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COM(2022) 120 final

2022/0074 (COD)

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**

(Text with EEA relevance)

{SEC(2022) 160 final} - {SWD(2022) 75 final} - {SWD(2022) 76 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### Reasons for and objectives of the proposal

Central Securities Depositories (CSDs) operate the infrastructure that enables securities settlement, i.e. the completion of a securities transaction through the transfer of cash or securities, or both<sup>1</sup>. CSDs play a crucial role in the primary market by centralising the initial recording of newly issued securities (“notary service”). They also maintain securities accounts that record the number of securities held by whom, and record each change in the holding of those securities (“central maintenance service”). In addition, some CSDs provide ancillary services,<sup>2</sup> including banking services.

CSDs play an essential role in the financing of the economy through their role in the issuance of securities and by allowing securities transactions to be completed. CSDs also play an important role in the implementation of monetary policy by central banks. For instance, eligible collateral for central bank monetary operations, especially in the Euro area, flows through securities settlement systems operated by CSDs. Today, 26 CSDs are authorised in the EU. In 2019, EU securities settlement systems handled more than 420 million delivery instructions worth over EUR 53 trillion of securities and representing a total turnover of over EUR 1 120 trillion<sup>3</sup>.

The 2014 Regulation on improving securities settlement in the European Union and on central securities depositories (CSDR) sought to improve the safety and efficiency of settlement as well as provide a set of common requirements for CSDs across the EU. While CSDs were resilient, including in the 2008 financial crisis, and were subject to regulation under national law and international standards, they were not regulated consistently across the European Union (EU). This led to differences in their safety and raised level playing field concerns. Regulating CSDs was also important to complete the regulatory framework of the trading and post-trading market infrastructures, following the Market in Financial Instruments Directive (Directive 2004/39/EC<sup>4</sup>), which addressed trading venues, and the European Markets Infrastructure Regulation (Regulation (EU) No 648/2012<sup>5</sup>), which addressed CCPs and trade

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<sup>1</sup> Article 2(7) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, OJ L 257, 28.8.2014 (CSDR).

<sup>2</sup> These include providing cash accounts, accepting deposits from participants to a securities settlement system, providing cash credit, guarantees of payment services. Other ancillary services include collateral management, maintenance of shareholder registers, supporting corporate actions.

<sup>3</sup> Data generated through the Securities Trading, Clearing and Settlement Statistics Database, European Central Bank, <https://sdw.ecb.europa.eu/browse.do?node=9691131>

<sup>4</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L 145, 30.4.2004. MiFID was in force until 2 January 2018. Today, it is partly recast with MiFID2 (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014) and partly replaced with MiFIR (Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ L 173, 12.6.2014).

<sup>5</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L 201, 27.7.2012.

repositories. Moreover, a consistent regulatory approach to settlement systems and settlement processes was important to complement and facilitate Target2-Securities (T2S)<sup>6</sup>. CSDR was also the EU's response to the call of the Financial Stability Board (FSB), on 20 October 2010<sup>7</sup>, for a revision and enhancement of standards to ensure more robust financial market infrastructures.<sup>8</sup>

CSDs are financial institutions of systemic importance for financial markets, hence it is essential that their framework remains fit for purpose. Regular review of CSDR is warranted to ensure it continues to achieve its objectives while making, where possible, the framework more proportionate, and effective. The review of CSDR is a key action in the 2020 Capital Markets Union (CMU) Action Plan<sup>9</sup> for the development of a more efficient post-trading landscape in the EU. Resilient and efficient markets for settlement in the EU should better integrate the post-trading infrastructure landscape and increase the competitiveness of EU CSDs and EU financial markets in general.

Article 75 of CSDR required the Commission to review and prepare a report assessing the implementation of the Regulation and the way forward for its review by 19 September 2019. The European Parliament, in its resolution on further development of the Capital Markets Union,<sup>10</sup> also invited the Commission to review the settlement discipline<sup>11</sup> regime under CSDR in view of Brexit and the Covid-19 crisis. To this end, a targeted consultation<sup>12</sup> took place between 8 December 2020 and 2 February 2021. On 1 July 2021, the Commission adopted a report.<sup>13</sup> It concluded that in broad terms CSDR is achieving its original objectives to enhance the efficiency of settlement in the EU and the soundness of CSDs. For most areas, significant changes to CSDR were considered premature considering the recent application of requirements. Nevertheless, the report identified areas where further action may be necessary to achieve CSDR's objectives in a more proportionate, effective and efficient manner.

Given the need to eliminate disproportionate costs and burdens and to simplify rules without putting financial stability at risk, the CSDR review was included in the 2021 Commission Regulatory Fitness and Performance programme (REFIT)<sup>14</sup>.

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<sup>6</sup> <https://www.ecb.europa.eu/paym/target/t2s/html/index.en.html>.

<sup>7</sup> [https://www.fsb.org/wp-content/uploads/pr\\_101020.pdf](https://www.fsb.org/wp-content/uploads/pr_101020.pdf).

<sup>8</sup> <https://www.bis.org/cpmi/publ/d101.htm>.

<sup>9</sup> See Communication from the Commission, A Capital Markets Union for people and businesses – New action plan, COM(2020) 590, Action 13.

<sup>10</sup> European Parliament Resolution of 8 October 2020 on further development of the Capital Markets Union (CMU), (2020/2036, (INI)), see para. 21.

<sup>11</sup> The settlement discipline regime aims to encourage market participants to avoid settlement fails; its two main elements are the measures to prevent settlement fails (Article 6 of CSDR) and the measures to address settlement fails (Article 7 of CSDR). The latter comprise three main pillars; reporting requirements, cash penalties and mandatory buy-ins.

<sup>12</sup> Commission targeted consultation on the review of regulation on improving securities settlement in the European Union and on central securities depositories, [https://ec.europa.eu/info/consultations/finance-2020-csdr-review\\_en](https://ec.europa.eu/info/consultations/finance-2020-csdr-review_en)

<sup>13</sup> Report from the Commission to the European Parliament and the Council under Article 75 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, COM(2021) 348 final.

<sup>14</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission Work Programme 2021 'A Union of vitality in a world of fragility', Annex I, COM(2020) 690 final.

## Consistency with existing policy provisions in the policy area

CSDR is related to several pieces of EU legislation, including the Settlement Finality Directive,<sup>15</sup> MiFID and MiFIR as well as for those CSDs that have been authorised under CSDR to provide banking-type ancillary services, the Capital Requirements Regulation,<sup>16</sup> the Capital Requirements Directive<sup>17</sup> and the Bank Recovery and Resolution Directive<sup>18</sup>.

The proposals to amend CSDR are in line with the Commission's plan for a CMU<sup>19</sup>. The aim of CMU is to enable capital to flow across the EU to the benefit of consumers, investors and companies. The Covid-19 crisis has made it more urgent to deliver on CMU as market-based financing is an essential component for the European economy's return to long-term growth and to finance the EU's environmental and digital transitions. Safe and efficient post-trade arrangements are an essential element of robust capital markets. The proposed legislative changes would contribute to the development of a more efficient post-trading landscape in the EU.

CSDR is also closely related to the Digital Finance Package<sup>20</sup>. It is particularly related to the proposal for a Regulation on a pilot regime for market infrastructures based on distributed ledger technology<sup>21</sup> (DLT). Under that Regulation, DLT settlement systems and DLT trading and settlement systems may be exempted from complying with certain provisions of CSDR subject to certain conditions with a view to stimulating innovation in this area, while safeguarding investor protection, market integrity and financial stability. The political agreement on that proposal also introduced the possibility to postpone the CSDR rules on mandatory buy-ins, to allow more in-depth reflections as part of the CSDR review.<sup>22</sup> Furthermore, CSDR is related to the proposal for Regulation on digital operational resilience of the financial sector<sup>23</sup> that aims to ensure that all participants in the financial system, including CSDs, have the necessary safeguards in place to mitigate cyber-attacks and related ICT risks.

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<sup>15</sup> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, OJ L 166, 11.6.1998.

<sup>16</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013.

<sup>17</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, 27.6.2013.

<sup>18</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, OJ L 173, 12.6.2014.

<sup>19</sup> Communication from the Commission, A Capital Markets Union for people and businesses – New action plan, COM(2020) 590.

<sup>20</sup> [https://ec.europa.eu/info/publications/200924-digital-finance-proposals\\_en](https://ec.europa.eu/info/publications/200924-digital-finance-proposals_en).

<sup>21</sup> Proposal for a Regulation of the European Parliament and of the Council on a pilot regime for market infrastructures based on distributed ledger technology, COM/2020/594 final.

<sup>22</sup> [https://ec.europa.eu/commission/presscorner/detail/en/MEX\\_21\\_6293](https://ec.europa.eu/commission/presscorner/detail/en/MEX_21_6293)

<sup>23</sup> Proposal for a Regulation of the European Parliament and of the Council on digital operational resilience for the financial sector, COM/2020/595 final.

Market infrastructures, including CSDs, were also part of the Commission communication on “The European economic and financial system: fostering openness, strength and resilience”.<sup>24</sup> This Communication sets out how the EU can reinforce its open strategic autonomy in the macro-economic and financial fields by, in particular but not only, further developing EU financial market infrastructures and increasing their resilience. A strong EU settlement system as regulated by CSDR is thus an important element contributing to EU’s open strategic autonomy in the field of financial markets infrastructure.

Finally, this proposal is consistent with work ongoing at the international level in the framework of the FSB aiming to, among others, achieve a consistent application of the Principles for Financial Markets Infrastructure (PFMIs) developed by the Committee on Payments and Markets Infrastructure (CPMI) and the International Organisation of Securities Commissions (IOSCO).

### **Consistency with other Union policies**

This initiative should be viewed within the context of the broader Commission agenda to make the EU markets more competitive and resilient as represented by the CMU, digital finance and open strategic autonomy initiatives. Safe and efficient post-trade arrangements are an essential element of robust capital markets. A fully functioning and integrated market for capital will allow the EU’s economy to grow in a sustainable way and be more competitive, in line with the strategic priority of the Commission for an Economy that Works for People, focused on creating the right conditions for job creation, growth and investment.

The initiative in question has no direct and/or identifiable impacts leading to significant harm or affecting the consistency with the climate-neutrality objectives and the obligations arising out of the European Climate Law<sup>25</sup>.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

The legal basis for this proposal is Article 114 of the Treaty of the Functioning of the European Union (TFEU), which is the legal basis for CSDR. The analysis carried out as part of the Impact Assessment report identifies that elements of CSDR need to be amended to eliminate disproportionate costs and compliance burdens and to simplify rules without putting at risk financial stability to improve the Regulation’s efficiency and facilitate the integration of the market for securities settlement in the European Union.

### **• Subsidiarity (for non-exclusive competence)**

The objectives of CSDR, namely to lay down uniform requirements for the settlement of financial instruments in the EU, rules on the organisation and conduct of CSDs and to promote safe, efficient and smooth settlement, cannot be sufficiently achieved by the Member States alone, as the co-legislators acknowledged in 2014 when adopting CSDR.

