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Presidency Discussion Paper

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This discussion paper should be read in conjunction with the corresponding Annex which contains consolidated draft legal text. This text reflects updates to the original Commission proposal; in accordance with the views expressed by Member States at Council Working Party meetings and through subsequent written feedback.

The discussion paper seeks to highlight and explain key changes to the legal drafting subsequent to the last CWP meeting on 15 July. All amendments to the original Commission proposal are provided in **bold, underlined text** in the Annex to this paper.

Updated recitals have not been included in the Annex, as they will be further revised to reflect the substantive policy decisions agreed by Member States.

A. CSDR

A.1 Preparedness

A.1.1 Article 1(3a) and Recital (XX)

The IE Presidency text includes Recital (XX) and inserts a new Article 1(3a) following the non-paper discussed in at the CWP on May 08 and subsequent written comments from Member States	
Relevant articles	Article 4 Master Regulation

The non-paper discussed on 8 May set out the case for flexibility in the text of CSDR, to allow Member States '*to select and apply measures that are most suitable to ensure the continuous provision of critical services under various national security threat scenarios of each Member State, based on their existing systems and frameworks, threat landscape and other characteristics.*'

A large majority of Member States supported the proposal and the inclusion of Recital (XX) in the Master Regulation and Article 1(3a) in CSDR reflects this. The text is reflective of similar provisions[1] and mirrors the wording in DORA Art 1(3).

Delegations are invited to examine the suggested amendments and provide their views.

A.2 Scope of requirement to establish interoperable links

A.2.1 Articles 1(4)

The IE Presidency proposes drafting to exclude CSDs operated by public bodies from the hub and spoke requirement.	
Relevant articles	Article 4 Master Regulation

Delegations are invited to examine the suggested amendments and provide their views as part of the discussion on connectivity and the amendments made to Article 48a.

[1] Other such clarifications, with similar language, can be found e.g. in NISD2 (EU) 2022/2555 Art. 2(6), Whistleblower Directive (EU) 2019/1937 Art. 3(2), and Cyber Security Act (EU) 2019/881Art. 1(2).

A.3 Freedom of Issuance

A.3.1 Recital (XX)

The IE Presidency proposes a recital to clarify the right of CSDs to refuse to provide services to an issuer.	
Relevant articles	Recital (XX) Master Regulation

At the last CWP on 3 July options for a recital to clarify the continued possibility for CSDs to refuse to provide services to an issuer on the basis of the law governing the securities were discussed and two options were presented to Member States. With support evenly split between both options, the IE Presidency has chosen to reject the additional wording discussed, as the clarifying recital is already sufficiently clear.

Delegations are invited to examine the suggested amendments and provide their views.

A.4 Third Country Regime

A.4.1 Article 25 and Recital (XX)

The IE Presidency proposes an amendment to Article 25 CSDR and a Recital to clarify the concept of "governing law" on which the amendment to Article 25 is based.	
Relevant articles	Recital (XX) and Article 4 Master Regulation

At the CWP on 3 July, Member States discussed options to address the unintended consequences of amendments to the third country regime introduced by CSDR Refit by reverting to the original scope of CSDR, i.e. to financial instruments governed by the law of the Member States.

Member States, in their feedback, have requested a recital to explain the concept of "governing law" used in Article 25.

Delegations are invited to examine the suggested amendments and provide their views.

A.5 Communication standards

A.5.1 Article 6(5)(a)

The IE Presidency proposes to text to address Member States concerns in relation to communication standards	
Relevant articles	Article 4 Master Regulation

Member States have expressed a concern that ESMA may choose to impose a new EU standard that is not aligned with international standards. This would increase costs for firms in the EU. This additional drafting seeks to address those concerns.

Delegations are invited to examine the suggested amendments and provide their views.

A.6 Cash penalties and EMTs

A.6.1 Article 7(2)

The IE Presidency proposes to include a technical suggestion from the ECB.	
Relevant articles	Article 4 Master Regulation

The suggested wording brings consistency to the operationalisation of the payment of cash penalties with EMTs. Where, for instance, some participants would want to pay cash penalties with EMTs to other participants who would not have a wallet to receive those EMTs, the wording clarifies that payment methods are set out in the CSDs rules.

Delegations are invited to examine the suggested amendments and provide their views.

A.7 Significance

A.7.1 Articles 11 and 11a

The IE Presidency proposes that text will not be discussed as this was discussed at the CWP on September 02, subject to written feedback and emerging consensus on this issue further amendments will be put forward as required.	
Relevant articles	Article 4 Master Regulation

A.8 Cooperation arrangements

A.8.1 Articles 14

The IE Presidency proposes that the text will not be discussed as this is subject to discussion on cooperation arrangements in ESMAR, when the policy there is clearer, text in CSDR will be amended as appropriate.	
Relevant articles	Article 4 Master Regulation

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A.9 Connectivity

A.9.1 Article 48(a)

The IE Presidency proposes further drafting to address the proportionality concerns of Member States.	
Relevant articles	Article 4 Master Regulation

A number of Member States continue to express concerns about the proportionality for those not part of T2S. The drafting proposes that these 'spoke' CSDs would only establish inbound and outbound standard links with a CSD-hub.

Regarding the scope of instruments settled through the links with a CSD-hub, a 'spoke' CSD is only required to ensure that all financial instruments issued in that CSD-hub, that are denominated in EURO and admitted to trading or traded on trading venues are available for settlement through the link.

The scope of the bilateral links between CSD-hubs remains unchanged compared to COM proposal (i.e. all instruments issued by CSDs hubs).

The gap between the cost of establishing interoperable links for CSDs not connected to T2S and CSDs that are connected to T2S is substantial and mandating those interoperable links would be costly for both the hub and the spokes. According to the latest data, only one CSD would be required to establish standard links with the hub of its choice.

Delegations are invited to examine the suggested amendments and provide their views.

A.10 Freedom to Issue

A.10.1 Article 49(a)

The IE Presidency proposes further drafting to address the written feedback received from Member States in	
Relevant articles	Article 4 Master Regulation

This drafting proposal was discussed at the CWP on 3 July and was agreed by a large majority of Member States. Further drafting has been incorporated to reflect written feedback received.

Delegations are invited to examine the suggested amendments and provide their views.

A.11 Open Access

A.11.1 Article 53

The IE Presidency proposes further drafting to address the written feedback received from Member States on open access provisions in MiFIR	
Relevant articles	Article 4 Master Regulation

This drafting was suggested by Member States in written feedback. Delegations are invited to examine the suggested amendments and provide their views.

B. AOB

B.1 Any Other Business