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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.

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# General information about respondent

|  |  |
| --- | --- |
| Are you representing an association? | No |
| Activity: | Government, Regulatory and Enforcement |
| Country/Region | Spain |

##### 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>

We support this requirement because it is the best way to ensure that matching at the CSD takes place before the intended settlement date.

We would also like to support the communication of the transaction type within the transaction data, in order to ensure the correct understanding of the nature of the transaction from trading to settlement. We also support the inclusion of the trade date in order to facilitate the correct processing of corporate actions.

<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>

It is our understanding that instructions generated by the CSD are out of the scope of mandatory matching, as the text refers only to “instructions sent by participants”.

Should this not be the case, then it would be necessary to take into account the instructions generated by the CSDs. The CSD must have the capacity to send unilateral instructions already matched that will automatically qualify for settlement. Some examples are the management of corporate events and the collateral management instructions, where the CSD is entitled by the counterparties to select and transfer securities between their accounts. However, we believe that the first interpretation should be applied. Therefore, all the activity managed by the CSD should be exempted from matching.

It is also necessary to take into account that T2S does not allow already matched transactions from CCPs concerning two CSDs. This could also be the case for transactions between two interoperable CCPs within one single CSD. Therefore, CCPs will not be able to send already matched instructions when the counterparty is another CCP.

We propose the rewording of article 3.2.b to exempt from mandatory matching the movement between accounts managed by the same participant, and not only in the name of the same participant. When a participant opens an individual third party client account at the CSD, this participant is managing this account on behalf of the client, and matching between the different accounts managed by this participant should not be mandatory.

It would be convenient to include a provision for generic exceptions provided these are approved by the competent authority.

<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>

We appreciate the restrictive threshold, although it would be better not to have any exemption at all, as this could be a source of competitive issues especially in cross CSD transactions.

In case it is stated, the ratio of failed should be closer to 0%, and considering that it is very complicated it could be 0.1%. The volume of failed would be considered appropriate.

On the other hand, we would like to propose that the text clarifies that even when a CSD complies with these ratios, they should not be allowed to opt out from this settlement features.

<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>

Regarding the requirement to inform the competent authority about manual interventions, we propose that the text expressly allows for the use of user-applications (U2A) without having to inform the competent authority and rather focus on the manual handling of processes that have been designed to be automatic. These applications may be used by participants and by the CSD in certain processes or as a back-up for automated messaging flows.

Additionally, the requirement to report “without any delay”, together with the ambiguity of the definition of manual intervention, could result in an overwhelming amount of reports being done on a daily basis to the supervisor. We propose the removal of the sentence “without undue delay”, and either leave the frequency to be agreed with the competent authority, or include a provision to exclude from reporting any manual interventions previously agreed with the competent authority.

Regarding the article 3.3 on matching fields, we believe that the word “mandatory” is too prescriptive and that a list of matching fields would be enough. The removal of the word “mandatory” would allow for a more flexible implementation of the market practices.

Regarding the inclusion of the transaction type as a matching field, we support ESMA’s decision to enforce matching of this information in the settlement instruction in order to ensure consistent reporting per type of transaction.

Regarding article 3.9, please note that the CSD is not aware of the process or outcome of the buy-in process. If settlement or cancellation takes place, the CSD can’t know if it is because a buy-in was done, or because securities were finally delivered, or a cash compensation was agreed.

As an alternative solution, CSD could propose to report to the competent authority the data that can be objectively defined such as the definition of the periods and the final out-come of the failed transaction: initiation of buy-in (if after ISD+X the transaction is still pending, it would automatically be flagged for buy-in), final status settled or cancelled and information on penalties.

<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>

Regarding the information on buy-ins, please see the answer of Q4.

ESMA’s proposal to set-up a working flow with the top ten participants with the highest failing rates (article 4.3.), is too restrictive. The list of 10 may not be stable, particularly for very efficient markets. It may also prove to be too many or too few depending on the size of the market. We would suggest to remove “top-ten” from the text, and leave it up to the CSD to decide how many and select among the most representative participants.

In relation to article 4.2.b it has to be considered the complexity of identifying the reason for a failure beyond the lack of cash or securities. A possible way to simplify it could be to identify whether the fault is on the deliverer, on the receiver or both.

In regards to the annual report mandated in article 5.3, we would propose a longer period of time, such as 15 working days (instead of 10) or a natural month (end of January). There are many requirements coinciding with the change of year and providing the CSD with more time to prepare this report would ensure higher quality.