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<sup>24</sup> Commission Communication, ‘The European economic and financial system: fostering openness, strength and resilience’, COM(2021) (32).

<sup>25</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’), OJ L 243, 9.7.2021.

Today, Member States and national supervisors cannot solve on their own the challenges arising from the burdensome and unclear CSDR requirements or the risks resulting from diverging national supervisory practices. They also cannot address on their own the risk to the EU financial stability that the lack of information on the activities of third-country CSDs could pose. As such, the objectives of this initiative cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of actions, be better achieved at EU level in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union.

- **Proportionality**

The proposal aims to ensure that the objectives of CSDR are met in a more proportionate, effective and efficient manner. This should translate into simpler or reduced requirements aiming to reduce the administrative burden of the Regulation on stakeholders, in particular CSDs, without endangering investor protection, market integrity and financial stability. By reviewing the supervisory arrangements for CSDs (in particular those operating cross-border as well as those that are parts of groups of CSDs), the proposal addresses the challenges observed in achieving supervisory convergence. Furthermore, the recalibration of certain requirements in relation to the passporting process, the provision of banking-type ancillary services and settlement discipline, addresses the concerns raised by stakeholders, including the European Securities and Markets Authority (ESMA), while safeguarding the objectives of CSDR. The proposal does not go beyond what is necessary to achieve these objectives, taking into account the need to monitor and to mitigate any risks the operations of CSDs, operating from within and outside of the EU, may raise for financial stability. The proportionality of the preferred policy options is further assessed in Chapter 6 of the accompanying Impact Assessment.

- **Choice of the instrument**

CSDR is a Regulation and thus it needs to be amended by a legal instrument of the same nature.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

An evaluation of CSDR assessed to what extent specific policy requirements in CSDR have met their objectives and in particular whether these requirements have done so in an efficient and effective way, while at the same time being coherent, relevant and providing EU added-value. The findings of the evaluation are presented in Annex 5 of the Impact Assessment.

Given that some of the core requirements of CSDR have only recently become applicable or are not applicable yet, the assessment was not a full evaluation.

The evaluation nevertheless concluded:

- **Effectiveness and efficiency:** While the volume of settled trades increased since the entry into force of CSDR, cross-border transactions remained stable. In several areas, e.g. passporting, significant barriers exist and preliminary findings suggested that actions to reduce disproportionate compliance burden and to improve cross-border activity could be undertaken. Improvements could also be sought in the areas of banking services, as access to banking-type ancillary services is limited which in turn



inhibits settlement in foreign currencies, and of supervisory arrangements, both impacting the possibilities or opportunities for CSDs to offer services cross-border.

- **Relevance:** The objectives of CSDR to increase the safety and efficiency of the EU settlement market and to ensure a level playing field for CSD services remain relevant.
- **Coherence:** CSDR is aligned with international efforts to ensure the stability and safety of post-trade infrastructures. CSDR is coherent with other pieces of EU legislation and policy initiatives.
- **EU added value:** CSDR covered a gap that existed in legislation by introducing a new framework aiming to address, in a uniform process at EU level, the lack of a harmonised approach towards the EU's settlement markets and in addressing the related systemic risks.

Due to the need to simplify targeted areas of CSDR and make them more proportionate, as evidenced by the contributions to the targeted consultation on CSDR and by the Commission's review of the Regulation, the review of CSDR is a REFIT initiative.

- **Stakeholder consultations**

The Commission has consulted stakeholders throughout the process of preparing this proposal. In particular:

- a targeted consultation<sup>26</sup> between 8 December 2020 and 2 February 2021;
- consultation on an inception impact assessment<sup>27</sup> between 8 March 2021 and 5 April 2021;
- two Member States' Experts Group meetings (22 September 2020 and 15 July 2021) to which the European Central Bank (ECB), ESMA and the secretariat of European Parliament Economic and Monetary Affairs committee were also invited.

Generally, the objectives of CSDR to enhance the efficiency of settlement in the EU and ensure the soundness of CSDs were supported. Related core requirements were seen to be achieving these objectives, and delivering on the EU's international commitments for regulatory reform. However, stakeholders, including Member State representatives, highlighted a number of areas where CSDR requirements could be adjusted without compromising its overall objectives in order to: (i) simplify and increase the efficiency of the requirements; and (ii) reduce disproportionate costs and burdens.

The proposal takes this stakeholder feedback into account, as well as the feedback received through meetings with a broad range of stakeholders and EU authorities and institutions. It introduces targeted amendments to CSDR aimed at:

- (a) minimising barriers to cross-border settlement by simplifying and clarifying burdensome passporting requirements, improving cooperation between

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<sup>26</sup> For an overview of the Commission Consultation Document, individual contributions and a Summary of the received input see "Targeted consultation on the review of the Regulation on improving securities settlement in the European Union and on central securities depositories", available at: [https://ec.europa.eu/info/consultations/finance-2020-csdr-review\\_en](https://ec.europa.eu/info/consultations/finance-2020-csdr-review_en).

<sup>27</sup> For the Inception Impact Assessment and received comments see: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12649-Central-securities-depositories-review-of-EU-rules\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12649-Central-securities-depositories-review-of-EU-rules_en).

supervisors and facilitating access to banking-type ancillary services to facilitate settlement in foreign currencies;

- (b) better calibrating the application of some requirements (e.g. on settlement discipline, banking-type ancillary services) to reduce administrative burden and compliance costs without endangering financial stability;
- (c) ensuring that authorities in the EU have adequate powers and information to monitor risks in relation to both EU and third-country CSDs, including by enhancing their supervisory cooperation.

- **Collection and use of expertise**

In preparing this proposal the Commission relied on external expertise:

- **Reports by ESMA:** ESMA submitted four reports in 2020 and 2021 to the Commission on internalised settlement,<sup>28</sup> the cross-border provision of services by CSDs and the handling of applications to provide notary and central maintenance services cross-border,<sup>29</sup> the provision of banking-type ancillary services<sup>30</sup> and the use of FinTech by CSDs.<sup>31</sup> Such reports also took into account answers to ESMA surveys from national authorities, CSDs and participants. The Commission also considered the bi-annual ESMA Reports on trends, risks and vulnerabilities<sup>32</sup> in the financial infrastructure and services sectors;
- **Targeted input from the European System of Central Banks (ESCB)** to the CSDR consultation, including an anonymised and consolidated outcome of a survey conducted among CSDs.

This input has been complemented with, at times confidential, quantitative and qualitative input from financial markets participants.

- **Impact assessment**

The Commission conducted an impact assessment of relevant policy alternatives. Policy options were identified based on the following five drivers: (i) burdensome and unclear passporting requirements, (ii) insufficient coordination and cooperation between authorities, (iii) restrictive requirements for the provision of banking services related to settlement in foreign currencies, (iv) unclear and complicated requirements for settlement discipline and (v) insufficient information about the activities of third-country CSDs in the EU. The policy options were assessed against the specific objectives of minimising barriers to cross-border settlement, reducing administrative burden and compliance costs without endangering financial stability and ensuring adequate powers and information to monitor risks.

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<sup>28</sup> ESMA Report to the European Commission, ‘CSDR Internalised Settlement’, 5 November 2020, ESMA70-156-3729.

<sup>29</sup> ESMA Report to the European Commission, ‘Cross-border services and handling of applications under Article 23 of CSDR’, ESMA70-156-3569, 5 November 2020.

<sup>30</sup> ESMA Report to the European Commission, ‘Provision of banking-type ancillary services under CSDR’, 8 July 2021, ESMA70-156-4582.

<sup>31</sup> ESMA Report to the European Commission, ‘Use of FinTech by CSDs’, 2 August 2021, ESMA70-156-4576.

<sup>32</sup> “ESMA Report on trends, risks and vulnerabilities”, European Securities and Markets Authority, ESMA-50-165-1287, No. 2, 2020.



The Impact Assessment received a positive opinion with comments of the Regulatory Scrutiny Board on 29 October 2021 which made the following main recommendations for improvements:

- Clarify the interplay between the revised CSDR and the Communication on “The European economic and financial system: fostering openness, strength and resilience”;
- Explain better why passporting, a practice successfully used in many other areas of financial law, does not seem to work in this segment;
- Explain the analysis that led to the introduction of mandatory buy-ins as an element of the settlement discipline regime in 2014 and how the Commission’s assessment has changed since then;
- Clarify which policy options are complementary and which are mutually exclusive.

The requested clarifications were added in the relevant sections of the Impact Assessment, i.e., regarding the Communication on open strategic autonomy in section 1.4.2, examples of burdensome passporting requirements faced by CSDs which hinder the provision of services cross-border in Annex 6, an explanation of the origin of mandatory buy-ins in Section 2.2.2 and a clarification as to the complementary or mutually exclusive nature of the policy options in Section 6.

Based on the assessment and comparison of all policy options, the Impact Assessment concluded on the following preferred policy options:

- Simplify the CSDR passporting process by removing the possibility for the host supervisors to refuse the passport, and by replacing it with a notification from the home supervisors to the host supervisors. The preferred policy option minimises barriers to cross-border settlement and reduces the administrative burden and compliance costs. Other policy options assessed were reducing the scope of the passporting requirements to equity securities or clarifying the role and powers of competent authorities and requirements related to national laws. However, both would only partially meet the objectives.
- Enhance the cooperation between national supervisors by establishing colleges of supervisors to facilitate CSDs’ access to markets other than that of their authorisation and ensure financial stability by providing supervisors with more powers to monitor risks. Other options considered included enhancing the existing CSDR rules for cooperation arrangements and introducing more supervision of CSDs at EU level. However, colleges attain the right balance between achieving the objectives while reflecting the fact that supervisory responsibility remains with the CSDs’ home Member State.
- Facilitate CSDs’ access to banking-type ancillary services by allowing CSDs with a banking license to offer such services to other CSDs and reviewing the thresholds below which CSDs may use a commercial bank. Another option considered was the removal of restrictions for the provision of banking-type ancillary services to CSDs, however that was disregarded as potentially increasing significantly the risks to financial stability.

- A combination of clarifying various elements related to settlement discipline (e.g. scope) and modifying the timeline for the implementation of mandatory buy-ins<sup>33</sup> (“two-step approach”) is the most effective and efficient option. The implementation of mandatory buy-ins will be dependent on the evolution of settlement efficiency in the EU. First, the gathered evidence suggests that cash penalties will incentivise improvements in settlement efficiency, without endangering stability and liquidity across markets and financial instruments. Second, after cash penalties have applied, it can then be assessed how to best apply the mandatory buy-in in light of the evolution of settlement efficiency. The option to suspend the framework in its entirety was disregarded as settlement fails in the EU remain consistently higher than in other major financial markets.
- Introduce an end date for the grandfathering clause for EU and third-country CSDs<sup>34</sup> and a notification requirement for third-country CSDs. The information received would allow the Commission to prioritise its assessment of equivalence of third-country CSD frameworks, as the granting of equivalence by the Commission is a condition for the recognition by ESMA of third-country CSDs that wish to offer notary and central maintenance services in relation to financial instruments constituted under the law of a Member State. The combination of these measures will therefore ensure that authorities have adequate powers and timely information to monitor risks in line with the evolution of market needs. Nonetheless, the proposed amendments do not affect the equivalence and recognition processes already applicable under CSDR; therefore, third-countries and potential applicant third-country CSDs remain invited to submit their requests for equivalence and applications for recognition respectively under the current CSDR requirements. Another option considered was to enhance the regime for third-country CSDs that provide services for financial instruments constituted under the law of a Member State by, for e.g., requiring recognition by ESMA for the provision of settlement services or by increasing ESMA’s supervisory powers, but that was considered at this point premature and disproportionate.
- The overall package of options will have a positive effect on the post-trading landscape in the EU by enabling a more proportionate regulation of CSDs, enhancing the efficiency of securities settlement and thus contributing to the competitiveness of the EU financial markets.
- **Regulatory fitness and simplification**

The overall approach is to propose measures which are necessary in the interest of market integration and financial stability while reducing the regulatory and compliance burden for market participants. This is in line with the Commission's Better Regulation Agenda. The options retained have a positive effect, ensuring more proportionate regulation of CSDs and enhancing the competitiveness of the EU settlement market as a whole.

