



2022/0074(COD)

11.10.2022

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DRAFT REPORT

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

Committee on Economic and Monetary Affairs

Rapporteur: Johan Van Overtveldt

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0120),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0118/2022),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Central Bank of 28 July 2022¹,
 - having regard to Rules 59 and 40 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2022),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Delegated and implementing acts adopted in accordance with Articles 290

¹ OJ C ... / Not yet published in the Official Journal.

and 291 of the Treaty on the Functioning of the European Union (TFEU) constitute Union legal acts. Pursuant to Articles 127(4) and 282(5) TFEU, the ECB is to be consulted on any proposed Union act in its fields of competence. Safe and efficient financial market infrastructures and the smooth functioning of financial markets are essential for the fulfilment of the basic tasks of the ESCB under Article 127(2) TFEU, and the pursuit of its primary objective of maintaining price stability under Article 127(1) TFEU. The ECB should be duly consulted on the delegated and implementing acts adopted under this Regulation.

Or. en

Justification

Amendment 1 proposed by the ECB in its opinion of 28 July 2022. As payment and settlement systems fall within the ECB's fields of consultative competence, and given its expertise regarding the safety and efficiency of financial market infrastructures and the smooth functioning of financial markets, the ECB should be consulted on draft Union acts, including draft delegated and implementing acts, within the CSDR framework.

Amendment 2

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) 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) 2018/1229⁴⁰ has allowed all interested parties to better understand

Amendment

(5) 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) 2018/1229⁴⁰ has allowed all interested parties to better understand

the regime and the challenges its application could give rise to. In this regard, the scope of cash penalties **and mandatory buy-ins** set out in Article 7 of Regulation (EU) No 909/2014 should be clarified, in particular by specifying which categories of transactions are excluded. Such exclusions should cover in particular transactions that failed for reasons not attributable to the participants and transactions that do not involve two trading parties, for which the application of cash penalties **or mandatory buy-ins** would not be practicable or could lead to detrimental consequences for the market, 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 details of such exclusions by means of a delegated act.

⁴⁰ 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).

the regime and the challenges its application could give rise to. In this regard, the scope of cash penalties set out in Article 7 of Regulation (EU) No 909/2014 should be clarified, in particular by specifying which categories of transactions are excluded. Such exclusions should cover in particular transactions that failed for reasons not attributable to the participants and transactions that do not involve two trading parties, for which the application of cash penalties 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, realignments **and free-of-payment securities transfers made in the context of the (de)mobilisation of collateral**. The Commission should be empowered to supplement Regulation (EU) No 909/2014 by further specifying the details of such exclusions by means of a delegated act.

⁴⁰ 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).

Or. en

Justification

Based on amendment 1 proposed by the ECB in its opinion of 28 July 2022. Free-of-payment securities transfers made in the context of the (de)mobilisation of collateral, whether those transfers are between private parties or between members of the ESCB and their counterparties, do not involve 'two trading parties', and should, therefore, be exempted from the application of the settlement discipline regime. Furthermore, it is suggested to follow the ECB recommendation to discard the possibility of mandatory buy-ins altogether.

Amendment 3

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) 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 those rules* should *therefore be subject to an assessment by the Commission as to its appropriateness in the light of the evolution of settlement efficiency in the Union*. Cash penalties and reporting requirements should however continue to apply in order to *assess their impact on improving* settlement efficiency in the Union. *Considering the potential impacts of mandatory buy-in rules, such rules should apply only where certain conditions are met, namely where the application of cash penalties has not resulted in a long-term, continuous reduction of settlement fails in the Union, where settlement efficiency in the Union has not reached appropriate levels considering the situation in third-country capital markets that are comparable in terms of size, liquidity as well as instruments traded and types of transactions executed on such markets, or where the level of settlement fails in the Union has or is likely to have a negative effect on the financial stability of the Union. Where the Commission considers that any of those conditions is met and that the application of mandatory buy-ins is proportionate to address 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*

Amendment

(6) 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 existence of such rules is a disproportionate interference in the execution of securities transactions and the functioning of securities markets, poses significant risks for market liquidity and financial stability in the Union, and could jeopardise the global competitiveness of the Union. Because of the implications that the deployment of mandatory buy-ins might have, the possibility of their application should be discarded.* Cash penalties and reporting requirements should however continue to apply in order to *improve* settlement efficiency in the Union. *ESMA, in close cooperation with the ESCB, should be given the possibility of developing draft regulatory technical standards to specify the target levels of settlement efficiency, taking into account factors such as the liquidity of financial instruments, the cross-border or domestic nature of transactions, and the currencies in which transactions are settled.* The cash penalties referred to in the third subparagraph of Article 7(2) of Regulation (EU) No 909/2014 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 has been cancelled bilaterally. In order to support the provision of accurate, timely and complete information on penalties, all information necessary for the calculation of cash penalties should*

buy-in rules should start to apply. The cash penalties referred to in the third subparagraph of Article 7(2) of Regulation (EU) No 909/2014 should be calculated on a daily basis for each business day that a transaction fails to be settled until the **end of the buy-in process or the** actual settlement day, **whichever is the earlier.**

be centralised in the European Single Access Point.

Or. en

Amendment 4

Proposal for a regulation Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The removal of the central counterparty buy-in provisions from Regulation (EU) No 236/2012 by Regulation (EU) No 909/2014 was justified at the time because those provisions would be covered by the mandatory buy-in provisions of the latter Regulation. The buy-in provisions for cleared share trades should now be reintroduced in Regulation (EU) No 236/2012 in parallel with the removal of the mandatory buy-in provisions from Regulation (EU) No 909/2014.

Or. en

Justification

The removal of Art 15 of Regulation (EU) No 236/2012 (Short Selling Regulation - SSR) via Art 72 of Regulation (EU) No 909/2014 (CSDR) came into force in February 2022 as per the provisions of Art 76(5) CSDR. This was justified because the SSR CCP buy-in provisions against naked short-selling would then be covered by the CSDR MBI provisions. Combined with the delay of the CSDR MBI regime, the removal of Art 15 SSR left a gap in the legislation. In parallel to the suggestion to discard the entire application of CSDR MBI provisions, it is suggested to reintroduce these provisions in the SSR.

Amendment 5

Proposal for a regulation Recital 7

Text proposed by the Commission

Amendment

(7) To avoid a multiplicity of buy-ins for a transactions on the same financial instrument along a chain of counterparties, 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. Each participant involved in the transaction chain should be allowed to pass-on a buy-in notification to the participant failing to them until it reaches the original failing participant. *deleted*

Or. en

Amendment 6

Proposal for a regulation Recital 8

Text proposed by the Commission

Amendment

(8) Mandatory buy-ins and cash compensation processes allow for the payment of the difference between the buy-in price and the original trade price to be made from the seller to the purchaser only where that buy-in or cash compensation reference price is higher than the original trade price. This asymmetry for the payment of the differential could create an unequitable remedy that would unduly benefit the purchaser in the event that the buy-in or reference price is lower than the original trade price. The payment of the differential between the buy-in price and the original trade price should therefore apply in both directions to ensure that the *deleted*

trading parties are restored to the economic terms, had the original transaction taken place.

Or. en

Amendment 7

Proposal for a regulation Recital 10

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 8

Proposal for a regulation Recital 11

Text proposed by the Commission

Amendment

(11) 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) The *possibility of a* negative interest rates *environment* 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.

Or. en

Amendment 9

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) 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 in order to 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.***

Amendment

(12) 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 in order to enable the Commission to make any necessary corrections or amendments with a view to clarifying the requirements set out in such regulatory technical standard.

Or. en

Amendment 10

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) While Regulation (EU) No 909/2014 requires national supervisors to cooperate with and involve relevant authorities, national supervisors are not required to inform the 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 annual 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 in a reasoned decision

Amendment

(14) While Regulation (EU) No 909/2014 requires national supervisors to cooperate with and involve relevant authorities, national supervisors are not required to inform the 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 annual reviews and evaluations. The relevant authorities should therefore be able to issue reasoned opinions on the authorisation of CSDs, ***on*** the review and evaluation process ***of CSDs, and on the review and evaluation by CSD competent authorities of CSDs providing banking-***

why such opinions were not followed.

type ancillary services. The competent authorities should take into account such opinions or explain in a reasoned decision why such opinions were not followed.

Or. en

Justification

Based on amendment 3 proposed by the ECB in its opinion of 28 July 2022. The involvement of the relevant authorities in the review and evaluation process of banking-type ancillary services should be aligned with the involvement of the relevant authorities in the context of the authorisation of the provision of banking-type ancillary services, where the proposed regulation foresees a consultation procedure involving the relevant authorities.

Amendment 11

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) 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 may 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 appropriately calibrated periodicity should therefore be set in order to alleviate this burden and avoid a duplication of information from one review the other. The supervisory capacities of competent authorities and the objective of safeguarding financial stability should, however, not be undermined.

Amendment

(15) 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 may 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 appropriately calibrated periodicity should therefore be set in order to alleviate this burden and avoid a duplication of information from one review the other. ***To further ensure consistency, the minimum frequency at which the CSD competent authorities and the competent authorities referred to in Article 4(1), point (40), of Regulation (EU) No 575/2013 of the European Parliament and of the Council conduct reviews and evaluations of banking-type ancillary services should be***

aligned with the frequency of the review and evaluation of CSDs. The supervisory capacities of competent authorities and the objective of safeguarding financial stability should, however, not be undermined.

Or. en

Justification

Amendment 4 proposed by the ECB in its opinion of 28 July 2022. For reasons of consistency, there is merit in aligning the proposed minimum frequency with which the CSD competent authorities and the authorities referred to in point (40) of Article 4(1) of Regulation (EU) No 575/2013 review and evaluate compliance with CSDR of banking-type ancillary services with the frequency of the review and evaluation of CSDs. It is suggested to extend the frequency of such assessment to two years.

