

[Link to CSDR Roadmap](#)

ISLA and its members would like to take this opportunity to highlight the significance of incorporating a review of the Settlement Discipline Regime (SDR), as highlighted in the Roadmap, in particular Mandatory Buy-ins, (that apply from February 2022, and hence not yet live), as part of the wider CSDR Refit, however we would also stress the importance of a review of this particular element, prior to implementation of the rules.

As outlined in ISLA's [response](#) to the Commissions targeted review of regulation on improving securities settlement in the European Union and on Central Securities Depositories in February 2021, and in the Joint Trade Association [letter](#) (including 15 signatories, representing a broad range of market participants) in March 2021, our membership fully supports the policy aims of the framework, to improve settlement efficiency in European capital markets. ISLA encourage the introduction of cash penalties on failed transactions and consider this to be a key driver in improving settlement rates across all markets however, the consensus view held by several market participants including ISLA, is that the Mandatory Buy-in regime should not be implemented in its current form and requires considerable revisions to limit any negative market impacts.

ISLA promotes the use of an optional approach to buy-ins, that offer parties discretion to measure and assess impacts and act according to economic benefit. This mechanism should be exercisable in the event of a settlement fail and not limited to a timeframe outlined in regulation, increasing flexibility regarding settlement & market exposure. ISLA recognises the benefit of bilaterally agreed contractual buy-in type mechanisms, included in the Global Master Securities Lending Agreement (GMSLA) for example and given the existence of this established contractual remedy, ISLA believe that legislation should only request trading parties to have contractual provisions to deal with settlement failures, dependent on instrument type.

Our response also provides data to demonstrate the link between total assets on loan and market liquidity, and strongly advocate for SFTs such as securities lending transactions to be out of scope, on the grounds that SFTs contribute to a reduction in settlement failures across the wider market through increased supply, and that imposing buy-ins on this particular instrument type, would adversely impact overall market efficiency.

There are still several outstanding issues requiring further clarity, before a buy-in regime can be enforced for example, use of a pass-on mechanism, scope of the regime, asymmetry of price differentials and cash compensation and the obligation to appoint a buy-in agent.

ISLA would like to express concern around the timing of implementation of the SDR as highlighted in our recent letter, given the outstanding lack of clarity and legal uncertainty on several key issues, and so believe it is imperative that if there are targeted changes to be made, the market be given adequate time to amend their operational and legal procedures. We therefore strongly recommend that the Commission advise of any changes, as soon as possible. The requirement to establish contractual arrangements is a sizeable exercise for global participants, particularly when current undertakings may become redundant as a result of the review. ISLA supports a decoupling of the buy-in regime from the remaining elements of the SDR such as penalties, with a subsequent change in go-live date for this element.

Finally, with regards to technological innovation, ISLA strongly advocate for an increased use of Distributed Ledger Technology (DLT) across the EU regulatory framework, including CSDR. Without such an evolution, financial markets will continue to chase the weakest link in asset settlement, which are agnostic to individual regulations or specific financial markets.