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<sup>33</sup> If a transaction has failed to settle at the end of a prescribed period, a mandatory buy-in process is initiated by the buyer of the securities who is forced to repurchase them elsewhere. The failing party is required to meet any price differential between the original and new transaction and all costs of the buy-in.

<sup>34</sup> According to Article 69(4) of CSDR until national competent authorities and ESMA have authorised or recognised and EU or third-country CSDs respectively pursuant to CSDR, the national rules on authorisation and recognition applicable before CSDR entered into force continue to apply.

CSDs would benefit from reduced costs when operating in the EU, notably due to a reduction of barriers to cross-border settlement stemming from (i) the establishment of colleges and (ii) the simplification of the current passporting procedure. In particular, easing the burdens associated with the passporting requirements would simplify and accelerate the process. The simplified passporting process, which includes a notification to host competent authorities rather than an approval by them, is expected to reduce the costs by up to 75%, which would generate a one-off saving, on average, of EUR 585 000 per CSD. The introduction of colleges would also benefit EU CSDs due to the legal certainty resulting from the enhancement of supervisory convergence. Furthermore, the introduction of colleges and of an end date to the grandfathering clause would enhance financial stability with regard to EU CSDs and third-country CSDs.

Simplification of the requirements to access banking-type ancillary services by CSDs, which is required in order to settle in foreign currencies, would also increase competition in this domain. In this regard, a review of the threshold below which CSDs can use for such services credit institutions could enable CSDs to develop further their services to domestic investors and cross-border. It is estimated that EUR 16 billion of additional settlement in foreign currencies could be expected on an annual basis as a result of the proposed changes.

The simplification of the passporting procedure, the creation of mandatory colleges and the increased provision of banking services related to settlement in foreign currencies will increase competition between CSDs in the EU, thereby benefitting investors and issuers, SMEs included. Overall, issuers, in particular innovative start-ups and SMEs, and investors would have more choice in terms of financing arrangements and would benefit from the increased competition, a greater choice in issuance, risk diversification and currency diversification in their cross-border investments, thereby contributing to a deepening of the CMU.

Finally, the proposed changes to the settlement discipline regime would ensure a more proportionate approach to the treatment of settlement fails, while ensuring that levels of settlement efficiency continue to improve in the EU to the benefit of investors and the EU economy as a whole. The two-step approach in particular should alleviate the most negative impacts related to liquidity, where application of the relevant requirements is not justified. This should indirectly positively impact SMEs, whose securities are less liquid.

Digitalisation and the impact of new technologies on post-trade services have not been addressed in this initiative as they have been deemed out of scope. The targeted consultation supporting this initiative indicated that stakeholders prefer to gather experiences in applying the DLT pilot regime Regulation before any changes to the CSDR are contemplated. ESMA in its report on the use of Fintech by CSDs, also did not support extensive amendments to CSDR at this point in time to facilitate the use of technological innovation by CSDs, but rather suggested to wait for the experiences of the EU pilot regime. It was hence decided that any fundamental changes to CSDR to realise the full potential of technology will be postponed until lessons can be drawn from the implementation of the DLT pilot regime Regulation.

- **Fundamental rights**

The EU is committed to high standards of protection of fundamental rights and is signatory to a broad set of conventions on human rights. In this context, the proposal is not likely to have a direct impact on these rights, as listed in the main United Nations conventions on human

rights, the Charter of Fundamental Rights of the European Union which is an integral part of the EU Treaties, and the European Convention on Human Rights.

#### **4. BUDGETARY IMPLICATIONS**

The proposal will have no implications for the budget of the Union.

ESMA would mainly be impacted by the participation to colleges, the development or update of 5 technical standards and the management of the process for the notification by third-country CSDs of their EU activities. The latter would however be a small one-off cost. The simplification of the passporting procedure would nevertheless alleviate ESMA's costs as the passporting requirements would be simpler and clearer. Furthermore, a clear determination of transactions falling within the scope of the settlement discipline regime would also lessen the administrative burden on ESMA related to replying to Q&As. Moreover, the adaptation in the periodicity of the reports that ESMA is required to submit to the Commission will further reduce the administrative burden imposed on the Authority. ESMA would also benefit from some of the preferred policy options which would strengthen the supervisory environment, in particular the notification process for third-country CSDs.

The proposed tasks for ESMA will therefore not require the establishment of additional posts and can be carried out with existing resources. The same is also true for the EBA that will be required to develop one technical standard determining the threshold below which CSDs may use credit institutions for the provision of banking-type ancillary services.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The proposal includes a requirement that the Commission reports to the European Parliament and to the Council on the application of CSDR in its entirety, with a focus on its effectiveness and efficiency in meeting its objectives (i.e. improve the efficiency and safety of EU settlement markets). When doing so, the Commission should consider all aspects of CSDR, including whether there are other substantive barriers to competition in relation to the services subject to this Regulation which should be addressed, the need to apply further measures to improve settlement efficiency and the potential need for further measures to limit the impact on taxpayers of the failure of CSDs.

In principle, this evaluation should take place within five years after the entry into force of these amendments. Input would also be required from ESMA as well as national authorities and central banks. Statistical data for the analysis should be sought primarily from ESMA.

- **Detailed explanation of the specific provisions of the proposal**

##### *5.2.1 Definitions*

Article 1(1) introduces a definition of the notion of group of undertakings, in line with the definition in Regulation (EU) No [2019/2033](#).

##### *5.2.2 Settlement discipline regime*

Article 1(2) introduces amendments to the settlement discipline regime.

In point (a), amendments to Article 7(2) of CSDR provide that in situations where a settlement fail is caused by factors not attributable to the participants to the transaction or

where a transaction does not involve two trading parties, such settlement fail is not subject to the penalty mechanism. It also specifies that cash penalties should be calculated either until the end of the buy-in process if the Commission has adopted the relevant implementing act or until the actual settlement date, whichever is earlier.

Point (b) introduces a new paragraph 2a according to which the Commission may adopt an implementing act, according with the examination procedure set out in Regulation (EU) No 182/2011, deciding to apply mandatory buy-ins to certain financial instruments or categories of transactions mandatory buy-ins should apply. The Commission may take that decision where it 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, certain conditions set out in that provision are met.

In point (c), the amendment to Article 7(3) of CSDR specifies when, the buy-in process shall be initiated where the Commission has adopted an implementing act pursuant to Article 7(2a) and that the extension period for financial instruments traded on an SME growth market is calculated on the basis of calendar days.

Point (d) introduces a new paragraph 3a in Article 7 of CSDR to explain how the pass-on mechanism will work. A pass-on mechanism will prevent a cascade of failed settlements each requiring a separate buy-in process by allowing each participant in the transaction chain to pass-on a buy-in notification to the failing participant such that only one buy-in is necessary to resolve the whole chain of transactions. This pass-on mechanism can then be replicated contractually between the participants and their clients until the ultimate buyers and sellers.

Point (e) amends Article 7(4) of CSDR providing that in situations where a settlement fail is caused by factors not attributable to the participants to the transaction or where a transaction does not involve two trading parties, such settlement fail is not subject to the mandatory buy-in mechanism.

Point (f) amends Article 7(6) of CSDR introducing symmetry of payments between the buyer and the seller in case the economic terms of the transaction at execution of the buy-in differ from the original transaction. The objective is to ensure that the buy-in restores the parties to the transaction to the same economic position had the original transaction taken place.

Point (g), amends Article 7(11) of CSDR clarifying that the exemption to the settlement discipline requirements for CCPs only applies when the CCP interposes itself between counterparties. It also clarifies that if CCPs incur losses from the application of mandatory buy-ins, they may establish in their rules a mechanism to cover such losses.

Point (h) introduces a new 13a in Article 7 of CSDR which confers to the Commission the power to suspend the buy-in mechanism 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. This new paragraph 13a sets out the procedure that should be followed by the Commission for such a suspension, i.e. following a recommendation by ESMA after consulting the ESCB and the ESRB. It also specifies that such a suspension shall be valid for a maximum period of six months, renewable by periods of three months for a maximum total period of 12 months from the beginning of the suspension.

In point (i), amendments to Article 7(14) of CSDR clarify that the delegated act of the Commission specifying the parameters for the calculation of a deterrent and proportionate level of the cash penalties shall take into account the effects of negative interest rates.



Point (j) introduces a new paragraph 14a in Article 7 of CSDR empowering the Commission to specify the situations where a settlement fail should be considered as being caused by factors not attributable to the participants and where a transaction does not involve two trading parties, as per the amendments introduced in paragraphs 2 and 4 of Article 7.

Point (k), amends Article 7(15) of CSDR introducing a new date by which ESMA shall submit regulatory technical standards specifying those aspects of the settlement discipline regime listed in that same paragraph. This change of the date should allow ESMA to revise the regulatory technical standards to take into account the changes made to CSDR following this review and make any necessary amendments with a view to clarify the requirements set out in such regulatory technical standards, such as the conditions under which participants may execute their own buy-ins.

### *5.2.3 Cooperation between competent authorities and relevant authorities, review and evaluation and recovery and orderly wind-down strategies.*

Article 1(3) amends paragraphs (b) and (c) of Article 12 of CSDR with a view to clarify that where a CSD does not carry out settlement activity before the beginning of the authorisation process, the criteria determining which relevant authorities should be involved in that process shall take into account the anticipated settlement activity.

Point (b) of Article 1(4) amends Article 17(4) of CSDR on the consultation of relevant authorities by competent authorities regarding the authorisation process for a CSD. In point (e) Article 1(6), introduces equivalent amendments to Article 22(6) of CSDR, on the consultation of relevant authorities by competent authorities regarding the review and evaluation process. The changes in Articles 17(4) and 22(6) of CSDR introduce a process whereby the consulted authorities may issue a reasoned opinion within three months of the receipt of the information by the competent authority. In case of negative opinion by one of the relevant authorities consulted, the competent authority shall address such negative opinion in a reasoned decision, which may again be subject to a negative opinion from the consulted authorities. If the competent authority disagrees with that negative opinion it will inform those authorities that objected and the latter may refer the matter to ESMA. If the matter is not resolved within 30 days after such referral, the competent authority shall take the final decision on the review and evaluation and provide a detailed explanation of its decision in writing to the relevant authorities.

