



European Securities and
Markets Authority

Final Report

CSDR RTS on Settlement Discipline – Suspension of buy-in



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Legislative references

CSDR	Central Securities Depositories Regulation – 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 (OJ L 257, 28.8.2014, p. 1–72)
DLT Pilot Regulation	Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, p. 1–33)
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).
RTS on settlement discipline	Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 230, 13.9.2018, p. 1)

Acronyms used

CSD	Central Securities Depository
ESCB	European System of Central Banks
ESMA	European Securities and Markets Authority
NCA	National Competent Authority
RTS	Regulatory Technical Standards
SMSG	Securities and Markets Stakeholders Group

1 Executive Summary

Reasons for publication

This final report presents a draft regulatory technical standard ('RTS') suspending the application of the mandatory buy-in rules provided in Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline¹ ('RTS on settlement discipline').

The initial date of entry into force of the RTS on settlement discipline was 13 September 2020. The entry into force of Delegated Regulation (EU) 2018/1229 was deferred until 1 February 2021 according to Delegated Regulation (EU) 2020/1212² and then, according to Delegated Regulation (EU) 2021/70³, to 1 February 2022, when it has started applying.

However, market participants have conveyed their concerns about having serious difficulties to implement the mandatory buy-in regime on the scheduled date due to: (i) the absence of clarity regarding some open questions necessary for the implementation of the buy-in requirements, and (ii) the uncertainty as to whether the European Commission's legislative proposal on amending Regulation (EU) No 909/2014 of the European Parliament and of the Council ('CSDR') would include amendments to the mandatory buy-in rules and the extent of any potential amendments.

As the legislative provision modifying CSDR to allow decoupling the application dates of the settlement discipline measures has now been officially published⁴, ESMA hereby presents a proposal for the amendment of the RTS on settlement discipline in order to formally suspend the application of the provisions on the buy-in regime for three years, to allow the European Commission and the co-legislators additional time to determine the best way forward to improve settlement efficiency while avoiding potential duplicative implementation costs for market participants in case extensive changes would be made to the existing buy-in measures.

Given that the proposed amendment is limited in scope, as well as the urgency to have legal certainty as to the implementation and enforcement of the CSDR buy-in regime, ESMA has not conducted an open public consultation in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010 ('ESMA Regulation')⁵. However, ESMA has consulted the Securities and Markets Stakeholder Group ('SMSG') and has conducted a high-level analysis of the costs and benefits. ESMA has also cooperated closely with the members of the European System of Central Banks ('ESCB').

Content

This paper provides explanations for the proposal to amend the RTS on settlement discipline. Section I explains the background to ESMA's proposal, Section II details the rationale for the RTS amendment, Section III outlines ESMA's proposal, and Section IV covers the way forward.

Next Steps

This Final Report is sent to the European Commission, and ESMA is submitting the draft RTS presented in Annex IV for endorsement in the form of a Commission Delegated Regulation, i.e. a legally binding instrument applicable in all Member States of the European Union. Following the endorsement of the draft RTS by the European Commission, the Commission Delegated Regulation will then be subject to the non-objection of the European Parliament and of the Council.

¹ OJ L 230, 13.9.2018, p. 1.

² Commission Delegated Regulation (EU) 2020/1212 of 8 May 2020 amending Delegated Regulation (EU) 2018/1229 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 275, 24.8.2020, p. 3–4).

³ Commission Delegated Regulation (EU) 2021/70 of 23 October 2020 amending Delegated Regulation (EU) 2018/1229 concerning the regulatory technical standards on settlement discipline, as regards its entry into force (OJ L 27, 27.1.2021, p. 1–2)

⁴ OJ L 151, 02.06.2022, p.1

⁵ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331, 15.12.2010, p. 84.

