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| 18 December 2014 |

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| Reply form for the  Technical Standards under the CSD Regulation |
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| Date: 18 December 2014 |

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper - Technical Standards under the CSD Regulation, published on the ESMA website.

***Instructions***

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

1. use this form and send your responses in **Word format**;
2. do not remove the tags of type <ESMA\_QUESTION\_TS\_CSDR\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
3. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

1. if they respond to the question stated;
2. contain a clear rationale, including on any related costs and benefits; and
3. describe any alternatives that ESMA should consider

**Naming protocol:**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_ TA\_CSDR \_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

E.g. if the respondent were ESMA, the name of the reply form would be ESMA\_TS\_CSDR\_AIXX\_REPLYFORM or ESMA\_CE\_TS\_CSDR\_AIXX\_ANNEX1

Responses must reach us by **19 February 2015**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

***Publication of responses***

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

***Data protection***

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Disclaimer’.

# General information about respondent

|  |  |
| --- | --- |
| Are you representing an association? | No |
| Activity: | Central Securities Depository |
| Country/Region | Poland |

##### Do you think the proposed timeframes for allocations and confirmations under Article 2 of the RTS on Settlement Discipline are adequate?

##### If not, what would be feasible timeframes in your opinion?

##### Please provide details and arguments in case you envisage any technical difficulties in complying with the proposed timeframes.

<ESMA\_QUESTION\_TS\_CSDR\_1>

From our point of view CSDs are not directly in the scope of trade confirmation and allocation between investment firms and their professional clients.

To improve the process on the CSD side it is crucial to use hold/release and tolerance level mechanisms.

Hold release mechanisms allow the investment firm to send the instruction to a CSD with the status “hold” while waiting for the confirmation from its client. Then, after the confirmation only a “release” instruction is required.

Tolerance levels allow for settlement in the situation when the amount in the instructions differs between counterparties.

We would like to point out that the fields required for the purpose of trade confirmations need to be consistent with the fields used in the further processing of the transaction (e.g. for the matching of instructions).

<ESMA\_QUESTION\_TS\_CSDR\_1>

##### Do you agree with the cases when matching would not be necessary, as specified under Article 3(2) of the draft RTS?

##### Should other cases be included? Please provide details and evidence for any proposed case.

<ESMA\_QUESTION\_TS\_CSDR\_2>

We agree that matching is not necessary in the following situations:

a) the settlement instructions received by the CSD are already matched by trading venues or other entities such as CCPs;

b) FoP instructions which consist of transfers of financial instruments between different accounts opened in the name of the same participant.

Matching of settlement instructions by CSDs should be fully automated and occur continuously throughout each business day.

In our opinion the three exemptions set out in Art.3(2) should not be considered exhaustive. Given the diversity of current market practices, more exemptions from mandatory matching will be necessary in a number of cases, including:

* corporate actions processing;
* other operations initiated by the CSD, if they are used in specific CSD procedures;
* situations when instructions are processed as a result of a Court order (e.g. insolvency proceedings).

<ESMA\_QUESTION\_TS\_CSDR\_2>

##### What are your views on the proposed approach under Article 3(11) of the draft RTS included in Chapter II of Annex I?

##### Do you think that the 0.5% settlement fails threshold (i.e. 99.5% settlement efficiency rate) is adequate? If not, what would be an adequate threshold? Please provide details and arguments.

##### Do you think that the 2,5 billion EUR/year in terms of the value of settlement fails for a securities settlement system operated by a CSD is adequate? If not, what would be an adequate threshold? Please provide details and arguments.

<ESMA\_QUESTION\_TS\_CSDR\_3>

In our opinion Level 2 legislation should not mandate specific technical functionalities of CSD systems. KDPW believes it should be up to each market to decide on the most effective and appropriate tools to prevent settlement fails, and that the objectives of the CSDR can be achieved without imposing a single technical design on all EU CSDs.

Additionally, the problem exists of how CSDs, which suddenly fall below the threshold, then manage to introduce H/R, recycling or partials (if they do not currently have these facilities), within a 3 month period (as per Art. 3 §13)? The proposed period is too short, taking into account, that the introduction of these facilities would require changes not only in the CSD’s system, but also in the systems of participants.

From our point of view the 99.5 settlement efficiency rate is adequate.

We suggest that only a percentage threshold should be used. There are different sizes of markets so a value based index will be quite difficult to implement.

<ESMA\_QUESTION\_TS\_CSDR\_3>

##### What are your views on the proposed draft RTS included in Chapter II of Annex I?

<ESMA\_QUESTION\_TS\_CSDR\_4>

In our opinion occasional manual interventions in CSD procedures are necessary and essential for the smooth processing and timely settlement of instructions, in particular where corrective actions are required, or in times of crisis.

The lack of a definition of “manual intervention” in Article 3 of the draft RTS is a problem, as it could give rise to legal uncertainty.

CSDs should only be expected to report manual interventions which are not foreseen in the CSD’s operating procedures.

KDPW shares the opinion of ECSDA, that prescribing the use of standardised mandatory matching fields is not appropriate for binding Level 2 legislation and is not necessary to fulfil the Level 1 mandate granted to ESMA by the CSDR. Imposing mandatory matching fields by law will prevent flexible adaptations in the future and is unlikely to bring substantial benefits in terms of improving settlement efficiency. On the contrary, we believe that imposing mandatory matching fields by law could increase the number of settlement fails and create systemic risk. This is because the higher the number of mandatory matching fields, the more likely it becomes that two instructions do not match.

All fields proposed by ESMA should be amended to comply with ISO standards (15022 and 20022) - there is a discrepancy in fields: “transaction type” and “instruction type”.

In Art 3(3) there are erroneous references to Art. 4(2), e.g. there is no h) in this Article.

The obligation to recycle failed settlement instructions should only apply to instructions that have been matched and a CSD should be allowed to foresee the cancellation of instructions after a certain time to avoid "indefinite" recycling for those instructions.

Information on the status of instruction should be consistent with ISO standards. ISO norms do not define buy-in information.

We strongly recommend the removal of requirement of processing of data, which are not related to CSD activities (e.g. buy-ins) and not not covered by ISO norms.

<ESMA\_QUESTION\_TS\_CSDR\_4>

##### What are your views on the proposed draft RTS on the monitoring of settlement fails as included in Section 1 of Chapter III of Annex I?

<ESMA\_QUESTION\_TS\_CSDR\_5>

A CSD should be able to identify and keep information about the intended settlement date and the status of settlement instructions which have entered the system.

Reporting requirements should take into account the fact that a CSD can only identify and report information that it actually has access to. In relation to the required information on buy-ins, we would like to point out that this information is in most cases currently not available to CSDs.

We strongly believe that CSDs should not be required to be involved in the buy-in process.

If we accept that it is important to differentiate between transactions executed on trading platforms from OTC trades, and between transactions cleared in a CCP from non-CCP cleared transactions, it is worth noting that this differentiation will not be achieved by applying a list of ISO codes for the “transaction type” field. Any attempt to apply a list of ISO codes as required by the provisions of CSDR for the purpose of identifying the transaction type so as to monitor settlement fails may be premature, bearing in mind the current low levels of harmonisation in this scope. Currently the rule is to apply market practice, which is defined according to the needs of users in a given market, which is not necessarily the same across different markets. Achieving a harmonised effect here will not be possible without far-reaching system changes in the trading and post-trading sphere and does not seem realistic within the time frame for the implementation of the CSDR regulation (see ECSDA comment to Standardised matching fields, art.3(3)).

