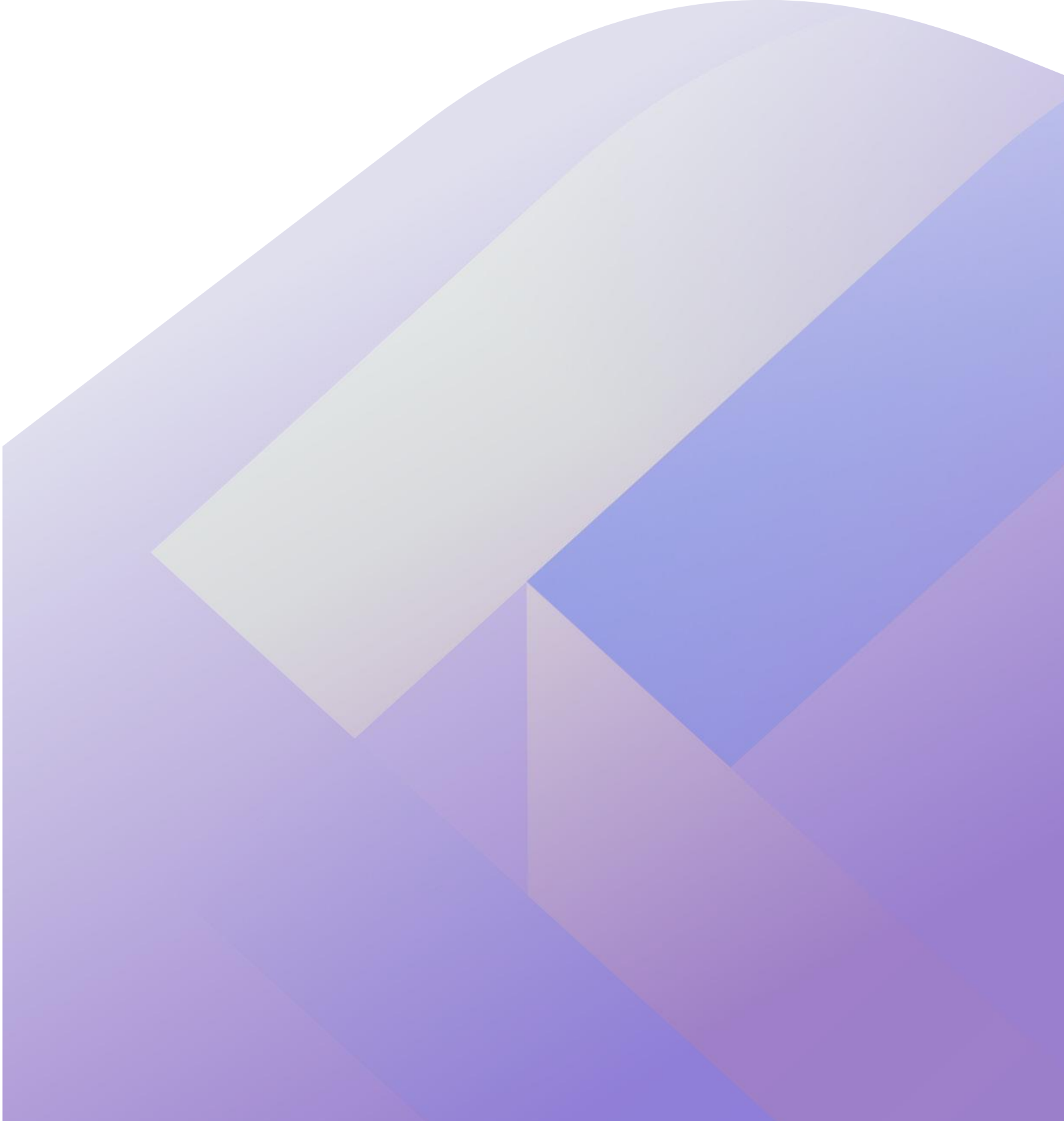


Reply Form

**to the Consultation Paper on Technical Advice on the
Scope of CSDR 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 **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_SETD_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_ SETD_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP1_ SETD_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	European Central Securities Depositories Association (ECSDA)
Activity	Other
Are you representing an association?	<input checked="" type="checkbox"/>
Country / Region	Belgium

2 Questions

Q1 Do you agree with ESMA’s proposal regarding the underlying causes of settlement fails that are considered as not attributable to the participants in the transactions? Please specify which cases you agree with and which cases you don’t agree with (if applicable). Please justify your answer and provide examples and data where available.