Point (c) of Article 1(4) inserts a new paragraph (7a) in Article 17 of CSDR to introduce new requirements for competent authorities to share information with other authorities, notably relevant authorities.

Article 1(5) amends Article 20(5) of CSDR, clarifying that the procedures that the CSD must have in place in the event of a withdrawal of authorisation shall include the transfer of issuance accounts and records maintained for the provision of core services referred to in points 1 and 2 of Section A of the Annex.

Article 1(6) amend paragraphs 1, 4 and 7 of Article 22 of CSDR with a view to change the periodicity of the review and evaluation process, from a yearly basis to every two years. In addition, it amends paragraphs 2 and 3 of Article 22 of CSDR in order to clarify how CSDs should prepare to face scenarios that may potentially prevent them from being able to provide their critical operations and services as a going concern. The requirement to draw resolution plans is removed since it is deemed unclear and no Union resolution regime on the basis of which a resolution plan could be drafted currently exists. Instead, the revised paragraph 2 requires CSDs to prepare and submit to the competent authority appropriate plans for their



recovery or orderly wind-down. The revised paragraph 3 specifies the minimum content of the plans referred to in paragraph 2 as well as the periodicity for the review and update of such plans (at least every two years). It also clarifies that such 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 the BRRD. The changes to paragraph 3 do not affect the requirement for competent authorities to inform ESMA where a resolution plan is established and maintained for a CSD. This can be the case due to national legislation or the requirement to comply with other pieces of EU legislation such as the BRRD.

Point (c) of Article 1(6) amends Article 22(11) of CSDR by introducing a new date by which ESMA shall submit draft regulatory technical standards to the Commission to specify standard forms, templates and procedures for the review and evaluation. This change of the date should allow ESMA to adapt, where necessary, the regulatory technical standards to the changes made to CSDR following this initiative.

Finally, Article 1(18) amends Article 55 of CSDR in order to extend the deadline within which relevant authorities and competent authorities can issue a reasoned opinion on the authorisation to provide banking-type ancillary from one month to two months. Indeed, the one-month deadline is too short for the issuance of such an opinion.

#### *5.2.4 Passporting regime and corporate or similar law of the Member State under which the securities are constituted*

Article 1(15) amends the second subparagraph of Article 49(1) of CSDR with a view to clarify that the corporate or similar law of the Member State under which the securities are constituted and which shall continue to apply in the context of cross-border issuances of securities includes both: (i) the corporate or similar law of the Member State where the issuer is established and (ii) where different, the governing corporate or similar law under which the securities are issued. This covers notably the case of bonds issued by an issuer located in one Member State but contractually subject to the law of another Member State. Article 1(15) also amends the third subparagraph of Article 49(3) of CSDR to include a requirement for Member States to update the list of relevant provisions on a regular basis.

Article 1(7) amends Article 23 of CSDR in order to clarify the following aspects of the passporting process.

First, it adapts the cross-reference to the second subparagraph of Article 49(1), in paragraphs (2) and (3) of Article 23, such that a CSD wishing to provide notary or central maintenance services in relation to financial instruments constituted under the law of another Member State shall take into account both the law of the Member State where the issuer is established and, where different, the governing corporate or similar law under which the securities are issued.

Second, it amends Article 23(2) of CSDR to allow new CSDs to proceed with a passporting request in parallel with an authorisation application, so that they may start their cross-border activity from the date of authorisation by their home competent authority provided that at least one month has passed from the date of the communication of the passporting request by the home competent authority to the host competent authority.

Third, it amends Article 23(3), point (e) of CSDR to clarify that a CSD requesting a passport should always provide an assessment of the measures it intends to take to allow its users to comply with the national law referred to in Article 49(1).

Fourth, it amends Article 23(4) of CSDR, to shorten the period of time under which a home competent authority shall communicate the passporting request to the host competent authority.

Fifth, it amends Article 23(6) removing the possibility for a host competent authority to refuse a passporting request. Under the revised provision, the CSD may start providing services after one month from the date of the communication of the passporting request by the home competent authority to the host competent authority, or earlier if agreed upon by the host competent authority.

#### *5.2.5 Colleges of supervisors*

Article 1(9) introduces Article 24a in CSDR as part of a new Section 4a in Title III on the cooperation of authorities through colleges, requiring the establishment of colleges of supervisors in two cases:

- (a) where a CSD is subject to the passporting procedure of Article 23(3) to (7), i.e. the so-called “passporting college”; or
- (b) where a CSD is part of a corporate group comprising two or more CSDs authorised in at least two Member States, i.e. the so-called “group-level college”.

Where a CSD subject to the passporting procedure of Article 23(3) to (7) is also part of a corporate group that comprises at least another CSD, it should be possible to establish only one college for that CSD rather than two separate colleges (i.e. a separate passporting college and a separate group-level college), to ensure synergies and avoid unnecessary administrative burden on the authorities involved.

The establishment of only one college should also be possible where the other CSDs within the group are subject to the passporting procedure, to avoid a situation where there are multiple passporting colleges and a separate group-level college for CSDs that are part of the same group and which, in many cases, have common procedures, share resources, assessments of the measures they have put in place to ensure compliance with host Member State laws where they provide services cross-border etc. Nonetheless, where those other CSDs within the group are also subject to the passporting procedure, the establishment of just one college for the whole group shall be possible only with the agreement of those CSDs’ competent authorities.

In addition, Article 24a establishes the rules on the determination of the chair especially for the group-level college, the composition of the colleges and their tasks to ensure a coherent supervisory approach across the EU. ESMA is empowered to develop draft regulatory technical standards specifying the practical arrangements for the operation of colleges.

Finally, amendments are introduced throughout the Regulation to ensure that colleges are informed of important decisions taken in respect of CSDs (i.e. amendments to Article 22(7), paragraphs (4), (5) and (7) of Article 23, paragraphs (1) and (5) of Article 24, paragraphs (1) and (2) of Article 60 of CSDR.)

#### *5.2.6 Third-country CSDs and end of the grandfathering clause*

Article 1(10) amends Article 25 of CSDR which sets out the framework for third-country CSDs. Point (a) introduces a requirement for CSDs that intend to provide settlement services in relation to financial instruments constituted under the law of a Member State to submit a

notification to ESMA, thereby addressing the lack of information in this regard at both national and EU level. Point (c) empowers ESMA to draft regulatory technical standards to specify the information that the third-country CSD shall provide to ESMA in that notification, specifies that such information shall be limited to what is strictly necessary and provides a list of examples.

Point (b) of Article 1(10) amends the fifth subparagraph of Article 25(6) specifying that ESMA shall inform the third-country CSD applying for recognition to provide notary or central maintenance services in writing with a fully reasoned decision whether the recognition has been granted or refused within six months from the latter date between the submission of a complete application and the adoption of an equivalence decision by the Commission.

Article 1(23) amends Article 69(4) of CSDR by introducing an end-date to the grandfathering clause for both EU and third-country CSDs. More specifically, point (a) amends Article 69(4) by setting out that the end-date for the grandfathering clause for EU CSDs shall be the one year from the entry into force of this Regulation. Point (b) introduces a new paragraph 4a which sets out an end-date to the grandfathering clause for third-country CSDs, which shall be three years from the entry into force of this Regulation due to the equivalence and recognition processes. In addition, third-country CSDs benefitting from the grandfathering clause shall be required to submit a notification to ESMA when offering notary and central maintenance services in relation to financial instruments constituted under the law of a Member State to address the lack of information in this regard both at national and at EU level. Point (b) empowers ESMA to draft regulatory technical standards to specify the information that the third-country CSD shall provide to ESMA in that notification and specifies that such information shall be limited to what is strictly necessary and provides a list of examples. Similarly, a notification requirement is also introduced for those third-country CSDs that offered settlement services before the entry into force of this Regulation.

#### *5.2.7 Banking-type ancillary services*

First, Article 1(13) amends Article 40(2) of CSDR and point (a) of Article 1(17) amends point (b) of Article 54(2) of CSDR in order to introduce the possibility for CSDs authorised to provide banking-type ancillary services to provide such services to CSDs that have not obtained this authorisation and which, therefore, cannot settle in specific currencies above certain amounts where they do not have access to the relevant central bank.

Point (b) of Article 1(17) amends the introductory wording of paragraph 4, thereby enabling CSDs to seek the provision of banking-type ancillary services not only from designated credit institutions but also from other CSDs that have been authorised to provide such services pursuant to Article 54(3), whether those CSDs are part of the same corporate group or not. In this regard, point (b) of Article 1(17) deletes point (c) of Article 54(4) of CSDR, thereby eliminating the prohibition that designated credit institutions cannot offer core CSD services.

Second, point (c) of Article 1(17) amends Article 54(5) of CSDR which provided a specific threshold in CSDR under which CSDs could use a credit institution for banking services. In order to adequately calibrate this threshold and with a view of managing financial risks, point (d) of Article 1(17) introduces a mandate for the EBA, in cooperation with the ESCB and ESMA, to develop draft regulatory technical standards, to be adopted by the Commission, setting an appropriate threshold below which banking-type ancillary services can be provided by credit institutions, including relevant risk management and prudential standards, mitigating potential risks from amending the threshold.

Finally, Article 1(19) amends Article 59(4) of CSDR to ensure adequate prudential requirements, ensuring consistency with other applicable legislation or making more explicit certain requirements to ensure supervisory consistency or specify a number of smaller issues in the area of risk management. To that effect point (a):

- (a) amends point (c) of Article 59(4) making it explicit and bringing it in line with the existing regulatory standards that for the liquidity stress scenario qualifying liquid resources should be maintained instead of liquid resources and the stress scenario should consider the largest two participants instead of only the largest one.
- (b) amends point (d) of Article 59(4) clarifying that qualifying liquid resources should be maintained for the relevant currencies instead of for all currencies.
- (c) amends points (e) of Article 59(4), clarifying that in case prearranged funding arrangements are used, these should be highly reliable. It also makes explicit that when similar arrangements to committed arrangements are used these should be held against the same standard of highly reliable and held with only creditworthy credit institutions.
- (d) amends point (i) of Article 59(4) clarifying that a CSD can convert into cash, instead of ‘liquidate’, any collateral provided by the defaulting client, and that, where non-committed arrangements are used, a CSD should be able to establish that any associated potential risks have been identified and mitigated. The objective is to allow uncommitted arrangements on the condition that a comprehensive framework is in place.
- (e) inserts a new point (k) in Article 59(4) to make more explicit that CSDs should cover relevant risks in their risk management and prudential frameworks, including relevant netting arrangements. This should ensure that credit and liquidity risks in relation to netting arrangements are properly managed by CSDs. This requirement should be further clarified in the existing RTS developed by the EBA in accordance with Article 59(5).