Amendment 12

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) 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 issued 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, the requirement to set up mandatory colleges should **apply in**

Amendment

(19) 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 issued 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, the requirement to set up mandatory colleges should **be based**

two cases. Firstly, for CSDs that offer notary and central maintenance services in relation to financial instruments issued under the law of more than one Member States (the passporting colleges) and secondly for CSDs that belong to the same group (the “group-level colleges”). To reduce the administrative burden on the authorities participating to colleges, where a CSD offering services cross-border is also part of a group of CSDs, the chair of the college should be able to decide that only one college is established for that CSD. Where the other CSDs in the group also offer services cross-border, the chair of the college should be able to make that decision only where the competent authorities of those other CSDs consent. In that case, there would be only one college for all CSDs within the group that would exercise the tasks assigned to passporting and group-level colleges. Such colleges should ensure the sharing of information pertaining to the CSDs concerned.

on a single existing and reliable criterion, namely, the substantial importance of a CSD for a jurisdiction other than the one where it is established. The threshold for the mandatory establishment by competent authorities of a college of supervisory authorities should be met where a CSD is of substantial importance in at least two host Member States. Such colleges should ensure the sharing of information pertaining to the CSDs concerned. Members of a college should have the possibility of requesting the adoption by the college of a binding opinion concerning issues identified during the review and evaluation process of CSDs, or during the review and evaluation of providers of banking-type ancillary services, or that relate to the extension or outsourcing of activities and services provided by the CSD, or concerning any potential breach of the requirements of Regulation (EU) No 909/2014 arising from the provision of services in a host Member State. The process for the adoption of such an opinion should rely on a simple majority vote.

Or. en

Amendment 13

Proposal for a regulation Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) Some CSDs established in the Union operate securities settlement systems that apply netting arrangements. Such CSDs should adequately measure, monitor and manage the risks arising from the application of those netting arrangements put in place for settlement on a net basis.

Justification

Amendment 5 proposed by the ECB in its opinion of 28 July 2022. The requirement to monitor and manage risks stemming from netting arrangements should apply to all CSDs operating securities settlement systems that use netting arrangements, irrespective of whether those CSDs provide banking-type ancillary services or not.

Amendment 14**Proposal for a regulation****Recital 26***Text proposed by the Commission*

(26) 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 access a central bank other than that of its home Member State, that CSD should be able to settle the cash leg of transactions in foreign currencies 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 foreign currencies 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 such services to other CSDs that do not hold

Amendment

(26) 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 access a central bank other than that of its home Member State, that CSD should be able to settle the cash leg of transactions in foreign currencies 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 foreign currencies 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 such services to other CSDs that do not hold

such license irrespective if the latter are part of the same group of companies.

such license irrespective if the latter are part of the same group of companies.
Designated credit institutions and CSDs authorised to provide banking-type ancillary services should only be authorised to provide such services for the purposes of settlement of the cash leg corresponding to the transactions in the securities settlement system of the CSD seeking to use the banking-type ancillary services, and not to carry out any other activities.

Or. en

Justification

Based on amendment 6 proposed by the ECB in its opinion of 28 July 2022. The scope of services to be offered by banking CSDs to user CSDs should be limited to services which are provided for the purposes of settlement in foreign currencies.

Amendment 15

Proposal for a regulation

Recital 27

Text proposed by the Commission

(27) Within an appropriately set risk limit, CSDs that are not authorised to provide banking-type ancillary services should be able to offer a sufficient amount of foreign currency settlement through accounts opened with credit institutions ***or through its own account***. The threshold below which a CSD may designate a credit institution to provide any banking-type ancillary services from within a separate legal entity without being required to comply with the conditions set out in Title IV of Regulation (EU) No 909/2014 should be calibrated in a way that promotes efficiency of settlement and the use of banking ancillary services while ensuring financial stability. As a body with specialised expertise regarding banking and credit risk matters, EBA should be

Amendment

(27) Within an appropriately set risk limit, CSDs that are not authorised to provide banking-type ancillary services should be able to offer a sufficient amount of foreign currency settlement through accounts opened with credit institutions. The threshold below which a CSD may designate a credit institution to provide any banking-type ancillary services from within a separate legal entity without being required to comply with the conditions set out in Title IV of Regulation (EU) No 909/2014 should be calibrated in a way that promotes efficiency of settlement and the use of banking ancillary services while ensuring financial stability. ***The calibration of the threshold should avoid the introduction of new risks to the CSD, the credit institution providing the***

entrusted with the development of draft regulatory technical standards to set the appropriate thresholds and, *where necessary, any* risk mitigating 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.

banking services, and the banking system as a whole. It should also ensure a level playing field among CSDs, with and without authorisation, in the provision of banking-type ancillary services respecting the principle of ‘same activity, same risk, same rules’, and be based on total settled amounts. 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 *(i) govern the provision of services by banking CSDs to non-bank CSDs and (ii) set the appropriate thresholds, taking into account implications for the various financial risks, the level playing field, and the potential conflicts of interest. EBA should also be entrusted with drafting* risk mitigating 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.

Or. en

Amendment 16

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) The power to adopt acts in

Amendment

(33) 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 to the transaction and the transactions that are not to be considered to involve two trading parties, the functioning of colleges of supervisors, the information to be notified by third-country CSDs; and the maximum amount below which CSDs may use any credit institution to settle the cash payments.

accordance with Article 290 TFEU should be delegated to the Commission to specify the effect that, in a **case of a** negative interest rates **environment**, 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 to the transaction and the transactions that are not to be considered to involve two trading parties, the functioning of colleges of supervisors, the information to be notified by third-country CSDs; and the maximum amount below which CSDs may use any credit institution to settle the cash payments.

Or. en

Amendment 17

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) 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 Council⁴³.

⁴³ 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).

Amendment

(34) To ensure uniform conditions for the implementation of this Regulation, 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 Council⁴³.

⁴³ 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).

Amendment 18

Proposal for a regulation

Recital 36

Text proposed by the Commission

(36) The application of the revised scope of the rules on cash penalties, the new requirements regarding the establishment of colleges of supervisors, the submission of a notification by third-country CSDs of the core services they provide in relation to financial instruments constituted under the law of a Member State, the revised threshold under which credit institutions may offer to settle the cash payments for part of the CSD's securities settlement system and the revised prudential requirements applicable to credit institutions or CSDs authorised to provide banking-type ancillary services pursuant to Article 59 of Regulation (EU) No 909/2014 should be deferred to give sufficient time for the adoption of the necessary delegated acts further specifying such requirements,

Amendment

(36) The application of the revised scope of the rules on cash penalties, the new requirements regarding the establishment of colleges of supervisors, the submission of a notification by third-country CSDs of the core services they provide in relation to financial instruments constituted under the law of a Member State, the revised threshold under which credit institutions may offer to settle the cash payments for part of the CSD's securities settlement system and the revised prudential requirements applicable to credit institutions or CSDs authorised to provide banking-type ancillary services pursuant to Article 59 of Regulation (EU) No 909/2014 should be deferred to give sufficient time for the adoption of the necessary delegated acts further specifying such requirements. ***In order to afford CSDs and financial market participants sufficient time to adjust their systems, the period of 24 months between the date of adoption of this Regulation and the date of application of the amended scope of the settlement discipline regime should only being as of the date of adoption of the relevant Commission delegated acts.***

Amendment 19

Proposal for a regulation

Recital 36 a (new)

(36a) To ensure consistency of record keeping, issuers that use the services of a CSD should be identified by a unique code through the use of legal entity identifiers (LEI). The use of an LEI is already required by Commission Implementing Regulation (EU) 2017/394 for reporting purposes, where CSDs need to provide information to competent authorities.

Or. en

Justification

The LEI code is required for several entities under multiple rules, none of which directly applies to all issuers. E.g. the LEI obligation from the Prospectus Regulation only applies to EU issuers, disadvantaging them vis-à-vis non-EU issuers; ITS (EU) 2017/394 is addressed to CSDs, which may not always have the means to impose this on issuers. This amendment imposes a direct obligation on all issuers to obtain a LEI code without creating market disruptions, as the requirement for CSDs already exists, and other legislation already covers the requirement for a majority of issuers.

Amendment 20

Proposal for a regulation

Article 1 – paragraph 1 – point 1 a (new)

Regulation (EU) No 909/2014

Article 2 – paragraph 1 – point 26

Present text

(26) ‘default’, in relation to a participant, means a situation where insolvency proceedings, as defined in point (j) *of Article 2* of Directive 98/26/EC, are opened against a participant;

Amendment

(1a) in Article 2(1), 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, are opened against a participant, **or an event stipulated in the CSD’s internal rules as constituting a default;**’

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0909-20220622&qid=1665050653870&from=EN>)

Justification

Based on amendment 7 proposed by the ECB in its opinion of 28 July 2022. It is suggested to align the definition of “default” with the definition laid down in the Principles for Financial Market Infrastructures issued by the CPSS and the IOSCO, which refers to events stipulated in a CSD’s internal rules as constituting a default. The last subordinate clause of the amendment suggested by the ECB is not taken on board, out of caution to avoid automatic triggers of a default - CSDs should retain flexibility on the decision whether or not to put a participant in default.

Amendment 21

Proposal for a regulation

Article 1 – paragraph 1 – point 1 b (new)

Regulation (EU) No 909/2014

Article 2 – paragraph 1 – point 44

Text proposed by the Commission

Amendment

(1b) in Article 2(1), the following point is inserted:

‘(28a) ‘netting’ means netting as defined in Article 2, point (k), of Directive 98/26/EC;’

Or. en

Justification

Amendment 8 proposed by the ECB in its opinion of 28 July 2022. As reflected in several principles of the Principles for Financial Market Infrastructures (PFMIs) issued by the Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO), specific requirements are needed to address risks stemming from netting arrangements of CSDs. These should apply to all CSDs operating securities settlement systems that use netting arrangements, irrespective of whether those CSDs provide banking-type ancillary services or not.

Amendment 22

Proposal for a regulation

Article 1 – paragraph 1 – point 1 c (new)

Regulation (EU) No 909/2014
Article 2 – paragraph 1 – point 44

Text proposed by the Commission

Amendment

(1c) in Article 2(1), point (44) is deleted;

Or. en

Justification

The definition of 'SME growth market' is no longer required if the possibility of mandatory buy-ins is discarded altogether. See proposed amendments to Article 7.

