Council of the European Union

Brussels, 14 November 2023
(OR. en)

15014/23

Interinstitutional File: 2022/0074(COD)

CODEC 2044
EF 334
ECOFIN 1124
PE 134

INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories - Outcome of the European Parliament's first reading (Brussels, 8 to 9 November 2023)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure[1], a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Economic and Monetary Affairs (ECON), Irene TINAGLI (S&D, IT), presented on behalf of ECON a compromise amendment (amendment number 1) to the abovementioned proposal for a Regulation, for which Johan VAN OVERTVELDT (ECR, BE) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above.

[1] OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 9 November 2023, the plenary adopted the compromise amendment (amendment number 1) to the abovementioned proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto[2].

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

---

[2] The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics.*** The symbol " ▌ " indicates deleted text.

P9_TA(2023)0389

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

European Parliament legislative resolution of 9 November 2023 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories (COM(2022)0120 – C9-0118/2022 – 2022/0074(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2022)0120),

– having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0118/2022),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the European Central Bank of 28 July 2022[1],

– having regard to the opinion of the European Economic and Social Committee of 14 July 2022[2],

[1] OJ C 367, 26.9.2022, p. 3.
[2] OJ C 443, 22.11.2022, p. 87.

– having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 12 July 2023 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to Rule 59 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs (A9-0047/2023),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P9_TC1-COD(2022)0074

Position of the European Parliament adopted at first reading on 9 November 2023 with a view to the adoption of Regulation (EU) 2023/… of the European Parliament and of the Council amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories *and amending Regulation (EU) No 236/2012*

(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 Central Bank[5],

Having regard to the opinion of the European Economic and Social Committee[6],

Acting in accordance with the ordinary legislative procedure[7],

---

5 OJ C *367, 26. 9. 2022, p. 3*.

6 OJ C *443, 22.11.2022, p. 87.*

7 Position of the European Parliament of 9 November 2023.

Whereas:

(1) Regulation (EU) No 909/2014 of the European Parliament and of the Council[8] standardises the requirements for the settlement of financial instruments and the rules on the organisation and conduct of central securities depositories (CSDs) to promote safe, efficient and smooth settlement. That Regulation introduced shorter settlement periods, settlement discipline measures, strict organisational, conduct of business and prudential requirements for CSDs, increased prudential and supervisory requirements for CSDs and other institutions providing banking services that support securities settlement, and ***a*** regime allowing authorised CSDs to provide their services across the Union.

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

[8] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

(3) Efficient and resilient post-trading infrastructures are essential elements for a well-functioning capital markets union and increase the efforts to support investment, growth and jobs in line with the political priorities of the Commission. For that reason, a review of Regulation (EU) No 909/2014 is one of the key actions of the Commission Capital Markets Union Action Plan set out in the communication of the Commission of 24 September 2020 on a Capital Markets Union for people and businesses-new action plan.

(4) In 2019, the Commission carried out a targeted consultation on the application of Regulation (EU) No 909/2014. The Commission also received input from the European Supervisory Authority (European Securities and Markets Authority) (ESMA) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[9] and the European System of Central Banks (ESCB). The feedback received indicated that stakeholders support and consider relevant the objective of Regulation (EU) No 909/2014 to promote safe, efficient and smooth settlement of financial instruments, and that no major overhaul of that Regulation was necessary. The report submitted by the Commission ***to the European Parliament and the Council*** in accordance with Regulation (EU) No 909/2014 was published on 1 July 2021. Although the provisions of that Regulation are not yet all fully applicable, the report identified areas for which targeted action is necessary to ensure that the objective of that Regulation is reached in a more proportionate, efficient and effective manner.

[9] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

(5) CSDs should be able to specify, in their internal rules, which events other than insolvency proceedings constitute the default of a participant. In general, such events relate to a failure to complete a transfer of funds or securities in accordance with the terms and conditions and the internal rules of the securities settlement system.

(6) Regulation (EU) No 909/2014 introduced rules on settlement discipline to prevent and address failures in the settlement of securities transactions and therefore ensure the safety of transaction settlement. ***Additional measures and tools to improve settlement efficiency in the Union, such as shaping of transaction sizes or partial settlement, should be explored. Accordingly, ESMA should, in close cooperation with the members of the ESCB, review industry best practices, both within the Union and internationally, with a view to identifying all relevant measures that could be implemented by settlement systems or market participants, and develop updated draft regulatory technical standards on measures to prevent settlement fails in order to increase settlement efficiency.***

(7) The rules introduced by Regulation (EU) No 909/2014 include, in particular, reporting requirements, a cash penalties regime and mandatory buy-ins. ***Currently, only the reporting requirements and the cash penalties regime apply. The accumulated*** experience in applying the ***cash penalties regime as well as*** the development and specification of the ***settlement discipline*** framework, in particular in Commission Delegated Regulation (EU) 2018/1229[10], have allowed all interested parties to better understand that framework and the challenges its application ***gives*** rise to. In ***particular***, the scope of the cash penalties and of the mandatory ***buy-in process set out in*** Regulation (EU) No 909/2014 should be clarified***.*** ***In order to distinguish the requirements relating to*** cash penalties ***from those relating to*** mandatory buy-ins***, such requirements should be laid down in separate articles***.

10 Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 230, 13.9.2018, p. 1).

(8) Settlement fails the underlying cause of which is not attributable to the participants and operations that are not considered as trading should not be subject to cash penalties or mandatory buy-ins, since the application of those measures to such settlement fails and operations would not be practicable or could lead to detrimental consequences for the market. For mandatory buy-ins, that is likely to be the case for certain primary market transactions, securities financing transactions, corporate actions, reorganisations or the creation and redemption of fund units, realignment operations or other types of transactions that render the buy-in process unnecessary. Similarly, the settlement discipline measures should not apply to failing participants against which insolvency proceedings have been opened, or where central counterparties (CCPs) are the failing participants, except for transactions entered into by a CCP where it does not interpose itself between counterparties.

(9) Cash penalties should be calculated for each business day for as long as the fail persists. The ***possibility of a*** negative interest ***rate environment*** should be taken into account when defining the parameters for the calculation of cash penalties. Eliminating any adverse incentives to fail that could arise in a low or negative interest rate environment is necessary in order to avoid unintended effects on the non-failing participant. ***The Commission should, on a regular basis, review the parameters used to calculate cash penalties and should, as a result, consider potential changes to the method used for the calculation of those penalties, such as setting progressive rates.***

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

(11) When considering whether to introduce mandatory buy-ins, the Commission should, in addition to consulting the European Systemic Risk Board, request ESMA to provide a cost-benefit analysis. Based on that cost-benefit analysis, the Commission should be able to introduce mandatory buy-ins by means of an implementing act. That implementing act should specify to which financial instruments or categories of transactions mandatory buy-ins are to be applied.

(12) ***Applying buy-ins to a chain of*** transactions on the same financial instrument ***carried out by*** counterparties ***that are participants of a CSD*** could trigger unnecessary duplicative costs and affect the liquidity of the financial instrument***. To avoid such consequences***, a pass-on mechanism should be available to participants in such transactions. Each participant involved in the transaction chain should be allowed to pass on a buy-in obligation to the next participant.

(13) Mandatory buy-ins allow for the payment of the difference between ***a financial instrument's*** buy-in price and ***its*** original trade price to be made by the seller to the purchaser only where that buy-in reference price is higher than the original trade price. That asymmetry ▌ would unduly benefit the purchaser in the event that the buy-in reference price is lower than the original trade price. ***It would also make the pass-on mechanism impossible to apply since, notably, the amounts to be paid can differ between each step in the chain of transactions, depending on when each intermediary executes the buy-in. Therefore, that asymmetry should be removed*** to ensure that the trading parties are restored to the economic terms ***that would have applied*** had the original transaction taken place. ▌

(14) The mandatory buy-in procedures under Regulation (EU) No 236/2012 of the European Parliament and of the Council[11] ceased to apply on 1 February 2022, as a result of the entry into force of Delegated Regulation (EU) 2018/1229. However, the mandatory buy-in procedures under Regulation (EU) No 236/2012 were independent of the regime under Regulation (EU) No 909/2014 and should have continued to apply. Therefore, it is appropriate to reinstate in Regulation (EU) No 236/2012 the provision governing mandatory buy-ins. Transactions that will fall within the scope of that provision should not be subject to mandatory buy-ins under Regulation (EU) No 909/2014.

(15) Transactions not cleared by a CCP might be uncollateralised and therefore each trading venue member or trading party bears the counterparty risk. Moving that risk to other entities, such as participants of a CSD, would force the participants to cover their exposure to counterparty risk with collateral, which could lead to a disproportionate increase in the costs of securities settlement. The failing trading venue member or the failing trading party, as applicable, should therefore bear responsibility for the payment of the price difference, the cash compensation and the buy-in costs.

---

[11] ***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 (OJ L 86, 24.3.2012, p. 1).***

(16) Where ▌ mandatory buy-ins apply, it should be possible for the Commission to temporarily suspend their application in certain exceptional situations. Such a suspension should be possible for specific categories of financial instruments where necessary to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the Union. Such a suspension should be proportionate to those aims.

(17) ESMA should develop updated draft regulatory ***technical*** standards in order to take into account the ***amendments*** introduced by this Regulation to Regulation (EU) No 909/2014. That would enable the Commission to make any necessary corrections or amendments with a view to clarifying the requirements set out in such existing regulatory technical ***standards. ESMA should also develop draft regulatory technical standards to specify the details of the pass-on mechanism, which types of transactions render the buy-in process unnecessary and how to take into account the specificities of retail investors when executing mandatory buy-ins.***

(18) Where a CSD does not carry out a settlement activity before the beginning of the authorisation process, the criteria determining which relevant authorities should be involved in such authorisation process should take into account the anticipated settlement activity to ensure that the views of all relevant authorities potentially interested in the activities of that CSD are taken into account.

(19) Where a new CSD applies for authorisation, but compliance with certain requirements cannot be assessed because the CSD is not yet operational, the competent authority should be able ***to grant*** the authorisation where it can reasonably be assumed ***that that CSD will comply with Regulation (EU) No 909/2014*** when it effectively ***commences*** its activities. ***That assessment is particularly relevant as regards the use of distributed ledger technology and the application of Regulation (EU) 2022/858 of the European Parliament and of the Council[12].***

[12] ***Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, p. 1)***

(20) While Regulation (EU) No 909/2014 requires national supervisors to cooperate with and involve relevant authorities, national supervisors are not required to inform ▌ those relevant authorities whether or how their views have been considered in the outcome of the authorisation process or whether additional issues have been identified in the course of ***regular*** reviews and evaluations. The relevant authorities should therefore be able to issue reasoned opinions on the authorisation of CSDs and the review and evaluation process. The competent authorities should take into account such opinions or explain ▌ why such opinions were not followed. ***The competent authorities should inform the relevant authorities, as well as other authorities consulted, of the results of the authorisation process. The competent authorities should inform the relevant authorities, ESMA and the college of the results of the review and evaluation process.***

(21) The provisions regarding the timelines for the authorisation of a CSD to outsource core services to a third party or to extend its activities to certain other services should be amended to remove unintended inconsistencies between those timelines and the timelines of the general authorisation process.

