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 | EURONEXT GROUP |
| Activity | Others |
| Are you representing an association? |  |
| Country / Region | Europe |

# 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>

Option 3 seems to be favoured from ES-CPH perspective, considering it is more in line with current domestic solution that derives the cash discount penalty rate in the absence of official interest rate for overnight credit. This option 3 does not require changes to the T2S penalty mechanism, as opposed to options 1 and 4. Please refer to the ECB – MIB response for further details.

<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 |

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<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>

Please refer to the ECB – MIB response for further details in this regard.

<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>

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<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>

Yes, we support the proposal beyond which more recent reference data may be used for the calculation of the related cash penalties. In this regard we refer to the analysis conducted within the Eurosystem and highlighted in the context of the change request CR-802.

<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>

We would support option b) 40 days, please refer to the ECB – MIB response for further details in this regard.

<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 should be noted that in the current market practice, there is already only one CSD that is actually providing the relevant reference data. Allocation of this task by the way does not exempt other CSDs nor participant to implement appropriate checks and controls. There is no need to specifically allocate responsibility to confirm the reference data. Imposing this task of validation on Issuer CSDs to provide reference data across systems to other CSDs is not needed.

<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>

To ensure predictability in the computation of cash penalties, it is recommended to always use the oldest available historical reference data. Please refer to the ECB – MIB response for further details.

<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 |

We believe that a flexible approach allowing to use the most oldest available historical reference data should be the right approach taking in to account that the benefit-cost ratio of implementing the change request is deemed very low. Please refer to the ECB- MIB response for further details.

<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 |

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<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>

According to the empirical data and some statistical elaboration we made comparing settlement data from 2020, 2021 2022 and 2023, it seems that correlation between settlement efficiency evolution and the application of penalties mechanism across different asset classes is not linear. Overall positive and negative trends in settlement efficiency seem to be more influenced by market conditions (e.g. volatility), contingent occurrences (e.g. in case of monetary policy operations) and structural inefficiencies (e.g. non-automated post-trade processes) rather than by the application of penalties. These factors could be observed at both European and at local levels and their impact may vary across EU markets. Hence the assumption that an increase of penalty rates would lead to a directly proportional improvement of settlement efficiency could be questionable. Indeed we have also some empirical evidence of peaks in value of penalties corresponding to peaks in settlement efficiency.

<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>

According to our evidence the level of cash penalties is quite stable for each months and across different asset classes. On interpretation could be that fails are due to other structural reasons that cannot be solved individually by market participants.

For instance, on ETFs there is a specific structural issue due to the gap between the settlement cycle in the primary market (T+3) and the settlement cycle in the secondary market (T+2, now moving to T+1). This issue requires specific discussion with the ETF industry to be solved rather than an increase of penalties. In the meantime, lowering the penalties rate or exempting fails on ETFs from penalties on ISD +1 should be considered.

<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>

According to our evidence, the percentage of fails due to lack of securities is largely higher than the other categories, with an average of almost 99% of fails. Beyond this category, there could be different causes deriving from market condition (e.g. volatility) but also issues affecting settlement efficiency at different levels of the transaction processing chain such as need to increase the automation down the chain and issues on inventory management. <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>

Euronext Securities makes available to its participants data services aiming at adding transparency and predictability of the securities settlement process and assisting the optimization of practices and procedure for securities allocation.

<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>

Overall settlement efficiency across Euronext Securities CSDs are in the mid-nineties, with the lowest settlement efficiency occurring for ETFs. Bonds are generally very resilient across the four CSDs. Therefore we do not agree that setting appropriate level of settlement efficiency at CSD / settlement system level could be meaningful, rather the focus should be to identify targets and range of confidence within which settlement efficiency is acceptable.

<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>

In respect of penalty rates by asset type as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389 we would suggest the following targeted adjustment to make them more proportionate in respect of ETFs and less liquid bonds. Please refer also to our answer under Q28 and Q35.

As regard ETF we would support a lower penalty rate that takes into account the specificities of this instruments in terms of post-trade set up and interactions, between creation and redemption processes. This to avoid to excessively penalise trading on the market which is subject to standard deadlines compared to the OTC trading.

As regards less liquid bonds, a proposal could be to lower penalties currently applied to categories no. 5 and no. 6 as referred to in Annex of EU Commission Delegated Regulation (EU) 2017/389 (0,2 and 0,15 respectively) since most illiquid bonds for which no repo market is available (corps & financials) already fall into these two categories. The new penalty rate should be lower than the one applied to category no. 4 (govies and supranational) for which the current rate (0,1) could be maintained at the current level.

<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>

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<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>

The introduction of progressive penalty rates will require significant operational and IT changes to the penalty mechanism currently in place. The cost of these changes would be born mainly by CSDs and their participants without the possibility to recover them. Besides the impact on market liquidity and the benefit of such progressive mechanism on settlement efficiency are not easily predictable.

In addition implementing significant changes to penalties mechanism while in parallel preparing the migration to T+1, could be counterproductive since it would cause an increase of the workload and a contention of resources available. Also in terms of market impact it is very likely that the adoption of T+1 could bring about an increase of fail and consequently the request to smoothen the penalties regime at least for some asset class as we highlighted in the response to ESMA call for evidence. Needless to say that such a change pose questions also in terms of impact on the competitiveness of EU market compared to other jurisdictions moving to T+1 without such stringent framework on settlement discipline.