2 Final report

2.1 Background

1. The CSDR settlement discipline regime includes three main measures to address settlement fails: the reporting of settlement fails, the application of cash penalties and a mandatory buy-in regime.
2. After having already been postponed twice⁶, first for technical reasons impacting the cash penalties regime and then due to the overall impact of the COVID-19 pandemic on the implementation of all regulatory reforms, the settlement discipline regime has entered into force on 1 February 2022.
3. While understanding that market participants were largely ready to implement settlement fails reporting and cash penalties, ESMA was made aware in July 2021 of market participants' serious difficulties regarding the implementation of the buy-in regime on the scheduled date.
4. Indeed, the entry into force of this important piece of legislation occurred in the context of the on-going review of CSDR launched by the European Commission in 2020 and following in particular the publication on 1 July 2021 of their summary report of the targeted consultation document on the review of CSDR⁷.
5. This report highlighted that the questions relating to settlement discipline received the highest response rate (they were addressed by 98% of the respondents to the consultation conducted by the Commission between 8 December 2020 and 2 February 2021) and, under the heading "Reducing disproportionate burdens and costs related to the settlement discipline", the European Commission suggested that:

"In light of stakeholders' feedback, it is appropriate for the Commission to consider proposing certain amendments, subject to an impact assessment, to the settlement discipline framework, in particular the mandatory buy-in rules, to make it more proportionate and avoid potential undesired consequences."

⁶ Commission Delegated Regulation (EU) 2020/1212 of 8 May 2020 amending Delegated Regulation (EU) 2018/1229 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 275, 24.8.2020, p. 3–4).

⁷ European Commission, [Summary report of the targeted consultation](#) document on the review of regulation on improving securities settlement in the European Union and on central securities depositories, 8 December 2020 – 2 February 2021

6. On 16 March 2022, the European Commission has published its legislative proposals⁸ in this respect, which indeed include changes to the settlement discipline regime and in particular to the buy-in process – however, this is only the starting point of the legislative process.
7. Following the publication of the July 2021 report, a number of trade associations⁹ have relayed to ESMA and to the European Commission the challenges they faced, which were twofold: the absence of clarity regarding some open questions necessary for the implementation of the buy-in requirements, and the uncertainty as to whether the European Commission’s legislative proposal would include amendments to the mandatory buy-in rules and the extent of any potential amendments. These challenges directly impacted market participants’ ability to implement the regime and potential future amendments might involve additional costs linked to any additional later change of their systems and processes.
8. Having regard to these challenges, in September 2021 ESMA wrote¹⁰ to the European Commission, the European Parliament and the Council to call for a delay of the application of the buy-in regime, so that sufficient time is given for the CSDR review to thoroughly consider the mandatory buy-in framework as a part of settlement discipline.
9. To do this, an amendment needed to be made in CSDR itself, to allow setting different dates of application for the various settlement discipline measures. In November 2021, the European Parliament and the European Council reached a political agreement¹¹ on a change to CSDR that allows for a deferral of mandatory buy-ins, as part of the negotiations of the European Commission proposal for a pilot regime for market infrastructures based on distributed ledger technology¹². This will allow the European Commission and the co-legislators further time to determine the best way forward to improve settlement efficiency as appropriate, while avoiding potential duplicative implementation costs for market participants in case extensive changes would be made to the existing buy-in requirements.
10. Taking into account this likely upcoming legislative change and while noting that neither ESMA, nor the NCAs have any formal power to allow the disapplication of directly applicable EU legal text, on 17 December 2021, ESMA published a statement on the

⁸ [Proposal](#) for a regulation of the European Parliament and of the Council 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

⁹ Joint Associations’ [Letter](#) to EC and ESMA, 14 July 2021

¹⁰ [ESMA letter](#) to the European Commission dated 23 September 2021

¹¹ [Press statement](#) from the European Commission dated 25 November 2021: “*The Commission also welcomes the political agreement reached on the changes to the Central Securities Depositories Regulation that allow for a deferral of mandatory buy-ins. This will allow further time to determine the best way forward to improve settlement efficiency while avoiding potential negative consequences.*”

¹² Proposal for a Regulation of the European Parliament and of the Council on a pilot regime for market infrastructures based on distributed ledger technology (COM/2020/594 final)

“Supervisory approach on the implementation of the CSDR buy-in provisions”¹³, whereby NCAs are expected not to prioritise supervisory actions in relation to the application of the CSDR buy-in regime until the amendment formally postponing its application is in place.

11. Following the procedural change included in the DLT Pilot Regulation to CSDR allowing to set a different date of application of the buy-in rules, ESMA presents in this final report the draft RTS precisely aiming at temporarily suspending the application of the existing mandatory buy-in regime.

