

AMAFI'S GENERAL COMMENTS

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On ESMA'S consultation paper on Technical Advice on CSDR Penalty Mechanism

[AMAFI](#) is the trade association representing financial markets' participants of the sell-side industry located in France. It has a wide and diverse membership of more than 170 global and local institutions notably investment firms, credit institutions, broker-dealers, exchanges and private banks. They operate in all market segments, such as equities, bonds and derivatives including commodities derivatives. AMAFI represents and supports its members at national, European and international levels, from the drafting of the legislation to its implementation. Through our work, we seek to promote a regulatory framework that enables the development of sound, efficient and competitive capital markets for the benefit of investors, businesses and the economy in general.

AMAFI would like to thank ESMA for this consultation on Technical Advice on CSDR Penalty Mechanism as this topic is very important to its members.

The answers to the questions were prepared in cooperation with other French associations, notably France Post Marché (FPM) and Association Française de Gestion (AFG).

1. GENERAL COMMENTS

Before answering to some of the specific questions raised by ESMA, AMAFI would like to stress the following points:

1. First of all, we do share the goal of ESMA to address the issue of an efficient settlement efficiency within the EU. That said :
2.
 - a) The current situation at least in France according to Euroclear statistics (see above) does not seem to raise any particular issue regarding the functioning of the market.
 - b) AMAFI advocates for improve the settlement efficiency having in mind that the penalty regime is not the only way to achieve this goal. In this context, AMAFI together with FPM and AFG, have worked in order to put in place market practices (such as hold and release, partial settlement, auto-borrow...)
3. It must be noted that the penalty mechanism was introduced only 2 years ago (February 2022), the outcome of the current regime needs to be further assessed.
4. The current regime is well balanced as it penalizes the actual entity that is responsible for the fail whatever the rate of penalty is. If a new regime were adopted it is of crucial importance to maintain this situation.
5. Introducing progressive penalty rates should be carefully considered because we foresee that it could end up with regulatory arbitrage from some market participants. This raises doubts about the intermediary immunization principle the regulator emphasized. For instance, a party facing difficulties in finding securities to borrow on ISD but succeeding on ISD+1 might face unfair

penalties if the lender fails to deliver on ISD+1. Raising the current penalty rates could be envisaged.

6. Modifying the current regime will require from investment firms and CSDs huge development and running costs (IT, compliance...) while the benefits of this change would be marginal regarding market efficiency.
7. Finally, the question whether to modify the current penalty regime should not be assessed without considering its connections with the intention to shortening the settlement cycle in the EU to T+1. Indeed, we anticipate that the implementation of T+1 could end up by causing higher settlement fails.
8. For the answers on the questions of the consultation AMAFI has worked together with FPM and fully supports technical answers provided by FPM.