One proposal that could be examined is a separate segregation of transaction types along the following lines:

1) referring to underlying business transaction or type of business operation:

(i)           trades (purchase or sale of securities);

(ii)          transactions related to collateral management, securities lending/borrowing, repurchase transactions;

(iii)         corporate actions and custody related operations;

(iv)         other transactions;

2) referring to the place of trading:

(i)           executed on a trading venue;

(ii)          other transactions;

3) referring to transaction clearing:

(i)           CCP cleared transactions,

(ii)          other transactions.

This type of segregation will allow for the direct mapping of transaction structures to ISO compliant instruction fields.

The reasons for failed instructions should take into account, that these might be not only ‘lack of securities’ or ‘lack of cash’, there are also other reasons for settlement fails, such as sending of late instructions, instructions with the status “hold” or temporary restrictions for settlement with a certain ISIN code.

KDPW does not have access to information regarding the *“missing amount”* of cash in the cash accounts maintained by their participants at the central bank.

As regards Art.4(3) on the "working flow" with the top ten participants, KDPW supports the spirit of ESMA's proposal and recognises the need to establish a dialogue with its most important participants in terms of settlement fails, but disagrees that such working flow should be specified in Level 2 legislation. CSD should be able to identify the participants with the highest rates of settlement fails and cooperate with them to improve their performance, but, taking into account the different reasons for their fails, this cooperation should have more individual character. We believe that a CSD gives participants sufficient tools to avoid fails and it is a participant’s task to improve its operation.

A CSD should send reports on settlement fails to public authorities. In our opinion reports on a monthly basis should be send 10 working days after the end of each month and reports on annual basis should be sent 20 working days after the end of each year. Working days should be defined as working days specific for the calendar of the Member State.

It is indicated that information “shall be transmitted in a machine readable format” – the scope of data is defined in Annex 1. We assume, that it means that the format will be bilaterally agreed between each CSD and its competent authority. If such was the intention of ESMA, it should be clearly indicated in the RTS.

It is assumed that periodic reports would be generated and transmitted by a dedicated IT system. The possibility for a competent authority to request more frequent and more detailed reporting from a CSD (Art 5(2)) brings additional costs that are difficult to estimate, as any ad hoc requests for additional information would require manual processing. We propose to delete this possibility or to limit it to particular situations.

The scope of the additional data should be in line with the requirements of the record keeping section.

In our opinion reports on settlement fails should be sent only to competent authorities. The competent authority should send reports further to the relevant authorities and ESMA.

Comments to the content of settlement fails report to public authorities:

* reasons for failed instructions – there are other reasons for settlement fails, apart from lack of securities or lack of cash, such as sending of late instructions, instructions with the status “hold” or temporary restrictions for settlement with a certain ISIN code.
* number and value of settlement fails – we assume that the data relate to all instructions, including failed instructions in the chain.
* It is unclear, which exchange rate should be taken for conversion of values into EUR – should it be an exchange rate for a given date or an average from a predefined period, the ECB reference date, or the exchange rate established by the Polish Central Bank?
* top 10 participants – it is worth noting that the biggest contributors might be participants from the settlement fails chain, but not the one which caused the fail.
* field 13 “main reason” – such fields are not used in system solutions, which would create difficulties if the report were to be created automatically.
* field 19 “total number of penalties” – it is not clear how to count the “number of penalties”, in our opinion only field 20 “total value of penalties” should be counted.
* buy-in fields – as we indicated earlier, these information are currently not processed by KDPW.
* field 27 - it is not clear which information should be indicated here, such fields are not used in CSD system solutions.
* Fields 28 and 29 – it is unclear, whether these values should be reported every quarter, or only when the thresholds defined in Art. 3.11 are exceeded.
* It is not clear how to take into account “partially settled instructions” in data relating to the number and value of settlement fails and the number and value of settlement instructions, i.e. whether a partially settled instruction should be counted as one instruction, regardless of the number of parts in which it has been settled or whether each part should be counted separately.
* In our opinion the classification of assets used in the column “Type of asset class” should be in line with ISO 10962. If it is not the case, there should be clear assigning of financial instruments to each type of asset class.

Remarks to Reports on settlement fails to be made public (annex 2):

* reasons for failed instructions – there are other reasons for settlement fails, apart from lack of securities or lack of cash, such as sending of late instructions, instructions with the status “hold” or temporary restrictions for settlement with a certain ISIN code.
* field 16 should indicate the “number” instead of “volume” of failed settlement instructions,
* field 27 - it is not clear which information should be indicated here, such fields are not used in CSD system solutions.
* It is not clear how to take into account “partially settled” instructions” in data relating to the number and value of settlement fails and the number and value of settlement instructions, i.e. whether a partially settled instruction should be counted as one instruction, regardless of the number of parts in which it has been settled or whether each part should be counted separately.
* number and value of settlement fails – we assume that the data relate to all instructions, including failed instructions in the chain.
* It is unclear, which exchange rate should be taken for conversion of values into EUR – should it be an exchange rate for a given date or an average from a predefined period, the ECB reference date, or the exchange rate established by the Polish Central Bank?

<ESMA\_QUESTION\_TS\_CSDR\_5>

##### What are your views on the proposed draft RTS related to the penalty mechanism? Do you agree that when CSDs use a common settlement infrastructure, the procedures for cash penalties should be jointly managed?

<ESMA\_QUESTION\_TS\_CSDR\_6>

We agree that the penalty mechanism should consider:

* Instructions failed on ISD,
* Instructions held on ISD,
* Instructions entered into the settlement system after ISD.

The ISD is always the point from which the penalty is calculated.

We would like to point out that KDPW currently does not have access to the information required to assess if a particular financial instrument is admitted to trading to a MiFID trading venue (Regulated Market, MTF or OTF) if the trading venue is outside Poland. Therefore, giving CSDs access to a central and reliable source of information on which securities are "admitted to trading on a MiFID venue" (and not only on a regulated market) will be indispensable for a proper implementation of the Level 2 standards on settlement discipline.

In order to limit the flow of cash while processing penalty payments, participants should be able to net amounts due with the amount they should receive (only net amounts would be paid/redistributed on a monthly basis).

We agree the penalty mechanism shall not apply to failing participants that are CCPs. However, in our opinion CSDs should run the process of collection and redistribution of cash penalties without CCP and Clearing Members involvement. If a CCP operates under Trade-date-netting/Settlement Date Netting, such as KDPW\_CCP, information on transactions is present in the CSD system after ISD and therefore the CSD has all the information required for the calculation of penalties on the CCP cleared transactions. In such case it should be possible for a CSD to collect and redistribute penalties directly from CSD participants which can also be members of the CCP. In case the clearing member is not a participant of the CSD, penalties could be collected by its settlement agent who will pass on penalties to the clearing member according to their contractual relationship, without the need of involving the CCP.

This would also streamline the processing of penalties when there is a dependence of settlement of trades which are cleared by a CCP and those which are not cleared by a CCP, i.e. a CCP-cleared trade for onward OTC delivery to custodian. If a CCP member (seller) fails to deliver securities, another CCP member (buyer) does not obtain securities for onward OTC transfer to a custodian. CSD passes penalty info to CCP, which penalises its member (seller) and compensates the other member (buyer). If the CCP would be excluded from the CSD penalty system, a problem arises how to compensate the custodian, who did not receive the onward delivery.

KDPW agrees that CSDs should only redistribute monies they have actually collected, in order not to bear any financial risks. In cases where a participant does not pay late settlement penalties owed to the CSD at the end of the month (e.g. if a participant goes into default), we would like to clarify that, as per Art. 8 of the draft RTS, the CSD is entitled to delay the payment of the "redistributed" penalties to the suffering parties until the moment the payment is actually received. It is worth highlighting that the penalty mechanism uses netting which means that the lack of payment from one participant changes the positions for other participants in the chain e.g. if such a situation occurs, the participant with the neutral position in the chain might be obliged to pay.

