

Reply Form

**to the Consultation Paper on Technical Advice on
CSDR Penalty Mechanism**

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 **29 February 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_CSDR_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_CSDR _nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP1_CSDR _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	The Swedish Securities Markets Association
Activity	Associations, professional bodies, industry representatives
Are you representing an association?	<input checked="" type="checkbox"/>
Country / Region	Sweden

2 Questions

Q1 Do you agree with ESMA's proposal? Which Option is preferable in your view? Please also state the reasons for your answer.

<ESMA_QUESTION_CSDR_1>

Given the very low number of currencies affected, option 3 seems most cost-efficient. Option 3 is the one that most resembles the solution that is currently used in practice, which, in our opinion, works well.

We would advise against using option 4, since it would entail extensive changes to the current well-functioning practice. We do not really see how option 4 would work in practice.

<ESMA_QUESTION_CSDR_1>

Q2 Do you have other suggestions? If yes, please specify and provide arguments.

<ESMA_QUESTION_CSDR_2>

We do not have alternative suggestions. We would like to add that as per the ECSDA CSDR penalties framework, penalties are calculated on RVP instructions that cause a fail, regardless if this is due to lack of cash. When the RVP instruction is the so-called failing instructions, this is generally due to late matching or the instruction being on hold, not lack of cash. Lack of cash

is generally only an issue for a limited period during a settlement day in a CSD settlement system.

<ESMA_QUESTION_CSDR_2>

Q3 Do you agree with the approach followed for the Option you support to incorporate proportionality in the Technical Advice? If not, please provide an indication of further proportionality considerations, detailed justifications and alternative wording as needed.

<ESMA_QUESTION_CSDR_3>

Yes, we agree with the approach followed for Option 3.

<ESMA_QUESTION_CSDR_3>

Q4 What costs and benefits do you envisage related to the implementation of each Option? 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_QUESTION_CSDR_4>

Option		
	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_4>

Q5 As a CSD, do you face the issue of accumulation of reference data related to Late Matching Fail Penalties (LMFPs), that may degrade the functioning of the securities settlement system you operate? If yes, please provide details, including data where available, in particular regarding the number and value of late matching instructions, as well as for how many business days they go in the past from the moment they are entered into the securities settlement system, and the percentage they represent compared to the overall number and value of settlement fails on a monthly basis (please use as a reference the period June 2022 – June 2023).

<ESMA_QUESTION_CSDR_5>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_5>

Q6 What are the causes of late matching? How can you explain that there are so many late matching instructions? What measures could be envisaged in order to reduce the number of late matching instructions?

<ESMA_QUESTION_CSDR_6>

Some causes of late matching that we have identified are: lack of securities of the underlying client that may cause a delivery instruction to not be sent, incorrect SSIs, delays in the settlement chain, and that cross border instructions often settle late.

The SSMA represents CSD participants, and is not a CSD, but from our members perspective it seems that one of the primary causes of late matching is that matching is attempted but not successful. Today there is a problem with the late matching fail penalties, and who is penalised. If the reason for failing is incorrect SSIs from both sides, only one part will be subject to penalties, which leads to discussions regarding which party is going to change first. An example of this is when settlement instructions are sent to the CSD before end of the intended settlement day, but the instructions do not match. This leads to one or both of the settlement instructions requiring cancellation and replacement with further possible issues with regards to which counterparty should send the replacement instruction that will be deemed the one that caused the fail. Improvements with regards to post-trade pre-settlement processes such as use of the UTI and SSI solutions could have substantial effect to reduce failure to match on time. In other cases, one or both of the settlement instructions are sent late (without first having been cancelled and replaced) due to issues in allocation or (in the case of delivery instructions) lack of support for hold & release in some part of chain of intermediaries. In all cases, increased support for both sending and receiving/using allegements and so-called “close” or “near”-matching reporting could also be beneficial.

It would help with earlier detection regarding why instructions do not match. If more market participants would use tools such as, for example CTM for pre-matching, Alert for SSI, or Swift for UTI tracking / monitoring, this might reduce the late matching issues.

<ESMA_QUESTION_CSDR_6>

Q7 Do you agree with ESMA’s proposal to establish a threshold beyond which more recent reference data shall be used for the calculation of the related cash penalties to prevent the degradation of the performance of the systems used by CSDs? Please also state the reasons for your answer.

