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***I
REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories
(COM(2022)0120 – C9-0118/2022 – 2022/0074(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Johan Van Overtveldt

Symbols for procedures

*	Consultation procedure
***	Consent procedure
***I	Ordinary legislative procedure (first reading)
***II	Ordinary legislative procedure (second reading)
***III	Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.
By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories (COM(2022)0120 – C9-0118/2022 – 2022/0074(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2022)0120),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9 0440/2021),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Central Bank of 28 July 2022[1],

– having regard to the opinion of the European Economic and Social Committee of 14 July 2022[2],

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs (A9-0047/2023),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

[1] OJ C 367, 26.9.2022, p. 3.
[2] OJ C 443, 22.11.2022, p. 87.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Central Bank[3],
Having regard to the opinion of the European Economic and Social Committee[4],
Acting in accordance with the ordinary legislative procedure,
Whereas:

(1) Regulation (EU) No 909/2014 of the European Parliament and of the Council[5] was published in the Official Journal of the European Union on 28 August 2014, and entered into force on 17 September 2014. It standardises the requirements for the settlement of financial instruments and rules on the organisation and conduct of central securities depositories (CSDs) to promote safe, efficient and smooth settlement. That Regulation introduced shorter settlement periods, settlement discipline measures, strict organisational, conduct of business and prudential requirements for CSDs, increased prudential and supervisory requirements for CSDs and other institutions providing banking services that support securities settlement, and regime allowing authorised CSDs to provide their services across the Union.

(2) A simplification of the requirements in certain areas covered by Regulation (EU) No 909/2014, and a more proportionate approach to those areas, is in line with the Commission's Regulatory Fitness and Performance (REFIT) programme which

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* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol ▌.

3 OJ C […], […], p. […].

4 OJ C , , p. .

5 Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

emphasises the need for cost reduction and simplification so that Union policies achieve their objectives in the most efficient way, and aims in particular at reducing regulatory and administrative burdens.

(3) Efficient and resilient post-trading infrastructures are essential elements for a well-functioning Capital Markets Union and they deepen the efforts to support investments, growth and jobs in line with the political priorities of the Commission. For this reason, the Commission Capital Markets Union Action Plan adopted in 2020[6] included as one of its key actions the review of Regulation (EU) No 909/2014.

(4) In 2019, the Commission carried out a targeted consultation on the application of Regulation (EU) No 909/2014.The Commission also received input from the European Securities and Markets Authority ('ESMA') and the European System of Central Banks ('ESCB'). It appeared from the consultations that stakeholders support and consider as relevant the objectives of that Regulation, i.e. to promote safe, efficient and smooth settlement of financial instruments, and that no major overhaul was necessary. On 1 July 2021, the Commission adopted a review report[7] in accordance with Article 75 of Regulation (EU) No 909/2014. Although not all the provisions of that Regulation are fully applicable yet, the report identified areas for which targeted action is necessary to ensure that its objectives are reached in a more proportionate, efficient and effective manner.

(5) Regulation (EU) No 909/2014 has introduced rules on settlement discipline to prevent and address failures in the settlement of securities transactions and therefore ensure the safety of transaction settlement. Such rules include in particular reporting requirements, a cash penalties regime and mandatory buy-ins. Despite the absence of experience in applying those rules, the development and specification of the framework in Commission Delegated Regulation (EU) 2018/1229[8] has allowed all interested parties to better understand the regime and the challenges its application could give rise to. In this regard, the scope of ***measures to prevent and address settlement fails*** set out in ***Articles 6 and*** 7 of Regulation (EU) No 909/2014 should be clarified .

(5a) The overarching objective of the settlement discipline regime is to improve settlement efficiency within the Union. As such, it is necessary that all measures to improve settlement efficiency are explored to reduce settlement fails. To achieve that objective, this Regulation contains a number of measures, including cash penalties, more efficient operational processes, and closer monitoring of supervisory activities to target settlement fails. Nevertheless, further efforts are needed to improve settlement efficiency in the Union. A range of different practices already exist on the market, for example, hold and release or partial settlement, however other measures could also be considered. Accordingly, ESMA should, in close cooperation with the ESCB,

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6 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Capital Markets Union for people and businesses-new action plan', COM(2020/) 590.

7 Report from the Commission to the European Parliament and the Council under Article 75 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (COM(2021) 348 final).

8 Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 230, 13.9.2018, p. 1).–

review industry best practices, both within the Union and internationally, with a view to identifying all relevant measures that could be implemented by settlement systems or market participants, and updating, where necessary and appropriate, the draft regulatory technical standards on measures to encourage and incentivise timely settlement.

(6) ***The*** market volatility in 2020 amplified concerns about the potential negative effects of ***significantly interfering in the functioning of securities transactions through*** mandatory buy-in rules, both in normal and stressed market conditions. ▌ . Considering the potential impacts of mandatory buy-in rules, such rules should apply only ***as a last resort, when all other available measures have failed to address the insufficient levels of settlement efficiency in the Union. Therefore, the Commission should as a first step consult the ESRB and require ESMA to provide it with a cost-benefit analysis. Only in cases where such analysis demonstrates that mandatory buy-ins might be the appropriate tool should the Commission have the possibility of recourse to the mandatory buy-in mechanism.***

(6a) ***Moreover, mandatory buy-ins should only be possible*** where certain ***additional*** conditions are met, namely where the application of cash penalties has not resulted in a long-term, continuous reduction***, or in maintaining a sustainable reduced level,*** of settlement fails in the Union, ***even after a review of the level of cash penalties, and*** where the level of settlement fails in the Union has or is likely to have a negative effect on the financial stability of the Union. Where the Commission considers that ▌ those conditions ***are*** met and that the application of mandatory buy-ins is ***necessary, appropriate and*** proportionate to address ***the*** level of settlement fails in the Union, the Commission should be empowered to adopt an implementing act determining for which financial instruments or categories of transactions the mandatory buy-in rules should start to apply.

(6b) ***It should be clarified that the*** cash penalties referred to in the third subparagraph of Article 7(2) of Regulation (EU) No 909/2014 should be calculated on a daily basis for each business day that a transaction fails to be settled until the end of the buy-in process***,*** or ***until the original transaction is either settled or else bilaterally cancelled***, whichever is the earlier.

(6c) ***Some categories of transactions should be excluded from the scope of cash penalties and mandatory buy-ins. Such exclusions should cover in particular transactions that failed for reasons not attributable to the participants and transactions that do not involve two trading parties. The application of cash penalties or mandatory buy-ins to such transactions would not be practicable or could result in detrimental consequences for the market, such as certain transactions from the primary market, corporate actions, reorganisations, creation and redemption of fund units, realignments, and free-of-payment securities transfers made in the context of the (de)mobilisation of collateral***.

(6d) ***Pursuant to Article 72 of Regulation (EU) No 909/2014, and to Article 76(5) of that Regulation prior to its amendment by Regulation (EU) 2022/858 of the European***

Parliament and of the Council[9], Article 15 of Regulation (EU) No 236/2012 of the European Parliament and of the Council[10] was deleted from the date of entry into force of Delegated Regulation (EU) 2018/1229 to reflect the fact that, from that date onwards, Regulation (EU) No 909/2014 and Delegated Regulation (EU) 2018/1229 were expected to harmonise at Union level the measures to prevent and address settlement fails with a wider scope of application than Regulation (EU) No 236/2012. Given that the provisions on buy-in will not enter into application on the date of entry into force of this Regulation, it is necessary to provide for the application of the buy-in procedures that are laid down in Article 41a of Delegated Regulation (EU) 2018/1229 until such time as the provisions on buy-in of this Regulation apply.

(7) To avoid a multiplicity of buy-ins for a transactions on the same financial instrument along a chain of counterparties, which could trigger unnecessary duplicative costs and could affect the liquidity of the financial instrument, a 'pass-on' mechanism should be available to participants in such transactions. Each participant involved in the transaction chain should be allowed to pass-on a buy-in notification to the participant failing to them until it reaches the original failing participant.

(8) Mandatory buy-ins and cash compensation processes allow for the payment of the difference between the buy-in price and the original trade price to be made from the seller to the purchaser only where that buy-in or cash compensation reference price is higher than the original trade price. This asymmetry for the payment of the differential could create an unequitable remedy that would unduly benefit the purchaser in the event that the buy-in or reference price is lower than the original trade price. The payment of the differential between the buy-in price and the original trade price should therefore apply in both directions to ensure that the trading parties are restored to the economic terms, had the original transaction taken place.

(9) The settlement discipline regime set out in Article 7 of Regulation (EU) No 909/2014 should not apply to a failing participant, which is a central counterparty ('CCP') as defined in Regulation (EU) No 648/2012 of the European Parliament and of the Council[11]. However, for transactions entered into by a CCP where it does not interpose itself between counterparties, such as permitted use of collateral for investment purposes, the CPP should be subject to the settlement discipline regime like any other participant.

(10) Where the mandatory buy-ins apply, it should be possible for the Commission to temporarily suspend their application in certain exceptional situations. Such a suspension should be possible for specific categories of financial instruments where necessary to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the Union. Such a suspension should be proportionate to those aims.

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[9] ***Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, p. 1).***

[10] ***Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1).***

[11] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

(11) The ***possibility*** of ***a*** negative interest ***rate environment*** should be taken into account in the delegated act for the calculation of cash penalties in order to avoid unintended effects on the non-failing participant by eliminating any adverse incentives to fail that may arise in a low or negative interest rate environment.

(12) ESMA should prepare draft regulatory standards to revise the existing regulatory technical standards in order to take into account the changes made to Regulation (EU) No 909/2014 in order to enable the Commission to make any necessary corrections or amendments with a view to clarifying the requirements set out in such regulatory technical standard .

