

# 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](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\_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](http://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](#)'.

## **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	European Central Securities Association (ECSDA)
Activity	Other
Are you representing an association?	<input checked="" type="checkbox"/>
Country / Region	Belgium

## 2 Questions

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

<ESMA\_QUESTION\_CR&E\_1>

ECSDA appreciates the intention to improve the understanding of cross-border activities. The CSDs are considering the efforts to maintain and develop the cross-border links essential for a fully-fledged and functional CMU. From that perspective, an efficient regulatory regime is instrumental. We, therefore, highly value the efforts of authorities to improve it and the possibility to contribute to the consultation by providing our views.

The network of relayed links is a rather widespread structure used by CSDs to support cross-border settlement in line with market needs. The links are assessed by central banks when used by the latter for monetary policy transactions. For example, the ECB does it according to the current “ECB Guideline for eligibility of links for Eurosystem credit operations”.

A clear mapping of relayed links can be useful to complement the understanding of how cross-border settlement takes place in the EEA and to reflect on the stability of the number of links in the market as lastly assessed by ESMA in its report on cross-border services under CSDR. ECSDA is pleased to share with the authorities the Links matrix that we produce annually.

However, it is not entirely clear how data on settlement instructions settled via relayed links can be useful to complement the dimensioning of a CSD’s cross-border activity. In line with the definition reported in the consultation paper, relayed links are composed of two (or more) direct (standard or customised) links of the intermediary CSD with each of the other involved CSDs. Therefore, the information requested on relayed links is already included in the reporting

concerning the direct links composing the relayed link. As a consequence, clarity is needed as to how data on the number and value of settlement instructions settled via relayed links are to be reported to avoid double counting. In addition, given the structure of relayed links, it is not clear which CSD is requested to report the information as not all CSDs in the chain are necessarily aware of the existence of the relayed link.

It should also be noted that the request to provide information on the value of settlement instructions is not included in existing reports on links that CSDs are requested to provide to the respective NCAs.

Finally, we would like to underline that adding such information would require significant costs to investigate and amend the relevant queries and workflows as well as IT development costs, even though the percentage of the settlement activity on relayed links is at this stage minor.

**In conclusion, given the above and the principle of proportionality, we recommend calibration of the requirements allowing a clear mapping of relayed links and excluding the information on the value of settlement instructions.**

<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>

ECSDA welcomes the intention to streamline the review and evaluation process, in line with the objective of CSDR Refit and generally agrees with the proposed amendments.

However, it is recommended to carefully design the reporting obligations based on the principle of proportionality, ensuring consistency and avoiding duplications with other reporting workflows, improving the clarity and structure of the text of the regulation.

For example, the information on the “jurisdiction of incorporation” (the term “country of incorporation” is also used in CSDR that we understand should have the same meaning) of participants, issuers and linked CSDs is already provided by the CSDs according to other rules and should be available in ESMA’s database. Specifically:

- 1) the information aimed at identifying the linked CSD and the type of link requested in the proposed art. 42 (I) concerning data on links is already provided by the CSDs when the link is authorised. Similarly, the information concerning the jurisdiction of

incorporation of participants is provided for the assessment of the substantial importance of the CSD.

- 2) Other details concerning participants requested under the proposed art. 42, such as the country where the branch of the participant is located (in other cases, the word “country of operation” is used) are not available in the current CSDs databases. This is because the contractual counterparty undertaking all obligations and liabilities towards the CSDs is the legal entity with legal capacity. We suggest clarifying the purpose of collecting such information from CSDs and leveraging the existing information available to competent authorities.
- 3) The classification of participants that CSDs are required to follow and report according to the proposed art. 42 might lead to divergent interpretations when compared to the classification currently applied by CSDs (e.g., public authorities and publicly guaranteed undertakings). This should be clarified, taking into account existing categorisations and that participants can have multiple licences and fall within multiple categories. Also in this case, given that the new categorisation will need to be implemented in the CSDs’ systems and queries, it should be investigated whether such information can be more easily retrieved from the ESMA databases, being already available, especially for regulated entities. It should be noted that the implementation efforts would go beyond IT developments. This is because “type” represents a new classification that would need to be collected from all participants and built into the CSD reference data system, which means considerable effort for operational teams regarding data gathering and system development.

The summary of the types of manual intervention performed by the CSD seems 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. However, in respect to settlement, such information should be already available. Hence, the scope and purpose of such information shall be clarified, and otherwise reporting of any manual intervention is not deemed by us relevant and proportionate requirement, supportive of the efficient and globally competitive regulatory regime.

The information concerning the change in the CSD’s risk management framework impacting the calculation of capital requirements under Article 47 of Regulation (EU) 909/2014 (art. 40) seems to be included in the information reporting item related to risk management, capital requirements and recovery plan.

In respect of the information list to be shared with the relevant authorities to support the reinforced consultation procedure introduced in level 1, ECSDA recommends further evaluating whether certain information, such as information on business risk, is significant for

the relevant authorities in that context, to preserve the smoothness and timeliness of the enhanced consultation process.

Moreover, ECSDA recommends full alignment with reporting deriving from other legislations such as DORA (Regulation (EU) 2022/2554), specifically mentioned in the consultation. The information that CSDs will be requested to provide within the review and evaluation on how they manage their ICT-related risks under DORA shall not differ from the information required according to DORA.

In respect of the specification of the possibility for competent authorities to request certain information items on a more frequent basis, we wonder whether such specification is necessary, given the existing powers and competence of NCAs and whether such specification would not prejudice the objective to have a less burdensome review and evaluation process envisaged by level 1.

Finally, in order to include the additional information in the reporting workflows, IT developments as well as adaptations of processes and queries will be necessary, requiring on average a change management period of more than one year from the coming into force of the new RTS.

<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>

<ESMA\_QUESTION\_CR&E\_3>