Reply Form

Consultation Paper on the Amendments to the RTS on Settlement Discipline

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 **14 April 2025.**

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\_CSDC\_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\_ CSDC\_nameofrespondent.

 For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ CSDC\_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 | The Investment Association |
| Activity | Asset management company |
| Are you representing an association? |[x]
| Country / Region | UK |

# Questions

**3.1.1 Timing of allocations and confirmations**

1. Do you agree with the proposed amendments to Articles 2(2) and 3 of CDR 2018/1229?

<ESMA\_QUESTION\_CSDC\_1>

**About the Investment Association**

The Investment Association (IA) champions the interests of the UK-based investment management industry. We represent 250 investment managers, a third of which are headquartered in the EU and who collectively operate from 642 offices across the EU.

Our members put €10.6 trillion to work in the economy, representing 37% of the €28.6 trillion of assets managed in Europe. They manage €2.5 trillion for Europeans and invested €843 billion into EU businesses and projects last year while providing access to global investment opportunities.

**Response to question 1**

We disagree with the amendments.

We do not think it is necessary to have different deadlines for EMEA-based clients and those based in a timezone more than two-hours away (i.e. non-EMEA based clients).

Maintaining two separate cut-offs for investors in different regions is not practicable and does not currently occur.

The UK report has been altered to only reflect one deadline (IA feedback to the UK report consultation also requested one deadline also), and the US also does not reflect different deadlines. The UK report now suggests that allocations and confirmations be sent by 23:59 on T (which broadly matches the US methodology and the CDR deadline in Article 2(2)a).

We agree with the proposed language of article 2(2)a.

We are of the view that the exception for article 2(2)b of CDR 2018/1229 should be deleted.

We are of the view that that article 3 should be amended to match the timelines in article 2(2)a.

<ESMA\_QUESTION\_CSDC\_1>

1. Would you see merit in introducing an obligation for investment firms to notify their professional clients the execution details of their orders as soon as these orders are fulfilled (in a way that allows STP)? If yes, should it be cumulative to the proposed amendments to Articles 2(2) and 3 of CDR 2018/1229?

<ESMA\_QUESTION\_CSDC\_2>

We agree with this obligation, though it should be caveated to either come only when an order is fully filled or will face no further updates by the end of the day to avoid confusion for partial fill updates.

<ESMA\_QUESTION\_CSDC\_2>

1. If you support an obligation for investment firms to notify their professional clients the execution as soon as the orders are fulfilled, do you think that clients should be allowed a maximum number of business hours for the allocations and confirmations from the moment of notification by investment firms, instead of having fixed deadlines? If yes, how many hours would be necessary for that?

<ESMA\_QUESTION\_CSDC\_3>

We agree that firms should be required to send orders “as soon as practically possible”, and in any case in no more than two hours or by end-of-day, whichever is earlier.

<ESMA\_QUESTION\_CSDC\_3>

1. Should CDR 2018/1229 further specify the term ‘close of business’ for the purpose of Article 2(2)? If yes, how should this take into account the business day at CSD level?

<ESMA\_QUESTION\_CSDC\_4>

More analysis should be done against the EU CSDs to ensure that any definition can apply across ***all*** EU CSDs (or can apply subject to EU CSDs amending processes). Members emphasised the importance of consistency across CSDs.

As it stands, we are of the view that close of business should be defined as 23:59 CET and should also take into account CSD business days.

The obligation should not exist if the CSD is closed.

<ESMA\_QUESTION\_CSDC\_4>

1. Should the 10:00 CET deadline for professional clients in different time zones and retail clients be brought forward to 07:00 CET on T+1, to be aligned with the UK deadline?

<ESMA\_QUESTION\_CSDC\_5>

We understand that the UK proposal for instruction deadlines has changed. Per our response for question 1, we are of the view that there should no longer be separate deadlines for EMEA and non-EMEA clients. This has never been followed in practice and would become more difficult still in a compressed timeframe.

With the US T+1 transition, firms are already used to following one deadline.

<ESMA\_QUESTION\_CSDC\_5>

1. Can you suggest any other means to achieve the same objective? If yes, please elaborate

<ESMA\_QUESTION\_CSDC\_6>

No IA response

<ESMA\_QUESTION\_CSDC\_6>

**3.1.2 Means for sending allocations and confirmations**

1. Do you agree to make the use of electronic and machine-readable format that allow for STP mandatory for written allocations?

<ESMA\_QUESTION\_CSDC\_7>

We agree with this proposal as written.