<ESMA_QUESTION_CSDR_7>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_7>

Q8 Do you agree with the threshold of 92 business days or 40 business days in order to prevent the degradation of the performance of the systems used by CSDs? Please specify which threshold would be more relevant in your view:

a)92 business days;

b)40 business days;

c)other (please specify).

Please also state the reasons for your answer and provide data where available, in particular regarding the number and value of late matching instructions that go beyond 92 business days, 40 business days in the past or another threshold you think would be more relevant, and the percentage they represent compared to the overall number and value of settlement fails on a monthly basis (please use as a reference the period June 2022 – December 2023).

<ESMA_QUESTION_CSDR_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_8>

Q9 Do you agree that the issuer CSD for each financial instrument shall be responsible for confirming the relevant reference data to be used for the related penalties calculation? Please also state the reasons for your answer.

<ESMA_QUESTION_CSDR_9>

The SSMA is not a CSD, but from a CSD participant and client perspective we do not quite understand why an issuer CSD should provide this for transactions in an investor CSD's system or between two investor CSDs.

There have been occurrences where the relevant CSDs have not had complete and accurate data. The optimal solution would be to have a single source from which all CSDs could retrieve the reference data.

<ESMA_QUESTION_CSDR_9>

Q10 In your view, where settlement instructions have been matched after the intended settlement date, and that intended settlement date is beyond the agreed number of business days in the past, the use of more recent reference data (last available data) for the calculation of the related cash penalties should be optional or compulsory? Please also state the reasons for your answer.

<ESMA_QUESTION_CSDR_10>

Representing CSD participants, or clients of CSD participants, across the EU/EEA, we believe that any solution should be implemented in the same manner in all CSDs. Accordingly, the same rule should apply to all CSDs, rather than having some CSDs use data older than a set time, while others do not.

<ESMA_QUESTION_CSDR_10>

Q11 Do you have other suggestions? If yes, please specify, provide drafting suggestions and provide arguments including data where available.

<ESMA_QUESTION_CSDR_11>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_11>

Q12 Do you agree with the approach followed to incorporate proportionality in the Technical Advice? If not, please provide an indication of further proportionality considerations, detailed justifications and alternative wording as needed.

<ESMA_QUESTION_CSDR_12>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_12>

Q13 What costs and benefits do you envisage related to the implementation of the approach proposed by ESMA? 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_QUESTION_CSDR_13>

Approach proposed by ESMA	
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	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_13>

Q14 If applicable (if you have suggested a different approach than the one proposed by ESMA), please specify the costs and benefits you envisage related to the implementation of the respective approach. 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_QUESTION_CSDR_14>

Approach proposed by respondent (if applicable)		
	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_14>

Q15 Based on your experience, what has been the impact of CSDR cash penalties on reducing settlement fails (by type of asset as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389 since the application of the regime in February 2022? Please provide data and arguments to justify your answer.

<ESMA_QUESTION_CSDR_15>

It is difficult to determine the effect of penalties when other changes were implemented by many participants and intermediaries at the same time, or in the few months prior, to when the CSDR penalties provisions came into effect. Increases in use and support of partial settlement and hold & release, including partial release, have surely had significant effects as well. That said, we believe penalties have resulted in some improvement of the CSDs' settlement rates.

The SSMA thinks that it is very good that different efforts to reduce settlement fails have been and continues to be made, by both the regulator and market participants. Cash penalties is one of the tools that can help reducing the settlement fails and is, together with partial settlement, partial release and hold & release, in our opinion, a better tool than e.g. introducing mandatory buy-ins. We would however like to advise ESMA and the regulator to refrain from introducing any major changes to the current regime at this point. If we want to see a reduction of settlement fails soon, it is preferable to make adjustments to the mechanism that is already in place. If penalty rates are to be increased, limited, stepwise increases of the current rates should be considered, rather than substantial changes to the current mechanism.

<ESMA_QUESTION_CSDR_15>

Q16 In your view, is the current CSDR penalty mechanism deterrent and proportionate? Does it effectively discourage settlement fails and incentivise their rapid resolution? Please provide data and arguments to justify your answer.

<ESMA_QUESTION_CSDR_16>

The implementation cost of the penalty mechanism in the CSDs, and the forwarding/reporting and payment of penalties in the chain of intermediaries, was high. The maintenance costs of

this are also high, both for CSDs and for participants and intermediaries. From that perspective, the proportionality can be questioned.

