German Banking Industry Committee

Die Deutsche Kreditwirtschaft

Comments

on ESMA's consultation paper "Regulatory Technical Standards on the CSD Regulation – The Operation of the Buy-in Process"

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The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

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Introduction

The German Banking Industry Committee (GBIC) is the joint committee operated by the central associations of the German banking industry. These associations are the Association of German Banks (Bundesverband deutscher Banken, BdB), for the private commercial banks, the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

GBIC warmly welcomes ESMA's consultation paper of 30 June 2015 on its draft regulatory technical standards (RTS) for the operation of the buy-in process introduced under the CSD Regulation.

We especially welcome ESMA's careful analysis of the responses to its consultation document issued in December 2014 and the changes to the regulatory technical standards for the buy-in process it is now considering as a result. We greatly appreciate ESMA's decision to solicit the views of market participants on these proposed changes despite the pressure to finalise the draft RTS on schedule and we will do our utmost to reply to the questions raised as comprehensively as possible. Given the tight deadline for submitting comments, however, as well as the fact that many of the relevant specialists at our member banks are currently on vacation, we have only been able to analyse cost aspects to a limited extent.

We totally agree with ESMA's conclusion in para 37 of the consultation paper that transforming the settlement activity into a fully collateralised system would be contrary to the objective of the level 1 text. The same goes for the view in para 39 that increasing the costs of investing in securities would render EU securities markets less attractive and would, moreover, be contrary to the objectives of the CSD Regulation and of capital markets union. We also take the view that the buy-in process needs to be compatible with the civil-law regimes in member states and would point out that no authority exists to modify or extend the scope of national civil law by means of RTS.

Aside from replying to questions 1 to 5, our comments therefore focus on analysing the proposed options 1 and 2 and on suggesting some improvements.

Q1: Please provide evidence of how placing the responsibility for the buy-in on the trading party will ensure the buy-in requirements are effectively applied.
Please provide quantitative cost-benefit elements to sustain your arguments.

1. How placing the responsibility for the buy-in on the trading party will ensure the buy-in requirements are effectively applied.

The operation of a buy-in basically reflects the legal consequences of default in performance and the law of damages. With this in mind, each of the options ESMA proposes should take account of the existing civil-law governing the markets.

Option 1 pays due regard to the requirements of civil law and the proposed rules would be fully compatible (in Germany, at any rate) with the existing law governing damages.

It is worth pointing out that in many member states of the European Union – including Germany – there are no established market practices at present in relation to buying in securities which have not been delivered under an OTC contract. This does not mean, however, that the legal prerequisites for a buy-in do not exist. The parties to an OTC contract already make a binding commitment to deliver the securities in question on a given date. As we see it, the buy-in process must be based on this existing legal relationship between the contracting parties.

If the trading party which has undertaken to deliver the securities fails to do so on the date and in the manner contractually agreed (thus becoming a failing party), the receiving party has a right to damages.[1] German law requires the receiving party to be put in the same position it would have been in if the contract had been properly performed.[2] In theory, the receiving party is already entitled to acquire the non-delivered securities elsewhere instead of obtaining them from the failing party and to demand reimbursement from the failing party of the associated costs.[3] This principle is also reflected in widely-used market practices at international level (cf., for example, the International Capital Market Association's ICMA Rule Book).

The procedures set out in Article 7 of the CSDR and option 1 of the RTS are fully consistent with the law governing damages in Germany (and presumably in other member states as well).

The trading parties affected by a settlement fail already have a contractual relationship with each other and it is this contractual relationship which is key to the operation of the buy-in process. On the basis of this relationship, the receiving party already has a right – though as things stand no obligation – to engage a buy-in agent to perform a buy-in.

By contrast, intermediaries charged with settling the transaction are merely agents (known in Germany as *Erfüllungsgehilfen*) used to perform the obligations of the trading parties. Contractual relationships invariably exist between the intermediaries on the delivering side. They also exist on the receiving side. There is no direct contractual relationship, however, between a failing CSD participant and the receiving party or receiving CSD participant. For persons that have no contractual relationship with one another, performing a buy-in will throw up a number of legal difficulties. This is illustrated in the following chart:

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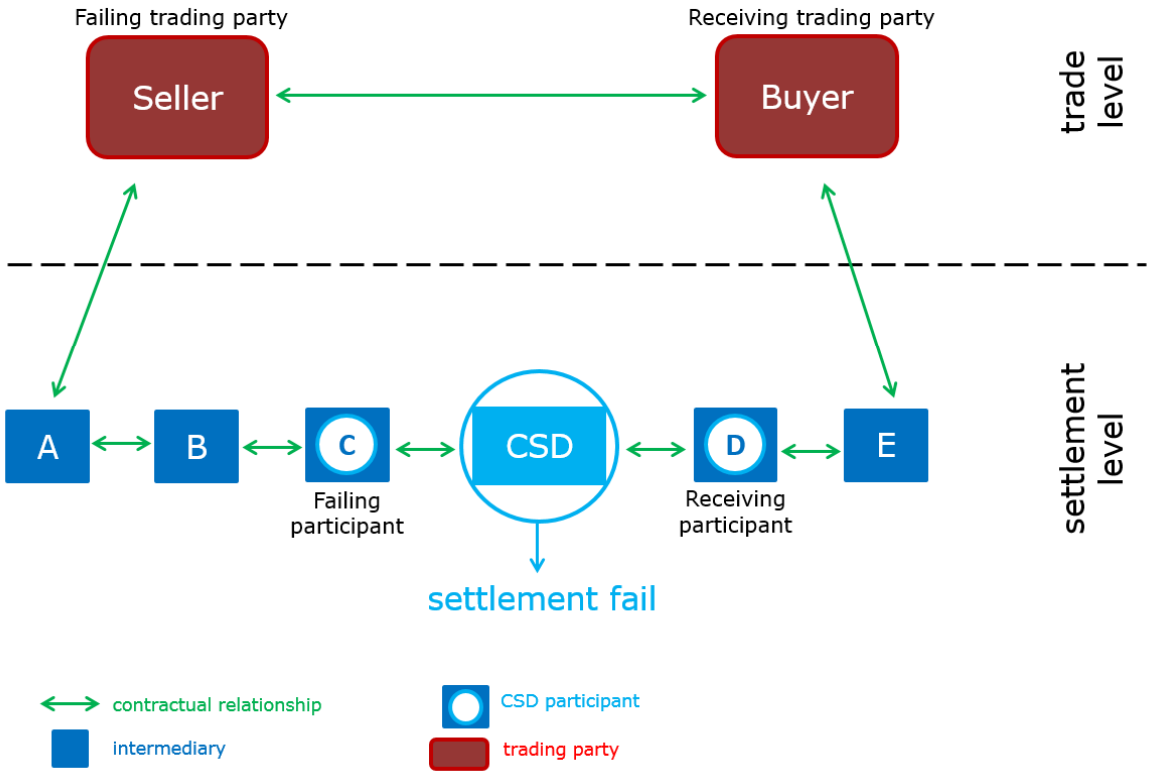
[1] Sections 280, 281 of the German Civil Code, section 376 of the German Commercial Code.

[2] Section 249 of the German Civil Code, see below in "Evidence".

[3] Sections 249 and 250 of the German Civil Code, see below in "Evidence".



