Basic information

2012/0029(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Securities settlement in the EU and central securities depositories (CSDs) Amending Directive 98/26/EC 1996/0126(COD) Amending Regulation (EU) No 236/2012 2010/0251(COD) Amending Directive 2014/65/EC 2011/0298(COD) Amended by 2016/0034(COD) Amended by 2020/0266(COD) Amended by 2022/0074(COD) Amended by 2025/0022(COD) **Subject** 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	SWINBURNE Kay (ECR)	10/05/2011
	Shadow rapporteur DORFMANN Herbert (PPE) SÁNCHEZ PRESEDO Antolín (S&D) BOWLES Sharon (ALDE) BESSET Jean-Paul (Verts /ALE) KLUTE Jürgen (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	STOYANOV Dimitar (NI)	25/04/2012

Council of the European Union

Council configuration	Meetings	Date
General Affairs	3331	2014-07-23
Economic and Financial Affairs ECOFIN	3271	2013-11-15

European Commission	**Commission DG**	**Commissioner**
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel
European Economic and Social Committee		

Key events

Date	Event	Reference	Summary
07/03/2012	Legislative proposal published	COM(2012)0073	Summary
15/03/2012	Committee referral announced in Parliament, 1st reading		
04/02/2013	Vote in committee, 1st reading		
14/02/2013	Committee report tabled for plenary, 1st reading	A7-0039/2013	Summary
15/11/2013	Debate in Council		
15/04/2014	Decision by Parliament, 1st reading	T7-0388/2014	Summary
15/04/2014	Results of vote in Parliament		
23/07/2014	Act adopted by Council after Parliament's 1st reading		
23/07/2014	Final act signed		
23/07/2014	End of procedure in Parliament		
28/08/2014	Final act published in Official Journal		

Technical information

Procedure reference	2012/0029(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Directive 98/26/EC 1996/0126(COD) Amending Regulation (EU) No 236/2012 2010/0251(COD) Amending Directive 2014/65/EC 2011/0298(COD) Amended by 2016/0034(COD) Amended by 2020/0266(COD) Amended by 2022/0074(COD) Amended by 2025/0022(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 114-p1
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/09123

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE492.931	13/07/2012	
Amendments tabled in committee		PE500.450	12/11/2012	
Amendments tabled in committee		PE500.476	13/11/2012	
Committee opinion	JURI	PE496.503	28/11/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0039/2013	14/02/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0388/2014	15/04/2014	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00049/2014/LEX	23/07/2014	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2012)0073	07/03/2012	Summary
Document attached to the procedure	SWD(2012)0022	07/03/2012	
Document attached to the procedure	SWD(2012)0023	07/03/2012	
Commission response to text adopted in plenary	SP(2014)471	09/07/2014	
Follow-up document	COM(2021)0348	01/07/2021	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2012)0073	04/05/2012	
Contribution	CZ_SENATE	COM(2012)0073	07/11/2012	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N7-0125/2012 OJ C 336 06.11.2012, p. 0013	09/07/2012	Summary
EESC	Economic and Social Committee: opinion, report	CES1572/2012	11/07/2012	
	European Central Bank: opinion,	CON/2012/0062		

ECB	guideline, report	OJ C 310 13.10.2012, p. 0012	01/08/2012	Summary

Additional information		
Source	**Document**	**Date**
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act

Regulation 2014/0909
OJ L 257 28.08.2014, p. 0001 Summary

Corrigendum to final act 32014R0909R(04)
OJ L 349 21.12.2016, p. 0008

Delegated acts

Reference	Subject
2020/2647(DEA)	Examination of delegated act
2018/2725(DEA)	Examination of delegated act
2019/2795(DEA)	Examination of delegated act
2016/2984(DEA)	Examination of delegated act
2016/2983(DEA)	Examination of delegated act
2016/2982(DEA)	Examination of delegated act
2016/2985(DEA)	Examination of delegated act
2020/2847(DEA)	Examination of delegated act
2023/2659(DEA)	Examination of delegated act
2022/2760(DEA)	Examination of delegated act
2026/2813(DEA)	Examination of delegated act
2026/2812(DEA)	Examination of delegated act

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

2012/0029(COD) - 01/08/2012 - European Central Bank: opinion, guideline, report

OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a regulation on improving securities settlement in the European Union and on central securities depositories.

