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Settlement discipline: supervisory approach on the implementation of the CSDR provisions

As of 1st February 2022, central securities depositories (CSDs) and their participants shall comply with settlement discipline measures with a particular supervisory approach regarding the mandatory buy-in regime.

To improve securities settlement in the European Union, the regulation on central securities depositories (CSDR) establishes three mechanisms aimed at reducing settlement fails:

- The reporting of settlement fails by CSDs to their authorities;
- The application of a cash penalty mechanism for participants that are responsible for settlement fails; and
- The mandatory buy-in regime allowing the compulsory enforcement of the non-settled original transactions.

The settlement fail reporting and cash penalty measures will apply as of 1st February 2022, while the application date of the buy-in process is to be officially postponed in the first half of 2022.

Entry into application of settlement fail reporting and cash penalty measures

Settlement fail reporting and cash penalty mechanisms applicable to CSDs and their participants will apply as of 1st February 2022.

Settlement fail reporting will facilitate the comparison of settlement default rates on a uniform basis across Europe. Such reporting will complement the detailed monitoring of settlement fails carried out by the AMF. This will also provide the public with access to an annual report on settlement fails published by each CSD.

Cash penalties will have the effect of financially sanctioning CSD participants responsible for a settlement fail. Penalties will be collected from defaulting participants and distributed to participants affected by settlement fails. From an operational point of view, CSDs (or central counterparties for cleared transactions) shall charge and collect cash penalties from failing participants and distribute them to relevant participants at least once a month. Since a participant may also act as an agent for its clients, CSDs should also provide participants with sufficient details regarding the penalty calculation to enable them to recover the cash penalty from their clients.

Together these measures notably require CSDs to implement arrangements for cash penalties to be collected from and distributed to their participants, who are, in turn, themselves strongly encouraged to organise modalities for penalties to be collected from and distributed to their clients.

AMF would expect CSDs, their participants and clients concerned to be diligent in preparing for this important step for improving securities settlement in the EU.

Specific supervisory approach on the implementation of the buy-in regime

The purpose of the mandatory buy-in process is to improve settlement efficiency by initiating a buy-in when financial instruments are not delivered within a certain time period after the intended settlement date of a transaction.

The current provisions governing the mandatory buy-in process raise many difficulties with respect to its implementation that have led the co-legislators to agree on an amendment to CSDR that will allow the postponement of the application date of this regime. This amendment should enter into force in the first half 2022 and should allow the modification of legal provisions regarding the application date of the mandatory buy-in regime, currently planned for February 1, 2022.

Ahead of the publication in the Official Journal of the European Union of the legislative text that will formalise the postponement of the mandatory buy-in regime application date, the European Securities and Markets Authority (ESMA) has asked national authorities, in a public statement published on 17 December 2021, not to prioritise supervisory actions in relation to the application of the CSDR buy-in regime.

The AMF supports this approach and confirms that it does not expect the industry to implement the buy-in regime on February 1, 2022.

Read more

- ✎ [European Commission Daily News \(25/11/2021\)](#)
- ✎ [ESMA Public statement on buy-in \(17/12/2021\)](#)

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