Amendment 23

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point a

Regulation (EU) No 909/2014

Article 7 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

The penalty mechanism referred to in the first subparagraph shall include cash penalties for participants that cause settlement fails ('failing participants') except where those settlement fails are caused by factors not attributable to the participants to the transaction or for operations that do not involve two trading parties. 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 ***end of the buy-in process referred to in paragraphs 3 to 8 that is to be applied pursuant to paragraph 2a, or the actual settlement day, whichever is the earlier.*** The cash penalties shall not be configured as a revenue source for the CSD.;

The penalty mechanism referred to in the first subparagraph shall include cash penalties for participants that cause settlement fails ('failing participants') except where those settlement fails are caused by factors not attributable to the participants to the transaction or for operations that do not involve two trading parties. 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 actual settlement day ***or until the transaction has been cancelled bilaterally.*** The cash penalties shall not be configured as a revenue source for the CSD.;

Or. en

Justification

The existence of regulation-driven mandatory buy-ins is a significant interference in the execution of securities transactions and the functioning of securities markets. Because of the implications that the deployment by the European Commission of mandatory buy-ins may have, including with respect to the potential non-availability of a buy-in agent, it is suggested to discard the possibility of mandatory buy-ins altogether. Discarding the entire application of mandatory buy-ins is also the preferred approach of the ECB as expressed in its opinion of 28 July 2022 (see point 1.4).

Amendment 24

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point b

Regulation (EU) No 909/2014

Article 7 – paragraph 2

Text proposed by the Commission

Amendment

(b) the following paragraph 2a is inserted: ***deleted***

‘2a. Without prejudice to the penalty mechanism referred to in paragraph 2 of this Article and the right to bilaterally cancel the transaction, the Commission may, by means of an implementing act, decide to which of the financial instruments referred to in Article 5(1) or categories of transactions in those financial instruments the settlement discipline measures referred to in paragraphs 3 to 8 of this Article are to be applied where the Commission considers that those measures constitute a proportionate means to address the level of settlement fails in the Union and that, based on the number and volume of settlement fails, any of the following conditions is met:

(a) the application of the cash penalty mechanism referred to in paragraph 2 has not resulted in a long-term, continuous reduction of settlement fails in the Union;

(b) settlement efficiency in the Union has not reached appropriate levels considering the situation in third-country capital markets that are comparable in

terms of size, liquidity as well as instruments traded and types of transactions executed on such markets;

(c) 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).’;

Or. en

Justification

The existence of regulation-driven mandatory buy-ins is a significant interference in the execution of securities transactions and the functioning of securities markets. Because of the implications that the deployment by the European Commission of mandatory buy-ins may have, including with respect to the potential non-availability of a buy-in agent, it is suggested to discard the possibility of mandatory buy-ins altogether. Discarding the entire application of mandatory buy-ins is also the preferred approach of the ECB as expressed in its opinion of 28 July 2022 (see point 1.4).

Amendment 25

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point b a (new)

Regulation (EU) No 909/2014

Article 7 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

(ba) the following paragraph 2b is inserted:

‘2b. In order to support the provision of accurate, timely and complete information on penalties, all information necessary for the calculation of cash penalty amounts shall be centralised in the European Single Access Point operated by ESMA in accordance with Regulation ... [ESAP Regulation]. Such information shall include the list of financial instruments that fall within the scope of this Regulation, and the daily reference price and category of each such

instrument.’

Or. en

Justification

Currently, reference data are sourced from multiple locations, requiring significant efforts by market participants and limiting their ability to effectively monitor their exposure to penalties. Consolidating information into a single source such as the forthcoming European Single Access Point (ESAP) would be a significant improvement.

Amendment 26

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EU) No 909/2014

Article 7 – paragraph 3

Text proposed by the Commission

Amendment

(c) paragraph 3 is ***replaced by the following:***

(c) paragraph 3 is ***deleted;***

3. Where the Commission has adopted an implementing act pursuant to paragraph 2a and where a failing participant has not delivered financial instruments covered by that implementing act to the receiving participant within a period after the intended settlement date ('extension period') equal to 4 business days, a buy-in process shall be initiated whereby those instruments shall be available for settlement and delivered to the receiving participant within an appropriate timeframe.

Where the transaction relates to a financial instrument traded on an SME growth market, the extension period shall be 15 calendar days unless the SME growth market decides to apply a shorter period.

Or. en

Justification

The existence of regulation-driven mandatory buy-ins is a significant interference in the execution of securities transactions and the functioning of securities markets. Because of the implications that the deployment by the European Commission of mandatory buy-ins may have, including with respect to the potential non-availability of a buy-in agent, it is suggested to discard the possibility of mandatory buy-ins altogether. Discarding the entire application of mandatory buy-ins is also the preferred approach of the ECB as expressed in its opinion of 28 July 2022 (see point 1.4).

Amendment 27

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point d

Regulation (EU) No 909/2014

Article 7 – paragraph 3a

Text proposed by the Commission

Amendment

(d) *the following paragraph 3a is inserted:* ***deleted***

3a. Where a receiving participant (the ‘intermediate receiving participant’) does not receive the financial instruments by the date referred to in paragraph 3 leading to a failing onward delivery of those financial instruments to another receiving participant (the ‘end receiving participant’), the intermediate receiving participant shall be considered as complying with the obligation to execute a buy-in against the failing participant where the end receiving participant executes the buy-in for those financial instruments. Similarly, the intermediate receiving participant may pass-on to the failing participant its obligations toward the end receiving participant pursuant to paragraphs 6, 7 and 8.;

Or. en

Justification

The existence of regulation-driven mandatory buy-ins is a significant interference in the execution of securities transactions and the functioning of securities markets. Because of the implications that the deployment by the European Commission of mandatory buy-ins may

have, including with respect to the potential non-availability of a buy-in agent, it is suggested to discard the possibility of mandatory buy-ins altogether. Discarding the entire application of mandatory buy-ins is also the preferred approach of the ECB as expressed in its opinion of 28 July 2022 (see point 1.4).

Amendment 28

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point e

Regulation (EU) No 909/2014

Article 7 – paragraph 4

Text proposed by the Commission

Amendment

(e) paragraph 4 is *replaced by the following*:

(e) paragraph 4 is *deleted*;

4. Without prejudice to paragraph 3a, the following derogations from the requirement referred to in paragraph 3 shall apply:

(a) based on asset type and liquidity of the financial instruments concerned, the extension period may be increased from 4 business days up to a maximum of 7 business days where a shorter extension period would affect the smooth and orderly functioning of the financial markets concerned;

(b) for operations composed of several transactions including securities repurchase or lending agreements, the buy-in process referred to in paragraph 3 shall not apply where the timeframe of those operations is sufficiently short and renders the buy-in process ineffective;

(c) for settlement fails that occurred for reasons not attributable to the participants, the buy-in process referred to in paragraph 3 shall not apply;

(d) for transactions that do not involve two trading parties the buy-in process referred to in paragraph 3 shall not apply.;

Or. en

Justification

The existence of regulation-driven mandatory buy-ins is a significant interference in the execution of securities transactions and the functioning of securities markets. Because of the implications that the deployment by the European Commission of mandatory buy-ins may have, including with respect to the potential non-availability of a buy-in agent, it is suggested to discard the possibility of mandatory buy-ins altogether. Discarding the entire application of mandatory buy-ins is also the preferred approach of the ECB as expressed in its opinion of 28 July 2022 (see point 1.4).

Amendment 29

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point e a (new)

Regulation (EU) No 909/2014

Article 7 – paragraph 5

Text proposed by the Commission

Amendment

(ea) paragraph 5 is deleted;

Or. en

Justification

The existence of regulation-driven mandatory buy-ins is a significant interference in the execution of securities transactions and the functioning of securities markets. Because of the implications that the deployment by the European Commission of mandatory buy-ins may have, including with respect to the potential non-availability of a buy-in agent, it is suggested to discard the possibility of mandatory buy-ins altogether. Discarding the entire application of mandatory buy-ins is also the preferred approach of the ECB as expressed in its opinion of 28 July 2022 (see point 1.4).

Amendment 30

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point f

Regulation (EU) No 909/2014

Article 7 – paragraph 6

Text proposed by the Commission

Amendment

(f) paragraph 6 is **replaced by the following:**

(f) paragraph 6 is **deleted;**

6. Without prejudice to the penalty

mechanism referred to in paragraph 2, where the price of the financial instruments agreed at the time of the trade is different from the price paid for the execution of the buy-in, the corresponding difference shall be paid by the participant benefitting from such price difference to the other participant no later than on the second business day after the financial instruments have been delivered following the buy-in.

Or. en

Justification

The existence of regulation-driven mandatory buy-ins is a significant interference in the execution of securities transactions and the functioning of securities markets. Because of the implications that the deployment by the European Commission of mandatory buy-ins may have, including with respect to the potential non-availability of a buy-in agent, it is suggested to discard the possibility of mandatory buy-ins altogether. Discarding the entire application of mandatory buy-ins is also the preferred approach of the ECB as expressed in its opinion of 28 July 2022 (see point 1.4).

Amendment 31

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point f a (new)

Regulation (EU) No 909/2014

Article 7 – paragraphs 7 and 8

Text proposed by the Commission

Amendment

(fa) paragraphs 7 and 8 are deleted;

Or. en

Justification

The existence of regulation-driven mandatory buy-ins is a significant interference in the execution of securities transactions and the functioning of securities markets. Because of the implications that the deployment by the European Commission of mandatory buy-ins may have, including with respect to the potential non-availability of a buy-in agent, it is suggested to discard the possibility of mandatory buy-ins altogether. Discarding the entire application of mandatory buy-ins is also the preferred approach of the ECB as expressed in its opinion of 28 July 2022 (see point 1.4).

Amendment 32

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point g

Regulation (EU) No 909/2014

Article 7 – paragraph 11 – subparagraph 2

Text proposed by the Commission

Amendment

If a CCP incurs losses from the application of Article 7(2), third subparagraph, the CCP may establish in its rules a mechanism to cover such losses.;

deleted

Or. en

Justification

This subparagraph is no longer relevant if the entire application of mandatory buy-ins is discarded. See the amendment proposed to Article 7(2), third subparagraph.

