

## PUBLIC STATEMENT

### Supervisory approach on the implementation of the CSDR buy-in provisions

The mandatory buy-in process is one of the key measures of the settlement discipline regime established by the CSDR<sup>1</sup> (in line with Articles 7(3) to 7(8) of the CSDR and Articles 21 to 38 of the RTS on Settlement Discipline<sup>2</sup>).

ESMA sent a [letter](#) to the European Commission (EC), copying the European Parliament and the Council, in order to address the uncertainty linked to the upcoming CSDR review and expected legislative proposal aiming inter alia at modifying the buy-in regime which will be published by the EC at the beginning of 2022 and the difficulties of market participants related to the implementation of the buy-in regime by 1 February 2022.

In particular, ESMA called for an urgent change in CSDR to allow postponing the application date of the buy-in regime, while noting the importance of the entry into of force of the rest of the settlement discipline regime measures (settlement fails reporting and cash penalties) on 1<sup>st</sup> February 2022 as planned.

The co-legislators have now agreed<sup>3</sup> on an amendment to CSDR, introduced via the Proposal for a Regulation on a pilot regime for market infrastructures based on distributed ledger technology (so-called “DLT Pilot Regime”), that will allow to decouple the date of application of the provisions dealing with the buy-in regime from the provisions dealing with penalties and reporting.

This amendment will allow ESMA to develop draft technical standards proposing to postpone the date of application of the buy-in regime while keeping the date of application of the penalties and reporting requirements unchanged (1 February 2022).

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<sup>1</sup> 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)

<sup>2</sup> 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. 1–53)

<sup>3</sup> [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.*”

ESMA is aware that the legislative procedure in relation to the Proposal for a Regulation on a DLT Pilot Regime is not yet concluded and the adopted text of the DLT Pilot Regime is not expected to enter into force ahead of the application start date of the settlement discipline regime.

From a legal perspective, neither ESMA nor NCAs possess any formal power to allow the disapplication of directly applicable EU legal text. At the same time, based on the assumption that the above-mentioned decoupling of the application dates of settlement discipline measures will eventually be allowed, ESMA considers that it is important to take into account this likely upcoming legislative change when applying the CSDR settlement discipline regime until the provision postponing the application of the buy-in regime is formally in place.

Therefore, to take into account the future amendment of the RTS on settlement discipline to postpone the date of application of the buy-in measures and to avoid potential additional costs linked to any additional later change of the systems and processes of market participants implementing these measures, ESMA would expect NCAs not to prioritise supervisory actions in relation to the application of the CSDR buy-in regime.

Further, the Short Selling Regulation<sup>4</sup> currently requires CCPs to include a buy-in regime in their operating rules, but this requirement is meant to be repealed upon the application of the CSDR buy-in regime<sup>5</sup>. To take into account the impact of the above-mentioned amendment of the RTS on settlement discipline on this requirement, ESMA would expect NCAs to encourage CCPs to continue applying the buy-in rules currently implemented by them until the application of the revised CSDR buy-in regime.

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<sup>4</sup> Cf. Article 15 of 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)

<sup>5</sup> Cf. Recital 78 and Articles 72 and 76(5) of CSDR