(22) Regular reviews and evaluations of CSDs by competent authorities are necessary to ensure that CSDs continue to have in place appropriate arrangements, strategies, processes and mechanisms to evaluate the risks to which ***CSDs are***, or might be, exposed or which could constitute a threat to the smooth functioning of securities markets. Experience has, however, shown that an annual review and evaluation is disproportionately burdensome for both CSDs and competent authorities and of limited added value. Subject to a minimum frequency of once every 3 years, competent authorities should be able to set a more appropriate frequency ***for the review and evaluation*** of each CSD in order to alleviate that burden and avoid a duplication of information from one ***exercise to the next. Furthermore, in assessing what would be the appropriate frequency and depth of the review and evaluation, the competent authority should consider what would be proportionate, taking into account the size, systemic importance, risk profile, nature, scale and complexity of the CSD***. The supervisory capacities of competent authorities and the objective of safeguarding financial stability should, however, not be undermined. ***Therefore, competent authorities should continue to have the possibility to perform any additional review and evaluation. CSDs providing banking-type ancillary services are also subject to review and evaluation under Directive 2013/36/EU of the European Parliament and of the Council[13].***

[13] ***Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).***

(23) A CSD should be prepared to face scenarios that could potentially prevent it from being able to provide its critical operations and services as a going concern and should assess the effectiveness of a full range of options for recovery or orderly wind-down ***in those scenarios***. Regulation (EU) No 909/2014 introduced requirements in that respect, providing in particular that a competent authority is to require the CSD to submit an adequate recovery plan and is to ensure that an adequate resolution plan is established and maintained for each CSD. No harmonised resolution regime on which a resolution plan could be based, however, currently exists. CSDs that are authorised to offer banking-type ancillary services fall within the scope of Directive 2014/59/EU of the European Parliament and of the Council[14]. However, no specific provisions exist for CSDs which are not authorised to provide such services and therefore are not considered credit institutions under Directive 2014/59/EU with the obligation to have recovery and resolution plans in place. Clarifications should therefore be introduced with a view to better aligning the requirements applicable to CSDs taking into account the absence of a Union framework for the recovery and resolution for all CSDs. ***In order to avoid a duplication of requirements, where a recovery and resolution plan has been drawn up for a CSD under Directive 2014/59/EU, that CSD should not be required to prepare plans on recovery or orderly wind-down under Regulation (EU) No 909/2014, insofar as the information to be included in those plans has been already provided. However, such CSDs should provide their competent authority with the recovery plans drawn up under that Directive.***

14 Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

(24) The procedure set out in Regulation (EU) No 909/2014 regarding the provision by ***a CSD*** of notary and central maintenance services in relation to financial instruments constituted under the law of a Member State other than ***the law of the Member State where the CSD is authorised*** has proven to be burdensome and some of its requirements are unclear. That procedure has resulted in a disproportionately costly and lengthy process for CSDs. The procedure should therefore be ***clarified and*** simplified to better dismantle the barriers to cross-border settlement ***so as to enable*** authorised CSDs to fully benefit from the freedom to provide services within the Union. ***Without prejudice to the measures that CSDs need to take to allow their users to comply with national law, it should be clear which is the relevant legal framework for the assessment that a CSD is required to perform under Regulation (EU) No 909/2014 in relation to the measures that it intends to take to allow its users to comply with the law of another Member State and that the assessment be limited only to shares. The competent authority of the host Member State should be offered the possibility to comment on the assessment related to the law of that Member State. The final decision should be left to the competent authority of the home Member State.***

(25) ***In order to allow for better cooperation regarding the supervision of CSDs providing cross-border services, the competent authority of the home Member State should be able to invite staff from the competent authorities of the host Member States and from ESMA to participate in on-site inspections in branches. The competent authority of the home Member State should also transmit to ESMA and the college the findings of the on-site inspections and information on remedial actions or penalties decided on by that competent authority.***

(26) Regulation (EU) No 909/2014 requires the cooperation of authorities that have an interest in the operations of CSDs that offer services in relation to financial instruments ***constituted*** under the laws of more than one Member State. Nonetheless, the supervisory arrangements remain fragmented and can lead to differences in the allocation and nature of supervisory powers depending on the CSD concerned. Such fragmentation creates barriers to the cross-border provision of CSD services in the Union, perpetuates the remaining inefficiencies in the Union settlement market and has a negative impact on the stability of Union financial markets. While Regulation (EU) No 909/2014 provides for the possibility of setting up colleges, that option has rarely been used. In order to ensure the effective and efficient coordination of the supervision by competent authorities, the setting up of colleges should ***become*** mandatory under certain conditions***. A college of supervisors should be established*** for CSDs ***the activities of which are considered to be of substantial importance for the functioning of the securities markets and the protection of investors in at least two host Member States. A college set up under this Regulation should not prevent or replace other forms of cooperation between competent*** authorities***. ESMA should develop draft regulatory technical standards to specify the criteria on the basis of which it can be determined whether the activities are of substantial importance. Members of a*** college should ***have the possibility of requesting the adoption by the college of a non-binding opinion concerning issues identified during the review and evaluation of a CSD or during the review and evaluation of providers of banking-type ancillary services, or concerning issues that relate to the extension or outsourcing of activities and services provided by the CSD, or concerning any potential breach of the requirements of Regulation (EU) No 909/2014 arising from the provision of services in a host Member State. Non-binding opinions should be adopted by a simple majority vote***.

(27) ESMA and competent authorities currently have limited information on the services offered by third-country CSDs in relation to financial instruments constituted under the law of a Member State as a result of several factors. The first is the deferred application, without an end date, of the recognition requirements for third-country CSDs that already provided central maintenance and notary services in the Union before the date of application of Regulation (EU) No 909/2014 pursuant to Article 69(4) of that Regulation. The second is the fact that where a third-country CSD provides only the settlement service, it is not subject to recognition requirements. The third is ***the fact that*** Regulation (EU) No 909/2014 does not require third-country CSDs to notify Union authorities of their activities in relation to financial instruments constituted under the law of a Member State. ***Given the*** lack of information, neither issuers nor public authorities at Union or national level ***have been*** able to assess the activities of those CSDs in the Union when needed. Therefore, third-country CSDs should be required to inform Union authorities of their activities in relation to financial instruments constituted under the law of a Member State.

(28) ▌Regulation (EU) No 909/2014 requires a CSD to have a management body of which at least one third, but no less than two, of its members are independent. ***In order to ensure a more consistent application of the concept of independence, that concept*** should ▌be clarified in line with the definition of 'independent members' in Regulation (EU) No 648/2012 of the European Parliament and of the Council[15].

(29) Regulation (EU) No 909/2014 does not contain specific requirements applying in the case of an acquisition of, or increase in, qualifying holdings in the capital of CSDs. Such requirements, including as regards the procedures to be followed, should therefore be introduced in order to ensure the consistent application of requirements regarding the shareholding structure of a CSD, similar to provisions laid down in Regulation (EU) No 648/2012 and Directive 2013/36/EU. ESMA should develop guidelines on the assessment of the suitability of any person who will direct the business of the CSD, as well as on the procedural rules and evaluation criteria for the prudential assessment of direct or indirect acquisitions of, and increases in, holdings in CSDs.

(30) In order to ensure ***legal certainty as regards*** the key arrangements on which user committees should advise the management body, it should be further clarified what elements are included in the 'service level'.

---

15 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

(31) Given their central role regarding the safety of transactions, CSDs should not only reduce the risks associated with the safekeeping and settlement of transactions in securities, but should ***also*** seek to minimise those risks.

(32) Several CSDs established in the Union operate securities settlement systems that apply deferred net settlement. Those CSDs should adequately measure, monitor and manage the risks stemming from the use of such settlement.

(33) Under certain circumstances, a security ***might*** be constituted under the corporate or similar law of two different Member States. That is in particular the case for debt securities where the issuer is ***incorporated*** in one Member State and the securities ***are*** issued under the law of another Member State. It is important to clarify that in such cases the corporate or similar law of both Member States should continue to apply. ***The choice of the applicable law is not to be governed by Regulation (EU) No 909/2014 and should therefore remain at the issuers' discretion or otherwise be determined by law.***

(34) In order to ensure that issuers who arrange for their securities to be recorded in a CSD established in another Member State can comply with the relevant provisions of the corporate or similar law of that Member State, Member States should regularly update the list of such key relevant provisions of national law and communicate it to ESMA for the purposes of publication.

(35) In order to avoid settlement risks due to the insolvency of ***a*** settlement agent, a CSD should settle, whenever practical and available, the cash payments of its securities settlement system through accounts opened with a central bank. Where that option is not practical and available, such as where a CSD does not meet the conditions to ***open an account with*** a central bank other than that of its home Member State, the CSD should be able to settle the cash payments for all or part of its securities settlement systems in ***a currency other than that*** of the ***country where the CSD is established*** through ***accounts opened with CSDs or with credit*** institutions authorised to provide banking services ***under the conditions laid down in*** Regulation (EU) No 909/2014***.***

(36) In order to better support the efficiency of the settlement market, deepen capital markets and enhance cross-border settlement, a CSD authorised to provide banking-type ancillary services in accordance with Regulation (EU) No 909/2014, whose relevant risks are already monitored, should be able to offer services pertaining to the settlement of the cash payments to CSDs that are not authorised under Directive 2013/36/EU, in a currency other than that of the country where the CSD seeking to use those services is established, irrespective of whether they are part of the same group of companies. An authorisation to designate CSDs or credit institutions should only be used for the settlement of the cash payments for all or part of the securities settlement systems of the CSD seeking to use the banking-type ancillary services. It should not be used for the purposes of carrying out any other activities. It should also be possible for a CSD that intends to settle the cash payments for all or part of its securities settlement systems through its own accounts or that otherwise intends to provide any banking-type ancillary services to be authorised to do so under the conditions laid down in Regulation (EU) No 909/2014.

(37) ***Below*** an appropriate ***threshold***, CSDs that are not authorised to provide banking-type ancillary services should be able to ***settle the cash payments through accounts opened with CSDs authorised to provide banking-type ancillary services in accordance with Regulation (EU) No 909/2014 and*** through accounts opened with ***any*** credit ***institution, in any currency. That threshold should consist of a maximum aggregate amount for such settlement of cash payments. In addition, the*** threshold ***should be calibrated in a way that promotes efficiency of settlement and allows CSDs to reach a level of cash settlement beyond which requiring a banking authorisation under Directive 2013/36/EU or connecting to a central bank of issue becomes relevant, while ensuring financial stability and limiting risk implications that result from the derogations applicable under that threshold. The calibration of the threshold should take into account the need for a CSD to be able to settle payments in different currencies, especially for the most liquid currencies, while setting an appropriate limit that would be applicable to the CSD as a whole. The calibration of the threshold should also take into account the need to avoid an unintended shift away from settlement in central bank money***.

(38) As a body with specialised expertise regarding banking and credit risk matters, the European Supervisory Authority (European Banking Authority) (EBA) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[16] should be entrusted with the development of draft regulatory technical standards to set an appropriate threshold and to specify any ***appropriate risk management and prudential*** requirements related thereto. EBA should also cooperate closely with the members of the ESCB and with ESMA. The Commission should be empowered to adopt those regulatory technical standards in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU). The competent authorities, which regularly monitor the threshold, should transmit their findings together with the underlying data to ESMA and EBA and their findings to the members of the ESCB, notably in order to feed into a regular report that should be prepared by EBA, in cooperation with the members of the ESCB and with ESMA, on banking-type ancillary services.

16 Regulation (EU) No 1093/2010 of the European Parliament and of 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 (OJ L 331, 15.12.2010, p. 12).

(39) CSDs, including those authorised to provide banking-type ancillary services, and designated credit institutions should cover relevant risks in their risk management and prudential frameworks ▌. Tools to cover those risks should include maintaining sufficient qualifying liquid resources in all relevant currencies and ensuring that stress scenarios are sufficiently strong. CSDs should also ensure that corresponding liquidity risks are managed and covered by highly reliable funding arrangements with creditworthy institutions; those arrangements should be committed or have similar reliability. ▌ CSDs which provide banking-type ancillary services should also have specific rules and procedures to tackle potential credit, liquidity and concentration risks stemming from the provision of those services. EBA should develop draft regulatory technical standards to update the existing regulatory technical standards in order to take into account those changes to prudential requirements***. That would*** enable the Commission to make any necessary amendments with a view to clarifying the requirements set out in such regulatory technical standards, such as those related to the management of potential liquidity shortfalls.

(40) A period of only one month for relevant authorities and competent authorities to issue a reasoned opinion on the authorisation to provide banking-type ancillary services has proven to be too short for those authorities to be able to make a substantiated analysis. Therefore, a longer period of two months should be provided for in this Regulation.

(41) In order to provide CSDs established in the Union and third-country CSDs with sufficient time to apply for authorisation and recognition of their activities, the date of application of the authorisation and recognition requirements of Regulation (EU) No 909/2014 was initially deferred until an authorisation or recognition decision was made pursuant to that Regulation. Sufficient time has elapsed since the entry into force of that Regulation. Therefore, those requirements should now start to apply to ensure, on the one hand, a level-playing field amongst all CSDs offering services in relation to financial instruments constituted under the law of a Member State and, on the other hand, that authorities at Union and national level have the necessary information to ensure investor protection and monitor financial stability.

