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**NOTE**

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| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee |
| 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<br>- Mandate for negotiations with the European Parliament |

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 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[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with the ordinary legislative procedure,

[1] OJ C […], […], p. […].
[2] OJ C 367, 26. 9. 2022, p. 3.

Whereas:

(1) Regulation (EU) No 909/2014 of the European Parliament and of the Council[3] entered into force on 17 September 2014. It standardises the requirements for the settlement of financial instruments and 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.

(1a) A simplification of the requirements in certain areas covered by Regulation (EU) No 909/2014, and a more proportionate approach to those areas, is in line with the Commission's Regulatory Fitness and Performance (REFIT) programme, which emphasises the need for cost reduction and simplification so that Union policies achieve their objectives in the most efficient way, and aims in particular at reducing regulatory and administrative burdens.

(2) Efficient and resilient post-trading infrastructures are essential elements for a well-functioning Capital Markets Union and they deepen the efforts to support investments, growth and jobs in line with the political priorities of the Commission. For this reason, the Commission Capital Markets Union Action Plan adopted in 2020[4] included as one of its key actions the review of Regulation (EU) No 909/2014.

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[3] 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).

[4] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Capital Markets Union for people and businesses-new action plan', COM(2020/) 590.

(3) 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 Securities and Markets Authority ('ESMA') and the European System of Central Banks ('ESCB'). It appeared from the consultations that stakeholders support and consider as relevant the objectives of that Regulation, i.e. to promote safe, efficient and smooth settlement of financial instruments, and that no major overhaul was necessary. On 1 July 2021, the Commission adopted a review report[5] in accordance with Article 75 of Regulation (EU) No 909/2014. Although not all the provisions of that Regulation are fully applicable yet, the report identified areas for which targeted action is necessary to ensure that its objectives are reached in a more proportionate, efficient and effective manner.

(4) Regulation (EU) No 909/2014 has introduced rules on settlement discipline to prevent and address failures in the settlement of securities transactions and therefore ensure the safety of transaction settlement. Such rules include in particular reporting requirements, a cash penalties regime and mandatory buy-ins. Despite the absence of experience in applying those rules, the development and specification of the framework in Commission Delegated Regulation (EU) 2018/1229[6] has allowed all interested parties to better understand the regime and the challenges its application could give rise to. Cash penalties and reporting requirements should continue to apply in order to assess their impact on improving settlement efficiency in the Union. However, the scope of cash penalties and mandatory buy-ins set out in Article 7 of Regulation (EU) No 909/2014 should be clarified. In order to distinguish the requirements on cash penalties from those on mandatory buy-ins, they should be split in two separate articles, one-dedicated to cash penalties and another one to mandatory buy-ins.

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5 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 (COM(2021) 348 final).

6 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).

(4a) The cash penalties should continue to be subject to some of the requirements in Regulation (EU) No 909/2014 that are relevant only for the cash penalties and their calculations. The parameters for calculation of cash penalties should remain applicable. However, the Commission should be empowered to reassess such parameters on a regular basis every four years and to further consider the method used for calculation of cash penalties, such as the possibility of setting a progressive rate.

(4b) Specific provisions should be dedicated to mandatory buy-in measures, which should be measures of last resort used only in the situation where the level of settlement fail is excessively high and other measures have not proved sufficient in lowering it.

(4c) Some categories of transactions should be excluded from the scope of the cash penalties measures and mandatory buy-in measures. The exemptions should cover in particular transactions that failed for reasons not attributable to the participants and transactions that do not involve two trading parties, for which the application of cash penalties or mandatory buy-ins would not be practicable or could lead to detrimental consequences for the market, such as certain transactions from the primary market, corporate actions, reorganisations, creation and redemption of fund units and realignments. The Commission should be empowered to supplement Regulation (EU) No 909/2014 by further specifying the conditions under which settlement fails should not be considered as attributable to the participants by means of a delegated act. ESMA should develop draft regulatory technical standards specifying the particulars of what are the transactions that should not be considered as trading and some further details that are left up to ESMA for cash penalties. It should also be clarified that cash penalties should be calculated on a daily basis for each business day that a transaction fails to be settled until the actual settlement day or until the transaction is bilaterally cancelled, whichever is the earlier.

(5) The overarching objective of the settlement discipline regime is to improve settlement efficiency within the Union. However, the market volatility in 2020 amplified concerns about the potential negative effects of mandatory buy-in rules, both in normal and stressed market conditions. The application of mandatory buy-in rules should therefore be subject to an assessment by the Commission as to its appropriateness, necessity and proportionality in the light of the evolution of settlement efficiency in the Union. Considering the potential impacts of mandatory buy-in rules, such rules should apply only as the last resort and when all possible other avenues for addressing insufficient level of settlement efficiency in the Union have been tried. Therefore, the Commission should as a first step consult ESRB and require from ESMA to be provided with a cost-benefit analysis. Where such analysis demonstrates that mandatory buy-in might be the appropriate tool, the Commission should have the possibility to have recourse the mandatory buy-in mechanism.

(5a) Moreover, putting in place mandatory buy-in should only be possible where certain conditions are met. The mandatory buy-in should therefore only be applied where the application of cash penalties has not resulted in a long-term and sustainable reduction of settlement fails in the Union or in maintaining a sustainable reduced level of settlement fails in the Union, as certain limited level of settlement fails is unavoidable. Together with that condition, also a second condition should be fulfilled, namely that the level of settlement fails in the Union has or is likely to have a negative effect on the financial stability of the Union. A negative effect should be understood as less severe impact than jeopardising the financial stability in the Union. Where the Commission considers that both those conditions are met and that the application of mandatory buy-in measure is a proportionate, necessary and adequate to address the level of settlement fails in the Union, the Commission should be empowered to adopt an implementing act determining for which financial instruments or categories of transactions the mandatory buy-in rules should start to apply.