The IA encourages efforts to automate and standardise these processes, and to ensure all relevant data fields are included to allow for T+1 transition.

<ESMA\_QUESTION\_CSDC\_7>

1. Would you see merit in introducing optionality for investment firms to set deadlines based on whether an electronic, machine-readable format of the communication is used? In such case, do you agree that an earlier deadline could be set for non-machine readable formats, so clients are disincentivised to use them? Which should be such deadline?

<ESMA\_QUESTION\_CSDC\_8>

We do not think that there is merit in introducing this optionality per our response to question 7, where we agree that electronic and machine-readable communications should be mandatory.

We note that the proposed amendment to article 2 as written is ambiguous as to whether it explicitly prohibits firms from accepting non-machine readable instructions. As an example, an e-mail instruction could be considered to be electronic and machine-readable (with AI), but many firms would consider this to be manual.

<ESMA\_QUESTION\_CSDC\_8>

1. Please provide quantitative evidence regarding the use of non-machine readable formats for written allocations and confirmations.

<ESMA\_QUESTION\_CSDC\_9>

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<ESMA\_QUESTION\_CSDC\_9>

1. Would it be necessary to introduce a similar obligation in other steps of the settlement chain? If yes, please elaborate.

<ESMA\_QUESTION\_CSDC\_10>

We disagree with introducing a similar obligation to provide quantitative evidence regarding the use of non-machine readable formats in other steps of the settlement chain.

We understand that this would likely mean smaller buy-side firms or funds. It may also include firms outside of the EU for which the EU may have less regulatory oversight over.

More practically, we are of the view that this obligation would be very difficult to track, measure and enforce and would impose disproportionate burdens on small firms operating in the EU market vs other market jurisdictions.

<ESMA\_QUESTION\_CSDC\_10>

1. Can you suggest any other means to achieve the same objective? If yes, please elaborate

<ESMA\_QUESTION\_CSDC\_11>

No IA response

<ESMA\_QUESTION\_CSDC\_11>

**3.1.3 The use of international open communication procedures and standards for messaging and reference data to exchange allocations and confirmations**

1. Do you agree with the proposed amendment to Article 2 of CDR 2018/1229?

<ESMA\_QUESTION\_CSDC\_12>

We agree with the proposed amendment.

<ESMA\_QUESTION\_CSDC\_12>

1. Do you agree that settlement efficiency would improve if all parties in the transaction and settlement chain used the latest international standards, such as the ISO 20022 messaging standards, in particular whenever A2A messages and data are exchanged? If not, please elaborate. How long would it take for all parties to adapt to ISO20022?

<ESMA\_QUESTION\_CSDC\_13>

We agree that following international standards is beneficial to both the jurisdiction and for wider investors, many of whom follow increasingly broad and global investment strategies.

We do not, however, see practical benefits in a required transition from 15022 to 20022 for securities messages.

<ESMA\_QUESTION\_CSDC\_13>

1. Can you provide figures (by number and type of financial entities, jurisdictions) regarding the current use of international open communication procedures and standards such as: a) ISO 20022, b) ISO 15022, c) others (please specify)?

<ESMA\_QUESTION\_CSDC\_14>

We strongly disagree with the assertion in paragraph 61 of the consultation paper that ISO 20022 messaging standards are already broadly used.

We do not believe that for securities, ISO 20022 is widely used amongst any industry participants, and are even less so for buy-side firms. Mandating their use would represent a very large one-off cost to industry.

For securities transactions, the vast majority of traffic that the buy-side see are via the existing 15022 standards (e.g. MT5XX formats).

We understand that for cash transactions, some firms are looking to make the transition from 15022 to 20022 given that SWIFT are looking to decommission cash ISO15022 message types by November 2025.

As it stands, we would not expect many of our 200+ member firms have the capability to process security messages in the ISO 20022 format. We would also be surprised if a wide array of custodian banks or broker-dealers had this capability across all message types.

We agree with ESMA that ISO 20022 should not be introduced at this stage.

Should ESMA wish to further pursue this, it must be with further consultation including small investment firms and preferably in line with other global investment jurisdictions.

<ESMA\_QUESTION\_CSDC\_14>

1. Do you agree with the proposal of the EU Industry Task Force whereby allocation requirements should be aligned with CSD-level matching requirements? If not, please elaborate.

<ESMA\_QUESTION\_CSDC\_15>

We agree with the taskforce, but also agree that it does not need to be updated in regulation. We see this as common practice as of today.