2.2 Rationale of the proposed amendments

12. Given the amendment made to CSDR via the DLT Pilot Regulation and considering the potential duplicative implementation costs for market participants in case extensive changes would be made to the existing buy-in measures, ESMA hereby suggests to formally suspend the application of the provisions on the mandatory buy-in regime set out in the RTS on settlement discipline.
13. The CSDR Refit legislative proposal has been published by the European Commission on 16 March 2022. However, this is only the beginning of the legislative procedure, which will focus on CSDR, potentially including amendments to the CSDR buy-in regime and related Level 2 measures.
14. Taking into account the time required by an ordinary legislative procedure, ESMA believes that a suspension of the application of the existing buy-in requirements for three years would be appropriate.
15. In addition, a consequence of the start of the application of the CSDR settlement discipline regime on 1 February 2022 was the deletion, by Article 72 of CSDR, of Article 15 of Regulation (EU) No 236/2012 on short selling¹⁴ (‘SSR’). This article required central counterparties clearing transactions in shares to provide in their rules for a buy-in regime in case of settlement fails.
16. However, this repeal of Article 15 of SSR was justified by the fact that CSDR “harmonises at Union level the measures to prevent and address settlement fails and has a wider scope of application of application for such measures than [SSR]”¹⁵.

¹³ [Public Statement: Supervisory approach on the implementation of the CSDR buy-in provisions](#) (ESMA70-156-5153)

¹⁴ Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps, OJ L 86, 24.3.2012, p. 1–24.

¹⁵ See Recital 78 of CSDR: “Taking into account the fact that this Regulation harmonises at Union level the measures to prevent and address settlement fails and has a wider scope of application for such measures than Regulation (EU) No 236/2012 of the European Parliament and of the Council, it is necessary to repeal Article 15 of that Regulation.”

17. Therefore, given the envisaged suspension of application of the CSDR buy-in regime, ESMA consider it necessary to maintain the requirement formerly introduced by Article 15 of SSR on buy-in.

2.3 Proposed amendments

18. ESMA's proposal (see Annex IV) covers the suspension of the application of the provisions relating to the mandatory buy-in regime of the RTS on settlement discipline for three years i.e. until the potential amendments to the existing CSDR buy-in regime would start applying.

19. It is also proposed to include the provisions of former Article 15(1) of SSR in the RTS on settlement discipline itself, to be applied for the duration of the suspension.

20. Given that the proposal is limited in scope and that it reflects the input already provided by market participants calling for clarity regarding the buy-in measures, as well as the urgency to have legal certainty as to the application of the buy-in requirements, ESMA has not conducted any open public consultation in accordance with the third subparagraph of Article 10(1) of ESMA Regulation.

21. Nevertheless, ESMA has requested the advice of SMSG and has conducted a high-level analysis of the costs and benefits. ESMA has also cooperated closely with the members of the ESCB.

2.4 Way forward

22. This amendment to the RTS on settlement discipline will be submitted to the European Commission for review and endorsement. The process that follows the adoption of draft RTS by the European Commission is a non-objection period by the European Parliament and Council before the RTS can be published in the Official Journal and subsequently enter into force.

3 Annexes

3.1 Annex I – ESMA mandate to develop draft technical standards

Article 7(15) of Regulation (EU) No 909/2014

Measures to address settlement fails

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 timeframes to deliver the financial instrument following the buy-in process referred to in paragraph 3. Such timeframes 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 timeframes 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.

3.2 Annex II – Advice of the Securities and Markets Stakeholder Group

In accordance with Article 10(1) and Article 37(1) of the ESMA Regulation, ESMA has requested the advice of the Securities and Markets Stakeholder Group (SMSG). The SMSG has not provided any comment.

3.3 Annex III – High-level cost benefit analysis

Pursuant to the third subparagraph of Article 10(1) of the ESMA Regulation, ESMA shall conduct open public consultations on draft RTS and analyse the potential related costs and benefits, unless such consultations and analyses are highly disproportionate in relation to the scope and impact of the draft RTS concerned or in relation to the particular urgency of the matter.

As indicated in section 2.3 above, given the input already received from market participants, in particular to the public consultation ran by the European Commission within the context of the legislative proposal reviewing CSDR, ESMA considers that it would be disproportionate to conduct an open public consultation both in relation to the scope and impact of the draft RTS concerned, as well as in relation to the particular urgency of the matter. Nevertheless, ESMA has conducted a high-level analysis of the potential costs and benefits of the proposed amendment.

