

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	Finance Denmark
Activity	Associations, professional bodies, industry representatives
Are you representing an association?	<input checked="" type="checkbox"/>
Country / Region	Denmark

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>

Denmark will be the only case in this scenario as Bulgaria soon will adopt the Euro. In that perspective we think that it is most cost efficient to keep the current Danish solution that derive the cash discount penalty rate in the absence of official interest rate for overnight credit. This solution was originally derived by the Danish CSD and the Danish Central bank as giving the same result which also was confirmed by the Danish NCA and the data for the calculation is easily accessible. Furthermore, Denmark has a fixed currency since the Danish krone is pegged to the Euro with a very small spread and the Danish rates thus follows the Eurozone rates very closely.

Changing the current approach for something that might never be used except for the Danish krone would not give any value and is in our view disproportionate.

Finally, since option 4 is a progressive rate that includes a complete change of the current system, we cannot support that solution.

<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 failure, regardless of if this is due to lack of cash or another reason.

When the RVP instruction is the so-called failing instructions, this is generally in Denmark 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

<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

We think that the current solution already solves the issues and is in line with the purpose of the regulation, pls also see response to Q1

<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>

Majority of penalties relate to late settlement. However, among most common reason behind late matching, we can include technical issues at the settlement system, late trade request/instruction, back dated Corporate Event transfers.

To be more specific one of the primary causes of late matching is that matching is attempted but not successful, e.g. 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 use of hold & release in some part of chain of intermediaries. In all cases, increased support in the market for both sending and receiving/using alludgements and so-called “close” or “near”-matching reporting could also be beneficial.

<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>

Yes, that would reduce risk of using incorrect reference data (or lack of reference data) by CSDs when calculating the penalties. Also many LMFP Penalties concern delay of less than 40/92 days, therefore we feel, that adding threshold to reference data will not have much financial impact to the stakeholders.

<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>

B - A sample of penalties in the Danish market from October to January shows that the average delay in LMFP Penalties does not exceed 40 days, the biggest average taking place in November (22 days). The average from the last two months is around 4,5 days.

<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>

Yes, we see a need for a golden record and that should in our opinion be the issuer CSD. That would be helpful especially during queries related to penalty amount.

<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>

As participants, or clients of participants, in CSDs 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 and others 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>

No

<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>

Yes

<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>

It is difficult to determine the specific effect of penalties when other changes were implemented by many participants and intermediaries at the same time, or in the few months prior, as CSDR penalties went into effect. Increased use and support of partial settlement and hold & release, including partial release, have surely had significant effects as well.

We can see lower amount of received penalties comparing year to year, which indicates higher settlement rate. Therefore, we believe Penalty Regime had positive impact. The overall number of penalties in the Danish market was around 16% lower in 2023 comparing to 2022, noting that Penalty Regime started in February 2022. We also noticed see constant decrease of received penalties from June 2023.

<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 of this is 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 this borrowing the securities is even possible. In lower interest rate times, the penalties in a chain of transaction 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/accept for the end investors.

In Denmark we can see that number of received penalties is in general lower than at the beginning of the Penalty Regime (see also answer to Q15). We are monitoring received penalties; therefore we are focusing to decrease amount of received penalty messages. Also Danish market is experiencing increase of the settlement rate. Therefore, we can see that the Regime is working in this market. On the other hand, most of the penalties we receive have value of less than 100 DKK (i.e 87% of received penalties in Q4 2023 had value range 0-100 DKK), of other market participants also receive such small penalties, then it might be not enough for them to improve settlement rate.

<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>

Among most common reasons we can include:

- Late instructions, from client/front office
- Counterparty did not deliver shares to cover our delivery
- We/our counterparty did not manage to cancel instructions on time
- Instructions were incorrect, and we had to amend them but we did it after ISD

Please note that late matching fails should also be included in this, as matching issues may be completely separate from lack of securities. With regards to settlement fails, in our view, “true” lack of cash over more than one settlement date in a CSD is very unusual. Lack of cash as in temporary funding issues in the CSD settlement system 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>

Since we can see that settlement efficiency is getting higher, and in general is very high in the Danish market we do not have any other tool to improve settlement efficiency. We can see that Penalty Regime is working well as the way to improve settlement in the market.

