ECSDA
European Central Securities
Depositories Association

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"Building a European Settlement Discipline Framework that works":

ECSDA comments on the ESMA Discussion Paper on CSDR technical standards (Part 1)

This paper constitutes the first part of ECSDA's comments on the ESMA Discussion Paper of 20 March 2014 on draft technical standards for the CSD Regulation ("CSDR")[1]. It covers questions 1 to 20 of the consultation and includes some additional comments.

We describe ECSDA's proposal for a harmonised European settlement discipline regime under the upcoming CSD Regulation. We have designed our proposal so that it is fully compatible with the Level 1 text of the Regulation, as published by the Council of the European Union on 24 April 2014 (outcome of the European Parliament's first reading[2]). We hope that this proposal will help ESMA in the drafting process for the CSDR technical standards under articles 6 and 7 of the Regulation. Whenever possible, we include some elements to be taken into consideration for the cost-benefit analysis to be included by ESMA in its impact assessment.

The recommendations contained in this paper are the result of joint work by European CSDs. They would imply important changes to current systems and processes. They have also been discussed with market participants, including in the context of the T2S Harmonisation Steering Group task force on settlement discipline.

[1] http://www.esma.europa.eu/system/files/2014-299_discussion_paper_on_central_securities_depositories_0.pdf
[2] http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%208512%202014%20INIT

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Executive Summary

The following table summarises ECSDA's proposal for a harmonised settlement discipline regime in the European Union. **Implementing such a regime will require considerable investments and adaptions from both CSDs and market participants.**

Level 1 CSD Regulation	Level 2 technical standards – ESMA or EC "mandate"	Level 2 technical standards – ECSDA proposal for a harmonised EU settlement discipline regime
Article 6(2): Measures facilitating settlement on ISD	*"the details of the procedures facilitating settlement referred to in paragraph 2 [i.e. settlement on the intended settlement date, including the promotion of early settlement on the intended settlement date]"*	**In order to promote settlement early on the intended settlement date (ISD), technical standards <u>should</u>:** (1) Make matching at CSD level compulsory, except (a) when instructions have already been matched by a trading venue or a CCP and are received by the CSD via a trade feed, (b) in case of corporate actions processing, (c) for FoP transfers among accounts managed by the same CSD participant (collateral movements, account allocations in direct holding markets) and (d) for other exceptional transfers such as those resulting from a Court order; (2) Require CSDs to offer matching possibilities continuously throughout the day. **Technical standards <u>could also</u>**: (3) Encourage CSDs to promote straight-through-processing (STP) and to use ISO standards whenever possible. However, the detailed communications standards to be used and the cases when manual intervention is required/acceptable should not be specified in Level 2 legislation; (4) Recommend the use of a matching tolerance amount of up to EUR 25, while allowing each CSD to decide on the most appropriate level of tolerance in consultation with its participants. **Technical standards <u>should not</u>**: (5) Prescribe certain matching fields. Mandating the use of certain matching fields pertains to the technical design of CSDs' system and goes beyond the mandate given to ESMA under the Level 1 Regulation. It is also unlikely to bring substantial benefits in terms of reducing the level of settlement fails.

Level 1 CSD Regulation	**Level 2 technical standards – ESMA or EC "mandate"**	**Level 2 technical standards – ECSDA proposal for a harmonised EU settlement discipline regime**
Article 6(3): Incentives for timely settlement	*"the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 3"*	**In order to encourage and incentivise timely settlement by CSD participants, technical standards <u>should</u>:** (1) Require CSDs to give participants access to the status of their pending instructions (i.e. whether these are matched or unmatched); (2) Provide CSDs with a toolkit of measures that can be used, where appropriate, to enhance settlement efficiency. **Technical standards <u>could also</u>**: (3) Encourage (but not require) CSDs to provide a hold/release mechanism and/or bilateral cancellation facilities as part of the toolkit if there is a demand for such a functionality among CSD participants. **Technical standards <u>should not</u>**: (4) Impose requirements on CSDs' tariff structure (e.g. imposing a progressive tariff structure) to motivate CSD participants to send their matching and/or settlement instructions early on ISD; (5) Require CSDs to identify the causes of unmatched instructions; (6) Specify the detailed modalities (timing, format) for CSDs to provide information on pending instructions to their participants; (7) Prescribe how many batches of settlement are required in a CSD. Mandating a certain number of batches per day pertains to the technical design of CSDs' system and goes beyond the mandate given to ESMA under the Level 1 Regulation. It is also unlikely to bring substantial benefits in terms of reducing the level of settlement fails; (8) Prescribe any aspect of the technical design of a settlement system, such as standards for the speed at which information is disseminated electronically to participants, the use of partialling, technical netting etc.

Level 1 CSD Regulation	**Level 2 technical standards – ESMA or EC "mandate"**	**Level 2 technical standards – ECSDA proposal for a harmonised EU settlement discipline regime**
Article 7(1): Monitoring and reporting fails	*"the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1"*	**CSDR technical standards on the monitoring and reporting of settlement fails <u>should</u>:** (1) Include a single, harmonised methodology (including contents and frequency) for CSDs to report settlement fails to their competent authorities: - In terms of *contents*, the "template" currently used by ESMA appears as a good basis. Further granularity should however be provided by requesting CSDs to report internal and cross system (=often cross border) settlement separately, and to distinguish between a maximum of 5 asset types (inspired by the broad categories of the CFI classification); - In terms of *format*, a machine-readable format like XML or spreadsheet-type format should be used to allow ESMA to easily aggregate the settlement fails data it receives; (2) Require CSDs to report fails on a monthly basis to their competent authority (with the possibility for authorities to obtain more frequent reports in crisis situations or upon request); (3) Require competent authorities, based on the monthly reports received from CSDs, to report back to ESMA with the same - monthly – frequency; (4) Define a minimum European template to be used by CSDs for disclosing settlement fails data to the general public. **Technical standards <u>could also</u>:** (5) Require that CSDs give their participants access to regular, at least monthly, reports on their individual level of settlement fails; (6) State that a CSD participant should be able to view its fails data both as deliverer and as receiver of securities, whether by accessing the CSD interface or as part of the monthly reports it receives from the CSD; (7) Require annual aggregate/anonymised settlement fails data to be made available on a dedicated page on the CSD's public website or on the public website of the relevant competent authority.

Article 7(2): Late settlement penalties	ESMA Standards: *"the processes for collection and redistribution of cash penalties and any other possible proceeds from such penalties"* *EC Delegated Act: "parameters for the calculation of a deterrent and proportionate level of cash penalties referred to in paragraph 2 based on asset type liquidity of the instrument and type of transaction that shall ensure a high degree of settlement discipline and a smooth and orderly functioning of the financial markets concerned."*	**The upcoming EC delegated act on penalties for late settlement <u>should:</u>** (1) Require that the penalty fee for late settlement be an ad valorem fee with a fixed, per trade component aimed to cover the costs of maintaining the penalty system; (2) Determine a minimum amount for the fixed, per trade component of the penalty fee, allowing CSDs to cover the costs of developing and maintaining the system. Some flexibility for CSDs to go beyond this minimum amount is however necessary to account for the different costs across CSDs; (3) Recommend a mark-to-market approach for determining the reference price on which to calculate the penalty (as this would ensure that a single method is used for sourcing reference prices for both DvP and FoP instructions), on the condition that (a) CSDs can obtain the required pricing data, that (b) ESMA specifies the source of prices to be used, possibly based on a tender, having in mind however that the cost of using this source by CSDs would be one of the costs of maintaining the penalty system, and that (c) a solution is found for illiquid securities for which no reliable daily market price is available; (4) Exempt some FoP deliveries from penalties, such as transfers between securities accounts managed by the same participant (including between the accounts of a participant and of an account holder that is not a participant in direct holding markets); (5) Allow for a differentiated rate for calculating penalties for a maximum of two asset types, i.e. distinguishing between debt securities and transactions in all other financial instruments. There should be a single daily penalty fee rate for both categories of transactions; (6) Foresee the possibility for the calculation method to be adjusted over time to reflect changing market conditions. **The upcoming EC delegated act <u>should not</u>:** (7) Impose the use of a gross (single-instruction-based) or multilateral net model to all CSDs. CSDs should be allowed to choose either model. That said, a single model might be defined at the level of the T2S platform in the future if the Eurosystem ever decides to integrate a functionality facilitating the imposition of penalty fees by T2S participating CSDs. **The CSDR technical standards on the collection and redistribution of cash penalties <u>should</u>:** (8) Require CSDs to redistribute the penalty monies, after having deducted the part used to cover the CSD's costs of maintaining the system, whenever possible to the suffering party and, when this is not practical, to the community of participants or to projects that benefit the market as a whole.

Level 1 CSD Regulation	Level 2 technical standards – ESMA or EC "mandate"	Level 2 technical standards – ECSDA proposal for a harmonised EU settlement discipline regime
Article 7(3): Buy-ins	*"c) the details of operation of the appropriate buy-in mechanism, including appropriate time frames to deliver the financial instrument following the buy-in procedure referred to in paragraph 3. Such time frames shall be calibrated taking into account the asset type and liquidity of the financial instruments.* *d) the circumstances under which the extension period could be prolonged according to asset type and liquidity of the financial instruments, in accordance with the conditions referred to in point (a) of paragraph 4 taking into account the criteria for assessing liquidity under Articles 2(1)(7a) of MiFIR [MIFIR determination of 'liquid market'];* *e) type of operations and their specific timeframes referred to in point (c) of paragraph 4 that renders buy-in ineffective;* *f) A methodology for the calculation of the cash compensation referred to in paragraph 7."*	CSDs, given their low risk profile, should not be involved in the execution of buy-ins. Furthermore, buy-ins are about the enforcement of contractual obligations at the trading level, and it is unclear how such a process can be "policed" at the settlement level, even if the rules on buy-ins are contained in CSDs' rulebooks. ECSDA thus recommends that further discussions should take place between ESMA, market infrastructures and their users, after the consultation deadline of 22 May, to consider what processes could be put in place to enforce the CSDR buy-in rules in 'non-CCP' scenarios. We also think that it will be important for CSDR technical standards on buy-ins to foresee a special treatment for illiquid securities, and that the criteria used to define such securities will also have to be considered in the context of penalties for late settlement under article 7(2).

Level 1 CSD Regulation	**Level 2 technical standards – ESMA or EC “mandate”**	**Level 2 technical standards – ECSDA proposal for a harmonised EU settlement discipline regime**
Art.7(9): Suspension of failing participants	*“the conditions under which a participant is deemed to consistently and systemically fail to deliver the financial instruments referred to in paragraph 9”*	Given the serious consequences the suspension of a CSD participant can have for financial markets as a whole, this measure should be considered only as the ultimate punishment in extreme cases. A quantitative threshold should in any case: - be reasonably low (e.g. below 75% of instructions settled on the intended settlement date, in volume or value, over a 12-month period), and - never automatically trigger the suspension of a participant.
Art.7(10): Settlement information necessary for executing buy-ins	*“the necessary settlement information [provided by a CSD] referred to in paragraph 10 [enabling CCPs and trading venues to fulfil their buy-in obligations]”*	**Technical standards <u>should</u>:** (1) Require CSDs to inform CCPs and/or, where appropriate, trading venues about the current status of instructions received from these CCPs/trading venues. The information to be provided should be specified in the transaction feed agreement signed between the relevant infrastructures, if applicable. **Technical standards <u>should not:</u>** (2) Impose the segregation of the accounts of all trading and clearing members at CSD level.

Introductory remarks

ESMA should take the following issues into consideration when preparing the draft CSDR technical standards on settlement discipline:

1. **The proposed technical standards should be proportionate, given that the level of settlement efficiency in Europe is already high (more than 98%[3]).** The objective of upcoming technical standards should be to give CSDs the necessary tools to promote efficient settlement, rather than to "punish" every participant failing to settle on time. In most cases settlement fails are neither intentional nor due to any fault of an individual but are for instance the result of problems in the holding chain. As acknowledged by the European Central Bank in a 2011 report on settlement fails[4], settlement failures can be due to a multiplicity of reasons such as delays caused by the use of a cross-border link, failure to deliver physical securities or even a lack of cash with the purchaser. Fails are not necessarily linked to naked short sales, and there will always be a certain "physiological" level of settlement fails even in highly efficient markets. Measures which are not expected to have a significant positive impact on the overall level of settlement efficiency should not be mandated when alternative, less complex and less costly measures can achieve a similar outcome.