The penalty rates when the fail is caused by a settlement instruction that is a DVP, DF or RF are generally below the cost of borrowing the securities, provided borrowing the securities is even possible. In lower interest rate times, the penalties in a chain of transactions may differ if the failing instruction is an RVP (thus a penalty based on cash) in one transaction and the failing instruction in the others are DVP or DF (thus a penalty based on the value of the securities), which can be difficult to explain to the end investors and for them to accept.

While we do think that the introduction of the CSDR penalty mechanism has resulted in some improvement of the CSDs' settlement rates, we also acknowledge that the current penalty rates do not seem to be deterrent enough to have a significant effect on some players that recurrently cause a substantial part of the failing instructions. In our answer to other questions in this consultation, we do however recommend that, if penalty rates are to be increased, limited, stepwise increases of the current rates should be considered, rather than introducing progressive penalty rates or making other substantial changes to the current mechanism.

<ESMA_QUESTION_CSDR_16>

Q17 What are the main reasons for settlement fails, going beyond the high level categories: “fail to deliver securities”, “fail to deliver cash” or “settlement instructions on hold”? Please provide examples and data, as well as arguments to justify your answer.

<ESMA_QUESTION_CSDR_17>

Some of the reasons for settlement fails that we have identified are: instructions on hold, delays in the settlement chain, and that cross border instructions often settle late.

Please note that late matching fails should also be included in this, as matching issues may be completely separate from lack of securities, and we refer to our response to Q6.

With regards to settlement fails, in our view, “true” lack of cash over more than one settlement date is very unusual, in Sweden close to zero percent. Lack of cash as in temporary funding issues are generally solved within hours at most. If a CSD participant does not wish to accept the credit risk by a client's high-value RVP instruction, the instruction would most likely be placed on hold by the CSD participant. Lack of securities is often due to a transaction chain; delivery settlement instructions are generally covered, but the cover – whether a receipt due to a trade or a receipt due to a loan or transfer between accounts or even CSDs (cross-border)

– may in turn also be failing settlement. A delivery placed on hold is often caused by lack of securities in the underlying client’s account, though it can also be used to prioritise a specific delivery above another.

<ESMA_QUESTION_CSDR_17>

Q18 What tools should be used in order to improve settlement efficiency? Please provide examples and data, as well as arguments to justify your answer.

<ESMA_QUESTION_CSDR_18>

Due to different internal processes at different brokers, there can be a difference in where they are willing to settle the trade (ICSDs, local CSDs). This increases cross border settlement.

For reduction of late matching fails, please see our response to Q6. For reduction of settlement fails, the use of partial settlement, including partial release, is still possible to increase. Improvements of the CSDs’ partial settlement functionality may also be possible to achieve.

<ESMA_QUESTION_CSDR_18>

Q19 What are your views on the appropriate level(s) of settlement efficiency at CSD/SSS level, as well as by asset type? Please provide data and arguments to justify your answer.

<ESMA_QUESTION_CSDR_19>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_19>

Q20 Do you think the penalty rates by asset type as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389 are proportionate? Please provide data and arguments to justify your answer.

<ESMA_QUESTION_CSDR_20>

Yes, if the penalty rates in question are those that entered into force in 2022.

Some of the suggested changes in the consultation document would result in steep increases of the penalty rates, to a degree that is, in our opinion, unproportionate.

<ESMA_QUESTION_CSDR_20>

Q21 Regarding the proportionality of the penalty rates by asset type as foreseen in the Annex to Commission Delegated Regulation (EU) 2017/389, ESMA does not have data on the breakdown of cash penalties (by number and value) applied by CSDs by asset type. Therefore, ESMA would like to use this CP to ask for data from all EEA CSDs on this breakdown, including on the duration of settlement fails by asset type.

<ESMA_QUESTION_CSDR_21>

If CSDs are to provide breakdowns, we would like to stress the importance of them making sure to include information about the asset types and duration/age.

<ESMA_QUESTION_CSDR_21>

Q22 In your view, would progressive penalty rates that increase with the length of the settlement fail be justified? Please provide examples and data, as well as arguments to justify your answer.

<ESMA_QUESTION_CSDR_22>

While we, on a principal level, understand and can sympathise with the idea that it should be more expensive to fail for a longer period of time, introducing progressive penalty rates is, in our view, not a proportionate solution, since the changes required in relation to the already implemented penalty mechanism would be technically very complex and expensive for the CSDs to introduce.

