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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC

(Text with EEA relevance)

{SWD(2012) 22}
{SWD(2012) 23}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Central Securities Depositories (CSDs) are systemically important institutions for the financial markets. Any trade of securities on or off a securities exchange is followed by post-trade processes that lead to the settlement of that trade, which is the delivery of securities against cash. The CSDs are the key institutions that enable settlement by operating so-called securities settlement systems. CSDs also ensure the initial recording and the central maintenance of securities accounts that record how many securities have been issued by whom and each change in the holding of those securities.

CSDs also play a crucial role for the collateral market especially for monetary policy purposes. For instance, almost all of the eligible collateral for central bank monetary policy operations in the EU, especially in the Euro area, flows through securities settlement systems operated by CSDs.

Securities settlement systems in the EU settled approximately €920 trillion worth of transactions in 2010, and held almost €39 trillion of securities at the end of 2010. There are over 30 CSDs in the EU, generally one in each country, and two 'international' CSDs (ICSDs – Clearstream Banking Luxembourg and Euroclear Bank), which are a sub-category of CSDs specialised in the issuance of international bonds, commonly known as "Eurobonds".

While generally safe and efficient within national borders, CSDs combine and communicate less safely across borders, which means that an investor faces higher risks and costs when making a cross-border investment. For example, the number of settlement fails is higher for cross-border transactions than for domestic transactions and cross-border settlement costs are up to four times higher than domestic settlement costs.

These safety problems are the result of a number of factors, including:

- The length of the settlement cycle. The time between trade and settlement is not harmonised in the EU, creating disruptions when securities are settled cross-border;

- A small but substantial proportion of securities still exist in paper form. These are settled after a much longer settlement cycle, which increases the risk incurred by investors;

- Settlement fails, which are situations where a transaction fails to be settled on the intended settlement date, are not subject to deterrent penalties in all markets and where they exist settlement discipline measures differ widely between markets;

- While Directive 98/26/EC on settlement finality in payment and securities settlement systems (SFD)[1] reduces the disruption to a securities settlement system caused by insolvency proceedings against a participant in that system, it does not address other risks of the system or the resilience of the CSD operating the system. Some CSDs are subject to additional credit and liquidity risks derived from the provision of banking services ancillary to settlement;

[1] OJ L166, 11.6.1998, p. 45

- Agreements between CSDs to link-up, while being considered as a first step towards the consolidation of the European settlement markets, raise safety concerns in the absence of specific prudential rules for such links. In addition, they increase the interconnectedness between CSDs, which justifies further the introduction of a common prudential framework.

The absence of an efficient single internal market for settlement also raises important concerns. Important barriers to the European post trading market continue to exist, such as for instance the limitation of securities issuers' access to CSDs, different national licensing regimes and rules for CSDs across the EU and limited competition between different national CSDs. These barriers result in a very fragmented market. As a consequence, the cross-border settlement of transactions relies on unnecessarily complex holding 'chains' often involving several CSDs and several other intermediaries. This has a negative impact on the efficiency, but also on the risks associated with cross-border transactions.

These problems are important as cross-border transactions in Europe, ranging from usual purchases/sales of securities to collateral transfers, continue to increase and CSDs become increasingly interconnected. These trends are expected to accelerate with the advent of Target2 Securities (T2S), a project launched by the Eurosystem to provide a borderless common platform for securities settlement in Europe, which is scheduled to start in 2015.

This proposed Regulation addresses these problems. It introduces an obligation to represent all transferable securities in book entry form and to record these in CSDs before trading them on regulated venues. It harmonises settlement periods and settlement discipline regimes across the EU. It introduces a common set of rules inspired by international standards addressing the risks of the CSDs' operations and services. As CSDs will be subject to identical substantive rules across the EU, they will benefit from uniform requirements for licensing and an EU wide passport, which will help remove the existing barriers of access.

The proposed Regulation will therefore increase safety in the system and open the market for CSD services, therefore improving the efficiency of securities settlement. The proposed Regulation will complete the regulatory framework for securities market infrastructures, alongside the Directive 2004/39/EC on markets in financial instruments (MiFID) [2] for trading venues, and the proposal for a Regulation on derivative transactions (EMIR) for Central Counterparties (CCPs).

This initiative has received wide political support. The ECOFIN Council of 2 December 2008 emphasised the need to strengthen the safety and soundness of securities settlement systems operated by CSDs and agreed that EU legislation is needed to address legal barriers relating to post-trading, including barriers of access to CSDs. The need for appropriate standards for CSDs is also agreed internationally. As early as 2001 global banking and securities regulators (CPSS-IOSCO) adopted a set of recommendations for securities settlement systems. These were adapted through non-binding guidelines by European regulators (ESCB-CESR) in 2009. In October 2010 the Financial Stability Board re-iterated the call for updated standards for more robust core market infrastructures and asked for the revision and enhancement of existing standards.

[2] OJ L 145, 30.4.2004, p. 1

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

This initiative is the result of an extensive and continuous dialogue and consultation with all major stakeholders, including securities and banking regulators, the ECB and all types of market participants. It takes into consideration the views expressed in a public consultation from 13 January to 1 March 2011, and the input obtained through a broad range of stakeholder groups since summer 2010.

In addition, an external study of costs and prices in the post trading sector was commissioned from Oxera Consulting. Oxera delivered a first report in 2009 and a second one in 2011. These reports provide useful data on the cost gaps between cross-border and domestic post trading costs in Europe.

In line with its "Better Regulation" policy, the Commission conducted an impact assessment of policy alternatives. Policy options were assessed against the key objectives of increasing the safety, efficiency and level playing field for CSD services in Europe. The assessment was done by considering the effectiveness of achieving the objectives above and the cost efficiency of implementing different policy options.

The draft impact assessment report was submitted on 16 March 2011 to the Commission's Impact Assessment Board (IAB), followed by a resubmission of a revised draft on 8 August 2011. The draft report was considerably improved following the comments of the IAB by strengthening the evidence base underlying the problems found and the analysis of different policy options, in particular with respect to banking services ancillary to settlement and by including an estimation of the overall benefits and of the impact of different policy options on different stakeholder groups and a clearer and more robust monitoring and evaluation framework.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union ('TFEU') as the most appropriate legal basis in this field. The proposal aims principally at addressing the lack of safety and efficiency of securities settlement and the resulting obstacles to the functioning of the internal market resulting from the divergent national rules regulating securities settlement and the activities of the CSDs, which operate securities settlement systems, by introducing a set of common rules concerning certain aspects of the settlement cycle and discipline, as well as a set of common prudential requirements addressing the resilience of and access to CSDs.. In the absence of such common rules and requirements, likely divergent measures taken at national level will have a direct negative impact on the safety, efficiency and competition in the settlement markets in the Union. A regulation is considered to be the most appropriate instrument to ensure that all market participants are subject to uniform and directly applicable obligations regarding the settlement cycle and discipline, and that CSDs are subject to uniform and directly applicable prudential standards in the Union, which should reinforce their resilience and central role in the maintenance of book-entry systems and in the settlement process.

As the main purpose of the proposed Regulation is to introduce a number of legal obligations imposed directly on market operators consisting, inter alia, in the recording of virtually all

transferable securities in book-entry form in a CSD and a stricter time frame for settlement and as CSDs are responsible for the operation of securities settlement systems and the application of measures to provide timely settlement in the Union, it is essential that all CSDs constantly comply at all times with uniform and stringent prudential requirements provided in the proposal. It is therefore necessary to include in this proposal a set of uniform and directly applicable rules regarding the authorisation and ongoing supervision of CSDs, as a corollary to the legal obligations imposed on market operators.

3.2. Subsidiarity and proportionality

According to the principle of subsidiarity provided in Article 5(3) of the Treaty on European Union, action at Union level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can, because of the scale or effects of the proposed action, be better achieved by the EU.

This proposal essentially aims at making the European securities market safer and more efficient within the Union, which calls for a coordinated EU action. The Union action is further justified by the systemic nature of CSDs and their increasing interconnection, in particular after the introduction of T2S.

As regards authorisation and supervision of CSDs, the proposed Regulation aims at striking a balance between the competences of national authorities and the interests of other competent authorities. The European Securities and Markets Authority (ESMA) will play a key role in resolving disputes, facilitating the cooperation arrangements between national authorities and developing technical standards in close consultation with the members of European System of Central Banks (ESCB).

Certain issues are already covered by existing Union legislation. For instance, securities settlement systems are already defined by Directive 98/26/EC on settlement finality in payment and securities settlement systems[3] and Directive 2004/39/EC (MiFID) provides for certain rules of access by market participants to the securities settlement system of their choice. The proposed Regulation is consistent with these Union texts.

The proposal also takes full account of the principle of proportionality required in Article 5(4) of the Treaty on European Union, namely that Union action should be adequate to reach the objectives pursued and should not go beyond what is necessary. The proposed Regulation is compatible with this principle and strikes the right balance between the public interest at stake and the cost-efficiency of the measures proposed. The proposal has taken full account of the need to balance safety, efficiency of the markets and costs for the stakeholders.

3.3. Detailed explanation of the proposal

The proposed Regulation has two main parts: measures addressing all market operators in the context of securities settlement (Title II) and measures addressing specifically CSDs (Titles III, IV and V). The remaining titles, on scope and definitions (Title I) and transitional and final provisions (Title VI) apply to both parts of the proposal.

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[3] OJ L166, 11.6/1998, p. 45

3.3.1. Scope of proposal (Title I)

The proposed Regulation covers all CSDs, but exempts from the authorisation and supervision requirements the members of the ESCB and other national or public bodies performing similar services, such as the Member States national bodies charged with or intervening in the management of the public debt, that would otherwise qualify as CSDs. These institutions nevertheless remain subject to the full set of requirements for CSDs. They are exempt from Title IV, which imposes the segregation between banking services ancillary to settlement and other CSD services since these institutions, by their very nature, provide such ancillary services.

Regarding financial instruments, the proposal covers all financial instruments as far as the requirements for CSDs are concerned, but it mainly covers transferable securities as defined in point (18) of Article 4(1) of Directive 2004/39/EC (MiFID) (essentially shares and bonds) for the purposes of Title II on securities settlement.

3.3.2. Securities settlement (Title II)

A key objective of the proposed Regulation consists in increasing the safety of settlement. Title II includes three sets of measures to achieve this objective. First, it imposes the so-called dematerialisation/immobilisation of securities, which is the issuance of securities in book-entry form. This measure is aimed at increasing the efficiency of settlement, facilitating the shortening of settlement periods and ensuring the integrity of a securities issue by allowing for easier reconciliation of securities holdings. Book entry securities do not necessarily need to be recorded in a CSD before they are traded or given as collateral. They may be, for instance, recorded by registrars. However, if they are traded on venues regulated by Directive 2004/39/EC (MiFID), they need to be recorded in a CSD, in order to benefit from the protection for securities settlement systems under Directive 98/26/EC and in order to facilitate reconciliation between securities recorded, on the one hand, and securities traded, on the other hand. The proposed Regulation provides for a sufficiently long transitional period, until 1 January 2018, in order to allow market operators from the Member States where significant amounts of paper securities still exist to comply with this measure.

Second, Title II harmonises the settlement period for the securities transactions across the EU. In Europe most securities transactions are settled either two or three days after the trading day, depending on each market. The settlement period will be harmonised and set at two days after the trading day, although shorter settlement periods will be allowed. Third, Title II harmonises settlement discipline measures across the EU. These consist of *ex ante* measures to prevent settlement fails, and *ex post* measures to address settlement fails. The key objective is to reduce settlement fails and to discourage any competition lowering the standards for settlement discipline, for instance between markets that may have different penalties systems in place. The proposed provisions go beyond the level of CSDs and aim to subject market participants that fail to deliver securities on the intended settlement date to a harmonised 'buy-in' procedure, which may be executed by a CCP, in the case of a cleared transaction, or otherwise included in trading venues own rules.