<ESMA\_QUESTION\_CSDC\_15>

1. Can you suggest any other means to achieve the same objective? If yes, please elaborate.

<ESMA\_QUESTION\_CSDC\_16>

No IA response

<ESMA\_QUESTION\_CSDC\_16>

**3.1.4 Onboarding of new clients**

1. Do you agree with the proposed regulatory change to introduce an obligation for investment firms to collect the data necessary to settle a trade from professional clients during their onboarding and to keep it updated? If not, please explain.

<ESMA\_QUESTION\_CSDC\_17>

The IA’s understanding of this question is that ESMA is looking to encourage SSIs being held in a central database, putting the onus on firms to ensure their information is kept up to date and accurate.

We agree with the sentiment of the proposal if so, but would welcome further clarification from ESMA.

We also urge brokers to ensure that they in turn keep their own records updated following updates from investment managers.

<ESMA\_QUESTION\_CSDC\_17>

1. Can you suggest any other means to achieve the same objective? If yes, please elaborate.

<ESMA\_QUESTION\_CSDC\_18>

No IA response

<ESMA\_QUESTION\_CSDC\_18>

**3.1.6 Partial settlement**

1. Do you agree with the proposed amendment to Article 10 of CDR 2018/1229? If not, please elaborate.

<ESMA\_QUESTION\_CSDC\_19>

We agree with the proposed amendment by ESMA such that auto-partials are defaulted to be on, subject to an “opt-out” instructed by a counterparty for either an individual transaction or as set against an account.

We agree with ESMA that participants should have agency as to whether they accept auto-partials and be given the choice to opt-out..

Generally, our member firms see auto-partials as a service they will opt in to, given it will reduce settlement risk where possible and limit the number of open failing transactions.

Our investment manager member firms see a small number of clients opt out of auto-partials, given that when reinstructed they result in higher CSD and custody fees for no benefit to the client. For as long as auto-partials result in a higher cost, firms should be able to opt out.

However, the drafting of the revised Article 10 related to Partial Settlement should read: “auto-partial settlement” instead of “partial settlement”.

In addition we note that there is not a specific question relating to ESMA’s proposal under paragraph 79 of the consultation which would requite “hold and release” functionality to be used consistently across all CSDs. The IA would nonetheless like to comment in support of this proposal. “Hold and release” functionality is a useful tool to reduce settlement fails. In any case, this function is already widely in use, so this proposal would simply affirm established market best practice.

<ESMA\_QUESTION\_CSDC\_19>

1. Do you agree with the deletion of Article 12 of CDR 2018/1229? If not, please elaborate.

<ESMA\_QUESTION\_CSDC\_20>

We agree with the deletion of article 12 of CDR 2018/1229, which exempts some EU CSDs from offering hold & release or auto-partial.

Auto-partial settlement should be used unless one of the participants decides to opt out from this functionality or where instructions are put on hold by participants.

In any case, CSDs should not be allowed to apply fees to every auto-partial settlement of a settlement instruction, meaning that if, for instance, the same instruction is partial settled 3 times over a day, both participants will be charged 3 times the fee of an instruction: there should be no accumulation of fees in case of auto-partial settlements.

<ESMA\_QUESTION\_CSDC\_20>

1. Do you have other suggestions to incentivise partial settlement? If yes, please elaborate.

<ESMA\_QUESTION\_CSDC\_21>

While the IA considers that auto-partials should be the norm, we recognise there may be scenarios where manual partials continue. ESMA should further acknowledge and explore solutions where cash penalties disincentivise acceptance of partials – for example, where a small firm accepts a manual partial from a counterparty, but is second to instruct the new shapes, incorrectly suffering a cash penalty.

We re-paste an entry from a previous IA response to ESMA on how CSDs might accomplish this.

We recognise that ESMA may see this as too big a build for CSDs, but for as long as instructing a manual partial incurs a cost via a cash penalty, firms will be disincentivised to accept partials.

