COUNCIL OF THE EUROPEAN UNION

Brussels, 23 September 2013 (OR. en)

13748/13

Interinstitutional File: 2012/0029 (COD)

EF 173
ECOFIN 797
CODEC 2042

NOTE

From:	Presidency
To:	Delegations
No. Cion doc.:	7619/2013 EF 62 ECOFIN 253 CODEC 648
Subject:	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 - Presidency compromise

Delegations will find below a Presidency compromise text on the above Commission proposal.

With respect to the Commission's proposal, additions are underlined and those compared to the last compromise are highlighted in bold.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the European Central Bank[2],

Acting in accordance with the ordinary legislative procedure,

[1] OJ C , , p. .
[2] OJ C , , p. .

Whereas:

(1) Central Securities Depositories (CSDs), along 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.

(2) Due to their position at the end of the settlement process, the securities settlement systems operated by CSDs are of a systemic importance for the functioning of securities markets. Playing an important role in the securities holding systems through which their participants report the securities holdings of investors, the securities settlement systems operated by CSDs also serve as an essential tool to control the integrity of an issue that is hindering undue creation or reduction of issued securities and thereby playing an important role in maintaining investor confidence. Moreover, securities settlement systems operated by CSDs are closely involved in the collateralisation of monetary policy operations as well as in the collateralisation process between credit institutions and are, therefore, important actors in the collateral markets.

(3) While Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems[3] reduced the disruption to a securities settlement system caused by insolvency proceedings against a participant in that system, it is necessary to address other risks that securities settlement systems are facing, as well as the risk of insolvency or disruption in the functioning of the CSDs that operate securities settlement systems. A number of CSDs are subject to credit and liquidity risks deriving from the provision of banking services ancillary to settlement.

[3] OJ L 166, 11.6.1998, p. 45.

(4) The increasing number of cross-border settlements as a consequence of the development of link agreements between CSDs calls into question the resilience, in the absence of common prudential rules, of CSDs when importing the risks encountered by CSDs from other Member States. Moreover, despite the increase in cross-border settlements, the settlement markets in the Union remain fragmented and cross-border settlement more costly, due to different national rules regulating settlement and the activities of CSDs and limited competition between CSDs. This fragmentation hinders and creates additional risks and costs for cross-border settlement. In the absence of identical obligations for market operators and common prudential standards for CSDs, likely divergent measures taken at national level will have a direct negative impact on the safety, efficiency and competition in the settlement markets in the Union. It is necessary to remove those significant obstacles in the functioning of the internal market and avoid distortions of competition and to prevent such obstacles and distortions from arising in the future. Consequently, the appropriate legal basis for this Regulation should be Article 114 of the Treaty on the Functioning of the European Union, as interpreted in accordance with the consistent case law of the Court of Justice of the European Union.

(5) It is necessary to lay down in a Regulation a number of uniform obligations to be imposed on market participants regarding certain aspects of the settlement cycle and discipline and to provide a set of common requirements for CSDs operating securities settlement systems. The directly applicable rules of a Regulation should ensure that all market operators and CSDs are subject to identical directly applicable obligations and rules. A Regulation should increase the safety and efficiency of settlement in the Union by preventing any diverging national rules as a result of the transposition of a directive.
A Regulation should reduce the regulatory complexity for market operators and CSDs resulting from different national rules and should allow CSDs to provide their services on a cross-border basis without having to comply with different sets of national requirements such as those concerning the authorisation, supervision, organisation or risks of CSDs. A Regulation imposing identical requirements on CSDs should also contribute to eliminating competitive distortions.

(6) The Financial Stability Board (FSB) called, on 20 October 2010[4], for more robust core market infrastructures and asked for the revision and enhancement of the existing standards. 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. These standards replace the BIS recommendations from 2001, which were adapted through non-binding guidelines at European level in 2009 by the European System of Central Banks (ESCB) and the Committee of European Securities Regulators (CESR).

(7) The Council, in its conclusions of 2 December 2008[5], emphasised the need to strengthen the safety and soundness of the securities settlement systems, and to address legal barriers to post-trading in the Union.

(8) One of the basic tasks of the ESCB is to promote the smooth operation of payment systems. In this respect, the members of the ESCB execute oversight by ensuring efficient and sound clearing and payment systems. The members of the ESCB often act as settlement agents for the cash leg of the securities transactions. They are also important clients of CSDs, which often manage the collateralisation of monetary policy operations.
The members of the ESCB should be closely involved by being consulted in the authorisation and supervision of CSDs, recognition of third country CSDs and the approval of CSD links. They should also be closely involved by being consulted in the setting of regulatory and implementing technical standards as well as of guidelines and recommendations. The provisions of this Regulation should be without prejudice to the responsibilities of the European Central Bank (ECB) and the National Central Banks (NCBs) to ensure efficient and sound clearing and payment systems within the Union and other countries and should not prevent their access to the information relevant for the performance of their duties.

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4 FSB "Reducing the moral hazard posed by systemically important financial institutions", 20 October 2010.

5 Conclusions of 2911th Council meeting, ECOFIN, 2 December 2008.

(9) Member States' central banks or any other bodies performing similar functions in certain Member States, such as the Member States national bodies charged with or intervening in the management of the public debt may themselves provide a number of services which would qualify them as a CSD. Such institutions should be exempt from the authorisation and supervision requirements, certain organisational requirements and capital requirements, but should remain subject to the full set of prudential requirements for CSDs. Since central banks act as settlement agents for the purpose of settlement, they should also be exempt from the requirements set out in Title IV of this Regulation.

(10) This Regulation should apply to the settlement of transactions in all financial instruments and activities of CSDs unless specified otherwise. This Regulation should also be without prejudice to other legislation of the Union concerning specific financial instruments such as Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC[6] and measures adopted in accordance with that Directive. The use of the generic term 'securities' in this Regulation should not alter or contradict these principles.

[6] OJ L 275, 25.10.2003, p. 32.

(11) The recording of securities in book-entry form is an important step to increase the efficiency of settlement and ensure the integrity of a securities issue, especially in a context of increasing complexity of holding and transfer methods. For reasons of safety, this Regulation provides for the recording in book-entry form of all transferable securities admitted to trading on the trading venues regulated by Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC[7]. This Regulation should not impose one particular method for the initial book-entry recording, which may take the form of immobilisation or of immediate dematerialisation. This Regulation should not impose the type of institution that should record securities in book-entry form upon issuance and permits different actors, including registrars, to perform this function. However, once such securities are traded on trading venues regulated by Directive 2004/39/ EC or provided as collateral under the conditions of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements[8], such securities should be recorded in a CSD book-entry system in order to ensure, inter alia, that all such securities can be settled in a securities settlement system.

(12) In order to ensure the safety of settlement, any participant to a securities settlement system buying or selling certain financial instruments, namely transferable securities, money-market instruments, units in collective investment undertakings and emission allowances, should settle its obligation on the intended settlement date.

[7] OJ L 145, 30.4.2004, p. 1.
[8] OJ L 168, 27.6.2002, p. 43.

(13) Longer settlement periods of transactions in transferable securities cause uncertainty and increased risk for securities settlement systems participants. Different durations of settlement periods across Member States hamper reconciliation and are sources of errors for issuers, investors and intermediaries. It is therefore necessary to provide a common settlement period which would facilitate the identification of the intended settlement date and facilitate the implementation of settlement discipline measures. The intended settlement date of transactions in transferable securities which are executed on trading venues regulated by Directive 2004/39/EC should be no later than on the second business day after the trading takes place. For complex operations composed of several transactions such as securities repurchase or lending agreements, this requirement should apply to the first transaction involving a transfer of securities. Given their unstandardised character, this requirement should not apply to transactions that are negotiated privately by the relevant parties, but executed on the trading venues regulated by Directive 2004/39/EC.

(14) CSDs and other market infrastructures should take measures to prevent and address settlement fails. It is essential that such rules be uniformly and directly applied in the Union. In particular, CSDs and other market infrastructures should be required to put in place procedures enabling them to take appropriate measures to suspend any participant that systematically causes settlement fails and to disclose its identity to the public, provided that that participant has the opportunity to submit observations before such a decision is taken.

(15) One of the most efficient ways to address settlement fails is to require failing participants to be subject to a compulsory enforcement of the original agreement. This Regulation should provide for uniform rules concerning certain aspects of the buy-in transaction for all transferable securities, money-market instruments, units in collective investment undertakings and emission allowances, such as the timing, pricing and penalties. These rules should be adapted to the specificities of different securities markets and transactions to avoid adversely impacting on the liquidity of different markets. These rules should be applied in such a manner that incentivises the settlement of transactions in all relevant financial instruments by their intended settlement date. 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. Cash penalties imposed on failing participants should be credited where possible to the non-failing beneficiaries as compensation and should not in any case become a source of revenue for the CSD or the settlement intermediaries. The buy-in shall be deemed to be not possible when due to the illiquidity of the financial instrument or the type of transaction concerned a buy-in is not feasible. This may in particular be the case of financial instruments that cannot be easily found in the market at the time of the execution of the buy-in or for certain short term repurchase agreements. In case of a chain of transactions multiple buy-ins should be avoided to the extent possible.

(16) As the main purpose of this Regulation is to introduce a number of legal obligations imposed directly on market operators consisting, inter alia, in the recording in book-entry form in a CSD of all transferable securities once such securities are traded on trading venues regulated by Directive 2004/39/EC or provided as collateral under the conditions of Directive 2002/47/EC and in the settling their obligations no later than on the second business day after trading takes place and as CSDs are responsible for the operation of securities settlement systems and the application of measures to provide timely settlement in the Union, it is essential to ensure that all CSDs are safe and sound and comply at all times with stringent organisational, conduct of business and prudential requirements established by this Regulation.

Uniform and directly applicable rules regarding the authorisation and ongoing supervision of CSDs are therefore an essential corollary of and are interrelated with the legal obligations imposed on market participants by this Regulation. It is, therefore, necessary to include the rules regarding the authorisation and supervision of CSDs in the same act as the legal obligations imposed on market participants.

(17) Taking into account that CSDs should be subject to a set of common requirements and in order to dismantle the existing barriers to cross-border settlement, any authorised CSD should enjoy the freedom to provide its services within the territory of the Union either by establishment of a branch or by way of direct provision of services. In order to ensure an appropriate level of safety in the provision of CSD services by CSDs authorised in another Member State, such CSDs shall be subject to a specific procedure established in this Regulation whenever they intend to provide certain services listed in this Regulation.

(18) Within a borderless Union settlement market, it is necessary to define the competences of the different authorities involved in the application of this Regulation. Member States should specifically designate the competent authorities responsible for the application of this Regulation, which should be afforded the supervisory and investigatory powers necessary for the exercise of their functions. A CSD should be subject to the authorisation and supervision of the competent authority of its place of establishment, which is well placed and should be empowered to examine how CSDs operate on a daily basis, to carry out regular reviews and to take appropriate action when necessary. That authority should however consult at the earliest stage and cooperate with other relevant authorities, which include the authorities responsible for the oversight of each securities settlement system operated by the CSD, the central banks that issue the most relevant settlement currencies, where applicable, the relevant central banks that act as settlement agent for each securities settlement system, and, also, where applicable, the competent authorities of other group entities. In the course of the consultation and cooperation of the competent authority with other authorities, the opinions expressed by the latter should not be binding unless specifically provided for in this Regulation or other Union law. This cooperation also implies immediate information of the authorities involved in case of emergency situations affecting the liquidity and stability of the financial system in any of the Member States where the CSD or its participants are established.

Whenever a CSD provides its services in another Member State than where it is established either by the establishment of a branch or by way of direct provision of services the competent authority of its place of establishment is mainly responsible for the supervision of that CSD. While performing the duties under this Regulation no authority should directly or indirectly discriminate against any undertaking from another Member State. Subject to the requirements of this Regulation, a CSD from one Member State should not be restricted or prevented from settling financial instruments in the currency of another Member State or in the currency of a third country.

(18a) This Regulation should not prevent Member States from requiring in their national laws a specific legal framework for day-to-day cooperation at the national level between the competent authority of the CSD and other relevant authorities. This national legal framework should be consistent with the guidelines concerning the supervisory practices and cooperation between authorities that ESMA may issue under this Regulation.

(19) Any legal person falling within the definition of a CSD needs to be authorised by the competent national authorities before starting its activities. In view of taking into account different business models, a CSD should be defined by reference to certain core services, which consist of settlement, implying the operation of a securities settlement system, notary and central securities accounts maintenance services. A CSD should at least operate a securities settlement system and provide one other core service. This definition should exclude, therefore, entities which do not operate securities settlement systems such as registrars, public authorities and bodies in charge of a registry system established under Directive 2003/87/EC or central counterparties (CCPs) that are regulated by Regulation (EU) 648/212. This combination is essential for CSDs to play their role in the securities settlement and in ensuring the integrity of a securities issue.

(20) In order to avoid any risk taking by the CSDs in other activities than those subject to authorisation under this Regulation, the activities of the authorised CSDs should be limited to the provision of services covered by their authorisation and they should not hold any participation, as defined in the Regulation by reference to the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, or any ownership, direct or indirect, of 20 % or more of the voting rights or capital in any other institutions than the ones providing similar services, unless such a participation is approved by CSDs' competent authorities on the basis that it does not significantly increase their risk profile.

(21) In order to ensure the safety in the functioning of the securities settlement systems, the latter should be operated only by the CSDs subject to the rules provided in this Regulation or by central banks.

(22) Without prejudice to specific requirements of Member States tax legislation, CSDs should be authorised to provide services ancillary to their core services that contribute to enhancing the safety, efficiency and transparency of the securities markets and that do not create undue risks to their core services. These services should be listed in a non-exhaustive fashion in this Regulation in order to enable CSDs to respond to future market developments. Where the provision of such services relates to withholding and reporting obligations to the tax authorities, it will continue to be carried out in accordance with the legislation of the Member States concerned.

(23) A CSD intending to outsource a core service to a third party or to provide a new core or ancillary service, to operate another securities settlement system, to use another settlement agent or to set up any CSD links that involve significant risks should apply for authorisation following the same procedure as that required for initial authorisation, with the exception that the competent authority should inform the applicant CSD within three months whether authorisation has been granted or refused. However, CSD links not involving significant risks or interoperable links of CSDs that outsource their services related to these interoperable links to public entities, such as the members of the ESCB, should not be subject to prior authorisation, but should be notified by the relevant CSDs to their competent authorities.

(24) CSDs established in third countries may offer their services in the Union either through a branch or by way of direct provision of services. In order to ensure an appropriate level of safety in the provision of CSD services by third country CSDs, such CSDs shall be subject to recognition by ESMA whenever they intend to provide certain services listed in this Regulation. In view of the global nature of financial markets, ESMA is best placed to recognise third country CSDs. ESMA may recognise third country CSDs only if the Commission concludes that they are subject to a legal and supervisory framework equivalent to the one provided in this Regulation, if they are effectively authorised, supervised and subject to oversight in their country and if cooperation arrangements have been established between ESMA and the competent and relevant authorities of CSDs. Recognition by ESMA is subject to an effective equivalent recognition of the prudential framework applicable to CSDs established in the Union and authorised under this Regulation.

(25) 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 this Regulation should follow the existing recommendations developed by CPSS-IOSCO and ESCB-CESR. The Commission and ESMA, in close cooperation with the members of the ESCB, should ensure consistency with the existing standards and their future developments when drawing up or proposing to revise the regulatory technical and implementing standards as well as the guidelines and recommendations required in this Regulation.

(26) Considering the complexity as well as the systemic nature of the CSDs and of the services they provide, transparent governance rules should ensure that senior management, members of the management body, shareholders and participants, who are in a position to exercise control as defined by reference to the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts[9], over the operation of the CSD, are suitable to ensure the sound and prudent management of the CSD.

[9] OJ L 193, 18.7.1983, p. 1.

(26a) Within Member States different governance structures are used, in most cases a unitary and/or a dual board structure. The definitions used in the Regulation intend to embrace all existing structures without advocating any particular structure. They are purely functional for the purpose of setting out rules aimed at a particular outcome irrespective of the national company law applicable to an institution in each Member State. The definitions shall therefore not interfere with the general allocation of competencies according to the national company law.