3.3.3. CSDs (Title III)

Authorisation and supervision of CSDs (Chapter I)

Directive 98/26/EC defines already securities settlement systems as formal arrangements allowing transfers of securities between different participants. However, that directive does

not address the institutions which are responsible for operating such systems. In view of the increasing complexity of such systems and risks related to settlement, it is essential that institutions operating securities settlement systems are legally defined, authorised and supervised along a set of common prudential standards. A CSD is defined as being a legal person that operates a securities settlement system and at least one other core service (either 'notary' service or central maintenance service). In addition, CSDs would only be permitted to perform certain 'ancillary' services, which are mostly related to the core services. Where such ancillary services include tax services, CSDs would need to ensure that they comply with the tax legislation of the Member States concerned. In the case of withholding tax relief procedures, CSDs would need to observe any requirements that the Member State of source of the payments subject to withholding tax imposes on financial intermediaries in order to authorise them to apply the withholding and claim withholding tax relief on behalf of the beneficial owners of the payments. This may in particular involve the obligation to report investor information directly to the source Member State (in return for being able to claim relief from withholding taxes at source), which may in turn pass it on to the Member State of residence of the beneficial owner of financial instruments.

CSDs will have to be authorised and supervised by national competent authorities of the place where they are established. However, in view of the increasing cross-border element of their activity, other authorities, related to the securities settlement system(s) operated by the CSD and to other group entities would have to be consulted. ESMA will have an important role in developing draft technical standards to harmonise the authorisation process and to ensure cooperation between authorities.

The proposal grants authorised CSDs a "passport" to provide services in the Union, either by providing directly a service in another Member State or by establishing a branch in that Member State. A CSD from a third country can be granted access to the Union if it is recognised by ESMA. Such recognition may be granted only when the Commission has ascertained that the legal and supervisory framework of that third country is equivalent to the Union one and that the third country provides for a effective equivalent recognition of the Union regulatory and supervisory framework; the CSD is subject to effective authorisation and supervision in that third country; and cooperation arrangements are in place between ESMA and that third country authorities.

Requirements for CSDs and conflict of law (Chapters II and III)

Since CSDs are systemically important and perform critical services for the securities market, they must be subject to high prudential standards to ensure their viability and the protection of their participants. The requirements for CSDs are grouped into several categories in Chapter II: organisational requirements (Section 1), conduct of business rules (Section 2), requirements for CSD services (Section 3), prudential requirements (Section 4) and requirements for CSD links (Section 5).

Section 1 requires CSDs to have robust governance arrangements, experienced and suitable senior management, board and shareholders, and to set up user committees representing issuers and participants for each securities settlement system. Any outsourcing of services or activities should not compromise the responsibility of a CSD towards participants or issuers or the exercise of supervisory and oversight functions by different authorities. An important exception is foreseen for outsourcing arrangements with public entities, such as the T2S project operated by the Eurosystem, which are governed by a dedicated framework agreed by the competent authorities.

Section 2 introduces important requirements for CSDs to have non-discriminatory, transparent and strictly risk-based criteria for participation to securities settlement systems. These requirements are reinforced by the provisions on access set out in Chapter IV. It also introduces important principles on transparency regarding public disclosure of prices and disclosure to the competent authorities of costs and revenues by service provided.

Section 3, in Article 34 on requirements for CSD services, recognises the important role played by CSDs in ensuring the integrity of a securities issue and includes obligations about intraday reconciliation of accounts. In terms of account segregation for the purpose of protecting participants' assets, the proposal goes beyond the requirements provided in Directive 2004/39/EC (MiFID) and requires CSDs to segregate the accounts of each participant from those of other participants and to enable participants to segregate the accounts of each of the participants' clients. Regarding cash settlement, the proposal requires CSDs to settle on central bank accounts whenever practical and available. Commercial bank money settlement is allowed, however, contrary to some current practices, it must be done via a separate credit institution that acts as settlement agent.

The prudential requirements for the CSDs themselves in Section 4 include important provisions on the mitigation of operational risk. Since CSDs would not be permitted to perform banking type of services directly, the key risk CSDs will face is operational risk. These provisions include appropriate measures to ensure the continuity of operations, including settlement, at all times. Capital requirements are also set by reference to operating expenses – CSDs should hold capital, retained earnings and reserves to cover at least six months of operating expenses.

As CSDs are increasingly interconnected and this process is expected to accelerate with the advent of T2S, Article 45 provides for important prudential requirements for linked CSDs, including the setting up of identical settlement finality rules.

Chapter III aims at increasing the legal certainty for securities transactions, by proposing a conflict-of-law rule with respect to proprietary aspects for securities held by a CSD.

Access to CSDs (Chapter IV)

Opening up the market for CSD services and removing barriers of access is one of the objectives of this initiative. Chapter IV addresses three types of access: (a) between issuers and CSDs, (b) between CSDs, and (c) between CSDs and other market infrastructures.

In many Member States issuers are required by law to issue certain types of securities, most notably shares, in the national CSD. Article 47 introduces the right of issuers to record their securities in any CSD authorised in the Union as well as the right for CSDs to provide services for securities that have been constituted under the law of another Member State. National specificities are respected by recognising that this right should be without prejudice to the corporate law under which the securities are constituted.

Sections 2 and 3 lay down the principles on access. A CSD should have the right to become a participant in a securities settlement system of another CSD based on non-discriminatory and risk-based principles. A CSD should also have the right, based on the same principles, to request another CSD to develop special functions, which should be charged on a 'cost-plus' basis. Similarly, a CSD should have the right to receive transaction feeds from CCPs and trading venues and those infrastructures should have access to securities settlement systems

operated by CSDs. Any disputes between the relevant competent authorities could be referred to ESMA for dispute resolution.

3.3.4. Credit institutions designated to act as settlement agents (Title IV)

As described before, when central bank settlement is not practical or available, CSDs may offer commercial bank money settlement to their participants. However, CSDs should not provide the banking services ancillary to settlement themselves, but should be authorised by their competent authorities to designate a credit institution to act as settlement agent to open cash accounts and grant credit facilities to facilitate settlement unless the competent authorities demonstrate, based on the available evidence, that the exposure of one credit institution to the concentration of credit and liquidity risks is not sufficiently mitigated. This separation between CSDs and settlement agents is an important measure to address and increase the safety of CSDs. Banking services ancillary to settlement increase the risks to which CSDs are exposed and therefore the likelihood of CSDs suffering a default or being subject to severe stress. While the banking services are usually provided by some CSDs on intraday basis and are limited to the services ancillary to settlement, the amounts handled are however significant and any default of such CSDs would have negative consequences for the securities and payments markets. The requirement to provide the banking services in a separate legal entity than the one which provides the core CSD services will prevent the transmission of risks from the banking services to the provision of core CSD services, in particular in case of insolvency or severe stress resulting from the banking services. This requirement will also provide CSDs and public authorities with more options to find appropriate solutions in case of default of the settlement agent providing banking services. For the CSDs which currently provide banking services, the main costs associated with this measure are the legal costs involved in the setting-up a separate legal entity for providing banking services, while CSDs willing to develop such services in the future would not incur significant incremental costs for setting-up of a separate legal entity. There are no less stringent alternatives to the separation of banking services, which would entirely eliminate the danger of transmission of risks from the banking services to the core CSD services.

In order to secure the efficiencies resulting from the provision of both CSD and banking services within the same group of undertakings, the requirement that banking services be carried out by a separate credit institution should not prevent that credit institution from belonging to the same group of undertakings as the CSD. However, if both CSD and banking services are provided within the same group of undertakings, the activities of the credit institution providing banking services should be limited to the provision of banking services ancillary to settlement. The latter restriction aims at reducing the overall risk profile of the group resulting from the presence of a credit institution in that group.

The competent authority should be able demonstrate on a case by case basis the absence of systemic risk incurred by the provision of both CSD and banking services by the same legal entity. In such a case, a reasoned request could be made to the European Commission which may authorise the derogation. In any case, the activities of a CSD licensed as credit institution should be limited to the provision of banking services ancillary to settlement.

The credit institution acting as settlement agent should be authorised under the Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions[4]. However, as securities settlement system(s) operated by CSDs should be protected as much as possible against any potential risks caused by settlement agents, such agents should comply with additional requirements to mitigate credit and liquidity risks in respect of each securities settlement system they serve.

Considering that Directive 2006/48/EC does not address specifically intraday credit and liquidity risks resulting from the provision of banking services ancillary to settlement, credit institutions should also be subject to specific enhanced credit and liquidity risk mitigation requirements that should apply to each securities settlement system in respect of which they act as settlement agents. The proposed requirements for the settlement agents are inspired by the international CPSS-IOSCO standards for financial market infrastructures and by current market practices. They include full collateralisation of credit exposures, monitoring of intraday liquidity taking into account the liquidity risk generated by the default of the two largest participants and concentration limits on liquidity providers.

3.3.5. Sanctions (Title V)

A review of the existing sanctioning powers and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities has been carried out in the Commission Communication 'Reinforcing sanctioning in the financial services sector'[5]. A stock taking of the national regimes in place has, for example, revealed that the levels of pecuniary sanctions vary widely among Member States, that some competent authorities do not have certain important sanctioning powers at their disposal and that some competent authorities cannot impose sanctions on natural and legal persons. As a result, the Commission now proposes that Member States should provide that appropriate administrative sanctions and measures can be applied to breaches of the Regulation. To this end, a minimum set of administrative sanctions and measures should be available to the competent authorities, including withdrawal of authorisation, public warnings, dismissal of management, restitution of profits gained from the breaches of this Regulation where those can be determined, and administrative fines. The maximum level of administrative fines should not be lower than the level provided for by the Regulation – 10% of the annual turnover of a legal entity or five million Euro or 10% of the annual income of a natural person. When determining the type and level of sanctions, the competent authorities should take into account a number of criteria set in the Regulation, including the size and financial strength of the responsible person, the impact of the violation and the cooperative behaviour of the responsible person. The proposed Regulation does not prevent individual Member States from fixing higher standards.

3.3.6. Compliance with Articles 290 and 291 TFEU

On 23 September 2009, the Commission adopted proposals for Regulations establishing EBA, EIOPA, and ESMA. In this respect the Commission wishes to recall the Statements in relation to Articles 290 and 291 TFEU it made at the adoption of the Regulations establishing the European Supervisory Authorities according to which: "As regards the process for the adoption of regulatory standards, the Commission emphasises the unique character of the

4 OJ L 177, 30.6.2006, p. 1
5 COM(2010) 716, 8.12.2010

financial services sector, following from the Lamfalussy structure and explicitly recognised in Declaration 39 to the TFEU. However, the Commission has serious doubts whether the restrictions on its role when adopting delegated acts and implementing measures are in line with Articles 290 and 291 TFEU."

4. BUDGETARY IMPLICATIONS

The proposal has implications for the European Union budget related to the tasks allocated to ESMA, as specified in the legislative financial statements accompanying this proposal.

2012/0029 (COD)

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on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

Having regard to the opinion of the European Central Bank[7],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Central Securities Depositories (CSDs), along with Central Counterparties (CCPs) contribute to a large degree in maintaining post trade infrastructures that safeguard financial markets and give market participants confidence that securities transactions are executed properly and in a timely manner, including during periods of extreme stress.

(2) Due to their position at the end of the settlement process, the securities settlement systems operated by CSDs are of a systemic importance for the functioning of securities markets. Being situated at the top of the securities holding chain through which their participants report the securities holdings of investors, the securities settlement systems operated by CSDs also serve as an essential tool to control the integrity of an issue, playing an important role in maintaining investor confidence. Moreover, securities settlement systems operated by CSDs are closely involved in the collateralisation of monetary policy operations as well as in the collateralisation

6 OJ C , , p. .
7 OJ C , , p. .

process between credit institutions and are, therefore, important actors in the collateral markets.

(3) While Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems[8] reduced the disruption to a securities settlement system caused by insolvency proceedings against a participant in that system, it is necessary to address other risks that securities settlement systems are facing, as well as the risk of insolvency or disruption in the functioning of the CSDs that operate securities settlement systems. A number of CSDs are subject to credit and liquidity risks deriving from the provision of banking services ancillary to settlement.

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

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

(6) The Financial Stability Board (FSB) called, on 20 October 2010[9], for more robust core market infrastructures and asked for the revision and enhancement of the existing

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8 OJ L 166, 11.6.1998, p. 45.

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

standards. The Committee on Payments and Settlement Systems (CPSS) of the Bank of International Settlements (BIS) and the International Organisation of Securities Commissions (IOSCO) are finalising draft global standards. These are to replace the BIS recommendations from 2001, which were adapted through non-binding guidelines at European level in 2009 by the European System of Central Banks (ESCB) and the Committee of European Securities Regulators (CESR).

