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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: | Other |
| Country/Region | Europe |

##### 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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

**T2S Advisory Group (AG) response to Q2**

**RTS Article 3(2), Annex I***on mandatory matching****:***

The AG agrees with the proposed text under Art. 3(2) of the draft regulatory technical standards (RTS) as proposed by ESMA. The AG does not see the need to include any further cases of mandatory CSD matching in the RTS.

The AG understands that Art. 3(2) does not prevent matching for all settlement instructions in T2S (including for example, Free of Payment (FOP), payment free of delivery (PFOD) etc.) as currently foreseen in the T2S system specification documentation. The rules and system developments of 24 EU CSDs planning to migrate to T2S have been following this commonly agreed T2S rule.

The AG is of the view that this rule (i.e. mandatory matching for all settlement instructions) is fully in line with the concept of mandatory matching of instructions prior to settlement.

In this respect, the T2S Community would like to make the following clarification with regards to already matched instructions in T2S:

In T2S, T2S actors (CSDs, CCPs, DCPs, etc.) can send instructions as “already matched” to T2S. From a business point of view, these are two instructions sent by the T2S actor that has already matched them. Technically, they are sent as one instruction and T2S will create the two separate instructions upon successful validation.

<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>

**AG response to Q3**

**RTS Art. 3(11), Annex I** *on exemptions from hold and release, recycling and partial-settlement requirements:*

The AG is of the opinion that for reasons of level playing field among all CSDs and harmonisation across the EU market, there should be no regulatory rules allowing the opt-out of certain CSDs from the recycling process. The mandatory recycling for all failed transactions in all EU CSDs ensures that there is a harmonised treatment of such transactions across EU member states, eliminates the need for diversified processes in back offices and ensures safety and efficiency across cross-CSD transactions.

One example of the potential consequences of recycling opt-out would be the negative impact on the management of corporate actions (CA) on flows (i.e. transaction management such as market claims, transformations and buyer protection).

The EU market have in recent years progressed substantially in establishing the EU market standards for CA processing (Corporate Actions Joint Working Group standards) as well as the T2S CA standards on flows. In particular, in the case of recycling opt-out, the processing of managing market claims and transformations will not be in line with the agreed harmonisation standards (i.e. opt-out CSDs will not be able to generate market claims and transformations after the intended settlement date). In case of cross-CSD settlement, this will result in situations when the CSD of one party will generate a market claim or a transformed instruction while the opt-out CSD of the other party to the transaction will not generate market claims or a transformed instruction. This will result in failed settlement transaction and the inability of the receiving party to receive its due entitlement (securities or cash). As a consequence, the AG members would like to express their strong concerns regarding the possibility for EU CSDs to opt-out from the recycling facility.

Regarding the functional implementation of the recycling opt-out for the T2S CSDs, the AG would like to clarify that there is no T2S functionality for opt-out of the recycling process in the current specification. The recycling facility is by default applicable to all instructions in T2S and not specific to any CSD, therefore it will be applied for all CSDs in T2S. This is also in line with the harmonisation approach which has been followed and supported by the T2S community (i.e. CSDs, NCBs and market participants).

CSDs in T2S, which are exempted and would prefer to not use the recycling facility in T2S, would have to manually cancel instructions which are failing at the end of intended settlement day (ISD). **Alternative drafting proposal:**

The AG invites ESMA to consider the following redrafting of **Art. 3(11):**

*“The requirements under paragraphs 5 ~~to~~ and 7 shall not apply if the following conditions apply:…”*

If this is accepted by ESMA, the wording of **the last part of Art.3 (13)** has to be corrected accordingly:

*“… the CSD shall implement the requirements under paragraphs 5 and ~~to~~ 7 within 3 months.”*

<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>

**AG response to Q4**

The AG welcomes ESMA’s approach in using the T2S harmonised matching fields as a basis for the minimum list of the future, regulated mandatory matching fields. Such approach fosters the principle of having a “single rule book” in the EU, and at the same time allows the market to add further mandatory matching fields if and when needed in the future.

**RTS Art. 3(3)(d), Annex I** *on introducing the “transaction type” as a mandatory matching field*:

Regarding the addition of the **“transaction type”** as a new mandatory matching field, the AG would like to note that there is currently no agreed market practice in the EU on how to populate this field (i.e. what value to use in order to ensure successful matching). The T2S harmonisation forums have discussed the usage of such field in the past but no agreement on such standard could be reached. The absence of such harmonisation of market practices across the EU might have the opposite effect of what the CSDR aims to achieve, i.e. instead of achieving higher degrees of safety and efficiency, it increases the risk of matching fails (since different values will not allow matching) if the field is made a mandatory matching field.

Therefore, the AG seeks ESMA’s clarification on the purpose, need for and benefits of having such mandatory matching field. Is it primarily for record keeping / reporting purposes or was it for the buy-in / penalty process? If it is used primarily for record-keeping purposes then this field may be only mandatory but not matching field; conversely if used for settlement discipline purposes it makes sense that this field is a mandatory matching field.

The AG acknowledges that harmonised usage of the “transaction type” field either as mandatory matching field or as mandatory (but not matching) field is deemed beneficial for record keeping/reporting regarding the passing on the information on the transaction type .However, the AG would like to note that in the absence of full harmonisation, the usage of the field as mandatory (but not matching) field has less negative implications for the settlement efficiency (in or outside T2S). More specifically:

* the non-harmonised usage of this field as a mandatory matching field would result in increased matching fails;
* the non-harmonised usage of this field as mandatory (but not matching) field would only affect information sharing but not matching and settlement efficiency.

If it was decided to introduce “transaction type” as a mandatory matching field, the AG wishes to underline that this would require the launch of a new, major harmonisation effort in the EU. At the moment EU CSDs and market participants are using certain values of this field in a way that trigger differences in processing of settlement instructions. Therefore, it will take a considerable amount of time before a harmonised EU standard will be agreed, endorsed, monitored and implemented. The harmonisation governance structure of such effort would still need to be clarified (i.e. who drives this efforts? Who monitors?)

In case the values of the “transaction type” field would involve changes in the ISO standards, the governance and timelines (minimum 12 months) of the ISO changes should be taken into account.

Please refer to the AG response to question 14 regarding the impact on the T2S messages.

**RTS Art. 3(4), Annex I** *on bilateral cancellation facility:*

The AG understands that this paragraph does not prevent unilateral cancellation before matching as foreseen in the T2S CSDs operations.

***Alternative drafting proposal:***

The AG would like to make the following drafting proposal on Art. 3(4):

“*A CSD shall offer its participants a bilateral cancellation facility that enables them to bilaterally revoke matched settlement instructions that form part of the same transaction*.”

**RTS Art. 3(8), Annex I** *on provision of allegement messages:*

The AG is of the view that the proposed Art. 3(8) should be re-assessed on the base that allegement messages[[1]](#footnote-2) are not necessary for all CSD participants in order to support their processing/services.

In the case of the 24 T2S CSDs and their participants, an agreement has been achieved in order to make the allegement service *optional* and *not mandatory*. In particular, CSD participants have highlighted that they did not want to be ‘flooded’ with allegement messages which could be counter-productive in assisting them to identify the pending transactions.