As mentioned above, there is no requirement at present to execute a mandatory buy-in. Trading parties initiate a buy-in if it seems economically advantageous to do so. If the buy-in has little prospect of success or is likely to generate excessively high costs, the party entitled to buy in will normally prefer instead to wait until the seller is in a position to deliver the securities.

Nor has the German market seen a need up to now to make mandatory buy-ins an established practice in the interests of greater settlement efficiency, for instance, because alternative solutions offer greater flexibility. Particularly when illiquid instruments are involved, the party entitled to perform a buy-in will normally refrain from doing so since it makes better business sense to await delivery of the securities from the seller at a later date than it does to generate further costs by initiating a buy-in whose successful conclusion is far from certain.
Nonetheless, the introduction at EU level of a harmonised, mandatory buy-in process in the event of a settlement fail will naturally lead to the establishment of a new market practice, both in Germany and throughout the EU.

This means that, when the RTS for Article 7 of the CSDR take effect, the buy-in will become the normal legal consequence of a settlement fail, including fails of OTC transactions, and trading parties will abide by this new practice. Furthermore, the receiving party – as the injured party – will generally always have an interest in enforcing its rights.
When it comes to the practical aspects of the buy-in process, it should be borne in mind that a receiving party basically wants to obtain the securities it has purchased and has little interest in a cash payment.

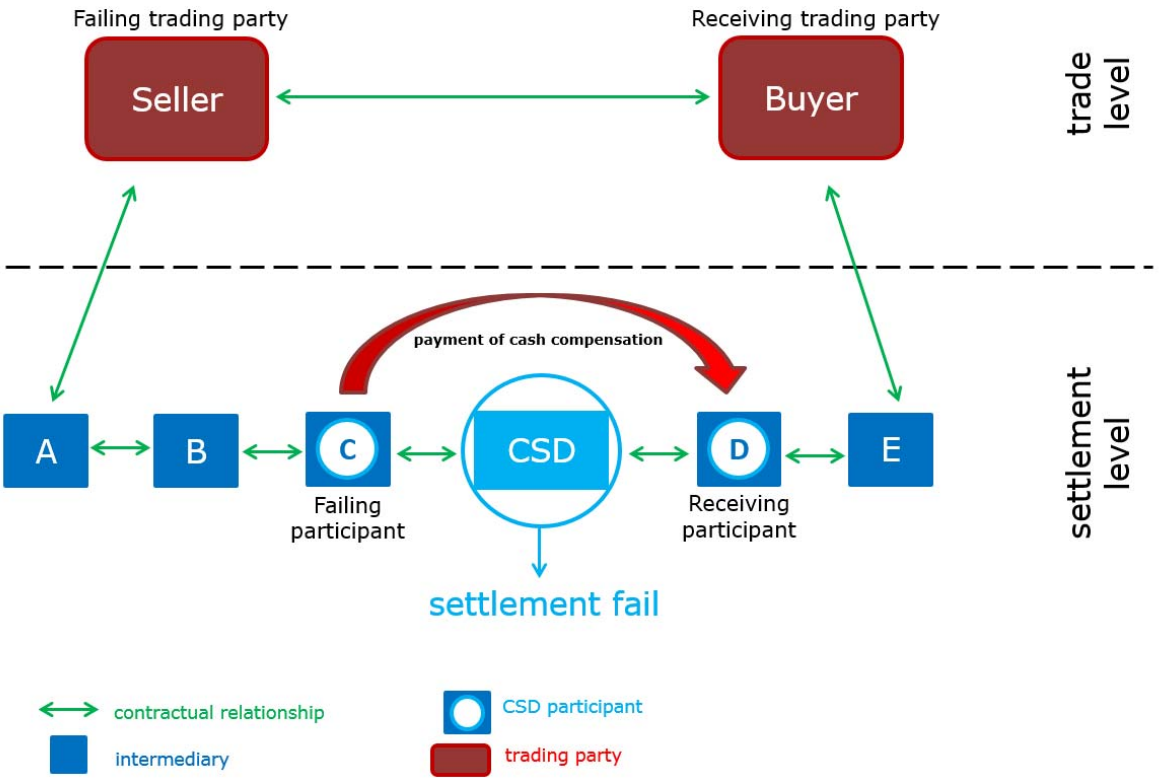
But if the CSDR requires cash compensation to be paid if no buy-in is initiated, trading parties will, in their own interests, commission a suitable buy-in agent.

Unlike their settlement agents, the trading parties, with their knowledge of, and access to, various markets, are best placed to know how and where a buy-in can be successfully performed.

Even if the agreement is not subject to German law, the new market practice will still trigger a buy-in. A similar market practice already exists for CCP-cleared transactions so market participants are already familiar with the principles of its operation. In the event of a settlement fail, the CCP (acting on the trading level) imposes a buy-in on the other trading party (the clearing member which did not deliver on schedule or in the extension period). Article 7 of the CSDR explicitly refers to this point.

As soon as these arrangements have become established as a new market practice in the OTC area, trading parties will ensure in their own interests that the buy-in process is properly executed. It should be borne in mind that the buy-in rules are not supervisory measures, which are not applicable in third countries, but serve to enforce claims for damages arising from the contractual relationship between the trading parties, irrespective of the country in which they are located.

As the following chart shows, requiring CSD participants to execute the buy-in would have the major disadvantage that they have no contractual link with the original transaction. Imposing liability on CSD participants, as suggested as the fall-back solution in **option 2**, could therefore only be given a legal basis if the CSD participants were obliged to furnish a guarantee to receiving parties with which they had no contractual relationship and which they did not even know!



There is no basis in civil law whatsoever for imposing liability of this kind by means of RTS. Nor would the European Commission have the authority to issue the technical standards in the form of a delegated regulation which changed, or extended the scope of, civil law in member states or assigned the liability for damages to third parties.

Though we understand ESMA's wish to introduce a mechanism which will also ensure execution of the buy-in process in third countries, the solution cannot possibly be to shift the liability for a failure on the part of the trading parties onto a third party. This would inject substantial risk into the low-risk business of settling securities and run totally counter to the objectives of the CSDR, namely to ensure that securities settlement is secure and efficient.

Should the rationale behind option 2 be to cover cases in which trading parties (located in third countries, for example) decide simply to ignore the mandatory buy-in requirement, we would ask ESMA to bear in mind that such cases would neither damage the system nor generate additional costs. Such cases also seem to be acceptable because the receiving party has consciously chosen the failing party in an OTC trade. What is more, option 2 will do nothing to induce these trading parties to initiate a buy-in after all. Instead, huge costs and risks will be imposed on the CSD participant which has to pay the cash compensation under the fall-back arrangement. Under certain circumstances, these costs and risks may even compromise the participant's ability to continue as a going concern. For further details on this point, please see our reply to Q3.

With this in mind, we would strongly recommend waiting to see how the change in market practices brought about under option 1 works in practice. The big advantage of option 1 is that it is based on a familiar market instrument and existing market mechanisms and structures. As a result, comparatively few resources will be needed to implement the option. Further action can then be taken at a later date if it turns out that the buy-in rules are ignored outside the EU and that damage is caused as a result. But there is no reason to assume from the outset that this will be the case.

Even if a central buy-in institution were established to handle all buy-ins on behalf of receiving parties, this would not ensure that all buy-in were executed in practice. This is because there would be no guarantee of this institution being reimbursed for the difference between the actual and originally agreed price plus the costs of executing the buy-in. Further questions also arise (e.g. who should this central institution be? How would it find out action was required? What operating systems would need to be developed?).