(7) The Council, in its conclusions of 2 December 2008[10], emphasised the need to strengthen the safety and soundness of the securities settlement systems, and to address legal barriers to post-trading in the Union.

(8) One of the basic tasks of the ESCB is to promote the smooth operation of payment systems. In this respect, the members of the ESCB execute oversight by ensuring efficient and sound clearing and payment systems. The members of the ESCB often act as settlement agents for the cash leg of the securities transactions. They are also important clients of CSDs, which often manage the collateralisation of monetary policy operations. The members of the ESCB should be closely involved by being consulted in the authorisation and supervision of CSDs, recognition of third country CSDs and the approval of CSD links. They should also be closely involved by being consulted in the setting of regulatory and implementing technical standards as well as of guidelines and recommendations. The provisions of this Regulation should be without prejudice to the responsibilities of the European Central Bank (ECB) and the National Central Banks (NCBs) to ensure efficient and sound clearing and payment systems within the Union and other countries.

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

(10) This Regulation should apply to the settlement of transactions in all financial instruments and activities of CSDs unless specified otherwise. This Regulation should also be without prejudice to other legislation of the Union concerning specific financial instruments such as Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC[11] and measures adopted in accordance with that Directive.

(11) The recording of securities in book-entry form is an important step to increase the efficiency of settlement and ensure the integrity of a securities issue, especially in a context of increasing complexity of holding and transfer methods. For reasons of safety, this Regulation provides for the recording in book-entry form of all transferable securities. This Regulation should not impose one particular method for the initial

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

11 OJ L 275, 25.10.2003, p. 32.

book-entry recording, which may take the form of immobilisation through the issuance of a global note or of immediate dematerialisation. This Regulation should not impose the type of institution that should record securities in book-entry form upon issuance and permits different actors, including registrars, to perform this function. However, once such securities are traded on trading venues regulated by Directive 2004/39/EC 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[12] or provided as collateral under the conditions of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements[13], such securities should be recorded in a CSD book-entry system in order to ensure, inter alia, that all such securities can be settled in a securities settlement system.

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

(13) Longer settlement periods of transactions in transferable securities cause uncertainty and increased risk for securities settlement systems participants. Different durations of settlement periods across Member States hamper reconciliation and are sources of errors for issuers, investors and intermediaries. It is therefore necessary to provide a common settlement period which would facilitate the identification of the intended settlement date and facilitate the implementation of settlement discipline measures. The intended settlement date of transactions in transferable securities which are admitted to trading on trading venues regulated by Directive 2004/39/EC should be no later than on the second business day after the trading takes place.

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

(15) One of the most efficient ways to address settlement fails is to require failing participants to be subject to a buy-in, whereby the securities which ought to be delivered must be bought in the market after the intended settlement date and delivered to the receiving participant. This Regulation should provide for uniform rules concerning certain aspects of the buy-in transaction for all transferable securities, money-market instruments, units in collective investment undertakings and emission allowances, such as the timing, notice period, pricing and penalties.

(16) As the main purpose of this Regulation is to introduce a number of legal obligations imposed directly on market operators consisting, inter alia, in the recording in book-

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12 OJ L 145, 30.4.2004, p. 1.

13 OJ L 168, 27.6.2002, p. 43.

entry form in a CSD of all transferable securities once such securities are traded on trading venues regulated by Directive 2004/39/EC or provided as collateral under the conditions of Directive 2002/47/EC and in the settling their obligations no later than on the second business day after trading takes place and as CSDs are responsible for the operation of securities settlement systems and the application of measures to provide timely settlement in the Union, it is essential to ensure that all CSDs are safe and sound and comply at all times with stringent organisational, conduct of business and prudential requirements established by this Regulation. Uniform and directly applicable rules regarding the authorisation and ongoing supervision of CSDs are therefore an essential corollary of and are interrelated with the legal obligations imposed on market participants by this Regulation. It is, therefore, necessary to include the rules regarding the authorisation and supervision of CSDs in the same act as the legal obligations imposed on market participants.

(17) Taking into account that CSDs should be subject to a set of common requirements and in order to dismantle the existing barriers to cross-border settlement, any authorised CSD should enjoy the freedom to provide its services within the territory of the Union either by establishment of a branch or by way of direct provision of services.

(18) Within a borderless Union settlement market, it is necessary to define the competences of the different authorities involved in the application of this Regulation. Member States should specifically designate the competent authorities responsible for the application of this Regulation, which should be afforded the supervisory and investigatory powers necessary for the exercise of their functions. A CSD should be subject to the authorisation and supervision of the competent authority of its place of establishment, which is well placed and should be empowered to examine how CSDs operate on a daily basis, to carry out regular reviews and to take appropriate action when necessary. That authority should however consult at the earliest stage and cooperate with other relevant authorities, which include the authorities responsible for the oversight of each securities settlement system operated by the CSD and, where applicable, the relevant central banks that act as settlement agent for each securities settlement system, and, also, where applicable, the competent authorities of other group entities. This cooperation also implies immediate information of the authorities involved in case of emergency situations affecting the liquidity and stability of the financial system in any of the Member States where the CSD or its participants are established. Whenever a CSD provides its services in another Member State than where it is established either by the establishment of a branch or by way of direct provision of services the competent authority of its place of establishment is mainly responsible for the supervision of that CSD.

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

(20) In order to avoid any risk taking by the CSDs in other activities than those subject to authorisation under this Regulation, the activities of the authorised CSDs should be limited to the provision of services covered by their authorisation and they should not hold any participation, as defined in the Regulation by reference to the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies[14], or any ownership, direct or indirect, of 20 % or more of the voting rights or capital in any other institutions than the ones providing similar services.

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

(22) Without prejudice to specific requirements of Member States tax legislation, CSDs should be authorised to provide services ancillary to their core services that contribute to enhancing the safety, efficiency and transparency of the securities markets. Where the provision of such services relates to withholding tax procedures, it will continue to be carried out in accordance with the legislation of the Member States concerned.

(23) A CSD intending to outsource a core service to a third party or to provide a new core or ancillary service, to operate another securities settlement system, to use another central bank as settlement agent or to set up a CSD link should apply for authorisation following the same procedure as that required for initial authorisation, with the exception that the competent authority should inform the applicant CSD within three months whether authorisation has been granted or refused.

(24) CSDs established in third countries may offer their services either through a branch or by way of direct provision of services to issuers and participants established in the Union in relation to their activities there and may set up links with CSDs established in the Union subject to recognition by ESMA. In view of the global nature of financial markets, ESMA is best placed to recognise third country CSDs. ESMA may recognise third country CSDs only if the Commission concludes that they are subject to a legal and supervisory framework equivalent to the one provided in this Regulation, if they are effectively authorised and supervised in their country and if cooperation arrangements have been established between ESMA and the competent authorities of CSDs. Recognition by ESMA is subject to an effective equivalent recognition of the prudential framework applicable to CSDs established in the Union and authorised under this Regulation.

(25) Considering the global nature of financial markets and the systemic importance of the CSDs, it is necessary to ensure international convergence of the prudential requirements to which they are subject. The provisions of this Regulation should follow the existing recommendations developed by CPSS-IOSCO and ESCB-CESR. ESMA should consider the existing standards and their future developments when drawing up or proposing to revise the regulatory technical and implementing standards as well as the guidelines and recommendations required in this Regulation.

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[14] OJ L 222 , 14.8.1978, p. 11.

(26) Considering the complexity as well as the systemic nature of the CSDs and of the services they provide, transparent governance rules should ensure that senior management, board members, shareholders and participants, who are in a position to exercise control as defined by reference to the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts[15], over the operation of the CSD, are suitable to ensure the sound and prudent management of the CSD.

(27) Transparent governance rules should ensure that the interests of the shareholders, the management and staff of the CSD, on the one hand, and the interests of their users, on the other, are taken into account. These governance principles should apply without prejudice to the ownership model adopted by the CSD. User committees should be established for each securities settlement system operated by the CSD to advise the board of the CSD on the key issues that impact its members.

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

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

(30) Considering the central role of securities settlement systems in the financial markets, CSDs should, when providing their services, ensure the timely settlement, the integrity of the issue, the segregation of the securities accounts maintained for each participant and the possibility to offer, upon request, further segregation of the accounts of the participants' clients. CSDs should ensure that these requirements apply separately to each securities settlement system operated by them.

(31) In order to avoid settlement risks due to the insolvency of the settlement agent, a CSD should settle, whenever practical and available, the cash leg of the securities transaction through accounts opened with a central bank. If this option is not practical

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

and available, a CSD should be able to settle through accounts opened with a credit institution established under the conditions provided in Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions[16] and subject to a specific authorisation procedure and prudential requirements provided in Title IV of this Regulation. The latter, when acting as settlement agent, should be able to provide to the CSD's participants the services set out in this Regulation, which are covered by the authorisation, and may otherwise provide other services not covered by this Regulation.

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

(33) The requirement that the settlement of the cash leg of the securities transaction be carried out by a separate legal entity acting as settlement agent is an important measure to increase the safety and resilience of CSDs. Such a separation between core services of CSDs and banking services ancillary to settlement appears indeed indispensible for eliminating any danger of transmission of the risks from the banking services, such as credit and liquidity risks, to the provision of core services of CSDs. There are no less intrusive measures available for eliminating those credit and liquidity risks in order to ensure the envisaged level of safety and resilience of CSDs. However, in order to secure the efficiencies resulting from the provision of both CSD and banking services within the same group of undertakings, the requirement that banking services be carried out by a separate credit institution should not prevent that credit institution from belonging to the same group of undertakings as the CSD. If both CSD and banking services are provided within the same group of undertakings, in order to increase the safety and efficiency of the services provided, the activities of the credit institution providing banking services should be limited to the provision of banking services ancillary to settlement. Furthermore, a derogation to the obligation to separate banking services ancillary to settlement from core CSD services should be available in the absence of any danger of transmission of credit and liquidity risks from the banking services to the provision of core services of CSDs. In order to ensure a consistent application of the possibility to derogate from the obligation on CSDs not to provide any banking type of ancillary services, the Commission should be empowered to decide, at the request of a national competent authority, whether any such derogation is permitted in view of the absence of systemic risk incurred by the provision of both CSD core and banking services by the same legal entity. In any case, the activitities of a CSD benefiting from any such derogation and authorised as a credit

[16] OJ L 177, 30.6.2006, p. 1.

institution should be limited exclusively to the provision of banking services ancillary to settlement.

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

(35) The safety of the link arrangements set up between CSDs should be subject to specific requirements to enable the access of their respective participants to other securities settlement systems. The requirement to provide banking type of ancillary services in separate legal entity should not prevent CSDs from receiving such services, in particular when they are participants in a securities settlement system operated by another CSD. It is particularly important that any potential risks resulting from the link arrangements such as credit, liquidity, organisational or any other relevant risks for CSDs are fully mitigated. For interoperability links, it is important that linked securities settlement systems have identical moments of entry of transfer orders into the system, irrevocability of transfer orders and finality of transfers of securities and cash. The same principles should apply to CSDs that use a common settlement information technology (IT) infrastructure.

(36) As operators of securities settlement systems, CSDs perform a key role in the process of transferring securities on securities accounts. In order to enhance legal certainty especially in a cross-border context, it is important to establish clear rules on the law applicable to ownership aspects in relation to the securities that are maintained by a CSD in its accounts. Following the approach taken by the existing conflict of laws rules, the applicable law should be the law of the place where the accounts of a CSD are maintained.

(37) In many Member States issuers are required by national law to issue certain types of securities, notably shares, within their national CSDs. In order to remove this barrier to the smooth functioning of the Union post-trading market and to allow issuers to opt for the most efficient way for managing their securities, issuers should have the right to choose any CSD established in the Union for recording their securities and receiving any relevant CSD services. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of CSDs to provide their services to issuers. In order to protect the rights of shareholders, the right of issuers to choose a CSD should not prevent the application of the national corporate laws under which the securities are constituted and which govern the relation between issuers and their shareholders.