(12a) At present, ESMA has limited information on the authorisation and supervision of CSDs that are of substantial importance for the functioning of securities markets and the protection of investors in the Union in at least two host Member States and of CSDs that are part of a group with two or more CSDs. To foster regulatory convergence and contribute to a more level playing field through a more consistent interpretation of requirements, ESMA should be added to the list of relevant authorities for such CSDs.

(13) Where a central securities depository (CSD) does not carry out a settlement activity before the beginning of the authorisation process, the criteria determining which relevant authorities should be involved in such authorisation process should take into account the anticipated settlement activity to ensure that the views of all relevant authorities potentially interested in the activities of that CSD are taken into account.

(14) While Regulation (EU) No 909/2014 requires national supervisors to cooperate with and involve relevant authorities, national supervisors are not required to inform those relevant authorities if and how their views have been considered in the outcome of the authorisation process and if additional issues have been identified in the course of annual reviews and evaluations. The relevant authorities should therefore be able to issue reasoned opinions on the authorisation of CSDs and the review and evaluation process. The competent authorities should take into account such opinions or explain in a reasoned decision why such opinions were not followed.

(15) Regular reviews and evaluations of CSDs by competent authorities are necessary to ensure that CSDs continue to have in place appropriate arrangements, strategies, processes and mechanisms to evaluate the risks to which the CSD is, or might be, exposed or which may constitute a threat to the smooth functioning of securities markets. Experience has, however, shown that an annual review and evaluation is disproportionately burdensome for both CSDs and competent authorities and with limited added value. A more appropriately calibrated periodicity should therefore be set in order to alleviate this burden and avoid a duplication of information from one review the other. ***To further ensure consistency, the minimum frequency at which the competent authorities of CSDs and the competent authorities defined in Regulation (EU) No 575/2013 of the European Parliament and of the Council[12] conduct reviews and evaluations of banking-type ancillary services should be aligned with the frequency of the review and evaluation of CSDs.*** The supervisory capacities of

[12] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

competent authorities and the objective of safeguarding financial stability should, however, not be undermined.

(16) A CSD should be prepared to face scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. Regulation (EU) No 909/2014 introduced requirements in this respect, providing in particular that a competent authority is to require the CSD to submit an adequate recovery plan and is to ensure that an adequate resolution plan is established and maintained for each CSD. No harmonised resolution regime on which a resolution plan could be based, however, currently exists. While CSDs authorised to offer banking-type ancillary services fall within the scope of Directive 2014/59/EU of the European Parliament and of the Council[13], no specific provisions exist for CSDs that are not authorised to provide such services and therefore are not considered credit institutions under Directive 2014/59/EU with the obligation to have recovery and resolution plans in place. Clarifications should therefore be introduced with a view to better align the requirements applicable to CSDs taking into account the absence of a Union framework for the recovery and resolution for all CSDs. ***In order to avoid a duplication of requirements, CSDs authorised to offer banking-type ancillary services that are already subject to the requirements regarding recovery plans set out in Directive 2014/59/EU should not be required to comply with the requirements regarding the preparation of plans on recovery or orderly wind-down under this Regulation, insofar as the information to be included in those plans has been already provided.***

(17) Where a new CSD applies for authorisation and compliance with certain requirements cannot be assessed because the CSD is not operational yet, the competent authority should be able to grant the authorisation subject to the condition that those requirements are complied with when the CSD effectively launches its activities. ***That assessment is particularly relevant as regards the use of distributed ledger technology and the application of Regulation (EU) 2022/858.***

(18) The procedure set out in Article 23 of Regulation (EU) No 909/2014 regarding the provision by CSDs of notary and central maintenance services in relation to financial instruments constituted under the law of a Member State other than that of their authorisation has proven to be burdensome and some of its requirements are unclear. This has resulted in a disproportionately costly and lengthy process for CSDs. The procedure should therefore be simplified to better dismantle the barriers to cross-border settlement in order for authorised CSDs to fully benefit from the freedom to provide services within the Union.

(19) Regulation (EU) No 909/2014 requires the cooperation of authorities that have an interest in the operations of CSDs that offer services in relation to financial instruments issued under the law of more than one Member States. Nonetheless, the supervisory arrangements remain fragmented and can lead to differences in the allocation and nature of supervisory powers depending on the CSD concerned. This in turn creates barriers to the cross-border provision of CSD services in the Union, perpetuates the remaining

[13] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

inefficiencies in the Union settlement market and has negative impacts on the stability of Union financial markets. Despite the possibility to set up colleges in accordance with Article 24(4) of that Regulation, that option has barely been used. In order to ensure an effective and efficient coordination of the supervision by competent authorities, the requirement to set up mandatory colleges should ***be based on a single existing and reliable criterion, namely, the substantial importance of a CSD for a jurisdiction other than the one where it is established. The threshold for the mandatory establishment by competent authorities of a college of supervisors should be met where a CSD is of substantial importance in at least two host Member States***. Such colleges should ***be chaired by ESMA and*** ensure the sharing of information pertaining to the CSDs concerned. ***Members of a college should have the possibility of requesting the adoption by the college of a formal opinion concerning issues identified during the review and evaluation process of CSDs, or during the review and evaluation of providers of banking-type ancillary services, or concerning issues that relate to the extension or outsourcing of activities and services provided by the CSD, or concerning any potential breach of the requirements of Regulation (EU) No 909/2014 arising from the provision of services in a host Member State. The process for the adoption of formal opinions should rely on a simple majority vote.***

(20) ESMA and competent authorities currently have limited information on the services that CSDs established in a third-country offer in relation to financial instruments constituted under the law of a Member State for several reasons. Firstly, ***the*** application of recognition requirements for third-country CSDs that already provided central maintenance and notary services in the Union before the date of application of Regulation (EU) No 909/2014 pursuant to Article 69(4) of that Regulation ***has been deferred indefinitely***. ***Secondly***, where a third-country CSD provides only the settlement service, it is not subject to recognition requirements. Finally, Regulation (EU) No 909/2014 does not require CSDs established in a third-country to notify Union authorities of their activities related to financial instruments constituted under the law of a Member State. Due to that lack of information, neither issuers nor public authorities at national and Union level would be able to assess the activities of those CSDs in the Union if needed. Therefore, ***the recognition regime for*** CSDs established in a third-country should be ***expanded to cover securities settlement services in addition to notary and central maintenance services. Such expansion would contribute to a more level playing field between CSDs established in a Member State and CSDs established in a third country, adequately mitigating the risks related to settlement services in respect of*** financial instruments constituted under the law of a Member State.

(21) Article 27(2) of Regulation (EU) No 909/2014 requires a CSD to have a management body of which at least one third, but no less than two, of its members are independent. That concept of independence may, however, be subject to divergent interpretations and should therefore be clarified, in line with the definition of 'independent members' under Article 2(28) of Regulation (EU) No 648/2012.

(22) In order to ensure the consistency of interpretation of the key issues on which user committees should advise the management body, it should be further clarified what elements are included in the 'service level'.

(23) Given their central role regarding the safety of transactions, CSDs should not only reduce the risks associated with the safekeeping and settlement of transactions in securities, but should seek to minimise those risks.

(24) Under certain circumstances, a security may be constituted under the national corporate or similar laws of two different Member States. This is in particular the case for debt securities where the issuer is established in one Member State and the securities may be issued under the governing law of another Member State. In such a case, both national corporate or similar laws should continue to apply.

(25) In order to ensure that issuers who arrange for their securities to be recorded in a CSD established in another Member State can comply with the relevant provisions of the corporate or similar law of such Member States, Member States should regularly update the list of such national key relevant provisions published by ESMA.

(25a) Some CSDs established in the Union operate securities settlement systems that apply netting arrangements. Such CSDs should adequately measure, monitor and manage the risks stemming from the application of the netting arrangements put in place for settlement on a net basis, particularly for deferred netting arrangements.

(26) In order to avoid settlement risks due to the insolvency of the settlement agent, a CSD should settle, whenever practical and available, the cash leg of the securities transaction through accounts opened with a central bank. Where that option is not practical and available, including where a CSD does not meet the conditions to access a central bank other than that of its home Member State, that CSD should be able to settle the cash leg of transactions through accounts opened with institutions authorised to provide banking services under the conditions provided in Regulation (EU) No 909/2014. For that purpose, CSDs authorised to provide banking-type ancillary services in accordance with Regulation (EU) No 909/2014 and for which the relevant risks are already monitored, should be able to offer services ***pertaining to the settlement of the cash leg of securities transactions, in a currency other than that of the country where the settlement takes place,*** to other CSDs that do not hold such license irrespective if the latter are part of the same group of companies. ***Designated credit institutions and CSDs authorised to provide banking-type ancillary services should be authorised only to provide such services to settle the cash leg corresponding to all or part of the securities settlement system of the CSD seeking to use the banking-type ancillary services, and not to carry out any other activities. That cash leg should not be in a currency of the country where the CSD seeking to use those services is established.***

(27) Within appropriately set risk ***limits***, CSDs that are not authorised to provide banking-type ancillary services should be able ***arrange*** foreign currency settlement through accounts opened with credit institutions . The threshold below which a CSD may designate a credit institution to provide any banking-type ancillary services from within a separate legal entity without being required to comply with the conditions set out in Title IV of Regulation (EU) No 909/2014 should ***consist of a maximum amount for those arranged payments. The threshold should*** be calibrated in a way that promotes efficiency of settlement and the use of banking ancillary services while ensuring financial stability. ***The calibration of the threshold should avoid the introduction of new risks to the CSD, the credit institution providing the banking services and the banking system as a whole. It should also ensure a level playing field among CSDs, with and without authorisation, in the provision of banking-type ancillary services respecting the principle of 'same activity, same risk, same rules', and be based on total settled amounts.*** As a body with specialised expertise regarding banking and credit risk matters, EBA should be entrusted with the development of draft regulatory technical standards to set the appropriate thresholds ***taking into account the implications for the***

various financial risks and the level playing field. EBA should also be entrusted with drafting any risk mitigating requirements. EBA should also closely cooperate with the members of the ESCB and with ESMA. The Commission should be empowered to adopt regulatory technical standards in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) with regard to the detailed elements of the determining for the provisioning of banking type ancillary services, the accompanying details of the risk management and capital requirements for CSDs and the prudential requirements on credit and liquidity risks for CSDs and designated credit institutions that are authorised to provide banking-type ancillary services.