From the participating entities point of view, the proposed measures are considered adequate.

<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 believe that the penalties should be harmonized to the maximum among the different European markets to avoid arbitration in case of failure. Any harmonization in this respect is considered very positive.

Regarding article 7, there are a few scenarios that need clarification:

- What would happen if both the buyer and the seller fail? Should the penalty not be applied or should it be applied to both and then netted with the reciprocal compensation? Due to the fact that the penalty rates are different, the buyer would normally have a positive outcome with the fail (because cash penalty is lower than the securities penalty).

- If a transaction is introduced after ISD, the penalty applies backwards, this point is made clear in article 7.3. We understand that this would also be the case if it matches after ISD (if it is not matched it will not be considered a fail; so if it matches after ISD, then it will be treated in a similar way as a late input).

- How is the CSD going to apply back-wards penalties for late input or late matching transactions? Particularly when both participants instruct late?

- If a participant fails to pay the net penalty, which criteria should the CSD apply for selecting the participants that are going to be excluded from the compensation?

As it has been mentioned before, we support the inclusion of the transaction type as a matching field in order to report consistently. See the answer to Q4.

We also support the proposal to manage the penalty mechanism jointly at the level of the common infrastructure. In addition to the benefits stemming from developing only one common system as well as ensuring harmonization on how the penalties would be applied across all the eligible CSDs, there would not be competitive distortions derived from the different ways that the cost of the penalty system would be passed on to participants.

Regarding article 9, we appreciate that the RTS clarify that it’s not only the CCP but also its counterparty who is exempted of the application of the penalty by the CSD. Therefore, no compensation would be received by the CCP. However, we would like to ask for clarifications on two points:

1. Are the RTS enforcing the CCPs to apply the same penalty/distribution scheme as the CSDs’ one? Or could CCPs have their own mechanism with different rates and different distribution arrangements?
2. If CCPs were obliged to apply penalties according to the calculation provided by the CSDs, wouldn’t the exemption in Level 1 be in practice overridden?
3. Our understanding is that some netting mechanisms such as Continuous Net Settlement are not compatible with CSD’s calculating the penalties because transactions are cancelled if not settled on ISD. CSD would only be able to calculate penalties for basic trade date netting instructions.
4. For basic trade date netting instructions where the CSD can calculate the penalties, would it be possible for the CCP to voluntarily submit to the penalty/compensation scheme of the CSD? We believe that it could be a convenient arrangement for all parties as CCPs would not need to put in place the process of charging penalties and paying compensations, and then having to report everything back to the CSD.

<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>

Regarding the role of the CSDs in the buy-in process:

1. Level 1 Regulation does not foresee any responsibilities for the CSD except having to “include in its internal rules an obligation for their participants to be subject to…”
2. However, the RTS foresee that CSDs “shall appoint a buy-in agent or execute the buy-in by auction”.
3. It seems that the draft RTS is not in line with what the Level 1 Regulation has established. Level 1 Regulation has deliberately left CSDs out of the buy-in process because this would add risk to the CSD’s profile. If CSDs are going to be involved and taking decisions about the buy-in process, then there should be certain mechanisms of guarantees to ensure that the system is covering the risk borned by the CSD. Additionally, the appointment of an agent, the management of an auction or the execution of a buy-in itself have to be managed at the level of trading parties, as the CSD doesn’t have any direct relationship with market agents or trading venues. Having to decide when, or how, a buy-in has to be done, at what price, how to process it and link it with the original failing transaction are far beyond the responsibilities that a CSD is ready to cope with.

A possible solution for the compliance of the buy-in requirement for OTC transactions, would be that the rules and regulations of the CSD foresee that OTC transactions have to be bought in accordance to the following procedure:

1. When the buy-in date arrives, the CSD will flag the transaction as “initiation of buy-in”. The receiving party has to trigger the process if they want/agree to buy-in with their counterparty. They can ask via the participant that the CSD broadcasts an auction notice to the market with their contact details. Alternatively, they can directly get in contact with a buy-in agent.
2. If the transaction was not settled or was cancelled by the participants by the end of the buy-in period, the CSD would send a notice of cancellation of the instruction as long as it would be understood that a cash compensation had taken place.