[*https://www.esma.europa.eu/system/files/webform/206163/100411/ESMA\_CP1\_CSDR\_\_TheInvestmentAssociation.docx*](https://www.esma.europa.eu/system/files/webform/206163/100411/ESMA_CP1_CSDR__TheInvestmentAssociation.docx)

***Resolving cash penalty “inaccuracies”***

*ESMA should encourage CSDs to resolve the issue in manually partialing already failing trades where, when the recipient counterparty being failed into submits the new shapes second, they suffer the debit. CSDs should develop a methodology to link the cancelled original trade to the new split shapes, such that the penalty direction remains the same. This will encourage more manual partialing of stock.*

*We believe that this could be resolved through the following logic for a newly booked trade:*

*- Is the intended settlement date in the past? (This should be a small minority of trades.)*

*- If yes, does the trade date, intended settlement date and counterparty details of the trade match with other unsettled or newly cancelled trades (same-day) between the same counterparties.*

*- If yes, does the aggregate total of the newly input trades match the quantity and price of the existing trade?*

*- If yes, apply the LMFP in the same direction as it was applied to the initial cancelled trade (rather than applying the late matching fail penalty to the counterpart that input the new trades into the CSD second).*

*Whilst we understand that this would be a build for CSDs, it would fix for incorrect cash penalty postings and encourage greater manual partialing and liquidity. We are happy to engage with ESMA to explore other options to resolve this issue.*

<ESMA\_QUESTION\_CSDC\_21>

1. Do you think that some types of transactions should not be subject to partial settlement? If yes, could you provide a list and the supporting reasoning?

<ESMA\_QUESTION\_CSDC\_22>

The IA does not see any reason why some transactions should be excluded from partial settlement.

<ESMA\_QUESTION\_CSDC\_22>

**3.1.7. Auto-collateralisation**

1. Do you agree with the introduction of an obligation for CSDs to facilitate the provision of intraday cash credit secured with collateral via an auto-collateralisation facility? If not, please elaborate.

<ESMA\_QUESTION\_CSDC\_23>

We do not believe this impacts the buy-side – no IA response.

<ESMA\_QUESTION\_CSDC\_23>

1. Can you suggest any other means to achieve the same objective? If yes, please elaborate.

<ESMA\_QUESTION\_CSDC\_24>

We do not believe this impacts the buy-side – no IA response.

<ESMA\_QUESTION\_CSDC\_24>

**3.1.8 Real-time gross settlement versus batches**

1. Should CDR 2018/1229 be amended to require all CSDs to offer real-time gross settlement for a minimum window of time of each business day as well as a minimum number of settlement batches? Please provide arguments to justify your answer.

<ESMA\_QUESTION\_CSDC\_25>

We agree that CSDs should be required to offer real-time gross settlement for a minimum window of time. We agree that batches add latency, and that either moving to real-time or at a minimum, increasing the number of batches and decreasing the time between them, will improve settlement efficiency.

We note that this may not be seen down the settlement chain, as custodians have their own latency in reflecting updates from CSDs down to their stakeholders. If this change is imposed, there should be an industry drive encouraging custodians to reflect this data as “real-time” as possible.

<ESMA\_QUESTION\_CSDC\_25>

1. What should be the length of the minimum window of time of each business day for real-time gross settlement and the minimum number of settlement batches that should be offered, per business day? Please provide arguments to justify your answer.

<ESMA\_QUESTION\_CSDC\_26>

Feedback from member firms suggested that a time window of 08.00 – 16.00 CET would be acceptable. More broadly, the IA’s members believe the goal should be to ensure that real-time settlement is available on valuation date throughout the business day for as long as possible.

<ESMA\_QUESTION\_CSDC\_26>

1. Can you suggest any other means to achieve the same objective? If yes, please elaborate.

<ESMA\_QUESTION\_CSDC\_27>

No IA response

<ESMA\_QUESTION\_CSDC\_27>

**3.1.9 Reporting top failing participants**

1. Do you agree with the proposed amendments to Table 1 of Annex I of CDR 2018/1229? If not, please elaborate.

<ESMA\_QUESTION\_CSDC\_28>

We do not expect that investment managers would appear in a top 10 of failing participants at a given CSD. This is because:

* Typically, they are responsible for a low proportion of fails (anecdotally ~80% of cash penalties are due to broker short).
* They trade a lower number of transactions compared to market-makers or brokers.
* They may be within a custodians CSD omnibus account so not easily identified.

We understand that the list of failing participants is not widely used by industry either.

Given that CSDs will only see custodian accounts, the top 10 failing participants may not be a true reflection on the counterparties that are genuinely failing. Some member firms did provide feedback however this may still be useful information to gather if provided on a granular enough level .

We encourage ESMA to conduct further analysis on the usefulness of the CSD requirement to report the top 10 failing participants, with a view towards potential future refinement or removal in order to simplify requirements on CSDs.

