Council of the European Union
General Secretariat

Interinstitutional files:
2022/0074 (COD)

Brussels, 04 November 2022

WK 14967/2022 INIT

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Services and Banking Union (CSDR) Financial Services Attachés
Subject:	CSDR Review: Presidency compromise text - Replies from MS

Presidency compromise	Draft suggestions	MS Comments
(17) The procedure set out in Article 23 of Regulation (EU) No 909/2014 regarding the provision by CSDs of notary and central maintenance services in relation to financial instruments constituted under the law of a Member State other than that of their authorisation has proven to be burdensome and some of its requirements are unclear. This has resulted in a disproportionately costly and lengthy process for CSDs. The procedure should therefore be simplified to better dismantle the barriers to cross-border settlement in order for authorised CSDs to fully benefit from the freedom to provide services within the Union. It is also set beyond the doubt what law of Member State is relevant for the assessment under Article 23 and the obligation is streamline to lessen the burden place on CSDs.	LV: **It should also be made clear which national law is relevant for the assessment under Article 23 and the assessment obligation has to be streamlined to decrease the burden placed on CSDs.** **IE:** It is also set beyond ~~the~~ doubt that the law of the issuing Member State is the only one relevant for the assessment under Article 23 and the obligation is to streamline processes and lessen the burdens placed on CSDs. **NL:** (17) The procedure set out in Article 23 of Regulation (EU) No 909/2014 regarding the provision by CSDs of notary and central maintenance services in relation to financial instruments constituted under the law of a Member State other than that of their	**BG:** We support the presidency compromise in general considering the proposed amendments in Articles 23 and 49. However, we still have some concerns with the proposal in Article 23. We have stated so far that during the process it is important both NCAs (home and host) to be able to express views in relation to the assessment of the measures the CSD intends to take to allow its users to comply with the relevant national law of the member states in which it plans to provide notary and central maintenance services. Having in mind that company law is not harmonized at the EU level and considering the concessions in the current partial compromises, we are of the view that at least in a recital it should be clarified that the host NCA may indicate the home NCA in case during acquainting with the documents provided by the home NCA (on the basis of Article 23, para 4) it appears that the assessment of the CSD and the measures provided in relation to the law of the host MS related to shares are not appropriate. The time limit for

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	authorisation has proven to be burdensome and some of its requirements are unclear. This has resulted in a disproportionately costly and lengthy process for CSDs. The procedure should therefore be simplified to better dismantle the barriers to cross-border settlement in order for authorised CSDs to fully benefit from the freedom to provide services within the Union. It **should be clear** what law of **a** Member State is relevant for the assessment under Article 23 and the obligation is streamline**d** to lessen the burden place**d** on CSDs	such an indication of the host NCA to the home NCA would be in our understanding, 1 month having in mind the provision in Article 23, para 6 of the draft regulation. In our view, such addition in a recital would only contribute to the streamlined process while ensuring that host MS legislation is followed by the CSD and that both NCAs could resolve possible issues on a bilateral basis before the CSD starts the actual provision of services. We note that the above issue could not be solved between NCAs within a passporting college as it stands in the current proposal given that there would be cases where a supervisory college would not be established. LV: **We propose slight rephrasing of the last sentence for the sake of clarity.** **EE:**

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		Agree, reducing the administrative burden much welcomed. **IE:** Our view is that shares represent the most significant investor protection concerns. Therefore, we would tend towards supporting the limitation to shares of the Article 23(3) safeguards in terms of issuer's national corporate law. Regarding Article 49(1), we are supportive, in principle, of restricting the scope to the law pertaining to the financial instrument issued but in any case welcome the clarifications. We made some suggested ammendments to clarify text. NL: Some textual adaptations to improve the text.

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		PT: The added part of article 23 seems too conclusive and adds little added value for the better comprehension of the cross-border framework.
(25) In order to avoid settlement risks due to the insolvency of the settlement agent, a CSD should settle, whenever practical and available, the cash leg of the securities transaction in central bank money through accounts opened with and operated by a central bank. Where that option is not practical and available, including where a CSD does not meet the conditions to access a payment system operated by a central bank other than that of its home Member State, that CSD should be able to settle the cash leg of transactions in foreign currencies in commercial bank money through accounts opened with institutions authorised to provide banking services under the conditions provided in Regulation (EU) No 909/2014. ~~The~~	**BE:** **[...] For that purpose, CSDs authorised to provide banking-type ancillary services in accordance with Regulation (EU) No 909/2014 and for which the relevant risks are already monitored, should be able to offer ~~such services a~~ limited services (such as ~~arranging payments~~ settling the cash leg of a securities transaction where that cash is not an ~~in non-~~EU currency) to other CSDs that do not hold such license irrespective if the latter are part of the same group of companies.** **ES:**	BE: We believe that "arranging payments" does not properly reflect the service that the banking-service provider can perform. we would rather refer to the settlement of the cash leg of a securities transaction ES: typo. To assure coherence with article 54.2.b). EE: **Agree** **FR:** We do not understand what objectives these additions aim to address. Given their potential consequences on ongoing projects (CBDCs, etc…) we are in favor of keeping the existing wording (see article 40 of CSDR) which refers to

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~~efficiency of the settlement market would be better served by enhancing the possibilities for CSDs to provide settlement in foreign currencies through the use of accounts opened with institutions authorised to provide banking services, within appropriate risk limits, with a view to deepen capital markets and enhance cross-border settlement.~~ **For that purpose, CSDs authorised to provide banking-type ancillary services in accordance with Regulation (EU) No 909/2014 and for which the relevant risks are already monitored, should be able to offer** ~~such services a~~ **limited services (such as arranging payments in non-EU currency) to other CSDs that do not hold such license irrespective if the latter are part of the same group of companies.**	(25) In order to avoid settlement risks due to the insolvency of the settlement agent, a CSD should settle, whenever practical and available, the cash leg of the securities transaction in central bank money through accounts opened with and operated by a central bank. Where that option is not practical and available, including where a CSD does not meet the conditions to access a payment system operated by a central bank other than that of its home Member State, that CSD should be able to settle the cash leg of transactions in foreign currencies in commercial bank money through accounts opened with institutions authorised to provide banking services under the conditions provided in Regulation (EU) No 909/2014. ~~The efficiency of the settlement market would be better served by enhancing the possibilities for CSDs to provide settlement in foreign currencies through the use of accounts opened~~	"accounts" in CSDR (both for central and commercial money). In the same veine, we want to delete the words "operated by", as we do not understand where it comes from and considering that it could be an obstacle of the development of DLT project by Central bank whose decisions should not be pre-empted. In addition, should the pilote regime be adopted after the experimentation phase, this mention would be an obstacle to some DLT models. This mention is hence not compatible with the principle of technological neutrality. A regards banking CSDs : A strict separation of central depository and banking activities should be kept in order to avoid importing a risk of bankruptcy due to banking activities on the CSD's core activities.. Indeed, while the three functions of a central depository present mainly operational risks that are unlikely to lead to a failure, the banking services present risks of failure in the event of a counterparty default or market reversal. Therefore, we are not in favour of extending the provision of banking services of CSDs authorised to provide banking-type ancillary services to other CSDs. At the very least, we strongly support the introduction of limitation to the provision of services by banking CSDs to

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	~~with institutions authorised to provide banking services, within appropriate risk limits, with a view to deepen capital markets and enhance cross-border settlement.~~ For that purpose, CSDs authorised to provide banking-type ancillary services in accordance with **Directive 2013/36/EU** ~~Regulation (EU) No 909/2014~~ and for which the relevant risks are already monitored, should be able to offer ~~such services a~~ limited services (such as arranging payments in non-EU currency) to other CSDs that do not hold such license irrespective if the latter are part of the same group of companies. FR: **(25) In order to avoid settlement risks due to the insolvency of the settlement agent, a CSD should settle, whenever practical and available, the cash leg of the securities transaction ~~in central bank money~~ through**	other CSDs linked to payments in non-EU currency (therefore, in terms of drafting, we suggest to deleate "limited services (such as" to only quote the service of settlement in non-EU commercial money). **EL:** The CSDs should also be able to offer limited services in EU currencies for which settlement in central bank money is not possible. DE: The services that can be offered by CSDs authorised to provide banking-type ancillary services in accordance with Regulation (EU) No 909/2014 to other CSDs is already limited to the services set out in Section C of the Annex and does not require any further limitations. CSDs authorised to provide banking-type ancillary services have dedicated risk-management frameworks to appropriately manage risk associated with the provision of banking-type ancillary services.

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	accounts opened with ~~and operated by~~ a central bank. Where that option is not practical and available, including where a CSD does not meet the conditions to access a payment system operated by a central bank other than that of its home Member State, that CSD should be able to settle the cash leg of transactions in foreign currencies ~~in commercial bank money~~ through accounts opened with institutions authorised to provide banking services under the conditions provided in Regulation (EU) No 909/2014. ~~The efficiency of the settlement market would be better served by enhancing the possibilities for CSDs to provide settlement in foreign currencies through the use of accounts opened with institutions authorised to provide banking services, within appropriate risk limits, with a view to deepen capital markets and enhance cross-border settlement.~~	

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	For that purpose, CSDs authorised to provide banking-type ancillary services in accordance with Regulation (EU) No 909/2014 and for which the relevant risks are already monitored, should be able to offer ~~such services~~ ~~a limited services (such as~~ arranging payments in non-EU currency~~)~~ to other CSDs that do not hold such license irrespective if the latter are part of the same group of companies. **DE:** (25) In order to avoid settlement risks due to the insolvency of the settlement agent, a CSD should settle, whenever practical and available, the cash leg of the securities transaction in central bank money through accounts opened with and operated by a central bank. Where that option is not practical and available, including where a CSD does not meet the	

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	conditions to access a payment system operated by a central bank other than that of its home Member State, that CSD should be able to settle the cash leg of transactions in foreign currencies in commercial bank money through accounts opened with institutions authorised to provide banking services under the conditions provided in Regulation (EU) No 909/2014. For that purpose, CSDs authorised to provide banking-type ancillary services in accordance with Regulation (EU) No 909/2014 and for which the relevant risks are already monitored, should be able to offer **such services** ~~a limited services (such as arranging payments in non-EU currency)~~ to other CSDs that do not hold such license irrespective if the latter are part of the same group of companies.	
(26) Within an appropriately set risk limit, CSDs that are not authorised to provide banking-type ancillary services should be able to arrange payments in ~~offer a~~	**BE:** **(26) Within an appropriately set risk limit, CSDs that are not authorised to provide banking-type ancillary services should be**	BE: We believe that "arranging payments" does not properly reflect the services that CSD should be

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~~sufficient amount of~~ **foreign currency** ~~settlement~~ **through accounts opened with credit institutions** ~~or through its own account~~**. The threshold below which a CSD may designate a credit institution as a separate legal entity to provide any banking-type ancillary services** ~~from within a separate legal entity~~ **without being required to comply with the conditions set out in Title IV of Regulation (EU) No 909/2014 should be calibrated in a way that promotes efficiency of settlement and the use of banking ancillary services while ensuring financial stability. The threshold might differ in relation to various non-EU currencies. As a body with specialised expertise regarding banking and credit risk matters, EBA should be entrusted with the development of draft regulatory technical standards to set the appropriate thresholds and, where necessary, any risk mitigating requirements. EBA should also closely cooperate with the members of the ESCB and with ESMA. The Commission should be empowered to adopt regulatory technical standards in accordance with**	**able to** ~~**arrange payments**~~ **arrange the settlement of the cash leg of a securities transaction in** ~~offer a sufficient amount of~~ **foreign** ~~currency~~ **currencies** ~~settlement~~ **through accounts opened with credit institutions** ~~or through its own account~~**. […]** **FR:** **(26) Within an appropriately set risk limits, CSDs that are not authorised to provide banking-type ancillary services should be able to arrange payments in** ~~offer a sufficient amount of~~ **foreign currency** ~~settlement~~ **through accounts opened with credit institutions** ~~or through its own account~~ **and through accounts opened with CSDs that are authorised to provide banking-type ancillary services. The thresholds below which a CSD may designate a credit institution as a separate legal entity and banking CSDs to provide** ~~any~~ **banking-type ancillary services** ~~from within a separate legal entity~~ **without being required to comply with the conditions set out in Title IV of Regulation (EU) No 909/2014 should be calibrated in a way that promotes efficiency of settlement and the use of banking ancillary services while ensuring financial stability.** ~~**The threshold might differ in relation to various non-EU currencies.**~~ **As**	allowed (or are able to) provide to their participants below the threshold. We suggest sticking to references to settlement of the cash leg of a securities transaction. EE: **Agree** **FR:** In addition, in order to ensure that this new possibility for non banking CSDs to settling through banking CSDs accounts does not lead to a reduction of settlement in central banks' accounts, the total volume so settled should be capped when doing so. It is in line with the spirit of both CSDR and the pilote Regime under CSDs' settlement through banks' accounts cannot exceed a ceiling. In terms of drafting, we copied-pasted the below paragraph regarding threshold for CSD using banks accounts for their settlement, and adapted it to ICSDs. We are not aware of any necessity of having different threshold per currency. In addition, we believe that establishing and applying different thresholds across currencies would be very complex (about 180 threshold to be set…) and that we should avoid such complexity

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Article 290 of the Treaty on the Functioning of the European Union (TFEU) with regard to the detailed elements of the determining for the provisioning of banking type ancillary services, the accompanying details of the risk management and capital requirements for CSDs and the prudential requirements on credit and liquidity risks for CSDs and designated credit institutions that are authorised to provide banking-type ancillary services.	**a body with specialised expertise regarding banking and credit risk matters, EBA should be entrusted with the development of draft regulatory technical standards to set the appropriate thresholds and, where necessary, any risk mitigating requirements. EBA should also closely cooperate with the members of the ESCB and with ESMA. The Commission should be empowered to adopt regulatory technical standards in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) with regard to the detailed elements of the determining for the provisioning of banking type ancillary services, the accompanying details of the risk management and capital requirements for CSDs and the prudential requirements on credit and liquidity risks for CSDs and designated credit institutions that are authorised to provide banking-type ancillary services.**	Therefore, the following sentence should be deleted: **"The threshold might differ in relation to various non-EU currencies."** HU: In regard to banking CSD-s, we consider it positive that separate draft regulatory technical standards will set the appropriate thresholds, which is expected to take account of the different-sized markets in the Member States. DE: From a supervisory perspective there are some open questions concerning the setting of different thresholds for different currencies, e.g. • Which factors will be considered here ? How should these different thresholds be implemented ?
(27) CSDs, including those authorised to provide banking-type ancillary services,	**BE:**	BE:

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and designated credit institutions should cover relevant risks stemming from settlement in their risk management and prudential frameworks, ~~including relevant netting arrangements~~. Tools to cover those risks should include maintaining sufficient qualifying liquid resources in all relevant currencies and ensuring that stress scenarios are sufficiently strong. CSDs should also ensure that corresponding liquidity risks are managed and covered by highly reliable funding arrangements with creditworthy institutions, whether those arrangements are committed or have similar reliability. The EBA should submit draft regulatory technical standards to revise the existing regulatory technical standards in order to take into account those changes to prudential requirements, in order to enable the Commission to make any necessary amendments with a view to clarifying the requirements set out in such regulatory technical standards, such as those related to the management of potential liquidity shortfalls.	**(27) CSDs, including those authorised to provide banking-type ancillary services, and designated credit institutions should cover relevant risks ~~stemming from settlement~~ in their risk management and prudential frameworks, ~~including relevant netting arrangements~~.** […]	We do not understand why the scope was narrowed here. Especially given that we're in the recitals here, we do not see the need and believe that there are more risks to be covered than just those (directly) related to settlement. EE: **Agree** **FR:** In order to be in a position to support the insertion of this new recital, we need to understand why this is added. We indeed believe there is already an existing CSDR framework as regards the covering of risks stemming from settlement.

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(28) A period of only 1 month for relevant authorities and competent authorities to issue a reasoned opinion on the authorisation to provide banking-type ancillary services has proven to be too short for those authorities to be able to make a substantiated analysis. Therefore, a longer period of 2 months should be laid down.		EE: **Agree**
Article 2		EE: **Agree**
1. For the purposes of this Regulation, the following definitions apply:		
…		
(25a) 'group' means a group within the meaning of Article 2(11) of Directive 2013/34/EU;	DE: ~~(25a) 'group' means a group within the meaning of Article 2(11) of Directive 2013/34/EU;~~	DE: The definition of group is not needed because there is no need for a group-level college.
…		

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(28a) 'netting' means netting as defined in point (k) of Article 2 of Directive 98/26/EC resulting from transfer orders;	NL: (28a) 'netting' means netting as defined in **Article 2,** point (k), ~~of Article 2~~ of Directive 98/26/EC resulting from transfer orders;	FR: Please see our comment below on article 47a. NL: Changed in order to adhere to the standard way of referencing in EU law at the mometn
…		
(47) 'qualifying holding' means a direct or indirect holding in a CSD which represents at least 10 % of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council, taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the CSD in which that holding subsists;		**BG:** We support the presidency compromise described in the non-paper, which is giving consideration to other sectorial pieces of legislation. DK: We find that this specification of qualifying holding makes good sense. **EL:** We agree with the definition.
(48) 'close links' means close links as defined in point (35) of Article 4(1) of Directive 2014/65/EU.	NL: (48) 'close links' means close links as defined in **Article 4(1),** point (35)**,** ~~of Article 4(1)~~ of Directive 2014/65/EU.	DK: We find that this specification of close links makes good sense.

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		NL: Changed in order to adhere to the standard way of referencing in EU law at the mometn **EL:** We agree with the definition.
Article 6a	FR: Article 7	EE: Agree in principle FR: We really welcome the split between the regime of cash penalties and MBI in separate articles. However,in order to ease the drafting work on Level 1, Level 2 and Level 3 texts and the replacement of cross references, it would be preferable to: - have the article 7 enterely dedicated to cash penalties; - have a new article 7a dedicated to buy-in; have a new article 7b dedicated to the buy-in for cleared transactions (provisions of article 15 of short selling regulation). HU:

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		We welcome the proposal to clarify the text of the legislation by moving the elements of MBI and cash penalties in separate articles. **EL:** We support the idea of separation of the cash penalties and MBI into separate articles. PT: On the cash penalties and mandatory buy-ins we consider that the amendments in this first compromise text goes in the right direction but we still have some concerns that should be addressed on the text. Nothwithstanding this possible right direction, we would like to stress that it would be important in the future to further assess the causes of settlement fails in Europe, as this would be extremely helpful to design fited measures to mitigate it.
Measures to address settlement fails – **Penalty mechanism**	PT:	AT:

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	~~Measures to address settlement fails~~ – **Penalty mechanism**	With regard to settlement discipline, we support the clear distinction between cash penalties one the one hand and MBI as last resort on the other hand. PL: With regard to our position concerning MBI we are supportive of a provision separating MBI and cash penalties. ES: we can support the new wording of this article. The clearer the wording of this article, the best outcome we will get on CSDR. DK: We welcome the suggestion to divide the rules related to the penalty mechanism and the buy-in rules into two different articles. This should contribute to facilitate a better overview of the rules. PT:

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		Article 6a should have its own title.
1. For each securities settlement system it operates, a CSD shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1). It shall provide regular reports to the competent authority and relevant authorities, as to the number and details of settlement fails and any other relevant information, including the measures envisaged by CSDs and their participants to improve settlement efficiency. Those reports shall be made public by CSDs in an aggregated and anonymised form on an annual basis. The competent authorities shall share with ESMA any relevant information on settlement fails.	PT: 1. For each securities settlement system it operates, a CSD shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1). It shall provide regular reports to the competent authority and relevant authorities, as to the number and details of settlement fails and any other relevant information, including the measures envisaged by CSDs and their participants to improve settlement efficiency. Those reports shall be made public by CSDs in an aggregated and anonymised form on an annual basis. The competent authorities shall share with ESMA any relevant information on settlement fails, such as the number and details of settlement fails and any other relevant information, including the measures envisaged	HU: We propose to strengthen the penalty mechanism. PT: We believe that the mention to “any relevant information on settlement fails” in the end of the provision should be duly detailed.

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	by CSDs and their participants to improve settlement efficiency.	
2. For each securities settlement system it operates, a CSD shall establish procedures that facilitate settlement of transactions in financial instruments referred to in Article 5(1) that are not settled on the intended settlement date. These procedures shall provide for a penalty mechanism which will serve as an effective deterrent for participants that cause settlement fails.	IT: 2. (…). **The penalty mechanism referred to in the first subparagraph shall apply to all transactions of the financial instruments referred to in Article 5(1) which are admitted to trading or traded on a trading venue or cleared by a CCP.**	IT: Currently, pursuant to Article 7(10) of CSDR, penalties are applied to transactions on securities which are traded on TVs or cleared by CCPs. The reference to the scope of penalties was not reintroduced in the new proposed article dedicated to penalties. Thus, we propose to add it again.
Before establishing the procedures referred to in the first subparagraph, a CSD shall consult the relevant trading venues and CCPs in respect of which it provides settlement services.		
The penalty mechanism referred to in the first subparagraph shall include cash penalties for participants that cause settlement fails ('failing participants'). ~~except where those settlement fails are caused by factors not attributable to the participants to the transaction or for~~	FR: **The penalty mechanism referred to in the first subparagraph shall include cash penalties for participants that cause settlement fails ('failing participants').** ~~except where those settlement fails are caused by~~	PL: Supplementing this paragraph with explicit recognition of the bilateral cancellation of settlement orders relating to a transaction for which the process of imposing fines has been initiated as an ending event is worth of support.

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~~operations that do not involve two trading parties.~~ **Cash penalties shall be calculated on a daily basis for each business day that a transaction fails to be settled after its intended settlement date until** ~~the end of the buy-in process referred to in paragraphs 3 to 8 that is to be applied pursuant to paragraph 2a,~~ **the day at which the transaction is either settled or bilaterally cancelled,** ~~or the actual settlement day,~~ **whichever is the earlier. The cash penalties shall not be configured as a revenue source for the CSD.**	~~factors not attributable to the participants to the transaction or for operations that do not involve two trading parties.~~ **Cash penalties shall be calculated on a daily basis for each business day that a transaction fails to be settled after its intended settlement date until** ~~the end of the buy-in process referred to in paragraphs 3 to 8 that is to be applied pursuant to paragraph 2a,~~ **the day at which the transaction is either settled or bilaterally cancelled,** ~~or the actual settlement day,~~ **whichever is the earlier.** **Cash penalties' rate shall be progressive and shall increase depending on the duration of the fails.** **The cash penalties shall not be configured as a revenue source for the CSD.**	DK: We agree upon the importance to specify the scope of the cash penalty mechanism. This includes that only participants that cause settlement fails should be subject to a cash penalty. FR: Cash penalties are due to become the main tool at our hand to lower settlement fail. We believe we should build on the cash penalties regime to encourage participants to enhance their settlement process. In order to do so, we suggest to foresee the possibility to apply a graduate rate of penalties depending on the duration of the fails (for instance, after two business day the rate could be increased). This point should be specified within the RTS. **IE:** We welcome separating out the regime and are generally open to supporting the cash penalty proposal. On a technical point, we would suggest that settlement fail reports should exclude (or separately report) all

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		trades that are not covered under the penalty scheme. This would avoid creating a misleading picture which might suggest that higher penalties are needed.
3. The penalty mechanism referred to in paragraph 2 shall not apply where those settlement fails are caused by factors not attributable to the participants to the transactions or the operations that are not considered as trading or where the transactions include financial collateral arrangements as defined in Article 2(1)(a) of Directive 2002/47/EC or the securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365.	**FR:** **3. The penalty mechanism referred to in paragraph 2 shall not apply to:** **(a) settlement fails caused by factors not attributable to the participants to the transactions;** **(b) failed settlement instructions related to transactions referred to in [*LEVEL 2 instrument*].** ~~**where those settlement fails are caused by factors not attributable to the participants to the transactions or the operations that are not considered as trading or where the transactions include financial collateral arrangements as defined in Article 2(1)(a) of Directive 2002/47/EC or the securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365.**~~	ES: a few comments on this article – a) The exemption of cash penalties for finacial colateral arragements or securities financing transactions could create problems. As CSDs cannot always establish in the origin if an operation is from one type or another, we could create differences between equal or similar operations. We see no added value on this modification, as we prefer the previous wording on this issue. b) We would support the new wording for "settlement fails are caused by factors not attributable to the participants to the transactions or the operations that are not considered as trading". DK: We support further clarification of the scope of the penalty mechanism.

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	IT: 3. The penalty mechanism referred to in paragraph 2 shall not apply where those settlement fails are caused by factors not attributable to the participants to the transactions or **where** the operations ~~that~~ **do not involve two partecipants** ~~are not considered as trading or where the transactions include financial collateral arrangements as defined in Article 2(1)(a) of Directive 2002/47/EC or the securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365~~. NL: **3. The penalty mechanism referred to in paragraph 2 shall not apply to settlement fails:** **a) that are caused by factors not attributable to the participants to the transactions;**	FR: As a preliminary remark, we should keep in mind that the rationale of the cash penalties mechasnim is to apply to "settlement instruction" and not to "operation/transaction". As regards the scope of exemptions, in our view: - there is no rationale to exempt all "**the transactions or the operations that are not considered as trading**" from the cash penalties mechanism, for two reasons. First, such an exemption will have a negative impact on market participants acting as intermediary in case for instance of primary market operation. For example, if a market-maker suscribes to an issuance on behalf of its client and does not receive the securities, he will not receive any cash penalty because the operation will be exempted, while he will have to pay cash penalties to its client because he will not be able to deliver the securities (that he did not receive). Second, this exemption will be very difficult to implement for CSDs that are not always able to identify such operations. - We also believe that exemption for "operations that do not involve two trading parties" introduces complexity for CSDs who are not always able to identify the link between settlement instruction and

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	b) where the operations are not considered as trading; **c) where the transactions include financial collateral arrangements as defined in Article 2(1)(a) of Directive 2002/47/EC;** **d) where the transactions are securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365;** **e) where the failing participants are CCPs, except for transactions entered into by a CCP where it does not interpose itself between counterparties.** **f) if insolvency proceedings are opened against a failing participant.** **DE:** 3. The penalty mechanism referred to in paragraph 2 shall not apply where those settlement fails are caused by factors not attributable to the participants to the transactions	the relative operation/transaction. Such complexity is not welcomed in particular in view of the difficult implementation of the cash penalties since February (even the industry acknowledges that the level of cash penalties is too low and is lower than the level of the former contractual penalties framework that were applied by CSD and CCP before February 2022); if (i) it is proved necessary to exempt settlement instructions arising from certain transactions such as financial collateral arrangements or SFT and (ii) it is possible in practice for the CSD to identify such instructions, such list of transactions should be provided for under a Level 2 text. ESMA could be mandated to make an impact assessment of the application of cash penaltis per type of transactions and conclude, on the basis of such quantitative analysis, whether certain transactions should be excluded from the scope of the cash penalties. We believe that, as of today, we are not in a position to assess the consequence of such exemptions and that we should be very cautious, the cash penalties framework being our main tool to

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	or the operations that are not considered as trading ~~or where the transactions include financial collateral arrangements as defined in Article 2(1)(a) of Directive 2002/47/EC or the securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365~~.	enhance settlement efficiency in the EU. This is not the time to relax this framework that have only began to apply on February 2022. IT: We strongly disagree with the proposal of granting an exemption from the penalty mechanism to all collateral and securities financing transactions. These two categories of transactions, which are currently subject to penalties, represent a large part of the settlement activity. Thus, an exemption would greatly undermine the efficacy of the penalty mechanism. Morever, as this new exemption is set directly at L1, the EC would be unable to amend it in case of need (e.g. if the settlement fail rate increases). Therefore, we propose to eliminate the general exemption to collateral and securities financing transactions. With reference to the scope of the second proposed exemption (i.e. operations that are not considered as trading), we believe that is not very clear.

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		As far as penalties are concerned, it is our understanding that the correct subjective scope of application is to CSD participants. When transfers of securities in a CSD do not involve participants only, they should not be subject to penalties (for instance, a transfer between an issuer and a participant during the initial issuance of a security and other kind of transactions to be further investigated. e.g. free-of-payment (FOP) securities transfers in the context of the (de)mobilisation of collateral). For this reason, we propose a drafting suggestion aimed at claryfing that penalties should not be applied to transactions which do not involve exclusively CSD participants. NL: Restructured paragraph 3 to make it a more easily readable summary, and include the subparagraph on CCPs and insolvency proceedings.