(28) CSDs, including those authorised to provide banking-type ancillary services, and designated credit institutions should cover relevant risks in their risk management and prudential frameworks, including relevant netting arrangements. Tools to cover those risks should include maintaining sufficient qualifying liquid resources in all relevant currencies and ensuring that stress scenarios are sufficiently strong. CSDs should also ensure that corresponding liquidity risks are managed and covered by highly reliable funding arrangements with creditworthy institutions, whether those arrangements are committed or have similar reliability. The EBA should submit draft regulatory technical standards to revise the existing regulatory technical standards in order to take into account those changes to prudential requirements, in order to enable the Commission to make any necessary amendments with a view to clarifying the requirements set out in such regulatory technical standards, such as those related to the management of potential liquidity shortfalls.

(29) A period of only 1 month for relevant authorities and competent authorities to issue a reasoned opinion on the authorisation to provide banking-type ancillary services has proven to be too short for those authorities to be able to make a substantiated analysis. Therefore, a longer period of 2 months should be laid down.

(30) In order to provide CSDs established in the Union or in third countries with sufficient time to apply for authorisation and recognition of their activities, the date of application of the authorisation and recognition requirements of Regulation (EU) No 909/2014 was initially deferred until an authorisation or recognition decision was made pursuant to that Regulation. Sufficient time has elapsed since the entry into force of that Regulation. , Therefore, those requirements should now start to apply to ensure, on the one hand, a level-playing field amongst all CSDs offering services in relation to financial instruments constituted under the law of a Member State, and, on the other hand, that authorities at national and Union level have the necessary information to ensure investor protection and monitor financial stability.

(31) Regulation (EU) No 909/2014 currently requires ESMA to prepare, in cooperation with national competent authorities and the EBA, annual reports on 12 topics and submit those reports to the Commission. That requirement is disproportionate considering the nature of certain topics which do not require an annual update. The frequency and number of those reports should therefore be recalibrated in order to reduce the burden on ESMA and competent authorities while ensuring that the Commission is provided with the necessary information it needs to review the implementation of Regulation (EU) No 909/2014.

(32) Regulation (EU) No 909/2014 should therefore be amended accordingly.

(33) The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to specify the effect that, in ***the case*** of ***a*** negative interest ***rate***

environment, fails could have on the affected counterparties in relation to the calculation of cash penalties or their adverse incentives to fail, the reasons causing settlement fails that are to be considered to be not attributable to the participants to the transaction and the transactions that are not to be considered to involve two trading parties***; to reassess the parameters or the method used for the calculation of deterrent and proportionate cash penalties, such as setting a progressive rate; to determine transactions that are to be excluded from the scope of the cash penalties measures and mandatory buy-in measures;*** the functioning of colleges of supervisors, the information to be notified by third-country CSDs; and the maximum amount below which CSDs may use any credit institution to settle the cash payments.

(34) To ensure uniform conditions for the implementation of this Regulation, and in particular with regard to the application and the suspension of mandatory buy-in requirements where those apply, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[14].

(34a) Delegated and implementing acts adopted in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU) constitute Union legal acts. Pursuant to Articles 127(4) and 282(5) TFEU, the ECB is to be consulted on any proposed Union act in its fields of competence. Safe and efficient financial market infrastructures and the smooth functioning of financial markets are essential for the fulfilment of the basic tasks of the ESCB under Article 127(2) TFEU, and the pursuit of its primary objective of maintaining price stability under Article 127(1) TFEU. The ECB should therefore be duly consulted on the delegated and implementing acts adopted under this Regulation.

(35) Since the objectives of this Regulation, namely to increase the provision of cross-border settlement by CSDs, reduce administrative burden and compliance costs and ensure that authorities have sufficient information in order to monitor risks, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(36) The application of the revised scope of the rules on cash penalties, the new requirements regarding the establishment of colleges of supervisors, the submission of a notification by third-country CSDs of the core services they provide in relation to financial instruments constituted under the law of a Member State, the revised threshold under which credit institutions may offer to settle the cash payments for part of the CSD's securities settlement system and the revised prudential requirements applicable to credit institutions or CSDs authorised to provide banking-type ancillary services pursuant to Article 59 of Regulation (EU) No 909/2014 should be deferred to give sufficient time for the adoption of the necessary delegated acts further specifying such requirements,

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[14] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 909/2014

Regulation (EU) No 909/2014 is amended as follows:

(1) Article 2 is amended as follows***:***

(a) the following point is inserted:

'(25a) 'group' means a group within the meaning of Article 2(11) of Directive 2013/34/EU;'***;***

(b) point (26) is replaced by the following:

'(26) 'default' means, in relation to a participant, a situation where insolvency proceedings, as defined in Article 2, point (j), of Directive 98/26/EC, are opened against a participant, or an event stipulated in the CSD's internal rules as constituting a default;';

(c) the following points are inserted:

(28a) 'netting' means netting as defined in Article 2, point (k), of Directive 98/26/EC;

(28b) 'deferred net settlement' means a settlement mechanism whereby cash or securities transfer orders in relation to securities transactions of the participants in the securities settlement system are subject to netting and settlement of participants' net claims and obligations and which takes place at the end of predefined settlement cycles during or at the end of the business day; ';

(1a) in Article 6, paragraph 5 is replaced by the following:

'5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the measures to prevent settlement fails in order to increase settlement efficiency, and in particular:

(a) the measures to be taken by investment firms in accordance with the first subparagraph of paragraph 2;

(b) the details of the procedures that facilitate settlement referred to in paragraph 3, which could include, but are not limited to, shaping of transaction sizes, partial settlement of failing trades, and the use of auto-lend/borrow programmes provided by certain CSDs; and

(c) the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by... [18 months after the date of publication of this amending Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. ';

(2) Article 7 is amended as follows:

(-a) the following paragraph is inserted:

'***1a. Where a CSD's settlement efficiency over a six-month period is significantly lower than the average settlement efficiency levels recorded on the Union market, ESMA and the competent authority of the home Member State shall identify the reasons for those fails and the measures that could be taken to address the situation.';***

(-aa) in paragraph 2, the first subparagraph is replaced by the following:

'2. Without prejudice to the regulatory tools referred to in paragraph 1a, for each securities settlement system it operates, a CSD shall establish procedures that facilitate the settlement of transactions in financial instruments referred to in Article 5(1) that are not settled on the intended settlement date. Those procedures shall provide for a penalty mechanism that serves as an effective deterrent for participants that cause settlement fails.';

(a) in paragraph 2, the third subparagraph is replaced by the following:

'The penalty mechanism referred to in the first subparagraph shall include cash penalties for participants that cause settlement fails ('failing participants') except where those settlement fails are caused by factors not attributable to the participants to the transaction or for operations that do not involve two trading parties. Cash penalties shall be calculated on a daily basis for each business day that a transaction fails to be settled after its intended settlement date until the ***the transaction is either settled or else bilaterally cancelled***. The cash penalties shall not be configured as a revenue source for the CSD.';

(b) the following paragraph is inserted:

'2a. Without prejudice to the ***regulatory tools referred to in paragraph 1a of this Article, the*** penalty mechanism referred to in paragraph 2 of this Article and the right to bilaterally cancel the transaction, ***after consulting the ESRB and based on the cost-benefit analysis provided by ESMA pursuant to Article 74(-1), point (a),*** the Commission may, by means of an implementing act, decide to which of the financial instruments referred to in Article 5(1) or categories of transactions in those financial instruments the settlement discipline measures referred to in paragraphs 3 to 8 of this Article are to be applied where the Commission considers that those measures constitute a ***necessary, appropriate and*** proportionate means to address the level of settlement fails in the Union***, taking into account the possible impact of the mandatory buy-in process on the Union market,*** ▌ the number and volume of settlement fails ***still outstanding at the end of the extension period referred to in paragraph 3 of this Article, and whether or not a particular market is already subject to appropriate contractual provisions that provide a right for receiving participants to trigger a buy-in.***

The Commission may adopt an implementing act as referred to in the first subparagraph if the following conditions ***are*** met:

(a) the application of the cash penalty mechanism referred to in paragraph 2 has not resulted in a long-term, continuous reduction ***or in maintaining a sustainable reduced level*** of settlement fails in the Union***, even after a review of the level of cash penalties in accordance with paragraph 14 of this Article***;

▌

(c) the level of settlement fails in the Union has or is likely to have a negative effect on the financial stability of the Union.

The implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2).';

(c) paragraph 3 is replaced by the following:

'3. ***Without prejudice to the right to bilaterally cancel the transaction, where*** the Commission has adopted an implementing act pursuant to paragraph 2a and where a failing participant has not delivered financial instruments covered by that implementing act to the receiving participant within a period after the intended settlement date ('extension period') equal to 4 business days, a buy-in process shall be initiated whereby those instruments shall be available for settlement and delivered to the receiving participant within an appropriate timeframe.

Where the transaction relates to a financial instrument traded on an SME growth market, the extension period shall be 15 ***business*** days unless the SME growth market decides to apply a shorter period.'