<ESMA_QUESTION_SETD_1>

Considering the current practice applied by CSDs in line with the “ECSDA Penalties Framework”, we generally support ESMA’s proposal to focus on transactions and data that are truly relevant regarding settlement and financial risk aspects and specify settlement fails that are considered as “not attributable to the participants in the transactions”.

To ensure a smooth application of any changes to the current set-up, sufficient lead time must be granted to all stakeholders so that their IT department can implement and enact any system changes.

Although the general approach makes sense to us, we disagree with the proposal regarding the ISIN suspension from trading, unless the approach to be taken is acknowledged by ESMA, i.e. CSDs will have to continue to rely on the “tradable” ISINs listed in the ESMA FIRDS database to identify those ISINs in the scope of the SDR. Should suspended ISINs be out of SDR scope, all relevant Trading Venues must ensure that such ISINs listed in FIRDS are labelled as “invalid” or do not appear at all. Otherwise, it would be practically impossible and unreasonable

for CSDs and T2S to consider trading suspension as not attributable to the participants in case of settlement fails. As a result, penalties would continue to be applied and no appeals would be accepted by CSDs (same as already today and as stated in the ECSDA Penalties Framework).

In addition, it should be considered that the suspension of ISIN from trading venues does not trigger per se the exclusion of ISIN from the scope of settlement discipline according to Article 7. Indeed, ISIN would still be eligible for settlement and therefore there could be fails in settlement instructions related to OTC trading. In our view only ISIN delisted or excluded from trading should be considered out of scope.

We agree instead to exclude the following:

- I. ISIN suspension from the settlement due to a reconciliation issue;
- II. settlement instructions involving cash settlement outside the securities settlement system operated by the CSD if, on the respective day, the relevant payment system is closed for settlement;
- III. technical impossibilities at the CSD level that prevent settlement, such as a failure of the infrastructure components, a cyber-attack, network problems, or technical (IT) issues in the system of the CSD;
- IV. settlement instructions involving securities under sanctions or anti-money laundering proceedings ;
- V. settlement instructions put on hold due to the order issued by a court, the police or a similar authority with the relevant mandate.

<ESMA_QUESTION_SETD_1>

Q2 ESMA would like to ask for the stakeholders' views on the costs and benefits of the implementation of the respective exemptions from settlement discipline (based on the underlying causes of settlement fails that are considered as not attributable to the participants in the transactions). 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's proposal - underlying causes of settlement fails that are considered as not attributable to the participants in the transactions		
	Qualitative description	Quantitative description/ Data
Benefits		
Compliance costs: - One-off - On-going		
Costs to other stakeholders		
Indirect costs		

<ESMA_QUESTION_SETD_2>

N.A. for ECSDA.

<ESMA_QUESTION_SETD_2>

Q3 Do you have other suggestions regarding the underlying causes of settlement fails that are considered as not attributable to the participants in the transactions? Please justify your answer and provide examples and data where available.

<ESMA_QUESTION_SETD_3>

See our feedback to Q1

<ESMA_QUESTION_SETD_3>

Q4 If you have answered yes to the previous question, 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.

Respondent's proposal (if applicable)		
	Qualitative description	Quantitative description/ Data
Benefits		
Compliance costs: - One-off - On-going		
Costs to other stakeholders		
Indirect costs		

<ESMA_QUESTION_SETD_4>

N.A. for ECSDA.

<ESMA_QUESTION_SETD_4>

Q5 Do any of the exemption proposed above breaks the immunization principle? Please provide arguments.

<ESMA_QUESTION_SETD_5>

All the examples mentioned above may break the immunisation principle but given the limited occurrences, we consider them as acceptable.

<ESMA_QUESTION_SETD_5>

Q6 Which of the exemptions proposed above do you think can be filtered out before penalties are applied in an automated way? And which ones can only be exempted ex-post, as part of the already existing appeal mechanism at CSDs?

Please provide details regarding the cost for ex-ante filtering compared to ex-post exemption via the appeal mechanism.

<ESMA_QUESTION_SETD_6>

For the CSDs' penalty mechanisms, ex-ante exemptions can be applied for all items listed in Q1 and Q3 except "technical impossibilities at the CSD level" and "trading suspension" (unless relevant ISINs are removed from the ESMA FIRDS database).

The above-mentioned instances are already managed by CSDs and a process is in place as per ESMA Q&As, therefore, we do not see the benefits of changing the ways these scenarios are handled by the CSDs.

<ESMA_QUESTION_SETD_6>

Q7 For exemptions that can be filtered out in advance, do you think that a CSD would prefer to implement this filter or not? Also considering the very large number of appeals they might have to deal with and also the costs it will entail.

