Settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories

2022/0074(COD) - 16/03/2022 - Legislative proposal

PURPOSE: to amend certain elements of the Central Securities Depositories (CSD) Regulation in order to eliminate compliance burdens and disproportionate costs and simplify the rules without undermining investor protection, market integrity and financial stability.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Regulation (EU) No 909/2014 of the European Parliament and of the Council standardises the requirements for the settlement of financial instruments and the rules on the organisation of central securities depositories (CSDs) and the conduct of their business, in order to promote safe, efficient and smooth settlement.

CSDs play an essential role in the financing of the economy through their role in the issuance of securities and by allowing securities transactions to be completed. CSDs also play an important role in the implementation of monetary policy by central banks. As CSDs are systemically important financial institutions for the financial markets, it is essential that the framework applicable to them remains fit for purpose.

The CSD Regulation required the Commission to review the Regulation and report on its implementation and the way forward for its revision by 19 September 2019. In its resolution on the further development of the Capital Markets Union, the European Parliament also called on the Commission to review, in the context of Brexit and the COVID-19 crisis, the settlement discipline regime of the CSD Regulation.

In 2019, the Commission conducted a targeted consultation on the application of Regulation (EU) No 909 /2014. On 1 July 2021, the Commission adopted a report concluding that, overall, the CSD Regulation is achieving its original objectives of increasing the efficiency of securities settlement in the EU and the soundness of CSDs. In most areas, it considered it premature to make substantial changes to the Regulation. However, it indicated areas where further action might be needed to **achieve the objectives of the CSD Regulation in a more proportionate, effective and efficient way**.

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

CONTENT: the proposal aims to adjust the requirements of Regulation (EU) No 909/2014 on CSDs without compromising its overall objectives, in order to: (i) **simplify these requirements and make them more efficient**; and (ii) **reduce the disproportionate costs and burdens arising from them**.

In concrete terms, the proposal aims to:

- minimise obstacles to cross-border settlements and reduce the administrative burden and compliance costs by simplifying the **passporting process** under the CSD Regulation. The possibility for the supervisory authority of the host Member State to refuse the passport is to be abolished and replaced by a notification from the supervisory authority of the home Member State to the supervisory authority of the host Member State. According to the Commission, the simplified passporting process is expected to reduce costs by up to 75%, generating a one-off saving of EUR 585 000 on average per CSD;

- enhance the cooperation between national supervisors by establishing colleges of supervisors to facilitate CSDs' access to markets other than their home market and ensure financial stability by providing supervisors with more powers to monitor risks;

- **facilitate CSDs' access to banking-type ancillary services** by allowing CSDs with a banking license to offer such services to other CSDs and reviewing the thresholds below which CSDs may use a commercial bank. It is estimated that the proposed measures regarding CSDs' access to bank-like ancillary services could generate EUR 16 billion of additional foreign currency securities settlement on an annual basis;

- combine the clarification of various elements related to **settlement discipline** with a revision of the implementation timeline for **mandatory buy-ins**. It is proposed to clarify the scope of application of cash penalties and automatic buy-backs by specifying, inter alia, the categories of transactions that are excluded from them. Such exclusions should cover in particular transactions that failed for reasons not attributable to the participants and transactions that do not involve two trading parties, for which the application of cash penalties or mandatory buy-ins would not be practicable or could lead to detrimental consequences for the market;

- introduce an expiry date for the grandfathering clause for EU and third country CSDs and a **notification requirement for third country CSDs**, thus ensuring that authorities within the EU have the powers and information they need to monitor the risks associated with both EU and third country CSDs, including through enhanced supervisory cooperation.

BUDGETARY IMPLICATIONS: the proposal will have no implications on the EU budget. The European Securities and Markets Authority (ESMA) will be mainly affected by the participation in colleges, the development or updating of five technical standards and the management of the notification procedure by third country CSDs of their activities in the EU. However, this last point represents a limited one-off cost. The tasks proposed for ESMA therefore do not require the creation of additional posts and can be carried out with existing resources. The same applies to the EBA.