

Regulation (EU) No 909/2014 of the European Parliament and of the Council
of 23 July 2014 on improving securities settlement in the European Union
and on central securities depositories and amending Directives 98/26/EC and
2014/65/EU and Regulation (EU) No 236/2012 (Text with EEA relevance)

TITLE II

SECURITIES SETTLEMENT

CHAPTER III

Settlement discipline

Article 6

Measures to prevent settlement fails

1 Trading venues 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 transaction has been executed.

2 Notwithstanding the requirement laid down in paragraph 1, investment firms authorised pursuant to Article 5 of Directive 2014/65/EU shall, where applicable, take measures to limit the number of settlement fails.

Such measures shall at least consist of arrangements between the investment firm and its professional clients as referred to in Annex II to Directive 2014/65/EU to ensure the prompt communication of an allocation of securities to the transaction, confirmation of that allocation and confirmation of the acceptance or rejection of terms in good time before the intended settlement date.

ESMA shall, in close cooperation with the members of the ESCB, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 on the standardised procedures and messaging protocols to be used for complying with the second subparagraph of this paragraph.

3 For each securities settlement system it operates, a CSD shall establish procedures that facilitate the settlement of transactions in financial instruments referred to in Article 5(1) on the intended settlement date with a minimum exposure of its participants to counterparty and liquidity risks and a low rate of settlement fails. It shall promote early settlement on the intended settlement date through appropriate mechanisms.

4 For each securities settlement system it operates, a CSD shall put in place measures to encourage and incentivise the timely settlement of transactions by its participants. CSDs shall require participants to settle their transactions on the intended settlement date.

5 ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the measures to be taken by investment firms in accordance with the first subparagraph of paragraph 2, the details of the procedures facilitating settlement referred to in paragraph 3 and the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4.

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) No 909/2014 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with 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 relevant authorities, as to the number and details of settlement fails and any other relevant information, including the measures envisaged by CSDs and their participants to improve settlement efficiency. Those reports shall be made public by CSDs in an aggregated and anonymised form on an annual basis. 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 penalty mechanism which will serve as an effective deterrent for participants that cause settlement fails.

Before establishing the procedures referred to in the first subparagraph, a CSD shall consult the relevant trading venues and CCPs in respect of which it provides settlement services.

The penalty mechanism referred to in the first subparagraph shall include cash penalties for participants that cause settlement fails ('failing participants'). Cash penalties shall be calculated on a daily basis for each business day that a transaction fails to be settled after its intended settlement date until the end of a buy-in process referred to in paragraph 3, but no longer than the actual settlement day. The cash penalties shall not be configured as a revenue source for the CSD.

3 Without prejudice to the penalty mechanism referred to in paragraph 2 and the right to bilaterally cancel the transaction, where a failing participant does not deliver the financial instruments referred to in Article 5(1) to the receiving participant within 4 business days after the intended settlement date ('extension period') a buy-in process shall be initiated whereby those instruments shall be available for settlement and delivered to the receiving participant within an appropriate time-frame.

Where the transaction relates to a financial instrument traded on an SME growth market the extension period shall be 15 days unless the SME growth market decides to apply a shorter period.

4 The following exemptions from the requirement referred to in paragraph 3 shall apply:

- a based on asset type and liquidity of the financial instruments concerned, the extension period may be increased from four business days up to a maximum of seven business days where a shorter extension period would affect the smooth and orderly functioning of the financial markets concerned;
- b for operations composed of several transactions including securities repurchase or lending agreements, the buy-in process referred to in paragraph 3 shall not apply where

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the timeframe of those operations is sufficiently short and renders the buy-in process ineffective.

5 Without prejudice to paragraph 7, the exemptions referred to in paragraph 4 shall not apply in relation to transactions for shares where those transactions are cleared by a CCP.

6 Without prejudice to the penalty mechanism referred to in paragraph 2, where the price of the shares agreed at the time of the trade is higher than the price paid for the execution of the buy-in, the corresponding difference shall be paid to the receiving participant by the failing participant no later than on the second business day after the financial instruments have been delivered following the buy-in.

