

# **Response Form to the Consultation Paper on the amendment of Article 19 of CSDR RTS on Settlement Discipline**



## Responding to this paper

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

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

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

### Instructions

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

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

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

### Data protection

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



**Who should read this paper**

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



## General information about respondent

Name of the company / organisation	European Central Securities Depositories Association (ECSDA)
Activity	Other Financial service providers
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Belgium



## Questions

**Q1 Do market participants support removing the special process of collection and distribution of penalties by CCPs for cleared transactions? Please provide justifications, if possible supported by quantitative data.**

<ESMA\_QUESTION\_SETD\_1>

### **Introduction / general remarks**

ECSDA welcomes the [ESMA initiative of consulting the relevant stakeholders on the change of the dedicated penalties collection and distribution process for cleared transactions](#), as currently foreseen under Article 19 of Commission Delegated Regulation (EU) 2018/1229 (CDR).

ECSDA is generally supportive of the ESMA proposal. In addition, the following elements are essential for CSDs:

- that further light is shed on the interaction between CSDR Article 7(11) and the changed Article 19 (and eventually, recital 22),
- receiving the information on the timeline for the entry into force of the regime as soon as possible, and
- that the date of activation of the regime is foreseen on the first business day of the month.

*In the interest of clarity, we suggest structurally clarifying the treatment of CCP transactions and penalties in CSDR itself, ideally as part of the CSDR Refit exercise.*

### **ECSDA feedback to Q1**

**ECSDA Members are supportive of the change of the current special process of collection and distribution of penalties by CCPs for cleared transactions.**

ECSDA believes that stakeholders involved in the collection and redistribution of cash penalties would benefit from the introduction of a mechanism for failed settlement penalties payments that would be as coherent as possible for cleared and non-cleared transactions. This view is aligned with the previous EACH and ECSDA position paper highlighting the benefits of the removal to the maximum extent of the differences between the processes described in CDR Articles 17 and 19, and has been confirmed by our practical experience.

**The purpose of the amendment to CDR Article 19 should be to no longer differentiate between CCP transactions and other transactions settlement in a CSD. Accordingly and for the sake of simplicity and clarity, we believe that the changes in Article 19 should, ultimately, be reflected in level 1 (Article 7(11)).**

Finally, as a consequence of more aligned processes for collection and distribution of penalties for cleared and non-cleared transactions, CSDs are not expecting to see significant differences in the number of transactions subject to the regime.

<ESMA\_QUESTION\_SETD\_1>

**Q2 Do market participants support amending Article 19 of the CDR on Settlement Discipline as suggested in Annex IV? Please provide justifications, if possible supported by quantitative data.**

<ESMA\_QUESTION\_SETD\_2>

ECSDA supports the amendment of Article 19 as proposed by ESMA in the consultation. We would however recommend staying closer to the drafting of the current CSDR Article 7(11). Article 7(11) states that the penalties (and buy-in) process “*shall not apply to failing participants which are CCPs*”. This drafting is broadly reflected in the current text of the CDR (recital 22 and Article 19) which refers to “*where the failing or receiving participant is a CCP*”. The proposal from ESMA to refer to “*transactions cleared by a CCP*” in CDR Article 19 may create confusion about whether this effectively addresses the full scope of CSDR Article 7(11) or not.

In line with our comment in response to Q1, we suggest continuing to use the existing terminology and referring to CCPs as failing or receiving participants in this context. Please see our proposal below.

**Article 19 - Penalty mechanism ~~for transactions cleared by a CCP~~ where the participant is a CCP**

**~~“With respect to settlement fails related to transactions cleared by CCPs~~ Where the failing or the receiving participant is a CCP,**

**(a) CSDs shall:**

- (i) calculate and apply the cash penalties in accordance with Article 16;
- (ii) collect from and distribute to their participants the net amount of cash penalties in accordance with Article 17; **and**
- (iii) manage costs relating to the application of the cash penalties mechanism to such transactions in accordance with Article 18.

**(b) CCPs may allocate to their clearing members the net amount of penalties, credit or debit, received from or paid to the other CSD participants pursuant to point (a). In such cases, CCPs shall establish relevant mechanism in their rules.”**

As indicated in our response to Q1, ECSDA is not providing quantitative data on the ESMA amendment proposals.<ESMA\_QUESTION\_SETD\_2>

**Q3 Do market participants support delaying the application of the envisaged amendment by six months after the publication of the amending RTS in the Official Journal of the EU? If not, what would be appropriate implementation period in your view? Please provide explanations.**

<ESMA\_QUESTION\_SETD\_3>



Although we cannot commit on behalf of specific ECSDA Members, ECSDA CSDs generally support a minimum six-month delay after the publication of the changes in the EU Official Journal for the actual implementation of the change.

As highlighted by ECSDA in previous exchanges, some CSDs would appreciate having twelve months, due to internal governance and IT releases schedule. In this context, ECSDA would appreciate for ESMA to provide an indicative timing for the publication of the amendment in the Official Journal as soon as possible.

Moreover, it is essential that ESMA specifies that the implementation date of the new regime considers the monthly penalties lifecycle. **The change should be implemented as of the first business day of the month for any settlement fails in the scope of CDR that occurred on that day and after.** This will avoid the need to maintain and apply multiple penalties reporting and payment mechanisms in the same month (for which the current systems are not conceived).

<ESMA\_QUESTION\_SETD\_3>