<ESMA\_QUESTION\_CSDC\_28>

1. Should top 10 failing participants be reported both in absolute terms (current approach) and in relative terms (according to the proposed amendments to Table 1 of Annex I of CDR 2018/1229)?

<ESMA\_QUESTION\_CSDC\_29>

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<ESMA\_QUESTION\_CSDC\_29>

1. Do you have additional suggestions regarding the requirements for CSDs to report settlement fails data specified in Annex I and Annex II of CDR 2018/1229? If yes, please elaborate.

<ESMA\_QUESTION\_CSDC\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CSDC\_30>

**3.1.10 Reporting the reasons for settlement fails**

1. Do you agree with the proposed amendments to Article 13(1)(a) of CDR 2018/1229? Or can you suggest alternative options so that CSDs have visibility of the root causes of settlement fails at participants level?

<ESMA\_QUESTION\_CSDC\_31>

Although we can understand ESMA’s rationale behind the proposal for CSD participants to advise the CSD of reason for failure where the CSD does not have the information, we do not think this change is practicable.

The direct CSD participant will tend to either be a custodian bank or broker-dealer, who may not themselves be aware of the reason for the settlement fail. They may have to go down the settlement chain.

More practically too, there is not an obvious channel to provide this information from a CSD participant to the CSD, or from the CSD participant’s client to the participant. Additionally, it may not be clear to the participant which transaction the CSD needs additional information on. Having to accomplish this across every failing trade would represent a cost to industry disproportionately large to the benefit accrued.

<ESMA\_QUESTION\_CSDC\_31>

1. Based on the experience since the implementation of the settlement discipline regime under CSDR, please describe the main root causes of settlement fails identified so far. Please specify the relevant categories in more granular terms, going beyond “lack of securities”, “lack of cash” and “instructions put on hold”.

<ESMA\_QUESTION\_CSDC\_32>

We copy our response to question 17 on the ESMA consultation on Technical Advice on CSDR Penalty Mechanism due 29th February 2024)

https://www.esma.europa.eu/system/files/webform/206163/100411/ESMA\_CP1\_CSDR\_\_TheInvestmentAssociation.docx

*The IA surveyed investment manager members on fail rates in early 2023. The below percentages are an average taken from the 18 firms that answered. Whilst the data is somewhat aged, we don’t believe that this has changed materially.*

***81% caused by the counterpart (broker)***

*This was largely due to CLAC (counterparty lack of securities) or broker short.*

*The broker community should be able to explain in more detail why they’re commonly short of securities, but we understand that this is due to their inventory management model and where they agree a transaction despite not yet holding the securities. For any given security on any given day, a broker may have tens or hundreds of internal and client buy and sell transactions on a stock. The broker manages the overall net receipt or deliver through securities borrowing or borrow returns. It is generally in a broker’s interest to keep a clearing (CSD) position of a stock near zero for funding reasons. If the underpinning borrow fails or is delayed, many offsetting delivers will fail.*

*There’s a concern that if a broker needs to “overborrow” to double cover delivery transactions due to high cash penalty rates, these additional costs will be passed on to the industry via higher trading costs.*

***14% caused by the custodian/client/investment manager***

*Our members have discussed that this portion of fails is commonly caused by securities lending. It’s often a client decision to undertake securities lending with a lending agent, such that the portfolio manager has limited or no visibility of which stocks are on loan when a stock is sold.*

*When an on-loan stock is sold, there’s an extended chain of events that needs to happen compared to a conventional trade, which makes the trade more likely to fail. For example:*

* *Portfolio manager sells security that’s on loan.*
* *Sale notification goes to custodian*
* *Custodian instructs agency lender to recall.*
* *Agency lender instructs recall to borrower.*
* *Borrower may have to source alternate stock before being able to return the securities.*
* *If the recall fails by intended settlement date, the onward sale leg fails.*
* *Even if the recall settles (as FOP), it may be only after the DvP settlement window has closed, which causes the fail of the onward sale.*

*Given the numerous entities involved, it can be difficult to know where to apportion debit penalties as one or more parties may be at fault for the fail of the borrow return and subsequent settlement fail of the sell.*

***6% caused by the investment manager.***

*Investment management firms are looking to continue to make marginal gains on settlement efficiency, including:*

* *Depository realignments - Being aware of whether stock is at the local CSD or ICSD and instructing to the right place.*
* *Incorrect static data such as SSIs – Employing the use of SSI repositories or encouraging custodians to do so.*
* *Late instruction*
* *Late sale notification where inventory is out on loan.*
* *Looking to further improve pre-matching rates and encourage counterparts to do the same.*

<ESMA\_QUESTION\_CSDC\_32>

1. According to Article 13(2) of the CDR, CSDs shall establish working arrangements with their top failing participants to analyse the main reasons for settlement fails. Do you believe that this provision has proven useful in analysing the root causes of fails and in preventing them? Do you have suggestions on other actions which CSDs could take with respect to top failing participants?

