

Response Form to the Consultation Paper

Guidelines on Settlement Fails Reporting under Article 7(1) of CSDR



Responding to this paper

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

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

ESMA will consider all comments received by **20 February 2019**.

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:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_SFR_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. 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.
4. When you have drafted your response, name your response form according to the following convention: ESMA_SFR_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_SFR_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Consultation on Securitisation Repositories Application Requirements").

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.

The collection of confidential responses is without prejudice to the scope of Regulation (EC) No 1049/2001¹. Possible requests for access to documents will be dealt in compliance with the requirements and obligations laid down in Regulation (EC) No 1049/2001.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading Legal Notice

Who should read this paper

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest to central securities depositories (CSDs) as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014² (CSDR).

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, (OJ L 145, 31.5.2001, p. 43–48)

² Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1-72).

General information about respondent

Name of the company / organisation	Italian Association of Financial Markets Intermediaries - ASSOSIM
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Italy

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_SFR_1>

The Italian Association of Financial Markets Intermediaries - ASSOSIM welcomes the opportunity to provide the views of its members on the proposals presented by ESMA in this consultation paper.

Please, note that the present document was written in cooperation with the Italian Banking Association (ABI).

<ESMA_COMMENT_SFR_1>

Questions

1. : Do you have any comments or suggestions regarding the financial instruments which should be covered by the reports on settlement fails? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_1>

We invite ESMA to consider the opportunity to further clarify the potential implications of the withdrawal of the United Kingdom from the EU (Brexit) on UK CSDs in this specific regard.

In particular:

- 1) It would be extremely valuable to receive further guidance from ESMA regarding the implications (if any) that both the i) EC Implementing Decision (EU) 2018/2030 adopted on 19 December 2018 and ii) ESMA recognition decision of UK CSDs, could have in the context of this Guideline 1, in light of the fact that Guidelines 1 explicitly refer to items mentioned therein, namely «financial instruments that are initially recorded or centrally maintained in CSDs *authorised in the EU* i.e. financial instruments in relation to which *an EU CSD* acts in an issuer CSD capacity» and also to «financial instruments that are recorded *in an EU CSD* that acts in an investor CSD capacity for the respective financial instruments, even though they may be initially recorded or centrally maintained outside of CSDs authorised *in the EU*»;
- 2) With particular reference to Irish securities, we are pleased to acknowledge the consistent approach adopted by ESMA that supports «*continued access to the UK Central Securities Depository (CSD), in order to allow the UK CSD to serve Irish securities and to avoid any negative impact on the Irish securities market*». In this respect, we would be grateful to receive confirmation by ESMA (when publishing the responses received to this public consultation) that – as a consequence of the above-mentioned Implementing Decision and the ESMA recognition decision of UK CSDs – i) no implications on settlement of Irish securities are likely to occur and ii) Euroclear UK and Ireland will continue to be able to provide their services within 21 months from Hard Brexit date;

Last but no less importantly, it would be useful to receive further guidance by ESMA about the implication(s) of Hard Brexit on any settlement-related issue (also in the light of the EU contingency measures at issue) not only in the context of these two sets of Guidelines under consultation but also by other means such as for instance, Q&As, Public Statements. This would be in line with the approach already adopted on other areas (such as Prospectus Regulation, EMIR, etc.) potentially affected by the scenario of a Hard Brexit.

<ESMA_QUESTION_SFR_1>

2. : Do you believe it would be useful for CSDs to provide data by taking into account the liquidity of the financial instruments and whether the settlement instructions and settlement fails relate to transactions executed on an SME growth market, thus reflecting the types of penalty rates specified in the Commission Delegated Regulation (EU) 2017/389? Would this add operational complexities to the reporting? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_2>

We agree with the text of the Guideline 2, provided that (i) the Financial Instruments reference data System (FIRDS) is accessible, (ii) specific rules are provided for cases where FIRDS is not available (to any counterparty or just one) and (iii) it contains only reliable data, i.e. it is build up on the basis of rules that are certain and clearly identified.