2. **An overly prescriptive approach in CSDR technical standards could be detrimental if it prevents CSDs' settlement discipline regimes to be calibrated and further improved.** Technical standards should allow CSDs to make use of the most appropriate tools available to enhance settlement efficiency for each SSS they operate. As stressed in the ECSDA "Principles on settlement discipline" issued in June 2013[5], technical standards should not mandate each and every aspect of the discipline regime and be so detailed as to prevent CSDs from adapting to changing circumstances. Indeed, the most efficient markets have historically relied on flexible arrangements that can be calibrated as market conditions and practices evolve, for example allowing infrastructures to adjust the type of incentives or penalties in place following consultations with users, based on specific objectives and/or on specific issues identified for each SSS in the market(s) where the given CSD operates. More specifically, an overly penal regime runs the risk of forcing participants down the path of settlement internalisation, or may even drive end investors away from cash markets and into the derivatives space.

3. **The timing for rolling out settlement discipline measures under the CSD Regulation should be phased.** As stressed in a joint industry letter sent to EU policy-makers in November

[3] Using a harmonised methodology covering 19 European markets, ECSDA calculated that, in March 2012, the settlement efficiency rate, measured by the number of instructions settling on the intended settlement date (ISD) divided by the total number of settlement instructions, was 98.9% in value terms and 97.4% in volume terms. See http://www.ecsda.eu/uploads/tx_doclibrary/2012_09_18_ECSDA_Statistical_Exercise.pdf

[4] See http://www.ecb.europa.eu/pub/pdf/other/settlementfails042011en.pdf

[5] http://www.ecsda.eu/uploads/tx_doclibrary/2013_06_10_ECSDA_Settlement_discipline.pdf

2013 by European trade associations representing CSDs, CCPs and their users[6], the parallel implementation of TARGET2-Securities and of the move to a T+2 settlement cycle need to be taken into account as all sectors of the market, not just CSDs, will have their roadmaps fully consumed by these projects. A transition period of maximum 3 years (2015-2017) would allow market participants, as well as infrastructures, to make the necessary adaptations and avoid an unnecessarily complex and costly implementation of some functionalities that will be provided by T2S. ESMA should not underestimate the changes required in CSD systems to accommodate for a harmonised settlement discipline regime (e.g. database changes, introduction of new messages, new billing mechanism…). Such changes not only take months to implement, but they must also be reflected by CSD participants so that they can pass on fines to their own clients, if appropriate. As a result, the priority of EU law-makers should be to ensure that all CSDR technical standards are adopted on time, and prior to the launch of T2S in June 2015, while at the same time allowing for a realistic timeline for CSDs to fully implement the settlement discipline standards, i.e. by 2017 after the 4th T2S migration wave is completed. Such timeline would need to be complemented by transitional provisions that adequately take into account related EU regulatory initiatives (e.g. Short Selling Regulation which is subject to a deletion according to Article 72a).

4. **CSDR technical standards should not include explicit references to TARGET2-Securities or to specific standards (such as ISO 20022).** Although ESMA should of course keep in mind the specific needs and functionalities of T2S when drafting the standards, technical standards should withstand the test of time and avoid referring to specific technical infrastructures, settlement solutions or standards, especially when the latter are subject to further evolutions, given that technical standards ultimately become binding legislation (so-called "Level 2" legislation).

5. **CSDR technical standards should set some minimum standards, but still allow CSDs to go beyond these standards in some cases**. For example, a centralised securities lending and borrowing facility can help reduce the level of settlement fails but will not always be an appropriate solution in all markets. CSDR technical standards should provide a common basis for all CSDs, while allowing CSDs to pick the most appropriate tools in the "settlement discipline toolbox" at their disposal, based on the needs of the market(s) in which they operate. This is also in line with Recital 16 of CSDR, stating that rules concerning penalties "should be adapted to the specificities of different securities markets".

6. **CSDR technical standards should take into account existing standards supporting efficient matching and settlement of securities transactions such as the ESSF-ECSDA Matching Standards of 2006**[7]. However not all of those market standards are suitable to be

[6] See http://www.ecsda.eu/uploads/tx_doclibrary/2013_11_04_Joint_Letter_CSDR_Art7.pdf
[7] ESSF-ECSDA Matching Standards (2006): http://www.ecsda.eu/uploads/tx_doclibrary/2006_10_05_ESSF_ECSDA_Matching_Standards.pdf; and latest ECSDA status report on matching harmonisation (Nov 2013)

translated into binding Level 2 legislation. They reflect ‘best practices’ which are often very detailed and not meant to be generally applicable. The standards are also necessarily subject to adjustments over time, in particular to reflect advances in technology and other market developments.

7. **Finally, it is important that the technical standards take into account the specific situation of direct holding markets** and ensure a fair and equal treatment of different account holding models in Europe. For example, account allocation movements between the accounts of end investors managed by the same CSD participant should be exempt from late settlement penalties, as the equivalent account allocation in omnibus account markets is internalised within the books of the banks and thus not even visible to the CSD.

1. Trade confirmation – art.6(1)

<u>WHAT THE LEVEL 1 REGULATION SAYS:</u>

Article 6(1): "**Trading venues** shall establish procedures that enable the confirmation of relevant details of transactions in financial instruments referred to in Article 5 (1) on the date when the transaction has been executed.
Notwithstanding the requirement set out in the first sub-paragraph, **investment firms** authorised pursuant to Article 5 of Directive .../.../EU [new MiFID] shall, where applicable, put in place arrangements to limit the number of settlement fails. Such measures shall at least consist of arrangements between the investment firm and its professional clients to ensure the prompt communication of an allocation of securities to the transaction, confirmation of that allocation and confirmation of the acceptance or rejection of terms in good time before the intended settlement date.
ESMA shall, in close co-operation with the members of ESCB, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 on the standardised procedures and messaging protocols to be used referred to in the first sub-paragraph.".

<u>WHAT THE LEVEL 2 TECHNICAL STANDARDS SHOULD SPECIFY:</u>

"measures to be taken by investment firms in accordance with the first subparagraph of paragraph 1"

Q1: Which elements would you propose ESMA to take into account / to form the technical standards on confirmation and allocation between investment firms and their professional clients?

Unlike trading venues and investment firms, CSDs are not directly in the scope of article 6(1) on trade confirmation. ECSDA thus does not comment on question 1 of the Discussion Paper.

2. Measures facilitating settlement on ISD – art.6(2)

WHAT THE LEVEL 1 REGULATION SAYS:

Article 6(2): "For each securities settlement system it operates, a CSD shall establish procedures that **facilitate the settlements of transactions** in financial instruments referred to in Article 5(1) **on the intended settlement date** with a minimum exposure of its participants to counterparty and liquidity risks and a low rate of settlement fails. It shall promote early settlement on the intended settlement date through appropriate mechanisms".

WHAT THE LEVEL 2 TECHNICAL STANDARDS SHOULD SPECIFY:

"the details of the procedures facilitating settlement referred to in paragraph 2"

A. ECSDA Proposal

In order to promote settlement early on the intended settlement date (ISD), technical standards should:

(1) Make matching at CSD level compulsory, except (a) when instructions have already been matched by a trading venue or a CCP and are received by the CSD via a trade feed, (b) in case of corporate actions processing, (c) for FoP transfers among accounts managed by the same CSD participant (collateral movements, account allocations in direct holding markets) and (d) for other exceptional transfers such as those resulting from a Court order;

(2) Require CSDs to offer matching possibilities continuously throughout the day.

Technical standards could also:

(3) Encourage CSDs to promote straight-through-processing (STP) and use ISO standards whenever possible. However the detailed communications standards to be used and the cases when manual intervention is required/acceptable should not be specified in Level 2 legislation;

(4) Recommend the use of a matching tolerance amount up to EUR 25, while allowing each CSD to decide on the most appropriate level of tolerance in consultation with its participants.

Technical standards should not:

(5) Prescribe certain matching fields. Mandating the use of certain matching fields pertains to the technical design of CSDs' system and goes beyond the mandate given to ESMA under the Level 1 Regulation. It is also unlikely to bring substantial benefits in terms of reducing the level of settlement fails.

B. Analysis of the different options

(1) Promoting automation, STP, and international communication standards

Q2: In your opinion, are there any exceptions that should be allowed to the rule that no manual intervention occurs in the processing of settlement instructions? If so please highlight them together with an indication of the cost involved if these exceptions are not considered.

Automation and the promotion of straight-through processing (STP) is core to the CSD business. ECSDA agrees that all processes should be designed to function on an STP basis "by default", but we caution ESMA against imposing STP or limiting explicitly the number and type of cases when manual intervention is allowed.

Indeed, as in most businesses, manual intervention is needed on occasion, in particular where corrective actions are required, or in times of crisis. There is no need for ESMA to restrict manual intervention in regulatory technical standards, especially given the difficulty of defining "manual intervention" (would this refer to interventions made by the CSD or by CSD participants? Does access to a CSD's graphical user interface count as manual intervention?) and the multiplicity of cases when such intervention might be required to ensure timely settlement (often in exceptional circumstances).

For example, for some OTC transactions, CSD participants manually amend their instructions to reflect information received from their own clients (e.g. using an MT599 message) instead of having to cancel and re-instruct in the settlement system. Manual processes are also sometimes needed for corporate actions, redemptions/coupon payments, stripping instructions or the handling of bankruptcies and similar exceptional circumstances. Settlement via direct links can, depending on the respective CSD system, also require some manual intervention for the CSD and/or its participants.

Furthermore, Standard 11 of the ESSF-ECSDA Matching Standards foresees that the instruction process in the CSD should enable the 'amendment' of instructions in non-matching relevant areas rather than the cancellation and resubmission of the trade. Such flexibility supports the smooth processing of instructions and should be preserved.

ECSDA believes that **ESMA standards should encourage automation whenever this increases the efficiency and safety of the system. But mandating automation and limiting the type of exceptions (="manual intervention") in Level 2 legislation could be counterproductive and actually reduce settlement efficiency, removing all flexibility for CSDs and their participants.** CSDs must have full discretion as to when manual intervention is necessary.

In line with the response of the T2S community to ESMA, ECSDA insists that manual intervention should be allowed in the CSD rules of procedures.

Besides, it should be noted that STP at CSD level is also dependent on the level of automation of CSD participants and linked infrastructures. For instance, implementing "already matched" functionalities whereby the trading or clearing infrastructures use a Power of Attorney to instruct the CSD on behalf of participants is a good way to promote STP and reduce the likelihood of fails. These functionalities can also help achieve compliance with Article 6(1) requiring trading venues to *"establish procedures that enable the confirmation of relevant details of transactions"*.

Q3: ESMA welcomes concrete proposals on how the relevant communication procedures and standards could be further defined to ensure STP.

ESMA regulatory technical standards could seek to encourage the use of communication procedures and standards that facilitate STP, in line with the CPSS-IOSCO Principles for financial market infrastructures. However, **Level 2 legislation should not mandate the use of specific communication standards (e.g. ISO 20022): this would not only be disproportionate, but it would also "lock" the rules with the standards in use at a given time and cause problems once the standards evolve into new ones.**

At most, ESMA could introduce a general reference to ISO standards in the technical standards, but a more precise reference to individual standards (e.g. to ISO15022 or ISO20022) should be avoided. Indeed:

- ISO standards do not cover all functionalities and services offered by CSDs and in some cases, limiting CSD communication standards to ISO standards would result in the discontinuation of some services that are helpful to market participants and support an efficient settlement process. Examples include messages for static data, certain reports including settlement discipline related reporting, the SBI trade confirmation service in the French market, communication of end investors details in the Spanish market, cash settlement forecasts in the

Polish market, as well as many of the account level services offered by CSDs in direct holding markets.
- Technical standards for other infrastructures (trading venues and CCPs) do not go into this level of detail, and there is no reason to adopt a prescriptive approach on communication standards for CSDs.
- In some cases, other communication standards than ISO standards might be appropriate to enhance settlement efficiency and STP, in particular for CSDs not participating in T2S. In such cases, local standards should be allowed, on the condition that they are publicly available.

Furthermore, we note that the scope of article 6(2) is restricted to the settlement process, while in practice CSDs will look to develop automated processes and use harmonised communications standards for other processes as well, such as the maintenance of securities accounts. Introducing overly detailed requirements on communication standards for settlement in Level 2 legislation could thus be counterproductive if it hampers CSDs' ability to adopt a holistic approach to support STP for all their processes and activities.

All in all, ECSDA does not believe that technical standards aiming to implement CSDR article 6(2) need to cover automation and communication standards, especially given that article 35 of the Regulation already covers communication procedures and is not subject to Level 2 legislation. We believe that standards on matching processes (see thereafter) would be more appropriate to fulfil ESMA's mandate under article 6(4).

