



**EURONEXT / INTERBOLSA's comments on the ESMA Consultation Paper
on the Guidelines on participant default rules and procedures under CSDR**

INFORMATION ABOUT THE RESPONDENT

- **Name and address of the respondent**

Name

INTERBOLSA – Sociedade Gestora de Sistemas de Liquidação e de Sistemas Centralizados de Valores Mobiliários, S.A.

Address

Avenida da Boavista, n.º 3433, 4100-138, PORTO, PORTUGAL

- **Field of activity of the respondent**

INTERBOLSA is the Portuguese CSD, managing centralized securities systems and securities settlement systems.

The CSD activity is undertaken in the context of national regulations as a CSD (operating SSS) authorised and supervised by a public authority [Comissão do Mercado de Valores Mobiliários, the Portuguese Securities Market Commission (“CMVM”)].

CONTACTS

For any questions on this paper, please contact:

- (i) Isabel Vidal
Head of Legal, Regulation, Compliance, Custody and Settlement Affairs, Portugal
ividal@nyx.com
or
- (ii) Helena Teixeira Lopes
Legal Manager for Settlement and Custody
helena.lopes@interbolsa.pt



Introduction

Interbolsa – Sociedade Gestora de Sistemas de Liquidação e de Sistemas Centralizados de Valores Mobiliários, S.A. (“Interbolsa”), the Portuguese CSD, which is part of the EURONEXT Group, welcomes the European Securities and Market Authority’s initiative regarding the consultation paper launched on 31 March 2016, as regards the “Guidelines on participant default rules and procedures under CSDR”.

Actually, the harmonisation of the rules and procedures related to this issue is extremely relevant and has been discussed intensively in a TARGET2-Securities context and perspective.

Currently, the Central Securities Depositories (CSDs) and the National Central Banks (NCBs) are signing, in the context of T2S, a Collective Agreement (which in its article 2 identifies the rights and obligations of all parties with respect to the insolvency of a participant) and a set of insolvency procedures was discussed and its implementation is being analysed.

Therefore, Interbolsa considers extremely relevant that the Guidelines support the work already concluded by the CSDs and NCBs in a T2S context.

On the other hand, Interbolsa considers that the Guidelines on CSD participant default rules and procedures should lead to the creation of harmonised rules and procedures across CSDs and should be aligned with the rules and procedures on finality and insolvency already applying for other market infrastructures, namely for operators of payment systems and clearing systems.

As a member of the European Central Securities Depositories Association (“ECSDA”), Interbolsa has participated in the discussion of ECSDA’s responses to this consultation paper and supports the comments included in the paper prepared and submitted by ECSDA.

Nevertheless, Interbolsa considers important to also comment individually the ESMA Consultation Paper, even if, in general, we do not have divergent positions.

Therefore, Interbolsa presents in this document its response to the Consultation Paper issued by ESMA on 31 May 2016, on “Guideline on participant default rules and procedures under CSDR”.

QUESTIONS

(5.1.1) Procedure for establishing participant default rules

Q1. Do you consider other stakeholders should be involved in the definition of the default rules and procedures of a CSD? If so, which ones, and what should be the level of their involvement?

Additionally to the stakeholders identified in the proposal to be involved in the definition of the default rules and procedures of a CSD, Interbolsa considers that the national regulator (competent authority) should also be involved in this exercise. Actually, the communication received from the authorities designated under the Settlement Finality Directive (SFD) (most of the times the national regulator) is essential to the CSD to start the process and take the necessary actions related to the default of a participant, being the time of the communication crucial, namely to assess the moment of entry and irrevocability of the settlement instructions entered into the system.

(5.1.2) Acknowledgement of a participant's default

Q2. Do you think that such acknowledgement process is appropriate? In particular, do you consider it necessary for the CSD to verify the information regarding the default with the designated authority under the SFD before the CSD can take any action, or should the CSD be able to start taking actions based on its reasonable assessment of the participant's situation and on the reliability of the source that informed the CSD in the first place?

Being certain that the CSD can receive information related to the insolvency of a participant from several sources, it should be given to the CSD enough space to perform its reasonable assessment of the participant's situation regarding the reliability of the source that disclosed the information in the first place without the need for prior verification or acknowledgment with the designated authority under the Settlement Finality Directive (SFD).