Amendment 33

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point h

Regulation (EU) No 909/2014

Article 7 – paragraph 13a

Text proposed by the Commission

Amendment

(h) the following paragraph 13a is inserted:

deleted

‘13a. 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, 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 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 6 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 3 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 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.;'

Or. en

Justification

The existence of regulation-driven mandatory buy-ins is a significant interference in the execution of securities transactions and the functioning of securities markets. Because of the implications that the deployment by the European Commission of mandatory buy-ins may have, including with respect to the potential non-availability of a buy-in agent, it is suggested to discard the possibility of mandatory buy-ins altogether. Discarding the entire application of mandatory buy-ins is also the preferred approach of the ECB as expressed in its opinion of 28 July 2022 (see point 1.4).

Amendment 34

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 909/2014

Article 7 – paragraph 14a

Text proposed by the Commission

14a. The Commission *may* adopt delegated acts in accordance with Article 67 to supplement this Regulation specifying the reasons for settlement fails that are to be considered as not attributable to the participants to the transaction and the transactions that are not to be considered to involve two trading parties under paragraph 2 *and paragraph 4, points (c) and (d)*, of this Article.;

Amendment

14a. The Commission *shall* adopt delegated acts in accordance with Article 67 to supplement this Regulation specifying the reasons for settlement fails that are to be considered as not attributable to the participants to the transaction and the transactions that are not to be considered to involve two trading parties under paragraph 2 of this Article.;

Or. en

Justification

Amendment 11 proposed by the ECB in its opinion of 28 July 2022. The adoption of Commission delegated acts specifying the newly introduced exclusions from the cash penalty mechanism is crucial to provide relevant market stakeholders sufficient clarity so as to proceed with the appropriate implementation of the settlement discipline regime. Moreover, it is suggested to discard the entire application of mandatory buy-ins.

Amendment 35

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j a (new)

Regulation (EU) No 909/2014

Article 7 – paragraph 15 – subparagraph 1

Text proposed by the Commission

Amendment

(ja) in paragraph 15, first subparagraph, points (c) to (f) and point (h) are deleted;

Or. en

Justification

Points c, d, e, f, and h of this subparagraph are no longer relevant if the entire application of mandatory buy-ins is discarded.

Amendment 36

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point k

Regulation (EU) No 909/2014

Article 7 – paragraph 15 – subparagraph 2

Text proposed by the Commission

Amendment

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].;

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

Or. en

Justification

Legal-technical amendment.

Amendment 37

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point k a (new)

Text proposed by the Commission

Amendment

(ka) the following paragraph is inserted:

‘ESMA may, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the target levels of settlement efficiency, by taking into account factors such as the liquidity of financial instruments, the cross-border or domestic nature of transactions, and the currencies in which the transactions are settled.

The target levels specified in the draft regulatory technical standards referred to in the first subparagraph shall contribute to periodic assessments of the impact of penalties on settlement efficiency rates for different asset classes, and, where appropriate, provide guidance for a recalibration of the applicable fees.

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.’

Or. en

Justification

This amendment aims at giving ESMA the possibility to define the target level(s) of settlement efficiency. As ESMA would first need to assess the feasibility of defining such target(s) that would remain meaningful in time, given the market conditions and market developments, it is suggested not to make this a mandatory task at this stage. Target level(s) of settlement efficiency should where appropriate provide guidance for a recalibration of penalties.

Amendment 38

Proposal for a regulation

Article 1 – paragraph 1 – point 4 a (new)

Regulation (EU) No 909/2014

Article 19 – paragraph 2

2. The granting of authorisation under paragraph 1 shall follow the procedure laid down in Article 17.

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

(4a) in Article 19, paragraph 2 is replaced by the following:

'2. The granting of authorisation under paragraph 1 shall follow the procedure laid down in Article 17 ***with the exception of Article 17(4).***

Once an application referred to in paragraph 1 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 inform the competent authority of its views within three months of receipt of the information by the relevant authority.

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

Or. en

([tps://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0909-20220622&qid=1665050653870&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0909-20220622&qid=1665050653870&from=EN))

Justification

While the CSDR REFIT proposal does not amend Art 19, the amendments proposed to Art 17 impact Art 19 via the cross-reference. As the deadlines proposed in Article 17(4) do not fit into the three months deadline of Article 19(2), it is suggested to specify that the current inter-authorities consultation procedure remains applicable in the case of Article 19 consultations. To further mirror Article 17, it is suggested that the consulted authorities are also informed about the results of the authorisation process for the extension of activities and services.

Amendment 39

**Proposal for a regulation
Article 1 – paragraph 1 – point 5**

Text proposed by the Commission

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 and records linked to the provision of *core services referred to in Section A, points 1 and 2, of the Annex.*;

Amendment

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 issuances*** and records linked to the provision of ***notary services and central maintenance services***;

Or. en

Justification

As “issuance accounts” is a purely operational concept rather than a legal one, it is suggested to use a more generic reference. To ensure that this change makes a difference in real life - given that section A, point 2 of the Annex again refers to “securities accounts” - it is further suggested to refer to “notary and central maintenance services” instead of to Section A, points 1 and 2 of the Annex.

Amendment 40

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point a

Regulation (EU) No 909/2014

Article 22 – paragraph 3 – subparagraph 1 – point c

Text proposed by the Commission

(c) 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;

Amendment

(c) adequate procedures ***enabling*** 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;

Or. en

Justification

At the time of drafting the plans for its recovery or orderly wind-down, a CSD cannot ex ante provide for provisions that effectively “ensure” a timely transfer as that would depend on the ex post circumstances. It is therefore suggested that CSD plans should “enable” this objective.

Amendment 41

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point a

Regulation (EU) No 909/2014

Article 22 – paragraph 3 – subparagraph 3

Text proposed by the Commission

The CSD shall review and update the plans regularly and **a** least every **2** years. The plans shall have regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned **and any relevant recovery or resolution plan established in accordance with Directive 2014/59/EU.**

Amendment

The CSD shall review and update the plans regularly and **at** least every **two** years. ***The plans shall be approved by the management body, or an appropriate committee of the management body, and updated regularly. Each update of the plans shall be provided to the competent authority. The competent authority may require the CSD to take additional measures or to make any alternative provision where the competent authority considers that the CSD’s plans are insufficient.*** The plans shall have regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned.

Or. en

Justification

For sake of consistency and reading, it is suggested to remove the sentence on board approval and communication to the competent authority from Art 47 and move it to Art 22.

Amendment 42

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point a

Regulation (EU) No 909/2014

Article 22 – paragraph 3 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

Where a CSD is subject to Directive 2014/59/EU, a recovery plan and a resolution plan shall, instead of the plans referred to in paragraph 2 of this Article, be drawn up by the CSD and the resolution authority respectively in accordance with that Directive, taking into account points (a) to (d) of the first subparagraph of this paragraph.

Or. en

Justification

CSDs with a banking licence are already subject to BRRD rules for the drafting of recovery and resolution plans. This amendments aims at avoiding unnecessary duplication and/or possible inconsistencies.

Amendment 43

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point a

Regulation (EU) No 909/2014

Article 22 – paragraph 3 – subparagraph 4

Text proposed by the Commission

Amendment

Where a resolution plan is established and maintained for a CSD with the aim of ensuring its core functions, the **competent** authority shall inform ESMA thereof.

Where a resolution plan is established and maintained for a CSD with the aim of ensuring its core functions, the **resolution** authority shall inform ESMA thereof.

Or. en

Justification

Clarification of the authority in charge of resolution.

Amendment 44

Proposal for a regulation

Article 1 – paragraph 1 – point 6 – point b

Text proposed by the Commission

7. The competent authority shall regularly, and at least once every 2 years, inform the relevant authorities and, where applicable, the **colleges** 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.;

Amendment

7. The competent authority shall regularly, and at least once every 2 years, inform the relevant authorities and, where applicable, the **college of supervisors** 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.;

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based on one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 45

Proposal for a regulation

Article 1 – paragraph 1 – point 7

Regulation (EU) No 909/2014

Article 23 – paragraph 3 – introductory part

Text proposed by the Commission

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, 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:

Amendment

Any CSD wishing to provide the services referred to in paragraph 2 of this Article in relation to **shares** constituted under the law of another Member State referred to in Article 49(1), second subparagraph, for the first time, or to change the range of those services provided shall **communicate** the following information to the competent authority of the home Member State:

Justification

This amendment follows a recommendation made by ESMA in its report of 5 November 2020 on cross-border services and handling of applications under Article 23 (see report ESMA70-156-3569, paragraph 84, last bullet). It is suggested to limit the scope of the obligation to submit information for financial instruments constituted under the law of another Member State to shares, as “application to instruments other than shares is not proportionate and triggers unintended and meaningless consequences.”

Amendment 46**Proposal for a regulation****Article 1 – paragraph 1 – point 7**

Regulation (EU) No 909/2014

Article 23 – paragraph 3 – point b

*Text proposed by the Commission**Amendment*

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

(b) the type of shares constituted under the law of the host Member State in respect of which the CSD intends to provide services and the services which the CSD intends to provide;

Justification

For the sake of consistency and reading, and to ensure that branches are not wrongfully omitted from the scope and that the relevant criteria are listed for the relevant passporting situation, it is suggested to split Art 23(3) into to dedicated subparagraphs: one for services constituted under the law of a another Member state, and one for branches in another Member State.

Amendment 47**Proposal for a regulation****Article 1 – paragraph 1 – point 7**

Regulation (EU) No 909/2014

Article 23 – paragraph 3 – point d

*Text proposed by the Commission**Amendment*

(d) where there is a branch, the

deleted

***organisational structure of the branch
and the names of those responsible for the
management of the branch;***

Or. en

Justification

For the sake of consistency and reading, and to ensure that branches are not wrongfully omitted from the scope and that the relevant criteria are listed for the relevant passporting situation, it is suggested to split Art 23(3) into two dedicated subparagraphs: one for services constituted under the law of another Member State, and one for branches in another Member State.