Regarding the requirement of the CSD to “test consistency” of the information of buy-ins:

1. The Regulation says that “CSDs may monitor the execution of buy-ins”, but the RTS is imposing an obligation on the CSD that goes beyond monitoring as CSDs are requested to “test consistency”. We would also like to point out that our understanding is that Regulation is not requesting the development of technical standards in this specific point.
2. It is not possible for CSDs to properly test consistency of the buy-ins performed by CCPs and TVs for the following reasons: securities are fungible, the information on settlement chains is not available and CSDs do not have the information on the ultimate beneficiaries. Therefore, this task would have to be totally manual, trying to gather information from participants, incurring in huge costs and higher risks. CSDs would surely be making mistakes which they could be accounted for (allowing for or preventing buy-ins incorrectly).
3. We would therefore kindly suggest that ESMA reconsiders this last paragraph of article 11.

Regarding the application of the partial settlement at the end of the extension period, we support an earlier application of partialling, ideally from ISD+1 in order to increase liquidity in the security and ensure that chained transactions are capable of benefiting from partial settlement before the buy-in deadline.

We also believe that, if it had not been possible to partially implement the operation and rebuy period is complete, it seems more appropriate to settle in cash.

Regarding the scope of buy-ins, we would like ESMA to clarify the definition of transactions submitted to the buy-in obligation. We understand that not all the securities movements that enter into the settlement system should be subject to the settlement discipline. We are referring for instance to transactions related to corporate events, to collateral management services, portfolio transfers, automatic lending, or intra-account movements. As we believe that settlement discipline does not make sense in these cases and actually this is not in the spirit of the Regulation, we support industry suggestions whereby a definition of the transaction in relation to the underlying economic agreement is proposed. A proper definition of what is defined as a transaction would probably solve all concerns above mentioned.

<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>

The definition of the extension period and timeframe to deliver the buy-in is complex. As a result of the additional time for the extension period envisaged for illiquid securities, there are going to exist three different extension periods.

Regarding the criteria for defining liquid/illiquid securities, we understand that CSDs will be able to feed on ESMA’s public information and ESMA will maintain the list of illiquid securities. Also the frequency that markets need to update the information on illiquid securities would be a burden if the feed could not be automated.

<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>

With the current T2S specifications, the CSDs cannot apply the exemption for short-term repos. There is currently no way in T2S to know the length of the repo because there is no link between the two transactions or any reference in the first leg to the date of the second leg.

An alternative way to differentiate short-term repos may be by creating two different types of transactions, which participants had to match them. One transaction type for short time repo and another one for longer term repos would allow CSDs to apply the buy-in regime properly.

Any agreed solution will necessarily require some changes in T2S, whether it is by including a new matching transaction type or the information on the date of the return leg.

<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>

We understand that the prices used to calculate the compensation should always refer to the latest prices that have been settled in the market or the closing price of the previous day. Negative amounts should never be settled to the entity that has failed.

<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 believe that the conditions for a participant to consistently and systematically fail, are too restrictive. Important distortions could be created, especially for small participants. If a participant sends only two transactions and one of them fails, as a matter of fact the participant will have a 50% failing rate.

We also believe that the calculation is too complex, taking into account that automatic suspensions will never be triggered. The proposed formula requires the CSD to take into account not only the fail rate, but also the number of days that has failed as well as the number of days that operates.

The following approach would simplify the identification of systematically failing participants:

1. Excluding participants under certain thresholds of activity measured in cash or number of transactions.
2. Allowing for a yearly calculation: once excluded small participants, the consideration of the number of days is not relevant.
3. Envisaging certain flexibility to be agreed between the CSD and the competent authority.

We also understand that the most important thing should be the volume of failures and not the number of failed operations, although the latter should be considered.

<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>

Regarding the information related to the buy-in process, please refer to the answer to Q4. The rest of the information on the result of the settlement process is already foreseen. We would just like to clarify the following: Whenever a TV is involved, if the TV doesn’t send the instructions directly to the CSD, but participants do it; then this will be treated as an OTC. No information can be sent to the TV as there is no relationship between the CSD and the TV.

<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 scope of the settlement discipline needs to be very well defined, so that misinterpretations may not be understood as a circumvention.

<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>

From the point of view of the entities, the 18 months’ timeframe for the implementation seems reasonable. However, the Spanish CSD supports the proposal for a phased-in implementation of the settlement discipline regime and it would like to request for a longer delay of at least 24 months.

Some CSDs are joining T2S in the last implementation wave, scheduled for February 2017. Therefore, an 18 months period would be almost over by the time these CSDs conclude their migration.

The first part of the standards (measures to prevent settlement fails) could start in 18 months, as most of these requirements are already under development and will be ready by the time we conclude migration to T2S. For the penalty and buy-in regime, we would support a longer deadline.

