

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

2012/0029(COD) - 23/07/2014 - Final act

PURPOSE: to improve safety in the securities settlement system and opening the market for central securities depositories (CSD) services.

LEGISLATIVE ACT: Regulation (EU) No 909/2014 of the European Parliament and of the Council 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.

CONTENT: Central securities depositories (CSDs), together with central counterparties (CCPs) contribute to a large degree in maintaining post-trade infrastructures that safeguard financial markets and give market participants confidence that securities transactions are executed properly and in a timely manner, including during periods of extreme stress.

Subject matter and scope: this Regulation lays down **uniform requirements** for the settlement of financial instruments in the Union and **rules on the organisation and conduct of central securities depositories (CSDs)** to promote safe, efficient and smooth settlement.

CSDs will benefit from uniform requirements for licensing and an **EU-wide "passport"**, which will help remove barriers of access to the market.

Taking into account the global nature of financial markets and the systemic importance of CSDs, the Regulation should follow existing guidelines for recommendations for financial market infrastructures developed by the Committee on Payment Systems and Settlement Systems (CPSS) and the International Organisation of Securities Commissions (IOSCO).

The Regulation introduces an **obligation to represent all transferable securities in book entry form**, i. e. recorded electronically, and to record them in CSDs before trading them on regulated venues.

The authorities of the Member State where the issuer that issues securities is established shall ensure the implementation of this provision. The Regulation also harmonises **settlement periods and settlement discipline regimes** across the EU.

Authorisation and supervision of the CSD: the Regulation stipulates that a CSD shall be authorised and supervised by the **competent authority** of its home Member State. Each Member State shall designate the competent authority responsible for carrying out the duties under this Regulation for the authorisation and supervision of CSDs established in its territory and shall inform ESMA thereof. The conditions and procedures of the authorisation are defined in the Regulation.

The competent authority shall, at least **on an annual basis, review the arrangements, strategies, processes and mechanisms** implemented by a CSD with respect to compliance with this Regulation. The competent authority shall require the CSD to submit to the competent authority an adequate **recovery plan** to ensure continuity of its critical operations. The competent authority shall subject the CSD to **on-site inspections**.

Third countries: third-country CSDs may provide services referred to in the Annex within the territory of the Union, including through setting up a branch. In order to ensure an appropriate level of safety in the

provision of CSD services by third- country CSDs, such CSDs should be subject to recognition by ESMA where they intend to provide certain services listed in this Regulation or to set up a branch in the Union.

Organisational arrangements: a CSD shall have **robust governance arrangements**, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate remuneration policies and internal control mechanisms, including sound administrative and accounting procedures.

A CSD shall: (i) maintain and implement adequate resolution procedures where possible conflicts of interest occur; (ii) make its governance arrangements and the rules governing its activity available to the public; (iii) have appropriate procedures for its employees to report internally potential infringements of this Regulation through a specific channel; (iv) be subject to regular and independent audits.

The senior management of a CSD shall be of sufficiently **good repute and experience** so as to ensure the sound and prudent management of the CSD.

In order to allow competent authorities to supervise the activities of CSDs effectively, CSDs should be subject to strict record-keeping requirements. CSDs should **maintain for at least 10 years** all the records and data on all the services that they may provide.

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

Administrative sanctions and other measures: without prejudice to the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on and ensure that their competent authorities may impose the administrative sanctions and other measures applicable to the persons responsible for infringements.

Member States shall ensure that the competent authorities **publish on their official websites** any decision imposing an administrative sanction. Where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, the decision to publish a sanction or other measure should be on an anonymous basis.

In the case of a legal person, maximum administrative pecuniary sanctions of at least **EUR 20 million or up to 10 % of the total annual turnover** and in respect of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 million or in the two cases, at least twice the amounts of the profit gained as a result of an infringement where those amounts can be determined.

Review: by 18 September 2019, the Commission shall review and prepare a general report on this Regulation and submit it to the European Parliament and to the Council, together with any appropriate proposals.

ENTRY INTO FORCE: 17.09.2014. Article 3(1) (book entry form) shall apply from 1 January 2023 to transferable securities issued after that date and from 1 January 2025 to all transferable securities.

DELEGATED ACTS: the Commission may adopt delegated acts to adopt the regulatory technical standards. Power to adopt such acts is conferred on the Commission for **an indeterminate period of time from 17 September 2014**. The European Parliament or the Council may formulate objections to a delegated act within a period of **three months** of notification of that act (that period may be extended by three months). If Parliament or Council raise objections, the delegated act will not enter into force.