Amendment 48

Proposal for a regulation

Article 1 – paragraph 1 – point 7

Regulation (EU) No 909/2014

Article 23 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. A CSD wishing to set up a branch in another Member State for the first time, or to change the range of services provided through a branch, shall communicate the following information to the competent authority of the home Member State:

(a) the host Member State;

(b) the type of shares constituted under the law of the host Member State in respect of which the CSD intends to provide services and the services which the CSD intends to provide;

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

(d) the organisational structure of the branch and the names of the persons responsible for the management of the branch.

Or. en

Justification

For the sake of consistency and reading, and to ensure that branches are not wrongfully omitted from the scope and that the relevant criteria are listed for the relevant passporting situation, it is suggested to split Art 23(3) into to dedicated subparagraphs: one for services constituted under the law of a another Member state, and one for branches in another Member State.

Amendment 49

Proposal for a regulation

Article 1 – paragraph 1 – point 7

Regulation (EU) No 909/2014

Article 23 – paragraph 4

Text proposed by the Commission

4. Within 1 month from the receipt of the 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 wishing to provide its services in the host Member State. ***Where the CSD already provides services to other host Member States, the competent authority of the home Member State shall also inform the passporting college referred to in Article 24a.***

Amendment

4. Within 1 month from the receipt of the 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 wishing to provide its services in the host Member State.

Or. en

Justification

It is unclear why authorities from one host Member State would need to be informed about the intention of a CSD to open a branch in or service securities under the laws of another host Member State. It is therefore suggested to remove this requirement to share business information about a CSD in this manner.

Amendment 50

Proposal for a regulation

Article 1 – paragraph 1 – point 7

Regulation (EU) No 909/2014

Article 23 – paragraph 5

Text proposed by the Commission

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

Amendment

5. Where the competent authority of the home Member State decides in accordance with paragraph 4 not to communicate all the information referred to in paragraph 3 to the competent authority of the host Member State, it shall give reasons for its refusal to the CSD concerned within 3 months of receiving all the information and inform the competent authority of the host Member State of its decision.

Or. en

Justification

It is unclear why authorities from one host Member State would need to be informed about the intention of a CSD to open a branch in or service securities under the laws of another host Member State. It is therefore suggested to remove this requirement to share business information about a CSD in this manner.

Amendment 51

Proposal for a regulation

Article 1 – paragraph 1 – point 7

Regulation (EU) No 909/2014

Article 23 – paragraph 7

Text proposed by the Commission

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 1 month before implementing the

Amendment

7. In the event of a **substantive** change of the information **communicated** in accordance with paragraph 3 **or paragraph 3a** of this Article, a CSD shall give written notice of that change to the competent authority of the home Member State at least 1 month before implementing

change. The competent authority of the host Member State **and the passporting college referred to in Article 24a** shall also be informed of that change without delay by the competent authority of the home Member State.;

the change. The competent authority of the host Member State shall also be informed of that change without delay by the competent authority of the home Member State.

Or. en

Justification

The word “substantive” is added to better reflect the principle of proportionality and mirror the wording from Art 16(4). Furthermore, it is suggested to delete the proposed information duty to the Article 24a college as a change in a document submitted for one passport does not seem relevant per se for another passport.

Amendment 52

Proposal for a regulation

Article 1 – paragraph 1 – point 8 – point a

Regulation (EU) No 909/2014

Article 24 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Upon the request of any member of the passporting 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 and*** ESMA to participate in on-site inspections.

Amendment

The competent authority of the home Member State may invite staff from ESMA to participate in on-site inspections.

Or. en

Justification

It is suggested to delete the parts of this sentence, which create the wrong impression that supervision of a CSD is a collective exercise by EU Member States. As authorities of the host Member State of the branch are already covered by the first subparagraph, invitations for participation in on-site inspections should in this subparagraph be limited to ESMA.

Amendment 53

Proposal for a regulation

Article 1 – paragraph 1 – point 8 – point a

Regulation (EU) No 909/2014
Article 24 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The competent authority of the home Member State **may** transmit to ESMA any information received from the CSDs during or in relation to on-site inspections.;

Amendment

The competent authority of the home Member State **shall** transmit to ESMA any **substantive** information received from the CSDs during or in relation to on-site inspections.;

Or. en

Justification

The home Member State competent authority's information duty to ESMA should be mandatory rather than voluntary. The word "substantive" is added to avoid an overload of documents without added value for ESMA.

Amendment 54

Proposal for a regulation

Article 1 – paragraph 1 – point 8 – point a (new)

Regulation (EU) No 909/2014

Article 24 – paragraph 3

Present text

3. The competent authority of the home Member State of the CSD shall, on the request of the competent authority of the host Member State and without delay, communicate the identity of the issuers **and** participants in the securities settlement systems operated by the CSD which provides services **in that** host Member State and any other relevant information concerning the activities of **that CSD** in the host Member State.

Amendment

(aa) *paragraph 3 is replaced by the following:*

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

Member State *through a branch.*'

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0909-20220622&qid=1665050653870&from=EN>)

Justification

To ensure proportionality in the disclosure of information, it is suggested to clarify the type of information that the host Member State competent authority may request to the home Member State competent authority.

Amendment 55

Proposal for a regulation

Article 1 – paragraph 1 – point 8 – point c

Regulation (EU) No 909/2014

Article 24 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a CSD providing services within its territory in accordance with Article 23 is in breach of the obligations arising from the provisions of this Regulation, it shall inform the competent authority of the home Member State, **ESMA and the passporting** college referred to in Article 24a of those findings.

Amendment

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 ESMA. ESMA may inform the** college referred to in Article 24a of those findings.

Or. en

Justification

This amendment aims at avoiding the wrong impression that supervision of a CSD is a collective exercise by EU Member States. Not all CSD activities are relevant for all host Member States authorities. This is for example the case for operational processes specifically designed to act as issuer CSD for only one market, or when a CSD has an organisational issue in a branch in only one host Member State.

Amendment 56

Proposal for a regulation

Article 1 – paragraph 1 – point 8 – point c

Regulation (EU) No 909/2014

Article 24 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Where, despite measures taken by the competent authority of the home Member State, the CSD persists in acting in infringement 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. **ESMA and the passporting college referred to in Article 24a** shall be informed of such measures without delay.

Amendment

Where, despite measures taken by the competent authority of the home Member State, the CSD persists in acting in infringement 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. ESMA shall be informed of such measures without delay. **ESMA may inform the college referred to in Article 24a of those measures.**

Or. en

Justification

This amendment aims at avoiding the wrong impression that supervision of a CSD is a collective exercise by EU Member States. Not all CSD activities are relevant for all host Member States authorities. This is for example the case for operational processes specifically designed to act as issuer CSD for only one market, or when a CSD has an organisational issue in a branch in only one host Member State.

Amendment 57

Proposal for a regulation

Article 1 – paragraph 1 – point 8 – point d

Regulation (EU) No 909/2014

Article 24 – paragraphs 7 and 8

Text proposed by the Commission

(d) **paragraphs 7 and 8 are** deleted;

Amendment

(d) **paragraph 8 is** deleted;

Justification

Substantial importance of a CSD to a host Member State should remain a criterion to determine participation of host Member State authorities in cooperation agreements. It is therefore suggested to maintain the existing wording of paragraph 7.

Amendment 58**Proposal for a regulation****Article 1 – paragraph 1 – point 9**

Regulation (EU) No 909/2014

Article 24a – title

*Text proposed by the Commission**Amendment*

Colleges of Supervisors for CSDs
providing services in another Member State and for CSDs that are part of a group with two or more CSDs

Colleges of Supervisors for CSDs

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based on one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 59**Proposal for a regulation****Article 1 – paragraph 1 – point 9**

Regulation (EU) No 909/2014

Article 24a – paragraph 1 – subparagraph 1 – introductory part

*Text proposed by the Commission**Amendment*

Colleges of supervisors ***shall be established*** to carry out the tasks referred to in paragraph 6 ***in the following cases:***

Competent authorities designated in accordance with Article 11 shall establish, manage and chair a college of supervisors

to carry out the tasks referred to in paragraph 6 **where the CSD they supervise is of substantial importance in more than one host Member State.**

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 60

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) where a CSD is subject to the procedure referred to in Article 23(3) to (7) ('passporting college'); **deleted**

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 61

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Text proposed by the Commission

Amendment

(b) where a CSD is part of a group that comprises two or more CSDs authorised in at least two Member States ('group-level college'). **deleted**

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based on one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 62

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

In the case referred to in the first subparagraph, point (a), the CSD's home competent authority shall establish, manage and chair the passporting college. That college shall be established within 1 month from the date referred to in Article 23(6). Where the CSD submits subsequent notifications pursuant to Article 23(3), the competent authority of the home Member State shall invite the competent authorities of the relevant host Member States to the passporting college within 1 month from the date referred to in Article 23(6). **deleted**

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 63

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

In the case referred to in the first subparagraph, point (b), where the parent undertaking is a CSD authorised in the Union, the competent authority of the home Member State of that CSD shall establish, manage and chair the group-level college. Where the parent undertaking is not a CSD authorised in the Union, the competent authority of the home Member State of the CSD with the largest balance sheet total shall establish, manage and chair the group-level college.

deleted

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 64

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) no 909/2014

Article 24a – paragraph 1 – subparagraph 4

Text proposed by the Commission

Amendment

By way of derogation from the third subparagraph, where the application of the criteria referred to in that subparagraph would be inappropriate, the competent authorities may waive by common agreement those criteria and appoint a different CSD's competent authority to manage and chair the college, taking into account the CSDs concerned and the relative importance of their activities in the relevant Member States. In such cases, the parent CSD or the CSD with the largest balance sheet total, as applicable, shall have the right to be heard before the competent authorities take the decision.

deleted

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 65

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 1 – subparagraph 5

Text proposed by the Commission

Amendment

The competent authorities shall notify the Commission and ESMA without delay of any agreement made pursuant to the fourth subparagraph. ***deleted***

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 66

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) ***in the case of a passporting college***, the competent authority of the host Member States;

(d) the competent authority of the host Member States;

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 67

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) in the case of a group-level college, the competent authority and the relevant authorities of each CSD in the group;

deleted

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based on one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 68

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where a CSD for which a college is established in accordance with paragraph 1 is not of substantial importance in a Member State where a subsidiary belonging to the same group of companies as the CSD, or its parent undertaking, is established or where the CSD for which a college is established is entitled to provide services in another Member State in accordance with Article 23(2), the competent authority and relevant authorities of that Member State

shall be able to participate in the college established in accordance with paragraph 1 of this Article upon their request.

