Response of Clearstream Group

to the

EBA Consultation Paper on the Draft Regulatory Standards amending 2017/390 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council on prudential requirements for central securities depositories and designated credit institutions offering banking-type ancillary services

Eschborn, 02 March 2026

Clearstream and Deutsche Börse Group welcome the inclusion of banking CSDs as providers of banking-type ancillary services to other CSDs and the attention given to settlement efficiency and risk.

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 ('Clearstream'), consisting of the Luxembourg International Central Securities Depository Clearstream Banking S.A. and the German Central Securities Depository Clearstream Europe 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 Europe AG** (CEU; *formerly Clearstream Banking AG, CBF*) currently still operates under a banking license issued by the BaFin, but intends to return it, as publicly announced in July 2025. CEU 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

CBL and CEU fully comply with the prudential requirements laid down in Articles 59(1), (3) and (4) CSDR and the supervisory requirements as per Article 60 CSDR, the capital surcharge as well as monthly reporting to the competent authorities.

Please find Clearstream's detailed position on EBA's proposed draft RTS hereafter:

Question 1:

Are there other foreseeable operational arrangements in the designation of a CSD to provide foreign currency cash settlement services to a designating CSD that should be taken into account in the amending of these regulatory technical standards?

We would like to highlight three key operational aspects and one case of legal uncertainty, which, in our view, warrant further clarification and consideration in the amendments to the RTS under Article 59(5) CSDR:

1) **The potential requirement to monitor or report cash settlement activity separately**
2) **The operational risk of 'responsibility without capability'**
3) **Onboarding models for participants of the designating CSD or the use of affiliates**
4) **Legal structure and textual coherence**

1) Potential Requirement to Monitor or Report Cash Settlement Activity Separately

Point 18 of the **Chapter on background and rationale** of the draft RTS clearly indicates that a designated CSD should **not be required to monitor or report separately** the cash settlement activity of participants of the designating CSD. This is particularly relevant where a participant is already a direct participant in both CSDs and may legitimately **prefer to operate only one cash account** at the designated CSD for collateral and credit efficiency.

Background/Rationale Chapter, Point 18: "*This is because a participant of the designating CSD could also be a participant of the banking CSD, and prefer to hold one cash account at the designated CSD for collateral and credit efficiency reasons. Requiring separate reporting is likely to prevent a designating CSD from being able to offer a single cash account and create an unnecessary regulatory burden.*"

However, **the current drafting of Article 18a of the Commission Delegated Regulation leaves room for ambiguity**. To ensure legal certainty and avoid unnecessary regulatory burden, the final RTS should:

- Explicitly reflect the rationale in point 18, **confirming that no separate cash account, monitoring, or reporting is required** where the participant already maintains a cash account at the designated CSD.
- Provide a **clear differentiation** between
  - **Scenario A**: The participant of the designating CSD is **also** a participant of the designated CSD (single-account model), and
  - **Scenario B**: The participant is **not** a participant of the designated CSD (additional rules and procedures may apply).

A clear reference in the legal text confirming that the designated CSD may rely on its existing monitoring and reporting processes for the single account would provide the required legal certainty.

2) Operational risk of 'responsibility without capability'

The current draft of the RTS creates an operational arrangement of **'responsibility without capability'**, in which the designated CSD carries the full prudential and legal responsibility for credit and liquidity risk management, while **lacking the legal right or operational capability** to obtain essential risk, exposure, and KYC information from the designating CSD.

Based on Art. 18a(2)(b) it is unclear, how and on which material basis the designated CSD can identify material dependencies in case the designating CSD is subject to secrecy rules and cannot deliver respective information to the designated CSD.

This results in a regulatory expectation that **cannot be operationally fulfilled**.

To ensure workability, the RTS should explicitly require the designating CSD to:

- **Provide timely, comprehensive, and accurate information on its participants** that generate exposure at the designated CSD.
- Enter into a **binding operational and legal arrangement** ensuring that relevant risk, KYC, and due diligence information is transmitted without delay.

Without such a requirement, the designated CSD would be placed in a position where it is accountable for risks it cannot meaningfully assess or manage.

3) Onboarding models for participants of the designating CSD or the use of affiliates

The RTS should also account for the different operational scenarios under which participants of the designating CSD (in Clearstream's case: CEU) may access cash settlement services at the designated CSD:

1. **CEU participant is already a participant of the designated CSD**

   The participant uses its existing account at the designated CSD to also receive cash-settlement services for the settlement of the securities leg at the designating CSD. No additional monitoring or reporting is warranted (see point 1) above). In addition, no additional collection of information (Art. 18a(2)(a) and (b)) is warranted; relevant data already exists within the designated CSD.

2. **CEU participant is not a participant yet but will be onboarded**

   The participant uses a new account at the designated CSD to just receive cash settlement services for the settlement of the securities leg at the designating CSD. The new participant will run through the full standard onboarding process under client due diligence obligations pursuant to CSDR, which includes all required KYC, due diligence, and risk information. The additional gathering of information (Art. 18a(2)(a)) about the participant appears to not be required. The requirement to additionally identify material dependencies between the participants of the securities settlement system of the designating CSD and its own participants is unnecessary in the case of the newly onboarded participant (as part of the standard credit due diligence processes) or excessive if it relates to other participants of the designating CSD.