(d) the following paragraph is inserted:

'3a. Where a receiving participant (the 'intermediate receiving participant') does not receive the financial instruments by the date referred to in paragraph 3 leading to a failing onward delivery of those financial instruments to another receiving participant (the 'end receiving participant'), the intermediate receiving participant shall be considered as complying with the obligation to execute a buy-in against the failing participant where the end receiving participant executes the buy-in for those financial instruments. Similarly, the intermediate receiving participant may pass-on to the failing participant its obligations toward the end receiving participant pursuant to paragraphs 6, 7 and 8.';

(e) paragraph 4 is replaced by the following:

'4. Without prejudice to paragraph 3a, the following derogations from the requirement referred to in paragraph 3 shall apply:

(a) based on asset type and liquidity of the financial instruments concerned, the extension period may be increased from 4 business days up to a maximum of 7 business days where a shorter extension period would affect the smooth and orderly functioning of the financial markets concerned;

▌

(c) for settlement fails that occurred for reasons not attributable to the participants, the buy-in process referred to in paragraph 3 shall not apply;

(d) for transactions that do not involve two trading parties the buy-in process referred to in paragraph 3 shall not apply;

(da) for securities financing transactions, the buy-in process referred to in paragraph 3 shall not apply.';

(ea) paragraph 5 is replaced by the following:

'5. Without prejudice to paragraph 7, the derogations referred to in paragraph 4 shall not apply in relation to transactions for shares where those transactions are cleared by a CCP.';

(f) paragraph 6 is replaced by the following:

'6. Without prejudice to the penalty mechanism referred to in paragraph 2, where the price of the financial instruments agreed at the time of the trade is different from the price paid for the execution of the buy-in, the corresponding difference shall be paid by the participant benefitting from such price difference to the other participant no later than on the second business day after the financial instruments have been delivered following the buy-in.';

(fa) in paragraph 7, the second subparagraph is replaced by the following:

'Where the price of the financial instruments agreed at the time of the trade is different from the price used to determine cash compensation, the corresponding difference shall be paid by the participant benefitting from such price difference to the other participant no later than on the second business day after the end of either the buy-in process referred to in paragraph 3 or the deferral period, where the deferral period was chosen.';

(g) paragraph 11 is replaced by the following:

'11. Paragraphs 2 to 9 shall not apply to failing participants which are CCPs, except for transactions entered into by a CCP where it does not interpose itself between counterparties.

If a CCP incurs losses from the application ***of paragraph 2***, third subparagraph, the CCP may establish in its rules a mechanism to cover such losses.';

(h) the following paragraph 13a is inserted:

'13a. ESMA may recommend that the Commission suspend in a proportionate way the buy-in mechanism referred to in paragraphs 3 to 8 for specific categories of financial instruments where necessary to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the Union. Such recommendation shall be accompanied by a fully reasoned assessment of its necessity and shall not be made public.

Before making the recommendation, ESMA shall consult the ESRB and the ESCB.

The Commission shall, without undue delay after receipt of the recommendation, on the basis of the reasons and evidence provided by ESMA, either suspend the buy-in mechanism referred to in paragraph 3 for the specific categories of financial instruments by means of an implementing act, or reject the recommended suspension. Where the Commission rejects the requested suspension, it shall provide the reasons thereof in writing to ESMA. Such information shall not be made public.

The implementing act shall be adopted in accordance with the procedure referred to in Article 68(3).

The suspension of the buy-in mechanism shall be communicated to ESMA and shall be published in the *Official Journal of the European Union* and on the Commission's website.

The suspension of the buy-in mechanism shall be valid for an initial period of no more than 6 months from the date of application of that suspension.

Where the grounds for the suspension continue to apply, the Commission may, by way of an implementing act, extend the suspension referred to in the third subparagraph for additional periods of no more than 3 months, with the total period of the suspension not exceeding 12 months. Any extensions of the suspension shall be published in accordance with the fifth subparagraph.

The implementing act shall be adopted in accordance with the procedure referred to in Article 68(3). ESMA shall, in sufficient time before the end of the suspension period referred to in the sixth subparagraph or of the extension period referred to in the seventh subparagraph, issue an opinion to the Commission on whether the grounds for the suspension continue to apply.';

(i) paragraph 14 is replaced by the following:

'14. The Commission shall be empowered to supplement this Regulation by adopting delegated acts in accordance with Article 67 specifying parameters for the calculation of a deterrent and proportionate level of the cash penalties referred to in paragraph 2, third subparagraph, of this Article based on asset type, liquidity of the financial instrument, type of transaction and the effect that low or negative interest rates could have on the incentives of counterparties and fails. The parameters used for the calculation of cash penalties shall ensure a high degree of settlement discipline and the smooth and orderly functioning of the financial markets concerned.';

(j) the following paragraph is inserted:

'14a. The Commission ***shall be empowered to*** adopt delegated acts in accordance with Article 67 to supplement this Regulation specifying the reasons for settlement fails that are to be considered as not attributable to the participants to the transaction and the transactions that are not to be considered to involve two trading parties under paragraph 2 and paragraph 4, points (c) and (d), of this Article.';

(k) in paragraph 15, the second subparagraph is replaced by the following:

'ESMA shall submit those draft regulatory technical standards to the Commission by … [*PO please insert the date = 1 year after the entry into force of this Regulation*].'

(3) ***Article 12 is amended as follows:***

(a) in ***paragraph*** 1, points (b) and (c) are replaced by the following:

'(b) the central banks in the Union issuing the most relevant currencies in which settlement takes or will take place;

(c) where relevant, the central bank in the Union in whose books the cash leg of a securities settlement system operated by the CSD is or will be settled;

(ca) ESMA, for CSDs that are of substantial importance for the functioning of securities markets and the protection of investors in the Union in at least two host

Member States or that are part of a group with two or more CSDs.';

(b) paragraph 3 is replaced by the following:

'3. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards specifying the conditions under which the Union currencies referred to in paragraph 1, point (b), are considered to be the most relevant, and efficient practical arrangements for the consultation of the relevant authorities referred to in points (b), (c) and (ca) of that paragraph.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [one year after the date of entry into force of this amending Regulation].

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(4) Article 17 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

'By way of derogation from the first subparagraph, where an applicant CSD does not comply with all requirements of this Regulation, but where it may be reasonably assumed that it will do so when it will have actually launched its activities, the competent authority may grant the authorisation subject to the condition that that CSD has all the necessary arrangements in place to comply with the requirements of this Regulation when it actually launches its activities.";

(b) paragraph 4 is replaced by the following:

'4. From the moment when the application is considered to be complete, the competent authority shall transmit all information included in the application to the relevant authorities and consult those authorities concerning the features of the securities settlement system operated by the applicant CSD.

Each relevant authority may issue a reasoned opinion to the competent authority within 3 months of the receipt of the information by the relevant authority. Where a relevant authority does not provide an opinion within that timeframe it shall be deemed to have issued a positive opinion.

Where at least one of the relevant authorities issues a negative reasoned opinion, the competent authority wishing to grant the authorisation shall within 30 calendar days provide the relevant authorities with a reasoned decision addressing the negative opinion.

Where within 30 calendar days after the competent authority has issued the reasoned decision referred to in the third subparagraph, any of the relevant authorities issues another negative opinion and the competent authority disagrees it shall inform those relevant authorities. Any of the authorities that issued a negative opinion may refer the matter to ESMA for assistance under Article 31(2) point (c), of Regulation (EU) No 1095/2010.

Where 30 calendar days after referral to ESMA the issue is not settled, the competent authority wishing to grant the authorisation shall take the final decision and provide a detailed explanation of its decision in writing to the relevant authorities.

Where the competent authority wishes to refuse authorisation, the matter shall not be referred to ESMA.

Negative opinions shall state in writing the full and detailed reasons why the requirements laid down in this Regulation or other requirements of Union law are not met.';

(c) the following paragraph 7a is inserted:

'7a. The competent authority shall inform without undue delay the authorities consulted pursuant to paragraphs 4 to 7 of the results, including any remedial actions, of the authorisation process.';

(***4a) in Article 19, paragraph 2 is replaced by the following:***

'2. The granting of an authorisation under paragraph 1 shall follow the procedure laid down in Article 17, with the exception of Article 17(4).

Once the competent authority considers that an application referred to in paragraph 1 is complete, it shall transmit all information included in the application to the relevant authorities and consult those authorities concerning the features of the securities settlement system operated by the applicant CSD. Each relevant authority may inform the competent authority of its views within two months of receipt of the information by the relevant authority.

The competent authority shall inform the applicant CSD and the relevant authorities whether the authorisation has been granted or refused within three months of the submission of a complete application.';

(5) in Article 20, paragraph 5 is replaced by the following:

'5. A CSD shall establish, implement and maintain adequate procedures ensuring the timely and orderly settlement and transfer of the assets of clients and participants to another CSD in the event of a withdrawal of authorisation referred to in paragraph 1. Such procedures shall include the transfer of issuance accounts ***or similar records evidencing securities issuances*** and records linked to the provision of ***notary*** services ***and central maintenance services.'***;

(6) Article 22 is amended as follows:

(a) paragraphs 1 to 4 are replaced by the following:

'1. The competent authority shall, at least every 2 years, review the arrangements, strategies, processes and mechanisms implemented by a CSD with respect to compliance with this Regulation and evaluate the risks to which the CSD is, or might be, exposed to or which it creates for the smooth functioning of securities markets or stability of the financial markets.

2. The CSD shall identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. Those

scenarios shall take into account the various independent and related risks to which the CSD is exposed. Using that analysis, the CSD shall prepare and submit to the competent authority appropriate plans for its recovery or orderly wind-down.