(42) Regulation (EU) No 909/2014 currently requires ESMA, in cooperation with EBA, national competent authorities and relevant authorities, to prepare annual reports on 12 topics and to submit those reports annually to the Commission. That requirement is disproportionate considering the nature of certain topics which do not require an annual update. The frequency and number of those reports should therefore be recalibrated in order to reduce the burden on ESMA and competent authorities while ensuring that the Commission is provided with the information it needs to review the implementation of Regulation (EU) No 909/2014. ***However, given the changes to the settlement discipline regime of Regulation (EU) No 909/2014 introduced by this Regulation, it is appropriate to require ESMA to regularly prepare reports to the Commission on some additional topics, such as measures taken by competent authorities to address situations where a CSD's settlement efficiency over a six-month period is significantly lower than the average settlement efficiency levels recorded in the Union market and the possibility of applying additional regulatory tools to improve settlement efficiency in the Union. Furthermore, ESMA, in cooperation with the members of the ESCB, should also submit a report to the European Parliament and to the Council on the potential shortening of the settlement cycle in order to inform potential future developments on that topic. EBA should prepare an annual report focussing on the findings of competent authorities as a result of their monitoring of the threshold for settlement of cash payments. Upon the request of the Commission, ESMA should provide a cost-benefit analysis that should be used as a basis for the implementing act on mandatory buy-ins.*** ▌

(43) In order to ensure the effectiveness of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to take into account, when developing the parameters for the calculation of the level of cash penalties, the duration of the settlement fail, the level of settlement fails per class of financial instruments and the effect that low or negative interest rates can have on the incentives of counterparties and on fails, and to review those parameters; and to specify which underlying causes of a settlement fail are not considered attributable to the participants and which operations are not considered as trading. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[17]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(44) The Commission should be empowered to adopt, in accordance with Article 290 TFEU and with Articles 10 to 14 of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1095/2010, regulatory technical standards developed by EBA and by ESMA with regard to: specifications of the mandatory buy-in process regarding the details of the pass-on mechanism, which types of transactions render the buy-in process unnecessary and how to take into account the specificities of retail investors when executing mandatory buy-ins; the information to be notified by third-country CSDs; the conditions for the activities of a CSD to be considered of substantial importance; the rules and procedures to be established by a CSD providing banking-type ancillary services; the details of the measuring, monitoring, management and reporting of the credit and liquidity risks by CSDs in relation to deferred net settlement; the threshold below which CSDs may use any credit institution to settle the cash payments; and the updated prudential requirements on liquidity and the rules and procedures on credit, liquidity and concentration risks in the case of CSDs authorised to provide banking-type ancillary services.

---

17 OJ L 123, 12.5.2016, p. 1.

(45) ***In order*** to ensure uniform conditions for the implementation of the amendments introduced by this Regulation, and in particular with regard to the application and the suspension of mandatory buy-in requirements where those apply, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[18]. The Commission should adopt immediately applicable implementing acts where, in duly justified cases relating to the application and the suspension of mandatory buy-ins, imperative grounds of urgency so require.

[18] 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 (OJ L 55, 28.2.2011, p. 13).

(46) Delegated and implementing acts adopted in accordance with Articles 290 and 291 TFEU constitute Union legal acts. Pursuant to Articles 127(4) and 282(5) TFEU, the European Central Bank (ECB) is to be consulted on any proposed Union act in its fields of competence. Where the consultation of the ECB is required pursuant to the Treaties, the ECB is to be duly consulted on the delegated and implementing acts adopted under this Regulation.

(47) Since the objectives of this Regulation, namely to increase the provision of cross-border settlement by CSDs, reduce the administrative burden and compliance costs and ensure that authorities have sufficient information in order to monitor risks, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, 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.

(48) The application of the revised scope of the rules on cash penalties, the new requirements regarding the establishment of colleges of supervisors, the submission of a notification by third-country CSDs of the core services they provide in relation to financial instruments constituted under the law of a Member State, the new rules on deferred net settlement, the revised threshold below which credit institutions may offer to settle the cash payments for part of the CSD's securities settlement system and the revised prudential requirements applicable to credit institutions or CSDs authorised to provide banking-type ancillary services pursuant to Article 59 of Regulation (EU) No 909/2014 should be ***either*** deferred ***or subject to appropriate transitional provisions*** to give sufficient time for the adoption of the necessary delegated acts further specifying such requirements***. Given the amendments introduced by this Regulation with regard to the procedure concerning the freedom to provide services in another Member State, it is also appropriate to clarify the rules that should apply to the provision of services by CSDs in Member States other than the home Member State and the setting up of a branch in another Member State. Given the amendments introduced by this Regulation with regard to the frequency and content of the reports that ESMA is to submit to the Commission, the application of the provisions governing the content of some of those reports should be deferred to ensure that ESMA has sufficient time to prepare the new reports and that only the reports that are to be prepared under the existing provisions will be required to be submitted by 30 April 2024.***

(49) Regulations (EU) No 909/2014 and (EU) No 236/2012 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 909/2014

Regulation (EU) No 909/2014 is amended as follows:

(1) in Article 2, paragraph 1 ***is amended as follows***:

(a) point (26) is replaced by the following:

'(26) "***default" means, in relation to a participant, a situation where insolvency proceedings, as defined in Article 2, point (j), of Directive 98/26/EC, are opened against a participant or an event defined in the CSD's internal rules as constituting a default;';***

(b) the following points are added:

'(47) "group" means a group within the meaning of Article 2, point (11), of Directive 2013/34/EU;

(48) *"close links" means close links as defined in Article 4(1), point (35), of Directive 2014/65/EU;*

(49) *"qualifying holding" means a direct or indirect holding in a CSD which represents at least 10 % of the capital or of the voting rights, as set out in Articles 9, 10 and 11 of Directive 2004/109/EC of the European Parliament and of the Council*, or which makes it possible to exercise a significant influence over the management of the CSD;*

(50) *"deferred net settlement" means a settlement mechanism whereby cash or securities transfer orders in relation to securities transactions of the participants in the securities settlement system are subject to netting, and whereby settlement of participants' net claims and obligations takes place at the end of predefined settlement cycles during or at the end of the business day.*

** Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).';*

(2) in Article 6(5), the first and second subparagraphs are replaced by the following:

'5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the measures to prevent settlement fails in order to increase settlement efficiency and in particular:

(a) the measures to be taken by investment firms in accordance with paragraph 2, first subparagraph;

(b) the details of the procedures that facilitate settlement referred to in paragraph 3, which could include the shaping of transaction sizes, partial settlement of failing trades and the use of auto-lend/borrow programmes provided by certain CSDs; and

(c) the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [18 months from the date of entry into force of this amending Regulation].';

(3) Article 7 is replaced by the following:

'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). The CSD shall provide regular reports to the competent authority and relevant authorities as to the number and details of settlement fails and any other relevant information, including the measures envisaged by the CSD and its participants to improve settlement efficiency. Those reports shall be made public by the CSD 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 establish procedures that facilitate the settlement of transactions in financial instruments referred to in Article 5(1) that are not settled on the intended settlement date. Those procedures shall provide for a penalty mechanism that serves as an effective deterrent to participants that cause settlement fails.

Before establishing the procedures referred to in the first subparagraph, a CSD shall consult the relevant trading venues and CCPs in respect of which it provides settlement services.

The penalty mechanism referred to in the first subparagraph shall include cash penalties for participants that cause settlement fails ('failing participants'). Cash penalties shall be calculated on a daily basis for each business day that a transaction fails to be settled after its intended settlement date until the transaction is either settled or bilaterally cancelled. The cash penalties shall not be configured as a revenue source for the CSD.

3. The penalty mechanism referred to in paragraph 2 shall not apply to:

(a) settlement fails the underlying cause of which is not attributable to the participants in the transaction;

(b) operations that are not considered as trading;

(c) transactions where the failing participant is a CCP, except for transactions entered into by a CCP where it does not interpose itself between the counterparties; or

(d) transactions where insolvency proceedings are opened against the failing participant.

4. A CCP may establish in its rules a mechanism to cover losses that it could incur resulting from the application of paragraph 2, third subparagraph.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 to supplement this Regulation by specifying parameters for the calculation of a deterrent and proportionate level of the cash penalties referred to in paragraph 2, third subparagraph, of this Article based on all of the following:

(a) asset type;

(b) liquidity of the financial instrument;

(c) type of transaction;

(d) duration of the settlement fail.

When specifying the parameters referred to in the first subparagraph, the Commission shall take into account the level of settlement fails per class of financial instruments and the effect that low or negative interest rates could have on the incentives of counterparties and on settlement fails. The parameters used for the calculation of cash penalties shall ensure a high degree of settlement discipline and the smooth and orderly functioning of the financial markets concerned.

The Commission shall review the parameters for the calculation of the level of the cash penalties on a regular basis and at least every four years in order to reassess the appropriateness and effectiveness of the cash penalties in achieving a level of settlement fails in the Union deemed to be acceptable having regard to the impact on the financial stability of the Union.

6. By … [two years from the date of entry into force of this amending Regulation], ESMA shall publish and keep updated on its website a list of the financial instruments referred to in Article 5(1) which are admitted to trading or traded on a trading venue or cleared by a CCP.

7. CSDs, CCPs and trading venues shall establish procedures that enable them to suspend, in consultation with their respective competent authorities, any participant that fails consistently and systematically to deliver the financial instruments 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 that the competent authorities of the CSDs, 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, without delay, the respective competent authorities of the suspension of a participant. The competent authority shall immediately inform the relevant authorities of the suspension of a participant.

Public disclosure of suspensions shall not contain personal data as defined in Article 4, point (1), of Regulation (EU) 2016/679 of the European Parliament and of the Council.*

This paragraph shall not apply to failing participants which are CCPs or in cases where insolvency proceedings are opened against the failing participant.

8. This Article shall not apply where the principal venue for the trading of shares is located in a third country. The location of the principal venue for the trading of shares shall be determined in accordance with Article 16 of Regulation (EU) No 236/2012.

9. The Commission shall be empowered to adopt delegated acts in accordance with Article 67 to supplement this Regulation by specifying:

(a) the underlying causes of settlement fails that are considered as not attributable to the participants in the transaction under paragraph 3, point (a), of this Article; and

(b) the circumstances in which operations are not considered as trading under paragraph 3, point (b), of this Article.

10. 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;

(b) the processes for collection and redistribution of cash penalties and any other possible proceeds from such penalties in accordance with paragraph 2;

(c) the conditions under which a participant is deemed to fail, consistently and systematically, to deliver the financial instruments as referred to in paragraph 7.

ESMA shall submit those draft regulatory technical standards to the Commission by … [1 year from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 7a

Mandatory buy-in process

1. ***Without prejudice to the penalty mechanism referred to in Article 7(2) and the right to bilaterally cancel the transaction, after consulting the European Systemic Risk Board and based on the cost-benefit analysis provided by ESMA pursuant to Article 74(4), the Commission may, by means of an implementing act, decide to which of the financial instruments referred to in Article 5(1), or categories of transactions in those financial instruments, the mandatory buy-in process referred to in paragraphs 4 to 10 of this Article is to be applied where the Commission considers that mandatory buy-ins constitute a necessary, appropriate and proportionate means to address the level of settlement fails in the Union.***

   The Commission may adopt the implementing act referred to in the first subparagraph only if both of the following conditions are met:

   (a) the application of the penalty mechanism referred to in Article 7(2) has not resulted in a long-term sustainable reduction of settlement fails in the Union or in maintaining a reduced level of settlement fails in the Union, even after a review of the level of cash penalties in accordance with Article 7(5), second subparagraph;

   (b) the level of settlement fails in the Union has or is likely to have a negative effect on the financial stability of the Union.