Or. en

Justification

This amendment aims at further enhancing cooperation between competent authorities responsible for the supervision of CSDs belonging to the same group and relevant authorities, which is particularly important when some services are outsourced to entities of the same group based in a different Member State, and also between authorities from home and host Member States in the case of passports.

Amendment 69

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

Where a CSD subject to the procedure referred to in Article 23(3) to (7) is also part of a group that comprises two or more CSDs and its competent authority is the chair of the group-level college, that competent authority may decide that only one college shall be established for the purposes of paragraph 1, points (a) and (b), of this Article for that CSD. Where any of the other CSDs within the group are also subject to the procedure referred to in Article 23(3) to (7), the chair of the college may make that decision only with the agreement of the competent authorities of those CSDs.

deleted

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two

types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 70

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Where a college established pursuant to the first subparagraph: ***deleted***

(a) convenes for the exercise of the tasks referred to in paragraph 6, points (a) to (d), of this Article, the authorities referred to in paragraph 2, points (a) to (f) of this Article in relation to each CSD within the group shall participate to that meeting of the college;

(b) convenes for the exercise of the tasks referred to in paragraph 6, point (e), of this Article only the authorities referred to, in paragraph 2, points (a), (b), (c), (e) and, where applicable, (f) of this Article shall participate to that meeting of the college.

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 71

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 6 – subparagraph 1 – point d

Text proposed by the Commission

(d) ***in the case of a passporting college***, the cooperation of the home and host Member State pursuant to Article 24 and regarding the measures referred to in Article 23(4), point (e) and on any issues encountered in the provision of services in other Member States;

Amendment

(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;

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 72

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 6 – subparagraph 1 – point e

Text proposed by the Commission

(e) ***in the case of a group-level college***, the exchange of information on resources shared and outsourcing arrangements in place within a group of CSDs pursuant to Article 19, on significant changes to the structure and ownership of the group, and on changes in the organisation, senior management, processes or arrangements where those

Amendment

(e) the exchange of information on resources shared and outsourcing arrangements in place within a group of CSDs pursuant to Article 19, on significant changes to the structure and ownership of the group, and on changes in the organisation, senior management, processes or arrangements where those changes have a significant impact on

changes have a significant impact on governance or risk management for the CSDs belonging to the group.

governance or risk management for the CSDs belonging to the group.

Or. en

Justification

As cooperation between home and host Member States is currently insufficient and supervisory arrangements inefficient, the creation of mandatory colleges to promote supervisory convergence in the application of CSDR requirements is supported. Creating two types of supervisory colleges seems however disproportionate from an operational point of view. It is therefore suggested to simplify and streamline the Commission proposal by requiring the creation of colleges based on one existing reliable criterion, i.e. the substantial importance of a CSD in other Member States.

Amendment 73

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. At the request of any of its members, and upon adoption by a majority of the college in accordance with paragraph 6b, the college may adopt binding opinions with regard to issues identified during the review and evaluation processes pursuant to Article 22 or Article 60, or that relate to any extension or outsourcing of activities and services under Article 19, or concerning any potential breach of CSDR requirements arising from the provision of services in a host Member State as referred to in Article 24(5).

Or. en

Justification

Members of a college should be able to request the adoption of binding opinions on application issues identified during the review and evaluation process of CSDs and of providers of banking-type ancillary services, the extension or outsourcing of activities and

services provided by the CSD, and the potential breach of CSDR requirements arising from the provision of services in a host Member State. Colleges should thus effectively be tools for the promotion of supervisory convergence. The process for the adoption of opinions should rely on a simple majority vote process.

Amendment 74

Proposal for a regulation

Article 1 – paragraph 1 – point 9

Regulation (EU) No 909/2014

Article 24a – paragraph 6 b (new)

Text proposed by the Commission

Amendment

6b. A binding opinion of the college shall be adopted on the basis of a simple majority of its members. Each member of the college shall have one vote. Members of the college that act in more than one capacity, including as competent authority and as relevant authority, shall have one vote for each capacity in which it acts.

Where EBA is a member of the college pursuant to Article 24a(2), its voting member shall have voting rights only on those opinions that relate to issues identified during the review and evaluation process pursuant to Article 60.

Or. en

Justification

This amendment suggests that the adoption by the college of an opinion pursuant to Article 24a (new) paragraph 6a (new) would require a simple majority of the members of the college. It notably also gives ESMA voting rights as a full member of the college, thus enabling ESMA to identify and address supervisory convergence issues. Voting rights of EBA are restricted to issues relating to banking-type ancillary services.

Amendment 75

Proposal for a regulation

Article 1 – paragraph 1 – point 12 a (new)

Regulation (EU) No 909/2014

Article 29 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(12a) in Article 29, the following paragraph is inserted:

'(2a) Prior to using the services of a CSD, an issuer shall ensure that it is identified with a valid legal entity identifier (LEI). A CSD shall not provide services under this Regulation to an issuer prior to obtaining the LEI from that issuer.';

Or. en

Justification

The LEI code is required for several entities under multiple rules, none of which directly applies to all issuers. E.g. the LEI obligation from the Prospectus Regulation only applies to EU issuers, disadvantaging them vis-à-vis non-EU issuers; ITS (EU) 2017/394 is addressed to CSDs, which may not always have the means to impose this on issuers. This amendment imposes a direct obligation on all issuers to obtain a LEI code without creating market disruptions, as the requirement for CSDs already exists, and other legislation already covers the requirement for a majority of issuers.

Amendment 76

Proposal for a regulation

Article 1 – paragraph 1 – point 14 a (new)

Regulation (EU) No 909/2014

Article 47 – paragraph 1 – point b

Present text

Amendment

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

(14a) Article 47 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

'(b) enabling the orderly winding-down or restructuring of **its operations and services** where the **CSD is unable to raise new capital.'**;

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0909-20220622&qid=1665050653870&from=EN>)

Justification

At the time of drafting the plans for its recovery or orderly wind-down, a CSD cannot ex ante provide for provisions that effectively “ensure” a timely transfer as that would depend on the ex post circumstances. It is therefore suggested that CSD plans should “enable” this objective. For sake of consistency and reading, it is moreover suggested to remove the sentence on board approval and communication to the competent authority from Article 47 and move it to Article 22.

Amendment 77

Proposal for a regulation

Article 1 – paragraph 1 – point 14 a (new)

Regulation (EU) No 909/2014

Article 47 – paragraph 2 – subparagraph 2

Present text

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

Amendment

(b) in paragraph 2, the second subparagraph is replaced by the following:

'The plan required under point (b) of the first subparagraph shall be drafted pursuant to in accordance with Article 22.'.

Or. en

Amendment 78

Proposal for a regulation

Article 1 – paragraph 1 – point 14 b (new)

Regulation (EU) No 909/2014

Article 47a (new)

Text proposed by the Commission

Amendment

(14b) the following Article is inserted:

'Article 47a

Netting

1. CSDs shall expressly indicate in their internal rules whether they apply netting arrangements.

2. CSDs applying netting arrangements shall measure, monitor, and manage the credit and liquidity risks arising from netting arrangements.

3. ESMA shall, in close cooperation with the EBA and the members of the ESCB, develop draft regulatory technical standards to further specify details of the frameworks for the monitoring, measuring, management, reporting and public disclosure of the risks stemming from netting arrangements.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by ... [one year after the date of entry into force of this amending 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 1093/2010.'

Or. en

Justification

Amendment 15 proposed by the ECB in its opinion of 28 July 2022. As reflected in several principles of the Principles for Financial Market Infrastructures (PFMIs) issued by the Committee on Payment and Settlement Systems (CPPSS) and the International Organization of Securities Commissions (IOSCO), specific requirements are needed to address risks stemming from netting arrangements of CSDs. These should apply to all CSDs operating securities settlement systems that use netting arrangements, irrespective of whether those CSDs provide banking-type ancillary services or not.

Amendment 79

Proposal for a regulation

Article 1 – paragraph 1 – point 14 c (new)

Regulation (EU) No 909/2014
Article 49 – paragraph 1 – subparagraph 1

Present text

An issuer shall have the right to arrange for its securities admitted to trading on regulated markets or MTFs or traded on trading venues to be recorded in any CSD established in any Member State, subject to compliance by that CSD with conditions referred to in Article 23.

Amendment

(14c) in Article 49(1), the first subparagraph is replaced by the following:

‘An issuer shall have the right to arrange for its securities admitted to trading on regulated markets or MTFs or traded on trading venues to be recorded in any CSD established in any Member State ***and, in the case of shares,*** subject to compliance by that CSD with conditions referred to in Article 23.’

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0909#d1e3629-1-1>)

Justification

Alignment following the suggestion to limit the scope of Art 23(3)(e) of CSDR to shares.