<ESMA\_QUESTION\_TS\_CSDR\_6>

##### What are your views on the proposed draft RTS related to the buy-in process?

##### In particular, what are your views on applying partial settlement at the end of the extension period? Do you consider that the partialling of the settlement instruction would impact the rights and obligations of the participants?

##### What do you think about the proposed approach for limiting multiple buy-in and the timing for the participant to provide the information to the CSD?

<ESMA\_QUESTION\_TS\_CSDR\_7>

A CSD should not be involved in the buy-in process except where it informs CCPs, trading venues and CSD participants about securities that should be bought-in by sending a report and accepting settlement of buy-in instructions. Currently CSDs are usually not involved in the buy-in process. In practice there is no one-to-one correspondence between trades and settlement instructions. Usually CSDs do not have any contractual relationship with trade counterparties (which, unlike CSD participants, are responsible for executing buy-ins). Collecting information on buy-ins at CSD level, rather than at trading level, would generate a whole set of problems given that CSDs currently do not have access to the required information on buy-ins and, even if they receive such information in the future, they will have absolutely no way to control that this information is complete or accurate.

Giving CSDs a role in relation to buy-ins will bring new liabilities and will thus increase their risk profile, contrary to the overall objective of the CSDR.

KDPW disagrees with the proposed wording of Art.11(5) and believes that the obligation for CSDs to reserve relevant securities before partial settlement should be deleted. Not only is such "reservation" unnecessary, but it would also potentially create various problems for the CSD and its participants (such as blocking assets which would be used for settlement of other transactions on ISD, which would lead to more settlement fails).

Partial settlement should apply to instructions (including buy-in instructions) from the moment the instruction is sent for settlement for the first time on the intended settlement date.

We do not agree that the buy-in process should be used for instructions on hold. In such a situation the settlement failure is caused by the status of the instruction (on hold) and not by the actual lack of securities. The buy-in process would not automatically settle if the status of the instruction is still ‘on hold’.

If a buy-in fails, the compensation process should be performed by entities which initiate the buy-in process: CCPs, trading venues and CSD participants. A CSD should only support tools to execute the process e.g. cancelling of instructions.

As regards Art.11(10), requiring CSDs to test the consistency of the information provided by failing participants or a trading venue with settlement instructions is unpractical and will not allow CSDs to prevent multiple buy-ins. We understand that, in line with Article 7(10) of the Level 1 text of the CSDR, ESMA wishes to avoid unnecessary buy-ins in the context of chains of failed transactions, but we are convinced that the proposed wording of Art.11(10) is unworkable and will not achieve this aim. CSDs should not take responsibility for deciding on the number of buy-ins to be executed.

Additionally, the above proposition is not consistent with STP principles (Art.3(1)) regarding the minimalisation of manual interventions.

<ESMA\_QUESTION\_TS\_CSDR\_7>

##### What are your views on the proposed draft RTS related to the buy-in timeframe and extension period?

<ESMA\_QUESTION\_TS\_CSDR\_8>

A CSD should not be responsible for estimation of liquidity of securities. If the criterion of liquidity in relation to buy-in timeframe and extension period will be used, a central list of those instruments falling under the definition of "liquid market" in accordance with point (a) of Article 2(1)(17) or point (b) of Article 2(1)(17), respectively, of Regulation (EU) No 600/2014 should be made available to CSDs.

KDPW expects that such a list will be updated every day, taking into account the possibility of registration of new series of securities.

It may be easier to have the same extension period for every security type, regardless of the liquidity of the security.

<ESMA\_QUESTION\_TS\_CSDR\_8>

##### What are your views on the proposed draft RTS related to the type of operations and their timeframe that render buy-in ineffective?

<ESMA\_QUESTION\_TS\_CSDR\_9>

In KDPW’s opinion, repo and securities lending should not be subject to buy-ins.

<ESMA\_QUESTION\_TS\_CSDR\_9>

##### What are your views on the proposed draft RTS related to the calculation of the cash compensation?

<ESMA\_QUESTION\_TS\_CSDR\_10>

In our opinion, cash compensation should be proceeded by a CCP and price of the compensation should be calculated on a basis of the recent available market price of the security.

If a buy-in fails, the compensation process should be performed by entities which initiate the buy-in process: CCPs, trading venues and CSD participants. A CSD should only support tools to execute the process e.g. cancelling of instructions.

<ESMA\_QUESTION\_TS\_CSDR\_10>

##### What are your views on the proposed draft RTS related to the conditions for a participant to consistently and systematically fail?

<ESMA\_QUESTION\_TS\_CSDR\_11>

We would like to insist that, when a participant falls under the threshold defined in Art.16(1), this should never lead to the automatic suspension of that participant. The suspension of a participant is an extreme measure that can only be used as the ultimate sanction to a serious problem and only be implemented after careful consideration of the circumstances in each case and in close consultation with the competent authority.

Participant should be assessed over a 12-month period. In our view a threshold should be set by reference to the settlement efficiency rate of each securities settlement system and should be considered as more than 10 % deviation in value or volume.

<ESMA\_QUESTION\_TS\_CSDR\_11>

##### What are your views on the proposed draft RTS related to the settlement information for CCPs and trading venues?

<ESMA\_QUESTION\_TS\_CSDR\_12>

We agree that CSDs should send settlement instruction statuses to the market venue or/and to the CCP.

<ESMA\_QUESTION\_TS\_CSDR\_12>

##### What are your views on the proposed draft RTS related to anti-avoidance rules for cash penalties and buy-in?

<ESMA\_QUESTION\_TS\_CSDR\_13>

The cash penalty mechanism and the buy-in process should be applied by all CSDs (buy-in in cooperation with CCPs). The difference in models or systems used by CSDs should not lead to a different application of the regulation.

<ESMA\_QUESTION\_TS\_CSDR\_13>

##### Do you agree that 18 months would be an appropriate timeframe for the implementation of the settlement discipline regime under CSDR? If not, what would be an appropriate timeframe in your opinion? Please provide concrete data and evidence justifying a phase-in for the settlement discipline measures and supporting your proposals.

<ESMA\_QUESTION\_TS\_CSDR\_14>

It seems that at least 18, and preferably 24 months would be required to implement the settlement discipline regime as proposed under CSDR, but excluding the buy-in regime as proposed in the Technical Standards. This timeframe takes into account not only the implementation of changes to a CSD system, but also the required customizations, including testing, in the systems of CSD participants and other entities, e.g. CCPs. Our experience shows that implementation of fairly simple changes to participants’ systems takes many months in a situation when there are few IT companies on the market offering their services to many participants.

It is worth highlighting that postponement of changes in the area of settlement discipline regime should have effect on the implementation of other RTS related regulations e.g.: record keeping.

<ESMA\_QUESTION\_TS\_CSDR\_14>

##### What are your views on the proposed draft RTS on CSD authorisation (Chapter II of Annex II) and draft ITS on CSD authorisation (Chapter I of Annex VI)?

<ESMA\_QUESTION\_TS\_CSDR\_15>

Art.5(1)(a) of the draft RTS includes a reference to international accounting standards to which KDPW is not subject today. Given that there is no mention of these accounting reporting standards in the Level 1 CSD Regulation, and in the absence of a mandate for ESMA to harmonise CSD accounting standards, we believe that the draft RTS should not impose additional requirements in this area, especially as the CSDR requirements can be fulfilled by relying on existing accounting standards used by KDPW (and agreed with competent authorities).

