

REVIEW OF THE REGULATION ON CENTRAL SECURITIES DEPOSITORIES: SETTLEMENT DISCIPLINE

Background

Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union (EU) and central securities depositories entered into force in 2014.

This Regulation establishes, inter alia, certain requirements related to the settlement cycle and settlement discipline, as well as common requirements for central securities depositories. In particular, it establishes that the intended settlement date shall be no later than the second business day after trade (T+2) for trades in transferable securities executed on trading venues. It also includes rules on settlement discipline, to prevent and remedy securities settlement fails related to: i) reporting requirements; ii) the cash penalties regime; and iii) the mandatory buy-in regime. The reporting requirements and cash penalties entered into force on 1 February 2022. With regard to mandatory buy-ins, it was decided to postpone the entry into force until November 2025, in the expectation that the review under way of the Regulation establishes a new framework.

Review of the Regulation (CSDR Refit)

On 27 December 2023, Regulation (EU) No 2023/2845 amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories and amending Regulation (EU) No 236/2012 was published in the Official Journal of the European Union on 27 December 2023. The main new developments are:

With regard to the settlement cycle: it includes a mandate for the European Securities and Markets Authority to carry out an assessment regarding the potential shortening of the settlement cycle in the EU.

With regard to settlement discipline:

- The scope of the cash penalties and mandatory buy-in regimes is reduced. They will not apply to transactions that fail for reasons that are not attributable to the participants or to transactions that do not involve two trading parties (such as certain primary market transactions, corporate transactions, reorganisations or the creation and redemption of investment fund units). They will also not apply if the failing participant is a central counterparty or in transactions in which insolvency proceedings are opened against the failing participant.
- Cash penalties. The Commission will review the parameters used to calculate the cash penalties in order to eliminate any adverse incentives to fail that could arise in a low or negative interest rate environment.
- Mandatory buy-in regime:
 - i) In addition to the exclusions mentioned above, the buy-in regime will not apply to securities financing transactions or to transactions already governed by Article 15 of Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps.
 - ii) The European Commission may introduce this scheme as a measure of last resort provided that these two conditions are met: the current measures do not result in a long-term sustainable reduction of settlement fails or the maintenance of a reduced level of settlement fails, and the level of settlement fails may have a negative effect on the financial stability of the Union.
 - iii) A pass-on mechanism should be implemented, so that each participant involved in the transaction chain can pass on a buy-in obligation to the next participant. This measure is intended to avoid duplication of costs and certain negative effects on the liquidity of a financial instrument if several buy-ins are applied within a chain.