(27) 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, are taken into account. These governance principles should apply without prejudice to the ownership model adopted by the CSD. User committees should be established for each securities settlement system operated by the CSD to give users the opportunity to advise the management body of the CSD on the key issues that impact them and should be given the means to perform their role.

(28) Considering the importance of the tasks entrusted to CSDs, this Regulation should provide that CSDs do not transfer their responsibilities to third parties through outsourcing by contract of their activities to third parties. Outsourcing of such activities should be subject to strict conditions that maintain the CSDs' responsibility for their activities and ensure that the supervision and oversight of the CSDs are not impaired. Outsourcing by a CSD of its activities to public entities may, under certain conditions, be exempted from these requirements.

(28a) This Regulation should not prevent Member States allowing direct holding systems from providing in their national laws that parties other than CSDs shall or may perform certain functions, which in some other types of securities holding systems are typically performed by CSDs and specifying how these functions should be exercised. In particular, in some Member States account operators or participants in the securities settlement systems operated by CSDs record entries into securities accounts maintained by the CSD without necessarily being account providers themselves. In view of the need for legal certainty on the entries made into accounts at the CSD level, the specific role played by such other parties should be recognised by this regulation. It should therefore be possible, under specific circumstances and subject to strict rules laid down by law, to either share the responsibility between a CSD and the relevant other party or to provide for exclusive responsibility for that other party for certain aspects related to maintaining of securities accounts at the top tier level provided that such other party is subject to appropriate regulation and supervision. There should be no restrictions on the extent to which responsibility is shared.

(29) Conduct of business rules should provide transparency in the relations between the CSD and its users. In particular, a CSD should have publicly disclosed, transparent, objective and non-discriminatory criteria for participation to the securities settlement system, which would allow restricting access of the participants only on the basis of the risks involved. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of CSDs to provide their services to participants. A CSD should publicly disclose prices and fees for its services. In order to provide open and non-discriminatory access to CSD services and in view of the significant market power that CSDs still enjoy on the territory of their respective Member States, a CSD may not diverge from its published pricing policy for its core services, unless it offers such services at a lower price. These participation provisions complement and reinforce the right of market participants to use a settlement system in another Member State provided for in Directive 2004/39/EC.

(29a) In order to facilitate efficient recording, settlement and payment, CSDs should accommodate in their communication procedures with participants and with the market infrastructures they interface with, the relevant international communication procedures and standards for messaging and reference data.

(30) Considering the central role of securities settlement systems in the financial markets, CSDs should, when providing their services, make their best effort to ensure the timely settlement of securities transactions and the integrity of the securities issue. This Regulation should not interfere with the national laws of the Member States regulating the holdings of securities and the arrangements maintaining the integrity of securities issues. However, in order to enhance the protection of their participants' and their clients' assets, this 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 might only be available at a higher cost to be borne by the participants' clients requesting further segregation. CSDs should ensure that these requirements apply separately to each securities settlement system operated by them.

(30a) Directive 98/26/EC provides that transfer orders entered into securities settlement systems in accordance with the rules of those systems should be legally enforceable and binding on third parties. However, considering that Directive 98/26/EC does not specifically refer to CSDs that operate securities settlement systems, for clarity, this Regulation should require CSDs to define the moment or moments at which transfer orders are entered into their systems and become irrevocable in accordance with the rules of that Directive. In addition, in order to increase 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 accordance, as the case may be, with the rules provided in national law. CSDs should also take all reasonable steps to ensure that transfers of securities and cash are legally enforceable and binding on third parties no later than at the end of the business day of the actual settlement date.

(31) In order to avoid settlement risks due to the insolvency of the settlement agent, a CSD should settle, whenever practical and available, the cash leg of the securities transaction through accounts opened with a central bank. If this option is not practical and available, a CSD should be able to settle through accounts opened with a credit institution established under the conditions provided in Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions[10] and subject to a specific authorisation procedure and prudential requirements provided in Title IV of this Regulation. It is desirable that the credit institution be a separate legal entity from the CSD so as to reduce the risk to which the settlement system itself is exposed. Such a separation between core services of CSDs and banking services ancillary to settlement appears to be suitable to eliminate any danger of transmission of the risks from the banking services, such as credit and liquidity risks, to the provision of core services of CSDs. Such banking activities involving credit and liquidity risks shall only be outsourced to entities authorised to run exclusively the banking services ancillary to the CSD activities as described under this Regulation.

In order to secure the efficiencies resulting from the provision of both CSD and banking services within the same group of undertakings, the requirement that banking services be carried out by a separate credit institution should not prevent that credit institution from belonging to the same group of undertakings as the CSD. It is appropriate to provide for arrangements under which CSDs may be authorised to provide ancillary services from within the same legal entity to their participants and to other entities. Wherever a credit institution other than a central bank acts as settlement agent, the credit institution should be able to provide to the CSD's participants the services set out in this Regulation, which are covered by the authorisation, but should not provide other banking services from the same legal entity in order to limit the settlement systems' exposure to the risks resulting from the failure of the credit institution.

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10 OJ L 177, 30.6.2006, p. 1.

(32) Considering that Directive 2006/48/EC does not address specifically intraday credit and liquidity risks resulting from the provision of banking services ancillary to settlement, credit institutions providing such services should also be subject to specific enhanced credit and liquidity risk mitigation requirements that should apply to each securities settlement system in respect of which they act as settlement agents. In order to ensure full compliance with specific measures aimed at mitigating credit and liquidity risks, the competent authorities should be able to require CSDs to designate more than one credit institution whenever they can demonstrate, based on the available evidence, that the exposures of one credit institution to the concentration of credit and liquidity risks is not fully mitigated.

(33a) Supervision of the compliance of designated credit institutions or CSDs authorised to provide banking services ancillary to settlement with the requirements of Directive 2006/48/EC and the specific relevant prudential requirements of this Regulation should be entrusted to the competent authorities referred to in Directive 2006/48/EC. This Regulation should be without prejudice to any future Union legislation conferring specific tasks on the European Central Bank concerning policies related to the prudential supervision of credit institutions.

(33b) A credit institution or a CSD authorised to provide banking services ancillary to settlement should comply with any present or future Union legislation applicable to credit institutions. This Regulation should be without prejudice to any future Union legislation establishing a framework for the recovery and resolution of credit institutions and other financial institutions.

(34) In order to provide a sufficient degree of safety and continuity of the services provided by the CSDs, the CSD should be subject to specific uniform and directly applicable prudential and capital requirements which do mitigate their legal, operational and investment risks.

(35) The safety of the link arrangements set up between CSDs should be subject to specific requirements to enable the access of their respective participants to other securities settlement systems. The provision of banking type of ancillary services in separate legal entity should not prevent CSDs from receiving such services, in particular when they are participants in a securities settlement system operated by another CSD. It is particularly important that any potential risks resulting from the link arrangements such as credit, liquidity, organisational or any other relevant risks for CSDs are fully mitigated. The requirements of this regulation on participant protection in link arrangements shall be without prejudice to specific Union and Member States' legislation concerning the protection of the clients of CSD participants and any other persons in the securities holding chain. For interoperable links, it is important that linked securities settlement systems have identical moments of entry of transfer orders into the system, irrevocability of transfer and use equivalent rules concerning the moment of finality of transfers of securities and cash. The same principles should apply to CSDs that use a common settlement information technology (IT) infrastructure.

(37) In many Member States issuers are required by national law to issue certain types of securities, notably shares, within their national CSDs. In order to remove this barrier to the smooth functioning of the Union post-trading market and to allow issuers to opt for the most efficient way for managing their securities, issuers should have the right to choose any CSD established in the Union for recording their securities and receiving any relevant CSD services. Without prejudice to that right, the national corporate laws under which the securities are constituted or any other similar laws shall continue to apply. Such national corporate and other similar laws (such as property law, insolvency law, tax law) under which the securities are constituted shall govern the relationship between their issuer and holders or any third parties, and their respective rights and duties attached to the securities such as voting rights, dividends and corporate actions. A refusal to provide services to an issuer may be based only on a comprehensive risk analysis or if that CSD does not provide any issuance services in relation to securities constituted under the corporate law or other similar law of the relevant Member State. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of CSDs to provide their services to issuers.

(37a) In view of the increasing cross-border holdings and transfers of securities enhanced by this Regulation, it is of the utmost urgency and importance to establish clear rules on the law applicable to proprietary aspects in relation to the securities held in the accounts maintained by CSDs and other intermediaries in the securities holding chain in a future Union legislation on Securities Law.

(38) The European Code of Conduct for Clearing and Settlement of 7 November 2006[11] created a voluntary framework to enable access between CSDs and other market infrastructures. However, the post-trade sector remains fragmented along national lines, making cross-border trades more costly. It is necessary to lay down uniform conditions for links between CSDs and of access between CSDs and other market infrastructures. In order to enable CSDs to offer their participants access to other markets, they should have a right to become a participant of another CSD or request another CSD to develop special functions for having access to the latter. Such access may only be rejected when it threatens the smooth and orderly functioning of the financial markets or causes systemic risk. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of a CSD to grant access to another CSD. Since some CSD links may introduce additional risk for settlement, they should be subject to authorisation and supervision by the relevant competent authorities.

(39) CSDs should also have access to transaction feeds from a CCP or a trading venue and those market infrastructures should have access to the securities settlement systems operated by the CSDs, unless such access endangers the operation of their activities. Such access may only be rejected when it threatens the smooth and orderly functioning of the financial markets or causes systemic risk. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of CSDs or market infrastructures to provide access to their services.

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11 "European Code of Conduct for Clearing and Settlement" signed by FESE (Federation of European Securities Exchanges), EACH (European Association of Clearing Houses) and ECSDA (European Central Securities Depositories Association) on 7 November 2006.

(40) A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory and sanctioning regimes. To this end, supervisory authorities should be equipped with sufficient powers to act and should be able to rely on deterrent sanctioning regimes to be used against any unlawful conduct. A review of existing sanctioning powers and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities has been carried out in the Communication of 8 December 2010 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on reinforcing sanctioning in the financial services sector.

(41) Therefore, in order to ensure effective compliance by CSDs, credit institutions designated as settlement agents, the members of their management bodies and any other persons who effectively control their business or any other persons with the requirements of this Regulation, competent authorities should be able to apply administrative sanctions and measures which are effective, proportionate and dissuasive.

(42) In order to provide deterrence and consistent application of the sanctions across Member States, this Regulation should provide for a list of key administrative sanctions and measures that need to be available to the competent authorities, for the power to impose those sanctions and measures on all persons, whether legal or natural, responsible for a breach, for a list of key criteria when determining the level and type of those sanctions and measures and for levels of administrative pecuniary sanctions. Administrative fines should take into account factors such as any identified financial benefit resulting from the breach, the gravity and duration of the breach, any aggravating or mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the competent authority.

The adoption and publication of sanctions should respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, in particular the rights to respect for private and family life (Article 7), the right to the protection of personal data (Article 8) and the right to an effective remedy and to a fair trial (Article 47).

(43) In order to detect potential breaches, effective mechanisms to encourage reporting of potential or actual breaches of this Regulation to the competent authorities should be put in place. These mechanisms should include adequate safeguards for the persons who report potential or actual breaches of this Regulation and the persons accused of such breaches. Appropriate procedures should be established to comply with the accused person's right to protection of personal data, with the right of defence and to be heard before the adoption of a final decision affecting that person as well as with the right to seek effective remedy before a tribunal against any decision or measure affecting that person.

(44) This Regulation should be without prejudice to any provisions in the law of Member States relating to criminal sanctions.

(45) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[12] governs the processing of personal data carried out in the Member States pursuant to this Regulation. Any exchange or transmission of personal data by competent authorities of the Member States should be undertaken in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[13] governs the processing of personal data carried out by ESMA pursuant to this Regulation. Any exchange or transmission of personal data carried out by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.

(46) This Regulation complies with the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the rights to respect for private and family life, the right to the protection of personal data, the right to an effective remedy or to a fair trial, the right not to be tried or punished twice for the same offence, the freedom to conduct a business, and has to be applied in accordance with those rights and principles.

(47) European Securities and Markets Authority (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (ESMA), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC[14], should play a central role in the application of this Regulation by ensuring consistent application of Union rules by national competent authorities and by settling disagreements between them.

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12 OJ L 281, 23.11.1995, p.31.
13 OJ L 8, 12.1.2001, p. 1.
14 OJ L 331, 15.12.2010, p. 84.

(48) As a body with highly specialised expertise regarding securities and securities markets, it is efficient and appropriate to entrust ESMA with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission. Whenever specified, ESMA should also closely cooperate with the members of the ESCB and the European Banking Authority (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC[15].

(49) The Commission should be empowered to adopt regulatory technical standards in accordance with Article 290 of the Treaty on the Functioning of the European Union and with the procedure set out in Articles 10 to 14 of Regulation (EU) No 1095/2010 with regard to the detailed elements of the settlement discipline measures; the information and other elements to be included by a CSD in its application for authorisation; the information that different authorities shall supply each other when supervising the CSDs; the information that the applicant CSD shall provide ESMA in its application for recognition; the elements of the governance arrangements for CSDs; the details of the records to be kept by CSDs; the risks which may justify a refusal by a CSD of access, to participants and the elements of the procedure available for requesting participants; the details of the measures to be taken by CSDs so that the integrity of the issue is maintained; the mitigation of the operational risks and of the risks derived from the CSD links; the details of the capital requirements for CSDs; the elements of the procedure for access of issuers to CSDs, access between CSDs and between CSDs and other market infrastructures; the details of the prudential requirements on credit and liquidity risks for the designated credit institutions.

[15] OJ L 331, 15.12.2010, p. 12.

(50) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 of Treaty on the Functioning of the European Union and in accordance with the procedure set out in Article 15 of Regulation (EU) No 1095/2010 with regard to standard forms and templates for the application for authorisation by CSDs; for the provision of information between different competent authorities for the purposes of supervision of CSDs; for the relevant cooperation arrangements between home and host authorities; for formats of records to be kept by CSDs; for the procedures in cases when a participant or an issuer is denied access to a CSD, CSDs are denied access between themselves or between CSDs and other market infrastructures; for the consultation of different authorities prior to granting authorisation to a settlement agent.

(51) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty. In particular, the delegated acts should be adopted in respect of specific details concerning some definitions, level of cash penalties for the participants that cause settlement fails and the criteria under which the operations of a CSD in a host Member State should be considered of substantial importance for that Member State. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

(52) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to take decisions on the assessment of rules from third countries for the purposes of recognition of third country CSDs. Those powers should be *exercised* in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers[16]. When assessing the relevant rules of third countries, a proportionate, outcomes-based approach will be taken in the Commission's decision, focusing on compliance with relevant international and Union requirements. Conditional or interim recognition may also be granted where there are no areas of material difference that would have foreseeable detrimental effects on EU markets.

(53) Since the objectives of this Regulation, namely to lay down uniform requirements for settlement as well as for CSDs, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

[16] OJ L 55, 28.2.2011, p. 13.

(54) It is necessary to amend Directive 98/26/EC to bring it in line with the Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)[17], whereby designated securities settlement systems are no longer notified to the Commission but to ESMA.

(54a) Considering that this Regulation harmonises at Union level the measures to prevent and address settlement fails and has a wider scope of application for such measures than Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps[18], it is necessary to repeal Article 15 of that Regulation

(54b) CSDs should however be fully exempted from the application of Directive [MiFID proposal] and Regulation [MiFIR proposal] whenever they provide services that are explicitly listed in this Regulation. However, in order to ensure that any entities providing investment services and activities are subject to Directive [MiFID proposal] and Regulation [MiFIR proposal] and to avoid competitive distortions between different types of providers of the such services, it is necessary to require CSDs that provide investment services and activities in the course of their ancillary services to be subject to the requirements of Directive [MiFID proposal] and Regulation [MiFIR proposal].

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17 OJ L 331, 15.12.2010, p. 120.