(6) To avoid a multiplicity of buy-ins for transactions on the same financial instrument along a chain of counterparties that are participants in the CSD, which could trigger unnecessary duplicative costs and could affect the liquidity of the financial instrument, a 'pass-on' mechanism should be available to participants in such transactions allowing those participants to coordinate their actions and inform the CSD thereof. Where appropriate, the CSD should inform relevant market infrastructure involved. Each participant involved in the transaction chain should be allowed to pass-on a buy-in notification based on their bilateral agreement to the participant failing to them until the original failing participant is reached.

(7) *deleted*

(8) The settlement discipline regime set out in Article 7 of Regulation (EU) No 909/2014 should not apply to a failing participant, which is a central counterparty ('CCP') as defined in Regulation (EU) No 648/2012 of the European Parliament and of the Council[7]. Further details should be specified in regulatory technical standards. However, for transactions entered into by a CCP where it does not interpose itself between counterparties, such as permitted use of collateral for investment purposes, the CCP should be subject to the settlement discipline regime like any other participant.

(8a) The CCPs had applied independent mandatory buy-in measure under Regulation (EU) No 236/2012 until it was accidentally deleted. The mandatory buy-in regime in Regulation (EU) No 236/2012 is independent of the regime of Regulation (EU) No 909/2014 and should continue to apply. Therefore, the particular provision should return to its original place.

(8b) Transactions not cleared by a CCP might be uncollateralised and therefore each trading venue member or trading party bears the counterparty risk. Moving this risk to other entities, such as CSD's participants, would force the latter to cover their exposure to counterparty risk with collateral. This could lead to increased costs of securities settlement in a disproportionate manner. The failing clearing member, 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.

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[7] 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).

(9) Where the mandatory buy-in measures 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.

(10) The context of negative interest rates should be taken into account in the delegated act for the calculation of cash penalties in order to avoid unintended effects on the non-failing participant by eliminating any adverse incentives to fail that may arise in a low or negative interest rate environment.

(11) ESMA should prepare draft regulatory standards to revise the existing regulatory technical standards in order to take into account the changes made 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 regulatory technical standard, such as the conditions under which participants may execute their own buy-ins.

(12) Where a central securities depository (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.

(13) 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 if and how their views have been considered in the outcome of the authorisation process and if 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. Any of the authorities that issued a negative opinion might refer the matter to ESMA for assistance under Regulation (EU) No 1095/2010.

(14) 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 the CSD is, or might be, exposed or which might 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 with limited added value. A more appropriate periodicity should therefore be set in order to alleviate this burden and avoid a duplication of information from one review to the other. The period of evaluation should be carefully calibrated. Where relevant, competent authorities might coordinate their review and evaluation with the conduct of thread led penetration testing under Regulation (EU) 2022/… of the European Parliament and of the Council [DORA] and take into account the result of such tests in their report. The supervisory capacities of competent authorities and the objective of safeguarding financial stability should, however, not be undermined, therefore the possibility of competent authorities to request an additional review should be kept. Furthermore, the assessment of the appropriate periodicity by the competent authority should be carried out in a proportionate manner, with a review interval of up to three years if appropriate considering the risk profile of the CSD's activities.

(15) A CSD should be prepared to face scenarios that might potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. Regulation (EU) No 909/2014 introduced requirements in this 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. While CSDs authorised to offer banking-type ancillary services fall within the scope of Directive 2014/59/EU of the European Parliament and of the Council[8], no specific provisions exist for CSDs that 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. In order to avoid duplication of requirements, CSDs authorised to offer banking-type ancillary services that are already subject to the requirements regarding recovery plans set in Directive 2014/59/EU of the European Parliament and of the Council should not be required to comply with the requirements regarding the preparation of plans on recovery or orderly wind down under this Regulation, insofar as the information to be included in those plans has been already provided.

(16) Where a new CSD applies for authorisation and compliance with certain requirements cannot be assessed because the CSD is not operational yet, the competent authority should be able to, before granting the authorisation, assess whether it is likely that the requirements under this Regulation will be complied with by the CSD concerned when the CSD effectively commences its activities. That assessment is particularly relevant as regards the use of distributed ledger technology and application of Regulation (EU) 2022/858 of the European Parliament and of the Council.

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8 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).

(17) The procedure set out in Article 23 of Regulation (EU) No 909/2014 regarding the provision by CSDs of notary and central maintenance services in relation to financial instruments constituted under the law of a Member State other than that of their authorisation has proven to be burdensome and some of its requirements are unclear. This has resulted in a disproportionately costly and lengthy process for CSDs. The procedure should therefore be 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 CSD need to take to allow their users to comply with national laws, it should also be clear which is the legal framework that is relevant for the assessment that a CSD is required to perform under Article 23 of 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 this assessment is limited to shares only. The obligation to perform that assessment should be streamlined to lessen the burden placed on CSDs. The competent authority of the host Member State should be offered the possibility to comment on the assessment related to national laws before the competent authority of the home Member State communicates the information to the competent authority of the host Member State. The final decision on passporting should be left to the home competent authority.

(18) 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 law of more than one Member States. Nonetheless, the supervisory arrangements remain fragmented and can lead to differences in the allocation and nature of supervisory powers depending on the CSD concerned. This in turn creates barriers to the cross-border provision of CSD services in the Union, perpetuates the remaining inefficiencies in the Union settlement market and has negative impacts on the stability of Union financial markets. Despite the possibility to set up colleges in accordance with Article 24(4) of that Regulation, that option has barely been used. In order to ensure an effective and efficient coordination of the supervision by competent authorities, a requirement to set up mandatory colleges should apply. A college of supervisors should be established for CSDs whose activities in at least two host Member States are considered of substantial importance for the functioning of the securities markets and the protection of investors. A college set up under this Regulation should not automatically 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 and, if still relevant, respect the current threshold that is set for substantial importance set in Commission Delegated Regulation 2017/389 at 15 % involvement of CSDs in particular services in the relevant host Member State.