3. The plans referred to in paragraph 2 shall contain at least the following:

(a) a substantive summary of the key recovery or orderly wind-down strategies;

(b) an identification of the CSD's critical operations and services;

(c) adequate procedures ***enabling*** the timely and orderly settlement and transfer of the assets of clients and participants to another CSD in the event it became permanently impossible for the CSD to restore its critical operations and services;

(d) a description of the measures needed to implement the key strategies.

The CSD shall have the capacity to identify and provide to related entities the information needed to implement the plans on a timely basis during stress scenarios.

The CSD shall review and update the plans regularly and ***at*** least every 2 years. ***The plans shall be approved by the management body, or an appropriate committee of the management body. Each update of the plans shall be provided to the competent authority. The competent authority may require the CSD to take additional measures or to make alternative provisions where the competent authority considers that the CSD's plans are insufficient.*** The plans shall have regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned .

3a. Where a CSD is subject to Directive 2014/59/EU, a recovery plan and a resolution plan shall, instead of the plans referred to in paragraph 2 of this Article, be drawn up by the CSD and the resolution authority respectively in accordance with that Directive, taking into account points (a) to (d) of the first subparagraph of paragraph 3.

Where a resolution plan is established and maintained for a CSD with the aim of ensuring its core functions, ***the resolution authority or, where no such authority exists,*** the competent authority shall inform ESMA thereof.

4. The competent authority shall establish the frequency and depth of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned. The review and evaluation shall be updated at least every 2 years.';

(b) paragraphs 6 and 7 are replaced by the following:

'6. When performing the review and evaluation referred to in paragraph 1, the competent authority shall, at an early stage, transmit necessary information to the relevant authorities and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU, and consult them in particular concerning the functioning of the securities settlement systems operated by the CSD.

The consulted authorities may issue a reasoned opinion within 3 months of the receipt of the information by the competent authority.

Where an authority does not provide an opinion within that deadline it shall be deemed to have issued a positive opinion.

Where at least one of the relevant authorities issues a negative reasoned opinion, the competent authority shall within 30 calendar days provide the relevant authorities with a reasoned decision addressing the negative opinion.

Where within 30 calendar days after the reasoned decision referred to in the fourth subparagraph of this paragraph is issued, any of the relevant authorities issues another negative opinion and the competent authority disagrees, the competent authority shall inform that relevant authority. Any of the authorities that issued a negative opinion may refer the matter to ESMA for assistance under Article 31(2), point (c), of Regulation (EU) No 1095/2010.

Where 30 calendar days after referral to ESMA the issue is not settled, the competent authority shall take the final decision on the review and evaluation and provide a detailed explanation of its decision in writing to the relevant authorities.

Negative opinions shall state in writing the full and detailed reasons why the requirements laid down in this Regulation or other requirements of Union law are not met.

7. The competent authority shall regularly, and at least once every 2 years, inform the relevant authorities and, where applicable, the ***college of supervisors*** referred to in Article 24a of this Regulation and the authority referred to in Article 67 of Directive 2014/65/EU of the results, including any remedial actions or penalties, of the review and evaluation referred to in paragraph 1 of this Article.';

(c) in paragraph 11, the second subparagraph of is replaced by the following:

'ESMA shall submit those draft implementing technical standards to the Commission by [*PO please insert 1 year after the entry into force of this Regulation*].';

(7) in Article 23, paragraphs 2 to 7 are replaced by the following:

'2. An authorised CSD or a CSD that has applied for authorisation pursuant to Article 17 that intends to provide the core services referred to in Section A, points 1 and 2, of the Annex in relation to financial instruments constituted under the laws of another Member State referred to in Article 49(1), second subparagraph, or to set up a branch in another Member State shall be subject to the procedure referred to in paragraphs 3 to 7 of this Article. The CSD may provide such services only after it has been authorised pursuant to Article 17 but not earlier than the relevant date applicable in accordance with paragraph 6.

3. Any CSD wishing to provide the services referred to in paragraph 2 of this Article in relation to financial instruments constituted under the law of another Member State referred to in Article 49(1), second subparagraph, for the first time, or to change the range of those services provided shall ***communicate*** the following information to the competent authority of the home Member State:

(a) the host Member State;

(b) ***the type of financial instruments constituted under the law of the host Member State and in respect of*** ▌ which the CSD intends to provide ***services, as well as the services which the CSD intends to provide;***

(c) the currency or currencies that the CSD intends to process;

▌

(e) an assessment of the measures the CSD intends to take to allow its users to comply with the national law referred to in Article 49(1)***, in relation to shares***.

3a. A CSD intending to set up a branch in another Member State for the first time, or to change the range of core services referred to in Section A, point 1 or 2 of the Annex, provided through a branch, shall communicate the following information to the competent authority of the home Member State:

(a) the host Member State;

(b) the type of financial instruments constituted under the law of the host Member State and in respect of which the CSD intends to provide services, as well as the services which the CSD intends to provide;

(c) the currency or currencies that the CSD intends to process;

(d) the organisational structure of the branch and the names of the persons responsible for the management of the branch.

4. Within 1 month from the receipt of the information referred to in paragraph 3, the competent authority of the home Member State shall communicate that information to the competent authority of the host Member State unless, by taking into account the provision of services envisaged, it has reasons to doubt the adequacy of the administrative structure or the financial situation of the CSD wishing to provide its services in the host Member State.

The competent authority of the host Member State shall without delay inform the relevant authorities of that Member State of any communication received under the first subparagraph.

5. Where the competent authority of the home Member State decides in accordance with paragraph 4 not to communicate all the information referred to in paragraph 3 to the competent authority of the host Member State, it shall give reasons for its refusal to the CSD concerned within 3 months of receiving all the information and inform the competent authority of the host Member State of its decision.

6. The CSD may start providing the services referred to in paragraph 2 in the host Member State at the earliest of the following dates:

(a) after 1 month from the date of transmission of the communication referred to in paragraph 4;

(b) on receipt of a communication from the competent authority of the host Member State approving the provision of services in the host Member State.

The competent authority of the home Member State shall immediately inform the CSD of the date of transmission of the communication referred to in paragraph 4.

7. In the event of a change of the information ***communicated*** in accordance with paragraph 3 ***or paragraph 3a*** of this Article ***regarding the types of financial instruments in respect of which the CSD provides or intends to provide services, the currency or currencies the CSD processes or intends to process, or the measures that the CSD takes or intends to take to allow its users to comply with the national law***

referred to in Article 49(1), a CSD shall give written notice of that change to the competent authority of the home Member State at least ***one*** month before implementing the change. The competent authority of the host Member State ▌ shall also be informed of that change without delay by the competent authority of the home Member State.';

(8) Article 24 is amended as follows:

(a) in paragraph 1, the following subparagraphs are added:

'***The*** competent authority of the home Member State may invite staff from ▌ ESMA to participate in on-site inspections.

The competent authority of the home Member State ***shall*** transmit to ESMA any information received from the CSDs during or in relation to on-site inspections ***relating to any remedial actions or penalties decided on by the competent authority***.';

(aa) paragraph 3 is replaced by the following:

'3. The competent authority of the home Member State of the CSD shall, on the request of the competent authority of the host Member State and without delay, communicate the identity of the issuers established in the host Member State or of the participants holding financial instruments constituted under the laws of the host Member State in the securities settlement systems operated by the CSD which provides core services as referred to in Section A, points 1 and 2, of the Annex in relation to financial instruments constituted under the laws of the host Member State and any other relevant information concerning the activities of a CSD that provides core services in the host Member State through a branch.';

(b) paragraph 4 is deleted;

(c) paragraph 5 is replaced by the following:

'5. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a CSD providing services within its territory in accordance with Article 23 is in breach of the obligations arising from the provisions of this Regulation, it shall inform the competent authority of the home Member State ***and ESMA. ESMA may inform the*** college referred to in Article 24a of those findings.

Where, despite measures taken by the competent authority of the home Member State, the CSD persists in acting in infringement of the obligations arising from the provisions of this Regulation, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take all the appropriate measures needed in order to ensure compliance with the provisions of this Regulation within the territory of the host Member State. ESMA▌ shall be informed of such measures without delay. ***ESMA may inform the college referred to in Article 24a of those measures.***

The competent authority of the host Member State and of the home Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.';

(d) ***paragraph*** 8 ***is*** deleted;

(9) in Title III, the following Section 4a is inserted:

‘Section 4a

Cooperation of authorities through colleges

Article 24a

Colleges of Supervisors for CSDs providing services in another Member State and for CSDs that are part of a group with two or more CSDs

1. ***Where a CSD is of substantial importance in more than one host Member State, ESMA shall establish, manage and chair a college of supervisors ('the college').***

2. The college referred to in paragraph 1 shall consist of:

(a) ESMA***, as the chair of the college***;

(b) the competent authority of the CSD’s home Member State;

(c) the relevant authorities referred to in Article 12;

(d) the competent authority of the host Member States ***where the CSD is of substantial importance***;

(f) EBA, where a CSD has been authorised pursuant to Article 54(3).

2a. Where a CSD for which a college is established in accordance with paragraph 1 is not of substantial importance in a Member State where a subsidiary belonging to the same group of companies as the CSD, or its parent undertaking, is established or where the CSD for which a college is established is entitled to provide services in another Member State in accordance with Article 23(2), the competent authority and relevant authorities of that Member State shall be able to participate in the college established in accordance with paragraph 1 of this Article upon their request.

4. The chair shall notify the composition of the college to ***all relevant competent authorities*** within 30 calendar days of the college's establishment and any change in its composition within 30 calendar days of that change. ESMA shall publish on its website without undue delay the list of the members of that college and keep that list up-to-date.