18 OJ L 86, 24.3.12, p. 1

(55) The application of the authorisation and recognition requirements of this Regulation should be deferred in order to provide CSDs established in the Union or in third countries with sufficient time to apply for authorisation and recognition of their activities provided for in this Regulation. Until the decision is made under this Regulation on the authorisation or recognition of CSDs and of their activities, including CSD links, the respective national rules on authorisation and recognition of CSDs shall continue to apply.

(56) It is also necessary to defer the application of the requirements of recording certain transferable securities in book-entry form and settling obligations in securities settlement systems no later than on the second business day after the trading in order to provide market participants, holding securities in paper form or using longer settlement periods, with sufficient time to comply with those requirements.

HAVE ADOPTED THIS REGULATION:

Title I

Subject matter, scope and definitions

Article 1

Subject matter and scope

1. 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 to promote safe and smooth settlement.

2. This Regulation applies to the settlement of all financial instruments and activities of CSDs unless otherwise specified in the provisions of this Regulation.

3. This Regulation is without prejudice to provisions of Union legislation concerning specific financial instruments, in particular Directive 2003/87/EC

4. Articles 9 to 18, 20 to 22, 25, 26(5), 28(4) and 44, the provisions of Title IV and the requirements to report to competent authorities or relevant authorities or to comply with their orders under this Regulation, do not apply to the members of the European System of Central Banks (ESCB), other Member States' national bodies performing similar functions, or to Member States' public bodies charged with or intervening in the management of the public debt.

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions apply:

(1) ‘central securities depository’ ('CSD') means a legal person that operates a securities settlement system listed in point 3 of Section A of the Annex and performs at least one other core service listed in Section A of the Annex;

(1a) 'third country CSD' means any legal entity established in a third country that provides a similar service to the core service listed in point 3 of Section A of the Annex and performs at least one other core service listed in Section A of the Annex;

(1b) ‘Immobilisation’ means the act of concentrating the location of physical securities in a CSD so that subsequent transfers can be made by book entry;

(1c) ‘Dematerialised form’ means financial instruments which exist only as book entry records;

(1d) ‘receiving CSD’ means the CSD which receives the request of another CSD, the requesting CSD, to have access to its services through a CSD link

(1e) ‘requesting CSD’ means the CSD which requests access to the services of another CSD, the receiving CSD through a CSD link;

(2) 'settlement' means the completion of a securities transaction with the aim of discharging the obligations of the parties to a transaction through the transfer of funds or securities or both;

(2a) ‘financial instruments’ means financial instruments as defined in point (14) of Article 4 of [MiFID II];

(3) 'securities settlement system' means a system under the first, second and third indents of point (a) of Article 2 of Directive 98/26/EC that is not operated by a CCP whose business consists of the execution of transfer orders as defined in the second indent of point (i) of Article 2 of Directive 98/26/EC;

(4) 'settlement period' means the time period between the trade date and the intended settlement date;

(5) 'business day' means business day as defined in point (n) of Article 2 of Directive 98/26/EC;

(6) 'settlement fail' means the non-occurrence of settlement of a securities transaction on the intended settlement date due to a lack of securities or cash, regardless of the underlying cause;

(7) 'intended settlement date' means the date that is entered into the securities settlement system as the settlement date and on which the parties to a securities transaction agree that settlement is to take place;

(8) 'central counterparty (CCP)' means a central counterparty (CCP) as defined in point (1) of Article 2 of Regulation (EU) 648/2012;

(9) 'competent authority' means the authority designated by each Member State in accordance with Article 10;

(9a) 'relevant authority' means the authority referred to in Article 11;

(10) 'participant' means any participant, as defined in point (f) of Article 2 of Directive 98/26/EC to a securities settlement system;

(11) ‘participation’ means participation within the meaning of the first sentence of Article 17 of Directive 78/660/EEC, or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;

(12) ‘home Member State’ means the Member State in which a CSD is established;

(13) ‘host Member State’ means the Member State, other than the home Member State, in which a CSD has a branch or provides CSD services;

(14) ‘branch’ means a place of business other than the head office which is a part of a CSD, which has no legal personality and which provides CSD services for which the CSD has been authorised;

(15) ‘control’ means the relationship between two undertakings as defined in Article 1 of Directive 83/349/EEC;

(16) 'participant's default' means a situation where insolvency proceedings, as defined in point (j) of Article 2 of Directive 98/26/EC, are opened against a participant;

(17) 'delivery versus payment' ('DVP') means a securities settlement mechanism which links a transfer of securities with a transfer of funds in a way that the delivery of securities occurs if and only if the corresponding transfer of funds occurs and vice versa;

(18) 'securities account' means an account on which securities may be credited or debited;

(19) 'CSD link' means an arrangement between CSDs whereby one CSD becomes a participant in the securities settlement system of another CSD in order to facilitate the transfer of securities from the participants of the latter CSD to the participants of the former CSD or accesses the other CSD indirectly via an intermediary. CSD links include standard links, customised links, indirect links, and interoperable links;

(20) 'standard link' means a CSD link whereby a CSD becomes a participant to the securities settlement system of another CSD under the same terms and conditions as applicable to any other participant to the securities settlement system operated by the latter;

(21) 'customised link' means a CSD link whereby a CSD that becomes a participant to the securities settlement system of another CSD is provided additional specific services to the services normally provided by that CSD to participants to securities settlement system;

(22) 'interoperable link' means a CSD link whereby the CSDs agree to establish mutual technical solutions for settlement in the securities settlement systems that they operate;

(22a) 'Indirect link' means an arrangement between a CSD and a third party other than a CSD, that is a participant to the securities settlement system of another CSD. Such link is set up by a CSD in order to facilitate the transfer of securities to its participants from the participants of another CSD;

(23) 'transferable securities' means transferable securities as defined in point (18) of Article 4 of Directive 2004/39/EC;

(23a) ‘shares’ means securities specified in point 18(a) of Article 4 of Directive 2004/39/EC [new Article 2(1)(9)(a) MiFIR]

(24) 'money-market instruments' means money-market instruments as defined in point (19) of Article 4 of Directive 2004/39/EC;

(25) 'units in collective investment undertakings' means units in collective investment undertakings as referred to in point (3) of Section C of Annex I of Directive 2004/39/EC;

(26) 'emission allowances' means any units recognised for compliance with the requirements of Directive 2003/87/EC excluding derivatives in emission allowances;

(27) 'regulated market' means 'regulated market' as defined in point (14) of Article 4 of Directive 2004/39/EC;

(28) 'multilateral trading facility (MTF)' means multilateral trading facility as defined in point (15) of Article 4 of Directive 2004/39/EC;

(29) 'organised trading facility (OTF)' means any system or facility, which is not a regulated market or MTF, operated by an investment firm or a market operator, in which multiple third-party buying and selling interests in financial instruments are able to interact in the system in a way that results in a contract in accordance with the provisions of Title II of Directive 2004/39/EC;

(29a) 'trading venue' means any regulated market, MTF or OTF;

(30) 'subsidiary' means a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC;

(31) 'settlement agent' means settlement agent as defined in point (d) of Article 2 of Directive 98/26/EC.

(32) ‘management body’ means the body or bodies of a CSD, appointed in accordance with the national law, which is empowered to set the CSDs strategy, objectives and overall direction, and which oversees and monitors management decision-making. This shall include persons who effectively direct the business of the CSD.

Where, according to national law, management body comprises different bodies with specific functions, the requirements of this Regulation shall apply only to those members of the management body to whom the applicable national law assigns the respective responsibility;

(33) 'senior management' means those individuals who exercise executive functions within a CSD and who are responsible and accountable to the management body for the day-to-day management of that CSD.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures to specify the ancillary services set out in points (1) to (4) of Section B of the Annex and the services set out in Section C of the Annex.

Title II

Securities settlement

Chapter I

Book-entry form

Article 3

Book-entry form

1. Any issuer established in the EU that issued or intends to issue transferable securities which are admitted to trading on regulated markets or MTFs shall arrange for such securities to be represented in book-entry form as immobilisation or subsequent to a direct issuance in dematerialised form.

2. Where transferable securities are traded on trading venues those securities shall be recorded in book-entry form in a CSD on or before the intended settlement date, unless they have already been so recorded.

   Where transferable securities are transferred following a financial collateral arrangement as defined in point (a) of Article 2 of Directive 2002/47/EC, those securities shall be recorded in book-entry form in a CSD prior to the settlement date, unless they have already been so recorded.

Article 4

Enforcement

1. The authorities of the Member State where the issuer that issues securities is established shall be competent for ensuring that Article 3(1) is applied.

2. The authorities competent for the supervision of the trading venues shall ensure that Article 3(2) is applied when the securities referred to in Article 3(1) are traded on trading venues.

3. Member States' authorities responsible for the supervision of the collateral taker and the collateral provider as defined in Article 1(2) of Directive 2002/47/EC shall be competent for ensuring that Article 3(2) of this Regulation is applied when the securities referred to in Article 3(1) of this Regulation are transferred following a financial collateral arrangement as defined in point (a) of Article 2 of Directive 2002/47/EC.

Chapter II

Settlement periods

Article 5

Intended settlement dates

1. Any participant to a securities settlement system that settles in that system on its own account or on behalf of a third party transactions in transferable securities, money-market instruments, units in collective investment undertakings and emission allowances shall settle such transactions on the intended settlement date.

2. As regards transactions in transferable securities referred to in paragraph 1 which are executed on trading venues, the intended settlement date shall be no later than on the second business day after the trading takes place. This requirement shall not apply to transactions which are negotiated privately but executed on the trading venues.

3. The authorities competent for the supervision of the CSDs shall be competent for ensuring that paragraph 1 is applied.

   The authorities competent for the supervision of trading venues shall be competent for ensuring that paragraph 2 is applied.

Chapter III

Settlement discipline

Article 6

Measures to prevent settlement fails

1. Trading venues shall establish procedures that enable the confirmation of relevant details of transactions in financial instruments referred to in Article 5 (1) on the date when the transaction has been executed.

2. For each securities settlement system it operates, a CSD shall establish procedures that facilitate the settlements of transactions in financial instruments referred to in Article 5(1) on the intended settlement date with a minimum exposure of its participants to counterparty and liquidity risks and a low rate of settlement fails. It shall promote early settlement on the intended settlement date through appropriate mechanisms.

3. For each securities settlement system it operates, a CSD shall provide tools to enable its participants to manage for the timely settlement of their transactions. CSDs shall require participants to settle their transactions on the intended settlement date.

4. The European Securities and Markets Authority (ESMA) shall develop, in close co-operation with the members of the European System of Central Banks (ESCB), draft regulatory technical standards to specify the details of the procedures facilitating settlement referred to in paragraph 2 and the details of the tools for the management of the timely settlement of transactions referred to in paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 7

Measures to address settlement fails

1. For each securities settlement system it operates, a CSD shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1). It shall provide regular reports to the competent authority and the authorities referred to in Article 11, as to the number and details of settlement fails and any other relevant information. These reports, including the measures envisaged by CSDs and their participants to improve settlement efficiency, shall be made public by CSDs in an aggregated and anonymised form on an annual basis. The competent authorities shall share with ESMA any relevant information on settlement fails.

2. For each securities settlement system it operates, a CSD shall provide for sufficiently deterrent cash penalties for participants that cause settlement fails ('failing participants') in respect of transactions in financial instruments referred to in Article 5(1). Cash penalties shall be calculated on a daily basis for each business day that a transaction fails to settle after its intended settlement date until the end of a buy-in period referred to in paragraph 3, but no longer than the actual settlement day. A CSD may apply further disincentives to discourage repeated non-compliant behaviour.

The cash penalties referred to in the previous subparagraph in any case shall not be configured as a revenue source for the CSD.

3. Without prejudice to the penalties as defined in paragraph 2, a failing participant that does not deliver the financial instruments referred to in Article 5(1) to the receiving participant within 4 business days after the intended settlement date ('extension period') shall be subject to the buy-in whereby those instruments shall be available for settlement and delivered to the receiving participant within an appropriate time frame.

However, based on asset type, liquidity of the financial instruments and type of the transactions concerned, the extension period may be set up to a maximum of 7 business days in exceptional cases for the financial instruments other than shares cleared by a CCP where a shorter extension period would affect the smooth and orderly functioning of the financial markets concerned.

3a. Without prejudice to the penalties as defined in paragraph 2, where the price of the financial instruments agreed at the time of the trade is higher than the price paid for the execution of the buy-in, the corresponding difference shall be paid to the receiving participant by the failing participant no later than on the second business day after the financial instruments have been delivered following the buy-in.

4. If the buy-in fails or is not possible, the receiving participant can choose to be paid a cash compensation or to defer the execution of the buy-in at an appropriate later date ('deference period').

If the financial instruments are not delivered to the receiving participant at the end of the deference period, the cash compensation shall be paid.

The cash compensation shall be paid to the receiving participant no later than on the second business day after the end of the buy-in period or deference period, in case the deference period was chosen.

4a. The failing participant shall reimburse the entity that executes the buy-in of all amounts paid in accordance with paragraphs 3, 3a and 4, including any execution fees resulting from the buy-in. Such fees shall be clearly disclosed to the participants.

5. deleted

6. CSDs, CCPs, and trading venues shall establish procedures that enable them to suspend in consultation with their respective competent authority any participant that fails consistently and systematically to deliver the financial instruments referred to in Article 5(1) 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 the competent authorities of the CSD, CCPs and trading venues, and of that participant have been duly informed. In addition to consulting before any suspension, CSDs, CCPs and trading venues, shall notify, with no delay, the respective competent authority of the suspension of a participant. The competent authority shall immediately inform the relevant authorities referred to in Article 11 on the suspension of the participant.

Public disclosure of suspensions shall not contain personal data within the meaning of Article 2 (a) of Directive 95/46/EC.

7. Paragraphs 2 to 6 shall apply to all transactions of the instruments referred to in Article 5 (1) which are admitted to trading on regulated markets or MTFs, traded on a trading venue or cleared by a CCP.

For transactions cleared by a CCP, the CCP shall be the entity that executes the buy-in procedure according to paragraphs 3 to 4a.

For transactions not cleared by a CCP but executed on a trading venue, the trading venue shall include in its internal rules an obligation for its members to be subject to the measures referred to in paragraphs 3 to 4a.

A CSD shall provide the necessary settlement information to CCPs and trading venues to enable them to fulfil their obligations under this paragraph.

For transactions in financial instruments referred to in Article 5(1) which are admitted to trading on regulated markets or MTFs but not cleared by a CCP or traded on a trading venue, the CSDs shall include in their internal rules an obligation for its members to be subject to the measures referred to in paragraphs 3 to 4a.

7a. Paragraphs 2 to 6 shall not apply to failing participants which are CCPs.

7b. Paragraphs 2 to 6 shall not apply if insolvency proceedings are opened against the failing participant.

7c. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 to specify, based on the asset type, the liquidity of the financial instruments and the type of the transactions concerned, the levels of cash penalties referred to in paragraph 2 that shall ensure a high degree of settlement discipline and a smooth and orderly functioning of the financial markets concerned.

8. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify;

a) the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1, and

b) a deterrent and proportionate level of disincentives referred to in paragraph 2 based on asset type liquidity of the instrument and type of transaction and in any case sufficiently deterrent to limit the non compliant behaviour, the maximum level of settlement fails beyond which CSDs may apply further disincentives, the processes for collection and redistribution of the cash penalties and any other possible proceeds from such penalties;

b1) according to asset type liquidity of the relevant instrument and type of transaction: the extension period, the details of operation of the appropriate buy-in mechanism, including appropriate time frames to deliver the financial instrument following the buy-in procedure referred to in paragraph 3, the circumstances under which a buy-in is deemed not possible in accordance with paragraph 4, the deference period referred to in paragraph 4;

b1a) the calculation of the cash compensation referred to in paragraph 4;

b2) the conditions under which a participant is deemed to consistently and systemically fail to deliver the financial instruments referred to in paragraph 6; and,

c) the necessary settlement information referred to in paragraph 7.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 8

Enforcement

1. The competent authority of the CSD that operates the securities settlement system, the relevant authority responsible for the oversight of the securities settlement system concerned as well as the competent authorities for the supervision of trading venues and CCPs shall be competent for ensuring that Articles 6 and 7 are applied by the institutions subject to their supervision and for monitoring the penalties imposed. Where necessary, the respective competent authorities shall cooperate closely. Member States shall inform ESMA about the designated competent authorities that are part of the supervision structure on the national level.