Presidency compromise	Draft suggestions	MS Comments
		EL: We agree with the exception of transactions includind financial collateral arrangements and of securities financing transactions from the application of cash penalties. DE: The types of transactions to be excluded from the penalty regime should be further specified at level-2 (see amendment to para. 7 point c).
The penalty mechanism referred to in paragraph 2 shall not apply to failing participants which are CCPs, except for transactions entered into by a CCP where it does not interpose itself between counterparties.	NL: ~~The penalty mechanism referred to in paragraph 2 shall not apply to failing participants which are CCPs, except for transactions entered into by a CCP where it does not interpose itself between counterparties~~	NL: Deleted as it is added to first subparagraph of paragraph 3 PT: We question what kind of mechanisms are those.
If a CCP incurs losses from the application of the first subparagraph, the CCP may establish in its rules a mechanism to cover such losses.		

Presidency compromise	Draft suggestions	MS Comments
The penalty mechanism referred to in paragraph 2 shall not apply if insolvency proceeding is opened against the failing participant.	NL: ~~The penalty mechanism referred to in paragraph 2 shall not apply if insolvency proceeding is opened against the failing participant.~~	NL: Deleted as it is added to first subparagraph of paragraph 3
4. The Commission shall be empowered to supplement this Regulation by adopting delegated acts in accordance with Article 67 specifying parameters for the calculation of a deterrent and proportionate level of the cash penalties referred to in paragraph 2, third subparagraph, of this Article based on asset type, liquidity of the financial instrument, type of transaction and the effect that low or negative interest rates could have on the incentives of counterparties and fails. The parameters used for the calculation of cash penalties shall ensure a high degree of settlement discipline and the smooth and orderly functioning of the financial markets concerned.	**FR:** **4. The Commission shall be empowered to supplement this Regulation by adopting delegated acts in accordance with Article 67 specifying parameters for the calculation of a deterrent ~~and,~~ proportionate and progressive level of the cash penalties referred to in paragraph 2, third subparagraph, of this Article based on asset type, liquidity of the financial instrument, type of transaction, duration of the settlement fail, taking into account the fail settlement rate per category of financial instruments and the effect that low or negative interest rates could have on the incentives of counterparties and fails. The parameters used for the calculation of cash penalties shall ensure a high degree of settlement discipline and the smooth and orderly functioning of the financial markets concerned.**	FR: Since the new buy-in regime will be a last resort tool, it will rely on the cash penalties regime to incentivize market participants to reduce settlement fails in the EU. To achieve this goal through the cash penalties, we suggest to : - introduce a regular review of the penalties rate, so that their appropriatness is ensured on the long run ; - apply a progressive rate according to the duration of the fails – in a case of a fail, it will create an incentive that this fail lasts not too long ; take into account the fail settlement rate per category of financial instruments while establishing the level of cash penalties. HU: Our view is that MBI and related mechanisms to assess settlement discipline would be further strengthened by a significant increase in the level of cash penalties under

Presidency compromise	Drafts suggestions	MS Comments
	The level of the cash penalties should be reviewed on a regular basis and at least every three years in order to ensure its appropriatness with regard to the level of settlement fails in the Union.	the CSDR regime, as cash penalties in their current form and level are not sufficient deterrents.
The delegated acts shall specify which parameters of the financial instrument covered by those delegated act in accordance with first subparagraph should be used for calculating penalties.	IT: The delegated acts shall specify which parameters of the financial instrument **or of the transaction** covered by those delegated act in accordance with first subparagraph should be used for calculating penalties. NL: The delegated acts shall specify which parameters of the financial instrument covered by those delegated act**s** in accordance with **the** first subparagraph should be used for calculating penalties.	FR: We would be grateful if we could be provided with ESMA's views on this golden source. We wonder if the costs and complexity of the golden source would not outweight the benefit of such measure considering the small magnitude of the prices difference problem on the process of cash penalties. The Commission also raised an interesting responsibility issue for ESMA that should be clarified. IT: The meaning of this new paragraph is not crystal clear to us. We understand that it might be aimed at identifying which part of the transaction should be used to calculate the penalty (e.g. the countervalue). If our understanding is correct, we have a wording suggestion. The meaning of the paragraph could also be better explained in a recital.

Presidency compromise	Draft suggestions	MS Comments
ESMA shall draw up and keep updated a list of financial instruments covered by the scope of the delegated act.	IT: ESMA shall ~~draw up~~ **publish** and keep updated a list of financial instruments covered by the scope of the delegated act. **The list will include all data needed to calculate a penalty on a specific financial instrument, including the reference day, the price of the instrument and the applicable penalty rate.** **PT:** **ESMA shall draw up and keep updated a list on its website of financial instruments covered by the scope of the delegated act.**	PL: CSDs should have a wide scope of information to charge a penalty, so this requirement for ESMA is worth of support. FR: We would be grateful if we could be provided with ESMA's views on this golden source. We wonder if the costs and complexity of the golden source would not outweight the benefit of such measure considering the small magnitude of the prices difference problem on the process of cash penalties. The Commission also raised an interesting responsibility issue for ESMA that should be clarified. IT: We understand that the proposal is aimed at giving to the industry the "golden source" for the calculation of penalties that they are calling for.

Presidency compromise	Draft suggestions	MS Comments
		We agree with this objective and we propose to expand the information published by ESMA to ensure that the objective is reached. DE: We expressly support that ESMA draws up and keeps updated a list of financial instruments covered by the cash penalty mechanism. PT: To clarify where the list should be published and where.
5. This Article shall not apply where the principal venue for the trading of shares is located in a third country. The location of the principal venue for the trading of shares shall be determined in accordance with Article 16 of Regulation (EU) No 236/2012.		
6. The Commission may adopt delegated acts in accordance with Article 67 to supplement this Regulation specifying the reasons for settlement fails that are to be considered as not attributable to the participants to the transaction ~~and the~~	PL: **6. The Commission may adopt delegated acts in accordance with Article 67 to supplement this Regulation defining and specifying the**	PL: It would be more plausible to give to the Commission a power to define in the delegated act the term "*settlement fails that are to be considered as not attributable to the*

Presidency compromise	Draft suggestions	MS Comments
~~transactions that are not to be considered to involve two trading parties~~ **under paragraph 2** ~~and paragraph 4, points (c) and (d), of this Article~~**.**	**reasons for settlement fails that are to be considered as not attributable to the participants to the transaction** ~~and the transactions that are not to be considered to involve two trading parties~~ **under paragraph 2** ~~and paragraph 4, points (c) and (d), of this Article~~**.** **FR:** **6. The Commission may adopt delegated acts in accordance with Article 67 to supplement this Regulation specifying:** **(a) the reasons for settlement fails that are to be considered as not attributable to the participants to the transaction under paragraph 3(a).** PT: **6. The Commission** ~~**may**~~ **should adopt delegated acts in accordance with Article 67 to supplement this Regulation specifying the reasons for settlement fails that are to be**	*participants to the transaction*", as it will provide better clearness in this scope. FR: We are not sure to understand the scope of this Commission delegated act and the scope of the proposed ESMA RTS: should the exemptions be provided for under the Commission delegated act or the RTS? PT: Typo regarding the paragraph (it is 3 not 2). In addition, for legal certainty the adoption of the delegated acts should be mandatory.

Presidency compromise	Draft suggestions	MS Comments
	considered as not attributable to the participants to the transaction ~~and the transactions that are not to be considered to involve two trading parties~~ **under paragraph** ~~2~~ **3** ~~and paragraph 4, points (c) and (d), of this Article~~**.**	
7. ESMA shall, in close cooperation with 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;		**BG:** In relation to the proposed "redistribution" of the collected cash penalties (item 7, letter "b"), while we understand that the cash penalties are not a source of revenue for the CSD, we would like to have additional clarity at level 1 mandate to whom they would be redistributed.

Presidency compromise	Draft suggestions	MS Comments
(c) the operations that are not considered as trading under first subparagraph of paragraph 3.	FR: **(c) the reasons for settlement fails that are to be considered as not attributable to the participants to the transaction under paragraph 3(a);** **(d) the list of transactions that are exempted from cash penalties under paragraph 3(b)** ~~**the operations that are not considered as trading under first subparagraph of paragraph 3.**~~ **IT:** (c) the operations that **do not involve two partecipants** ~~are not considered as trading~~ under first subparagraph of paragraph 3. NL: (c) the operations that are not considered as trading under **the** first subparagraph of paragraph 3. DE:	PL: This provision is worth of support, as it will give to entities mentionned there more clarity in this regard. FR: In line with our comment above on paragraph 3. IT: See comment above **EL:** We agree with defining the transactions/operations that are not considering as trading in RTS, since it is a technical topic. DE: The types of transactions to be excluded from the penalty regime should be further specified at level-2 (see comment on para. 3 above). PT:

Presidency compromise	Draft suggestions	MS Comments
	(c) the operations that are not considered as trading under first subparagraph of paragraph 3, **including financial collateral arrangements as defined in Article 2(1)(a) of Directive 2002/47/EC or the securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365.** **PT:** (d) **reasons for settlement fails that are to be considered as not attributable to the participants to the transaction** ~~and the transactions that are not to be considered to involve two trading parties~~ **under paragraph** ~~2~~ **3** ~~and paragraph 4, points (c) and (d), of this Article~~**.**	In order to not increase the number of level 2 legislation, this paragraph (in the draft suggestions and in the current paragraph 6 of the Proposal) should be included in the regulatory technical standards.
ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please insert the date = 1 year after the entry into force of this Regulation].		

Presidency compromise	Draft suggestions	MS Comments
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.		
Article 7	BE: ~~Article 7~~ FR: Article 7a	BE: We suggest removing this Article, as we are against keeping the MBI in the CSDR. Removing the MBI has been expressed to be the preferred option of many important stakeholders, which we believe should be listened to. The risks and disadvantages linked to the MBI are significant and the potential benefits are predicted to be minimal (and for multiple circumstances even non-existent). EE: Agree in principle
~~Measures to address settlement fails~~ **Mandatory buy-in process**	NL: **Measures to address settlement fails -** Mandatory buy-in process	PL: As expressed by us during the last Working Party, such requirement (even introduced as "last resort") should only apply to CCP-cleared transactions and possibly to trading venue transactions, and should not be mandatory for other transactions. However, if the MBI requirement will remain in CSDR in larger scope, it

Presidency compromise	Draft suggestions	MS Comments
		should be clearly stated that the MBI may only be activated as the "last resort" tool, which may only be activated after a reassessment of fines. Such compromise should, however, consist in adding a clause in the CSDR clearly indicating that the process cannot end with the assessment of the penalty system itself, or even with a possible change in the "*structure or degree of the penalty mechanism*", but should also include an increase in the amount of these penalties. It is doubtful whether their current amount can actually have a preventive effect. In other words, we propose to consider a solution in which the Commission could issue an implementing act providing for the introduction of the MBI only after increasing the amount of penalties to the level specified in the CSDR and only after checking whether this measure proves to be sufficient. FR: **We support the two-steps and granular approach proposed by the Commission, so we are satisfied that a mandatory buy-in process remains in the text.** We remain convinced that the financial penalties regime should be the main lever at our hand to decrease the level of settlement fail within the EU (and thus should be re-calibrated accordingly). We also believe that keeping the

Presidency compromise	Draft suggestions	MS Comments
		threat of a potential mandatory buy-in activation is a very important incentive for the industry. Consequently, we should ensure that the perspective of an MBI activation has some credibility. The drafting modification on the activation criteria goes in the right direction, but requiring cumulative criteria for its activation as well as triggering it after an 8 days period is equivalent to a guarantee to the industry that the MBI will never be activated. In this scenario, not only we would not incentivise the industry to lower the level of settlement fails, but we would also require the industry to put in place costly procedures so that the industry can apply the voluntary buy-in before the 8 days deadline. - **Regarding the decision process** In our view, the suggested drafting is not satisfactory and should be clarified in order to establish a very clear and orderly decision process. Under the suggested drating, in term of timing, we understand that the process would be as follows: - 1) ESMA will provide the Commission with a cost-benefit analysis *[at the Commission request?how often? ESMA should be clearly mandated to this end]* - *2)*The Commission will have to establish that one of the triggering criteria is met on the basis of ESMA analysis; - 3) Commission will consult ESRB, ESCB and ESMA;

Presidency compromise	Draft suggestions	MS Comments
		- 4) Commission will enact the Implementing Act; - 5) Commission will have to, **before applying** the Implementing Act, assess the penalty mechanism and where appropriate change the structure or degree of penalty mechanism in order to increase the settlement efficiency in the Union [*under which mandate?*]. This process can be better calibrated. With respect to suggested paragraph 2, we believe that we should rather foresee the ability for the Commission to reinforce the cash penalty mechanism, **within the cash penalties framework directly and not in this article dedicated to the buy-in.** We have made below drafting suggestions in order to establish a clear and efficient process. IE: We welcome the changes to the MBI regime. However, we still feel that an undue burden may be placed on CSDs, as they will be required to set up a very complex mechanism even when settlement fails are negligibly low as such we would still support deleting MBI from the regulation.

Presidency compromise	Draft suggestions	MS Comments
		However in the spirit of compromise, we can support MBI as being a tool of last resort. We also support measures to keep the pass-on mechanism at the level of CSD participants rather than trading parties Assuming penalties are effective in reducing settlement fails, it is clear that, beyond a certain point, having any MBI regime of significant complexity will have the effect of burdening industry with unnecessary costs. While MBIs may have some limited effect, we would stress that it remains the case that an MBI regime will be disproportionate if not appropriately constructed. NL: Both article 6 and 7 contain measures to address settlement fails. If it is added to article 6 it would be, for consistency's sake, useful to add it to article 7 as well.
1. The Commission may ~~Without prejudice to the penalty mechanism referred to in paragraph 2 of this Article and the right to bilaterally cancel the transaction, the Commission may,~~ **by means of an implementing act, decide to which of the**	**FR:** **1. The Commission may** ~~Without prejudice to the penalty mechanism referred to in paragraph 2 of this Article and the right to~~	SK: We would like to draw attention to the quality of financial instruments. We are of view that illiquid as well as very volatile financial instruments may significantly complicate the application of MBI.

Presidency compromise	Draft suggestions	MS Comments
financial instruments referred to in Article 5(1) or categories of transactions in those financial instruments ~~the settlement discipline measures~~ the mandatory buy-in process referred to in paragraphs ~~3~~ 2 to 8 of this Article ~~are~~ is to be applied, where the Commission considers that those measures constitute a necessary, appropriate and proportionate means to address the level of settlement fails in the Union.	~~bilaterally cancel the transaction, the Commission may,~~ **by means of an implementing act, decide to which of the financial instruments referred to in Article 5(1) or categories of transactions in those financial instruments ~~the settlement discipline measures~~ the mandatory buy-in process referred to in paragraphs ~~3~~ 2 to 8 of this Article ~~are~~ is to be applied, where the Commission considers that this measure constitutes a necessary, appropriate and proportionate mean to address the level of settlement fails in the Union.** DE: 1. The Commission may by means of an implementing act, decide to which of the financial instruments referred to in Article 5(1) or categories of transactions in those financial instruments the mandatory buy-in	Second important issue within MBI is willingness to perform the function of buy-in agent for certain financial instruments. The proposed changes to the CSDR regarding the buy-in do not change this position of the CSD participants either, as the CSDR Refit empowers the Commission to decide by means of an implementing act which of the financial instruments referred to in Article 5 (1) or to which categories of transactions under these financial instruments should be subject to settlement discipline measures i. e. buy-in, but today we cannot predict whether or not the buy-in process will also apply to issues of Slovak securities and how the liquidity of financial instruments in general will be taken into account. This condition of taking into account the liquidity and volume of transactions with the relevant financial instruments for individual financial instruments and categories of financial instruments, not only in general but also within individual markets within Member States (their issues), to be met, which the Commission should take into account, CSDR Refit does not exist. herefore, it will be important how the decision is made, not only to which financial instruments or which categories of transactions within those financial

Presidency compromise	Draft suggestions	MS Comments
	process referred to in paragraphs 2 to 8 of this Article is to be applied, where the Commission considers that those measures constitute a ~~necessary, appropriate and~~ proportionate means to address the level of settlement fails in the Union. PT: **1. The Commission may** without prejudice ~~to the penalty mechanism referred to in paragraph 2 of this Article and~~ to the right to bilaterally cancel the transaction~~, the Commission may,~~ **and by means of an implementing act, decide to which of the financial instruments referred to in Article 5(1) or categories of transactions in those financial instruments** ~~the settlement discipline measures~~ **the mandatory buy-in process referred to in paragraphs** ~~3~~ **2 to 8 of this Article** ~~are~~ **is to be applied, where the**	instruments should be applied, but if the buy-in process is to work, to take into account the conditions and liquidity in within national emissions. **In view of the above, we are of the opinion that the buy-in procedure should be voluntary on the basis of a decision of the receiving participant to whom the financial instruments were not delivered within the set deadline, i. e. whether it initiates a buy-in process or chooses a cash compensation.** LV: We can agree with Presidency proposal that Commission may, by means of implementing act, decide to which of the financial instruments the mandatory buy-in process is applied. We support also the reference to the cost-benefit analysis. However, we would like to refer to the earlier Presidency non-paper proposal from September meeting suggesting non-failing party to use the buy-in that would always be available to contracting parties only on request. We would welcome the construction of MBI in the way that buy-in agent would not be necessarily established.

Presidency compromise	Draft suggestions	MS Comments
	Commission considers that those measures constitute a necessary, appropriate and proportionate means to address the level of settlement fails in the Union.	HU: MBI may place excessive burden on CSDs for securities settlements. If it is necessary, we are open to the Commission IA form of MBI, but with due regard to that MBI should be a measure of the last resort. The latest proposal points in this direction, so we can support to regulate mandatory buy-in as a "last resort tool" and all the provisions pointing to that end. **EL:** We agree with the addition of the words "necessary and appropriate", since the MBI is only to be used as a last resort. DE: The concept of proportionality already includes necessity and appropriateness. PT: We do not think that it is beneficial to remove the bilateral possibility of parties to cancel the transaction.
The Commission may, based on the cost-benefit analysis provided by ESMA and on the number and volume of settlement fails, prepare the implementing act on mandatory buy-in ~~and that, based on the number and volume of settlement fails, any~~	FR: **At least every two years, the Commission should request from ESMA a cost-benefit analysis on the potential application of the mandatory buy-in process to financial**	BE: Given our starting position is to remove the MBI in its entirety, and we understand a majority of Member States shared this belief during the last WP, we believe that, if the MBI remains within the text, it can only be

Presidency compromise	Draft suggestions	MS Comments
~~of~~ if the following conditions ~~is~~ are met:	instruments and transactions with high rates of settlement fails in the Union. The Commission may, based on the cost-benefit analysis provided by ESMA and on the number and volume of settlement fails, ~~prepare~~ adopt an implementing act on mandatory buy-in ~~and that, based on the number and volume of settlement fails, any of~~ if one of the following conditions is met: **DE:** The Commission may, based on ~~the cost-benefit analysis provided by ESMA and on~~ the number and volume of settlement fails, prepare the implementing act on mandatory buy-in if **any of** the following conditions ~~are~~ **is** met: PT: **1st Proposal:**	kept as an absolute last resort measure requiring sufficient and strict conditions to be met before activitating it. In this respect we oppose changes to the cumulative character of the conditions as foreseen in this article or to changes to the content of these conditions if they were to be made less strict as it would bring us further away from our initial belief that the MBI should be removed completely. ES: we support the inclusion of a cost/benefit analysis provided by ESMA (althought it could be further developed). FR: We suggest a regular cost-analysis to be produced by the ESMA so that it is available should the activation of the MBI be considered. To our knowledge, so far, none Member-State has asked for the triggering criteria to be cumulative.

Presidency compromise	Draft suggestions	MS Comments
	The Commission may, based on ~~the cost-benefit analysis provided by ESMA~~ ~~and~~ on the number and volume of settlement fails, prepare the implementing act on mandatory buy-in ~~and that, based on the number and volume of settlement fails, any of~~ if any of following conditions ~~is~~ are met: **2nd Proposal:** **The Commission may, ~~based on the cost-benefit analysis provided by ESMA~~ and on the number and volume of settlement fails, prepare the implementing act on mandatory buy-in ~~and that, based on the number and volume of settlement fails, any of~~ if conditions a) and b) are met of ~~following~~ ~~is~~ met or if condition c) is met:**	As mentioned above, we strongly believe that the triggering condition should not be cumulative, as it would deprive the MBI from all its credibility. LT: The proposed conditions for the introduction of the MBI (Art. 7(1)) even though formulated in the qualitative manner has a quantitative basis and at the same time remains completely unclear what goals we have – what is the long-term and sustainable reduction of settlement fails? What are the appropriate settlement fail levels? What shall we communicate to the market participants when they will start asking about the improvements they should make? **EL:** We agree that a cost-benefit analysis should precede the application of MBI. DE: The cost benefit analysis should be part of the ESMA report provided for in Art. 74. The conditions for introducing the mandatory buy-in should be alternative and not cumulative, in order not to set the bar too high for applying the instrument. PT:

Presidency compromise	Draft suggestions	MS Comments
		Based on the discussions in the last Working Party, we have the doubt if a cost-benefit analysis will always precede an implementing act (i.e. does an implementing act will always have to take into account the conclusions of a cost-benefit analysis?).
(a) the application of the cash penalty mechanism referred to in ~~paragraph 2~~ Article 6a(2) has not resulted in a long-term, ~~continuous~~ sustainable reduction of settlement fails in the Union;	LV: (a) the application of the cash penalty mechanism referred to in Article 6a(2) has not resulted in a long-term, sustainable reduction of settlement fails in the Union in times when markets operate in business as usual situation. FR: **(a) the application of the cash penalty mechanism referred to in ~~paragraph 2~~ Article ~~6a(2)~~7 has not resulted in a long-term over the time, in a ~~continuous~~ sustainable reduction of settlement fails in the Union;**	ES: support the new wording. LV: We would like to propose adding an explanation that it is meant in times when markets operate in business as usual situation (since in market stress conditions there is a probability of temporarily increase in settlement fails). FR: We welcome this drafting suggestion. We also suggest to also delete the notion of "long term" in view of the frequent review of the impact of the cash penalties framework.

Presidency compromise	Draft suggestions	MS Comments
	PT: 1st Proposal: **(a) the application of the cash penalty mechanism referred to in ~~paragraph 2~~ Article 6a(2) has not resulted in a long-term, ~~continuous~~ sustainable reduction of settlement fails in the Union;** 2nd Proposal: (a) the application of the cash penalty mechanism referred to in ~~paragraph 2~~ Article 6a(2) has not resulted in a long-term, ~~continuous~~ sustainable reduction of settlement fails in the Union;	HU: Replacing the term "continuous" with "sustainable", is in line with our position. PT: We understand the willingness to move on regarding this topic, but in line with the previous comments, we think that would be beneficial to discuss how these conditions a) and b) are going to be assessed. As a matter of compromise, we suggest that "The Commission shall before adopting the implementing act on mandatory buy-in consult the ESRB and ESCB on whether they consider that the conditions in points (a) to (c) of this paragraph are met and request a cost-benefit analysis from ESMA." (see draft suggestions below). In addition the reference to "long-term" might benefit from further clarification.

Presidency compromise	Draft suggestions	MS Comments
		HR: We believe that the wording "has not resulted in a long-term, sustainable reduction of settlement fails in the Union" is vague and lacks quantitative criteria, as we noted before in our detailed comments on MBI. It also needs to be said that we still have open questions on the actual causes of settlement fails. Since the causes are uncertain, it is also uncertain if penalties will actually reduce settlement fails
(b) settlement ~~efficiency~~ fails in the Union have ~~has~~ not ~~reached~~ fallen to appropriate levels ~~considering~~, in particular when comparing them, where possible, to the situation in third-country capital markets that are comparable in terms of size, liquidity as well as instruments traded and types of transactions executed on such markets;	LV: (b) settlement efficiency fails in the Union have has not reached fallen to appropriate levels; IT: (b) settlement fails in the Union have not fallen to appropriate levels, **also taking into account, where possible but not limited to,** ~~in particular when comparing them, where possibile, to~~ the situation in third-country capital markets that are comparable in terms of size, liquidity as well as instruments traded and types of transactions executed on such markets;	ES: support the new wording. LV: We maintain the wiev that the potential costs for comparative analysis with third-country capital markets would outweigh the benefits. FR: We welcome this drafting suggestion HU:

Presidency compromise	Draft suggestions	MS Comments
	EL: (b) settlement efficiency in the Union is low in particular when compared, where possible, to the situation in third-country capital markets that are comparable in terms of size, liquidity as well as instruments traded and types of transactions executed on such markets; DE: (b) settlement fails in the Union have not **reached** ~~fallen to~~ appropriate levels, in particular when comparing them, where possible, to the situation in third-country capital markets that are comparable in terms of size, liquidity as well as instruments traded and types of transactions executed on such markets; PT: 1st Proposal:	From our point of view, there is no adequate data available outside the EU for comparisons, there is no regime similar to the CSDR outside the EU that we are aware of in detail. With the term "where possible" the point is acceptable to us. IT: We suggest a different wording for point b), with regard to the comparison to third-country capital markets to not exclude the possibility to cover the case where the level of fails in the EU is not appropriate, since it has a clear negative effect on the financial stability, although lower than the level of fails in comparable third-countries. **EL:** The term "appropriate levels" is rather unclear. DE: Editorial remark. PT:

Presidency compromise	Draft suggestions	MS Comments
	~~(b) settlement efficiency fails in the Union have has not reached fallen to appropriate levels considering, in particular when comparing them, where possible, to the situation in third-country capital markets that are comparable in terms of size, liquidity as well as instruments traded and types of transactions executed on such markets;~~ 2nd Proposal: **(b) settlement ~~efficiency~~ fails in the Union have ~~has~~ not ~~reached~~ fallen to appropriate levels ~~considering~~, in particular when comparing them, where possible, to the situation in third-country capital markets that are comparable in terms of size, liquidity as well as instruments traded and types of transactions executed on such markets, while also considering differences in methodologies for recording settlement fails;**	Taking into account the problems which have been discussed regarding the comparability of markets, and the fact that if the COM concludes that it is not possible, this condition b) will not be applied, we propose to delete this condition because it provides ambiguity to the Proposal. If that is not the path pursued, then we propose to have an implementing act if condition a) and b) are met together or if condition c) is met alone. (See draft suggestions)

Presidency compromise	Draft suggestions	MS Comments
(c) the level of settlement fails in the Union has or is likely to have a negative effect on the financial stability of the Union.	IT: (c) the level of settlement fails in the Union has ~~or is likely to have~~ a **clear** negative effect on the financial stability of the Union. PT: 1st Proposal: (b) the level of settlement fails in the Union has or is likely to have a negative effect on the financial stability of the Union. 2nd Proposal: **(c) the level of settlement fails in the Union has or is likely to have a negative effect on the financial stability of the Union.**	IT: We are not convinced with the proposed wording, as the criterion seems to be too vague. Thus, we propose to limit it to situation where the level of fails has a clear negative effect on financial stability. PT: Financial stability should not depend on other conditions, such as a) and b) to be activated. Therefore, condition c) should not be cumulative.
The implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2). It shall specify a date of application that may not be shorter than one year after its entry into force.	**IT:** **(…) The cost-benefit analysis mentioned in paragraph 1 shall be provided by ESMA following a request by the Commission and shall consider the following elements:**	**IT:** We understand that the proposal envisages two different cost-benefit analysis, one by ESMA to be done every two years (even if the conditions for the application of

Presidency compromise	Draft suggestions	MS Comments
	i) the average duration of settlement fails to which the mandatory buy-in would apply; **ii) the impact of the mandatory buy-in process on EU market, including implications of subjecting specific financial instruments and categories of transactions to the mandatory buy-in;** **iii) the application of a similar buy-in process in comparable third countries markets and the impact on the competitiveness of EU markets;** **iv) any clear impacts on financial stability stemming from settlement fails.**	the MBI have not materialised) and the other one by the EC if and when the EC is evaluating the adoption of the MBI. We agree having a cost-benefit analysis, but we believe that it should be done only once. In particular, we propose that the cost-benefit analysis is carried out by ESMA following a request by the EC if and when the EC is evaluating the adoption of the MBI. We also believe that CSDR should clearly state which elements should be considered in the cost-benefit analysis. **EL:** We agree with setting a transitional period, in order for the markets to prepare for the implementation of MBI. DE: We expressly support the implementing period of at least one year.

