Settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories

2022/0074(COD) - 09/11/2023 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 552 votes to 33, with 9 abstentions, a 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 (CSDs).

The proposed amendment to the CSD Regulation aims to reduce compliance costs and regulatory burdens for CSDs and to make it easier for CSDs to offer a wider range of cross-border services, while improving their cross-border supervision.

Parliament's position adopted at first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Measures to prevent settlement fails

European Securities and Markets Authority (ESMA) should, 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:

- the measures to be taken by investment firms;

- the details of the procedures that facilitate settlement, which could include the shaping of transaction sizes, partial settlement of failing trades and the use of auto-lend/borrow programmes provided by certain CSDs; and

- the details of the measures to encourage and incentivise the timely settlement of transactions.

Measures to address settlement fails

For each securities settlement system it operates, a CSD should:

- establish a system that monitors settlement fails of transactions in financial instruments;

- establish procedures that facilitate the settlement of transactions in financial instruments that are not settled on the intended settlement date. Those procedures should provide for a **penalty mechanism** that serves as an effective deterrent to participants that cause settlement fails.

The penalty mechanism should include cash penalties for participants that cause settlement fails. Cash penalties should be calculated on a daily basis for each business day that a transaction fails to be settled after its intended settlement date until the transaction is either settled or bilaterally cancelled.

CSDs, CCPs and trading venues should establish procedures that enable them to **suspend**, in consultation with their respective competent authorities, **any participant** that fails consistently and systematically to deliver the financial instruments on the intended settlement date and to disclose to the public its identity only after giving that participant the opportunity to submit its observations and provided that the competent authorities of the CSDs, CCPs and trading venues, and of that participant have been duly informed. Public disclosure of suspensions should not contain personal data.

Buy-ins

The amended text clarifies the scope of the buy-in process laid down in Regulation (EU) No 909/2014.

Mandatory buy-ins should be a measure of **last resort** and should apply only where the following two conditions are met at the same time: (1) the application of other measures, such as cash penalties or the suspension, by CSDs, central counterparties or trading venues, of participants that cause settlement fails consistently and systematically, has not resulted in a long-term sustainable reduction of settlement fails in the Union or in maintaining a reduced level of settlement fails in the Union; and (2) the level of settlement fails has or is likely to have a negative effect on the financial stability of the Union.

College of Supervisory Authorities

A college of supervisors should be established for CSDs the activities of which are considered to be of substantial importance for the functioning of the securities markets and the protection of investors in at least two host Member States. A college set up under this Regulation should not prevent or replace other forms of cooperation between competent authorities. ESMA should develop draft regulatory technical standards to specify the criteria on the basis of which it can be determined whether the activities are of substantial importance.

Members of a college should have the possibility of requesting the adoption by the college of a **non-binding opinion** concerning issues identified during the review and evaluation of a CSD 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. Non-binding opinions should be adopted by a simple majority vote.

Information to competent authorities

Any natural or legal person or such persons acting in concert, who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a CSD or to further increase, directly or indirectly, such a qualifying holding in a CSD as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10 %, 20 %, 30 % or 50 % or would lead to the CSD becoming its subsidiary, should first notify the competent authority of that CSD in writing thereof, indicating the size of the intended holding and relevant information.

When assessing the notification and the information communicated, the competent authority should, in order to ensure the sound and prudent management of the CSD in which an acquisition is proposed and having regard to the likely influence of the proposed acquirer on the CSD, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition.

Review

No later than five years from the date of entry into force of the amending regulation, the Commission should review the regulation and draw up a general report thereon. The Commission should analyse in

particular: (i) the functioning of the regulatory and supervisory framework for Union CSDs, especially those CSDs whose activities 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, focusing in particular on the cross-border provision of services, potential risks for clients and participants of CSDs, investor protection and the financial stability in the Union; (ii) the scope of the Union regulatory and supervisory framework for third-country CSDs.