(18a) In order to facilitate the performance of the tasks of the college, the members of the college should include, among others, the home and host competent authorities of the CSD, the relevant authorities pursuant to Article 12 of Regulation (EU) No 909/2014 and authorities from third countries upon their justified request. That request should include a comprehensive reasoning demonstrating the need for the participation of the third-country authority in the college, as well as the added value of such participation.

(18b) In order to facilitate certain tasks assigned to the colleges, the competent authority of CSD should share most relevant information set by this Regulation about the CSD with the members of college. The information should include that on senior management, management body and shareholders, as well as information about approved outsourcing arrangements regarding core functions within the group or outside the group the CSDs is member of.

(19) ESMA and competent authorities currently have limited information on the services that CSDs established in a third-country offer in relation to financial instruments constituted under the law of a Member State for several reasons. First, due to the deferred application, without an end date, of 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. Second, due to the fact that where a third-country CSD provides only the settlement service, it is not subject to recognition requirements. Finally, due to the fact that Regulation (EU) No 909/2014 does not require CSDs established in a third-country to notify Union authorities of their activities related to financial instruments constituted under the law of a Member State. Given the lack of information, neither issuers nor public authorities at national and Union level have been able to assess the activities of those CSDs in the Union if needed. Therefore, CSDs established in a third-country should be required to inform Union authorities of their activities in relation to financial instruments constituted under the law of a Member State.

(20) 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' under Article 2(28) of Regulation (EU) No 648/2012.

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

(22) 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.

(23) Under certain circumstances, a security might be constituted under the national corporate or similar laws of two different Member States. This is in particular the case for debt securities where the issuer is incorporated in one Member State and the securities might be issued under the governing law of another Member State. In such a case, both national corporate or similar laws should continue to apply. The choice of the applicable law is not to be governed by this Regulation and should therefore remain at the issuers' discretion or otherwise be determined by law.

(23a) Any new rules in this Regulation governing the provision of services by a CSD established in a given Member State in relation to financial instruments constituted under the law of another Member State should apply only to securities initially recorded after those new rules become applicable. The securities that have been recorded by a CSD by the date of entry into force of this Regulation should therefore not trigger the application of any new rules with regard to the freedom to provide services in another Member State.

(24) 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 such Member States, Member States should regularly update the list of such national key relevant provisions published by ESMA.

(25) In order to avoid settlement risks due to the insolvency of the settlement agent, a CSD should settle, whenever practical and available, the cash leg of the securities transaction through accounts opened with a central bank. Where that option is not practical and available, including where a CSD does not meet the conditions to open an account with a central bank other than that of its home Member State, that CSD should be able to settle the cash leg of transactions in a currency other than of the country where the settlement takes place through accounts opened with institutions authorised to provide banking services under the conditions provided in Regulation (EU) No 909/2014. The efficiency of the settlement market would be better served by enhancing the possibilities for CSDs to provide settlement in currency other than that of the country where the settlement takes place through the use of accounts opened with institutions authorised to provide banking services, within appropriate risk limits, with a view to deepen capital markets and enhance cross-border settlement. For that purpose, CSDs authorised to provide banking-type ancillary services in accordance with Regulation (EU) No 909/2014, and for which the relevant risks are already monitored, should be able to offer services pertaining to the settlement of the cash leg of securities transactions, in a currency other than that of the country where the settlement takes place, to other CSDs that do not hold such license irrespective of whether the latter are part of the same group of companies.

(26) Within appropriately set risk limits, CSDs that are not authorised to provide banking-type ancillary services should be able to arrange payments in a currency other than of the country where the settlement takes place through accounts opened with credit institutions. A CSD should be able to designate a credit institution below particular threshold as a separate legal entity. That threshold should consist of a maximum amount for those arranged payments. In addition, that threshold should be calibrated in a way that promotes efficiency of settlement and allows CSDs to reach a level of cash settlement below which requiring a banking license or connecting to a central bank of issue is not practical, while ensuring financial stability and level playing field in the Union. To this end, the threshold should take into account the need for CSDs to be able to settle payments in different currencies, especially for the most liquid ones, while setting an appropriate limit that would be applicable to the institution as a whole. Nevertheless, in determining and calibrating the threshold, risks to the financial stability of market infrastructures as well as to the EU should be avoided or appropriately mitigated. As a body with specialised expertise regarding banking and credit risk matters, EBA should be entrusted with the development of draft regulatory technical standards to set the appropriate thresholds and, where necessary, any risk mitigation requirements. EBA should also closely cooperate with the members of the ESCB and with ESMA. The Commission should be empowered to adopt regulatory technical standards in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) with regard to the detailed elements of the determining for the provisioning of banking type ancillary services, the accompanying details of the risk management and capital requirements for CSDs and the prudential requirements on credit and liquidity risks for CSDs and designated credit institutions that are authorised to provide banking-type ancillary services.

(27) 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, whether those arrangements are committed or have similar reliability. EBA should submit draft regulatory technical standards to revise 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.

(28) 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 laid down.

(29) In order to provide CSDs established in the Union or in third countries with sufficient time to apply for authorisation and recognition of their activities, 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 national and Union level have the necessary information to ensure investor protection and monitor financial stability. The third-country CSDs which would provide the core services referred to in Section A, points (1) and (2), of the Annex of Regulation (EU) No 909/2014 should be subject to the procedures set out in that Regulation. However, the third-country CSDs already providing the core services referred to in Section A, points (1) and (2), of the Annex of Regulation (EU) No 909/2014 should benefit from a simplified notification procedure.

(30) Regulation (EU) No 909/2014 currently requires ESMA to prepare, in cooperation with national competent authorities and EBA, annual reports on 12 topics and submit those reports 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 necessary information it needs to review the implementation of Regulation (EU) No 909/2014. Upon request from the Commission, ESMA should provide a cost-benefit analysis that should be used as a basis for the implementing act on mandatory buy-in.

*(31) [moved to recital 35a]*

(32) The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to specify the effect that, in a context of negative interest rates, fails could have on the affected counterparties in relation to the calculation of cash penalties or their adverse incentives to fail, the reasons causing settlement fails that are to be considered to be not attributable to the participants, the information to be notified by third-country CSDs; and the maximum amount below which CSDs might use any credit institution to settle the cash payments.