For the purposes of reaching the decision referred to in the first subparagraph, the Commission shall take into account all of the following:

(a) the potential impact of the mandatory buy-in process on financial markets in the Union;

(b) the number, volume and duration of settlement fails, including the number and volume of settlement fails outstanding at the end of the extension period referred to in paragraph 4;

(c) whether a particular financial instrument or category of transactions in that financial instrument is already subject to appropriate contractual provisions that provide a right for receiving participants to trigger a buy-in.

The implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2). It shall specify a date of application that is not earlier than one year after its entry into force.

2. ***ESMA shall publish and keep updated on its website a list of the financial instruments determined by the implementing act referred to in paragraph 1.***

3. ***Before adopting the implementing act referred to in paragraph 1, the Commission shall:***

(a) assess the effectiveness and proportionality of the penalty mechanism referred to in Article 7(2) and, where appropriate, change the structure or severity of the penalty mechanism in order to increase settlement efficiency in the Union;

(b) consider whether the conditions referred to in paragraph 1 are met, despite the prior application of the penalty mechanism ***referred to in Article 7(2) and the rationale for, and potential cost implications of, subjecting specific financial instruments and categories of transactions to mandatory buy-ins.***

4. ***Without prejudice to the right to bilaterally cancel the transaction,*** where the Commission has adopted an implementing act pursuant to paragraph ***1*** and where a failing participant has not delivered ***the*** financial instruments covered by that implementing act to the receiving participant within a period after the intended settlement date ('extension period') of ***5*** business days, a mandatory buy-in process shall be initiated ▌.

By way of derogation from the first subparagraph, based on the asset type and liquidity of the financial instruments concerned, the extension period may be increased to a maximum of 7 business days where a shorter extension period would affect the smooth and orderly functioning of the markets concerned.

By way of derogation from the first and second subparagraphs, where the transaction relates to a financial instrument traded on an SME growth market, the extension period shall be 15 ***business*** days unless the SME growth market decides to apply a shorter period.

5. The instruments subject to the mandatory buy-in process shall be available for settlement and delivered to the receiving participant within an appropriate timeframe.

6. Where ***there is a settlement fail in a chain of transactions resulting in settlement fails of subsequent transactions in the chain, each*** participant shall ***have the right to pass on their obligation to initiate the mandatory buy-in*** to the ***next*** participant ***in the chain.***

The intermediate receiving participant shall be considered as complying with the obligation to execute a mandatory buy-in against the failing participant where it passes on its obligation in accordance with the first subparagraph. The intermediate receiving participant may also pass on to the failing participant its obligations towards the end receiving participant pursuant to paragraphs 8, 9 and 10.

The relevant CSD shall be informed about how the failed transaction was resolved throughout the chain of transactions.

▌

7. ***The mandatory buy-in process*** referred to in paragraph 4 shall ***not*** apply to:

(a) the settlement fails, operations and transactions listed in Article 7(3);

(b) securities financing transactions;

(c) *other types of transactions* ***that render the buy-in process unnecessary;***

(d) transactions that fall within the scope of Article 15 of Regulation (EU) No 236/2012.

8. Without prejudice to the penalty mechanism referred to in ***Article 7(2)***, where the price of the financial instruments agreed at the time of the trade is different from the price paid for the execution of the buy-in, the difference shall be paid by the participant benefitting from the price difference to the other participant no later than on the second business day after the financial instruments have been delivered following the buy-in.

9. If the buy-in fails or is not possible, the receiving participant may choose either to be paid cash compensation or to defer the execution of the buy-in to an appropriate later date ('deferral period'). If the relevant financial instruments are not delivered to the receiving participant by the end of the deferral period, cash compensation shall be paid to the receiving participant.

Cash compensation shall be paid no later than on the second business day after the end of either the mandatory buy-in process referred to in paragraph 4 or, in cases where the receiving participant chooses to defer the execution of the buy-in, the deferral period.

10. The failing participant shall reimburse the entity that executes the buy-in for all amounts paid in connection with the mandatory buy-in process initiated pursuant to paragraph 4, first subparagraph, including any execution fees resulting from the buy-in. Such fees shall be clearly disclosed to the participants.

11. Paragraphs 4 to 10 shall apply to all transactions of the financial instruments referred to in Article 5(1) which are admitted to trading or traded on a trading venue or cleared by a CCP as follows:

(a) for transactions cleared by a CCP, the CCP shall be the entity that executes the buy-in according to paragraphs 4 to 10;

(b) 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 and its participants to apply the measures referred to in paragraphs 4 to 10;

(c) for all transactions other than those referred to in points (a) and (b) of this subparagraph, CSDs shall include in their internal rules an obligation for their participants to be subject to the measures referred to in paragraphs 4 to 10.

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

Without prejudice to points (a), (b) and (c) of the first subparagraph, CSDs may monitor the execution of buy-ins as referred to in those points with respect to multiple settlement instructions, on the same financial instruments and with the same date of expiry of the execution period, with the aim of minimising the number of buy-ins to be executed and thus the impact on the prices of the relevant financial instruments.

12. This Article shall not apply where the principal venue for the trading of shares is located in a third country. The location of the principal venue for the trading of shares shall be determined in accordance with Article 16 of Regulation (EU) No 236/2012.

13. ESMA may recommend that the Commission suspend in a proportionate way the buy-in mechanism referred to in paragraphs 4 to 10 for specific categories of financial instruments where necessary to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the Union. Such recommendation shall be accompanied by a fully reasoned assessment of its necessity and shall not be made public.

Before making the recommendation ***referred to in the first subparagraph***, ESMA shall consult the members of the ESCB and the European Systemic Risk Board.

The Commission shall, without undue delay after receipt of the recommendation, on the basis of the reasons and evidence provided by ESMA, either suspend the mandatory buy-in mechanism referred to in paragraphs 4 to 10 for the specific categories of financial instruments by means of an implementing act, or reject the recommended suspension. Where the Commission rejects the recommended suspension, it shall provide the reasons therefor in writing to ESMA. Such information shall not be made public.

The implementing act ***referred to in the third subparagraph*** shall be adopted in accordance with the procedure referred to in Article 68(3).

The suspension of the mandatory buy-in mechanism shall be communicated to ESMA and shall be published in the *Official Journal of the European Union* and on the Commission's website.

The suspension of the mandatory buy-in mechanism shall be valid for an initial period of no more than six months from the date of application of that suspension.

Where the grounds for the suspension continue to apply, the Commission may, by way of an implementing act, extend the suspension for additional periods of no more than three months each, with the total period of the suspension not exceeding 12 months. Any extensions of the suspension shall be published in accordance with the fifth subparagraph.

The implementing act ***referred to in the seventh subparagraph*** shall be adopted in accordance with the procedure referred to in Article 68(3). ESMA shall, in sufficient time before the end of the suspension referred to in the sixth subparagraph or of the extension referred to in the seventh subparagraph, issue an opinion to the Commission on whether the grounds for the suspension continue to apply. ▌

14. ***Where*** the Commission ***has adopted an implementing act*** in accordance with ▌ paragraph ***1, it shall review that decision on a regular basis and at least every four years in order to assess whether the conditions set out in that paragraph remain fulfilled***.▌

Where the Commission considers that mandatory buy-ins are no longer justified or do not address settlement fails in the Union and are no longer necessary, appropriate or proportionate, it shall, without delay, adopt implementing acts amending or repealing the implementing act referred to in paragraph 1.

The implementing act referred to in the second subparagraph shall be adopted in accordance with the examination procedure referred to in Article 68(2).

Where ESMA considers that mandatory buy-ins are no longer justified or do not address settlement fails in the Union and are no longer necessary, appropriate or proportionate, it may recommend that the Commission amend or repeal the implementing act referred to in paragraph 1. Paragraph 13, first to fourth subparagraphs, shall apply mutatis mutandis.

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

(a) the details of the operation of the appropriate buy-in process referred to in paragraphs 4 to 10, including appropriate timeframes, calibrated taking into account the asset type and liquidity of the financial instruments, for the delivery of the financial instrument following the buy-in process;

(b) the circumstances under which the extension period could be prolonged according to asset type and liquidity of the financial instruments, in accordance with the conditions referred to in paragraph 4, second subparagraph, taking into account the criteria for assessing liquidity under Article 2(1), point (17), of Regulation (EU) No 600/2014;

(c) the details of the pass-on mechanism under paragraph 6;

(d) other types of transactions that render the buy-in process unnecessary as referred to in paragraph 7, point (c), such as financial collateral arrangements or transactions that include close-out netting provisions;

(e) a methodology for the calculation of the cash compensation referred to in paragraph 9;

(f) the necessary settlement information referred to in paragraph 11, second subparagraph; and

(g) the details of how the participants of the CSDs, the CCPs and the trading venue members are to take into account the specificities of retail investors when executing the mandatory buy-in in accordance with paragraph 11.

ESMA shall submit those draft regulatory technical standards to the Commission by … [1 year from the date of entry into force of this amending Regulation]. ▌

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

**** Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).***

’;

(4) in Article 12(1), points (b) and (c) are replaced by the following:

‘(b) the central banks in the Union issuing the most relevant currencies in which settlement takes or will take place;

(c) where relevant, the central bank in the Union in whose books the cash payments of a securities settlement system operated by the CSD is or will be settled.’

▌;

(5) Article 17 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

'By way of derogation from the first subparagraph, where an applicant CSD does not comply with all requirements of this Regulation, but where it can reasonably be assumed that it will do so when it ***commences*** its activities, the competent authority may grant the authorisation subject to the condition that the applicant CSD has all the necessary arrangements in place to comply with the requirements of this Regulation when it ***commences*** its activities.***'***;

(b) paragraph 4 is replaced by the following:

'4. 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 and consult those authorities concerning the features of the securities settlement system operated by the applicant CSD.

Each relevant authority may issue a reasoned opinion ***within its areas of competence*** to the competent authority within three months of receipt of the information by the relevant authority. Where a relevant authority does not provide an opinion within that timeframe it shall be deemed to have issued a positive opinion.

Where at least one of the relevant authorities issues a negative reasoned opinion, and the competent authority nevertheless intends to grant the authorisation, that competent authority shall, within ***one month*** of receipt of the negative opinion, provide the relevant authorities with ***the reasons why it intends to grant the authorisation notwithstanding*** the negative opinion.

Any of the relevant authorities ***that issued a*** negative opinion ***referred to in the third subparagraph*** may refer the matter to ESMA for assistance under Article 31(2), point (c), of Regulation (EU) No 1095/2010.

Where the issue is not settled within one month of the referral to ESMA, the competent authority intending to grant the authorisation shall take a final decision and provide the relevant authorities with a detailed explanation of its decision in writing.

Where the competent authority ***intends*** to refuse authorisation, the matter shall not be referred to ESMA.

A negative ***opinion referred to in the third subparagraph*** shall state in writing the full and detailed reasons why the requirements laid down in this Regulation or other requirements of Union law are not met.**'**;

(c) the following paragraph is inserted:

‘7a. ***In addition to consulting the competent authorities referred to in paragraph 6,*** the competent authority ***may, before granting authorisation to the applicant CSD, consult other*** authorities ***supervising an entity that has a qualifying holding in the applicant CSD on the matters referred to in paragraph 7.’***;

(d) the following paragraph is inserted:

‘8a. The competent authority shall, without undue delay, inform the authorities consulted pursuant to paragraphs 4 to 7a of the results of the authorisation process, including any remedial actions.’;

(6) in Article 19, paragraph 2 is replaced by the following:

‘2. The granting of an authorisation to outsource a core service to a third party pursuant to paragraph 1 or to extend activities pursuant to paragraph 1, points (a), (c) and (d), shall follow the procedure laid down in Article 17.

The granting of an authorisation under paragraph 1, point (b), shall follow the procedure laid down in Article 17(1), (2), (3), (5) and (8a).

The granting of an authorisation under paragraph 1, point (e), shall follow the procedure laid down in Article 17(1), (2) and (3).

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

(7) in Article 20, paragraph 5 is replaced by the following:

'5. A CSD shall establish, implement and maintain adequate procedures 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 paragraph 1. Such procedures shall include the transfer of issuance accounts ***or similar records evidencing the issuance of securities,*** and records linked to the provision of the core services referred to in Section A, points 1 and 2, of the Annex. *';*

(8) Article 22 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The competent authority shall review the arrangements, strategies, processes and mechanisms implemented by a CSD***, including the plans referred to in Article 22a,*** with respect to compliance with this Regulation and evaluate the risks to which the CSD is, or might be, exposed or which it creates for the smooth functioning of securities markets or stability of the financial markets.

