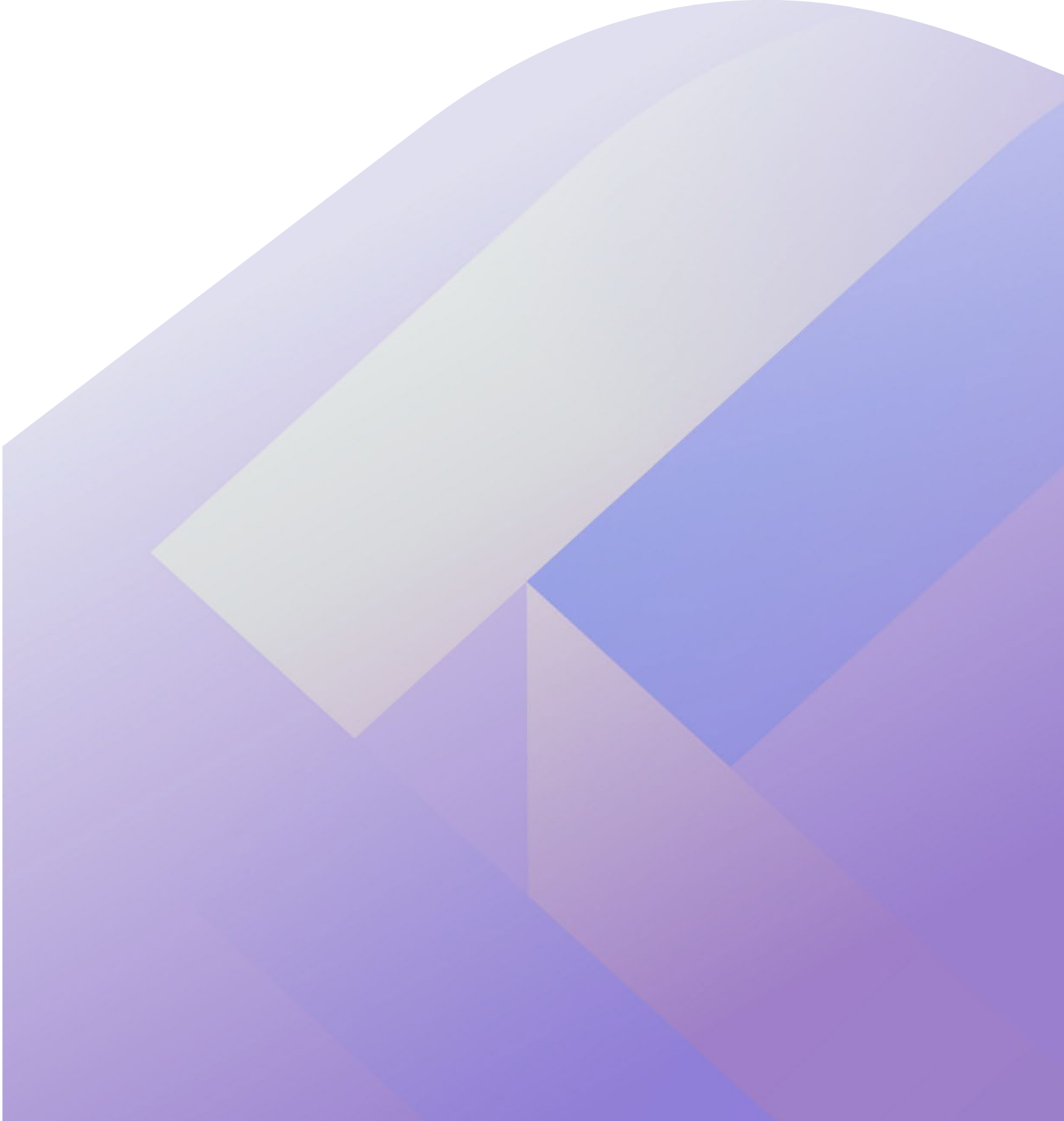


Reply Form

**to the Consultation Paper on Technical Advice on the
Scope of CSDR Settlement Discipline**



Responding to this Consultation Paper

ESMA invites comments on all matters in this Consultation Paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

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

ESMA will consider all comments received by **9 September 2024**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in this reply form.
- Please do not remove tags of the type < ESMA_QUESTION_SETD_0>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
- When you have drafted your responses, save the reply form according to the following convention: ESMA_CP1_ SETD_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA_CP1_ SETD_ABCD.

- Upload the Word reply form containing your responses to ESMA's website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading '[Data protection](#)'.

Who should read this paper?

All interested stakeholders are invited to respond to this consultation paper. In particular, ESMA invites market infrastructures (CSDs, CCPs, trading venues), their members and participants, other investment firms, credit institutions, issuers, fund managers, retail and wholesale investors, and their representatives to provide their views to the questions asked in this paper.