An alternative idea worth considering might be to use a CCP's infrastructure as an automatic buy-in agent, at least for the types of instrument for which the CCP executes buy-ins for non-OTC transactions.

We are aware that Article 7(8) of the CSDR states that the "failing participant shall reimburse".[4] At the same time, we do not believe that ESMA should feel constrained by the wording of this provision alone to formulate a rule along these lines in its RTS. ESMA's mandate, as we see it, is to develop an "**appropriate** buy-in process" as specified in Article 7(15)(c).[5] In its original proposal, the European Commission envisaged in Article 3(7) that the failing participant should be "subject to a buy-in", while the

[4] "The failing participant shall reimburse the entity that executes the buy-in for all amounts paid in accordance with paragraphs 3, 4 and 5, including any execution fees resulting from the buy-in. Such fees shall be clearly disclosed to the participants."

[5] "the details of operation of the appropriate buy-in process referred to in paragraphs 3 to 8, including appropriate time-frames to deliver the financial instrument following the buy-in process referred to in paragraph 3. Such time-frames shall be calibrated taking into account the asset type and liquidity of the financial instruments;"

final text of the regulation is much more neutrally formulated, saying that “where a failing participant does not deliver […] a buy-in process shall be initiated”.

The buy-in mechanism operated at trading venues rightly requires the trading parties to initiate the buy-in and reimburse its cost or pay the cash compensation. It is even more important for this principle to apply to the buy-in process for OTC transactions, where the trading parties have consciously opted to conclude a contract with each other.

Evidence

The relevant provisions of the law of obligations under the German Civil Code are as follows[6]:

Section 280
Damages for breach of duty

(1) If the obligor breaches a duty arising from the obligation, the obligee may demand damages for the damage caused thereby. This does not apply if the obligor is not responsible for the breach of duty.
(2) Damages for delay in performance may be demanded by the obligee only subject to the additional requirement of section 286.
(3) Damages in lieu of performance may be demanded by the obligee only subject to the additional requirements of sections 281, 282 or 283.

Section 281
Damages in lieu of performance for non-performance or failure to render performance as owed

(1) To the extent that the obligor does not render performance when it is due or does not render performance as owed, the obligee may, subject to the requirements of section 280 (1), demand damages in lieu of performance, if he has without result set a reasonable period for the obligor for performance or cure. If the obligor has performed only in part, the obligee may demand damages in lieu of complete performance only if he has no interest in the part performance. If the obligor has not rendered performance as owed, the obligee may not demand damages in lieu of performance if the breach of duty is immaterial.
(2) Setting a period for performance may be dispensed with if the obligor seriously and definitively refuses performance or if there are special circumstances which, after the interests of both parties are weighed, justify the immediate assertion of a claim for damages.
(3) If the nature of the breach of duty is such that setting a period of time is out of the question, a warning notice is given instead.
(4) The claim for performance is excluded as soon as the obligee has demanded damages in lieu of performance.
(5) If the obligee demands damages in lieu of complete performance, the obligor is entitled to claim the return of his performance under sections 346 to 348.

[6] Translation provided by the Langenscheidt Translation Service. Translation regularly updated by Neil Mussett and most recently by Samson Übersetzungen GmbH, Dr. Carmen v. Schöning.

Section 249
Nature and extent of damages

(1) A person who is liable in damages must restore the position that would exist if the circumstance obliging him to pay damages had not occurred.
(2) Where damages are payable for injury to a person or damage to a thing, the obligee may demand the required monetary amount in lieu of restoration. When a thing is damaged, the monetary amount required under sentence 1 only includes value-added tax if and to the extent that it is actually incurred.

Section 250
Damages in money after the specification of a period of time

The obligee may specify a reasonable period of time for the person liable in damages to undertake restoration and declare that he will reject restoration after the period of time ends. After the end of the period of time the obligee may demand damages in money, if restoration does not occur in good time; the claim to restoration is excluded.

Section 376 of the German Commercial Code
If there is a stipulation that the performance by one party of his part of the contract must be completed at a definitely fixed time or within a definitely fixed period, the other party may, if it is not so completed, either rescind the contract, or if the defaulting party is in delay, may claim damages for breach of contract instead of specific performance thereof. Such party can only claim i.e., refuses to furnish it at the proper time in spite of due demand made therefor.

In an action for damages for breach of contract, if the goods in question have an exchange or market price, the amount of the claim may be based upon the difference between the contract price and the exchange or market price at the time and place at which the contract should have been performed.

If the goods have an exchange or market price, the result of an actual sale or purchase thereof made otherwise than at such price can only be made the basis of the claim for damages if such sale or purchase was effected immediately after the time or the expiration of the period stipulated for performance. The sale or purchase, if not effected by auction, must be effected at current price through a broker authorised to effect sales of a similar nature or an authorised auctioneer.

The rule stated in sect. 373, paragraph 4, applies to such sale by public auction. The creditor must immediately notify the debtor of the sale. In default of such notification he is liable to pay damages for any resulting loss.

2. Cost-benefit elements

The new market practice (i.e. “as of now trading parties will no longer refrain from exercising their right to damages”) will be introduced through the entry into force of Article 7 of the CSDR in conjunction with the corresponding regulatory technical standards.
Associated costs: none.

Additional collateralisation costs (for settlement level): none.

Implementation by CSDs: we assume CSDs will need to indicate in their internal rules and terms and conditions (and inform their clients) that new practices will be established in national markets when the RTS enter into force.
Associated costs: negligible.

The related obligation to have in place a (fully automated) method of disseminating information (especially relating to the buy-in: initiation, outcome, forwarding to other market participants, CSD reporting to supervisors) and of paying the cash compensation will require substantial adjustments to the systems of all market participants. As already pointed out in our response to ESMA’s consultation paper of December 2014, such adjustments will take a considerable amount of time. We therefore urge ESMA to reconsider the period needed for due implementation, especially in view of the operational challenges posed by the T2S project.
The associated costs will be quite significant, but would be the same under all three options.

Q2: Please indicate whether the assumption that the trading party has all the information required to apply the buy-in would be correct, in particular in cases where the fail does not originate from the trading party, but would rather be due to a lack of securities held by one of the intermediaries within the chain.

It is indeed correct to assume that the trading party has all the information it needs to apply the buy-in. The fail report contains any necessary details which a trading party might lack.

Even in the event of a settlement agent (one of the intermediaries in the chain) being responsible for the fail, the fail report will give the trading parties all the information required to enable

- the failing party to acquire the missing securities within the extension period;
- or the receiving party to initiate a buy-in after the extension period ends.

The trading parties themselves both have and forward all details of the transaction they wish to conclude. The only additional item of information required is that the transaction has not been settled as agreed. The parties will be notified of this fact by the CSD via the relevant chain of intermediaries.

Q3: Should you believe that the collateralisation costs attached to this option are significant, please provide detailed quantitative data to estimate the exact costs and please explain why a participant would need to collateralise its settlement instructions under this option.

We most certainly believe that option 2 would give rise to significant collateralisation costs. Though it is possible that a CSD participant will have a direct contractual relationship with the trading party, this will not necessarily be the case. There may be a chain of several intermediaries between the CSD participant and the trading party (see the chart in our reply to Q1).