(33) In order to ensure uniform conditions for the implementation of 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[9].

[9] 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).

(34) Since the objectives of this Regulation, namely to increase the provision of cross-border settlement by CSDs, reduce 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.

(35) The application of the new requirements regarding the establishment of colleges of supervisors, the revised threshold under which credit institutions might 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 deferred to give sufficient time for the adoption of the necessary delegated acts further specifying such requirements.

(35a) Regulations (EU) No 236/2012 and (EU) No 909/2014 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) Article 2 is amended as follows:

(a) the following point (25a) is inserted:

'(25a) 'group' means a group within the meaning of Article 2(11) of Directive 2013/34/EU;';

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

'(26) 'default', in relation to a participant, means a situation where insolvency proceedings, as defined in Article 2, point (j) of Directive 98/26/EC of the European Parliament and of the Council, are opened against a participant or an event stipulated in the CSD's internal rules as constituting a default, relating notably to a failure to complete a transfer of funds or securities in accordance with the CSD's internal rules;';

(c) the following points (47) and (48) are added:

'(47) '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, taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the CSD;

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

(1a) The following Article 6a is inserted:

*'Article 6a*

**Penalty mechanism**

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), which are admitted to trading or traded on a trading venue or cleared by a CCP. 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 settlement of transactions in financial instruments referred to in Article 5(1), which are admitted to trading or traded on a trading venue or cleared by a CCP, that are not settled on the intended settlement date. These procedures shall provide for a penalty mechanism which will serve as an effective deterrent for 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.

3. The penalty mechanism referred to in paragraph 2 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 day at which the transaction is either settled or bilaterally cancelled, whichever is earlier. The cash penalties shall not be configured as a revenue source for the CSD.

4. The penalty mechanism referred to in paragraph 2 shall not apply to settlement fails:

(a) that are caused by factors not attributable to the participants to the transactions;

(b) where the operations are not considered as trading;

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

(d) if insolvency proceeding is opened against the failing participant.

If a CCP incurs losses from the application of the first subparagraph, the CCP may establish in its rules a mechanism to cover such losses.

5. The Commission shall be empowered to supplement this Regulation by adopting delegated acts in accordance with Article 67 specifying parameters for the calculation of a deterrent and proportionate level of the cash penalties referred to in paragraph 3 of this Article based on asset type, on the liquidity of the financial instrument, on the type of transaction, and on the duration of the settlement fail, while taking into account the level of settlement fails per category of financial instruments and the effect that low or negative interest rates could have on the incentives of counterparties and 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 level of the cash penalties shall be reviewed on a regular basis and at least every four years in order to reassess its appropriateness and effectiveness in achieving a level of settlement fails in the Union deemed to be acceptable having regards to the impact of the financial stability of the Union.

6. ESMA shall publish and keep updated on its website a list of financial instruments referred to in Article 5(1), which are admitted to trading or traded on a trading venue or cleared by a CCP, to which the delegated act referred to in paragraph 5 is to be applied to.

7. 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.

8. The Commission may adopt delegated acts in accordance with Article 67 to supplement this Regulation specifying the conditions under which settlement fails are to be considered as not attributable to the participants to the transaction under paragraph 4, point (a).

9. ESMA shall, in close cooperation with 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 circumstances in which operations are not to be considered as trading under paragraph 4, point (b);

   (d) the mechanism applicable where CCP is failing participant under paragraph 4, point (c).

   ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please insert the date = 1 year after the entry into force of this Regulation].

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

(2) Article 7 is replaced by the following:

*'Article 7*

**Mandatory buy-in process**

1. Upon consultation with ESRB and based on the cost-benefit analysis provided by ESMA pursuant to Article 74(1a), the Commission may decide, by means of an implementing act, 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 3 to 8 of this Article is to be applied, where the Commission considers that this process constitutes a necessary, appropriate and proportionate means to address the level of settlement fails in the Union, taking into account the possible impact of the mandatory buy-in process on the Union market, as well as the number, volume and duration of settlement fails.

The Commission may adopt the implementing act on mandatory buy-in referred to in the first subparagraph if the following conditions are met:

(a) the application of the cash penalty mechanism referred to in Article 6a has not resulted in a long-term, sustainable reduction or in maintaining a sustainable reduced level of settlement fails in the Union; and

(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.

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 may not be shorter than one year after its entry into force.

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

2. The Commission shall, before adopting the implementing act under paragraph 1, assess the effectiveness and proportionality of the penalty mechanism referred to in Article 6a(5) and where appropriate change the structure or degree of penalty mechanism in order to increase the settlement efficiency in the Union.

Before adopting the implementing act, the Commission shall consider whether the applicable conditions referred to in paragraph 1 are met, despite the prior application of the measures referred to in Article 6a(2) and the rationale for, and potential cost implications of subjecting specific financial instruments and categories of transactions to the mandatory buy-in.

3. 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') equal to six business days, a buy-in process shall be initiated.

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.

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

4. Where a transaction is part of a chain of trades and may result in different settlement instructions, the participants involved in the buy-in process may, by coordinating their actions, pass-on their obligations to initiate the mandatory buy-in along a chain of trading transactions to the ultimate failing participant responsible for the buy-in, and inform the CSD thereof.

5. Without prejudice to paragraph 4, the mandatory buy-in process referred to in paragraph 3 shall not apply:

(a) to transactions including securities repurchase or lending agreements and other types of transactions that render the buy-in process ineffective;

(b) to transactions where the failing participants are CCPs, except for transactions entered into by a CCP where it does not interpose itself between counterparties;

(c) to transaction when the insolvency proceeding is opened against the failing participant;

(d) to transactions that are within the scope of Article 15a of Regulation (EU) No 236/2012;

(e) to settlement fails that occurred for reasons not attributable to the participants to the transactions;

(f) to operations that are not to be considered as trading.