(38) The European Code of Conduct for Clearing and Settlement of 7 November 2006[17] created a voluntary framework to enable access between CSDs and other market infrastructures. However, the post-trade sector remains fragmented along national lines, making cross-border trades more costly. It is necessary to lay down uniform conditions for links between CSDs and of access between CSDs and other market

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

infrastructures. In order to enable CSDs to offer their participants access to other markets, they should have a right to become a participant of another CSD or request another CSD to develop special functions for having access to the latter. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of a CSD to grant access to another CSD. Since CSD links may introduce additional risk for settlement, they should be subject to authorisation and supervision by the relevant competent authorities.

(39) CSDs should also have access to transaction feeds from a CCP or a trading venue and those market infrastructures should have access to the securities settlement systems operated by the CSDs, unless such access endangers the operation of their activities. A quick and appropriate remedy should be made available to competent authorities to address any unjustified refusal of CSDs or market infrastructures to provide access to their services.

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

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

(42) In order to provide deterrence and consistent application of the sanctions across Member States, this Regulation should provide for a list of key administrative sanctions and measures that need to be available to the competent authorities, for the power to impose those sanctions and measures on all persons, whether legal or natural, responsible for a breach, for a a list of key criteria when determining the level and type of those sanctions and measures and for levels of administrative pecuniary sanctions. Administrative fines should take into account factors such as any identified financial benefit resulting from the breach, the gravity and duration of the breach, any aggravating or mitigating factors, the need for fines to have a deterrent effect and, where appropriate, include a discount for cooperation with the competent authority. The adoption and publication of sanctions should respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, in particular the rights to respect for private and family life (Article 7), the right to the protection of personal data (Article 8) and the right to an effective remedy and to a fair trial (Article 47).

(43) In order to detect potential breaches, effective mechanisms to encourage reporting of potential or actual breaches of this Regulation to the competent authorities should be put in place. These mechanisms should include adequate safeguards for the persons

who report potential or actual breaches of this Regulation and the persons accused of such breaches. Appropriate procedures should be established to comply with the accused person's right to protection of personal data, with the right of defence and to be heard before the adoption of a final decision affecting that person as well as with the right to seek effective remedy before a tribunal against any decision or measure affecting that person.

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

(45) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[18] governs the processing of personal data carried out in the Member States pursuant to this Regulation. Any exchange or transmission of personal data by competent authorities of the Member States should be undertaken in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[19] governs the processing of personal data carried out by ESMA pursuant to this Regulation. Any exchange or transmission of personal data carried out by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.

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

(47) European Securities and Markets Authority (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (ESMA), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC[20], should play a central role in the application of this Regulation by ensuring consistent application of Union rules by national competent authorities and by settling disagreements between them.

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

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18 OJ L 281, 23.11.1995, p.31.
19 OJ L 8, 12.1.2001, p. 1.
20 OJ L 331, 15.12.2010, p. 84.

(European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC[21].

(49) The Commission should be empowered to adopt regulatory technical standards in accordance with Article 290 of the Treaty on the Functioning of the European Union and with the procedure set out in Articles 10 to 14 of Regulation (EU) No 1095/2010 with regard to the detailed elements of the settlement discipline measures; the information and other elements to be included by a CSD in its application for authorisation; the information that different authorities shall supply each other when supervising the CSDs; the details of the cooperation arrangements between home and host authorities; the elements of the governance arrangements for CSDs; the details of the records to be kept by CSDs; the details of the measures to be taken by CSDs so that the integrity of the issue is maintained; the protection of the participants' securities; the timely achievement of settlement; the mitigation of the operational risks and of the risks derived from the CSD links; the details of the capital requirements for CSDs; the details of the prudential requirements on credit and liquidity risks for the designated credit institutions.

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

(51) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty. In particular, the delegated acts should be adopted in respect of specific details concerning definitions; the criteria under which the operations of a CSD in a host Member State should be considered of substantial importance for that Member State; the services for which a third country CSD shall seek for recognition by ESMA and the information that the applicant CSD shall provide ESMA in its application for recognition; the risks which may justify a refusal by a CSD of access to participants and the elements of the procedure available for requesting participants; the assessment of situations when settlement in central bank money is not practical and available; the elements of the procedure for access of issuers to CSDs, access between CSDs and between CSDs and other market infrastructures.

(52) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to take decisions on the assessment of rules from third countries for the purposes of recognition of third country CSDs and derogations from the obligation to separate banking services ancillary to settlement from core CSD services. Those powers should be exercised in

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

accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers[22].

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

(54) It is necessary to amend Directive 98/26/EC to bring it in line with the Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)[23], whereby designated securities settlement systems are no longer notified to the Commission but to ESMA.

(55) The application of the authorisation and recognition requirements of this Regulation should be deferred in order to provide CSDs established in the Union or in third countries with sufficient time to seek authorisation and recognition provided for in this Regulation.

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

HAVE ADOPTED THIS REGULATION:

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22 OJ L 55, 28.2.2011, p. 13.

23 OJ L 331, 15.12.2010, p. 120.

Title I
Subject matter, scope and definitions

Article 1
Subject matter and scope

1. This Regulation lays down uniform requirements for the settlement of financial instruments in the Union and rules on the organisation and conduct of central securities depositories to promote safe and smooth settlement.

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

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

4. Articles 9 to 18 and 20 as well as the provisions of Title IV do not apply to the members of the European System of Central Banks (ESCB), other Member States' national bodies performing similar functions or Member States' public bodies charged with or intervening in the management of the public debt.

Article 2
Definitions

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

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

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

   (3) 'securities settlement system' means a system under the first and second indents of point (a) of Article 2 of Directive 98/26/EC whose business consists of the execution of transfer orders as defined in the second indent of point (i) of Article 2 of Directive 98/26/EC;

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

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

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

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

(8) 'central counterparty (CCP)' means an entity that interposes itself between the counterparties to the contracts traded within one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

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

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

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

(12) ‘home Member State’ means the Member State in which a CSD has been authorised;

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

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

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

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

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

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

(19) 'CSD link' means an arrangement between CSDs whereby one CSD opens an account in the securities settlement system of another CSD in order to facilitate the transfer of securities from its participants to the participants of that CSD. CSD links include standard link access, customised link access and interoperable links;

(20) 'standard link access' means a CSD link whereby a CSD is connected to another CSD as any other participant to the securities settlement system operated by the latter;

(21) 'customised link access' means a CSD link whereby a CSD provides specific services to another CSD distinct from the services provided to other participants to its securities settlement system;

(22) 'interoperability links' means CSD links whereby the securities settlement systems operated by CSDs become interoperable as defined in point (o) of Article 2 of Directive 98/26/EC;

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

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

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

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

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

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

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

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

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

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures to specify the technical elements of the definitions in points (17), (20), (21) and (22) of paragraph 1, and to specify the ancillary services set out in points (1) to (4) of Section B of the Annex and the services set out in points (1) and (2) of Section C of the Annex.

Title II
Securities settlement

Chapter I
Book-entry form

Article 3
Book-entry form

1. Any company that issues transferable securities which are admitted to trading on regulated markets shall arrange for such securities to be represented in book-entry form as immobilisation through the issuance of a global note, which represents the whole issue, or subsequent to a direct issuance of the securities into a dematerialised form.

2. Where the securities referred to in paragraph 1 are traded on regulated markets, traded on multilateral trading facilities (MTFs) or organised trading facilities (OTFs) or are transferred following a financial collateral arrangement as defined in point (a) of Article 2 of Directive 2002/47/EC, those securities shall be recorded in book-entry form in a CSD prior to the trade date, unless they have already been so recorded.

Article 4
Enforcement

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

2. The authorities competent for the supervision of the regulated markets, MTFs and OTFs shall ensure that Article 3(2) is applied when the securities referred to in Article 3(1) are traded on regulated markets, MTFs or OTFs.

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

Chapter II
Settlement periods

Article 5
Intended settlement dates

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

2. As regards transferable securities referred to in paragraph 1 which are traded on regulated markets, MTFs or OTFs, the intended settlement date shall be no later than on the second business day after the trading takes place.

3. The relevant authority of the Member State whose law applies to the securities settlement system operated by a CSD shall be competent for ensuring that paragraphs 1 and 2 are applied.

Chapter III
Settlement discipline

Article 6
Measures to prevent settlement fails

1. Any regulated market, MTF or OTF shall establish procedures that enable the confirmation of relevant details of transactions in financial instruments referred to in Article 5 (1) on the date when the orders have been sent to it.

2. For each securities settlement system it operates, a CSD shall establish procedures that facilitate the settlements of transactions in financial instruments referred to in Article 5(1) on the intended settlement date. It shall promote early settlement on the intended settlement date through appropriate mechanisms, such as a progressive tariff structure.

3. For each securities settlement system it operates, a CSD shall establish monitoring tools that allow it to identify in advance settlements of transactions in financial instruments referred to in Article 5(1) that are most likely to fail and it shall require participants to settle such transactions on the intended settlement date.

4. The European Securities and Markets Authority (ESMA) shall develop in consultation with the members of the European System of Central Banks (ESCB) draft regulatory technical standards to specify the details of the procedures enabling confirmation of relevant details of transactions and facilitating settlement referred to in paragraphs 1 and 2 and the details of the monitoring tools identifying likely settlement fails referred to in paragraph 3.

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

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

Article 7
Measures to address settlement fails

1. For each securities settlement system it operates, a CSD shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1). It shall provide regular reports to the competent authority and to any person with a legitimate interest as to the number and details of settlement fails and any other relevant information. The competent authorities shall share with ESMA any relevant information on settlement fails.

2. For each securities settlement system it operates, a CSD shall establish procedures that facilitate settlement of transactions in financial instruments referred to in Article 5(1) that are not settled on the intended settlement date. These procedures shall provide for a sufficiently deterrent penalty mechanism for participants that cause the settlement fails.

3. A participant to a securities settlement system that fails to deliver the financial instruments referred to in Article 5(1) to the receiving participant on the intended settlement date shall be subject to a buy-in whereby those instruments shall be bought in the market no later than four days after the intended settlement date and delivered to that receiving participant and other measures in accordance with paragraph 4.

4. The measures referred to in paragraph 3 shall specify at least the following:

   (a) the daily penalty paid by the defaulting participant for each business day between the intended settlement date and the actual settlement date;

   (b) the notice period given to the defaulting participant before the execution of a buy-in;

   (c) the pricing and costs of a buy-in;

   (d) where relevant, the party that executes the buy-in;

   (e) the amount of compensation for the receiving participant in case the execution of the buy-in is not possible.

5. The measures referred to in paragraph 3 shall ensure that:

   (a) the receiving participant receives at least the price of the financial instruments agreed at the time of the trade;

(b) the daily penalty paid by the defaulting participant is sufficiently deterrent for the defaulting participant;

(c) where the execution of the buy-in is not possible, the amount of cash compensation paid to the receiving participant is higher than the price of the financial instruments agreed at the time of the trade and the last publicly available price for such instruments on the trading venue where the trade took place, and is sufficiently deterrent for the defaulting participant;

(d) the parties referred to in paragraph 7, including CCPs, who execute the buy-in disclose to participants the fees charged for this service;

(e) if a party other than the failing participant executes the buy-in, the failing participant reimburse all amounts paid by the executing party in accordance with paragraphs 3 and 4.

6. CSDs, CCPs, regulated markets, MTFs and OTFs shall establish procedures that enable them to suspend any participant that fails systematically to deliver the financial instruments referred to in paragraph 1 or cash on the intended settlement date and to disclose to the public its identity only after giving that participant the opportunity to submit its observations.

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

For transactions cleared by a CCP before being settled within a securities settlement system, the measures referred to in paragraph 3 to 5 shall be executed by the CCP.

For transactions not cleared by a CCP, the regulated markets, MTFs and OTFs shall include in their internal rules an obligation on their participants to be subject to the measures referred to in paragraph 3 to 5.

8. ESMA shall develop in consultation with the members of the ESCB draft regulatory technical standards to specify the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1, of the procedures facilitating settlement of transactions following settlement fails referred to in paragraph 2 and the measures referred to in paragraphs 3 to 5.

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

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

Article 8
Enforcement

1. The relevant authority of the Member State whose law applies to the securities settlement system operated by a CSD shall be competent for ensuring that Articles 6

and 7 are applied and for monitoring the penalties imposed, in close cooperation with the authorities competent for the supervision of the regulated markets, MTFs, OTFs, and CCPs referred to in Article 7. In particular, the authorities shall monitor the application of penalties referred to in Article 7 (2) and (4) and of the measures referred to in Article 7(6).