Together with Directive 2004/39/EC and the proposal for a regulation on OTC derivatives, central counterparties and trade repositories, this regulation will be part of the regulatory framework for market infrastructures and trading venues. The ECB **strongly supports the Commission's proposal** to strengthen the legal framework applicable to central securities depositories (CSDs) and to harmonise the rules underpinning the operation, authorisation and supervision of CSDs, as well as those relating to the issuance, holding and transfer of securities through such CSDs in the Union. It

recommends that the regulation, and the corresponding implementing acts, be adopted prior to the launch of TARGET2-Securities (T2S) planned for June 2015.

The ECB makes the following recommendations on the proposal:

Scope of the regulation: the ECB notes that the **proposed regulation does not define 'financial instruments'** and that some parts of it apply only to 'securities' or transferable securities, whereas others also apply to money market instruments, units in collective investment undertakings and emission allowances. It is of the view that **all three core services should be regulated**.

The ECB recommends **further clarifying the scope of the proposed regulation**, both as regards the type of instruments it applies to and the definition of CSD, which should be amended to avoid regulatory arbitrage stemming from the creation by a CSD of two or three legal entities to perform different core activities without being subject to the Regulation applicable to CSDs. The ECB considers that each legal person offering any of the three core services indicated in Section A of the Annex should be subject to the Regulation.

Cooperation between authorities: the Regulation should ensure that:

- the powers of competent authorities and the European Securities and Markets Authority (ESMA) are complemented and balanced by an adequate involvement of the members of the ESCB;
- be consistent with the CPSS-IOSCO principles. An effective and close cooperation should be fostered between competent authorities and the members of the ESCB, both from an oversight perspective and as central banks of issue and without prejudice to central bank powers;
- facilitate comprehensive supervision and oversight in a cross-border context given the expected development of cross-border operations and settlement, as well as links between CSDs, a feature which will be facilitated and even fostered by the launch of the T2S common platform. Competent authorities should have the option of deciding on the appropriate form of cooperation arrangements, and the option of establishing colleges of authorities could be envisaged.

CSDs and banking type of ancillary services: the ECB makes the following points:

- the proposal distinguishes between banking type of ancillary services for the participants of a securities settlement system related to settlement service on the one hand, and banking type of ancillary services related to other core or ancillary services on the other hand. The ECB is of the view that the **distinction is not clear** and that the banking type of ancillary services referred to should be aligned as much as possible to the terminology in European banking legislation;
- the framework for the provision of ancillary banking services should be guided by an appropriate mitigation of risks whilst safeguarding the efficiency of CSDs in providing their services. Given the crucial nature of this issue, a **more comprehensive assessment of the various options for the provision of ancillary banking services** may be warranted. The ECB is prepared to contribute to such an assessment;
- there should be **no uncertainty** as to the exact scope of the ancillary banking services which designated credit institutions would be authorised to perform, the prudential requirements to which they would be subject, and their degree of autonomy vis-à-vis the banking legislative framework;
- the proposal limits the services to be provided by a designated credit institution that belongs to the same group as the CSD. The ECB recommends **extending this limitation to all credit institutions providing banking services listed in Section C of the Annex** for the participants of a securities settlement system having regard to the potential adverse effects on the ability of the CSD to continue to perform its functions, in particular those based on a delivery versus payment mechanism, in the case of a resolution or insolvency of the credit institution;
- the ECB considers that the procedure for granting a derogation is rather complex and could be streamlined to achieve the necessary degree of certainty and uniformity.

Consistency with global standards for CSDs: there are some inconsistencies between the CPSS-IOSCO principles and the proposed regulation, which the ECB recommends addressing: (i) requirements for tiered participation are not addressed; (ii) the need to manage risks stemming from interdependencies is mentioned only in the context of operational risk; (iii) the proposal regulation does not distinguish between deferred net settlement systems (DNS) that provide a settlement guarantee and those DNS that do not.

Conflict of laws: noting that the proposal provides as a general rule that any question with respect to proprietary aspects in relation to securities held by a CSD is governed by the law of the country where the securities account is maintained, the ECB strongly objects to the introduction of the additional conflict of laws rules which would be inconsistent with existing Union legislation and would affect legal certainty.

Furthermore, the ECB considers it necessary to **harmonise the various Union legal frameworks for holding and disposing of securities** and the exercise of rights attached to securities in line with the final report of the Legal Certainty Group.

Specific regime for resolution of CSDs: the ECB recommends adopting a specific, comprehensive regime for the resolution of CSDs.

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

2012/0029(COD) - 09/07/2012 - Document attached to the procedure

Executive summary of the Opinion of the European Data Protection Supervisor on the Commission 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.

