Reply Form

**to the Consultation Paper on Technical Advice on CSDR Penalty Mechanism**

Responding to this Consultation Paper

ESMA invites comments on all matters in this Consultation Paper and in particular on the specific questions summarised in Annex 1. 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 **29 February 2024.**

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

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:

• Insert your responses to the questions in the Consultation Paper in this reply form.

• Please do not remove tags of the type < ESMA\_QUESTION\_CSDR\_0>. Your response to each question has to be framed by the two tags corresponding to the question.

• 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.

• When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP1\_CSDR \_nameofrespondent.

 For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_CSDR \_ABCD.

• Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at *www.esma.europa.eu* under the heading *‘Your input - Consultations’.*

**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 publicly 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 ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’.

**Who should read this paper?**

All interested stakeholders are invited to respond to this consultation paper. In particular, ESMA invites market infrastructures (CSDs, CCPs, trading venues), their members and participants, other investment firms, credit institutions, issuers, fund managers, retail and wholesale investors, and their representatives to provide their views to the questions asked in this paper.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Italian Banking Association |
| Activity | Associations, professional bodies, industry representatives |
| Are you representing an association? |[x]
| Country / Region | Italy |

# Questions

1. Do you agree with ESMA’s proposal? Which Option is preferable in your view? Please also state the reasons for your answer.

<ESMA\_QUESTION\_CSDR\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_1>

1. Do you have other suggestions? If yes, please specify and provide arguments.

<ESMA\_QUESTION\_CSDR\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_2>

1. Do you agree with the approach followed for the Option you support to incorporate proportionality in the Technical Advice? If not, please provide an indication of further proportionality considerations, detailed justifications and alternative wording as needed.

<ESMA\_QUESTION\_CSDR\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_3>

1. What costs and benefits do you envisage related to the implementation of each Option? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

<ESMA\_QUESTION\_CSDR\_4>

|  |  |
| --- | --- |
| **Option**  |    |
|   | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Compliance costs:****- One-off****- On-going** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Costs to other stakeholders** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |
| **Indirect costs** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_4>

1. As a CSD, do you face the issue of accumulation of reference data related to Late Matching Fail Penalties (LMFPs), that may degrade the functioning of the securities settlement system you operate? If yes, please provide details, including data where available, in particular regarding the number and value of late matching instructions, as well as for how many business days they go in the past from the moment they are entered into the securities settlement system, and the percentage they represent compared to the overall number and value of settlement fails on a monthly basis (please use as a reference the period June 2022 – June 2023).

<ESMA\_QUESTION\_CSDR\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_5>

1. What are the causes of late matching? How can you explain that there are so many late matching instructions? What measures could be envisaged in order to reduce the number of late matching instructions?

<ESMA\_QUESTION\_CSDR\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_6>

1. Do you agree with ESMA’s proposal to establish a threshold beyond which more recent reference data shall be used for the calculation of the related cash penalties to prevent the degradation of the performance of the systems used by CSDs? Please also state the reasons for your answer.

<ESMA\_QUESTION\_CSDR\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_7>

1. Do you agree with the threshold of 92 business days or 40 business days in order to prevent the degradation of the performance of the systems used by CSDs? Please specify which threshold would be more relevant in your view:

**a)92 business days;**

**b)40 business days;**

**c)other (please specify).**

**Please also state the reasons for your answer and provide data where available, in particular regarding the number and value of late matching instructions that go beyond 92 business days, 40 business days in the past or another threshold you think would be more relevant, and the percentage they represent compared to the overall number and value of settlement fails on a monthly basis (please use as a reference the period June 2022 – December 2023).**

<ESMA\_QUESTION\_CSDR\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_8>

1. Do you agree that the issuer CSD for each financial instrument shall be responsible for confirming the relevant reference data to be used for the related penalties calculation? Please also state the reasons for your answer.

<ESMA\_QUESTION\_CSDR\_9>

In line with par. 35, we agree with the rationale that, for each financial instrument, there is and there should be one CSD to be responsible (the Issuer CSD) for determining the relevant reference data to be used for the related penalties calculation.

<ESMA\_QUESTION\_CSDR\_9>

1. In your view, where settlement instructions have been matched after the intended settlement date, and that intended settlement date is beyond the agreed number of business days in the past, the use of more recent reference data (last available data) for the calculation of the related cash penalties should be optional or compulsory? Please also state the reasons for your answer.

<ESMA\_QUESTION\_CSDR\_10>

On the basis of our analysis, we are not in a position to express a view on the core part of the question, i.e. the optional or compulsory use of more recent data for the calculation of the related cash penalties.

However, we consider it crucial that a standardized approach across all CSDs is adopted, as this would ensure consistent processes across the Union and clarity. Indeed, it is of fundamental importance to provide CSD participants with certainty on the criteria for calculating the penalties, without being them subject to any discrepancies and inconsistencies depending on each single CSD.

<ESMA\_QUESTION\_CSDR\_10>

1. Do you have other suggestions? If yes, please specify, provide drafting suggestions and provide arguments including data where available.

<ESMA\_QUESTION\_CSDR\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_11>

1. Do you agree with the approach followed to incorporate proportionality in the Technical Advice? If not, please provide an indication of further proportionality considerations, detailed justifications and alternative wording as needed.