#### *5.2.8 Organisational requirements and links*

Point (a) of Article 1(4) inserts a new subparagraph in Article 17(2) of CSDR in order to allow a competent authority, where an applicant CSD does not comply with all requirements of CSDR at the time of application but can be reasonably assumed that it will do so when it will actually launch its activities, to grant the authorisation to that CSD subject to the condition that the CSD has all necessary arrangements in place to comply with CSDR when it actually launches its activities.

Article 1(11) inserts a new paragraph 3a in article 27 of CSDR in order to clarify the meaning of the term ‘independent member of the management body’ in the context of that article.

Article 1(12) amends paragraph 3 of Article 28 of CSDR in order to clarify and ensure the consistency of interpretation of the notion of ‘service level’, by adding a list of examples of the topics that it should cover.

Article 1(32) amends Article 36 of CSDR with a view to clarify that CSDs should not only reduce the risks associated with the safekeeping and settlement of transactions in securities, but should seek to minimise them. The term ‘reduce’ is therefore replaced by ‘minimise’.

Article 1(16) amends Article 52(1) of CSDR in order to ensure that a receiving CSD will not unnecessarily delay the operation of an authorised link. The receiving CSD should therefore be required to implement the link within 12 months.

#### *5.2.9 ESMA reports*

Article 1(24) introduces changes to Article 74 of CSDR in order to better adapt the periodicity of the reports that ESMA shall submit to the Commission.

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**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank<sup>35</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>36</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 909/2014 of the European Parliament and of the Council<sup>37</sup> was published in the Official Journal of the European Union on 28 August 2014, and entered into force on 17 September 2014. It standardises the requirements for the settlement of financial instruments and rules on the organisation and conduct of central securities depositories (CSDs) to promote safe, efficient and smooth settlement. That Regulation introduced shorter settlement periods, settlement discipline measures, strict organisational, conduct of business and prudential requirements for CSDs, increased prudential and supervisory requirements for CSDs and other institutions providing banking services that support securities settlement, and regime allowing authorised CSDs to provide their services across the Union.
- (1) A simplification of the requirements in certain areas covered by Regulation (EU) No 909/2014, and a more proportionate approach to those areas, is in line with the Commission's Regulatory Fitness and Performance (REFIT) programme which emphasises the need for cost reduction and simplification so that Union policies achieve their objectives in the most efficient way, and aims in particular at reducing regulatory and administrative burdens.

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<sup>35</sup> OJ C [...], [...], p. [...].

<sup>36</sup> OJ C , , p. .

<sup>37</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).



- (2) Efficient and resilient post-trading infrastructures are essential elements for a well-functioning Capital Markets Union and they deepen the efforts to support investments, growth and jobs in line with the political priorities of the Commission. For this reason, the Commission Capital Markets Union Action Plan adopted in 2020<sup>38</sup> included as one of its key actions the review of Regulation (EU) No 909/2014.
- (3) In 2019, the Commission carried out a targeted consultation on the application of Regulation (EU) No 909/2014. The Commission also received input from the European Securities and Markets Authority ('ESMA') and the European System of Central Banks ('ESCB'). It appeared from the consultations that stakeholders support and consider as relevant the objectives of that Regulation, i.e. to promote safe, efficient and smooth settlement of financial instruments, and that no major overhaul was necessary. On 1 July 2021, the Commission adopted a review report<sup>39</sup> in accordance with Article 75 of Regulation (EU) No 909/2014. Although not all the provisions of that Regulation are fully applicable yet, the report identified areas for which targeted action is necessary to ensure that its objectives are reached in a more proportionate, efficient and effective manner.
- (4) Regulation (EU) No 909/2014 has introduced rules on settlement discipline to prevent and address failures in the settlement of securities transactions and therefore ensure the safety of transaction settlement. Such rules include in particular reporting requirements, a cash penalties regime and mandatory buy-ins. Despite the absence of experience in applying those rules, the development and specification of the framework in Commission Delegated Regulation (EU) 2018/1229<sup>40</sup> 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.
- (5) The overarching objective of the settlement discipline regime is to improve settlement efficiency within the Union. However, the market volatility in 2020 amplified concerns about the potential negative effects of mandatory buy-in rules, both in normal and stressed market conditions. The application of those rules should therefore

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<sup>38</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Capital Markets Union for people and businesses-new action plan', COM(2020/) 590.

<sup>39</sup> Report from the Commission to the European Parliament and the Council under Article 75 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (COM(2021) 348 final).

<sup>40</sup> 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).–

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 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.

- (6) 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.
- (7) 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 trading parties are restored to the economic terms, had the original transaction taken place.
- (8) The settlement discipline regime set out in Article 7 of Regulation (EU) No 909/2014 should not apply to a failing participant, which is a central counterparty (‘CCP’) as defined in Regulation (EU) No 648/2012 of the European Parliament and of the Council<sup>41</sup>. However, for transactions entered into by a CCP where it does not interpose itself between counterparties, such as permitted use of collateral for investment purposes, the CPP should be subject to the settlement discipline regime like any other participant.
- (9) 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

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<sup>41</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

necessary to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the Union. Such a suspension should be proportionate to those aims.

- (10) The context of negative interest rates should be taken into account in the delegated act for the calculation of cash penalties in order to avoid unintended effects on the non-failing participant by eliminating any adverse incentives to fail that may arise in a low or negative interest rate environment.
- (11) ESMA should prepare draft regulatory standards to revise the existing regulatory technical standards in order to take into account the changes made to Regulation (EU) No 909/2014 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.
- (12) Where a central securities depository (CSD) does not carry out a settlement activity before the beginning of the authorisation process, the criteria determining which relevant authorities should be involved in such authorisation process should take into account the anticipated settlement activity to ensure that the views of all relevant authorities potentially interested in the activities of that CSD are taken into account.
- (13) While Regulation (EU) No 909/2014 requires national supervisors to cooperate with and involve relevant authorities, national supervisors are not required to inform 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 why such opinions were not followed.
- (14) Regular reviews and evaluations of CSDs by competent authorities are necessary to ensure that CSDs continue to have in place appropriate arrangements, strategies, processes and mechanisms to evaluate the risks to which the CSD is, or might be, exposed or which 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.
- (15) A CSD should be prepared to face scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. Regulation (EU) No 909/2014 introduced requirements in this respect, providing in particular that a competent authority is to require the CSD to submit an adequate recovery plan and is to ensure that an adequate resolution plan is established and maintained for each CSD. No harmonised resolution regime on which a resolution plan could be based, however, currently exists. While CSDs authorised to offer banking-type ancillary services fall within the scope of Directive 2014/59/EU of the European Parliament and of the

Council<sup>42</sup>, no specific provisions exist for CSDs that are not authorised to provide such services and therefore are not considered credit institutions under Directive 2014/59/EU with the obligation to have recovery and resolution plans in place. Clarifications should therefore be introduced with a view to better align the requirements applicable to CSDs taking into account the absence of a Union framework for the recovery and resolution for all CSDs.

- (16) Where a new CSD applies for authorisation and compliance with certain requirements cannot be assessed because the CSD is not operational yet, the competent authority should be able to grant the authorisation subject to the condition that those requirements are complied with when the CSD effectively launches its activities.
- (17) The procedure set out in Article 23 of Regulation (EU) No 909/2014 regarding the provision by CSDs of notary and central maintenance services in relation to financial instruments constituted under the law of a Member State other than that of their authorisation has proven to be burdensome and some of its requirements are unclear. This has resulted in a disproportionately costly and lengthy process for CSDs. The procedure should therefore be simplified to better dismantle the barriers to cross-border settlement in order for authorised CSDs to fully benefit from the freedom to provide services within the Union.
- (18) Regulation (EU) No 909/2014 requires the cooperation of authorities that have an interest in the operations of CSDs that offer services in relation to financial instruments 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 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.
- (19) ESMA and competent authorities currently have limited information on the services that CSDs established in a third-country offer in relation to financial instruments

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<sup>42</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

constituted under the law of a Member State for several reasons. First, due to the deferred application, without an end date, of recognition requirements for third-country CSDs that already provided central maintenance and notary services in the Union before the date of application of Regulation (EU) No 909/2014 pursuant to Article 69(4) of that Regulation. Second, due to the fact that where a third-country CSD provides only the settlement service, it is not subject to recognition requirements. Finally, since Regulation (EU) No 909/2014 does not require CSDs established in a third-country to notify Union authorities of their activities related to financial instruments constituted under the law of a Member State. Due to that lack of information, neither issuers nor public authorities at national and Union level would be able to assess the activities of those CSDs in the Union if needed. Therefore, CSDs established in a third-country should be required to inform Union authorities of their activities in relation to financial instruments constituted under the law of a Member State.

- (20) Article 27(2) of Regulation (EU) No 909/2014 requires a CSD to have a management body of which at least one third, but no less than two, of its members are independent. That concept of independence may, however, be subject to divergent interpretations and should therefore be clarified, in line with the definition of ‘independent members’ under Article 2(28) of Regulation (EU) No 648/2012.
- (21) In order to ensure the consistency of interpretation of the key issues on which user committees should advise the management body, it should be further clarified what elements are included in the ‘service level’.
- (22) Given their central role regarding the safety of transactions, CSDs should not only reduce the risks associated with the safekeeping and settlement of transactions in securities, but should seek to minimise those risks.
- (23) Under certain circumstances, a security may be constituted under the national corporate or similar laws of two different Member States. This is in particular the case for debt securities where the issuer is established in one Member State and the securities may be issued under the governing law of another Member State. In such a case, both national corporate or similar laws should continue to apply.
- (24) In order to ensure that issuers who arrange for their securities to be recorded in a CSD established in another Member State can comply with the relevant provisions of the corporate or similar law of such Member States, Member States should regularly update the list of such national key relevant provisions published by ESMA.
- (25) In order to avoid settlement risks due to the insolvency of the settlement agent, a CSD should settle, whenever practical and available, the cash leg of the securities transaction through accounts opened with a central bank. Where that option is not practical and available, including where a CSD does not meet the conditions to 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.

- (26) 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 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.
- (27) CSDs, including those authorised to provide banking-type ancillary services, and designated credit institutions should cover relevant risks in their risk management and prudential frameworks, including relevant netting arrangements. Tools to cover those risks should include maintaining sufficient qualifying liquid resources in all relevant currencies and ensuring that stress scenarios are sufficiently strong. CSDs should also ensure that corresponding liquidity risks are managed and covered by highly reliable funding arrangements with creditworthy institutions, whether those arrangements are committed or have similar reliability. The EBA should submit draft regulatory technical standards to revise the existing regulatory technical standards in order to take into account those changes to prudential requirements, in order to enable the Commission to make any necessary amendments with a view to clarifying the requirements set out in such regulatory technical standards, such as those related to the management of potential liquidity shortfalls.
- (28) A period of only 1 month for relevant authorities and competent authorities to issue a reasoned opinion on the authorisation to provide banking-type ancillary services has proven to be too short for those authorities to be able to make a substantiated analysis. Therefore, a longer period of 2 months should be laid down.
- (29) In order to provide CSDs established in the Union or in third countries with sufficient time to apply for authorisation and recognition of their activities, the date of application of the authorisation and recognition requirements of Regulation (EU) No 909/2014 was initially deferred until an authorisation or recognition decision was made pursuant to that Regulation. Sufficient time has elapsed since the entry into force of that Regulation. , Therefore, those requirements should now start to apply to ensure, on the one hand, a level-playing field amongst all CSDs offering services in relation to financial instruments constituted under the law of a Member State, and, on the other hand, that authorities at national and Union level have the necessary information to ensure investor protection and monitor financial stability.