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The Commission shall before adopting the implementing act on mandatory buy-in consult the ESRB, ESCB and ESMA.	FR: **The Commission shall before adopting the implementing act on mandatory buy-in consult the ESRB, ESCB and ESMA that may provide non-binding opinion within two months from the date of referral.** **NL:** The Commission shall **consult the ESRB, ESCB and ESMA** before adopting the implementing act on mandatory buy-in. ~~consult the ESRB, ESCB and ESMA.~~ PT: The Commission shall before adopting the implementing act on mandatory buy-in consult the ESRB and ESCB **on wether they consider that the conditions in points (a) to (c) of this paragraph are met and request a cost-benefit analysis from ESMA.**	ES: we couls support this consultation process before applying the MBI. The expertise of this bodies would be really useful in the implementation processes. NL: Shifted the wording around to make it clearer. PT: Since MS will be required to approve the implementing act trough the comitology procedure we deem important that the results of the consultation and ESMA's cost and benefit analysis is at least shared with the Council.

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	The response from the ESRB and ESCB as well as ESMA's cost-benefit analysis, should be shared with the Council and the European Parliament.	
ESMA shall draw up and keep updated a list of financial instruments covered by the scope of the implemented act.	FR: **ESMA shall draw up and keep updated a list of financial instruments covered by the scope of the implementing act.**	DE: We expressly support that ESMA draws up and keeps updated a list of financial instruments covered by the cash penalty mechanism.
2. The Commission shall before applying the implementing act under paragraph 1 assess the penalty mechanism referred to in Article 6a(4) and where appropriate change the structure or degree of penalty mechanism in order to increase the settlement efficiency in the Union.	**FR:** ~~**2. The Commission shall before applying the implementing act under paragraph 1 assess the penalty mechanism referred to in Article 6a(4) and where appropriate change the structure or degree of penalty mechanism in order to increase the settlement efficiency in the Union.**~~ **DE:** 2. The Commission shall before applying the implementing act under paragraph 1 assess **if** the **level of penalties** ~~penalty mechanism~~ referred to in Article 6a is **appropriate**~~(4) and where~~	AT: We also consider it positive to perform a mandatory assessment of the penalty mechanism before implementing the MBI regime. FR: We believe that we should rather foresee the ability for the Commission to reinforce the cash penalty mechanism within the cash penalties framework directly and not in this article dedicated to the buy-in. Please see our comments above on Article 7. HU:

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	~~appropriate change the structure or degree of penalty mechanism in order to increase the settlement efficiency in the Union~~.	We support the Commission to review the application of cash penalties. **EL:** We support the reassessment of cash penalties prior to the application of the implementing act on MBI. **DE:** The application of the implementing act should not depend on the re-assessment of the penalty mechanism as such. The Commission should be required to assess if the level of penalties is appropriate before introducing a mandatory buy-in.
Before adopting the implementing act the Commission shall consider whether the applicable conditions referred to in paragraph 1 are met, despite the prior implementation of the measures referred to in Article 6a(2) and the rationale for and potential cost implications of subjecting specific financial instruments and categories of transactions to the mandatory buy-in.	**FR:** **Before adopting the implementing act the Commission shall consider whether the applicable conditions referred to in paragraph 1 are met, despite the prior implementation of the measures referred to in Article 7 ~~6(a)2~~ and the rationale for and potential cost implications of subjecting**	**IT:** We believe that only when the changes to the penalty mechanism have been done and have been implemented for enough time and yet the desired degree of settlement discipline has not been reached, then the introduction of the buy-in process could be evaluated (subject to the cost-benefit analysis).

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	specific financial instruments and categories of transactions to the mandatory buy-in. **IT:** Before adopting the implementing act the Commission shall consider whether the applicable conditions referred to in paragraph 1 are met, despite the prior implementation of the measures referred to in Article 6a(2) **and the application, for enough time, of the changes to the penalty mechanism under the first subparagraph of paragraph 2** ~~and the rationale for and potential cost implications of subjecting specific financial instruments and categories of transactions to the mandatory buy-in~~. DE: ~~Before adopting the implementing act the Commission shall consider whether the applicable conditions referred to in paragraph 1 are met, despite the prior implementation of the~~	The second part has been moved to the new paragraph above dealing with the cost-benefit analysis. DE: See comment above and on Art. 7 para. 1.

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	~~measures referred to in Article 6a(2) and the rationale for and potential cost implications of subjecting specific financial instruments and categories of transactions to the mandatory buy-in.~~	
3. Where the Commission has adopted an implementing act pursuant to paragraph ~~2a~~ 1 and where a failing participant has not delivered financial instruments covered by that implementing act to the receiving participant within a period after the intended settlement date ('extension period') equal to 4 business days, a buy-in process ~~shall~~ may be initiated upon the request from receiving participant.	FR: **3. Where the Commission has adopted an implementing act pursuant to paragraph ~~2a~~ 1 and where a failing participant has not delivered financial instruments covered by that implementing act to the receiving participant within a period after the intended settlement date ('extension period') equal to 4 business days, a buy-in process ~~may~~** shall **be initiated ~~upon the request from receiving participant.~~** **IT:**	BE: In addition to our proposal to remove Article 7, we would like to express that the large majority of MS indicated that they would not be in for a "voluntary MBI". This proposal nevertheless does foresee a hybrid solution which starts with such a voluntary MBI. DK: We are open to consider a relief of the mandatory buy-in obligation from 4 to 8 business days and change the requirement for a mandatory buy-in after 4 days from "shall" to "may". FR:

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	Where the Commission has adopted an implementing act pursuant to paragraph ~~2a~~ 1 and where a failing **party** ~~participant~~ has not delivered financial instruments covered by that implementing act to the receiving **party** ~~participant~~ within a period after the intended settlement date ('extension period') equal to 4 business days, a buy-in process ~~shall~~ may be initiated upon the request from receiving **party** ~~participant~~. DE: 3. Where the Commission has adopted an implementing act pursuant to paragraph 1 and where a failing **party**~~participant~~ has not delivered financial instruments covered by that implementing act to the receiving **party**~~participant~~ within a period after the intended settlement date ('extension period') equal to 4 business days, a buy-in process may	We do not agree with the introduction of such voluntary buy-in. Please refer to our comment above. HU: We support the initiation on-request, as the mechanism is firstly triggered by the parties. LT: The wording of paragraph 3 is not in line with the wording in paragraph 7 and therefore the idea of extension+deferral periods is not very clear (please see also comments on para 7). IT: We believe that the buy-in process should affect (trading) parties, not partecipants to a CSD, with the exception of transactions cleared by a CCP, where the CCP itself should handle the buy-in process vis-à-vis its clearing members (as it is today). This is also made clear in Recital 35 of the current RTS on settlement discipline (i.e. Commission Delegated Regulation 2018/1229), which clarifies that transactions

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	be initiated upon the request from **the** receiving **party**~~participant~~.	not cleared by a CCP are generally uncollateralised and therefore each trading party bears the counterparty risk. If the buy-in is applied to participants, it would mean that this counterparty risk is transferred to participants to CSDs, forcing the latter to cover their exposure to counterparty risk with collateral. This could lead to increased costs of securities settlement in a disproportionate manner. The failing clearing member or the failing trading party, as applicable, should therefore bear responsibility for the payment of and should cover the buy-in costs, the price difference and the cash compensation. Thus, with reference to the mandatory buy-in, we propose to replace any reference to "participant" with a reference to "party". DE: The buy-in process should be regulated at the trading level. The party responsible for the buy-in should be the failing trading party, trading venue member or clearing member, as applicable, not the failing CSD participant (see Art. 27, 29 and 31 of the Commission delegated regulation (EU) 2018/1229 of 25 May 2018). A limitation to CSD participants only would cause severe frictions in practice.

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When extension period equals to 8 business days and a failing participant has not delivered financial instruments covered by that implementing act to the receiving participant, a buy-in process shall be initiated.	**FR:** ~~When extension period equals to 8 business days and a failing participant has not delivered financial instruments covered by that implementing act to the receiving participant, a buy-in process shall be initiated.~~ **IT:** When extension period equals to 8 business days and a failing **party** ~~participant~~ has not delivered financial instruments covered by that implementing act to the receiving **party** ~~participant~~, a buy-in process shall be initiated. DE: When **the** extension period equals to 8 business days and a failing **party** ~~participant~~ has not delivered **the** financial instruments covered by that implementing act to the receiving	BE: We believe this proposal to already be very tricky and would oppose any lowering of the period triggering the mandatory buy-in ES: we see there is no need to this paragraph. The receiving participant will know if they want a MBI after 4 days. No added value in making this mandatory after 8 days, as the receiving participant has the option to trigger the mechanism. DK: We are open to consider a relief of the mandatory buy-in obligation from 4 to 8 business days. IT: See our comment to paragraph 3 above **EL:** We agree with the proposed process.

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	party~~participant~~, a buy-in process shall be initiated.	DE: See above. PT: If the path of the negotiations pursue this structure regarding MBIs, we ask if the proposed structure would not benefit from taking into account the asset type and liquidity of the financial instruments concerned, in line to what previously happened (former article 7(4)(a)). HR: We would ask that exceptions from the mandatory buy in be introduced for illiquid instruments. If this is not possible, then some more flexibility, at least in the deadlines for the MBI, is needed for illiquid instruments.
Whereby those instruments shall be available for settlement and delivered to the receiving participant within an appropriate timeframe.	**IT:** Whereby those instruments shall be available for settlement and delivered to the receiving **party** ~~participant~~ within an appropriate timeframe.	**IT:** See our comment to paragraph 3 above DE:

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	DE: Whereby those instruments shall be available for settlement and delivered to the receiving **party** ~~participant~~ within an appropriate timeframe.	See above, the term "participant" would need to be replaced by "party" throughout Art. 7.
Where the transaction relates to a financial instrument traded on an SME growth market, the extension period shall be 15 ~~calendar~~ business days unless the SME growth market decides to apply a shorter period.	IT: Where the transaction relates to a financial instrument traded on an SME growth market, the extension period shall be 15 ~~calendar~~ business days unless the SME growth market decides to apply a shorter period. **After the extension period a buy-in process shall be initiated.** **EL:** Where the transaction relates to a financial instrument traded on an SME growth market, the extension period shall be 10 business days unless the SME growth market decides to apply a shorter period.	IT: It is not crystal clear if the 15 days extension period refers to the buy-in on request or the mandatory one. We propose to make it clear **EL:** This amendmend lengthens too much the extension period for SME (from two to three weeks). PT: With the current wording it is not clear what the PRES indents to do regarding SME growth market.

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4. Where a transaction is part of a chain of trades and may result in different settlement instructions, the participants involved in the buy-in process may limit the number of buy-ins pursuant to paragraph 2 by coordinating their actions amongst themselves and informing the CSD thereof. In this case, the participants responsible for the buy-in shall be permitted to pass on its obligation to initiate the buy-in along a chain of trading transactions to the ultimate failing participant responsible for the buy-in.	FI: 4. Where a transaction is part of a chain of trades and may result in different settlement instructions, the participants responsible for the buy-in shall be permitted to pass on its obligation to initiate the buy-in along a chain of trading transactions to the ultimate failing participant responsible for the buy-in. The participants involved in the buy-in process may ~~limit the number of buy-ins pursuant to paragraph 2 by~~ coordinate ~~ing~~ their actions amongst themselves and inform~~ing~~ the CSD thereof. ~~In this case, the participants responsible for the buy-in shall be permitted to pass on its obligation to initiate the buy-in along a chain of trading transactions to the ultimate failing participant responsible for the buy-in.~~ FR:	BE: In addition to our proposal to remove Article 7, we would like to express that this proposal will again create chaos as – in our view – there cannot and will not be any efficient coordination on who will/should trigger the MBI, as the "chain of trades" is not known to most parties (other than CSDs). FI: The proposal could be interpreted in such a way that pass-on would be conditional to coordination of participants' actions (unclear where "in this case" refers to). We would see pass-on as an individual right rather than somenthing depending on co-operation with other participants. Thus, we would propose to change the order of the sentences. DK: We are not convinced that this solution would give the market participants the necessary clarity.

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	4. Where a transaction is part of a chain of trades and may result in different settlement instructions, the ~~participants~~ parties involved in the buy-in process may limit the number of buy-ins pursuant to paragraph 2 by coordinating their actions amongst themselves and informing the CSD thereof. ~~In this case, the participants responsible for initiating the buy-in shall be permitted to pass on its obligation to initiate the buy-in along a chain of trading transactions to the ultimate failing participant responsible for the buy-in.~~ **IT:** 4. Where a transaction is part of a chain of trades and may result in different settlement instructions, the **party** ~~participant~~ involved in the buy-in process may limit the number of buy-ins pursuant to paragraph 2 by coordinating their	Buy-in is a bilateral arrangement and CSD has no reason to be involved. At this point in time we prefer not to change the text as suggested and to keep the original proposal form the Commission. FR: We welcome the introduction of the pass-on mechanism which is necessary in order to implement a buy-in in a efficient manner. Given the technicity required to design an efficient pass-on mechanism (which requires in our view discussion with operational experts and market participants), Level 1 should only provides for the principle and a mandate should be introduced to amend the RTS on settlement discipline. In particular, a new article should be introduced in the RTS on settlement discipline to set up the scope and practical implementation of a pass-on mechanism (for instance, it could be useful to distinguish in Level 2 how it works for cleared and non cleared transactions as well as for transactions where a settlement agent is appointed etc.).

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	actions amongst themselves and informing the CSD thereof. In this case, the **parties** ~~participant~~ responsible for the buy-in shall be permitted to pass on its obligation to initiate the buy-in along a chain of trading transactions to the ultimate failing **party** ~~participant~~ responsible for the buy-in. DE: 4. Where a transaction is part of a chain of trades and may result in different settlement instructions, the **parties**~~participants~~ involved in the buy-in process may limit the number of buy-ins pursuant to paragraph 2 by coordinating their actions amongst themselves and informing the CSD thereof. In this case, the **parties**~~participants~~ responsible for the buy-in shall be permitted to pass on **their**~~its~~ obligation to initiate the buy-in along a chain of trading	IT: See our comment to paragraph 3 above DE: The revised wording of the pass-on mechanism is a step in the right direction, but the wording should be further aligned to recital (34) of Commission delegated regulation (EU) 2018/1229 of 25 May 2018 and should not be limited to CSD participants, but include clearing members, trading venue members and trading parties, as applicable. A limitation to CSD participants only would cause severe frictions in practice. PT: Imagining that person A sells shares to person B, which in turn sells them to person C. If A fails to deliver to B, the latter will fail to deliver to C.

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	transactions to the ultimate failing **party**~~participant~~ responsible for the buy-in.	If we are understanding correctly, the pass-on mechanism will allow to do a buy-in in which A delivers directly the shares to C. However, since the market is anonymous, we ask if the coordination between person A and B as proposed by the PRES is possible. HR: This paragraph needs further specification, as it currently can be interptered in different ways. We also note that settlement chains are complicated and that it is doubtful that this (well intended) provision can be easily applied in practice
5. Without prejudice to paragraph ~~3a~~ 4, the following derogations from the requirement referred to in paragraph 3 shall apply:	IT: 5. Without prejudice to paragraph ~~3a~~ 4, the following derogations from the requirement referred to in paragraph 3 **may** ~~shall~~ apply: NL:	SK: We do not support introduction of MBI. However if there will be majority of MS willing to include MBI provisions to the CSDR, then we will support exemptions from MBI as broad as it will be possible.

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	5. Without prejudice to paragraph 4, ~~the following derogations from the requirement referred to in~~ paragraph 3 shall **not** apply: PT: **5. Without prejudice to paragraph ~~3a~~ 4, the buy-in process ~~following derogations from the requirement~~ referred to in paragraph 3 shall not apply:**	BE: In addition to our proposal to remove Article 7, we would like to express that this proposal for derogations seems to be exhaustive, despite the majority of MS' expressing views that the list should be flexible. We could allow to ESMA to propose additional exemptions via RTS ES: we strongly support these exemptions from MBI. DK: We agree with this accumulation of the derogations from mandatory buy-in in one paragraph. FR: It is not necessary to provide for a wide range of exemptions to the buy-in process in Level 1 considering that: - **The implementing act will provide for a limited scope of financial instruments and category of transactions (this is not a general mandatory buy-in anymore);**

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		- The implemented act may, if necessary, provide for exemptions after an ESMA impact assessment HU: We consider that the listed exemptions from the scope of mandatory buy-in are eligible. In general, we also support the steps aimed to clarify the rules (collection of exceptions, specific wording). IT: At this stage we do not have a strong view on the proposed exemptions, but we believe that in any case the list of exemptions may be better set in a ESMA RTS taking into account: i) the potential increase in exemptions; and ii) the need to coordinate the exemptions with the results of the cost-benefit analysis (which should be carried out by ESMA before the application of the MBI) Thus, we believe that Level 1 should contain an indicative list of exemptions from the MBI, which should include at least the exemption already set out in

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		CSDR and Commission Delegated Regulation 2018/1229 with reference to securities financing transactions. NL: If we're not mistaken the point of paragraph 5 is to ensure that MBI does not apply to various transactions. Therefore the wording needs to be crystal clear. **EL:** We agree with aligning and summarising all exceptions from MBI in one paragraph. PT: Drafting suggestion
(a) to securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365;	**FR:** ~~**(a) to securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365;**~~ DE:	The types of transactions to be excluded from the mandatory buy-in should be further specified at level-2 (see amendment to para. 15 point b).

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	~~(a) to securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365;~~	
(b) to financial collateral arrangements as defined in Article 2(1)(a) of Directive 2002/47/EC;	**FR:** **~~(b) to financial collateral arrangements as defined in Article 2(1)(a) of Directive 2002/47/EC;~~** **DE:** ~~(b) to financial collateral arrangements as defined in Article 2(1)(a) of Directive 2002/47/EC;~~	
(c) to transactions that include close-out netting provision as defined in Article 2(1)(n) of Directive 2002/47/EC;	**FR:** **~~(c) to transactions that include close-out netting provision as defined in Article 2(1)(n) of Directive 2002/47/EC;~~** DE: ~~(c) to transactions that include close-out netting provision as defined in Article 2(1)(n) of Directive 2002/47/EC;~~	NL: Is it correct that close-out netting provisions are exempt from MBI but not from the penalty mechanism?

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(d) to transactions where the failing participants are CCPs, except for transactions entered into by a CCP where it does not interpose itself between counterparties;	**DE:** ~~(d) to transactions where the failing participants are CCPs, except for transactions entered into by a CCP where it does not interpose itself between counterparties;~~	
(e) to transaction when the insolvency proceeding is opened against the failing participant;	**DE:** ~~(e) to transaction when the insolvency proceeding is opened against the failing participant;~~	
(f) to transactions that are in scope of Article 15 Regulation (EU) No 236/2012;	**FR:** **(f) to transactions that are in scope of Article 7b ~~15 Regulation (EU) No 236/2012[article~~ ;** **NL:** (f) to transactions that are in scope of Article 15 **of** Regulation (EU) No 236/2012; DE: ~~(f) to transactions that are in scope of Article 15 Regulation (EU) No 236/2012;~~	FR: A new article 7b should be created to introduce the provisions of former article 15 of the short selling regulation. NL: Added a word. Is it correct that transactions in scope of art. 15 SSR are exempt from MBI but not from the penalty mechanism?

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(ge) ~~for~~ **to settlement fails that occurred for reasons not attributable to the participants**~~, the buy-in process referred to in paragraph 3 shall not apply~~;	DE: (**a**~~g~~) to settlement fails that occurred for reasons not attributable to the participants;	
(hd) ~~for transactions that do not involve two trading parties the buy-in process referred to in paragraph 3 shall not apply~~ **to the operations that are not considered as trading.**	**FR:** ~~**(hd) for transactions that do not involve two trading parties the buy-in process referred to in paragraph 3 shall not apply to the operations that are not considered as trading.**~~ **DE:** (**b**~~h~~) to the operations that are not considered as trading.	
6. Without prejudice to the penalty mechanism referred to in ~~paragraph 2~~ **Article 6a(2)**, where the price of the ~~shares~~ **financial instruments** agreed at the time of the trade is higher than the price paid for the execution of the buy-in, the corresponding difference shall be paid to the receiving participant by the failing participant no later than on the	IT: 6. Without prejudice to the penalty mechanism referred to in ~~paragraph 2~~ **Article 6a(2)**, where the price of the ~~shares~~ **financial instruments** agreed at the time of the trade is higher than the price paid for the execution of the buy-in, the	BE: In addition to our proposal to remove Article 7, we would like to express that ICMA indicated that this paragraph is flawed and should be addressed. The COM's proposal did take that remark on board, but this has now been turned back by the Presidency. We do not

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second business day after the financial instruments have been delivered following the buy-in.	corresponding difference shall be paid to the receiving **party** ~~participant~~ by the failing **party** ~~participant~~ no later than on the second business day after the financial instruments have been delivered following the buy-in.	understand what the Presidency's reasoning is here and would revert back to the COM proposal. ES: from our perspective, there is an error on this paragraph because of the assimetry in the price difference. We are not dealing here with a sanction, but with a mechanism to assure that the buy-in has the same economic affect that the original operation had. IT: See our comment to paragraph 3 above **EL:** We prefer the wording proposed by the Commission in order to introduce symmetry of payments between the buyer and the seller. DE: We expressly agree to revert back to the original wording of Art. 7 para. 6. We understand that this para. has been further specified by Art. 35 para. 2 of

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		Commission delegated regulation (EU) 2018/1229 of 25 May 2018 to avoid unintended consequences.
7. If the buy-in fails or is not possible, the receiving participant can choose to be paid cash compensation or to defer the execution of the buy-in to an appropriate later date ('deferral period'). If the relevant financial instruments are not delivered to the receiving participant at the end of the deferral period, cash compensation shall be paid.	IT: 7. If the buy-in fails or is not possible, the receiving **party** ~~participant~~ can choose to be paid cash compensation or to defer the execution of the buy-in to an appropriate later date ('deferral period'). If the relevant financial instruments are not delivered to the receiving **party** ~~participant~~ at the end of the deferral period, cash compensation shall be paid.	IT: See our comment to paragraph 3 above
Cash compensation shall be paid to the receiving participant no later than on the second business day after the end of either the buy-in process referred to in paragraph 3 or the deferral period **referred to in paragraph 3 subparagraph 2 or 4**, where the deferral period was chosen.	**IT:** Cash compensation shall be paid to the receiving **party** ~~participant~~ no later than on the second business day after the end of either the buy-in process referred to in paragraph 3 or the deferral period **referred to in paragraph 3 subparagraph 2 or 4**, where the deferral period was chosen.	LT: There is no deferral period referred to in paragraph 3, only extension period is mentioned there. Therefore, it is not clear whether the "additional" extension period mentioned in paragraph 3 subparagraph 2 is to be understood as a deferral period OR the deferral period is on top of the extension periods mentioned in paragraph 3 but is equal to the same number of days

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	NL: Cash compensation shall be paid to the receiving participant no later than on the second business day after the end of either the buy-in process referred to in paragraph 3 or the deferral period referred to in paragraph 3**,** subparagraph 2 or 4, where the deferral period was chosen.	(i.e., 15 days extension + 15 days deferral for SME growth market and 4 days extension (optional buy-in) + 4 days extension (mandatory buy-in) + 4 days deferral for the rest financial instruments). IT: See our comment to paragraph 3 above NL: Added a comma before 'subparagraph'
8. The failing participant shall reimburse the entity that executes the buy-in for all amounts paid in accordance with paragraphs ~~3, 4 and 5~~ **3 and 5**, including any execution fees resulting from the buy-in. Such fees shall be clearly disclosed to the participants.	IT: 8. The failing **party** ~~participant~~ shall reimburse the entity that executes the buy-in for all amounts paid in accordance with paragraphs ~~3, 4 and 5~~ **3 and 5**, including any execution fees resulting from the buy-in. Such fees shall be clearly disclosed to the **parties** ~~participants~~.	IT: See our comment to paragraph 3 above
9. CSDs, CCPs and trading venues shall establish procedures that enable them to suspend in consultation with their respective competent authorities, any participant that		

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fails consistently and systematically to deliver the financial instruments referred to in Article 5(1) on the intended settlement date and to disclose to the public its identity only after giving that participant the opportunity to submit its observations and provided that the competent authorities of the CSDs, CCPs and trading venues, and of that participant have been duly informed. In addition to consulting before any suspension, CSDs, CCPs and trading venues shall notify, without delay, the respective competent authorities of the suspension of a participant. The competent authority shall immediately inform the relevant authorities of the suspension of a participant.		
Public disclosure of suspensions shall not contain personal data within the meaning of ~~point (a) of Article 2 of Directive 95/46/EC~~ **Article 4(1) Regulation (EU) 2016/679**.	NL: Public disclosure of suspensions shall not contain personal data within the meaning of Article 4(1) **of** Regulation (EU) 2016/679.	NL: Added a word
10. Paragraphs ~~2~~ **1** to 9 shall apply to all transactions of the financial instruments referred to in Article 5(1) which are admitted		

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to trading or traded on a trading venue or cleared by a CCP as follows:		
(a) for transactions cleared by a CCP, the CCP shall be the entity that executes the buy-in according to paragraphs 3 to 8;		
(b) for transactions not cleared by a CCP but executed on a trading venue, the trading venue shall include in its internal rules an obligation for its members and its participants to apply the measures referred to in paragraphs 3 to 8;	IT: ~~(b) for transactions not cleared by a CCP but executed on a trading venue, the trading venue shall include in its internal rules an obligation for its members and its participants to apply the measures referred to in paragraphs 3 to 8;~~ **11. Parties in the settlement chain shall establish contractual arrangements with their relevant counterparties that incorporate the buy-in process requirements.** **Each party in the settlement chain shall ensure that the contractual arrangements established with its relevant counterparties are enforceable in all relevant jurisdictions.**	IT: For transactions not cleared by a CCP, the buy-in process should affect the (trading) parties which have executed, on or outside a trading venue, the transaction which has led to the buy-in process. Trading parties should therefore bear responsibility for the payment of and should cover the buy-in costs, the price difference and the cash compensation. Thus, we propose to add the wording currently used in Article 25 of the RTS on settlement discipline (Commission Delegated Regulation 2018/1229)

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	Parties shall establish the necessary procedures to execute the buy-in, pay the cash compensation, the price difference and the buy-in costs within the required timeframes. The contractual arrangements and the procedures referred to shall include the necessary provisions to ensure that the relevant parties in the settlement chain receive the information required to exercise their rights and obligations in accordance with the timeframes specified in this Regulation	
(c) for all transactions other than those referred to in points (a) and (b) of this subparagraph, CSDs shall include in their internal rules an obligation for their participants to be subject to the measures referred to in paragraphs 3 to 8.	IT: ~~(c) for all transactions other than those referred to in points (a) and (b) of this subparagraph, CSDs shall include in their internal rules an obligation for their participants to be subject to the measures referred to in paragraphs 3 to 8.~~	ES: as we said on the meeting, in these cases the obligations should rest with the trading parties, not the CSDs. As a consequence, the rules have to be set on this regulation (or in futher developments), but not in the internal rules of a CSD.
A CSD shall provide the necessary settlement information to CCPs and trading		

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venues to enable them to fulfil their obligations under this paragraph.		
Without prejudice to points (a), (b) and (c) of the first subparagraph, CSDs may monitor the execution of buy-ins referred to in those points with respect to multiple settlement instructions, on the same financial instruments and with the same date of expiry of the execution period, with the aim of minimising the number of buy-ins to be executed and thus the impact on the prices of the relevant financial instruments.		
11. This Article shall not apply where the principal venue for the trading of shares is located in a third country. The location of the principal venue for the trading of shares shall be determined in accordance with Article 16 of Regulation (EU) No 236/2012.		
12. ESMA may recommend that the Commission suspend in a proportionate way the buy-in mechanism referred to in paragraphs 3 to 8 for specific categories of financial instruments where necessary to avoid or address a serious threat to	**FR:** **12. ESMA may recommend that the Commission adapt or suspend in a proportionate way the buy-in mechanism**	FR: We need to ensure we have enough flexibility here and that the ESMA is legally in a position to recommend either a suspension or an adaptation of the MBI.