<ESMA\_QUESTION\_CSDR\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_12>

1. What costs and benefits do you envisage related to the implementation of the approach proposed by ESMA? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

<ESMA\_QUESTION\_CSDR\_13>

|  |  |
| --- | --- |
| **Approach proposed by ESMA** |    |
|   | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Compliance costs:****- One-off****- On-going** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Costs to other stakeholders** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Indirect costs** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_13>

1. If applicable (if you have suggested a different approach than the one proposed by ESMA), please specify the costs and benefits you envisage related to the implementation of the respective approach. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

<ESMA\_QUESTION\_CSDR\_14>

|  |  |
| --- | --- |
| **Approach proposed by respondent** (if applicable) |    |
|   | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Compliance costs:****- One-off****- On-going** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Costs to other stakeholders** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Indirect costs** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_14>

1. Based on your experience, what has been the impact of CSDR cash penalties on reducing settlement fails (by type of asset as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389 since the application of the regime in February 2022? Please provide data and arguments to justify your answer.

<ESMA\_QUESTION\_CSDR\_15>

On the basis of data collected and published by ESMA in a recent report Trends, Risks and Vulnerabilities, (No. 2, August 2023[[1]](#footnote-2)) and on the basis of comments by our members, current penalty rates seem to have had a positive impact in diminishing settlement fails, in particular for equities.

However, our members have added that, when assessing the impact of the cash penalties regime on settlement efficiency ratios in the EU, it would be reasonable to consider a time frame starting from a date prior to 1 February 2022 (date of application of the current settlement discipline regime, SDR), as most of industry participants were deploying solutions to improve settlement efficiency in the months preceding the above-mentioned *go-live*.

<ESMA\_QUESTION\_CSDR\_15>

1. In your view, is the current CSDR penalty mechanism deterrent and proportionate? Does it effectively discourage settlement fails and incentivise their rapid resolution? Please provide data and arguments to justify your answer.

<ESMA\_QUESTION\_CSDR\_16>

Comments gathered by our members point to positive effects of the penalties’ regime on the settlement efficiency. However, based on experience reported by some members, two scenarios could be identified where cash penalties do not necessarily lead to the timely resolution of a settlement issue, i.e. Cancel/Rebook of settlement instructions, and Manual partials, as described in the following two paragraphs.

Case 1: Party A and Party B execute a transaction. Party A instructs the transaction for settlement in CSD 1. Party B instructs for settlement in CSD 2. In order for the transaction to settle, one party must cancel their original instruction, and rebook to a different CSD. If the discrepancy is not identified and resolved prior to ISD (Intended Settlement Date), the rebooking will incur a LMFP (Late Matching Fail Penalty). Depending on the size of the penalty, this can discourage either party from wanting to rebook their instruction, at least without agreement that the penalty amount can be reclaimed from their counterparty. This leads to delays and inefficiencies in the settlement process.

Case 2: A similar scenario can occur in relation to manual partials. If the seller has available inventory, but not the full amount, a partial delivery should be offered by the seller and accepted by the buyer. Ideally, this happens on an automated basis. If one of the parties, or the CSD, cannot facilitate an “auto-partial”, then it will need to be instructed manually. Cancelling and rebooking the original instruction into two separate instructions with a back-dated ISD will incur LMFPs for whichever party is last to input the new instructions. Again, this creates a disincentive for parties to agree a timely resolution to the issue.

In Q&A paper on CSDR[[2]](#footnote-3), ESMA states that (pag. 31) CSDR “*should not lead to the application of duplicative penalties for the same settlement instructions on the period between the ISD and the date of the introduction of the new settlement instruction into the securities settlement system*”. However, there is currently no systematic means for CSDs to identify and exclude such instructions from the application of penalties.

In the light of the above, we believe that the need to increase the use of partial settlement and partial release looks even more compelling (see also our answer to Q18 below).

<ESMA\_QUESTION\_CSDR\_16>

1. What are the main reasons for settlement fails, going beyond the high level categories: “fail to deliver securities”, “fail to deliver cash” or “settlement instructions on hold”? Please provide examples and data, as well as arguments to justify your answer.

<ESMA\_QUESTION\_CSDR\_17>

Our members believe the three high-level categories mentioned in the question do not entirely reflect the root causes leading to settlement fails. In our opinion, the main reasons and driver(s) for settlement fails could be classified into the following four categories:

1. Inventory management;
2. Data quality. This driver/topic is related to the ideal objective of a reference data to be sourced by all parties from a common, central data source in order to minimize the risk of a mismatch between two parties;
3. Counterparties set-up and behaviour, i.e. related to relative low penetration of automation;
4. Workflow management, i.e. related to delays or fails attributed to internal workflow inefficiencies, *non-straight-through-processing* (non-STP) processes, manual booking errors or technology issues.

Specifically for ETFs, one of the main reasons for settlement fails seems to be the lack of harmonization in the messaging standards and in the actual content of the messages exchanged by CSDs and ICSDs. Among other issues affecting ETFs’ settlement efficiency is that often participants report to buy an ETF, to find out afterwards that they have to await its actual constitution/setup, or some reimbursements of it coming from other markets.

<ESMA\_QUESTION\_CSDR\_17>

1. What tools should be used in order to improve settlement efficiency? Please provide examples and data, as well as arguments to justify your answer.