The EDPS welcomes the fact that he is consulted by the Commission and recommends that references to this Opinion are included in the preambles of the proposed regulation. The EDPS begins by recalling that any trade in securities on or off a trading venue is followed by a post-trade flow of processes, leading to the settlement of the trade, which means the delivery of securities to the buyer against the delivery of cash to the seller. CSDs

are key institutions that enable settlement by operating securities settlement systems. They are the institutions that facilitate the transactions concluded on the markets. CSDs also ensure the initial recording and the central maintenance of securities accounts that record how many securities have been issued by whom and each change in the holding of those securities.

While generally safe and efficient within national borders, CSDs combine and communicate less safely across borders, which means that **an investor faces higher risks and costs when making a cross-border investment.** The absence of an efficient single internal market for settlements also raises other important concerns such as the limitation of security issuers' access to CSDs, different national licensing regimes and rules for CSDs across the EU, and limited competition between different national CSDs. These barriers result in a very fragmented market while cross-border transactions in Europe continue to increase and CSDs become increasingly interconnected.

Recommendations: the EDPS states that the proposal contains provisions which may in certain cases have **data protection implications for the individuals concerned** such as the investigative powers of the competent authorities, the exchange of information, the keeping of records, the outsourcing of activities, the publication of sanctions and the reporting of breaches.

Accordingly, the EDPS makes some recommendations, the main ones being as follows:

- the rephrasing of provisions **emphasising the full applicability of existing data protection legislation** in one general provision referring to Directive 95/46/EC as well as Regulation (EC) No 45/2001 and the clarification of the reference to Directive 95/46/EC by specifying that the provisions will apply in accordance with the national rules which implement Directive 95/46/EC. The EDPS furthermore recommends including this type of overarching provision in a **substantive provision** of the proposal;
- **the limitation of competent authorities' access to documents** and information to specifically identified and serious violations of the proposal and in cases where a reasonable suspicion (which should be supported by concrete initial evidence) exists that a breach has been committed;
- the introduction of a requirement for competent authorities to request documents and information by f**ormal decision, the specification of the legal basis and the purpose of the request** and what information is required, the time limit within which the information is to be provided, as well as the right of the addressee to have the decision reviewed by a court of law;
- **the specification of the kind of personal information that can be processed** and transferred under the proposal, the definition of the purposes for which personal data can be processed and transferred by competent authorities and the fixing of a proportionate data retention period for the above processing or at least the introduction of precise criteria for its establishment;
- in view of the risks concerned regarding transfers of data to third countries, the addition of specific safeguards such as a **case-by-case assessment** and the existence of an **adequate level of protection of personal data in the third country** receiving the personal data;
- the replacement of the minimum retention period of five years in Article 27 of the proposal with a **maximum retention period** when records contain personal data. The chosen period should be necessary and proportionate for the purpose for which data are processed,
- the rephrasing of Article 28.1(i) as follows: 'The CSD ensures that the service provider provides its services in full compliance with the national rules, applicable to the CSD, implementing Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The CSD is responsible (…)';
- the addition in Article 62.2(b) of a provision saying that the **identity of these persons should be guaranteed at all stages of the procedure**, unless its disclosure is required by national law in the context of further investigation or subsequent judicial proceedings';
- **the assessment of the necessity and proportionality of the proposed system of mandatory publication of sanctions**. Subject to the outcome of the necessity and proportionality test, in any event provide for adequate safeguards to ensure respect of the presumption of innocence, the right of the persons concerned to object, the security/accuracy of the data and their deletion after an adequate period of time.

Lastly, the EDPS notes that there are comparable provisions to the ones referred to in this Opinion in several pending and possible future proposals, such as those discussed in the EDPS Opinions on the European Venture Capital Funds and the European Social Entrepreneurship Funds, and the legislative package on the revision of the banking legislation, credit rating agencies, markets in financial instruments (MiFID/MiFIR) and market abuse. Therefore, the EDPS recommends reading this Opinion in close conjunction with his Opinions on these initiatives.

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

2012/0029(COD) - 14/02/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Kay SWINBURNE (ECR, UK) 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.

The report examines the current systems of settlements in order to determine if improvements might be made that would serve the interests of all investors. In the interests of both risk mitigation and ensuring a competitive environment for post trade services, the report looks closely at existing models for CSDs across the EU. It notes that one of the most immediate developments is the introduction of the **ECB's Target2Securities (T2S) system** , due to go live in 2015. While there has been a single CSD for each Member State, the introduction of T2S makes it possible to see how a more streamlined and integrated model might develop.