Actually, being Interbolsa a T2S CSD the information regarding the insolvency of a participant can be disclosed through the T2S platform (entered by another CSD or a NCB). In this context,

the CSDs will share information and they should rely on the information disclosed by another CSD or NCB.

Only in case of doubt the CSD should verify the information received, namely with the designated authority under the SFD, before taking any action.

On the other hand, Interbolsa considers that if an insolvency proceedings is opened against a participant, Interbolsa shall (“as soon as possible”):

- (i) Share the information with its participants and all other entities involved.

For example, in a T2S context, Interbolsa should immediately inform the T2S platform in order to disseminate the information through the platform to all CSDs and NCBs impacted;

- (ii) Verify what type of settlement instructions exist in the system and the procedures to apply to each of it attending to the status of the settlement instruction (for example, verify if the moment of entry into the system (the so called SF1) has been reached).
- (iii) Provide all the relevant information it has collected to the competent authority.

Regarding the proposed list of information to be provided to the competent authority, identified in paragraph 18, Interbolsa has the following comments:

- a. Defaulting participant’s settlement instructions – The CSD can and should disclose the information regarding the pending settlement instructions. However it is difficult to predict what settlement instructions may fail to settle (could be none or all).
- b. Number of clients concerned – The CSDs that do not have direct holding systems, do not have information regarding clients. All the securities accounts opened in the CSD system are omnibus accounts.

(5.1.3) Actions a CSD may take in case of default

Q3. Do you consider that the actions listed are appropriate or that other actions should be listed? Should certain actions be mandatory, depending for instance on the type or size of default, the characteristics of the participant or the CSD or any other criteria?

Interbolsa agrees in general with the proposed actions listed. Actually, if an insolvency proceedings is opened against a CSD participant the actions to be taken should be the “suspension” or even the “exclusion” of the participant.

Nevertheless, and attending to the regime established in the SFD, namely the assessment and evaluation to be made regarding the settlement instructions of the default participant that have entered into the system before the moment the CSD was aware of the opening of such proceedings, the suspension or exclusion of the participant shall occur only when all the settlement instructions that should be processed are settled (legal effects of the SFD)

On the other hand, and considering the list of actions to be applied “where relevant”, Interbolsa does not understand the reference in point (e) to the “use of financial resources”. Are these financial resources related to the guarantees eventually provided by the participant to the CSD?

Interbolsa cannot accept that the financial resources referred in point (e) are the CSD own financial resources. Unlike CCPs and banks, CSDs (such as Interbolsa) that not provide banking-type ancillary services, are not expected to use their own financial resources in relation to the management of a participant’s default.

(5.1.4) Implementation of the default procedures

Q4. Do you think other items should be included in the internal plans?

No.

(5.1.5) Communication on the implementation of the default procedures

Q5. Do you think that information on the implementation of the default rules and procedures should be transmitted to other stakeholders? If so, which other stakeholders?

First of all, and considering the list of stakeholders provided, Interbolsa considers that the information to ESMA is not an obligation of the CSDs. In our opinion, the CSD shall inform its competent authority and the competent authority shall inform ESMA.

On the other hand, and considering a T2S environment, the CSD should inform, without undue delay, the T2S platform in order to disseminate the information to all CSDs and NCBs

participating in the T2S platform, and to allow all involved entities to take the necessary actions. Harmonised procedures will be implemented by all T2S CSDs and NCBs.

(5.2) Periodic testing and review of participant default procedures

Q6: Do you think that such testing and reviewing processes are appropriate?

Interbolsa considers that the performance of such tests at least annually, when the default rules and procedures do not change, do not seem adequate. Interbolsa believes that it would be feasible and adequate to perform tests every 2 or 3 years.

However, if the rules and procedures change the CSD should test the new procedures. The same should apply if an insolvency event occurs and the CSD detects that some procedures are not well assimilated or understood by its participants and the market.

On the other hand, each CSD should be able to accommodate the tests to be performed to its specific circumstances, and should have the possibility to limit the scope of the tests to the most relevant actions for its specific circumstances.

EURONEXT/INTERBOLSA thanks ESMA for the opportunity to comment on the Consultation Paper on “Guidelines on CSD participant default rules and procedures”.