That said in general we see the following tools for reduction of late matching fails - increased support for both sending and receiving/using allgedgements and so-called “close” or “near”-matching reporting pls see our response to Q6. For reduction of settlement fails we see that general improvements of the CSDs’ partial settlement functionality would be possible way to achieve higher settlement rates.

<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>

We cannot give any opinion in relation to CSD level, however in general we noticed increase of settlement rate. Pls also see answer to question 15.

<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>

Given that the penalty rates in question are those that entered into force in 2022 then they are proportionate and according to the risk level of trading in specific security type (higher rate for shares, lower rate for debt instruments). However, we believe that the asset type division should be extended to ETFs, as they are popular security type, and it is unclear for us why it is perceived by CSDR as "other financial instrument"

<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>

For CSDs to answer. We can see a decrease in number of received penalties, but our penalties relate mostly to transfers in liquid shares

<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>

In the analyses we have seen, most fails are resolved on ISD+1 with an average of 3 days. Fails that persist over a long period of time make up a fairly limited percentage of fails. We

believe progressive penalty rates is not justified at the moment and should only be implemented after a thorough analysis, when 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.

<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. In our opinion, as we already see a lower penalty rate, introduction of convexity will further increase the implementation cost compared to progressive rates without convexity.

<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>

Since most of our penalties concern liquid instruments (as per answer to Q21), we prefer not to change the approach towards illiquid instruments.

<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. We wonder if such an increase is justified considering that in DK, the settlement rate is high and increasing. We support, though the fact that the ETFs are to be added to the security type list. If penalty rates are to be increased, we believe a more limited increase of current 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.

Option 2 introduces new division of securities, so there are less security groups. However, it might be unclear for market participants on how the securities are to be divided. In the case of bonds from current group 4, they will receive much higher rate than the current ones, and than the ones proposed in option 1 (Option 1 proposes 2,5 basis points for 1 day of delay, vs. Current 0,1 basis points and 0,6 basis points in option 1). Considering the fact that we rarely receive penalty for this group, we wonder if this is justified to increase penalty rate so much. We also do not understand why category 1 has 5 basis points for 6th day of delay, while it has 10 basis points for 5th day of delay (page 50 of pdf)

<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>

In general, we think that the current penalty regime has not been effective for enough time for us to fully see the effects of the current regime and level of penalties. Please remember that there was a long period after going live with the penalty regime with severe implementation difficulties. In our opinion we still lack sufficient data to fully assess the effect of the penalty regime. That said we are still supportive of the penalty regime as a tool for improving settlement

efficiency rates but we find it appropriate to investigate possible steps before increasing penalty rates as dramatically as suggested in this consultation paper.

Appropriate steps could be taken at CSD level by investigating root causes of failures locally and take action on these and to see the effectiveness of such steps before moving to an increase in penalty rates

<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>

As mentioned in Q26 we in general see a need for more granular data on penalties and a longer time period than the current before we properly can assess the effectiveness of the current penalty regime.

<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.
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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
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

Please see reply to Q22

<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>

No further proposals

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>

In our opinion, both alternatives increase complexity and cost. We do not think that settlement instructions of lower value should be charged higher than the ones of higher value, especially if the penalty concerns small free of payment transaction. Therefore we assume that higher penalties should be changed for bigger trades, however we think that the current approach (penalty rate depends on asset type, security price and trade nominal) is the most justified one, as it considers both security price, and trade nominal, which results in that bigger transfers and those involving valuable security, get higher penalty

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 value of this into the “equation”, especially since the trading parties may not even control the settlement flow, will be difficult for parties.

Mandatory or increased use of partial settlement for selected transactions could possibly achieve similar effects for less cost. This would need a clear definition.

Another way to go could be further investigation on root causes for fails and focus on fixing them.