KDPW supports ECSDA in its standpoint here, thus we suggest amending art.5(1) of the draft RTS as follows:

*Article 5 - Financial reports, business plans, recovery plans and resolution plans*

*1. An application for authorisation of a CSD shall contain the following financial and business information about the applicant CSD:*

*(a) a complete set of financial statements,* ***~~prepared in conformity with Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards~~****, for the preceding three years;*

As regards Art.5(1)(d) of the draft RTS, KDPW is not convinced that the requirement for CSDs to include a business plan in their application for authorisation is necessary in the case of an already established CSD. We believe that contemplating different business scenarios for CSD services over a 3-year period makes sense for newly established CSDs, but that it is unlikely to provide any important new elements to a competent authority already aware of the business plans of an existing CSD under its supervision.

We are concerned that under Article 5(5)(b) it is expected that a CSD will have to prepare and maintain a resolution plan document. This document is in fact a compilation of supervisory tools introduced in the event that the recovery plan (that is in fact drafted and maintained by the CSD) will not achieve the desired effects. In this we would like to support the ECSDA standpoint. We strongly believe that unlike recovery plans, which are drafted and maintained by CSDs, resolution plans are the responsibility of public authorities, as acknowledged by CSDR Article 22, CPMI-IOSCO Principles for financial market infrastructures (PFMI)[[1]](#footnote-2) and the FSB Key Attributes[[2]](#footnote-3). Asking a CSD to provide its resolution plan to the competent authority goes against the principle that the resolution plan is to be drafted and maintained by the resolution authority, not the CSD.

KDPW thus suggests deleting art.5(5)(b) of the draft RTS:

*Article 5 - Financial reports, business plans, recovery plans and resolution plans*

*[…] 5. The application shall also include:*

*[No changes to point (a)]*

***~~(b) the resolution plan established and maintained for the CSD so as to ensure continuity of at least its core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned.~~***

We are also concerned about the proposed provisions of Art. 11 subpara. 1 d) iii which imply that KDPW should have procedures in place which will be able to exclude individual members (from the Management or Supervisory Boards) from receiving information where a permanent conflict of interest may exist. The idea behind this is understandable – these provisions already exist in KDPW regulations – however, how is this a priori exclusion supposed to work in practice when (for instance) in the case of Supervisory Board members, it is only until these members have received and familiarised themselves with the information that they will be able to assess any potential conflicts.

The provisions of Art. 13 e) seem to imply that the User Committee does not need to be established at the authorisation stage, since the provisions refer to a list of *proposed* members. If this is a suggestion that the competent authority should approve the list of members of the User Committee, then we believe it is not an acceptable suggestion.

The provisions of Art 21. (page 171) should take into account the option of phase-in for the settlement discipline measures. In such case the information on settlement discipline measures would not be required in the application for authorisation. Moreover, given that many records are related to compliance with the settlement discipline rules of the CSD Regulation, KDPW strongly recommends that the timeline for implementing art. 21 RTS on CSD authorisation be aligned with the timeline for implementing the draft technical standards on settlement discipline. In other words, compliance with both sets of requirements should only be enforced after a transition period of at least 18 months following publication of the relevant technical standards.

It is worth pointing out that the provisions of Art. 37 go further than the analogous provisions contained in EMIR. The notification obligation is clearly understandable, however, performing a self-assessment as regards compliance with the provisions of CSDR is rather excessive. The assessment should be performed by the competent authority (this is the purpose of the notification, after all). Moreover, the provisions of Art. 37 indicate that all the material changes contained in rules, procedures and other documents will need to be notified at the preliminary draft stage, which may significantly delay their implementation process.

<ESMA\_QUESTION\_TS\_CSDR\_15>

##### What are your views on the proposed draft RTS on CSD review and evaluation (Chapter III of Annex II) and draft ITS (Chapter II of Annex VI)?

<ESMA\_QUESTION\_TS\_CSDR\_16>

In our opinion the requirement for CSD to present a self-assessment of material changes to the conditions under which the authorisation has been granted (Review and evaluation (art. 39(1)) is excessive, as this kind of assessment should be made by the body who granted the authorisation, i.e. the competent authority.

Art.41(1)(u) requires a CSD to provide *"information to any changes to the resolution plan"* to its competent authority as part of the annual review. As mentioned in our answer to question 15 (comments on Art.5(5) of the draft RTS), we believe that the current formulation in the draft RTS is misleading. Unlike recovery plans, which are drafted and maintained by CSDs, resolution plans are the responsibility of resolution authorities*.* If ESMA's intention is to ensure that CSDs provide all the information necessary for the resolution authority to update the CSD's resolution plan, Art.41(1)(u) should be reformulated accordingly and should include a reference to the resolution authority.

***(u) any information deemed necessary to ensure that the resolution plan established and maintained by the resolution authority ensures the continuity of at least the CSD core functions, having regard to the size, systemic importance, nature, scale and complexity of the activities of the CSD concerned, including any relevant resolution plan established in accordance with Directive 2014/59/EU;***

KDPW believes that ESMA needs to clarify the distinction between “maintained” and “centrally maintained” used in Art.42(1)(b), as it is not clear. Additionally, if ESMA’s intention is to obtain a list of ISIN codes under this heading, it should be aware that the list will amount to thousands of ISINs for KDPW, and much more for other CSDs.

Art.42(1)(c), (d) and (e) As regards issuers, CSDs often do not have information on the place of incorporation of the issuer. The law applicable to the issues admitted for settlement in a CSD would be, anyway, more relevant as it determines the rights and obligations of investors, as well as the services to be performed by the CSD.

<ESMA\_QUESTION\_TS\_CSDR\_16>

##### What are your views on the proposed draft ITS on cooperation arrangements as included in Chapter III of Annex VI?

<ESMA\_QUESTION\_TS\_CSDR\_17>

We agree with the ESMA proposal.

<ESMA\_QUESTION\_TS\_CSDR\_17>

##### What are your views on the proposed draft RTS on CSD recognition (Chapter IV of Annex II)?

<ESMA\_QUESTION\_TS\_CSDR\_18>

We agree with the ESMA proposal.

<ESMA\_QUESTION\_TS\_CSDR\_18>

##### What are your views on the proposed approach regarding the determination of the most relevant currencies?

<ESMA\_QUESTION\_TS\_CSDR\_19>

We agree with the ESMA proposal.

<ESMA\_QUESTION\_TS\_CSDR\_19>

##### What are your views on the proposed draft RTS on banking type of ancillary services (Chapter VI of Annex II) and draft ITS on banking type of ancillary services (Chapter IV of Annex VI)?

<ESMA\_QUESTION\_TS\_CSDR\_20>

We agree with the ESMA proposal.

<ESMA\_QUESTION\_TS\_CSDR\_20>

##### What are your views on the proposed draft RTS on CSD participations (Chapter II of Annex III)?

<ESMA\_QUESTION\_TS\_CSDR\_21>

As regards Art.2(1)(c), we would like to highlight that according to CSDR Art. 18 (4), the criteria to be taken into account by the competent authorities to approve the participation of CSDs in legal persons other than those providing the services listed in Sections A and B of the Annex may include whether the *services* provided by that legal person are complementary to the services provided by a CSD. We believe that any attempt to define these criteria on the basis of a list of *entities* performing such services (i.e. central counterparties, regulated markets, MTFs, trade repositories), as proposed by ESMA in Art. 2(1)(c) of RTS on CSD requirements, is not fully in line with the provisions of Art. 18 (4) CSDR – this is because it does not directly relate to services, which can be understood to be complementary to services provided by a CSD. We therefore propose another approach, providing examples of complementary services and qualifying them in a general sense as services, which contribute to enhancing the safety, efficiency and transparency of the financial markets, and which meet the general criteria defined in the first sentence of part B of the Annex to the CSDR; the extension of the potential scope of services in the financial markets is in principle compliant with the primary aim of CSDR (see: point. 1 of the preamble: “Central securities depositories (CSDs), together with central counterparties (CCPs) contribute to a large degree in maintaining post-trade infrastructures that safeguard financial markets (…)”).