- (30) Regulation (EU) No 909/2014 currently requires ESMA to prepare, in cooperation with national competent authorities and the EBA, annual reports on 12 topics and submit those reports to the Commission. That requirement is disproportionate considering the nature of certain topics which do not require an annual update. The frequency and number of those reports should therefore be recalibrated in order to reduce the burden on ESMA and competent authorities while ensuring that the Commission is provided with the necessary information it needs to review the implementation of Regulation (EU) No 909/2014.
- (31) Regulation (EU) No 909/2014 should therefore be amended accordingly.
- (32) The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to specify the effect that, in a context of negative interest rates, fails could have on the affected counterparties in relation to the calculation of cash penalties or their adverse incentives to fail, the reasons causing settlement fails that are to be considered to be not attributable to the participants 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.
- (33) To ensure uniform conditions for the implementation of this Regulation, and in particular with regard to the application and the suspension of mandatory buy-in requirements where those apply, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>43</sup>.
- (34) Since the objectives of this Regulation, namely to increase the provision of cross-border settlement by CSDs, reduce administrative burden and compliance costs and ensure that authorities have sufficient information in order to monitor risks, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (35) The application of the 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,

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<sup>43</sup> 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).

HAVE ADOPTED THIS REGULATION:

*Article 1*

**Amendments to Regulation (EU) No 909/2014**

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

(1) in Article 2 the following point (25a) is inserted:

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

(2) Article 7 is amended as follows:

(a) in paragraph 2, the third subparagraph is replaced by the following:

‘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.’;

(b) the following paragraph 2a is inserted:

‘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).’;

(c) paragraph 3 is replaced by the following:

‘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.'

(d) the following paragraph 3a is inserted:

'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.';

(e) paragraph 4 is replaced by the following:

'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.';

(f) paragraph 6 is replaced by the following:

'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.';

(g) paragraph 11 is replaced by the following:

'11. Paragraphs 2 to 9 shall not apply to failing participants which are CCPs, except for transactions entered into by a CCP where it does not interpose itself between counterparties.

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.’;

(h) the following paragraph 13a is inserted:

‘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.’;

(i) paragraph 14 is replaced by the following:

‘14. The Commission shall be empowered to supplement this Regulation by adopting delegated acts in accordance with Article 67 specifying parameters for the calculation of a deterrent and proportionate level of the cash penalties referred to in paragraph 2, third subparagraph, of this Article based on asset type, liquidity of the financial instrument, type of transaction and the effect that low or negative interest rates could have on the incentives of counterparties and fails. The parameters used for the calculation of cash penalties shall ensure a high degree of settlement discipline and the smooth and orderly functioning of the financial markets concerned.’;

(j) the following paragraph 14a is inserted:

‘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.’;

(k) in paragraph 15, the second subparagraph is replaced by the following:

‘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].’;

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

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

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

(4) Article 17 is amended as follows:

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

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

(b) paragraph 4 is replaced by the following:

‘4. From the moment when the application is considered to be complete, the competent authority shall transmit all information included in the application to the relevant authorities and consult those authorities concerning the features of the securities settlement system operated by the applicant CSD.

Each relevant authority may issue a reasoned opinion to the competent authority within 3 months of the receipt of the information by the relevant authority. Where a relevant authority does not provide an opinion within that timeframe it shall be deemed to have issued a positive opinion.

Where at least one of the relevant authorities issues a negative reasoned opinion, the competent authority wishing to grant the authorisation shall within 30 calendar days provide the relevant authorities with a reasoned decision addressing the negative opinion.

Where within 30 calendar days after the competent authority has issued the reasoned decision referred to in the third subparagraph, any of the relevant authorities issues another negative opinion and the competent authority disagrees it shall inform those relevant authorities. Any of the authorities that issued a negative opinion may refer the matter to ESMA for assistance under Article 31(2) point (c), of Regulation (EU) No 1095/2010.

Where 30 calendar days after referral to ESMA the issue is not settled, the competent authority wishing to grant the authorisation shall take the final decision and provide a detailed explanation of its decision in writing to the relevant authorities.



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

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

(c) the following paragraph 7a is inserted:

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

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

‘5. A CSD shall establish, implement and maintain adequate procedures ensuring the timely and orderly settlement and transfer of the assets of clients and participants to another CSD in the event of a withdrawal of authorisation referred to in paragraph 1. Such procedures shall include the transfer of issuance accounts and records linked to the provision of core services referred to in Section A, points 1 and 2, of the Annex.’;

(6) Article 22 is amended as follows:

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

‘1. The competent authority shall, at least every 2 years, review the arrangements, strategies, processes and mechanisms implemented by a CSD with respect to compliance with this Regulation and evaluate the risks to which the CSD is, or might be, exposed to or which it creates for the smooth functioning of securities markets or stability of the financial markets.

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

3. The plans referred to in paragraph 2 shall contain at least the following:

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

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

(c) adequate procedures ensuring the 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;

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

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

The CSD shall review and update the plans regularly and at 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](#).

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.

4. The competent authority shall establish the frequency and depth of the review and evaluation referred to in paragraph 1 having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned. The review and evaluation shall be updated at least every 2 years.’;

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

‘6. When performing the review and evaluation referred to in paragraph 1, the competent authority shall, at an early stage, transmit necessary information to the relevant authorities and, where applicable, the authority referred to in Article 67 of Directive 2014/65/EU, and consult them in particular concerning the functioning of the securities settlement systems operated by the CSD.

The consulted authorities may issue a reasoned opinion within 3 months of the receipt of the information by the competent authority.

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

Where at least one of the relevant authorities issues a negative reasoned opinion, the competent authority shall within 30 calendar days provide the relevant authorities with a reasoned decision addressing the negative opinion.

Where within 30 calendar days after the reasoned decision referred to in the fourth subparagraph of this paragraph is issued, any of the relevant authorities issues another negative opinion and the competent authority disagrees, the competent authority shall inform that relevant authority. Any of the authorities that issued a negative opinion may refer the matter to ESMA for assistance under Article 31(2), point (c), of Regulation (EU) No 1095/2010.

Where 30 calendar days after referral to ESMA the issue is not settled, the competent authority shall take the final decision on the review and evaluation and provide a detailed explanation of its decision in writing to the relevant authorities.

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

7. The competent authority shall regularly, and at least once every 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.’;

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

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

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

‘2. An authorised CSD or a CSD that has applied for authorisation pursuant to Article 17 that intends to provide the core services referred to in Section A, points 1 and 2, of the Annex in relation to financial instruments constituted under the laws of another Member State referred to in Article 49(1), second subparagraph, or to set up a branch in another Member State shall be subject to the procedure referred to in paragraphs 3 to 7 of this Article. The CSD may provide such services only after it has been

authorised pursuant to Article 17 but not earlier than the relevant date applicable in accordance with paragraph 6.

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

- (a) the host Member State;
- (b) a programme of operations stating in particular the services which the CSD intends to provide;
- (c) the currency or currencies that the CSD intends to process;
- (d) where there is a branch, the organisational structure of the branch and the names of those responsible for the management of the branch;
- (e) an assessment of the measures the CSD intends to take to allow its users to comply with the national law referred to in Article 49(1).

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.

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

5. Where the competent authority of the home Member State decides in accordance with paragraph 4 not to communicate 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.

6. The CSD may start providing the services referred to in paragraph 2 in the host Member State at the earliest of the following dates:

- (a) after 1 month from the date of transmission of the communication referred to in paragraph 4;
- (b) on receipt of a communication from the competent authority of the host Member State approving the provision of services in the host Member State.

The competent authority of the home Member State shall immediately inform the CSD of the date of transmission of the communication referred to in paragraph 4.

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 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.’;

(8) Article 24 is amended as follows:

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

‘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.

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.’;

(b) paragraph 4 is deleted;

(c) paragraph 5 is replaced by the following:

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

Where, despite measures taken by the competent authority of the home Member State, the CSD persists in acting in 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.

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

(d) paragraphs 7 and 8 are deleted;

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

‘Section 4a

### **Cooperation of authorities through colleges**

*Article 24a*

#### **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**

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

(a) where a CSD is subject to the procedure referred to in Article 23(3) to (7) (‘passporting college’);

(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’).

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).

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.

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.

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

2. The college referred to in paragraph 1 shall consist of:

- (a) ESMA;
- (b) the competent authority of the CSD's home Member State;
- (c) the relevant authorities referred to in Article 12;
- (d) in the case of a passporting college, the competent authority of the host Member States;
- (e) in the case of a group-level college, the competent authority and the relevant authorities of each CSD in the group;
- (f) EBA, where a CSD has been authorised pursuant to Article 54(3).

3. 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.

Where a college established pursuant to the first subparagraph:

- (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.
4. The chair shall notify the composition of the college to ESMA within 30 calendar days of the college's establishment and any change in its composition within 30 calendar days of that change. ESMA shall publish on its website without undue delay the list of the members of that college and keep that list up-to-date.
5. The competent authority of a Member State which is not a member of the college may request from the college any information relevant for the performance of its supervisory duties.
6. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:
- (a) the exchange of information, including requests for information pursuant to Articles 13, 14 and 15 and information on the review and evaluation process pursuant to Article 22;
- (b) more efficient supervision by avoiding unnecessary duplicative supervisory actions, such as information requests ;
- (c) agreement on the voluntary entrustment of tasks among its members.
- (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;
- (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 changes have a significant impact on governance or risk management for the CSDs belonging to the group.

The chair shall convene a meeting of the college at least once a year.

In order to facilitate the performance of the tasks assigned to colleges pursuant to the first subparagraph of this paragraph, members of the college referred to in paragraph 2 may add points to the agenda of a meeting.

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

That agreement shall determine the practical arrangements for the functioning of the college, including the modalities of communication amongst college members, and may determine tasks to be entrusted to the CSD's competent authority or another member of the college.

8. ESMA shall develop draft regulatory technical standards specifying the details of the practical arrangements referred to in paragraph 7.

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

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

(10) Article 25 is amended as follows:

(a) the following paragraph 2a is inserted:

“2a. A third-country CSD that intends to provide the core service referred to in point (3) of Section A of the Annex in relation to financial instruments constituted under the law of a Member State referred to in Article 49(1), second subparagraph, shall submit a notification to ESMA.”;

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

‘Within 6 months from the submission of a complete application or from the adoption of an equivalence decision by the Commission in accordance with paragraph 9, whichever is later, ESMA shall inform the applicant CSD in writing with a fully reasoned decision whether the recognition has been granted or refused.’;

(c) the following paragraph 13 is added:

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

- (a) the number of Union participants to whom the third-country CSD provides the services referred to in paragraph 2a;
- (b) the number and volume of transactions in financial instruments constituted under the law of a Member State settled during the previous year;
- (c) the number and volume of transactions settled by Union participants during the previous year.

