

Response of Clearstream Group

to the

EBA Consultation Paper on the Draft Regulatory Standards on the determination of the threshold referred to in Art. 54(5) of the CSDR and accompanying appropriate risk management and accompanying prudential requirements to mitigate risks in relation to the designation of credit institutions in accordance with Art. 54(2a) of the CSDR

Eschborn, 16 June 2025

Clearstream expressly welcomes the effort to create a coherent legal framework for the provision of banking-type ancillary services and a level-playing field among EU CSDs. We are pleased about the opportunity to present our position in the context of this consultation.

The following statement was prepared on behalf of Clearstream Group, consisting of the Luxembourg International Central Securities Depository Clearstream Banking S.A. and the German Central Securities Depository Clearstream Banking AG, who are both affected by the provisions set out in the draft RTS.

Clearstream Group, as part of Deutsche Börse Group (DBG), is a leading provider of post-trade infrastructure and securities services for the German and international market, as well as 59 domestic markets worldwide:

The ICSD **Clearstream Banking S.A. (CBL)**, holds a banking license, issued by the CSSF, and is authorized under CSDR Articles 16 and 54 to provide core banking services as well as the following non-banking type ancillary services:

- Providing cash accounts to, and accepting deposits from, participants in a securities settlement system and holders of securities accounts;
- Providing cash credit for reimbursement no later than the following business day, cash lending to pre-finance corporate actions and lending securities to holders of securities accounts;
- Payment services involving processing of cash and foreign exchange transactions;
- Guarantees and commitments related to securities lending and borrowing.

The German CSD **Clearstream Banking AG (CBF)** operates under a banking license issued by the BaFin, and is authorized under Articles 16 and 54 to provide core banking services as well as the following non-banking-type ancillary services:

- Providing cash accounts to, and accepting deposits from, participants in a securities settlement system and holders of securities accounts;
- Providing cash credit for reimbursement no later than the following business day, cash lending to pre-finance corporate actions and lending securities to holders of securities accounts;
- Payment services involving processing of cash and foreign exchange transactions

It is important to Clearstream that clear legal and risk management conditions are created that guarantee safety, integrity and a high standard of service in the provision of banking-type ancillary services. At Clearstream Group, we are actively ensuring the efficiency and reliability of our processes, which has made us a trusted provider of banking-type ancillary services for the past years, since operating with banking licenses. CBL and CBF fully comply with the prudential requirements laid down in Article 59(1), (3) and (4) CSDR and the supervisory requirements as per Article 60 CSDR, the capital surcharge and monthly reporting to the competent authorities, as considered “advanced risk management and prudential requirements” within the Consultation Paper.

In our view, these requirements are risk-appropriate already and crucial to guarantee a high standard and the safety of the service. A staggered approach, including the proposed threshold and differing risk requirements for the provision of the same type of service, poses the risk of increased legal complexity and fragmentation. In view of the EU’s goal of regulatory harmonization and simplification, which were identified as main priorities in the EU

Competitiveness Compass and the Commission work program, introducing additional complexities should rather be avoided.

Therefore, Clearstream's detailed position on EBA's proposed draft RTS is as follows:

CHAPTER 1: Determination of the threshold referred to in Article 54(5) of Regulation (EU) 909/2014

Q1. Do you agree with the proposed approach for determining the threshold referred to in Art. 54(5) of the CSDR?

Clearstream Group is generally supportive of the proposed approach, particularly the maintenance of a low threshold under Article 54(5) CSDR. We believe this is consistent with the objectives of the regulation and contributes to a robust risk management framework. For more detail, please refer to our answer to Question 3.

Q2. Do you think that other elements should be taken into account in the proposed approach? If yes, which ones?

We consider the proposed approach sufficient, however, for some open questions that require clarification, please refer to our answer to Question 3.

Q3. Do you agree with the proposed levels set out in the proposed approach for the different parameters?