In the analyses we have seen, most fails are resolved on ISD+1. Fails that persist over a long period of time make up a fairly limited percentage of the total number of fails. We believe progressive penalty rates should only be implemented after a thorough analysis, and provided that it can be determined that the cost of the implementation will be substantially lower than the effect on the settlement rate. Please note that the cost of implementation of the current CSDR penalties regime was very high, for both CSDs and intermediaries, but also for end investors (buy-side and sell-side). Additional changes require development (i.e. not simply changes in parameters) should only be implemented after thorough analysis.

Furthermore, introducing major changes, such as progressive penalty rates, would require quite a few years of work, hence it would take a fairly long time before it could render any results. If we want to see a reduction of settlement fails soon, a better solution would be to make adjustments to the mechanism that is already in place. If penalty rates are to be increased, limited, stepwise increases of the current rates should be considered, rather than substantial changes to the current mechanism.

<ESMA_QUESTION_CSDR_22>

Q23 What are your views regarding the introduction of convexity in penalty rates as per the ESMA proposed Option 2 (settlement fails caused by a lack of liquid financial instruments)? Please justify your answer by providing quantitative examples and data if possible.

<ESMA_QUESTION_CSDR_23>

As per our response to Q22, we believe that progressive penalty rates should only be implemented if an analysis shows that the positive effect on the settlement rate will outweigh the implementation cost compared to progressive rates without convexity. In our opinion, introduction of convexity will further increase the implementation cost. It would also give rise to rather complex questions about whether different scenarios would be subject to convexity in penalty rates or not (e.g. previously liquid shares that are no longer liquid, subscription rights, etc.).

We also believe that it should be easy to understand the calculations of penalty rates, and to explain the difference between asset classes and liquidity/illiquidity to customers.

<ESMA_QUESTION_CSDR_23>

Q24 Would it be appropriate to apply the convexity criterion to settlement fails due to a lack of illiquid financial instruments as well? Please justify your answer by providing quantitative examples and data if possible.

<ESMA_QUESTION_CSDR_24>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_24>

Q25 What are your views regarding the level of progressive penalty rates:

a) as proposed under Option 1?

b) as proposed under Option 2?

<ESMA_QUESTION_CSDR_25>

In both options, the levels are dramatically higher than current penalty rates. If penalty rates are to be increased, we believe a more limited increase of the current, non-progressive rates – i.e. changes to parameters, not requiring development – should be considered. If such increases do not have the desired effect, further increases or more complex changes requiring development after e.g. two years could be possible.

We also believe that it should be easy to understand the calculations of penalty rates, and to explain the difference between asset class, liquidity/illiquidity to customers.

<ESMA_QUESTION_CSDR_25>

Q26 If you disagree with ESMA’s proposal regarding the penalty rates, please specify which rates you believe would be more appropriate (i.e. deterrent and proportionate, with the potential to effectively discourage settlement fails, incentivise their rapid resolution and improve settlement efficiency). Please provide examples and data, as well as arguments to justify your answer. If relevant, please provide an indication of further proportionality considerations, detailed justifications and alternative proposals as needed.

<ESMA_QUESTION_CSDR_26>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_26>

Q27 What are your views regarding the categorisation of types of fails:

a) as proposed under Option 1?

b) as proposed under Option 2?

Do you believe that less/further granularity is needed in terms of the types of fails (asset classes) subject to cash penalties? Please justify your answer by providing quantitative examples and data if possible.

<ESMA_QUESTION_CSDR_27>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_27>

Q28 What costs and benefits do you envisage related to the implementation of progressive penalty rates by asset type (according to ESMA's proposed Options 1 and 2)? 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_QUESTION_CSDR_28>

Progressive penalty rates (by asset type) - ESMA's proposal Option 1	Please see ESMA's proposed Option 1 in Section 5.3 of this CP.	
	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Progressive penalty rates (by asset type) - ESMA's proposal Option 2	Please see ESMA's proposed Option 2 in Section 5.3 of this CP.	
	Qualitative description	Quantitative description/ Data

Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_28>

Q29 Alternatively, do you think that progressive cash penalties rates should take into account a different breakdown than the one included in ESMA's proposal above for any or all of the following categories:

- (a) asset type;
- (b) liquidity of the financial instrument;
- (c) type of transaction;
- (d) duration of the settlement fail.