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financial stability or to the orderly functioning of financial markets in the Union. Such recommendation shall be accompanied by a fully reasoned assessment of its necessity and shall not be made public.	**referred to in paragraphs 3 to 8 for specific categories of financial instruments where necessary to avoid or address a serious threat to financial stability or to the orderly functioning of financial markets in the Union. Such recommendation shall be accompanied by a fully reasoned assessment of its necessity and shall not be made public.**	**EL:** We agree with adding a procedure for suspending the buy-in mechanism under certain circumstances and accompanied by a fully reasoned assessment.
Before making the recommendation, ESMA shall consult the ESRB and the ESCB.	**FR:** **Before making the recommendation, ESMA shall consult the ESRB and the ESCB, who should answer in an appropriate delay according to the urgency**	FR: We need to specify that the consultation should be realized in a timely manner.
The Commission shall, without undue delay after receipt of the recommendation, on the basis of the reasons and evidence provided by ESMA, either suspend the buy-in mechanism referred to in paragraph 3 for the specific categories of financial instruments by means of an implementing act, or reject the	**FR:** **The Commission shall, without undue delay after receipt of the recommendation, on the basis of the reasons and evidence provided by ESMA, either adapt or suspend the buy-in mechanism referred to in paragraph 3 for the**	

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recommended suspension. Where the Commission rejects the requested suspension, it shall provide the reasons thereof in writing to ESMA. Such information shall not be made public.	**specific categories of financial instruments by means of an implementing act, or reject the recommended suspension. Where the Commission rejects the requested suspension or adaptation, it shall provide the reasons thereof in writing to ESMA. Such information shall not be made public.**	
The implementing act shall be adopted in accordance with the procedure referred to in Article 68(3).		
The suspension of the buy-in mechanism shall be communicated to ESMA and shall be published in the Official Journal of the European Union and on the Commission's website.	**FR:** **The adaption or suspension of the buy-in mechanism shall be communicated to ESMA and shall be published in the Official Journal of the European Union and on the Commission's website.**	
The suspension of the buy-in mechanism shall be valid for an initial period of no more than 6 months from the date of application of that suspension.	**PT:** ~~**The suspension of the buy-in mechanism shall be communicated to ESMA and shall be**~~	**PT:** The implementing act will have to be published in the official journal. The lunch of the comitology procedure

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	~~**published in the Official Journal of the European Union and on the Commission's website.**~~	is enough. No need for a comunication to ESMA that the procedure to suspend has been lunched.
Where the grounds for the suspension continue to apply, the Commission may, by way of an implementing act, extend the suspension referred to in the third subparagraph for additional periods of no more than 3 months, with the total period of the suspension not exceeding 12 months. Any extensions of the suspension shall be published in accordance with the fifth subparagraph.		
The implementing act shall be adopted in accordance with the procedure referred to in Article 68(3). ESMA shall, in sufficient time before the end of the suspension period referred to in the sixth subparagraph or of the extension period referred to in the seventh subparagraph, issue an opinion to the Commission on whether the grounds for the suspension continue to apply.		

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13. Where the mandatory buy-in is considered no longer justified, does not address the settlement fails in Union and is no longer necessary, appropriate or proportionate, the Commission shall, without delay, adopt implementing acts amending or repealing the implementing act referred to in paragraph 1. **The implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2).**	AT: **13. Where the mandatory buy-in is considered no longer justified (or) does not address the settlement fails in Union or is no longer necessary, appropriate or proportionate, the Commission shall, without delay, adopt implementing acts amending or repealing the implementing act referred to in paragraph 1.** **The implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2).** **NL:** 13. Where the mandatory buy-in is considered no longer justified, does not address the settlement fails in Union and is no longer necessary, appropriate or proportionate, the Commission shall, without delay, adopt **an** implementing act~~s~~ amending or repealing the implementing act referred to in paragraph 1.	SK: We support this inclusion. Althou the conditions are very general, we are view, that more details on stated conditions are not needed. BE: In addition to our proposal to remove Article 7, we would like to express that the wording "without delay" is very vague and gives the COM a lot of flexibility to keep the MBI for much longer than needed. AT: Furthermore, the specified procedure for amending or repealing the IA for MBI is a positive aspect. However, we would like to switch from a cumulative enumeration to an alternative one, as there may be situations in which the MBI still adresses the settlement fails in the EU but is no longer considered justified (e.g. because the

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	The implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2). DE: ~~13. Where the mandatory buy-in is considered no longer justified, does not address the settlement fails in Union and is no longer necessary, appropriate or proportionate, the Commission shall, without delay, adopt implementing acts amending or repealing the implementing act referred to in paragraph 1.~~ ~~The implementing act shall be adopted in accordance with the examination procedure referred to in Article 68(2).~~ PT:	„acceptable“ level of settlement fails has already been reached). In these cases (and generally), a more flexible abolition of the MBI should be possible. ES: it seems reasonable to establish (when there are no reasons to keep the MBI) the option for COM to amend or repeal its previous decision on MBI. NL: As it is referred to amending or repealing a singular implementing act, this will probably also be done by a singular implementing act, instead of plural acts. DE: The implementation of this paragraph gives the impression, that the legislator is not convinced regarding the buy-in regime. This could lead to a lack

Presidency compromise	Draft suggestions	MS Comments
	Where the mandatory buy-in is considered no longer justified, does not address the settlement fails in Union ~~and~~ **or** is no longer necessary, appropriate or proportionate, the Commission shall**, without delay, adopt implementing acts amending or repealing the implementing act referred to in paragraph 1.** **ESMA may recommend that the Commission adopt an implementing act repealing the implementing act referred to in paragraph 1**. **The Commission shall, without undue delay after receipt of the recommendation, on the basis of the reasons and evidence provided by ESMA, either repeal the buy-in mechanism referred to in paragraph 3 for the specific categories of financial instruments by means of an implementing act, or reject the recommended repealing. Where the Commission rejects the requested repealing, it shall provide the reasons thereof in writing**	of acceptance of this regime in the market and the current discussions would go on. The paragraph is also not required as the Commission may amend or repeal the implementing act at any time. PT: Regarding drafting, the "and" should be replaced by an "or" (see draft suggestions). In addition, we might benefit from further clarification on how will the COM assess this point. For example, will this constitute a mandatory periodic evaluation? Finally, ESMA should also be allowed to do the recommendation.

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	to ESMA. Such information shall not be made public **The implementing act shall be adopted in accordance with the procedure referred to in Article 68(3).**	
14. The Commission may adopt delegated acts in accordance with Article 67 to supplement this Regulation specifying the ~~reasons for~~ conditions under which settlement fails ~~that~~ are to be considered as not attributable to the participants to the transaction under ~~paragraph 2 and~~ paragraph 4, 5, point ~~(c)~~ (g) ~~and (d)~~, of this Article.	PL: **14. The Commission may adopt delegated acts in accordance with Article 67 to supplement this Regulation defining and specifying the ~~reasons for~~ conditions under which settlement fails ~~that~~ are to be considered as not attributable to the participants to the transaction under ~~paragraph 2 and~~ paragraph 4, 5, point ~~(c)~~ (g) ~~and (d)~~, of this Article**.	PL: See comment to the art. 6a(7).

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15. ESMA shall, in close cooperation with the ESCB, develop draft regulatory technical standards to specify:	IT: 15. ESMA **may** ~~shall~~, in close cooperation with the ESCB, develop draft regulatory technical standards to specify:	IT: See our comment on paragraph 5 above
(a) the details of pass-on-mechanism under paragraph 4;		FR: We welcome this drafting suggestion.
(b) the details of derogations under paragraph 5 except point (g) or other functionally equivalent arrangements under the third country law and add another specific transaction for which the mandatory buy-in should not apply;	**FR:** **~~(d)~~ the details of derogations under paragraph 5 except point (g) or other functionally equivalent arrangements under the third country law ~~and add another specific transaction for which the mandatory buy-in should not apply;~~** **IT:** (b) the details of **the derogations under paragraph 5 except point (g) from the mandatory buy-in** ~~derogations under paragraph 5 except point (g) or other~~	**IT:** See our comment on paragraph 5 above NL: Changed it to not use exceptions. DE: The types of transactions to be excluded from the mandatory buy-in should be further specified at level-2 (see amendment to para. 5).

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	~~functionally equivalent arrangements under the third country law and add another specific transaction for which the mandatory buy-in should not apply~~; NL: (b) the details of derogations under paragraph 5 ~~except point (g)~~**, points a to f and h,** or other functionally equivalent arrangements under the third country law and add another specific transaction for which the mandatory buy-in should not apply; DE: ~~(b) the details of derogations under paragraph 5 except point (g) or other functionally equivalent arrangements under the third country law and~~	

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	~~add another specific transaction for which the mandatory buy-in should not apply;~~	
(c) the operations that are not considered as trading under paragraph 5 point (h);	**IT:** ~~**(c) the operations that are not considered as trading under paragraph 5 point (h);**~~ **NL:** (d) the operations that are not considered as trading under paragraph 5**,** point (h); **DE:** (**b**~~**c**~~) the operations that are not considered as trading under paragraph 5 point (**b**~~**h**~~), including securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365, financial collateral arrangements as defined in Article 2(1)(a) of Directive 2002/47/EC, transactions that include close-out netting provision as defined in Article 2(1)(n) of Directive 2002/47/EC, transactions where the failing participants are CCPs, except for	PL: This provision is worth of support, as it will give to entities mentionned there more clarity in this regard. IT: This exemption is added to the others in point b) above NL: Added a comma DE: See comment above.

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	transactions entered into by a CCP where it does not interpose itself between counterparties, transactions when the insolvency proceeding is opened against the failing participant and transactions that are in scope of Article 15 Regulation (EU) No 236/2012.	
(d) the details of how the participants to the CSDs, the CCPs or the trading venue member, as applicable should execute the mandatory buy-in in accordance with paragraph 10 taking into account the specifics of retail investors.		DK: It should be clarified that retail investors should not under any circumstances be obliged to initiate a mandatory buy-in. FR: Could you please elaborate on the issue regarding retail investors? **EL:** Point (d) is rather unclear and we prefer to omit it.
ESMA shall submit those draft regulatory technical standards to the Commission by	**IT:**	**IT:** See our comment on paragraph 5 above

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… [PO please insert the date = 1 year after the entry into force of this Regulation].	ESMA shall submit those draft regulatory technical standards **mentioned in letters a) and d)** to the Commission by … [PO please insert the date = 1 year after the entry into force of this Regulation].	
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.		
	Article 7b **Mandatory buy-in procedures for cleared transactions**	We believe that in order to make MBI provisions more readable, we should bundle it in a unique regulation, so we suggest to directly add an article in CSDR, reiterating provisions of former article 15 of short selling regulation (without reintroducing it into SSR).
	1. 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:	

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	(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). 2. A central counterparty in a Member State that provides clearing services for shares shall ensure that procedures are in place, which ensure that where a natural or legal person who sells shares fails to deliver the shares for settlement by the date on which settlement is due, such person must make daily payments for each day that the failure continues.	

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	The daily payments shall be sufficiently high to act as a deterrent to natural or legal persons failing to settle.“	
Article 17		
Procedure for granting authorisation		
…		
6a. The competent authority may, before granting authorisation to the applicant CSD, consult the competent authorities of another Member State supervising an entity having qualifying holding in the CSD.	**FI:** **6a. The competent authority ~~may~~ shall, before granting authorisation to the applicant CSD, consult the competent authorities of another Member State supervising an entity having qualifying holding in the CSD.** **FR:** **6a. The competent authority may, before granting authorisation to the applicant CSD,**	FI: in line with the rest of this Article, the competent autority should (not “may”) consult the competent authority of the other Member State supervising entity having qualifying holding. DK: It makes good sense to facilitate such consultation. EE: **Agree**

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	consult the relevant EU competent authorities ~~of another Member State~~ supervising an entity having qualifying holding in the applicant CSD. **NL:** 6a. The competent authority may, before granting authorisation to the applicant CSD, consult the competent authorities of another Member State supervising an entity having **a** qualifying holding in the CSD.	FR: This ability should not be limited to the case where the entity is established in another Member State (the autority could be in the same Member State). **NL:** Added a word **EL:** We support the addition. **HR:** The consultation process could be further detailed e.g. is confirmation of consultation required from the consulted competent authorities? What is expected timeframe for consulted NCAs to respond?
7. The consultation referred to in paragraph **6 and 6a** shall cover the following:		

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(a) the suitability of the shareholders and persons referred to in Article 27(6) and the reputation and experience of the persons who effectively direct the business of the CSD referred to in Article 27(1) and (4), where those shareholders and persons are common to the CSD and to a CSD authorised in another Member State;		
(b) whether the relations referred to in points (a), (b) and (c) of paragraph 6 between the CSD authorised in another Member State and the applicant CSD do not affect the ability of the latter to comply with the requirements of this Regulation.		
Article 23		EE: **Agree in principle** **HR:** We interpret the current provisions of Articles 23 and 49. of CSDR as follows (there could be different interpretations, which should be clarified):

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		- If a CSD intends to offer core services to issuers established in other Member States, it can do so under the freedom to provide services or through a branch (Article 23(1) of CSDR). - If a CSD intends to provide core services to issuers established in other Member States under the freedom to provide services (FOS), the procedure referred to in para 3 to 7 of Article 23 of CSDR applies only if the financial instruments issued by those issuers are constituted under a law different than the one of the MS where the CSD is established. The host MS is the one of the law under which the securities are constituted, which is not necessarily the MS where the issuer is established. If the MS of the law under which the securities are constituted is not the MS where the issuer is established, then the MS of the issuer's establishment is neither notified or considered a host MS. This also means that no provisions that govern cooperation arrangements would apply to the NCA of the MS of the issuer's establishment.

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		- If a CSD intends to provide core services to issuers established in other Member States through setting up a branch (FOE), the procedure referred to in para 3 to 7 of Article 23 of CSDR applies regardless of which corporate law applies. We suggest to discuss further the definition of the "host MS" mentioned above (where the MS of the law under which the securities are constituted is not the MS where the issuer is established), to ensure that the MS where the issuer is established is considered a host MS for the purposes of CSDR. This would not exclude the MS of the law under which the securities are constituted, but add to it. If this is resolved, we would have no objection to the simplifications in the notification process. However, the host MS NCA should be able to comment on the CSD's notification if it spots irregularities related to the host MS corporate law. And the CSD should be obligated to correct them and should be instructed to do so by its home MS NCA.

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		The powers of the host MS NCA when the CSD does not comply with CSDR provisions (related to MS corporate law) should also be further developed and explained. Additionally, if there is no ex ante assessment/approval, we should discuss the inclusion of the host MS NCA in the CSD review and assessment process for the services subject to the passporting process (potentially this can be linked to the materiality threshold of the services provided by the CSD in the host MS). This could enable the home NCA to get specific information on what to focus on for services subject to the passporting process and reduce the likelihood that the host MS NCA would need to use its powers.
Freedom to provide services in another Member State		
1. An authorised CSD may provide services referred to in the Annex within the territory of the Union, including through setting up a		

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branch, provided that those services are covered by the authorisation.		
2. An authorised CSD or a CSD that has applied for authorisation pursuant to Article 17 that intends to provide the core services referred to in Section A, points 1 and 2, of the Annex, in relation to financial instruments constituted under the laws of another Member State referred to in Article 49(1), second subparagraph, or to set up a branch in another Member State shall be subject to the procedure referred to in paragraphs 3 to 7 of this Article. The CSD may provide such services only after it has been authorised pursuant to Article 17, but not earlier than the relevant date applicable in accordance with paragraph 6.	**FR:** **2. An authorised CSD or a CSD that has applied for authorisation pursuant to Article 17 that intends to provide the core services referred to in Section A, points 1 and 2, of the Annex, in relation to financial instruments constituted under the lawss of another Member State referred to in Article 49(1), second subparagraph, or to set up a branch in another Member State shall be subject to the procedure referred to in paragraphs 3 to 7 of this Article. The CSD may provide such services only after it has been authorised pursuant to Article 17, but not earlier than the relevant date applicable in accordance with paragraph 6.**	AT: We support the clarifications with regard to the national law that is relevant for the assessment under Article 23. FR: Please refer to our comment below on article 49.
3. Any CSD wishing to provide the services referred to in paragraph 2 of this		

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Article in relation to financial instruments constituted under the law of another Member State referred to in Article 49(1), second subparagraph, for the first time, or to change the range of those services provided shall submit documents with the following information to the competent authority of the home Member State:		
(a) the host Member State;		
(b) a programme of operations stating in particular the services which the CSD intends to provide;		
(c) the currency or currencies that the CSD intends to process;		
(d) where there is a branch, the organisational structure of the branch and the names of those responsible for the management of the branch;		
(e) an assessment of the measures the CSD intends to take to allow its users to comply with the ~~national~~ law of another Member	**FR:** **(e) an assessment of the measures the CSD intends to take to allow its users to comply**	**BG:** We support the presidency compromise in general considering the proposed amendments in Articles 23 and 49.

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State referred to in Article 49(1), second subparagraph, in relation to shares.	with the ~~national~~ law of another Member State referred to in Article 49(1)~~, second subparagraph, in relation to shares.~~.	However, we still have some concerns with the proposal in Article 23. We have stated so far that during the process it is important both NCAs (home and host) to be able to express views in relation to the assessment of the measures the CSD intends to take to allow its users to comply with the relevant national law of the member states in which it plans to provide notary and central maintenance services. Having in mind that company law is not harmonized at the EU level and considering the concessions in the current partial compromises, we are of the view that at least in a recital it should be clarified that the host NCA may indicate the home NCA in case during acquainting with the documents provided by the home NCA (on the basis of Article 23, para 4) it appears that the assessment of the CSD and the measures provided in relation to the law of the host MS related to shares are not appropriate. The time limit for such an indication of the host NCA to the home NCA would be in our understanding, 1 month having in mind the provision in Article 23, para 6 of the draft

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		regulation. In our view, such addition in a recital would only contribute to the streamlined process while ensuring that host MS legislation is followed by the CSD and that both NCAs could resolve possible issues on a bilateral basis before the CSD starts the actual provision of services. We note that the above issue could not be solved between NCAs within a passporting college as it stands in the current proposal given that there would be cases where a supervisory college would not be established. PL: We maintain that the best solution would be to completely abandon the requirement to passport services in the event that the CSD only intends to provide a notary service and a central account maintenance service in relation to financial instruments established under the law of another Member State, without opening a branch in that other country. At the

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		same time, we believe that the Presidency's proposal that requires the evaluation referred to in Art. 23 sec. 3 letter e of CSDR, only if the CSD intends to provide the above-mentioned in relation to stocks, is a reasonable compromise. DK: We are open to consider to limit the requirement for CSD's to assess the measures it intends to take to allow the users to comply with the national law to shares only. LV: **Home NCA would like to gain comfort that the CSD does not faces risk of not fullfilling of host country national requirements. Besides, it will be prudent from CSD's side to have such comfort too before engangement. So in practice, the CSD will need to**

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		make kind of assessment for any category of financial instruments. **FR:** Please refer to our comment below on Article 49. This assessment is a cornerstone of the passporting process. As of today, several CSDs have stopped their passporting processes in certain jurisidictions, precisely because they were not able to provide services to issuers in accordance with the law applicable to these issuers, regardless of the type of financial instruments (shares or bonds). From a French perspective, we have observed that there are two type of passporting request: - The one including a legal opinion that the CSD have requested in order to demonstrate that its offer of services to issuers located in the host Member-State comply with the law applicable to the issuers (law of incorporation); - The one not including such legal opinion and without detailed justification of compliance of the passported services with the issuers law, triggering long discussions with the CSD and its host NCA. In order to harmonise the passporting process, we should ensure that every CSD provide the same analysis in their passporting application file. We believe that a Level 2 text

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		should provide for a list of the elements that should be included and covered by the analysis to be provided by the CSDs and have made drafting suggestions in this respect. On the method, should we modify the type of law to be taken into account by the CSD for their passporting or activities, then we have to consultatJustice Ministries at some point of the CSDR Refit negociations (corporate law is also in their hands). **EL:** We agree with limiting the assessment of the measures only to shares. DE: We expressly support to limit the assessment to shares.
4. Within 1 month from the receipt of the information referred to in paragraph 3, the competent authority of the home Member State shall communicate that information to the competent authority of the host Member State unless, by taking into account the provision of services	**FR:** **4. Within 1 month from the receipt of a complete application file including all the information and documents referred to in paragraph 3, the competent authority of the home Member State shall communicate that information to the competent authority of the host Member State unless, by taking into**	FR: We believe that it is important to add the concept of "complete file" considering (i) the removal of the host NCA right to refuse a passport and (ii) the short time period for the granting of the passport.

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envisaged, it has reasons to doubt the adequacy of the administrative structure or the financial situation of the CSD wishing to provide its services in the host Member State. Within the same period, where ~~Where~~ the CSD already provides services to other host Member States, the competent authority of the home Member State shall also inform the passporting college referred to in Article 24a.	**account the provision of services envisaged, it has reasons to doubt the adequacy of the administrative structure or the financial situation of the CSD wishing to provide its services in the host Member State. Within the same period, where ~~Where~~ the CSD already provides services to other host Member States, the competent authority of the home Member State shall also inform, where established, the ~~passporting~~ cross-border college referred to in Article 24a.** **NL:** 4. Within 1 month from the receipt of the information referred to in paragraph 3, the competent authority of the home Member State shall communicate that information to the competent authority of the host Member State unless, by taking into account the provision of services envisaged, it has reasons to doubt the adequacy of the administrative structure or the financial situation of the CSD wishing to provide its services in the host Member State. Within the same period, where ~~Where~~ the CSD already provides services to other host Member States, the competent authority of the home Member State shall also inform the ~~passporting~~ college referred to in Article 24a.	We suggest to rename the passporting college into "cross-border college" in view of the modification of the concept of substantial importance that should also include settlement activities, notably those carried through links (in addition of passported services) – see below. **NL:** Due to changes in 24a(1) PT: Drafting suggestion

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	PT: **Within the same period, where ~~Where~~ ~~the CSD already provides services to other host Member States,~~ the competent authority of the home Member State shall also inform the passporting college referred to in Article 24a**	
The competent authority of the home Member State shall inform the CSD of the date of transmission of the communication to the host Member State without delay.		ES: support this new paragraph. It seems reasonable to set this obligation, due to the date is relevant for provision of services or setting a branch.
The competent authority of the host Member State shall without delay inform the relevant authorities of that Member State of any communication received under the first subparagraph.	**FR:** **The competent authority of the host Member State shall without delay inform the relevant authorities of that Member State of any communication of a complete application file received under the first subparagraph.**	FR: Please see our comment above.
5. Where the competent authority of the home Member State decides in accordance with paragraph 4 not to communicate ~~all~~ the information referred to in paragraph 3 to the competent	**BE:** **5. Where the competent authority of the home Member State decides in accordance with paragraph 4 not to communicate ~~all~~ the**	BE: We would like to avoid using the same terminology in different contexts, as this could create confusion. Reasoned decisions are issued by consulted authorities

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authority of the host Member State, it shall ~~give~~ provide a fully reasoned ~~reasons~~ decision for its refusal to the CSD concerned within 1 ~~3~~ months of receiving all the information and inform the competent authority of the host Member State and the passporting college referred to in Article 24a of its decision.	**information referred to in paragraph 3 to the competent authority of the host Member State, it shall ~~give~~ provide the ~~a fully~~ reasoned reasoning ~~reasons decision~~ for its refusal to the CSD concerned within 1 ~~3~~ months of receiving all the information and inform the competent authority of the host Member State and the passporting college referred to in Article 24a of its decision.** **FR:** **5. Where the competent authority of the home Member State decides in accordance with paragraph 4 not to communicate ~~all~~ ~~the information referred to in paragraph 3~~an application file to the competent authority of the host Member State, it shall ~~give~~ provide a fully reasoned ~~reasons~~ decision for its refusal to the CSD concerned within 1 ~~3~~ months of**	in the context of the authorisation or review and evaluation exercises of a CSD. ES: at this moment, we could see the new wording as an improvement (both in the reasons and in the due date). FR: We suggest to rename the passporting college into "cross-border college" in view of the modification of the concept of substantial importance that should also include settlement activities, notably those carried through links (in addition of passported services) – see below. NL: Due to changes in 24a(1) **EL:** We prefer the wording of the Commission proposal (no need for issuing a decision).

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	receiving all the information referred to in paragraph 3 and inform the competent authority of the host Member State and, where established, the ~~passporting~~ cross-border college referred to in Article 24a of its decision. **NL:** 5. Where the competent authority of the home Member State decides in accordance with paragraph 4 not to communicate the information referred to in paragraph 3 to the competent authority of the host Member State, it shall provide a fully reasoned decision for its refusal to the CSD concerned within 1 months of receiving all the information and inform the competent authority of the host Member State and the ~~passporting~~ college referred to in Article 24a of its decision.	DE: We prefer to revert back to the original wording proposal. PT: If the NCA has refused to send the information referred in paragraph 3 we see no need to inform the host NCA or the passporting colleges since the provision of service cannot start without that information being transmitted to the host Member State.