The committee recommends that the position of the European Parliament adopted in first reading, following the ordinary legislative procedure, should amend the Commission proposal as follows:

Purpose: it is clarified that the Regulation lays down uniform requirements for the settlement of financial instruments specified **the new Directive concerning the markets in financial services in the Union (MiFID)** and rules on the organisation and conduct of central securities depositories to promote **safe, transparent, efficient and smooth settlement**.

In view of the global nature of financial markets, and the systemic importance of the CSDs, the provisions of the Regulation should follow the **global principles** for **financial market infrastructures** devised by the Committee on Payments and Settlement Systems (CPSS) of the Bank of International Settlements (BIS) and the International Organisation of Securities Commissions (IOSCO) and the recommendations of the European System of Central Banks (ESCB) and the Committee of European Securities Regulators (CESR) for **securities settlement systems and recommendations for central counterparties (CCPs)** in the Union.

The Regulation should **not make changes to existing CSD models or services** unless they cannot meet the objectives of the Regulation or they pose undue risks.

Settlement Cycles and Settlement discipline: investment firms authorised pursuant to the new MiFID Directive and professional clients within the meaning of that Directive shall agree and take such measures as are necessary to **limit the number of settlement fails**. Such measures shall include, in the case of the client, where applicable, the prompt communication of an allocation by the client of the transaction to the investment firm no later than the end of the day on which the trade is executed and the issuance of a corresponding confirmation by the investment firm. The means by which such measures shall be performed shall be agreed between the parties and shall include use of a **standardised messaging protocol**.

For each securities settlement system it operates, a CSD shall establish **monitoring tools** that allow participants in that system to identify transactions in financial instruments that contain an increased risk of failure. The CSD and those participants shall **inform each other about such transactions as early as possible** and they shall have in place procedures to ensure they or their clients are able to settle such transactions on the intended settlement date.

All settlement fails should be reported to the competent authority and disclosed publicly in an aggregated format on a regular basis.

In order to reduce the problems caused by settlement fails it is provided that **sanctions** be imposed upon offending market participants and that receiving parties are able to initiate a buy-in procedure four days after the intended settlement date should their counterparty have failed to deliver the securities.

SME Growth Markets: Members consider that all EU markets legislation should be properly tailored for SME Growth Markets, so as to encourage more SMEs into the capital markets, particularly so as to reduce companies' reliance upon bank lending.

In the case of SME growth markets, the amendments aim to allow those venues the **flexibility** not to apply sanctions for settlement fails or the buy-in procedure until up to 15 days after the trade has taken place so as to allow the activity of market makers in those less liquid markets.

Supervision: responsibility for authorising and supervising CSDs should remain primarily with the Member States. However, in order to facilitate the efficient development and then coordinate the supervision of a single European post-trade infrastructure, the European Securities and Markets Authority (ESMA) should be involved in coordinating the activities of competent authorities. That cooperation should take place under the aegis of the ESMA peer review mechanism, ensuring that all interested competent authorities receive all relevant information concerning the activities of CSDs within the Union.

Internalisation: settlement internalisers, although not defined as CSDs in the Regulation, are required **to report their settlement activities** to their competent authority. Furthermore, ESMA will monitor internalised settlement, particularly after the introduction of Target2Securities. If systemic risk prevalence increases, ESMA will be able to issue guidelines requiring more detailed reporting.

Banking Services: in order for CSDs to be as resilient as possible, and maintain a level playing field across the entire EU, Members feel that when a CSD wants to provide banking services to perform its primary function, it will be required to **establish a separate legal entity** constituted under the relevant banking legislation (CRD IV) to provide these services.

CSD links: a new recital states that the Regulation should have the objective of increasing competition, reducing cross-border barriers and improving Union-wide reachability among participants, custodians and end investors in order to serve the whole Union and the internal market. Important features supporting those objectives are **freedom to provide cross-border services and efficient infrastructural links among CSDs and towards other entities.**

Third-country CSDs should be able to set up standard links with CSDs established in the Union in the absence of such recognition provided that the relevant competent authority does not object.

Segregation: CSDs should, when providing their services, ensure the requirement to offer, upon request, both **omnibus accounts**, where appropriate, in order to increase efficiencies and single beneficiary accounts so clients can choose the level of segregation they believe is appropriate to their needs. Those services should be provided on a reasonable commercial basis.