The AG is of the view that CSDs and their participants, should have the possibility to be notified by T2S immediately and when there is sufficient time for them to address an unmatched instruction if the unsuccessful attempt takes place closer to the cut-off time.

For the same reasons, the AG is of the opinion that a second allegement message on ISD is not considered necessary by the T2S CSDs and their participants.

***Alternative drafting proposal:***

The AG would like to propose an alternative drafting proposal to Art. 3(8) as following:

*“A CSD shall offer the possibility to inform its participants about pending settlement instructions of counterparties within 1 hour after the first unsuccessful attempt to match the instructions or ~~and 1 hour from the beginning of intended settlement date~~ immediately if the first unsuccessful attempt to match happens in the 5 hour period before the cut-off of the intended settlement date”.*

<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>

**AG response to Q5**

The T2S AG agrees in principle with the proposed RTS and the overall strategy for the creation of a single rule book in the EU regarding the monitoring of settlement fails.

However the T2S AG would like to provide ESMA with the following specific comments:

**RTS Art. 4(1), Annex I** *on a system to identify and to keep a record of information about the intended settlement date and the status of settlement instructions*

First, the AG assumes that the proposed segregation regarding the records of the status of the settlement instructions is a minimum and that CSDs could include additional pieces of information in accordance with the current international agreements on the ISO messages, reports and queries. CSDs will have to use the information included in the ISO messages, queries and reports in order to identify and record the information about the ISD and the status of the settlement instructions. If there are inconsistencies of the proposed RTS with the ISO standards, the CSDs and their participants will have to develop records with different information to what is currently managed via the ISO messages, reports and queries.

***Alternative drafting proposal:***

To make better use of existing logic of ISO messages and reporting as well as existing ISO codes, the AG would like to propose the following drafting proposal under 4(1) (differentiation of settlement instructions):

*a) pending instructions (which can still settle on ISD);*

*b) failed settlement instructions (which cannot settle anymore on ISD), including, where available, information on:*

*i) initiation of buy-in;*

*ii) extension period;*

*iii) deferral period;*

*iv) buy-in period;*

*v) outcome of buy-in process;*

*vi) payment of cash compensation or settlement of the buy-in transaction;*

*vii) penalties referred to in Article 7(2) of Regulation (EU) No 909/2014.*

*c) fully settled settlement instructions;*

*d) partially settled settlement instructions, including the settled part and the missing part of either securities or cash;*

*e) cancelled settlement instructions, including information whether it is cancelled by the system or by the participant.*

For each of the categories of settlement instructions above, the following information should be provided:

*– whether an instruction is matched or not matched;*

*– whether an instruction can settle partially;*

*- whether an instruction is on hold;*

*- where relevant, what are the reasons for instruction being pending or failing.”*

This proposal of the AG provides all the information necessary for monitoring settlement fails required by ESMA in its reporting under its original proposal for reporting under article 4(1). The only exception is the category “Recycled settlement instructions” 4(1) f), which is redundant in the view of the T2S AG because settlement instructions (not settled after they reached their ISD) when recycled are either pending, failing or settled (for most CSDs) or cancelled by the system (for those CSDs exempted from recycling as per art. 3 par.11). In addition, no ISO code currently exists to identify recycled transactions (either in T2S or outside T2S). In any case, competent authorities are aware which CSDs are recycling instructions and which are not doing so.

**RTS Art. 4(2), Annex I** *on system monitoring settlement fails:*

*4(2/b) regarding reason an instruction is failing*

The AG would like to note that in addition to *lack of securities* or *lack of cash*, there are other reasons for settlement fails (e.g. *linking of instructions with the settlement of other instructions which have not settled yet*, sending late instructions, temporary restriction for settlements with a certain ISIN etc.) which are captured by ISO codes and should be available in the reports. It is not clear to the AG whether penalties and buy-in regime would be applicable in these cases or whether instructions will be exempted from this regime in case the reasons for fails are different from lack of securities and cash.

The AG invites ESMA to clarify the usage and procedures (if any) on the management of fails for reasons other than lack of securities and/or cash.

In addition, the AG would like to underline that in the case of fails due to lack of cash, CSDs do not have access to the information regarding the “missing amount” of cash in the relevant cash accounts of their participants.

***Alternative drafting proposal for 4(2/b)***

*“(b) the reason for any cause of fail (e.g. whether the settlement fail is due to a partial or total lack of securities or due to a lack of cash, temporary restriction etc.)”*

*4 (2) d) on differentiation between different types of asset classes*

There is an inconsistency between the proposed differentiation of the types of assets classes required for the purposes of monitoring settlement fails and the one for calculating penalties (see Table in the Technical Advice, par. 52) and also for those proposed for buy-in rules (see article 12, Annex I). The AG would welcome the alignment of both systems in terms of information requirements for reasons of harmonisation of the information source and flow of the two processes (penalties and buy-ins).

4 (2) e) *on differentiation between different types of transactions*

There is an additional category “others (please specify)” which is included in Table 2 of Annex 1 of the RTS on settlement discipline regarding reports on settlement fails. This information is missing from the text described in art. 4.2(e).

The AG would like to clarify that the currently agreed ISO field “transaction type” codes do not provide the information required by the proposed RTS 4 (2) e). The business purpose of the “transaction type” is not to identify location of trading or clearing but rather to provide information on underlying business transaction or type of business operation per financial instrument.

The AG proposes that the differentiation between the different types of categories under 4(2) e) follows the categorisation of transaction types adopted by ISO for the ‘transaction type’ field, making use of the available ISO codes for the different categories (see comment on question 23, Annex VII/Table 1). This is the preferred option of the T2S AG as the codes provided will be the same as the ones used in the settlement messages. In any case, the exact ISO codes have to be kept for record keeping by the CSDs as required by other RTS (in particular recordkeeping requirements).

In addition, the AG would like to propose that CSDs use the ISO fields “place of trade” and “place of clearing” for recording the information required under RTS 4.2(e). In any case, the AG understands that the exact trading venue and CCP have to be known to the CSD for other requirements on settlement discipline: CCPs have to be known for passing the information on calculated penalties and trading venues to inform them about a failing transactions that should be subject to buy-ins.

Please see our comment on question 23 regarding Annex VII/Table 1.

***Alternative drafting proposal***

The AG proposes the following drafting under 4(2) e):

*“e) the ISO transaction type of the settlement instruction;”*

In addition, the AG proposes to add the following information to be provided, if available in the settlement instructions, for the purposes of the system of monitoring settlement fails after article 4 (g):

*‘h) place of trade (to be provided if the transaction has been concluded on a trading venue)*

*i) place of clearing (to be provided if the transaction has been cleared by a CCP)’*

**RTS Article 5, Annex I** *on reports to public authorities*

The AG would like to propose that the items in the reports to competent authorities should be built as much as possible using the available ISO standards on messages, queries and reports.

This would ensure wider market harmonisation.

See AG comment on “transaction type” in response above.