<ESMA_QUESTION_SFR_2>

3. : Do you have any comments or suggestions regarding the fact that a CSD should only take into account matched instructions where matching is required? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_3>

CSD should take into account not only matched instructions, where matching is required, but also unmatched trades generated by a mismatch (due to different countervalues, quantity etc.).

<ESMA_QUESTION_SFR_3>

4. : Do you have any comments or suggestions regarding the scope of the data that should be included in the reports on settlement fails? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_4>

As it regards the exclusion from the application of penalties of primary market operations, PMOs (point b), we agree with the proposal and we suggest to consider as PMOs the entire transactions' chain, up to (and including) the delivery of the instrument to the subscriber. If necessary, the primary market transactions composing a chain could be all identified by a dedicated transaction type.

Our suggestion descends from the importance of recalling that the settlement of primary market trades can take place through different (so-called) "technical settlement procedures". Indeed:

- In some cases, primary market trades are settled directly between 'the Issuer account held at the CSD' and 'the CSD account of the first investor' subscribing the issue (or its custodian), i.e. Issuer account > Investor account;
- In other cases, the settlement of these trades takes place using a 'transitory' account of the CSD, i.e. Issuer account > CSD transitory account > Investor account;
- In some further cases, their settlement takes place using a 'transitory' account of the Issuer agent, i.e. Issuer account > Issuer Agent transitory account > Investor account.

Eventually, we would suggest ESMA to add also "T2S auto-collateralization" operations to the type of transactions and operations that should be considered as out of scope of settlement fails reporting, along with any other type of CSDs' or platforms' automatically-generated transactions as, for instance, third party repos and automated substitutions run by T2S on securities used as collateral.

<ESMA_QUESTION_SFR_4>

5. : Are there other types of realignment operations than those used in T2S? What are the characteristics of those realignment operations? Could those realignment operations fail?

How can realignment operations be identified by CSDs? Please provide details and examples.

<ESMA_QUESTION_SFR_5>

As mentioned in answer 4, we would suggest to consider outside of the scope of application of settlement fail reporting also “T2S auto-collateralization” operations and any other type of CSDs/platform automatically-generated transactions as, for instance, third party repos and those automated substitutions which are run by T2S or the specific CSD.

<ESMA_QUESTION_SFR_5>

6. : Do you have comments or suggestions regarding the settlement scenarios included in Annex I to the Guidelines? Do you think there are additional scenarios which would be relevant? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_6>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SFR_6>

7. : Do you see any operational burdens related to reporting by an Investor CSD even when it receives only one settlement instruction which it sends to another CSD (e.g. Issuer CSD) through a CSD link? What about in the case where the Issuer CSD is a third-country CSD? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_7>

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<ESMA_QUESTION_SFR_7>

8. : Can such settlement instructions as mentioned in Q7 be subject to settlement fails? If the answer is no, please explain why. If the answer is yes, please specify the cases/reasons that may lead to settlement fails.

<ESMA_QUESTION_SFR_8>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SFR_8>

9. : Do you think it would be useful for CSDs to report also ‘settled instructions’, in addition to ‘settlement fails’ and ‘total instructions’? Would this add operational complexities to the reporting? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_9>

In our opinion, this additional requirement could be useful only where an efficiency-threshold mechanism which triggers the application of penalties would be introduced.

<ESMA_QUESTION_SFR_9>

10. : Do you have any comments or suggestions regarding the proposed approach for calculating the rate of settlement fails by taking into account recurring settlement fails? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_10>
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<ESMA_QUESTION_SFR_10>

11. : How could the information on the duration of settlement fails be captured in the reporting template (to be potentially included in Table 2 of Annex I of the Commission Delegated Regulation (EU) 2018/1229)? Would it be useful to split the daily data depending on the number of days for which settlement instructions have been failing (fully or partially)? Would this add operational complexities to the reporting? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_11>
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<ESMA_QUESTION_SFR_11>

12. : Do you have any comments or suggestions regarding the proposed approach for reporting partially settled instructions? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_12>
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<ESMA_QUESTION_SFR_12>

13. : Can you please provide estimates regarding the cases where a late matching instruction is received containing an ISD within the previous month?

