9 July 2024
ESMA74-1505669078-6673

Reply Form

Draft amending technical standards to Regulation (EU) 2017/392 and Regulation (EU) 2017/394 under CSDR

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 **9 September 2024.**

All contributions should be submitted online at 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_CR&E_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_ CR&E_nameofrespondent.

  For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP1_ CR&E_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 under the heading '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.

1 General information about respondent

Name of the company / organisation	Bolsas y Mercados Españoles – SIX Group
Activity	CSD
Are you representing an association?	☐
Country / Region	Spain

2 Questions

Q1 Do you agree with the proposed requirement for data on "relayed links"? If not, please elaborate.

<ESMA_QUESTION_CR&E_1>

Bolsas y Mercados Españoles (hereinafter, BME) shares the vision of the importance of having a clear map of links, including relayed links.

To this end, and taking into account that this is first regulatory attempt to define in a EU legislative instrument what kind of arrangement is a *relayed link,* we would like to highlight that in some cases, there is no contractual relationship between the end CSDs (being the Issuer CSD and the end-investor CSD that accesses the issuer via an intermediary CSD). Further, it is also possible that currently there are *relayed links* that are perfectly unknown to the Issuer CSD. Therefore it would be desirable to reconsider the definition provided in the consultation paper.

In the particular case of the requirement for data on relayed links, as a relayed link is composed of direct links between CSDs operating securities settlement systems, most of the relevant information requested should be in the reporting already provided by the CSDs involved in any of the parts of the relayed link. If so, any potential duplication in reporting should be avoided.

BME considers that more clarity is needed on the CSD or CSDs that are required to provide the data. It should be noted that not all the CSDs whose links to another CSD can be used to set up a relayed link are aware of the agreement or the existence of the relayed link. Therefore, it should be expressly stated that the data must be provided exclusively by the CSDs that are part of the agreement on the relayed link.

<ESMA_QUESTION_CR&E_1>

Q2 Do you agree with the proposed amendments to Delegated Regulation (EU) 2017/392? If not, please elaborate.

<ESMA_QUESTION_CR&E_2>

BME welcomes the intention to harmonize the report which may benefit the level-playing field and convergence at supervisory level.

We had expected that any request for information resulting from CSDR Refit and its RTS would effectively streamline the current regime, in order to meet the objectives sought with CSDR Refit and the Commission's Regulatory Fitness and Performance (REFIT) programme, which emphasizes the need for cost reduction and simplification and the aim to have a clear, stable and predictable regulatory framework.

However, the ESMA consultation proposes relevant changes in the reporting that seems to be not fully aligned with the Refit principles.

First, the information to be reported by the CSDs is increased and it is not simplified. In some cases, this is data that is already available to authorities in public registers, mainly the CSD register in ESMA. This is the case of the proposed amendments to article 42 paragraph (1) (l) when incorporating the need to specify all the data about the linked CSD (country of incorporation, LEI, registered name, type of link link…). Same applies in the case of the new data required on each participant of the CSD.

Given that the data are already incorporated in a public register maintained by a public authority, authorities should obtain or consult these data directly from those public registers, rather than requiring the CSD to make significant technical developments in order to provide it again and in another format. The potential redundance or double submission obligation entails costs in terms of processes and IT resources for CSDs that is, again, not aligned with Refit principles. The requested information is available to the authorities in a public register operated by an authority.

In addition, there are new required data that may not be in the systems of the CSD. This would be the case in article 42 paragraph (1) (a), when the type of participant is proposed to be provided in the report specifying whether the participant is a credit institution, investment firm, CCP, CSD… This data, which is also recorded in public registries since the participants are authorized entities, is not stored in the CSD systems once confirmed that the entity belongs to one of the categories authorized.

The addition of this in the report will require from the CSDs important technical developments and resources not only for the report, but also to collect the information from all the participants. Taking into account that the participants are also regulated entities it should be investigated whether such information can be more easily and with certainty retrieved from the ESMA databases.

BME considers that the amendments should be aligned with the principle of proportionality, ensuring a stable regulatory framework and avoiding duplications with other reporting workflows.

It would also be desirable to improve the clarity in some of the ESMA proposals, especially in those that are totally new, such as the ones related to the Regulation (EU) 2022/2554 about the information on the outcome of the testing of the CSD's ICT systems. BME recommends full alignment with reporting deriving from DORA. Therefore, the information to be provided within the review and evaluation on the test on ICT systems and how the CSD manage the ICT related risk under DORA shall not differ from the information required under such regulation.

Among the new paragraphs that have been inserted, BME would like to raise new point (ha) in article 42, relating to the type of transaction from which a FoP instructions results. Although this information could be in one of the fields of the settlement instruction, but due to the characteristics of the field, the information may not be harmonized and reliable.

The summary of the types of manual intervention performed by the CSD seem to have a wider scope than the existing obligation to report manual interventions according to RTS (EU) 2018/1229 on settlement discipline, which is limited to manual interventions in the automated settlement process. The scope and purpose of such information shall be clarified. The notification of any manual intervention does not seem to us to be a relevant and proportionate requirement.

BME would like to highlight that IT developments and adaptations will be necessary, requiring on average a change management period of one year from the coming into force of the new Regulation.

<ESMA_QUESTION_CR&E_2>

Q3 Do you agree with the proposed amendments to Implementing Regulation (EU) 2017/394? If not, please elaborate.

<ESMA_QUESTION_CR&E_3>

Please, see response to Q1 and Q2. BME expected that any request for information resulting from CSDR Refit and its RTS would effectively streamline the current regime, in order to meet the objectives sought with CSDR Refit.

<ESMA_QUESTION_CR&E_3>