<ESMA\_QUESTION\_CSDR\_18>

The use of Partial Settlement and the Hold and Release mechanism (H&R) should be increased to improve the current settlement efficiency in the Union, and even more so in light of an eventual future gradual move to a shorter settlement cycle (T+1) in the Union.

**From an operational standpoint**, our members believe that an increased use of Partial Release would play a key role for the efficiency as it currently allows and would continue to allow partialization of settlement instructions, which reduces the amount of a potentially-pending transaction which is not settling by the ISD. Likewise, H&R would allow synchronization on the settlement instructions release, avoiding any inconvenience due to timing. However, it must be underlined that we are aware that the increased use of partial settlement “*per se*” risks being not sufficient, since by merely keeping “on hold” a settlement instruction, it does not automatically prompt an increase in the settlement success in percentual terms.

Having said the above (i.e., finding and supporting ways to increase the use of partial release, partial settlement and Hold/Release functionality) some members believe that the procedures governing the way the “Hold” functionality is managed should be preserved as they are today and should not be modified especially as far as “third-party accounts” are concerned, because otherwise this could and would raise the need to open several segregated accounts and, consequently, drive upwards the costs for participants.

**From a regulatory point of view,** the operational proposal presented in the paragraph above would translate:

* either into the deletion of Art. 12 of Commission Delegated Regulation (EU) 2018/1229, which provides for a derogation for CSDs to provide H&R mechanism and to allow for the partial settlement of settlement instructions;
* or into the partial change of the logics: **CSD should, by default, provide for both H&R and Partial Settlement** (hence, derogation under Art. 12 should be repealed), leaving the parties to a transaction to decide whether “not to opt for” the H&R or for the Partialization. However, for this to work, this approach would have to go along with an amendment in the logics enshrined in the T2S platform specifically for Partialization. Under this newly proposed logic (partialization by default), T2S settings on partialization would have to be set accordingly, hence at the opposite as nowadays.

That said, partial settlement could even be made mandatory for the main asset classes, with some exceptions as for instance securities lending, or for specific types of instructions such as “portfolio transfers”, as well as “new issuances”, “mark-up/mark-downs” and claims/transformations that should also be excluded from partial settlement.

<ESMA\_QUESTION\_CSDR\_18>

1. What are your views on the appropriate level(s) of settlement efficiency at CSD/SSS level, as well as by asset type? Please provide data and arguments to justify your answer.

<ESMA\_QUESTION\_CSDR\_19>

Our members agrees with ESMA on the fact that «*100% settlement efficiency may not be a realistic target*», and that «*some flexibility in the penalty mechanism should be provided for*» (as per paragraph 57 on page 28).

A possible approach to define an optimal level of settlement efficiency should consider and address the “reduction of (systemic) risk” and the understanding of “when” high levels of settlement fails start representing “a source of systemic risk for the EU”.

Having different optimal levels of settlement efficiency by asset type could be a solution to consider and, in that scope, a series of factors should be considered, as for instance trading volume(s), market value(s), liquidity degree, etc.

However, none of the above could be self-standing without a prior effort to define i) what “settlement efficiency” means and ii) a related commonly agreed measure(s) of it, so that (for instance) the Settlement Efficiency statistics produced by EU CSDs become finally harmonised and comparable (as it is not the case to date). Likewise, ECB shall be involved in this process so that the Target2-Securities platform adopts such new definitions and measures of Settlement Efficiency, or at least adds them to its pre-defined set of efficiency measures (otherwise, the industry would continue to have a Eurosystem Platform with its own three different measures of efficiency, whilst CSDR discipline would have its own).

<ESMA\_QUESTION\_CSDR\_19>

1. Do you think the penalty rates by asset type as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389 are proportionate? Please provide data and arguments to justify your answer.

<ESMA\_QUESTION\_CSDR\_20>

The CSDR Settlement Discipline is being applied since exactly two years. It would be appropriate to allow for a longer time frame to thoroughly assess whether significant changes to cash penalties should be introduced. **The penalty rates by asset type provided for under the current Delegated Regulation (EU) 2017/389 are deemed reasonable and proportionate to the goal**. Even more so, given the current market conditions which are seeing positive sensible levels of interest rates. Interest rate level is important as it represents a measure of the “opportunity costs” of a transaction to fail. The higher the interest rate are, the higher is the cost-opportunity of a failing transaction and, consequently, the penalty mechanism is strongly helped in its dissuasive function. Hence, in “normal” market conditions, with positive interest rates, there should be no strong need of exacerbating the dissuasive action of penalty rates. That is why we believe that the current penalty rate by asset type are proportionate and effective to the goal.

Should the review of the penalty mechanism go ahead anyway (be it with the proposed solution under Option 1 on page 32 or under Option 2 under page 33), the relevant implementation would have to provide stakeholders with an appropriate timeframe to set and deploy the changes.

We invite ESMA to ponder over the fact that the implications for market participants by Option 1 or Option 2 would be even more compelling and challenging when considered along with the challenges of a potential future shift of the EU to a shorter settlement cycle (T+1) and (consequently) a potential surge – at least in the short term – of market stress and of settlement fails (as also acknowledged by ESMA). Whilst ESMA is aware of market stakeholders’ feedback about a number of issues to be tackled and resolved prior to considering a move to T+1 cycle (see comments on the recent Call for Evidence on T+1, closed on the 15th of December 2023), we are also conscious that, at a certain point in time, such move could be “unilaterally” proposed by the EU legislator, regardless the specific technical feedback provided on a move to T+1. Eventually, for all this, it would be **safer to retain the current penalty mechanism by asset type**, in order to have further time to assess its effective dissuasive function and proportionality **under the current market conditions benefitting of positive interest rates**, without moving (at least in the short/medium term) to new penalty structures which, should the policy-maker decide to move for T+1, would be exacerbate the settlement penalty application responding to a new, more costly and restructured penalty scheme.

