



Questions and Answers: reviewing the Central Securities Depositories Regulation to boost the EU's Capital Markets Union

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What is the Central Securities Depositories Regulation and what is today's review about?

The Central Securities Depositories Regulation was introduced following the financial crisis to improve the safety and efficiency of settlement in financial markets, i.e. the completion of a securities transaction through the transfer of cash or securities, or both. It also provides a set of common requirements for Central Securities Depositories across the EU. It is an essential piece of legislation that ensures the stability and efficiency of the EU's financial system.

Central Securities Depositories play a pivotal role in the EU's capital markets. They operate the infrastructure (so-called securities settlement systems) that enables the settlement of securities.

Today's review aims to provide more proportionate and effective rules to reduce compliance costs and regulatory burdens for Central Securities Depositories, as well as facilitating their ability to offer a broader range of services cross-border, and improving their cross-border supervision. It is a key element of the [2020 Capital Markets Union Action Plan](#), which aims to boost the EU's capital markets, and ensure that businesses have access to varied sources of funding. More efficient securities settlement will contribute to this goal.

What led the European Commission to make these proposals?

The Commission concluded [in its Report of 1 July 2021](#) that, in broad terms, the Central Securities Depositories Regulation continues to achieve its original objectives to enhance the efficiency of settlement in the EU and the soundness of Central Securities Depositories. Nevertheless, while the volume of settled trades increased since the entry into force of the Central Securities Depositories Regulation, feedback from stakeholders indicate that in several areas, such as passporting, licensing, and supervisory assessments, significant barriers exist.

In 2020, the Commission started carrying out an assessment of the current rules, as required by Article 75 of the Central Securities Depositories Regulation. This included a targeted public consultation with more than 90 contributions from a broad range of stakeholders, as well as reports from the European Securities and Markets Authority (ESMA) and the European System of Central Banks (ESCB). In addition to this, [the Final Report of the High Level Forum on the Capital Markets Union](#) also recommended in 2020 to review the Central Securities Depositories Regulation to strengthen the Central Securities Depositories passport and improve supervisory convergence among national competent authorities. This would enhance the cross-border provision of settlement services in the EU, thereby fostering further competition and cost savings.

In the consultation, stakeholders also expressed concerns on the implementation of specific requirements that already apply (i.e. on cross-border provision of services, cooperation between supervisory authorities, access to commercial bank money, the framework for third-country central securities depositories). Concerns were also raised about the proportionality of the settlement discipline regime and its impact on financial stability.

On the basis of this feedback, the Commission adopted the Central Securities Depositories Regulation Report recommending to amend the Regulation in these areas to eliminate disproportionate costs and regulatory burdens on market participants and to simplify rules without compromising the safety and stability of the markets.

Finally, today's review is also part of the Commission's efforts to ensure that EU legislation delivers results for citizens and businesses effectively and at minimum cost (REFIT).

What are the main proposed amendments to the Central Securities Depositories Regulation?

Ensuring the stability and efficiency of the EU's settlements markets remains the main objective of Central Securities Depositories Regulation. Nevertheless, a number of changes have been proposed

today to make these rules even more proportionate and effective.

1. Improving the passporting regime

The current passporting process (i.e. the procedure under which a Central Securities Depository authorised in one Member State can provide services in another Member State), requires the host Member State authority to approve the Central Securities Depository's assessment of the measures needed to comply with national laws, as referred to in Article 49(1) of the Central Securities Depositories Regulation. This has made the process burdensome and costly and has in the past caused Central Securities Depositories to stop providing their services cross-border. This is in contrast to other areas of EU financial services legislation where actions required by host Member State authorities is minimal.

The Commission's proposal will clarify and simplify the passporting rules, such as by shortening the period to transmit the request to the host supervisor, removing the possibility for the host supervisors to refuse the passport and mandating that only a notification from the home supervisors to the host supervisors is required. This will minimise barriers to cross-border settlement and reduce the administrative burden and compliance costs.

2. Improving cooperation between supervisory authorities

Central Securities Depositories are often part of larger groups, including two or more Central Securities Depositories. In this way, Central Securities Depositories may outsource key support functions to other group entities while governance may be established at group level. So far, the supervisory approach to such entities has focused on individual Central Securities Depositories.. Nonetheless, decisions made by the authority of one Central Securities Depository in the group can impact the other financial market infrastructures in the group.

While the Central Securities Depositories Regulation requires the establishment of cooperative arrangements between home and host authorities when certain conditions are met and allows for the voluntary establishment of colleges of supervisors, there is evidence that such arrangements have been rarely used. In practice, this means that communication between authorities in different Member States is not standardised. The same Central Securities Depository is likely to be subject to different supervisory arrangements and requirements in the different Member States in which it may operate. This leads to insufficient cooperation between authorities in home and host Member States but also insufficient supervisory convergence, creating further obstacles in the Central Securities Depositor's cross-border operations, hindering the creation of a true single market for settlement.

To address these problems, the Commission is today proposing to establish colleges where a Central Securities Depository is passported in other Member States and where it is part of a corporate group comprising two or more Central Securities Depositories authorised in at least two Member States. A college of supervisors is a formal though flexible structure through which supervisors can organise themselves to ensure consistent and convergent supervision, usually in a cross-border context. While colleges would be set up primarily for information-sharing purposes, and the home supervisor would maintain supervisory powers, other authorities participating in the colleges would be taken more into account by the home supervisor.