2. In order to ensure consistent, efficient and effective supervisory practices within the Union in relation to Articles 6 and 7 of this Regulation, ESMA may, in close co-operation with the members of ESCB, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010.

3. An infringement of the rules under this Title shall not affect the validity of a private contract on financial instruments or the possibility for the parties to enforce the provisions of a private contract on financial instruments.

Title III

Central securities depositories

Chapter I

Authorisation and supervision of CSDs

Section 1

Authorities responsible for authorisation and supervision of CSDs

Article 9

Competent authority

A CSD shall be authorised and supervised by the competent authority of the Member State where it is established.

Article 10

Designation of the competent authority

1. 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.

   Where a Member State designates more than one competent authority, it shall determine their respective roles and shall designate a single authority to be responsible for cooperation with other Member States' competent authorities, the relevant authorities referred to in Article 11, ESMA, and EBA whenever specifically referred to in this Regulation.

2. ESMA shall publish on its website a list of the competent authorities designated in accordance with paragraph 1.

3. The competent authorities shall have the supervisory and investigatory powers necessary for the exercise of their functions

Article 11

Relevant authorities

1. The following authorities shall be involved in the authorisation and supervision of CSDs whenever specifically referred to in this Regulation:

(a) the authority responsible for the oversight of the securities settlement system operated by the CSD in the Member State whose law applies to that securities settlement system;

(a1) the central banks in the Union issuing the most relevant currencies in which settlement takes place;

(b) where relevant, the central bank in the Union in whose books the cash leg of a securities settlement system operated by the CSD is settled.

2. ESMA shall publish on its website the list of the relevant authorities referred to in paragraph 1.

2a. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards for the purpose of obtaining the conditions under which the Union currencies referred to in point (a1) of paragraph 1 are considered to be as the most relevant and the practical arrangements for the consultation of the relevant authorities referred to in point (a1) and (b).

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 11a

Exchange of Information

1. Competent authorities, other relevant authorities and ESMA shall, on request and without undue delay, provide one another with the information required for the purposes of carrying out their duties under this Regulation.

2. Competent authorities, other relevant authorities, ESMA and other bodies or natural and legal persons receiving confidential information in the exercise of their duties under this Regulation shall use it only in the course of their duties.

Article 12

Cooperation between authorities

1. The authorities referred to in Articles 9 and 11 and ESMA shall cooperate closely, by exchanging all relevant information for the application of this Regulation. Whenever appropriate and relevant, such cooperation shall include other public authorities and bodies, in particular those established or appointed under Directive 2003/87/EC.

In order to ensure consistent, efficient and effective supervisory practices within the Union, including cooperation between authorities referred to in Articles 9 and 11 in the different assessments necessary for the application of this Regulation, ESMA may, in close cooperation with the members of the ESCB, issue guidelines addressed to authorities referred to in Article 9 in accordance with Article 16 of Regulation (EU) No 1095/2010.

The competent authorities shall, in the exercise of their general duties, duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned, in particular in the emergency situations referred to in Article 13, based on the available information.

Article 13

Emergency situations

Without prejudice to the notification procedure provided for in Article 6(3) of Directive 98/26/EC, the authorities referred to in Articles 9 and 11 shall immediately inform ESMA, the ESRB and each other of any emergency situation relating to a CSD, including of any developments in financial markets, which may have an adverse effect on market liquidity, the stability of a currency in which settlement takes place, integrity of monetary policy and on the stability of the financial system in any of the Member States where the CSD or one of its participants are established.

Section 2

Conditions and procedures for authorisation of CSDs

Article 14

Authorisation of a CSD

1. Any legal person that falls within the definition of CSD shall obtain an authorisation from the competent authority of the Member State where it is established before commencing its activities.

2. The authorisation shall specify the core services in Section A of the Annex and ancillary services permitted pursuant to section B of the Annex, which the CSD is authorised to provide.

   A CSD shall comply at all times with the conditions necessary for the authorisation.

   A CSD as well as its independent auditors, shall, without undue delay, inform the competent authority of any material changes affecting the conditions for authorisation.

Article 15

Procedure for granting authorisation

1. The applicant CSD shall submit an application for authorisation to its competent authority.

2. The application for authorisation shall be accompanied by all information necessary to enable the competent authority to satisfy itself that the applicant CSD has established, at the time of the authorisation, all the necessary arrangements to meet its obligations set out in this Regulation. The application for authorisation shall contain amongst others a programme of operations setting out the types of business envisaged and the structural organisation of the CSD.

3. Within 30 working days from the receipt of the application, the competent authority shall assess whether the application is complete. If the application is not complete, the competent authority shall set a time limit by which the applicant CSD has to provide additional information. The competent authority shall inform the applicant CSD when the application is considered to be complete.

4. As from the moment when the application is considered to be complete, the competent authority shall transmit all information included in the application to the relevant authorities referred to in Article 11 and consult those authorities concerning the features of the securities settlement system operated by the applicant CSD. Each relevant authority may inform the competent authority of its views within 3 months of the receipt of the information by the relevant authority.

4a. Whenever the applicant CSD intends to provide services referred to in point 1 of Article 4(2) of Directive [MiFID proposal] in addition to the provision of ancillary services explicitly listed in Section B of the Annex, the competent authority shall transmit all information included in the application to the authority referred to in Article 69 of Directive [MiFID proposal] and consult that authority on the ability of the applicant CSD to comply with the requirements of Directive [MiFID proposal] and of Regulation [MiFIR].

5. The competent authority shall, before granting authorisation to the applicant CSD, consult the competent authorities of the other Member State involved in the following cases:

(a) the CSD is a subsidiary of a CSD authorised in another Member State;

(b) the CSD is a subsidiary of the parent undertaking of a CSD authorised in another Member State.

(c) the CSD is controlled by the same natural or legal persons who control a different CSD authorised in another Member State.

The consultation referred to in the first subparagraph shall cover the following:

(a) the suitability of the shareholders and persons referred to in Article 25(6) and the reputation and experience of the persons who effectively direct the business of the CSD referred to in Article 25(1) and 25(4), whenever those shareholders and persons are common to both the CSD and a CSD authorised in another Member State;

(b) whether the relations referred to in paragraph 5 between the CSD authorised in another Member State and the applicant CSD do not affect the ability of the latter to comply with the requirements of this Regulation.

6. Within six months from the submission of a complete application, the competent authority shall inform the applicant CSD in writing with a fully reasoned decision whether the authorisation has been granted or refused.

7. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the information that the applicant CSD shall provide to the competent authority in the application for authorisation.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

8. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms, templates and procedures for the application for authorisation.

ESMA shall submit those draft implementing technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Article 16

Effects of the authorisation

1. The activities of the authorised CSD shall be limited to the provision of services covered by its authorisation.

2. Securities settlement systems may be operated only by authorised CSDs including central banks acting as CSDs.

3.

4. An authorised CSD may only have a participation in a legal person whose activities are limited to the provision of services set out in Sections A and B of the Annex, unless such a participation is approved by its competent authority on the basis that it does not significantly increase the risk profile of the CSD.

4a. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the conditions under which the competent authorities may approve participations of CSDs in legal persons other than those providing the services listed in Sections A and B of the Annex.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 17

Extension and outsourcing of activities and services

1. An authorised CSD shall submit a request for authorisation to the competent authority of the Member State where it is established whenever it wishes to outsource a core service to a third party under Article 28 or extend its activities to one or more of the following:

(a) additional core services set out in Section A of the Annex and ancillary services permitted under, but not explicitly listed in Section B of the Annex not covered by the initial authorisation

(b) the operation of another securities settlement system;

(c) the settlement of all or part the cash leg of its securities settlement system in the books of another settlement agent;

(d) setting up the interoperable links, including those with third country CSDs.

(i) deleted

(ii) deleted

(iii) deleted

(iv) deleted

2. The granting of authorisation under paragraph 1 shall follow the procedure set out in Article 15.

The competent authority shall inform the applicant CSD whether the authorisation has been granted or refused within three months of the submission of a complete application.

2a. CSDs established in the Union that intend to establish an interoperable link shall submit an application for authorisation as required under point (d) of paragraph 1, to their respective competent authorities. These authorities shall consult with each other regarding the approval of the CSD link. In case of divergent decisions and if agreed by both competent authorities the matter may be referred to ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

2b. The authorities referred to in paragraph 2a shall refuse to authorise a link only when such CSD link would threaten the smooth and orderly functioning of the financial markets or cause systemic risk.

3a. Interoperable links of CSDs that outsource some of their services, related to these interoperable links, to a public entity in accordance with Article 28(5) and CSD links that are not referred to in point (d) of paragraph 1 shall not be subject to authorisation under point (d) of paragraph 1, but shall be notified to the CSDs' competent and relevant authorities prior to their implementation by providing all relevant information that allows such authorities to assess compliance with the requirements provided in Article 45. In case the links are established with third country CSDs the information provided by the requesting CSD shall allow the competent authority to evaluate whether the protection level of a CSD link fullfils the requirements under Article 45.

The competent authority of the requesting CSD shall require the CSD to discontinue a CSD link that has been notified when such link does not fulfil the requirements provided in Article 45 and thereby would threaten the smooth and orderly functioning of the financial markets or cause systemic risk. A competent authority requiring the CSD to discontinue a CSD link shall follow the relevant procedure provided in Article 18.

5a. The additional ancillary services explicitly listed in Section B of the Annex shall not be subject to authorisation, but shall be notified to the competent authority prior to their provision.

Article 18

Withdrawal of authorisation

1. Without prejudice to any remedial actions or measures under Title V, the competent authority of the Member State where the CSD is established shall withdraw the authorisation in any of the following circumstances:

(a) where the CSD has not made use of the authorisation during 12 months, expressly renounces the authorisation or has provided no services or performed no activity during the preceding six months;

(b) where the CSD has obtained the authorisation by making false statements or by any other unlawful means;

(c) where the CSD no longer complies with the conditions under which authorisation was granted and has not taken the remedial actions requested by the competent authority within a set time frame;

(d) where the CSD has seriously or systematically infringed the requirements set out in this Regulation and, whenever relevant, in Directive [MiFID proposal] and Regulation [MiFIR proposal].

A CSD shall establish, implement and maintain an adequate procedure ensuring the timely and orderly settlement and transfer of the assets of clients and participants to another CSD in the event of a withdrawal of authorisation referred to in the first subparagraph.

2. As from the moment it becomes aware of one of the circumstances referred to in paragraph 1, the competent authority shall immediately consult the relevant authorities referred to in Article 11 and, whenever relevant, the authority referred to in Article 69 of Directive [MiFID proposal] on the necessity to withdraw the authorisation.

3. ESMA and any relevant authority referred to in Article 11 and, whenever relevant, the authority referred to in Article 69 of Directive [MiFID proposal] may, at any time, request that the competent authority of the Member State where the CSD is established examines whether the CSD still complies with the conditions under which the authorisation was granted.

4. The competent authority may limit the withdrawal to a particular service, activity, or financial instrument.

Article 19

CSD Register

1. Decisions taken by competent authorities under Articles 14, 17 and 18 shall be immediately communicated to ESMA.

2. Central banks shall without undue delay inform ESMA of any securities settlement system that they operate.

3. The name of each CSD operating in compliance with this Regulation and to which authorisation or recognition has been granted under Articles 14, 17 and 23 shall be entered in a list specifying the services for which the CSD has been authorised. The list shall include branches operated by the CSD in other Member States and CSD links. ESMA shall publish the list on its dedicated website and keep it up to date.

Section 3

Supervision of CSDs

Article 20

Review and evaluation

1. 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 and evaluate the risks to which the CSD is, or might be, exposed.

2. The competent authority shall establish the frequency and depth of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned. The review and evaluation shall be updated at least on an annual basis.

3. The competent authority shall subject the CSD to on-site inspections.

4. When performing the review and evaluation referred to in paragraph 1, the competent authority shall consult at an early stage the relevant authorities referred to in Article 11, in particular concerning the functioning of the securities settlement systems operated by the CSD and, whenever relevant, the authority referred to in Article 69 of Directive [MiFID proposal].

5. The competent authority shall regularly, and at least once a year, inform the relevant authorities referred to in Article 11 and, whenever relevant, the authority referred to in Article 69 of Directive [MiFID proposal] of the results, including any remedial actions or penalties, of the review and evaluation referred to in paragraph 1.

6. When performing the review and evaluation referred to in paragraph 1, the competent authorities responsible for supervising CSDs which maintain the types of relations referred to in points (a), (b) and (c) of the first subparagraph of Article 15(5) shall supply one another with all relevant information that is likely to facilitate their tasks.

7. The competent authority shall require the CSD that does not meet the requirements of this Regulation to take at an early stage the necessary actions or steps to address the situation.

8. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the following:

(a) the information that the CSD shall provide to the competent authority for the purposes of the review referred to in paragraph 1;

(b) the information that the competent authority shall supply to the relevant authorities referred to in paragraph 5;

(c) the information that the competent authorities referred to in paragraph 6 shall supply one another.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

9. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to determine standard forms, templates and procedures for the provision of information referred to in the first subparagraph of paragraph 8.

ESMA shall submit those draft implementing technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Section 4

Provision of services in another Member State

Article 21

Freedom to provide services in another Member State

1. An authorised CSD may carry out its activities within the territory of the Union, either by the establishment of a branch or by way of direct provision of services, provided that the types of activities concerned are covered by the authorisation.

1b. An authorised CSD that intends to provide the services referred to in points 1 and 2 of Section A of the Annex in relation to financial instruments constituted under the law of another Member State referred to in Article 47(1) or to establish a branch in another Member State shall be subject to the procedure referred to in paragraphs 2 to 6.

2. Any CSD wishing to provide its services within the territory of another Member State for the first time, or to change the range of services provided shall communicate the following information to the competent authority of the home Member State:

(a) the Member State in which the CSD intends to operate, including the currency or currencies it processes;

(b) a programme of operations stating in particular the services which the CSD intends to provide;

(c) in case of a branch, the organisational structure of the branch and the names of those responsible for the management of the branch.

(d) whenever relevant, a comprehensive assessment of how the CSD intends to support its users' compliance with national laws referred to in Article 47(1).

3. Within three months from the receipt of the information referred to in paragraph 2, the competent authority of the home Member State shall communicate that information to the competent authority of the host Member State unless, by taking into account the provision of services envisaged, it has reasons to doubt the adequacy of the administrative structure or the financial situation of the CSD wishing to provide its services in the host Member State.

The competent authority of the host Member State shall inform without delay the relevant authorities referred to in Article 11 of that Member State of any communication received under the first subparagraph.

4. Where the competent authority of the home Member State refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the CSD concerned within three months of receiving all the information.

5. The CSD may start providing its services in the host Member State under the following conditions:

(a) on receipt of a communication from the competent authority in the host Member State acknowledging receipt by the latter of the communication referred to in paragraph 3 and, whenever relevant, approving the assessment referred to in point (d) of paragraph 2;

(b) in the absence of any receipt of a communication, after three months from the date of transmission of the communication referred to in paragraph 3.

6. In the event of a change in any of the information communicated in accordance with paragraph 2, a CSD shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed without delay of that change by the competent authority of the home Member State.

Article 22

Cooperation between home and host authorities

1. Where a CSD authorised in one Member State has established a branch in another Member State, the competent authority of the home Member State and the competent authority of the host Member State shall cooperate closely in the performance of the duties provided for in this Regulation, in particular when carrying out on-site inspections in that branch.

2. The competent authorities from the host Member States may require CSDs which provide services in accordance with Article 21 to report to them periodically on their activities in those host Member States, including for the purpose of collecting statistics.