ESMA should also understand that we do **not favour** a move to a different penalty structure and mechanism **in the short-to-medium term**, because market participants are currently coping with the complexities generated by the US migration to the shorter settlement cycle in T+1, especially for the treatment of the so-called “dual listed securities”, listed in US markets as well as in EU venues (and the complexities will continue well beyond of the 28th of May, go-live date of the US migration).

Further to asking whether the current penalty scheme is proportionate, ESMA should also be aware of the **current computational issues** that CSD participants are able to infer in the calculation of penalties **by CSD and ICSDs**. In particular, ABI understands that, over the last 2 years, some of its members have witnessed cases in which the ICSDs have ended up with different penalty amounts upon the same transactional scheme and amounts. ESMA should look into that, with ICSDs and their participants, so that the current penalty mechanism is applied uniformly, further than being proportionate.

Finally, ESMA should also be aware of the fact that some settlement fails are unavoidable when caused by divergence in the working hours of T2S Markets and ICSDs working ours. ABI understands from its members that ICSDs legitimately allow their users to settle internally and bridge (between Euroclear and/or Clearstream accounts) up to 19:30 with the close of the optional real-time process (using so-called “day light flags” used at ICSDs). Some members have made us aware that a sensible sources of settlement fails derives from a mismatching between the above “working hours”: a settlement chain including trades settling both in ICSDs and T2S CSDs would inevitably be interrupted in the CSDs, where it is not materially possible to deliver/receive securities/cash after 16, while settlement would still possible on an ICSD.

<ESMA\_QUESTION\_CSDR\_20>

1. Regarding the proportionality of the penalty rates by asset type as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389, ESMA does not have data on the breakdown of cash penalties (by number and value) applied by CSDs by asset type. Therefore, ESMA would like to use this CP to ask for data from all EEA CSDs on this breakdown, including on the duration of settlement fails by asset type.

<ESMA\_QUESTION\_CSDR\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_21>

1. In your view, would progressive penalty rates that increase with the length of the settlement fail be justified? Please provide examples and data, as well as arguments to justify your answer.

<ESMA\_QUESTION\_CSDR\_22>

On the basis of preliminary comments, our members have the following arguments not supporting the introduction of progressive penalty rates (at least at this point in time):

1. Disincentive to partial settlement and partial release;
2. More constraints and less “fluidity” in the repo market;
3. Significant complexity on the use of the new structure of the penalty mechanism, also from a penalties’ reconciliation standpoint;
4. Significant change to the structure of the penalty mechanism in terms of time elapsed since the 1st of February 2022, i.e. date of application of the SDR;
5. Apparently, scarce empirical evidence supporting such change;
6. Industry investments required to implement the changes (be it option A o B)

Overall, it is important to reiterate the message conveyed in answer to Q20 above i.e. as a first step, it is necessary to enhance the current settlement ecosystem, by moving to an extensive use of the H&R function and partial settlements, as well as to work on the identification of the root causes of fails, and on a commonly applied definition and understanding of efficiency and fails, so that every EU CSD be in a position to produce harmonised and comparable data on efficiency. Then, the implications in the EU of the T+1 move by the US will have to be very carefully considered (and observed), as well as those of a potential shift in the EU a shorter cycle. Only after having achieved these two steps, a review of the settlement penalties regime should be considered.

Finally, regulatory initiatives at the EU level should now strive for more stability and simplicity in the settlement space, not additional complexity.

<ESMA\_QUESTION\_CSDR\_22>

1. What are your views regarding the introduction of convexity in penalty rates as per the ESMA proposed Option 2 (settlement fails caused by a lack of liquid financial instruments)? Please justify your answer by providing quantitative examples and data if possible.

<ESMA\_QUESTION\_CSDR\_23>

Our members understand ESMA’s rationale and considerations under Option 2 about a potential alternative structure of the penalty mechanism, reviewed on the basis of the liquidity and illiquidity degree of financial instruments and with penalty rates growing more than (or less than) proportionally over time (depending on the classes of financial instruments. However, at this point in time, and consistently to our previous answers, the introduction of convexity in penalty rates is not supported.

<ESMA\_QUESTION\_CSDR\_23>

1. Would it be appropriate to apply the convexity criterion to settlement fails due to a lack of illiquid financial instruments as well? Please justify your answer by providing quantitative examples and data if possible.

<ESMA\_QUESTION\_CSDR\_24>

Notwithstanding our members' position – not in favour of convexity in penalty rates – consideration and protection of liquidity in less-liquid instruments should be given specific attention in future, when considering any potential change to the penalty regime.

<ESMA\_QUESTION\_CSDR\_24>

1. What are your views regarding the level of progressive penalty rates:

**a) as proposed under Option 1?**

**b) as proposed under Option 2?**

<ESMA\_QUESTION\_CSDR\_25>

The levels of penalty rates proposed by ESMA under both Option 1 or Option 2 would represent a sensible increase in the penalty mechanism compared to current levels and, on the basis of the feedback gathered by our members, they would not seem to be fully justifiable according to current available data.