At the outset and in regard to the calculation method of the threshold, Clearstream Group would like to seek further **clarification on the setting of the values and level limits** used to determine the application of basic prudential requirements, and basic and advanced prudential requirements for credit institutions operating below the threshold. We would like to better understand on which basis the values of 1.5% and EUR 3.75 bn (or 2.5% and EUR 6.25 bn respectively) were calculated.

From a prudential and risk management perspective, Clearstream Group is of the view that maintaining the threshold at a low level would be most appropriate **in light of the objectives pursued by CSDR**. The threshold levels seem to be low and thus should be monitored carefully when going forward and used by CSDs without banking licenses. Limiting the provision of banking-type ancillary services predominantly to credit institutions authorized under Directive 2013/36/EU (CRD IV) **would serve to reinforce financial stability and resilience, strengthen market confidence, and promote high standards of operations:**

Firstly, a low threshold ensures that **only institutions subject to the full spectrum of prudential requirements** applicable to credit institutions, including capital adequacy, liquidity coverage, governance, and risk management obligations, **are able to provide banking-type ancillary services**. Such a requirement is essential to **mitigate systemic risk** and to preserve the safety and soundness of financial market infrastructures.

Secondly, from a **risk management** standpoint, a low threshold serves to ensure that institutions offering banking-type ancillary services are adequately equipped **to manage liquidity and credit risks effectively**. Specifically, subjecting such institutions to the comprehensive prudential and

risk management requirements applicable above the threshold contributes to the mitigation of credit risk, as it ensures the maintenance of sufficient own funds to cover potential losses arising from counterparty defaults and/or other exposures.

Moreover, the requirement to operate under enhanced liquidity standards **incentivizes institutions to uphold conservative liquidity positions**, thereby reducing the likelihood of funding mismatches and ensuring the timely discharge of obligations. This, in turn, **safeguards the orderly functioning of financial markets** and limits the propagation of liquidity stress throughout the system. It also contributes to strengthening the resilience of the broader financial system by reducing the potential for contagion effects stemming from the failure of inadequately prepared entities.

Thirdly, maintaining a low threshold fosters a **high standard of service quality** by ensuring that institutions offering banking-type ancillary services operate under advanced risk management frameworks and are **subject to comprehensive supervisory oversight**. This approach also establishes a **positive incentive structure, encouraging institutions aspiring to offer these services to invest in the enhancement** of their internal processes, governance mechanisms, and capital resilience. We believe that such incentives are critical to promoting continuous improvements in risk management practices throughout the sector.

In addition, we consider that a conservative calibration of the threshold is **particularly important in the current political environment**, characterized by heightened geopolitical risks and increased market volatility. Preserving the stability and resilience of financial market infrastructures is **essential to maintaining investor trust** and ensuring the smooth functioning of financial markets. Allowing entities that may not possess the necessary financial strength or risk management capabilities to provide banking-type ancillary services would, in our view, introduce significant vulnerabilities that the CSDR framework rightly seeks to avoid.

In light of these considerations, **Clearstream Group would encourage the EBA to maintain a prudent and stability-oriented approach in the finalization of the draft RTS**. We firmly believe that maintaining a low threshold and applying the corresponding prudential requirements would best serve the overarching objectives of safeguarding financial stability, promote high standards of risk management, and ensure the continued resilience of financial market infrastructures across the Union.

[CHAPTER 2: Appropriate risk management and prudential requirements to mitigate risks in relation to the designation of credit institutions in accordance with Article 54\(2a\) of Regulation \(EU\) 909/2014](#)

Q4. Do you agree with the proposed basic risk management and prudential requirements? If no, please provide rationale and an alternative proposal.

Clearstream Group would like to obtain **clarification from EBA about the involvement of CSDs in the scope of Article 2 'Basic risk management and prudential requirements'** of the proposed RTS. While CSDR Refit Article 54(2a) determines that CSDs can designate other CSDs with the provision of banking-type ancillary services – a notion also expressed in the Executive Summary of the consultation paper –, Article 2 of the proposed RTS exclusively mentions CSDs as *designating* entities, and credit institutions as *designated* entities that are required to comply with the basic, prudential and advanced risk management requirements.