And irrespective of whether or not a direct contractual relationship exists, the risk of non-payment by each contracting party will need to be individually assessed on the basis of prudential risk measurement principles and be collateralised accordingly. Regulatory capital will also have to be set aside to cover the risks. In the process, the participant will need to obtain and also assess information about persons involved it does not know and with which it has no direct contractual relationship.

Our starting point for an estimate of what this would have meant for the German OTC market in 2014 is a total amount of

€27,958,528,500,000.00
(twenty-seven trillion, nine hundred and fifty-eight billion, five hundred and twenty-eight million five hundred thousand euros).

Collateral would have been needed both for settlement instructions relating to securities which were not (yet) held at the time the instruction was given and for settlement instructions relating to securities which could theoretically have been put to use elsewhere until the time of delivery. We have consequently assumed that collateral would have been involved in 10% of all transactions.[7] This gives an amount of around

€2.8 trillion.

The actual collateralisation costs would depend on the case-by-case credit quality and risk assessment and on the capital requirements involved.

The basis for the above figures is the total volume of OTC transactions settled in 2014 by Clearstream Banking AG Frankfurt, the German CSD. A total of 82.68 million transactions[8] worth a total of €79.882 trillion were settled for the German market as a whole. OTC transactions accounted for 35% of this amount. Given that the consultation is focused on OTC business, we believe this approach to be an appropriate one. Naturally, there are also other calculation methods, including CCP-based approaches. As regards the figures, they represent pure OTC transactions while on-exchange OTC trades could also have been taken into consideration as well.

[7] The exact percentage will depend on the type of client: for some, such as funds, the percentage may be lower, while for other market participants, the percentage is likely to be far higher than 10%.

[8] http://www.clearstream.com/clearstream-en/newsroom/clearstream-s-december-and-year-2014-figures/69886

When it comes to the collateral and margin for DvP settlement instructions, it needs to be borne in mind that margin depends on the asset class, quality and remaining maturity (of bonds, for example) of the financial instrument (ISIN) in question. It is therefore not possible to calculate an “average margin” on which to base an estimate.

To nevertheless get some idea of the scale of the ramifications of option 2, we have taken a mixed calculation of margin for the following types of instrument:

- for high-quality, highly liquid bonds/collateral (HQLAs) such as German Bunds with a remaining maturity of six to ten years, around 3% would be required;
- for corporate bonds around 6%;
- for equities the requirement could be 50-60% or even as much as 100%.

Based on a mixed calculation of only around 5%, the value of collateral required in 2014 **in the German market alone** for an assumed 10% of the total transaction amount mentioned above would have been

€140 billion
(= 5% of €2.8 trillion).

The collateral would have to be calculated and posted for each day that the risk of an obligation to pay the cash compensation exists. This could amount to a period of nine or more calendar days from the time the delivery instruction was entered to the time it became clear that no buy-in had been initiated (two business days to ISD, four business days for the extension period, one business day for the buy-in, plus two calendar days for the weekend – this is excluding additional weekend days, bank holidays and special extensions such as liquidity or SME deferrals). In view of the usual settlement efficiency rate, however, we expect an average of three to four days to apply. On top of that, price risk during this period would have to be taken into account – the risk of prices rising substantially is especially high with illiquid financial instruments since a mandatory buy-in would see a steep increase in demand.

The above assumption is for cases where there is a direct contractual relationship between the failing CSD and the failing party. Each additional intermediary inserted in the chain between them would push up the need for collateral and the actual collateralisation costs would **increase exponentially** as a result. It would not be possible to transfer the collateral along the chain and each intermediary would have to determine its own capital requirements individually.

We basically share ESMA’s view that actual defaults are likely to be comparatively infrequent and so the failing participant will not normally have to pay the cash compensation. Nevertheless, all settlement transactions have to be included when considering the risks. This is because any of the delivery instructions may theoretically fail and, in any of the ensuing buy-ins, the trading party may remain inactive.

To assess the risks involved, the CSD participant would have to evaluate the creditworthiness of its client (and possibly of an associated chain of intermediaries) and also weigh the behaviour of the trading party which would have to perform the buy-in and which the participant would not know. The fail rates of the type of transaction involved would also need to be considered.

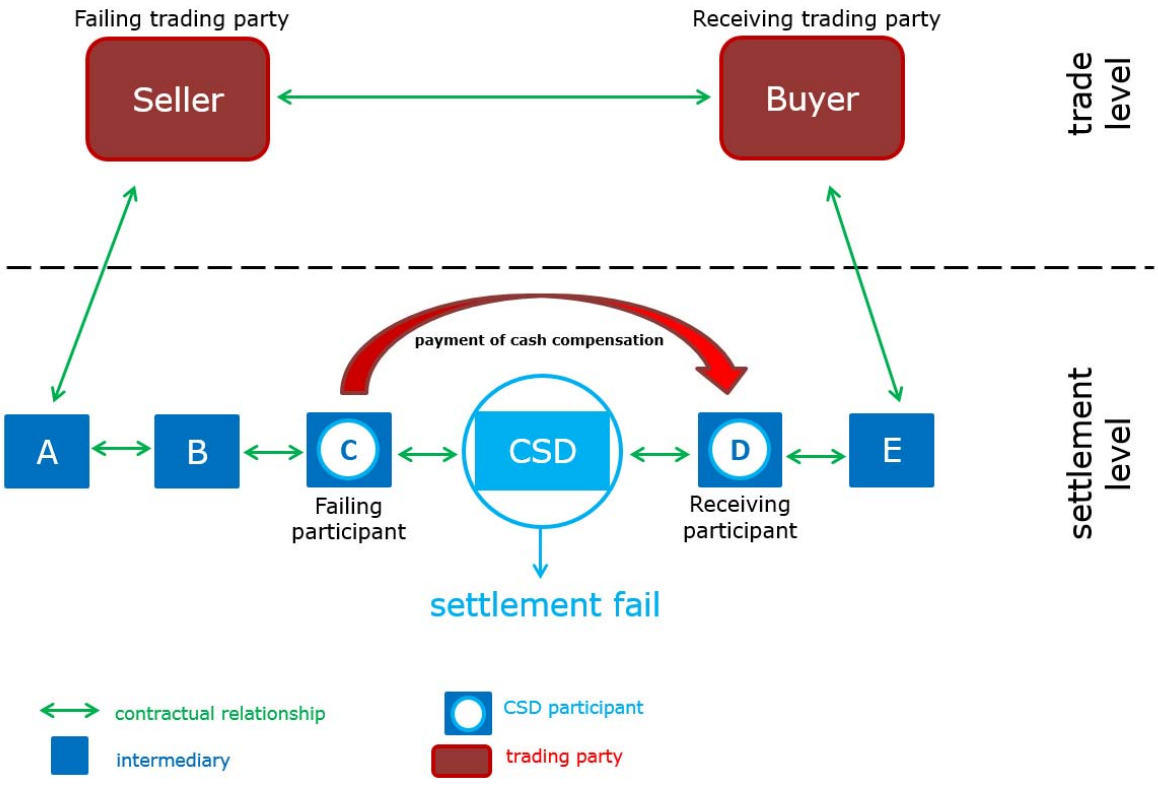
In addition to the collateralisation costs, the affected CSD participants and intermediaries would also need to set aside **regulatory capital**.

It needs to be borne in mind that, given, on the one hand, the business model of many custodians and the amount of regulatory capital needed to cover their low-risk business, and, on the other hand, the potentially high amounts of cash compensation involved (OTC!), even a low risk of default could generate substantial collateralisation costs.