(2) Matching of settlement instructions

Q4: Do you share ESMA's view that matching should be compulsory and fields standardised as proposed? If not, please justify your answer and indicate any envisaged exception to this rule. Are there any additional fields that you would suggest ESMA to consider? How should clients' codes be considered?

(a) Compulsory matching

ECSDA agrees with ESMA that, for transactions which have not been matched by a trading venue or a CCP, matching should be compulsory at CSD level, but we believe more exceptions need to be considered, in particular:
- in the context of corporate actions processing;
- for certain free of payment (FoP) transfers among securities accounts managed by the same CSD participant, and not necessarily "opened in the name of the same participant" (see below);
- in the context of multilateral systems without CCP intervention (i.e. when instructions are not entered into the settlement system by the CSD participants, but are received via a trade feed);
- when instructions are processed as a result of a Court order (e.g. insolvency proceedings).

ECSDA agrees with ESMA that FoP instructions between accounts opened in the name of the same participant should be excluded from the compulsory matching requirement since these are typically collateral movements, portfolio transfers or account allocation movements, especially in direct holding markets. Nonetheless, we believe that the phrase "accounts opened in the same of the same participant" should be replaced by "accounts ***managed by*** the same participant" in order to cover all direct holding models.

Indeed, in direct holding markets, securities can be held in accounts belonging to end investors / customers of the CSD participant, not on the CSD participant's account. As a result, a transaction on behalf of an end investor can be effected in one of the following ways:

(a) Securities may be transferred directly from the account of a customer of Participant A (or from Participant A's account) to the account of a customer of Participant B; or

(b) Securities can be transferred from the account of Participant A to the account of Participant B in one transaction, and then Participant B can instruct another transaction between its account and the account of its customer.

In scenario (b), the second transaction allocating securities from Participant B's account to the account of the customer of Participant B is only effected by one participant, and so compulsory matching is not feasible. The same applies to other transactions between accounts managed by the same CSD participant (collateral movements, portfolio transfers etc.).

Importantly, the account of a Participant's customer can either be an account for which the Participant is the account operator (as mentioned under CSDR article 31) **or an account on which the Participant has been given a Power of Attorney**. **In the latter case, the account is managed by the same Participant, but might have been opened in a different name from that of the Participant (e.g. directly in the Participant customer's name). It is thus important to extend the exemption from compulsory matching for all FoP instructions between accounts managed by the same Participant.**

Provided these conditions are recognised in the upcoming technical standards/delegated acts, ECSDA would not oppose a general requirement for compulsory matching in the CSDR technical standards. We note however that today, in some countries (BE, DK, FR, NL, NO), FoP instructions do not always require matching and that this will constitute a change in market practice for CSD participants.

(b) Continuous matching

Most CSDs already offer real-time matching throughout business day, in line with the ESSF-ECSDA Standard 3. **CSDR technical standards should include a general requirements for CSDs to offer matching possibilities throughout the business day, as a means to facilitate early matching and timely settlement.**
We note, however, that requiring real-time matching to be provided by all EU CSDs during the day will require system changes in some markets (BG, CY, GR) and that sufficient time should be given to these markets for making the necessary adaptations.

(c) Standardised matching fields

There is no need for technical standards to go as far as mandating the use of certain matching fields (e.g. in line with T2S matching fields). In any case, technical standards should not contain a direct reference to TARGET2-Securities, and any requirement should take into account the needs and circumstances of non-T2S CSDs. For example, there is a mandatory T2S matching field called "CSD of the counterparty", but this field will not be relevant in a pure domestic context outside of T2S, and should thus not be mandatory. Moreover, even T2S participating CSDs need flexibility to use matching fields for their internal transactions to allow the provision of additional services to their participants, for example, to prevent cross-matching. Finally, it is also worth noting that T2S matching fields are still subject to changes, based on further project developments. 'Fixing' compulsory matching fields in Level 2 legislation would thus create considerable (and unnecessary) constraints by requiring a revision of the law every time there is a need for updating the rules on compulsory matching fields.

ECSDA recalls that Standard 1 of the ESSF-ECSDA matching standards (2006) already contains a list of harmonised matching fields and that there is no need to create additional binding requirements. In fact it is important that CSDs can retain flexibility in using other matching fields, including optional fields, so as to adapt to local market reality (e.g. end investor information in direct holding markets). Client codes should remain an optional matching field. **Mandating the use of certain matching fields would, according to ECSDA, go beyond the mandate given to ESMA under the Level 1 Regulation, and**

is unlikely to bring substantial benefits in terms of reducing the level of settlement fails.

(d) Use of matching tolerance amounts

In order to facilitate the matching process and timely settlement, many CSDs have introduced a “tolerance amount” which, according to ESSF-ECSDA Standard 17, should not exceed EUR 25. CSDs also have the option to use a lower tolerance threshold of up to EUR 2 for retail-sized transactions (below EUR 100,000).

According to a 2013 survey by ECSDA[8], at least 9 CSDs have a EUR 25 threshold in place today, 12 CSDs use a lower amount, and 8 CSDs have EUR 0 tolerance. Sometimes in the latter case, the CSD offers the matching tolerance functionality in its settlement system but the amount is set at 0 at the request of participants.

Should CSDR technical standards recommend the use of matching tolerance amount to facilitate timely settlement, **ECSDA believes that the standards should allow CSDs to determine the appropriate optional tolerance amount in consultation with their participants, from EUR 0 up to EUR 25 (or approximate counter value in the relevant currency).**

The use of a different tolerance amount for retail-sized transactions should remain optional. Today, only 5 CSDs apply a different threshold for retail-size transactions: CSD Prague (CZK 50 instead of CZK 600), Euroclear Finland (EUR 2 instead of EUR 25), KDPW (PLN 8 instead of PLN 100), KDD (EUR 2 instead of EUR 25) and Euroclear UK and Ireland (GBP 0 instead of GBP 10 since members can opt out of matching tolerance for retail transactions).

[8] See the ECSDA report on matching harmonisation published in November 2013: http://www.ecsda.eu/uploads/tx_doclibrary/2013_11_18_ECSDA_Matching_Report.pdf

3. Incentives for timely settlement – art.6(3)

WHAT THE LEVEL 1 REGULATION SAYS:

Article 6(3): "For each securities settlement system it operates, a CSD shall provide measures to encourage and incentivise the timely settlement of transactions by its participants. CSDs shall require participants to settle their transactions on the intended settlement date."

WHAT THE LEVEL 2 TECHNICAL STANDARDS SHOULD SPECIFY:

"the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 3"

A. ECSDA Proposal

In order to encourage and incentivise timely settlement by CSD participants, technical standards should:

(1) Require CSDs to give participants access to the status of their pending instructions (i.e. whether these are matched or unmatched);

(2) Provide CSDs with a toolkit of measures that can be used, where appropriate, to enhance settlement efficiency.

Technical standards could also:

(3) Encourage (but not require) CSDs to provide a hold/release mechanism and/or bilateral cancellation facilities as part of the toolkit if there is a demand for such a functionality among CSD participants.

Technical standards should not:

(4) Impose requirements on CSDs' tariff structure (e.g. imposing a progressive tariff structure) to disincentive the late input of settlement instructions;

(5) Require CSDs to identify the causes of unmatched instructions;

(6) Specify the detailed modalities (timing, format) for CSDs to provide information on pending instructions to their participants;

(7) Prescribe how many batches of settlement are required in a CSD. Mandating a certain number of batches per day pertains to the technical design of CSDs' system and goes beyond the mandate given to ESMA under the Level 1 Regulation. It is also unlikely to bring substantial benefits in terms of reducing the level of settlement fails;

(8) Prescribe any aspect of the technical design of a settlement system, such as standards for the speed at which information is disseminated electronically to participants, the use of partialling, technical netting etc.

B. Analysis of the different options

(1) Incentives for early input of settlement instructions

Q5: Do you agree with the above proposals? What kind of disincentives (other than monetary incentives such as discounts on matching fees) might be envisaged and under which product scope?

(a) Financial disincentives for the late input of settlement instructions

The difference between the measures covered under article 6(2) and article 6(3) of the CSD Regulation is not entirely clear from the Level 1 text, but ECSDA understands that **article 6(3) aims to focus on incentive measures**, whether for early matching or early settlement. Early matching or early settlement means that instructions are communicated to the CSD, whenever possible, early on or before the business day rather than just before the applicable deadline.

Different incentives can be developed to encourage market participants to instruct early in the business day or before, but such incentives are typically market-specific and cannot necessarily be generalised. De facto, the existence of a late settlement penalty regime (under article 7) already constitutes a strong disincentive to settle late and thus also to instruct late, since this increases the likelihood of a fail. Very few CSDs (FR, SE, UK) have established financial incentives for early matching, and there is no evidence that these markets have greatly improved settlement rates compared to those markets where no such incentives exist. Given the high matching rates in other markets that do not have such financial incentives in place, it is doubtful whether the compulsory introduction of a late matching fee in all EU markets would have any benefits[9].

The introduction of a late matching fee or other financial 'disincentive' for late matching should thus be only one tool, among many others, that a CSD can adopt if this is appropriate to enhance settlement efficiency given the local market circumstances (e.g. if the CSD observes that too many participants tend to instruct late in the day). Besides, the moment an instruction is matched often does not depend only on the CSD participant but also on the relevant processes in the CCP and/or trading venue involved. In such cases, late matching fees are not an appropriate tool. And, even when a surcharge for late matching is applied, it must take into account special cases, e.g. exemptions might be needed for certain financial instruments like repos that settle same day and for CCP-cleared transactions. The case of CSDs not offering night-time settlement and the impact of the T2S tariff structure[10] for T2S-participating CSDs should also be taken into account.

We also note that, when applicable, a late matching fee should take the trade date and the settlement cycle into account (for example, defining "late matching" as "matching completed after trade date" rather than on "ISD-2"). Otherwise there would be an incentive for brokers to use, where possible, longer settlement cycles in order to benefit from early matching discounts (for transactions not falling under the T+2 obligation under CSDR article 5).

ECSDA thus does not agree with ESMA's suggestion that "settlement instructions which are not received by the CSD by the end of ISD-2 should be subject to disincentives by the CSD", if this means that all CSDs would be required to apply financial disincentives to instructions matched or input late, even if these settle on time. **Generally speaking, the details of a CSD's tariff structure, including disincentives for late matching/late input of settlement instructions, should not be imposed by law. A progressive tariff structure is only one means of promoting early settlement and should not be imposed in those markets where no need has been identified.** CSDs should be allowed, but not obliged to, use a progressive tariff structure.

(b) Hold/release mechanism and bilateral cancellation facilities

In paragraph 24 of the discussion paper, ESMA suggests that *"in order to incentivise early matching, CSDs should offer hold/release and bilateral cancellation facilities, without prejudice of the Settlement Finality Directive provisions".*

Some ECSDA members already offer a hold/release functionality to their participants, and T2S CSDs in particular are expected to offer such a mechanism, in line with ESSF-ECSDA Standard 9. There are

[9] For more details, see http://www.ecsda.eu/uploads/tx_doclibrary/2011_07_07_ECSDA_Fails_Report.pdf
[10] T2S will introduce a surcharge of EUR 0.15 on "intended settlement date failed transactions" from 2015 onwards, and the tariff system for T2S will contain a differentiation between night-time and day-time processing.

however different aspects to a hold and release mechanism and some CSDs only provide for part of the service (e.g. possibility to release an instruction put on hold, but not necessarily to put on hold an instruction already released), often due to a lack of demand by market participants.

ECSDA believes that regulatory technical standards should not mandate such specific technical functionalities, which are anyway difficult to define in legislation and are unlikely in themselves to significantly reduce the number of settlement fails. We however recognise that CSDs should be encouraged to offer a hold/release mechanism as a best practice if there is a demand from their participants.

As regards bilateral cancellation facilities, ESSF-ECSDA Matching Standard 6 does not impose the use of bilateral cancellation facilities once instructions are matched. Today, some CSDs still allow for unilateral cancellations, for example as a way to amend an instruction ("cancel and replace").

ECSDA recognises that bilateral cancellation facilities are a best practice and that CSDs should be encouraged to offer such functionality based on market demand. However, there is no reason to mandate this in technical standards.