<ESMA\_QUESTION\_CSDC\_33>

We are not familiar with our member firms being invited to join these working arrangements, but would not expect investment managers or their clients to be within the top failing participants of a given CSD.

<ESMA\_QUESTION\_CSDC\_33>

**3.1.11 CSDs’ public disclosure on settlement fails**

1. Do you agree with the proposed amendments to Table 1 of Annex III of CDR 2018/1229 to include information on the breakdown of the settlement fails per asset class? If not, please elaborate.

<ESMA\_QUESTION\_CSDC\_34>

 We have no view on the additional fields.

We request that ESMA commit to posting an aggregated and easily consumable version of this data. Whilst the TRV report is useful for assessing settlement efficiency trends, it does not contain the underlying data.

Having this underlying data will assist the industry in better assessing trends or target areas to improve settlement efficiency.

<ESMA\_QUESTION\_CSDC\_34>

1. Do you think that CSDs should publish additional information on settlement fails? If yes, please specify.

<ESMA\_QUESTION\_CSDC\_35>

We think the CDR should include an obligation for ESMA to consolidate the data from the CSDs and to publish it.

Having the CSDs publish information is unlikely to reach investment firms as they are not direct CSD member firms. If ESMA were to ingest, consolidate and report this data instead it would represent a much more digestible and usable data set.

<ESMA\_QUESTION\_CSDC\_35>

1. Should the frequency of publication of settlement fails data by CSDs increase? Which should be the right frequency?

<ESMA\_QUESTION\_CSDC\_36>

No IA response

<ESMA\_QUESTION\_CSDC\_36>

**3.2.1 Unique transaction identifier (UTI)**

1. Do you agree that the use of UTI should not be made mandatory through a regulatory change?

<ESMA\_QUESTION\_CSDC\_37>

The use of UTI should not be mandated. While some firms may find it appropriate to use UTI, other firms reported concerns that there was an insufficient business case to merit the cost of their introduction. It should be left up to individual firms to determine how to approach this.

<ESMA\_QUESTION\_CSDC\_37>

1. What are your views on the use of UTI in general and in the case of netted transactions specifically?

<ESMA\_QUESTION\_CSDC\_38>

As noted above, we do not believe the use of UTI should be mandated. Members did not note specific use cases for netted transactions.

<ESMA\_QUESTION\_CSDC\_38>

**3.2.2 SSIs format**

1. Should the market standards for the storage and exchange of SSIs be left to the industry or is regulatory action at EU level necessary?

<ESMA\_QUESTION\_CSDC\_39>

We agree with the emphasis placed on the storage and exchange of SSIs, and also agree that it should be left to industry to improve.

Similar to question 7, the IA encourages efforts to automate and standardise these processes, and to ensure all relevant data fields are included to allow for T+1 transition.

<ESMA\_QUESTION\_CSDC\_39>

**3.2.3 Place of settlement (PSET) as mandatory field of written allocations**

1. How can the PSET contribute to improve settlement efficiency and reduce settlement fails? Do you have suggestions on how to make the use of PSET more consistent across the market? If yes, please elaborate.

<ESMA\_QUESTION\_CSDC\_40>

For EU T+1 settlement, determining the place of settlement (PSET) for a given transaction will be one of the key areas to improve for investment managers and for the wider industry more generally.

We agree that mismatches between PSETs remain a challenge and one of the primary causes for an investment manager to suffer a cash penalty.

We have received varying views as to whether PSET should be a mandatory field for written allocations.

Some firms saw mandatory PSET usage as being a key step towards the wider goal of improving efficiency and settlement discipline.

However, others noted that currently there is not a consistent or universally adopted process for custodian banks to advise where securities are kept (PSAF) such that buy-side firms are able to consistently report the place of settlement when instructing.

Instead, we think ESMA and industry associations could have a role in educating and incentivising firms to improve their PSET/PSAF processes. This includes encouraging buy-side firms to ingest the PSAF where possible and reconcile it back and to encourage sell-side firms and custodians to develop a better more standardised framework to provide PSAF information.