CSDR Article 54(2a) defines *designated entities* as either a *credit institution* under Article 54(2a) (a) or as *CSD* under Article 54(2a) (b). Thus, there is no indication that the entities listed in Article 54(2a) (a) and (b) are both referred to as credit institutions, which leaves the conclusion that the CSDR Refit made a distinction between a *designated CSD* and a *designated credit institution*.

Therefore, Clearstream Group would greatly appreciate EBA to consider specifying the scope *ratione personae* of the RTS for the type of designated entity subject to the risk management and prudential requirements.

To avoid uncertainty as to the entities to be covered by the draft RTS, even though a global reading of Articles 2 and 3 indicates that CSDs should be excluded, **we would propose a precise provision as follows:**

*“The risk management and prudential requirements for the designation of credit institutions in accordance with **point (a) of** Article 54(2a) of Regulation (EU) No 909/2014 that are exempted under Article 54(5) of that Regulation, shall be the following:”*

This amendment would be particularly helpful, considering that during the review process from CSDR to CSDR Refit the cross-reference in CSDR Article 54(5) to CSDR Article 54(2)(b) was not incorporated, which states that the conditions and prudential and risk requirements under CSDR 54(4) do not apply to credit institutions.

To amend the draft RTS as proposed above serves to correct the cross reference that has not been updated in the CSDR Refit in Article 54(5) CSDR and to **avoid any misinterpretation or uncertainty** with the various regulators to be sure that CSDs designated by another CSD are not in scope.

Q5. Do you agree with the proposed level of settlement activity, which determines whether only basic or both basic and advanced risk management and prudential requirements are applied?

Besides our comments to Question 4, no further remarks from Clearstream Group.

Q6. Do you agree with the proposed advanced risk management and prudential requirements? If no, please provide rationale and an alternative proposal.

Besides our comments to Question 4, no further remarks from Clearstream Group.

Given the importance of clear legal conditions for ensuring the safety and integrity of banking-type ancillary services, we would like to extend our responses to the consultation questions with the following general consideration, which we believe is particularly relevant for any future consultations on this topic and the broader CSDR framework.

Distributions (e.g., dividends, coupons) are ancillary to the civil law obligations of a depository and distinct from cash payments related to settlement. Therefore, they **should be excluded from CSDR's scope for settlement agent designation and threshold calculations.**

With the designation of a CSD authorized to provide banking services, a non-banking CSD can delegate the settlement of the cash leg of the transactions to such entity in accordance with Article 40.2 CSDR.

By linking the role of settlement agent with the cash payments in accordance with Article 40.2 CSDR, **cash payments that are ancillary to the obligation incumbent upon a depositor** as per the civil law that remains applicable together with CSDR **should be excluded**. The supervisory and prudential approach to the risks related to the payment of income proceeds and the necessity to include them in the settlement volumes should not take over the civil law dimension of the deposit.

This issue was already flagged by Clearstream prior to this consultation, as it serves as an explanation for the low usage of Article 54.5 CSDR. **We do not agree with the approach by ESMA to include the cash payments resulting from custody (e.g. distributions) in the calculation of settlement volumes.**

CSDR provisions regarding cash payments (Articles 40.2, 54.2, 54.2a, and 19.1(d)) relate to the settlement of transactions, not inherent depository duties. Distributions do not involve trading, transfer orders, or settlement between system participants, but stem from corporate decisions taken by the issuers of the relevant securities.

It is important to note the distinction between the reference to cash payments in Article 40.2 CSDR (applicable to cash settlement). This reference is different to Article 54.2 CSDR as amended, with the latter referring to “a CSD that intends to settle the cash payments for all or part of its securities settlement systems through its own accounts **in accordance with Article 40(2)** or that otherwise intends to provide any banking-type ancillary services referred to in paragraph 1 (...)”.