5. The competent authority of a Member State which is not a member of the college may request from the college any information relevant for the performance of its supervisory duties.

6. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:

(a) the exchange of information, including requests for information pursuant to Articles 13, 14 and 15 and information on the review and evaluation process pursuant to Article 22;

(b) more efficient supervision by avoiding unnecessary duplicative supervisory actions, such as information requests ;

(c) agreement on the voluntary entrustment of tasks among its members;

(ca) the coordination of the supervisory review and evaluation processes pursuant to Articles 22 and 60 or that relate to the extension and outsourcing of activities and services under Article 19;

(d) the cooperation of the home and host Member State pursuant to Article 24 and regarding the measures referred to in Article ***23(3)***, point (e) and on any issues encountered in the provision of services in other Member States;

(e) the exchange of information on resources shared and outsourcing arrangements in place within a group of CSDs pursuant to Article 19, on significant changes to the structure and ownership of the group, and on changes in the organisation, senior management, processes or arrangements where those changes have a significant impact on governance or risk management for the CSDs belonging to the group.

The chair shall convene a meeting of the college at least once a year.

In order to facilitate the performance of the tasks assigned to colleges pursuant to the first subparagraph of this paragraph, members of the college referred to in paragraph 2 may add points to the agenda of a meeting.

6a. At the request of any of its members, and upon adoption by a majority of the college in accordance with paragraph 6b, the college shall adopt formal opinions with regard to issues identified during the review and evaluation processes pursuant to Article 22 or 60, or that relate to any extension or outsourcing of activities and services under Article 19, or concerning any potential breach of requirements laid down in this Regulation arising from the provision of services in a host Member State as referred to in Article 24(5).

6b. The college shall adopt its formal opinions on the basis of a simple majority of its members. Each member of the college shall have one vote. Members of the college that act in more than one capacity, including as competent authority and as relevant authority, shall have one vote for each capacity in which they act.

Where EBA is a member of the college pursuant to paragraph 2, its voting member shall have voting rights only on those opinions that relate to issues identified during the review and evaluation process pursuant to Article 60.

7. The establishment and functioning of the college shall be based on a written agreement between all its members.

That agreement shall determine the practical arrangements for the functioning of the college, ***as well as the modalities for inviting other relevant authorities on an ad hoc basis and for specific topics***.

8. ESMA shall develop draft regulatory technical standards specifying the details of the practical arrangements referred to in paragraph 7.

ESMA shall submit those draft regulatory technical standards to the Commission by … [*PO please insert the date = 1 year after the date of entry into force of this Regulation*].
Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with

Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(10) Article 25 is amended as follows:

(-a) paragraph 2 is replaced by the following:

'2. Notwithstanding paragraph 1, a third-country CSD that intends to provide the core services referred to in Section A of the Annex in relation to financial instruments constituted under the law of a Member State referred to in the second subparagraph of Article 49(1), or to set up a branch in a Member State, shall be subject to the procedure referred to in paragraphs 4 to 11 of this Article.';

(aa) in paragraph 4, the following point is inserted:

'(ca) the CSD is established or authorised in a third country that is not considered to have strategic deficiencies in its national anti-money laundering and counter-terrorist financing regime that pose significant threats to the financial system of the Union, in accordance with Article 9 of Directive (EU) 2015/849 of the European Parliament and of the Council[15];';

(b) in paragraph 6, the fifth subparagraph is replaced by the following:

'Within 6 months from the submission of a complete application or from the adoption of an equivalence decision by the Commission in accordance with paragraph 9, whichever is later, ESMA shall inform the applicant CSD in writing with a fully reasoned decision whether the recognition has been granted or refused.';

(11) in Article 27, the following paragraph 3a is inserted:

"3a. For the purposes of paragraphs 2 and 3, independent member of the management body shall mean a member of the management body who has no business, family or other relationship that raises a conflict of interests regarding the CSD concerned or its controlling shareholders, its management or its participants, and who has had no such relationship during the five years preceding his membership of the management body;";

(12) in Article 28, paragraph 3 is replaced by the following:

'3. User committees shall advise the management body on key arrangements that impact on their members, including the criteria for accepting issuers or participants in their respective securities settlement systems and on service level, which includes the choice of a clearing and settlement arrangement, operating structure of the CSD, scope

[15] ***Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).***

of products settled or recorded, and the use of technology and procedures for the operations of the CSD .';

(12a) in Article 29, the following paragraph is inserted:

'2a. Prior to using the services of a CSD, an issuer shall be required to obtain and transmit to the CSD a valid legal entity identifier (LEI). A CSD shall not provide services under this Regulation to an issuer prior to obtaining the LEI from that issuer.';

(13) Article 36 is replaced by the following:

"*Article 36*

General provisions

For each securities settlement system it operates a CSD shall have appropriate rules and procedures, including robust accounting practices and controls, to help ensure the integrity of securities issues, and minimise and manage the risks associated with the safekeeping and settlement of transactions in securities.";

(14) in Article 40, paragraph 2 is replaced by the following:

'2. 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 in 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.';

(14a) in Article 47, paragraph 2 is replaced by the following:

'2. A CSD shall maintain a plan for the following:

(a) the raising of additional capital should its equity capital approaches or falls below the requirements laid down in paragraph 1;

(b) enabling the orderly winding-down or restructuring of its operations and services where the CSD is unable to raise new capital.

The plan required under point (b) of the first subparagraph shall be drafted in accordance with Article 22.';

(14b) the following Article is inserted:

'Article 47a
Netting

1. CSDs applying netting arrangements and in particular deferred net settlement systems shall clearly define the rules and procedures applicable to netting and for the settlement of participants' net claims and obligations.

2. CSDs applying netting arrangements shall measure, monitor and manage the credit and liquidity risks arising from netting arrangements, in particular deferred net settlement systems.

3. ESMA shall, in close cooperation with EBA and the members of the ESCB, develop draft regulatory technical standards to further specify details of the frameworks for the monitoring, measuring, management, reporting and public disclosure of the risks in relation to netting arrangements, in particular deferred net settlement systems.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [one year after the date of entry into force of this amending Regulation].
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

(15) in Article 49(1), the second and the third subparagraphs are replaced by the following:

'Without prejudice to the issuer's right referred to in the first subparagraph, the corporate or similar law of the Member State under which the securities are constituted shall continue to apply. This includes:

(a) ***for shares,*** the ▌ law of the Member State where the issuer is established; and

(b) ***for securities other than shares,*** the ▌ law ***of the Member State*** under which the securities are issued.

Member States shall compile a list of key relevant provisions of their law, as referred to in the second subparagraph. Competent authorities shall communicate that list to ESMA by 18 December 2014. ESMA shall publish the list by 18 January 2015. Member States shall update that list regularly and at least every 2 years. They shall communicate the updated list at those regular intervals to ESMA. ESMA shall publish the updated list.';

(16) in Article 52, paragraph 1 is replaced by the following:

'1. When a CSD submits a request for access to another CSD pursuant to Articles 50 and 51, the receiving CSD shall treat such request promptly and shall provide a response to the requesting CSD within 3 months. If the receiving CSD agrees to the request, the link shall be implemented within a reasonable timeframe, but no longer than 12 months.';

(17) Article 54 is amended as follows:

(a) in paragraph 2, point (b) is replaced by the following:

'(b) to designate for that purpose one or more credit institutions authorised in accordance with Article 8 of Directive 2013/36/EU or a CSD authorised to provide banking-type ancillary services pursuant to paragraph 3 of this Article'.

(aa) in paragraph 3, first subparagraph, the following point is added:

'(fa) where the CSD intends to provide banking-type ancillary services to other CSDs in accordance with paragraph 2, point (b), the CSD has in place clear rules and procedures addressing potential conflicts of interest and mitigating the risk of discriminatory treatment towards any other such CSDs and their participants.';

(b) in paragraph 4, the first subparagraph is amended as follows:

(i) the introductory wording is replaced by the following:

"Where a CSD seeks to designate a credit institution or use a CSD that is authorised pursuant to paragraph 3 to provide any banking-type ancillary services from within a separate legal entity, which may be part of the group to which the former CSD belongs, whether or not ultimately controlled by the same parent undertaking, the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:";

(ii) point (c) is deleted;

(ba) in paragraph 4, the following suparagraphs are added:

'Where a CSD seeks to designate a credit institution that does not itself carry out any of the core services referred to in Section A of the Annex, the authorisation referred to in point (a) of the first subparagraph of this paragraph shall be used only to provide the banking-type ancillary services referred to in Section C of the Annex for settlement of the cash leg corresponding to all or part of the securities settlement system of that CSD, and not to carry out any other activities. That cash leg shall not be in a currency of the country where the CSD seeking to use those services is established.

Where a CSD seeks to use a CSD that is authorised pursuant to paragraph 3 of this Article, the authorisation referred to in point (a) of the first subparagraph of this paragraph shall be used only to provide the banking-type ancillary services in Section C of the Annex for the settlement of the cash leg corresponding to all or part of the securities settlement system of the CSD seeking to use the banking-type ancillary services, and not to carry out any other activities. That cash leg shall not be in a currency of the country where the CSD seeking to use those services is established.';

(c) paragraph 5 is replaced by the following:

'5. Paragraph 4 shall not apply to credit institutions referred to in paragraph 2, point (b), that offer to settle the cash payments for part of the CSD's securities settlement system, if the total value of such cash settlement through accounts opened with those credit institutions does not exceed a maximum amount calculated over a one-year period. That threshold shall be determined in accordance with paragraph 9.