<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>

Regarding the review period (article 1): due to the overwhelming task of passing reviews on an annual basis, it is important to have a balanced approach by all competent authorities. Additionally, on condition that CSDs will be granted authorisation at different points in time, it could be considered to find a way to harmonise the review periods so that all CSDs have the same calendar. For instance, the review could take place at the end of the next natural year after the authorisation has been granted. This would have the advantage of matching with the statistical data period referred to in article 42.2 in Chapter III of Annex II.

As regards article 2.2 (p), we consider that the information to be provided by CSDs should focus on those procedures related to tax and insolvency matters in order to be consistent with the wording of article 41.1 (e) RTS.

In regards to article 3, about policies and procedures, this requirement is redundant with other articles where the responsibilities of the Risk Officers, Technology Officer, Compliance Officers, Management Body, etc. are described. The RTS already allocate the responsibility of the different members in relation to the compliance with the policies and procedures, and obliges them to specify the measures to control and ensure compliance. We would rather support a top-down approach than having to mention, in each policy or procedure, who the person responsible is and what the measures to adopt in case of a breach are. This would also make easier to update the information in case of a change or responsibilities of a particular individual and inform the competent authority. We would therefore kindly propose to delete the first paragraph of article 3.

If however, ESMA decides to keep the requirement, we will propose to assign the responsibility to a department rather than to an individual.

Regarding article 5, we would like ESMA to reconsider the minimum three year period for the business plan. The business of CSDs is very limited in scope and very stable. Projects do not usually result in dramatic changes on income, and there is little capacity to foresee changes derived from market trends and participants decisions. The chances that the plans are not met and subsequent explanations to be required by authorities might be very high. This would add up more unnecessary workload to the supervisory tasks.

We also believe that the drafting and maintenance of the resolution plan is responsibility of the resolution authority.

The requirements in terms of internal control and management of conflict of interests are excessive in relation to the risk profile of a CSD.

We believe that the consideration of the internal control policies and procedures in which the CSD will provide the information of their dealing with the internal audit, how the findings are reported, escalated and followed-up, might be enough for the competent authorities to evaluate the compliance with internal audit requirements. In any case, ESMA could consider taking a minimum approach here, as it has been done with other requirements, so that it could be up to the CA to ask for more information if they were not satisfied. In our opinion, the monitoring and evaluation tools, the safeguard for information processing systems, the definition of the internal audit methodology and how it is applied and the 3-years work plan will put a costly burden on CSDs and should not be mandated. The approach taken for the compliance arrangements in article 8.3 seems to be more reasonable and we would propose ESMA to consider the same approach for the internal audit function.

As far as article 11 on management of conflict of interests is concerned, it is mentioned “possible conflicts of interest” in paragraph 1.c). This could result in a theoretical consideration of all possible conflicts of interest. We would therefore suggest to eliminate the word “possible” so that the resolution procedures refer to real conflicts of interests.

Regarding the article 18, we would like to comment on the requirement to provide “evidence that the CSD services are unbundled” and ask for clarification on what this evidence should be. With the CSDR, unbundling is an obligation, established in a legal provision, and supervised by the competent authority. CSDs will have to provide their competent authorities with confidential information (the analytical accounting) in order to prove the unbundling of services. On the one side, we cannot be requested to make public this information to clients and prospects, therefore, we would suggest to replace the “evidence” by a “self-statement” in compliance with the relevant article of the CSDR.

In relation to article 27 on “portability” applied in the draft RTS to CSDs, we believe that this concept that stems from the clearing scope doesn’t work for CSDs. Within the CSDs framework, the notion of portability will only make sense in those jurisdictions where the securities holder is entitled vis-a-vis the account holder (book-entry confers contractual rights or claims against the CSD), but never in the cases where the owner of securities held by means of book-entry has an ownership right, enforceable erga omnes. The portability of a property right is defined by the rules of property, and the depository cannot alter this rules. CSDs should only be required to ensure that participants and clients with segregated accounts would be capable of transferring their assets to any other provider. But automatic and massive transfers wouldn’t work either way (from the point of view of the transferring CSD or from the point of view of the receiver CSD). In the event of withdrawal of authorisation, it should be up to the participants to choose where to and under which conditions the CSD of origin should transfer their assets. Additionally, we would like to point out that such a concept is not present in the Level 1 Regulation. As a result, in our opinion, there is no mandate given to ESMA to define it.