(c) Informing participants about unmatched instructions

In paragraph 25 of the discussion paper, ESMA suggests that *"CSDs should develop a procedure to inform participants about pending settlement instructions of counterparties. Participants should be able to know that their instruction did not match the reason why. This information could be made available by the CSD within 30 minutes maximum, or similar cap after the first unsuccessful matching attempt; and at the beginning of ISD."*

ECSDA agrees that **CSDs should provide their participants with up-to-date information on the status of their pending instructions**, whether in "push" mode (e.g. reporting) or "pull" mode (e.g. access to the matching status of an instruction via an online interface or upon request). **However we do not think that the detailed modalities on how this information needs to be accessed should be specified in Level 2 legislation** (e.g. within *x* minutes, with what kind of message/interface). The practical modalities typically depend on the technical design of each CSD's system and on participants' preference based on the costs involved. The most important thing is that participants should have an easy access to such information.

Importantly, ESMA should recognise that that **CSDs are not always in a position to identify the reasons why an instruction has not been matched.** Requiring the CSDs to investigate the causes of an unmatched instructions would potentially require manual intervention and expose the CSD to legal risks. CSD participants are best placed to understand the business context in which a transaction has failed to match. In the T2S platform, for example, CSDs may be able to check whether a settlement instruction is matched, but they will not receive information on the underlying cause why an instruction is not matched.

As a result, CSDR technical standards should contain a general requirement for CSDs to allow participants to access the matching status of pending instructions. But technical standards should not go as far as:
- requiring CSDs to identify and provide information on the causes for unmatched instructions;
- specifying the detailed modalities (timing, format) for providing such information.

(d) Other tools to incentivise early settlement

Some CSDs (e.g. AT, FR) offer pre-matching facilities which also encourage participants to match early. As with other types of incentive measures, such facilities should not be mandated in regulation but rather

be allowed so that they can be adopted in those markets where a need has been identified.
We also note that, outside of the CSD environment, the encouragement of the use of automated trade confirmation mechanisms can assist in early matching and hence early settlement.

(2) System functionalities

Q6: In your opinion, should CSDs be obliged to offer at least 3 daily settlements/batches per day? Of which duration? Please elaborate providing relevant data to estimate the cost and benefit associated with the different options.

(a) Settlement batches

ECSDA agrees with the general analysis provided by ESMA in paragraphs 26 to 29 of the Discussion Paper, but we are however not convinced about the penultimate sentence of paragraph 29 suggesting that *"all CSDs should be obliged to offer at least three daily settlements (batches), unless they operate on an RTGS basis".*

Today, some European CSDs work with batches for securities settlement and some of them have less than 3 settlement batches a day, usually because there is no market demand. **In the absence of any evidence that this will reduce settlement fails, ECSDA does not think that ESMA should mandate a specific number of batches per day**.

Should ESMA however consider imposing the use of 3 settlement batches per day as a minimum requirement in the future, it is essential that CSDs be given sufficient time, i.e. at least 5 years, to implement the change, given that this would require considerable investments and, in some cases, the implementation of an entirely new system.

(b) Other system functionalities

Q7: In your view, should any of the above measures to facilitate settlement on ISD be mandatory? Please describe any other measure that would be appropriate to be mandated.

The technical functionalities listed by ESMA in paragraph 30 of its Discussion Paper are used by CSDs to facilitate timely settlement are part of a "toolkit" that cannot be mandated for all CSDs in all cases. Generally speaking, CSDR technical standards should ensure that CSDs are allowed to pick the most appropriate tools to enhance settlement efficiency in their market, but should not seek to mandate specific tools when there is no evidence that such tools would substantially benefit settlement efficiency at European level.

For example, **mandating the use of technical netting and other optimisation algorithms, partial settlement or trade shaping functionalities, is clearly not justified and would go beyond the Level 1 mandate granted to ESMA.** Such functionalities are not always required in a given market, and for example the shaping of trades is not a functionality offered in TARGET2-Securities, and, if provided at all, can in fact be more efficiently provided at the level of the CCP, rather than at CSD level.

Taken into account the fact that:

- The level of settlement efficiency in Europe is already close to 100%,
- The majority of EU CSDs have joined T2S,
- T2S will provide functionalities such as optimisation algorithms (technical netting), partial settlement, and the recycling of instructions,

it is unnecessary, burdensome and costly to require CSDs to develop these functionalities.

(3) Lending facilities

Q8: Do you agree with this view? If not please elaborate on how such arrangements could be designed and include the relevant data to estimate the costs and benefits associated with such arrangements. Comments are also welcome on whether ESMA should provide for a framework on lending facilities where offered by CSDs.

ECSDA agrees with ESMA that securities lending and borrowing (SLB) facilities should not be mandated in technical standards but should rather be considered as one possible option to prevent settlement fails. SLB facilities (where the CSD acts as agent between lenders and borrowers) are offered by CSDs today in some markets, but not all CSDs should be expected to develop a central facility. The costs of implementing a central system will not always be justified, and it is worth noting that some of the largest markets in Europe (e.g. UK, FR) operate very efficiently without centralised SLB facilities.

Given that authorised CSDs already have the possibility, but not the obligation to offer SLB services under Section B of the Annex of the Level 1 CSD Regulation (“organising a securities lending mechanism, as agent among participants of a securities settlement system”), **there is no need for technical standards to cover SLB services of CSDs.** SLB services are just another part of the toolkit available to CSDs to use when deemed appropriate.

4. Monitoring and reporting settlement fails – art.7(1)

WHAT THE LEVEL 1 REGULATION SAYS:

Article 7(1): “For each securities settlement system it operates, a CSD shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1). It shall provide regular reports to the competent authority and the authorities referred to in Article 11, as to the number and details of settlement fails and any other relevant information. These reports, including the measures envisaged by CSDs and their participants to improve settlement efficiency, shall be made public by CSDs in an aggregated and anonymised form on an annual basis. The competent authorities shall share with ESMA any relevant information on settlement fails.”

WHAT THE LEVEL 2 TECHNICAL STANDARDS SHOULD SPECIFY:

“the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1”

ANNUAL REPORTING BY ESMA ON CROSS-BORDER SETTLEMENT FAILS:

Article 69(1): “ESMA, in cooperation with EBA and the authorities referred to in Articles 9 and 11, shall submit annual reports to the Commission [including among others] an assessment of the following:
(...) (a) settlement efficiency for domestic and cross-border operations for each Member State based on the number and volume of settlement fails.” amount of penalties referred to in Article 7(4), number and volumes of buy-in transactions referred to in Article 7(4) and any other relevant criteria;

A. ECSDA Proposal

The CSDR technical standards should:

(1) Include a single, harmonised methodology (including contents and frequency) for CSDs to report settlement fails to their competent authorities:
   - In terms of *contents*, the “template” currently used by ESMA appears as a good basis. Further granularity should however be provided by requesting CSDs to report internal and cross system (=often cross border) settlement separately, and to distinguish between a maximum of 5 asset types (inspired by the broad categories of the CFI classification);
   - In terms of *format*, a machine-readable format like XML or spreadsheet-type format should be used to allow ESMA to easily aggregate the settlement fails data it receives.

(2) Require CSDs to report fails on a monthly basis to their competent authority (with the possibility for authorities to obtain more frequent reports in crisis situations or upon request);

(3) Require competent authorities, based on the monthly reports received from CSDs, to report back to ESMA with the same - monthly - frequency.

(4) Define a minimum European template to be used by CSDs for disclosing settlement fails data to the general public.

Technical standards could also:

(5) Require that CSDs give their participants access to regular, at least monthly, reports on their individual level of settlement fails;

(6) State that a CSD participant should be able to view its fails data both as deliverer and as receiver of securities, whether by accessing the CSD interface or as part of the monthly reports it receives from the CSD;

(7) Require annual aggregate/anonymised settlement fails data to be made available on a dedicated page on the CSD’s public website or on the public website of the relevant competent authority.

B. Analysis of the different options

(1) Contents of the settlement fails reports sent by CSDs to regulators

Q9: Do you agree with the above monitoring system description? What further elements would you suggest? Please present the appropriate details, notably having in mind the current CSD datasets and possible impact on reporting costs.

(a) A single European template for CSD reports on settlement fails

ECSDA believes that **a truly harmonised methodology should be used by all EU CSDs for reporting on settlement fails to their regulators**. A harmonised methodology is indispensable to allow for comparability across markets, and for a meaningful aggregation of settlement fails data at EU level. This methodology should be included in the CSDR technical standards and should be based on the existing ECSDA methodology of February 2010[11], although more granular criteria need to be added (e.g. allowing for the distinction between domestic and cross-border settlements). The current "template" used by ESMA for collecting reports from national regulators also constitutes a workable basis for the harmonised fails reporting requirements, but will require some clarifications and improvements.

For example, we think that it would be more efficient for ESMA to collect absolute figures on the volume and value of fails, rather than percentages. National regulators and/or ESMA will easily be able to calculate percentages based on the figures provided, and such an approach would ensure consistency.

Moreover, ECSDA understands that EU regulators would like to be able to compare the level of settlement fails across asset classes, and at domestic and cross-border level, to be able to develop specific recommendations for specific types of transactions. We note that article 69(1)(a) also requires ESMA to report annually on settlement efficiency, including a distinction between *"domestic and cross-border operations for each Member State".*

We think that the main challenge of the harmonised EU methodology for reporting settlement fails will be to find a workable definition of:

- The different asset classes or transaction types;
- Domestic versus cross-border (or internal versus cross-systems?) settlements.

Generally speaking, ECSDA is in favour of a harmonised template to be used by all CSDs for reporting fails to their regulators on a monthly basis. Whereas regulators will always have the possibility to request additional details on an ad hoc basis, we believe that the CSDR technical standards should be seen as an opportunity to harmonise the reporting standards across all EU markets, thereby facilitating the aggregation of fails data at European level.

(b) Fails data on different asset classes

On the distinction between asset classes, there is no universal and readily available classification of existing financial instruments that could be used as such for the purpose of settlement fails reporting. Whereas creating a common taxonomy of financial instruments, with each ISIN code being assigned to a specific category, is an overambitious aim, the use of broadly defined categories has at least the merit of avoiding that CSDs each provide their own groupings of financial instruments and would ensure a sufficient degree of comparability, notwithstanding the possibility that the same (type of) instrument might occasionally fall in a different category depending on the interpretation made by the reporting

[11] See http://www.ecsda.eu/uploads/tx_doclibrary/2010_02_28_ECSDA_Statistical_Exercise_01.pdf

CSDs or their competent authorities.

We thus recommend that **ESMA should broadly define up to 5 categories of instruments for the purpose of settlement fails reporting, allowing each CSD to collect fails data per asset type without that this require technical changes or major investments in CSD's own reporting systems.**

For example, the following categories of asset classes could be used, **based on the CFI classification**[12]**:**

- **Equities ("E" category in CFI, except category EU on investment fund units);**
- **Investment fund units ("EU" category);**
- **Debt instruments ("D" category except category DY on money market instruments);**
- **Money market instruments ("DY" category);**
- **All other securities.**

The five categories above will largely suffice, and in any case the total number of categories to be reported for settlement fails purpose, to be manageable, should not exceed 5.

In case ECSDA's proposed categories would be adopted by ESMA, we note that CSDs will have to make adaptations to their current systems as such distinction is not currently used for the purpose of settlement fails reporting. For CSDs not acting as national numbering agencies (NNAs) in particular, solutions will have to be found to acquire the data necessary to the proper categorisation of financial instruments.

(c) "Domestic" and "cross-border" fails

On the distinction between domestic and cross-border transactions, ECSDA notes that there are different definitions of the terms, not all of which are practical from the CSDs' perspective. In fact, from the point of view of a CSD, it is only possible to distinguish between:

- **"internal settlements"** , i.e. settlement between two participants of that CSD, and
- **"external settlements"**, i.e. settlement between a participant of that CSD and the participant of a linked CSD, whereas the account of the investor CSD is credited/debited by the Issuer CSD.

In practice, external, i.e. cross-system settlements will often but not always be cross-border settlements. An "internal" settlement within a CSD is in turn typically considered as "domestic", but it could very well be that the underlying investors in the securities are from a different country than that where the securities were issued and settled. Furthermore, in the case of indirect links whereby an investor CSD holds securities at an issuer CSD via the account of an intermediary (considered as a 'domestic' CSD participant by the issuer CSD), transactions will appear as "internal settlements", given that there is no direct link between the two CSDs. In such cases, and provided that the information is available to the issuer CSD, ESMA should clarify whether and how it expects the CSD to report such transactions.