6. Without prejudice to the penalty mechanism referred to in Article 6a, where the price of the financial instruments agreed at the time of the trade is higher than the price paid for the execution of the buy-in, the corresponding difference shall be paid to the receiving participant by the failing participant no later than on the second business day after the financial instruments have been delivered following the buy-in.

7. If the buy-in fails or is not possible, the receiving participant can choose 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 at the end of the deferral period, cash compensation shall be paid.

Cash compensation shall be paid to the receiving participant no later than on the second business day after the end of either the buy-in process referred to in paragraph 3 or the deferral period, where the deferral period was chosen.

8. The failing participant shall reimburse the entity that executes the buy-in for all amounts paid in accordance with paragraphs 3 and 5, including any execution fees resulting from the buy-in. Such fees shall be clearly disclosed to the participants.

9. 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 within the meaning of Article 4(1) Regulation (EU) 2016/679.

10. Paragraphs 1 to 9 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 3 to 8;

    (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 3 to 8;

(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 3 to 8.

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 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.

11. 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.

12. ESMA may recommend that the Commission suspend in a proportionate way the buy-in mechanism referred to in paragraphs 3 to 8 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 ESRB and the ESCB.

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 buy-in mechanism referred to in paragraph 3 for the specific categories of financial instruments by means of an implementing act, or reject the recommended suspension. Where the Commission rejects the requested suspension, it shall provide the reasons thereof 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 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 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 referred to in the third subparagraph for additional periods of no more than three months, 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 period referred to in the sixth subparagraph or of the extension period referred to in the seventh subparagraph, issue an opinion to the Commission on whether the grounds for the suspension continue to apply.

13. The Commission shall review its decision on adopting an implementing act referred to in paragraph 1 on a regular basis and at least every four years in order to assess whether the criteria set in paragraph 1 remain fulfilled.

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

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

ESMA may recommend that the Commission amend or repeal the implementing act referred to in paragraph 1, where it considers that the mandatory buy-in is no longer justified or does not address the settlement fails in Union and is no longer necessary, appropriate or proportionate. The first to third subparagraphs of paragraph 12 shall apply mutatis mutandis.

14. The Commission may adopt delegated acts in accordance with Article 67 to supplement this Regulation specifying the conditions under which settlement fails are to be considered as not attributable to the participants in the transaction under paragraph 5, point (e), of this Article.

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

(a) the details of the pass-on-mechanism under paragraph 4;

(b) the transactions referred to in points (a), (b) and (f) of paragraph 5, and other types of transactions that render the buy-in process ineffective, such as securities financing transactions, financial collateral arrangements or transactions that include close-out netting provision and other relevant transactions;

(c) the details of how the participants to the CSDs, the CCPs or the trading venue members, as applicable, shall execute the mandatory buy-in in accordance with paragraph 10 taking into account the specifics of retail investors.

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please insert the date = 1 year after the entry into force of this Regulation].

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

(3) 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 leg of a securities settlement system operated by the CSD is or will be settled.’;

(4) 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 may be reasonably assumed that it will do so when it will have actually commenced its activities, the competent authority may grant the authorisation subject to the condition that that CSD has all the necessary arrangements in place to comply with the requirements of this Regulation when it actually 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 area of competences to the competent authority within three months of the 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, the competent authority wishing to grant the authorisation shall within one month provide the relevant authorities with a reasoning addressing the negative opinion. In particular, the reasoning shall include the reasons for derogation from the negative reasoned opinion issued by the relevant authority.

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.';

(ba) the following paragraph 7a is inserted:

'7a. The competent authority may, before granting authorisation to the applicant CSD, consult appropriate competent authorities supervising an entity that has a qualifying holding in the applicant CSD on the matters referred to in paragraph 7.';

(c) the following paragraph 8a is inserted:

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

(5) 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 securities issuance and records linked to the provision of core services referred to in Section A, points 1 and 2, of the Annex.*';*

(6) Article 22 is amended as follows:

(a) paragraphs 1 to 4 are replaced by the following:

‘1. The competent authority shall, at least every three years, review the arrangements, strategies, processes and mechanisms implemented by a CSD with respect to compliance with this Regulation and evaluate the risks to which the CSD is, or might be, exposed or which it creates for the smooth functioning of securities markets or for the stability of the financial markets.

2. The CSD shall identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and 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.

2a. Where a CSD, required under Directive 2014/59/EU to draw up a recovery plan, has drawn up such a recovery plan and that recovery plan contains all of the elements listed in paragraph 3 of this Article, the CSD shall not be required to prepare and submit to the competent authority the plans for its recovery referred to in paragraph 2.

CSDs shall not be required to include in the plans referred to in paragraph 2 the information required under paragraph 3 which has been already provided in the plans referred to in Article 12 of Regulation [DORA].

3. The plans referred to in paragraph 2 shall 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 should its equity capital approach or fall below the requirements laid down in Article 47(1);

(d) adequate procedures ensuring the orderly winding-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 became permanently impossible for the CSD to restore its critical operations and services;

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

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.

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

The plans shall have regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned, as well as risk exposures of the CSD.

Where a recovery or orderly wind down plan is established and maintained by a CSD authorised to provide banking-type ancillary services in accordance with Article 54(3) with the aim of ensuring its core functions, the competent authority shall inform ESMA thereof.

4. The competent authority shall establish the frequency and depth of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned, as well as risk exposures of the CSD. The review and evaluation shall be updated at least every three years.*';*

(b) 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 in particular concerning the functioning of the securities settlement systems operated by the CSD.

The consulted authorities may issue a reasoned opinion within its area of competences within three months of the receipt of the information by the competent authority.

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

Where at least one of the consulted authorities issues a negative reasoned opinion, the competent authority shall within one month provide the consulted authorities with a reasoning addressing the negative opinion. In particular, the reasoning shall include the reasons for derogation from the negative reasoned opinion issued by the consulted authority.

