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THE EUROPEAN UNION**

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**NOTE**

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From:	Presidency
To:	Delegations
No. Cion doc.:	7619/2013 EF 62 ECOFIN 253 CODEC 648
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving securities settlement in the European Union and on central securities depositories (CSDs) and amending Directive 98/26/EC - Presidency compromise

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**1. On page 9, Recital 15 should read as follows:**

"(15) One of the most efficient ways to address settlement fails is to require failing participants to be subject to a compulsory enforcement of the original agreement. This Regulation should provide for uniform rules concerning certain aspects of the buy-in transaction for all transferable securities, money-market instruments, units in collective investment undertakings and emission allowances, such as the timing, pricing and penalties. These rules should be adapted to the specificities of different securities markets and transactions to avoid adversely impacting on the liquidity of different markets. These rules should be applied in such a manner that incentivises the settlement of transactions in all relevant financial instruments by their intended settlement date.

The procedures and penalties related to settlement fails should be commensurate to the scale and seriousness of such fails whilst being scaled in such a way that maintains and protects liquidity of the relevant financial instruments. Cash penalties imposed on failing participants should be credited where possible to the non-failing beneficiaries as compensation and should not in any case become a source of revenue for the CSD or the settlement intermediaries. The buy-in shall be deemed to be not possible when due to the illiquidity of the financial instrument or the type of transaction concerned a buy-in is not feasible **(regardless of whether the transaction is executed on a trading venue or OTC or whether or not it is cleared by a CCP)**. This may in particular be the case of financial instruments that cannot be easily found in the market at the time of the execution of the buy-in or for certain short term repurchase agreements. ~~In case of a chain of transactions multiple buy-ins should be avoided to the extent possible."~~

Note:

The change was introduced to clarify that “type of transaction” should not be read as ways of executing transactions (i.e. through CCP or OTC).

**2. On page 18, in Recital 31, first-subparagraph, the word “exclusively” should be deleted.**

Note:

The last sentence of recital 31 clarifies that banking activities can only be outsourced to entities authorized to provide banking services ancillary to the CSD services under the CSDR (both 1+2 and 2+2 model). The word “exclusively” is not needed for that purpose, but might have as unintended consequence that outsourcing would be restricted to entities under the 2+2 model, since a CSD providing banking services under the 1+2 model is not “exclusively” running the above mentioned banking services, but is also providing CSD core services.

**3. On page 44, in Article 7 paragraph 7, the following sub-paragraph should be added:**

"CSDs may coordinate the execution of buy-ins referred to in sub-paragraphs 2, 3 and 5, 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.

Note:

This paragraph was added to address the concern raised to minimise the impact of multiple buy-in.