We also would be grateful for confirmation by ESMA that Art.2(1)(c) does not prevent a CSD from having participation in an entity that serves several CSDs, not only the CSD in which it has the participation.

We recommend that Art.2(1) of the draft RTS be amended as follows:

*Article 2 - Criteria for the participations of a CSD*

*1. A CSD may have a new or keep an existing participation only in a legal person other than those providing the services listed in Sections A and B of the Annex of Regulation (EU) No 909/2014 if each of the following conditions is fulfilled:*

*[..] (b) the CSD fully capitalises, through financial resources that fulfil the criteria as set under Article 46 of Regulation (EU) No 909/2014, the risks resulting from any:*

*[…] (iii) loss sharing agreements or recovery or resolution mechanism of the legal person in which a CSD intends to participate* ***to the extent known or reasonably foreseeable****.*

*(c) the entity in which the CSD holds a participation is providing complementary services related to the core or ancillary services offered by* ***~~the~~******a*** *CSD, ~~including~~* ***~~for instance,~~*** *~~services offered by:~~* ***understood as services that contribute to enhancing the safety, efficiency and transparency of the financial markets, which may include but are not restricted to:***

***- Organised execution and arranging of trades,***

***- Provision of clearing,***

***- Collection and maintenance of data.***

*d) […]*

*e) […]*

***2. The provision of paragraph 1 (c) of this Article shall not be interpreted in a way which excludes any services related to collection and maintenance of data services*** (or alternatively ***trade repository*** services) ***from the scope of services listed in Section B point 4 of the Annex of Regulation (EU) No 909/2014.***

<ESMA\_QUESTION\_TS\_CSDR\_21>

##### What are your views on the proposed draft RTS on CSD risk monitoring tools (Chapter III of Annex III)?

<ESMA\_QUESTION\_TS\_CSDR\_22>

Art.3 of the RTS introduces restrictions on staff sharing with other group entities.

In general, the principle expressed in Art. 3 subpara. 3 states that a CSD shall not share staff with other group entities unless under the terms of an outsourcing agreement. At the same time, Art. 3 subparas. 4 and 5 introduce exceptions to this rule, whereby it will be possible for certain functions (under certain conditions) of the CRO, CTO, CCO and members of the management board/supervisory board to be shared.

With respect to these principles, it should be highlighted that the provisions of Art. 6 subpara. 1 may suggest that the exceptions described in Art. 3 subparas. 4 and 5 may also relate to the additionally listed functions of internal control and audit. In our opinion, in order to remove any potential inconsistency and to achieve a uniform approach to the draft RTS provisions, the provisions of Art. 3 subpara. 4 should be extended to include the functions described a few pages later in Art. 6 subpara. 1.

In relation to Article 4 RTS on CSD requirements - Risk management and internal control mechanisms we would like to remark, that in general CSDs do not incur risks from clients of their participants and have no way of exercising any control over these clients. We do not think that a legally binding text should impose unreasonable regulatory expectations onto CSDs, especially given that CSDs could be sanctioned for non-compliance with these requirements. We thus recommend removing the phrase “and, where relevant, their clients" from Art.4(1).

Similarly, we are concerned that the current wording of Art.4(2) would make CSDs legally responsible for assessing the risks they pose to other entities. Introducing such a requirement in Level 2 legislation would impose duties on CSDs without ensuring that they can access the required information to fulfil those duties, and is thus problematic. We thus suggest restricting the legal requirement to those risks to which the CSD itself is exposed.

As for Art.4(9), we believe that the requirement to share *"rules, procedures and contractual arrangements"* with participants and even participants' clients is excessive and will give rise to a whole set of data protection, business confidentiality and market competition concerns. Participants' contractual documentation should include all the information on the rights and obligations of participation in the CSD, and so there is no need for this additional requirement. As for clients of CSD participants, they only have a contractual relationship with a CSD participant. Requiring a CSD to share the details of a contractual arrangement it has with a participant with that participant's client would very likely create competition concerns and violate contractual commitments and data protection rules.

*Article 4 - Risk management and internal control mechanisms*

*1. A CSD shall have a sound framework for the comprehensive management of all relevant risks to which it is or may be exposed. A CSD shall establish documented policies, procedures and systems that identify, measure, monitor and manage such risks. In establishing risk-management policies, procedures and systems, a CSD shall structure them in such a way as to ensure that participants* ***~~and, where relevant, their clients~~*** *properly manage and contain the risks they pose to the CSD.*

*2. A CSD shall take an integrated and comprehensive view of all relevant risks. These shall include the risks it bears from* ***~~and poses~~*** *to any other entities, including its participants and, to the extent practicable, their clients, as well as linked CSDs and central counterparties, trading venues, payment systems, settlement banks, liquidity providers and investors.*

*[…] 9. The rules, procedures and contractual arrangements of the CSD shall be recorded in writing or on a durable medium. These rules, procedures, and contractual arrangements and any accompanying material shall be accurate, up-to-date and readily available to the competent authority****~~, participants, if affecting participants‘ rights and obligations and, where known by the CSD and where affecting clients‘ rights and obligations, their clients~~****.*

In addition, we have some doubts about the required composition of the CSD risk committee, as regards art. 5(5) of the draft RTS on CSD requirements.

In particular, it should be clarified whether the phrase *“where there are management body members sitting as members of the risk committee”* means that the requirement to have a majority of non-executive members applies **only** **in case** there are management body members sitting as members of the risk committee. Accordingly, a CSD risk committee would not have to be necessarily composed of members of the management body.

Moreover it should be clarified whether *“non-executive members”*, to have a majority in the risk committee, means members of the management body which are not senior managers at the CSD or whether it also includes **CSD employees** which are not senior managers. Assuming that operational risk is the primary risk that a CSD faces (paragraph 237 on page 70 of “Consultation Paper”), the CSD risk committee should first of all focus on operational risk. We believe that the point of view from inside the organisation is absolutely necessary for the management of this specific risk, therefore it should be acceptable that the risk committee is composed of a majority of CSD employees.

In relation to Article 7 RTS on CSD requirements – Internal auditing we would like to straess, that KDPW should make available the results of the internal audit to the user committee to the extent that these results are related to the mandate of the user committee, with the proviso that members of this committee that are settlement internalisers should not receive this information. The question arises then, how will KDPW be able to identify these members of the user committee, since the CSDR does not give a CSD such authority. Settlement internalisers report each quarter to the competent authority. It will therefore be necessary, working with the Polish Financial Supervision Authority (our competent authority) to prepare the means to identify, since, in accordance with the provisions of the RTS it is KDPW that will be responsible for making this information available to the settlement internalisers. In such instances, it is enough not to be a settlement internaliser in the calendar quarter, in which KDPW is performing an internal audit to obtain the results of this audit as a member of the user committee not being a settlement internaliser.

We propose deleting direct reporting to the management body of the CSD from Art. 7.2. The manner in which the management body is informed about matters relating to internal audits should be governed by internal corporate decisions. Introducing a direct reporting line is very restrictive here and may raise concerns whether it will be possible to report via an audit committee separate from the management body (as currently takes place in KDPW\_CCP), which did not raise concerns at the level of the implementation of EMIR.

As regards the frequency of independent audits (Art. 7.7), KDPW considers that it would be more proportionate to conduct independent audits on a risk based approach rather than mandate it every year. In our opinion independent audits should be performed at least every 3 years.

<ESMA\_QUESTION\_TS\_CSDR\_22>

##### What are your views on the proposed draft RTS on CSD record keeping (Chapter IV of Annex III) and draft ITS on CSD record keeping (Annex VII)?