Amendment 80

Proposal for a regulation

Article 1 – paragraph 1 – point 17 – point b – point ii a (new)

Regulation (EU) No 909/2014

Article 54 – paragraph 4 – point d

Present text

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

Amendment

(iia) point (d) is replaced by the following:

(d) where a CSD seeks to designate a credit institution which does not itself carry out any of the core services referred to in Section A of the Annex, the authorisation referred to in point (a) is used only to provide the banking-type ancillary services referred to in Section C of the Annex ***for settlement of the cash leg corresponding to the transactions in the securities settlement system of the CSD seeking to use the banking-type ancillary***

services in a currency other than that of the country where the settlement takes place, and not to carry out any other activities;

where a CSD seeks to use a CSD that is authorised pursuant to paragraph 3, the authorisation referred to in point(a) is used only to provide the banking-type ancillary services in Section C of the Annex for the settlement of the cash leg corresponding to the transactions in the securities settlement system of the CSD seeking to use the banking-type ancillary services in a currency other than that of the country where the settlement takes place, and not to carry out any other activities;'

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014R0909-20220622&qid=1665050653870&from=EN>)

Justification

Based on amendment 12 proposed by the ECB in its opinion of 28 July 2022. The scope of services to be offered by banking CSDs to user CSDs should be limited to services provided for the purposes of settlement in foreign currencies. The slight change to the ECB suggestion - the words "corresponding to" - aims at avoiding any wrong perception that cash leg settlement could happen in the securities settlement system of the CSD seeking to use the banking ancillary services and thus clarifying that cash leg settlement can only be done by banking CSDs or designated credit institutions.

Amendment 81

Proposal for a regulation

Article 1 – paragraph 1 – point 17 – point c

Regulation (EU) No 909/2014

Article 54 – paragraph 5 – subparagraph 2

Text proposed by the Commission

*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**. Where the competent*

Amendment

*ESMA shall monitor at least once per year that the threshold referred to in the first subparagraph is respected and report its findings to the competent authority, **the ESCB and EBA**. Where **ESMA***

authority determines that the threshold has been exceeded, *it* shall require the CSD concerned to seek authorisation in accordance with paragraph 4. The CSD concerned shall submit its application for authorisation within 6 months.;

determines that the threshold has been exceeded, ***the competent authority*** shall require the CSD concerned to seek authorisation in accordance with paragraph 4. The CSD concerned shall submit its application for authorisation within 6 months.

Or. en

Justification

It seems warranted to grant ESMA the responsibility to monitor compliance with the threshold.

Amendment 82

Proposal for a regulation

Article 1 – paragraph 1 – point 17 – point d

Regulation (EU) No 909/2014

Article 54 – paragraph 9 – subparagraph 1

Text proposed by the Commission

EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to determine the maximum amount 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 foreign currencies through accounts opened with such credit institutions. When developing ***these*** draft regulatory technical standards the EBA shall also determine, ***where necessary, any*** accompanying appropriate risk management and prudential mitigating requirements.

Amendment

EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to determine the maximum amount referred to in paragraph 5, taking into account:

(i) the need to balance the credit and liquidity risks for CSDs, ***for the designated credit institutions and for the CSD participants*** that result from the settlement of cash payments through accounts opened

with credit institutions *exempted from the application of paragraph 4* and the need to allow CSDs to settle in foreign currencies through accounts opened with such credit institutions.

(ii) the implications for market stability that could derive from a change of risk profile of CSDs, taking into account their systemic importance for the functioning of securities markets;

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

(iv) existing global guidance such as the Principles for financial market infrastructures.

When developing *those* draft regulatory technical standards the EBA shall also determine accompanying appropriate risk management and prudential mitigating requirements.

Or. en

Justification

This amendment aims at addressing the concerns voiced by the ECB in its opinion of 28 July 2022 regarding banking-type ancillary services. Moreover, risk mitigating measures are always necessary to be in line with Principles for Financial Market Infrastructures (PFMI).

Amendment 83

Proposal for a regulation

Article 1 – paragraph 1 – point 18 a (new)

Regulation (EU) No 909/2014

Article 55 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(18a) in Article 55, the following paragraph is inserted:

‘6a. The competent authority shall,

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

Or. en

Justification

This amendment aims at adding a similar requirement for banking-type ancillary services as the one proposed in the Commission proposal for the authorisation procedure under Article 17 (see proposed new paragraph 7a under that Article).

Amendment 84

Proposal for a regulation

Article 1 – paragraph 1 – point 19 – point a – point iii

Regulation (EU) No 909/2014

Article 59 – paragraph 4 – point k

Text proposed by the Commission

Amendment

(iii) the following point (k) is added: **deleted**

(k) it shall adequately monitor and manage any risks, including relevant netting arrangements in relation to the cash leg of their applied settlement model.;

Or. en

Justification

This addition becomes redundant if the ECB recommendation is followed to insert specific provisions addressing the risks stemming from netting arrangements.

Amendment 85

Proposal for a regulation

Article 1 – paragraph 1 – point 20 – point a

Regulation (EU) No 909/2014

Article 60 – paragraph 1 – subparagraph 3

Text proposed by the Commission

The competent authorities referred to in the first subparagraph shall regularly, and at least **once a year**, 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 **colleges** referred to in Article 24a, of the results, including any remedial actions or penalties, of its supervision under this paragraph.;

Amendment

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

Or. en

Justification

Amendment 13 proposed by the ECB in its opinion of 28 July 2022. For reasons of consistency, there is merit in aligning the proposed minimum frequency with which the CSD competent authorities and the authorities referred to in point (40) of Article 4(1) of Regulation (EU) No 575/2013 review and evaluate compliance with CSDR of banking-type ancillary services with the frequency of the review and evaluation of CSDs. It is suggested to extend the frequency of such assessment to two years.

Amendment 86

Proposal for a regulation

Article 1 – paragraph 1 – point 20 – point b

Regulation (EU) No 909/2014

Article 60 – paragraph 2

Text proposed by the Commission

(b) **in** paragraph 2, **the second subparagraph** is replaced by the following

Amendment

(b) paragraph 2 is replaced by the following:

‘2. The competent authority of the CSD shall, after consulting competent authorities referred to in paragraph 1 and the relevant authorities, in accordance with the procedure laid down in Article 55(5), review and evaluate at least every two years the following:

(a) in the case referred to Article 54(2), point (b), whether all the necessary arrangements between the designated credit institutions and the CSD allow them to meet their obligations as laid down in this Regulation;

(b) in the case referred to in Article 54(2), point (a), whether the arrangements relating to the authorisation to provide banking-type ancillary services allow the CSD to meet its obligations as laid down in this Regulation.

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

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

Where a CSD designates an authorised credit institution in accordance with Article 54 in view of the protection of the participants in the securities settlement systems it operates, a CSD shall ensure that it has access from the credit institution it designates to all necessary information for the purpose of this Regulation. The CSD shall report to its competent authority, and to the competent authorities referred to in paragraph 1, any failure by the designated credit institution to provide the necessary information.’

Or. en

Justification

Based on amendment 13 proposed by the ECB in its opinion of 28 July 2022. For reasons of consistency, there is merit in aligning the proposed minimum frequency with which the CSD competent authorities and the authorities referred to in point (40) of Article 4(1) of Regulation (EU) No 575/2013 review and evaluate compliance with CSDR of banking-type ancillary services with the frequency of the review and evaluation of CSDs. It is suggested to extend the frequency of such assessment to two years.

Amendment 87

Proposal for a regulation

Article 1 – paragraph 1 – point 23 – point c a (new)

Regulation (EU) No 909/2014

Article 69 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(ca) the following paragraph is added:

‘6a. The issuers for which a CSD already provides services on ... [date of entry into force of this amending Regulation [CSDR Refit]] shall obtain and provide their LEI to the CSD within one year thereof.’

Or. en

Justification

The LEI code is required for several entities under multiple rules, none of which directly applies to all issuers. E.g. the LEI obligation from the Prospectus Regulation only applies to EU issuers, disadvantaging them vis-à-vis non-EU issuers; ITS (EU) 2017/394 is addressed to CSDs, which may not always have the means to impose this on issuers. This amendment imposes a direct obligation on all issuers to obtain a LEI code without creating market disruptions, as the requirement for CSDs already exists, and other legislation already covers the requirement for a majority of issuers.

Amendment 88

Proposal for a regulation

Article 1 – paragraph 1 – point 23 a (new)

Regulation (EU) No 909/2014

Article 72

Text proposed by the Commission

Amendment

(23a) Article 72 is deleted.

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0909#d1e5083-1-1>)

Justification

The removal of Art 15 of Regulation (EU) No 236/2012 (Short Selling Regulation - SSR) via Art 72 of Regulation (EU) No 909/2014 (CSDR) came into force in February 2022 as per the provisions of Art 76(5) CSDR. This was justified because the SSR CCP buy-in provisions against naked short-selling would then be covered by the CSDR MBI provisions. Combined with the delay of the CSDR MBI regime, the removal of Art 15 SSR left a gap in the legislation. In parallel to the suggestion to discard the entire application of CSDR MBI provisions, it is suggested to reintroduce these provisions in the SSR.

Amendment 89

Proposal for a regulation

Article 1 – paragraph 1 – point 24 – point a – point iii a (new)

Regulation (EU) No 909/2014

Article 74 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

(iiiia) the following point is added:

‘(la) the potential benefits and challenges that the adoption of a T+1 settlement cycle would represent, including an assessment of its impact on counterparty, market, credit and operational risks, its impact on the global competitiveness and attractiveness of capital markets of the Union, and its impact and feasibility in the context of the level of settlement efficiency on capital markets of the Union.’;

Or. en

Justification

It is suggested that ESMA makes a report of costs and benefits related to reducing the settlement cycle from the current T+2 standard towards T+1. The Commission should take the findings of such a report into account when reviewing the CSDR Refit.

Amendment 90

Proposal for a regulation

Article 1 – paragraph 1 – point 24 – point b

Regulation (EU) No 909/2014
Article 74 – paragraph 1a – point (d)

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

It is suggested that the report proposed in the amendment to paragraph 1 of Article 74 on a possible migration towards a T+1 settlement cycle should be submitted to the Commission upon its request.

Amendment 91

Proposal for a regulation

Article 1 – paragraph 1 – point 25

Regulation (EU) No 909/2014

Article 75 – paragraph 1

Text proposed by the Commission

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:

Amendment

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 **(la) and the report referred to in Article 14 of Regulation (EU) 2022/858 of the European Parliament and of the Council^{43a}**, 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:

43a Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on

distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, p. 1).

Or. en

Justification

It is suggested that the report proposed in the amendment to paragraph 1 of Article 74 on a possible migration towards a T+1 settlement cycle should be taken into account by the Commission when working on its review of the CSDR Refit. Furthermore, it is suggested that the Commission also takes into account the evaluation of the DLT Pilot Regime, and thus considers DLT-related modifications to the CSDR that could contribute to making it fitter for the digital age, if and where appropriate.