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

Title III
Central securities depositories

Chapter I
Authorisation and supervision of CSDs

SECTION 1
AUTHORITIES RESPONSIBLE FOR AUTHORISATION AND SUPERVISION OF CSDS

Article 9
Competent authority

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

Article 10
Designation of the competent authority

1. Each Member State shall designate the competent authority responsible for carrying out the duties under this Regulation for the authorisation and supervision of CSDs established in its territory and shall inform ESMA thereof.

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

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

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

Article 11
Relevant authorities

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

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

(b) where applicable, the central bank in the Union in whose books the cash leg of a securities settlement system operated by the CSD is settled or, in case of settlement through a credit institution in accordance with Title IV, the central bank in the Union of issue of the relevant currency.

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

Article 12
Cooperation between authorities

1. The authorities referred to in Articles 9 and 11 and ESMA shall cooperate closely for the application of this Regulation, in particular in emergency situations referred to in Article 13. Whenever appropriate and relevant, such cooperation shall include other public authorities and bodies, in particular those established or appointed under Directive 2003/87/EC.

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

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

Article 13
Emergency situations

The authorities referred to in Articles 9 and 11 shall immediately inform ESMA and each other of any emergency situation relating to a CSD, including of any developments in financial markets, which may have an adverse effect on market liquidity and on the stability of the financial system in any of the Member States where the CSD or one of its participants are established.

SECTION 2
CONDITIONS AND PROCEDURES FOR AUTHORISATION OF CSDS

Article 14
Authorisation of a CSD

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

2. The authorisation shall specify the services set out in Sections A and B of the Annex, which the CSD is authorised to provide.

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

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

Article 15
Procedure for granting authorisation

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

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

3. Within 20 working days from the receipt of the application, the competent authority shall assess whether the application is complete. If the application is not complete, the competent authority shall set a time limit by which the applicant CSD has to provide additional information. The competent authority shall inform the applicant CSD when the application is considered to be complete.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 16
Effects of the authorisation

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

2. Securities settlement systems may be operated only by authorised CSDs and central banks.

3. An authorised CSD shall not be exposed to any risks related to the provision of banking type of ancillary services by the credit institution designated to provide such services in accordance with Title IV.

4. An authorised CSD may only have a participation in a legal person whose activities are limited to the provision of services set out in Sections A and B of the Annex.

Article 17
Extension and outsourcing of activities and services

1. An authorised CSD shall submit a request for authorisation to the competent authority of the Member State where it is established whenever it wishes to outsource

a core service to a third party under Article 28 or extend its activities to one or more of the following:

(a) additional core and ancillary services set out in the Sections A and B of the Annex not covered by the initial authorisation;

(b) the operation of another securities settlement system;

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

(d) setting up any CSD link.

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

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

Article 18
Withdrawal of authorisation

1. The competent authority of the Member State where the CSD is established shall withdraw the authorisation in any of the following circumstances:

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

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

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

(d) where the CSD has seriously and systematically infringed the requirements set out in this Regulation.

2. As from the moment it becomes aware of one of the circumstances referred to in paragraph 1, the competent authority shall immediately consult the relevant authorities referred to in Article 11 on the necessity to withdraw the authorisation except where such a decision is required urgently.

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

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

Article 19
CSD Register

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

2. Central banks shall immediately inform ESMA of any CSD that they operate.

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

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

SECTION 3
SUPERVISION OF CSDS

Article 20
Review and evaluation

1. The competent authority shall, at least on an annual basis, review the arrangements, strategies, processes and mechanisms implemented by a CSD with respect to compliance with this Regulation and evaluate the risks to which the CSD is, or might be, exposed.

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

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

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

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

6. When performing the review and evaluation referred to in paragraph 1, the competent authorities responsible for supervising CSDs which maintain the types of relations referred to in points (a), (b) and (c) of the first subparagraph of Article

15(5) shall supply one another with all relevant information that is likely to facilitate their tasks.

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

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

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

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

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

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

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

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

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

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

SECTION 4
PROVISION OF SERVICES IN ANOTHER MEMBER STATE

Article 21
Freedom to provide services in another Member State

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

2. Any CSD wishing to provide its services within the territory of another Member State for the first time, or to change the range of services provided shall

communicate the following information to the competent authority of the Member State where it is established:

(a) the Member State in which it intends to operate;

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

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

3. Within three months from the receipt of the information referred to in paragraph 2, the competent authority 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.

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

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

(a) on receipt of a communication from the competent authority in the host Member State acknowledging receipt by the latter of the communication referred to in paragraph 3;

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

6. In the event of a change in any of the information communicated in accordance with paragraph 2, a CSD shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of that change by the competent authority of the home Member State.

Article 22
Cooperation between home and host authorities

1. Where a CSD authorised in one Member State has established a branch in another Member State, the competent authority of the home Member State of the CSD, in the exercise of its responsibilities and after informing the competent authority of the host Member State, may carry out on-site inspections in that branch.

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

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

4. When, taking into account the situation of the securities markets in the host Member State, the activities of a CSD that has established a branch or interoperability links with other CSDs or security settlement systems in that host Member State have become of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State, the home and host competent authorities shall establish cooperation arrangements for the supervision of the activities of that CSD in the host Member State.

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

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

The competent authority of the host 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.

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

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

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

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

SECTION 5
RELATIONS WITH THIRD COUNTRIES

Article 23
Third countries

1. A CSD established in a third country may provide CSD services either through a branch or by way of direct provision of services to issuers and participants established in the Union in relation to their activities in the Union and may establish links with a CSD established in the Union, only where that CSD is recognised by ESMA.

2. After consultation with the authorities referred to in paragraph 3, ESMA shall recognise a CSD established in a third country that has applied for recognition to provide the services referred to in paragraph 1, where the following conditions are met:

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

   (b) the CSD is subject to effective authorisation and supervision ensuring a full compliance with the prudential requirements applicable in that third country;

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

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

   (a) the competent authorities of the Member States in which the third country CSD intends to provide CSD services;

   (b) the competent authorities supervising CSDs established in the Union with whom a third country CSD has established links;

   (c) the authorities referred to in point (a) of Article 11(1);

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

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

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

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

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

5. ESMA shall, in consultation with the authorities referred to in paragraph 3, review the recognition of the CSD established in a third country in case of extensions by that CSD in the Union of the services referred to in paragraph 1 under the procedure set out in paragraphs 1 to 4.

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

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

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

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

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

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

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

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures to specify the services for which a CSD established in a third country shall apply for recognition by ESMA under paragraph 1 and the information that the applicant CSD shall provide ESMA in its application for recognition under paragraph 4.

Chapter II
Requirements for CSDs

SECTION 1
ORGANISATIONAL REQUIREMENTS

Article 24
General provisions

1. A CSD shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks to which it is or might be exposed, and adequate remuneration policies and internal control mechanisms, including sound administrative and accounting procedures.

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

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

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

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

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

7. A CSD bound by capital links with another CSD, a holding company or with a credit institution referred to in Title IV shall adopt detailed policies and procedures specifying how the requirements set in this article apply to the group and to the different entities of the group.

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

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

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

Article 25
Senior management, board and shareholders

1. The senior management of a CSD shall be of sufficiently good repute and experience so as to ensure the sound and prudent management of the CSD.

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

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

4. The board shall be composed of suitable members with an appropriate mix of skills, experience and knowledge of the entity and of the market.

5. A CSD shall clearly determine the roles and responsibilities of the board and shall make the minutes of the board meetings available to the competent authority.

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

7. A CSD shall:

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

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

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

Article 26
User committee

1. A CSD shall establish user committees for each securities settlement system it operates, which shall be composed of representatives of issuers and of participants to

such securities settlement systems. The advice of the user committee shall be independent from any direct influence by the management of the CSD.

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

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

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

5. A CSD shall promptly inform the competent authority of any decision in which the board decides not to follow the advice of a user committee.

Article 27
Record keeping

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

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

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

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

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

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

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

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

Article 28
Outsourcing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2
CONDUCT OF BUSINESS RULES

Article 29
General provisions

1. A CSD shall be designed to meet the needs of its participants and the markets it serves.

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

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

Article 30
Participation requirements

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

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

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

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

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

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

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

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

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures to specify the risks which may justify a refusal by a CSD of access to participants and the elements of the procedure referred to in paragraph 3.

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

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

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

Article 31
Transparency

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

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

3. A CSD shall be bound by its published pricing policy.

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

5. A CSD shall disclose to all participants the risks associated with the services provided.

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

Article 32
Communication procedures with participants and other market infrastructures

CSDs shall use in their communication procedures with participants of the securities settlement systems they operate and with the market infrastructures they interface with the recognised communication procedures and standards for messaging and reference data in order to facilitate efficient recording, payment and settlement.

SECTION 3
REQUIREMENTS FOR CSD SERVICES

Article 33
General provisions

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

Article 34
Integrity of the issue

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

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

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

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

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

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

Article 35
Protection of participants' securities

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

2. A CSD shall keep records and accounts that enable a participant to distinguish the securities of that participant from those of that participant's clients.

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

4. A CSD shall publicly disclose the level of protection and the costs associated with the different levels of segregation it provides and shall offer these services under reasonable commercial terms.

5. A CSD shall not use the securities of a participant for any purpose unless it has obtained that participant's express consent.

6. ESMA shall develop in consultation with the members of the ESCB draft regulatory technical standards specifying the book-entry methods and the account structures enabling the distinction between the holdings referred under paragraphs 1 to 3 and the methods of assessment thereof.

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

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

Article 36
Settlement finality

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

be designated and notified according to the procedures referred to in point (a) of Article 2 of Directive 98/26/EC.

2. A CSD shall establish procedures for its securities settlement systems that allow for a timely achievement of settlement, a minimum exposure of their participants to counterparty risk and liquidity risk and a low rate of settlement fails.

3. A CSD shall clearly define the point at which transfer orders in a securities settlement system are irrevocable, legally enforceable and binding on third parties.

4. A CSD shall disclose the point in time at which transfers of funds and securities in a securities settlement system are irrevocable, legally enforceable and binding on third parties.

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

6. A CSD shall achieve settlement finality no later than by the end of the business day of the intended settlement date. Upon demand by its user committee, it shall install systems that allow for intraday or real-time settlement.

7. The cash proceeds of securities settlements shall be available for recipients to use no later than by the end of the business day of the intended settlement date.

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

9. ESMA shall develop in consultation with the members of the ESCB draft regulatory technical standards specifying the elements of the procedures referred to in paragraph 2 allowing the timely achievement of settlement.

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

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

Article 37
Cash settlement

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

2. When it is not practical and available to settle in central bank accounts, 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. If a CSD offers to settle in accounts opened with a credit institution, it shall do so in accordance with the provisions of Title IV.

3. Where the CSD offers settlement both in central bank accounts and in accounts opened with a credit institution, its participants shall have the right to choose between these two options.

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

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures defining the cases when the settlement of the cash payments in a specific currency through accounts opened with a central bank is not practical and available and the methods of assessment thereof.

Article 38
Participant default rules and procedures

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

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

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

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

SECTION 4
PRUDENTIAL REQUIREMENTS

Article 39
General requirements

A CSD shall adopt a sound risk-management framework for comprehensively managing legal, business, operational and other risks.

Article 40
Legal risks

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

2. A CSD shall design its rules, procedures and contracts so as they can be enforced in all relevant jurisdictions, including in the case of the default of the participant.

3. A CSD conducting business in different jurisdictions shall identify and mitigate the risks arising from any potential conflicts of laws across jurisdictions.

Article 41
General business risk

A CSD shall have robust management and control IT tools to identify, monitor and manage general business risks, including business strategy, cash flows, and operating expenses.

Article 42
Operational risks

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

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

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

4. The plan referred to in paragraph 3 shall at a minimum provide for the recovery of all transactions at the time of disruption to allow the participants of a CSD to continue to operate with certainty and to complete settlement on the scheduled date. It shall include the setting up of a second processing site with the requisite level of key resources, capabilities and functionalities, including appropriately skilled and experienced staff.