A study by the European Central Securities Depositories Association (ECSDA) entitled "2012 Statistical Exercise on Matching and Settlement Efficiency" showed settlement efficiency in the German market on ISD+1 that year to be 99.91% in terms of value and 98.80% in terms of volume[9]. Despite this high level of efficiency, some of the transactions which were not settled could still have required very large amounts of cash compensation to be paid under the proposed new rules. The risk management of banks which engage in custodian business only is not equipped to accommodate such amounts as things stand.

Q4: If you believe that option 1 (trading party executes the buy-in) can ensure the applicability of the buy-in provisions are effectively applied, please explain why and what are the disadvantages of the proposed option 2 (trading party executes the buy-in with participant as fall back) compared to option 1, or please evidence the higher costs that option 2 would incur. Please provide details of these costs.

We see the following difficulties **in addition to** the disadvantages described above in our reply to Q1.



[9] 2012 Statistical Exercise on Matching and Settlement Efficiency, ECSDA, page 7.

The CSD participant (C) would need to have a contractual agreement in place with its client (B) under which the client undertook to reimburse any cash compensation paid by the CSD participant. There is no legal foundation for an agreement of this kind, however.

Nor would C have any economic leverage to induce B to make such an undertaking unless C terminated the business relationship altogether. As explained in our reply to Q1, the legal situation under German law is that the failing trading party (seller) has an obligation to pay damages to the receiving trading party (buyer). If the fail was caused by an agent (e.g. A, B or C) used to perform the seller's obligations in the delivery process, the seller would be entitled to be indemnified by its agent A, which in turn could claim reimbursement from B, and so on down the chain. No such entitlement exists in the opposite direction, however. The failing participant (C) is not able to demand cash compensation from its client (B). Although Article 15(3)(e) of the draft RTS requires the CSD rules to "provide that the participant shall recover [the] amount from its client", we doubt that such a requirement could be enforced. Entitlement to reimbursement would require a basis in civil law, not in a regulatory technical standard. B would be equally unable to demand reimbursement from its client (A). B would only commit itself to reimbursing C for the cost of the cash compensation if B was sure of obtaining reimbursement itself from A. The longer the chain of intermediaries, the greater the number of contractual obligations which each link in the chain would have to agree on and enforce. Technical standards cannot establish a legal basis which would guarantee that C was ultimately reimbursed for the cash compensation by the failing trading party (seller). Even if it seemed politically desirable to require the CSD participant (C) to assume liability under a guarantee, particularly so as to avoid potential third-country issues, we do not believe this would be legally enforceable.

What is more, option 2 could produce extremely unfair situations triggered by mere chance. If, for example, an intermediary in the chain became insolvent, the reimbursement for the cash compensation could no longer be passed down the chain. As a result, the cash compensation would end up being paid for by a person that had not caused the damage and should not have to bear the consequences. By contrast – and unlike under option 1 – the person that actually caused the damage (the failing party) would not face any consequences at all.

On top of that, there is a danger that the fall-back arrangement (payment of cash compensation by the failing participant) could lead to inappropriate behaviour on the part of trading parties. Article 15(3)(e) requires the failing participant to pay cash compensation unless it can prove to the CSD that the buy-in was "performed" (initiated? executed?) or that "the trading party" (which one?) is subject to insolvency proceedings. It will normally be difficult for the failing participant to provide evidence of either since it will not necessarily have a contractual relationship with the trading parties. There is thus a risk of the participant having to pay compensation even if the buy-in has been performed, though without notification of the fact being given. In any event, this provides no incentive for the receiving party to execute a buy-in.

Nor would option 2 set any incentive for the seller to take action since it could always rely on another market participant (the buyer or C) doing the work to resolve the non-delivery. The seller would simply be presented with a bill at the end. If a buy-in seemed unlikely to be successful, yet the market price lay below the price agreed, the buyer might have an incentive to ignore its obligation to execute a buy-in. This is because the CSDR in conjunction with option 2 would not require it to pay cash compensation to the seller based on generally prevailing principles. Instead, it could exploit the fact that C would have to pay D the cash compensation (which would equal zero if the market price was low). The buyer would thus

be able to ensure it was in an economically more advantageous situation than would have been the case under option 1.

Although highly unlikely, there is also a possibility of both trading parties (buyer and seller) colluding in a sale of securities which the seller does not actually hold. A price much lower than the market price would be agreed. The buyer would not execute a buy-in and participant C would have to pay cash compensation, which would be forwarded by D along the chain to the buyer. The buyer and seller could share the cash compensation and C would have to try – despite the legal difficulties outlined above – to obtain reimbursement.

The transfer of cash compensation along the chain from D to the buyer is also a potential source of default risk from the buyer's perspective.

The costs involved would consist, first, of the collateralisation costs mentioned in our reply to Q3 and, second, the amount of the cash compensation payment which could not be passed on to the failing party in the event of an actual default.

Q5: Please provide detailed quantitative evidence of the costs associated with the participant being fully responsible for the buy in process and on the methodology used to estimate these costs.

Replying to this question poses several challenges. Some key details of option 3 are as yet unclear, which makes it virtually impossible to provide robust evidence of the costs at present.

It is not clear, for instance, which market participant is supposed to pay the purchase price to the buy-in agent or how and by whom the payment should be made if the buy-in price is higher than the price originally agreed. If the financial instruments were to be delivered by the buy-in agent to the receiving CSD participant on a DvP basis, the CSD participant would have to be able to pay the entire sum due to the buy-in agent. This problem notwithstanding, we have based the following estimates on the figures used as our starting point in our reply to Q3, i.e. a total of around €28 trillion for OTC transactions and around €2.8 trillion (= 10%) for collateralisation purposes.

Should the seller's side, i.e. the **failing participant**, be responsible for paying the purchase price and the buy-in costs, the failing participant (C) will have to demand collateral worth this amount. Para 36 of the consultation paper rightly points this out. The value of this collateral will not be "up to 100% of their settlement instructions", however, but this amount plus an add-on for a higher buy-in price and the costs of the buy-in.

Applied to our initial figures, this means that the participants would have to collateralise up to 100% of the value of the transactions which might be subject to a buy-in, namely €2.8 trillion plus the additional amount for the higher prices and costs. We have estimated this at an amount equivalent to the cash compensation, i.e. €140 billion. On this basis, the collateralisation costs in the German market in 2014 would have been

€2.94 trillion.

If, however, it is the **receiving participant** which has to pay the buy-in agent, the buy-in agent will have to obtain the same amount of collateral from the receiving participant (original purchase price plus add-on for higher price and costs, i.e. a market total of €2.94 trillion). On top of that, the failing participant, which would have to reimburse the higher price and costs, would demand the corresponding collateral (i.e. €140 billion) from the failing party. In this case, collateral worth a total of

€3.08 trillion

would have needed to be posted in the German market in 2014.

Should the receiving participant have direct access to the receiving party's funds to cover the original purchase price (which is not normally the case), then collateralisation costs would be reduced by a corresponding amount.