**RTS Art. 5.1, Annex I***on information and data on settlement fails*

The AG would propose to ESMA that information on the types of securities accounts (i.e. which types of securities accounts are connected to the fails) are also reported by the CSDs to the competent authorities. This could be included in Annex I, Table 2.

In this way it would be possible for the competent authorities to receive information on whether the fails are due to lack of securities of the CSD participant or of its clients.

<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>

**AG response to Q6**

***Part 1 of the Response on Scope of CSDR (Level I) Art. 7***

***General AG Comment on the scope of all settlement discipline regime RTS (applying to all question of the ESMA consultation):***

**Scope of Financial Instruments and Transactions**

According to CSDR Art. 1(2), the CSDR applies to the settlement of all financial instruments unless otherwise explicitly specified in a given provision of the CSDR, i.e. Articles 3 and 5(2) are only applicable to transferable securities. In the absence of such an explicit limitation, a given provision of the CSDR applies to all financial instruments.

In addition, the AG’s understanding is that the scope of financial instruments covered by the Level II RTS is described in CSDR Arti.2(8), where the definition of “financial instruments” is referring to Art. 4(1)(15) of [MIFID 2](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_173_R_0009&from=EN). MiFID 2 provides a list of instruments defined as “financial instruments” [1]

The AG assumption is that a central authority, e.g. ESMA, will maintain a list of securities, which are in the scope of the penalties regime

**Scope of Settlement transactions**

The assumption of the AG is that all transferable securities transactions settled in an EU CSD (i.e. in a securities settlement system governed by the law of a Member State) are in the scope of the CSDR. This is independent of where the security has initially been issued (in or outside the EU).

In addition, CSDR provides that the settlement discipline measures referred to in Art. 7(2) to (9) (i.e. penalties and buy-ins) apply to the following transactions regarding transferable securities, money market instruments, UCITS and emission allowances (CSDR Art. 5(1)):

a) **OTC transactions** on the above financial instruments admitted to trading on trading venues. **In this case the CSD shall include in their internal rules an obligation for their participants to be subject to the buy-in measures;**

b) **non-OTC transactions** on the above financial instruments traded on a trading venue. In this case the trading venue shall include in its internal rules an obligation for its members and its participants to apply the buy-in measures.

c) transactions on the above financial instruments **cleared by a CCP** (OTC and non-OTC transactions regardless of whether the financial instruments are or not admitted to trading on trading venues). **In this case the CCP shall be the entity executing the buy-ins.**

1. CSDR therefore excludes from the scope of application of the penalties and buy-ins requirements: OTC transactions in financial instruments (as per Art 5.1 of CSDR) which are not admitted to trading;

and at the same time

1. they are not cleared by a CCP.

**This scope of application of CSDR art. 7 (and the related RTS) is independent of the types of transactions underlying the settlement process.**

CSDR Art. 7 provides for the following exemptions from the penalty and/or buy-in rules:

- CSDR Art. 7(4)(b), excludes certain operations composed of several transactions as further specified in RTS Art. 14 on *ineffective buy-ins*;

- CSDR Art 7 (12) exempts from all penalty and buying requirements, if insolvency procedure are opened against the failing participant;

- CSDR Art. 7 (13) exempts from all penalty and buy-in requirements, transactions in securities for which *the principal venue for the trading is located in a third country.* The location of the “principal venue” shall be determined in accordance with Article 16 of [Short Selling Regulation](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:086:0001:0024:en:PDF) (EU No 236/2012).

***Part 2 of the Response on the scope of RTS Art. 7***

**AG Comments on Scope and Design of Penalty Regime (as set out in RTS Article 7, Annex I)**

The AG believes that the scope and the application of the penalty regime set out in RTS Article 7 should be as well-defined as possible. This is important both in the context of any jointly-managed cash penalty platform for T2S CSDs (as discussed below) as well as in the design of the pan-European environment beyond T2S CSDs.

The AG has the following specific comments on the scope and application of the penalty regime as set out in RTS Article 7:

1. the apparent scope is very broad, as it includes all transfer orders (as defined by the Settlement Finality Directive);
2. this broad scope would mean that many specific types of transfer (such as movements related to corporate actions on stocks, portfolio transfers, and collateral movements (including collateral movements to and from central banks) would fall within the scope. The EU CSDs would benefit from an explicit clarification from EU public authorities on the matter;
3. the text is not fully clear as to what triggers the liability to pay a penalty; if a transaction fails because the participant delivering the securities either has insufficient securities or has put its instruction on hold, then the delivering participant is liable; but other scenarios are possible; it is possible that the receiving participant has insufficient cash, or has put its instruction on hold; there are also other possible reasons for failure (as, for example, a CSD can put a transaction on hold, or can freeze activity in an ISIN or on a securities account (see AG response on question 2 and 3 in the Technical Advice document);
4. it is important that the liability for a penalty be identified in each of the different possible scenarios; it would, for example, be anomalous that a delivering party that has securities available be charged in the event that the receiving party has insufficient cash;
5. the text is not fully clear with respect to the exact process in the event that one or both participants send their settlement instructions to the CSD only after the intended settlement date; it is believed that a participant that sends its settlement instruction to the CSD on or before the intended settlement date is not liable for any penalty for the period up to the point of matching (as set out in Article 7, paragraph 1); it is assumed that if the other participant sends its instruction on ISD +2, and matching occurs on ISD+2, then this second participant may become liable for fines for ISD and ISD+1, and both participants may become liable for fines in the event that the transactions is still failing on ISD +2 and afterwards; if both participants instruct after ISD, then it is unclear as to whether both participants are potentially liable for the full period from ISD to point of settlement, or whether the first participant to instruct does benefit from an exemption for at least part of the period;
6. in the event of instructions send to the settlement platform after ISD, and assuming that there is clarity on the exact periods of potential liability for both participants, and on the liability for the different possible scenarios of lack of securities and lack of cash, then there are still technical problems; In a case a CSD is required to be able to look back in time, and identify whether a particular participant would have had at its disposal sufficient resources to settle a transaction, the CSD may not be able to look at cash accounts and to identify end of day balances; a more fundamental point is that – given that the settlement instructions were unmatched at the relevant points of time in the past – the CSD participants may very well have used the resources (cash and/or securities) for other purposes; it would be very difficult for CSDs to reconstruct an alternative sequence of events. Some AG members questioned the interpretation of this requirement and would welcome that ESMA clarifies the text further.

***Part 3 of the Response on the scope of RTS Art. 7***

**RTS Art. 7(6), Annex I** *on a requirement for**CSDs using a common platform to jointly manage cash penalties*

***Justification for such jointly managed service***

The AG welcomes the principle for a harmonised management of the cash penalty regime across T2S CSDs. This principle ensures harmonisation and level playing field conditions for the competing CSDs and their participants in and outside T2S. The AG was one of the early supporters of such harmonised settlement discipline regime in the EU.