The competent authority shall establish the frequency and depth of the review and evaluation referred to in the first subparagraph having regard to the size, systemic importance, risk profile, nature, scale and complexity of the activities of the CSD concerned.

The review and evaluation shall take place at least every three years.

▌ ';

(b) paragraphs 2, 3 and 4 are deleted;

(c) paragraphs 6 and 7 are replaced by the following:

'6. When performing the review and evaluation referred to in paragraph 1, the competent authority shall, at an early stage, transmit ***the*** necessary information to the relevant authorities and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU, and consult them ***on whether the requirements of this Regulation or other requirements of Union law are met by the CSD as regards*** the functioning of the securities settlement systems operated by the CSD.

The consulted authorities may issue a reasoned opinion within ***their areas of competence within*** three months of receipt of the information from the competent authority.

Where a consulted authority does not provide an opinion within that deadline it shall be deemed to have issued a positive opinion.

Where ***a consulted authority*** issues a negative reasoned opinion ***and*** the competent authority ***disagrees with it, that competent authority*** shall, within ***one month*** of receipt of the negative opinion, provide the ***consulted authority*** with a ***reasoning*** addressing the negative opinion.

▌ Any of the ***consulted*** authorities that issued a negative opinion may refer the matter to ESMA for assistance under Article 31(2), point (c), of Regulation (EU) No 1095/2010.

Where the issue is not settled within one month of its referral to ESMA, the competent authority shall take the final decision on the review and evaluation and provide a detailed explanation of its decision in writing to the relevant authorities.

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

7. The competent authority shall ▌ inform the relevant authorities***, ESMA*** and, where applicable, the ***college*** referred to in Article 24a of this Regulation and the authority referred to in Article 67 of Directive 2014/65/EU of the results, including any remedial action or penalties, of the review and evaluation referred to in paragraph 1 of this Article.**'**;

(d) paragraph 10 is amended as follows:

(i) in the first subparagraph, point (b) is replaced by the following:

'(b) the information that the competent authority is to supply in accordance with paragraph 7;';

(ii) the second subparagraph is replaced by the following:

'ESMA shall submit those draft regulatory technical standards to the Commission by … [1 year from the date of entry into force of this amending Regulation].';

(e) in paragraph 11, the second subparagraph ▌ is replaced by the following:

'ESMA shall submit those draft implementing technical standards to the Commission by **…** [1 year from the date of entry into force of this amending Regulation].**'**;

(9) the following Article is inserted:

‘Article 22a

Plans for recovery and orderly wind-down

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

2. The plans referred to in paragraph 1 shall have regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned ▌ and contain at least the following:

(a) a substantive summary of the key recovery or orderly wind-down strategies;

(b) an identification of the CSD’s critical operations and services;

(c) adequate procedures ensuring the raising of additional capital in cases where the CSD’s equity capital approaches or falls below the requirements laid down in Article 47(1);

(d) ***adequate procedures ensuring the orderly wind-down or restructuring of the CSD's operations and services where the CSD is unable to raise new capital;***

(e) adequate procedures ensuring the timely and orderly settlement and transfer of the assets of clients and participants to another CSD in the event it becomes permanently impossible for the CSD to restore its critical operations and services;

(f) a description of the measures needed to implement the key strategies.

3. The CSD shall have the capacity to identify and provide to related entities the information needed to implement the plans on a timely basis during stress scenarios.

4. The plans shall be approved by the management body, or an appropriate committee of the management body.

5. The CSD shall regularly, and ***at*** least every ***two*** years, review and update the plans. ***Each update of the plans shall be provided to the competent authority.***

6. Where the competent authority considers that the CSD's plans are insufficient, the competent authority may require the CSD to take additional measures or to develop alternative measures.

7. Where a CSD is subject to Directive *2014/59/EU* ***and a recovery plan has been drawn up under that Directive, the CSD shall provide that recovery plan to the competent authority.***

Where a resolution plan ***under Directive 2014/59/EU, or a similar plan under national law*** with the aim of ensuring ***the continuity of a CSD's*** core services, ***is established and maintained for a CSD, the resolution authority or, where no such authority exists***, the competent authority shall inform ESMA ***of the existence of such a plan***.

Where the recovery plan and the resolution plan under Directive 2014/59/EU, or any similar plan under national law, contain all of the elements listed in paragraph 2, the CSD shall not be required to prepare the plans pursuant to paragraph 1.';

(10) in Article 23, paragraphs 2 to 7 are replaced by the following:

'2. An authorised CSD or a CSD that has applied for authorisation pursuant to Article 17 that intends to provide the core services referred to in Section A, points 1 and 2, of the Annex in relation to financial instruments constituted under the ***law*** of another Member State referred to in Article 49(1), second subparagraph, ***point (a),*** or to set up a branch in another Member State shall be subject to the procedure referred to in paragraphs 3 to 9 of this Article. The CSD may provide such services only after it has been authorised pursuant to Article 17 and not earlier than the date applicable in accordance with paragraph 8 of this Article.

3. Any CSD ***that intends*** to provide the services referred to in paragraph 2 in relation to financial instruments constituted under the law of another Member State referred to in Article 49(1), second subparagraph, ***point (a),*** for the first time, or to change the range of those services provided, shall ***communicate*** the following information to the competent authority of the home Member State:

(a) the host Member State;

(b) a programme of operations stating in particular the services which the CSD intends to provide***, including the type of financial instruments constituted under the law of the host Member State in respect of which the CSD intends to provide such services***;

(c) the currency or currencies that the CSD intends to process;

(d) an assessment of the measures the CSD intends to take to allow its users to comply with the ▌ law ***of the host Member State*** referred to in Article 49(1)***, second subparagraph, point (a), in relation to shares***.

4. A CSD intending to set up a branch in another Member State for the first time or to change the range of the core service referred to in Section A, point 1, of the Annex, or of the core service referred to in Section A, point 2, of the Annex, provided through a branch, shall communicate the following information to the competent authority of the home Member State:

(a) the information referred to in paragraph 3, points (a), (b) and (c);

(b) the organisational structure of the branch and the names of the persons responsible for the management of the branch;

(c) an assessment of the measures that the CSD intends to take to allow its users to comply with the law of the host Member State referred to in Article 49(1), second subparagraph, point (a), in relation to shares.

5. The competent authority of the home Member State shall communicate the assessment referred to in paragraph 3, point (d), or in paragraph 4, point (c), as applicable, to the competent authority of the host Member State without undue delay. The competent authority of the host Member State may provide a non-binding opinion on that assessment to the competent authority of the home Member State within one month of receipt of that assessment.

6. Within ***two months*** of receipt of the ***complete*** information referred to in paragraph 3, ***points (a), (b) and (c), or paragraph 4, points (a) and (b), as applicable,*** 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 ***intending*** to provide services in the host Member State ***or the adequacy of the measures the CSD intends to take in accordance with paragraph 3, point (d), or in paragraph 4, point (c), as applicable. Within that period,*** where the CSD already provides services to other host Member States, ***including through a branch,*** the competent authority of the home Member State shall also inform the ▌college referred to in Article 24a.

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

The competent authority of the home Member State shall immediately inform the CSD of the date of transmission of the communication referred to in the first subparagraph.

7. Where the competent authority of the home Member State decides in accordance with paragraph 6 not to communicate ▌ the information referred to in paragraph 3 ***or paragraph 4, as applicable,*** to the competent authority of the host Member State, it shall ***provide the*** reasons for its refusal to the CSD concerned within two months ***of receipt of that*** information and inform the competent authority of the host Member State and the ▌ college referred to in Article 24a of its decision.

8. The CSD may start providing services ***or set up a branch as*** referred to in paragraph 2 ***at the earliest 15 calendar days after the date of transmission of the communication referred to in paragraph 6, first subparagraph, from the competent authority of the home*** Member State ***to the competent authority*** of the ***host Member State.***

▌

9. In the event of a change to the information set out in the documents submitted in accordance with paragraph 3 ***or paragraph 4, as applicable***, the CSD shall give written notice of the 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 and the ▌college referred to in Article 24a shall also be informed of that change without delay by the competent authority of the home Member State.

▌

10. ESMA may issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 to specify the scope of the assessment that the CSD is required to provide under paragraph 3, point (d), and paragraph 4, point (c), of this Article.';

(11) Article 24 is amended as follows:

(a) in paragraph 1, the following subparagraphs are added:

'▌The competent authority of the home Member State may invite staff from the competent authorities of the host Member States and from ESMA to participate in on-site inspections.

The competent authority of the home Member State ***shall*** transmit to ESMA ***and to the college referred to in Article 24a the findings of the on-site inspections and information on any remedial actions or penalties decided on by that competent authority***.';

(b) paragraph 3 is replaced by the following:

'3. The competent authority of the home Member State of the CSD shall, upon the request of the competent authority of the host Member State and without delay, communicate the identity of the issuers established in the host Member State and of the participants holding financial instruments constituted under the law of the host Member State in the securities settlement systems operated by the CSD which provides core services as referred to in Section A, points 1 and 2, of the Annex in relation to financial instruments constituted under the law of the host Member State, and any other relevant information concerning the activities of a CSD that provides core services in the host Member State through a branch.';

(c) paragraph 4 is deleted;

(d) paragraph 5 is replaced by the following:

'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 23 is in breach of the obligations arising from the provisions of this Regulation, it shall inform the competent authority of the home Member State, ESMA and the ▌college referred to in Article 24a of those findings.

Where, despite measures taken by the competent authority of the home Member State, the CSD persists in acting in ***breach*** of the obligations arising from the provisions of this Regulation, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, 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. The competent authority of the host Member State shall inform ESMA and the ▌ college referred to in Article 24a of such measures without ***undue*** delay.

The competent authority of the host Member State ***or the competent authority*** of the home Member State 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.***'***;

(e) paragraph 7 is deleted;

(12) the following Article is inserted:

‘Article 24a

College of supervisors ▌

1. ***The competent authority of the home Member State*** shall ***establish a college of supervisors*** to carry out the tasks referred to in paragraph 8 ***in relation to a CSD whose activities are considered of substantial importance for the functioning of securities markets and the protection of investors in at least two host Member States.***

2. The college shall be established within one month of the date when:

(a) the competent authority of the home Member State determines that the activities carried out by the CSD in at least two host Member States are of substantial importance; or

(b) the competent authority of the home Member State is notified by one of the entities listed in paragraph 4 that the activities carried out by the CSD in at least two host Member States are of substantial importance.

3. The competent authority of the home Member State shall manage and chair the college.

4. The college shall consist of:

(a) ESMA;

(b) the competent authority of the ▌ home Member State;

(c) the relevant authorities referred to in Article 12;

(d) ***the competent authorities of the host Member States in which the CSD's activities are of substantial importance***;

▌

(e) EBA, where the CSD has been authorised pursuant to Article 54(3).

5. Where the activities of a CSD for which a college is established are not of substantial importance in a Member State where a subsidiary belonging to the same group of companies as the CSD, or its parent undertaking, is established or where the CSD for which a college is established is entitled to provide services in another Member State in accordance with Article 23(2), the competent authority and relevant authorities of that Member State shall be able to participate in the college upon their request.

6. The chair shall notify the composition of the college to ESMA within ***one month*** of the college's establishment and any change in its composition within ***one month*** of that change. ESMA ***and the competent authority of the home Member State*** shall publish on their websites without undue delay the list of the members of that college and keep that list ***updated***.

7. A competent authority which is not a member of the college may request from the college any information relevant for the performance of its supervisory duties.

8. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:

   (a) the exchange of information, including requests for information pursuant to Articles 13, 14 and 15 and information on the review and evaluation process pursuant to Article 22;

(b) efficient supervision by avoiding unnecessary duplicative supervisory actions, such as information requests ▌;

(c) agreement on the voluntary entrustment of tasks among its members***;***

▌

(d) ▌ the exchange of information ***on an authorised outsourcing or extension of activities and services under Article 19;***

(e) ▌ the cooperation between the authorities of the home Member State and of the host Member State pursuant to Article 24 regarding the measures referred to in Article ***23(3)***, point (d), and any issues encountered in relation to the provision of services in other Member States;

(f) the exchange of information on group structure, senior management, management body and shareholders pursuant to Article 27;

(g) the exchange of information on processes or arrangements that have a significant impact on governance or risk management for the CSDs belonging to the group.

9. The chair shall convene a meeting of the college at least ***annually or upon the request of a member of the college***.

In order to facilitate the performance of the tasks assigned to ***the college pursuant to*** paragraph ***8***, members of the college ▌ may add points to the agenda of a meeting.

The chair may invite additional participants to the discussions of the college on an ad hoc basis on specific topics.

The members of a college other than its chair may decide not to participate in a meeting of the college.

10. Upon the request of any of its members, the college shall adopt, in accordance with paragraph 11, non-binding opinions with regard to:

(a) issues identified during the review and evaluation processes pursuant to Article 22 or 60;

(b) issues relating to any outsourcing or extension of activities and services under Article 19; or

(c) issues relating to any potential breach of this Regulation arising from the provision of services in a host Member State as referred to in Article 24(5).

11. The college shall adopt its non-binding opinions on the basis of a simple majority vote. The members referred to in paragraph 4, points (b), (c) and (d), shall have voting rights. Each member with a voting right shall have one vote. Members with a voting right that act in more than one capacity, including as competent authority and as relevant authority, shall have one vote for each capacity in which they act. EBA and ESMA shall not have voting rights.

12. The functioning of the college shall be based on a written agreement between all of its members.

That agreement shall determine the practical arrangements for the functioning of the college, including the modalities of communication amongst members of the college, and may determine tasks to be entrusted to them.

13. ESMA shall develop draft regulatory technical standards specifying the ***criteria under which the activities of a CSD in a host Member State could be considered to be of substantial importance for the functioning of the securities markets and the protection of investors in that host Member State***.

ESMA shall submit those draft regulatory technical standards to the Commission by … [1 year from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.**'**;'

(13) Article 25 is amended as follows:

▌

(a) the following paragraph is inserted:

‘2a. A third-country CSD that intends to provide the core service referred to in Section A, point 3, of the Annex in relation to financial instruments constituted under the law of a Member State referred to in Article 49(1), second subparagraph, shall notify ESMA thereof. ***ESMA shall inform the competent authority of the Member State under whose law the financial instruments are constituted of the notification received.’;*** ▌

(b) in paragraph 4, the following point is added:

‘(e) the third-country CSD is established or authorised in a third country that is not identified as a high-risk third country in the delegated acts adopted pursuant to Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council*.

---

* ***Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).’;***

(c) in paragraph 6, the fifth subparagraph is replaced by the following:

‘Within six months of submission of a complete application or of adoption of an equivalence decision by the Commission in accordance with paragraph 9, whichever is later, ESMA shall inform the applicant CSD in writing with a fully reasoned decision whether the recognition has been granted or refused.**’**;

(d) the following paragraph is added:

‘13. ESMA shall develop draft regulatory technical standards to specify the information that the third-country CSD is to provide to ESMA in the notification referred to in paragraph 2a. Such information shall be limited to what is strictly necessary, including, where applicable and available:

(a) the number of participants located in the Union to whom the third-country CSD provides ***or intends to provide*** the services referred to in paragraph 2a;

(b) the number and volume of transactions in financial instruments constituted under the law of a Member State settled during the previous year;

(c) the number and volume of transactions settled by Union participants during the previous year.

ESMA shall submit those draft regulatory technical standards to the Commission by … [1 year from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(14) Article 26 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

'Where a CSD intends to provide banking-type ancillary services to other CSDs pursuant to Article 54(2a), first subparagraph, point (b), that CSD shall have in place clear rules and procedures addressing potential conflicts of interest and mitigating the risk of discriminatory treatment towards those other CSDs and their participants.';

(b) paragraph 3 is replaced by the following:

'***3. A CSD shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between its participants or their clients and the CSD itself, including:***

(a) the CSD's managers;

(b) the CSD's employees;

(c) the members of the CSD's management body;

(d) any person with direct or indirect control over the CSD;

(e) any person with close links with any of the persons listed in points (a), (b) and (c); and

(f) any person with close links with the CSD itself.

A CSD shall maintain and implement adequate resolution procedures where possible conflicts of interest occur.';

(c) the following paragraph is added:

'9. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to further specify the details of the rules and procedures referred to in paragraph 2, second subparagraph.

EBA shall submit those draft regulatory technical standards to the Commission by … [1 year from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010. ';

(15) Article 27 ***is amended as follows***:

(a) in paragraph 2, the following subparagraph is added:

'For the purposes of this Article, ***an*** independent member of the management body means a member of the management body who has no business, family or other relationship that raises a conflict of interest regarding the CSD concerned or its controlling shareholders, its management or its participants, and who has had no such relationship during the five years preceding their membership of the management body.';

(b) paragraphs 6, 7 and 8 are replaced by the following:

'***6. The competent authority shall not authorise a CSD unless it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings in the CSD and of the amounts of those holdings.***

7. The competent authority shall refuse to authorise a CSD where it is not satisfied as to the suitability of the shareholders or members that have qualifying holdings in the CSD, taking into account the need to ensure the sound and prudent management of the CSD.

8. Where close links exist between the CSD and other natural or legal persons, the competent authority shall grant authorisation only where those links do not prevent the effective exercise of the supervisory functions of the competent authority.

9. Where the persons referred to in paragraph 6 exercise an influence which is likely to be prejudicial to the sound and prudent management of the CSD, the competent authority shall take appropriate measures to put an end to that situation, which may include the withdrawal of the authorisation of the CSD.

10. The competent authority shall refuse authorisation where the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the CSD has close links, or where difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of the supervisory functions of the competent authority.

11. A CSD shall, without delay:

(a) provide the competent authority with information regarding the ownership of the CSD, and, in particular, the identity and scale of interests of any person having a qualifying holding in the CSD;

(b) make public:

(i) the information provided to the competent authority under point (a); and

(ii) the transfer of ownership rights that results in a change in control of the CSD.';

(16) The following articles are inserted:

'Article 27a

Information to competent authorities

1. A CSD shall notify its competent authority of any changes to its management and provide the competent authority with all the information necessary to assess its compliance with Article 27(1) to (5).

Where the conduct of a member of the management body is likely to be prejudicial to the sound and prudent management of the CSD, the competent authority shall take appropriate measures, which may include removing that member from the management body.

2. Any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a CSD or to further increase, directly or indirectly, such a qualifying holding in a CSD as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10 %, 20 %, 30 % or 50 % or would lead to the CSD becoming its subsidiary (the 'proposed acquisition'), shall first notify the competent authority of that CSD in writing thereof, indicating the size of the intended holding and relevant information, as referred to in Article 27b(4).

Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a CSD (the 'proposed vendor') shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 10 %, 20 %, 30 % or 50 % or so that the CSD would cease to be that person's subsidiary.

3. The competent authority shall, promptly and in any event within two working days of receipt of the notification referred to in paragraph 2 and of the information referred to in paragraph 4, acknowledge receipt in writing thereof to the proposed acquirer or proposed vendor.

The competent authority shall have a maximum of 60 working days after the date of the written acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in Article 27b(4) (the 'assessment period'), to carry out the assessment provided for in Article 27b(1) (the 'assessment').

The competent authority shall inform the proposed acquirer or proposed vendor of the date of the expiry of the assessment period at the time of acknowledging the receipt.

4. The competent authority may, during the assessment period, but no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

The assessment period shall be suspended for the period between the date of the request for information by the competent authority and the receipt of a response thereto by the proposed acquirer. The suspension shall not exceed 20 working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but shall not result in a suspension of the assessment period.

5. The competent authority may extend the suspension referred to in paragraph 4, second subparagraph, to up to 30 working days where the proposed acquirer is situated or regulated outside the Union or is a natural or legal person not subject to supervision under this Regulation or under Regulation (EU) No 648/2012 or under Directive 2009/65/EC*, 2009/138/EC** or 2011/61/EU of the European Parliament and of the Council, or Directive 2013/36/EU or 2014/65/EU.***

6. Where the competent authority, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made available to the public upon request of the proposed acquirer. However, a competent authority may make such disclosure also in the absence of a request by the proposed acquirer if so provided for by national law.

7. Where the competent authority does not oppose the proposed acquisition within the assessment period, it shall be deemed to be approved.

8. The competent authority may fix a maximum period for concluding the proposed acquisition and may extend that period where appropriate.

9. Member States shall not impose requirements for notification to, and approval by, the competent authority of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Regulation.

Article 27b

Assessment

1. When assessing the notification provided for in Article 27a(2) and the information referred to in Article 27a(4), the competent authority shall, in order to ensure the sound and prudent management of the CSD in which an acquisition is proposed and having regard to the likely influence of the proposed acquirer on the CSD, assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following:

(a) the reputation and financial soundness of the proposed acquirer;

(b) the reputation, knowledge, skills and experience of any person who will direct the business of the CSD as a result of the proposed acquisition;

(c) whether the CSD will be able to comply and continue to comply with this Regulation;

(d) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

When assessing the financial soundness of the proposed acquirer, the competent authority shall pay particular attention to the type of business pursued and envisaged in the CSD in which the acquisition is proposed.

When assessing the CSD's ability to comply with this Regulation, the competent authority shall pay particular attention to whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, to effectively exchange information among the competent authorities and to determine the allocation of responsibilities among the competent authorities.

2. The competent authorities may oppose the proposed acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of holding that is to be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. Member States shall make available to the public a list specifying the information that is necessary to carry out the assessment and that shall be provided to the competent authorities at the time of the notification referred to in Article 27a(2). The information required shall be proportionate and shall be adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 27a(2) to (5), where two or more proposals to acquire or increase qualifying holdings in the same CSD have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

6. The competent authorities shall, without undue delay, provide each other with any information which is essential for or relevant to the assessment. The competent authorities shall, upon request, communicate all relevant information to each other and shall communicate all essential information at their own initiative. A decision by the competent authority that has authorised the CSD in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.

7. ESMA shall, in close cooperation with EBA, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 on the assessment of suitability of any person who will direct the business of the CSD, as well as on the procedural rules and evaluation criteria for the prudential assessment of direct or indirect acquisitions of, and increases in, holdings in CSDs.

Article 27c
Derogation for CSDs providing banking-type ancillary services

Articles 27a and 27b shall not apply to a CSD which has been authorised pursuant to Article 54(3) and is subject to Directive 2013/36/EU.

_____

** Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302 17.11.2009, p. 32).*

*** Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335 17.12.2009, p. 1).*

**** Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives*

2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174 1.7.2011, p. 1).';

(17) in Article 28, paragraph 3 is replaced by the following:

‘3. User committees shall advise the management body on key arrangements that impact on their members, including the criteria for accepting issuers or participants in their respective securities settlement systems and on service level. Service level includes the choice of clearing and settlement arrangement, operating structure of the CSD, scope of products settled or recorded, use of technology ▌ for the operations of the CSD ***and relevant procedures***.***’***;

(18) in Article 29, the following paragraph is inserted:

'1a. A CSD shall require issuers to obtain and transmit to the CSD a valid legal entity identifier (LEI).';

(19) Article 36 is replaced by the following:

'Article 36

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, and minimise and manage the risks associated with the safekeeping and settlement of transactions in securities.';

(20) in Article 40, paragraph 2 is replaced by the following:

'2. Where 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, through a CSD that is authorised to provide the services listed in Section C of the Annex whether within the same group of undertakings ultimately controlled by the same parent undertaking or not, or through its own accounts. If a CSD offers to settle such cash payments through accounts opened with a credit institution, through its own accounts or the accounts of another CSD, it shall do so in accordance with the provisions of Title IV.**'**;

(21) in Article 47, paragraph 2 is deleted;

(22) the following Article is inserted:

'Article 47a

Deferred net settlement

1. CSDs that apply deferred net settlement shall define the rules and procedures applicable to that mechanism and to the settlement of participants' net claims and obligations.