Since the receiving CSD participant has to commission the buy-in agent to execute a buy-in for the buyer, the participant will be obliged to engage in a trading activity which will be new to many custodians. To perform this additional banking service, these custodian banks will need to obtain corresponding permission from their banking regulator and will be subject to additional supervision by the competent authority. The banks will also have to invest not inconsiderable amounts in establishing a new operational unit and the processes needed to support it. Added to this is the cost of building a **trading and processing department**, including infrastructure, IT systems and personnel/experts for the following areas:

- front office (trade desk)
- middle office (accounts, agreements, bookkeeping, monitoring the settlement of trading activities)
- back office
  - location management
  - reconciliation
  - neutral control
  - regulatory reporting.

Each position needs a minimum of two FTEs to meet the requirements of the so-called "four-eyes principle".

Conclusion

For the reasons explained above, we are convinced that option 1 is the only model that could feasibly and reasonably be implemented in the EU. We would urge ESMA to weigh the benefits of option 1 against the drawbacks of the other two options, especially the huge costs, risks, and legal and operational uncertainty involved.

Although we appreciate that ESMA feels itself bound by the sometimes ambiguous wording of Article 7 of the CSDR, we nevertheless take the view that option 1 does not exceed ESMA's mandate; nor do we agree that the option "may not be legally sound".[10] On the contrary, option 1 is a model which is based

[10] Para 14(b) of the consultation paper.

on existing technical procedures and legal structures and which could consequently be implemented in a reasonable and proportionate manner. This would be fully consistent with Article 7(15)(c) of the CSDR, which tasks ESMA with developing an “appropriate buy-in process”. It is not option 1, in our eyes, which has the weakness of being “exposed to legal challenges” as claimed in para 15 of the consultation paper, but rather options 2 and 3.

Compared to option 1, options 2 and 3 would, as demonstrated above, generate substantial and totally unnecessary costs. In addition, they would introduce considerable risks, particularly into the settlement area. Given the uncertainty concerning the operational processes, the allocation of liability, the absence of a basis in civil law and the possible challenges of complying with prudential requirements, these two options represent models which are clearly **not** “legally sound” and which would certainly be “exposed to legal challenges”.

What is more, options 2 and 3 run totally counter to the CSDR’s objective of ensuring that securities settlement is secure and efficient, and would instead give rise to incalculable financial, operational and legal risks. This, in turn, would result in rising settlement fees and could cause severe damage to the markets in the EU. The risks and costs associated with options 2 and 3 are out of all proportion to the expected benefits (e.g. for Germany: collateralisation costs of €140 billion and €2.94/3.08 trillion respectively plus regulatory capital – and all with the aim of trying to enhance a settlement efficiency of already 99.9%).

In conclusion, we would like to propose the following amendments to option 1:

Whereas:
(1) In order to support an integrated market for securities settlement, the buy-in process should be harmonised and should include some common requirements. Given the importance of incentivising timely actions to address settlement fails, it is important to keep all relevant involved parties informed during the process.

(2) Regulation (EU) No 909/2014 refers to participants in different infrastructures, CSDs, CCPs and trading venues. It is essential for the correct identification **of** the entity responsible for executing a buy-in that **“**parties**”** and **“**participants**”** are distinguished, where **“**parties**”** are the trading parties in an OTC transaction or in a trading venue or the clearing members in a CCP, and **“**participants**”** are participants to a securities settlement system of a CSD.

(3) The buy-in process should provide for a way to address settlement fails without jeopardising the risk profile of CSDs~~, CCPs~~ or trading venues. Buy-in should not imply any **additional** ~~unnecessary~~ risk taking by a CSD~~, a CCP~~ or a trading venue. A CSD or a trading venue should therefore not perform the buy-in as counterparty on its own account.

(4) The settlement of an instruction aims at ensuring the final settlement of a transaction concluded between trading parties. For transactions executed on a trading venue and for transactions cleared by a CCP, the trading venue members**, the CCP** and the clearing members respectively are the parties to the transaction and therefore the parties that should perform the buy-in. They have the relevant information to execute it. For transactions not executed on a trading venue nor cleared by a CCP,

~~Either Option 1 and 2 (trading party)~~
the buy-in should be performed by the trading ***party~~ies~~*** *that concluded that transaction.* ~~*The original parties are the ones with the relevant information on why the settlement failed and who the relevant counterparty responsible for it is.*~~
~~Option 3 (Participant)~~
~~*the CSD participants are the immediate parties to be identified by the CSD as being responsible for not delivering the relevant instruments. Therefore, in order to ensure the efficiency of the buy-in process, the CSD participants should be responsible for the buy-in process affecting these transactions.*~~

(5) Given the different parties involved in a settlement chain, they need to be informed of the status of the buy-in process at key points in time. This information should be formalised by way of notification in order for the **trading** ~~counter~~party to be alerted on the status of the actions to settle the transaction and take action as need be.

(6) ~~Either Option 1 and 2 (trading party)~~
The buy-in agent will act upon request from the receiving party, but the cost will be borne by the failing party. It is appropriate to set a framework so that the buy-in agent will act in the interest of the failing party.
~~or Option 3 (participant)~~
~~*The buy-in agent will act upon request from the receiving participant, but the cost will be borne by the failing participant. It is appropriate to set a framework so that the buy-in agent will act in the interest of the failing participant.*~~

(7) ~~Either Option1 and 2 (trading party)~~
In order to limit the number of buy-ins and preserve liquidity of the market for the relevant instrument, the failing party should be allowed to deliver the financial instruments to the receiving party up to the moment when it is informed that the buy-in agent is appointed. As from that point in time, in order to prevent a situation where the receiving party would receive twice the financial instruments from the buy-in agent and from the failing party, the failing party should be able to deliver the financial instruments to the buy-in agent or to the entity performing the auction with the approval of that agent or entity.
~~or Option 3 (participant)~~
~~*In order to limit the number of buy-ins and preserve liquidity of the market for the relevant instrument, the failing participant should be allowed to deliver the financial instruments to the receiving participant up to the moment when it is informed that the buy-in agent is appointed. As from that point in time, in order to prevent a situation where the receiving participant would receive twice the financial instruments from the buy-in agent*~~

~~*and from the failing participant, the failing participant should be able to deliver the financial instruments to the buy-in agent or to the entity performing the auction with the approval of that agent or entity.*~~

~~(8) A settlement instruction that is not eligible for partial settlement may fail for the entire amount of financial instruments of that instruction, even if part of the financial instruments is available for delivery to the account of the delivering participant. As the purpose of the buy-in is to address settlement fails, the receiving participant should accept partial settlement from the last business day of the extension period, so that a buy-in will only be performed for the non-delivered financial instruments. Partial settlement should not apply to settlement instructions that have been put on hold by a participant, since this may indicate that the financial instruments in the account do not belong to the client for which the instruction has been entered into the system. For the same reason, the financial instruments received as part of the buy-in process should be delivered to the receiving participant, even if the amount of such instruments allow only settlement of part of the settlement instruction.~~

[We suggest deleting recital 8 as this is only relevant to option 3. The seller will initiate a partial delivery in its own interest. If partial delivery takes place, the buyer must not refuse acceptance. So only the missing portion will need to be bought-in. This could be clarified by a new recital.]

~~(9) With the aim to balance the uncertainty resulting from the buy-in process and the interest of the parties to close the transaction, in case the buy-in fails, in the absence of express communication of the receiving party choice, the buy-in process should be terminated and the cash compensation should be paid.~~

[We suggest deleting recital 9 as this is only relevant to option 3.]