However, regarding the ESMA provided justification for T2S CSDs to manage jointly a cash penalty service as described in RTS Art. 7(6) and in section 2.3, par. 62 of the Consultation Paper, the AG could not identify the reasons why such jointly managed system is proposed to become a regulatory requirement for CSDs. Furthermore, the AG members could not identify the reasons why in the absence of implementation of such system at the level of a common infrastructure, “the penalty mechanism would collapse” (par. 62, p. 23 of the Consultation Paper).

On the other hand that the AG members would agree that a common solution for the T2S CSDs could potentially entail development and running cost synergies. Assuming that 24 T2S CSDs operating in 21 European jurisdictions could develop such jointly managed cash penalty system, still to be defined, the related costs could be shared between 24 CSDs. This would minimise the impact on the development efforts of CSDs and would ensure a level playing field for competing cross border.

***Missing harmonisation/agreement***

The possibility for a third, non CSD, provider to offer such service to the T2S CSDs would pre-require a level of common agreement among all relevant CSDs and potentially of their competent authorities regarding certain aspects of such service:

* Who is the *reference price* provider to such central/jointly managed cash penalty service?
* What is the “value date” of such reference price? Trade or intended settlement day of the failed transaction? End of day price or intraday average etc.?
* What are the timelines for calculating/collecting the penalties? How often? On which day of the month?
* Who ensures that the non-T2S, but still EU, CSDs will also follow the same harmonised conversions/parameters as the CSDs participating in the jointly managed cash penalty system? ESMA, national competent authorities or is it left to voluntary best market practices?
* More detailed information as to the scope and requirements for such a service. (See Part 2 of this response above)

***Preliminary understanding on the scope of services of a jointly managed system***

Based on the above, the AG is of the view that the only service a common cash penalty system could offer to the T2S CSDs is the outsourcing of the CSDs management of fail and penalty information (which is based on information available to CSDs).

Further to this limited scope, the AG members would like to clarify that CSDs do not have any means to “charge and re-distribute the penalty when another CSD is involved” beyond their own CSD participants. This is valid in or outside T2S, with or without the use of a “jointly managed cash penalty system”.

The AG members have tried to identify the potential services this jointly managed system could provide to the T2S CSDs. These preliminary assumptions are necessary in order for the T2S stakeholders, and especially the CSDs, to be able to assess the impact on their systems on developing such a jointly managed cash penalty service.

Any such jointly managed system, independently of who would be the service provider, could, upon authorisation by the CSDs, provide the following services:

* ***collect information*** on the failed transactions of the T2S CSDs (note: this information is the “property” of each CSD);
* ***calculate the penalties***, as per the RTS requirements, and based on a reference price source provider to be agreed by the T2S CSDs/regulators;
* provide each T2S CSD with ***reports*** on the fails and the penalties applicable to their own CSD participants (report to each CSD, per each CSD);
* potentially provide, if so required, a ***billing service*** to the T2S CSDs.

**In addition to these services to be provided by the central cash penalty service to the T2S CSDs, each T2S CSD would have to take further actions in order to fulfil its own regulatory responsibilities regarding the charging, collecting, netting, re-distributing or any other such action regarding the applicability of the cash penalties requirements on its own CSD participants.**

The T2S AG would like to underline that the description of this possible service is only indicative at this stage. It serves the AG as a proxy for assessing the impact on the T2S CSDs to jointly develop such service.

***Alternative AG proposal to ESMA***

The AG proposes the following drafting under 7(6):

“*~~In case of interoperable links and~~ CSDs that use a common settlement infrastructure, ~~including in the circumstances referred to in paragraph 5 of Article 30 of Regulation (EU) No 909/2014, the procedures for cash penalties shall be jointly managed by the involved CSDs. The arrangement between the involved CSDs or the framework referred to in Article 30(5) of Regulation (EU) No 909/2014~~ ~~2014~~ shall work in close collaboration to establish harmonised modalities for the collection and distribution of cash penalties in accordance with the provisions of Regulation (EU) No 909/2014 and this Regulation.”*

[1](1) Transferable securities;

(2) Money-market instruments;

(3) Units in collective investment undertakings;

(4) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;

(5) Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;

(6) Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;

(7) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;

(8) Derivative instruments for the transfer of credit risk;

(9) Financial contracts for differences;

(10) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF;

(11) Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).

<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>

**AG response to Q7**

The AG would like to note that there are certain RTS requirements which require further developments from the CSDs regarding the ISO messages and reports. (See the AG comments on Q4, Q5 and Q23)

**RTS Art.11(5), Annex I***on reservation of the relevant financial instruments:*

The AG would like to clarify that if a CSD reserves the relevant financial instruments (as proposed in RTS Art. 11(5)) on the participant’s account, then partial settlement on that position cannot take place because the positions are by definition unavailable.

***Alternative drafting proposal:***

The AG would therefore propose to ESAM to consider deleting the following sentence from the RTS Art. 11(5) :

“*The CSD shall reserve the relevant financial instruments available in the failing participant’s account for the settlement of that instruction.”*

**RTS Art. 11(6), Annex I***on partialling and buy-in process:*

The AG is of the opinion that mandatory partial settlement should not be applied on the last day of the extension period but at an earlier stage e.g. as of ISD+x business days (where ISD +x should be earlier than the end of the extension period).

The AG proposal would allow for some opportunity for the trade to settle (partially) before the end of the extension period. This, in turn, would provide more opportunities for other pending transactions to settle before the end of the extension period, since more liquidity (securities and cash) would be available in the settlement system.

Regarding the cash and securities thresholds of the partialling processing the AG would like to note the following:

Quantity thresholds (on securities) on partial settlement should be provided by CSDs as there should be no settlement below a certain minimum settlement quantity or not in accordance with the settlement unit multiple agreed for a given security. If partial settlement would be allowed without respecting the minimum settlement quantity and settlement unit multiple of an ISIN, it could lead to the need of manual corrections which have to be performed by CSDs.

Cash thresholds on partial settlement are also applied in most schemes for partial settlement. If those are removed for all partial settlement on ISD, it will lead to unnecessary increase of settlement volumes and, therefore, additional costs for all the actors. However, if these cash thresholds are applied also in the extension period, this could lead in rare cases to situations which will not be compatible with the immunization principle (netting of penalties paid and penalties received in case of chains of transactions) as described by ESMA in para 65 of the consultation paper (page 23). Therefore, the AG proposes that the threshold of cash on partial settlement is not applied when partial settlement is made mandatory in the extension period.

***Alternative drafting proposal:***

*“6.   The partialling functionality offered by the CSD, referred to under Article 3 (7), shall be applied as of intended settlement day (ISD) + x business days on the last day  of the extension period when the financial instruments are available in the account of the delivering participant irrespective of any opt out elected by the receiving participant.”*

The AG would invite ESMA to consider the following principle: In order to avoid manual operations to correct securities positions while allowing netting of penalties paid and penalties received by participants in chains of transactions, the mandatory partial settlement facility applied in the extension period should respect the minimum settlement unit and the settlement unit multiple attributes of the ISINs but not any minimum cash thresholds for partial settlement which are normally applied for settlement on the ISD.