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	DE: 5. Where the competent authority of the home Member State decides in accordance with paragraph 4 not to communicate the information referred to in paragraph 3 to the competent authority of the host Member State, it shall **give reasons** ~~provide a fully reasoned~~ decision for its refusal to the CSD concerned within 1 months of receiving all the information and inform the competent authority of the host Member State and the passporting college referred to in Article 24a of its decision.	
6. The CSD may start providing the services referred to in paragraph 2 of this Article in relation to financial instruments constituted under the law of host Member State referred to in Article 49(1), second subparagraph, or set up a branch ~~in the~~	**FR:** **6. The CSD may start providing the services referred to in paragraph 2 of this Article in relation to financial instruments constituted under the law of host Member State referred to in Article 49(1)** ~~**second subparagraph,**~~ **or**	AT: We regret that no changes to the passporting procedure and to the role of the host authorities therein have been proposed. In this regard, we want to point to the comments of several MS in the follow-up questions to the last meeting which showed their willingness to

Presidency compromise	Draft suggestions	MS Comments
~~host Member State at the earliest of the following dates:~~	**set up a branch** ~~in the host Member State at the earliest of the following dates:~~	reopen the passporting issue, especially if passporting colleges are still opposed by a majority of MS. So we still call for a compromise in this issue. **EL:** We agree with the change which makes clear when the CSD might start the provision of services in the host country.
~~(a)~~ **after 1 month from the date of transmission of the communication referred to in paragraph 4 from the competent authority of home Member State to the competent authority of host Member State~~;~~.**		
7. In the event of a change of the information set out in the documents submitted in accordance with paragraph 3 of this Article, a CSD shall give written notice of that change to the competent authority of the home Member State at least 1 month before implementing the change. The competent authority of the host Member State and the passporting	**FR:** **7. In the event of a change of the information set out in the documents submitted in accordance with paragraph 3 of this Article, a CSD shall give written notice of that change to the competent authority of the home Member State at least 1 month before**	FR: We suggest to rename the passporting college into "cross-border college" in view of the modification of the concept of substantial importance that should also include settlement activities, notably those carried through links (in addition of passported services) – see below. NL:

Presidency compromise	Draft suggestions	MS Comments
college referred to in Article 24a shall also be informed of that change without delay by the competent authority of the home Member State.	**implementing the change. The competent authority of the host Member State and, where established, the ~~passporting~~ cross-border college referred to in Article 24a shall also be informed of that change without delay by the competent authority of the home Member State.** **NL:** 7. In the event of a change of the information set out in the documents submitted in accordance with paragraph 3 of this Article, a CSD shall give written notice of that change to the competent authority of the home Member State at least 1 month before implementing the change. The competent authority of the host Member State and the ~~passporting~~ college referred to in Article 24a shall also be informed	Due to changes in 24a(1)

Presidency compromise	Draft suggestions	MS Comments
	of that change without delay by the competent authority of the home Member State.	
	FR: **8. ESMA shall develop draft regulatory technical standards to specify the scope of the assessment that the applicant CSD shall provide under paragraph 3(e).**	FR: Please refer to our comment above.
Article 24		EE: **Agree in principle**
Cooperation between authorities of the home Member State and of the host Member State and peer review		**NL:** We endorse the proposal to increase in cross-border cooperation between regulators in order to ensure better oversight of CSDs. The proposal should ensure an improvement of the information exchange and disclosure to supervisors. Due to the non-commital nature of this cooperation and information disclosure, in this article we would like to see a strengthening thereof.
1. Where a CSD authorised in one Member State has set up a branch in another Member State, the competent authority of the home Member State and the competent authority of the host Member State shall cooperate		

Presidency compromise	Draft suggestions	MS Comments
closely in the performance of their duties provided for in this Regulation, in particular when carrying out on-site inspections in that branch. The competent authority of the home Member State and of the host Member State may, in the exercise of their responsibilities, carry out on-site inspections in that branch after informing the competent authority of the host Member State or of the home Member State respectively.		
Upon the request of any member of the passporting college referred to in Article 24a, the competent authority of the home Member State may invite staff from competent authorities of the host Member States ~~and ESMA~~ to participate in on-site inspections.	**FR:** **Upon the request of any member of the ~~passporting~~ cross-border college referred to in Article 24a, the competent authority of the home Member State may invite staff from competent authorities of the host Member States ~~and ESMA~~ to participate in on-site inspections.** **NL:**	AT: We support the idea that ESMA will not participate in on-site inspections. DK: We agree that ESMA should not participate in on-site inspections. FR:

Presidency compromise	Draft suggestions	MS Comments
	Upon the request of any member of the ~~passporting~~ college referred to in Article 24a, the competent authority of the home Member State may invite staff from competent authorities of the host Member States ~~and~~ ~~ESMA~~ to participate in on-site inspections.	We suggest to rename the passporting college into "cross-border college" in view of the modification of the concept of substantial importance that should also include settlement activities, notably those carried through links (in addition of passported services) – see below. **NL:** Due to changes in 24a(1)
The passporting college referred to in the second subparagraph shall be informed without undue delay of any findings of on-site inspections that may be relevant for the execution of its tasks.	**FR:** **The ~~passporting~~ cross-border college referred to in the second subparagraph shall be informed without undue delay of any findings of on-site inspections that may be relevant for the execution of its tasks.** **NL:** The ~~passporting~~ college referred to in the second subparagraph shall be informed without undue	**NL:** Due to changes in 24a(1)

Presidency compromise	Draft suggestions	MS Comments
	delay of any findings of on-site inspections that may be relevant for the execution of its tasks.	
…		
5. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a CSD providing services within its territory in accordance with Article 23 is in breach of the obligations arising from the provisions of this Regulation, it shall inform the competent authority of the home Member State~~, ESMA~~ and the passporting college referred to in Article 24a of those findings.	**FR:** **5. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a CSD providing services within its territory in accordance with Article 23 is in breach of the obligations arising from the provisions of this Regulation, it shall inform the competent authority of the home Member State, ESMA~~,~~ ~~ESMA~~ and the ~~passporting~~ cross-border college referred to in Article 24a of those findings.** **NL:**	FR: ESMA should be maintained as a receiver of these information. We should not create two frameworks and differentiate the treatment between the CSDs passeported on the one hand and on the other hand of the CSDs subject to the establishment of cross-border/passporting colleges. NL: Due to changes in 24a(1)

Presidency compromise	Draft suggestions	MS Comments
	5. Where the competent authority of the host Member State has clear and demonstrable grounds for believing that a CSD providing services within its territory in accordance with Article 23 is in breach of the obligations arising from the provisions of this Regulation, it shall inform the competent authority of the home Member State and the ~~passporting~~ college referred to in Article 24a of those findings.	
Where, despite measures taken by the competent authority of the home Member State, the CSD persists in acting in infringement of the obligations arising from the provisions of this Regulation, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take all the appropriate measures needed in order to ensure compliance with the provisions of this Regulation within the territory of the host Member State. ~~ESMA and the~~ The passporting college referred to	**FR:** **Where, despite measures taken by the competent authority of the home Member State, the CSD persists in acting in infringement of the obligations arising from the provisions of this Regulation, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take all the appropriate measures needed in order to**	FR: ESMA should be maintained as a receiver of these information. We should not create two frameworks and differentiate the treatment between the CSDs passeported on the one hand and on the other hand the CSDs subject to the establishment of crossborder/passporting colleges. NL: Due to changes in 24a(1)

Presidency compromise	Draft suggestions	MS Comments
in Article 24a shall be informed of such measures without undue delay.	**ensure compliance with the provisions of this Regulation within the territory of the host Member State. ~~ESMA and the~~ ESMA and The ~~passporting~~ cross-border college referred to in Article 24a shall be informed of such measures without undue delay.** **NL:** Where, despite measures taken by the competent authority of the home Member State, the CSD persists in acting in infringement of the obligations arising from the provisions of this Regulation, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take all the appropriate measures needed in order to ensure compliance with the provisions of this Regulation within the territory of the host Member State. ~~ESMA and the~~ The ~~passporting~~	

Presidency compromise	Drafting suggestions	MS Comments
	college referred to in Article 24a shall be informed of such measures without undue delay.	
The competent authority of the host Member State and of the home Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.		
…		
Article 24a		EE: **Agree in principle, except sceptical about including ESMA in paragraph 2. Including ESMA in colleges would add unnecessary administrative burden and require additional resources that ESMA does not have, without achieving desired objectives and added value. The creation and functioning of colleges should be fit for purpose.** **PT:**

Presidency compromise	Draft suggestions	MS Comments
		Regarding colleges, we believe that the amendments in this first compromise text goes into the right direction, as they reflect most of our previous comments asking for more flexibility and proportionality. However, we still believe that we still have space to assess on the mandatory establishment of passporting colleges as this seem to pose additional complexity.
Colleges of Supervisors ~~for CSDs providing services in another Member State and for CSDs that are part of a group with two or more CSDs~~		FI: we see colleges as indispensable part of the overall compromise regarding passporting. Both types of colleges are needed, e.g. group-CSDs may use shared services, thus justifying the establishment of group-colleges. **BG:** We support the presidency compromise which is in our view balanced given that the procedure for provingcross-border services is less burdensome, given the proposal.

Presidency compromise	Draft suggestions	MS Comments
		PL: We can support the proposal to amend the provisions on colleges for the CSD in this shape. The current compromise proposal does not provide for an absolute obligation to establish a supervisory board for each CSD providing services abroad, but limits this obligation to clearly defined situations, including in particular cases where a CSD providing services in the territory of another country is systemically important. Simultaneously in other cases, there is a possibility of effective exchange of information between supervisory authorities based on a different legal basis from the CSDR so this provision is proportional. FR: As you know we are very supportive of the establishment of both group level and passporting colleges, it is a good thing that their mandatory establishment is part of the Presidency's proposal of compromise.

Presidency compromise	Draft suggestions	MS Comments
		- **Regarding passporting college** **As a preliminary remark, the establishment of passporting college is the necessary corollary of the principle of an "automatic" passport.** In addition, we believe it should be up to each NCA to say if the CSD activity in its jurisdiction has no importance, and to not participate to the passporting college if it deems it unnecessary. Nevertheless, we understand many member states are supportive of a substantiality criteria. As of today this substantiality criteria is tailored in a way that will imply that very few CSDs will have passporting colleges. For example, in France, there is currently only one CSD passported that would be considered as substantially important for the French market although several CSDs passported have de facto a significant activity. **Therefore, if the "substantial importance" concept should be used to determine whether a passporting college should be established, we take the view that the key elements of this concept shall be reviewed in this respect (i.e. articles 4 to 6 of the Commission Delegated Regulation (EU) 2017/389 shall be amended)**. To this end, the concept of substantial importance **should be amended in order to take into account the settlement activities carried out by the CSD, including through links,** in addition to the notarial and central maintenance

Presidency compromise	Draft suggestions	MS Comments
		services provided (that are currently the only services taken into account with respect to the substantiality criteria). **The passporting college would hence be a "cross border" college;** we have made drafting suggestions accordingly. In addition, the concept of substantial importance should be subject to an assessment by the ESMA (opinion), taking stock of colleges activities. - **Regarding group-level college** As regards the group-level college, in a compromise spirit we can live with the Presidency's proposition of establishing the college group starting from 3 CSD in the group, even if we believe **it is very important that the mandatory group college also applies to groups of CSDs which are established through branches** (i.e. only having one CSD being a legal person within the group such as Nasdaq group). In our opinion, different legal status should not generate such a difference in terms of information sharing between NCAs and with relevant European authorities otherwise we might create some unintended incentives for prefer one form over another. We support the possibility to invite additional participants to the group-level college. However, we should ensure that the wording allows for third-country authorities to join (and not only "participate to discussions"). We have provided below a drafting suggestion in this regard.

Presidency compromise	Draft suggestions	MS Comments
		HU: Altough we supported the closer cooperation of national authorities instead of the establishment of colleges, we consider the proposal of the Presidency is acceptable in case of the establishment of colleges. We also support the inclusion of third-country authorities. **EL:** We still have reservations regarding passporting colleges.
1. Colleges of supervisors shall be established to carry out the tasks referred to in paragraph 6 in the following cases:	LV: **Delete Article 24a** **NL:** **1.** Colleges of supervisors shall be established to carry out the tasks referred to in paragraph 6 **where a CSD is subject to the procedure referred to in Article 23(3) to (7) and its activities are of substantial importance for the functioning of the securities markets and the protection of the investors in the host Member State.**	SK: We would like to accent the application of proportinality principle, as well as substantiality principle. Therefore the word "shall" should be replaced with word "may", in case of a need to exchange views on important issues. The college should be established only when this is needed. AT: Although we oppose the establishment of colleges, we welcome the more proportionate approach of the Presidency compromise if colleges are to be introduced, especially the idea that ESMA will not participate in on-site inspections.

Presidency compromise	Draft suggestions	MS Comments
		LV: **We maintain the view the existing CSDR framework (Art 24) is viable and allows to achieve the objective of good cooperation and exchange of information among concerned authorities. A good example is the cooperation arrangement for Nasdaq CSD and following CSD peer review exercise there are improvements in functioning of cooperation arrangements. We can support improvement of the current framework, and strongly object introduction of mandatory colleges.** **However in case the introduction of mandatory colleges is supported by the majority of MS, we would have some proposals as follows.** **NL:** Added to paragraph one as we want to delete 1(b), thereby leaving only the passporting colleges, which should just be general colleges.

Presidency compromise	Draft suggestions	MS Comments
(a) where a CSD is subject to the procedure referred to in Article 23(3) to (7) and its activities are of substantial importance for the functioning of the securities markets and the protection of the investors in the host Member State ('passporting college');	**BE:** **(a) where a CSD's ~~is subject to the procedure referred to in Article 23(3) to (7) and its~~ activities are of substantial importance for the functioning of the securities markets and the protection of the investors in the host Member State ~~('passporting college')~~;** **FR:** **(a) where a CSD is subject to the procedure referred to in Article 23(3) to (7) and its activities are of substantial importance for the functioning of the securities markets and the protection of the investors in the host Member State ('~~passporting~~ cross-border college');** **IT:**	BE: In our view, the only valid criterion to establish colleges is that of substantial importance. As explained before, passporting is of legal-technical nature and is country-specifc. It can therefore not realistically be discussed at a college. We suggest therefore to drop the reference to Art. 23 as a criterion to establish a college. The name of the college can be dropped as we also suggest removing para (b). FI: Finland: The thresholds provided by the delegated act 2017/389 are quite high. Furthermore, as they are based on overall figures (total issuance and total settlement), the definition of substantial importance does not take into account situations where a CSD would be of substantial importance in certain asset classes. Neither

Presidency compromise	Draft suggestions	MS Comments
	~~**(a) where a CSD is subject to the procedure referred to in Article 23(3) to (7) and its activities are of substantial importance for the functioning of the securities markets and the protection of the investors in the host Member State ('passporting college');**~~ Or, as second best **For the sake of establishing passporting colleges, the activities of a CSD shall be considered of substantial importance for the functioning of the securities markets and the protection of investors in that host Member State where the aggregated market value of financial instruments issued by issuers from the host Member State that are initially recorded or centrally maintained in securities accounts by the CSD represents at least 15 % of the total value of financial instruments issued by all issuers from the host Member**	does it take into account the issues of settlement in foreign currencies and interoperable links. Thus, if this delegated act is to be taken as basis for the definition of substantial importance, we would advocate adding certain flexibily for the participation in the college, see our comments on Art 24 a second sub-paragraph of par 1. PL: We kindly ask the Presidency for presenting us during the next meeting how the term "*substantial importance*" should be understood, taking into consideration the current exisiting provisions (which are to be removed) and ESMA's guidelines in this matter. ES: we support the inclusion of "substantial importance" concept. A more proporcionate approach should be the key regarding colleges.

Presidency compromise	Draft suggestions	MS Comments
	State that are initially recorded or centrally maintained in securities accounts by all CSDs established in the Union; **NL:** Deleted DE: (a) where a CSD is subject to the procedure referred to in Article 23(3) to (7) and its activities are of substantial importance for the functioning of the securities markets and the protection of the investors in ~~the~~ **more than one** host Member State ~~('passporting college');~~	DK: We support the suggestion not to mandate passporting colleges in all situations and instead limit it to those situations where the cross border activities are of substantial importance in the host member state. FR: We suggest to rename the passporting college into "cross-border college" in view of the modification of the concept of substantial importance that should also include settlement activities, notably those carried through links (in addition of passported services). IE: We support revisions set out in the paper, in particular the provision requiring Colleges for CSDs of substantial importance. HU:

Presidency compromise	Draft suggestions	MS Comments
		We consider it important to apply a gradual approach, proportionality and substantiality are the main criterias needed to be taken into account. **IT:** We are not convinced that there is a need for the mandatory creation of passporting colleges. Thus, our preferred option would be to delete the requirement. As a second best, we suggest to add in the L1 the criterion which defines when a CSD becomes of substantial importance. In this respect, we propose to use the threshold currently provided for in Article 24 of CSDR, as defined in Commission Delegated Regulation (EU) 2017/389. NL: This is transferred to the first subparagraph of paragraph 1.

Presidency compromise	Draft suggestions	MS Comments
		DE: In case there is only one host Member State, information exchange can be done at a bilateral level and no college needs to be established. The term "passporting college" is misleading and should be avoided throughout CSDR. We support the reference to the term "substantial importance" as currently defined at level-2. In any case the definition of the term should be based on objective criteria. PT: We believe that the criteria for substantiality should be defined in Level 1.
(b) where a CSD is part of a group that comprises ~~two~~ three or more CSDs authorised in at least ~~two~~ three Member States ('group-level college').	BE: ~~(b) where a CSD is part of a group that comprises~~ two ~~three or more CSDs~~	BE: As explained multiple times before, this proposal of a group-college would be de facto an empty box. All the tasks that **can** be performed by the group-level college

Presidency compromise	Draft suggestions	MS Comments
	~~authorised in at least two three Member States ('group-level college').~~ **FR:** **(b) where a CSD is part of a group that comprises ~~two~~ three or more CSDs authorised in at least ~~two~~ two ~~three~~ Member States ~~('group-level college')~~; or** **(ii) two or more branches established in accordance with Article 23 in at least two Member States;** **('group-level college')** **NL:** Deleted DE: ~~(b) where a CSD is part of a group that comprises three or more CSDs authorised in at~~	(i.e. exchange of info) are already performed today via CSDR R&E exercises. Other tasks that are proposed are in practice not possible, as there is no such thing as group-level supervision. Therefore, the added value would be non-existent, whereas it would create great burden for the NCAs concerned. ES: ok. DK: We find it important to introduce a requirement for the establishment of group colleges in order to facilitate cooperation about risk evaluation of a group of CSD's. LV: **It is actually not clear why three CSDs have been chosen as a threshold for group-level college. It needs to be somehow substantiated in the text.**

Presidency compromise	Draft suggestions	MS Comments
	~~least three Member States ('group-level college').~~	**FR:** As it stands, the group college establishment obligation do not encompass groups organised through branches, like Nasdaq. In our view, such groups should also be required to established a group-level college. We would prefer establishing the group college starting from 2 CSDs. At the very least, if we keep 3 CSDs as a criteria, it should be specified that they should be authorised in at least 2 members states, to include more groups of CSDs. The fact that the CSD is constitued under branches will allow for the establishment of a cross-border college if the substantiality criteria is fullfilled. Nevertheless, issues deemed relevant to be discussed in the context of a group college or a passeporting college are not the same (as testified by the list of issues in article 24.6.). Both colleges have complementary functions for groups of CSDs constituted under a branch legal status. **NL:**

Presidency compromise	Draft suggestions	MS Comments
		With 3+3 being the criteria for establishing group colleges, it begs the question whether this will be useful. As far as we know only two CSD groups will need to set up a group-level college while one of the two largest CSD-groups does not meet this criterium. Furthermore we are unsure if group-level colleges will provide benefits for supervisors in terms of a better sharing of information and this might already be achieved by the passporting colleges for substantially important CSDs. DE: We do not see a need to introduce group colleges.
In the case referred to in the first subparagraph, point (a), the CSD's home competent authority shall establish, manage and chair the passporting college. That college shall be established within 1 month from the date referred to in Article 23(6). Where the CSD submits subsequent notifications pursuant to Article 23(3), the competent authority of the home Member	**BE:** **In the case referred to in t~~he first subparagraph~~ paragraph 1, ~~point (a),~~ the CSD's home competent authority shall establish, manage and chair the ~~passporting~~ college. That college shall be established**	BE: Drafting suggestions in line with comments to paragraphs above. FI:

Presidency compromise	Draft suggestions	MS Comments
State shall invite the competent authorities of the relevant host Member States ~~to the passporting college within 1 month from the date referred to in Article 23(6)~~ in relation to which the condition set in point (a) of the first subparagraph is fulfilled and other members of the college within 2 months from the date of transmission of the communication referred to in Article 23(4).	**within 1 month from the ~~date referred to in Article 23(6)~~ first publication by ESMA of EU CSDs' substantial importance following the entry into force of this Regulation. ~~Where the CSD submits subsequent notifications pursuant to Article 23(3), the competent authority of the home Member State shall invite the competent authorities of the relevant host Member States to the passporting college within 1 month from the date referred to in Article 23(6) in relation to which the condition set in point (a) of the first subparagraph is fulfilled and other members of the college within 2 months from the date of transmission of the communication referred to in Article 23(4).~~** **FI:**	Finland: As the delegated act 2017/389 in not able to address all issues affecting the securities markets of the host Member State (see above), it is proposed to allow also competent authorities of Member States not fulfilling the substantiality criteria of the delegated act to participate to the college on the basis of a justified request. The chair of the college should not be able to refuse such a request as the best knowledge on the importance of the CSD for the host market resides with the NCA of the host market. FR: This paragraph should be redrafted in order to take into account the new criteria for establishing a cross border college. Since most CSDs are already passported in the EU, the paragraph should covers two cases: - For CSD already passported (for which it is already possible to measure if they are of substantial importance):

Presidency compromise	Draft suggestions	MS Comments
	In the case referred to in the first subparagraph, point (a), the CSD's home competent authority shall establish, manage and chair the passporting college. That college shall be established within 1 month from the date referred to in Article 23(6). Where the CSD submits subsequent notifications pursuant to Article 23(3), the competent authority of the home Member State shall invite the competent authorities of the relevant host Member States ~~to the passporting college within 1 month from the date referred to in Article 23(6)~~ in relation to which the condition set in point (a) of the first subparagraph is fulfilled and, based on a justified request, other members of the college within 2 months from the date of transmission of the communication referred to in Article 23(4).	For CSD that will be passported in the future for which a longer time period is needed in order to monitor their activities and their potential substantial importance for the host member state.

Presidency compromise	Draft suggestions	MS Comments
	FR: **In the case referred to in the first subparagraph, point (a), the CSD's home competent authority shall establish, manage and chair the ~~passporting~~ cross-border college. That college shall be established within 1 month from the date referred to in Article 23(6). Where the CSD submits subsequent notifications pursuant to Article 23(3), the competent authority of the home Member State shall invite the competent authorities of the relevant host Member States ~~to the passporting college within 1 month from the date referred to in Article 23(6)~~ in relation to which the condition set in point (a) of the first subparagraph is fulfilled and other members of the college within 2 months from the date of transmission of the communication referred to in Article 23(4).** ESMA should provide the Commission with an opinion containing an assessment of the concept	

Presidency compromise	Draft suggestions	MS Comments
	of subtantiability after a [xx] period after the first cross-border college is established, and adapt it if needed, taking into account the way colleges are used and if they are sufficiently used. NL: ~~**In the case referred to in the first subparagraph, point (a),**~~ t**T**he CSD's home competent authority shall establish, manage and chair the ~~passporting~~ college. That college shall be established within 1 month from the date referred to in Article 23(6). Where the CSD submits subsequent notifications pursuant to Article 23(3), the competent authority of the home Member State shall invite the competent authorities of the relevant host Member States in relation to which the condition set in point (a) of the first subparagraph is fulfilled and other	

Presidency compromise	Draft suggestions	MS Comments
	members of the college within 2 months from the date of transmission of the communication referred to in Article 23(4).	
In the case referred to in the first subparagraph, point (b), where the parent undertaking is a CSD authorised in the Union, the competent authority of the home Member State of that CSD shall establish, manage and chair the group-level college. Where the parent undertaking is not a CSD authorised in the Union, the competent authority of the home Member State of the CSD with the largest balance sheet total shall establish, manage and chair the group-level college.	**BE:** ~~**In the case referred to in the first subparagraph, point (b), where the parent undertaking is a CSD authorised in the Union, the competent authority of the home Member State of that CSD shall establish, manage and chair the group-level college. Where the parent undertaking is not a CSD authorised in the Union, the competent authority of the home Member State of the CSD with the largest balance sheet total shall establish, manage and chair the group-level college.**~~ **IT:**	BE: Drafting suggestions in line with comments to paragraphs above. IT: In our view, the "largest balance sheet total" criterion would allow CSDs of the group the ability to "choose" the authority chairing the college by carrying out specific balance-sheet policies (e.g. paying extra-dividend to reduce the balance sheet total or borrow money to increase it). **NL:** No need anymore as 24a(1)(b) is deleted DE:

Presidency compromise	Draft suggestions	MS Comments
	~~Where the parent undertaking is not a CSD authorised in the Union, the competent authority of the home Member State of the CSD with the largest balance sheet total shall establish, manage and chair the group-level college.~~ **Where the parent undertaking is not a CSD authorised in the Union, the competent authorities of the CSD of the group will manage and chair the group-level college on a rotation basis.** **NL:** Deleted DE: ~~In the case referred to in the first subparagraph, point (b), where the parent undertaking is a CSD authorised in the Union, the competent authority of the home Member State of that CSD shall~~	See above.

Presidency compromise	Draft suggestions	MS Comments
	~~establish, manage and chair the group-level college. Where the parent undertaking is not a CSD authorised in the Union, the competent authority of the home Member State of the CSD with the largest balance sheet total shall establish, manage and chair the group-level college.~~	
By way of derogation from the third subparagraph, where the application of the criteria referred to in that subparagraph would be inappropriate, the competent authorities may waive by common agreement those criteria and appoint a different CSD's competent authority to manage and chair the college, taking into account the CSDs concerned and the relative importance of their activities in the relevant Member States. In such cases, the parent CSD or the CSD with the largest balance sheet total, as applicable, shall have the right to be heard before the competent authorities take the decision.	**BE:** **~~By way of derogation from the third subparagraph, where the application of the criteria referred to in that subparagraph would be inappropriate, the competent authorities may waive by common agreement those criteria and appoint a different CSD's competent authority to manage and chair the college, taking into account the CSDs concerned and the relative importance of their activities in the relevant Member States. In such cases, the parent CSD or the CSD~~**	BE: Drafting suggestions in line with comments to paragraphs above. FR: We believe that the reference to a "common agreement" only raises uncertainty about the adoption rule. NL: No need anymore as 24a(1)(b) is deleted

Presidency compromise	Draft suggestions	MS Comments
	~~with the largest balance sheet total, as applicable, shall have the right to be heard before the competent authorities take the decision.~~ **FR:** **By way of derogation from the third subparagraph, where the application of the criteria referred to in that subparagraph would be inappropriate, the competent authorities may waive by common agreement voted by simple majority of members of the college those criteria and appoint a different CSD's competent authority to manage and chair the college, taking into account the CSDs concerned and the relative importance of their activities in the relevant Member States. In such cases, the parent CSD or the CSD with the largest balance sheet total, as**	

Presidency compromise	Draft suggestions	MS Comments
	applicable, shall have the right to be heard before the competent authorities take the decision. **NL:** deleted	
The competent authorities shall notify the Commission and ESMA without delay of any agreement made pursuant to the fourth subparagraph.	**BE:** ~~**The competent authorities shall notify the Commission and ESMA without delay of any agreement made pursuant to the fourth subparagraph.**~~ **NL:** deleted	BE: Drafting suggestions in line with comments to paragraphs above. NL: No need anymore as 24a(1)(b) is deleted PT: Why is there a need to notify the Commission? The Commission is not a member of the college.

Presidency compromise	Draft suggestions	MS Comments
2. The college referred to in paragraph 1 shall consist of:	**BE:** **2. The college referred to in paragraph 1 ~~shall~~ may consist of** **FR:** **2. The college referred to in paragraph 1 shall consist of:**	BE: We are not in favour of the wording "shall", as it creates an obligation for the authority to participate to the college. ES: in general tersm, we could support this new structure. FR: As mentioned above, we should just ensure that the wording allows for third-country authorities to join (and not just "participate to discussions").
(a) ESMA;	LV: **Delete (a) ESMA**	LV: **The composition of colleges should be limited to national competent authorities and relevant authorities, of markets for which CSD are of significant importance. Please note that we do not support subitem (a) the inclusion of ESMA into**

Presidency compromise	Draft suggestions	MS Comments
		colleges as ESMA does not exercise any supervisory powers in relation to CSDs (it does not participate in the authorisations and review and evaluation processes of the CSDs) while all other college members do have a supervisory tasks or interest in participating in the colleges justified by the relevance for the performance of their duties. LT: We do not support the inclusion of ESMA into all colleges. As rightly mentioned in the Presidency note, ESMA does not exercise any supervisory powers in relation to CSDs (it does not participate in the authorisations and review and evaluation processes of the CSDs) while all other college members do have a supervisory tasks or interest in participating in the colleges justified by the relevance for the performance of their duties. Current CSDR text already allows for the exchange of the relevant information among competent

Presidency compromise	Draft suggestions	MS Comments
		authorities, relevant authorities and ESMA and this is the general requirement for all CSDs despite the fact whether there are colleges established or not. It should also be noted that the bigger the college the less efficient is the work. As home and host authorities has a direct interest in the supervision of the CSD, they are ready to react quickly, especially in the stress situations, and work efficiently and effectively, while members without clear role in the college might undermine this situation. It is clear now that only minority of the EU CSDs would qualify for having colleges, therefore, the goals of the inclusion of ESMA into colleges described in the impact assessment will not be achieved in any case. More importantly, supervisory convergence is reached not by ESMA alone, but as a matter of fact by the discussions in relevant ESMA committees. To sum up, the benefits of the ESMA participation in the colleges are not clear (compared to the colleges

Presidency compromise	Draft suggestions	MS Comments
		without ESMA) and therefore the justification for such a participation is very much questionable.
(b) in the case of a passporting college,	BE: ~~(c) in the case of a passporting college,~~ FR: **(b) in the case of a cross-border college,** **NL:** Deleted	BE: Drafting suggestions in line with comments to paragraphs above. NL: No need anymore as 24a(1)(b) is deleted and there's only one type of college
(i) the competent authority of the CSD's home Member State;	BE: **~~(i)~~(b) the competent authority of the CSD's home Member State;** **NL:** (~~**i**~~**b**) the competent authority of the CSD's home Member State;	BE: Drafting suggestions in line with comments to paragraphs above.

Presidency compromise	Draft suggestions	MS Comments
(ii) the relevant authorities referred to in Article 12;	BE: **~~(ii)~~(c) the CSD's relevant authorities referred to in Article 12;** **NL:** (iic) the relevant authorities referred to in Article 12;	BE: Drafting suggestions in line with comments to paragraphs above.
(iii) the competent authority of the host Member States in relation to which the condition set in point (a) of the first subparagraph of paragraph 1 is fulfilled; and	BE: **~~(iii) the competent authority of the host Member States in relation to which the condition set in point (a) of the first subparagraph of paragraph 1 is fulfilled; and~~** **(c) the competent authorities of the Member States for which the activities of the CSD are of substantial importance for the functioning of its securities markets and the protection of the investors in that host Member State**	BE: Drafting suggestions in line with comments to paragraphs above.