Pursuant to recital 16 of CSDR, penalties should be configured in a way that “*maintains and protects the liquidity of the relevant financial instruments. In particular, market-making activities play a crucial role in providing liquidity to markets within the Union, particularly to less liquid securities. Measures to prevent and address settlement fails should be balanced against the need to maintain and protect liquidity in those securities*.” Apparently, such principle would risk being jeopardized by the progressive structure of the penalty rates proposed by ESMA and this could, on its turn, have implications for i) liquidity and, eventually, ii) competitiveness of EU securities markets.

<ESMA\_QUESTION\_CSDR\_25>

1. If you disagree with ESMA’s proposal regarding the penalty rates, please specify which rates you believe would be more appropriate (i.e. deterrent and proportionate, with the potential to effectively discourage settlement fails, incentivise their rapid resolution and improve settlement efficiency). Please provide examples and data, as well as arguments to justify your answer. If relevant, please provide an indication of further proportionality considerations, detailed justifications and alternative proposals as needed.

<ESMA\_QUESTION\_CSDR\_26>

First and foremost, any potential recalibration of current penalty rates should be based on accurate, comprehensive and granular data. Secondly, a truly common set of measures for settlement efficiency should be defined and applied by CSDs, so that all interested institutions and parties would be able to work on the same data, correctly representing the actual settlement (in)efficiency in the Union.

Thirdly, when considering potential recalibration of the current penalties’ structure and rates, the following list of factors (preliminary and not exhaustive) could be considered:

1. **Interest rates.** As mentioned in a previous answer, higher interest rates create an additional cost/disincentive to settlement fails to deliver, hence, diminishing the need for a sensible penalty mechanism review;
2. **Ability to use securities lending market and associated costs, duration and availability of borrowing securities**; i.e. it should be avoided that any eventual restructuring of the penalty mechanism determines further constrains to the activity of Securities’ Lending which is and will continue to be fundamental and central to safeguard a successful settlement of securities, especially in cases of unforeseen issues in the identification of the relevant amount of securities to be made available for an imminent settlement. This is also why, in occasion of the recent ESMA’s Call for Evidence on the Potential Shortening of the Settlement Cycle, we have elaborated on the importance safeguarding Securities Lending as much as possible from implications deriving from a shorter time available for SL or, differently said, on the importance to keep securities lending in due account in an eventual future assessment on the appropriateness and readiness to plan a migration to T+1. For sake of exhaustiveness, in our response to the Call for Evidence on T+1, among other things, we stated “(…) *Based on feedback from our members, despite the availability of some automated tools, a lot of securities lending is agreed upon and takes place via e-mail and phone contacts. Hence, the compressed timeframe associated to the (potential) migration to T+1 will substantially shorten the time available to identify and cover short positions and, as a consequence, could result in i) an increase in settlement fails and cash penalties (all other things being equal) and ii) in the longer term, in a behavioural change with a related reduction of liquidity from the market*.”;
3. **Broader market conditions**. As shown in March 2020, periods of market stress and volatility are likely to prompt an increase in the number and proportions of settlement fail. There is the risk that higher penalty rates may further heighten rather than mitigate tensions in the settlement value chain;
4. **Possible future migration to a shorter settlement cycle**. This could prompt an increase in settlement fails rates as market participants would have less time to resolve daily unforeseen operational issues and place cash/securities ready for settlement.

<ESMA\_QUESTION\_CSDR\_26>

1. What are your views regarding the categorisation of types of fails:

**a) as proposed under Option 1?**

**b) as proposed under Option 2?**

**Do you believe that less/further granularity is needed in terms of the types of fails (asset classes) subject to cash penalties? Please justify your answer by providing quantitative examples and data if possible.**

<ESMA\_QUESTION\_CSDR\_27>

Our members consider the current asset classes of the CSDR penalty mechanism fairly appropriate.

The proposal in Option 1 to introduce a new category for ETFs seems reasonable but it should first take into account the market specificities of the product and the role of market-makers in providing liquidity. Also, ESMA should conduct specific analysis on ETFs’ trading and post-trading value-chain to identify the actual sources of fails and verify whether, as our members have mentioned, the introduction of penalties on ETFs is not expected to induce an actual improvement on their specific levels of settlement efficiency. This is due to the fact that current issues impeding a timely settlement on ETF is to be searched in the lack of harmonization in the messaging standards and the informational contents exchanged by CSDs and ICSDs.

