

CSD Regulation.

Reference text:

Final text dated published to the EC Journal Officiel of 2014, August the 28th.

http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=uriserv:OJ.L_.2014.257.01.0001.01.FRA

<http://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:32014R0909&from=FR>

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0909&from=FR>

Final level II text dealing with CSD agreement, internalized settlement reports and penalties calculation.

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2017:065:TOC>

Date(s) of effect:

Officially published on 2014, August the 28th, this regulation enters into force on 2014 September the 17th with few exceptions, some parts being immediately effective and some others needing ESMA and EBA standards.

- "T+2" (settlement cycle within the 2 days after the trading date) is mainly in place (deadline on January 2015, the 1st or six months before any outsourcing of a Securities Settlement Engine-SSE),
- Securities dematerialization or immobilization (before 2023 for new issuance, and 2025 for all)
- CSD has 6 months delays after ESMA or EBA standards enforcement currently supposed this deadline is supposed to be between end of 2016 and 2017 first quarter.
- Following measures are already effective:
 - o General framework (scope, concepts)
 - o Book entry principle for dematerialized tradable securities
 - o Account segregation possibilities for client of CSD participant at CSD level
 - o Definition of Settlement Finality 1 by each CSD
 - o Outsourcing possibilities for core CSD function (SSE in view of T2S).
- Following measures imply publication of technical advice or technical standards by ESMA or EBA and their publication was initially planned for summer 2016 but first final technical standards (CSD agreements, Settlement Internalisers, Penalties calculation) has been published in March 2017 (with implementation phase):
 - o Settlement discipline regime including information and confirmation of trade execution as quick as possible (standards not published), obligation to report "internal settlement" (standards published) in to authorities, penalties and "buy in" procedures (not published). ESMA mentions a 24 months period of implementation ("phasing") leading to effective implementation during summer 2018.
 - o Business framework for CSD activities (designation of competent authorities, CSD licensing, passport of CSDs, third countries CSDs, organizational and transparency rules and CSD governance, risk mitigation, integrity of issuance, free choice of a CSD for an issuer... (standards published)
 - o Segregation between CSD business and banking activities including derogatory regime (standards published)
 - o Interoperable links between CSDs before September 2019 (standards published).

Following its Discussion Paper of March 2014 (deadline for answers on 2014 May the 22nd) ESMA leaded a public consultation in December 2014 the 18th on draft technical standards and a technical advice to the Commission on delegated acts concerning penalties for settlement defaults with a deadline on 2015, February the 19th).

In the same time, EBA, in cooperation with ESMA has launched a consultation on banking service provision and credit and liquidity risks monitoring including intraday aspects on 2015, February the 27th with a deadline on 2015, April the 27th.

Following its demand for delay, ESMA has published draft technical standards on 2015, September the 28th to European Commission regarding measures related to CSDs and internal settlement report from custodian to their authorities. This has been completed by prudential measures related to banking activities complementing CSD ones.

The Authority has decided to make a new consultation during the summer 2015 regarding where execution of Buy In should be executed or operated (trading party, trading party with fall-back option, CSD participant level operating the buy-in) and ESMA published its draft technical standards and

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associated reports in 2016 February, the 1st. As already mentioned some standards have already been published.

If no adaptation period is mentioned, standards are enforced 20 days after their publication to the official gazette of European Union. An exceptional extension of 24 months of “phasing” period has been suggested by standards for settlement discipline implementation due to T2S waves.

Presentation

The European CSD text has the objective of defining the regulatory framework in which the function of Central Securities Depository must be exercised and of improving settlement in Europe. This text takes the form of a regulation enabling immediate application without requiring transposition into local law.

The draft is based around 6 chapters and an annex specifying the services falling within the scope of the CSD regulation.

Title 1 describes general framework of the text (scope and concepts). It defines the Central Securities Depository as a legal entity managing a settlement/delivery system and holding either a notarial position or a central securities account management position (article 2 (1) and appendix A).

Title 2 has the purpose of improving settlement and associated discipline in Europe:

- By imposing book entry principle for listed securities on regulated markets (article 3) with a deadline postponed in 2025.
- By instituting a settlement/delivery cycle taking place a maximum of two days after trading date (T) (article 5). It targets securities not represented by certificates admitted for the operations of the central securities depository and traded on regulated market (and on the MTF and OTF trading platforms). Harmonisation on “T+2” must be effective by 1st January 2015 with specific cases of postponement to 2016 or six months before a T2S migration. Over The Counter operations are by definition excluded from the scope.
- By describing measures for management of settlement failures (articles 6 and 7), in particular by implementing penalties and Buy In procedures. Proposals vary within a window of deadlines between 4 to 7 days after Intended Settlement Date with exception for SME growth securities (14 days). Potentially each CSD may define its own deadline in this window. The level 1 text approach is strict with a systematic (mandatory) Buy In procedure. The level 2 standards are looking into where to operate this Buy In procedure. Procedure should take in account cooperation between CCPs and CSDs.
- By imposing to Custodians to report “internalised settlement” every 3 months, meaning settlement done in the books of a bank.