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

6. A CSD shall identify, monitor and manage the risks that key participants to the securities settlement systems it operates, as well as service and utility providers, and other CSDs or other market infrastructures might pose to its operations.

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

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

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

Article 43
Investment risks

1. A CSD shall hold its financial assets at central banks or authorised credit institutions that have robust accounting practices, safekeeping procedures and internal controls that fully protect these assets.

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

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

4. A CSD shall take into account its overall credit risk exposures to individual institutions in making its investment decision and shall ensure that its overall risk exposure to any individual institution remains within acceptable concentration limits.

Article 44
Capital requirements

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

   (a) ensure that the CSD is adequately protected against operational, legal, business, custody and investment risks;

   (b) cover potential general business losses, so that the CSD can continue providing services as a going concern;

   (c) ensure an orderly winding-down or restructuring of the CSD's activities over an appropriate time span in case of default;

   (d) allow the CSD to meet its current and projected operating expenses for at least six months under a range of stress scenarios.

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

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

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

This plan shall be approved by the board of directors or an appropriate board committee and updated regularly.

3. ESMA shall develop in consultation with the members of the ESCB draft regulatory technical standards to specify the capital, retained earnings and reserves of a CSD referred to in paragraph 1 and the features of the plan referred to in paragraph 2.

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

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

SECTION 5
REQUIREMENTS FOR CSD LINKS

Article 45
CSD links

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

2. Link arrangements shall be submitted to authorisation as required under point (d) of Article 17(1).

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

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

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

5. A CSD that uses an intermediary to operate a link with another CSD shall measure, monitor, and manage the additional risks arising from the use of that intermediary.

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

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

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

(a) entry of transfer orders into the system;

(b) irrevocability of transfer orders;

(c) finality of transfers of securities and cash.

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

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

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

Chapter III
Conflict of laws

Article 46
Applicable law to proprietary aspects

1. Any question with respect to proprietary aspects in relation to financial instruments held by a CSD shall be governed by the law of the country where the account is maintained.

2. Where the account is used for settlement in a securities settlement system, the applicable law shall be the one governing that securities settlement system.

3. Where the account is not used for settlement in a securities settlement system, that account shall be presumed to be maintained at the place where the CSD has its habitual residence as determined by Article 19 of Regulation (EC) No 593/2008 of the European Parliament and the Council[24].

[24] OJ L 177, 4.7.2008, p. 6.

4. The application of the law of any country specified in this Article shall comprise the application of the rules of law in force in that country other than its rules of private international law.

Chapter IV
Access to CSDs

SECTION 1
ACCESS OF ISSUERS TO CSDS

Article 47
Freedom to issue in a CSD authorised in the EU

1. Without prejudice to the corporate law under which the securities are constituted, an issuer shall have the right to arrange for its securities to be recorded in any CSD established in any Member State.

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

3. A CSD may refuse to provide services to an issuer. Such refusal may only be based on a comprehensive risk analysis or on the absence of access by the CSD to transaction feeds from the market where the requesting issuer's securities are or will be traded.

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

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

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

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

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

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures to specify the risks which may justify a refusal by a CSD of access to issuers and the elements of the procedure referred to in paragraph 4.

6. ESMA shall develop in consultation with the members of the ESCB draft implementing technical standards to establish standard forms and templates for the procedure referred to in paragraph 2.

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

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

SECTION 2
ACCESS BETWEEN CSDS

Article 48
Standard link access

A CSD shall have the right to become a participant of another CSD in accordance with Article 30 and subject to the authorisation of the CSD link provided under Article 17.

Article 49
Customised link access

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

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

Article 50
Procedure for CSD links

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

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

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

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

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

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

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

3. Where the CSDs agree to establish a link, they shall submit their decision for authorisation to their respective competent authorities in accordance with Article 17, which shall assess whether any potential risks resulting from the link arrangement such as credit, liquidity, operational or any other relevant risks are fully mitigated.

The competent authorities of the respective CSDs shallrefuse to authorise a link when this could affect the functioning of the securities settlement systems operated by the applicant CSDs.

4. The competent authorities of the respective CSDs shall consult each other regarding the approval of the link and may, if necessary in case of divergent decisions, 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.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures to specify the elements of the procedures referred to in paragraphs 1 to 3.

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

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

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

SECTION 3
ACCESS BETWEEN A CSD AND ANOTHER MARKET INFRASTRUCTURE

Article 51
Access between a CSDs and another market infrastructure

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

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

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

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

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

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

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

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

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning measures to specify the elements of the procedure referred to in paragraphs 1 to 3.

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

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

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

TITLE IV

CREDIT INSTITUTIONS DESIGNATED TO PROVIDE BANKING TYPE OF ANCILLARY SERVICES FOR CSDS' PARTICIPANTS

Article 52
Authorisation to provide banking type of ancillary services

1. A CSD shall not provide itself any banking type of ancillary services set out in Section C of the Annex.

2. By way of derogation from paragraph 1, when a national competent authority referred to in Article 53(1) of this Regulation is satisfied that a CSD has all the necessary safeguards in place to allow it to exercise ancillary services, the competent authority may submit a request to the Commission to allow this CSD also to carry out the ancillary services set out in Section C of the Annex. This request shall include:

   (a) evidence justifying the request, explaining in detail the arrangements the CSD has put in place to deal with all associated risks;

   (b) a reasoned assessment that this solution is the most effective means to ensure systemic resilience;

   (c) an analysis of the expected impact on the relevant financial market and financial stability.

   Following a detailed impact assessment, a consultation of the undertakings concerned and after taking into account the opinions of the EBA, the ESMA and the ECB, the Commission shall adopt an implementing decision in accordance with the procedure referred to in Article 66. The Commission shall give reasons for its implementing decision.

   A CSD which benefits from a derogation shall be authorised as a credit institution as provided in Title II of Directive 2006/48/EC. This authorisation shall be limited exclusively to the provision of the banking type of ancillary services that it is authorised to provide in accordance with paragraph 4 and shall imply the fulfilment of the prudential and supervision requirements provided in Article 57 and 58.

3. A CSD that intends to settle the cash leg of all or part of its securities settlement system in accordance with Article 37(2) of this Regulation shall obtain authorisation

to designate for this purpose an authorised credit institution as provided in Title II of Directive 2006/48/EC, unless the competent authority referred to in Article 53(1) of this Regulation demonstrates, based on the available evidence, that the exposure of one credit institution to the concentration of risks under Article 57(3) and (4) of this Regulation is not sufficiently mitigated. In the latter case, the competent authority referred to in Article 53(1) may require the CSD to designate more than one credit institution. The designated credit institutions shall be considered as settlement agents.

4. The authorisation referred to in paragraph 3 shall cover the ancillary services set out in Section C of the Annex that the designated credit institution or a CSD that has been granted a derogation under paragraph 2 of this Article may want to provide for its participants.

5. Whenever the CSD and the designated credit institution belong to a group of undertakings ultimately controlled by the same parent undertaking, the authorisation as provided in Title II of Directive 2006/48/EC of such designated credit institution shall be limited exclusively to the provision of the banking type of ancillary services that it is authorised to provide in accordance with paragraph 3 of this Article. The same requirement applies in respect of a CSD that has been granted a derogation under paragraph 2 of this Article.

6. The CSD and the designated credit institutions shall comply at all times with the conditions necessary for authorisation under this Regulation.

The CSD shall, without undue delay, notify the competent authorities of any material changes affecting the conditions for authorisation.

Article 53
Procedure for granting and refusing authorisation

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

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

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

4. The competent authority shall, before granting authorisation to the CSD, consult the following authorities:

(a) The relevant authority referred to in point (a) of Article 11(1) on whether the envisaged provision of services by the designated credit institution will not

affect the functioning of the securities settlement system operated by the applicant CSD;

(b) The competent authority referred to in Article 58(1) on the ability of the credit institutions to comply with the prudential requirements under Article 57.

5. ESMA shall develop in consultation with the members of the ESCB draft regulatory technical standards to specify the information that the applicant CSD shall provide to the competent authority.

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

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

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

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

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

Article 54
Extension of the banking type of ancillary services

1. A CSD that intends to extend the banking type of ancillary services for which it designates a credit institution shall submit a request for extension to the competent authority of the Member State where that CSD is established.

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

Article 55
Withdrawal of authorisation

1. The competent authority of the Member State where the CSD is established shall withdraw the authorisation in any of the following circumstances:

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

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

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

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

2. Before withdrawing authorisation, the competent authority shall consult the relevant authorities under point (a) of Article 11(1) and the authorities referred to in Article 58(1) on the necessity to withdraw the authorisation except where such a decision is required urgently.

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

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

Article 56
CSD Register

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

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

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

(b) the name of each designated credit institution;

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

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

Article 57
Prudential requirements applicable to credit institutions designated to provide banking type of ancillary services

1. A credit institution designated to provide banking type of ancillary services shall provide the services set out in Section C of the Annex that are covered by the authorisation.

2. A credit institution designated to provide banking type of ancillary services shall comply with any present or future legislation applicable to credit institutions.

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

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

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

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

(d) if collateral is required to manage its corresponding credit risk, it shall accept only collateral with low credit, liquidity and market risk;

(e) it shall set and enforce appropriately conservative haircuts and concentration limits on collateral values constituted to cover the credit exposures referred to in point (c);

(f) it shall put in place legally binding arrangements to allow collateral to be sold or pledged promptly, particularly in the case of cross-border collateral;

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

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

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

(j) it shall provide for an automatic reimbursement procedure of intraday credit and discourage overnight credit through deterrent sanctioning rates.

4. A credit institution designated to provide banking type of ancillary services shall comply with the following specific prudential requirements for the liquidity risks related to these services in respect of each securities settlement system:

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

(b) it shall monitor continuously the level of liquid assets it holds and determine the value of its available liquid assets taking into account appropriate haircuts on these assets;

(c) it shall measure continuously its liquidity needs and risks; in doing so, it shall take into account the liquidity risk generated by the default of the two participants to which it has the largest exposures;

(d) it shall mitigate the corresponding liquidity risks with immediately available resources such as prefunding arrangements and, failing this, shall seek to obtain the necessary credit lines or similar arrangements to cover the corresponding liquidity needs only with institutions with an adequate risk and market profile and it shall identify, measure and monitor its liquidity risk stemming from these institutions;

(e) it shall set and enforce appropriate concentration limits for each of the corresponding liquidity providers including its parent undertaking and subsidiaries;

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

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

(h) it shall base its intraday credit services on proportionate and at least same maturity resources, composed of capital, cash deposits, and borrowing arrangements;

(i) it shall deposit the corresponding cash balances on dedicated accounts with central banks, where practical and available;

(j) it shall ensure that it can re-use, with the informed consent of the customer, the collateral provided to it by a defaulting customer.

5. EBA, in consultation with ESMA and the members of the ESCB, shall develop draft regulatory technical standards to specify the following:

(a) the frequency of the credit exposure measuring and monitoring framework referred to in point (b) of paragraph 3 and the types of risk-management tools that shall be used to control the risks derived from these exposures;

(b) what constitutes equivalent financial resources for the purpose of point (c) of paragraph 3;

(c) the type of collateral that can be considered as having low credit, liquidity and market risk for the purpose of point (d) of paragraph 3;

(d) what constitutes appropriate haircuts for the purposes of point (e) of paragraph 3 and point (b) of paragraph 4;

(e) the concentration limits on collateral values referred to in point (e) of paragraph 3, on credit exposures referred to in point (g) of paragraph 3 and on liquidity providers referred to in point (e) of paragraph 4;

(f) what constitutes deterrent sanctioning rates for the purpose of point (j) of paragraph 3;

(g) the details of the monitoring framework referred to in point (b) of paragraph 4 and the methodology for calculating the value of available liquid assets for the

purpose of point (b) of paragraph 4 and for measuring the liquidity needs and risks referred to in point (c) of paragraph 4;

(h) what constitutes immediately available resources and an adequate risk and market profile for the purpose of point (d) of paragraph 4;

(i) the frequency, the type and the time horizons of the stress tests for the purpose of point (f) of paragraph 4;

(j) the criteria for assessing when it is practical and available to deposit cash balances on accounts with central banks for the purposes of point (i) of paragraph 4.