<ESMA\_QUESTION\_CSDR\_27>

1. What costs and benefits do you envisage related to the implementation of progressive penalty rates by asset type (according to ESMA’s proposed Options 1 and 2)? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

<ESMA\_QUESTION\_CSDR\_28>

|  |  |
| --- | --- |
| **Progressive penalty rates (by asset type) - ESMA’s proposal Option 1** |   **Please see ESMA’s proposed Option 1 in Section 5.3 of this CP.** |
|   | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  Proposed creation of new penalty type for ETFs would make it possibile for this asset class to have an appropriately calibrated penalty rate. |  TYPE YOUR TEXT HERE |
| **Compliance costs:****- One-off****- On-going** |  Multi-annual Implementation project for T2S and CSDs to redefine and to implement penalty calculation engines.Mutatis mutandis, other market participants (custodians, trading parties) are likely to be impact in the same way.Build costs for FMIs likely to be passed downwards to end users. |  TYPE YOUR TEXT HERE |
| **Costs to other stakeholders** |  Wider bid-offer spreads by liquidity providers to account for the increased cost of a potential failed settlement. |  TYPE YOUR TEXT HERE |
| **Indirect costs** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |
| **Progressive penalty rates (by asset type) - ESMA’s proposal Option 2** |   **Please see ESMA’s proposed Option 2 in Section 5.3 of this CP.** |
|   | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Compliance costs:****- One-off****- On-going** |  Multi-annual Implementation project for T2S and CSDs to redefine and to implement penalty calculation engines.Mutatis mutandis, other market participants (custodians, trading parties) are likely to be impact in the same way.Build costs for FMIs likely to be passed downwards to end users. |  TYPE YOUR TEXT HERE |
| **Costs to other stakeholders** |  Wider bid-offer spreads by liquidity providers to account for the increased cost of a potential failed settlement. |  TYPE YOUR TEXT HERE |
| **Indirect costs** |  Potential implications on primary markets with issues likely to suffer increased cost when seeking to raise new capital.Likely impact on EU markets’ competitiveness. | TYPE YOUR TEXT HERE |

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_28>

1. Alternatively, do you think that progressive cash penalties rates should take into account a different breakdown than the one included in ESMA’s proposal above for any or all of the following categories:

**(a) asset type;**

**(b) liquidity of the financial instrument;**

**(c) type of transaction;**

**(d) duration of the settlement fail.**

**If you have answered yes to the question above, what costs and benefits do you envisage related to the implementation of progressive penalty rates according to your proposal? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.**

<ESMA\_QUESTION\_CSDR\_29>

As indicated in our answer to Q.22 above, our members are not supporting of introducing a progressive penalty regime at this point in time. For the time being we are not in a position to suggest an alternative proposal. As also elaborated above, regulatory initiatives at the EU level should now strive for achieving stability and simplicity in the settlement space and not additional complexity.

|  |  |
| --- | --- |
| **Progressive penalty rates – respondent's proposal** *(if applicable)* |    |
|   | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Compliance costs:****- One-off****- On-going** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Costs to other stakeholders** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Indirect costs** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_29>

1. Another potential approach to progressive penalty rates could be based not only on the length of the settlement fail but also on the value of the settlement fail. Settlement fails based on instructions with a lower value could be charged a higher penalty rate than those with a higher value, thus potentially creating an incentive for participants in settling smaller value instructions at their intended settlement date (ISD). Alternatively, settlement fails based on instructions with a higher value could be charged a higher penalty rate than those with a lower value. In your view, would such an approach be justified? Please provide arguments and examples in support of your answer, including data where available. What costs and benefits do you envisage related to the implementation of this approach? Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

<ESMA\_QUESTION\_CSDR\_30>

TYPE YOUR TEXT HERE

|  |  |  |
| --- | --- | --- |
| **Progressive penalty rates – based on the length and value of the settlement fail** | **Settlement fails based on lower value settlement instructions could be charged a higher penalty rate than those based on higher value settlement instructions** | **Settlement fails based on higher value settlement instructions could be charged a higher penalty rate than those based on lower value settlement instructions** |
|   | **Qualitative description** | **Quantitative description/ Data** | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |
| **Compliance costs:****- One-off****- On-going** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |
| **Costs to other stakeholders** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |
| **Indirect costs** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_30>

1. Besides the criteria already listed, i.e. type of asset, liquidity of the financial instruments, duration and value of the settlement fail, what additional criteria should be considered when setting proportionate and effective cash penalty rates? Please provide examples and justify your answer.

<ESMA\_QUESTION\_CSDR\_31>

Please refer to our answer to Q26 above for a first and preliminary list of key criteria. The introduction of changes to the basic methodology for calculating the penalty amounts on any individual failing settlement instruction would instead be worry-some as these would require sensible amendments to the IT logics, processes and procedures, at a time when market participants in the post-trading space will have to cope with the implications of the US migration to T+1 cycle and to any unforeseeable impact deriving from that.

<ESMA\_QUESTION\_CSDR\_31>

1. Would you be in favour of the use of the market value of the financial instruments on the first day of the settlement fail as a basis for the calculation of penalties for the entire duration of the fail? ESMA would like to ask for the stakeholders’ views on the costs and benefits of such a measure. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

<ESMA\_QUESTION\_CSDR\_32>

TYPE YOUR TEXT HERE

|  |  |
| --- | --- |
| **Use the market value of the financial instruments on the first day of the settlement fail as a basis for the calculation of penalties for the entire duration of the fail** |    |
|   | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Compliance costs:****- One-off****- On-going** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Costs to other stakeholders** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Indirect costs** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_32>

1. How should free of payment (FoP) instructions be valued for the purpose of the application of cash penalties? Please justify your answer and provide examples and data where available.

<ESMA\_QUESTION\_CSDR\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_33>

1. Do you think there is a risk that higher penalty rates may lead to participants using less DvP and more FoP settlement instructions? Please justify your answer and provide examples and data where available.