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>

We do not have any additional criteria to propose

<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>

We would like to know if this proposal would also be used for late matching fails. Regardless, our view remains 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 question, but we believe the ECSDA CSDR penalties framework is a reasonable interpretation of how to 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 possible, perhaps it should be considered to treat failing RF instructions the same 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>

Not necessarily since when using a FoP in a regulated market under supervision you just have a counterparty risk on the cash part.

<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

By our experience penalties for bond transactions are less common than penalties for equities. In our opinion, considering liquidity of bonds is not necessary in penalty calculation, due to lower volume of such transfers (and, in result, penalties), and potential higher effort for CSDs to apply such change, as stated in question.

<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>

No further proposals

<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.

Furthermore, current values of penalties usually do not exceed 0,5 % of trade value, so the risk that a counterparty decides to "earn" cash from penalties is rather low. Considering proposed penalty rates, this trade value - penalty value proportionality can be several times higher, however there is still low risk, that someone decides to "earn" on penalties. Please consider, that many transfers are linked to each other, meaning that one purchase of securities is immediately used to cover other sells. In such situation potential claim cost may exceed penalty value, even if the rates are risen.

<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>

Penalties with interest rates involved are rather rare, so the risk is very low.

<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>

In general, we think as first step in markets with high settlement fail rates there should be discussions at CSD level/User Committee in terms of proposed solutions on how settlement efficiency can be improved in that specific market instead of introducing penalty rates in that specific market.

The CSD could further have bilaterally meetings with specific participants that are the root cause of many penalties since majority of penalties to our understanding is caused be few market participants.

<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

Over 90% of received penalties concern Trades (22F:SETR/TRAD) versus payment. So we do not see it is necessary to make any changes that would concern trade types.

<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>

Most penalties does not concern securities lending/borrowing, and since we do not think that the information could be sourced without additional costs, we are not in favour of such solution.

<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

All corporate actions related settlement instructions, e.g. 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.

We think that the regulation is unclear on this topic and that should be clarified. Our opinion is that this could be solved with exempting all relevant CA transaction types e.g. TRAN, CLAI etc. from penalties since it is just CORP that is exempted today.

<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>

We do not have data on settlement rate in non-CSDR markets. Please note, however, that to the best of our knowledge the settlement system in the USA differs a lot comparing to European countries, i.e. trade matching criteria is less strict (basically, number of shares, and security ID is enough). The result is that original trade settles quickly, however it is quite often returned back to the seller on the next day. Considering that, comparing USA and European markets needs to be discussed in wider aspect than Penalty Regime only.

<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 customers 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? 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>

Is a minimum penalty rate seen as a threshold below which the penalty is not distributed by the CSD? Currently we see that most penalties are below 5€ so we are doubtful of the cost/benefit analysis on these penalties.

If a minimum penalty rate is seen as a threshold where all penalties are rounded up to this threshold, we think it would be an unproportionate increase in penalty levels unless the threshold is set very low as most penalties are below 5€ leading to question of the effectiveness of such a threshold.

Furthermore, we see a high level of settlement efficiency in the Danish market and fails are real fails and not speculation in the level of penalty rates.

Again, our preferred first step is to encourage market participants to discuss settlement fails, root causes and how to improve settlement efficiency.

<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) which is done at CSD level, we believe the implementation timeline could be measured in months. The CSDs should have a good overview of that. The more complex changes including penalty reporting structures would likely require years.

<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>

None, to the best of our knowledge.

<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>

Currently the tools for preventing settlement fails are: Penalty Regime, extra fees applied by CSDs for trades pending in the market (especially non-matched ones). Additionally Mandatory Buy-in is still planned to be introduced. With such tools, and planned higher penalty fees, we do not think any other special penalty fees should be introduced. We would rather propose mutual dialogue between CSD and participants in order to agree on the root cause of massive settlement delays and ways of improvement. Remember that to a great extent CSD participants act as settlement agents for clients rather than simply 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. Pls also see answer to Q39

<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>

We believe the topic can be discussed in general in terms of proposed solutions on how settlement efficiency can be improved based on a root cause analysis rather than explaining in details on individual participants lower/higher efficiency, that should be a bilaterally discussion between the CSD and the participant. Pls also see answer to Q39 and Q49.

<ESMA_QUESTION_CSDR_51>