1 General information about respondent

| | |
|--------------------------------------|-------------------------------------|
| Name of the company / organisation | Finance Denmark |
| Activity | Other |
| Are you representing an association? | <input checked="" type="checkbox"/> |
| Country / Region | Denmark |

2 Questions

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

<ESMA_QUESTION_SETD_1>

We agree with the proposal, as indeed the proposed circumstances are out of participants’ control. Yet, the risk that these new circumstances will take place is rather low, especially when it comes to settlement instructions involving securities under sanctions or anti-money laundering proceedings and police/court investigation related cases.

Please note that all banks are obliged to monitor and carefully proceed with KYC and due diligence towards our clients, as well as monitoring securities which are under sanctions or anti-money laundering proceedings. Therefore, we do not believe that introduction of two new underlying causes to be not attributable to the participants in the transactions will have much influence on the current CSDR Penalty volume.

<ESMA_QUESTION_SETD_1>

Q2 ESMA would like to ask for the stakeholders’ views on the costs and benefits of the implementation of the respective exemptions from settlement discipline (based on the underlying causes of settlement fails that are considered as not attributable to the participants in the transactions). Please use the table below. Where relevant, additional tables, graphs and information may be included in

order to support some of the arguments or calculations presented in the table below.

| | | |
|--|--------------------------------|---------------------------------------|
| ESMA's proposal - underlying causes of settlement fails that are considered as not attributable to the participants in the transactions | | |
| | Qualitative description | Quantitative description/ Data |
| Benefits | | |
| Compliance costs: - One-off - On-going | | |
| Costs to other stakeholders | | |
| Indirect costs | | |

<ESMA_QUESTION_SETD_2>

Currently the received penalties which are subsequently removed by the CSD due to one of the current exemptions is rather low (less than 1 per cent) and concerns usually one market. The main reason is trades where cash settlement is outside the CSD settlement system, and the payment system is closed. Therefore, we do not expect that adding two new circumstances will much change the given number and it shall remain around 1% of what is currently received.

<ESMA_QUESTION_SETD_2>

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

<ESMA_QUESTION_SETD_3>

No

<ESMA_QUESTION_SETD_3>

Q4 If you have answered yes to the previous question, please specify what costs and benefits you envisage related to the implementation of your proposal. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

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

<ESMA_QUESTION_SETD_4>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SETD_4>

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

<ESMA_QUESTION_SETD_5>

Generally, the immunization principle should not be broken provided all related transactions take place within the same market. Issues like ISIN suspension, technical impossibilities at the CSD or securities under sanctions or anti-money laundering proceedings concern the whole market, so we believe that in such cases all transfers concerned should be exempted from CSDR Penalty Regime.

The only exception, where we can see possibility of breaking "immunization principle" within the same market, is case of settlement instructions put on hold to the order issued by court or other authorities. In case of hold of instruction for one party only, the risk of breaking immunization principle is higher.

When it comes to transfers between markets, the risk of breaking the immunization rule is also higher, i.e. ISIN might be suspended only on one market, and in the other one it might be still active. On the other hand, sanctions or anti-money laundering proceedings usually concern all countries within European Economic Zone, so in such case the risk of breaking immunization rule is low, similarly, to trades in the same market.

<ESMA_QUESTION_SETD_5>

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

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

<ESMA_QUESTION_SETD_6>

The below exemptions should be filtered out in advance:

- ISIN suspensions due to various reasons
- Securities under sanctions or anti-money laundering proceedings.
- settlement instructions involving cash settlement outside the securities settlement system operated by the CSD if, on the respective day, the relevant payment system is closed for settlement.

Blocked and suspended securities should be visible for CSDs, so we believe they can be filtered automatically from the penalty regime, considering the fact that ISINs are provided to participants in daily penalty reports. When it comes to the third exemption mentioned, we are aware of the fact that CSDs might not be always able to filter impacted penalty, however CSD should remove penalty without appeal procedure.

The below exemptions might be impossible to be filtered out:

- settlement instructions put on hold due to the order issued by a court, the police or similar authority with relevant mandate - we do not know which side (participant or CSD) will be ordered by authorities to put an instruction on hold. If it is participant, then CSD would have to be informed on the situation which might take time.
- Technical impossibilities at the CSD level that prevent settlement - it is not always possible for CSDs to stop penalty calculation process which is automatic if CSD experiences issues preventing its employees from making any ad hoc changes. Nevertheless, CSD should be able to detect penalties to be removed and send respective message to participants.

<ESMA_QUESTION_SETD_6>

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

<ESMA_QUESTION_SETD_7>

We believe CSDs would be willing to implement filters in order to avoid additional work around detecting penalties which should be removed, sending removal messages to previously send penalties, and possible big number of appeals in case penalties are not removed.

Automatic filters are also welcome by market participants, especially in those markets which introduced fees for each appeal case. Additionally, participants also would like to avoid extra work related to finding penalties to be appealed and filling appeal form to be sent to CSD.