2. CSDs that apply deferred net settlement shall measure, monitor, manage and report to the competent authorities the credit and liquidity risks arising from that mechanism.

3. ESMA shall, in close cooperation with EBA and the members of the ESCB, develop draft regulatory technical standards to specify the details of the measuring, monitoring, management and reporting of the credit and liquidity risks by CSDs in relation to deferred net settlement.

ESMA shall submit those draft regulatory technical standards to the Commission by … [1 year from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.';

(23) in Article 49(1), the second and the third subparagraphs are replaced by the following:

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

(a) the corporate or similar law of the Member State where the issuer is ***incorporated***; and

(b) the governing corporate or similar law ***of the Member State*** under which the securities are issued.

Member States shall compile a list of key relevant provisions of their ***corporate or similar*** law, as referred to in the second subparagraph. Competent authorities shall communicate that list to ESMA by ***… [1 year from the date of entry into force of this amending Regulation]***. ESMA shall publish that list by ***… [1 year and one month from the date of entry into force of this amending Regulation]***. Member States shall regularly, and at least every ***two*** years, update that list. They shall communicate the updated list at those regular intervals to ESMA. ESMA shall publish such updated list. ▌ ’;

(24) in Article 52, paragraph 1 is replaced by the following:

‘1. When a CSD submits a request for access to another CSD pursuant to Articles 50 and 51, the receiving CSD shall treat the request promptly and shall provide a response to the requesting CSD within three months. If the receiving CSD agrees to the request, the CSD link shall be implemented within a reasonable timeframe, which shall be no longer than 12 months.*’;*

(25) Article 54 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘***2. A CSD that intends to settle the cash payments for all or part of its securities settlement systems through its own accounts*** in accordance with Article ***40(2) or that otherwise intends*** to provide ***any*** banking-type ancillary services ***referred to in*** paragraph ***1 shall be authorised under the conditions specified in paragraphs 3, 6, 7, 8 and 9a*** of this Article.’;

(b) the following paragraph is inserted:

'2a. A CSD that intends to settle the cash payments for all or part of its securities settlement systems through accounts opened with a credit institution or with a CSD in accordance with Article 40(2) shall be authorised, under the conditions specified in paragraphs 3 to 9a of this Article, to designate for that purpose one or more:

(a) credit institutions authorised in accordance with Article 8 of Directive 2013/36/EU; or

(b) CSDs authorised to provide banking-type ancillary services pursuant to paragraph 3 of this Article.

An authorisation to designate credit institutions or CSDs in accordance with the first subparagraph shall only be used with regard to the banking-type ancillary services referred to in Section C of the Annex for the settlement of the cash payments for all or part of the securities settlement systems of the CSD seeking to use the banking-type ancillary services, and not to carry out any other activities.

The credit institutions and CSDs authorised to provide banking-type ancillary services designated in accordance with the first subparagraph shall be considered to be settlement agents.';

(c) paragraph 4 is replaced by the following:

‘▌4. Where ***all of*** the following conditions are met, a CSD ***may be authorised*** to designate a credit institution ▌ to provide ▌ banking-type ancillary services ***for the settlement*** of the ***cash payments for all or part of that CSD's securities settlement systems pursuant to*** paragraph ***2a, point (a)***: ▌

(a) the credit institution meets the prudential requirements laid down in Article 59(1), (3) and (4) and the supervisory requirements laid down in Article 60;

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

(c) the authorisation under Article 8 of Directive 2013/36/EU is used only to provide the banking-type ancillary services referred to in Section C of the Annex for the settlement of the cash payments for all or part of the securities settlement systems of the CSD seeking to use the banking-type ancillary services, and not to carry out any other activities;

(d) the credit institution is subject to an additional capital surcharge that reflects the risks, including credit and liquidity risks, resulting from the provision of intra-day credit, inter alia, to the participants in a securities settlement system or other users of CSD services;

(e) the credit institution reports at least monthly to the competent authority and discloses to the public annually as a part of its public disclosure as required under Part Eight of Regulation (EU) No 575/2013 on the extent and management of intra-day liquidity risk in accordance with Article 59(4), point (j), of this Regulation; and

(f) the credit institution 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 materialises as a result of the provision of banking-type ancillary services from within a separate legal entity.';

(d) the following paragraph is inserted:

'4a. Where a CSD seeks to designate a credit institution or a CSD in accordance with paragraph 2a to settle the cash payments for all or part of its securities settlement systems, such cash payments shall not be in a currency of the country where the designating CSD is established.';

(e) paragraphs 5***, 6 and 7*** are replaced by the following:

5. Paragraph 4 shall not apply to credit institutions referred to in paragraph ***2a***, point (a), ***and paragraph 4a shall not apply to credit institutions and CSDs referred to in paragraph 2a,*** that offer to settle the cash payments for all or part of the CSD's securities settlement systems, if the total value of such cash settlement through accounts opened with those credit institutions ***and CSDs, as applicable,*** calculated over a one-year period***, does not exceed the threshold*** determined in accordance with paragraph 9.

The competent authority shall monitor at least once per year that the threshold referred to in the first subparagraph is respected***. The competent authority shall transmit*** its findings ***together with the underlying data*** to ESMA ***and EBA. The competent authority shall also transmit its findings to the members of the ESCB. Without prejudice to Article 40(1),*** where the competent authority determines that the threshold has been exceeded, ***the competent authority*** shall require the CSD concerned to seek authorisation in accordance with paragraph ***2***. The CSD concerned shall submit its application for authorisation within six months.

6. Where the competent authority considers that the exposure of one credit institution to the concentration of risks under Article 59(3) and (4) is not sufficiently mitigated, the competent authority may require a CSD to designate more than one credit institution or CSD referred to in paragraph 2a, or to designate a credit institution or a CSD referred to in paragraph 2a, in addition to providing services itself in accordance with paragraph 2 of this Article.

7. A CSD authorised to provide any banking-type ancillary services and a credit institution designated in accordance with paragraph 2a, point (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 substantive changes affecting the conditions for authorisation.';

(f) in paragraph 8, the first subparagraph is replaced by the following:

‘8. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to determine the additional risk-based capital surcharge referred to in paragraph 3, point (d), and paragraph 4, point (d).’;

(g) the following paragraph is added:

‘9. EBA shall, in close cooperation with the members of the ESCB and ESMA, develop draft regulatory technical standards to determine the ***threshold*** referred to in paragraph 5 ***and accompanying appropriate risk management and prudential requirements to mitigate*** risks ***in relation to the designation of*** credit ***institutions in accordance with paragraph 2a***. When developing ***those*** standards***,*** EBA shall ***take into account the following:***

(a) the implications for the market stability that could derive from a change of risk profile of CSDs and their participants, including the systemic importance of CSDs for the functioning of securities markets;

(b) the implications for the credit and liquidity risks for CSDs, for the designated credit institutions involved and for the CSD participants that result from the settlement of cash payments through accounts opened with credit institutions that are not subject to paragraph 4;

(c) the possibility for CSDs to settle cash payments in several currencies;

(d) the need to avoid both an unintended shift from settlement in central bank money to settlement in commercial bank money and disincentives to the efforts of CSDs to settle in central bank money; and

(e) the need to ensure a level playing field amongst CSDs in the Union.

EBA shall submit those draft regulatory technical standards to the Commission by **…** [1 year from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) ***No 1093/2010***.▌';

(26) ***Article 55 is amended as follows:***

(a) paragraphs 1 and 2 are replaced by the following:

'1. The CSD shall submit its application for authorisation to designate a credit institution or a CSD authorised to provide banking-type ancillary services or to provide itself any banking-type ancillary services, as required under Article ***54, to the competent authority of its home Member State.***

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 or CSD authorised to provide banking-type ancillary services have established, at the time of the authorisation, all the necessary arrangements to meet their obligations as laid down in this Regulation. It shall contain a programme of operations setting out the banking-type ancillary services envisaged, the structural organisation of the relations between the CSD and, where applicable, the designated credit institution or CSD authorised to provide banking-type ancillary services and how that CSD and, where applicable, the designated credit institution or CSD authorised to provide banking-type ancillary services intend to meet the prudential requirements laid down in Article 59(1), (3), (4) and (4a) and the other conditions laid down in Article 54.';

(b) paragraph 5 is amended as follows:

(i) the first, second and third subparagraphs are replaced by the following:

'The authorities referred to in paragraph 4, points (a) to (e), shall issue a reasoned opinion on the authorisation within two months of receipt of the information referred to in that paragraph. Where an authority does not provide an opinion within that deadline**,** it shall be deemed to have issued a positive opinion.

Where an authority referred to in paragraph 4, points (a) to (e), issues a negative reasoned opinion, the competent authority intending to grant the authorisation shall, within one month of receipt of that negative opinion, provide the authorities referred to in paragraph 4, points (a) to (e), with the reasons addressing the negative opinion.

Where, within 1 month of those reasons being presented, any of the authorities referred to in paragraph 4, points (a) to (e), issues a negative opinion and the competent authority nevertheless intends to grant the authorisation, any of the authorities that issued a negative opinion may refer the matter to ESMA for assistance under Article 31(2), point (c), of Regulation (EU) No 1095/2010.';

(ii) ***the following subparagraph is added:***

'***The competent authority shall, without undue delay, inform the authorities referred to in paragraph 4, points (a) to (e), of the results of the authorisation process, including any remedial actions.***';

(27) Article 59 is amended as follows:

(a) paragraph 4 is amended as follows:

(i) points (c), (d) and (e) are replaced by the following:

‘(c) it shall maintain sufficient qualifying liquid resources in all relevant currencies for a timely provision of settlement services under a wide range of potential stress scenarios including the liquidity risk generated by the default of at least two participants, including its 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 relevant currency, such as cash at the central bank of issue and at other creditworthy financial institutions, committed lines of credit or similar arrangements and highly liquid 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, and it shall identify, measure and monitor its liquidity risk stemming from the various financial institutions used for the management of its liquidity risks;

(e) where prearranged and highly reliable funding arrangements, committed lines of credit or similar arrangements are used, it shall select only 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; ▌ ';

(ii) point (i) is replaced by the following:

'(i) it shall have prearranged and highly reliable arrangements to ensure that it can convert in a timely fashion the collateral provided to it by a defaulting client into cash and, where non-committed arrangements are used, establish that any associated potential risks have been identified and mitigated;';

(b) the following paragraph is inserted:

'***4a. Where a CSD intends to provide banking-type ancillary services to other CSDs pursuant to Article 54(2a), first subparagraph, point (b), the CSD shall have in place clear rules and procedures addressing any potential credit, liquidity and concentration risks resulting from the provision of those services.***';

(c) in paragraph 5, the ***first and*** second subparagraphs ***are*** replaced by the following:

‘***5. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to further specify details of the frameworks and tools for the monitoring, measuring, management, reporting and public disclosure of the credit and liquidity risks, including those which occur intra-day, referred to in paragraphs 3 and 4, as well as the rules and procedures referred to in paragraph 4a. Those draft regulatory technical standards shall, where appropriate, be aligned to the regulatory technical standards adopted in accordance with Article 46(3) of Regulation (EU) No 648/2012.***

EBA shall submit those draft regulatory technical standards to the Commission by … [1 year from the date of entry into force of this amending Regulation].***’;***

(28) Article 60 is amended as follows:

(a) in paragraph 1, the third subparagraph is replaced by the following:

‘The competent authorities referred to in the first subparagraph shall regularly, and at least ***every two years***, assess whether the designated credit institution or CSD authorised to provide banking-type ancillary services complies with Article 59 and shall inform the competent authority of the CSD which shall then inform the authorities referred to in Article 55(4) and, where applicable, the ***college*** referred to in Article 24a, of the results, including any remedial actions or penalties, of its supervision under this paragraph.;’

(b) ▌ paragraph 2 ***is amended as follows***:

(i) the introductory wording is replaced by the following:

'The competent authority of the CSD shall***, after consulting the competent*** authorities referred to in ***paragraph 1 and the relevant authorities, review and evaluate at least every two years the following:***';▌

(ii) the second subparagraph is replaced by the following:

'The competent authority of the CSD shall regularly, and at least every two years, inform the authorities referred to in Article 55(4) and, where applicable, the college referred to in Article 24a, of the results, including any remedial actions or penalties, of its review and evaluation under this paragraph.';

(29) Article 67 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The power to adopt delegated acts referred to in Article 2(2) shall be conferred on the Commission for an indeterminate period from 17 September 2014.';

(b) the following paragraph is inserted:

‘2a. The power to adopt delegated acts referred to in Article ***7(5), and (9)*** ▌ shall be conferred on the Commission for an indeterminate period from ***... [the*** date of entry into force of this ***amending Regulation***]***’***;’

(c) paragraph 3 is replaced by the following:

‘3. The delegation of power referred to in ***Article 2(2) and in Article 7(5) and (9)*** ▌ 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.***’***;

(d) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to ***Article 2(2) and Article 7(5) and (9)*** 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 of the Council.***’;***

(30) in Article 68, the following paragraph is added:

‘3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.***’***;

(31) Article 69 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. The national rules on authorisation of CSDs shall continue to apply until the date when a decision is made under this Regulation on the authorisation of CSDs and of their activities, including CSD links, or until … [1 year from the date of entry into force of this amending Regulation], whichever is earlier.;’

(b) the following paragraphs are inserted:

‘4a. The national rules on recognition of third-country CSDs shall continue to apply until the date when a decision is made under this Regulation on the recognition of the third-country CSDs and of their activities, or until … [3 years from the date of entry into force of this amending Regulation], whichever is earlier.