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

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

Article 58

Supervision of credit institutions designated to provide banking type of ancillary services

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

2. The competent authority referred to in Article 9 in consultation with the competent authority referred to paragraph 1 shall review and evaluate at least on an annual basis whether the designated credit institutions comply with Article 57(1), and whether all the necessary arrangements between the designated credit institutions and the CSD allow them to meet their obligations set out in this Regulation.

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

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

Title V
Sanctions

Article 59
Administrative sanctions and measures

1. Member States shall lay down rules on the administrative sanctions and measures applicable in the circumstances defined in Article 60 to the persons responsible for breaches of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. Those sanctions and measures shall be effective, proportionate and dissuasive.

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

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

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

Article 60
Sanctioning powers

1. This article shall apply to the following provisions of this Regulation:

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

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

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

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

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

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

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

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

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

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

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

2. Without prejudice to the supervisory powers of competent authorities, in case of a breach referred to in paragraph 1, the competent authorities shall, in conformity with national law, have the power to impose at least the following administrative sanctions and measures:

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

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

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

(d) dismissal of the members of the management bodies of the institutions responsible for a breach;

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

(f) in respect of a natural person, administrative pecuniary sanctions of up to EUR 5 million or up to 10 % of the total annual income of that person in the preceding calendar year;

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

3. Competent authorities may have other sanctioning powers in addition to those referred in paragraph 2 and may provide for higher levels of administrative pecuniary sanctions than those established in that paragraph.

4. Every administrative sanction or measure imposed for breaches of this Regulation shall be published without undue delay, including at least information on the type and nature of the breach and the identity of persons responsible for it, unless such disclosure would seriously jeopardise the stability of financial markets. Where publication would cause a disproportionate damage to the parties involved, competent authorities shall publish the measures and sanctions on an anonymous basis.

The publication of sanctions shall comply with fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, in particular with the right to respect of private and family life and the right to the protection of personal data.

Article 61
Effective application of sanctions

1. When determining the type and level of administrative sanctions or measures, the competent authorities shall take into account the following criteria:

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

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

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

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

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

   (f) previous breaches by the responsible person.

2. Additional factors may be taken into account by competent authorities, if such factors are specified in national law.

Article 62
Reporting of violations

1. Member States shall put in place effective mechanisms to encourage reporting of breaches of this Regulation to competent authorities.

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

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

   (b) appropriate protection for persons who report potential or actual breaches;

(c) protection of personal data concerning both the person who reports the potential or actual breaches and the accused person in compliance with the principles laid down in Directive 95/46/EC;

(d) appropriate procedure to ensure the rights of defence and to be heard of the accused person before the adoption of a final decision affecting that person and the right to seek effective remedy before a tribunal against any decision or measure affecting that person.

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

Article 63
Delegation of powers

The Commission shall be empowered to adopt delegated acts in accordance with Article 64 concerning Articles 2(2), 22(6), 23(1), 23(4), 30(1), 30(3), 37(1), 50(1), 50(2), 50(3), 51(2) and 51(3).

Article 64
Exercice of the delegation

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

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

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

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

5. A delegated act adopted pursuant to Article 63 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two 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 two months at the initiative of the European Parliament or the Council.

Article 65
Implementing powers

The Commission shall be empowered to adopt implementing acts under Article 23(6) and the third subparagraph of Article 52(2). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 66(2).

Article 66
Committee procedure

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC[25]. That Committee shall be a committee in the meaning of Regulation (EU) No 182/2011.

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

Article 67
Transitional provisions

1. Institutions that have been notified to ESMA as CSDs under the conditions set out under Article 19(4) shall seek all authorisations that are necessary for the purposes of this Regulation within two years from the date of entry into force of this Regulation.

2. Within two years from the date of entry into force of this Regulation, a CSD established in a third country shall seek either authorisation from the competent authority of the Member State in which the CSD provides its services where it intends to provide its services on the basis of Article 14, or recognition from ESMA where it intends to provide its services on the basis of Article 23.

3. Where, on the date of entry into force of this Regulation, a CSD established in a third country, already provides services in a Member State in accordance with the national law of that Member State, that CSD shall be permitted to continue to provide services until such time as the authorisation referred to in Article 14 or the recognition referred to in Article 23 is granted or rejected.

4. Links between a CSD established in a third country and CSDs authorised in the Member States shall be accepted until such time as the authorisation referred to in Article 14 or the recognition referred to in Article 23 is granted or rejected.

Article 68
Amendment to Directive 98/26/EC

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

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

2. Six months after the entry into force of this Regulation at the latest, Member States shall adopt and publish and communicate to the Commission measures necessary to comply with the provisions of paragraph 1.

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

Article 69
Reports and review

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

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

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

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

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

Article 70

Entry into force and application

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

2. Article 5 shall apply from 1 January 2015.

3. Article 3(1) shall apply from 1 January 2020.

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

ANNEX

List of Services

Section A
Core services of central securities depositories

1. Initial recording of securities in a book-entry system ('notary service');

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

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

Section B
Non-banking type of ancillary services of central securities depositories

Services provided by the CSDs that contribute to enhancing the safety, efficiency and transparency of the securities markets, including:

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

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

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

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

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

   (a) Services related to shareholders' registers;

   (b) Initiating the processing of corporate actions, including tax, general meetings and information services;

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

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

3. Maintaining securities accounts in relation to the settlement service, collateral management and other ancillary services.

4. Any other services, such as:

   (a) Providing general collateral management services as agent;

   (b) Providing regulatory reporting;

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

(d) Providing IT services.

Section C
Banking type of ancillary services

1. Banking type of services for the participants to a securities settlement system related to the settlement service, such as

   (a) Providing cash accounts;

   (b) Accepting cash deposits;

   (c) Providing cash credit;

   (d) Lending securities.

2. Banking type of services related to the other core or ancillary services listed in Sections A and B, such as:

   (a) Providing cash accounts for settlement and accepting cash deposits from the holders of securities accounts;

   (b) Lending securities to the holders of securities accounts;

   (c) Banking type of services facilitating the processing of corporate actions, such as:

      – (i) Pre-financing income and redemption proceeds;

      – (ii) Pre-financing tax reclaims.

ANNEX

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned in the ABM/ABB structure

1.3. Nature of the proposal/initiative

1.4. Objective(s)

1.5. Grounds for the proposal/initiative

1.6. Duration and financial impact

1.7. Management method(s) envisaged

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

2.2. Management and control system

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 impact on expenditure

3.2.1. Summary of estimated impact on expenditure

3.2.2. Estimated impact on operational appropriations

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party participation in financing

3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Regulation of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC

1.2. Policy area(s) concerned in the ABM/ABB structure[26]

Internal Market – Financial markets

1.3. Nature of the proposal/initiative

☒ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action**[27]

☐ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objectives

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

Increase the safety and the efficiency of the financial markets; boost the internal market for financial services

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

Specific objectives:

In the light of the general objectives above, the following specific objectives are sought:

- Increase safety of cross-border settlement
- Increase efficiency of cross-border settlement
- Ensure a level playing field for CSD services

[26] ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

[27] As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

1.4.3. Expected result(s) and impact

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

The proposal aims at:

- Increasing the safety and efficiency of settlement by harmonising settlement periods and ensuring the large majority of transferable securities are issued in book entry form
- Improving settlement discipline by creating an appropriate and harmonised framework to prevent and address settlement fails
- Regulating appropriately all CSDs operating in the EU
- Ensuring consistency of requirements for CSDs and coordination in supervision by national regulators
- Reducing costs of cross-border settlement for investors
- Providing more choice to issuers and investors by increasing access to CSDs
- Increasing level playing field in the competition between CSD services, leading potentially to better quality and lower fees for CSD services for issuers and investors

1.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

- A report assessing settlement efficiency for each EU market. Indicators could include number and volume of settlement fails (differentiated between domestic and cross-border transactions), volume of CSD penalties, number of buy-in procedures and number of cases of suspension of membership due to systematic failures to settle
- A report measuring the volume of market claims, to assess whether the harmonisation of settlement periods has led to an increased efficiency of corporate actions
- A report measuring internalisation of settlement by custodians outside of securities settlement systems operated by CSDs. This information is important in terms of systemic risk and to help assess whether EU intervention may be necessary in this respect
- A report assessing whether cross-border activity is increasing. Indicators could include number of CSD links, number of foreign participants to CSDs, volume of transactions for foreign participants and numbers of issuers accessing foreign CSDs
- A report analysing prices in the EU for the key CSD services, such as settlement and safekeeping for cross-border and domestic transactions
- A survey of CSDs, issuers and other market infrastructures to assess to what extent the measures taken have eliminated barriers of access or whether obstacles (of practical or legal

nature) still remain

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

As a result of the application of the Regulation in Member States:

- Settlement periods would be harmonised
- The large majority of transferable securities would be issued in book entry form
- Settlement discipline would be increased by creating an appropriate and harmonised framework to prevent and address settlement fails
- All CSDs operating in the EU would be regulated appropriately, based on the same set of requirements
- The authorisation and supervision of CSDs would be harmonised and the coordination between national regulators would be improved
- Access to CSDs (by issuers, other CSDs and other market infrastructures) and from CSDs (to other CSDs and other market infrastructures) would be increased and the conditions for access would be harmonised

1.5.2. Added value of EU involvement

- Financial markets are inherently cross-border in nature and are becoming increasingly so. The nature of problems identified with respect to CSD services, and particularly settlement in the EU relate essentially to cross-border transactions. Consequently, the effectiveness of remedies implemented in an autonomous and uncoordinated way by individual Member States would likely be very low in a cross-border context
- The systemic nature of CSDs and their increasing interconnection in Europe calls for coordinated action
- Related aspects are covered by the existing acquis communautaire, notably the Financial Collateral Arrangements Directive, the Settlement Finality Directive (SFD), the Market in Financial Instruments Directive (MiFID), the Capital Requirements Directive (CRD) as well as the possible future Securities Law Directive. Any new proposal would need to tie in perfectly with these EU measures. This can be best achieved in a common effort

1.5.3. Lessons learned from similar experiences in the past

CSDs are important institutions for the financial markets in that they ensure the recording and safekeeping of securities and operate the systems that ensure settlement of securities transactions, which means the effective delivery of securities against cash. As such, they are important financial market infrastructures, alongside trading venues, central counterparties (CCPs) and trade repositories (TRs). Trading venues are regulated by the Market in Financial

Instruments Directive (MiFID), while CCPs and TRs will also be regulated at EU level once the proposal for a regulation on derivative transactions, central counterparties and trade repositories will be approved by the European Parliament and the Council and will enter into force. MiFID has been applied since November 2007 and has resulted in more competition between venues for the trading of financial instruments and more choice for investors in terms of service providers and available financial instruments.

1.5.4. Coherence and possible synergy with other relevant instruments

Certain issues are already covered by existing Union legislation. For instance, securities settlement systems are already defined by Directive 98/26/EC on settlement finality in payment and securities settlement systems[28] and Directive 2004/39/EC (MiFID) provides for certain rules of access by market participants to the securities settlement system of their choice. Other issues are included in Commission proposals. For instance, the Commission proposal on short selling and certain aspects of Credit Default Swaps also address settlement discipline for certain categories of financial instruments, and the Commission proposal on derivative transactions, central counterparties and trade repositories establish rules for clearing, which is a process closely related to settlement. The proposed Regulation is consistent with these Union texts.

1.6. Duration and financial impact

☐ Proposal/initiative of **limited duration**

– ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY

☒ Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from 2013 to 2015,

– followed by full-scale operation.

1.7. Management mode(s) envisaged[29]

☐ **Centralised direct management** by the Commission

☐ **Centralised indirect management** with the delegation of implementation tasks to:

– ☐ executive agencies

– ☒ bodies set up by the Communities[30]

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28 OJ L166, 11.6/1998, p. 45

29 Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

30 As referred to in Article 185 of the Financial Regulation.

– ☐ national public-sector bodies/bodies with public-service mission

– ☐ persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

☐ **Shared management** with the Member States

☐ **Decentralised management** with third countries

☐ **Joint management** with international organisations ***(to be specified)***

If more than one management mode is indicated, please provide details in the "Comments" section.

Comments

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2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Article 81 of the draft Regulation establishing the European Securities and Markets Authority (ESMA) provides for the evaluation of the experience acquired as a result of the operation of ESMA within three years from the effective start of its operation. To this end, the Commission will publish a general report that will be forwarded to the European Parliament and to the Council.