Indeed, defining a domestic or cross-border transaction based on the domicile of the investor, as was done in the 2011 Oxera study[13], for example, would be impossible to implement since CSDs often do not have any information on the identity, let alone on the domicile, of the underlying investors in the securities. Moreover, the domicile of CSD participants, where it is known to the CSD, is not relevant for the purpose of identifying whether a securities delivery is truly non-domestic, since the underlying investor in securities might be from a country different from the one where the securities were issued and settled.

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[12] See http://www.anna-web.org/index.php/home/cfiaiso10962

[13] In the Oxera Study of May 2011 published by the European Commission DG MARKT, a 'domestic" transaction was defined as one where the domicile of the investor and the domicile of the security are the same, and a cross-border transaction as one where the domicile of the investor is different from that of the security. See: http://ec.europa.eu/internal_market/financial-markets/docs/clearing/2011_oxera_study_en.pdf

As a result, ECSDA recommends that ESMA should require CSDs to report fails data on "internal" settlements and on "external settlements" (e.g. deliveries made via a link) separately. Given the fact that links are primarily used in the context of cross-border settlements, such reporting would allow ESMA and the EU Commission to assess the level of settlement efficiency in a cross-border context.

(d) Information on the failing participants

On the identity of the failing participants, ECSDA believes that:

- Regulators should receive fails data at the aggregate level (all participants) by default;
- Regulators should have the possibility to request details about the level of fails of an individual participant of an ad hoc basis, e.g. in case of specific concerns with certain actors in the market;
- Systematically providing details on the identity of the failing participant for each failed instruction would result in lengthy, complex and unnecessarily burdensome reports to regulators;
- Even in cases where the regulator receives information on the settlement performance of an individual participant, the regulator will often not know who is behind the fail (e.g. among the many underlying clients of a given CSD participant) and will need to obtain further information from the market participant in question. CSDs themselves often cannot identify the original failing party, e.g. when omnibus accounts are used.

(e) Format of the settlement fails reports sent to regulators

ECSDA supports the use of a machine-readable format, such as Excel or XML. We believe that such formats will allow ESMA to more easily aggregate the reports received from national regulators.

(2) Frequency of the settlement fails reports sent by CSDs to regulators

Q12: What would the cost implication for CSDs to report fails to their competent authorities on a daily basis be?

ESMA should seek to harmonise the frequency of CSDs' reports to their regulator(s) in order to facilitate the aggregation of EU-wide data on a regular basis. **Currently, most CSDs report fails to competent authorities on a monthly basis and such frequency appears appropriate, notwithstanding the possibility for authorities to request additional data from the CSD on an ad hoc basis.**

The monthly reports could however be required to contain daily data.

A daily reporting would clearly be disproportionate and overly burdensome (including for regulators), especially given the generally very high level of settlement efficiency in Europe. The operational and administrative costs for CSDs and national regulators having to process the data would be very substantial. Daily reporting on fails should rather be seen as a crisis management measure, e.g. when there is a problematic increase in the level of settlement fails in a given market.

Based on the monthly reports received from CSDs, regulators could be expected to report back to ESMA with the same – monthly - frequency.

(3) Settlement fails reports provided by CSDs to their participants

Q10: What are your views on the information that participants should receive to monitor fails?

CSDR technical standards implementing article 6(3) should already require CSDs to give participants access to the status of their pending instructions (i.e. whether these are matched or unmatched). This information aims at preventing / managing fails.

Under article 7(1), the information communicated by the CSD to its participants refers to settlement fails information *ex post*, allowing participants to monitor the evolution in their level of settlement efficiency over time. The idea is that CSD participants should be able to access information on their own level of settlement fails. Such information can typically be obtained by CSD participants in one of two ways:

- By accessing their own fail reports in the CSD graphical user interface (GUI);
- By receiving regular (typically monthly) reports from the CSD on their level of settlement fails as deliverer.

ECSDA believes that some flexibility should be maintained as to how participants can access information on their own level of settlement performance. **CSDR technical standards could for instance require that CSDs provide monthly reports to their participants on their level of settlement fails**, but they should not specify the details of such reports (which will depend on user requirements). Today, CSDs provide fail information to their participant in their capacity as “deliverer”, but not always as “receiver”. In the future we agree that **a participant should be able to view its fails data both as deliverer and as receiver of securities, but such information should not necessarily have to be included in the monthly reports sent by the CSD to its participants if it can be obtained by using the CSD’s graphical user interface (GUI).**

Moreover, a participant should be able to obtain historical fails data for its accounts at the CSD upon request.

In all cases, it should be possible for the CSD to charge a reasonable fee to cover the cost of producing and sending fails reporting to participants.

(4) Settlement fails reports provided by CSDs to the general public

Q11: Do you believe the public information should be left to each CSD or local authority to define or disclosed in a standard European format provided by ESMA? How could that format look like?

ECSDA believes that there would be value in technical standards defining a “minimum European template” to be used by CSDs for disclosing settlement fails data to the general public. This annual data should be aggregated to the level of all the CSDs’ participants and include the following information:
- Total value of instructions settled by the CSD
- % of fails based on value over the past year
- Total volume of instructions settled by the CSD
- % of fails based on volume over the year.

The data should ideally contain figures for the past year and the previous year at a minimum, to allow for a comparison of the level of settlement efficiency over time.

Unlike in the case of reporting to regulators, for which ECSDA believes a single set of data should be used by all CSDs, we believe that for public reports it should be possible for a CSD to include additional information on top of the minimum required, or to update the information more frequently than once a year. This way, the level of disclosure could be adapted to local market characteristics (e.g. in small and concentrated markets, too granular information might not be appropriate if it allows to identify individual market participants).

Technical standards could require annual aggregate/anonymised settlement fails data to be made available on a dedicated page on the CSD’s public website (not on a website with restricted access to CSD participants) or the public website of the respective competent authority.

5. Late settlement penalties – art.7(2)

WHAT THE LEVEL 1 REGULATION SAYS:

Article 7(2): "For each securities settlement system it operates, a CSD shall establish procedures that facilitate settlement of transactions in financial instruments referred to in Article 5(1) that are not settled on the intended settlement date. These procedures shall provide for a penalty mechanism which will serve as an effective deterrent for participants that cause the settlement fails.

Before establishing the procedures referred to in the previous subparagraph, a CSD shall consult the relevant trading venues and CCPs in respect of which it provides settlement services.

Such penalty mechanisms shall include cash penalties for participants that cause settlement fails ('failing participants'). Cash penalties shall be calculated on a daily basis for each business day that a transaction fails to settle after its intended settlement date until the end of a buy-in period referred to in paragraph 3, but no longer than the actual settlement day.

The cash penalties referred to in the previous subparagraph shall not be configured as a revenue source for the CSD."

WHAT THE LEVEL 2 TECHNICAL STANDARDS SHOULD SPECIFY:

"the processes for collection and redistribution of cash penalties and any other possible proceeds from such penalties"

WHAT THE LEVEL 2 EC DELEGATED ACT SHOULD SPECIFY:

"parameters for the calculation of a deterrent and proportionate level of cash penalties referred to in paragraph 2 based on asset type liquidity of the instrument and type of transaction that shall ensure a high degree of settlement discipline and a smooth and orderly functioning of the financial markets concerned."

ANNUAL REPORTING BY ESMA ON PENALTIES:

Article 74(1): "ESMA, in cooperation with EBA and the authorities referred to in Articles 10 and 12, shall submit annual reports to the Commission (...) [including] at least an assessment of the following:
(a) (...) settlement efficiency for domestic and cross-border operations for each Member State based on the number and volume of settlement fails, amount of penalties referred to in Article 7(4)(…)"
(b) appropriateness of penalties for settlement fails, in particular the need for additional flexibility in relation to penalties for settlement fails in relation to illiquid financial instruments referred to in Article 5(1)."

A. ECSDA Proposal

Although the ESMA Discussion Paper does not include a detailed analysis of the measures to be adopted under CSDR article 7(2) on penalties for late settlement, ECSDA expects that the European Commission will consult on its upcoming delegated act at a later stage. We thus seize the opportunity of this paper to describe what we think could constitute a workable system for late settlement penalties, consistent with the Level 1 text of the Regulation and with the other proposals made by ECSDA in relation with the Level 2 technical standards on settlement discipline. ECSDA stresses that these proposals are preliminary, and that we are committed to working jointly with ESMA, the European Commission and the other European associations representing users and market infrastructures to ensure that the future technical standards establish a workable framework for the processing of late settlement penalty fees. We also call on the European Commission and ESMA to organise a proper market consultation on this aspect of the Regulation in the coming months, given the complexity of the issue and the need to ensure full consistency between the buy-in regime and the regime for late settlement penalties.

The upcoming EC delegated act on penalties for late settlement should:

1) Require that the penalty fee for late settlement be an **ad valorem fee with a fixed, per trade component** aimed to cover the costs of maintaining the penalty system;

2) **Determine a minimum amount for the fixed, per trade component of the penalty fee,** allowing CSDs to cover the costs of developing and maintaining the system. Some flexibility for CSDs to go beyond this minimum amount is however necessary to account for the different costs across CSDs.

3) Recommend a **mark-to-market approach** for determining the reference price on which to calculate the penalty (as this would ensure that a single method is used for sourcing reference prices for both DvP and FoP instructions), on the condition that (1) CSDs can obtain the required pricing data, that (2) ESMA specifies the source of prices to be used, possibly based on a tender, having in mind however that the cost of using this source by CSDs would be one of the costs of maintaining the penalty system, and that (3) a solution is found for illiquid securities for which no reliable daily market price is available;

4) **Exempt some FoP deliveries from penalties, such as transfers between securities accounts managed by the same participant** (including between the accounts of a participant and of an account holder that is not a participant in direct holding markets);

5) **Allow for a differentiated rate for calculating penalties for a maximum of two asset types, i.e. distinguishing between debt securities and transactions in all other financial instruments.** There should be a single daily penalty fee rate for both categories of transactions.

6) **Foresee the possibility for the calculation method to be adjusted over time** to reflect changing market conditions.

The upcoming EC delegated act should not:

7) **Impose the use of a gross (single-instruction-based) or multilateral net model to all CSDs.** CSDs should be allowed to choose either model. That said, a single model might be defined at the level of the T2S platform in the future if the Eurosystem ever decides to integrate a functionality facilitating the imposition of penalty fees by T2S participating CSDs.

The CSDR technical standards on the collection and redistribution of cash penalties should:

8) Require CSDs to redistribute the **penalty monies**, after having deducted the part used to cover the CSD's costs of maintaining the system, **whenever possible to the suffering party and, when this is not practical, to the community of participants** or to projects that benefit the market as a whole.

B. Analysis of the different options

(1) A proportional (ad valorem) penalty

ECSDA recognises that an ad valorem penalty fee for late settlement is generally fairer, and acts as a better deterrent, than a "flat fee" system, even though we note that some CSDs today charge a flat fee on failed settlement instructions. In order to be workable, an ad valorem fee would however need to include a minimum fixed per trade component.

An ad valorem formula poses some challenges for **free of payment deliveries:**

- Some FoP deliveries should be exempt from penalties, such as transfers between securities accounts managed by the same participant[14] (mostly collateral movements, portfolio transfers, or transfers between a participant and another account holder who is not a participant for account allocation purposes in direct holding markets, see also our comments on compulsory matching).

- At the same time, other FoP deliveries are actually similar to DvP deliveries with the exception that the cash leg of the transaction settles outside the CSD (e.g. at an external cash settlement bank, a practice that is allowed and regulated by the CSD Regulation). Those transactions should consequently not be exempt from the general settlement discipline regime.

(a) A fixed amount charged for every failed instruction to cover CSD costs

CSDs must be able to recover their costs in relation to the setting up and management of the settlement discipline regime. A fixed, per trade component in the ad valorem fee would be a way to recover these costs, and to avoid that, in some cases, the cost of charging a penalty is higher than the amount of the penalty itself. Such "flat amount" is already applied in several markets today.

Level 2 legislation should therefore allow CSDs to establish a fixed, per trade component as part of the (otherwise ad valorem) penalty fee, and should specify a minimum monetary amount per trade. The possibility for a CSD to increase the amount of the fixed, per trade component, is important to reflect the different costs undergone by CSDs in developing and managing the settlement discipline regime. While the minimum amount will ensure a certain degree of harmonisation and ensure that CSDs can cover the costs of operating the discipline regime, individual CSDs facing higher costs and deciding to go beyond the minimum amount would have to consider the resulting competitive disadvantage.