~~(10) Only necessary for Option 2~~

~~Contractual arrangements between parties of a settlement chain can only produce their effects if the parties have an economic interest in making sure that the terms of a contract are complied with. Therefore, for the buy-in process to be effectively applied, CSDs participants should be responsible for the cash compensation in case the buy-in process is not applied through the appropriate contractual arrangements.~~
~~In some circumstances, a financial instrument may no longer be available on the market, for instance when a financial instrument has been redeemed or converted, in which case a buy-in is no longer possible. The buy-in process should in that case be accelerated, so that cash compensation could be paid before the end of the buy-in process, thus limiting the period of uncertainty.~~

(11) ~~Either Option1 and 2 (trading party)~~
A transaction may in some cases be part of a chain of transactions and instructions. In order to avoid that a buy-in has to be performed for each settlement fail in a chain of transactions, ~~*a CSD should allow*~~ *the parties* ***are entitled*** *to pass on the buy-in notification, which could be further passed on to other parties involved in the cause of the settlement fail. The CSD should remain informed of the pass-on and of the identity of the party receiving that notification.*
~~or Option 3 (participant)~~
~~*A transaction may in some cases be part of a chain of transactions and instructions. In order to avoid that a buy-in has to be performed for each settlement fail in a chain of transactions, a CSD should allow its participants to pass on the buy-in notification, which could be further passed on to other participants involved in the cause of the settlement fail. The CSD should remain informed of the pass-on and of the identity of the participant receiving that notification.*~~

Article XX
Definition

- ‘party’ means a party to a transaction including a member of a trading venue and for transactions cleared by a CCP, a clearing member or a CCP.

SECTION 3

Details of operation of the appropriate buy-in process
(Point (c) of Article 7(15) of Regulation (EU) No 909/2014)

Article 12
General

1. The buy-in process shall be initiated at the end of the business day following the elapse of the extension period.

2. The buy-in process shall comprise the following elements:
(a) the notifications, as specified in Article 13;
(b) the appointment without undue delay of a buy-in agent, where relevant;
(c) the execution of the buy-in process through the acquisition of the securities by the buy-in agent or through an auction;
~~Either Option 1 and 2 (trading party)~~
(d) the completion of the buy-in process through the delivery to the receiving party by the buy-in agent or the entity executing the auction, of all ~~or some of the~~ bought-in securities ***versus payment of the price of the bought-in securities. Where the buy-in failed and was not deferred, the buy-in process is completed by*** *~~and~~ the payment of the cash compensation for the non-delivered securities to the receiving party by the failing party.*
~~or Option 3 (participant)~~
~~*(d) the completion of the buy-in process through the delivery to the receiving participant by the buy-in agent or the entity executing the auction, of all or some of the bought-in securities and the payment of the cash compensation for the non-delivered securities to the receiving participant by the failing participant*~~
(e) the cancellation of the original settlement instructions.

Article 13
Notifications

1. The notifications referred to in point (a) of Article 12(2) shall be served upon the following steps and contain the following information:

(a) without delay upon the initiation of the buy-in process, a notification specifying the settlement fail it relates to;

(b) without delay upon the appointment of the buy-in agent, a notification specifying the date of the appointment and the name of the buy-in agent;

(c) **at the latest** on the last business day of the buy-in process, a notification specifying the results of the buy-in process;

(d) as the case may be, without delay, upon election of a choice made pursuant to Articles 15(1)(b) or (c), 15(2)(b) or (c) and 15(3)(b), a notification of such choice;

(e) as the case may be, at the latest upon the last business day of the deferral period, a notification specifying the results of the deferred buy-in process.

2. For transactions executed on a trading venue and not cleared by a CCP, the receiving party shall provide the relevant notifications referred to in paragraph 1 to the failing party and to the trading venue which shall transmit it to the CSD.

3. For transactions cleared by a CCP, the CCP shall provide the notifications referred to in paragraph 1 to the failing clearing member and to the CSD.

4. ~~Either Option1 and 2 (trading party)~~
For transactions not executed on a trading venue nor cleared by a CCP, the receiving party shall provide the notifications referred to in paragraph 1 ***through the chain of settlement intermediaries*** *to the failing party and ensure that the CSD is informed of the initiation, execution and results of the buy-in.*
~~or Option 3 (participant)~~

~~*For transactions not executed on a trading venue nor cleared by a CCP, the receiving participant shall provide the notifications referred to in paragraph 1 to the CSD, which shall transmit it to the failing participant.*~~

Article 14
Appointment of the buy-in agent and execution

1. For transactions executed on a trading venue and not cleared by a CCP, the rules of a trading venue shall provide that the receiving party shall appoint a buy-in agent. The trading venue shall appoint a buy-in agent where the receiving party does not do so within two business days following the elapse of the extension period.

2. For transactions cleared by a CCP, the rules of a CCP shall provide that the CCP shall appoint a buy-in agent or shall execute a buy-in through an auction.

3. ~~Either Option1 and 2 (trading party)~~
For transactions not executed on a trading venue nor cleared by a CCP, the receiving party shall be responsible for appointing a buy-in agent and a CSD shall include in its rules that:

(a) the participant shall ensure that ***its clients are informed of the mandatory buy-in process set out in these RTS and that they have an obligation to inform their clients thereof. The participant shall do its utmost to ensure that*** *the receiving party informs* ~~*it*~~***the participant*** *of its choices pursuant to Article 15(3)(b) or (c);*

(b) *the participant shall inform the CSD with respect to the choices it was informed of pursuant to point (a).*

~~Or Option 3 (participant)~~
~~*For transactions not executed on a trading venue nor cleared by a CCP, a CSD shall include in its rules that:*~~
~~*(a) the receiving participant appoints a buy-in agent;*~~

~~*(b) its participants inform the CSD about the results of the buy-in and the choice made pursuant to Article 15(3)(b) or (c).*~~

4. ~~Either Option1 and 2 (trading party)~~
The buy-in agent shall not have any conflict of interests in the execution of the buy-in process and shall execute the buy-in process on the terms most favourable to the failing party, in accordance with Article 27 of Directive 2014/65/EU.
~~or Option 3 (participant)~~
~~*The buy-in agent shall not have any conflict of interests in the execution of the buy-in process and shall execute the buy-in process on the terms most favourable to the failing party or participant, in accordance with Article 27 of Directive 2014/65/EU.*~~

5. ~~Either Option1 and 2 (trading party)~~
The failing party ~~*Failing parties*~~ *shall be allowed to deliver the securities* ***to the receiving party*** *until the receipt of the notification referred to in Article 13(1)(b).*
The failing ***party***~~***ies***~~ *shall thereafter be allowed to deliver the securities to the buy-in agent or to the entity that executes the buy-in auction upon agreement of that entity.*
~~or Option 3 (participant)~~
~~*Failing parties for transactions executed on a trading venue or cleared by a CCP and failing participants for transactions that are not executed on a trading venue nor cleared by a CCP shall be allowed to deliver the securities until the receipt of the notification referred to in Article 13(1)(b).*~~
~~*The failing parties or participants shall thereafter be allowed to deliver the securities to the buy-in agent or to the entity that executes the buy-in auction upon agreement of that entity.*~~

Article 15
Completion of the buy-in process

1. For transactions executed on a trading venue but not cleared by a CCP:
(a) when the buy-in has been successful, the securities shall be delivered to the receiving party and the failing and receiving parties shall ensure that the settlement instruction is cancelled;

(b) where the buy-in failed, the receiving party shall notify without delay to the trading venue and to the failing party whether it prefers to defer the buy-in, or whether it prefers to receive the cash compensation. In the absence of such notification, the failing party shall pay to the receiving party the cash compensation;

(c) where the buy-in results in a partial delivery of securities, the receiving party shall accept the bought-in securities. For the non-delivered securities, the receiving party shall notify without delay to the trading venue and to the failing party whether it prefers to defer the execution of the buy-in or to receive cash compensation. In the absence of such notification, the failing party shall pay the cash compensation to the receiving party.