A third-country CSD that provides the core services referred to in Section A, points 1 and 2, of the Annex in relation to financial instruments constituted under the law of a Member State referred to in Article 49(1), second subparagraph, pursuant to the applicable national rules on recognition of third-country CSDs shall notify ESMA thereof within two years of … [the date of entry into force of this amending Regulation].

ESMA shall develop draft regulatory technical standards to specify the information that the third-country CSD is required to provide to ESMA in the notification referred to in the second subparagraph. Such information shall be limited to what is strictly necessary including, where applicable and available:

(a) the number of participants to whom the third-country CSD provides ***or intends to provide*** the services referred to in the second subparagraph;

(b) the categories of financial instruments in respect of which the third-country CSD provides such services; and

(c) the total volume and value of such financial instruments.

ESMA shall submit those draft regulatory technical standards to the Commission by ... [1 year from the date of entry into force of this amending Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

4b. A third-country CSD that provided the core service referred to in Section A, point 3, of the Annex in relation to financial instruments constituted under the law of a Member State referred to in Article 49(1) second subparagraph, before … [***2 years from*** the date of entry into force of this amending Regulation] shall submit the notification referred to in Article 25(2a) ***by…*** [***2 years from the date*** of entry into force of this amending Regulation].

4c. Where a CSD has submitted a complete application for recognition in accordance with Article 25(4), (5) and (6) before … [the date of entry into force of this amending Regulation] but ESMA has not issued a decision in accordance with Article 25(6) by that date, the national rules on recognition of CSDs shall continue to apply until the ESMA decision is issued.';

(c) the following ***paragraphs are*** added:

‘6. ***The delegated act adopted pursuant to Article 7(14) as applicable before … [the date of entry into force of this amending Regulation] shall continue to apply until the date of application of the delegated act adopted pursuant to Article 7(5).***

The delegated act adopted pursuant to Article 7(15), points (a), (b) and (g), as applicable before … [the date of entry into force of this amending Regulation] shall continue to apply until the date of application of the delegated act adopted pursuant to Article 7(10).

7. ***The*** competent authorities shall establish ▌ colleges pursuant to Article 24a ***within one month of*** the date of entry into force of ***the regulatory technical standards adopted under Article 24a(13)***. ▌

8. A CSD that, in another Member State, provided core services referred to in Section A, points 1 and 2, of the Annex or set up a branch in accordance with Article 23 as applicable before … [the date of entry into force of this amending Regulation] shall be subject to the procedure set out in Article 23(3) to (6) only in relation to:

(a) the setting up of a new branch;

(b) a change in the range of those services.’;

(32) Article 72 is deleted;

(33) Article 74 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory wording is replaced by the following:

‘1. ESMA shall, in cooperation with EBA and the competent authorities and the relevant authorities, submit 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. Those reports shall include an assessment of the following:’;

(ii) ***points (a), (b) and (c) are*** replaced by the following:

‘(a) settlement efficiency for domestic and cross-border operations for each Member State***, taking into account at least the following:***

(i) the number and volume of settlement fails and their evolution***;***

(ii) impact of cash penalties on settlement fails across instruments***;***

(iii) the duration and main drivers of settlement fails***;***

(iv) the categories of financial instruments and markets where the highest settlement fail rates are observed***;***

(v) an international comparison of settlement fail rates*;*

(vi) the amount of the cash penalties referred to in Article *7;*

(vii) where applicable, the number and volumes of mandatory buy-ins referred to in Article 7a*;*

(viii) any measures taken by competent authorities to address situations where a CSD's settlement efficiency over a six-month period is significantly lower than the average settlement efficiency levels recorded in the Union market;

(aa) the settlement efficiency levels in comparison to the situation in major third-country capital markets as well as in terms of instruments traded and types of transactions executed in such markets;

(b) the appropriateness of cash penalties for settlement fails, in particular the need for additional flexibility in relation to those penalties for settlement fails in relation to illiquid financial instruments;

(c) the number and volume of transactions that are settled outside the securities settlement systems operated by CSDs and their evolution over time, including a comparison with the number and volume of the transactions that are settled in the securities settlement systems operated by CSDs, based on the information received under Article 9 and any other relevant information, as well as the impact of that evolution on competition in the settlement market and any potential risks to financial stability from internalised settlement;';

(iii) the following point is added:

'(l) the handling of notifications submitted in accordance with Article 25(2a)***.'***;

(b) paragraph 2 is replaced by the following:

2. The reports referred to in paragraph 1 shall be submitted to the Commission as follows:

(a) every ***two*** years for the reports referred to in paragraph 1, points (a), (aa), (b), (c), (i) and (l);

(b) every ***three*** years for the reports referred to in paragraph 1, points (d) and (f);

(c) at least every three years, and in any case within six months from a peer review exercise carried out in accordance with Article 24, for the report referred to in paragraph 1, point (g);

(d) upon request from the Commission, for the reports referred to in paragraph 1, points (e), (h), (j) and (k).

The reports referred to in paragraph 1 shall be communicated to the Commission by 30 April of the relevant year as determined in accordance with the periodicity set out in the first subparagraph of this paragraph.***'***;

(c) the following paragraphs are added:

'3. By … [1 year from the date of entry into force of this amending Regulation] and every two years thereafter, ESMA, in close cooperation with the members of the ESCB, shall submit a report to the European Parliament and to the Council on the assessment regarding the potential shortening of the period referred to in Article 5(2), first sentence ('settlement cycle'). That report shall include all of the following:

(a) an assessment of the appropriateness of shortening the settlement cycle and the potential impact of such shortening on CSDs, trading venues and other market participants;

(b) an assessment of the costs and benefits of shortening the settlement cycle in the Union, differentiating, where appropriate, between different financial instruments and categories of transactions;

(c) a detailed outline of how to move to a shorter settlement cycle, differentiating, where appropriate, between different financial instruments and categories of transactions;

(d) an overview of international developments on settlement cycles and their impact on the Union's capital markets.

4***. Upon the request of the Commission, ESMA shall provide a cost-benefit analysis of the introduction of the mandatory buy-in process. Such cost-benefit analysis shall consist of the following elements:***

(a) the average duration of settlement fails with respect to the financial instruments or categories of transactions in those financial instruments to which mandatory buy-ins could apply;

(b) the impact of the introduction of the mandatory buy-in process on the Union market, including an assessment of the underlying causes of the settlement fails to which mandatory buy-ins could apply and an analysis of the implications of subjecting specific financial instruments and categories of transactions to mandatory buy-ins;

(c) the application of a similar buy-in process in comparable third-country markets and the impact on the competitiveness of the Union market;

(d) any clear impact on financial stability in the Union stemming from settlement fails;

(e) any clear impact on fragmentation of the Union's capital markets stemming from diverging settlement efficiency rates, including the reasons for such divergence and appropriate measures to limit it.

5. EBA shall, in cooperation with the members of the ESCB and ESMA, publish an annual report on those CSDs which designate other CSDs or credit institutions for the provision of banking-type ancillary services. That report shall take into account the findings related to the monitoring of the threshold by competent authorities referred to in Article 54(5) and the credit and liquidity implications for CSDs providing banking-type ancillary services under such threshold.

6. ESMA shall, after consulting the members of the ESCB, submit a report by ... [1 year from the date of entry into force of this amending Regulation] to the Commission regarding the appropriateness of applying additional regulatory tools to improve settlement efficiency in the Union.

That report shall cover at least the shaping of transaction sizes, the partial settlement of failing trades and the use of auto-lend/borrow programmes.

Thereafter, ESMA, after consulting the members of the ESCB, shall report every three years on any potential additional tools to improve settlement efficiency in the Union. In cases where no new tools have been identified, ESMA shall inform the Commission thereof and shall not be required to provide a report.

7. ***By … [2 years from the date of entry into force of this*** amending ***Regulation], EBA, in close cooperation with the members of the ESCB and ESMA, shall submit a report to the European Parliament and to the Council on the assessment of the residual credit loss related to residual credit exposures as referred to in Article 59(3), point (g), and ways of addressing it. That report shall be made available to the public.***';

(34) Article 75 is replaced by the following:

‘Article 75

Review

By … [5 years from the date of entry into force of this amending Regulation], the Commission shall review and prepare a general report on this Regulation. ***The Commission*** shall, in particular, assess***:***

(a) the matters referred to in Article 74(1), points (a) to (l), establish whether there are substantive barriers to competition in relation to the services subject to this Regulation which are insufficiently addressed and consider the potential need to apply further measures to:

(i) improve settlement efficiency;

(ii) limit the impact on taxpayers of the failure of CSDs;

(iii) address any identified competition or financial stability issues related to internalised settlement;

(iv) minimise barriers to cross-border settlement;

(v) ensure adequate powers and information for authorities to monitor risks;

(b) the functioning of the regulatory and supervisory framework for Union CSDs, especially those CSDs whose activities are of substantial importance for the functioning of securities markets and the protection of investors in the Union in at least two host Member States, focusing in particular on the cross-border provision of services, potential risks for clients and participants of CSDs, investor protection and the financial stability in the Union;

(c) the functioning and scope of the Union regulatory and supervisory framework for third-country CSDs, in particular the supervision of such CSDs when providing services in the Union, including the role of ESMA.

The Commission shall submit the report to the European Parliament and to the Council, together with any appropriate proposals.'.

Article 2

Amendment to Regulation (EU) No 236/2012

In Regulation (EU) No 236/2012, the following article is inserted:

'Article 15
Buy-in procedures

A central counterparty in a Member State that provides clearing services for shares shall ensure that procedures are in place which comply with all of the following requirements:

(a) where a natural or legal person who sells shares is not able to deliver the shares for settlement within four business days of the day on which settlement is due, procedures are automatically triggered for the buy-in of the shares to ensure delivery for settlement;

(b) where the buy-in of the shares for delivery is not possible, an amount is paid to the buyer based on the value of the shares to be delivered at the delivery date plus an amount for losses incurred by the buyer as a result of the settlement failure;

(c) the natural or legal person who fails to settle reimburses all amounts paid pursuant to points (a) and (b).'.

Article 3

Entry into force and application

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

However, the following points of Article 1 ***shall apply from … [2 years from the date of entry into force of this amending Regulation]:***

(a) point 3, with regard to Article 7(3), points (a) and (b), of Regulation (EU) No 909/2014;

(b) point 13, point (a);

(c) point 22, with regard to Article 47a(1) and (2) of Regulation (EU) No 909/2014;

(d) point 25, point (e);

(e) point 27, point (a).

Additionally, Article 1, point 33, points (a) and (b), shall apply from 1 May 2024.

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

Done at …,

For the European Parliament	*For the Council*
The President	*The President*