7 If the buy-in fails or is not possible, the receiving participant can choose to be paid cash compensation or to defer the execution of the buy-in to an appropriate later date ('deferral period'). If the relevant financial instruments are not delivered to the receiving participant at the end of the deferral period, cash compensation shall be paid.

Cash compensation shall be paid to the receiving participant no later than on the second business day after the end of either the buy-in process referred to in paragraph 3 or the deferral period, where the deferral period was chosen.

8 The failing participant shall reimburse the entity that executes the buy-in for all amounts paid in accordance with paragraphs 3, 4 and 5, including any execution fees resulting from the buy-in. Such fees shall be clearly disclosed to the participants.

9 CSDs, CCPs and trading venues shall establish procedures that enable them to suspend in consultation with their respective competent authorities, any participant that fails consistently and systematically to deliver the financial instruments referred to in Article 5(1) on the intended settlement date and to disclose to the public its identity only after giving that participant the opportunity to submit its observations and provided that the competent authorities of the CSDs, CCPs and trading venues, and of that participant have been duly informed. In addition to consulting before any suspension, CSDs, CCPs and trading venues shall notify, without delay, the respective competent authorities of the suspension of a participant. The competent authority shall immediately inform the relevant authorities of the suspension of a participant.

Public disclosure of suspensions shall not contain personal data within the meaning of point (a) of Article 2 of Directive 95/46/EC.

10 Paragraphs 2 to 9 shall apply to all transactions of the financial instruments referred to in Article 5(1) which are admitted to trading or traded on a trading venue or cleared by a CCP as follows:

- a for transactions cleared by a CCP, the CCP shall be the entity that executes the buy-in according to paragraphs 3 to 8;
- b for transactions not cleared by a CCP but executed on a trading venue, the trading venue shall include in its internal rules an obligation for its members and its participants to apply the measures referred to in paragraphs 3 to 8;
- c for all transactions other than those referred to in points (a) and (b) of this subparagraph, CSDs shall include in their internal rules an obligation for their participants to be subject to the measures referred to in paragraphs 3 to 8.

A CSD shall provide the necessary settlement information to CCPs and trading venues to enable them to fulfil their obligations under this paragraph.

Without prejudice to points (a), (b) and (c) of the first subparagraph, CSDs may monitor the execution of buy-ins referred to in those points with respect to multiple settlement instructions, on the same financial instruments and with the same date of expiry of the

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execution period, with the aim of minimising the number of buy-ins to be executed and thus the impact on the prices of the relevant financial instruments.

11 Paragraphs 2 to 9 shall not apply to failing participants which are CCPs.

12 Paragraphs 2 to 9 shall not apply if insolvency proceedings are opened against the failing participant.

13 This Article shall not apply where the principal venue for the trading of shares is located in a third country. The location of the principal venue for the trading of shares shall be determined in accordance with Article 16 of Regulation (EU) No 236/2012.

14 The Commission shall be empowered to adopt delegated acts in accordance with Article 67 to specify parameters for the calculation of a deterrent and proportionate level of the cash penalties referred to in the third subparagraph of paragraph 2 based on asset type and liquidity of the financial instrument and type of transaction that shall ensure a high degree of settlement discipline and the smooth and orderly functioning of the financial markets concerned.

15 ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify:

- a the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1;
- b the processes for collection and redistribution of cash penalties and any other possible proceeds from such penalties in accordance with paragraph 2;
- c the details of operation of the appropriate buy-in process referred to in paragraphs 3 to 8, including appropriate time-frames to deliver the financial instrument following the buy-in process referred to in paragraph 3. Such time-frames shall be calibrated taking into account the asset type and liquidity of the financial instruments;
- d the circumstances under which the extension period could be prolonged according to asset type and liquidity of the financial instruments, in accordance with the conditions referred to in point (a) of paragraph 4 taking into account the criteria for assessing liquidity under point (17) of Article 2(1) of Regulation (EU) No 600/2014;
- e type of operations and their specific time-frames referred to in point (b) of paragraph 4 that renders buy-in ineffective;
- f a methodology for the calculation of the cash compensation referred to in paragraph 7;
- g the conditions under which a participant is deemed consistently and systematically to fail to deliver the financial instruments as referred to in paragraph 9; and
- h the necessary settlement information referred to in the second subparagraph of paragraph 10.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