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

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

(11) in Article 27, the following paragraph 3a is inserted:

“3a. For the purposes of paragraphs 2 and 3, independent member of the management body shall mean a member of the management body who has no business, family or other relationship that raises a conflict of interests regarding the CSD concerned or its controlling shareholders, its management or its participants, and who has had no such relationship during the five years preceding his membership of the management body;”

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

‘3. User committees shall advise the management body on key arrangements that impact on their members, including the criteria for accepting issuers or participants in their respective securities settlement systems and on service level, which includes the choice of a clearing and settlement arrangement, operating structure of the CSD,

scope of products settled or recorded, and the use of technology and procedures for the operations of the CSD.’;

(13) Article 36 is replaced by the following:

*“Article 36*

**General provisions**

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

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

‘2. Where it is not practical and available to settle in central bank accounts as provided in paragraph 1, a CSD may offer to settle the cash payments for all or part of its securities settlement systems through accounts opened with a credit institution, through a CSD that is authorised to provide the services listed in Section C of the Annex whether within the same group of undertakings ultimately controlled by the same parent undertaking or not, or through its own accounts. If a CSD offers to settle in accounts opened with a credit institution, through its own accounts or the accounts of another CSD, it shall do so in accordance with the provisions of Title IV.’;

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

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

- (a) the corporate or similar law of the Member State where the issuer is established; and
- (b) the governing corporate or similar law under which the securities are issued.

Member States shall compile a list of key relevant provisions of their law, as referred to in the second subparagraph. Competent authorities shall communicate that list to ESMA by 18 December 2014. ESMA shall publish the list by 18 January 2015. Member States shall update that list regularly and at least every 2 years. They shall communicate the updated list at those regular intervals to ESMA. ESMA shall publish the updated list.’;

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

‘1. When a CSD submits a request for access to another CSD pursuant to Articles 50 and 51, the receiving CSD shall treat such request promptly and shall provide a response to the requesting CSD within 3 months. If the receiving CSD agrees to the request, the link shall be implemented within a reasonable timeframe, but no longer than 12 months.’;

(17) Article 54 is amended as follows:

(a) in paragraph 2, point (b) is replaced by the following:

‘(b) to designate for that purpose one or more credit institutions authorised in accordance with Article 8 of Directive 2013/36/EU or a CSD authorised to provide banking-type ancillary services pursuant to paragraph 3 of this Article’.

(b) in paragraph 4, the first subparagraph is amended as follows:

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

“Where a CSD seeks to designate a credit institution or use a CSD that is authorised pursuant to paragraph 3 to provide any banking-type ancillary services from within a separate legal entity, which may be part of the group to which the former CSD belongs, whether or not ultimately controlled by the same parent undertaking, the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:”;

(ii) point (c) is deleted;

(c) paragraph 5 is replaced by the following:

‘5. Paragraph 4 shall not apply to credit institutions referred to in paragraph 2, point (b), that offer to settle the cash payments for part of the CSD’s securities settlement system, if the total value of such cash settlement through accounts opened with those credit institutions does not exceed a maximum amount calculated over a one-year period. That threshold shall be determined in accordance with paragraph 9.

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

(d) the following paragraph 9 is added:

‘9. 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.

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

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

(18) in Article 55(5), the first subparagraph is replaced by the following:

‘The authorities referred to in paragraph 4, points (a) to (e), shall issue a reasoned opinion on the authorisation within 2 months of receipt of the information referred to in that paragraph. Where an authority does not provide an opinion within that deadline it shall be deemed to have a positive opinion.’;

(19) Article 59 is amended as follows:

(a) paragraph 4 is amended as follows:

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

‘(c) it shall maintain sufficient qualifying liquid resources in all relevant currencies for a timely provision of settlement services under a wide range of potential stress scenarios including the liquidity risk generated by the default of at least two participants, including its parent undertakings and subsidiaries, to which it has the largest exposures;

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

(e) where prearranged and highly reliable funding arrangements, committed lines of credit or similar arrangements are used, it shall select only creditworthy financial institutions as liquidity providers; it shall establish and apply appropriate concentration limits for each of the corresponding liquidity providers including its parent undertaking and subsidiaries;’;

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

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

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

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

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

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

(20) Article 60 is amended as follows:

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

‘The competent authorities referred to in the first subparagraph shall regularly, and at least 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.’;

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

‘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.’;

(21) Article 67 is amended as follows:

(a) the following paragraph 2a is inserted:

‘2a. The power to adopt delegated acts referred to in Articles 7(14a), 24a(8), 25(13) and 54(9) shall be conferred on the Commission for an indeterminate period of time from [*PO please insert the date of entry into force of this Regulation*].’;

(b) paragraph 3 is replaced by the following:

‘3. The delegation of power referred to in Articles 2(2), 7(14), 24(7), 7(14a), 24a(8), 25(13) and 54(9) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’;

(c) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Articles 2(2), 7(14), 24(7), 7(14a), 24a(8), 25(13) and 54(9) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.’

(22) in Article 68, the following paragraph 3 is added:

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

(23) Article 69 is amended as follows:

(a) paragraph 4 is replaced by the following:

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

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

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

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

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

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

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

A third-country CSD that provides the core services referred to in Section A, points (1) and (2), of the Annex in relation to financial instruments constituted under the

law of a Member State referred to in Article 49(1), second subparagraph pursuant to the applicable national rules on the recognition of third-country CSDs shall submit a notification to ESMA within 2 years from *[PO please insert the date of entry into force of this Regulation]*.

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

- (a) the number of participants to whom the third-country CSD provides the services referred to in the second subparagraph;
- (b) the categories of financial instruments in respect of which the third-country CSD provides such services; and
- (c) the total volume and value of such financial instruments.

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

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

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

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

(c) the following paragraph 6 is added:

‘6. Home competent authorities shall establish and manage colleges pursuant to Article 24a for all CSDs providing their services in relation to financial instruments constituted under the law of another Member State pursuant to Article 23(2) before ... *[PO please insert the date = the date of entry into force of this Regulation]* or for CSDs that belong to a group that comprises other CSDs by ... *[PO please insert the date = 4 months after the date of entry into force of this Regulation]*.’;

(24) Article 74 is amended as follows:

(a) paragraph 1 is amended as follows:

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

‘ESMA shall, in cooperation with EBA and the competent authorities and the relevant authorities, submit reports to the Commission providing assessments of trends, potential risks and vulnerabilities, and, where necessary, recommendations of

preventative or remedial action in the markets for services covered by this Regulation. Those reports shall include an assessment of the following:’;

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

‘(a) settlement efficiency for domestic and cross-border operations for each Member State based on the number and volume of settlement fails and their evolution, including an analysis of the impact of cash penalties on settlement fails across instruments, the duration and main drivers of settlement fails, the categories of financial instruments and markets where the highest settlement fail rates are observed and an international comparison of settlement fail rates, including an assessment of the amount of penalties referred to in Article 7(2), and, where applicable, the number and volumes of buy-in transactions referred to in Article 7(3) and (4) as well as any other relevant criteria;’;

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

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

(b) the following paragraph 1a is inserted:

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

(a) at least every 2 years from ... [*PO please insert the date = the date of entry into force of this Regulation*] for the report referred to in paragraph 1, point (a);

(b) every 2 years for the reports referred to in paragraph 1, points (b) and (c);

(c) on an annual basis until ... [*PO please insert the date = 1 year after the date of entry into force of this Regulation*] and every 3 years from ... [*PO please insert the date = 1 year after the date of entry into force of this Regulation*], for the reports referred to in paragraph 1, points (d) and (f);

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

(e) on an annual basis until ... [*PO please insert the date = 1 year after the date of entry into force of this Regulation*] and every 2 years from ... [*PO please insert the date = 1 year after the date of entry into force of this Regulation*] for the reports referred to in paragraph 1, points (i) and (l).’;

(c) paragraph 2 is replaced by the following:

‘2. The reports referred to in paragraph 1 shall be communicated to the Commission by 30 April of the relevant year as determined in accordance with the periodicity set out in paragraph 1a.’;

(25) Article 75 is replaced by the following:

‘Article 75

### **Review**

By ... [*PO please insert the date = 5 years after the date of entry into force of this Regulation*], the Commission shall review and prepare a general report on this Regulation. That report shall, in particular, assess the matters referred to in Article 74(1), points (a) to (l), establish whether there are substantive barriers to competition in relation to the services subject to this Regulation which are insufficiently addressed and set out the potential need to apply further measures to:

- (a) improve settlement efficiency;
- (b) limit the impact on taxpayers of the failure of CSDs;
- (c) minimise barriers to cross-border settlement;
- (d) ensure adequate powers and information for authorities to monitor risks.

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

## *Article 2*

### **Entry into force and application**

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

However, Article 1, point (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 into force of this Regulation*].

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

### **1. FRAMEWORK OF THE PROPOSAL/INITIATIVE**

#### **1.1. Title of the proposal/initiative**

#### **1.2. Policy area(s) concerned**

#### **1.3. The proposal/initiative relates to:**

#### **1.4. Objective(s)**

*1.4.1. General objective(s)*

*1.4.2. Specific objective(s)*

*1.4.3. Expected result(s) and impact*

*1.4.4. Indicators of performance*

#### **1.5. Grounds for the proposal/initiative**

*1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

*1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

*1.5.3. Lessons learned from similar experiences in the past*

*1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

*1.5.5. Assessment of the different available financing options, including scope for redeployment*

#### **1.6. Duration and financial impact of the proposal/initiative**

#### **1.7. Management mode(s) planned**

### **2. MANAGEMENT MEASURES**

#### **2.1. Monitoring and reporting rules**

#### **2.2. Management and control system(s)**

*2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

*2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them*

*2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

#### **2.3. Measures to prevent fraud and irregularities**

### **3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE**



**3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected**

**3.2. Estimated financial impact of the proposal on appropriations**

*3.2.1. Summary of estimated impact on operational appropriations*

*3.2.2. Estimated output funded with operational appropriations*

*3.2.3. Summary of estimated impact on administrative appropriations*

*3.2.4. Compatibility with the current multiannual financial framework*

*3.2.5. Third-party contributions*

**3.3. Estimated impact on revenue**

## LEGISLATIVE FINANCIAL STATEMENT

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### 1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 904/2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

#### 1.2. Policy area(s) concerned

Internal Market – Financial Services.

#### 1.3. The proposal/initiative relates to:

a new action

a new action following a pilot project/preparatory action<sup>44</sup>

the extension of an existing action

a merger or redirection of one or more actions towards another/a new action

#### 1.4. Objective(s)

##### 1.4.1. General objective(s)

Contribute to a deeper and fairer internal market – create a more efficient and stable market for settlement in the EU.

##### 1.4.2. Specific objective(s)

Specific objective No

This proposal has the following specific objectives to achieve the general objectives for the EU internal market for CSD services:

- Reduce administrative burden and compliance costs, without endangering financial stability;
- Minimise barriers to cross-border settlement;
- Ensure adequate powers and information to monitor risks.