Presidency compromise	Drafts suggestions	MS Comments
	NL: (~~iii~~**d**) the competent authority of the host Member States in relation to which the condition ~~set in point (a) of the first subparagraph~~ of paragraph 1 is fulfilled; and	
(iv) the competent authority of the host Member States other than those referred to in point (iii) upon their justified request;	BE: ~~**(iv) the competent authority of the host Member States other than those referred to in point (iii) upon their justified request;**~~ **NL:** (~~**ive**~~) the competent authority of the host Member States other than those referred to in point (~~**iii**~~**d**) upon their justified request;	BE: Drafting suggestions in line with comments to paragraphs above. ES: doubt, ¿will the chair (CSD's home competent authority) refuse to accept this request? It seems with the current wording that its inclusion should be automatically accepted.
(c) in the case of a group-level college,	BE: ~~**(d) in the case of a group-level college,**~~ NL: deleted	BE: Drafting suggestions in line with comments to paragraphs above. NL:

Presidency compromise	Draft suggestions	MS Comments
	DE: ~~(c) in the case of a group-level college,~~	No need anymore as 24a(1)(b) is deleted and there's only one type of college DE: See above.
(i) the competent authorities of each CSD in the group and	BE: ~~(i) the competent authorities of each CSD in the group and~~ NL: Deleted DE: ~~(i) the competent authorities of each CSD in the group and~~	BE: Drafting suggestions in line with comments to paragraphs above. NL: No need anymore as 24a(1)(b) is deleted and there's only one type of college
(ii) the relevant authorities referred to in Article 12 of each CSD in the group;	BE: ~~(ii) the relevant authorities referred to in Article 12 of each CSD in the group;~~ NL:	BE: Drafting suggestions in line with comments to paragraphs above.

Presidency compromise	Draft suggestions	MS Comments
	Deleted DE: ~~(ii) the relevant authorities referred to in Article 12 of each CSD in the group;~~	NL: No need anymore as 24a(1)(b) is deleted and there's only one type of college
(d ~~f~~) EBA, where a CSD has been authorised pursuant to Article 54(3).	BE: **~~(d f)~~(e) EBA, where a CSD has been authorised pursuant to Article 54(3).** **NL:** (**~~df~~**) EBA, where a CSD has been authorised pursuant to Article 54(3).	BE: Drafting suggestions in line with comments to paragraphs above.
The members of a passporting college other than its chair may decide not to participate to a meeting of the college.	BE: **The members of a ~~passporting~~ college other than its chair may decide not to participate to a meeting of the college.** **FR:**	BE: Drafting suggestions in line with comments to paragraphs above. ES: maybe we should set some kind of threshold to celebrate a meeting of the college (three participantes,

Presidency compromise	Draft suggestions	MS Comments
	The members of a ~~passporting~~ cross-border college other than its chair may decide not to participate to a meeting of the college. **NL:** The members of a ~~passporting~~ college other than its chair may decide not to participate to a meeting of the college. PT: The members of a passporting college other than its chair may decide on its participation to a meeting of the college.	for instance), to avoid the possibility of a meeting where only assist the chair of the college. FR: As mentioned above, we should just ensure that the wording allows for third-country authorities to join (and not just "participate to discussions"). We suggest to indicate that the chair may invite third country authority to join as member. We have also indicate that this provision applies to both cross-border college and group-level college. NL: Due to changes in 24a(1)
The chair may decide to invite additional participants to the discussions of the college.	BE: **The chair may decide to invite additional ~~participants~~ authorities to the discussions of the college.** LV:	SK: The additional participants should be more specified. BE: Drafting suggestions in line with comments to paragraphs above.

Presidency compromise	Draft suggestions	MS Comments
	The chair may decide to invite additional participants to the discussions of the college, including ESMA, ESRB and ECB regarding the matters of their competence. FR: **The chair of the cross-border college and the group-level college may decide to invite ~~additional participants~~ third-country authorities supervising third-country CSDs that are part of the group to be member of the college or to take part to the discussions of the college.**	LV: For those colleges which see the need to involve other authorities on specific matters, we propose the following addition. FR: As mentioned above, we should just ensure that the wording allows for third-country authorities to join (and not just "participate to discussions"). The suggestion are made to avoid the difficulties we faced with the EMIR Colleges, where third-party authorities were not able to "join" the collegeAs a consequence we had to create distinct colleges to ensure a continuous dialogue with third country authorities. PT: It should be clearly explicit that those particicipants (which are invited by the chair) have to comply with the same requirements as the remaining members, namely on the confidentiality and duty of secrecy regimes.

Presidency compromise	Draft suggestions	MS Comments
3. Where ~~a CSD subject to the procedure referred to in Article 23(3) to (7) is also part of a group that comprises two or more~~ **the conditions set in points (a) and (b) of the first subparagraph of paragraph 1 are fulfilled** ~~CSDs~~ **and** ~~its~~ **the competent authority of the relevant CSD is the chair of the group-level college, that competent authority may decide that only one college shall be established.** ~~for the purposes of paragraph 1, points (a) and (b), of this Article for that CSD.~~ **Where any of the other CSDs within the group are also subject to the** ~~procedure referred to in Article 23(3) to (7)~~ **condition set in point (a) of the first subparagraph of paragraph 1, the chair of the college may make that decision only with the agreement of the competent authorities of those CSDs.**	BE: ~~**3. Where** a CSD subject to the procedure referred to in Article 23(3) to (7) is also part of a group that comprises two or more **the conditions set in points (a) and (b) of the first subparagraph of paragraph 1 are fulfilled** CSDs **and** its **the competent authority of the relevant CSD is the chair of the group-level college, that competent authority may decide that only one college shall be established.** for the purposes of paragraph 1, points (a) and (b), of this Article for that CSD. **Where any of the other CSDs within the group are also subject to the** procedure referred to in Article 23(3) to (7) **condition set in point (a) of the first subparagraph of paragraph 1, the chair of the college may make that decision only with the agreement of the competent authorities of those CSDs.**~~	BE: Drafting suggestions in line with comments to paragraphs above. NL: No need anymore as 24a(1)(b) is deleted and there's only one type of college DE: See above.

Presidency compromise	Draft suggestions	MS Comments
	NL: Deleted DE: ~~3. Where a CSD subject to the procedure referred to in Article 23(3) to (7) is also part of a group that comprises two or more the conditions set in points (a) and (b) of the first subparagraph of paragraph 1 are fulfilled CSDs and its the competent authority of the relevant CSD is the chair of the group-level college, that competent authority may decide that only one college shall be established. for the purposes of paragraph 1, points (a) and (b), of this Article for that CSD. Where any of the other CSDs within the group are also subject to the procedure referred to in Article 23(3) to (7) condition set in point (a) of the first subparagraph of paragraph 1, the chair of the~~	

Presidency compromise	Draft suggestions	MS Comments
	~~college may make that decision only with the agreement of the competent authorities of those CSDs.~~	
Where a college established pursuant to the first subparagraph:	BE: **~~Where a college established pursuant to the first subparagraph:~~** **NL:** deleted	BE: Drafting suggestions in line with comments to paragraphs above. NL: No need anymore as 24a(1)(b) is deleted and there's only one type of college
(a) convenes for the exercise of the tasks referred to in paragraph 6, points (a) to (d), of this Article, the authorities referred to in points (a) to (d) of the first subparagraph of paragraph 2~~, points (a) to (f) of this Article~~ in relation to each CSD within the group shall participate to that meeting of the college;	BE: **~~(a) convenes for the exercise of the tasks referred to in paragraph 6, points (a) to (d), of this Article, the authorities referred to in points (a) to (d) of the first subparagraph of paragraph 2~~**, ~~points (a) to (f) of this Article~~ **~~in relation to each CSD within the group shall participate to that meeting of the college;~~** LV:	BE: Drafting suggestions in line with comments to paragraphs above. LV: Change related to deletion of ESMA as a college member. NL:

Presidency compromise	Draft suggestions	MS Comments
	(a) convenes for the exercise of the tasks referred to in paragraph 6, points (a) to (d), of this Article, the authorities referred to in points ~~(a)~~(b) to (d) of the first subparagraph of paragraph 2, ~~points (a) to (f) of this Article~~ in relation to each CSD within the group shall participate to that meeting of the college; NL: deleted	No need anymore as 24a(1)(b) is deleted and there's only one type of college
(b) convenes for the exercise of the tasks referred to in paragraph 6, point (e), of this Article only the authorities referred to, in points (a), (c) and, where applicable, (d) of the first subparagraph of paragraph 2~~, points (a), (b), (c), (e) and, where applicable, (f) of this Article~~ shall participate to that meeting of the college.	BE: ~~**b) convenes for the exercise of the tasks referred to in paragraph 6, point (e), of this Article only the authorities referred to, in points (a), (c) and, where applicable, (d) of the first subparagraph of paragraph 2**, points (a), (b), (c), (e) and, where applicable, (f) of this Article **shall participate to that meeting of the college.**~~	BE: Drafting suggestions in line with comments to paragraphs above. LV: Change related to deletion of ESMA as a college member. NL:

Presidency compromise	Draft suggestions	MS Comments
	LV: **b) convenes for the exercise of the tasks referred to in paragraph 6, point (e), of this Article only the authorities referred to, in points ~~(a)~~, (c) and, where applicable, (d) of the first subparagraph of paragraph 2~~, points (a), (b), (c), (e) and, where applicable, (f) of this Article~~ shall participate to that meeting of the college.** NL: deleted	No need anymore as 24a(1)(b) is deleted and there's only one type of college
4. The chair shall notify the composition of the college to ESMA within 30 calendar days of the college's establishment and any change in its composition within 30 calendar days of that change. ESMA shall publish on its website without undue delay the list of the members of that college and keep that list up-to-date.		
5. The competent authority of a Member State which is not a member of the college	DE:	HU:

Presidency compromise	Draft suggestions	MS Comments
may submit a justified request asking from the college any information relevant for the performance of its supervisory duties.	~~5. The competent authority of a Member State which is not a member of the college may submit a justified request asking from the college any information relevant for the performance of its supervisory duties.~~	Open to a solution, but we would support the widest possible involvement of national authorities, if there are to be colleges. NL: When is it justified? Can an NCA refuse even if it is justified? Can a requesting NCA appeal (to ESMA?) when an NCA refuses information, even when justified? Many questions remain on this point. DE: The purpose of this para. is unclear as Member State authorities may request information from Home Member State authorities at any time.
6. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure:	BE: **6. The college shall, without prejudice to the responsibilities of competent authorities under this Regulation, ensure the exchange of information, including requests for information pursuant to Articles 13, 14 and**	BE: As explained before, point (a) is the only real task which a college could handle. We therefore suggest removing all other tasks, as they do not have any practical implication (see above).

Presidency compromise	Draft suggestions	MS Comments
	15 and information on the review and evaluation process pursuant to Article 22;	
(a) the exchange of information, including requests for information pursuant to Articles 13, 14 and 15 and information on the review and evaluation process pursuant to Article 22;	BE: ~~(a) the exchange of information, including requests for information pursuant to Articles 13, 14 and 15 and information on the review and evaluation process pursuant to Article 22;~~	
(b) more efficient supervision by avoiding unnecessary duplicative supervisory actions, such as information requests;	BE: ~~(b) more efficient supervision by avoiding unnecessary duplicative supervisory actions, such as information requests;~~	
(c) agreement on the voluntary entrustment of tasks among its members.	BE: ~~(c) agreement on the voluntary entrustment of tasks among its members.~~	
(d) in the case of a passporting college, the cooperation of the home and host Member State pursuant to Article 24 and regarding the measures referred to in Article 23(~~4~~3), point (e) and on any issues encountered in	BE: ~~c) in the case of a passporting college, the cooperation of the home and host Member State pursuant to Article 24 and regarding the measures referred to in~~	FR: In line with our proposal regarding the "cross-border" college, we suggest to add the matter of the links established by the CSD in the scope of the college.

Presidency compromise	Draft suggestions	MS Comments
the provision of services in other Member States;	~~Article 23(4 3), point (e) and on any issues encountered in the provision of services in other Member States~~ FR: **(e) in the case of a ~~passporting~~ cross-border college, the cooperation of the home and host Member State pursuant to Article 24 and regarding the measures referred to in Article 23(~~4~~ 3), point (e), the exchange of relevant information on the activities carried-out through links established in accordance with Article 48 and on any issues encountered in the provision of services in other Member States;** NL: (d) ~~in the case of a passporting college,~~ the cooperation of the home and host Member State pursuant to Article 24 and regarding the measures referred to in Article 23(3), point (e)	

Presidency compromise	Draft suggestions	MS Comments
	and on any issues encountered in the provision of services in other Member States;	
(e) in the case of a group-level college, the exchange of information on resources shared and outsourcing arrangements in place within ~~a~~ the group ~~of CSDs~~ pursuant to Article 19, on significant changes to the structure and ownership of the group, and on changes in the organisation, senior management, processes or arrangements where those changes have a significant impact on governance or risk management for the CSDs belonging to the group.	BE: ~~**e) in the case of a group-level college, the exchange of information on resources shared and outsourcing arrangements in place within a the group of CSDs pursuant to Article 19, on significant changes to the structure and ownership of the group, and on changes in the organisation, senior management, processes or arrangements where those changes have a significant impact on governance or risk management for the CSDs belonging to the group.**~~ FR: **e) in the case of a group-level college, the exchange of information on resources shared and outsourcing arrangements in place within ~~a~~ the group ~~of CSDs~~ pursuant to**	FR: We suggest adding the issue of the links. NL: No need anymore as 24a(1)(b) is deleted and there's only one type of college DE: See above.

Presidency compromise	Draft suggestions	MS Comments
	Article 19 including links established, on significant changes to the structure and ownership of the group, and on changes in the organisation, senior management, processes or arrangements where those changes have a significant impact on governance or risk management for the CSDs belonging to the group. NL: Deleted DE: ~~(e) in the case of a group-level college, the exchange of information on resources shared and outsourcing arrangements in place within a the group pursuant to Article 19, on significant changes to the structure and ownership of the~~	

Presidency compromise	Draft suggestions	MS Comments
	~~group, and on changes in the organisation, senior management, processes or arrangements where those changes have a significant impact on governance or risk management for the CSDs belonging to the group.~~	
The chair shall convene a meeting of the college at least once a year or upon the justified request of a member of the college referred to in the first subparagraph of paragraph 2.	ES: The chair shall convene a meeting of the college at least once a year or upon the justified request of ~~a~~ **at least two** members of the college referred to in the first subparagraph of paragraph 2. IT: The chair shall convene a meeting of the college at least once ~~a year~~ **every two years** or upon the justified request of a member of the college referred to in the first subparagraph of paragraph 2. EL:	ES: we could support this option. But it could be better if we set a minimum of 2 other members to request the meeting, instead of one. IT: We understand that the main focus of colleges should be on the review and evaluation process ("R&E"), thus the minimum frequency of colleges' meetings should be aligned to the minimum frequency of the R&E process. The R&E currently takes place at least once every year and this seems to explain the proposed annual frequency of colleges' meetings. However, CSDR Refit proposes to change the minimum frequency of the R&E from annual to once every 2 years.

Presidency compromise	Draft suggestions	MS Comments
	The chair shall convene a meeting of the college at least <u>every two</u> years or upon the justified request of a member of the college referred to in the first subparagraph of paragraph 2. DE: The chair shall convene a meeting of the college at least once a year or upon the ~~justified~~ request of a member of the college referred to in the first subparagraph of paragraph 2.	Against this background, the propose to keep the alignment between the minimum frequency of colleges' meetings and R&E by having colleges' meetings at least once every 2 years. **EL:** We propose to adapt the frequency of the college meetings to the frequency of the review and evaluation procedure. DE: It would be unclear what "justified" means.
In order to facilitate the performance of the tasks assigned to colleges pursuant to the first subparagraph of this paragraph, members of the college referred to in the first subparagraph of paragraph 2 may add points to the agenda of a meeting.	BE: **In order to facilitate the performance of the task~~s~~ assigned to colleges pursuant to the first subparagraph of this paragraph, members of the college referred to in the first subparagraph of paragraph 2 may add points to the agenda of a meeting.**	BE: Just 1 task.

Presidency compromise	Draft suggestions	MS Comments
7. The establishment and functioning of the college shall be based on a written agreement between all its members.		
That agreement shall determine the practical arrangements for the functioning of the college, including the modalities of communication amongst college members, and may determine tasks to be entrusted to the CSD's competent authority or another member of the college.	**BE:** **That agreement shall determine the practical arrangements for the functioning of the college, including the modalities of communication amongst college members~~, and may determine tasks to be entrusted to the CSD's competent authority or another member of the college~~.** **NL:** That agreement shall determine the practical arrangements for the functioning of the college, including the modalities of communication amongst college members, and may determine tasks to be entrusted to the CSD's competent authority or another member of the college.	BE: Entrusting other authorities with tasks is not possible. CSDR does not allow for supervision by any other authority than the CSD's NCA. NL: Added an extra subparagraph to have some grandfathering clause for already existing supervisory cooperation based on written agreements.

Presidency compromise	Draft suggestions	MS Comments
	Where supervisors have already established a written agreement related to the supervision of a CSD, this written agreement can stay into place. During that period the home supervisor will need to assess whether the written agreement is compliant with this article.	
8. ESMA shall develop draft regulatory technical standards specifying the details of the practical arrangements referred to in paragraph 7.	IT: ESMA, **in close cooperation with the members of the ESCB,** shall develop draft regulatory technical standards specifying the details of the practical arrangements referred to in paragraph 7.	IT: We propose to add ESCB as relevant authorities are involved in the CSDR colleges, in line with EMIR provisions on colleges (Article 18(6) of Regulation (EU) No 648/2012 so-called EMIR). PT: We consider this RTS should be deleted. Indeed if the members are supposed to establish the functioning of the college based on a written agreement which is then fully based on a RTS why don't just apply the RTS?

Presidency compromise	Draft suggestions	MS Comments
ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please insert the date = 1 year after the date of entry into force of this Regulation].		
Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.		
9. The Commission shall be empowered to adopt delegated act in accordance with Article 67 concerning measures for establishing the criteria under which the operations of a CSD in a host Member State could be considered to be of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.	BE: ~~**9. The Commission shall be empowered to adopt delegated act in accordance with Article 67 concerning measures for establishing the criteria under which the operations of a CSD in a host Member State could be considered to be of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.**~~	BE: We do not think that the current criteria to determine substantial importance should be reviewed. HU: We suggest to regulate the criteria at Level 1 regulation. IT: Criterion is already set in L1 (see our proposal above)

Presidency compromise	Draft suggestions	MS Comments
	IT: ~~**9. The Commission shall be empowered to adopt delegated act in accordance with Article 67 concerning measures for establishing the criteria under which the operations of a CSD in a host Member State could be considered to be of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.**~~	**EL:** We prefer to include the substantiality criteria in Level 1. PT: The definition of what is of substantial importance is an essential element for the entire passporting college regime. It therefore cannont, in our view, be defined in level 2.
Article 26		EE: Agree
General provisions		
…		
3. A CSD shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself, including its managers, employees, members of the management	BE: 3. A CSD shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself,	BE: We believe that the current wording is already all-encompassing, and the Presidency's suggested wording seems more restrictive.

Presidency compromise	Draft suggestions	MS Comments
body or any person ~~directly or indirectly linked to them~~ **with direct or indirect control or close links to them or the CSD itself**, and its participants or their clients. It shall maintain and implement adequate resolution procedures where possible conflicts of interest occur.	including its managers, employees, members of the management body or any person directly or indirectly linked to them ~~**with direct or indirect control or close links to them or the CSD itself**~~, and its participants or their clients. It shall maintain and implement adequate resolution procedures where possible conflicts of interest occur. FR: 3. A CSD shall maintain and operate effective written organisational and administrative arrangements to identify and manage any potential conflicts of interest between itself, including its managers, employees, members of the management body or any person directly or indirectly linked to them ~~directly or indirectly linked to them~~ ~~**with direct or indirect control or close links to them or the CSD itself**~~ and its participants or their clients. It shall maintain and	DK: We welcome the suggestions to further specify the rules related to qualifying holding and changes in the management of a CSD etc. We are still investigating the details of the amendments and will provide further comments at a later stage. FR: We do not support this drafting suggestion and believe that we should keep the existing provision. Indeed, it seems to us that the suggested wording is in fact narrowing the scope subject to the conflict of interest policy (before : the definition of the person included in the CSD scope was very broad – i.e. a list of person "directly or indirectly linked" to the CSD ; after : this definition focuses on the same people but only if they have a direct or indirect control or close link).

Presidency compromise	Draft suggestions	MS Comments
	implement adequate resolution procedures where possible conflicts of interest occur.	
Article 27		EE: Agree in principle FR: We support the direction taken as regards the introduction of a qualifying holding and the notification requirement as provided for under EMIR regulation. It was a non-sense that such requirement did not exist for CSD while existing for other financial infrastructures and regulated entities. We understand that articles 30-31-32 of EMIR have been copied-pasted below. We have made drafting suggestion regarding the application file to be provided to the authorities. **EL:** We agree with the proposed amendments.
Senior management, management body and shareholders		
…		

Presidency compromise	Draft suggestions	MS Comments
6. The competent authority shall not authorise a CSD unless it has been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.		IE: We support the approach based on tried-and-tested wording from EMIR and MiFID. However, we feel the consultation process could be further elaborated, along the lines of process set out in Article 23 of CSDR. More detail is needed e.g. is confirmation of consultation required from the competent authorities? How long do the consulted NCAs have to respond? What recourse is available to the consulted NCAs if they disagree with the authorisation? DE: The introduction of rules on qualifying holdings is generally welcome.
7. The competent authority shall refuse to authorise a CSD where it is not satisfied as to the suitability of the shareholders or members that have qualifying holdings in		

Presidency compromise	Draft suggestions	MS Comments
the CSD, taking into account the need to ensure the sound and prudent management of a CSD.		
8. Where close links exist between the CSD and other natural or legal persons, the competent authority shall grant authorisation only where those links do not prevent the effective exercise of the supervisory functions of the competent authority.		IE: We would also ask the question as to what happens if a non-financial corporate entity has a qualifying holding in a CSD? In such a case, the CSD NCA may not be in a position to supervise this entity and may need to collaborate with, or seek input from, another supervisory body.
9. Where the persons referred to in paragraph 6 exercise an influence which is likely to be prejudicial to the sound and prudent management of the CSD, the competent authority shall take appropriate measures to terminate that situation, which may include the withdrawal of the authorisation of the CSD.		
10. The competent authority shall refuse authorisation where the laws, regulations or administrative provisions of a third		

Presidency compromise	Draft suggestions	MS Comments
country governing one or more natural or legal persons with which the CSD has close links, or difficulties involved in their enforcement, prevent the effective exercise of the supervisory functions of the competent authority.		
11. A CSD shall:		
(a) provide the competent authority with, and make public, information regarding the ownership of the CSD, and in particular, the identity and scale of interests of any parties having a qualifying holding in the CSD;	**FR:** **(a) provide the competent authority with, and make public, information regarding the ownership of the CSD, and in particular, the identity and scale of interests of any ~~parties~~ person having a qualifying holding in the CSD;**	FR: We believe the word "person" is more appropriate, as it is used in many textes, and encompasses both legal and natural persons.
(b) make public the transfer of ownership rights that indicate a change in control over the CSD, after such a change in control has been approved by the competent authority.	PT: **(b) make public without unde delay, the transfer of ownership rights that indicate a change in control over the CSD, after such a change in control has been approved by the competent authority.**	PT: This provision b) is not included in article 30 of EMIR and we therefore ask the rational for it. Is it due to reasons of transparency? In addition, we ask if the timeline for such publication should be regulated.
Article 27a	BE: **~~Article 27a~~**	BE:

Presidency compromise	Draft suggestions	MS Comments
		We are against the proposed introduction of paragraphs 27a and 27b. The proposed changes whereby we move from a suitability assessment in case of change in control to an assessment in case a qualifying holding is created, should open discussions on the applicability of the QHP Guidelines defined for the financial sector (also in view of consistency in application of assessment criteria). The appropriateness of this guide for CSDs would need to be assessed prior to making any changes to CSDR. In addition, for CSDs with a banking license, the inclusion of the QHP to be assessed by the NCA is not compatible with the QHP foreseen in Capital Requirements Directive, as implemented (common procedure where ultimate decision is taken by the ECB). In any case, the ECB should be consulted in order to define appropriate modalities/procedures for such procedures. Finaly, the insertion of a QHP raises procedural / competence questions not only in cases of banking

Presidency compromise	Draft suggestions	MS Comments
		groups that include CSDs, but also in cases of groups counting more than one CSD (as QHP always foresee assessments in case of direct or indirect holdings). Duplication of tasks should be avoided from an efficiency/proportionality perspective as well as considering the legal and reputational risk that diverging opinions bear on relevant NCAs. EE: Agree in principle **EL:** We agree with the proposed Article 27a.
Information to competent authorities		FI: as acquisition or sell of qualified holding may be of interest also to the competent authorities of CSDs belonging to the same group, should also the group college be informed about such intentions and the outcome of the assessment of the competent authority?
1. A CSD shall notify its competent authority of any changes to its management, and shall provide the competent authority with all the		

Presidency compromise	Draft suggestions	MS Comments
information necessary to assess compliance with Article 27(1) and (4).		
Where the conduct of a member of the board is likely to be prejudicial to the sound and prudent management of the CSD, the competent authority shall take appropriate measures, which may include removing that member from the board.		
2. Any natural or legal person or such persons acting in concert (the 'proposed acquirer'), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in a CSD or to further increase, directly or indirectly, such a qualifying holding in a CSD as a result of which the proportion of the voting rights or of the capital held would reach or exceed 10 %, 20 %, 30 % or 50 % or so that the CSD would become its subsidiary (the 'proposed acquisition'), shall first notify in writing the competent authority of the CSD in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in		

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Article 27b(4). This natural or legal person shall also notify the CSD.		
Any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in a CSD (the 'proposed vendor') shall first notify the competent authority in writing thereof, indicating the size of such holding. Such a person shall likewise notify the competent authority where it has taken a decision to reduce a qualifying holding so that the proportion of the voting rights or of the capital held would fall below 10 %, 20 %, 30 % or 50 % or so that the CSD would cease to be that person's subsidiary. This natural or legal person shall also notify the CSD.		
The competent authority shall, promptly and in any event within two working days of receipt of the notification referred to in this paragraph and of the information referred to in paragraph 3, acknowledge receipt in writing thereof to the proposed acquirer or proposed vendor.		

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The competent authority shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required to be attached to the notification on the basis of the list referred to in Article 27b(4) (the assessment period), to carry out the assessment provided for in Article 27b(1) (the assessment).		
The competent authority shall inform the proposed acquirer or proposed vendor of the date of the expiry of the assessment period at the time of acknowledging receipt.		
3. The competent authority may, during the assessment period, where necessary, but no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.		

Presidency compromise	Draft suggestions	MS Comments
The assessment period shall be interrupted for the period between the date of request for information by the competent authority and the receipt of a response thereto by the proposed acquirer. The interruption shall not exceed 20 working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.		
4. The competent authority may extend the interruption referred to in the second subparagraph of paragraph 3 up to 30 working days where the proposed acquirer is situated or regulated outside the Union.		
5. Where the competent authority, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and	PT: **5. Where the competent authority, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two working days, and not exceeding**	**PT:** The information regarding the assessment should also be sent to the proposed vendor.

Presidency compromise	Draft suggestions	MS Comments
provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. However, Member States may allow a competent authority to make such disclosure in the absence of a request by the proposed acquirer.	**the assessment period, inform the proposed acquirer and proposed vendor in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. However, Member States may allow a competent authority to make such disclosure in the absence of a request by the proposed acquirer.**	
6. Where the competent authority does not oppose the proposed acquisition within the assessment period, it shall be deemed to be approved.		
7. The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.		
8. If a CSD becomes aware of any acquisitions or disposals of holdings in its capital that cause holdings to exceed or		

Presidency compromise	Draft suggestions	MS Comments
fall below any of the thresholds referred to in the first subparagraph of paragraph 2, that CSD is to inform the competent authority without delay.		
9. Member States shall not impose requirements for notification to, and approval by, the competent authority of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Regulation.		
Article 27b	BE: ~~**Article 27b**~~	BE: We are against the proposed introduction of paragraphs 27a and 27b. The proposed changes whereby we move from a suitability assessment in case of change in control to an assessment in case a qualifying holding is created, should open discussions on the applicability of the QHP Guidelines defined for the financial sector (also in view of consistency in application of assessment criteria). The appropriateness of this guide for CSDs would need to be assessed prior to making any changes to CSDR.

