

Consultation Paper

Guidelines on standardised procedures and messaging protocols used between investment firms and their professional clients under Article 6(2) 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 1. 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_CSDR_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_CSDR_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_CSDR_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 publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

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 investment firms and professional clients as referred to in Article 6 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_CSDR_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_CSDR_1>

Summary of questions

- 1. : Do you have any additional comments or suggestions regarding the proposed guideline? Please provide arguments supporting your comments and suggestions.**

<ESMA_QUESTION_CSDR_1>

We consider that exchanging the “information required” on the basis of the role that an investment firm or a professional client might have in each transaction might probably represent a way to pursue the final/overall goal of Guideline 1 but, eventually, in order to make it “working” and implementable, the term “role” would need a more robust basis of definition. Indeed, the text of Guideline 1 and the following paragraph 13 both appear too vague and/or broad and both leave the concept of “role” apparently undefined. Upon reading paragraph 13, it was not possible to understand why the text ends with a generic expression as “(...) *the respective roles (...) should be considered*” leaving un-answered the following question “*Which party would have to take the initiative of reporting?*”. Hence, a clear definition is expected by market participants.<ESMA_QUESTION_CSDR_1>

- 2. : Do you have any additional comments or suggestions regarding the proposed guideline? Please provide arguments supporting your comments and suggestions.**

<ESMA_QUESTION_CSDR_2>

We agree with the definition of Guideline 2. However, with regards to paragraph 19, we take the opportunity to highlight to ESMA the following instances.

Transactions are reported in T2S by the CSD, when the latter is appointed by its participants to settle a transaction on platforms other than T2S and not managed by a CSD subject to the discipline (settlement via a link).

Transactions are reported to record the securities and cash movements on participant’s SAC and DCA. It happens that the transactions to settle in the mentioned external platform are linked to other transactions in T2S: namely, the participant must receive securities from the external platform and has to deliver them to another participant in T2S.

We would expect that the failure to settle such transactions – when caused by parties not subject to this discipline and by participants to the external settlement system – are not penalized by the CSD that provides the service via a link.



We would although underline and remind that the chain of instructions in T2S might involve several participants and would ensure that, if no penalties apply to the instruction intended to settle via the external link, the same is for the linked instructions in T2S.

We wonder how this will be met (complied with) and how the parties can be aware about the non-applicability of penalties (particularly the parties that failed to receive the securities).

Paragraph 19 refers to the “place of settlement” but, still, the methodology of identification of non-penalized transactions appears misty-foggy, as in the cases described above there would be more places of settlement.

Hence, in our view, there is a need of a clearer proposal about the identification of those ISIN that, being issued by a CSD that is not subject to the discipline, are excluded from the penalties application *ab origine*.

It is important that ESMA acknowledges such particular cases in the work being carried to finalise these Guidelines.

Finally, as it regards paragraph 18, depending on when the text of these Guidelines will be finalized and how the negotiations with the United Kingdom will have developed, it would result particularly useful if ESMA could provide clarifications (via these Guidelines or dedicated Q&As) on the application of this specific Guideline n.2 in the context of Brexit, with particular reference to the status of "UK trading venues" and all the cases listed in point b), c) and d).

<ESMA_QUESTION_CSDR_2>

3. : Do you agree with the workflow described here? Should other steps be recommended? If so, please specify.

<ESMA_QUESTION_CSDR_3>

The proposed exchange of information details about the allocation appears redundant and of uneasy application. Indeed, there do exist market practices that already ensure that the necessary information flows between the parties and their agents. When starting a trading relation, the parties exchange SSI (standard settlement instructions) that might be revoked or amended when needed with a notice which is usually included in the commercial agreement signed by the parties.

Also, this issue posed by the Guideline lays more on the process flow envisaged (represented in the chart) as it adds workload to the existing flow which is based mainly on bilateral agreements. Please consider that the Italian market is already quite efficient as it has a very low level of late-settlement.

<ESMA_QUESTION_CSDR_3>



4. :

- (a) Do you have any additional comments or suggestions regarding the proposed guideline? Please provide arguments supporting your comments and suggestions.**

<ESMA_QUESTION_CSDR_4a>

We deem that the expression «*written communication*» might result too broad and generic but still it presents the advantage to require all users to use the same communication protocol, despite this certainly implies high costs of implementations, particularly for small entities compared to their volumes, and we believe that, adding so much information in the reporting is not beneficial on the overall level of the efficiency of the process.

More in detail, we consider that Guideline 4 needs to be integrated because as it does not address (i) what stakeholders should do in case of missing/late trade confirmations and (ii) the necessity of standardised process(es)/step(s) to follow, consistently across every Member State. Otherwise, in the absence of such clarification on missing/late trade confirmations, a question would arise: what should stakeholders do? blocking the settlement process (clearly not reasonable), or going ahead with the settlement, while the other party-to-the-transaction has to pay a penalty?

<ESMA_QUESTION_CSDR_4a>

- (b) Do you see a need to develop a template for written allocation and confirmations not sent electronically?**

<ESMA_QUESTION_CSDR_4b>

Yes, we deem it necessary to develop a friendly-user template (xls, csv file preferably) as this would allow not to force small-and-medium entities to migrate or support the allocation in ISO 20022.

<ESMA_QUESTION_CSDR_4b>

- 5. : Is any clarification needed in respect of the content of certain items? If so, please indicate. For instance, should the information to be communicated under fields (f) “trade price of the financial instrument” or (i) “total amount of cash that is to be delivered or received”, or any other field be further specified?**

<ESMA_QUESTION_CSDR_5>

We believe that clarification is needed with regards to the trade price of the financial instrument. Indeed, it is not clear whether the text of the guideline is referring to the dirty price or to the clean price



<ESMA_QUESTION_CSDR_5>

6. : Do you believe any additional information should be required by the investment firm for facilitating the settlement of the transaction? If so, please specify.

<ESMA_QUESTION_CSDR_6>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_6>

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

<ESMA_QUESTION_CSDR_7>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_CSDR_7>

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

<ESMA_QUESTION_CSDR_8>

As it regards Guideline 6 and paragraph 34, our reading would be the following: assuming that trade confirmations are sent complying to the data-elements required by these Guidelines, where banks/participants do have a stable relation with the respective counterparty (hence, no changes are brought to the Standard Settlement Instruction(s) , i.e. SSI), such SSIs might be agreed to be exchanged within their respective databases and no need to send/report it would arise. Indeed, reporting each time the full set of information (including settlement details / SSIs) genuinely appears too bulky and technically 'useless'.

<ESMA_QUESTION_CSDR_8>