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 regularly, and at least once every three years, 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 actions or penalties, of the review and evaluation referred to in paragraph 1 of this Article.*';*

(ba) in paragraph 10, point (b) is replaced by the following:

'(b) the information that the competent authority is to supply to the relevant authorities, the authority referred to in Article 67 of Directive 2014/65/EU and the members of college referred to in Article 24a, as set out in paragraph 7;';

(bb) in paragraph 10, the second subparagraph is replaced by the following:

'ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please insert 1 year after the entry into force of this Regulation].';

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

'ESMA shall submit those draft implementing technical standards to the Commission by … [PO please insert 1 year after the entry into force of this Regulation].';

(7) 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 7 of this Article. The CSD may provide such services only after it has been authorised pursuant to Article 17, but not earlier than the relevant date applicable in accordance with paragraph 6.

3. Any CSD wishing to provide the services referred to in paragraph 2 of this Article 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 submit documents with 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;

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

(d) where there is a branch, the organisational structure of the branch and the names of those responsible for the management of the branch;

(e) 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.

3a. The competent authority of the home Member State shall communicate the assessment referred to in paragraph 3, point (e), to the competent authority of the host Member State without undue delay. The competent authority of the host Member State may provide opinion to the competent authority of the home Member State within one month after the receipt of the assessment referred to in paragraph 3, point (e), from the competent authority of the home Member State.

4. Within two months from the receipt of complete information referred to in paragraph 3, 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 or the adequacy of the measures the CSD intends to take in accordance with paragraph 3, point (e). Within the same period, where the CSD already provides services to other host Member States, the competent authority of the home Member State shall also inform the college referred to in Article 24a.

The competent authority of the home Member State shall inform without delay the CSD of the date of transmission of the communication to the competent authority of the host Member State under the first subparagraph.

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.

5. Where the competent authority of the home Member State decides in accordance with paragraph 4 not to communicate the information referred to in paragraph 3 to the competent authority of the host Member State, it shall provide a fully reasoned decision for its refusal to the CSD concerned within one month of receiving all the information and inform the competent authority of the host Member State and the college referred to in Article 24a of its decision.

6. The CSD may start providing the services referred to in paragraph 2 of this Article in relation to financial instruments constituted under the law of a host Member State referred to in Article 49(1), second subparagraph, point (a), or set up a branch after 15 calendar days from the date of transmission of the communication referred to in paragraph 4 from the competent authority of the home Member State to the competent authority of the host Member State.

7. In the event of a change of the information set out in the documents submitted in accordance with paragraph 3 of this Article, a CSD shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State 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.

8. 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 shall provide under paragraph 3(e).';

(8) Article 24 is amended as follows:

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

'Upon request of any member of the college referred to in Article 24a, the competent authority of the home Member State may invite staff from competent authorities of the host Member States to participate in on-site inspections.

The college referred to in Article 24a shall be informed without undue delay of any findings of on-site inspections that may be relevant for the execution of its tasks.';

(b) paragraph 4 is deleted;

(c) 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 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 college referred to in Article 24a shall be informed by the competent authority of the host Member State of such measures without undue delay.

Either 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.’;

(d) paragraphs 7 and 8 are deleted;

(9) in Title III, Chapter I, the following Section 4a is inserted:

‘Section 4a

**Cooperation of authorities through colleges**

*Article 24a*

**Colleges 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 5 in relation to a CSD whose activities in at least two host Member States are considered of substantial importance for the functioning of the securities markets and the protection of the investors.

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

   (a) the competent authority of the home Member State determined 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 3 that the activities carried out by the CSD in at least two host Member States are of substantial importance.

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

3. The college referred to in paragraph 1 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 relation to which the condition set in paragraph 1 is fulfilled;

(e) the competent authorities of the host Member States other than those referred to in point (d), upon their justified request;

(f) third-country authorities, upon their justified request;

(g) EBA, where a CSD has been authorised pursuant to Article 54(3);

(h) where a CSD is part of a group, the competent authorities of the home Member State of each CSD in the group.

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

The chair may decide to invite additional participants to the discussions of the college, such as authorities of the home or host Member States other than those referred to in points (b) to (e) of the first subparagraph.

4. 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 its website without undue delay the list of the members of that college and keep that list updated.

5. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, be established to facilitate:

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

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

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

   (e) the exchange of information on approved outsourcing arrangements of core services pursuant to Article 19;

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

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

   In order to facilitate the performance of the tasks assigned to the college pursuant to paragraph 5, members of the college may add points to the agenda of a meeting.

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

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

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

ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please insert the date = 1 year after the date of entry into force of this 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.';

(10) Article 25 is amended as follows:

(a) the following paragraph 2a is inserted:

'2a. A third-country CSD that intends to provide the core service referred to in point (3) of Section A 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 submit a notification to ESMA. 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 6, the fifth subparagraph is replaced by the following:

*'*Within six months from the submission of a complete application or from the 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.*';*

(c) the following paragraph 13 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 Union participants 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 … [PO please insert the date = 1 year after the date of entry into force of this 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.';

(10a) In Article 26, 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) 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); or

(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.’;

(11) Article 27 is amended as follows:

(a) in paragraph 2, the second subparagraph is inserted:

‘A member of the management body shall be considered to be independent when it does not have, and has not had during the previous five years, any business, family or other relationship that raises a conflict of interest regarding the CSD concerned or its controlling shareholders or its management.’;

(b) paragraphs 6 to 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 a 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.’;

(c) the following paragraphs 9 to 11 are added:

‘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 terminate 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 difficulties involved in their enforcement, prevent the effective exercise of the supervisory functions of the competent authority.

11. A CSD shall, without delay:

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

(b) make public the transfer of ownership rights that indicate a change in control over the CSD, after such a change in control has been approved by the competent authority.’;

(11a) The following Articles 27a to 27c are inserted:

*'Article 27a*

**Information to competent authorities**

1. A CSD shall notify its competent authority of any changes to its management, and shall provide the competent authority with all the information necessary to assess compliance with Article 27(1) and (4).