Colleges will ensure that supervisory responsibilities are aligned, the Central Securities Depositories Regulation is applied in a more convergent and coherent manner, and that supervisory arrangements are more effective.

3. Improving banking-type ancillary services

A securities trade typically results in an obligation for the seller to deliver securities and a corresponding obligation for the buyer to pay cash. To ensure the payment of cash, a Central Securities Depository should use accounts that are opened with a central bank (i.e. "central bank money") when practical and available.

When the use of "central bank money" is not practical or available, a Central Securities Depository may use accounts opened with a credit institution, or accounts opened in their own books if they are authorised to provide banking-type ancillary services under the Central Securities Depositories Regulation (i.e. "commercial bank money").

As access to the central bank of a relevant currency is not always possible, settlement in "commercial bank money" is sometimes the only option available for Central Securities Depositories when they want to settle in currencies other than that of the jurisdiction in which they are authorised. However, the required banking licence is not always an option for them due to the associated costs. Furthermore, due to the conditions attached to the use of accounts opened with credit institutions, Central Securities Depositories have only used this possibility in very limited cases, according to the thresholds set out in the Central Securities Depositories Regulation.

To ensure and further develop competitive settlement markets in the EU, the conditions under which a Central Securities Depository may provide banking-type ancillary services have been reviewed:

- i. First, it is proposed to amend the threshold under which Central Securities Depositories can provide these services.
- ii. Second, the range of providers that Central Securities Depositories can use to offer different settlement services will be broadened. Central Securities Depositories that are authorised to provide banking-type ancillary services will also be able to provide these services to those that are not allowed to do so.

4. Improving settlement discipline:

“Settlement efficiency” measures the rate at which securities transactions settle on the intended settlement date. A capital market with a high level of settlement efficiency (or settlement discipline) is proof of the market and its participants' reliability, thereby reinforcing its attractiveness for new investors who, in turn, will become a source of capital for companies.

Since the entry into force of the Central Securities Depositories Regulation in 2014, settlement efficiency in the EU has continued to improve, albeit slowly. It still remains at lower levels than that of other developed capital markets.

There are three main elements of settlement discipline: reporting requirements, cash penalties and mandatory buy-ins.

The Regulation's settlement discipline regime was intended to enter into force in 2020, but its implementation was delayed twice due to technical issues, as well as the COVID-19 pandemic. The reporting of settlement failures and penalties only entered into force on 1 February 2022. Mandatory buy-in requirements were decoupled and their entry into force was suspended. A mandatory buy-in could be a tool in a settlement discipline framework, i.e. to ensure delivery of securities against cash in a securities trade. For example, should a securities delivery fail in the agreed period (usually two business days), a third party (e.g. a neutral buy-in agent) will buy and deliver the securities to the non-failing party (against payment and a penalty).

It became clear during the targeted consultation that the rules on mandatory buy-ins could lead to legal uncertainty, increased costs for market participants and financial stability risks, if not well calibrated. Mandatory buy-ins could also lead to reduced liquidity across asset classes or the reduced provision of certain critical market functions, such as market making. In addition, it is possible that cash penalties and reporting could themselves already provide sufficient incentives to market participants to improve settlement efficiency in the EU.

The Commission has therefore proposed a two-step approach:

- i. The penalties regime applies from 1 February 2022.
- ii. The Commission can re-introduce mandatory buy-ins by means of an implementing act in certain circumstances, for example, if the rate of settlement failures does not improve.

In addition, to further improve the mandatory buy-in regime, refine its scope, as well as make it more proportionate and effective, a pass-on mechanism will be introduced where only the original failing participant in the chain will be made the addressee of the claim.

5. Improving the oversight of third-country Central Securities Depositories

Currently, third-country Central Securities Depositories offering notary and central maintenance services have to be recognised by ESMA, after an equivalence decision for the relevant third country has been taken by the Commission. However, due to a grandfathering clause, third-country Central Securities Depositories that provided services in the EU before the entry into force of the Central Securities Depositories Regulation can continue doing so without needing to be recognised. In addition, there is little information on the provision of settlement services by third-country providers.

To address these issues, an end-date to the grandfathering clause will be introduced and third-country Central Securities Depositories will now have to notify ESMA when they are providing core services in the EU.

Who will benefit from these changes?

Simpler and more proportionate rules will reduce costs for Central Securities Depositories, market participants, investors and issuers, without compromising financial stability.

For example, Central Securities Depositories will benefit from a simplified passporting procedure, which will reduce costs when operating across the EU. They will also benefit from more proportional

requirements, such as the increased possibility for banking-type ancillary services.

This will increase competition between Central Securities Depositories, which investors and issuers will benefit from. Clearer and less burdensome requirements in the area of settlement discipline will also reduce costs for market participants.

This ultimately aims to improve businesses' access to finance, thereby directly benefitting the real economy.

Finally, better insight into the activities of third-country Central Securities Depositories and better cooperation between EU supervisors, including in the area of passporting, will improve financial stability for all market participants.

When will the changes enter into force?

The proposal will now be submitted to the co-legislators. The changes will enter into force once the European Parliament and the Council have approved them.

For More Information

[Press release](#)

[Legal texts](#)

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