Basic information

2022/0074(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories Amending Regulation 2014/909 2012/0029(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 **Legislative priorities** Joint Declaration 2023-24	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	VAN OVERTVELDT Johan (ECR)	07/04/2022
	Shadow rapporteur MARTUSCIELLO Fulvio (EPP) REPASI René (S&D) KYRTSOS Georgios (Renew) URTASUN Ernest (Greens/EFA) BECK Gunnar (ID) MACMANUS Chris (The Left)	

Committee for opinion	Rapporteur for opinion	Appointed
JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union

European Commission	Commission DG	Commissioner
	Financial Stability, Financial Services and Capital Markets Union	MCGUINNESS Mairead

European Economic and Social Committee

Key events

Date	Event	Reference	Summary
16/03/2022	Legislative proposal published	COM(2022)0120	Summary
04/04/2022	Committee referral announced in Parliament, 1st reading		
01/03/2023	Vote in committee, 1st reading		
01/03/2023	Committee decision to open interinstitutional negotiations with report adopted in committee		
06/03/2023	Committee report tabled for plenary, 1st reading	A9-0047/2023	Summary
13/03/2023	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
15/03/2023	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72)		
18/07/2023	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE751.620 GEDA/A/(2023)004501	
09/11/2023	Decision by Parliament, 1st reading	T9-0389/2023	Summary
09/11/2023	Results of vote in Parliament		
27/11/2023	Act adopted by Council after Parliament's 1st reading		
13/12/2023	Final act signed		
27/12/2023	Final act published in Official Journal		

Technical information

Procedure reference	2022/0074(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation 2014/909 2012/0029(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 114
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/9/08632

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE736.678	11/10/2022	
Amendments tabled in committee		PE738.624	16/11/2022	
Committee report tabled for plenary, 1st reading/single reading		A9-0047/2023	06/03/2023	Summary
Text agreed during interinstitutional negotiations		PE751.620	18/07/2023	
Text adopted by Parliament, 1st reading/single reading		T9-0389/2023	09/11/2023	Summary

Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2023)004501	13/07/2023	
Draft final act	00047/2023/LEX	13/12/2023	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2022)0120	16/03/2022	Summary
Document attached to the procedure	SEC(2022)0160	17/03/2022	
Document attached to the procedure	SWD(2022)0075	17/03/2022	
Document attached to the procedure	SWD(2022)0076	17/03/2022	
Commission response to text adopted in plenary	SP(2023)632	31/01/2024	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1786/2022	13/07/2022	
ECB	European Central Bank: opinion, guideline, report	CON/2022/0025 OJ C 367 26.09.2022, p. 0003	28/07/2022	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Meetings with interest representatives published in line with the Rules of Procedure

Rapporteurs, Shadow Rapporteurs and Committee Chairs

Transparency				
Name	**Role**	**Committee**	**Date**	**Interest representatives**
URTASUN Ernest	Shadow rapporteur	ECON	06/12/2022	Deutsche Börse Group
REPASI René	Shadow rapporteur	ECON	17/11/2022	Federation of European Securities Exchanges (FESE)
REPASI René	Shadow rapporteur	ECON	10/11/2022	ISDA
VAN OVERTVELDT Johan	Rapporteur	ECON	20/06/2022	European Central Securities Depositories Association

Final act	
Regulation 2023/2845 OJ L 000 27.12.2023, p. 0000	Summary

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) - 16/03/2022 - Legislative proposal

PURPOSE: to amend certain elements of the Central Securities Depositories (CSD) Regulation in order to eliminate compliance burdens and disproportionate costs and simplify the rules without undermining investor protection, market integrity and financial stability.

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

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: 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 of central securities depositories (CSDs) and the conduct of their business, in order to promote safe, efficient and smooth settlement.

CSDs play an essential role in the financing of the economy through their role in the issuance of securities and by allowing securities transactions to be completed. CSDs also play an important role in the implementation of monetary policy by central banks. As CSDs are systemically important financial institutions for the financial markets, it is essential that the framework applicable to them remains fit for purpose.

The CSD Regulation required the Commission to review the Regulation and report on its implementation and the way forward for its revision by 19 September 2019. In its resolution on the further development of the Capital Markets Union, the European Parliament also called on the Commission to review, in the context of Brexit and the COVID-19 crisis, the settlement discipline regime of the CSD Regulation.

In 2019, the Commission conducted a targeted consultation on the application of Regulation (EU) No 909/2014. On 1 July 2021, the Commission adopted a report concluding that, overall, the CSD Regulation is achieving its original objectives of increasing the efficiency of securities settlement in the EU and the soundness of CSDs. In most areas, it considered it premature to make substantial changes to the Regulation. However, it indicated areas where further action might be needed to **achieve the objectives of the CSD Regulation in a more proportionate, effective and efficient way**.