ESMA shall monitor at least once per year that the threshold referred to in the first subparagraph is respected and report its findings to ***the competent authority***, ESCB

and EBA. Where ***ESMA*** determines that the threshold has been exceeded, ***the competent authority*** shall require the CSD concerned to seek authorisation in accordance with paragraph 4. The CSD concerned shall submit its application for authorisation within 6 months.';

(d) the following ***paragraphs are*** added:

'9. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to determine the maximum amount referred to in paragraph 5, taking into account ***at least the following criteria:***

(a) the implications for the market stability that could derive from a change of risk profile of CSDs and their participants, taking into account the systemic importance of CSDs for the functioning of securities markets;

(b) the ***implications for*** the credit and liquidity risks for CSDs***, for the designated credit institutions involved and for the CSD participants*** that result from the settlement of cash payments through accounts opened with credit institutions ***exempt from paragraph 4***;

(c) the need to allow CSDs to settle in foreign currencies through accounts opened with such credit institutions;

(d) the need to avoid both an unintended shift from settlement in central bank money to settlement in commercial bank money and disincentives to the efforts of CSDs to achieve settlement in central bank money; and

(e) the existing global guidance and principles related to such activity.

When developing these draft regulatory technical standards the EBA shall also determine accompanying appropriate risk management and prudential mitigating requirements.

EBA shall submit those draft regulatory technical standards to the Commission by [*PO please insert the date= 1 year after the date of entry into force of this Regulation*].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

9a. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to further specify the details of the rules and procedures referred to in paragraph 3, point (g).

EBA shall submit those draft regulatory technical standards to the Commission by ... [one year after the date of entry into force of this amending Regulation].
Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(18) Article 55 ***is amended as follows:***

(a) in paragraph 5, the first subparagraph is replaced by the following:

'The authorities referred to in paragraph 4, points (a) to (e), shall issue a reasoned opinion on the authorisation within 2 months of receipt of the information referred to in that paragraph. Where an authority does not provide an opinion within that deadline it shall be deemed to have a positive opinion.';

(b) the following paragraph is inserted:

'6a. The competent authority shall, without undue delay, inform the authorities referred to in paragraph 4, points (a) to (e), of the results of the authorisation process, including any remedial actions.';

(19) Article 59 is amended as follows:

(a) paragraph 4 is amended as follows:

(i) points (c), (d) and (e) are replaced by the following:

'(c) it shall maintain sufficient qualifying liquid resources in all relevant currencies for a timely provision of settlement services under a wide range of potential stress scenarios including the liquidity risk generated by the default of at least two participants, including its parent undertakings and subsidiaries, to which it has the largest exposures;

(d) it shall mitigate the corresponding liquidity risks with qualifying liquid resources in each relevant currency such as cash at the central bank of issue and at other creditworthy financial institutions, committed lines of credit or similar arrangements and highly liquid collateral or investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions and it shall identify, measure and monitor its liquidity risk stemming from the various financial institutions used for the management of its liquidity risks;

(e) where prearranged and highly reliable funding arrangements, committed lines of credit or similar arrangements are used, it shall select only creditworthy financial institutions as liquidity providers; it shall establish and apply appropriate concentration limits for each of the corresponding liquidity providers including its parent undertaking and subsidiaries;';

(ii) point (i) is replaced by the following:

'(i) it shall have prearranged and highly reliable arrangements to ensure that it can convert in a timely fashion the collateral provided to it by a defaulting client into cash and where non-committed arrangements are used, establish that any associated potential risks have been identified and mitigated;';

▌

(aa) the following paragraph is inserted:

'4a. A CSD authorised under Article 54(2), point (a), to provide banking-type ancillary services shall have in place clear rules and procedures to address any potential additional credit, liquidity and concentration risks resulting from the

increased activity from the provision of banking-type ancillary services to other CSDs in accordance with Article 54(2), point (b).';

(ab) in paragraph 5, the first and second subparagraphs are replaced by the following:

'5. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to further specify details of the frameworks and tools for the monitoring, measuring, management, reporting and public disclosure of the credit and liquidity risks, including those which occur intra-day, referred to in paragraphs 3 and 4 as well as the rules and procedures referred to in paragraph 4a. Such draft regulatory technical standards shall, where appropriate, be aligned to the regulatory technical standards adopted in accordance with Article 46(3) of Regulation (EU) No 648/2012.

EBA shall submit those draft regulatory technical standards to the Commission by … [*PO please insert the date = 1 year after the date of entry into force of this Regulation*].';

(20) Article 60 is amended as follows:

(a) in paragraph 1, the third subparagraph is replaced by the following:

'The competent authorities referred to in the first subparagraph shall regularly, and at least once a year, assess whether the designated credit institution or CSD authorised to provide banking-type ancillary services complies with Article 59 and shall inform the competent authority of the CSD which shall then inform the authorities referred to in Article 55(4) and, where applicable, the colleges referred to in Article 24a, of the results, including any remedial actions or penalties, of its supervision under this paragraph.';

(b) in paragraph 2, the second subparagraph is replaced by the following:

'The competent authority of the CSD shall regularly, and at least once a year, inform the authorities referred to in Article 55(4) and, where applicable, the colleges referred to in Article 24a, of the results, including any remedial actions or penalties, of its review and evaluation under this paragraph.';

(21) Article 67 is amended as follows:

(a) the following paragraph 2a is inserted:

'2a. The power to adopt delegated acts referred to in Articles 7(14a), 24a(8), 25(13) and 54(9) shall be conferred on the Commission for an indeterminate period of time from [*PO please insert the date of entry into force of this Regulation*].';

(b) paragraph 3 is replaced by the following:

'3. The delegation of power referred to in Articles 2(2), 7(14), 24(7), 7(14a), 24a(8), 25(13) and 54(9) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.';

(c) paragraph 5 is replaced by the following:

'5. A delegated act adopted pursuant to Articles 2(2), 7(14), 24(7), 7(14a), 24a(8), 25(13) and 54(9) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.'

(22) in Article 68, the following paragraph 3 is added:

"3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.";

(23) Article 69 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. The national rules on the authorisation of CSDs shall continue to apply until the following date, whichever is earlier:

(a) the date when a decision is made under this Regulation on the authorisation of CSDs and of their activities, including CSD links; or

(b) … [*PO please insert the date* = 1 year *after the date of entry into force of this Regulation*].';

(b) the following paragraphs 4a, 4b and 4c are inserted:

'4a. The national rules on the recognition of third-country CSDs shall continue to apply until the following date, whichever is earlier:

(a) the date when a decision is made under this Regulation on the recognition of the respective third-country CSDs and of their activities; or

(b) … [*PO please insert the date = 3 years after the date of entry into force of this Regulation*].

A third-country CSD that provides the core services referred to in Section A, points (1) and (2), of the Annex in relation to financial instruments constituted under the law of a Member State referred to in Article 49(1), second subparagraph pursuant to the applicable national rules on the recognition of third-country CSDs shall submit a notification to ESMA within 2 years from *[PO please insert the date of entry into force of this Regulation]*.

ESMA shall develop draft regulatory technical standards to specify the information that the third- country CSD shall provide to ESMA in the notification referred to in the second subparagraph. Such information shall be limited to what is strictly necessary including, where applicable and available:

(a) the number of participants to whom the third-country CSD provides the services referred to in the second subparagraph;

(b) the categories of financial instruments in respect of which the third-country CSD provides such services; and

(c) the total volume and value of such financial instruments.

ESMA shall submit those draft regulatory technical standards to the Commission by [*PO please insert the date = 1 year after the date of entry into force of this Regulation*].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4b. A third-country CSD that provided the core service referred to in Section A, point (3), of the Annex in relation to financial instruments constituted under the law of a Member State referred to in Article 49(1), before … [*PO please enter the date of entry into force of this Regulation*] shall submit the notification referred to in Article 25(2a) within 2 years from …*[PO please insert the date of entry into force of this Regulation]*.

4c. Where a CSD has submitted a complete application for recognition in accordance with Article 25(4), (5) and (6) before … [*PO please insert the date = the date of entry into force of this Regulation*] but ESMA has not issued a decision in accordance with Article 25(6) by that date, the national rules on recognition of CSDs shall continue to apply until the ESMA decision is issued.';

(c) the following paragraph 6 is added:

'6. Home competent authorities shall establish and manage colleges pursuant to Article 24a for all CSDs providing their services in relation to financial instruments constituted under the law of another Member State pursuant to Article 23(2) before … [*PO please insert the date = the date of entry into force of this Regulation*] or for CSDs that belong to a group that comprises other CSDs by … [*PO please insert the date = 4 months after the date of entry into force of this Regulation*].';

(23a) Article 72 is deleted;

(24) Article 74 is amended as follows:

(-a) the following paragraph is inserted:

'-1. Upon the request of the Commission, ESMA shall provide a cost-benefit analysis, for the purposes of Article 7(2a), of a potential mandatory buy-in procedure. The analysis shall consist of the following:

(a) the average duration of settlement fails to which such a mandatory buy-in procedure could apply;

(b) the impact of the mandatory buy-in procedure on the Union market, including an analysis of the implication of subjecting specific financial instruments and categories of transactions to the mandatory buy-in procedure;

(c) the appropriateness of settlement efficiency levels considering the situation in third-country capital markets that are comparable in terms of size and liquidity, as well as in terms of instruments traded and types of transactions executed on such markets;

(d) the application of a similar buy-in procedure in comparable third-country markets and the impact on the competitiveness of the Union market;

(e) any clear impacts on financial stability stemming from the settlement fails;

(f) any clear impacts on fragmentation of the Union's capital market stemming from diverging settlement efficiency rates.';

(a) paragraph 1 is amended as follows:

(i) the introductory wording is replaced by the following:

'ESMA shall, in cooperation with EBA and the competent authorities and the relevant authorities, submit reports to the Commission providing assessments of trends, potential risks and vulnerabilities, and, where necessary, recommendations of preventative or remedial action in the markets for services covered by this Regulation. Those reports shall include an assessment of the following:';