Transparency: supervisors must have knowledge of the level, at least in aggregate terms, of institutions' repurchase agreements, securities lending and all forms of encumbrance or claw back arrangements in order for supervisors to have a full picture and understanding these operations which are not transparent and may give rise to uncertainties in settlement and ownership. CSDs should, therefore, store all data on such transactions which they process and where applicable provide services for, and allow access to such information, inter alia, by ESMA, EBA, relevant competent authorities, the ESRB, relevant central banks and the ESCB.

Conflict of laws: lastly, a new recital states that when applying the Regulation to solve the issues raised by any conflict of law, it is important that the Regulation does not seek to determine the law applicable to the treatment in insolvency proceedings of financial instruments recorded on an account maintained by a CSD or the effect with respect to such financial instruments of death, dissolution, inheritance or succession, divorce, mental health, incapacity or criminal proceedings.

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.

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.

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

2012/0029(COD) - 07/03/2012 - Legislative proposal

PURPOSE: to make the European securities market safer and more efficient within the Union, which calls for coordinated EU action on Central Securities Depositaries (CDSs).

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: the Central Securities Depositories (CSDs) are systemically important institutions for the financial markets. Any trade of securities on or off a securities exchange is followed by post-trade processes that lead to the settlement of that trade, which is the delivery of securities against cash. They play a **crucial role for the collateral market** especially for monetary policy purposes

While generally safe and efficient within national borders, CSDs combine and communicate less safely across borders, which means that an investor faces higher risks and costs when making a cross-border investment. For example, the number of settlement fails is higher for cross-border transactions than for domestic transactions and cross-border settlement costs are

up to four times higher than domestic settlement costs. These safety problems are the result of a number of factors, including:

- the length of the settlement cycle: the time between trade and settlement is not harmonised in the EU, creating disruptions when securities are settled cross-border;
- a small but substantial proportion of securities still exist in paper form: these are settled after a much longer settlement cycle, which increases the risk incurred by investors;
- settlement fails, which are situations where a transaction fails to be settled on the intended settlement date, are not subject to deterrent penalties in all markets and where they exist settlement discipline measures differ widely between markets;
- while Directive 98/26/EC on settlement finality in payment and securities settlement systems (SFD) reduces the disruption to a securities settlement system caused by insolvency proceedings against a participant in that system, it does not address other risks of the system or the resilience of the CSD operating the system.

The absence of an efficient single internal market for settlement also raises important concerns. Important barriers to the European post trading market continue to exist, such as for instance the limitation of securities issuers' access to CSDs, different national licensing regimes and rules for CSDs across the EU and limited competition between different national CSDs.

These barriers result in a very **fragmented market**. As a consequence, the cross-border settlement of transactions relies on unnecessarily complex holding 'chains' often involving several CSDs and several other intermediaries. This has a negative impact on the efficiency, but also on the risks associated with cross-border transactions.

IMPACT ASSESSMENT: the Commission conducted an impact assessment of policy alternatives. Policy options were assessed against the key objectives of increasing the safety, efficiency and level playing field for CSD services in Europe. The assessment was done by considering the effectiveness of achieving the objectives above and the cost efficiency of implementing different policy options.

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposal aims principally at **addressing the lack of safety and efficiency of securities settlement** and the resulting obstacles to the functioning of the internal market resulting from the divergent national rules regulating securities settlement and the activities of the CSDs, which operate securities settlement systems, by:

- introducing an **obligation to represent all transferable securities in book entry form and to record these** in CSDs before trading them on regulated venues;
- harmonising **settlement periods** and settlement discipline regimes across the EU;
- introducing a **common set of rules** inspired by international standards addressing the risks of the CSDs' operations and services.

As CSDs will be subject to identical substantive rules across the EU, they will benefit from uniform requirements for licensing and an EU wide **passport**, which will help remove the existing barriers of access.

As regards authorisation and supervision of CSDs, the proposed Regulation aims at striking a balance between the competences of national authorities and the interests of other competent authorities. The European Securities and Markets Authority (ESMA) will play a key role in resolving disputes, facilitating the cooperation arrangements between national authorities and developing technical standards in close consultation with the members of European System of Central Banks (ESCB).

Certain issues are already covered by existing Union legislation. For instance, securities settlement systems are already defined by Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2004/39/EC (MiFID) provides for certain rules of access by market participants to the securities settlement system of their choice. The proposed Regulation is consistent with these Union texts.

BUDGETARY IMPLICATIONS: this proposal has implications for the European Union budget related to the tasks allocated to ESMA. Estimated impact on the expenditure is EUR 1 093 million for the period 2013-2015.

The proposal also provides for a **co-financing** by the Member States to the amount of EUR 1 639 million over the 2013-2015 period.

DELEGATED ACTS: the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU).