Comments to the Commission Proposal (dated 16/03/2022) for a Regulation amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories

The Italian Association of Financial Markets Intermediaries - ASSOSIM welcomes the opportunity to comment on the Commission's Proposal amending the Central Securities Depositaries Regulation (CSDR) to further enhance the settlement efficiency in the Union, reduce the costs and burdens inherent in some of the procedures provided for by the Regulation currently in force (REFIT) and to achieve the goals set by Action 13 of the "Capital Markets Union Action Plan" (CMU).

First of all, as it regards the amendments to CSDR's Title II (Securities Settlement), Chapter III (**Settlement discipline**) of the Regulation, and specifically the amendments proposed to the **scope of application** of the settlement discipline provisions, we welcome the clarification (under Point (a) of Art. 1(2), amending Art. 7 paragraph 2 of CSDR) that settlement fails «*caused by factors not attributable to the participants to the transaction*» or related to «*operations that do not involve two trading parties*» are not subject to either the cash penalty regime, nor buy-ins. However, **as it specifically regards the scope of application of the settlement <u>penalty</u> regime**, and mentioned in our Response to the Commissions' public consultation on a Possible Review of the CSDR[1] (run between December 2020 and early February 2021), we believe that some specific transaction-types should be exempted from the penalty's regime, such as:

- corporate actions on stocks, such as
    i. cash distributions (e.g. cash dividends, interest payments),
    ii. securities distributions (e.g. stock dividends, bonus issues),
    iii. iii) reorganizations (e.g. conversions, stock splits, redemptions, tender offers),
- corporate action on flows,
- primary market operations, i.e. the process of initial creation of securities or new issuances, whereby the securities are created but are not yet subscribed, thereby with no capital raised,
- creation and redemption of fund units, i.e. the technical creation and redemption of fund units, unless done through transfer orders in a CSD-operated securities settlement system,
- T2S realignment operations,
- portfolio transfers where no change of final beneficiary owner occurs (carried out manually by intermediaries and which do not constitute the object of a contract between different entities),
- settlement instructions automatically inserted by CSDs to execute Issuers' requests to credit/debt securities

In this respect, we would deem it appropriate to include in Level 2 regulation the list of the specific transactions to be exempted from the penalty regime. This approach seems already envisaged by the Commission's legislative proposal where [pursuant to Point j) that introduces a new paragraph i.e. paragraph 14 a) into Article 7] the Commission may adopt Delegated Acts specifying the transactions that, inter alia,

- are to be considered as not attributable to the participants to the transaction and
- are not to be considered to involve two trading parties under paragraph 4 points c) and d) of Article 7 (same approach is envisaged in Recital 4, fifth sentence).

In this respect, it is also worth mentioning that at least some of the transactions included in our list above are explicitly mentioned also by the Commission's legislative proposal as "out of scope" transactions i.e. i) primary market transactions, ii) corporate actions, iii) creation and redemption funds, iv) realignments (Recital 4 of the legislative proposal).

As a final remark about this specific issue, we would like to underline **the need for an increase of the level of transparency as far as the calculation of penalties is concerned**. To this aim, ESMA should be entrusted with a mandate to create and operate a central "golden source" database, containing all information necessary to calculate cash penalty amounts. The above-mentioned data base should indicate:

- the nature of the instrument (in or out of scope).
- the instrument classification and the applicable penalty rate and

[1] Commission's targeted consultation document published in December, 8th, 2021, "*Review of Regulation on improving securities settlement in the European Union and on Central Securities Depositories*".

- the daily reference price (as provided by the Issuer CSD or Security Maintaining Entity SME).

The proposed ESMA data base could bear many substantial benefits, as for instance providing all market participants with clarity on such a critical aspect and contributing to reducing the likelihood of disputes.

In terms of entities subject to the settlement discipline penalties, we continue to suggest the **removal of CCPs' responsibility** in relation to collection and distribution of penalties to clearing members affected by the settlement fails. This could be achieved by amending Art. 19 of Delegated Regulation UE 2018/1229, moving such responsibility from CCPs to CSDs for both CCP-cleared and uncleared transactions. Indeed, as it is framed in the legislation currently in force, the process of collection and redistribution substantially increases the complexity and technology required by all parties involved, creating an additional layer of actors to such collection/distribution process. A simplification of the process (currently split in two) by the means of a unique, integrated and standardised procedure for the collection and distribution of penalties, valid for any financial instrument or transactions in scope would streamline such collection/redistribution activity for all the parties involved in it, reduce the room for operational issues and reconciliations (which our members have mentioned) and the related costs to be incurred in relation to the above-mentioned technology developments.

Finally, prior to moving to the topic of Buy-In, considering its possible benefits towards improving the settlement efficiency in the Union (in general terms), we would suggest the Commission to start analyzing measures promoting a wider and coherent usage of the so-called "partialization mechanism". Indeed, currently there could be some business scenarios (as described in the footnote[1]) where clients willing to partialize a settlement instruction may suffer some undue penalties, due to the fact that the parties of the instruction discover the presence of the "NPAR" indicator (set to YES or NO) only "ex-post", i.e. once the trade is not partially settling in T2S despite the partial availability of the securities/cash.

Moving now on to the Buy-In provisions, **the Commission's proposal envisages** [under Point (b) of Art. 1(2) which amends Article 7 par. 2 through the introduction of a new paragraph i.e. paragraph 2 a)] **a "conditional" application of mandatory buy-ins** (hereinafter: MBI). Namely, the Commission is empowered to adopt an Implementing Act deciding to apply MBI to certain financial instruments or categories of transactions

i. only where it deems the application of MBI proportionate to address the level of settlement fails in the EU and
ii. only taking the number and volume of settlement fails into account and provided that <u>any</u> of the following conditions is met:
    a. the application of the cash penalty mechanism has not resulted in a long-term, continuous reduction of settlement fails in the EU;
    b. the settlement efficiency in the EU has not reached appropriate levels
    c. the level of settlement fails in the Union has or is likely to have a negative effect on the financial stability of the EU.

[1] Doing a practical example:
A party of a transaction (let us name it "Party B") should receive 100 shares from its counterpart, "Party A" with a matched instruction, where the T2S "Partial Indicator" was set equal to YES by Party A;
Then, party B should deliver those 100 shares to another counterpart, name it "Party C" with a matched instruction where C has a partial indicator equal to "NPAR" (no partialization allowed).
In this business case, if Party B receives only 70 shares from A, it will be entitled to an "*in bonis*" penalty (or indemnity) for the 30 shares not received, while it will be charged for an "*in malis*" penalty for the entire 100 shares as B should deliver those 100 instruments to Party C but it cannot proceed so, due to the partialization set by A and discovered by B only once the settlement process is initiated in T2S.

This "conditional" application of the MBI regime put forth by the Commission in its proposal prompts two different kind of considerations.

On the one hand, **it shows the Commission's awareness that the MBI is not the "first-instance" measure to adopt** in order to reach settlement efficiency objectives. **This awareness is also showed in its Impact Assessment** whereby it acknowledges that the costs of applying the rules on MBI could outweigh their benefits for three main reasons.

1. First, the market volatility of March/April 2020 associated to the outbreak of the COVID-19 pandemic gave stakeholders the opportunity to reflect on how the upcoming settlement discipline regime would have impacted the market. In essence, the MBI regime could have exacerbated the negative impacts linked to the pandemic and the resulting stress in financial markets. In particular they could have increased liquidity pressure and increased the costs of securities at risk of being bought-in;
2. Second, the settlement discipline regime could also give rise to unintended consequences for the competitiveness of the EU capital markets. As acknowledged by the Commission and comparing the EU regulatory framework to Third Countries' regulatory framework (e.g. the UK), MBI may create an additional cost and risks for EU-settled securities that could disadvantage EU companies / financial markets;
3. Third, it should be noted that, despite the significant increase in trading, the settlement fail rate has remained relatively stable in the EU, both as a share of value and number of total transactions. As acknowledged by the Commission, quantitative evidence suggests that, in relative terms, the buy-in regime targets a small proportion of the total volume of transactions but will have an impact on the pricing and liquidity of a much larger percentage of overall transactions.

On the other hand, **the "conditional" application of the MBI raises some concerns**.

1. **Lead time: the possibility to activate MBI** – that is not completely ruled out pursuant to the Commission proposal – **makes it absolutely necessary for the industry to have adequate lead time and resources to get prepared in advance in order to duly carry out the wide range of activities** which, in all likelihood, would be required after the activation of a MBI regime e.g. **repapering of contracts and related counterparties' outreach, changes to IT systems/technologies.** By the same token, the **intention to activate MBI should be communicated well in advance**;

2. **Only one condition triggers MBI**: indeed, it is sufficient that only one of the three conditions mentioned (under Art. 1(2)(b)) is fulfilled to trigger the MBI regime. This in principle means that fulfilling any such conditions would not be particularly challenging and it could turn out to be even more problematic considering how material the impact of the activation of a MBI is likely to be;

3. **No indication regarding the disapplication of the MBI regime:** should MBI be imposed for specific financial instruments or categories of transactions, **it is not clear** from the wording of the Commission' proposal **whether this would be a permanent requirement**. In our view, the MBI regime should be activated on a time-limited or conditional basis **adequately defined in advance,** so that, once the level of settlement efficiency reaches an "appropriate level", the MBI regime is disapplied. Moreover, flexibility in disapplying MBI would be of critical importance in order to manage any potential shortening of the settlement cycle from T+2 to T+1 (such "cycle shortening" is currently being discussed in the US; the possibility of an extension of this shortening to other financial marketplaces cannot be ruled out). In this respect, we would also like to underline that **the introduction of a "suspension mechanism"** [Point (h) of Art. 1(2) adding a new paragraph 13 a in Article 7 of the CSDR], **albeit positive, cannot help solving the issue mentioned above since the suspension mechanism is designed to address only "extraordinary" situations that may arise as a consequence of the activation of MBI.** Namely, ESMA is entitled to recommend the EC to suspend the MBI (once activated) where necessary to avoid a "***serious threat to financial stability or to the orderly functioning of financial markets in the Union***", and this would only be possible only for a

limited period of time of six months. Moreover, and as a final remark, we would deem it extremely important to clarify how the suspension mechanism centered on ESMA can coexist with the suspension mechanisms aimed at addressing “ordinary” situations, i.e different from threats to financial stability or orderly functioning of financial markets brought about by the activation of the buy-in;

4. Accurateness and exhaustiveness of the data underlying the adoption of certain forthcoming Decisions. In light of the significant implications the MBI regime is likely to have in any case, we deem of paramount importance that such a move is based on an exhaustive and accurate set of data and information. **In this respect the Commission’s proposal is source of concerns as it envisages, for instance, that the EU rates of settlement fails should be assessed against those of other non-EU jurisdictions** [condition under letter b)]. **Actually, such cross-jurisdictional assessment could turn out to be problematic or even impossible** i) in the lack of comparable data or similar methodologies and also ii) in the light of the structural differences that may exist between EU and other jurisdictions in terms of a) structure of capital markets and of post-trade infrastructures, and b) regulatory frameworks, where it is sufficient to say (as acknowledged also by the EC in its Impact Assessment) that capital markets outside the EU do not have a comparable settlement discipline regime (for example, the UK announced in 2020 its intention not to implement the CSDR settlement discipline regime);

5. Another crucial issue relates to the **timing of application of the MBI regime**. We notice (Article 2 of the proposal) that the **Commission plans to defer the application of specific rules** that are included in its proposal such as, for example, the revised scope of the rules on cash penalties mentioned above. Namely, said rules on cash penalties are due to apply 24 months after the revised CSDR enters into force. **The underlying rationale** of the proposed postponement lies in the Commission’s **intention to give sufficient time for the adoption of the necessary delegated acts** further specifying such requirements (Recital 35). In this respect, **we deem it important that also the postponement of the date of application of the revised MBI regime is i) considered by the EU Co-Legislators as a high-priority issue** and ii) provided for in the reviewed CSDR. In particular, market operators should be granted the necessary time span they need to consolidate an “end-to-end” operational model with their clients. With reference to the underlying rationale of the above-mentioned proposal, **deferring the application of the revised MBI regime would provide the Commission with sufficient time for issuing the necessary delegated acts** (similarly to what already acknowledged by the Commission in relation to cash penalties, see above). Even more importantly, we deem necessary, with a view to ensuring a smooth and flawless launch of buy-in, that the Commission is provided sufficient time to identify, based on the above-mentioned acts, which financial instruments and which categories of transactions should fall under the scope of the buy-in.

Further to the above, with specific regards to “any of the conditions” under Art. 1(2)(b) that the Commission may consider to be “met” on the basis of *«…the number and volume of the settlement fails»*, **in our view, the regulatory framework should envisage and include a monitoring “system” on the basis of which the Commission would firstly i) alert the Union once a given settlement efficiency level is not reached** (or alternatively “gone below”), **adding the details of the actual aggregated levels of settlement (in)efficiency, and secondly, ii) provide for an observation period lasting X months for a focused “monitoring”.** Should the settlement efficiency not turn back and improve during such observation period, then the Commission would intervene by adopting an Implementing Act providing for the application of the buy-in regime, with market participants having been alerted X months in advance.

Also, and by the same token, as it regards the concept of “Settlement Efficiency”, we are aware that the same settlement discipline measures apply across the Union to markets that are characterised by different peculiarities and different inherent efficiency rates [i.e. the average medium-term “settlement” or “fail rate” of the "Italian" market (or of a specific segment of it) tends to differ, for instance, from the respective values computed on the French or the German markets/segments]. Hence, in our opinion, the Commission should consider introducing in CSDR or in its Delegated Regulation the concept of a "**Union Weighted-Average Settlement Rate**" or "**Union WA Fail Rate**" to understand whether the Union settlement efficiency conditions have actually improved or worsened. By doing so, where a worsening of the settlement efficiency variables in a specific market would occur (let us a consider any given "relatively-smaller market of instruments" in the Union) such "smaller market" would contribute to the "Union-wide Settlement Rate or Fail Rate" indicator in a proportional manner. Markets or segments that are inherently different in terms of Volumes/Dimensions/Sizes should be considered according to a principle of proportionality and represent the weighting-factor of their specific settlement rates when computing the Union-wide Rates. Eventually, this would prevent that a worsening in the settlement efficiency of a smaller market would be able (on a stand-alone basis) to trigger the Mandatory Buy-In for the entire Union, despite several other bigger-in-size markets being more efficient and perhaps improving.

Remaining within the scope of the buy-in regime but on more general terms, **there are some aspects of the Proposal that we consider not fully satisfactory**. Indeed,

- as expressed in our Response (February 2021) to the Commissions' public consultation on a Possible Review of the CSDR (mentioned above) **the feedback we gathered still strongly favours a *voluntary* buy-in regime for trades not cleared by CCPs**, while existing CCPs' mandatory buy-in rules should remain in place for cleared transactions. Turning the buy-in regime into a discretionary right – as opposed to a mandatory requirement – would, for example, **i)** empower purchasing parties to decide to initiative a buy-in only when it is commercially and economically rational for them to do so, also contributing to a reduction in the frequency of buy-ins and the impact on pricing and liquidity, **ii)** allow market makers to retain flexibility to offer prices in securities without having the inventory thereby avoiding a deterioration in liquidity conditions and in pricing levels to the advantage of end investors and companies and **iii)** provide lenders and repo traders with incentives to pursue their lending activities. Level-2 legislation would then define how such *voluntary* buy-in would be initiated and run, ensuring harmonised application of such rules across the Union. This would also make easier to ensure that the contractual agreements among parties – envisaging the option to buy-in – be based on a common harmonized legal framework. On its turn, this would promote i) convergence of contractual regimes ii) level playing field iii) transparency and iv) consistency in overall market practice and, at the same time, avoid a proliferation of heterogenous contractual standards. Eventually and for consistency, we continue to underline the need for having trading parties to include *voluntary* buy-in provisions in their contracts/agreements;
- in some specific circumstances, **a market participant should be given the opportunity to act as a buy-in agent for the failed transaction which it is involved in, given that the current legislative framework does not foresee the opportunity to elect as Buy-in Agent one of the parties involved in the trade subject to the buy-in**. We continue to note that even the revised CSDR would (presumably) continue to prescribe that a member of a trading venue, when acting on its own account on a given trade, would not be entitled to act as a Buy-in Agent for its own trade(s). In such cases, a member should have readily available a *buy-in agency contract* with a third-party, ready to assist it in the completion of the trade. However, such member is not allowed to select such an agent among those brokers/counterparties that have usual business relations with the former as potentially involved in the transaction as a 'party'. Plus, the only candidate Buy-in Agent available in the Union has recently stepped back and at the moment there would be no potential Buy-in Agents available. For these reasons, **we reiterate the importance of having Level-1 and Level-2 provisions allowing a party to a trade to act as buy-in agent, as this eventually would help achieving more easily one of the primary goals of the CSDR, i.e. the stable improvement of settlement rates and the overall settlement efficiency**. The above-mentioned proposal is even more significant considering, among other things **i)** the tight deadlines to appoint Buy-in Agents (1 business day, after the expiry of the extension period as per RTS), **ii)** the current absence of Buy-in Agents in the market

that, on its turn, makes the appointment not feasible coupled with the reluctance of most market makers to operate this role [as it consists in a resource-intensive activity to carry, requiring solid and fast coordination of several business units (compliance, legal, etc)] and **iii)** the risk of granting an exclusive right to one market marker for performing as buy-in agent, a scenario very close to granting "monopolistic power" to one single candidate. Removing the requirement for the receiving trading party to appoint a Buy-in Agent and allowing this party to execute its own buy-in could also **be complemented by a set of high-level principles aiming at ensuring fair and transparent treatment of both trading parties**. In this respect, it is worth noticing that the introduction of symmetry in differential buy-in payments [Point (f) of Art. 1(2) replacing paragraph 6 of Article 7; see also below] is likely to reduce the risk of unfair practices and, therefore, makes it even more reasonable to remove the regulatory requirement to appoint a buy-in agent and to entitle non-failing parties to autonomously activate buy-ins.

Finally, we would consider helpful to **make the *buy-in* a more-standardisable tool to resort to**, especially for cross-border transactions. This could be achieved **by an "*International Standardised Buy-in Agency Contract*"** [2] to which the international industry could work, in compliance with specific and clearly defined principles and rules that should be formerly enshrined in the CSDR legislation;

- in terms of **scope of application of** the newly proposed **buy-in regime** (i.e. transactions subject to the buy-in requirement), and in light of the level-2 legislation which in a foreseeable future will follow up on the revised CSDR Regulation,
  - firstly, we believe that the scope of the buy-in requirements should be refined in order to **exempt** (in a clear manner) **any instructions not related to an effective sell/buy transaction**. Indeed, the origin for both a penalty and a buy-in is a *failing settlement instruction* in the books of a CSD. If the application of penalties does not raise any concern *per se*, the application of a buy-in process based on failing instructions may lead to "absurd"/paradoxical cases, such as that of portfolio transfer transactions with "No Change of Beneficial Ownership" (NCBO, please, see footnote below[3]). In this regard, it would help introducing in Level 2 regulation a list of the specific transactions to be exempted from buy-in rules. This approach would resemble, mutatis mutandis, the one already adopted and applicable available under Art. 2(5) of Delegated Act 2017/590 on MIFIR transaction reporting ("a transaction for the purpose of … shall not include the following: …"). However, it seems that the amendment introduced to Art. 7, paragraph 2 (by Art. 1(2)(a) of the Proposal) points in the direction we hope (quote: settlement fails «*caused by factors not attributable to the participants to the transaction*» or related to «*operations that do not involve two trading parties*» are not subject to either the cash penalty regime, nor buy-ins), though this is not clear at the time. The approach advocated above seems already envisaged

[2] As a mere example, we cite the "*Global Master Securities Lending Agreement*" (GMSLA) defined by ISLA (International Securities Lending Association) for *Securities Lending.*

[3] **We believe that the transaction(s) identified by the PORT indicator (within T2S) should be excluded from the scope of application of penalties and buy-in process, where NCBO (No Change of Beneficial Ownership) is applicable**, i.e. where the debtor and the creditor/beneficiary are same person. Indeed, as it currently works, the Receiving counterparty (CPTY), in a portfolio transfer operation with NCBO, can step-in the portfolio transfer process only after the Delivering CPTY has initiated the transfer process: the latter inputs the Intended Settlement Date (ISD) as equal to the date in which the final user/client intends having the transfer complete (no "T+ approach" is applicable). As the settlement discipline penalty's regime application is based on ISD, penalties are currently applicable also to portfolio transfers with NCBO, which appears to be a non-sense given that the beneficiary is the very same person. Hence, as mentioned in the main text above, in our opinion, CSDR legislation (in Level-1 or Level-2) should exempt from the settlement discipline any operations identified with the PORT indicator in T2S where NCBO applies. **Such exemption could be avoided though**, should legislative procedure and the forthcoming institutional trialogue among the Commission, the European Parliament and the Council eventually decide to replace the "two-steps approach" for buy-ins with a *fully* voluntary one. In this scenario, should a portfolio transfer fail to settle, thanks to a voluntary buy-in regime the parties could firstly seek to solve the issues that led to such fail, or they could convene to initiate the buy-in process.

by the Commission's legislative proposal, precisely under point j) introducing a new paragraph (i.e. paragraph 14a into Article 7) providing that the Commission may adopt Delegated Acts specifying the transactions that, inter alia, *are to be considered as not attributable to the participants to the transaction* and *are not to be considered to involve two trading parties* under paragraph 4 points c) and d) of Article 7;

  - secondly and consequently, we continue to support the **<u>exclusion</u> of certain transactions** (reasonably via a *delegated act*) **such as,**
    - margin transfer or collateral movements,
    - portfolio transfers between accounts of the same client at different custodians,
    - market claims and transformations,
    - ETF creation and redemption process,
    - physical settlement of derivatives,
    - new issuances,
    - voluntary corporate actions where the outturn has an economic impact on the original transactions,
    - other transactions which do not directly represent the outright purchase or sale of a security,
    - SFTs and, with specific reference to Repos, Securities Lending and/or Derivatives, we deem that the requirement to include CSDR mandatory buy-in provisions into the contractual agreements i) will not promote the goals pursued by CSDR, i.e. increasing efficiency of settlement, and rather ii) will create unnecessary additional regulatory overlay and a series of unhelpful complexities (e.g. need to repaper contracts). In this respect, it is also worth mentioning that at least some of the above-listed transactions are explicitly mentioned by the Commission's legislative proposal as transactions that should be outside the scope of buy-in rules i.e. i) corporate actions and ii) creation and redemption of funds (Recital 4);
- in terms of **timeframe** of the buy-in process, the feedback gathered from our members **suggests it should be differentiated on the basis of i)** the market structure and liquidity degree of the underlying instrument's market segment. This could be achieved by introducing such principle in the current text of Art.7(3) of CSDR; **ii)** the impact on orderly and smooth functioning of markets. ESMA could perform the relevant technical assessment with a view to adopting Level-2 measures. Furthermore, and as a general approach, we deem it necessary to reconsider the duration of the MBI process as a whole i.e. in case MBI is provided for and activated, the timespan for operating MBI should be prolonged.

Finally, the Proposal reasonably sets forth:

- the introduction (as per Art.1(2)(d) which inserts a new Paragraph 3a in Art.7) of a **pass-on mechanism** to avoid triggering «*a cascade of failed settlements each requiring a separate buy-in process by allowing each participant in the transaction chain to pass-on a buy-in notification to the failing participant, such that only one buy-in is necessary to resolve the whole chain of transactions*» However, it is important to highlight that an efficient *pass-on mechanism* is highly dependent on the introduction of technical development on Swift messaging that could allow the clear and automatic identification (by the relevant CSD) of the failing participant up through the settlement chain. This will ease the identification of the entity in the settlement's chain entitled to suffer the *buy-in* without adding additional administrative costs to the other market participants of the chain. Overall, we would deem appropriate i) that the technical details of the pass-on mechanism are defined through Level 2 provisions and ii) that an ad hoc mandate is granted to ESMA in Article 7 para. 15 in order to develop draft Regulatory Technical Standards to this purpose;
- the introduction of ESMA's faculty to recommend the Commission to **suspend the buy-in mechanism** for specific categories of financial instruments where this is necessary to address a serious threat to

financial stability or to the orderly functioning of the financial markets (as per Art.1(2)(h) inserting paragraph 13a in Art. 7);

- the introduction of **symmetry of payments** [Point (f) of Art. 1(2) replacing paragraph 6 of Article 7; see also below] between the buyer and the seller in case the economic terms of the transaction at the execution of the buy-in differ from the original transaction. In this respect, the application in both directions of the differential between the buy-in price and the original trade price i) fixes the asymmetry of the regulatory framework currently in force, ii) guarantees that the economic positions of both parties are restored to the economic terms, had the original transaction taken place and, last but not least, iii) represents a key pre-condition for a workable pass-on mechanism;
- the Commission's proposal (Point (g) of Art. 1 (2) to replace paragraph 11 currently in force with a new one that provides for the application of the settlement discipline regime to CCPs, like any other participant, in those instances where these do not interpose themselves between counterparties, such as permitted use of collateral for investment purposes.

As it regards the **passporting process for CSDs**, which will allow CSDs to operate in more than one reference market, provided that interoperability is assured, it will foster **competition** and hence lead to a medium-term **reduction trend** of the general costs borne by the industry and, specifically, of the cost to serve the end investor. Therefore, we welcome the simplification of the process consisting in removing the possibility for the host supervisor to refuse the passport, replaced by a notification from the home supervisor to the host. Likewise, as for the enhancement of the **cooperation between national supervisors**, the proposal to introduce in the CSDR the Colleges of Supervisors, to facilitate CSD's access to markets other than that of their authorization, seems positive.

Coming to facilitating CSDs' **access to banking-type ancillary services** by allowing CSDs with a banking license to offer such services to other CSDs, and the revision of the thresholds below which CSDs may use a commercial bank, our considerations focus on the actual (not just potential) increase in the risk profile of such market infrastructures and, in extreme cases, in the risks for financial stability. More specifically:

i. we understand and share the Commission's objective to further enhance a united market of post-trade services and see the facilitations suggested in the Proposal as going in that direction;
ii. we understand the issues currently occurring for CSDs willing to settle in foreign currencies;
iii. we have no considerations strictly against it;
iv. we firmly believe, however, that such services do bear some kind of risks which, so far, were mainly borne by Banks (i.e. mainly credit and market risks), which are specifically regulated and provided with sufficient resources to withstand such risk(s), protecting infrastructures from any *spill-overs* of such risks. On the contrary, CSDs' eased access to banking-type ancillary services does bear the possibility to commingle risks that are typical of the infrastructure(s), with risk(s) that are typical of the banking sector. Hence, given that CSDs' critical role as central market infrastructures for core functions should remain adequately protected from any additional risks, CSDs should then subject to appropriate prudential requirements in order to make them safe even upon bearing such (greater) banking risks.