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| European Commission,  Directorate-General for Financial Stability, Financial Services and Capital Markets Union,  1049 Brussels,  Belgium  Submitted via online portal | |  | | --- | | **Invesco**  43-45 Portman Square, London W1H 6LY  United Kingdom | |  | | Switchboard +44 (0)20 7543 3500  Facsimile +44 (0)20 7543 3588  www.[invesco.co.uk](http://www.invescoperpetual.co.uk/) | |
| 2 February 2021 |  |
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Dear Madam, Sir,

Please find attached additional comments supplementing Invesco’s response to the European Commission consultation on the Review of the Central Securities Depositories Regulation (CSDR).

Invesco welcomes the opportunity to respond to the consultation and thanks the European Commission for its constructive engagement with stakeholders.

Yours sincerely,

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**Invesco response to the European Commission consultation on the Review of the Central Securities Depositories Regulation (CSDR)**

**Additional comments**

Contents

[CSDR and technological innovation 3](#_Toc63181586)

[Settlement discipline 4](#_Toc63181587)

# CSDR and technological innovation

|  |  |  |  |  |  |  |  |  |
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| **Q17: Do you consider that certain changes to the rules are necessary to facilitate the use of new technologies, such as DLT, in the framework of CSDR, while increasing the safety and improving settlement efficiency?**   |  |  | | --- | --- | | **Yes** |  | | **No** |  | | **The PILOT Regime is sufficient at this stage** |  | | **No opinion** |  | |
| Response: Given the potential transformational impact of crypto assets and related technologies across the financial services industry, and beyond, it will be important for EU authorities to develop an appropriate framework which encourages innovation while ensuring a high level of investor protection.  In this regard, so as to ensure that the CSDR framework continues to function as intended, both in terms of how it is applied currently and will apply following the forthcoming review, we believe that the European Commission and EU policymakers should proceed cautiously as regards any significant amendments to the CSDR in respect of the use of new technologies via the current proposals for Regulations on a PILOT Regime for market infrastructures based on distributed ledger technology (DLT) and on Markets in Crypto Assets (MiCA), in advance of or concurrent to the forthcoming review of the CSDR.  Our main concern is that, while emerging technologies such as DLT offer potential efficiencies in terms of trading and settlement (e.g. ‘atomic’ settlement) as well as greater transparency, implementing significant amendments to the CSDR framework to accommodate such emerging technologies, where they remain untested on the scale at which they would have to operate in the context of wholesale financial markets, could complicate and hinder the provision of securities settlement services and the entry into force of the settlement discipline regime in the EU (please see our response to Q43 on this point).  Hence, we support the policy intention behind the European Commission’s September 2020 Digital Finance Package and, in particular, the standalone proposal for a Regulation on a PILOT Regime for market infrastructures based on DLT. We believe that this targeted approach to the regulation of such entities will ensure that the services they provide, and the underlying technologies, are fit for purpose, scalable and supervised appropriately.  Indeed, calibrated correctly at Levels 1 and 2, a standalone regime for market infrastructures based on DLT, supplemented by the proposed MiCA Regulation, would allow for many of the outstanding legal and regulatory questions around crypto assets and related services facilitated by DLT to be considered in a more targeted manner. As a reference point, the October 2020 report of the Cambridge Centre for Alternative Finance on ‘Legal and Regulatory Considerations for Digital Assets’ sets out a number of questions for policymakers and regulators to consider around the clearing and settlement of crypto assets.  Finally, it will also be important to ensure a level playing field for entities providing the same or similar services, whether in relation to traditional financial instruments or crypto assets, or via traditional or DLT-based market infrastructures. |

# Settlement discipline

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| **Q33: Do you consider that a revision of the settlement discipline regime of CSDR is necessary?**   |  |  |  | | --- | --- | --- | | **Yes** | **No** | **No opinion** | |  |  |  |   **If you answered yes, please indicate which elements of the settlement discipline regime should be reviewed (you may choose more than one option):**   * **Rules relating to the buy-in** * **Rules on penalties** * **Rules on the reporting of settlement fails** * **Other (please specify)** |
| Response: Yes, we believe that a revision of the CSDR settlement discipline regime is necessary because, as currently drafted, we believe there is insufficient clarity on how the rules would operate in practice, in particular around the proposed mandatory buy-in and penalties regimes.   * Rules relating to the buy-in   One of the most obvious issues relating to the buy-in is the potential for asymmetry in the reimbursement for failed trades. The policy intention should be to ensure that the receiving party is in as near an economic position as possible to the one that would have resulted had the original transaction settled on time, regardless of the direction in which the price of the instrument may have moved. Given the difficulties inherent in ensuring that, where a trade has failed, buyers are protected against a rising price and that sellers, where they agree to fill a client order through a short sell, are not inadvertently adversely impacted by changes in the pricing of such transactions, we believe that buy-ins should not be mandatory as this would only serve to crystallise potential harm and market inefficiencies.  Additionally, the potential negative impact of the mandatory buy-in regime on ETP primary market transactions is a clear example of the need to revise the scope and application of the settlement discipline regime. The current scope of the settlement discipline regime could give rise to unintended market inefficiencies. For example, where an ETP creation/redemption leg of the primary market order may have failed, in order to buy-in ETP units, a buy-in agent may need to acquire the ETP units from another Authorised Participant (AP).  In the event that these units are not readily available on the secondary market, the secondary AP may need to subscribe for the ETP units with the ETP provider. This is because the ETP is essentially an open-ended collective investment scheme. Such a buy-in for an AP failing to return ETP units could result in a circular scenario whereby the ETP provider creates ETP units just to receive these same units back through the buy-in process. These ETP units would then subsequently be cancelled.  Ultimately, such inefficiencies would weaken investor protection measures and thereby have a material detrimental impact on end-investors, both in terms of the value of their investments and the prices with which they are presented in the market.  Moreover, the potential market inefficiency outlined above would have been wholly unnecessary as ETPs already have well-established and comprehensive liability and/or indemnity provisions in their prospectuses and their contracts with APs which protect the ETPs and their investors from losses caused by settlement delay or failure on the part of the AP. Similarly, APs will also have recourse against ETPs for settlement delay or failure under the prospectuses and/or AP contracts, and, in respect of UCITS Exchange Traded Funds (ETFs), they may also have protections under UCITS rules.  As such, in order to avoid such unintended market inefficiencies from arising, the European Commission should remove the ETP creation/redemption leg of the primary market order process from the scope of the CSDR buy-in regime.   * Rules relating to penalties   As regards the payment and attribution of penalties, we encourage the European Commission to clarify whether entities that are net recipients of penalties have discretion as to whether such monies are ascribed to the relevant fund (and so the performance of the relevant fund is impacted via positive tracking difference) or to the Management Company (and so the performance of the relevant fund is not impacted). |

**- ENDS -**