<ESMA\_QUESTION\_TS\_CSDR\_23>

As regards Art.8(8), we believe that a direct data feed is not necessary to demonstrate a CSD's compliance with the CSDR – moreover, it entails considerable costs, while potentially raising confidentiality issues in relation to participants' activity in the CSD. Given that the competent authorities can obtain information promptly from the CSD upon request, we suggest deleting Art.8(8).

*Article 8 - General Requirements*

*[…]* ***~~8. A CSD shall provide the competent authority with a direct data feed to transactions, settlement instructions, and position records, when requested by the competent authority, provided that the CSD is given sufficient time to implement the necessary facility to respond to such a request.~~***

As regards Art 9 (2), an allowance needs to be made for the proposal to delay the entry into force of Settlement Discipline provisions. At the same time though, provisions relating to record keeping with respect to data related to settlement discipline should begin to take effect from the moment of the entry into force of these obligations. An exemption needs to be made in Art. 38 (entry into force and application).

Furthermore, CSDs should not be required to apply CSDR record keeping requirements retroactively. In other words, CSDs should start keeping records based on the Level 2 standards requirements as soon as these requirement come into effect. They should not have to modify the records for the 10 years prior to their authorisation and the entry into force of the record keeping requirement, and should be allowed to keep these records in the format applicable at the time as per the local regulations.

We would like to remark, that tables 1-4 presented in Annex VII describe the contents of the data and not their format. Additionally, the tables contain mixed information, some of the tables contain guidelines such as what data needs to be stored, while others indicate documents/files so that trying to identify actual obligations becomes very difficult.

The description in Art. 1 (5) relating to “open format” is unclear. We assume, that the actual format is to be determined between a CSD and its competent authority.

It is not clear whether the identifiers described in fields 13 and 14 of Table 2 *Transaction/Settlement* Instruction (Annex VII) relate to CSD participants which are debited and credited via instructions, or to those sending the instructions.

The wording used in field 17 of Table 2 Positions (Stock) Records (Annex VII) is unclear. Does this mean that this field needs to contain 2 identifiers, of the CSD participant and its client? The field format only contains room for one indicator, not 2 as proposed. We propose therefore to replace “and” with “or” in “Identifiers of participants **and** of other securities account holders”.

It is unclear whether the category “omnibus” in field 18 of Table 2 Positions (Stock) Records (Annex VII) contains all the different types of global accounts.

Please expand on what “type of restriction” need to be reported in field 19 of Table 2 *Transaction/Settlement* Instruction (Annex VII).

<ESMA\_QUESTION\_TS\_CSDR\_23>

##### What are your views on the types of records to be retained by CSDs in relation to ancillary services as included in the Annex to the draft RTS on CSD Requirements (Annex III)? Please provide examples regarding the formats of the records to be retained by CSDs in relation to ancillary services.

<ESMA\_QUESTION\_TS\_CSDR\_25>

With respect to our comment above relating to Annex VII table 1-4 (mixed format with information), we are unclear as to the requirement defined in this point. Is the aim to transfer database structures? It would also be worth clarifying what is meant by “examples of the formats of the records”? There is also the question of how to approach correlation between databases and how to process changes to the databases.

<ESMA\_QUESTION\_TS\_CSDR\_25>

##### What are your views on the proposed draft RTS on reconciliation measures included in Chapter V of Annex III?

<ESMA\_QUESTION\_TS\_CSDR\_25>

It is unclear what the purpose of the requirement described in Art. 16 (c) is – it seems that the requirement of a weekly reconciliation is adequately met through the performance of the reconciliation method described in (a) – i.e. daily. We propose deleting this provision.

As regards Art. 17 (2) KDPW recommends that CSD should be obliged to provide information only to a competent authority, and the competent authority should pass it on to the corresponding relevant authority.

<ESMA\_QUESTION\_TS\_CSDR\_25>

##### Do you believe that the proposed reconciliation measures where other entities are involved in the reconciliation process for a certain securities issue within the meaning of Article 37(2) of CSDR are adequate? Please explain if you think that any of the proposed measures would not be applicable in the case of a specific entity. Please provide examples of any additional measures that would be relevant in the case of specific entities.

<ESMA\_QUESTION\_TS\_CSDR\_26>

In our opinion, for reasons of consistency, the reconciliation measures to be applied in links between CSDs should be dealt with in the RTS defining the requirements applicable to access and links (article 6). Art. 16 should apply to entities other than CSDs, such as registrars. If the proposed article were to be applied to a relationship between CSDs, we can see potential problems with the applicability of Art. 16 p. 2, as the change to the cooperation and information exchange measures may be enforced by a modification in the system of the linked CSD. In case of a standard link, an investor CSD has no influence on the shape of modifications and is obliged to conform to them. An obligation to wait for approval of such change by the competent authority of the investor CSD would be counterproductive.

Thus, we propose the following amendment:

“Any material change to the cooperation and information exchange measures shall be **notified to ~~approved by~~** the competent authority prior to its implementation.”

<ESMA\_QUESTION\_TS\_CSDR\_26>

##### What are your views on the proposed reconciliation measures for corporate actions under Article 15 of the draft RTS included in Chapter V of Annex III?

<ESMA\_QUESTION\_TS\_CSDR\_27>

We agree with the ESMA proposal.

<ESMA\_QUESTION\_TS\_CSDR\_27>

##### What are your views on the proposed draft RTS on CSD operational risks included in Chapter VI of Annex III?

<ESMA\_QUESTION\_TS\_CSDR\_28>

We appreciate that, as regards Art. 30(2) of the draft RTS on CSD requirements, cyber-attacks are treated as a specific kind of disaster scenario, which may need a longer timeframe than the standard two hours to resume critical functions. But in our opinion such scenarios as **pandemic situations** (listed in Art. 30 subpara. 1) should be all the more addressed with different maximum recovery time requirements.

In case of large scale disasters, a CSD may have very limited control over the situation, despite its secondary site, with sufficient resources, capabilities, functionalities and staffing arrangements being always fully operational and ready to use. For instance, because of a pandemic situation the government or local authorities could issue special regulations or declare a state of emergency and hence a CSD would not be able to take the necessary actions because of the conflict with the necessity to conform to those special regulations. Two hours recovery time is a good benchmark for most “typical” disasters, but we should accept that in case of an exceptional crisis, this benchmark could hardly be met by any CSD.

Moreover we would like to suggest that in Art. 33 of the draft RTS on CSD requirements, the word *“chapter”* should be replaced with the word *“section”*, as this article seems to refer only to Section 4 (“Business Continuity”) and not to the whole Chapter VI (“Operational Risk”).

<ESMA\_QUESTION\_TS\_CSDR\_28>

##### What are your views on the proposed draft RTS on CSD investment policy (Chapter VII of Annex III)?

<ESMA\_QUESTION\_TS\_CSDR\_29>

**Art.34 1 (c)**

We maintain our opposition regarding the average maximum of two years maturity imposed on CSD investments. We think it is too restrictive, especially when remaining requirements referred to in Article 34 paragraph 1, in relation to highly liquid financial instruments, are met (in particular issuers, limits, institutions, types of securities).

We suggest resigning from the maximum average portfolio maturity or extending it up to 5 years for securities issued or guaranteed by an EU Member State or the central bank, with the stipulation that for a single financial instrument it is not greater than 11 years.