In relation to article 30.2 on the information required on outsourcing agreements in relation to management of operational risks, it is necessary to clarify that CSDs should only be required to provide information about those outsourcing agreements related to core services, since only such agreements are subject to the authorization of the Competent Authority (article 30.4 Level 1 Regulation), all without prejudice to provide the Competent Authority, at its request, with all necessary information about outsourcing agreements related to ancillary services.

We would like to draw attention to draft ITS in article 1 of Chapter I of Annex VI whereby a competent authority may request the CSD to submit the same information in more than one language. Having to translate specific documentation related to the Authorisation or Review is completely unfair for that CSD in regards to other CSDs who can report everything in one single language. Translation costs are extremely high.

<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>

We would like ESMA to reconsider the requirements for CSDs to provide a self-assessment on the CSD’s activities’ compliance with the Regulation for the purpose of a yearly review. We understand that the self-assessment can be required when material changes occur (article 37), but not for regular activities over processes that have already been evaluated and approved.

We would make some comments to article 42 on “Statistical data to be delivered for each review and evaluation:

1. In letter e) of paragraph 1, the value of settlement instructions should be provided in market value or nominal value, depending on whether the securities are fixed income or other.
2. In our opinion, paragraph 2 provides ground for an unlevel playing field. We understand that certain discretionarity has to be left to the competent authority, but we would appreciate a reference to a risk or business justification before asking for more close supervision than the general regime established by the RTS.

Regarding article 43, it could be advisable for practical reasons to foresee that documents which remain unmodified do not need to be resent to the CA in the review.

<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 do not have any comments.

<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 proposed draft RTS on CSD recognition.

<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 do not have any comment.

<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 have no comments on the proposed draft RTS and ITS on banking services.

<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>

We agree with ESMA proposed RTS on CSD participations.

<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>

In relation to article 5 RTS, we would like to stress that the obligation of establishing an audit committee, a remuneration committee and a risk committee is not foreseen in article 26 Regulation (EU) No 909/2014, so RTS should not impose additional requirements. We suggest that the requirement for these three committees is waived.

However, if ESMA decides to maintain this obligation, we will at least suggest some amendments:

* Article 5 of the RTS only specifies the composition of the risk committee but doesn’t regulate the composition of the audit committee nor the remuneration committee. In this sense, if the existence of these committees were mandatory it would be necessary to specify their composition. As regards risk committee, it would also be convenient to clarify how many management body members will have to be part of it.
* We would also kindly ask ESMA to bear in mind that some CSDs have small management bodies and may be forced to increase the number of members significantly only to have enough people to participate in all these committees.
* We would recommend, that should these committees be mandated, they were at least not required to be subcommittees of the management body but of the CSD.
* There is no provision related to the responsibilities/functions of the audit committee and the remuneration committee because only the functions of the risk committee are specified (art. 5.5 RTS).
* In addition, it would be convenient to include a provision related to those CDS that are part of a group in the sense that if the parent company of the group has already an audit committee, a remuneration committee and a risk committee, it will be considered that the CSD complies with the requirement specified in article 5.1. Please note that an equivalent provision is already set out in article 3.4 RTS (referred to chief risk officer, chief compliance officer and chief technology officer) and article 7.2 RTS (referred to internal audit).

Finally, we consider that it is not a responsibility of the management body neither to establish procedures by which the management body and senior management should operate nor to enable the independence and adequate resources of internal control functions. In this sense, the responsibility of the management body will be to monitor senior management in order to guarantee that its development is in line with the objectives defined by the management body; and the senior management would be eventually responsible for ensuring the independence and adequate resources of internal control functions. Being this so, we propose to delete the letter (a) and (f) of article 5.1 RTS.

<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>

We are especially concerned with the following issues:

* The need to align with ISO standards, in particular to transaction types and status types.
* The need to differentiate between the record-keeping requirements for supervisory purposes, from the record-keeping requirements for business continuity purposes.
* The implementation timing of record-keeping requirements should be aligned with the implementation timeline for Chapter II of Annex I, at least for those related to buy-ins and settlement discipline. If a phased implementation is foreseen for the latter, it must also apply to the record-keeping requirements.

The record-keeping requirements as defined in the RTS would apply from the time of the implementation or the CSD approval, going forward in line with the article 69 of the CSDR and clarified in the FAQs published by the European Commission. This means that they will not have retrospective effect.

Additionally, we would like to express that the requirement in article 8.8 whereby” a CSD shall provide with a direct data feed (…) when requested by the competent authority”, could be a source for unlevel playing field between CSDs and should be harmonised across the EU.

