Securities settlement in the EU and central securities depositories (CSDs)

2012/0029(COD) - 15/04/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 522 votes to 78 with 30 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98 /26/EC.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary were the result of a compromise between Parliament and Council. They amend the Commission's proposal as follows:

Purpose: the Regulation would lay down **uniform requirements** for the settlement of financial instruments in the Union and rules on the organisation and conduct of central securities depositories to promote **safe, efficient and smooth settlement**.

In April 2012, the Committee on Payments and Settlement Systems (CPSS) of the Bank of International Settlements (BIS) and the International Organisation of Securities Commissions (IOSCO) adopted global standards for financial market infrastructures. Considering the global nature of financial markets and the systemic importance of the CSDs, it is necessary to ensure international convergence of the prudential requirements to which they are subject. The provisions of the Regulation should follow the existing principles for financial market infrastructures recommendations developed by CPSS-IOSCO principles for financial market infrastructures.

Remedying the gaps in the Regulation: according to the new rules, CSDs and other market infrastructures should take measures to prevent and address settlement fails. It was essential that such rules be uniformly and directly applied in the Union. One of the most efficient ways to address settlement fails was to require failing participants to be subject to a compulsory enforcement of the original agreement.

This Regulation should provide for uniform rules concerning **penalties.** The procedures and penalties related to settlement fails should be commensurate to the scale and seriousness of such fails whilst being scaled in such a way that maintains and protects liquidity of the relevant financial instruments.

The amendments adopted in plenary stressed the following points :

- all CSDs must be **safe and sound** and comply at all times with stringent organisational, conduct of business, including by taking all reasonable steps to mitigate against fraud and negligence ;

- any authorised CSD should enjoy the freedom to provide its services within the territory of the Union, including through the establishment of a branch. CSDs authorised in another Member State should be subject to a specific procedure established in this Regulation where they intended to provide certain core CSD services listed in the Regulation ;

- CSDs should have in place **recovery plans** to ensure continuity of their critical operations. Where a CSD provided its services in another Member State, the competent authority of the host Member State should be able to request from the competent authority of the home Member State all information concerning the activities of the CSD that was of relevance for it ;

- when the activities of a CSD in a host Member State had become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State, the home and host competent and relevant authorities should establish **cooperation arrangements for the supervision** of the activities of that CSD in the host Member State ;

- CSDs should be authorised to provide **services ancillary** to their core services that contributed to enhancing the safety, efficiency and transparency of the securities markets and that did not create undue risks to their core services. These services were listed in a non-exhaustive fashion in the Regulation in order to enable CSDs to respond to future market developments;

- CSDs **established in third countries** may offer their services in the Union, including through the establishment of a branch. In order to ensure an appropriate level of safety in the provision of CSD services by third country CSDs, such CSDs would be subject to recognition by ESMA where they intended to provide certain services;

- **transparent governance rules** should ensure that the interests of the shareholders, the management and staff of the CSD, on the one hand, and the interests of their users who CSDs are ultimately serving, on the other, were taken into account;

- CSDs should be able to **outsource** the operation of their services provided that the risks arising from such outsourcing arrangements are managed;

- the Regulation should require CSDs to **segregate** the securities accounts maintained for each participant and offer, upon request, further segregation of the accounts of the participants' clients which in some cases might only be available at a higher cost to be borne by the participants' clients requesting further segregation ;

- CSDs should **not use on their own account** the securities that belong to a participant unless explicitly authorised by that participant and should not otherwise use on their own account the securities that do not belong to them.

- In addition the CSD should require the participants to obtain any necessary prior consents from its clients;

- in order to ensure **legal certainty**, CSDs should disclose to their participants the moment in time at which the transfer of securities and cash in a securities settlement system are legally enforceable and binding on third parties;

- in order to allow competent authorities to effectively supervise the activities of CSDs, CSDs should be **subject to strict record keeping requirements** under the Regulation. CSDs should maintain for a period of at least ten years all the records and data on all the services that they may provide.

Lastly, ESMA must submit **annual reports** to the Commission assessing the trends and potential risks in the markets covered by the Regulation.

These reports should include at least an assessment of settlement efficiency, cross-border provision of services, the reasons for the rejection of access rights and any other material barriers to competition in post-trade financial services, appropriateness of penalties for settlement fails, the conditions relating to the provision of banking type of ancillary services and the sanctions regime.