<ESMA_QUESTION_SFR_13>
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<ESMA_QUESTION_SFR_13>

14. : Do you have any comments or suggestions regarding the proposed approach for treating late matching instructions? Which option do you prefer? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_14>
With specific regards to paragraph 23, we consider a report “on a monthly basis” preferable than “on a daily basis”.<ESMA_QUESTION_SFR_14>

15. : What would be an adequate tolerance level (for figures related to: values, volumes, rates) for the discrepancies between the annual report and the aggregated figures in the related monthly reports?

<ESMA_QUESTION_SFR_15>
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<ESMA_QUESTION_SFR_15>

16. : Do you have any comments or suggestions regarding the proposed approach for reporting settlement fails based on the reason (cause) of each settlement fail? Please provide arguments supporting your comments and suggestions. Please see the two

Options which have been considered, together with the related examples, in Annex II to these Guidelines.

<ESMA_QUESTION_SFR_16>
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<ESMA_QUESTION_SFR_16>

17. : Which Option regarding the treatment of business days in the monthly reports on settlement fails is preferable from an operational perspective? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_17>
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<ESMA_QUESTION_SFR_17>

18. : Do you have any comments or suggestions regarding the currencies? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_18>
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<ESMA_QUESTION_SFR_18>

19. : Do you have any comments or suggestions regarding the proposed approach for reporting the value of financial instruments included in DwP/RWP settlement instructions? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_19>
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<ESMA_QUESTION_SFR_19>

20. : Do you have any comments or suggestions regarding the proposed ranking? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_20>
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<ESMA_QUESTION_SFR_20>

21. : Do you have any comments or suggestions regarding the proposed process for the submission of settlement fails reports? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_21>
With regards to point n. 38, we noted that there are no specific deadlines for competent authorities to check the data and provide feedback to ESMA. On the contrary, we regard that it would be helpful to be aware of them.
As opposite to the above, regarding points n. 40 and 42, deadlines are clearly specified despite not appearing “binding”, being formulated as mere recommendation(s)<ESMA_QUESTION_SFR_21>

22. : Do you have any additional comments or suggestions regarding the proposed guidelines? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_22>

We are grateful for the opportunity given by this final question to request ESMA to direct its attention to a topic of crucial importance concerning the more extensive landscape of “insolvency”.

Specifically, as it regards the insolvency of a Client of a Participant to a CSD (thus, not the insolvency of the Participant but that of any of its clients), we deem CSD Participants should be able to submit a notice to their CSD(s) listing the trades/transactions which are specifically linked to such insolvent client, so as to suspend the application of any connected penalties.

Upon the occurrence of such event, the Participant whose Client has been subjected to insolvency proceedings should, without delay and, in any case, no later than five (5) business days from the date on which the insolvency proceedings were declared, provide its CSD with a list of impacted trades/transactions.

Should ESMA acknowledge the importance and the content of our proposal, and approve it, CSD Participants would see a sharp reduction in their risk exposure when their clients are subject to insolvency proceedings. Conversely, should the proposal be not accepted, leaving things unchanged as they are today, Participants would continue (i) to be called upon to pay settlement penalties, and (ii) to be required to manage *buy-ins* related to their insolvent Clients. In order to recover the penalties and costs they bore on behalf of their clients in connection with buy-in procedures, then Participants would only be able to file an unsecured claim with the relevant insolvency proceedings.

We note that other sections of these Guidelines already foresee and mention the possibility to exclude certain transactions from the application of settlement penalties. Hence, including the option described above should not require specific technicalities to be developed and/or deployed into production.<ESMA_QUESTION_SFR_22>