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		In addition, for CSDs with a banking license, the inclusion of the QHP to be assessed by the NCA is not compatible with the QHP foreseen in Capital Requirements Directive, as implemented (common procedure where ultimate decision is taken by the ECB). In any case, the ECB should be consulted in order to define appropriate modalities/procedures for such procedures. Finaly, the insertion of a QHP raises procedural / competence questions not only in cases of banking groups that include CSDs, but also in cases of groups counting more than one CSD (as QHP always foresee assessments in case of direct or indirect holdings). Duplication of tasks should be avoided from an efficiency/proportionality perspective as well as considering the legal and reputational risk that diverging opinions bear on relevant NCAs. EE: Agree in principle

Presidency compromise	Draft suggestions	MS Comments
		EL: We agree with the proposed Article 27b.
Assessment		
1. Where assessing the notification provided for in Article 27a(2) and the information referred to in Article 27a(3), the competent authority shall, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following:		
(a) the reputation and financial soundness of the proposed acquirer;		
(b) the reputation and experience of any person who will direct the business of the CSD as a result of the proposed acquisition;		
(c) whether the CSD will be able to comply and continue to comply with this Regulation;		

Presidency compromise	Draft suggestions	MS Comments
(d) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive (EU) 2015/849 is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.		
Where assessing the financial soundness of the proposed acquirer, the competent authority shall pay particular attention to the type of business pursued and envisaged in the CSD in which the acquisition is proposed.		
Where assessing the CSD's ability to comply with this Regulation, the competent authority shall pay particular attention to whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, to effectively exchange information among the competent authorities and to determine the allocation		

Presidency compromise	Draft suggestions	MS Comments
of responsibilities among the competent authorities.		
2. The competent authorities may oppose the proposed acquisition only where there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or where the information provided by the proposed acquirer is incomplete.		
3. Member States shall neither impose any prior conditions in respect of the level of holding that shall be acquired nor allow their competent authorities to examine the proposed acquisition in terms of the economic needs of the market.		
4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that shall be provided to the competent authorities at the time of notification referred to in Article 27a(2). The information required shall be proportionate and shall be adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall	**FR:** **4. ESMA shall develop draft regulatory technical standards to establish a list specifying the information necessary for the competent authority to carry out the assessment and an application template to be used by the proposed acquirer in order to make the notification provided for in Article 27a(2).**	FR: In our view, we should aim at harmonising the process in the EU. Therefore, we suggest that: - The list of information required should be set-out in RTS ; A notification template should be provided to proposed acquirer. SI:

Presidency compromise	Draft suggestions	MS Comments
not require information that is not relevant for a prudential assessment.	**ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please insert the date = 1 year after the date of entry into force of this Regulation]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in this paragraph 3 in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.** ~~**4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that shall be provided to the competent authorities at the time of notification referred to in Article 27a(2). The information required shall be proportionate and shall be adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.**~~ **SI:** In order to ensure consistent, efficient and effective assessment of the notification provided for in Article 27a(2) and the information	Instead of each member state individually, we suggest that either (1) ESMA is delegated to prepare a harmonised list of information, required to carry out the assessment by the competent authority or (2) member states are required to use to the maximum extent possible alredy existing ***Joint Guidelines for the prudential assessment of acquisitions of qualifying holdings***. While we agree, that information provided should be adapted to the nature of proposed acquisition (having in mind additional information requirements where the proposed acquisition would result in a qualifying holding of more than 10% - in line with joint guidelines), we do not agree with the possibility that information required is adapted to the nature of the proposed acquirer since it differentiates acquirers and therefore does not take into account the concept of "same business, same requirements". **Taking all into account, we favour above option 1) ESMA is delegated to prepare a harmonised list of**

Presidency compromise	Draft suggestions	MS Comments
	referred to in Article 27a(3), ESMA shall issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010. Member States shall not require information that is not relevant for a prudential assessment.	**information, required to carry out the assessment by the competent authority** Argumentation: Contrary to the possibility to intruduce heterogic national supervisory regimes, the use of joint guidelines allows defining common procedures that establish how acquisitions and increases of qualifying holdings by natural or legal persons in financial institutions should be assessed and aim to harmonise supervisory practices in the financial sector across the EU to provide more clarity to proposed acquirers on how they should notify the competent authorities.
5. Notwithstanding Article 27a(2), (3) and (4), where two or more proposals to acquire or increase qualifying holdings in the same CSD have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.		

Presidency compromise	Draft suggestions	MS Comments
6. The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. The competent authorities shall, upon request, communicate all relevant information to each other and shall communicate all essential information at their own initiative. A decision by the competent authority that has authorised the CSD in which the acquisition is proposed shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer.		
Article 40		
1. For transactions denominated in the currency of the country where the settlement takes place, a CSD shall settle the cash payments of its securities settlement system through accounts opened with a central bank of issue of the relevant currency where practical and available.		

Presidency compromise	Draft suggestions	MS Comments
2. Where it is not practical and available to settle in central bank accounts as provided in paragraph 1, a CSD may offer to settle the cash payments for all or part of its securities settlement systems through accounts opened with a credit institution, through a CSD that is authorised to provide the services listed in Section C of the Annex whether within the same group of undertakings ultimately controlled by the same parent undertaking or not, or through its own accounts. If a CSD offers to settle in accounts opened with a credit institution, through its own accounts or the accounts of another CSD, it shall do so in accordance with the provisions of Title IV.	**LV:** **2. Where it is not practical and available to settle in central bank accounts as provided in paragraph 1, a CSD may offer to settle the cash payments for all or part of its securities settlement systems through accounts opened with a credit institution, through a CSD that is authorised to provide the services listed in Section C of the Annex ~~whether within the same group of undertakings ultimately controlled by the same parent undertaking or not~~, or through its own accounts. If a CSD offers to settle in accounts opened with a credit institution, through its own accounts or the accounts of another CSD, it shall do so in accordance with the provisions of Title IV.** **FR:** ~~**2. Where it is not practical and available to settle in central bank accounts as provided in**~~	LV: As provision allows CSD to arrange settlement in accounts opened in another CSD, it does not matter whether this another CSD is undertaking of same group as the CSD, then text "whether within the same group of undertakings ultimately controlled by the same parent undertaking or not " is excessive. FR: We do not understand its value-added/objective of this paragraph and we are afraid there is a mistake in it. Indeed, a CSD can not settle cash payment through its own accounts, unless this CSD is authorized to provide the services listed in Section C of the annex…. We hence suggest to delete this paragraph 2.

Presidency compromise	Draft suggestions	MS Comments
	~~paragraph 1, a CSD may offer to settle the cash payments for all or part of its securities settlement systems through accounts opened with a credit institution, through a CSD that is authorised to provide the services listed in Section C of the Annex whether within the same group of undertakings ultimately controlled by the same parent undertaking or not, or through its own accounts. If a CSD offers to settle in accounts opened with a credit institution, through its own accounts or the accounts of another CSD, it shall do so in accordance with the provisions of Title IV.~~	
3. A CSD shall ensure that any information provided to market participants about the risks and costs associated with settlement in the accounts of credit institutions or through its own accounts is clear, fair and not misleading. A CSD shall make available sufficient information to clients or potential clients to allow them to identify and evaluate the risks and costs associated with settlement		

Presidency compromise	Draft suggestions	MS Comments
in the accounts of credit institutions or through its own accounts and shall provide such information on request.		
Article 47a		EE: Agree in principle FR: This netting issue has been introduced in the discussion at a very late stage. At this stage, we do not have sufficient information on the issue and its extent (the BCE opinion is not much developped on this point) to be able to support it. Considering the potential impact of these provisions, we believe that is necessary to have a clear view on this matter. We therefore ask the Presidence to provide us with a technical paper on this topic, (i) explaining from a practical and legal standpoints what are the netting arrangements targeted here (technical netting of settlement instructions ? such the one operated by T2S? bilateral and multilateral netting? Etc.), (ii) assessing whether the targeted netting

Presidency compromise	Draft suggestions	MS Comments
		qualifies as "netting" under the settlement finality directive (SFD). HR: Comment in relation with Article 47 (HR non-paper on possible further amendments to CSDR) Providing for a level playing field for non-banking CSDs when they calculate capital requirements We propose to remove any uncertainty on whether or not CSDs need to calculate capital requirements for physical assets, such as buildings, and for other investments that are not eligible in accordance with Article 46 of the CSDR. Non-banking CSDs should not be subject to more burdensome requirements than banking CSDs or banks for the same categories of assets. Non-eligibile assets that would be subject to deductions under CRR, should not be subject to additional capital requirements and calculation of risk

Presidency compromise	Draft suggestions	MS Comments
		weighted exposure amounts, since this would lead to inconsistencies in the approach used for banking and non-banking CSDs, and would put non-banking CSDs at a disadvantage. Deductions for CSDs should be considered for all instruments that would fall under Common Equity Tier 1, Additional Tier 1, Additional Tier 2 and Tier 2 instruments under CRR provisions. Physical (tangible) assets, while not subject to deductions under CRR, are filtered out of a CSD's capital under Article 47 (1) of CSDR – in this context, the treatment of tangible assets for non-banking CSDs should be clarified as soon as possible.
Netting		
1. CSDs shall explicitly indicate in their rules whether they apply netting arrangements.		DK: We have a scrutiny reservation on this proposal.

Presidency compromise	Draft suggestions	MS Comments
		FR. This netting issue has been introduced in the discussion at a very late stage. At this stage, we do not have sufficient information on the issue and its extent (the BCE opinion is not much developped on this point) to be able to support it. Considering the potential impact of these provisions, we believe that is necessary to have a clear view on this matter. We therefore ask the Presidence to provide us with a technical paper on this topic, (i) explaining from a practical and legal standpoints what are the netting arrangements targeted here (technical netting of settlement instructions ? such the one operated by T2S? bilateral and multilateral netting? Etc.), (ii) assessing whether the targeted netting qualifies as "netting" under the settlement finality directive (SFD). DE: We are generally supportive to introduce rules on netting in CSDR.

Presidency compromise	Draft suggestions	MS Comments
2. CSDs which use common settlement infrastructure in accordance with Article 48(8) and apply netting arrangements shall measure, monitor, and manage the credit and liquidity risks arising from netting arrangements.		
3. ESMA shall, in close cooperation with the EBA and the members of the ESCB, develop draft regulatory technical standards to further specify details of the frameworks for the monitoring, measuring, management, reporting and public disclosure of the risks stemming from the netting arrangements.		
ESMA shall submit those draft regulatory technical standards to the Commission by … [PO please insert the date = 1 year after the date of entry into force of this Regulation]. 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 1093/2010.		

Presidency compromise	Draft suggestions	MS Comments
Article 49		**BG:** We support the presidency compromise in relation to Articles 23 and 49 (1). Please refer to our comment on Article 23 above. EE: Agree in principle
Freedom to issue in a CSD authorised in the Union		
1. An issuer shall have the right to arrange for its securities admitted to trading on regulated markets or MTFs or traded on trading venues to be recorded in any CSD established in any Member State, subject to compliance by that CSD with conditions referred to in Article 23.		
Without prejudice to the issuer's right referred to in the first subparagraph, the corporate or similar law of the Member State under which the securities are constituted shall continue to apply. The corporate or similar law of the Member		

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State under which the securities are constituted includes:		
(a) for shares the ~~corporate or similar~~ law of the Member State where the issuer is ~~established~~ incorporated; ~~and~~ or	FR: **(a) ~~for shares~~ the ~~-~~corporate or similar law of the Member State where the issuer is ~~established~~ incorporated; ~~and~~ or**	DK: We are open to consider the limitation to shares. FR: We support the Commission proposal on this Article 49 and oppose the suggested change of wording. In the context of cross border services provided by CSD to issuers, **the concept of applicable law under article 49 of CSDR is key**. The Commission proposal, in line with ESMA opinion, ensures that the passporting process is clear for the NCAs and that compliance with the issuer law as well as the issuance law (if different) is ensured by passporting CSDs, thus providing legal certainty. As a preliminary remark, we note that, as of today, the dissociation between the law of the issuer and the law of the issuance may only occur with respect to securities such as bonds. It is not actually the case for shares so there is no need to provide for specific provision per type of financial instruments, that would in addition ties our hands should this practice evolve. Last but not least, should we change the way corporate law is taken into account by CSDs under the CSDR regulation then we should need to consult Justice Ministries at some point of the CSDR Refit negociations. As of today, in the EU, there is no harmonization of securities law and this constraint makes it mandatory for CSDs that intend to provide their services to issuers established in

Presidency compromise	Draft suggestions	MS Comments
		another member state to take into account the law of incorporation of these issuers. The law of incorporation of the issuer cannot be ignored by the CSD since this law may provide for important mandatory provisions potentially impacting the CSD while providing its services to the issuer and protecting investors. From a French law perspective, the law applicable to the issuers provides for mandatory provisions (issuance and securities holding model for example) that may be incompatible with the set-up of some foreign CSD (or at least, may require some change to the set-up). For instance, a CSD established in another Member State requested a passport in France a few years ago but have not obtained it so far, on the ground that this CSD is not able to demonstrate that it may comply with French law applicable to the issuers it intends to target as clients. The issue arises in particular where the CSD asking for the passport is established in a jurisidiction where the securities ownership rights are located at the CSD level and where the holding model applied differs from the one applied in the host Member State. In France (and some other Member States) an "indirect holding" model is used by CSDs. Under this model, an investor who acquires securities does not hold them directly in an account with the CSD (this is prohibited in France). Precisely, under French law, the property right to the securities only applies to the securities accounts held by intermediaries, i.e. the custodians: the securities accounts held by the CSD on behalf of custodians are only "technical accounts" or "mirror accounts" of the securities accounts held by these custodians on behalf of their own clients.

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		The property rights of investors to their securities are booked by the entry of securities in an account opened in their name with a custodian, which can either be a direct participant of the CSD and thus have a securities account with the CSD, or have a securities account with another custodian who is a participant of the CSD. This feature of French law cannot be ignored by a passporting CSD intending to provide services to French issuers, irrespective of the type of financial instruments. Considering the above, **we are strongly opposed** to a relief as the one suggested that would create a very dangerous situation from a legal perspective and from an investors protection perspective. **EL:** We agree. DE: We support the proposal to limit the application of the law of the issuer to shares.
(b) for other securities than shares the ~~governing corporate or similar~~ law of the Member State under which the securities are issued.	FR: **(b) ~~for other securities than shares~~ the governing corporate or similar law ~~of the Member State~~ under which the securities are issued.**	FI: The proposal could be interpreted to limit the opportunity to agree on the applicable law, namely the interpretation can be that the governing law should be the law of the Member State where the issuance takes place. We assume that this is not the intention, but

Presidency compromise	Draft suggestions	MS Comments
		would propose to review the wording, or add a clarification in the recitals along the lines that "CSDR does not intend to affect the choice of law, leaving it at the disposal of issuers". PL: In line with the alleviation in the matter of passporting provision we also support the inclusion of this proposal. FR: We support the Commission proposal on this Article 49 and oppose the suggested change of wording. In the context of cross border services provided by CSD to issuers, **the concept of applicable law under article 49 of CSDR is key**. The Commission proposal, in line with ESMA opinion, ensures that the passporting process is clear for the NCAs and that compliance with the issuer law as well as the issuance law (if different) is ensured by passporting CSDs, thus providing legal certainty. As a preliminary remark, we note that, as of today, the dissociation between the law of the issuer and the law of the issuance may only occur with respect to securities such as bonds. It is not actually the case for shares so there is no need to provide for specific provision per type of financial

Presidency compromise	Draft suggestions	MS Comments
		instruments, that would in addition ties our hands should this practice evolve. Last but not least, should we change the way corporate law is taken into account by CSDs under the CSDR regulation then we should need to consult Justice Ministries at some point of the CSDR Refit negociations. As of today, in the EU, there is no harmonization of securities law and this constraint makes it mandatory for CSDs that intend to provide their services to issuers established in another member state to take into account the law of incorporation of these issuers. The law of incorporation of the issuer cannot be ignored by the CSD since this law may provide for important mandatory provisions potentially impacting the CSD while providing its services to the issuer and protecting investors. From a French law perspective, the law applicable to the issuers provides for mandatory provisions (issuance and securities holding model for example) that may be incompatible with the set-up of some foreign CSD (or at least, may require some change to the set-up). For instance, a CSD established in another Member State requested a passport in France a few years ago but have not obtained it so far, on the ground that this CSD is not able to demonstrate that it may comply with French law applicable to the issuers it intends to target as clients. The issue arises in particular where the CSD asking for the passport is established in a jurisidiction where the securities ownership rights are located at the CSD level and where the holding model applied differs from the one applied in the host Member State.

Presidency compromise	Draft suggestions	MS Comments
		In France (and some other Member States) an "indirect holding" model is used by CSDs. Under this model, an investor who acquires securities does not hold them directly in an account with the CSD (this is prohibited in France). Precisely, under French law, the property right to the securities only applies to the securities accounts held by intermediaries, i.e. the custodians: the securities accounts held by the CSD on behalf of custodians are only "technical accounts" or "mirror accounts" of the securities accounts held by these custodians on behalf of their own clients. The property rights of investors to their securities are booked by the entry of securities in an account opened in their name with a custodian, which can either be a direct participant of the CSD and thus have a securities account with the CSD, or have a securities account with another custodian who is a participant of the CSD. This feature of French law cannot be ignored by a passporting CSD intending to provide services to French issuers, irrespective of the type of financial instruments. Considering the above, **we are strongly opposed** to a relief as the one suggested that would create a very dangerous situation from a legal perspective and from an investors protection perspective.
Member States shall compile a list of key relevant provisions of their law, as referred to in the second subparagraph. Competent authorities shall communicate that list to ESMA by 18 December 2014.		

Presidency compromise	Draft suggestions	MS Comments
ESMA shall publish the list by 18 January 2015. Member States shall update that list regularly and at least every 2 years. They shall communicate the updated list at those regular intervals to ESMA. ESMA shall publish the updated list.		
…		
Article 54		EE: Agree in principle
Authorisation and designation to provide banking-type ancillary services		
1. A CSD shall not itself provide any banking-type ancillary services set out in Section C of the Annex unless it has obtained an additional authorisation to provide such services in accordance with this Article.		
2. A CSD that intends to settle the cash leg of all or part of its securities settlement system in accordance with Article 40(2) or otherwise wishes to provide any banking-type ancillary services referred to in paragraph 1 shall be authorised either:	EL: 2. A CSD that intends to settle the cash leg of all or part of its securities settlement system in accordance with Article 40(2) shall be authorised either:	**EL:** CSDs authorised to provide banking type ancillary services should be able to offer to other CSDs only the cash settlement service of Article 40(2).

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(a) to offer such services itself under the conditions specified in this Article; or	**EL:** (a) to offer such services itself under the conditions specified in this Article; or	
(b) to designate for that purpose one or more credit institutions authorised in accordance with Article 8 of Directive 2013/36/EU ~~or a CSD authorised to provide banking-type ancillary services pursuant to paragraph 3 of this Article.~~	**EL:** (b) to designate for that purpose one or more credit institutions authorised in accordance with Article 8 of Directive 2013/36/EU or a CSD authorized to provide banking type ancillary services pursuant to paragrapf 3 of this Article. **DE:** (b) to designate for that purpose one or more credit institutions authorised in accordance with Article 8 of Directive 2013/36/EU **or a CSD authorised to provide banking-type ancillary services pursuant to paragraph 3 of this Article.**	**DE:** See comment below.

Presidency compromise	Draft suggestions	MS Comments
A CSD that intends to settle the cash leg of all or part of its securities settlement system in accordance with Article 40(2) in a currency other than that of the country where the settlement takes place shall also be authorised to designate a CSD authorised to provide banking-type ancillary services pursuant to paragraph 3 of this Article.	ES: A CSD that intends to settle the cash leg of all or part of its securities settlement system in accordance with Article 40(2) in a currency other than that of the country where the settlement takes place shall also be authorised to designate a CSD authorised to provide banking-type ancillary services pursuant to paragraph 3 of this Article **or pursuant to a third country regulation deemed equivalent according to paragraph 9 of article 23**. FR: **A CSD that intends to settle the cash leg ~~of all or~~ part of its securities settlement system in accordance with Article 40(2) in a non-EU currency ~~other than that of the country where the settlement takes place~~ shall also be authorised to designate a CSD authorised to**	ES: we prefer this adding wording to allow a CSD to privde these services not only under this regulation, but also if it is authorised by an equivalent one. **FR:** See comment on recital (25). The right criteria is the settlement "in a non-EU currency", not "in a currency other than that of the country where the settlement takes place". EL: **EL:** All other banking type ancillary services (except cash settlement) shall be offered either by the CSD itself, under the conditions of this Article, or by an authorised credit institution. DE: The services that can be offered by CSDs authorised to provide banking-type ancillary services in accordance with Regulation (EU) No 909/2014 to other CSDs is

Presidency compromise	Draft suggestions	MS Comments
	provide banking-type ancillary services pursuant to paragraph 3 of this Article. **EL:** A CSD that wishes to provide any other banking-type ancillary services referred to in paragraph 1 shall be authorised either: (a) to offer such services itself under the conditions specified in this Article; or (b) to designate for that purpose one or more credit institutions authorised in accordance with Article 8 of Directive 2013/36/EU. DE: ~~A CSD that intends to settle the cash leg of all or part of its securities settlement system in accordance with Article 40(2) in a currency other than that of the country where the settlement takes place shall also be authorised to designate a CSD authorised to provide banking-~~	already limited to the services set out in Section C of the Annex and does not require any further limitations (see comment on recital (25) for further details). PT: We would favor not having this limitation of the range of services that could be offered to other CSDs on only settlement of cash leg of non-EU currencies. Nonetheless, in the spirit of compromisse we may be open to accept it if the rational for it is properly justified.

Presidency compromise	Draft suggestions	MS Comments
	~~type ancillary services pursuant to paragraph 3 of this Article.~~	
3. Where a CSD seeks to provide any banking-type ancillary services from within the same legal entity as the legal entity operating the securities settlement system the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:		
(a) the CSD is authorised as a credit institution as provided for in Article 8 of Directive 2013/36/EU;		
(b) the CSD meets the prudential requirements laid down in Article 59(1), (3) and (4) and the supervisory requirements laid down in Article 60;		
(c) the authorisation referred to in point (a) of this subparagraph is used only to provide the banking-type ancillary services referred to in Section C of the Annex and not to carry out any other activities;		

Presidency compromise	Draft suggestions	MS Comments
(d) the CSD is subject to an additional capital surcharge that reflects the risks, including credit and liquidity risks, resulting from the provision of intra-day credit, inter alia, to the participants in a securities settlement system or other users of CSD services;		
(e) the CSD reports at least monthly to the competent authority and annually as a part of its public disclosure as required under Part Eight of Regulation (EU) No 575/2013 on the extent and management of intra-day liquidity risk in accordance with point (j) of Article 59(4) of this Regulation;		
(f) the CSD has submitted to the competent authority an adequate recovery plan to ensure continuity of its critical operations, including in situations where liquidity or credit risk crystallises as a result of the provision of banking-type ancillary services.		
(g) where the CSD intends to provide banking-type ancillary services to other CSDs in accordance with the second subparagraph of paragraph 2, the CSD	EL: (g) where the CSD intends to settle the cash leg of all or part of a securities settlement system of	**EL:** We agree with requiring addressing potential conflicts of interest and the risk of discriminatory treatment.

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has in place clear rules and procedures addressing potential conflicts of interest and mitigating the risk of discriminatory treatment towards any such other CSDs and their participants;	another CSD in accordance with the first subparagraph of paragraph 2, the CSD has in place clear rules and procedures addressing potential conflicts of interest and mitigating the risk of discriminatory treatment towards any such other CSDs and their participants; **DE:** (g) where the CSD intends to provide banking-type ancillary services to other CSDs in accordance with ~~the second subparagraph of~~ paragraph 2, the CSD has in place clear rules and procedures addressing potential conflicts of interest and mitigating the risk of discriminatory treatment towards any such other CSDs and their participants;	DE: See above.
(h) where the CSD intends to provide banking-type ancillary services to other CSDs in accordance with the last subparagraph of paragraph 2, the CSD has in place clear rules and procedures	**EL:** (h) where the CSD intends to settle the cash leg of all or part of a securities settlement system of another CSD in accordance with the first	**DE:** See above.

Presidency compromise	Draft suggestions	MS Comments
addressing any potential credit, liquidity and concentration risks resulting from such activity.	subparagraph of paragraph 2, the CSD has in place clear rules and procedures addressing any potential credit, liquidity and concentration risks resulting from such activity. DE: (h) where the CSD intends to provide banking-type ancillary services to other CSDs in accordance with ~~the last subparagraph of~~ paragraph 2, the CSD has in place clear rules and procedures addressing any potential credit, liquidity and concentration risks resulting from such activity.	
In the case of conflicting provisions laid down in this Regulation, in Regulation (EU) No 575/2013 and in Directive 2013/36/EU, the CSD referred to in point (a) of the first subparagraph shall comply with the stricter requirements on prudential supervision. The regulatory technical standards referred to in		

Presidency compromise	Draft suggestions	MS Comments
Articles 47 and 59 of this Regulation shall clarify the cases of conflicting provisions.		
4. Where a CSD seeks to designate a credit institution or use a CSD that is authorised pursuant to paragraph 3 to provide any banking-type ancillary services from within a separate legal entity, which may be part of the group to which the former CSD belongs, whether or not ultimately controlled by the same parent undertaking, the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:	**EL:** 4. Where a CSD seeks to designate a credit institution to provide any banking-type ancillary services or use a CSD that is authorised pursuant to paragraph 3 to settle the cash leg of all or part of its securities settlement system in accordance with Article 40(2), from within a separate legal entity, which may be part of the group to which the former CSD belongs, whether or not ultimately controlled by the same parent undertaking, the authorisation referred to in paragraph 2 shall be granted only where the following conditions are met:	
(a) the separate legal entity is authorised as a credit institution as provided for in Article 8 of Directive 2013/36/EU;		

Presidency compromise	Draft suggestions	MS Comments
(b) the separate legal entity meets the prudential requirements laid down in Article 59(1), (3) and (4) and supervisory requirements laid down in Article 60;		
~~(c) the separate legal entity does not itself carry out any of the core services referred to in Section A of the Annex;~~		**FR:** We are still concerned by the possibility to allow banking CSDs to offer settlement services in commercial money for non-banking CSDs. We believe this possibility is not needed, as the objective of enhancing cross-border settlement is already addressed byt the threshold increase for cash settlement through bank accounts. We nevertheless appreciate the Presidency's proposal to limit this possibility to the settlement in non-EU currency and we will reflect on the conditions under which such an option would be acceptable in our view. Just like when CSD use banks to settle in foreign currency, and just like for the pilot regime such conditions could consist in a threshold.
(d) the authorisation referred to in point (a) is used only to provide the banking-type ancillary services referred to in Section C of		

Presidency compromise	Draft suggestions	MS Comments
the Annex and not to carry out any other activities;		
(e) the separate legal entity is subject to an additional capital surcharge that reflects the risks, including credit and liquidity risks, resulting from the provision of intra-day credit, inter alia, to the participants in a securities settlement system or other users of CSD services;		
(f) the separate legal entity reports at least monthly to the competent authority and annually as a part of its public disclosure as required under Part Eight of Regulation (EU) No 575/2013 on the extent and management of intra-day liquidity risk in accordance with point (j) of Article 59(4) of this Regulation; and		
(g) the separate legal entity has submitted to the competent authority an adequate recovery plan to ensure continuity of its critical operations, including in situations where liquidity or credit risk crystallises as a result of the provision of banking-type		

Presidency compromise	Draft suggestions	MS Comments
ancillary services from within a separate legal entity.		
5. Paragraph 4 shall not apply to credit institutions referred to in paragraph 2, point (b), that offer to settle the cash payments for part of the CSD's securities settlement system, if the total value of such cash settlement through accounts opened with those credit institutions does not exceed a maximum amount calculated over a one-year period. That threshold shall be determined in accordance with paragraph 9.	ES: 5. Paragraph 4 shall not apply to credit institutions referred to in paragraph 2, point (b), that only offer to settle the cash payments for part of the CSD's securities settlement system.~~if the total value of such cash settlement through accounts opened with those credit institutions does not exceed a maximum amount calculated over a one-year period. That threshold shall be determined in accordance with paragraph 9~~. **Those credit institutions should meet the prudential requirements laid down in Article 59(3) and (4) and supervisory requirements laid down in Article 60.** **FR:**	ES: In order to avoid concentration in the provision of settlement in foreign currencies to CSDs in a low number of CSDs authorized to provide banking services, instead of establishing a maximum amount settled per currency and year we think that it would be better to set the same requirements when a credit institution is exclusively providing foreign currency settlement to a CSD. Requirements of article 59(1) are excluded as it seems not likely that a credit institution whose activity is limited to provide settlement in foreign currencies services to CSDs would be created. FR: In order to ensure that this new possibility for non banking CSDs to settling through banking CSDs accounts does not lead to a reduction of settlement in central banks' accounts, CSDs should be capped when

Presidency compromise	Draft suggestions	MS Comments
	5. Paragraph 4 shall not apply to credit institutions and banking type CSDs referred to in paragraph 2, point (b), that offer to settle the cash payments for part of the CSD's securities settlement system, if the total value of such cash settlement through accounts opened with those credit institutions or banking type CSDs does not exceed ~~a~~ maximum amounts calculated over a one-year period. That threshold shall be determined in accordance with paragraph 9.	doing so. It is in line with the spirit of both CSDR and the pilote Regime under which CSDs are capped for the settlement through commercial banks' accounts.
The competent authority shall monitor at least once per year that the threshold referred to in the first subparagraph is respected and report its findings to ESMA, ESCB and EBA. Where the competent authority determines that the threshold has been exceeded, it shall require the CSD concerned to seek authorisation in accordance with paragraph 4. The CSD concerned shall	FR: **The competent authority shall monitor at least once per year that the thresholds referred to in the first subparagraph is respected and report its findings to ESMA, ESCB and EBA. Where the competent authority determines that the threshold has been exceeded, it shall require the CSD concerned to seek authorisation in**	

Presidency compromise	Draft suggestions	MS Comments
submit its application for authorisation within 6 months.	**accordance with paragraph 4. The CSD concerned shall submit its application for authorisation within 6 months.**	
6. The competent authority may require a CSD to designate more than one credit institution, or to designate a credit institution in addition to providing services itself in accordance with point (a) of paragraph 2 of this Article where it considers that the exposure of one credit institution to the concentration of risks under Article 59(3) and (4) is not sufficiently mitigated. The designated credit institutions shall be considered to be settlement agents.		
7. A CSD authorised to provide any banking-type ancillary services and a credit institution designated in accordance with point (b) of paragraph 2 shall comply at all times with the conditions necessary for authorisation under this Regulation and shall, without delay, notify the competent authorities of any substantive changes affecting the conditions for authorisation.		

