



Ms Mairead McGuinness
Commissioner for Financial Services,
Financial Stability and Capital Markets
Union
European Commission
Rue de la Loi/ Wetstraat 200
B-1049 Brussels
Belgium

Ref: ESMA's views on the way forward on settlement discipline in the context of the CSDR review

Dear Commissioner McGuinness,

Having regard to the European Commission's current review of Regulation (EU) No 909/2014 on improving securities settlement in the European Union and on central securities depositories (CSDR), I am writing to you to highlight ESMA's views on the need to provide clarity in a timely manner to market participants in order to ensure an orderly implementation of the CSDR settlement discipline regime.

ESMA welcomed the publication by the European Commission of its report on the CSDR targeted review on 1st July 2021, which included high level statements on the way forward on various topics covered in its public consultation, hinting at possible changes to the settlement discipline regime and in particular to the mandatory buy-in regime.

ESMA is also very much looking forward to the publication of the European Commission legislative proposal, which we understand is expected by the end of the year. However, this timing will collide with the expected entry into force of the current CSDR settlement discipline regime on 1st February 2022.

While ESMA understands that market participants are largely ready to implement two of the key components of the settlement discipline regime (settlement fails reporting and cash penalties) on the scheduled date, ESMA is aware of market participants' serious difficulties regarding the implementation of the buy-in regime.

In particular, on settlement fails reporting and cash penalties, although some clarifications are still pending, there seems to be no need to delay their implementation. Furthermore, the timely implementation of these two components will also positively contribute to improving settlement efficiency and the transparency around it in the EU.

On the buy-in regime, as relayed by a number of trade associations, the challenges are 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 will include amendments to the mandatory buy-in rules and the extent of any potential amendments. These challenges directly impact market participants' ability to implement the regime and might involve potential additional costs linked to any additional later change of their systems and processes. Having regard to these challenges, ESMA supports a delay of the buy-in regime.

It therefore appears to be crucial that sufficient time is given for the CSDR review to thoroughly consider the mandatory buy-in framework as a part of settlement discipline. To do this, ESMA would call for urgent action to provide a signal that a modification of the current implementation deadline is considered, postponing the mandatory buy-in framework as soon as possible and, ideally, at the latest by the end of October 2021.

With this objective in mind, ESMA stands ready to assist the Commission and/or the co-legislators in the most constructive manner, in order to provide any relevant input and to bridge any gap the legislative process might generate and, if necessary, to properly implement the necessary steps with respect to the adequate application of the buy-in regime.

Should you or your staff require any further information please do not hesitate to contact me or Fabrizio Planta, Head of the Markets and Data Reporting Department (fabrizio.planta@esma.europa.eu).

Yours sincerely,

Anneli Tuominen

Cc: Irene Tinagli, MEP, Chair of the Committee on Economic and Monetary Affairs, European Parliament

Andrej Šircelj, President of the ECOFIN Council, Council of the European Union

Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European Union

John Berrigan, Director-General, DG Financial Stability, Financial Services and Capital Markets Union, European Commission