2.2. Management and control system

2.2.1. Risk(s) identified

An impact assessment has been carried out for the proposal to reform the financial supervision system in the EU to accompany the draft Regulations establishing the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities Markets Authority.

The additional resource to ESMA foreseen as a result of the current proposal is needed in order to allow ESMA to carry out its competences and notably its role in:

- Ensuring a harmonised and improved regime for settlement discipline by ensuring consistency of the monitoring and reporting of settlement fails and by drafting standards for the measures to prevent and address settlement fails
- Ensuring harmonisation and coordination of rules applying to CSDs by drafting standards
- Reinforcing and ensuring consistent application of national regulatory powers by issuing guidelines regarding the cooperation between authorities and drafting standards specifying the content of the application for authorisation and the information to be provided to competent authorities and to be exchanged between authorities for supervision purposes
- Ensuring coordination and harmonisation of conditions of access granted to third country firms
- Ensuring harmonisation and coordination of rules regarding access to CSDs by participants, issuers and other CSDs, and between CSDs and other market infrastructures

The lack of this resource could not ensure a timely and efficient fulfilment of the role of ESMA.

2.2.2. Control method(s) envisaged

Management and control systems as provided for in the ESMA Regulation will apply also with regard to the role of ESMA according to the present proposal.

The final set of indicators to assess the performance of ESMA will be decided by the Commission at the time of conducting the first required evaluation. For the final assessment, the quantitative indicators will be as important as the qualitative evidence gathered in the consultations. The evaluation shall be repeated every three years.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

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 the ESMA without any restriction.

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 expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description……...…….]	Diff./non-diff. (31)	from EFTA[32] countries	from candidate countries[33]	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	12.0404.01 [ESMA – Subsidy under Titles 1 and 2 (Staff and administrative expenditure)]	Diff	YES	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

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31 Diff. = Differentiated appropriations / Non-diff. = Non-Differentiated Appropriations

32 EFTA: European Free Trade Association.

33 Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:	1A	Competitiveness for Growth and Employment

DG: MARKT			Year **2013**[34]	Year **2014**	Year **2015**					**TOTAL**
• Operational appropriations										
12.0404.01	Commitments	(1)	0,385	0,354	0,354					**1,093**
	Payments	(2)	0,385	0,354	0,354					**1,093**
Appropriations of an administrative nature financed from the envelope for specific programmes[35]										
Number of budget line		(3)								
TOTAL appropriations for DG MARKT	Commitments	=1+1a +3	0,385	0,354	0,354					**1,093**
	Payments	=2+2a +3	0,385	0,354	0,354					**1,093**
• TOTAL operational appropriations	Commitments	(4)	0,385	0,354	0,354					**1,093**
	Payments	(5)	0,385	0,354	0,354					**1,093**
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations	Commitments	=4+ 6	0,385	0,354	0,354					**1,093**

34 Year N is the year in which implementation of the proposal/initiative starts.

35 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.

under HEADING 1A of the multiannual financial framework	Payments	=5+ 6	0,385	0,354	0,354					**1,093**

Comments:

The operational appropriations above are related to the specific tasks allocated to ESMA according to the proposal:

1) Tasks related to settlement discipline (2 regulatory standards, 1 guideline and repository tasks)

These measures aim to introduce consistent monitoring and reporting of settlement fails and to reduce settlement fails by implementing strict preventative and penalising measures.

ESMA will have to draft two regulatory technical standards regarding the measures to prevent settlement fails, the monitoring tools for identifying the likely fails, the measures to address fails and the details of the monitoring and reporting system in respect of fails.

ESMA will also have to issue guidelines to the authorities to ensure the consistent, efficient and effective enforcement of the measures to prevent and address settlement fails.

ESMA will also receive from the competent authorities the relevant data on settlement fails.

2) Tasks related to authorisation and supervision of CSDs (3 regulatory standards, 4 implementing standards, 1 guideline, repository and permanent tasks)

These measures aim to introduce a consistent authorisation and supervision framework for CSDs and to increase cooperation between authorities. This should, inter alia, reduce regulatory burden on the CSDs with cross-border operations.

ESMA will have to draft three regulatory technical standards and four implementing technical standards regarding the content of the application for authorisation, the information provided by CSDs to the competent authorities, the information exchanged between authorities for the purpose of supervision, and the cooperation between home and host authorities.

ESMA will have to draft guidelines to ensure the consistent, efficient and effective cooperation between authorities in the different assessments necessary for the application of the Regulation.

ESMA will have to maintain a detailed register of CSD activities in the Union, including names of authorised CSDs and of securities settlement systems operated by the CSDs, services provided, authorities in charge, third country CSDs, etc.

ESMA will play an important role in relation to non-EU CSDs intending to establish a branch or provide services without the establishment of a branch in the Union or intending to establish a link with a CSD in the Union. Most notably ESMA will have to assess whether such CSDs are subject to effective authorisation and supervision in their home countries and will have to establish cooperation agreements with the competent authorities in those countries.

ESMA will also have a number of other permanent tasks, including to intervene in case of disagreements between home and host authorities and to be informed in case of emergency situations.

3) Tasks related to the requirements for CSDs (8 regulatory standards, 2 implementing standards, 1 guideline, permanent tasks)

These measures aim to introduce consistent requirements for CSDs in respect of organisational and corporate governance matters, conduct of business, services and prudential framework. This should create a safer environment for CSD services and again reduce regulatory burden on the CSDs with cross-border operations.

ESMA will have to draft eight regulatory technical standards and two implementing technical standards in order to specify certain details in relation to a number of regulatory requirements for CSDs, namely for organisational matters, record keeping, access by participants, reconciliation of securities accounts, segregation of securities accounts, settlement finality, operational risk mitigation, capital requirements and CSD links.

ESMA will also have to issue guidelines regarding the CSDs' rules and procedures for managing a participant default.

ESMA will also have permanent tasks derived from its power to intervene in case of disagreements between authorities with respect to participants' access to CSDs.

4) Tasks related to the access requirements (3 implementing standards, permanent tasks)

These measures aim to increase efficiency by allowing issuers and investors access to the CSD of choice.

ESMA will have to draft three implementing technical standards in relation to the procedure of access from issuers to CSDs, between CSDs, and between CSDs and other market infrastructures.

ESMA will also have permanent tasks derived from its power to intervene in case of disagreements between authorities with respect to access.

5) Tasks related to the monitoring and evaluation of the proposal (2 annual reports)

ESMA will have to produce two annual reports, one to assess settlement efficiency for each EU market, based on the standardised reporting of settlement fails by market players, and the second to assess whether cross-border activity is increasing, based on the data recorded in the ESMA register.

Heading of multiannual financial framework:	**5**	" Administrative expenditure "

EUR million (to 3 decimal places)

		Year **2013**	Year **2014**	Year **2015**					**TOTAL**
DG: MARKT									
• Human resources		0	0	0					
• Other administrative expenditure		0	0	0					
TOTAL DG MARKT	Appropriations	0	0	0					
TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	0	0	0					

EUR million (to 3 decimal places)

		Year **2013**[36]	Year **2014**	Year **2015**					**TOTAL**
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0,385	0,354	0,354					**1,093**
	Payments	0,385	0,354	0,354					**1,093**

[36] Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. 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:

The specific objectives of the proposal are set out under 1.4.2. They will be reached through the legislative measures proposed, to be implemented at national level, and through the involvement of ESMA. While it is not possible to attribute concrete numerical outputs to each operational objective, ESMA's role and its contribution to the objectives of the proposal are described in detail in section 3.2.1.

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

– ☒ The proposal/initiative does not require the use of administrative appropriations

– ☐ The proposal/initiative requires the use of administrative appropriations, as explained below:

3.2.3.2. 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:

Comment:

No additional human and administrative resources will be needed in DG MARKT as a result of the proposal. Resources currently deployed to follow directive 1997/9/EC will continue to do so.

3.2.4. Compatibility with the current multiannual financial framework

– ☐ Proposal/initiative is compatible the current multiannual financial framework.

– ☒ Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

The proposal provides for extra tasks to be carried out by ESMA. This will require additional resources under budget line 12.0404.

– ☐ Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework[37].

3.2.5. Third-party contributions

– ☐ The proposal/initiative does not provide for co-financing by third parties

– ☒ The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year **2013**	Year **2014**	Year **2015**					Total
*Member States via EU national supervisors **	0,577	0,531	0,531					1,639
TOTAL appropriations cofinanced	0,577	0,531	0,531					1,639

* Estimation based on current financing mechanism in ESMA regulation (Member States 60%, Community 40%)

[37] See points 19 and 24 of the Interinstitutional Agreement.

3.3. Estimated impact on revenue

– ☒ Proposal/initiative has no financial impact on revenue.

– ☐ Proposal/initiative has the following financial impact:

  – ☐ on own resources

  – ☐ on miscellaneous revenue

Annex to the Legislative Financial Statement for a proposal for a Regulation of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC

The costs related to tasks to be carried out by ESMA have been estimated for staff expenditure (Title 1), in conformity with the cost classification in the ESMA draft budget for 2012 submitted to the Commission.

The proposal of the Commission include provisions for ESMA to develop 13 regulatory technical standards and 9 implementing technical standards that should ensure that provisions of highly technical nature are consistently implemented across the EU. In addition, ESMA will also have to develop 3 guidelines, mainly to ensure the efficient and effective cooperation between authorities and 2 annual reports to monitor and evaluate the effectiveness of the Regulation, will hold the register of CSDs and will have a number of other permanent tasks.

Regarding the timing, it has been assumed that the Regulation will enter into force in early 2013, and therefore that the additional ESMA resources are required from 2013. Additional staff has been estimated only for the technical standards, guidelines and reports to be produced by ESMA; it has been assumed that ESMA can carry out its other permanent tasks, such as in relation to non-EU CSD recognition and mediation between authorities with its existing staff. As regards the nature of positions, the successful and timely delivery of new technical standards will require, in particular, additional policy, legal and impact assessment officers.

The following assumptions were applied to assess the impact on number of FTEs required to develop technical standards, guidelines and reports:

- One policy officer drafts on average 5 technical standards a year and the same policy officer can draft the related guidelines or reports. This implies that 4 policy officers are needed;

- One impact assessment officer is needed for the technical standards above;

- One legal officer is needed for the technical standards and guidelines above.

This means an additional 6 FTEs are needed from 2013.

It was assumed that this increase in FTEs will be maintained in 2014 and 2015 since the standards will most likely be finalised only in 2014 and amendments may be required in 2015.

Other assumptions:

- Based on the distribution of FTEs in 2012 draft budget, the additional 6 FTEs are assumed to be comprised of 4 temporary agents (74%), 1 seconded national expert (16%) and 1 contractual agent (10%);

- Average annual salary costs for different categories of personnel are based on DG BUDG guidance;

- Salary weighting coefficient for Paris of 1.27;

- Training costs assumed at €1,000 per FTE per year;
- Mission costs of €10,000, estimated based on 2012 draft budget for missions per headcount;
- Recruiting-related costs (travel, hotel, medical examinations, installation and other allowances, removal costs, etc) of €12,700, estimated based on 2012 draft budget for recruiting per new headcount.

The method of calculating the increase in the required budget for the next three years is presented in more detail in table below. The calculation reflects the fact that that the Community budget funds 40% of the costs.

Cost type	**Calculation**	**Amount (in thousands)**			
		2013	**2014**	**2015**	**Total**
Title 1: Staff expenditure					
11 Salaries and allowances					
- of which temporary agents	=4*127*1,27	645	645	645	1,935
- of which SNEs	=1*73*1,27	93	93	93	278
- of which contract agents	=1*64*1,27	81	81	81	244
12 Expenditure related to recruitment	=6*12,7	76			76
13 Mission expenses	=6*10	60	60	60	180
15 Training	=6*1	6	6	6	18
Total Title 1: Staff expenditure		961	885	885	2,732
Of which Community contribution (40%)		385	354	354	1,093
Of which Member State contribution (60%)		577	531	531	1,639

The following table presents the proposed establishment plan for the four temporary agent positions.

Function group and grade	**Temporary posts**
AD 8	1
AD 7	1
AD 6	1
AD 5	1
AD total	**4**