Presidency compromise	Draft suggestions	MS Comments
8. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to determine the additional risk based capital surcharge referred to in point (d) of paragraph 3 and point (e) of paragraph 4.		
EBA 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 1093/2010.		
9. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to determine the maximum amount referred to in paragraph 5 that may be different for various third countries' currencies, taking into account the need to balance the credit and liquidity risks for CSDs that result from the	FR: **9. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to determine the maximum amounts referred to in paragraph 5 ~~that may be different for various third countries'~~**	AT: In article 54 para 9, we welcome the flexibility that is given to the EBA to determine different thresholds with regard to various third country currencies in their RTS. DK:

Presidency compromise	Draft suggestions	MS Comments
settlement of cash payments through accounts opened with credit institutions and the need to allow CSDs to settle in foreign currencies through accounts opened with such credit institutions. When developing these draft regulatory technical standards the EBA shall also determine, where necessary, any accompanying appropriate risk management and prudential mitigating requirements.	**~~currencies~~, taking into account the need to balance the credit and liquidity risks for CSDs that result from the settlement of cash payments through accounts opened with credit institutions or with banking-type CSDs. It should also take into account ~~and~~ the need to allow CSDs to enhance cross-border settlement ~~in foreign currencies through accounts opened with such credit institutions~~. When developing these draft regulatory technical standards the EBA shall also determine, where necessary, any accompanying appropriate risk management and prudential mitigating requirements.**	We are open to consider a different maximum amount for certain third country currencies. We wish to stress that there is no obligation for EU central banks to give other CSD's access to settlement in their currency. Therefore it could also be necessary to provide for better access to other union currencies. FR: We deleated the mention of third-country currencies. In order to ensure that this new possibility for non banking CSDs to settling through banking CSDs accounts does not lead to a reduction of settlement in central banks' accounts, CSDs should be capped when doing so. It is in line with the spirit both of CSDR when CSDs settle through banks and of the pilote Regime under which CSDs are capped for the settlement through commercial banks' accounts. DE:

Presidency compromise	Draft suggestions	MS Comments
		From a supervisory perspective, there are some questions concerning the setting of different thresholds for different currencies: • Which factors will be considered here ? • How should these different thresholds be implemented ? HR: What is the intention of introducing a distinction between non-EU and EU currencies? We would prefer to avoid any interpretation that would seem to discriminate against EU currencies
EBA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date= 1 year after the date of entry into force of this Regulation].		
Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in		

Presidency compromise	Draft suggestions	MS Comments
accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.		
10. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to further specify the details of the rules and procedures referred to in points (g) and (h) of paragraph 3.		ES: as we have mentioned, we support this paragraph. However, regarding procedures referred to in article g), due to its caractheristics, we consider that the most adequate authority would be ESMA, not the EBA.
EBA shall submit those draft regulatory technical standards to the Commission by [PO please insert the date= 1 year after the date of entry into force of this Regulation].		
Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.		
Article 55		
Procedure for granting and refusing authorisation to provide banking-type ancillary services		

Presidency compromise	Draft suggestions	MS Comments
…		
5. The authorities referred to in paragraph 4, points (a) to (e), shall issue a reasoned opinion on the authorisation within 2 months of receipt of the information referred to in that paragraph. Where an authority does not provide an opinion within that deadline it shall be deemed to have a positive opinion.		
Where at least one of the authorities referred to in points (a) to (e) of paragraph 4 issues a negative reasoned opinion, the competent authority wishing to grant the authorisation shall within 30 days provide the authorities referred to in points (a) to (e) of paragraph 4 with a reasoned decision addressing the negative opinion.		
Where 30 days after that decision has been presented any of the authorities referred to in points (a) to (e) of paragraph 4 issues a negative opinion and the competent authority still wishes to grant the authorisation any of the authorities that issued a negative opinion		

Presidency compromise	Draft suggestions	MS Comments
may refer the matter to ESMA for assistance under point (c) of Article 31 of Regulation (EU) No 1095/2010.		
Where 30 days after referral to ESMA the issue is not settled, the competent authority wishing to grant the authorisation shall take the final decision and provide a detailed explanation of its decision in writing to the authorities referred to in points (a) to (e) of paragraph 4.		
Where the competent authority wishes to refuse authorisation, the matter shall not be referred to ESMA.		
Negative opinions shall state in writing the full and detailed reasons why the requirements laid down in this Regulation or other parts of Union law are not met.		
…		
Article 59		EE: Agree in principle

Presidency compromise	Draft suggestions	MS Comments
Prudential requirements applicable to credit institutions or CSDs authorised to provide banking-type ancillary services		
…		
3. A credit institution designated under point (b) of Article 54(2) or a CSD authorised under point (a) of Article 54(2) to provide banking-type ancillary services shall comply with the following specific prudential requirements for the credit risks related to those services in respect of each securities settlement system:		
(a) it shall establish a robust framework to manage the corresponding credit risks;		
(b) it shall identify the sources of such credit risks, frequently and regularly, measure and monitor corresponding credit exposures and use appropriate risk-management tools to control those risks;		
(c) it shall fully cover corresponding credit exposures to individual borrowing		

Presidency compromise	Draft suggestions	MS Comments
participants using collateral and other equivalent financial resources;		
(d) if collateral is used to manage its corresponding credit risk, it shall accept highly liquid collateral with minimal credit and market risk; it may use other types of collateral in specific situations if an appropriate haircut is applied;		
(e) it shall establish and apply appropriately conservative haircuts and concentration limits on collateral values constituted to cover the credit exposures referred to in point (c), taking into account the objective of ensuring that collateral can be liquidated promptly without significant adverse price effects;		
(f) it shall set limits on its corresponding credit exposures;		
(g) it shall analyse and plan for how to **fully** address any potential residual credit exposures **including non-participant exposures**, and adopt rules and procedures to implement such plans **which shall include a**	FR: (g) it shall analyse and plan for how to **fully** address any potential residual credit exposures **including non-participant exposures**, and	FR: We can not support the mention of loss-allocation mechanisms as such loss allocation tool should fall within the scope of the recovery/resolution framework applicable to banking CSDs **under** the BRRD. It would go beyond the scope of CSDR.

Presidency compromise	Draft suggestions	MS Comments
loss allocation mechanism or a risk pass-through mechanism to its participants;	adopt rules and procedures to implement such plans ~~**which shall include a loss allocation mechanism or a risk pass-through mechanism to its participants;**~~ DE: (g) it shall analyse and plan for how to ~~fully~~ address any potential residual credit exposures ~~including non-participant exposures~~, and adopt rules and procedures to implement such plans ~~which shall include a loss allocation mechanism or a risk pass-through mechanism to its participants~~;	We do not dispose of a sufficient level of analysis/ justification to be in a position to csupport the addition of the mention "including non-participant exposures". DE: We consider that residual credit risks are approriately covered by CSDR and that CSDs need to address relevant risks in their recovery plans. Where supervisory authorities based on the individual business model of a CSD deem further precautionary measures such as *ex ante* loss allocation necessary, they could require such measures already today. We therefore do not see a need for amending CSDR in the proposed way and for introducing additional mandatory requirements for all CSDs, regardless of their business model. PT:

Presidency compromise	Draft suggestions	MS Comments
		Our impression was that the "non-paper" from the Belgian collegues regarding this topic was focused on the CSDs which provided banking type services. Therefore, it is important to clarify if this new provision will only apply to CSDs which provide banking type services or also to credit institutions.
(h) it shall provide credit only to participants that have cash accounts with it;		
(i) it shall provide for effective reimbursement procedures of intra-day credit and discourage overnight credit through the application of sanctioning rates which act as an effective deterrent.		
4. A credit institution designated under point (b) of Article 54(2) or a CSD authorised under point (a) of Article 54(2) to provide banking-type ancillary services shall comply with the following specific prudential requirements for the liquidity risks relating to those services in respect of each securities settlement system:		

Presidency compromise	Draft suggestions	MS Comments
(a) it shall have a robust framework and tools to measure, monitor, and manage its liquidity risks, including intra-day liquidity risks, for each currency of the security settlement system for which it acts as settlement agent;		
(b) it shall measure and monitor on an ongoing and timely basis, and at least daily, its liquidity needs and the level of liquid assets it holds; in doing so, it shall determine the value of its available liquid assets taking into account appropriate haircuts on those assets;		
(c) it shall maintain sufficient qualifying liquid resources in all relevant currencies for a timely provision of settlement services under a wide range of potential stress scenarios including the liquidity risk generated by the default of at least two participants, including its parent undertakings and subsidiaries, to which it has the largest exposures;		
(d) it shall mitigate the corresponding liquidity risks with qualifying liquid		

Presidency compromise	Draft suggestions	MS Comments
resources in each relevant currency such as cash at the central bank of issue and at other creditworthy financial institutions, committed lines of credit or similar arrangements and highly liquid collateral or investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions and it shall identify, measure and monitor its liquidity risk stemming from the various financial institutions used for the management of its liquidity risks;		
(e) where prearranged and highly reliable funding arrangements, committed lines of credit or similar arrangements are used, it shall select only creditworthy financial institutions as liquidity providers; it shall establish and apply appropriate concentration limits for each of the corresponding liquidity providers including its parent undertaking and subsidiaries;		

Presidency compromise	Draft suggestions	MS Comments
(f) it shall determine and test the sufficiency of the corresponding resources by regular and rigorous stress testing;		
(g) it shall analyse and plan for how to address any unforeseen and potentially uncovered liquidity shortfalls, and adopt rules and procedures to implement such plans;		
(h) where practical and available, without prejudice to the eligibility rules of the central bank, it shall have access to central bank accounts and other central bank services to enhance its management of liquidity risks and Union credit institutions shall deposit the corresponding cash balances on dedicated accounts with Union central banks of issue;		
(i) it shall have prearranged and highly reliable arrangements to ensure that it can convert in a timely fashion the collateral provided to it by a defaulting client into cash and where non-committed arrangements are used, establish that any		

Presidency compromise	Draft suggestions	MS Comments
associated potential risks have been identified and mitigated;		
(j) it shall report regularly to the authorities referred to in Article 60(1), and disclose to the public, as to how it measures, monitors and manages its liquidity risks, including intra-day liquidity risks.		
~~(k) it shall adequately monitor and manage any risks, including relevant netting arrangements in relation to the cash leg of their applied settlement model.~~	FR: (k) it shall adequately monitor and manage any risks, including relevant netting arrangements in relation to the cash leg of their applied settlement model.	FR: We should keep this requirement waiting to find out more about the proposal regarding netting arrangements.
5. EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory technical standards to further specify details of the frameworks and tools for the monitoring, the measuring, the management, the reporting and the public disclosure of the credit and liquidity risks, including those which occur intra-day, referred to in paragraphs 3 and 4. Such draft regulatory technical standards shall, where appropriate, be aligned to the regulatory		

Presidency compromise	Draft suggestions	MS Comments
technical standards adopted in accordance with Article 46(3) of Regulation (EU) No 648/2012.		
EBA shall submit those draft regulatory technical standards to the Commission by … [PO please insert the date = 1 year after the date of entry into force of this Regulation].		
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 1093/2010.		
Article 60		EE: Agree in principle
Supervision of designated credit institutions and CSDs authorised to provide banking-type ancillary services		
1. Without prejudice to Articles 17 and 22 of this Regulation, the competent authorities referred to in point (40) of Article 4(1) of Regulation (EU) No 575/2013 are		

Presidency compromise	Draft suggestions	MS Comments
responsible for the authorisation as credit institutions and supervision as credit institutions under the conditions provided in Regulation (EU) No 575/2013 and in Directive 2013/36/EU of the designated credit institutions and CSDs authorised under this Regulation to provide banking-type ancillary services.		
The competent authorities referred to in the first subparagraph shall also be responsible for the supervision of designated credit institutions and CSDs referred to in that subparagraph as regards their compliance with the prudential requirements referred to in Article 59 of this Regulation.		
The competent authorities referred to in the first subparagraph shall regularly, and at least ~~once a year~~ every two years, assess whether the designated credit institution or CSD authorised to provide banking-type ancillary services complies with Article 59 and shall inform the competent authority of the CSD which shall then inform the authorities referred to in Article 55(4) and, where applicable,	NL: The competent authorities referred to in the first subparagraph shall regularly, and at least every two years, assess whether the designated credit institution or CSD authorised to provide banking-type ancillary services complies with Article 59 and shall inform the competent authority of the CSD which shall then inform	IE: Every 3 years would seem more appropriate NL: Due to changes in 24a(1) DE:

Presidency compromise	Draft suggestions	MS Comments
the colleges referred to in Article 24a, of the results, including any remedial actions or penalties, of its supervision under this paragraph.	the authorities referred to in Article 55(4) and, where applicable, the college~~s~~ referred to in Article 24a, of the results, including any remedial actions or penalties, of its supervision under this paragraph.	We agree to extend the timeframe to two years and to align it with the timeframe of the review and evaluation process provided for in Article 22.
2. The competent authority of the CSD shall, after consulting competent authorities referred to paragraph 1, review and evaluate at least on ~~an annual basis~~ **every two years** the following:		IE: Every 3 years would seem more appropriate DE: See above.
(a) in the case referred to in point (b) of Article 54(2), whether all the necessary arrangements between the designated credit institutions and the CSD allow them to meet their obligations as laid down in this Regulation;		
(b) in the case referred to in point (a) of Article 54(2), whether the arrangements relating to the authorisation to provide	IE: two	

Presidency compromise	Draft suggestions	MS Comments
banking-type ancillary services allow the CSD to meet its obligations as laid down in this Regulation.		
The competent authority of the CSD shall regularly, and at least ~~once a year~~ every two years, inform the authorities referred to in Article 55(4) and, where applicable, the colleges referred to in Article 24a, of the results, including any remedial actions or penalties, of its review and evaluation under this paragraph.	**IE:** **The competent authority of the CSD shall regularly, and at least every three years, inform the authorities referred to in Article 55(4) and, where applicable, the colleges referred to in Article 24a, of the results, including any remedial actions or penalties, of its review and evaluation under this paragraph.** **NL:** The competent authority of the CSD shall regularly, and at least every two years, inform the authorities referred to in Article 55(4) and, where applicable, the college~~s~~ referred to in Article 24a, of the results, including any	IE: 3 years seems more proportionate NL: Due to changes in 24a(1)

Presidency compromise	Drafting suggestions	MS Comments
	remedial actions or penalties, of its review and evaluation under this paragraph.	
Where a CSD designates an authorised credit institution in accordance with Article 54, in view of the protection of the participants in the securities settlement systems it operates, a CSD shall ensure that it has access from the credit institution it designates to all necessary information for the purpose of this Regulation and it shall report any infringements thereof to the competent authority of the CSD and to competent authorities referred to in paragraph 1.		
3. In order to ensure consistent, efficient and effective supervision within the Union of credit institutions and CSDs authorised to provide banking-type ancillary services, EBA may, in close cooperation with ESMA and the members of the ESCB, issue guidelines addressed to competent authorities in accordance with Article 16 of Regulation (EU) No 1093/2010.		
Article 67		EE:

Presidency compromise	Draft suggestions	MS Comments
		Agree
…		
2. The power to adopt delegated acts referred to in Article 2(2), Article ~~7(14)~~ **6a(4)** and Article 24(7) shall be conferred on the Commission for an indeterminate period of time from 17 September 2014.		FR: References to be updated according to our above comments on Article 7.
2a. The power to adopt delegated acts referred to in Articles ~~7(14a)~~ 6a(6), 24a(8), 25(13) and 54(9) shall be conferred on the Commission for an indeterminate period of time from [PO please insert the date of entry into force of this Regulation].		FR: References to be updated according to our above comments on Article 7.
3. The delegation of power referred to in Articles 2(2), ~~7(14)~~ 6a(4), 6a(6), 24(7), ~~7(14a),~~ 24a(8), 25(13) and 54(9) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European		

Presidency compromise	Draft suggestions	MS Comments
Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.		
…		
5. A delegated act adopted pursuant to Articles 2(2), ~~7(14),~~ 6a(4) and (6), 24(7), ~~7(14a),~~ 24a(8), 25(13) and 54(9) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.		FR: References to be updated according to our above comments on Article 7.
Article 69		EE: Agree
Transitional provisions		

Presidency compromise	Draft suggestions	MS Comments
…		
6. The competent authorities of home Member States shall establish and manage colleges pursuant to points (a) and (b) of Article 24a(1) by … [PO please insert the date = 25 months after the date of entry into force of this Regulation].	FR: **6. The competent authorities of home Member States shall establish and manage colleges pursuant to points (a) and (b) of Article 24a(1) by … [PO please insert the date = 6 months after the date of entry into force of this Regulation].** **NL:** 6. The competent authorities of home Member States shall establish and manage **the** college~~s~~ pursuant to ~~points (a) and (b) of~~ Article 24a(1) by … [PO please insert the date = 25 months after the date of entry into force of this Regulation].	DK: We are a bit hesitant as to why the period has been changed from 4 monts to 25 months. We would prefer to hear the argumentation as to why the chosen period is a good idea. FR: We believe that a 25 months time period is really too long and not justified. HU: We agree with the transitional period. NL: Due to changes in 24a(1)
Article 72a	IT: **Article 72 of Regulation (EU) No. 909/2014 is replaced by the following**	EE: Agree FR:

Presidency compromise	Draft suggestions	MS Comments
		As mentioned above, we believe that in order to make MBI provisions more readable we should bundle it in a unique regulation, so we suggest to directly add an article in CSDR without reintroducing it into SSR. Please refer to our comment above in the MBI section. IT: From a technical point of view, in order to ensure legal certainty, it should be made crystal clear that the proposed Article 72a replaces the current text Article 72 CSDR.
Amendment to Regulation (EU) No 236/2012		FR: As mentioned above, we believe that in order to make MBI provisions more readable we should bundle it in a unique regulation, so we suggest to directly add an article in CSDR without reintroducing it into SSR. Please refer to our comment above in the MBI section.
The following Article 15a is inserted into Regulation (EU) No 236/2012:		FR: As mentioned above, we believe that in order to make MBI provisions more readable we should bundle it in a unique regulation, so we suggest to directly add an article in CSDR

Presidency compromise	Draft suggestions	MS Comments
		without reintroducing it into SSR. Please refer to our comment above in the MBI section. EL: We agree with introducing the MBI provision in Short-selling Regulation. PT: Is there any particular reason so that amendments to regulation (EU) no 236/2012 only mentions shares and not financial instruments in general?
"Article 15a		EE: Agree in principle FR: As mentioned above, we believe that in order to make MBI provisions more readable we should bundle it in a unique regulation, so we suggest to directly add an article in CSDR without reintroducing it into SSR. Please refer to our comment above in the MBI section.
Buy-in procedures		

Presidency compromise	Draft suggestions	MS Comments
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;		PT: This current proposal for the provision does not seem aligned with the current proposal for MBI. More specifically, according to the current proposal, the buy-in only occurs after the fourth business day if the non-failling party whishes so, which does not seem compatible with the wording as "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		SK: This provision partially address the problems with illiquid financial instruments however it can be applied only generally. Buy-in processes should clearly reflect

Presidency compromise	Draft suggestions	MS Comments
buyer as a result of the settlement failure; and		the situations with illiquid and very volatile financial instruments.
(c) the natural or legal person who fails to settle reimburses all amounts paid pursuant to points (a) and (b).“		
Article 74		EE: Agree in principle
1. ESMA shall, in cooperation with EBA and the competent authorities and the relevant authorities, submit reports to the Commission providing assessments of trends, potential risks and vulnerabilities, and, where necessary, recommendations of preventative or remedial action in the markets for services covered by this Regulation. Those reports shall include an assessment of the following:		HU: We would strongly support a preliminary cost-benefit analysis. DE: We agree to include into the ESMA report obligation a cost/benefit-analysis on the potential introduction of a mandatory buy-in.
(a) settlement efficiency for domestic and cross-border operations for each Member State based on the number and volume of settlement fails and their evolution, including an analysis of the impact of cash penalties on settlement fails across	IT: (a) settlement efficiency for domestic and cross-border operations for each Member State based on the number and volume of settlement fails and their evolution, including an analysis	FR: References to be updated according to our above comments on Article 7. IT:

Presidency compromise	Draft suggestions	MS Comments
instruments, the duration and main drivers of settlement fails, the categories of financial instruments and markets where the highest settlement fail rates are observed and an international comparison of settlement fail rates, including an assessment of the amount of penalties referred to in Article ~~7(2)~~ 6a(2), and, where applicable, the number and volumes of buy-in transactions referred to in Article 7(3) and ~~(4)~~ (5) as well as any other relevant criteria, cost-benefit analysis of potential mandatory buy-in procedure when implied on the financial instrument categories with the highest rate of settlement fails, analysis of potential impact of application of mandatory buy-in on settlement fails across financial instruments. The report shall also include an assessment of whether the list of derogations in Article 6a(3) and Article 7(5), as specified further in the delegated act referred to in Article 6a(7) and 7(15), remains effective in preventing and addressing settlement fails and encouraging settlement discipline.;	of the impact of cash penalties on settlement fails across instruments, the duration and main drivers of settlement fails, the categories of financial instruments and markets where the highest settlement fail rates are observed and an international comparison of settlement fail rates, including an assessment of the amount of penalties referred to in Article ~~7(2)~~ 6a(2), and, where applicable, the number and volumes of buy-in transactions referred to in Article 7(3) and ~~(4)~~ (5) as well as any other relevant criteria, ~~cost-benefit analysis of potential mandatory buy-in procedure when implied on the financial instrument categories with the highest rate of settlement fails, analysis of potential impact of application of mandatory buy-in on settlement fails across financial instruments. The report shall also include an assessment of whether the list of derogations in Article 6a(3) and Article 7(5), as specified~~	We believe that ESMA should carry out a cost-benefit analysis on the application of the MBI only if required by the EC. The same applies to the assessment of exemptions. **EL:** We agree with including the cost-benefit analysis and some further analysis to the data that ESMA should provide. HR: We believe that settlement fail reports should exclude (or at the very list separately report) all trades that are not covered under the penalty scheme.

Presidency compromise	Draft suggestions	MS Comments
	~~further in the delegated act referred to in Article 6a(7) and 7(15), remains effective in preventing and addressing settlement fails and encouraging settlement discipline.;~~	
…		
c) measuring settlement**,** which does not take place in the securities settlement systems operated by CSDs based on the number and volume of transactions, **including its evolution over time also with respect to settlement in securities settlement systems operated by CSDs,** based on the information received under Article 9 and any other relevant criteria. **The report shall consider the impact of this evolution on competition in the settlement market as well as identify any potential risks to financial stability.**;	IT: c) measuring settlement, which does not take place in the securities settlement systems operated by CSDs based on the number and volume of transactions, including its evolution over time also with respect to settlement in securities settlement systems operated by CSDs, based on the information received under Article 9 and any other relevant criteria. ~~The report shall consider the impact of this evolution on competition in the settlement market as well as identify any potential risks to financial stability.~~;	IT: We are not convinced there is a need to mention specific risks. In its report, ESMA should highlight any risk that might arise from settlement internalisers. **EL:** We agree that is usefull to include a comparison in terms of levels and efficiency between internalised settlement activity and CSD settlement.
…	LV:	LV:

Presidency compromise	Drafts suggestions	MS Comments
	(g) where applicable, the findings of the peer review process ~~for cross-border supervision~~ referred to in Article 24(6) and whether the frequency of such reviews could be reduced in the future, including an indication of whether such findings indicate the need for more formal colleges of supervisors;	We propose to delete that peer review is narrowed for cross-border provision of services. In practice CSD do not differentiate most of their processes for cross-border, i.e. IT systems, prudential matters, risk management, governance etc. are integrated processes within whole CSD, so it would not have much sense to cherry pick some of issues relevant for only cross-border aspects, indeed peer review inevitably will touch upon all integrated / general CSD processes and how NCA supervise it. Article 24(6) which introduces peer review, does not make such distinction, cross-border aspect is rather meant as criterion for selection of CSD for peer review, not to limit the peer review process.
Article 76		EE: Agree
Entry into force and application		
…		

Presidency compromise	Draft suggestions	MS Comments
5. The settlement discipline measures referred to in Article **6a(1) and (2) and Article** 7(1) to ~~(13)~~ **(11)** and the amendment laid down in Article 72 shall apply from the date of entry into force of the delegated act adopted by the Commission pursuant to Article **6a(7) and Article** 7(15).	IT: 5. The settlement discipline measures referred to in Article 6a(1) and (2) and Article 7(1) to ~~(13)~~ (11) ~~and the amendment laid down in Article 72~~ shall apply from the date of entry into force of the delegated act adopted by the Commission pursuant to Article 6a(7) and Article 7(15).	FR: References to be updated according to our above comments on Article 7. IT: The amendment to Article 72 (i.e. re-introduction of Article 15 SSR) should apply immediatly
An MTF that complies with the criteria laid down in Article 33(3) of Directive 2014/65/EU shall be subject to the ~~second~~ **fourth** subparagraph of Article 7(3) of this Regulation:		FR: References to be updated according to our above comments on Article 7.
(a) until the final determination of its application for registration under Article 33 of Directive 2014/65/EU; or		
(b) where an MTF has not applied for registration under Article 33 of Directive 2014/65/EU, until 13 June 2018.		
…		

Presidency compromise	Draft suggestions	MS Comments
		END