   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 so that the CSD would become its subsidiary (the 'proposed acquisition'), shall first notify in writing the competent authority of the CSD in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 27b(4). This natural or legal person shall also notify the CSD.

   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. This natural or legal person shall also notify the CSD.

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

The competent authority shall have a maximum of 60 working days as from 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 receipt.

3. The competent authority may, during the assessment period, where necessary, 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 interrupted for the period between the date of request for information by the competent authority and the receipt of a response thereto by the proposed acquirer. The interruption 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 may not result in an interruption of the assessment period.

4. The competent authority may extend the interruption referred to in the second subparagraph of paragraph 3 up to 30 working days where the proposed acquirer is situated or regulated outside the Union.

5. 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 accessible to the public at the 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.

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

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

8. If a CSD becomes aware of any acquisitions or disposals of holdings in its capital that cause holdings to exceed or fall below any of the thresholds referred to in the first subparagraph of paragraph 2, that CSD shall inform the competent authority without delay.

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(3), the competent authority shall 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 and experience of any member of management body, any member of senior management and 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 shall 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 publicly available 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 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), (3) and (4), 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 or relevant for 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 the members of the management body, members of the senior management or 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 and increases of holdings in CSDs.

*Article 27c*

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

(12) 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, which includes the choice of a clearing and settlement arrangement, operating structure of the CSD, scope of products settled or recorded, and the use of technology for the operations of the CSD.';

(13) 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.';

(14) 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 in 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.';

(14a) in Article 47, paragraph 2 is deleted;

(15) 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 includes:

(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, including a general description of the main principles applicable in the context of the provision of the core services referred to in point 1 and 2 of Section A of the Annex on a cross border basis in accordance with these provisions. Competent authorities shall communicate that list to ESMA by … [PO please insert the date = 1 year after the entry into force of this Regulation]. ESMA shall publish the list by … [PO please insert the date = 1 year and one month after the entry into force of this Regulation]. Member States shall update that list regularly and at least every two years. They shall communicate the updated list at those regular intervals to ESMA. ESMA shall publish the updated list.';

(16) 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 such request promptly and shall provide a response to the requesting CSD within three months. If the receiving CSD agrees to the request, the link shall be implemented within a reasonable timeframe, but no longer than 12 months.*';*

(17) Article 54 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. A CSD that intends to settle the cash leg of all or part of its securities settlement system in accordance with Article 40(2) or otherwise wishes to provide any banking-type ancillary services referred to in paragraph 1 shall be authorised to offer such services in accordance with this Article.’;

(aa) the following paragraph 2a is added:

‘2a. A CSD that intends to settle the cash leg of all or part of its securities settlement system in accordance with Article 40(2) shall be authorised either:

(a) to designate a CSD authorised to provide banking-type ancillary services pursuant to paragraph 3 of this Article; or

(b) to designate for that purpose one or more credit institutions authorised in accordance with Article 8 of Directive 2013/36/EU.’;

(b) in paragraph 3, the following points (g) and (h) are added:

‘(g) where the CSD intends to provide banking-type ancillary services to other CSDs in accordance with the second subparagraph of paragraph 2, the CSD has in place clear rules and procedures addressing potential conflicts of interest and mitigating the risk of discriminatory treatment towards any such other CSDs and their participants;

(h) where the CSD intends to provide banking-type ancillary services to other CSDs in accordance with the second subparagraph of paragraph 2, the CSD has in place clear rules and procedures addressing any potential credit, liquidity and concentration risks resulting from such activity.’;

(c) paragraph 5 is replaced by the following:

‘5. Paragraph 4 shall not apply to credit institutions referred to in paragraph 2a, point (b), that offer to settle the cash payments for part of the CSD’s securities settlement system, if the total value of such cash settlement through accounts opened with those credit institutions does not exceed a maximum amount calculated over a one-year period. That threshold shall be 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 and report its findings to ESMA, ESCB and EBA. Without prejudice to Article 40(1), where the competent authority determines that the threshold has been exceeded, it 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.’;

(d) the following paragraphs 9 and 10 are added:

‘9. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to determine the threshold referred to in paragraph 5, taking into account the need to balance the credit and liquidity risks for CSDs that result from the settlement of cash payments through accounts opened with credit institutions and the need to allow CSDs to settle in through accounts opened with such credit institutions. That threshold shall take into account the possibility for CSDs to settle the cash payments in several currencies. When developing these draft regulatory technical standards, EBA shall also determine appropriate risk management and prudential risk mitigation requirements and consider level playing field in the Union.

EBA shall submit those draft regulatory technical standards to the Commission by … [PO please insert the date = 1 year after the date of entry into force of this 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.

10. 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 points (g) and (h) of paragraph 3.

EBA shall submit those draft regulatory technical standards to the Commission by … [PO please insert the date = 1 year after the date of entry into force of this 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.';

(18) in Article 55(5), the first to fourth 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 a positive opinion.

Where at least one of the authorities referred to in points (a) to (e) of paragraph 4 issues a negative reasoned opinion, the competent authority wishing to grant the authorisation shall within one month provide the authorities referred to in points (a) to (e) of paragraph 4 with reasoning addressing the negative opinion. In particular, the reasoning shall include the reasons for derogation from the negative reasoned opinion issued by the relevant authority.