3. The competent authority of the home Member State of the CSD shall, on the request of the competent authority or the relevant authority of the host Member State and within an appropriate time frame, communicate the identity of the issuers and participants to the securities settlement systems operated by the CSD which provides services in that host Member State and any other relevant information concerning the activities of that CSD in the host Member State.

4. When, taking into account the situation of the securities markets in the host Member State, the activities of a CSD have 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 shall establish cooperation arrangements, [which may include colleges of supervisors,] for the supervision of the activities of that CSD in the host Member State.

5. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a CSD providing services within its territory in accordance with Article 21 is in breach of the obligations arising from the provisions of this Regulation, it shall refer those findings to the competent authority of the home Member State and ESMA.

Where, despite measures taken by the competent authority of the home Member State or because such measures prove inadequate, the CSD persists in acting in breach of the obligations arising from the provisions of this Regulation, after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to ensure compliance with the provisions of this Regulation within the territory of the host Member State. ESMA shall be informed of such measures without delay.

The competent authorities of the host and home Member States may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures for establishing the criteria under which the operations of a CSD in a host Member State could be considered of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.

7. ESMA, in close cooperation with the members of the ESCB, shall develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation referred to in paragraphs 1, 3 and 5.

ESMA shall submit those draft implementing technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Section 5

Relations with third countries

Article 23

Third countries

1. A third country CSD may provide CSD services in the Union either through a branch or by way of direct provision of services.

1b. Without prejudice to paragraph 1, a third country CSD that intends to provide the services referred to in points 1 and 2 of Section A of the Annex in relation to financial instruments constituted under the law of a Member State referred to in Article 47(1) or to establish a branch in a Member State shall be subject to the procedure referred to in paragraphs 2 to 8.

2. After consultation with the authorities referred to in paragraph 3, ESMA may recognise a third country CSD that has applied for recognition to provide its services, where the following conditions are met:

(a) the Commission has adopted a decision in accordance with paragraph 6;

(b) the third country CSD is subject to effective authorisation, supervision and oversight or, if the securities settlement system is operated by a central bank, oversight, ensuring a full compliance with the prudential requirements applicable in that third country;

(c) co-operation arrangements between ESMA and the competent authorities in that third country have been established pursuant to paragraph 7.

(d) whenever relevant, the third country CSD supports compliance of its users with the relevant national laws of the Member State in which the third country CSD intends to provide CSD services, including the laws referred to in paragraph 1, and its ability to support such compliance has been confirmed by the competent authorities of the Member State in which the third country CSD intends to provide CSD services.

3. When assessing whether the conditions referred to in paragraph 2 are met, ESMA shall consult with:

(a) the competent authorities of the Member States in which the third country CSD intends to provide CSD services, in particular, on how the third country CSD intends to support compliance of its users with the laws referred to in point (d) of paragraph 2;

(b) deleted

(c) the authorities referred to in Article 11;

(d) the authority in the third country competent for authorising, supervising and overseeing CSDs.

4. The third country CSD referred to in paragraph 1 shall submit its application for recognition to ESMA.

The applicant CSD shall provide ESMA with all information deemed necessary for its recognition. Within 30 working days from the receipt of the application, ESMA shall assess whether the application is complete. If the application is not complete, ESMA shall set a time limit by which the applicant CSD has to provide additional information.

The competent authorities of the Member States in which the third country CSD intends to provide CSD services shall assess the compliance of the third country CSD with the laws referred to in point (d) of paragraph 2 and inform ESMA with a fully reasoned decision whether the compliance is met or not within three months from the receipt of all the necessary information from ESMA.

The recognition decision shall be based on the criteria set out in paragraph 2.

Within six months from the submission of a complete application, ESMA shall inform the applicant CSD in writing with a fully reasoned decision whether the recognition has been granted or refused.

4a. The competent authorities of the Member States - in which the third country CSD, duly recognised under paragraph 2, provides CSD services - in close cooperation with ESMA, may request the competent authorities of that third country CSD to:

(a) report periodically on the third country CSD activities in those host Member States, including for the purpose of collecting statistics;

(b) communicate, within an appropriate time frame, the identity of the issuers and participants to the securities settlement systems operated by the third country CSD which provides services in that host Member State and any other relevant information concerning the activities of that third country CSD in the host Member State.

5. ESMA shall, in consultation with the authorities referred to in paragraph 3, review the recognition of the third country CSD in case of extensions by that CSD in the Union of its services under the procedure set out in paragraphs 2 to 4.

ESMA shall withdraw the recognition of that CSD where the conditions and requirements according to paragraph 2 are no longer met or in the circumstances referred to in Article 18.

6. The Commission may adopt a decision in accordance with the procedure referred to in Article 66, determining that the legal and supervisory arrangements of a third country ensure that CSDs authorised in that third country comply with legally binding requirements which are in effect equivalent to the requirements set out in this Regulation, that those CSDs are subject to effective supervision, oversight and enforcement in that third country on an ongoing basis, and that the legal framework of that third country provides for an effective equivalent system for the recognition of CSDs authorised under third country legal regimes.

7. In accordance with Article 33 (1) of Regulation (EU) No 1095/2010, ESMA shall establish cooperation arrangements with the relevant competent authorities of third countries whose legal and supervisory frameworks have been recognised as equivalent to this Regulation in accordance with paragraph 6. Such arrangements shall specify at least:

(a) the mechanism for the exchange of information between ESMA, the host competent authorities and the competent authorities of third countries concerned, including access to all information regarding the CSDs authorised in third countries that is requested by ESMA and in particular access to information in cases referred to in paragraphs 4a;

(b) the mechanism for prompt notification of ESMA where a third country competent authority deems a CSD it is supervising to be in breach of the conditions of its authorisation or other legislation to which it is obliged to adhere;

(c) the procedures concerning the coordination of supervisory activities including, where appropriate, onsite inspections.

Where a cooperation agreement provides for transfers of personal data by a Member State, such transfers shall comply with the provisions of Directive 95/46/EC and where a cooperation agreement provides for transfers of personal data by ESMA, such transfers shall comply with the provisions of Regulation (EU) No 45/2001.

8.

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the information that the applicant CSD shall provide ESMA in its application for recognition under paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Chapter II

Requirements for CSDs

Section 1

Organisational requirements

Article 24

General provisions

1. 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.

2. A CSD shall adopt policies and procedures which are sufficiently effective so as to ensure compliance with this Regulation, including compliance of its managers and employees with all the provisions of this Regulation.

3. A CSD shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself, including its managers, employees, members of the management body or any person directly or indirectly linked to them, and its participants or their clients. It shall maintain and implement adequate resolution procedures whenever possible conflicts of interest occur.

4. A CSD shall make its governance arrangements and the rules governing its activity available to the public.

5. A CSD shall have appropriate procedures for its employees to report potential violations internally through a specific channel.

6. A CSD shall be subject to regular and independent audits. The results of these audits shall be communicated to the management body and made available to the competent authority.

7. Whenever a CSD is part of a group of undertakings including in particular other CSDs and credit institutions referred to in Title IV, it shall adopt detailed policies and procedures specifying how the requirements set in this article apply to the group and to the different entities of the group.

8. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards specifying the monitoring tools for the risks of the CSDs referred to in paragraph 1, and the responsibilities of the key personnel in respect of those risks, the potential conflicts of interest referred to in paragraph 3 and the audit methods referred to in paragraph 6 at the CSD level as well as at the group level.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 25

Senior management, management body and shareholders

1. 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.

2. A CSD shall have a management body of which at least one third, but no less than two, of its members are independent.

3. The compensation of the independent and other non-executive members of the management body shall not be linked to the business performance of the CSD.

4. The management body shall be composed of suitable members of sufficiently good repute with an appropriate mix of skills, experience and knowledge of the entity and of the market.

5. A CSD shall clearly determine the roles and responsibilities of the management body in accordance with the relevant national law. A CSD shall make the minutes of the meetings of the management body available to the competent authority upon request.

6. The CSD shareholders and persons who are in a position to exercise, directly or indirectly, control over the management of the CSD shall be suitable to ensure the sound and prudent management of the CSD.

7. A CSD shall:

   (a) provide the competent authority with, and make public, information regarding the ownership of the CSD, and in particular, the identity and scale of interests of any parties in a position to exercise control over the operation of the CSD;

(b) inform the competent authority of and make public, after receiving approval by the competent authority, any transfer of ownership which gives rise to a change in the identity of the persons exercising control over the operation of the CSD.

Any natural or legal person shall inform without undue delay the CSD and its competent authority of its decision to acquire or dispose of its ownership rights that give rise to a change in the identity of the persons exercising control over the operation of the CSD.

8. Within 60 working days from the receipt of the information referred to in paragraph 7, the competent authority shall take a decision on the proposed changes in the control of the CSD. The competent authority shall refuse to approve proposed changes in the control of the CSD where there are objective and demonstrable grounds for believing that they would pose a threat to the sound and prudent management of the CSD or to the ability of the CSD to comply with this Regulation.

Article 26

User committee

1. A CSD shall establish user committees for each securities settlement system it operates, which shall be composed of representatives of issuers and of participants to such securities settlement systems. The advice of the user committee shall be independent from any direct influence by the management of the CSD.

2. A CSD shall define in a non-discriminatory fashion the mandate for each established user committee, the governance arrangements necessary to ensure its independence and its operational procedures, as well as the admission criteria and the election mechanism for user committee members. The governance arrangements shall be publicly available and shall ensure that the user committee reports directly to the management body and holds regular meetings.

3. User committees shall advise the management body of the CSD on key arrangements that impact their members, including the criteria for accepting issuers or participants to their respective securities settlement systems and service level and pricing structure.

4. Without prejudice to the right of competent authorities to be duly informed, the members of the user committees shall be bound by confidentiality. Where the chairman of a user committee determines that a member has an actual or a potential conflict of interest on a particular matter, that member shall not be allowed to vote on that matter.

5. The user committee may inform the CSD's competent authority of any decision in which the management body decides not to follow the advice of a user committee.

Article 27

Record keeping

1. A CSD shall maintain, for a period of at least ten years, all the records on the services and activity provided so as to enable the competent authority to monitor the compliance with the requirements under this Regulation.

2. A CSD shall make the records referred to in paragraph 1 available upon request to the competent authority and the relevant authorities referred to in Article 11 for the purpose of fulfilling their mandates.

3. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the details of the records referred to in paragraph 1 to be retained for the purpose of monitoring the compliance of CSDs with the provisions of this Regulation.

   ESMA shall submit those drafts to the Commission by nine months from the date of entry into force of this Regulation.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

4. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish the format of the records referred to in paragraph 1 to be retained for the purpose of monitoring the compliance of CSDs with the provisions of this Regulation.

ESMA shall submit those draft implementing technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Article 28

Outsourcing

1. Where a CSD outsources services or activities to a third party, it shall remain fully responsible for discharging all of its obligations under this Regulation and shall comply at all times with the following conditions:

   (a) outsourcing does not result in the delegation of its responsibility;

   (b) the relationship and obligations of the CSD towards its participants or issuers are not altered;

   (c) the conditions for the authorisation of the CSD do not effectively change;

   (d) outsourcing does not prevent the exercise of supervisory and oversight functions, including on site access to acquire any relevant information needed to fulfil those functions;

   (e) outsourcing does not result in depriving the CSD from the necessary systems and controls to manage the risks it faces;

   (f) the CSD retains the necessary expertise and resources for evaluating the quality of the services provided, the organisational and capital adequacy of the service provider, for supervising the outsourced services effectively and for managing the risks associated with the outsourcing on an ongoing basis;

(g) the CSD has direct access to the relevant information of the outsourced services;

(h) the service provider cooperates with the competent authority and the relevant authorities referred to in Article 11 in connection with the outsourced activities;

(i) the CSD ensures that the service provider meets the standards set down by the relevant data protection legislation which would apply if the service providers were established in the Union. The CSD is responsible for ensuring that those standards are set out in a contract between the parties and that those standards are maintained.

2. The CSD shall define in a written agreement its rights and obligations and those of the service provider. The outsourcing agreement shall include the possibility of the CSD to terminate the agreement.

3. A CSD and a service provider shall make available upon request to the competent authority and the relevant authorities referred to in Article 11 all information necessary to enable them to assess the compliance of the outsourced activities with the requirements of this Regulation.

4. The outsourcing of a core service shall be subject to authorisation under Article 17 by the competent authority.

5. Paragraphs 1 to 4 shall not apply where a CSD outsources some of its services or activities to a public entity and where that outsourcing is governed by a dedicated legal, regulatory and operational framework which has been jointly agreed and formalised by the public entity and the relevant CSD and agreed by the competent authorities on the basis of the requirements established in this Regulation.

Article 28a

Services provided by other parties

1. Notwithstanding Article 28, Member States shall where required by national legislation provide that a person other than CSDs is responsible for recording book entries into securities accounts maintained by CSDs.

2. Member States that allow other parties to provide certain core services referred to in Annex A in accordance with paragraph 1 shall specify by law the requirements that will apply in such case, including the requirements under this Regulation which shall apply both to the CSD and, where relevant, to the other party concerned.

3. Member States allowing other parties to provide core services referred to in Annex A in accordance with paragraph 1 shall communicate their relevant national laws to ESMA. ESMA shall include such information in the CSD register referred to in Article 19.

Section 2

Conduct of business rules

Article 29

General provisions

1. deleted

2. A CSD shall have clearly defined goals and objectives, such as in the areas of minimum service levels, risk-management expectations and business priorities.

3. A CSD shall have transparent rules for the handling of complaints.

Article 30

Requirements on participants

1. For each securities settlement system it operates a CSD shall have publicly disclosed criteria for participation which allow fair and open access for all legal persons that intend to become a participant. Such criteria shall be transparent, objective, risk-based, and non-discriminatory so as to ensure fair and open access to the CSD. Criteria that restrict access shall only be permitted to the extent that their objective is to control the risk for the CSD.

2. A CSD shall treat requests for access promptly by providing a response to such requests within one month at the latest and shall make the procedures for treating access requests publicly available.

3. A CSD may only deny access to a participant meeting the criteria referred to in paragraph 1 where it is duly justified in writing and based on a comprehensive risk analysis.

In case of refusal, the requesting participant has the right to complain to the competent authority of the CSD that has refused access.

The responsible competent authority shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting participant with a reasoned reply.

The responsible competent authority shall consult the competent authority of the place of establishment of the requesting participant on its assessment of the complaint. Where the authority of the requesting participant disagrees with the assessment provided, the matter shall be referred to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

Where the refusal by the CSD to grant access to the requesting participant is deemed unjustified, the responsible competent authority shall issue an order requiring that CSD to grant access to the requesting participant.

4. A CSD shall have objective and transparent procedures for the suspension and orderly exit of participants that no longer meet the criteria for participation referred to in paragraph 1.

5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the risks which may justify a refusal by a CSD of access to participants and the elements of the procedure referred to in paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraph 3.

ESMA shall submit those draft implementing technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Article 31

Transparency

1. For each securities settlement system it operates, as well as for the each of the other services it performs, a CSD shall publicly disclose the prices and fees associated with the core services set out in Annex A that they provide. It shall disclose the prices and fees of each service and function provided separately, including discounts and rebates and the conditions to benefit from those reductions. It shall allow its clients separate access to the specific services provided.

2. A CSD shall publish its price list so as to facilitate the comparison of offers and to allow clients to anticipate the price they shall have to pay for the use of services.

2a. A CSD shall be bound by its published pricing policy for its core services.

3. deleted

4. A CSD shall provide to its clients information that allows reconciling the invoice with the published price lists.

5. A CSD shall disclose to all clients information that allows clients to assess the risks associated with the services provided.

6. A CSD shall account separately for costs and revenues of the core services provided and shall disclose that information to the competent authority.

6a. A CSD shall account for the cost and revenue of the ancillary services provided as a whole and shall disclose that information to the competent authority.

Section 3

Requirements for CSD services

Article 33

General provisions

For each securities settlement system it operates a CSD shall have appropriate rules and procedures, including robust accounting practices and controls, to help ensure the integrity of securities issues, reduce and manage the risks associated with the safekeeping and settlement of transactions in securities.