**RTS Art. 11(9*),* Annex I***on buy-in not possible:*

In some circumstances a financial instrument may not be available any more on the market, for instance when a financial instrument has redeemed or was converted (i.e. certain corporate actions). In these situations a buy-in would not be possible. In such case, and in line with the Market Standards for Corporate Actions Processing, the result of the corporate action entitlements would compensate the counterparties.

**RTS Art. 11(10), Annex I***on the details of actors causing the fail****:***

The AG is of the opinion that the CSDs cannot identify who are the actors that “caused the fail” beyond its own CSD participants. In addition, the RTS is requiring “CSDs to test the consistency of this information”. This is related to the vaguely defined notion of chains of failed transactions (see also AG comment on chains in the ESMA’s Technical Advice text).

The CSDs are not aware of the originating trading parties behind the transaction they settle on their books. In addition, the AG would like to note that no CSD participant knows, or can know the whole transaction chain, but the participants can only “in the middle” pass on the information down the transaction chain.

The AG is of the opinion that there should be an inverse flow process, i.e. the CSD first informs its participants on the failed settlement transactions. As a next step in the process flow, the CSD participants inform their own clients responsible for the failed transaction. On their part, trading parties shall inform the CSD of the status of the buy-in process, through the CSD participants (i.e. the settlement agents).

Therefore, the AG would like to advise ESMA to reconsider the proposed role of the CSD in the process described under RTS Art. 11(10).<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 T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

**AG response to Q9**

**RTS Art. 14 Annex I** *on specific transactions and their timeframes:*

The T2S AG would like to clarify that CSDs would have to identify, in their own systems, operations composed of several transactions (as per Art. 14(1) and (2)). These may require for some CSDs the development of additional functionalities in their own systems, in case they do not have the information on the specific multiple transactions. In case transactions are linked, this information (i.e. elements of the repo transaction such as differentiation between first and second leg, terms of the repo) needs to come from the counterparties of the underlying trade and be populated in the settlement instructions by the respective CSD participants for CSDs to be able to identify such links.

<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>

**AG response to Q10**

**RTS Art.15, Annex I** *on calculation of cash compensation:*

The AG would like to make the comment that the methodology to arrive at the reference price is not fully clear from the wording of this article.<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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

**AG response to Q12**

**RTS Art. 17(2), Annex I** *on**reference to a trading venue:*

The AG supports ESMA’s view set out in paragraph 114 of the Consultation and art. 17 of the RTS on settlement discipline that settlement information for CCPs and trading venues should be instruction/transaction-related.

The T2S AG would like to highlight that the requirement for CSD participants *to indicate the details and references of the trading venue* reinforces the argument provided in response to Q5 on the identification of different transaction types (i.e. that the currently agreed ISO field “transaction type” codes do not provide the information required by the proposed RTS). The AG therefore would propose that the ISO field ‘Place of Trade’ (populated by the ISO Market Identifier Code – MIC code) is used by CSD participants to indicate the trading venue. See also comment in Question 23.

**Alternative drafting proposal:**

With respect to Article 17 of the draft technical standards, the AG has the following suggestions:

1(c): Replace “participants” by “CSD participants”; the rationale is that the CSD can identify the receiving and delivering CSD participants in a securities settlement instruction/transaction, but may well not be aware of the participants in the trading venue and/or the CCP.

1(d): Replace the current text by “The number and identification of the financial instruments for which settlement did not occur”; the rationale is that this is a concrete figure that CSDs can provide; a requirement to provide a figure relating to “missing” financial instruments would require CSDs to effect a judgment call, as CSDs do not necessarily have the full information to identify “missing” financial instruments.

1(e): Replace the current text that identifies five points in time by a text that specifies that CCPs and trading venues should be able to receive updated information at least once per business day; this is a more demanding and a more generic requirement; the current text appears inappropriate as – as a general rule - CSDs will not have the relevant information allowing them to identify these points in time.

1(f): This should be deleted as it duplicates item 1(d).

2: Add “any” to the current text so that the text runs as follows: “….shall indicate in its settlement instruction the details and any reference …..”; the rationale is that the trading parties may not have a reference from the trading venue that they can include in the settlement instruction.

<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>

**AG response to Q13**

The AG believes that Article 19 may generate legal risk for all parties involved in the trading, clearing and settlement process. Accordingly, the AG suggests that ESMA review the Article, and, if appropriate, delete it.

The concern of the AG is that this Article may create the risk that a process or mechanism that is compliant with the final text of Section 2 or Section 3 of Chapter III of the regulation (including certain exceptions where relevant) may be assessed as non-compliant with the RTS because this process or mechanism does not meet the additional requirements that are set out in the current text of Article 19 (a) and (b).

In effect, the risk is that the very broadly drafted requirements of Article 19 would supersede many of the detailed, technical provisions of Sections 2 and 3 of Chapter III.

<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>

**AG response to Q14**

**RTS Art. 20, Annex I** *on entry into force:*

The Article is of particular relevance for the 21 EU markets covering 24 CSDs planning to migrate to T2S by Q1 2017.

The AG appreciates the need for RTS to:

(a) Be well balanced in terms of risk and efficiency;

(b) Be correctly understood by all relevant stakeholders; and

(c) Give all relevant stakeholders sufficient time to implement the necessary changes.

Accordingly, the AG welcomes the extended entry into force period proposal beyond the usual 20 days but has its doubts, given the detailed RTS, on whether the 18 months proposed constitute an appropriate period. More specifically the AG wishes to caution that, for the reasons outlined in detail below, even an implementation period of 18 months might be insufficient for allowing CSDs, CSD participants, and all intermediaries in the custody chain, and potentially the T2S platform itself (where relevant) to implement the adaptations required by the RTS.

Given the detailed new requirements proposed by ESMA throughout this consultation paper, the AG invites ESMA to consider the trade-off between the urgency for the creation of a harmonised EU regulatory environment for a settlement discipline regime and the reality of system developments required by the EU CSDs in the next 24 months. Asking for the implementation of a substantially new and detailed settlement discipline regime in a period when systemically important market infrastructures already have to go through massive IT and rule changes could create systemic risks. These risks could undermine the huge efforts which these systemically important market infrastructures and their participants are undertaking in completing their successful preparations for and migration to T2S, and might thus adversely impact the ultimate objective of the RTS to help making Europe a better place to invest.

Concretely, the AG has identified the following elements regarding the impact of the RTS on the different T2S stakeholders (CSDs, CSD participants, and all intermediaries in the custody chain, and potentially the T2S platform itself) supporting the need for an extended implementation period, possibly beyond the 18 months:

**Impact of RTS on T2S CSDs**.

* Transaction type, new fields for status type, account type, transaction type, buy-in related fields, asset class) (See AG comment on Q5).
* Buy-in functionality and related information flows. (See AG comment on Q7).
* Implementation to process information flows (ISO) on penalty calculations, and processes/implementation for charging the cash penalties to their clients (See AG comment on Q6).
* The AG clarifies that certain record-keeping requirements (on records on flow and records on stock) as they are currently proposed in the RTS may involve changes in ISO standards. Changes in ISO standards involve substantial timelines and governance processes (see AG comment on Q4 and Q5 as well as under *Impact of RTS on T2S platform* below). In parallel, or subsequently, there is a need for further harmonisation effort on the usage of the ISO standard (for example the transaction type) across the EU markets.