3.3.1 Introduction

In 2019, the European Commission has launched preparatory works for a targeted review of CSDR. To support this review, between 8 December 2020 and 2 February 2021 a public consultation¹⁶ has been conducted to seek feedback as to whether it may be necessary to take action to ensure the fulfilment of the objectives of the CSDR in a more proportionate, efficient and effective manner. This consultation included inter alia questions on the existing settlement discipline requirements.

In its July 2021 report¹⁷ on the outcome of the consultation, the European Commission highlighted that settlement discipline questions received the highest response rate (they were addressed by 98% of the respondents) and, that *“in light of stakeholders’ feedback, it is appropriate for the Commission to consider proposing certain amendments, subject to an impact assessment, to the settlement discipline framework, in particular the mandatory buy-in rules, to make it more proportionate and avoid potential undesired consequences.”*

Taking this into account, the co-legislators have agreed that *“the costs of applying the rules on mandatory buy-ins are therefore expected to outweigh the potential benefits”* and consequently to amend CSDR via the DLT Pilot Regulation, to allow for different dates of application for each settlement discipline measure, thus giving the possibility to the European Commission and to

¹⁶ European Commission, [Targeted consultation document](#): Review of regulation on improving securities settlement in the European Union and on central securities depositories

¹⁷ European Commission, [Summary report of the targeted consultation](#) document on the review of regulation on improving securities settlement in the European Union and on central securities depositories, 8 December 2020 – 2 February 2021

the co-legislators to assess the evidence and if necessary to propose and agree on further necessary amendments to the existing buy-in regime.

On the basis of this amendment of CSDR and considering the possible duplicative implementation costs for market participants in case extensive changes would be made to the existing buy-in measures, ESMA proposes to amend the RTS on settlement discipline in order to temporarily suspend the application of the CSDR mandatory buy-in regime.

3.3.2 Baseline

The purpose of the amending draft RTS on settlement discipline proposed in Annex IV hereto is to suspend the application of the mandatory buy-ins until the CSDR review process including potential amendments of the CSDR buy-in regime and related Level 2 potential measures would be completed and would start applying.

Considering the usual length of an ordinary legislative procedure, ESMA deems appropriate to suspend the application of the existing buy-in requirements for three years.

3.3.3 Cost benefit analysis

On the basis of the analysis below, ESMA concludes that the benefits of suspending the application of the CSDR buy-in regime outweigh the costs:

Policy objective	To allow for sufficient time for the European Commission and the co-legislators to determine the best way forward to improve settlement efficiency and for market participants not to face duplicative implementation costs in case extensive changes would be made to the existing buy-in regime.
Technical proposal	To suspend the application of the CSDR buy-in regime for three years i.e. until the expected date of application of the potential amendments of the CSDR buy-in regime and potential related Level 2 measures.
Benefits	<ul style="list-style-type: none"> - Avoid the risk of disorderly and fragmented implementation due to the absence of clarification of certain aspects of the existing mandatory buy-in regime. - Allow the Commission and the co-legislators further time to determine the best way forward to improve settlement efficiency.

	<ul style="list-style-type: none">- The expected impact of the proposed change will represent a relief for market participants and authorities.- Legal certainty and transparency for the market.- Market participants will not incur duplicative implementation costs in case those rules are amended as a result of the review of CSDR.
Costs	No additional costs are envisaged.

3.4 Annex IV – Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) .../..
amending Commission Delegated Regulation (EU) 2018/1229
supplementing Regulation (EU) No 909/2014 of the European Parliament
and of the Council with regard to regulatory technical standards on
settlement discipline, as regards the date of application of the provisions
related to the buy-in regime

of []

(text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 236/2012¹⁸, and in particular Article 7(15) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2018/1229¹⁹ specifies measures to prevent and address settlement fails, and to encourage settlement discipline. Those measures include monitoring settlement fails and collecting and distributing cash penalties for settlement fails. Delegated Regulation (EU) 2018/1229 also specifies the operational details of the buy-in process.

¹⁸ OJ L 257, 28.8.2014, p. 1

¹⁹ Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 230 13.9.2018, p. 1).