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

Article 8

Enforcement

1 The competent authority of the CSD that operates the securities settlement system, the relevant authority responsible for the oversight of the securities settlement system concerned as

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well as the competent authorities for the supervision of trading venues, investment firms and CCPs shall be competent for ensuring that Articles 6 and 7 are applied by the institutions subject to their supervision and for monitoring the penalties imposed. Where necessary, the respective competent authorities shall cooperate closely. Member States shall inform ESMA about the designated competent authorities that are part of the supervision structure at the national level.

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, in close cooperation with the members of the ESCB, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010.

3 An infringement of the rules under this Title shall not affect the validity of a private contract on financial instruments or the possibility for the parties to enforce the provisions of a private contract on financial instruments.

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Changes and effects yet to be applied to :

- Regulation power to amend or revoke conferred by [2023 c. 29 s. 1517](#)
- Regulation power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 1](#)
- Regulation power to modify conferred by [2023 c. 29 s. 1317](#)
- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 1](#)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Title 3 Ch. 3 s. 1 heading words inserted by [S.I. 2018/1320 reg. 19\(1\)](#)
- Title 3 Ch. 3 s. 2 heading words inserted by [S.I. 2018/1320 reg. 19\(3\)](#)
- Title 3 Ch. 3 s. 3 heading words inserted by [S.I. 2018/1320 reg. 19\(7\)](#)
- Title 6 heading words substituted by [S.I. 2018/1320 reg. 22\(1\)](#)
- Signature words omitted by [S.I. 2018/1320 reg. 22\(9\)](#)
- Annex s. C point (c) words substituted by [S.I. 2018/1320 reg. 23](#)
- Art. 2.1(1) substituted by [S.I. 2018/1320 reg. 6\(2\)\(a\)](#)
- Art. 2.1(3) substituted by [S.I. 2018/1320 reg. 6\(2\)\(b\)](#)
- Art. 2.1(5) words inserted by [S.I. 2018/1320 reg. 6\(2\)\(c\)](#)
- Art. 2.1(6) substituted by [S.I. 2018/1320 reg. 6\(2\)\(d\)](#)
- Art. 2.1(8)-(10A) substituted for Art. 2(1)(8)-(10) by [S.I. 2018/1320 reg. 6\(2\)\(e\)](#)
- Art. 2.1(11) words omitted by [S.I. 2018/1320 reg. 6\(2\)\(f\)](#)
- Art. 2.1(14) substituted by [S.I. 2018/1320 reg. 6\(2\)\(g\)](#)
- Art. 2.1(16A) inserted by [S.I. 2018/1320 reg. 6\(2\)\(h\)](#)
- Art. 2.1(17) substituted by [S.I. 2018/1320 reg. 6\(2\)\(i\)](#)
- Art. 2.1(18) omitted by [S.I. 2018/1320 reg. 6\(2\)\(j\)](#)
- Art. 2.1(19) substituted by [S.I. 2018/1320 reg. 6\(2\)\(k\)](#)
- Art. 2.1(21)(22) substituted by [S.I. 2018/1320 reg. 6\(2\)\(l\)](#)
- Art. 2.1(23)(24) substituted by [S.I. 2018/1320 reg. 6\(2\)\(m\)](#)
- Art. 2.1(25) substituted by [S.I. 2018/1320 reg. 6\(2\)\(n\)](#)
- Art. 2.1(26) substituted by [S.I. 2018/1320 reg. 6\(2\)\(o\)](#)
- Art. 2.1(29)-(33) substituted by [S.I. 2018/1320 reg. 6\(2\)\(p\)](#)
- Art. 2.1(35) substituted by [S.I. 2018/1320 reg. 6\(2\)\(q\)](#)
- Art. 2.1(36) omitted by [S.I. 2018/1320 reg. 6\(2\)\(r\)](#)
- Art. 2.1(37)-(43) substituted by [S.I. 2018/1320 reg. 6\(2\)\(s\)](#)
- Art. 2.1(44) omitted by [S.I. 2018/1320 reg. 6\(2\)\(t\)](#)
- Art. 2.1(45) words omitted by [S.I. 2018/1320 reg. 6\(2\)\(u\)\(ii\)](#)
- Art. 2.1(45) words substituted by [S.I. 2018/1320 reg. 6\(2\)\(u\)\(i\)](#)
- Art. 2.1(47)-(55) inserted by [S.I. 2018/1320 reg. 6\(2\)\(v\)](#)
- Art. 2.1(54) words substituted in earlier amending provision [S.I. 2018/1320, reg. 6\(2\)\(v\)](#) by [S.I. 2020/1301 reg. 3Sch. para. 8\(b\)](#)
- Art. 2(56) inserted by [S.I. 2021/1376 reg. 26\(2\)](#)
- Art. 20(1)(d) words substituted by [S.I. 2018/1320 reg. 11\(9\)\(a\)\(ii\)](#)
- Art. 22(10)(b)(c) omitted by [S.I. 2018/1320 reg. 12\(1\)\(c\)\(i\)\(bb\)](#)
- Art. 25(4)(a) words substituted by [S.I. 2018/1320 reg. 13\(d\)\(ii\)](#)
- Art. 25(4)(d) substituted by [S.I. 2018/1320 reg. 13\(d\)\(iii\)](#)
- Art. 25(5)(a)(b) omitted by [S.I. 2018/1320 reg. 13\(e\)\(ii\)](#)
- Art. 25(5)(c) word inserted by [S.I. 2018/1320 reg. 13\(e\)\(iii\)](#)
- Art. 25(6A) inserted by [S.I. 2018/1320 reg. 13\(g\)](#)
- Art. 25(7)(a) words substituted by [S.I. 2018/1320 reg. 13\(h\)\(ii\)](#)
- Art. 25(7)(b) words substituted by [S.I. 2018/1320 reg. 13\(h\)\(iii\)\(aa\)](#)