<ESMA_QUESTION_SETD_7>

A cost-benefit analysis should be carried out by CSDs in order to assess the impact of any change to be implemented.

The Ex-ante exemption must be the rule, where possible, to avoid manual intervention across all stakeholders. "Appeals" must remain restricted to rare exception handling.

<ESMA_QUESTION_SETD_7>

Q8 Do you agree with ESMA's proposal regarding the circumstances in which operations are not considered as trading? Please specify which cases you agree with and which cases you don't agree with (if applicable). Please justify your answer and provide examples and data where available.

<ESMA_QUESTION_SETD_8>

We deem that no change should be introduced to the current process set-up, nevertheless, should any exemption be implemented it must not increase process complexity and risk.

Therefore, we would like to share the following considerations:

- From an operational perspective, the primary consideration is whether the type of operation proposed to be exempted: (i) can be identified unequivocally, and (ii) can be filtered ex-ante by the penalty mechanism (i.e. built into the design), in order to be operationally manageable given the potential volumes of instructions to exempt and to avoid any manual interventions.
- Each settlement instruction must be filled in with a securities transaction type code also called ISO transaction code, to identify the type of transaction/ operation it belongs to. However, this field in the settlement instruction is not a matching criterion. The usage of transaction-type codes can be restricted. As a result, BOTH settlement instructions of the receiving and delivering participant must contain the identical qualifier for CSDs to be able to apply for an SDR exemption.

<ESMA_QUESTION_SETD_8>

Q9 ESMA would like to ask for the stakeholders' views on the costs and benefits of the implementation of the respective exemptions from settlement discipline (based on the circumstances in which operations are not considered as trading). 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's proposal - circumstances in which operations are not considered as trading		
	Qualitative description	Quantitative description/ Data
Benefits		
Compliance costs: - One-off - On-going		
Costs to other stakeholders		
Indirect costs		

<ESMA_QUESTION_SETD_9>

N.A. for ECSDA.

<ESMA_QUESTION_SETD_9>

Q10 Do you have other suggestions regarding circumstances in which operations are not considered as trading? Please justify your answer and provide examples and data where available.

<ESMA_QUESTION_SETD_10>

We deem that no change should be introduced to the current process set-up, nevertheless, should any exemption be implemented, it must not increase process complexity and risk.

Please also refer to our response to Q8.

<ESMA_QUESTION_SETD_10>

Q11 If you have answered yes to the previous question, 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.

Respondent's proposal (if applicable)		
	Qualitative description	Quantitative description/ Data
Benefits		
Compliance costs: - One-off - On-going		
Costs to other stakeholders		
Indirect costs		

<ESMA_QUESTION_SETD_11>

N.A. for ECSDA

<ESMA_QUESTION_SETD_11>

Q12 Do any of the exemption proposed above breaks the immunization principle? Please provide arguments.

<ESMA_QUESTION_SETD_12>

Yes, most of the cases can break the immunization principle, as only applied to part of the chain.

<ESMA_QUESTION_SETD_12>

Q13 Which of the exemptions proposed above do you think can be filtered out before penalties are applied in an automated way? And which one can only be exempted ex-post, as part of the already existing appeal mechanism at CSDs?

Please provide details regarding the cost for ex-ante filtering compared to ex-post exemption via the appeal mechanism.

<ESMA_QUESTION_SETD_13>

As also stated in our response to Q8 and Q10, we deem that no change should be introduced to the current process set-up, nevertheless, should any exemption be implemented, it exemption be implemented it must not increase process complexity and risk.

Anyway, should these exemptions be implemented, we take the opportunity to restate that the identification transaction type code is not a matching criterion, while in our opinion the usage of an identical qualifier for both settlement instructions of the receiving and delivering parts would be needed to clearly identify transactions in or out of scope of penalties. However, introducing the transaction type code as a matching criterion would have a negative impact on the settlement efficiency rate, should this become a matching field.

<ESMA_QUESTION_SETD_13>

Q14 For exemptions that can be filtered out in advance, do you think that a CSD would prefer to implement this filter or not? Also considering the very large number of appeals they might have to deal with and also the costs it will entail.

<ESMA_QUESTION_SETD_14>

Please refer to our responses to Q8, Q10 and Q13.

<ESMA_QUESTION_SETD_14>

Q15 Which transaction types based on the codes allowed by T2S (or potentially other codes such as ISO transaction codes) should be exempted from settlement discipline measures? Please provide the codes, their definition and arguments to justify the exemption.

<ESMA_QUESTION_SETD_15>

Please refer to our feedback on the previous question (Q14).

<ESMA_QUESTION_SETD_15>