If you have answered yes to the question above, what costs and benefits do you envisage related to the implementation of progressive penalty rates according to 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.

<ESMA_QUESTION_CSDR_29>

TYPE YOUR TEXT HERE

Progressive penalty rates – respondent's proposal <i>(if applicable)</i>		
	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_29>

Q30 Another potential approach to progressive penalty rates could be based not only on the length of the settlement fail but also on the value of the settlement fail. Settlement fails based on instructions with a lower value could be charged a higher penalty rate than those with a higher value, thus potentially creating an incentive for participants in settling smaller value instructions at their intended settlement date (ISD). Alternatively, settlement fails based on instructions with a higher value could be charged a higher penalty rate than those with a lower value. In your view, would such an approach be justified? Please provide arguments and examples in support of your answer, including data where available. What costs and benefits do you envisage related to the implementation of this approach? 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_QUESTION_CSDR_30>

In our opinion, both alternatives increase complexity and cost. Generally, for transactions with the same intended settlement date, the priority is to settle CCP transactions, then any other exchange/MTF transactions, then OTC (or equivalent) transactions to other/external counterparties, and finally OTC (or equivalent) transactions between two accounts of the same client. Including the value of the settlement fail into the “equation” will be difficult for the trading

parties, especially since the parties may not even control the settlement flow. An increased use of partial settlement could possibly achieve similar effects, for substantially less cost.

Progressive penalty rates – based on the length and value of the settlement fail	Settlement fails based on lower value settlement instructions could be charged a higher penalty rate than those based on higher value settlement instructions		Settlement fails based on higher value settlement instructions could be charged a higher penalty rate than those based on lower value settlement instructions	
	Qualitative description	Quantitative description/ Data	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_30>

Q31 Besides the criteria already listed, i.e. type of asset, liquidity of the financial instruments, duration and value of the settlement fail, what additional criteria should be considered when setting proportionate and effective cash penalty rates? Please provide examples and justify your answer.

<ESMA_QUESTION_CSDR_31>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_31>

Q32 Would you be in favour of the use of the market value of the financial instruments on the first day of the settlement fail as a basis for the calculation of penalties for the entire duration of the fail? ESMA would like to ask for the stakeholders' views on the costs and benefits of such a measure. 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_QUESTION_CSDR_32>

No, the SSMA is not in favour of using the market value of the financial instruments on the first day of the settlement fail as a basis for the calculation of penalties for the entire duration of the fail. There is a lack of analysis of the feasibility and effects of such a system, and our view is that it would be overly complex and lead to many questions (e.g. would it also be used for late matching fails? How should financial instruments that are not traded daily be treated?). Our view remains that the same mechanism should apply to all instruments to avoid complexity, and that costly revisions of the current regime should only be implemented if a thorough analysis shows that the benefits outweigh the costs.

Use the market value of the financial instruments on the first day of the settlement fail as a basis for the calculation of penalties for the entire duration of the fail		
	Qualitative description	Quantitative description/ Data

Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_32>

Q33 How should free of payment (FoP) instructions be valued for the purpose of the application of cash penalties? Please justify your answer and provide examples and data where available.

<ESMA_QUESTION_CSDR_33>

We do not fully understand the reasoning behind the question. FoP transactions are already in scope of penalties, based on the value of the underlying security.

We believe the ECSDA CSDR penalties framework is a reasonable interpretation of how the calculate penalties on receive free (RF) and deliver free (DF) settlement instructions. Our preference would be to amend the penalties that are currently considered as “lack of cash” to be the same as for “lack of securities”, but if this is not deemed possible, perhaps it should be considered to treat failing RF instructions the in the same way as failing RVP instructions?

<ESMA_QUESTION_CSDR_33>

Q34 Do you think there is a risk that higher penalty rates may lead to participants using less DvP and more FoP settlement instructions? Please justify your answer and provide examples and data where available.

<ESMA_QUESTION_CSDR_34>

No, we do not think there is such a risk and we do not understand the reasoning behind the question. Why would firms want to change from DvP to FoP, unless necessary, since it is a process which will make you reduce STP and increase settlement risk? Please see our response to Q33.

