*Consultation Response:*

CONSULTATION PAPER - AMENDMENT OF ARTICLE 19 OF CSDR RTS ON SETTLEMENT DISCIPLINE

 6th September 2022

The European Association of Public Banks (EAPB) welcomes the opportunity to comment on ESMA’s [Consultation Paper](https://www.esma.europa.eu/sites/default/files/library/esma70-450-1173_consultation_paper_-_amendment_of_article_19_of_csdr_rts_on_settlement_discipline.pdf) on amending Art. 19 of the Commission Delegated Regulation 2018/1229.

The EAPB is the voice of the European public banking sector. EAPB represents directly and indirectly over 90 financial institutions with overall total assets of over € 3.500 bn and 15% market share of the European financial sector. EAPB members are national and regional promotional banks, municipality funding agencies and public commercial banks across Europe.

The EAPB supports its members in their CSDR implementation efforts. We offer help to interpret the regulatory framework specified by ESMA and try to provide additional clarity.

We believe that CSDR can be a driver of greater settlement efficiency and improved operational processes, for the ultimate benefit of the end investor. One measure of the CSDR to address settlement fails are the cash penalties for failed settlements. We are of the view that this mechanism is a good way to address settlement fails.

We fully concur with ESMA’s proposal to remove the separate process established in Article 19 of the Commission Delegated Regulation 2018/1229 for the collection and distribution of the cash penalties in relation to settlement fails on cleared transactions and to let the CSDs run the entire process of collection and distribution of penalties according to Article 16, 17 and 18 of the same delegated regulation.

In our opinion, the collection and distribution of penalties for cleared transactions analogous to the other penalties via the CSD will lead to a more efficient and transparent process which will, thus, become significantly leaner. The parallel framework increases operational risk and liquidity needs. Interacting with a single entity (the CSD) with regards to the single net amount of cash penalties to be paid or received each month would allow to improve that.

Example: Party A receives securities from a cleared transaction and delivers it onward to Party B in a bilateral transaction. If the CCP's delivery fails, the delivery to Party B cannot be fulfilled by Party A. Currently, the debit is made at the CSD level. A possible credit note is made separately via the CCP. Cash is to be acquired at the CSD level and an incoming payment is to be monitored at the CCP level. In the new process, there would most likely be a net penalty of zero. Advantage: no money transfers have to be executed and control processes are minimized.

Please do not hesitate to revert in case of any queries. We remain at your disposal.

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