The same comments apply to requirement 13.2 on additional records. This total flexibility to ask for further record-keeping request will be a source for uncertainty and unlevel competitive conditions.

<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>

It is difficult to segregate some of these ancillary services from core services for record-keeping or reporting. This is more evident with ancillary services related to settlement (matching and routing). This information is linked to the settlement transaction. This information is available in the audit trail of the transaction: processed, matched, settled… Segregated information should of course be available for statistical purposes, accounting and billing, but record-keeping will necessarily be mingled.

In relation to collateral management services, there is information at two levels: at the level of the collateral management service (collateral management instructions), and at the level of settlement (settlement instructions generated automatically in the settlement system as a result of the collateral management instructions previously received from the participant). We believe that only the information related to settlement is necessary, as it is the one that effectively moves the securities and the cash in the settlement systems, and it contains all the required information: counterparties, collateral, amount, and final status. Regarding the purpose of the collateral management instruction, please note that this is not always known to the CSD. Outside of triparty repo or monetary policy operations, the purpose used is a generic one: the parties request to mobilise collateral but the CSD doesn’t need to be aware of the nature of the underlying exposure.

<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>

Especially in the scope of T2S, we believe that imposing the second reconciliation process to the CSDs will be meaningless if the settlement platform doesn’t do it itself. Additionally, imposing settlement restrictions based on this reconciliation is extremely risky for CSDs.

In any case, we consider that additional amendments are necessary on article 17, on “Problems related to reconciliation”. Automatic suspension of settlement is not a proportionate approach and may provoke too much damage. The regulator should be aware that a suspension of settlement would also imply a suspension of trading with a huge impact, not only to the issuer, but also to final investors. Therefore, we would strongly advice for a more flexible approach. A suspension of settlement could also have systemic consequences (for instance: a CCP would not receive the relevant security as collateral, a bank using the security to receive central bank liquidity would not have access to the liquidity when required, suspension of trading…). As a result of this consequences CSD would be in a position of risk since it will be the one receiving claims and responsible for the damages so caused.

Furthermore, we would like to point out that the undue creation of securities would require a stronger action from the CSD than the one to be followed in case of deletion of securities. The consequences of both situations are very different so the measures to be taken should also be different. In any case, the suspension of settlement is excessive and counterproductive when a deletion of securities arises.

<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>

We have no comments.

<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 have no comments.

<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>

Regarding IT internal audits we have doubts that IT audits on T2S will be possible as per article 26 on “Examination of T2S Services and records retention” of the framework agreement signed between the CSDs and T2S. No internal audits are allowed by the CSDs, only the “external examination” by an examiner appointed by the Governing Council.

<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>

The draft RTS on CSD investment policy in Chapter VII of Annex III should be limited to the amount of minimum capital required to the CSDs. Any capital held over that minimum capital requirement should be allowed to be invested in other assets such as equities or corporate bonds, and in longer terms.

Additionally, we have some concerns with the required portfolio diversification. CSDs usually use their own infrastructure to keep their own assets, as this eliminates custody risk. CSDs should not be required to increase their custody network just for compliance with geographical diversification.

<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 have no comments.

<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>

We would like to show especial concern in relation to the prohibition for non-banking CSDs to receive banking services from other CSDs, the commercial arrangements not being made public, the need to differentiate between indirect links and interoperable links and the fact that imposing so many burdensome requirements to indirect links could result in the reduction of these links in favour of using custodian banks.

In addition to that, we would like to make the following remark in relation to the RTS on CSD links: The requirements to comply with the receiving CSD’s participation rules (article 4.1.a), should only be mandated for standard access. For instance, some CSDs require participants to be banks. In this case, non-banking CSDs would not be able to access. If standard access is requested by the investor CSD, then the receiving CSD may be obliged to request compliance with standard access regulations. But a different type of arrangements should be possible for customised or interoperable access whereby the receiving CSD may foresee specific provisions for peer access.

Regarding the prohibition to receive banking services from another CSD if the receiving CSD doesn’t have an authorization to provide them itself, we would like to stress that CSDs may be requested to open a cash account as part of the standard access procedure or when establishing a link with another (I)CSD. This requirement would therefore de facto deny standard access to many CSDs which do not have a license for providing banking services.

<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>

We believe that the information requirements should include all necessary information. This information should be equivalent to that obtainable in the event that the settlement would take place on a CSD and that the rules regarding the execution of the settlement should be clear and common for all entities. Regarding the timeframes we think they are appropriate.

<ESMA\_QUESTION\_TS\_CSDR\_32>