<ESMA\_QUESTION\_CSDR\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_34>

1. ESMA is considering the feasibility of identifying another asset class subject to lower penalty rates: “bonds for which there is not a liquid market in accordance with the methodology specified in Article 13(1), point (b) of Commission Delegated Regulation (EU) 2017/583 (RTS 2)”. The information on the assessment of bonds’ liquidity is published by ESMA on a quarterly basis and further updated on FITRS. However, ESMA is also aware that this may add to the operational burden for CSDs that would need to check the liquidity of bonds before applying cash penalties. As such, ESMA would like to ask for the stakeholders’ views on the costs and benefits of such a measure. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

<ESMA\_QUESTION\_CSDR\_35>

|  |  |
| --- | --- |
| **Applying lower penalty rates for illiquid bonds** |    |
|   | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE  |
| **Compliance costs:****- One-off****- On-going** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE  |
| **Costs to other stakeholders** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE  |
| **Indirect costs** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_35>

1. Do you have other suggestions for further flexibility with regards to penalties for settlement fails imposed on illiquid financial instruments? Please justify your answer and provide examples and data where available.

<ESMA\_QUESTION\_CSDR\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_36>

1. How likely is it that underlying parties that end up with “net long” cash payments may not have incentives to manage their fails or bilaterally cancel failing instructions as they may “earn” cash from penalties? How could this risk be addressed? Please justify your answer and provide examples and data where available.

<ESMA\_QUESTION\_CSDR\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_37>

1. How could the parameters for the calculation of cash penalties take into account the effect that low or negative interest rates could have on the incentives of counterparties and on settlement fails? Please provide examples and data, as well as arguments to justify your answer.

<ESMA\_QUESTION\_CSDR\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_38>

1. To ensure a proportionate approach, do you think the penalty mechanism should be applied only at the level of those CSDs with higher settlement fail rates? Please provide examples and data, as well as arguments to justify your answer. If your answer is yes, please specify where the threshold should be set and if it should take into account the settlement efficiency at:

**a) CSD/SSS level (please specify the settlement efficiency target);**

**b) at asset type level (please specify the settlement efficiency target); or**

**c) other (please specify, including the settlement efficiency target).**

<ESMA\_QUESTION\_CSDR\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_39>

1. Please specify what costs and benefits you envisage regarding the application of the penalty mechanism only at the level of the CSDs with higher settlement fail rates. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

<ESMA\_QUESTION\_CSDR\_40>

|  |  |
| --- | --- |
| **Application of the penalty mechanism only at the level of CSDs with lower settlement fail rates** |    |
|   | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE  |
| **Compliance costs:****- One-off****- On-going** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE  |
| **Costs to other stakeholders** | TYPE YOUR TEXT HERE  |  TYPE YOUR TEXT HERE |
| **Indirect costs** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_40>

1. Do you think penalty rates should vary according to the transaction type? If yes, please specify the transaction types and include proposals regarding the related penalty rates. Please justify your answer and provide examples and data where available. Please specify what costs and benefits you envisage related to the implementation of your proposal. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

<ESMA\_QUESTION\_CSDR\_41>

TYPE YOUR TEXT HERE

|  |  |
| --- | --- |
| **Applying penalty rates by transaction types** |    |
|   | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE  |
| **Compliance costs:****- One-off****- On-going** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE  |
| **Costs to other stakeholders** |  TYPE YOUR TEXT HERE |  TYPE YOUR TEXT HERE |
| **Indirect costs** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_41>

1. Do you think that penalty rates should depend on stock borrowing fees? If yes, do you believe that the data provided by data vendors is of sufficient good quality that it can be relied upon? Please provide the average borrowing fees for the 8 categories of asset class depicted in Option 1. (i.e. liquid shares, illiquid shares, SME shares, ETFs, sovereign bonds, SME bonds, other corporate bonds, other financial instruments).

<ESMA\_QUESTION\_CSDR\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_42>

1. Do you have other suggestions to simplify the cash penalty mechanism, while ensuring it is deterrent and proportionate, and effectively discourages settlement fails, incentivises their rapid resolution and improves settlement efficiency? Please justify your answer and provide examples and data where available. Please specify what costs and benefits you envisage related to the implementation of your proposal. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

<ESMA\_QUESTION\_CSDR\_43>

TYPE YOUR TEXT HERE

|  |  |
| --- | --- |
| **Respondent’s proposal** (if applicable) |    |
|   | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE  |
| **Compliance costs:****- One-off****- On-going** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE  |
| **Costs to other stakeholders** | TYPE YOUR TEXT HERE  |  TYPE YOUR TEXT HERE |
| **Indirect costs** |  TYPE YOUR TEXT HERE | TYPE YOUR TEXT HERE |

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_43>

1. Based on your experience, are settlement fails lower in other markets (i.e USA, UK)? If so, which are in your opinion the main reasons for that? Please also specify the scope and methodology used for measuring settlement efficiency in the respective third-country jurisdictions.

<ESMA\_QUESTION\_CSDR\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_44>

1. Do CSD participants pass on the penalties to their clients? Please provide information about the current market practices as well as data, examples and reasons, if any, which may impede the passing on of penalties to clients.