3. **CEU participant does not wish to become a participant and instead elects a third-party affiliate to receive cash settlement services from the banking CSD**

   The RTS should recognize this scenario to ensure the free choice of market participants to arrange for a settlement infrastructure.

4) Legal Structure and Textual Coherence

The EBA RTS appear to imply that the banking CSD enters into a service relationship with the participants of the designating CSD (cf. Art. 18a(1): "*[...] related to the provision of banking-type ancillary services to the participants of the securities settlement systems of the designating CSDs.*").

As noted in the introduction, it is the banking CSD that establishes a direct legal relationship with the relevant participant, whether that participant is an existing or a new customer of the designated CSD. This structure therefore leaves significant portions of the RTS drafting subject to considerable legal uncertainty regarding the respective roles, responsibilities, and underlying legal relationships.

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In summary, we respectfully request that the EBA incorporates clarifications into the Commission Delegated Regulation and accompanying RTS to:

- Confirm that no separate cash account, monitoring, or reporting is required where a single-account structure is applicable,
- Establish a mandatory information sharing obligation on the designating CSD to avoid 'responsibility without capability', and
- Recognize the different onboarding and access models for CEU participants, including the use of affiliates.

Such clarifications will provide legal certainty, reduce unnecessary operational burden, and ensure a workable and risk-sound framework for cross-CSD foreign currency cash settlement arrangements.

Question 2:

Are there additional measures that should be considered for inclusion in the draft RTS?

To address the arrangement of 'responsibility without capability' as described in the response to Question 1, an additional measure is required to create a workable and safe cooperative framework. **Clearstream proposes to amend the legal text of the RTS** to introduce a clear, proportionate, and legally binding responsibility for the designating CSD to support the designated CSD.

We suggest the following amendments:

Proposed new recital

(4a) In order to ensure the sound management of credit and liquidity risks by a CSD-banking service provider designated pursuant to Article 54(2a) of Regulation (EU) No 909/2014, that provider should have access to the necessary information concerning the participants of the designating CSD. As the designating CSD holds the primary relationship with those participants and already possesses the relevant information as part of its own due diligence and risk management processes, the most effective and proportionate means to ensure the designated CSD can fulfil its prudential obligations should be for the designating CSD to provide that information. Such an arrangement should avoid the creation of duplicative and unnecessarily burdensome information-gathering processes, thereby upholding the principle of proportionality while ensuring a complete risk management framework.

Proposed amendments to Article 18a

Additionally, Article 18a should be amended to reflect the cooperation mentioned in the EBA's explanatory part. Although Question 1 refers to "other foreseeable operational arrangements", the RTS text itself does not reference them. As for the new Recital reflecting the intentions of the EBA as stated in the preliminary part of the Consultation Paper, **we propose the following amendments to Article 18a**.

1. [Paragraph 1 remains unchanged]
2.For the purposes of ensuring compliance with paragraph 1, the CSD that designates the CSD-banking service provider ('the designating CSD') shall provide that provider with all necessary information concerning its participants making use of the service. The rules and procedures referred to in paragraph 1 shall ensure that the designated CSD-banking service provider:
(a) processes the information provided by the designating CSD to identify, monitor and manage any material credit risks;
(b) identifies material dependencies between the participants of the securities settlement system of the designating CSD and its own participants;
(c) regularly reviews risks arising from providing services listed under Section C of Annex I of Regulation (EU) No 909/2014 to the participants of the securities settlement systems of the designating CSD and takes mitigating action when appropriate.
3. [Paragraph 3 remains unchanged]

This amendment seamlessly embeds the designating CSD's obligation into the flow of the existing article, while remaining simple and direct as initially drafted by the EBA. It avoids new article or paragraph numbers, making the logic flow naturally, and is proportionate: Our proposal leverages information that the designating CSD already holds, creating a safe and efficient framework without imposing undue costs and complexity. Our proposed amendment is also legally unambiguous – that is, it transforms the intention of cooperation into a clear, binding legal duty for the designating CSD and a practical, achievable duty for the designated CSD ("*processes the information*").

This measure is essential to ensure the entity responsible for the risk has the legal means to obtain the information needed to manage it.

Further textual clarity request:
In the threshold RTS (Art. 54(5)), please embed "point (a)" directly in Article 2 (e.g., "*for the designation of credit institutions in accordance with point (a) of Article 54(2a)…*"). This will help to clarify that the scope only extends to designated credit institutions and prevents Articles 2 to 3 from being misread as applying to designated CSDs.

Question 3:

Are any of the proposed additional measures unnecessary or disproportionate?

The **proposed amendment to Article 21(c)(iii) [via Article 1(7)] requires clarification**. As the designating CSD does not grant credit, the intraday credit exposure is generated exclusively on the books of the designated CSD. The wording should be refined to eliminate any ambiguity and make it clear that the recording of exposures is limited to the books of the designated CSD providing the service.

Weakness of cross-referencing: The ongoing need to amend the RTS to align with CRR3 highlights the systemic weakness of relying on direct cross-references to dynamic regulations. This creates legal gaps whenever the source text is updated and requires constant maintenance.

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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.