Article 40.2 CSDR provides that “where it is not practical and available to settle in central bank accounts as provided in paragraph 1, a CSD may offer to **settle the cash payments for all or part of its securities settlement systems through accounts opened with a credit institution**, through a CSD that is authorised to provide the services listed in Section C of the Annex whether within the same group of undertakings ultimately controlled by the same parent undertaking or not, or through its own accounts. If a CSD offers to settle such cash payments through accounts opened with a credit institution, through its own accounts or the accounts of another CSD, **it shall do so in accordance with the provisions of Title IV**”.

Article 54.2a 2nd paragraph of CSDR as amended, which is the relevant provision of the Title IV, provides that “an authorisation to designate credit institutions or CSDs in accordance with the first subparagraph shall only be used with regard to the banking-type ancillary services referred to in Section C of the Annex for the **settlement of the cash payments for all or part of the securities settlement systems** of the CSD seeking to use the banking-type ancillary services, and not to carry out any other activities. The credit institutions and CSDs authorised to provide banking-type ancillary services designated in accordance with the first subparagraph **shall be considered to be settlement agents**.”

Article 19.1 (d) CSDR as amended specifies that “the settlement of all or part of **the cash leg** of its securities settlement system in the books of another settlement agent” as per Article 54.2a is subject to an authorization. CSDR defines also Delivery-versus-Payment as a “securities

settlement mechanism which links a transfer of securities with a transfer of cash in a way that the delivery of securities occurs if and only if the corresponding transfer of cash occurs and vice versa”.

Distributions are cash flows without a counterparty and strictly related to the deposited securities, unlike the two-sided nature of a securities transaction settlement with a securities leg and a cash leg.

Cash payment of ancillary rights attached to the securities are the result of a corporate decision taken by the issuer of the relevant securities. It does not involve any trading or transaction or transfer order and settlement among the participants in the system, even though they could opt for certain options, but it remains a corporate decision outside the system. Moreover, it constitutes a cash flow without counterparty as the securities leg is inactive and is a simple deposit. **We believe that it is reasonable to say that distributions are not cash payments or a cash leg** in accordance with Articles 19.1 (d), 40.2 (read together Recital 44 of CSDR) or 54.2a CSDR.

The obligation to process payments related to deposited securities falls under the civil law responsibilities of a depository (e.g., Articles 1927 et seq. of the Luxembourg Civil Code). **Distributions are ancillary to safekeeping and administration**, without a banking dimension.

Distributions are cash payments that are ancillary and inherent to the depository function, do not require a banking licence (as reflected in the PSF status of professional depositories of financial instruments under Article 26 of the Luxembourg Law of 5 April 1993 on the financial sector, as amended), and **are aligned with the civil law obligations applicable to depositories** pursuant to Articles 1927 et seq. of the Luxembourg Civil Code, which is also valid for the French and Italian civil codes. A depository’s principal obligations are the physical safekeeping of the assets (*obligation de conservation matérielle*) as well as the legal safekeeping of the assets (*obligation de conservation juridique*). The latter obligation of legal safekeeping of assets entails certain ancillary obligations, including the obligation to take all essential conservatory actions (*actes conservatoires indispensables*) which, in respect of securities, specifically include receiving any payments relating to such securities. On that basis, and if the cash is distributed to the holders of the relevant securities to which such amounts relate, **those cash payments could only appear to be an activity which is purely ancillary to the safekeeping and the administration of the financial instruments without any banking dimension.**

Therefore, based on CSDR and civil law arguments, **distributions should be separated from the cash payments** resulting from the cash leg of the securities settlement transactions for the determination of both thresholds and the role of the settlement agent (which as per Settlement Finality Directive is “*an entity providing to institutions and/or a central counterparty participating in systems, settlement accounts through which transfer orders within such systems are settled and, as the case may be, extending credit to those institutions and/or central counterparties for settlement purposes*” (Art. 2(d))).

We hope that our comments will be helpful for your deliberations. We are happy to provide explanations in case of questions and additional feedback for any further discussions.