Amendment 92

Proposal for a regulation

Article 1 a (new)

Regulation (EU) No 236/2012

Article 15

Text proposed by the Commission

Amendment

Article 1a

Amendment to Regulation (EU) No 236/2012

The following Article is inserted:

‘Article 15

Buy-in procedures

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

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

(b) where the buy-in of the shares for

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

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

A central counterparty in a Member State that provides clearing services for shares shall ensure that procedures are in place to ensure that where a natural or legal person who sells shares fails to deliver the shares for settlement by the date on which settlement is due, such person is required to make daily payments for each day that the failure continues.

The daily payments referred to in the third subparagraph shall be sufficiently high to act as a deterrent to natural or legal persons failing to settle.'

Or. en

Justification

The removal of Art 15 of Regulation (EU) No 236/2012 (Short Selling Regulation - SSR) via Art 72 of Regulation (EU) No 909/2014 (CSDR) came into force in February 2022 as per the provisions of Art 76(5) CSDR. This was justified because the SSR CCP buy-in provisions against naked short-selling would then be covered by the CSDR MBI provisions. Combined with the delay of the CSDR MBI regime, the removal of Art 15 SSR left a gap in the legislation. In parallel to the suggestion to discard the entire application of CSDR MBI provisions, it is suggested to reintroduce these provisions in the SSR.

Amendment 93

Proposal for a regulation Article 2 – paragraph 2

Text proposed by the Commission

However, Article 1, **point (2)(a)**, point (9), point (10)(a), point (17)(c), point (19)(a) and point (23)(b), second subparagraph, shall apply from [PO please insert the date = 24 months after the date of entry

Amendment

However, Article 1, point (9), point (10)(a), point (17)(c), point (19)(a) and point (23)(b), second subparagraph, shall apply from [PO please insert the date = 24 months after the date of entry into force

into force of this Regulation].

of this Regulation].

Article 1, point (2)(a), shall apply from the date of entry into force of the delegated act adopted by the Commission pursuant to Article 7(14a).

Article 1, point 14b, of this Regulation shall apply from the date of entry into force of the delegated act adopted by the Commission pursuant to Article 47a(3) of Regulation (EU) No 909/2014.

Or. en

Justification

Amendment 16 proposed by the ECB in its opinion of 28 July 2022. When the details of the scope of the settlement discipline regime are specified in Commission delegated acts, CSDs and financial market participants should be afforded sufficient time to adjust their systems. It is therefore suggested that the period of 24 months, which the proposed regulation contemplates between the adoption of the proposed regulation and the entry into force of the amended scope of the settlement discipline regime, should only start as of the adoption of the relevant Commission delegated acts.

EXPLANATORY STATEMENT

1. Background

On 16 March 2022, the European Commission adopted a Refit proposal 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 (the Central Securities Depositories Regulation or 'CSDR').

The CSDR was adopted in 2014 following the financial crisis to improve the safety and efficiency of settlement as well as to provide a set of common requirements for Central Securities Depositories (CSDs) across the EU.

The 2020 Capital Markets Union Action Plan and the 2021 Commission Work Programme announced the Commission's intention to come forward with a legislative proposal to amend the CSDR to improve its efficiency and effectiveness and contribute to the development of more efficient settlement markets in the EU.

In this context, building on the results of a targeted consultation on the mandated review of the CSDR, the amending proposal (the 'CSDR Refit proposal') aims at reducing compliance costs and regulatory burdens for CSDs, as well as at facilitating the ability of CSDs to offer a broader range of services cross-border, while also improving their cross-border supervision.

The main provisions in the European Commission's CSDR Refit proposal relate to:

- **Settlement discipline:** introduction of a 'two-step approach' whereby mandatory buy-ins could become applicable if and when the penalties regime alone does not improve settlement fails in the EU.
- **Banking-type ancillary services:** amending of conditions under which CSDs can access banking services by reviewing the threshold for such services and broadening the range of providers for such services.

- **Passporting:** simplification of the requirements for CSDs to operate across the EU with one single license, by removing costly and duplicative procedures.
- **Cooperation between supervisory authorities:** introduction of a requirement for colleges of supervisors for certain CSDs.
- **Surveillance of third-country CSDs:** phasing-out of the grandfathering clause and introduction of a notification requirement for third-country CSDs to ensure that ESMA and national supervisors have information about their activities in the EU.

2. Procedure in the European Parliament

The Committee on Economic and Monetary Affairs (ECON) was appointed as the lead Committee to deal with the proposal.

3. Draft report

As CSDs are financial institutions of systemic importance, it is essential that they are subject to an up-to-date regulatory framework that ensures the safety and efficiency of the post-trading landscape in the EU. Your Rapporteur therefore welcomes the CSDR Refit proposal. He fully supports the overall objective thereof as well as the general direction of proposed targeted amendments. He is nevertheless of the opinion that the proposal can be positively amended concerning several key features. He particularly suggests the following main modifications.

- **Settlement discipline:** removal of the mandatory buy-in (MBI) regime and enhancement of the penalties regime.

In line with the ECB's preferred approach as expressed in its opinion on the CSDR Refit, your Rapporteur considers regulation-driven MBIs as a significant interference in the execution of securities transactions and the functioning of securities markets. The MBI regime moreover poses significant risks for market liquidity and financial stability in the EU, and could jeopardise the EU's global competitiveness. Your Rapporteur therefore suggests discarding the CSDR MBI regime in its entirety, while reintroducing into the Short Selling

Regulation the central counterparty (CCP) buy-in provisions against naked short-selling that already existed prior to CSDR.

At the same time, he proposes to enhance the penalties regime by including a cross-reference to the forthcoming European Single Action Point (ESAP) that should provide market players with a centralised source of reference data for the calculation of penalties as soon as it is operational.

Another modification to the penalties regime consists of granting ESMA the possibility to determine an adequate level of settlement efficiency. This could contribute to periodic assessments of the impact of penalties on settlement efficiency, and where appropriate provide guidance for recalibrating the relevant fees.

- **Cooperation between supervisory authorities:** simplification of requirements to facilitate the creation of mandatory colleges.

Instead of creating colleges for passports and colleges for CSDs belonging to groups with two or more CSDs, your Rapporteur believes that the CSDR Refit proposal could be streamlined by requiring the creation of one type of colleges based on one existing reliable criterion, the substantial importance of a CSD in a Member State. He suggests setting the threshold for the mandatory establishment of a college of supervisors where a CSD has become of substantial importance for at least two host Member States.

Your Rapporteur proposes enabling such colleges of supervisors to vote by a simple majority process on binding opinions concerning the review and evaluation processes of CSDs and of providers of banking-type ancillary services, the extension or outsourcing of activities and services, and the potential breach of CSDR requirements arising from the provision of services in a host Member State. He further advises granting ESMA and, where appropriate, EBA full voting rights in such colleges, which should thus be able to address supervisory convergence issues.

- **Banking-type ancillary services:** strengthening of guidance and requirements.

Your rapporteur agrees that CSDs that are not authorised to provide banking-type ancillary services should be able to offer a certain amount of foreign currency settlement through

accounts opened with credit institutions, within an appropriate risk limit to be set by the EBA. Taking a prudent perspective, he recommends providing more granular guidance at Level I as to which considerations EBA should take into account when setting the threshold and accompanying risk management and prudential mitigating requirements. Such considerations should notably include possible market stability and level playing field implications, the need to avoid an unintended shift from settlement in central bank money to settlement in commercial bank money, and existing global guidance such as the Principles for Financial Market Infrastructures (PFMI). Furthermore, he suggests that ESMA be given the responsibility to monitor compliance with the threshold.

In line with recommendations made by the ECB, your Rapporteur moreover proposes explicitly limiting the scope of services to be offered by banking CSDs to user CSDs to services which are provided for the purposes of settlement in foreign currencies, and aligning the minimum frequency for reviewing and evaluating compliance with CSDR of banking-type ancillary services with the frequency of the review and evaluation of CSDs, while extending that frequency to two years.

- **Passporting:** reduction of barriers to the issuance of debt securities in another Member State

National corporate laws are not very relevant for securities other than shares. As highlighted by ESMA in its November 2020 report on the provision of cross-border services by CSDs, current CSDR passporting provisions seem in this respect unnecessarily burdensome and complex, especially for bonds. Your Rapporteur suggests a more proportionate approach by limiting the scope of the obligation for CSDs to submit information for financial instruments constituted under the law of another Member State to shares.

- **Netting:** introduction of specific requirements

Following advice by the ECB, your Rapporteur proposes introducing specific requirements to address risks stemming from CSDs operating securities settlements systems that use netting arrangements, irrespective of whether CSDs provide banking-type ancillary services or not.

- **Legal Entity Identifier:** introduction of a LEI obligation for issuers

The Legal Entity Identifier (LEI) is the only data element allowing to uniquely and unambiguously identify the issuers of financial instruments. The use of LEI ensures that reported data are of good quality and facilitates the monitoring tasks of supervisory authorities. While the LEI is already required for several entities under multiple rules, currently none of these rules applies directly to all issuers that use the services of a CSD. Your Rapporteur therefore advocates obliging issuers to use a LEI.

- **Review:** need to take into account the possible adoption of a T+1 settlement cycle and the experience with the DLT pilot regime

Your Rapporteur is of the opinion that, during the next review of the CSDR, the European Commission should consider the potential benefits and costs that moving towards a T+1 settlement cycle would represent in terms of counterparty, market, credit and operational risks, global competitiveness and attractiveness of EU capital markets, and feasibility in the context of the level of settlement efficiency. To prepare for the digital securities market of the future, he further suggests that the next CSDR review should also take into account lessons learnt from the experience with the pilot regime for market infrastructures based on distributed ledger technology (the “DLT pilot regime”).

4. Way forward

Your Rapporteur emphasises that his draft report constitutes only a starting point for ECON’s work on the CSDR Refit. He looks forward to the contributions of the shadow rapporteurs, which he will approach with an open mind and a constructive attitude.