Title 3 aims to design the business framework for CSD activities. It;

- defines the framework for issuing licences and for supervision of CSDs defined by the local market authorities reporting to the ESMA,
 - o it includes supervision by National Central Bank concerned by the currency of payment
 - o the licence may include investment services, provided the CSD complies with MIF
- permits a CSD to outsource core services (art. 19) allowing T2S to be used by CSD
- introduces the concept of passports for CSDs, (art. 23)
- authorises third countries CSD to operate in Europe provided being respectful of the rules of hosting country and authorises European CSDs to have links with third countries CSDs.
- Imposes rules of organisations and transparency to CSD, rules of security and integrity including to CSD participants the obligation to offer segregated accounts in the name of the clients at CSD level if requested by the investor.
- Imposes CSD to define SF1 (moment of entry)
- Defines rules in regards with risk mitigation (capital requirements, investments, links...)
- authorises an issuer to freely choose its central securities depository guarantor of its issue.

Title 4 defines a clear separation between the banking institutions and the Central Securities Depository is established and conveyed by segregation between the settlement/delivery activities and their translation into cash, which is assured by the banks (central or commercial). The principle of a

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“limited purpose bank” is introduced to offer ancillary services to Settlement (art 54-5). However CSD may provide services listed in appendix C with a specific derogation.

The last chapters cover sanctions and fix the period for adaptation of CSDs affected by the text depending on the issuance of ESMA Standards.

Current situation:

14 March 2012: draft text adopted by the Commission
4 April 2012: starting period of Council negotiation
4 February 2013 : ECON vote of the amended project (Parliament process only)..
20 May 2013 Parliament Plenary vote.
25 September 2013: Council agreement allowing trilog process (Council, Parliament, Commission).
24 February 2014 COREPER final acceptance
15 April 2014 vote by European Parliament
22 May deadline to answer to ESMA Discussion Paper
28 August 2014 : official publication at “Journal Officiel” of European Commission
17 September 2014 text enforcement provided exceptions or publication of standards if needed.
18 December 2014 ESMA consultation on technical standards and technical advice and delegated act related to penalties on settlement default.
6 October 2014 voluntary switch to T+2 of the main part of European securities industry following the French Initiative
1st January 2015 : deadline to switch to T+2 (exception of Spanish market)
19 February 2015 ESMA Consultation deadline
27 February 2015 EBA Consultation (standards on liquidity and banking aspects)
27 April 2015 end of EBA Consultation
18 June 2015 initial deadline for ESMA standards and technical advice presentation to European Commission, postponed to September 2015.
6 August 2015 End of the specific ESMA Consultation on Buy In
18 September 2015 ESMA publication of draft standards and technical advice regarding CSD regulatory framework and reporting of internal settlement by custodians.
15 December 2015 EBA publication of draft standards on prudential measures regarding banking activities dedicated to CSD
1st February 2016 publication of draft technical standards and associated reports on settlement discipline regime.
4 October 2016, final switch to T+2 of Spain (listed securities)
11 November 2016, publication of final technical standards (Level II) regarding licensing of CSD and agreement procedure, quarterly reporting of settlement internalisers and penalties calculation mechanism.
10 March 2017, official publication of above final texts
23 Mars 2017, ESMA guides publication on CSD participant default procedure and CSD access for CCP and Regulated Markets

Prochaines étapes :

Fin d'été, début de l'automne 2017 nouvel objectif de publication des textes de niveau II relatifs à la discipline de dénouement avec une période dite de « phasing » de 24 mois (fin 2019)

1^{er} Janvier 2023 tout nouveau titre émis devra être dématérialisé (ou immobilisé)

1^{er} Janvier 2025 tout les titres devront être dématérialisés (ou immobilisés).

Next steps:

End of September 2017 deadline for CSD to present their form for licensing

End of summer or beginning of autumn 2017, new goal for level II texts publication related to settlement discipline

March 2018 CSD agreements

End 2018, 1st quarter 2019 end of « phasing » period to implement settlement discipline regime

1st January 2023 any new security shall be issued in book entry

1^{er} January 2025 all securities shall be in book entry

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Find out more:

Impact study

http://ec.europa.eu/internal_market/financial-markets/docs/SWD_2012_22_en.pdf