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| Response Form to the Consultation Paper on the amendement of Article 19 of CSDR RTS on Settlement Discipline |
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**Responding to this paper**

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **9 September 2022**

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Use this form and send your responses in Word format (**pdf documents will not be considered except for annexes**);
3. Please do not remove tags of the type <ESMA\_QUESTION \_SETD\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
4. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
5. When you have drafted your response, name your response form according to the following convention: ESMA\_SETD\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_SETD\_ABCD\_RESPONSEFORM.
6. Upload the form containing your responses, **in Word format**, to ESMA’s website (www.esma.europa.eu under the heading “Your input – Open Consultations” -> Consultation Paper on the clearing and derivative trading obligations in view of the benchmark transition”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. 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 not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

All interested stakeholders are invited to respond to this consultation paper. In particular, this paper may be specifically of interest to CCPs, CSDs and their clients.

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**General information about respondent**

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| Name of the company / organisation | German Banking Industry Committee GBIC |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Germany |

**Questions**

1. Do market participants support removing the special process of collection and distribution of penalties by CCPs for cleared transactions? Please provide justifications, if possible supported by quantitative data.

<ESMA\_QUESTION\_SETD\_1>

GBIC is the joint committee operated by the central associations of the German banking industry. These associations are the *Bundesverband der Deutschen Volksbanken und Raiffeisenbanken* (**BVR**), for the cooperative banks, the *Bundesverband deutscher Banken* (**BdB**), for the private commercial banks, the *Bundesverband Öffentlicher Banken Deutschlands* (**VÖB**), for the public sector banks, the *Deutscher Sparkassen- und Giroverband* (**DSGV**), for the savings banks finance group and the *Verband deutscher Pfandbriefbanken* (**vdp**), for the Pfandbrief banks. Collectively, they represent approximately 1,700 banks.

We fully concur with ESMA’s proposal to remove the separate process of collection and distribution of penalties by CCPs for cleared transactions established in Article 19 of the Commission Delegated Regulation 2018/1229 (CSDR RTS). CSDs should run the entire process of collection and distribution of penalties according to Article 16, 17 and 18 of the CSDR RTS, instead.

In our opinion, one single party responsible for the collection and distribution of penalties for both CCP cleared and non-CCP cleared transactions will lead to a more efficient and transparent process which will, thus, become significantly leaner. The parallel framework for CCP cleared transactions 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 the current process.

The reporting process would also be improved as there would not be two separate reportings (CSD on the one hand, CCP on the other) any longer. This would **simplify** the current process and insure that there is **only one source** for the calculation, distribution and collection of late settlement penalties.

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<ESMA\_QUESTION\_SETD\_1>

1. Do market participants support amending Article 19 of the CDR on Settlement Discipline as suggested in Annex IV? Please provide justifications, if possible supported by quantitative data.

<ESMA\_QUESTION\_SETD\_2>

We generally support amending Article 19 of the CSDR RTS.

As set out by ESMA in the consultation paper, transactions can occur resulting in the CCP appearing as the failing participant for the CSD and the net amount of penalties to be collected from, or distributed to, CCPs. The CCPs wish to forward such penalties to their clearing members. It is important that clear rules exist as to how the cash penalties would be assigned or forwarded to identified CCP clearing members. However, if no referencing of the transactions takes place, the identified CCP clearing member would not be in a position to forward the cash penalties to its clients. It should be noted that CCP clearing members are not necessarily the trading party responsible for the settlement fail. It should therefore generally be possible for CCP clearing members to forward the cash penalties to their non clearing member (NCM) clients.

Furthermore, the reason for any imbalanced positions may be intransparent. CCP clearing members should be provided with the reason behind any penalties which are forwarded by the CCP.

It can be noted that our members are currently confronted with different/deviating processes of CCPs. Any intransparency of processes and unequal treatment of market participants should be avoided.

It should therefore be considered to clarify in Art. 19 (b) of the CSDR RTS that CCPs receiving or paying any cash penalties may allocate (forward) those cash penalties to their clients pursuant to a specified, EU-wide harmonised mechanism. Referencing of the transactions is key in order to ensure that CCP clearing members can further allocate cash penalties to the responsible client and/or trading party.

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<ESMA\_QUESTION\_SETD\_2>

1. Do market participants support delaying the application of the envisaged amendment by six months after the publication of the amending RTS in the Official Journal of the EU? If not, what would be appropriate implementation period in your view? Please provide explanations.

<ESMA\_QUESTION\_SETD\_3>

Given that the proposed amendment would trigger IT implementation and testing activities, GBIC recommends a delay of **at least 12 months.**

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<ESMA\_QUESTION\_SETD\_3>