We also think it would be useful for ESMA to undertake a review of the process to realign securities between EU CSDs and ICSDs. For T+1 settlement in the EU to be a success, these processes ideally need to occur within a T+1 settlement timeframe at a minimum. For an investment manager that is reliant on their custodian network to initiate the realignment, this is not currently the case.

<ESMA\_QUESTION\_CSDC\_40>

1. Do you agree that the PSET should not be made a mandatory field of written allocations under Article 2(1) of CDR 2018/1229? If you have a different view, please elaborate.

<ESMA\_QUESTION\_CSDC\_41>

As noted above, we have received varying views from our members as to whether PSET should be a mandatory field.

Some firms saw mandatory PSET usage as being a key step towards the wider goal of improving efficiency and settlement discipline.

However, others noted that currently there is not a consistent or universally adopted process for custodian banks to advise where securities are kept (PSAF) such that buy-side firms are able to consistently report the place of settlement when instructing.

Instead, we think ESMA and industry associations could have a role in educating and incentivising firms to improve their PSET/PSAF processes.

<ESMA\_QUESTION\_CSDC\_41>

**3.2.4 Place of safe keeping (PSAF) and place of settlement (PSET) as mandatory fields of settlement instructions**

1. Do you agree that the decision to use the PSAF and the PSET in the settlement instructions should be left to the industry?

<ESMA\_QUESTION\_CSDC\_42>

We agree that the decision to use PSAF or PSET in settlement instructions should be left to the industry.

Should PSET be mandated as a pre-matching field, however, ESMA must mandate that PSAF information is passed down the settlement chain in an agreed format (preferably as a BIC as part of an MT 535.

Separately, the IA are looking to work with SWIFT to mandate the reporting of the PSAF on an MT535, though we understand there’s some opposition from custodians that don’t yet have the capability.

<ESMA\_QUESTION\_CSDC\_42>

1. What are the current market practices regarding the use of PSAF and PSET, in particular in the case of netting along the trading and settlement chain?

<ESMA\_QUESTION\_CSDC\_43>

IA members do not consider that the question of netting along the trading and settlement chain is applicable to investment managers.

<ESMA\_QUESTION\_CSDC\_43>

**3.2.5 Transaction type**

1. Do you agree that the transaction type should not become a mandatory matching field under Article 5(4) of CDR 2018/1229?

<ESMA\_QUESTION\_CSDC\_44>

We agree that the transaction type should not become a mandatory matching field under article 5(4) of CDR 2018/1229. It is not commonly used today and would create greater complexity and result in more settlement fails.

<ESMA\_QUESTION\_CSDC\_44>

1. Do you think the lists mentioned in Article 2(1)(a) and Article 5(4) of CDR 2018/1229 should be updated? If yes, please specify.

<ESMA\_QUESTION\_CSDC\_45>

We do not think that these fields need to be updated and amended.

<ESMA\_QUESTION\_CSDC\_45>

**3.2.6 Timing for sending settlement instructions to the securities settlement system (SSS)**

1. What are your views on whether market participants should send settlement instructions intra-day rather than in bulk at the end of the day?

<ESMA\_QUESTION\_CSDC\_46>

We are of the view that this question and its answer should be considered alongside question 1, which considers allocations and confirmation deadlines under a T+1 settlement transition.

We agree that market participants sending settlement instructions intra-day rather than in bulk at the end of the day will tend to have better settlement efficiency.

However we also see that this is up to individual industry participants to solve for. There are likely to be a number of process flows, client and timezone limitations that limit when a market participant could send a settlement instruction. Investment managers will also have some restrictions based on their custodians’ capabilities and cut-off deadlines.

As an example, firms in Europe may only get instructions from clients based in the Western US or South America late in the EU working day given that those clients are in a time zone 8-9 hours behind. Moreover, it will be very difficult for ESMA to legislate for and track adherence to such a requirement down the settlement chain.

More generally, although our member firms generally consider CSDR cash penalties as an additional cost and operational burden, they should serve as the natural incentive to improve settlement efficiency.

We agree with ESMA’s view that at this time it is not necessary to introduce intra-day deadlines for submission of settlement instructions.

<ESMA\_QUESTION\_CSDC\_46>

1. Do you consider it necessary to introduce a deadline for the submission of settlement instructions through a regulatory amendment to CDR 2018/1229? If yes, what should be such a deadline? Please provide arguments to justify your answers.