To the contrary the current penalty regime was designed to be simple and efficient from both business and operational perspective. Therefore we would recommend that its set-up is maintained and not changed in the substance also in order to collect further data that would allow for a proper analysis of its application.

To improve proportionality of the penalty regime, only small changes could be supported in order to minimize the impact on securities value chain and to calibrate the burdens on fails for less liquid bonds and ETFs to the extent that they are subject to structural issues.

<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>

Although the concept of convexity seems reasonable, the penalty rates provided by Option 2 are definitely not comparable to the current applicable rate. It cannot be excluded that this sharp increase may have an impact on the activity of liquidity providers also on most liquid securities.

<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>

Although the concept of convexity seems reasonable also for less liquid securities, the penalty rates provided by Option 2 are definitely not comparable to the current applicable rate. It cannot be excluded that this sharp increase may have an impact on the trading activity on illiquid securities.

.<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>

Under both Options progressive penalty rates are definitely not comparable to the current applicable rate and it seems there is no evidence that could justify such an increase. Conversely this sharp increase might have a detrimental impact on the market. Current penalties rates framework should be maintained with some targeted adjustments as referred in our response to Q20.

<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>

As mentioned under Q20 and Q25, in respect of penalty rates by asset type as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389 we would recommend to maintain the current framework also in order to collect further data that would allow for a proper analysis of its application.

To improve proportionality of the penalty regime, only small changes could be supported in order to minimize the impact on securities value chain and to calibrate the burdens on fails for less liquid bonds and ETFs. Please refer also to our answer under Q28 and Q35.

<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>

With reference to the categorisation of types of fails per asset type we believe Option 1 is preferable. Indeed it maintains the current categorisation minimizing the impact in terms of changes to the mechanism in place as highlighted in Q22. We would support a more targeted approach only adding ETFs as new asset category (this change would have a medium impact if considered in isolation since it could rely on existing methodology with CFI code).

<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** | 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 |
| **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** | 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 |

Both options entail high implementation cost for CSDs and their participant in order to adapt the calculation mechanism and the related reconciliation procedure. Notably, Option 1 would impact the penalty mechanism computation logic (implementation of progressive rates). Whilst Option 2 is even more impactful requiring changes to computation logic (progressive rates with convexity) as well as a structural change to the methodology for the derivation of asset classes.

While it is very hard to draw any conclusion on the benefits of such change we are concerned about the increase that ESMA is proposing is that could have a detrimental impact on the market structure and in terms of competitiveness of EU post-trading industry if compared with other jurisdiction not having in place a settlement discipline framework.

We would support a more targeted approach only adding ETFs as new asset category (a medium impact if considered in isolation since it could rely on existing methodology with CFI code) with an appropriate penalty rate that takes into account the specificities of this instruments in terms of post-trade set up and interactions, between creation and redemption processes this to avoid to excessively penalise trading on the market which is subject to standard deadlines compared to the OTC trading.

<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>

We do not agree with this proposal for the reason highlighted in answer to previous questions.

|  |  |  |
| --- | --- | --- |
| **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>

We do not agree with this proposal for the reason highlighted in answer to previous questions

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **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 |

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<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>

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<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>

We believe that using 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 is not a substantial measure of simplification. Indeed, this measure does not solve the need for CSDs to find the reference price of the financial instruments on each day of the as a basis for the calculation of penalties. For example, if there is a fail on day 1 in relation to the securities A, the market value of day 1 must be taken into account; at the same time, if there is a fail on day 2 in relation to the securities A, the market value of day 2 must be taken into account, so the reference price of day should be sourced any way. Therefore, the process remains critical, given the need to source reference prices from different data providers.

In conclusion – and if our understanding is correct – the proposal would not lead to significant benefits but only to one-off costs due to the change in the process, while the on-going costs would remain unchanged.

|  |  |  |
| --- | --- | --- |
| **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 |

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<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>

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<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>

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<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 |

The proposal would require a change to the current procedure for the computation of penalties, with the extension of the process applied to liquid and illiquid stocks also to the bonds.

In this respect we would propose an alternative solution that could avoid the cost related to the implementation of a heavy and burdensome process like similar to the one for liquid / illiquid shares. Indeed instead of differentiating penalties on the basis of the liquidity of the bonds, a proposal could be to lower penalties currently applied to categories no. 5 and no. 6 as referred to in Annex of EU Commission Delegated Regulation (EU) 2017/389 (0,2 and 0,15 respectively) since most illiquid bonds for which no repo market is available (corps & financials) already fall into these two categories. The new penalty rate should be lower than the one applied to category no. 4 (Govies and supranational) for which the current rate (0,1) could be maintained at the current level.

<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>

CSDs have a reduced capability to intervene in the reduction of fail rates. Indeed, the main actors in this process are participants and their clients. On the contrary, CSD could only support in the analysis, without an active role in the reduction of the fail. Therefore, we believe that it is not appropriate to provide for the application of an increasing penalty mechanism at the level of CSDs with a higher settlement fail rates. Indeed, such a mechanism would lead to market disparities and differentiated enforcement, which risks increasing fragmentation to the detriment of the Capital Markets Union and systems integration.

<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 |

Please refer to Q39.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

We are of the view that the topic of settlement efficiency could be discussed in the User Committee to identify structural causes related to market conditions and to identify potential mitigating actions that could be applied by all actors. Whereas we do not believe that the individual situations or particular conditions/behaviours of single participant could be discussed due to the conflict of interest inherent in discussing such matters within the user committee.

<ESMA\_QUESTION\_CSDR\_51>