<ESMA_QUESTION_CSDR_34>

Q35 ESMA is considering the feasibility of identifying another asset class subject to lower penalty rates: “bonds for which there is not a liquid market in accordance with the methodology specified in Article 13(1), point (b) of Commission Delegated Regulation (EU) 2017/583 (RTS 2)”. The information on the assessment of bonds’ liquidity is published by ESMA on a quarterly basis and further updated on FITRS. However, ESMA is also aware that this may add to the operational burden for CSDs that would need to check the liquidity of bonds before applying cash penalties. As such, ESMA would like to ask for the stakeholders’ views on the costs and benefits of such a measure. 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_QUESTION_CSDR_35>

Applying lower penalty rates for illiquid bonds		
	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_35>

Q36 Do you have other suggestions for further flexibility with regards to penalties for settlement fails imposed on illiquid financial instruments? Please justify your answer and provide examples and data where available.

<ESMA_QUESTION_CSDR_36>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_36>

Q37 How likely is it that underlying parties that end up with “net long” cash payments may not have incentives to manage their fails or bilaterally cancel failing instructions as they may “earn” cash from penalties? How could this risk be addressed? Please justify your answer and provide examples and data where available.

<ESMA_QUESTION_CSDR_37>

We have so far not seen any indications of this, and find it difficult to believe that end investors would enter into contracts, trades etc. only to prefer to receive penalties rather than have the contracts or trades settle. For example, when a party declines to use partial settlement, they generally do so both when their instruction is the failing instruction (and thus is debited the penalty) and when it is the non-failing instruction.

<ESMA_QUESTION_CSDR_37>

Q38 How could the parameters for the calculation of cash penalties take into account the effect that low or negative interest rates could have on the incentives of counterparties and on settlement fails? Please provide examples and data, as well as arguments to justify your answer.

<ESMA_QUESTION_CSDR_38>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_38>

Q39 To ensure a proportionate approach, do you think the penalty mechanism should be applied only at the level of those CSDs with higher settlement fail rates? Please provide examples and data, as well as arguments to justify your answer. If your answer is yes, please specify where the threshold should be set and if it should take into account the settlement efficiency at:

- a) CSD/SSS level (please specify the settlement efficiency target);**
- b) at asset type level (please specify the settlement efficiency target); or**
- c) other (please specify, including the settlement efficiency target).**

<ESMA_QUESTION_CSDR_39>

No, we do not. The penalty mechanism should remain equal in all EU/EEA CSDs.

<ESMA_QUESTION_CSDR_39>

Q40 Please specify what costs and benefits you envisage regarding the application of the penalty mechanism only at the level of the CSDs with higher settlement fail rates. 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_QUESTION_CSDR_40>

Application of the penalty mechanism only at the level of CSDs with lower settlement fail rates		
	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_40>

Q41 Do you think penalty rates should vary according to the transaction type? If yes, please specify the transaction types and include proposals regarding the related penalty rates. Please justify your answer and provide examples and data where available. 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.

<ESMA_QUESTION_CSDR_41>

No, we do not see any benefits of varying the penalty rates according to the transaction type and think that it would increase the complexity of the penalty mechanism, which is not advisable.

To simplify the cash penalty mechanism, all corporate actions-related settlement instructions, e.g. PFODs and market claims – at least market claims on cash distributions – and those created by CSD systems for payment of corporate action events, should be out of scope of penalties.

Applying penalty rates by transaction types		
	Qualitative description	Quantitative description/ Data
Benefits	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Compliance costs: - One-off - On-going	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE
Costs to other stakeholders	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

Indirect costs	TYPE YOUR TEXT HERE	TYPE YOUR TEXT HERE

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_41>

Q42 Do you think that penalty rates should depend on stock borrowing fees? If yes, do you believe that the data provided by data vendors is of sufficient good quality that it can be relied upon? Please provide the average borrowing fees for the 8 categories of asset class depicted in Option 1. (i.e. liquid shares, illiquid shares, SME shares, ETFs, sovereign bonds, SME bonds, other corporate bonds, other financial instruments).

<ESMA_QUESTION_CSDR_42>

As a matter of principle, we understand and agree with the idea that it should be more expensive to fail, than to take a securities lending position – if the information could be sourced, and then used without additional cost. We do however not believe this to be the case, our view is that data vendors do not have sufficient data on lending fees. Hence, we advise against letting penalty rates depend on stock borrowing fees.

<ESMA_QUESTION_CSDR_42>

Q43 Do you have other suggestions to simplify the cash penalty mechanism, while ensuring it is deterrent and proportionate, and effectively discourages settlement fails, incentivises their rapid resolution and improves settlement efficiency? Please justify your answer and provide examples and data where available. 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.