Article 34

Integrity of the issue

1. A CSD shall take appropriate reconciliation measures to verify that the number of securities making up a securities issue or part of a securities issue submitted to the CSD is equal to the sum of securities recorded on the securities accounts of the participants of the securities settlement system operated by the CSD. Such reconciliation measures shall be conducted at least daily.

2. Where appropriate and if other entities are involved in the reconciliation process for a certain securities issue, such as the issuer, registrars, issuance agents, transfer agents, common depositories, other CSDs or other entities, the CSD and any such entities shall convene adequate cooperation and information exchange measures with each other so that the integrity of the issue is maintained.

3. Securities overdrafts, debit balances or securities creation shall not be allowed in a securities settlement system operated by a CSD.

4. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the reconciliation measures a CSD shall take under paragraphs 1 to 3.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 35

Protection of participants' securities

1. For each securities settlement system it operates a CSD shall keep records and accounts that shall enable it, at any time and without delay, to segregate in the accounts with the CSD the securities of a participant from the securities of any other participant and, if applicable, from the CSD's own assets.

2. A CSD shall keep records and accounts that enable a participant to segregate the securities of that participant from those of that participant's clients ('omnibus client segregation').

3. A CSD shall offer to keep records and accounts enabling a participant to segregate the securities of any of that participant's clients, if and as required by that participant ('individual client segregation').

A participant shall offer its client at least the choice between omnibus client segregation and individual client segregation and inform them of the costs and risks associated with each option.

However, a CSD and its participants shall provide individual client segregation if this is required under the national law of the Member State where the CSD is authorised.

CSDs and their participants shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered, including information on the insolvency law applicable in the relevant jurisdictions.

4. deleted

5. A CSD shall not use the securities of a participant or of a participant's client or any other person in the holding chain for any purpose unless it has obtained that participant's or its client's or that other person’s prior express consent.

6. deleted

Article 36

Settlement finality

1. A CSD shall ensure that the securities settlement system it operates offers adequate protection to participants.

Member States shall designate and notify the securities settlement system operated by CSDs according to the procedures referred to in point (a) of Article 2 of Directive 98/26/EC.

3. A CSD shall ensure that each securities settlement system that it operates defines the moments of entry and of irrevocability of transfer orders in that securities settlement system in accordance with Articles 3 and 5 of Directive 98/26/EC.

4. A CSD shall disclose the rules governing the finality of transfers of funds and securities in a securities settlement system.

5. Paragraphs 3 and 4 shall apply without prejudice to the provisions applicable to CSD links and common settlement IT infrastructure provided under Article 45.

6. A CSD shall take all reasonable steps to ensure that, subject to the relevant rules referred to in paragraph 4, finality of transfers of securities and cash referred to in paragraph 4 is achieved either in real time or intra-day and in any case no later than by the end of the business day of the actual settlement date.

7. deleted

8. All securities transactions against cash between direct participants settled in the securities settlement systems operated by a CSD shall be settled on a DVP basis.

9. deleted

Article 37

Cash settlement

1. For transactions denominated in the currency of the country where the settlement takes place, a CSD shall settle the cash payments of its respective securities settlement system through accounts opened with the central bank of issue of the relevant currency whenever practical and available.

2. When it is not practical and available to settle in central bank accounts, as provided in paragraph 1, a CSD may offer to settle the cash payments for all or part of its securities settlement systems through accounts opened with a credit institution or through its own accounts. If a CSD offers to settle in accounts opened with a credit institution or through its own accounts, it shall do so in accordance with the provisions of Title IV.

   A CSD shall provide sufficient information to market participants to allow them to identify and evaluate the risks and costs associated with these services when requested by market participants.

3. deleted

4. deleted

5. deleted

Article 38

Participant default rules and procedures

1. For each securities settlement system it operates, a CSD shall have effective and clearly defined rules and procedures to manage the default of a participant ensuring that the CSD can take timely action to contain losses and liquidity pressures and continue to meet its obligations.

2. A CSD shall make its default rules and relevant procedures available to the public.

3. A CSD shall undertake with its participants and other relevant stakeholders periodic testing and review of its default procedures to ensure that they are practical and effective.

4. In order to ensure consistent application of this article, ESMA may in close cooperation with the members of the ESCB, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010.

Section 4

Prudential requirements

Article 39

General requirements

A CSD shall adopt a sound risk-management framework for comprehensively managing legal, business, operational and other risks, including measures to mitigate fraud and negligence.

Article 40

Legal risks

1. For the purpose of its authorisation and supervision, as well as for the information of its clients, a CSD shall have rules, procedures, and contracts that are clear and understandable for all the securities settlement systems it operates and all other services it provides.

2. A CSD shall design its rules, procedures and contracts so that they are enforceable in all relevant jurisdictions, including in the case of the default of the participant.

3. A CSD providing services under this regulation in different jurisdictions shall take all reasonable steps to identify and mitigate the risks arising from any potential conflicts of laws across jurisdictions.

Article 41

General business risk

A CSD shall have robust management and control systems and IT tools to identify, monitor and manage general business risks, including losses from poor execution of business strategy, negative cash flows, and large operating expenses.

Article 42

Operational risks

1. A CSD shall identify sources of operational risk, both internal and external, and minimise their impact through the deployment of appropriate IT tools, controls and procedures, including for all the securities settlement systems it operates.

2. A CSD shall maintain appropriate IT tools that ensure a high degree of security and operational reliability, and have adequate capacity. Information technology tools shall adequately deal with the complexity, variety and type of services and activities performed so as to ensure high standards of security, the integrity and confidentiality of the information maintained.

3. For all services it provides as well as for each securities settlement system it operates, a CSD shall establish, implement and maintain an adequate business continuity policy and disaster recovery plan to ensure the preservation of its services, the timely recovery of operations and the fulfilment of the CSD's obligations in the case of events that pose a significant risk of disrupting operations.

4. The plan referred to in paragraph 3 shall provide for the recovery of all transactions and participants' positions and ensure that critical IT systems can promptly resume operations from the time of disruption to allow the participants of a CSD to continue to operate with certainty and to complete settlement on the scheduled date. It shall include the setting up of a second processing site with sufficient resources, capabilities, functionalities and appropriate staffing arrangements.

5. The CSD shall plan and carry out a programme of tests of the arrangements referred to in paragraphs 1 to 4.

6. A CSD shall identify, monitor and manage the risks that key participants to the securities settlement systems it operates, as well as service and utility providers, and other CSDs or other market infrastructures might pose to its operations and notify immediately the competent and relevant authorities if such relevant risks are identified.

7. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the operational risks referred to in paragraphs 1 and 6, the methods to test, address or minimise those risks, including the business continuity policies and disaster recovery plans referred to in paragraphs 3 and 4 and the methods of assessment thereof.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 43

Investment policy

1. A CSD shall hold its financial assets at central banks, authorised credit institutions or authorised CSDs.

2. A CSD shall have prompt access to its assets, when required.

3. A CSD shall invest its financial resources only in cash or in highly liquid financial instruments with minimal market and credit risk. These investments shall be capable of being liquidated rapidly with minimal adverse price effect.

3a. The amount of capital, including retained earnings and reserves of a CSD which are not invested in accordance with paragraph 3 shall not be taken into account for the purposes of Article 44(1).

4. A CSD shall ensure that its overall risk exposure to any individual institution with which it holds its assets remains within acceptable concentration limits.

4a. ESMA shall, in close cooperation with EBA and the members of the ESCB, develop draft technical standards specifying the financial instruments that can be considered as highly liquid with minimal market and credit risk as referred to in paragraph 1, the appropriate timeframe for access to assets referred to in paragraph 2 and the concentration limits as referred to in paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 44

Capital requirements

1. Capital, together with retained earnings and reserves of a CSD, shall be proportional to the risks stemming from the activities of the CSD. It shall be at all times sufficient to:

(a) ensure that the CSD is adequately protected against operational, legal, custody, investment and business risks so that the CSD can continue providing services as a going concern;

(b) ensure an orderly winding-down or restructuring of the CSD's activities over an appropriate time span of at least six months under a range of stress scenarios.

2. A CSD shall maintain a plan for the following:

(a) the raising of additional capital should its equity capital approach or fall below the requirements provided in paragraph 1;

(b) the achieving of an orderly wind down or reorganisation of its operations and services in case the CSD is unable to raise new capital.

The plan shall be approved by the management body or an appropriate committee of the management body and updated regularly. Each update of the plan shall be provided to the competent authority. The competent authority may require the CSD to take additional measures or to make any alternative provision where the competent authority considers that the CSD's plan is insufficient.

3. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards specifying requirements regarding the capital, retained earnings and reserves of a CSD referred to in paragraph 1.

EBA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

Section 5

Requirements for CSD links

Article 45

CSD links

1. Before establishing a CSD link and on an ongoing basis once the CSD link is established, all CSDs concerned shall identify, assess, monitor and manage all potential sources of risk for themselves and for their participants arising from the link arrangement and take appropriate measures to mitigate them.

2. CSDs that intend to establish links shall submit an application for authorisation to the competent authority of the requesting CSD as required under point (d) of Article 17(1) or notify the competent and relevant authorities of the requesting CSD as required under Article 17(3a).

2a. deleted

2b. deleted

3. A CSD link shall provide adequate protection to the linked CSDs and their participants, in particular as regards possible credits taken by CSDs and the concentration and liquidity risks as a result of the link arrangement.

   A CSD link shall be supported by an appropriate contractual arrangement that sets out the respective rights and obligations of the linked CSDs and, where necessary, of the CSDs' participants. A contractual arrangement with cross-jurisdictional implications shall provide for an unambiguous choice of law that govern each aspect of the link's operations.

4. In case of a provisional transfer of securities between linked CSDs, retransfer of securities prior to the first transfer becoming final shall be prohibited.

5. A CSD that uses an indirect link or an intermediary to operate a CSD link with another CSD shall measure, monitor, and manage the additional risks arising from the use of that indirect link or intermediary and take appropriate measures to mitigate them.

6. Linked CSDs shall have robust reconciliation procedures to ensure that their respective records are accurate.

7. Links between CSDs shall permit DVP settlement of transactions between participants in linked CSDs, wherever practical and feasible. The reasons for any non-DVP settlement shall be notified to the relevant and competent authorities.

8. Interoperable securities settlement systems and CSDs that use a common settlement infrastructure shall establish identical moments of:

(a) entry of transfer orders into the system;

(b) irrevocability of transfer orders.

The securities settlement systems and CSDs referred to in the first subparagraph shall use equivalent rules concerning the moment of finality of transfers of securities and cash.

9. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the conditions as provided in paragraph 3 under which each type of link arrangement provides for adequate protection of the linked CSDs and of their participants, in particular when a CSD intends to participate in the securities settlement system operated by another CSD, the monitoring and managing of additional risks referred to in paragraph 5 arising from the use of intermediaries, the reconciliation methods referred to in paragraph 6, the cases where DVP settlement through CSD links is practical and feasible as provided in paragraph 7 and the methods of assessment thereof.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Powers is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation EU No 1095/2010.

Chapter IV

Access to CSDs

Section 1

Access of issuers to CSDs

Article 47

Freedom to issue in a CSD authorised in the EU

1. An issuer shall have the right to arrange for its securities admitted to trading on regulated markets or MTFs or traded on trading venues to be recorded in any CSD established in any Member State, subject to compliance by that CSD with conditions referred to in Article 21.

   Without prejudice to the issuer's right referred to in the first subparagraph, corporate law or other similar law of the Member State under which the securities are constituted shall continue to apply.

   Member States shall ensure that a list of key relevant provisions of their laws referred to in subparagraph 2 is compiled. Competent authorities shall communicate that list to ESMA within three months after the entry into force of this Regulation. ESMA shall publish the list within four months after the entry into force of this Regulation.

   The CSD may charge a fee for the provision of its services to issuers on a cost-plus basis, unless otherwise agreed by both parties.

2. When an issuer submits a request for recording its securities in a CSD, the latter shall treat such request promptly and in a non-discriminatory fashion and provide a response to the requesting issuer within three months.

3. A CSD may refuse to provide services to an issuer. Such refusal may only be based on a comprehensive risk analysis or if that CSD does not provide the services referred to in point 1 of Section A of the Annex in relation to securities constituted under the corporate law or other similar law of the relevant Member State.

4. Where a CSD refuses to provide services to an issuer, it shall provide the requesting issuer with full written reasons for its refusal.

In case of refusal, the requesting issuer shall have a right to complain to the competent authority of the CSD that refuses to provide its services.

The competent authority of that CSD shall duly examine the complaint by assessing the reasons for refusal provided by the CSD and shall provide the issuer with a reasoned reply.

The competent authority of the CSD shall consult the competent authority of the place of establishment of the requesting issuer on its assessment of the complaint. Where the authority of the place of establishment of the requesting issuer disagrees with that assessment, the matter shall be referred to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

Where the refusal by the CSD to provide its services to an issuer is deemed unjustified, the responsible competent authority shall issue an order requiring the CSD to provide its services to the requesting issuer.

5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the reasons which may justify a refusal by a CSD of access to issuers and the elements of the procedure referred to in paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraph 4.

ESMA shall submit those draft implementing technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Section 2

Access between CSDs

Article 48

Standard link access

A CSD shall have the right to become a participant of another CSD and set up a standard link with that CSD in accordance with Article 30 and subject to the prior notification of the CSD link provided under Article 17(3a).

Article 49

Customised link access

1. Where a CSD requests another CSD to develop special functions for having access to the latter, the receiving CSD may reject such request only based on risk considerations. It may not deny a request on the grounds of loss of market share.

2. The receiving CSD may charge a fee from the requesting CSD for making customised link access available on a cost-plus basis, unless otherwise agreed by both parties.

Article 50

Procedure for CSD links

1. When a CSD submits a request for access under Articles 48 and 49 to another CSD, the latter shall treat such request promptly and provide a response to the requesting CSD within three months.

2. A CSD may only deny access to a requesting CSD where such access would threaten the smooth and orderly functioning of the financial markets or cause systemic risk. Such refusal can be based only on a comprehensive risk analysis.

   Where a CSD refuses access, it shall provide the requesting CSD with full reasons for its refusal.

   In case of refusal, the requesting CSD has the right to complain to the competent authority of the CSD that has refused access.

   The competent authority of the receiving CSD shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting CSD with a reasoned reply.

   The competent authority of the receiving CSD shall consult the competent authority of the requesting CSD on its assessment of the complaint. Where the authority of the requesting CSD disagrees with the assessment provided, each of the two authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

   Where the refusal by the CSD to grant access to the requesting CSD is deemed unjustified, the competent authority of the receiving CSD shall issue an order requiring that CSD to grant access to the requesting CSD.

3. deleted

4. deleted

5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the elements of the procedures referred to in paragraphs 1 and 2.

   ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedures referred to in paragraphs 1 to 3.

   ESMA shall submit those draft implementing technical standards to the Commission by nine months from the date of entry into force of this Regulation.

   Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Section 3

Access between a CSD and another market infrastructure

Article 51

Access between a CSD and another market infrastructure

1. A CCP and a trading venue shall provide transaction feeds on a non-discriminatory and transparent basis to a CSD upon request by the CSD and may charge a fee for such transaction feeds to the requesting CSD on a cost-plus basis, unless otherwise agreed by both parties.

   A CSD shall provide access to its securities settlement systems on a non-discriminatory and transparent basis to a CCP or a trading venue and may charge a fee for such access on a cost-plus basis, unless otherwise agreed by both parties.

2. When a party submits a request for access to another party in accordance with paragraph 1, such request shall be treated promptly and a response to the requesting party shall be provided within three months.

3. The receiving party may only deny access where such access would affect the smooth and orderly functioning of the financial markets or cause systemic risk. It may not deny a request on the grounds of loss of market share.

A party that refuses access shall provide the requesting party with full written reasons for such refusal based on a comprehensive risk analysis. In case of refusal, the requesting party has the right to complain to the competent authority of the party that has refused access.