(b) Conversion rate to be used in the calculation of penalty fees

For the sake of transparency and to avoid excessive costs and complexities, ECSDA recommends that the calculation method should be as simple as possible, avoiding for example daily changes in the rate of conversion used. We thus suggest using a simple rate applied to the reference value of the transaction with a fixed, per trade component to cover the CSD's costs.

Despite the need for simplicity, **a distinction is probably warranted between transactions in debt securities and all other transactions, given the typically higher average counter values of transactions in debt securities.** Such distinction is not widespread among CSDs, but some CSDs (e.g. Monte Titoli in Italy) have introduced a different rate for fixed income transactions at the request of their market participants. Distinguishing between more than two categories of transactions, however, would make the system too complex, and could considerably enhance costs.

In case the technical standards include a calculation formula for the late settlement penalty fee, we suggest the following characteristics:

- A proposed rate of 0.05% of the reference value for all transactions except debt securities, for which an appropriately calibrated (lower) rate is warranted;

[14] In some direct holding markets, account operators can be given a power of attorney to manage securities accounts registered in the name of another account holder. Transfers between such accounts, like transfers between accounts of the same participant, should be exempted from penalties.

- A harmonised minimum daily penalty fee of EUR X to be charged on each failed instruction (amount to be discussed with market participants);.
- A minimum fixed, per trade component of EUR 25 (or equivalent amount in the applicable currency) per daily penalty fee charged to cover the CSD's costs of managing the penalty regime.

It will also be very important that the rate can be calibrated over time to reflect changing market conditions. We strongly recommend that the technical standards foresee the possibility for regular reviews of the rate of conversion, the minimum daily penalty fee and the minimum fixed, per trade component, where necessary**, once the technical standards are in force.**

ECSDA is not in favour of incrementally increasing penalty rates as this would complicate the calculation. An ad valorem fee should anyways be sufficiently deterrent since it increases with the value of the instruction and with the length of the time the instruction remains unsettled.

(2) Reference price for the calculation of the ad valorem fee

If certain FoP transactions are included in the scope of the penalty regime, ECSDA believes that mark-to-market valuation would probably be the most appropriate option <u>provided the following conditions are met</u>:

- **Penalties are only applied to securities for which a reliable daily market price is readily available.** Today, most CSDs charging penalties for late settlement do not distinguish between "liquid" and "illiquid" securities. But in case of a mark-to-market approach, imposing penalties on illiquid securities for which a reliable daily market price is not available would increase risk and complexity.
- **CSDs would need to rely on the same, predetermined source of price information** to avoid any possible distortions or claims by participants that the reference price used for the calculation of the penalty is not correct. CSDs should be able to source price information easily and without being exposed to risks that this information might be inaccurate. ESMA should specify the source of prices to be used, possibly based on a tender, having in mind however that the cost of using this source by CSDs would be one of the costs of maintaining the penalty system.

The advantage of this option is that it would provide a single calculation method for both DvP and FoP instructions.

For instructions that fail to settle over multiple days, the penalty could be calculated based on the daily market price for each day when the settlement is delayed. Furthermore, although the calculation of penalty fees will be made on a daily basis, it should be possible for CSDs to charge the penalties to their participants on a monthly basis (e.g. in a special section of the invoice in the case of CSDs working with a monthly billing). This is in line with the current practice at some CSDs and would contribute to limit the administrative costs involved.

	Option A: Mark-to-market approach	**Option B: Monetary value of the settlement instruction**
Benefits	▪ A single method for all instructions (FoP, DvP) ▪ "Fairer"	▪ Easy to implement for the CSD
Disadvantages	▪ More risk (reliance on a third party provider for market prices, potential claims from participants if they believe the price to be inaccurate…) ▪ Higher costs for the CSD (use of	▪ Not appropriate for FoP deliveries ▪ Risk of wrong incentives (no penalties when the cash leg of the transaction occurs outside the CSD system)

	data provider)	
Conclusion	Appropriate	Not always appropriate

(3) Single instruction versus multilateral net balances

Level 2 legislation should not impose the use of a single model by CSDs, whether a "gross" model based on a single settlement instruction or a "net model" based on multilateral net balances for each security. Both models are currently in place and work efficiently at different CSDs. **ECSDA's preliminary analysis suggests that giving CSDs the choice between a gross and a net model should not result in significant distortions for market participants. Thus it should be up to each CSD to decide which model to apply after careful evaluation of the respective pros and cons.**

In the case of direct holding markets for instance, the 'gross' calculation model based on single instructions has the advantage of facilitating an accurate calculation of the penalty fees. Using multilateral net balances for calculating penalties could make the account allocation process much more complicated in such markets. Although in principle both the 'gross' and the 'net' models ensure a good level of "traceability" and transparency, some CSDs in direct holding markets feel that, with their current account set-up, the implementation of a net model would not always allow participants to see which individual instruction is linked to a penalty fee, making it more difficult for them to pass on the fees to the failing clients. This is because, in the "net" model, the CSD will only provide participants with the total amount of fees charged per ISIN.

On the other hand, compared to the "net" model, the "gross" model based on single settlement instructions has the disadvantage of imposing penalties onto some intermediaries which, in a chain of failed transactions, might have a "flat position" (i.e. they may be both receiver and payer of a penalty). A 'net' model avoids that such intermediary has to manage the "pass-on" of the penalties to its clients, and the related costs.

Both models can work with an RTGS system or a 'net' settlement system. Indeed, when penalties are calculated based on multilateral net balances, such calculation is independent from the settlement process.

In the future, ECSDA recognises that a single calculation model might need to be imposed at the level of the TARGET2-Securities platform if the Eurosystem ever decides to integrate a functionality facilitating the imposition of penalty fees by T2S-participating CSDs. Since the operator of T2S is unlikely to decide on such developments before the CSDR technical standards enter into force, **keeping both options open is important to avoid restricting T2S to the one option mandated by law.**

	Option A: "Gross" model	**Option B: "Net model"**	**Option C: Maintaining choice**
Benefits	▪ Since penalties are always linked to an individual instruction, it is easy for participants to identify to whom (among their own clients) they should "pass on" the cost of the penalty ▪ More appropriate for direct holding markets ▪ Works well in complex & cross-border chains and	▪ "Fairer" for those participants who cannot deliver because of another participant's fail (in a net system, they are not penalised) ▪ Possibly lower running costs for the CSD and for participants, since the lower level of fines charged to participants reduces the processing	▪ Both systems are in use today and CSDs could continue working with the model most adapted to local market characteristics (e.g. direct holding)

	in T2S, where it is not always possible for CSDs to easily identify the "first party in the chain" ▪ Positions the CSD as a neutral market infrastructure (not trying to identify the ultimate "responsible" in a chain of fails, given the limited information at the CSD's disposal) ▪ As it is the dominant model today, fewer CSDs will have to adapt their systems.	cost ▪ Works both with an RTGS and a net settlement model (penalty calculation is an off-settlement process) ▪ Seems to better accommodate the exemption of CCPs from penalty fees (at least for those CCPs that use a continuous net settlement model).	
Disadvantages	▪ Less "fair" for participants because they are penalised even if they are not the first participant responsible for the fail in a chain of failed transactions, although they might receive compensation for the fail (as suffering party) ▪ Cumbersome for participants and CSDs given the higher running cost, since each and every fail gives rise to a penalty (and the related operational & administrative burden). However, it is not clear whether the cost differential will really be important, given that the "net" model also requires some special upkeeps / resources.	▪ Less widespread than the "gross" model, a net model would require important set-up costs for most CSDs. ▪ In case of a fail chain between multiple CSD participants, having to identify the first failing participant in the chain could prevent the CSD from automating its penalty mechanism. ▪ In direct holding markets, the "net model" is less transparent and could make the account allocation process more complex. For example, participants might have to make some adaptations to their systems to identify the penalties that need to be passed on to the underlying clients, given that they will only receive the "net" information from the CSD (a list with the amount of fees to be paid per ISIN) ▪ Requires further discussion on some technical aspects such	▪ Risk of competitive advantage (or disadvantage) for those CSDs offering a "net" model?

		as H/R instructions and the use of omnibus accounts	
Conclusion	Not always appropriate	Not always appropriate	Appropriate

(4) Special cases

(a) Primary market transactions

ECSDA believes that primary market transactions require special consideration. In some (but not all) markets, such as the UK and Poland, new issues are exempted from penalties, at least for a certain number of days. That said, article 5(2) of the CSD Regulation exempts primary market transactions from the T+2 requirement, thereby already providing for some flexibility, and reducing the likelihood that penalties are charged:
"The intended settlement date shall be no later than on the second business day after the trading takes place. This requirement shall not apply to […] the first transaction where the transferable securities concerned are subject to initial recording in book-entry form pursuant to Article 3(2)."

(b) Repos and securities lending transactions

It is currently not possible for many CSDs – and it will not be possible for T2S – to identify bilateral repos and transactions resulting from bilateral securities lending and borrowing (SLB) arrangements. Exempting such transactions from the penalty regime would thus raise very concrete difficulties. Even if CSDs were to be required to make technical changes to their system to allow participants to "flag" a bilateral repo or SLB transaction, the CSD would not be able to check the use made of such a flag – in other words, it is unclear how the system would be "policed", and there is a risk that some non-eligible instructions would be flagged as "repo" in order to avoid paying penalties, without any possibility for the CSD to know. The problem is due to the fact that, unlike in the case of SME growth shares, which ECSDA understands are to be exempted from penalty fees, and which can be identified by their ISIN code, repos and SLB can involve any type of financial instruments used as collateral, and thus not identifiable, unless the transactions occur in the context of the CSD's own triparty repo services, or centralise securities lending and borrowing service (in which case the CSD has access to information on the nature of the transaction).
As a result, ECSDA does not think that bilateral repos and securities lending transactions can be exempted from late settlement penalties. A general exemption for repos (especially bilateral repos) would be difficult, if not impossible, for most CSDs to implement.

(c) Illiquid securities

According to recital 16 of the CSD Regulation, the procedures and penalties related to settlement fails should be *"scaled in such a way that maintains and protects liquidity of the relevant financial instruments. In particular, market making activities play a crucial role in providing liquidity to markets within the Union, particularly to less liquid securities"*. We understand this to be a recognition of the complexity and risks involved in imposing penalties on the least liquid financial instruments. Indeed, in some cases, requiring CSDs to impose penalties on illiquid securities could, in addition to entailing more risk for the CSD, further disincentivise market making for such instruments and, given that such securities are hard to borrow, further reduce their liquidity.

Limiting the penalty regime to liquid financial instruments, i.e. those securities for which a reliable market price is readily available (meaning that the CSD receives at least daily prices), would also be consistent with the mark-to-market approach for calculating the penalty fee because, for illiquid securities, no 'fresh' market price is usually available.

Moreover, it should also be taken into account that illiquid securities will be subject to an extended buy-in period, according to CSDR article 7(4)(a), so that late settlement fees would be applied for a longer timeframe than in the case of liquid securities.

Exempting illiquid securities from late settlement penalties will however require a clear, harmonised definition of what "illiquid" means for securities settlement purposes. ECSDA notes that the approach used by ESMA to define "liquidity" in the context of EMIR (EC delegated regulation 149/2013, Article 7) is too CCP- and derivative-specific and cannot be applied in the context of securities settlement. Nonetheless, the *"availability of fair, reliable and generally accepted pricing information",* a notion contained in EMIR (Article 5(4) of Regulation (EU) No 648/2012), will be relevant should a mark-to-market approach be adopted for the calculation of CSD late settlement penalties.

According to CSDR Recital 16, in the context of buy-ins, *"the basis for determining when financial instruments are deemed to be illiquid should be established through regulatory technical standards, taking account of the assessments already made in Regulation [MiFIR]."* ECSDA draws two conclusions from this Recital:

- First, that the definition of "liquid market" under MiFIR Article 2(17)[15] can be used as a basis to develop an appropriate definition of liquidity for the purpose of settlement discipline. The definition, however, does not have to be exactly the same;
- Second, ESMA should ideally propose a definition of liquidity that is relevant both in the context of buy-ins and in the context of penalties for late settlement.

For a definition of "liquid financial instruments" to be workable from a settlement discipline perspective, ECSDA believes it is indispensable that CSDs, at any time, can obtain easily and at minimal cost information on whether a given financial instrument is considered "illiquid" or "liquid", and that (at least) daily prices for this instrument are readily available from data vendors.

