

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) - 27/12/2023 - Final act

PURPOSE: to update the rules on central securities depositories (CSDs) with a view to reducing the financial and regulatory burden on CSDs and improving their ability to operate across borders, while also strengthening financial stability.

LEGISLATIVE ACT: Regulation (EU) 2023/2845 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 and amending Regulation (EU) No 236/2012.

CONTENT: Central Securities Depositories (CSDs) are national or international financial organisations that manage the "settlement" (transfer of ownership) of securities such as equities and bonds. As such, they play a key role in the financial markets.

Regulation (EU) No 909/2014 of the European Parliament and of the Council standardises the requirements for the settlement of financial instruments and the rules on the organisation and conduct of central securities depositories (CSDs) to promote safe, efficient and smooth settlement.

This regulation, by simplifying requirements in certain areas covered by Regulation (EU) No 909/2014, will **reduce compliance costs and regulatory burdens for CSDs**. It will improve the efficiency of securities settlement in the EU. It will make it easier for CSDs to offer cross-border services, while improving cooperation between supervisors.

A simpler passporting regime

‘Passporting’ refers to the procedure via which a CSD based in one EU member state can provide services in another member state. The new regulation will clarify and simplify the rules, thus reducing the barriers to cross-border settlement and easing the administrative and financial burden.

Better supervision

The regulation will also make supervision of CSDs more effective by improving cooperation between supervisors.

To ensure the effective and efficient coordination of the supervision by competent authorities, the setting up of **colleges** should become mandatory under certain conditions. 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.

Third country CSDs should be required to inform Union authorities of their activities in relation to financial instruments constituted under the law of a Member State.

Improved settlement efficiency

The new regulation contains measures to improve ‘settlement efficiency’ (the rate at which securities transactions settle on the intended date) by amending certain elements of the settlement discipline regime, including the preconditions for applying so-called mandatory buy-ins.

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.

CSDs, CCPs and trading venues will establish procedures that enable them to **suspend 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 regulation 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:

- firstly, 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
- secondly, the level of settlement fails has or is likely to have a negative effect on the financial stability of the Union.

Where mandatory buy-ins apply, it should be possible for the Commission to temporarily suspend their application in certain exceptional situations 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.

Plans for recovery and orderly wind-down

The CSD will identify scenarios that could potentially prevent it from being able to provide its critical operations and services as a going concern and will assess the effectiveness of a full range of options for recovery or orderly wind-down. Those scenarios will take into account the various independent and related risks to which the CSD is exposed. Using that analysis, the CSD will prepare and submit to the competent authority appropriate plans for its recovery or orderly wind-down.

Banking-type ancillary services

The regulation provides conditions under which CDSs can access banking-type services, including through other CSDs. As a result, offering services for a broader range of currencies as well as across borders will be facilitated.

ENTRY INTO FORCE: 2.1.2024.