<ESMA\_QUESTION\_CSDR\_45>

As per paragraphs 53 and 54, ESMA states that “*it seems that penalties paid or received are treated inconsistently by CSD participants*” as “*some CSD participants do not pass on penalties to clients, while others do pass penalties to the respective clients*”. Our members **are agnostic on the approach chosen by any given CSD participant across the Union**, properly because of the different readings that can be done of Recitals 18 and seq. and of Art. 7 of CSDR (as also implied by ESMA in par. 53) and because this appears to be in the remit of each participants’ commercial/business choice. Our members **understand ESMA’s** principle-fear that (par. 54) “*if penalties are not passed on to clients, this would reduce the effectiveness of the penalty mechanism and would also lead to a different application of CSDR across the Union*” **but they believes that the use of the term “Client” is too generic in this scope** and it deserves to be clarified and detailed in the Final Report to this consultation to avoid misinterpretation. Our members believe that CSDR discipline should ensure CSD participants debit the penalties to the entities which are actually responsible for a late settlement, or a settlement fail. The use of the terms “Clients” in par. 53 and 54 is generic and not helpful, as it can be referred to institutional clients (i.e. a bank using the services of a custodian bank), as well as to retail clients (which could materially be the source of a fail, given that any cash or securities account on their name is subject to an immediate check of its amounts, prior to allowing the client instructing the purchase or sale of any security). Hence, ESMA shall detail in the Final Report (and hence in any eventual amendment to the current Delegated Regulations), the type of Clients which cannot materially be debited or credited with Settlement Fail Penalties (due to operational set-ups which impede such kinds of Clients to be the source of a fail). ESMA shall also ensure CSD participants are responsible for debiting the penalties to the entity responsible for a fail, as long as the information available to the CSD participant allow such identification. Should this clarification not be introduced via the Final Report, there is a material risk that a (generic) bank, using custody and settlement services by a Custodian Bank, consider it liable for not passing a settlement fail penalty to its retail clients.

**ESMA should also gather detailed information (in order to be fully aware on it) on the different approaches regarding the debiting and crediting of settlement penalties in the scope of “Investment Management Companies” and their related “UCTS Funds” as we are aware of differences across the Union** (legitimate difference, due to regulatory and legal constrains which have legitimately led to slightly different set-ups). For instance, in Italy the UCITS/Fund, in case of fails, it is only credited penalties (in bonis penalties), but not debited (*in malis*) penalties, as the Fund it is not a *trading party,* nor an instructing party. Hence, *in malis* penalties are debited to the related Investment Management Company.

<ESMA\_QUESTION\_CSDR\_45>

1. Do you consider that introducing a minimum penalty across all types of fails would improve settlement efficiency? Is yes, what would be the amount of this minimum penalty and how should it apply? Please provide examples and data, as well as arguments to justify your answer.

<ESMA\_QUESTION\_CSDR\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_46>

1. What would be the time needed for CSDs and market participants to implement changes to the penalty mechanism (depending on the extent of the changes)? Please provide arguments to justify your answer.

<ESMA\_QUESTION\_CSDR\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_47>

1. Since the application of the RTS on Settlement Discipline, how many participants have been detected as failing consistently and systematically within the meaning of Article 7(9) of CSDR? How many of them, if any, have been suspended pursuant to same Article?

<ESMA\_QUESTION\_CSDR\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_48>

1. In your view, would special penalties (either additional penalties or more severe penalty rates) applied to participants with high settlement fail rates be justified? Should such participants be identified using the same thresholds as in Article 39 of the RTS on Settlement Discipline, but within a shorter timeframe (e.g. 2 months instead of 12 months)? If not, what criteria/methodology should be used for defining participants with high settlement fail rates? Please provide examples and data, as well as arguments to justify your answer.

<ESMA\_QUESTION\_CSDR\_49>

We have received different considerations on this scope by our members. Preliminarily, it can be stated that setting forth for public consultation a proposal with a specific penalty structure applicable to participants with systematically high levels of settlement fails could help focusing on the topic and assess whether such a measure might be introduced in CSDR, under specific conditions.

<ESMA\_QUESTION\_CSDR\_49>

1. How have CSDs implemented working arrangements with participants in accordance with article 13(2) of the RTS on Settlement Discipline? How many participants have been targeted?

<ESMA\_QUESTION\_CSDR\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDR\_50>

1. Should the topic of settlement efficiency be discussed at the CSDs’ User Committees to better identify any market circumstances and particular context of participant(s) explaining an increase or decrease of the fail rates? Please justify your answer.

<ESMA\_QUESTION\_CSDR\_51>

Our members consider that, in the interest of the well-functioning Capital Markets Union, the topic of Settlement Efficiency has finally gained the attention and focus it historically deserved. Likely, scheduling regular occasions to discuss the statistics and trends in the efficiency levels will be more and more valuable for infrastructures and participants. Hence, ABI would positively consider the discussion of the topic at CSDs’ User Committees but it also recall ESMA the crucial importance to provide for CSDs using the very same computation method for settlement efficiency statistics and for data formats (given that the current large differences in some CSDs statistics are not justifiable only with a lack in their participants’ efficiency, but it likely depends also on CSDs considering as “fail” something that other CSDs do not consider and qualify as such). Lacking that, the Union would continue having data on efficiency which are not harmonised and actually comparable.

<ESMA\_QUESTION\_CSDR\_51>

1. The Report is available at: <https://www.esma.europa.eu/sites/default/files/2023-08/ESMA50-1389274163-2681_trv_2-23_risk_monitor.pdf> [↑](#footnote-ref-2)
2. Available at <https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-2_csdr_qas.pdf> [↑](#footnote-ref-3)