A simplification of the requirements in certain areas covered by Regulation (EU) No 909/2014, and a more proportionate approach to those areas, is in line with the Commission's Regulatory Fitness and Performance (REFIT) programme which emphasises the need for cost reduction and simplification so that Union policies achieve their objectives in the most efficient way, and aims in particular at reducing regulatory and administrative burdens.

CONTENT: the proposal aims to adjust the requirements of Regulation (EU) No 909/2014 on CSDs without compromising its overall objectives, in order to: (i) **simplify these requirements and make them more efficient**; and (ii) **reduce the disproportionate costs and burdens arising from them**.

In concrete terms, the proposal aims to:

- minimise obstacles to cross-border settlements and reduce the administrative burden and compliance costs by simplifying the **passporting process** under the CSD Regulation. The possibility for the supervisory authority of the host Member State to refuse the passport is to be abolished and replaced by a notification from the supervisory authority of the home Member State to the supervisory authority of the host Member State. According to the Commission, the simplified passporting process is expected to reduce costs by up to 75%, generating a one-off saving of EUR 585 000 on average per CSD;

- enhance the cooperation between national supervisors by establishing colleges of supervisors to facilitate CSDs' access to markets other than their home market and ensure financial stability by providing supervisors with more powers to monitor risks;

- **facilitate CSDs' access to banking-type ancillary services** by allowing CSDs with a banking license to offer such services to other CSDs and reviewing the thresholds below which CSDs may use a commercial bank. It is estimated that the proposed measures regarding CSDs' access to bank-like ancillary services could generate EUR 16 billion of additional foreign currency securities settlement on an annual basis;

- combine the clarification of various elements related to **settlement discipline** with a revision of the implementation timeline for **mandatory buy-ins**. It is proposed to clarify the scope of application of cash penalties and automatic buy-backs by specifying, inter alia, the categories of transactions that are excluded from them. Such exclusions should cover in particular transactions that failed for reasons not attributable to the participants and transactions that do not involve two trading parties, for which the application of cash penalties or mandatory buy-ins would not be practicable or could lead to detrimental consequences for the market;

- introduce an expiry date for the grandfathering clause for EU and third country CSDs and a **notification requirement for third country CSDs**, thus ensuring that authorities within the EU have the powers and information they need to monitor the risks associated with both EU and third country CSDs, including through enhanced supervisory cooperation.

BUDGETARY IMPLICATIONS: the proposal will have no implications on the EU budget. The European Securities and Markets Authority (ESMA) will be mainly affected by the participation in colleges, the development or updating of five technical standards and the management of the notification procedure by third country CSDs of their activities in the EU. However, this last point represents a limited one-off cost. The tasks proposed for ESMA therefore do not require the creation of additional posts and can be carried out with existing resources. The same applies to the EBA.

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.

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) - 06/03/2023 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Johan VAN OVERTVELDT (ECR, BE) 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 committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

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.

The main provisions of the proposed revision of the CSD Regulation relate to

- settlement discipline: introduction of a ‘two-step approach’ whereby mandatory buy-ins could become applicable if and when the penalties regime alone does not improve settlement fails in the EU;

- banking-type ancillary services;

- cooperation of authorities through colleges;

- passporting, i.e. simplifying the requirements for CSDs to operate throughout the EU with a single licence, by removing costly and duplicative procedures;

- cooperation between supervisory authorities;

- surveillance of third country CSDs.

To ensure effective and efficient coordination of supervision by competent authorities, Members believe that the obligation to establish mandatory colleges should be based on a single existing and reliable criterion, namely the substantial importance of a CSD for a jurisdiction other than the one where it is established. The threshold for the mandatory establishment by the competent authorities of a college of supervisors should be met when a CSD is of substantial importance in at least two host Member States.

The report shall include in particular a new article concerning the colleges of supervisors for CSDs providing services in another Member State and for CSDs that are part of a group with two or more CSDs.

ESMA should establish, manage and chair a college of supervisors. The college should consist of:

- ESMA, as the chair of the college;

- the competent authority of the CSD's home Member State;

- the relevant authorities;

- the competent authority of the host Member States where the CSD is of substantial importance;

- the European Banking Authority, where a CSD has been authorised.

Members of a college should have the possibility of requesting the adoption by the college of a formal opinion concerning issues identified during the review and evaluation process of CSDs, 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. The process for the adoption of formal opinions should rely on a simple majority vote.

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.