	Option A: Exempting "illiquid" securities from penalties	**Option B: Include all securities instructions in the penalty regime**
Benefits	▪ Consistent with the aim of protecting and maintaining liquidity contained in CSDR Recital 16 ▪ Reduces risk for the CSD since no daily market price is readily available and the calculation of the penalty fee would thus involve complex (and potentially contested) choices ▪ Illiquid securities are typically hard to borrow, and not penalising them for late settlement avoids further dis-	▪ Easier for CSDs to automate the process (penalties apply to all types of instruments) ▪ Given that a substantial proportion of fails is due to less liquid securities (fails on blue chip stocks, on the other hand, tend to be relatively low), including such securities in the penalty regime would very likely have a stronger impact on the overall settlement efficiency rate.

[15] *"(17) 'liquid market' means:*
(a) for the purposes of Articles 9, 11, and 18, a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, and where the market is assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments:
(i) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument;
(ii) the number and type of market participants, including the ratio of market participants to traded financial instruments in a particular product;
(iii) the average size of spreads, where available;
(b) for the purposes of Articles 4, 5 and 14, a market for a financial instrument that is traded daily where the market is assessed according to the following criteria:
(i) the free float;
(ii) the average daily number of transactions in those financial instruments;
(iii) the average daily turnover for those financial instruments."

	incentivising investments in such instruments (including e.g. SME growth shares) ▪ The role of market makers is often important for such instruments, and imposing heavy penalties could discourage market making and further reduce liquidity	
Disadvantages	▪ Introduces more complexity in the penalty system and reduce possibility to automate, especially since a given instrument can go from being "liquid" to "illiquid" over time and vice-versa (no possibility to include/exclude certain ISINs on a permanent basis)	▪ Makes illiquid securities (including potentially SME growth stocks) even less attractive to trade in, including market-making activities in such securities ▪ Inconsistent with CSDR Recital 16 requiring a calibrated regime which takes into account the liquidity of securities ▪ Difficulty to calculate penalties on securities for which no reliable price is available, risk of wrong valuations and claims towards the CSD

Even if illiquid securities are exempt from late penalty fees, **ESMA might consider applying a minimum fixed daily amount to such failed instructions**. Such 'flat fee' would not involve any *ad valorem* calculation but could be used to cover the costs for the CSD of recycling failed delivery instructions in illiquid securities while avoiding 'wrong incentives'.

(5) Penalties in the context of cross-CSD settlement

According to the Level 1 text of the CSD Regulation, article 7(11), late settlement penalties *"shall not apply to failing participants which are CCPs."* There is no such exemption, however, for CSDs acting as participants in other CSDs ("investor CSDs" in the context of CSD links).

We note that, in line with the Level 1 Regulation, **only CCPs which are direct participants in a CSD will be exempted from penalty fees. In the case of "indirect links" (i.e. when a CCP accesses a CSD via an intermediary, without being a CSD participant), penalties will apply.**

In a cross-CSD settlement situation, ECSDA understands that the investor CSD will be fined for fails like any other participant, and will subsequently be expected to pass on the fine to its own participant(s) having failed to deliver on time. **The fact that CSDs are part of the T2S platform or have an interoperable link with (an)other CSD(s) should not have an impact on the way penalties are applied.** Generally, CSDR technical standards should not introduce any distinction between CSDs that are part of T2S and other CSDs. Penalties should apply to all CSDs in the same way.

That said, we expect that some issues will need to be addressed at the technical level in TARGET2-Securities to ensure that the process of "passing on" penalties from one CSD to another can work.

Irrespective of T2S, the following aspects will have to be clarified for an efficient processing of penalty fees in a cross-CSD context:

- Based on current bookkeeping regulations, it is unclear **whether the penalties would be considered as the CSD's own assets or clients' assets.** We assume that an efficient processing will usually require penalties to be treated as CSD assets by the investor CSD, so that they are easy to charge and refund to CSD participants as part of the CSD's monthly

invoicing. We expect such matters to be determined as part of the agreement between the issuer CSD and the respective investor CSDs.
If an investor CSD is charged penalties by an issuer CSD because of fails by one of its participants, we remark that the investor CSD might have to pay the issuer CSD even before it gets paid by the failing participant, thereby being temporarily exposed to the failing participant. In this context, the implications in case of an insolvency of a CSD participant must be clarified. Liabilities of an investor CSD must be limited and unambiguous in a T2S (and non-T2S) cross-border settlement context.

- If an investor CSD is charged penalties by an issuer CSD because of fails due to a 'glitch' in the system of the investor CSD, we assume that the investor CSD will have to pay the fee out of its own assets.

(6) Possibility to collect penalties only beyond a certain threshold

The objective of a settlement discipline scheme is to maintain a high level of settlement efficiency. This is why, in some existing penalty schemes, CSDs only penalise failed transactions when the fail rate of a given participant falls below a certain threshold (e.g. DK, UK). This "threshold" is a benchmark; it represents the target settlement efficiency rate each market participant should seek to achieve on an ongoing basis at a minimum.

ECSDA believes that the use of a threshold/benchmark can be a good way to ensure that penalties fulfil their aim, i.e. to support overall settlement efficiency in a market, rather than to penalise each and every fail. However, **in case the CSDR technical standards foresee the possibility for CSDs to restrict the collection of penalty fees to those cases a threshold is not met, it is important that the same threshold applies for all EU markets.** ESMA should thus, if applicable, specify how such a threshold is determined. It could be either a fixed percentage, e.g. 95% of settled instructions on the intended settlement date (but then this figure must be easy to adjust over time) or a more flexible formula, such as the average settlement efficiency rate in a given market.

ECSDA does not recommend giving each CSD the choice as to whether or not a performance threshold is used (and how it is determined) as this could result in competitive distortions.

Where a threshold is used, it should ensure that it is possible for CSD participants to associate fines with the underlying transactions – practically, this means that if performance drops below a certain threshold, then all fails will be fined for that participant, not just some.

We note that allowing for a 'threshold approach' would require the following issues to be addressed:

- In case of a fail which is below the threshold, a CSD still has to process the fail and report it, which generates costs for the system. When no penalty is charged, the CSD cannot cover these costs;
- Implementing a threshold is likely to make the penalty system more complex and thus costly to manage;
- Thresholds are acceptable when there is no necessity to pass the penalty fee to the suffering party. However when the penalties are 'passed on', suffering parties risk not obtaining compensation when 'their' fails fall below the threshold;
- A penalty system should be transparent and predictable. The disadvantage of such "thresholds" is that they somewhat reduce the predictability of the system.

(7) Use of the penalty monies

ECSDA agrees that penalties exist to promote settlement efficiency and should not be a source of income for the CSD. Today, such penalties are a revenue source for CSDs in a few countries, and so the Regulation will result in an important change in these markets.

However, **CSDs should be allowed to retain part of the penalty monies to recover the cost of managing the procedure (primarily communication and administrative costs)**. It is not possible to specify in technical standards the exact proportion of the collected fees that should be used to cover the costs of maintaining the penalty system versus the proportion that should be "redistributed", since this will depend on various factors (the overall level of fails, the level of the penalties charged, the number of participants, the way penalties are billed by the CSD as well as the level of complication of the system resulting from the ESMA technical standards). Today, some CSDs retain more than 50% of the collected penalties to maintain the system, while others retain a smaller portion (around 10%). Other CSDs charge a flat administrative fee to cover their costs while redistributing to rest to the participant having "suffered" from the fail. **In the future, the use of a minimum fixed, per trade component in the ad valorem fee could be a good way to allow CSDs to recover the costs of operating the penalty system.**

In order for the harmonised penalty regime to work efficiently in all EU markets, technical standards should include the following rules:

- **CSDs should be allowed to use part of the penalty monies to cover the costs of maintaining the penalty regime;**
- **The remainder of the monies should be allocated whenever possible to the suffering party and, when this is not practical, to the community of participants or to projects that benefit the market as a whole.**

In general, we note however that the CSD can pass on the penalty fee only to the receiving participant. This does not ensure that the actual suffering party receives the payment, which will mostly be an underlying client of the participant (or even further down the chain).

In terms of the "timing" for the redistribution of penalty monies, we assume that CSDs will wait for the penalties due by failing participants to be paid before the corresponding redistribution to the suffering participants can be executed. This would avoid a situation where investor CSDs have to refund penalties out of their own assets, thereby becoming exposed to the failing participants.

6. Buy-ins – art.7(3) to (8)

WHAT THE LEVEL 1 REGULATION SAYS:

Article 7(3): "Without prejudice to the penalties as defined in paragraph 2 and the right to bilaterally cancel the transaction, where a failing participant does not deliver the financial instruments referred to in Article 5(1) to the receiving participant within 4 business days after the intended settlement date ('extension period') a buy-in process shall be initiated whereby those instruments shall be available for settlement and delivered to the receiving participant within an appropriate time frame. Where the transaction relates to a financial instrument traded on an SME growth market the extension period shall be 15 days unless the SME growth market decides to apply a shorter period."

Article 7(4): "The following exemptions from the requirement referred to in paragraph 3 shall apply:
a) Based on asset type and liquidity of the financial instruments concerned, the extension period may be increased from 4 business days up to a maximum of 7 business days where a shorter extension period would affect the smooth and orderly functioning of the financial markets concerned.
b) For operations composed of several transactions including securities repurchase or lending agreements, the buy-in referred to in first sub-paragraph shall not apply where the timeframe of these operations is sufficiently short and renders the buy-in ineffective.

Article 7(5): "Without prejudice to paragraph 4, the exemptions referred to in paragraph 3a0 shall not apply in relation to transactions for shares where the shares are cleared by a CCP.
This Article does not apply where the principal venue for the trading of shares is located in a third country. The location of the principal venue for the trading of shares is to be determined in accordance with Article 16 of Regulation 236/2012."

Article 7(6): "Without prejudice to the penalties as defined in paragraph 2, where the price of the shares agreed at the time of the trade is higher than the price paid for the execution of the buy-in, the corresponding difference shall be paid to the receiving participant by the failing participant no later than on the second business day after the financial instruments have been delivered following the buy-in.]"

Article 7(7): "If the buy-in fails or is not possible, the receiving participant can choose to be paid a cash compensation or to defer the execution of the buy-in to an appropriate later date ('deferral period'). If the financial instruments are not delivered to the receiving participant at the end of the deferral period, the cash compensation shall be paid.
The cash compensation shall be paid to the receiving participant no later than on the second business day after the end of the buy-in period or deferral period, where the deferral period was chosen."

Article 7(8): 'The failing participant shall reimburse the entity that executes the buy-in of 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.'

WHAT THE LEVEL 2 TECHNICAL STANDARDS SHOULD SPECIFY:

"c) the details of operation of the appropriate buy-in mechanism, including appropriate time frames to deliver the financial instrument following the buy-in procedure referred to in paragraph 3. Such time frames shall be calibrated taking into account the asset type and liquidity of the financial instruments.
d) the circumstances under which the extension period could be prolonged according to asset type and liquidity of the financial instruments, in accordance with the conditions referred to in point (a) of paragraph 4 taking into account the criteria for assessing liquidity under Articles 2(1)(7a) of MiFIR [MIFIR determination of 'liquid market'];
e) type of operations and their specific timeframes referred to in point (c) of paragraph 4 that renders

buy-in ineffective;
f) A methodology for the calculation of the cash compensation referred to in paragraph 7."

ANNUAL REPORTING BY ESMA ON BUY-IN:

Article 74(1): "ESMA, in cooperation with EBA and the authorities referred to in Articles 10 and 12, shall submit annual reports to the Commission (...) [including] at least an assessment of the following:
(a) (...) number and volumes of buy-in transactions referred to in Article 7(4) and any other relevant criteria."

Q13: CSDR provides that the extension period shall be based on asset type and liquidity. How would you propose those to be considered? Notably, what asset types should be taken into consideration?

Q14: Do you see the need to specify other minimum requirements for the buy-in mechanism? With regard to the length of the buy-in mechanism, do you have specific suggestions as to the different timelines and in particular would you find a buy-in execution period of 4 business days acceptable for liquid products?

Q15: Under what circumstances can a buy-in be considered not possible? Would you consider beneficial if the technical standard envisaged a coordination of multiple buy-ins on the same financial instruments? How should this take place?

Q16: In which circumstances would you deem a buy-in to be ineffective?

Q17: Do you agree on the proposed approach? How would you identify the reference price?