(19) 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) in paragraph 5, the second subparagraph is replaced by the following:

'EBA shall submit those draft regulatory technical standards to the Commission by … [PO please insert the date = 1 year after the date of entry into force of this Regulation].';

(20) 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 three 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 paragraph 1 and the relevant authorities, review and evaluate at least every three years the following:';

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

'The competent authority of the CSD shall regularly, and at least every three 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.';

(21) 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) and Article 6a(5) shall be conferred on the Commission for an indeterminate period of time from 17 September 2014.';

(aa) the following paragraph 2a is inserted:

'2a. The power to adopt delegated acts referred to in Article 6a(8) and Article 7(14) shall be conferred on the Commission for an indeterminate period of time from … [PO please insert the date of entry into force of this Regulation].';

(b) paragraph 3 is replaced by the following:

'3. The delegation of power referred to in Article 2(2), Article 6a(5) and (8) and Article 7(14) 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.';

(c) paragraph 5 is replaced by the following:

'5. A delegated act adopted pursuant to Article 2(2), Article 6a(5) and (8) and Article 7(14) 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.';

(22) in Article 68, the following paragraph 3 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.';

(23) Article 69 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. The national rules on the authorisation of CSDs shall continue to apply until the following date, whichever is earlier:

(a) the date when a decision is made under this Regulation on the authorisation of CSDs and of their activities, including CSD links; or

(b) [PO please insert the date = 1 year after the date of entry into force of this Regulation].’;

(b) the following paragraphs 4a, 4b and 4c are inserted:

‘4a. The national rules on the recognition of third-country CSDs shall continue to apply until the following date, whichever is earlier:

(a) the date when a decision is made under this Regulation on the recognition of the respective third-country CSDs and of their activities; or

(b) [PO please insert the date = 3 years after the date of entry into force of this Regulation].

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 the recognition of third-country CSDs shall submit a notification to ESMA from … [PO please insert the date = 1 year after the date of entry into force of this Regulation] but no later than … [PO please insert the date = 2 years after the date of entry into force of this Regulation].

ESMA shall develop draft regulatory technical standards to specify the information that the third- country CSD shall 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 … [PO please insert the date = 1 year after the date of entry into force of this 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), before … [PO please insert the date = 2 years after the date of entry into force of this Regulation] shall submit the notification referred to in Article 25(2a) by… [PO please insert the date = 2 years after the date of entry into force of this Regulation].

4c. Where a CSD has submitted a complete application for recognition in accordance with Article 25(4), (5) and (6) before … [PO please insert the date = the date of entry into force of this 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 6 and 7 are added:

'6. The competent authorities shall establish and manage colleges pursuant to Article 24a(1) by … [PO please insert the date = 25 months after the date of entry into force of this Regulation].

7. A CSD that provided the core service 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), shall comply with the procedure set out in Article 23(3) to (7) applicable after … [PO please insert the date of entry into force of this amending Regulation] only in relation to securities recorded after [PO please insert the date of entry into force of this amending Regulation].';

(24) Article 74 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

‘(a) settlement efficiency for domestic and cross-border operations for each Member State based on the number and volume of settlement fails and their evolution, including an analysis of the impact of cash penalties on settlement fails across instruments, the duration and main drivers of settlement fails, the categories of financial instruments and markets where the highest settlement fail rates are observed and an international comparison of settlement fail rates, including an assessment of the amount of penalties referred to in Article 6a, and, where applicable, the number and volumes of buy-in transactions referred to in Article 7(3) as well as any other relevant criteria;’;

(iii) point (c) is replaced by the following:

‘(c) measuring settlement, which does not take place in the securities settlement systems operated by CSDs based on the number and volume of transactions, including its evolution over time also with respect to settlement in securities settlement systems operated by CSDs, based on the information received under Article 9 and any other relevant criteria. The report shall consider the impact of this evolution on competition in the settlement market as well as identify any potential risks to financial stability;’;

(iv) the following point (l) is added:

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

(b) the following paragraphs 1a and 1b are inserted:

'1a. Upon request of the Commission, ESMA shall provide a cost-benefit analysis as referred to in Article 7(1), of a potential mandatory buy-in procedure when applied with respect to financial instruments or categories of transactions in those financial instruments as specified by the Commission in its request. Such cost-benefit analysis shall consist of the following elements:

(a) the duration of settlement fails with respect to the financial instrument of categories of transactions in those financial instruments to which the mandatory buy-in may apply;

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

(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 impacts on financial stability in the Union stemming from settlement fails.

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

(a) at least every two years from … [PO please insert the date = the date of entry into force of this Regulation] for the report referred to in paragraph 1, point (a);

(b) every two years for the reports referred to in paragraph 1, points (b) and (c);

(c) on an annual basis until … [PO please insert the date = 1 year after the date of entry into force of this Regulation] and every three years from … [PO please insert the date = 1 year after the date of entry into force of this Regulation], for the reports referred to in paragraph 1, points (d) and (f);

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

(e) on an annual basis until … [PO please insert the date = 1 year after the date of entry into force of this Regulation] and every two years from … [PO please insert the date = 1 year after the date of entry into force of this Regulation] for the reports referred to in paragraph 1, points (i) and (l).';

(c) paragraph 2 is replaced by the following:

'2. 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 paragraph 1a.';

(25) Article 75 is replaced by the following:

‘By … [PO please insert the date = one year after the date of entry into force of this Regulation] and every second year 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 of the possibility to shorten the settlement date under Article 5(2) and assess potential impact of such shortening on CSDs, trading venues and other market participants. The report shall be made publicly available.

By … [PO please insert the date = two years after the date of entry into force of this 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 possibilities of addressing it. The report shall be made publicly available.

By … [PO please insert the date = 5 years after the date of entry into force of this Regulation], the Commission shall review and prepare a general report on this Regulation. That report shall, in particular, assess 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 set out the potential need to apply further measures to:

(a) improve settlement efficiency;

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

(c) minimise barriers to cross-border settlement;

(d) ensure adequate powers and information for authorities to monitor risks.

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

*Article 1a*

**Amendment to Regulation (EU) No 236/2012**

The following Article 15a is inserted into Regulation (EU) No 236/2012:

*'Article 15a*

**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 after 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; and

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

*Article 2*

**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, Article 1, point (9), point (10)(a), point (17)(c) and point (19)(a) shall apply from … [PO please insert the date = 24 months after the date of entry into force of this Regulation].

Article 7(14) of Regulation (EU) No 909/2014 as applicable before entry into force of this Regulation will continue to apply until the date of application of the delegated regulation based on Article 6a(5) as amended by Article 1(1a) of this Regulation.

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

Done at Brussels,

*For the European Parliament* *For the Council*

*The President* *The President*