The AG takes note that ECSDA has prepared a survey among its members aiming at presenting a quantitative estimation of the impact of the proposed RTS on CSDs.

**Impact of RTS on CSD participants**

* CCPs have to process penalty information (flow between CSD and CCP and CCP to find the member to whom penalty applies);
* (transaction type, new fields for status type, account type, transaction type, buy-in related fields, asset class) (See AG comment on Q5).

The buy-in requirements will have far-reaching impacts on all CSD participants, and in particular on CSD participants that act as settlement agents. The requirements can be divided up into three parts: new information flows, new activities and new processes to manage new types of risk.

* New information flows: these will include the following items:
  1. information to the CSD as to details of settlement instructions in the same financial instruments ( Article 11, paragraph 10);
  2. information on the amount of unsettled securities that are available in the account of the delivering participant (Article 11, paragraph 5);
  3. information on the applicable buy-in timetable for that transaction;
  4. information from end investor (in the event the buy-in fails) as to choice between cash compensation and deferral (Article 11, paragraph 8).
* New activities:

1. Receiving CSD participant (and other intermediaries in custody chain): buy-in process;
2. Delivering CSD participant (and other intermediaries in custody chain): payment of buy-in cost (in excess of original purchase cost), and payment of cash compensation.

* New processes to manage risk:

1. From point of transmission of a settlement instruction to a CSD a settlement agent will be subject to increased risk (compared to the situation today). A delivering party may potentially be subject to the obligation to pay the cost of a buy-in or to pay cash compensation; a receiving party may potentially obliged to have a buy-in executed on its behalf. Settlement agents will need to put in place new processes to manage these risks.

**Impact of RTS on T2S platform**

Implementation of the RTS requirements for CSDs implies certain changes on the T2S platform in order to accommodate the new information which needs to be managed through the settlement process:

* Making Transaction type a mandatory matching field (only possible after harmonized rules are established in the EU).
* Implementing different content of status type, transaction type, account type fields, asset class (where different from the ISO CFI) and any related T2S support functionality on those fields (after ISO implementation).
* T2S message changes (independently of the ISO impact), where certain fields (where relevant), would be needed to be included in the existing T2S reports and query messages.
* ISO standards changes: existing ISO 20022 messages are usually updated on a yearly basis (in May) following a maintenance process involving the timely submission (prior to the 1st of June of the preceding year) of the change requests to the Registration Authority (i.e. SWIFT in case of ISO 20022 messages) and the assessment and validation of the requested changes by the relevant Standards Evaluation Group (composed of industry experts in the concerned business domain). The maintenance of ISO 20022 messages can be exceptionally requested outside of the yearly cycle.

Depending on the adoption time (foreseen by end 2015) of the CSDR RTS/ITS (unless change requests can be based on a stable draft version made available earlier), changes introduced by ESMA would be introduced in the updated ISO 20022 messages at the latest by May 2017 (or possibly one year earlier if an exceptional maintenance process is agreed by ISO these change requests). Once the new version of ISO 20022 messages is available, the communities of users (e.g. T2S) can decide on the actual implementation or migration conditions ('big bang' or migration preceded by a period of coexistence).

* After changes to these ISO messages have been endorsed by the ISO governance structure, new developments are required in T2S in order to utilise these fields (the procedure is the same for all infrastructures, not only T2S).

In addition, if T2S CSDs ask T2S to develop and provide the penalty calculations to support a jointly managed cash penalty system (see AG response to Q6) the following system developments have to be considered by the T2S stakeholders:

* Calculation of penalties, including back-dated (assuming this is possible). Implementing the information flows to CSDs on calculating cash penalties; provide additional penalty reports etc. which requires potentially new ISO messages in T2S.
* Building and maintaining a reference price list for cash penalties process, provided that the parameters of such service is agreed among CSDs and their regulators, including the choice of the reference price data provider.

***Overall Impact on T2S CSD migration phase***

In addition the AG would like to note the following regarding the overall impact of the settlement discipline regime RTS on the T2S CSDs and potentially on the T2S platform:

T2S is the most important and highly complex initiative in the area of securities settlement in the EU. Migrating to T2S and related testing is very complex and demanding, in particular for CSDs and their participants. The migration to T2S takes place in four waves, with the first wave CSDs testing for almost 12 months before their actual migration will take place. It had therefore been agreed, by all T2S stakeholders, that no new functions will be implemented during the testing and migration phases. Only the processing of bug fixes is allowed.

An application of settlement discipline measures that could imply several technical changes to the T2S platform in Q2 2017 (i.e. approximately 18 months delayed application) would endanger the success of the migration of T2S as a whole due to the technical complexity of introducing changes to a system that is being tested or migrated. Furthermore, for the “last-wave” CSDs this would mean that they would have to implement changes to their (legacy) systems around February 2017 while they are in the middle of their migration to T2S.

Thus, since two thirds of EU CSDs will be very busy testing for on-boarding CSDs during the next two years in the different migration waves (i.e. all CSDs will test, even those that are already migrated – testing with those that are about to migrate), the AG expresses its serious concern from an settlement efficiency and financial stability perspective. Introducing new tests for implementing the technical standards may jeopardise the stability of a wide part of the European securities settlement infrastructure. The AG is concerned that implementation of changes during the T2S migration period or immediately thereafter would induce undue risk for an already very complex project.

In the case of a delayed application of the technical measures by 18 months, it is true that entry into force would be after the migration has been completed, provided of course that no contingency migration wave will be utilised in T2S. However, T2S foresees that for a minimum of three to four months, T2S system performance and functional resilience will need to be monitored before any new changes can be implemented. This is necessary to ensure that the system runs smoothly and stable before any new changes are introduced. Any go-live of a new release in T2S is preceded by a 4-6 months user testing phase by all participants of the T2S platform (CSDs). The user testing phase encompassing testing by all T2S CSDs, their participants and the Eurosystem can thus – in the ***best case*** – commence no earlier than mid-2017 and would last until end 2017 (i.e. six months). It is worth pointing out that this “best case” scenario is over optimistic as it assumes that the eight CSDs of the last migration wave, who would have gone live with T2S in February or May 2017 have also already implemented all changes to be ready for the next release of T2S. A more realistic and risk adverse scenario would be an approach that would allow the user testing phase - which would include the regulatory changes of CSD-R Level II – to be conducted in the first half of 2018 and the go-live of such major release no earlier than mid-2018.

In addition, concerning the required harmonisation and establishment of common rules among the T2S CSDs, the AG would like to note that certain agreements on the harmonisation standards took the T2S community a couple of years to define, endorse, monitor and implement.

**Alternative proposal to ESMA**

***The AG therefore would like to stress the view that the settlement discipline measures, including certain elements of the related requirements on record-keeping and reporting to competent authorities, should be phased-in with a delay of minimum 24 months.***

<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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

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

<ESMA\_QUESTION\_TS\_CSDR\_19>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.<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>

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##### 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>

**AG response to Q23:**

The AG agrees in principle with the harmonised approach as proposed in the draft RTS of Annex III and ITS of Annex VII.