<ESMA_QUESTION_SETD_7>

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

<ESMA_QUESTION_SETD_8>

Finance Denmark agrees with the proposal, yet we believe more clarification is needed when it comes to how CSDs will define if a transaction belongs to one of the proposed groups. There might be a lot of misunderstanding between CSDs and market participants to what is considered as trading or not. This might result in many appeals incoming, therefore a specific

rules of how CSDs identify "not-trading" transfers must be set up. In our view, all transfers which are not related to buying/selling securities (as NCBO), or which are connected to corporate actions (i.e. new issues, redemptions, mark ups, mark downs) should be excluded from CSDR Penalty Regime.

Also, more clarification is needed on the reason why ETFs are to be exempted from point d (creation and redemption of fund units on the primary market, meaning the technical creation and redemption of fund units).

Regarding point 20, we suggest reconsidering if deliveries failed due to delays of security issue should be subject to CSDR penalties and buy-in regime. We believe that such approach might break the immunization rule, as failure of new issues of securities are not caused by CSDs participants.

Regarding statistics, in general the scope would depend on various circumstances like market, internal issues, number of instructions etc. Yet, our best estimate is that it would concern around 10% of all penalties received by participants, with no significant financial gains/losses due to the fact, that the proposal concerns mostly internal transfers.

<ESMA_QUESTION_SETD_8>

Q9 ESMA would like to ask for the stakeholders' views on the costs and benefits of the implementation of the respective exemptions from settlement discipline (based on the circumstances in which operations are not considered as trading). Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

| ESMA's proposal - circumstances in which operations are not considered as trading | | |
|---|-------------------------|--------------------------------|
| | Qualitative description | Quantitative description/ Data |
| Benefits | | |
| Compliance costs: - One-off - On-going | | |
| Costs to other stakeholders | | |

| | | |
|-----------------------|--|--|
| Indirect costs | | |
|-----------------------|--|--|

<ESMA_QUESTION_SETD_9>

We approve the idea of introduction of new rules based on which transaction would not be considered as trading. In our point of view new rules will limit the number of penalties for trades where delay in settlement was not caused by members. Further analysis on how to implement the idea would though be needed since there is no common market practise across CSDs that the idea can be based on today, pls also see our response to Q15.

<ESMA_QUESTION_SETD_9>

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

<ESMA_QUESTION_SETD_10>

No

<ESMA_QUESTION_SETD_10>

Q11 If you have answered yes to the previous question, please specify what costs and benefits you envisage related to the implementation of your proposal. Please use the table below. Where relevant, additional tables, graphs and information may be included in order to support some of the arguments or calculations presented in the table below.

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

| | | |
|-----------------------|--|--|
| Indirect costs | | |
|-----------------------|--|--|

<ESMA_QUESTION_SETD_11>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_SETD_11>

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

<ESMA_QUESTION_SETD_12>

As mentioned in Q8, we suggest reconsidering point 20, if failed deliveries due to delays of security issue should be subject to CSDR penalties and buy-in regime. We believe that such approach might break the immunization rule, as failure of new issues of securities are not caused by CSDs participants.

Otherwise, we do not see any other risk of breaking the immunization rule

<ESMA_QUESTION_SETD_12>

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

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

<ESMA_QUESTION_SETD_13>

Delays of settlement related to corporate actions might be detected automatically, as such transfers are usually marked as CA related.

Transfers related to realignment or FoP transfers in the context of the (de)mobilization of collateral might be harder to be detected. In terms of such transfers, more clarification is

needed on how CSDs are going to identify if a transfer should be exempted from CSDR article 7 or not.

Please note that if CSDs are not able to identify types of transaction themselves, then there might be a scenario where CSD participants would have to be engaged in the process. That would bring a lot of effort for both CSDs and participants.

<ESMA_QUESTION_SETD_13>

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

<ESMA_QUESTION_SETD_14>

Similarly to section 3.3.1, we would like to emphasize that as many auto filters as possible, are necessary to avoid costs and workload related to preparing and processing appeal request. Please note that some CSDs apply extra fees for each appeal request processed, many participants might not be willing to appeal a penalty if its value is smaller than the fee value.

<ESMA_QUESTION_SETD_14>

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

<ESMA_QUESTION_SETD_15>

Finance Denmark would like to bring to attention that there currently is no common European market practice on the use of transaction codes. Currently each CSD chooses which codes that are implemented and available in each market and many codes are locked by CSDs for internal use only while the use of other codes can be agreed upon in national market practices for specific national uses. Furthermore, if the use of transaction codes would be a match criterion it would be an enormous task to harmonize the use of transactions codes across all European CSDs and their participants and the related costs of changing systems could never be justified with the benefits of reduced penalties.

<ESMA_QUESTION_SETD_15>