- (2) The entry into force of Delegated Regulation (EU) 2018/1229 was deferred until 1 February 2021 according to Delegated Regulation (EU) 2020/1212²⁰ and then to 1 February 2022 according to Delegated Regulation (EU) 2021/70²¹.
- (3) Taking into account the evidence brought by stakeholders regarding the mandatory buy-ins and the amendment to Regulation (EU) No 909/2014 introduced by the Delegated Regulation (EU) 2022/858²² to allow for a different date of application for each of the settlement discipline measures referred to in Article 7(1) to (13) of Regulation (EU) No 909/2014, a suspension of the application of the rules on mandatory buy-ins is considered necessary. This would allow the Commission and the European Parliament and the Council to assess the settlement discipline framework, and in particular the rules on mandatory buy-ins, within the context of the legislative proposal reviewing Regulation (EU) No 909/2014, and, if necessary, to propose related amendments. In addition, suspending the application of the rules on mandatory buy-ins will ensure that market participants do not incur duplicative implementation costs in case those rules are amended as a result of the review of Regulation (EU) No 909/2014.
- (4) Delegated Regulation (EU) 2018/1229 should therefore be amended accordingly to allow for the suspension of the application of the rules on mandatory buy-ins until the legislative process amending Regulation (EU) No 909/2014 is completed.
- (5) Further, Regulation (EU) 236/2012²³, together with Regulation (EU) 909/2014, required central counterparties providing clearing services for shares to have buy-in procedures in place, and such procedures to be repealed once the rules on buy-in established in Regulation (EU) 909/2014 apply.
- (6) Considering the impact of the suspension of the mandatory buy-in measures, Delegated Regulation (EU) 2018/1229 should be amended accordingly to ensure that central counterparties providing clearing services for shares have buy-in procedures in place as

²⁰ Commission Delegated Regulation (EU) 2020/1212 of 8 May 2020 amending Delegated Regulation (EU) 2018/1229 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 275, 24.8.2020, p. 3–4).

²¹ Commission Delegated Regulation (EU) 2021/70 of 23 October 2020 amending Delegated Regulation (EU) 2018/1229 concerning the regulatory technical standards on settlement discipline, as regards its entry into force (OJ L 27, 27.1.2021, p. 1–2)

²² Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (OJ L 151, 2.6.2022, p. 1–33)

²³ Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps (OJ L 86, 24.3.2012, p. 1–24)

long as the suspension of the application of the buy-in measures set out in Delegated Regulation (EU) 2018/1229 applies.

- (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (8) Given the limited scope of the amendment, the urgency to suspend the application of the mandatory buy-in rules to provide clarity to market participants, and the input already provided by the latter to the public consultation run by the European Commission within the context of the legislative proposal reviewing Regulation (EU) No 909/2014 in particular, ESMA has not conducted any open public consultations. ESMA has nevertheless conducted a high-level analysis of the potential related costs and benefits and has requested the advice of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council²⁴. In developing the draft regulatory technical standards, ESMA has also cooperated with the members of the European System of Central Banks,

HAS ADOPTED THIS REGULATION:

Article 1
Amendment to Delegated Regulation (EU) 2018/1229

Delegated Regulation (EU) 2018/1229 is amended, as follows:

“In Article 42, a second subparagraph is added, as follows:

The settlement discipline measures as set out in Articles 21 to 38 of this Regulation shall be suspended for three years from [*insert date of entry into force of this amending RTS*].

A new Article 42a is introduced, as follows:

²⁴ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Article 42a
Transitional provisions

During the suspension referred to in Article 42, second subparagraph, a central counterparty in a Member State that provides clearing services for shares shall ensure that procedures are in place which comply with all of the following requirements:

- (a) where a natural or legal person who sells shares is not able to deliver the shares for settlement within four business days after the day on which settlement is due, procedures are automatically triggered for the buy-in of the shares to ensure delivery for settlement;
- (b) where the buy-in of the shares for delivery is not possible, an amount is paid to the buyer based on the value of the shares to be delivered at the delivery date plus an amount for losses incurred by the buyer as a result of the settlement failure; and
- (c) the natural or legal person who fails to settle reimburses all amounts paid pursuant to points (a) and (b).”

Article 2
Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President