Arguments in favour of this standpoint include:

* In our market there is no visible correlation between maturity and liquidity of securities considered to be safe. Securities issued or guaranteed by the government or the central bank, are highly liquid, regardless of maturity of 1, 2, 5 or 10 years.
* Securities of 10 year maturity are a common and widespread instrument of public debt management policy (governments tend to lengthen the debt maturity horizon, which is why debt securities with short maturities are systematically limited). Accordingly, the liquidity of securities with a ten year maturity is high and is analyzed in terms of risk. In our opinion a current estimation and a risk analysis over a 10 year horizon, are possible and enable to manage the risk, contrary to a forecast over a 20 or 30 year horizon, which seem to be impossible to be performed. Therefore the diversification of the portfolio, which also includes securities with a longer maturity, is more favorable for a CSD than the concentration of positions only in securities with a short maturity.
* Banks currently foresee a fall in interest rates and as a consequence securities price quotes will rise. The majority of Treasury instruments being traded on the Polish market are fixed interest securities. With returns between 1% and 2 % there is inherent risk with any rise in interest rates (and at the same time a lack of speculatory aims, while the securities are purchased on portfolio) of suffering a loss. Currently in Poland, there is only one bond being traded with a variable interest rate, which meets the less-than-2-year-maturity requirement. The “forced” purchase of bonds with a very low interest and short maturity is an unfavourable investment decision. Opening a position in only one security is also unprofitable and risky. In fact, portfolio diversification including instruments with longer time-to-maturity can be more beneficial for CSDs than a concentration of positions exclusively on short-term instruments. This is especially true in the current low rate environment for the euro currency, where a 2-year time-to-maturity restriction would force some CSDs to invest in instruments with a negative yield, thereby eroding their capital.
* True-life case study: KDPW currently also performs treasury management services for KDPW\_CCP. The KDPW\_CCP portfolio looks as follows:
  + The portfolio meets EMIR requirements – and the average maturity does not exceed the 2-year horizon,
  + In July 2015, securities with a nominal value of several million PLN will be redeemed, which will mean at the same time that following redemption, the average maturity date of the portfolio will increase,
  + This means that we will need to purchase securities with a comparable value which will shorten (maintain) the average maturity of the portfolio,
  + These need to be short-term securities – which means that of the variable income securities we have one security available whose issuer is the Polish State Treasury and several with a fixed interest (however, interest rates are very low and there is the risk of incurring losses in the event that interest rates rise).

KDPW does not need to have such high levels of liquidity as KDPW\_CCP and at the same time should operate in such a manner as to ensure the safety of remaining services. It will not be possible to ensure this safety if the CSD maintains a high concentration of positions in one security or will purchase fixed-interest securities, at a low level of return, and then profitability will increase (and the CSD will need to sell the securities).

It would be far more advantageous to be able to purchase among groups of “safe” securities (in terms of issuer and access to a liquid market) instead of limiting purchases with a maturity horizon.

* There is also no justification for CSDs for maintaining liquidity on a higher level than that required from banks and shortening the horizon of portfolio maturity. For example, Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (Art. 114) defines risk weights assigned to exposures to central governments or central banks. The securities issued by these entities have a risk weight of 0% regardless of maturity, provided that they have granted a credit assessment on a required level by a nominated ECAI.
* Furthermore, Art. 416, paragraph 1 and 3, and 417 letter (a) of the abovementioned Regulation define, under reporting obligations, requirements for liquid assets without the need for diversification of liquid assets representing claims on governments or guaranteed by governments or central banks.

We thus recommend the following amendments to art.34 of the draft RTS:

* *Article 34 - Highly liquid instruments with minimal market and credit risk*
* *1. Financial instruments can be considered highly liquid financial instruments, bearing minimal credit and market risk under Article 46 of Regulation (EU) No 909/2014 if they are debt instruments meeting each of the following conditions:*
* *[…] (c) the average time-to-maturity of the CSD’s portfolio does not exceed* ***~~two~~******five*** *years,* ***and no single investment has a time-to-maturity superior to eleven years****;*

We propose to remove the requirement of immediate and unconditional access to CSD cash assets, referred to in Article 35 paragraph 3, and replace it by the CSD’s obligation to ensure access to its cash assets within 3 business days, although in our opinion the period of 7 days is sufficient.

There are no valid reasons for which a CSD is obliged to ensure that it must exchange its assets into cash within one day or the same day. (Annex III point (14) of introduction and Art. 35 paragraphs 3 and 5). A CSD is planning its liquidity needs by taking into account current and future obligations. It is difficult to envisage what factors, beyond the standard (regular) activities, would under normal conditions cause the necessity to liquidate assets and place them at the disposal of CSD on the banking account.

We thus recommend amending Art.35 of the draft RTS as follows:

*Article 35 - Appropriate timeframe for access to assets*

*[…] 3. A CSD that holds cash assets shall be able to have* ***~~immediate~~swift*** *and unconditional access to those cash assets and take all appropriate measures for that purpose.*

*[…] 5. Where a CSD holds the securities with an authorised credit institution, it shall hold them in an individually segregated account in the books of a CSD and be capable of accessing and liquidating them* ***within three ~~on the~~*** *business day****s******from******~~following~~*** *the day whe****n~~re~~*** *a decision to liquidate the assets is taken.*

<ESMA\_QUESTION\_TS\_CSDR\_29>

##### What are your views on the proposed draft RTS on access (Chapters I-III of Annex IV) and draft ITS on access (Annex VIII)?

<ESMA\_QUESTION\_TS\_CSDR\_30>

We would like to note that by covering CSD participants and linked financial market infrastructures at the same time, the article creates some apparent inconsistencies. For instance, Art.2(6) seems to have been drafted mostly with CSD participants in mind, and it is difficult to imagine how the requirement can be applied to a trading venue with which a CSD has a link (trade feed), since the trading venue will not be a CSD participant and thus might not have any financial obligations towards the CSD.

Some confusion is also introduced by the fact that this Article covers at the same time the CSD’s risk assessment and the subsequent analysis by the competent authority in case the CSD has refused access to a participant, issuer, CSD or other financial market infrastructure and the requesting party has complained about this refusal. In order to avoid confusion regarding this sequence, ESMA should consider separating the different responsibilities in Art.2 of the draft RTS more clearly.

We agree with the proposals as regards the legal, financial and operational risks that should be taken into account by CSDs following a request for access by a requesting participant.

As regards Art. 2 (7) we would like to remark that financial assessment of issuers is in practice very difficult. It is possible to make such an assessment in the process of admitting an issuer to a CSD, but the continuous assessments of all the issuers after this period would be costly and burdensome, and we have doubts as to the consequences of a potential infringement of financial requirements by an issuer.

In Art. 2.12 it is unclear why a CSD or CCP, applying for access to a CSD, should be excluded from meeting the criteria of paragraph 10 (a).

As regards access criteria in the context of operational risks (Art. 2. 10(e)) it is suggested that access by a requesting participant “shall not create additional operational risks for the CSD, in particular access does not require the CSD to implement ongoing manual processing, increasing the risk of human error”. While KDPW is broadly in agreement with this proposal, please bear in mind that those CSDs that process corporate actions (such as KDPW) perform much of the processing manually owing to the lack of standardisation in this area. The same applies to the tax processing.This restriction may be particularly onerous for issuers seeking access to a CSD under Art. 2. 11(a).

<ESMA\_QUESTION\_TS\_CSDR\_30>

##### What are your views on the proposed draft RTS on CSD links as included in Chapter IV of Annex IV?

<ESMA\_QUESTION\_TS\_CSDR\_31>

With reference to Art. 4. 1(b), we believe that once a receiving CSD has been authorised under CSDR, it should already meet the stringent requirements of financial soundness, governance arrangements, processing capacity and operational reliability, and any reliance on a critical service provider will also be subject to oversight. In view of this, the requesting CSD should base its analysis on this principle, rather than being obliged to duplicate an analysis on an already authorised receiving CSD. We propose therefore to remove this requirement from links with already authorised CSDs. However, these requirements should remain for non-authorised CSDs and third country CSDs.