The responsible competent authority shall duly examine the complaint by assessing the reasons for refusal and shall provide the requesting party with a reasoned reply.

The responsible competent authority shall consult the competent authority of the requesting party on its assessment of the complaint. Where the authority of the requesting party disagrees with the assessment provided, each of the two authorities may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

Where the refusal by a party to grant access is deemed unjustified, the responsible competent authority shall issue an order requiring that party to grant access to its services within three months.

4. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the reasons which may justify a refusal of access and the elements of the procedure referred to in paragraph 3.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

5. ESMA shall, in close cooperation with the members of the ESCB, develop draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraphs 1 to 3.

ESMA shall submit those draft implementing technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the previous subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Title IV

Credit institutions designated to provide banking type of ancillary services for CSDs' participants

Article 52

Authorisation and designation to provide banking type of ancillary services

1. A CSD shall not itself provide any banking type of ancillary services set out in Section C of the Annex unless it has obtained an additional authorisation to provide such services in accordance with this Article.

2. A CSD that intends to settle the cash leg of all or part of its securities settlement system in accordance with Article 37(2) or otherwise wishes to provide any banking type of ancillary services referred to in paragraph 1 shall be authorised either:

(a) to designate for that purpose one or more authorised credit institutions as provided in Title II of Directive 2006/48/EC; or

(b) to offer itself such services under the conditions specified in this Article.

2a. deleted

3. Where a CSD seeks to provide any banking type of ancillary services from within the same legal entity as the legal entity operating the securities settlement system the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:

(a) the CSD shall be authorised as a credit institution as provided in Title II of Directive 2006/48/EC;

(b) the authorisation referred to in point (a) shall be used only to provide the banking type of ancillary services referred to in Section C of the Annex and not to carry out any other activities;

(c) the CSD meets the prudential requirements as set out under Article 57(1), (3) and (4) and supervisory requirements set out under Article 58;

(d) the CSD reports at least monthly to the competent authority and annually in its public Pillar 3 disclosure as required under Directive 2006/48/EC on the extent and management of intra-day liquidity risk in accordance with paragraph 6b; and

(e) the CSD has submitted to the competent authority an adequate recovery plan to ensure continuity of its critical operations, including in situations where liquidity or credit risk crystallises as a result of the provision of banking ancillary services;

4. Where a CSD seeks to provide any banking type of ancillary services from within a separate legal entity which is part of the same group of undertakings ultimately controlled by the same parent undertaking, the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:

(a) the separate legal entity shall be authorised as a credit institution as provided in Title II of Directive 2006/48/EC;

(b) the separate legal entity meets the prudential requirements as set out under Article 57(1), (3) and (4) and supervisory requirements set out under Article 58;

(c) the separate legal entity shall not itself carry out any of the core services referred to in Section A of the Annex; and

(d) the authorisation referred to in point a) shall be used only to provide the banking type of ancillary services referred to in Section C of the Annex and not to carry out any other activities;

(e) the separate legal entity reports at least monthly to the competent authority and annually in its public Pillar 3 disclosure as required under Directive 2006/48/EC on the extent and management of intra-day liquidity risk in accordance with paragraph 6b; and

(f) the separate legal entity has submitted to the competent authority an adequate recovery plan to ensure continuity of its critical operations, including in situations where liquidity or credit risk crystallises as a result of the provision of banking ancillary services from within a separate legal entity.

5. Where a CSD seeks to designate a credit institution which does not fall within the scope of paragraphs 3 or 4, the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:

(a) the credit institution shall be authorised as a credit institution as provided in Title II of Directive 2006/48/EC;

(b) the separate legal entity meets the prudential requirements as set out under Article 57(1), (3) and (4) and supervisory requirements set out under Article 58;

(c) the credit institution shall not itself carry out any of the core services referred to in Section A of the Annex; and

(d) the authorisation referred to in point a shall be used only to provide the banking type of ancillary services referred to in Section C of the Annex and not to carry out any other activities;

(e) the separate legal entity reports at least monthly to the competent authority and annually in its public Pillar 3 disclosure as required under Directive 2006/48/EC on the extent and management of intra-day liquidity risk in accordance with paragraph 6b; and

(f) the separate legal entity has submitted to the competent authority an adequate recovery plan to ensure continuity of its critical operations, including in situations where liquidity or credit risk crystallises as a result of the provision of banking ancillary services from within a separate legal entity.

5a. Paragraphs 4 and 5 shall not apply to credit institutions referred to in point (a) of paragraph 2 that offer to settle the cash payments for part of the CSD's securities settlement system, if the total value of such cash settlement through accounts opened with these credit institutions, calculated over the period of one year, is less than one per cent of the total value of all securities transactions against cash settled in the books of the CSD and does not exceed a maximum of EUR 2,5 billion per year.

The competent authority shall monitor at least once per year that the threshold defined in the first subparagraph is respected and report its findings to ESMA. Where the competent authority determines that the threshold has been exceeded, it shall require the CSD concerned to seek authorisation in accordance with paragraphs 4 and 5 of this Article. The CSD concerned shall have a period of 6 months to submit its application for authorisation.

6. The competent authority referred to in Article 53(1) may require a CSD to designate more than one credit institution, or to designate a credit institution in addition to providing services itself in accordance with paragraph 2(b) where it considers that the exposure of one credit institution to the concentration of risks under Article 57(3) and the (4) is not sufficiently mitigated. The designated credit institutions shall be considered as settlement agents.

6a. A CSD authorised to provide any banking type of ancillary services and a credit institution designated in accordance with paragraph 2(a) shall comply at all times with the conditions necessary for authorisation under this Regulation and shall, without delay, notify the competent authorities of any material changes affecting the conditions for authorisation.

6b. EBA shall after consulting ESMA, develop draft regulatory technical standards to further specify the reports required to enable effective monitoring of intra-day liquidity risk. Those draft regulatory technical standards shall reflect the internationally agreed monitoring indicators for intra-day liquidity management.

EBA shall submit those draft regulatory technical standards to the Commission by nine months after the entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first sub-subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

6c. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the details of the calculation of the threshold in paragraph 2a, in particular by taking into account the objective referred to in subparagraph 2 of paragraph 2a.

Article 53

Procedure for granting and refusing authorisation to provide banking type of ancillary services

1. The CSD shall submit its application for authorisation to designate a credit institution or to provide any banking type of ancillary service, as required under Article 52, to the competent authority of the Member State where it is established.

2. The application shall contain all the information that is necessary to enable the competent authority to satisfy itself that the CSD and where applicable the designated credit institution have established, at the time of the authorisation, all the necessary arrangements to meet their obligations set out in this Regulation. It shall contain a programme of operations setting out the banking type of ancillary services envisaged, the structural organisation of the relations between the CSD and the designated credit institutions where applicable and how that CSD or where applicable the designated credit institution intends to meet the prudential requirements as set out under Article 57(1), (3) and (4) and the other conditions set out in Article 52.

3. The competent authority shall apply the procedure under Article 15(3) and (6).

4. As from the moment when the application is considered to be complete, the competent authority shall transmit all information included in the application to the following authorities:

(a) The relevant authorities referred to in Article 11(1);

(b) the relevant competent authority referred to in Article 4 (4) of the Directive 2006/48/EC;

(c) the competent authorities in the Member State(s) where the CSD has established interoperable links with another CSD except where the CSD has established interoperable links referred to in Article 17(3a);

(d) the competent authorities in the host Member State where the activities of the CSD are of substantial importance for the functioning of the securities markets and the protection of investors within the meaning of Article 22(4);

(e) the competent authorities responsible for the supervision of the participants of the CSD that are established in the three Member States with the largest settlement values in the CSD's securities settlement system on an aggregate basis over a one-year period;

(f) ESMA and EBA.

The authorities referred to in points (a) to (e) of the first sub-paragraph shall issue a reasoned opinion on the authorisation within 30 days of receipt of the information referred to in the first sub-paragraph. Where an authority does not provide an opinion within that deadline it shall be deemed to have a positive opinion.

Where at least one of the authorities referred to in points (a) to (e) of the first sub-paragraph issues a negative reasoned opinion, the competent authority wishing to grant the authorisation shall within 30 days provide the authorities referred to in points (a) to (e) of the first subparagraph with a reasoned decision addressing the negative opinion.

Where 30 days after that decision has been presented a simple majority of the authorities referred to in points (a) to (e) of the first sub-paragraph issues a negative opinion and the competent authority still wishes to grant the authorisation the matter shall be referred to ESMA, for assistance under Article 31 point (c) of Regulation (EU) No 1095/2010.

Where 30 days after referral to ESMA the issue is not settled, the competent authority wishing to grant the authorisation shall take the final decision and provide a detailed explanation of its decision in writing to the authorities referred to in points (a) to (e) of the first sub-paragraph.

Where the competent authority wishes to reject the authorisation, the matter shall not be referred to ESMA.

Negative opinions shall state in writing the full and detailed reasons why the requirements laid down in this Regulation or other parts of Union law are not met.

5. ESMA shall, in close cooperation with the members of the ESCB and EBA, develop draft regulatory technical standards to specify the information that the CSD shall provide to the competent authority for the purpose of obtaining the relevant authorisations to provide the banking services ancillary to settlement.

ESMA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. ESMA shall, in close cooperation with the members of the ESCB and EBA, develop draft implementing technical standards to establish standard forms, templates and procedures for the consultation of the authorities referred to in paragraph 4 prior to granting authorisation.

ESMA shall submit those draft implementing technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1095/2010.

Article 54

Extension of the banking type of ancillary services

1. A CSD that intends to extend the banking type of ancillary services for which it designates a credit institution or that it provides itself in accordance with Article 52, shall submit a request for extension to the competent authority of the Member State where that CSD is established.

2. The request for extension shall be subject to the procedure under Article 53

Article 55

Withdrawal of authorisation

1. Without prejudice to any remedial actions or measures under Title V, the competent authority of the Member State where the CSD is established shall withdraw the authorisations referred to in Article 52 in any of the following circumstances:

(a) where the CSD has not made use of the authorisation within 12 months, expressly renounces the authorisation or where the designated credit institution has provided no services or performed no activity for the preceding six months;

(b) where the CSD has obtained the authorisation by making false statements or by any other unlawful means;

(c) where the CSD and the designated credit institution are no longer in compliance with the conditions under which authorisation was granted and have not taken the remedial actions requested by the competent authority within a set time frame;

(d) where the CSD and the designated credit institution have seriously and systematically infringed the requirements set out in this Regulation.

A CSD and the designated credit institution shall establish, implement and maintain an adequate procedure ensuring the timely and orderly settlement and transfer of the assets of clients and participants to another settlement agent in the event of a withdrawal of authorisation referred to in the first subparagraph.

2. As from the moment it becomes aware of one of the circumstances referred to in paragraph 1, the competent authority shall immediately consult the authorities referred to in Article 53(4) or, respectively, the authorities referred to in Article 53(4b), on the necessity to withdraw the authorisation.

3. ESMA, any relevant authority under point (a) of Article 11(1) and any authority referred to in Article 58(1) or, respectively, the authorities referred to in Article 53(4) may, at any time, request that the competent authority of the Member State where the CSD is established examine whether the CSD and the designated credit institution are still in compliance with the conditions under which the authorisation is granted.

4. The competent authority may limit the withdrawal to a particular service, activity, or financial instrument.

Article 56

CSD Register

1. Decisions taken by competent authorities under Articles 52, 54 and 55 shall be notified to ESMA.

2. ESMA shall introduce in the list that it is required to publish on its dedicated website in accordance with Article 19(3), the following information:

   (a) the name of each CSD which was subject to a decision under Articles 52, 54 and 55;

   (b) the name of each designated credit institution;

   (c) the list of banking type of ancillary services that a designated credit institution or a CSD authorised under Article 52 is authorised to provide for CSD's participants.

3. The competent authorities shall notify to ESMA those institutions that provide banking type of ancillary services according to requirements of national law 90 days from the entry into force of this Regulation.

Article 57

Prudential requirements applicable to credit institutions or CSDs authorised to provide banking type of ancillary services

1. A credit institution designated under Article 52 or a CSD authorised under Article 52 to provide banking type of ancillary services shall provide only the services set out in Section C of the Annex that are covered by the authorisation.

2. A credit institution designated under Article 52 or a CSD authorised under Article 52 to provide banking type of ancillary services shall comply with any present or future legislation applicable to credit institutions.

3. A credit institution designated under Article 52 or a CSD authorised to provide banking type of ancillary services shall comply with the following specific prudential requirements for the credit risks related to these services in respect of each securities settlement system:

   (a) it shall establish a robust framework to manage the corresponding credit risks;

   (b) it shall identify the sources of such credit risk, frequently and regularly, measure and monitor corresponding credit exposures and use appropriate risk-management tools to control these risks;

(c) it shall fully cover corresponding credit exposures to individual borrowing participants using collateral and other equivalent financial resources;

(d) if collateral is used to manage its corresponding credit risk, it shall accept collateral with low credit, liquidity and market risk; it may use other types of collateral in specific situations if an appropriate haircut is applied;

(e) it shall establish and apply appropriately conservative haircuts and concentration limits on collateral values constituted to cover the credit exposures referred to in point (c), taking into account the objectives of ensuring that collateral can be liquidated promptly without significant adverse price effects;

(g) it shall set limits on its corresponding credit exposures;

(h) it shall analyse and plan for how to address any potential residual credit exposures, adopt rules and procedures to implement such plans;

(i) it shall provide credit only to participants that have cash accounts with it;

(j) it shall provide for effective reimbursement procedures of intraday credit and discourage overnight credit through deterrent sanctioning rates.

4. A credit institution designated under Article 52 or a CSD authorised under Article52, to provide banking type of ancillary services shall comply with the following specific prudential requirements for the liquidity risks related to these services in respect of each securities settlement system:

(a) it shall have a robust framework to measure, monitor, and manage its liquidity risks for each currency of the security settlement system for which it act as settlement agent;

(b) it shall measure and monitor on an ongoing and timely basis, and at least daily, its liquidity needs and the level of liquid assets it holds; in doing so, it shall determine the value of its available liquid assets taking into account appropriate haircuts on these assets;

(c) it shall have sufficient liquid resources in all relevant currencies for a timely provision of settlement services under a wide range of potential stress scenarios including, but not limited to the liquidity risk generated by the default of at least one participant, including their parent undertakings and subsidiaries, to which it has the largest exposures;

(d) it shall mitigate the corresponding liquidity risks with qualifying liquid resources in each currency such as cash at the central bank of issue and at other creditworthy financial institutions, committed lines of credit or other similar arrangements and highly marketable collateral or investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions. It shall identify, measure and monitor its liquidity risk stemming from the various financial institutions used for the management of its liquidity risks;

(e) whenever prearranged funding arrangements are used, it shall only select creditworthy financial institutions as liquidity providers; it shall establish and apply appropriate concentration limits for each of the corresponding liquidity providers including its parent undertaking and subsidiaries;

(f) it shall determine and test the sufficiency of the corresponding resources by regular and rigorous stress testing;

(g) it shall analyse and plan for how to address any unforeseen and potentially uncovered liquidity shortfalls, and adopt rules and procedures to implement such plans;

(i) where practical and available, without prejudice to eligibility rules of central bank, it shall have access to central bank accounts and other central bank services to enhance its management of liquidity risks and Union credit institutions shall deposit the corresponding cash balances on dedicated accounts with Union central banks of issue;

(j) it shall have prearranged and highly reliable arrangements to ensure that it can timely liquidate, the collateral provided to it by a defaulting client.

5. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to specify details for the monitoring, the measuring and the management of the credit and liquidity risks referred to in paragraphs 3 and 4.

EBA shall submit those draft regulatory technical standards to the Commission by nine months from the date of entry into force of this Regulation.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

Article 58

Supervision of credit institutions and CSDs authorised to provide banking type of ancillary services

1. The competent authority referred to in Directive 2006/48/EC is responsible for the authorisation and supervision under the conditions provided in that directive of the credit institutions or CSDs authorised to provide banking type of ancillary services and as regards their compliance with Article 57(3) and (4) of this Regulation.

