

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	AMF Italia – Associazione Intermediari Mercati Finanziari
Activity	Associations, professional bodies, industry representatives
Are you representing an association?	<input checked="" type="checkbox"/>
Country / Region	Italy

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>

As a general principle and as better detailed below, our members do not think that an increase of penalty level would lead to an improvement of settlement efficiency. However, they believe that Option 4 is preferable provided that higher rates for settlements fails would apply starting from the day after the relevant ISD. In their view, such Option will be applicable only upon condition that T2S settlement system is able to ensure a correct application of the FIFO criterion in respect of settlement fails. In other words, T2S should be able to settle the transaction having the oldest ISD when cash becomes available. To this regard, please consider that AMF Italia members would like to underline that on certain past occasions T2S was not capable of applying FIFO criterion to fails. Should Option 4 be chosen, then a change request would need to be addressed to T2S given that – as anticipated above – in our members' opinion such option is viable only upon condition that FIFO criterion is correctly applied and implemented. In addition, our members think that an incorrect application of FIFO principle by T2S with respect to settlement is to be included in the appeal procedure under CSDR in order to allow a participant to ask for a penalty re-assessment in case a mistake in penalty calculation occurred.

<ESMA_QUESTION_CSDR_1>

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

<ESMA_QUESTION_CSDR_2>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

Our members believe that the absence of standardisation of cross-CSD transactions is the main cause of late matching.

<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>

Our members believe that any choice of the relevant timeframe is going to be materially impacted by price volatility. In particular, high volatility could make preferable taking into account oldest reference data while, on the contrary, low volatility could make preferable taking into account most recent reference data. Should a threshold be introduced, AMF Italia members believe that it should be equal to 60 business days in compliance with the operation of T2S which cancels unmatched instructions once 60 business days are elapsed.

<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>

Please, see answer to Q7.

<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>

Our members believe that such proposal (which, however, should include the technical issuer CSD as well as the issuer CSD) is acceptable as a provisional measure given that, in their opinion, it could undermine consistency and standardisation. As stated on previous occasions, AMF Italia members think that such reference data should be centralised in order to ensure full standardisation across EU CSDs. In this respect, they reiterate the importance of a mandate for ESMA to maintain and manage a common platform covering all EU financial instruments and related 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>

With regard to the question above, should the proposed approach be adopted, our members believe that the use of more recent reference data for the calculation of the related cash penalties should be compulsory in order to ensure standardisation.

<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		
	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>

TYPE YOUR TEXT HERE

<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>

Our members believe that the current framework has contributed to improve settlement efficiency although additional actions can be surely undertaken in such sense. It should be noted that when an option is exercised, a one-day fail occurs due to the participant's subsequent hedging. In such circumstance, the (technical) reasons for the fail are not considered/investigated and the penalty is applied. Given the foregoing, AMF Italia members think that CSDR penalties regime should set out exemptions for cases like the one described above and that it should provide CSDs with technical details and instructions in order to allow them to exclude such kind of one-day fails from penalty calculations. The Transaction Type field could be of use in this respect.

<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>

As stated in the response to Q6 above, our members believe that the lack of standardisation of cross-CSD records/transactions (those relating to ETFs are the most common case in point) is one of the main causes of settlement failures. In this regard, our members suggest improving the efficiency and standardisation of cross-CSD links.

<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>

As mentioned above, standardisation of cross-CSD transactions is of paramount importance to improve settlement efficiency. Furthermore, AMF Italia members believe that the place of settlement should be mandatorily determined by the executing broker.

<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>

TYPE YOUR TEXT HERE

<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>

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<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>

AMF Italia members believe that progressive penalty rates would only be justified for three business days, after which the penalty rates should be constant. This would be on the condition that partial settlement is mandatory.

<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>

Our members believe that, contrary to expectations, the introduction of convexity in penalty rates as per Option 2 would contribute to increase the number of settlement fails. Should convexity be introduced, it can be expected that there will be an incentive to delay corrective actions in order to benefit from a lower level of penalties (because, under the proposed Option 2, they would decrease after a number of business days, during which, on the contrary, they would gradually increase).

<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>

In the case of illiquid financial instruments, our members are in favour of applying the convexity criterion to settlement fails. Indeed, significant problems may arise in trading and delivering this type of financial instruments; therefore, it would not be advisable to increase the penalty

rates progressively in the event of non-delivery. Such rates could be increased only after a reasonable number of days to allow the participant time to take corrective action.

<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>

Given the current framework that provides for the transition to T+1 for the US markets, our members are opposed to Option 1, with particular reference to the new type of settlement fail due to a lack of ETFs. It is worth considering that there are currently many transactions in the EU on ETFs having US financial instruments as underlying. The implementation of Option 1 would discourage such transactions with a negative impact on ETF liquidity and market efficiency. In conclusion, our members believe that Option 2 (but with no convexity for liquid financial instruments) would be preferable.

<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>

As mentioned above, our members are in favour of Option 2, but without convexity for liquid financial instruments. They agree with a gradual increase in penalty rates up to 3 business days, although they would also suggest removing the convexity mechanism and replacing it with a fixed penalty rate to be applied from the fourth business day following the ISD. Our members believe that this would (i) discourage opportunistic behaviour (see our response to question 23 above) and (ii) be easier to manage and explain to clients. AMF Italia members

believe that ESMA's proposal about convexity would be more burdensome than the current regime and therefore expect that, if implemented, it could exacerbate the current fail rate. For this reason, our members do not support the introduction of elements that add complexity to the current framework, which is already very complex. They also believe that an implementation of the convexity principle could even discourage partial settlements, as the receiving participant could be incentivised to reject a partial settlement in order to gain cash from penalties. Moreover, given that the progressive increase in penalty rates in the first three business days may also encourage opportunistic valuations by the receiving participant, our members believe that an obligation to accept a partial settlement should be provided for by law. The benefit of such an obligation would be a reduction in settlement fails, with consequent benefits to the system as a whole.

<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>

AMF Italia members agree with the categorisation of types of fails as proposed under Option 2.

<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 (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_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>

TYPE YOUR TEXT HERE

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			
Indirect costs	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>

TYPE YOUR TEXT HERE

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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

As suggested in response to Question 26, partial settlement should be mandatorily accepted

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

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>

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<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>

TYPE YOUR TEXT HERE

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>

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<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>

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<ESMA_QUESTION_CSDR_45>

Q46 Do you consider that introducing a minimum penalty across all types of fails would improve settlement efficiency? If 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>

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<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>

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<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>

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<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>

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<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?

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<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>

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