**KDPW Proposal**: Make the provisions only applicable to non-authorised and third country CSDs:

(b) *Where a receiving CSD has not been authorised, or is a third country CSD*, *t*he requesting CSD shall conduct an analysis of ~~the~~ *that* receiving CSD’s financial soundness, governance arrangements, processing capacity, operational reliability and any reliance on a critical service provider. *Such an analysis by a requesting CSD shall not be deemed necessary for authorised receiving CSDs.*

We also recommend amending Art.4 1(d) to exclude those elements of the link arrangement that are commercial (e.g. prices and fees) from the "terms and conditions", and include only the operational elements to be communicated to CSD participants.

**KDPW Proposal**: Amend the provisions accordingly:

(d) The requesting CSD shall make the ***operational***terms and conditions of the link arrangement available to its participants to enable the participants to assess and manage the risks involved.

It is worth highlighting that the provisions of Art.4 1(h) on end-to-end testing before the link becomes operational cannot apply to links already existing at the time of authorisation. We propose only maintaining this requirement of end-to-end tests for links created after authorisation. Moreover, the “emergency plan” for links mentioned should not be a standalone document and should form an integral part of the business continuity policies of the respective CSDs.

**KDPW Proposal**: Amend the provisions accordingly:

(h) *For a link established after the authorisation of the requesting and receiving CSDs, t*he requesting CSD shall be responsible for having conducted end-to-end tests with the receiving CSD before the link becomes operational.

(h/2) *An* emergency plan shall be established *as part of the business continuity plans of the respective CSDs* ~~before the link becomes operational~~, covering at least the situation where the securities settlement systems of the linked CSDs malfunction or break down and the remedial actions in such events.

If DvP links are to be encouraged, the restriction in Art 4. 1(f) on using banking-type ancillary services from receiving (I)CSDs (or their corporate affiliates) which offer these services is in complete contradiction here. Since the banking operations of (I)CSDs are also subject to stringent regulation, it seems illogical that requesting CSDs should be forced to seek cash account services elsewhere. A (I)CSD with a banking licence will be able to perform settlement in a more efficient manner using cash in accounts within its system. Please note that a cash account opened for a requesting CSD in an (I)CSD offering banking-type ancillary services is not only used for the processing of the cash leg of settlement, but also for (incoming) fee payments and (outgoing) corporate actions (e.g. dividend) payments – so requesting CSDs will have such accounts opened already. Using a separate commercial bank then for the settlement of the cash leg will increase inefficiencies, prolong processing times and in some cases raise costs.

**KDPW proposal**: Delete Art 4. 1(f).

Art 4. 1(j)contains provisions on the assessment of any development that might result in the possibility to settle on a DvP basis, provisions which are not aligned with Article 7 a few pages later on (DVP Settlement through CSD links). It would be helpful to suggest in Art 4. 1(j) what criteria should be used in the assessment – will it only be the criteria of the existence of conditions that enable a “… safe and efficient access to cash in the currencies used for settlement by the receiving CSD for the requesting CSD and for its participants.” (as listed in Article 7)? If so, it would be helpful to mention this in Art 4. 1(j). If more criteria need to be assessed as part of Art 4. 1(j), these should be added to the list of circumstances in Article 7.

A distinction needs to be made between an *indirect* link – where an investor CSD holds an account with a third party (usually a bank) and this third party in turn holds an account in the issuer CSD – and an *operated* link – where the investor CSD holds an account directly with the issuer CSD, however the account is operated by a participant of the issuer CSD. In terms of risk, an operated link, which is simply a variation of a direct link, has a much lower risk profile than an indirect link, simply because of where the investor CSD has its account(s) located and for this reason it is important that these two types of link should be treated differently. This distinction is not made in the preamble to Annex IV of the Draft RTS on Access and Links (see (25) of the Recitals p. 241), nor in the provisions of Art. 5.1. As regards the provisions of Art. 5.1, there is no reason why an account operator needs to meet the same stringent criteria of credit institutions that act as intermediary in a third-party link.

**KDPW proposal**: Keep Art. 5. 1 for intermediaries in indirect links (as they are currently), however, oblige intermediaries that operate accounts in the issuer CSD *only* to meet the requirements of 5.1. (b), (c), (d), (e), (f), (g), (j) and (k).

It is important to amend the requirement of Art. 5. 1 (h), for intermediaries that are used by a requesting CSD in an indirect link to a receiving CSD, to manage an individually segregated account at the receiving CSD. The requirement for a CSD to offer individual segregation derives from Art 38 (4) of CSDR, where the requirement is dependent on whether this is an option preferred by the participant. These provisions of CSDR correctly recognise that in certain cases, the participant may not wish to segregate at individual level. This principle should continue to be maintained as an option available to participants holding accounts in receiving CSDs as part of an indirect link. This principle becomes even more significant for indirect links into non-EU jurisdictions, where individually segregated accounts in CSDs are not always the norm, either because of local legal restrictions or market practice. Nevertheless, the right for a requesting CSD to access its clients’ securities in the receiving CSD should be maintained.

**KDPW proposal**: Delete the reference to individually segregated accounts:

(h) ~~At least an individually segregated account at the receiving CSD is used for the operations of the link.~~ The requesting CSD shall ensure that it can access the securities *of its clients* held in the ~~individually segregated~~ ~~account~~ *receiving CSD* at any point in time, including in the event of a change or insolvency of the intermediary.

As regards reconciliation methods for linked CSDs (Art. 6), not all receiving CSDs (in particular non-EU CSDs) are able to transmit daily statements of information. In many cases, (again, from our experience, this relates to KDPW’s non-EU links) an end-of-day statement is only provided when there has been a movement on the account, otherwise not. For interoperable links, daily reconciliation is acceptable.

**KDPW proposal**: Amend the reference to daily statements:

1. The receiving CSD shall transmit to the requesting CSD ~~daily~~ statements of information *on each day of any change in the balance on an account* specifying the following, per account number and per securities issue:

(i) The aggregated opening balance;

(ii) The individual movements during the day;

(iii)The aggregated closing balance.

1. The requesting CSD shall conduct a ~~daily~~ comparison of the opening balance and the closing balance *on* *each day this information is* communicated to it by the receiving CSD or by the intermediary with the records maintained by the requesting CSD itself.

Since many CSD participants are banks which manage their own cross-border DvP settlement links, there may be potential conflict of interests if it were to exist a requirement for a User Committee made up of such banks to request its CSD to build such a DvP link (Art 7 (a)). Such a request may never be made to prevent competition from the CSD. In order to show market demand, it may be sufficient for a CSD participant to request such a link.

**KDPW proposal**: Amend the reference to User Committees in Art 7 (a):

(a) There is a market demand for DVP settlement evidenced through a request from any ~~of the User Committees~~ *participant* of the linked CSDs.

As discussed in our comment to Art 4. 1(j), the conditions listed in Article 7 under which a DvP link will be considered practical and feasible should be potentially expanded to correlate with the assessment suggested in Art 4. 1(j).

<ESMA\_QUESTION\_TS\_CSDR\_31>

##### What are your views on the proposed draft RTS on internalised settlement (Annex V) and draft ITS on internalised settlement (Annex IX)?

<ESMA\_QUESTION\_TS\_CSDR\_32>

From our point of view, CSDs are not directly in the scope of the standards on internalised settlement.

<ESMA\_QUESTION\_TS\_CSDR\_32>

1. CPSS (now CPMI) and IOSCO, Principles for financial market infrastructures, April 2012: <http://www.bis.org/cpmi/publ/d101.htm> [↑](#footnote-ref-2)
2. FSB, Key Attributes of Effective Resolution Regimes for Financial Institutions, 15 October 2014: <http://www.financialstabilityboard.org/2014/10/r_141015/> [↑](#footnote-ref-3)