<ESMA_QUESTION_CSDR_43>

To simplify the cash penalty mechanism, all corporate actions-related settlement instructions, e.g. PFODs and market claims – at least market claims on cash distributions – and those

created by CSD systems for payment of corporate action events should be out of scope of penalties.

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

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_43>

Q44 Based on your experience, are settlement fails lower in other markets (i.e USA, UK)? If so, which are in your opinion the main reasons for that? Please also specify the scope and methodology used for measuring settlement efficiency in the respective third-country jurisdictions.

<ESMA_QUESTION_CSDR_44>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_44>

Q45 Do CSD participants pass on the penalties to their clients? Please provide information about the current market practices as well as data, examples and reasons, if any, which may impede the passing on of penalties to clients.

<ESMA_QUESTION_CSDR_45>

We believe this is generally the case, with the possible exception of retail clients and the like, where intermediaries provide contractual settlement and hence the end investors are not affected by late matching or late settlement.

<ESMA_QUESTION_CSDR_45>

Q46 Do you consider that introducing a minimum penalty across all types of fails would improve settlement efficiency? Is yes, what would be the amount of this minimum penalty and how should it apply? Please provide examples and data, as well as arguments to justify your answer.

<ESMA_QUESTION_CSDR_46>

No, we do not believe this should be attempted. This adds complexity and cost, and could be very disproportionate for settlement transactions of low value.

<ESMA_QUESTION_CSDR_46>

Q47 What would be the time needed for CSDs and market participants to implement changes to the penalty mechanism (depending on the extent of the changes)? Please provide arguments to justify your answer.

<ESMA_QUESTION_CSDR_47>

This obviously depends on the changes to implement. If the only changes are increases of current penalty rates (i.e. could be accomplished by changes to existing parameters, rather than development), we believe the implementation timeline could be measured in months. The more complex changes would likely require several years.

Introducing major changes, such as progressive penalty rates, would require quite a few years of work, hence it would take a fairly long time before it could render any results. If we want to see a reduction of settlement fails soon, a better solution would be to make adjustments to the mechanism that is already in place. If penalty rates are to be increased, limited, stepwise increases of the current rates should be considered, rather than substantial changes to the current mechanism.

<ESMA_QUESTION_CSDR_47>

Q48 Since the application of the RTS on Settlement Discipline, how many participants have been detected as failing consistently and systematically within the meaning of Article 7(9) of CSDR? How many of them, if any, have been suspended pursuant to same Article?

<ESMA_QUESTION_CSDR_48>

To the best of our knowledge, none have been suspended.

<ESMA_QUESTION_CSDR_48>

Q49 In your view, would special penalties (either additional penalties or more severe penalty rates) applied to participants with high settlement fail rates be justified? Should such participants be identified using the same thresholds as in Article 39 of the RTS on Settlement Discipline, but within a shorter timeframe (e.g. 2 months instead of 12 months)? If not, what criteria/methodology should be used for defining participants with high settlement fail rates? Please provide examples and data, as well as arguments to justify your answer.

<ESMA_QUESTION_CSDR_49>

No, it would not. To a great extent, CSD participants act as settlement agents for clients, rather than simply managing their own trading activity. The penalties are thus often forwarded to clients, which in some cases are intermediaries themselves. Forwarding increased penalties (debits) to clients that did not cause the high fail rate of the CSD participant would likely be very difficult.

In addition, it is unclear who would receive such penalties. In the description in the consultation document, it says that the penalties should not be credited to the participant's counterparties, nor be an additional source of income for the CSD, but it is not specified who the intended recipient is. We cannot identify a suitable recipient.

<ESMA_QUESTION_CSDR_49>

Q50 How have CSDs implemented working arrangements with participants in accordance with article 13(2) of the RTS on Settlement Discipline? How many participants have been targeted?

<ESMA_QUESTION_CSDR_50>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_50>

Q51 Should the topic of settlement efficiency be discussed at the CSDs' User Committees to better identify any market circumstances and particular context of participant(s) explaining an increase or decrease of the fail rates? Please justify your answer.

<ESMA_QUESTION_CSDR_51>

Our view is that if there is a problem with settlement efficiency in a market, the topic is most likely discussed at the relevant CSD's User Committee already today. We do not see any need for regulatory requirements or clarifications in this area.

<ESMA_QUESTION_CSDR_51>