- Art. 25(7)(b) words substituted by S.I. 2018/1320 reg. 13(h)(iii)(bb)
- Art. 25(10)(a) word inserted by S.I. 2018/1320 reg. 13(k)(ii)(cc)
- Art. 25(10)(a) words omitted by S.I. 2018/1320 reg. 13(k)(ii)(bb)
- Art. 25(10)(a) words substituted by S.I. 2018/1320 reg. 13(k)(ii)(aa)
- Art. 25(10)(b) word inserted by S.I. 2018/1320 reg. 13(k)(iii)(bb)
- Art. 25(10)(b) words substituted by S.I. 2018/1320 reg. 13(k)(iii)(aa)
- Art. 30(1)(h) words omitted by S.I. 2018/1320 reg. 14(5)(a)(i)
- Art. 30(1)(i) words substituted by S.I. 2018/1320 reg. 14(5)(a)(ii)
- Art. 46(1)(d) words substituted by S.I. 2021/1376 reg. 26(3)
- Art. 49(1)-(1C) substituted for art. 49(1) by S.I. 2018/1320 reg. 19(2)(b)
- Art. 53(6) inserted by S.I. 2018/1320 reg. 19(8)(f)
- Art. 54(2)(b) words substituted by S.I. 2018/1320 reg. 20(1)(a)
- Art. 54(3)(a) words substituted by S.I. 2018/1320 reg. 20(1)(b)(i)
- Art. 54(3)(e) words substituted by S.I. 2021/1376 reg. 26(4)(a)(i)
- Art. 54(4)(a) words substituted by S.I. 2018/1320 reg. 20(1)(c)
- Art. 54(4)(f) words substituted by S.I. 2021/1376 reg. 26(4)(b)
- Art. 59(4)(h) word inserted by S.I. 2018/1320 reg. 20(6)(a)(iii)
- Art. 59(4)(h) word omitted by S.I. 2018/1320 reg. 20(6)(a)(ii)
- Art. 59(4)(h) words substituted by S.I. 2018/1320 reg. 20(6)(a)(i)
- Art. 59(4)(h) words substituted by S.I. 2018/1320 reg. 20(6)(a)(iv)