2. For transactions cleared by a CCP:

(a) where the buy-in has been successful, the securities shall be delivered to the receiving clearing member, and upon completion of the buy-in process, the CCP shall ensure that the settlement instruction is cancelled;

(b) where the buy-in failed, the CCP shall notify without delay to the failing clearing member whether it prefers to defer the buy-in, or whether it prefers to receive the cash compensation. In the absence of such notification, the failing clearing member shall pay to the CCP the cash compensation, which the CCP shall pass to the receiving clearing member;

(c) where the buy-in results in partial delivery of securities, the receiving clearing member shall accept the bought-in securities. For the non-delivered securities, the receiving clearing member shall notify without delay to the CCP whether it prefers to defer the buy-in process or to receive the cash compensation. In the absence of such notification, the failing clearing member shall pay to the CCP the cash compensation, which the CCP shall pass to the receiving clearing member.

3. ~~Either Option1 (trading party)~~
For transactions not executed on a trading venue nor cleared by a CCP:
(a) where the buy-in has been successful, the securities shall be delivered to the receiving party **versus payment;** ~~and the failing and receiving parties shall ensure that the settlement instruction is cancelled;~~

(b) where the buy-in failed, the receiving party shall notify to the failing party without delay whether it prefers to defer the buy-in, or whether it prefers to receive the cash compensation. In the absence of such notification, the failing party shall pay to the receiving party the cash compensation;

(c) where the buy-in results in a partial delivery of securities, the receiving party shall accept the bought-in securities. For the non-delivered securities, the receiving party shall notify to the failing party without delay whether it prefers to defer the buy-in or to receive the cash compensation. In the absence of such notification, the failing party shall pay to the receiving party the cash compensation.

(d) the failing and receiving parties shall ensure that the original settlement instruction is cancelled.

~~or Option 2 (trading party with the participant as a fall back)~~
~~*For transactions not executed on a trading venue nor cleared by a CCP:*~~
~~(a) where the buy-in has been successful, the securities shall be delivered to the receiving party and the failing and receiving parties shall ensure that the settlement instruction is cancelled;~~

~~(b) where the buy-in failed, the receiving party shall notify without delay to the failing party whether it prefers to defer the buy-in, or whether it prefers to receive the cash compensation. In the absence of such notification, the failing party shall pay to the receiving party the cash compensation;~~

~~(c) where the buy-in results in a partial delivery of securities, the receiving party shall accept the bought-in securities. For the non-delivered securities, the receiving party shall notify to the failing party without delay whether it prefers to defer the buy-in or to receive the cash compensation;~~

~~(d) where the CSD does not receive the information referred to in Article 13(3)(c) on the results of the buy-in on the business day following the end of the buy-in process, it shall notify the failing participant of the absence of evidence that the buy-in process was performed;~~

~~(e) where the failing participant does not provide to the CSD the evidence that the buy-in process was performed or that the trading party is subject to an insolvency proceeding, within one business day following the notification referred to in the first subparagraph, the failing participant shall pay the cash compensation to the receiving participant. The CSD rules shall provide that the participant shall recover that amount from its client.~~

~~or Option 3 (participant)~~
~~*For transactions not executed on a trading venue nor cleared by a CCP:*~~
~~(a) where the buy-in has been successful, the securities shall be delivered to the receiving participant and the failing and receiving participants shall ensure that the original settlement instruction is cancelled;~~

~~(b) where the buy-in failed, the receiving participant shall notify without delay to the CSD whether it prefers to defer the buy-in, or whether it prefers to receive the cash compensation. In the absence of such notification, the failing participant shall pay to the receiving participant the cash compensation;~~

~~(c) where the buy-in results in a partial delivery of securities, the receiving participant shall accept the bought-in securities. For the non-delivered securities, the receiving participant shall notify without delay to the CSD whether it prefers to defer the buy-in or to receive the cash compensation. In the absence of such notification, the failing participant shall pay to the receiving participant the cash compensation.~~

4. The buy-in is deemed to be impossible only when the relevant securities do not exist any longer as a result of the actions taken by the issuer of such securities. In such case, the receiving party ~~or participant~~ shall receive the cash compensation **from the failing party**.

For transactions cleared by a CCP, the CCP shall transfer the received cash compensation to the receiving clearing member.

Article 16
Partials

When the relevant securities are available in the account of the delivering participant, partial settlement offered by CSDs in accordance with Article 3(9) shall be applied from the last business day of the extension period**. The failing party shall instruct the failing participant of any partial delivery that it wishes to take place. The failing participant shall send a settlement instruction to the CSD accordingly**~~,~~ ~~irrespective of any contractual choice made by the participants~~. **The receiving participant and the receiving party shall accept such partial delivery.**

Article 17
Minimising the number of buy-in processes

~~Either Option 1 and 2 (trading party)~~
1. For transactions referred to in Article 15 (3), the failing party that is failing because of a failed receipt of securities can pass-on to the party causing the fail the notification referred to in point (a) of Article 12(2). The latter party in turn can pass on the notification to the party that originally caused the settlement fail. The party who has caused the settlement fail and who receives that notification shall pay to the receiving party identified in the notification the amounts referred to in Article 7(6) and (8) Regulation (EU) No 909/2014 or the cash compensation.

2. A receiving party who is also a failing party can pass on the notification referred to in point (a) of Article 12(2) to the party that originally caused the settlement fail. In such case, the former party shall not perform the buy-in as a receiving party.

3. A party who has passed on the notification referred to in point (a) of Article 12(2) shall ensure that the CSD is informed that it has passed-on that notification and of the identity of the party receiving that notification.

4. A party passing-on a notification referred to in point (a) of Article 12(2) shall notify the party in receipt of that notification and both shall ensure that the CSD is informed of the initiation, execution and results of the buy-in process.

~~Or Option 3 (participant)~~

~~*1. For transactions referred to in Article 15 (3), the failing participant that is failing because of a failed receipt of securities can pass-on to the participant causing the settlement fail the notification referred to in point (a) of Article 12(2). The latter participant can in turn pass on the notification to the participant that originally caused the settlement fail. The participant who has caused the settlement fail and who receives that notification shall pay to the receiving participant identified in the notification the amounts referred to in Article 7(6) and (8) Regulation (EU) No 909/2014 or the cash compensation.*~~

~~*2. A receiving participant who is also a failing participant can pass on the notification referred to in point (a) of Article 12(2) to the participant that originally caused the settlement fail. In such case, the former participant shall not perform the buy-in as a receiving participant.*~~

~~*3. A participant who has passed on the notification referred to in point (a) of Article 12(2) shall inform the CSD that it has passed-on that notification and of the identity of the participant having received that notification.*~~

~~*4. A participant passing-on a notification referred to in point (a) of Article 12(2) shall notify the participant in receipt of that notification and inform the CSD about the initiation, execution and results of the buy-in process*~~