However, there are some record keeping and reporting requirements (see below) that are not fully in line with the current ISO standards for instructing settlement messages and for reporting. The reason why the record keeping and reporting requirements should be in line with the ISO settlement messages and reports is that the information required from the CSDs can only be retrieved in the first place from the settlement related messages (i.e. settlement instructions)

In order for T2S CSDs to comply with these new regulatory requirements, the relevant ISO changes (fields, new messages, etc.) have to be agreed by the ISO international community. This process lasts between 1 and 2 years depending on the date of the submission of changes. Submission of proposals for messages does not necessary mean approval by the ISO standards governance process. A question therefore arises, how CSDs would be able to fulfil their new CSDR regulatory requirements in the case where the ISO standards for messages and reports are not updated in line with these EU requirements.

In addition, assuming that the ISO standards are updated, the filling in of these fields in these new messages, has to be harmonised at EU level. This is also a process requiring some time.

Who are the stakeholders/governance in this process?

In particular, the AG would like to provide some comments on specific articles of Annex III.

**RTS Article 9 (2) c) in Annex III and ITS in Annex VII Table 1** *(TRANSACTION/SETTLEMENT INSTRUCTION (FLOW) RECORDS) row 2 (Transaction type (covering at least the instruction types specified under Regulation (EU) No… [RTS on monitoring of settlement fails under Article 7 of Regulation (EU) No 909/2014]):*

See also reply to Question 5 above:

The T2S AG would like to suggest that ESMA considers the use of the standard ISO codes for the field “transaction type” to differentiate between the different transaction types. Otherwise, there is the difficulty that more than one of the codes which ESMA is proposing may describe more than one types of transactions. For example, there can be transactions concluded on a trading venue for collateral management purposes (e.g. repos) which are cleared by a CCP. In this case two codes may be applicable to that transaction: TRAD and COLL.

The AG would invite ESMA to consider the usage of other standard ISO fields in order to receive from CSDs the information on whether a transaction is concluded on a trading venue or not. This field could be the “Place of trade”. Similarly, and regarding the information on whether an instruction is cleared by a CCP or not, the field “place of clearing” could be used.

The information in these fields can be provided in addition to the information regarding the transaction type.

***Alternative drafting proposal:***

In line with its proposal in question 5 above, the AG proposes to fill in this row:

***Transaction Type*** *Standard ISO transaction type codes;*

*For reference the current standard ISO transaction type codes are:*

***CODE NAME***

*AUTO AutoCollateralisation*

*BSBK BuySellBack*

*CLAI MarketClaim*

*CNCB CentralBankCollateralOperation*

*COLI CollateralIn*

*COLO CollateralOut*

*CONV DepositoryReceiptConversion*

*CORP CorporateAction*

*ETFT ExchangeTradedFunds*

*FCTA FactorUpdate*

*INSP MoveOfStock*

*ISSU Issuance*

*MKDW MarkDown*

*MKUP MarkUp*

*NETT Netting*

*NSYN NonSyndicated*

*OWNE ExternalAccountTransfer*

*OWNI InternalAccountTransfer*

*PAIR PairOff*

*PLAC Placement*

*PORT PortfolioMove*

*REAL Realignment*

*REDI Withdrawal*

*REDM Redemption*

*RELE DepositoryReceiptReleaseCancellation*

*REPU Repo*

*RODE ReturnDeliveryWithoutMatching*

*RVPO ReverseRepo*

*SBBK SellBuyBack*

*SBRE BorrowingReallocation*

*SECB SecuritiesBorrowing*

*SECL SecuritiesLending*

*SLRE LendingReallocation*

*SUBS Subscription*

*SYND SyndicateUnderwriters*

*TBAC TBAClosing*

*TRAD Trade*

*TRPO TripartyRepo*

*TRVO TripartyReverseRepo*

*TURN Turnaround*

Related to the proposal above and the proposal under Q5, the AG proposes to introduce two new rows to be filled in by CSDs in table 1 in the Annex of the relevant ITS in case information is provided in the settlement instruction:

* ***‘Place of trading*** *Populated by the MIC (ISO Market Identification Code) (ISO 10383) if the instruction is resulting from a trade concluded on a trading venue or blank if the field in the settlement instruction does not contain a MIC or is not filled in;’*
* *‘****Place of clearing*** *BIC (or converted LEI) of CCP if transaction is cleared by a CCP or blank if the field does not contain a valid BIC or is not filled in’*

**RTS Article 9 (2) l) in Annex III and ITS in Annex VII Table 1 *(****TRANSACTION/SETTLEMENT INSTRUCTION (FLOW) RECORDS) row 11 (Cash Account Identifier)*

The proposed regulatory standard regarding the CSDs reporting to the competent authorities on the IBAN of the cash accounts used for settlement is only relevant and applicable for transactions other than those involving settlement in Euro central bank money in the Eurosystem NCBs accounts (i.e. TARGET2). The reason is that as per REGULATION (EU) No 260/2012 (14 March 2012), NCBs are exempt from the IBAN standard [i.e. payments executed in large value payment systems (e.g. T2, but also T2S cash accounts would clearly fall under this) are out of scope and hence the requirements do not apply to these. (If, however, an NCB provides a retail payment service on its own accounts that service and those accounts fall into the scope].

***Alternative drafting proposal:***

The AG proposes that when NCB cash accounts are used for settlement, the reporting on the cash accounts may not follow the IBAN standard but the cash account number is provided according to the standard of the relevant NCB. In particular, in Table 1 of ITS in Annex 1, row 11, column “Format”:

“International Bank Account Number (IBAN) or, where relevant, an NCB cash account number”

***RTS Article 9 (2) v) in Annex III and ITS in Annex VII Table 1*** *(TRANSACTION/SETTLEMENT INSTRUCTION (FLOW) RECORDS)* ***row 21*** *(****Status type*** *(in accordance with the RTS on monitoring of settlement fails under Article 7 of Regulation (EU) No 909/2014):*

See AG reply to question 5 above

In order for CSDs to identify the different statuses of settlement instructions, taking into account that a settlement instruction has a number of different statuses communicated in standard reports and queries. This approach would allow CSDs and EU market participants to operate in line with EU and global standards.