Expected result(s) and impact

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The proposal aims for more proportionate rules in the area of passporting, settlement discipline as well as in the area of banking services so that market players can benefit from enhanced cross-border provision of services, e.g. in the area of foreign currency settlement and a more proportionate supervision, e.g. colleges, third-country supervision as well as supervisory cooperation.

##### 1.4.3. Indicators of performance

*Specify the indicators for monitoring progress and achievements.*

<sup>44</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

For each specific objective the following performance indicators have been set.

Reduce administrative burden and compliance costs (by ESMA):

- EU settlement efficiency rates.
- Average (no. of days) duration of settlement fails.
- Number of CSDs providing cross-border services, able to access banking services, providing foreign currency settlement, able to use the exception under the threshold.
- Number of countries in which CSDs provide cross-border services.

Minimise barriers to cross-border settlement (by ESMA, ESCB, CSDs):

- Number of CSDs providing cross-border services, able to access banking services, providing foreign currency settlement, able to use the exception under the threshold.
- Number of countries in which CSDs provide cross-border services.
- Growth of foreign currency settlement.

Ensure adequate powers and information to monitor risks (by ESMA):

- Number of 3rd country CSDs that have applied for recognition.
- Number of colleges established by EU CSDs.

## 1.5. Grounds for the proposal/initiative

### 1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The evaluation of the CSDR after approximately 5 years after its introduction in 2014 has revealed that although settlement has increased significantly in the EU, cross border settlement has experienced relative slower growth, mainly due to sub-optimal foreign currency settlement and otherwise restrictive requirements. In addition, supervisory tools and possibilities should keep pace with risks in the EU market, such as third-country CSDs that to date benefit from grandfathering from the recognition requirement.

With the implementation of this proposal including its potential further development in level 2, the mainly more proportionate requirements are expected to be absorbed by both the supervisory community as well as the market around one year after agreement by the co-legislators and its entry into force.

### 1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

#### Reasons for action at European level (ex-ante)

The EU settlement market is an inseparable part of the EU financial market. As such, EU action should ensure that CSDR's regulatory requirements are more effective, efficient and proportionate, are applied uniformly, and guarantee a sound and consistent regulatory framework for securities settlement in the EU and the operations of CSDs. The EU settlement market is, together with EU financial market,

an essential foundation stone for the development of CMU as well as to ensure a safe and efficient single market for financial services.

Expected generated Union added value (ex-post)

The objectives of CSDR, namely to lay down uniform requirements for the settlement of financial instruments in the EU and rules on the organisation and conduct of CSDs, to promote safe, efficient and smooth settlement are an essential building block for a successful EU financial internal market, already given the cross – border component. Member States and national supervisors cannot solve on their own the promoting or facilitating of cross-border settlement, let alone the framework for third-country CSDs. The 2020 CMU Action Plan explicitly acknowledged that amending CSDR could help develop a more integrated post-trading landscape in the EU and thus contribute to the development of CMU.

#### 1.5.3. *Lessons learned from similar experiences in the past*

This proposal takes into account experiences from other, similar legislative packages in the field of financial services. For instance, passporting is a well-known tried and tested topic in other areas of financial services. Similarly, third-country regimes are also in effect in other financial services areas as are colleges of supervisors; these past experiences are taken into account in the design of the new proposed requirements.

#### 1.5.4. *Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

This proposal and its specific requirements are in line with the current arrangements for financial services within the MFF and aligned with standard practices of putting the EU budget to work and in line with current DG FISMA practices in planning and budgeting for new proposals.

In addition, the objectives of the initiative are consistent with a number of other EU policies and ongoing initiatives that aim to: (i) develop the CMU and (ii) enhance the efficiency and effectiveness of EU-level supervisory coordination, both within and outside the EU.

First, it is consistent with the Commission's ongoing efforts to further develop the Capital Markets Union ('CMU'). Further supervisory convergence of settlement markets can support the development of deeper and better integrated capital markets, as more efficient and resilient CSDs are essential elements for the well-functioning of CMU. The urgency of further developing and integrating EU capital markets was stressed in the Action Plan on CMU of September 2020. Conversely, the emergence of larger and more liquid financial markets implied by CMU will result in even more transactions being settled through CSDs, and will further increase the systemic relevance of CSDs. Given the potential for increased volumes, further enhancements of the supervisory framework are required in order to ensure a strong and stable CMU.

Furthermore, it is consistent with Action 16 of the 2020 CMU Action Plan which underlined that the Commission will work towards an enhanced single rulebook for capital markets by assessing the need for further harmonisation of EU rules and monitoring progress towards supervisory convergence noting that the Commission may consider proposing, amongst others, measures for stronger supervisory coordination by the European Supervisory Authorities.

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Third, it is consistent with the Commission equivalence policy with non-EU countries as set out in the 2019 Commission Communication on equivalence in the area of financial services. .

1.5.5. *Assessment of the different available financing options, including scope for redeployment*

N/A



## 1.6. Duration and financial impact of the proposal/initiative

### limited duration

- in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

### unlimited duration

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

## 1.7. Management mode(s) planned<sup>45</sup>

### Direct management by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

### Shared management with the Member States

### Indirect management by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
  - international organisations and their agencies (to be specified);
  - the EIB and the European Investment Fund;
  - bodies referred to in Articles 70 and 71 of the Financial Regulation;
  - public law bodies;
  - bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;
  - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;
  - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

### Comments

N/A

<sup>45</sup>

Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:

<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

In line with already existing arrangements ESMA prepares regular reports on its activity (including internal reporting to Senior Management, MB reporting, six month activity reporting to the Board of Supervisors and the production of the annual report), and undergoes audits by the Court of Auditors and the Internal Audit Service on its use of resources. Monitoring and reporting of the present proposed actions will comply with the same already existing requirements.

### 2.2. Management and control system(s)

#### 2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

In relation to the legal, economic, efficient and effective use of appropriations resulting from the proposal, it is expected that the proposal would not bring about new risks that would not be currently covered by an existing internal control framework.

#### 2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

Management and control systems as provided for in the ESMA Regulation are already implemented. ESMA works closely together with the Internal Audit Service of the Commission to ensure that the appropriate standards are met in all internal controls areas. These arrangements will apply also with regard to the role of ESMA according to the present proposal. Annual internal audit reports are sent to the Commission, Parliament and Council.

#### 2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

N/A

### 2.3. Measures to prevent fraud and irregularities

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply to ESMA without any restrictions.

ESMA shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) and shall immediately adopt appropriate provisions for all ESMA staff.

The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF

may, if need be, carry out on the spot checks on the beneficiaries of monies disbursed by ESMA as well as on the staff responsible for allocating these monies.

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. <sup>46</sup>	from EFTA countries <sup>47</sup>	from candidate countries <sup>48</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]	Diff./Non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

- New budget lines requested

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

<sup>46</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>47</sup> EFTA: European Free Trade Association.

<sup>48</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated financial impact of the proposal on appropriations

#### 3.2.1. Summary of estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

Heading of multiannual financial framework	Number
--	--------

DG: <.....>			Year N <sup>49</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations										
Budget line <sup>50</sup>	Commitments	(1a)								
	Payments	(2a)								
Budget line	Commitments	(1b)								
	Payments	(2b)								
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>51</sup>										
Budget line		(3)								
<b>TOTAL appropriations for DG &lt;.....&gt;</b>	Commitments	=1a+1b+3								
	Payments	=2a+2b								

<sup>49</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

<sup>50</sup> According to the official budget nomenclature.

<sup>51</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.



		+3								
--	--	----	--	--	--	--	--	--	--	--

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
<b>TOTAL appropriations under HEADING &lt;...&gt; of the multiannual financial framework</b>	Commitments	=4+ 6								
	Payments	=5+ 6								

**If more than one operational heading is affected by the proposal / initiative, repeat the section above:**

• TOTAL operational appropriations (all operational headings)	Commitments	(4)								
	Payments	(5)								
TOTAL appropriations of an administrative nature financed from the envelope for specific programmes (all operational headings)		(6)								
<b>TOTAL appropriations under HEADINGS 1 to 6 of the multiannual financial framework (Reference amount)</b>	Commitments	=4+ 6								
	Payments	=5+ 6								

<b>Heading of multiannual financial framework</b>	<b>7</b>	‘Administrative expenditure’
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This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the [Annex to the Legislative Financial Statement](#) (Annex V to the internal rules), which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: <.....>									
• Human resources									
• Other administrative expenditure									
<b>TOTAL DG &lt;.....&gt;</b>									
Appropriations									

<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>	(Total commitments = Total payments)								
--	--------------------------------------	--	--	--	--	--	--	--	--

EUR million (to three decimal places)

		Year N <sup>52</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework</b>	Commitments								
	Payments								

<sup>52</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.2.2. *Estimated output funded with operational appropriations*

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ↓			Year N		Year N+1		Year N+2		Year N+3		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL			
	OUTPUTS																			
	Type <sup>53</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 <sup>54</sup> ...																				
- Output																				
- Output																				
- Output																				
Subtotal for specific objective No 1																				
SPECIFIC OBJECTIVE No 2 ...																				
- Output																				
Subtotal for specific objective No 2																				
<b>TOTALS</b>																				

<sup>53</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>54</sup> As described in point 1.4.2. 'Specific objective(s)...'

### 3.2.3. Summary of estimated impact on administrative appropriations

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year N <sup>55</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
--	-------------------------	-------------	-------------	-------------	--	-------

<b>HEADING 7 of the multiannual financial framework</b>							
Human resources							
Other administrative expenditure							
<b>Subtotal HEADING 7 of the multiannual financial framework</b>							

<b>Outside HEADING 7<sup>56</sup> of the multiannual financial framework</b>							
Human resources							
Other expenditure of an administrative nature							
<b>Subtotal outside HEADING 7 of the multiannual financial framework</b>							

<b>TOTAL</b>							
--------------	--	--	--	--	--	--	--

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>55</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

<sup>56</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

### 3.2.3.1. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
<b>• Establishment plan posts (officials and temporary staff)</b>							
20 01 02 01 (Headquarters and Commission's Representation Offices)							
20 01 02 03 (Delegations)							
01 01 01 01 (Indirect research)							
01 01 01 11 (Direct research)							
Other budget lines (specify)							
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>57</sup></b>							
20 02 01 (AC, END, INT from the 'global envelope')							
20 02 03 (AC, AL, END, INT and JPD in the delegations)							
<b>XX 01 xx yy zz</b> <sup>58</sup>	- at Headquarters						
	- in Delegations						
01 01 01 02 (AC, END, INT - Indirect research)							
01 01 01 12 (AC, END, INT - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>							

**XX** is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

<sup>57</sup> AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

<sup>58</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

### 3.2.4. *Compatibility with the current multiannual financial framework*

The proposal/initiative:

- can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. Please provide an excel table in the case of major reprogramming.

- requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

- requires a revision of the MFF.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

### 3.2.5. *Third-party contributions*

The proposal/initiative:

- does not provide for co-financing by third parties
- provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

	Year N <sup>59</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

<sup>59</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.



### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on other revenue

please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>60</sup>							
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			
Article .....									

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

<sup>60</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.