<ESMA\_QUESTION\_CSDC\_47>

We disagree with introducing a deadline for the submission of settlement instructions.

<ESMA\_QUESTION\_CSDC\_47>

**3.2.7 Alignment of CSDs’ opening hours, real-time/night-time settlement and cut-off times**

1. Do you agree that CSDs’ business day schedule should be left to the industry? If not, please elaborate.

<ESMA\_QUESTION\_CSDC\_48>

We believe that a consistent CSD business day schedule would make operating within EU markets more straightforward and simple.

Generally, most market participants will rely on a custodian to access EU markets, such that they will be subject to the custodian’s deadlines for DvP and FoP settlement. This creates a complex scenario where an investment firm may face ~20 different custodian deadlines across 20+ EU markets with differing deadlines, making it very difficult to track genuine market cut-offs when prioritising the settlement of failing transactions. Tracking settlement has become ever more important given cash penalties.

Homogeneity across CSD cut-offs will make investing in EU markets more straightforward. We encourage ESMA to amend CDR 2018/1229 to legislate for this.

We also see that there’s merit in further exploring the homogenisation of the DvP and FoP cut-offs across EU markets. A common occurrence with CSDR cash penalties is where a loan recall settles in the later FoP cut-off window but where the DvP cut-off has closed, resulting in a penalty despite the delivering party being sufficient. This will become even more challenging with securities lending in a T+1 settlement environment.

<ESMA\_QUESTION\_CSDC\_48>

1. What would be, in your view, the ideal business day schedule for CSDs taking also into account real-time settlement, night-time settlement and cut-off times? Should they be aligned? Please provide arguments.

<ESMA\_QUESTION\_CSDC\_49>

Our members suggest a cut-off time of 05.59 CET for DvP and FoP would be best. This aligns with the UK approach to ensure improved consistency.

More broadly, we note that the goal should be to harmonise timings in order to facilitate settlement across the business day and to minimise having to manage multiple business day schedules to the best extent possible.

We urge CSDs to work closely with clients and if necessary to amend deadlines to facilitate T+1 settlement.

<ESMA\_QUESTION\_CSDC\_49>

**3.2.8 Shaping**

1. Do you agree that shaping should be adopted as best practice? If you do not agree and believe that it should be adopted as regulatory change, please indicate which should be the most adequate size to shape transactions per type of financial instrument.

<ESMA\_QUESTION\_CSDC\_50>

We are of the view that the EU T+1 taskforce should assess whether this is a necessary best practice or regulatory change.

<ESMA\_QUESTION\_CSDC\_50>

**3.2.9 Automated securities lending**

1. Do you see the need for a regulatory action in this area? If yes, please elaborate.

<ESMA\_QUESTION\_CSDC\_51>

Additional automation will be crucial in order to ensure deadlines are met. However there are costs and operational challenges to automated securities lending.

We are of the view that the EU T+1 taskforce should conduct further analysis to determine whether regulatory change is needed in this area.

<ESMA\_QUESTION\_CSDC\_51>

**3.2.10 Other proposals regarding settlement discipline measures and tools to improve settlement efficiency**

1. Do you have other proposals regarding settlement discipline measures and tools to improve settlement efficiency in areas not covered in the previous sections? Please give examples and provide arguments and data where available. If relevant, please also include the specific proposed amendments to CDR 2018/1229.

<ESMA\_QUESTION\_CSDC\_52>

A concern arising from the North American T+1 is that deadlines set by settlement service providers are overly onerous for non-US firms seeking T+1 settlement. We encourage regulators to work closely with settlement service providers to ensure that deadlines are sufficient to allow timely facilitation of transactions.

<ESMA\_QUESTION\_CSDC\_52>

**3.2.11 Costs and Benefits**

1. For all the topics covered in this CP please provide your input on the envisaged costs and benefits using the table below. Please include any operational challenges and the time it may take to implement the proposed requirements. Where relevant, additional tables, graphs and information may be included in order to support the arguments or calculations presented in the table below.

|  |  |
| --- | --- |
| **ESMA or respondent’s proposal**  |   |
|   | **Qualitative description** | **Quantitative description/ Data** |
| **Benefits** |  |   |
| **Compliance costs:****- One-off****- On-going** |  |   |
| **Costs to other stakeholders** |  |   |
| **Indirect costs** |  |  |

<ESMA\_QUESTION\_CSDC\_53>

<ESMA\_QUESTION\_CSDC\_53>