***Alternative drafting proposal:***

Following the proposal of the AG under reply to question 5, the following rows are suggested to substitute row 21 in the table 1 in the Annex of the relevant ITS:

**“21a Status of the instruction *(in accordance with Article 4(1) of Regulation (EU) No… [RTS on settlement discipline])***

Possible values:

PEND – Pending instruction (settlement at the ISD is still possible)

PENF – Failing instruction (settlement at the ISD is no longer possible)

SETT – Full settlement

PAIN – Partially settled

CANS – Instruction cancelled by the system

CANI – Instruction cancelled by the participant

**21b Remaining part of securities to be settled *(if Status of the instruction is PAIN)***

Information on the remaining XXX amount of securities against YYY cash to be delivered

**21c Matching status**

MACH if matched or

NMAT if the instruction is not matched

**21d Hold status of the instruction**

Possible values:

PREA [Your InstructionOnHold]

CSDH [CSD Hold]

CVAL [CSDValidation]

CDLR [ConditionalDeliveryAwaitingRelease]

BLANK if not on hold

**21e Opt-out of partial settlement**

Possible values:

NPAR if opt-out of partial settlement is activated

BLANK if partial settlement is allowed

**21f Reason codes for not settled instructions *(if Status of the instruction is PEND or PENF)***

Possible values:

BLOC AccountBlocked

CDLR ConditionalDeliveryAwaitingRelease

CLAC CounterpartyInsufficientSecurities

CMON CounterpartyInsufficientMoney

CSDH CSDHold

CVAL CSDValidation

FUTU AwaitingSettlementDate

INBC IncompleteNumberCount

LACK LackOfSecurities

LATE MarketDeadlineMissed

LINK PendingLinkedInstruction

MONY InsufficientMoney

OTHR Other

PART TradeSettlesInPartials

PRCY CounterpartyInstructionOnHold

PREA YourInstructionOnHold

SBLO SecuritiesBlocked

CONF AwaitingConfirmation

CDAC ConditionalDeliveryAwaitingCancellation

As mentioned under Q5, the AG considers that the code for recycled transactions is redundant and expresses the view that it should not be requested from CSDs.

<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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

**AG response to Q27**

The AG invites ESMA to review the text of Article 15 (on reconciliation measures for corporate actions).

The concern of the AG is to ensure that the Article is in line with the provisions of the Market Standards for Corporate Action Processing and the provisions of the T2S Corporate Actions Standards, and is also compatible with the target of optimizing settlement efficiency on T2S.

The specific concerns of the AG are: (i) that Article 15, paragraph 1, could be interpreted as requiring that corporate actions bookings be effected only at the end of a T2S settlement day, thereby prohibiting booking at the start of a settlement day; and (ii) that Article 15, paragraph 2, may have the effect of delaying the start of settlement in a security that is subject to a corporate action.

**Explanation relating to points (i) and (ii):**

The Corporate Actions Standards documents mandate that corporate actions bookings (relating to “corporate actions on stocks”) take place at the start of the settlement day of a CSD. The rationale is as follows: bookings for “corporate actions on stocks” are based on holdings as “record date” (and “record date” is defined as being an end-of-day date); the Market Standards documents provide for the actual bookings to take place as soon as after the “record date” i.e. at the opening of the settlement system on the following day.

Bookings on “corporate actions on stocks” follow the cascade principle. Bookings are effected at the account provider level; once the account provider has confirmed the bookings to its account holder, then the account holder in turn effects the bookings on the securities accounts that it provides; if an account provider has “blocked” standard settlement in a particular security in its books, then it will release the security for standard settlement, once it has effected the necessary corporate actions bookings.

Article 15, paragraph 2, could be interpreted to suggest that a CSD – before releasing a security for standard settlement – should perform an additional reconciliation process. It is unclear what this additional reconciliation process would involve.

**Alternative drafting proposal:**

The AG offers the following drafting suggestions for Article 15:

“*1. A CSD shall not initiate the processing of a corporate action that would change the balance of securities accounts provided ~~maintained~~ by the CSD until the reconciliation measures specified under Article 14 and, where applicable, under points a) and b) of Article 16(1) are completed. ~~at the end of settlement on the respective business day.~~*

*2. When a corporate action has been processed, a CSD shall ~~perform an additional reconciliation ensuring~~ ensure that all securities accounts provided ~~maintained~~ by the CSD are updated correctly.”*

<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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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 T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<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>

**AG response to Q31**

***RTS Art. 6(4), Annex IV***

The AG invites ESMA to review the text of Article 6, paragraph 4. The AG believes that the current text needs revision or additional clarity with respect to the following matters:

1. the text does not suitably distinguish between corporate actions on stocks (settled balances) and corporate actions on flows (pending transactions); the implied requirement for blocking settlement (i.e. *settlement by the former CSD in the relevant securities issues shall not commence until the corporate action has been fully processed*) relates to full processing of corporate actions on stocks, but does not relate to corporate actions on flows;
2. the requirement for blocking of settlement in a particular investor CSD should be lifted once the corporate action on stocks has been fully processed in the investor CSD’s account provider; it is possible to read the current text as requiring that settlement should be blocked until all CSDs (issuer CSD and all investor CSDs) have finished processing the corporate action on stocks;
3. the requirement for blocking of settlement in a particular investor CSD is unnecessarily broad; in the event of a securities distribution, and if the outcome security has the same ISIN as the parent security (e.g. a scrip dividend), there may well be no need, and no risk management benefit, for settlement in the parent securities to be blocked; this is on the basis that the entitlement to the outcome securities is fixed on record date, and that settlement in the outcome securities is possible only after the investor CSD has booked the securities to the account of its participant.
4. the text referring to “*enabling the coordination of their actions with regard to the adequate reflection of the corporate actions ……”* is unnecessary, and is potentially misleading. The distribution of information on corporate actions, and the processing of corporate actions on stocks, follows the principle of “cascade processing” (i.e. one action in the Issuer CSD and a subsequent action in the investor CSDs); it is difficult to reconcile this principle with the idea of “coordination” of actions.

The AG notes that all CSDs on T2S will comply with both the CAJWG Market Standards for Corporate Actions Processing, and the T2S Corporate Actions Sub Group (CASG) Standards. The AG suggests that the text of Article 6, paragraph 4 be revised so that it allows for full compliance with both these sets of Standards.

The AG would also propose that the definition of the relevant corporate action terms should be consistent with the glossary of the EU market standards (CAJWG standards).

***Alternative drafting proposal:***

The AG offers the following drafting suggestion for article 6(4):

“*4. In the case of a corporate action that would change the balance of securities accounts held by a CSD with another CSD, and in respect of booked positions (“corporate actions on stocks”), the bookings of the corporate action movements ~~settlement in the relevant securities issues~~ in the books of the former CSD shall not be finalised ~~commence~~ until after the corporate action movements relating to booked positions (“corporate actions on stocks”) of the relevant securities issues have been fully processed in the latter CSD.*

*The issuer CSD shall ensure the transmission to all its participants that are CSDs, or that are acting on behalf of CSDs, of timely information on corporate actions processing; all investor CSDs involved in the holding chain for a specific securities issue, shall likewise ensure the transmission of timely information to all their participants that are CSDs, or that are acting on behalf of CSDs. ~~enabling the coordination of their actions with regard to the adequate reflection of the corporate actions in the securities settlement systems operated by the respective investor CSDs.”~~*

<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>

The T2S Advisory Group (AG) considers the scope of this question as not directly relevant for T2S.

<ESMA\_QUESTION\_TS\_CSDR\_32>

1. In accordance with ISO 1022 (MT578) this message is used to advise the account owner that a counterparty has alleged an instruction against the account owner's account at the account servicer and the account servicer could not find the corresponding instruction of the account owner. [↑](#footnote-ref-2)