(ii) point (a) is replaced by the following:

'(a) settlement efficiency for domestic and cross-border operations for each Member State based on the number and volume of settlement fails and their evolution, including an analysis of the impact of cash penalties on settlement fails across instruments, the duration and main drivers of settlement fails, the categories of financial instruments and markets where the highest settlement fail rates are observed and an international comparison of settlement fail rates, including an assessment of the amount of penalties referred to in Article 7(2), and, where applicable, the number and volumes of buy-in transactions referred to in Article 7(3) and (4) as well as any other relevant criteria;';

(iii) the following point (l) is added:

'(l) the handling of notifications submitted in accordance with Article 25(2a);';

(b) the following paragraph 1a is inserted:

'1a. The reports referred to in paragraph 1 shall be submitted to the Commission as follows:

(a) at least every 2 years from … [*PO please insert the date = the date of entry into force of this Regulation*] for the report referred to in paragraph 1,point (a);

(b) every 2 years for the reports referred to in paragraph 1, points (b) and (c);

(c) on an annual basis until … [PO please insert the date = 1 year after the date of entry into force of this Regulation] and every 3 years from … [PO please insert the date = 1 year after the date of entry into force of this Regulation], for the reports referred to in paragraph 1, points (d) and (f);

(d) upon request from the Commission, for the reports referred to in paragraph 1, points (e), (h), (j) and (k);

(e) on an annual basis until … [PO please insert the date = 1 year after the date of entry into force of this Regulation] and every 2 years from … [PO please insert the date = 1 year after the date of entry into force of this Regulation] for the reports referred to in paragraph 1, points (i) and (l).';

(ba) the following paragraphs are inserted:

'1aa. ESMA shall, after consulting the ESCB, submit a report no more than [one year after the date of publication of this amending Regulation in the Official Journal] to the Commission regarding the possibility of applying additional regulatory tools to improve settlement efficiency in the Union. That report shall cover at least the shaping of transaction sizes, the partial settlement of failing

trades, and the use of auto-lend/borrow programmes provided by certain CSDs. Thereafter, ESMA, after consulting the ESCB, shall report every three years on any potential additional tools to improve settlement efficiency the Union. In cases where no new tools have been identified, ESMA shall inform the Commission thereof and shall not be required to provide a report.

1ab. ESMA shall, in agreement with the ESCB, submit a report not more than [X months after publication of this amending Regulation in the Official Journal] to the Commission regarding the potential shortening of the settlement cycle on the Union capital market. That report shall include all of the following:

(a) an overview of international developments on settlement cycles and their impact on capital markets of the Union;

(b) an assessment of the costs and benefits of shortening the settlement cycle in the Union, differentiating where appropriate between different financial instruments;

(c) a detailed assessment and timeline of how to move to a shorter settlement cycle, differentiating, where appropriate, between different financial instruments;

Thereafter, ESMA, in agreement with the ESCB, shall report annually on the progress towards quicker settlement cycles in the Union.';

'

(c) paragraph 2 is replaced by the following:

'2. The reports referred to in paragraph 1 shall be communicated to the Commission by 30 April of the relevant year as determined in accordance with the periodicity set out in paragraph 1a.';

(25) Article 75 is replaced by the following:

'*Article 75*

Review

By … [*PO please insert the date = 5 years after the date of entry into force of this Regulation*], the Commission shall review and prepare a general report on this Regulation. That report shall, in particular, assess the matters referred to in Article 74(1), points (a) to (l), establish whether there are substantive barriers to competition in relation to the services subject to this Regulation which are insufficiently addressed and set out the potential need to apply further measures to:

(a) improve settlement efficiency;

(b) limit the impact on taxpayers of the failure of CSDs;

(ba) further regulate the practice of internalised settlement;

(c) minimise barriers to cross-border settlement;

(d) ensure adequate powers and information for ***competent and relevant*** authorities to monitor risks***;***

(da) grant ESMA further supervisory powers in relation to CSDs that are of substantial importance for the functioning of securities markets and the protection of investors in the Union or that are of substantial importance in at least five host Member States;

(db) grant ESMA further supervisory and enforcement powers in relation to third-country CSDs;

(dc) improve the ability of market participants to monitor effectively their exposure to penalties and potential mandatory buy-in procedures by consolidating and making available reference data in a centralised database;

The Commission shall submit the report to the European Parliament and to the Council, together with any appropriate proposals.';

Article 1a

Amendments to Regulation (EU) No 236/2012

The following article is inserted:

'Article 15
Buy-in procedures

Until the buy-in regime set out in Article 7 of Regulation (EU) No 909/2014 [CSDR] is applied to transactions in shares cleared by central counterparties, a central counterparty in a Member State that provides clearing services for shares shall ensure that procedures are in place that comply with all of the following requirements:

(a) where a natural or legal person who sells shares is not able to deliver the shares for settlement within four business days of the day on which settlement is due, procedures are automatically triggered for the buy-in of the shares to ensure delivery for settlement;

(b) where the buy-in of the shares for delivery is not possible, an amount is paid to the buyer based on the value of the shares to be delivered at the delivery date plus an amount for losses incurred by the buyer as a result of the settlement fail;

(c) the natural or legal person who fails to settle reimburses all amounts paid pursuant to points (a) and (b).'

Article 2

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

However, Article 1, point (9), point (10)(a), point (17)(c), point (19)(a) and point (23)(b), second subparagraph, shall apply from …. [*PO please insert the date = 24 months after the date of entry into force of this Regulation*].

Article 1, point (2)(a), shall apply from the date of entry into force of the delegated act adopted by the Commission pursuant to Article 7(14a).

Article 1, point (14b), of this Regulation shall apply from the date of entry into force of the delegated act adopted by the Commission pursuant to Article 47a(3) of Regulation (EU) No 909/2014.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

PROCEDURE – COMMITTEE RESPONSIBLE

Title	Amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories
References	COM(2022)0120 – C9-0118/2022 – 2022/0074(COD)
Date submitted to Parliament	17.3.2022
Committee responsible Date announced in plenary	ECON 4.4.2022
Committees asked for opinions Date announced in plenary	JURI 4.4.2022
Not delivering opinions Date of decision	JURI 28.3.2022
Rapporteurs Date appointed	Johan Van Overtveldt 7.4.2022
Discussed in committee	8.11.2022 23.1.2023
Date adopted	1.3.2023
Result of final vote	+: 56 –: 3 0: 0
Members present for the final vote	Rasmus Andresen, Anna-Michelle Asimakopoulou, Manon Aubry, Gunnar Beck, Isabel Benjumea Benjumea, Stefan Berger, Gilles Boyer, Markus Ferber, Jonás Fernández, Giuseppe Ferrandino, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Valentino Grant, Claude Gruffat, José Gusmão, Enikő Győri, Eero Heinäluoma, Michiel Hoogeveen, Danuta Maria Hübner, France Jamet, Billy Kelleher, Ondřej Kovařík, Georgios Kyrtsos, Aurore Lalucq, Aušra Maldeikienė, Siegfried Mureşan, Denis Nesci, Luděk Niedermayer, Piernicola Pedicini, Lídia Pereira, Kira Marie Peter-Hansen, Eva Maria Poptcheva, Evelyn Regner, Dorien Rookmaker, Alfred Sant, Joachim Schuster, Ralf Seekatz, Pedro Silva Pereira, Paul Tang, Irene Tinagli, Ernest Urtasun, Johan Van Overtveldt, Stéphanie Yon-Courtin
Substitutes present for the final vote	Marc Angel, Nicola Beer, Karima Delli, Herbert Dorfmann, Gianna Gancia, Eider Gardiazabal Rubial, Elisabetta Gualmini, Valérie Hayer, Chris MacManus, Fulvio Martusciello, Jessica Polfjärd, Clara Ponsatí Obiols, René Repasi
Substitutes under Rule 209(7) present for the final vote	Joachim Kuhs, Alessandro Panza, Roberts Zīle
Date tabled	6.3.2023

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

56	+
ECR	Michiel Hoogeveen, Denis Nesci, Dorien Rookmaker, Johan Van Overtveldt, Roberts Zīle
ID	Gunnar Beck, Gianna Gancia, Valentino Grant, France Jamet, Joachim Kuhs, Alessandro Panza
NI	Enikő Győri, Clara Ponsatí Obiols
PPE	Anna-Michelle Asimakopoulou, Isabel Benjumea Benjumea, Stefan Berger, Herbert Dorfmann, Markus Ferber, Frances Fitzgerald, José Manuel García-Margallo y Marfil, Danuta Maria Hübner, Aušra Maldeikienė, Fulvio Martusciello, Siegfried Mureşan, Luděk Niedermayer, Lídia Pereira, Jessica Polfjärd, Ralf Seekatz
Renew	Nicola Beer, Gilles Boyer, Giuseppe Ferrandino, Valérie Hayer, Billy Kelleher, Ondřej Kovařík, Georgios Kyrtsos, Eva Maria Poptcheva, Stéphanie Yon-Courtin
S&D	Marc Angel, Jonás Fernández, Eider Gardiazabal Rubial, Elisabetta Gualmini, Eero Heinäluoma, Aurore Lalucq, Evelyn Regner, René Repasi, Alfred Sant, Joachim Schuster, Pedro Silva Pereira, Paul Tang, Irene Tinagli
Verts/ALE	Rasmus Andresen, Karima Delli, Claude Gruffat, Piernicola Pedicini, Kira Marie Peter-Hansen, Ernest Urtasun

3	-
The Left	Manon Aubry, José Gusmão, Chris MacManus

0	0

Key to symbols:
+ : in favour
- : against
0 : abstention