Today, CSDs are typically not involved in the buy-in process, which, as recognised by the CSD Regulation, is primarily the responsibility of CCPs. Nonetheless, in the case of "pure" OTC transactions (i.e. transactions not executed on recognised trading venues and not cleared by a CCP), Article 7(10)(c) foresees that *"the CSDs shall include in their internal rules an obligation for its participants to be subject to [buy-ins]".*

In this respect, ECSDA believes that CSDs, given their low risk profile, should in principle not be involved in the execution of buy-ins. Furthermore, buy-ins are about the enforcement of contractual obligations at the trading level, and it is unclear how such a process can be "policed" at the settlement level, even if the rules on buy-ins are contained in CSDs' rulebooks. ECSDA thus recommends that further discussions should take place between ESMA, market infrastructures and their users, after the consultation deadline of 22 May, to consider what processes could be put in place to enforce the CSDR buy-in rules in 'non-CCP' scenarios. Given that it is not possible for CSDs to police the execution of buy-ins, we believe it is important to bring clarity on 'who is responsible for what', and we are committed to working jointly with the other European associations representing users and market infrastructures to try and develop a workable solution by mid-July in order for ESMA to take it into account when drafting the actual technical standards on buy-ins.

Finally, in line with our comments on the application of late settlement penalties on illiquid securities, we support a proper calibration of the buy-in procedure to take into account the constraints in relation to the liquidity of securities. In particular, highly illiquid securities should be subject to longer timeframes for delivery to the receiving participant.

7. Suspension of failing participants – art.7(9)

WHAT THE LEVEL 1 REGULATION SAYS:

Article 7(9): "CSDs, CCPs, trading venues shall establish procedures that enable them to suspend in consultation with their respective competent authority any participant that fails consistently and systematically to deliver the financial instruments referred to in Article 5(1) on the intended settlement date and to disclose to the public its identity only after giving that participant the opportunity to submit its observations and provided the competent authorities of the CSD, CCPs and trading venues, and of that participant have been duly informed.
In addition to consulting before any suspension, CSDs, CCPs and trading venues, shall notify, with no delay, the respective competent authority of the suspension of a participant. The competent authority shall immediately inform the relevant authorities referred to in Article 11 on the suspension of the participant.
Public disclosure of suspensions shall not contain personal data within the meaning of Article 2 (a) of Directive 95/46/EC.".

WHAT THE LEVEL 2 TECHNICAL STANDARDS SHOULD SPECIFY:

"the conditions under which a participant is deemed to consistently and systemically fail to deliver the financial instruments referred to in paragraph 9"

A. ECSDA Proposal

Given the serious consequences the suspension of a CSD participant can have for financial markets as a whole, this measure should be considered only as the ultimate punishment in extreme cases and always involve close coordination with the competent authority. A quantitative threshold should in any case:

- be reasonably low (e.g. below 75% of instructions settled on the intended settlement date, in volume or value, over a 12-month period), and
- never automatically trigger the suspension of a participant.

B. Analysis of the different options

Q18: Would you agree with ESMA's approach? Would you indicate further or different conditions to be considered for the suspension of the failing participant?

Q19: Please, indicate your views on the proposed quantitative thresholds (percentages / months).

ECSDA generally agrees with the approach suggested by ESMA in paragraphs 64 to 66 of the Discussion Paper. However we believe that the suspension of a participant should be considered as an extreme measure. It can only be used as an ultimate solution to a serious problem, and will only be implemented after careful consideration of the circumstances of each case.

First of all, in many cases where a CSD participant fails to deliver securities, the fail is not due to the participant itself but to its underlying client(s). Given that in most cases the CSD can neither identify nor suspend the underlying client with whom it has no direct contractual relationship, suspending the participant will not effectively solve the problem. A less extreme alternative that addresses this constraint is for instance applied in Norway. In case of major problems, VPS, the Norwegian CSD, has the possibility to put a restriction on failing participants that forces them to identify the underlying client(s) that have caused the repeated fails. In practice, it means that the participant can no longer accept settlement instructions from this (these) client(s) if it wishes to remain a participant in the CSD. The suspension of the participant itself is thus the ultimate step in case the participant fails to comply with this condition.

Second, expecting a CSD to suspend a participant repeatedly failing to settle on time would imply that the CSD can trigger the suspension of a participant from all relevant trading venues and CCPs. Since this is not the case, we do not believe that a suspension is a reasonable response to repeated settlement failure and that there are other more efficient ways for the CSD to penalise repeated bad behaviour.

Keeping in mind that the suspension of a participant is a measure to be only considered in extreme scenarios, and in very close consultation with supervisory authorities and the other infrastructures involved, ECSDA acknowledges that ESMA might need to establish a threshold (or a combination of two thresholds, to take into account the value and volume of fails) to help define the notion of a participant failing "*consistently and systematically*". **Based on current experience, we believe that the threshold should in any case not be higher than 75% instructions settled on the intended settlement date (in terms of volume or value), and should be calculated over a sufficiently long period, e.g. 12 months.**

Most importantly, even if one or more thresholds are included in technical standards, it should be clear that **the suspension of a participant should never be triggered automatically once the thresholds are reached.** Some degree of discretion is needed for the CSD to consult with regulators and assess the possible consequences of a suspension for systemic risk.

8. Settlement information necessary for executing buy-ins – art.7(10)

WHAT THE LEVEL 1 REGULATION SAYS:

Article 7(10): "Paragraphs 2 to 9 shall apply to all transactions of the instruments referred to in Article 5 (1) which are admitted to trading or traded on a trading venue or cleared by a CCP as follows:
a) For transactions cleared by a CCP, the CCP shall be the entity that executes the buy-in procedure according to paragraphs 3 to 4a.
b) For transactions not cleared by a CCP but executed on a trading venue, the trading venue shall include in its internal rules an obligation for its members and its participants to be subject to the measures referred to in paragraphs 3 to 8.
c) For all other transactions than those referred to in points (a) and (b) the CSDs shall include in their internal rules an obligation for its participants to be subject to the measures referred to in paragraphs 3 to 8.

A CSD shall provide the necessary settlement information to CCPs and trading venues to enable them to fulfil their obligations under this paragraph.

Without prejudice to points (a) to (c) of this sub-paragraph CSDs may monitor the execution of buy-ins referred to in those points with respect to multiple settlement instructions, on the same financial instruments and with the same date of expiry of the execution period, with the aim of minimising the number of buy-ins to be executed and thus the impact on the prices of the relevant financial instruments.

Paragraphs 2 to 6 shall not apply to failing participants which are CCPs."

WHAT THE LEVEL 2 TECHNICAL STANDARDS SHOULD SPECIFY:

"the necessary settlement information referred to in paragraph 10"

A. ECSDA Proposal

Technical standards should:

1) Require CSDs to inform CCPs and/or, where appropriate, trading venues about the current status of instructions received from these CCPs/trading venues. The information to be provided should be specified in the transaction feed agreement signed between the relevant infrastructures, if applicable.

Technical standards should not:

2) Impose the segregation of the accounts of all trading and clearing members at CSD level.

B. Analysis of the different options

Q20: What is in your view the settlement information that CSDs need to provide to CCPs and trading venues for the execution of buy-ins? Do you agree with the approach out-lined above? If not, please explain what alternative solutions might be used to achieve the same results.

ECSDA has strong reservations about the analysis and the proposals made by ESMA in paragraphs 68 and 69 of its Discussion Paper. In particular, we do not agree with the statement that CSDs *"need to be able to associate the activity of each clearing member, CCP and participant to a trading venue, to a given securities account"*. In fact, we believe that it is the entity responsible for executing the buy-in (e.g. the CCP), which needs to be able to link a failed settlement instruction to a given counterparty.

As far as buy-ins of CCP-cleared transactions are concerned, the processes currently in place are satisfactory: CCPs are able to access the information they need to effect buy-ins and the information is passed on, where relevant, to trading members (irrespective of whether these act as clearing members or CSD participants). CCPs obtain the required information either through direct participation in the CSD or through indirect participation via a CSD participant. **A requirement to segregate the accounts of clearing members at CSD level is thus unnecessary, and unlikely in itself to solve the problem of buy-in execution.**

In the case of transactions on MiFID venues and in the absence of a CCP, the CSD Regulation does not specify who is responsible for executing the buy-in. Unlike CCPs, trading venues are typically not participants in CSDs and thus might not have access to as much information on the settlement of transactions as CCPs. Similarly, the trading counterparties themselves are also rarely CSD participants and have no contractual relationship with the CSD.

The Level 1 Regulation requires a trading venue to *"include in its internal rules an obligation for its members and its participants to be subject to the [buy-in] measures referred to in paragraphs 3 to 8."* It does not require trading venues to execute buy-ins on behalf of participants that have suffered from a fail, but only to foresee a buy-obligation in its rules. It is thus not entirely clear what kind of settlement information trading venues would need to receive from CSDs for the purpose of complying with CSDR article 7(10).

That said, we note that where a CSD receives a transaction feed directly from a trading venue, it is in principle able to send back to the trading venue the necessary information to manage the buy-in with reference to the trading counterparty, even when the trading counterparty is not a CSD participant but appoints a CSD participant to act as its settlement agent. In this regard, it should be considered that both CSDR and the revised MiFID establish a regulatory framework facilitating access to transaction feeds. Such feeds will typically be covered by a contractual agreement between a trading venue and the relevant 'linked' market infrastructures. The information flow to be provided for the purpose of executing buy-ins could thus be specified in these agreements, if applicable at all.

Requiring a trading member to open a separate account at the CSD, segregated from other trading members holding securities with the same CSD participant, would not solve the problem of buy-in execution. The requirement to open such segregated accounts would anyways fall on the market participants, and cannot be imposed on the CSD itself, and such a requirement would probably go beyond the scope of the Level 1 mandate in CSDR article 7.

Furthermore, such segregation requirement introduced in Level 2 standards would very likely result in a sharp increase in the number of securities accounts maintained at CSD level, which would be costly and could result in capacity problems at some CSDs. Given the limited use of such accounts for the purpose of enforcing buy-ins, and in view of the implied costs, **ECSDA is convinced that CSDR technical standards should not impose account segregation requirements on trading and clearing members.**

	Option A: Mandatory segregation requirements for trading and clearing members at CSD level	**Option B: Requirement for CSDs to pass to CCPs and trading venues the information on the current status of instructions received from these infrastructures**
Benefits	▪ Very limited in the case of CCPs, which have well-established procedures in place and already	▪ Easy to employ (part of standard reporting, at least in some CSDs). The information passed on would enable a

	have access to all relevant information from the CSD to manage the buy-in procedure.	CCP or trading venue to determine the date when the buy-in should be effected.
Disadvantages	▪ Unnecessary proliferation of accounts at CSD level would be costly and could lead to capacity problems in some CSDs.	
Conclusion	Not appropriate	Appropriate

Finally, we remark that, when applying a buy-in at the trading venue level, there is a risk that some settlement optimisation mechanisms between on-exchange and OTC transactions at the CSD level could be prevented.

ECSDA

9. Timeline for implementing CSDR article 7

TIMING BY “DEFAULT”, BASED ON THE LEVEL 1 REGULATION:

Technical standards under CSDR Article 7 would, unless special transitional provisions are foreseen, enter into force 20 days after their publication in the Official Journal.

ECSDA, together with the major stakeholders in the securities industry, is very concerned about the timing of article 7 implementation. As explained in our introductory remarks, both CSDs and their users will have to make important adaptations to their IT systems in order to comply with the future settlement discipline requirements. Such adaptations can only be initiated once the technical standards are final and the detailed specifications are known. As a result, ESMA and the EU legislator should be aware that it is not realistic to expect CSDs to comply with Article 7 requirements within 20 days after the entry into force of the new rules in the Official Journal of the European Union.

Based on past experience (some of which is described in more detail in the response of the T2S Advisory Group to the ESMA consultation) and on ESMA’s current proposals, ECSDA expects that the changes required of CSDs (e.g. database changes, introduction of new messages, new billing mechanism…) will take many months to implement.

Besides, it is in the interest of securities regulators and policy makers that the adaptations are not rushed and that CSDs have sufficient time to follow best project management practices, especially to avoid any negative impact on the preparations for TARGET2-Securities implementation. Once the technical specifications are known, CSDs will probably need at least 12 months to develop the required IT functionalities and to test the system, first internally, and later with market participants.

ECSDA thus strongly recommends that ESMA should consider a transition period of up to 3 years (from 2015 to 2017) for achieving full implementation of CSDR article 7. Assuming that the technical standards are adopted in final form prior to the launch of T2S in June 2015, we are convinced that a phased implementation until 2017 (by the time of the 4th T2S migration wave) would minimise the risk of disturbances and benefit the whole market by allowing for a smooth transition to the new framework.

Finally, it is important that this timeline be complemented by adequate transitional provisions that take into account all related EU regulatory initiatives (e.g. Short Selling Regulation which is subject to a deletion according to Article 72a).