   In case of CSDs authorised to provide banking services under Article 53, the competent authority referred to in the first subparagraph shall regularly, and at least once a year, inform the competent authority of the CSD and the authorities referred to in Article 53(4b), of the results, including any remedial actions or penalties, of its supervision under this paragraph.

2. The competent authority of the CSD in consultation with the competent authority referred to paragraph 1 shall review and evaluate regularly at least on an annual basis whether the designated credit institutions comply with Article 57(1), and whether all the necessary arrangements between the designated credit institutions and the CSD allow them to meet their obligations set out in this Regulation.

   In case of CSDs authorised to provide banking services under Article 52, the competent authority of the CSD in consultation with the competent authority referred to in Directive 2006/48/EC shall review and evaluate at least on an annual basis whether those CSDs comply with Article 57(1). The competent authority of the CSD shall regularly, and at least once a year, inform the authorities referred to in Article 53(4b) of the results, including any remedial actions or penalties, of its review and evaluation under this paragraph.

3. In case of designated authorised credit institutions under Article 52, in view of the protection of the participants to the securities settlement systems it operates, a CSD shall ensure that it has access from the credit institution it designates to all necessary information for the purpose of this Regulation and it shall report any breaches thereof to the competent authorities referred to in paragraph 1 and in Article 9.

4. In order to ensure consistent, efficient and effective supervision within the Union of credit institutions and CSDs authorised to provide banking type of ancillary services, EBA, may in close cooperation with ESMA and the members of the ESCB, issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010.

Title V

Sanctions

Article 59

Administrative sanctions and measures

1. Without prejudice to right for Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative sanctions and measures applicable in the circumstances defined in Article 60 to the persons responsible for infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The administrative sanctions and measures shall be effective, proportionate and dissuasive.

Member States may decide not to lay down rules for administrative sanctions on infringements that are already subject to national criminal law at the latest 24 months after the entry into force of this Regulation. In this case, Member States shall communicate to the Commission and ESMA the relevant criminal law rules.

By 24 months after the entry into force of this Regulation, the Member States shall notify the rules referred to in the first subparagraph to the Commission and ESMA. They shall notify the Commission and ESMA without delay of any subsequent amendments thereto.

2. The competent authorities shall be able to apply administrative sanctions and measures, to CSDs, designated credit institutions, and, subject to the conditions laid down in the national law, the members of their management bodies and any other persons who effectively control their business as well as to any other legal or natural person who under national law is held responsible for a breach.

3. In the exercise of their sanctioning powers in the circumstances defined in Article 60 competent authorities shall cooperate closely to ensure that the administrative sanctions and measures produce the desired results of this Regulation and coordinate their action in order to avoid any duplication or overlap when applying administrative sanctions and measures to cross border cases in accordance with Article 12.

4. Without prejudice to the supervisory powers of competent authorities, in case of a breach referred to in Article 60, the competent authorities shall, in accordance with this Regulation and national law, have the power to impose at least the following administrative sanctions and measures:

   (a) a public statement which indicates the person responsible for the breach and the nature of the breach;

   (b) an order requiring the person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;

   (c) withdrawal of the authorisations granted under Articles 14 and 52, in accordance with Articles 18 and 55;

(d) a temporary ban against any member of the institution's management body or any other natural person, who is held responsible, to exercise functions in the institution;

(e) administrative pecuniary sanctions of up to at least twice the amounts of the profit gained as a result of a breach where those amounts can be determined;

(f) in respect of a natural person, administrative pecuniary sanctions of up to at least EUR 5 million or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of adoption of this Regulation;

(g) in respect of a legal person, administrative pecuniary sanctions of up to at least EUR 20 million or up to 10 % of the total annual turnover of that person in the preceding business year; where the undertaking is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking of the group in the preceding business year.

5. Competent authorities may have other sanctioning powers in addition to those referred in paragraph 4 and may provide for higher levels of administrative pecuniary sanctions than those established in that paragraph.

6. deleted

7. Competent authorities shall exercise their functions and powers in any of the following ways::

(a) directly;

(b) in collaboration with other authorities;

(c) under their responsibility by delegation to entities to which tasks have been delegated according to this Regulation; or

(d) by application to the competent judicial authorities.

Article 59a

Publication of administrative sanctions

1. Member States shall ensure that the competent authorities publish on their official website at least any non-appealable administrative sanction imposed for breach this Regulation without undue delay after the person sanctioned is informed of that decision, in particular of the type and nature of the breach and the identity of a natural or legal person on whom the sanction is imposed.

   Where Member States permit publication of appealable sanctions, competent authorities shall, without undue delay, also publish on their official website information on the appeal status and outcome thereof.

2. Competent authorities shall publish the sanctions on an anonymous basis, in a manner which is in conformity with national law, in any of the following circumstances:

   a) where, in case the sanction is imposed on a natural person, publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication;

   b) where publication would jeopardise the stability of financial markets or an on-going investigation;

   c) where publication would cause, insofar as it can be determined, disproportionate damage to the institutions or individuals involved.

Alternatively, in these cases, the publication of the data in question may be postponed for a reasonable period of time, if it is foreseen that within that period the reasons for anonymous publication shall cease to exist or competent authorities may decide not to publish the decision to impose a sanction or measure at all whenever anonymous publication is not sufficient to achieve the relevant objectives in the circumstances referred to in the first subparagraph.

3. Competent authorities shall ensure that any publication, in accordance with this Article, shall remain on their official website for a period of at least five years after its publication. Personal data contained in the publication shall only be kept on the official website of the competent authority for the period which is necessary in accordance with the applicable data protection rules.

Article 60

Infringements

1. A breach of one or more of the following provisions shall be regarded as an infringement of this Regulation:

(a) provision of services set out in Sections A, B and C of the Annex in breach of Articles 14, 23 and 52;

(b) obtaining the authorisations required under Articles 14 and 52 by making false statements or by any other unlawful means as provided in point (b) of Article 18(1), and point (b) of Article 55(1);

(c) failure of CSDs to hold the required capital in breach of Article 44(1);

(d) failure of CSDs to comply with the organisational requirements in breach of Articles 24 to 28;

(e) failure of CSDs to comply with the conduct of business rules in breach of Articles 29 to 32;

(f) failure of CSDs to comply with the requirements for CSD services in breach of Articles 34 to 38;

(g) failure of CSDs to comply with the prudential requirements in breach of Articles 40 to 44;

(h) failure of CSDs to comply with the requirements for CSD links in breach of Article 45;

(i) abusive refusals by CSDs to grant different types of access in breach of Articles 47 to 51;

(j) failure of designated credit institutions to comply with the specific prudential requirements related to credit risks in violation of Article 57(3);

(k) failure of designated credit institutions to comply with specific prudential requirements related to liquidity risks in violation of Article 57(4).

Article 61

Effective application of sanctions

1. Member States shall ensure that, when determining the type and level of administrative sanctions or measures, the competent authorities shall take into account all relevant circumstances, including, where appropriate:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the responsible person;

(c) the size and the financial strength of the responsible person, for example as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;

(d) the importance of the profits gained, losses avoided by the responsible person or the losses for third parties derived from the breach, insofar as they can be determined;

(e) the level of cooperation of the responsible person with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;

(f) previous breaches by the responsible person.

2.

Article 62

Reporting of violations

1. Member States shall ensure that competent authorities establish effective mechanisms to encourage reporting of potential or actual breaches of this Regulation to competent authorities.

2. The mechanisms referred to in paragraph 1 shall include at least:

   (a) specific procedures for the receipt and investigation of reports of breaches;

   (b) appropriate protection for employees of institutions who report breaches committed within the institution against retaliation, discrimination or other types of unfair treatment at a minimum;

   (c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach in compliance with the principles laid down in Directive 95/46/EC;

   (d) clear rules that ensure that the confidentiality of the person who reports the breaches committed within the institution is guaranteed in all cases, unless its disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.

3. Member States shall require institutions to have in place appropriate procedures for their employees to report breaches internally through a specific, independent and autonomous channel.

Such a channel may also be provided through arrangements provided for by social partners. The same protection as referred to in points (b), (c) and (d) of paragraph 2 shall apply.

Article 62a

Right of appeal

Member Sates shall ensure that decisions and measures taken in pursuance of this Regulation are subject to the right of appeal. The same shall apply where no decision is taken, within six months of its submission, in respect of an application for authorisation which contains all the information required under the provisions in force.

Title VI

Delegated acts, transitional provisions, amendment to Directive 98/26/EC and final provisions

Article 63

Delegation of powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning Articles 2(2), 7(7c) and 22(6).

Article 64

Exercise of the delegation

1. The power to adopt delegated acts is conferred to the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 63 shall be conferred for an indeterminate period of time from the date of entry into force of this Regulation.

3. The delegation of powers referred to in Article 63 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 63 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

Article 65

Implementing powers

The Commission shall be empowered to adopt implementing acts under Article 23(6). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 66(2).

Article 66

Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC[19]. That Committee shall be a committee in the meaning of Regulation (EU) No 182/2011.

2. Article 5 of Regulation (EU) No 182/2011 shall apply when the Commission exercises the implementing powers conferred by this Regulation.

[19] OJ L 191, 13.7.2001, p. 45.

Article 67

Transitional provisions

0. The competent authorities referred to in Article 9 shall communicate to ESMA those institutions that operate as CSDs within 90 days from the date of entry into force of this Regulation.

1. CSDs shall apply for all authorisations that are necessary for the purposes of this Regulation and shall notify the relevant CSD links within six months from the date of entry into force of all the regulatory technical standards under Articles 15, 24, 42, 44, 45, and, whenever relevant, 53, and 57.

2. Within six months from whichever the latest of the date of entry into force of the regulatory technical standards under Articles 11, 15, 23, 24, 42, 44, 45, and, whenever relevant, 53, and 57 and the Commission's decision referred to in Article 23(6), a third country CSD shall apply for recognition from ESMA where it intends to provide its services on the basis of Article 23.

3. deleted

4. Until the decision is made under this Regulation on the authorisation or recognition of CSDs and of their activities, including CSD links, the respective national rules on authorisation and recognition of CSDs shall continue to apply.

4a. The CSDs operated by the institutions referred to in Article 1(4) shall comply with the requirements of this Regulation at the latest within one year from the date of entry into force of the regulatory technical standards referred to in paragraph 1.

Article 68

Amendment to Directive 98/26/EC

1. The third indent of the first subparagraph of point (a) of Article 2 of Directive 98/26/EC is replaced by the following:

"- designated, without prejudice to other more stringent conditions of general application laid down by national law, as a system and notified to the European Securities and Markets Authority by the Member State whose law is applicable, after that Member State is satisfied as to the adequacy of the rules of the system.".

2. Six months after the entry into force of this Regulation at the latest, Member States shall adopt and publish and communicate to the Commission measures necessary to comply with the third indent of the first subparagraph of point (a) of Article 2 of Directive 98/26/EC, as amended by this Regulation.

Article 68a

Amendment to Regulation (EU) No 236/2012

Article 15 of Regulation (EU) No 236/2012 is deleted.

Article 68b Application of Directive [MiFID]

Directive [MiFID] should not apply to CSDs authorised in accordance with Article 14 of this Regulation whenever they provide the services explicitly listed in Sections A and B of the Annex of this Regulation.

However, Directive [MiFID], with the exception of Articles 5 to 8, Article 9(1) to (5), (7) and (8) and Articles 10 to 13, should also apply to CSDs authorised in accordance with Article 14 of this Regulation if whenever they provide or perform one or more investment services or activities in addition to the provision of their ancillary services referred to in Section B of the Annex of this Regulation [CSDR].'

Article 69
Reports and review

1. ESMA, in cooperation with EBA and the authorities referred to in Articles 9 and 11, shall submit annual reports to the Commission providing assessments of trends, potential risks and vulnerabilities, and, where necessary, recommendations of preventative or remedial action in the markets for services covered by this Regulation. Such report shall include at least:

(a) An assessment of settlement efficiency for domestic and cross-border operations for each Member State based on the number and volume of settlement fails, amount of penalties referred to in Article 7(4), number and volumes of buy-in transactions referred to in Article 7(4) and any other relevant criteria;

(b) An assessment measuring settlement which does not take place in the securities settlement systems operated by CSDs based on the number and volume of transactions and any other relevant criteria;

(c) An assessment of the cross-border provision of services covered by this Regulation based on the number and types of CSD links, number of foreign participants to the securities settlement systems operated by CSDs, number and volume of transactions involving such participants, number of foreign issuers recording their securities in a CSD in accordance with Article 47 and any other relevant criteria;

(d) A report on handling access requests in Articles 47, 50 and 51 to identify reasons for the rejection of access requests and how they can be addressed by CSDs, CCPs, trading venues and their competent authorities to allow acceptance of such requests;

(e) A report on implementation of the exemption under Article 52(5a) including the assessment of the thresholds referred to in the Article 52 and the calculation of these thresholds;

(f) A report on handling the applications submitted in accordance with the procedures referred to in Article 21 paragraph 2 to 6 and Article 23 paragraph 2 to 7 including the assessment of the scope of application of these procedures as referred to in Article 21 paragraph (1b) and Article 23 paragraph (1b) against new trends, potential risks and vulnerabilities.

2. The reports referred to in paragraph 1 covering a calendar year shall be communicated to the Commission before 30 April of the next calendar year.

Article 70

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. Article 5(2) shall apply from 1 January 2015.

By way of exception from the first subparagraph, in case of a trading venue that has access to a CSD referred to in Article 28(5), Article 5(2) shall apply as follows:

(a) at least six months before such a CSD outsources its activities to the relevant public entity, and

(b) from 1 January 2016 at the latest.

3. Article 3(1) shall apply from 1 January 2025.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7.3.2012

For the European Parliament	For the Council
The President	The President

ANNEX

List of Services

Section A

Core services of central securities depositories

1. Initial recording of securities in a book-entry system through initial crediting and subsequent crediting and debiting of securities accounts ('notary service');

2. Providing and maintaining securities accounts at the top tier level ('central maintenance service');

3. Operating a securities settlement system ('settlement service').

Section B

Non-banking type of ancillary services of central securities depositories that do not entail credit or liquidity risks

Services provided by the CSDs that contribute to enhancing the safety, efficiency and transparency of the securities markets, which may include but is not restricted to:

1. Services related to the settlement service, such as:

   (a) Organising a securities lending mechanism, as agent among participants of a securities settlement system;

   (b) Providing collateral management services, as agent for participants of a securities settlement system;

   (c) Settlement matching, order routing, trade confirmation, trade verification.

2. Services related to the notary and central maintenance services, such as:

   (a) Services related to shareholders' registers;

   (b) Processing of corporate actions, including tax, general meetings and information services;

   (c) New issue services, including allocation and management of ISIN codes and similar codes;

   (d) Order routing and processing, fee collection and processing and related reporting;

3. Establishing CSD links, maintaining securities accounts in relation to the settlement service, collateral management and other ancillary services.

4. Any other services, such as:

(a) Providing general collateral management services as agent;

(b) Providing regulatory reporting;

(c) Providing data and statistics to market/census bureaus;

(d) Providing IT services.

Section C

Banking type of ancillary services

Banking type of services directly related to core or ancillary services listed in Sections A and B, such as:

(a) Providing cash accounts to, and accepting deposits from, participants in a securities settlement system and holders of securities accounts, within the meaning of point 1 of Annex 1 of Directive …/…/EU [new CRD];

(b) Providing cash credit for reimbursement no later than the following business day, cash lending to pre-finance corporate actions and lending securities to holders of securities accounts, within the meaning of point 2 of Annex 1 of Directive …/…/EU [new CRD];

(c) Payment services involving processing of cash and foreign exchange transactions, within the meaning of point 4 of Annex 1 of Directive …/…/EU [new CRD];

(ca) Guarantees and commitments related to securities lending and borrowing, within the meaning of point 6 of Annex 1 of Directive …/…/EU [new CRD];

(cb) Treasury activities involving foreign exchange and transferable securities related to managing participants' long balances, within the meaning of points 7(b) and (e) of Annex 1 of Directive …/…/EU [new CRD].