
EACH Response – ESMA consultation on the amendment of Article 19 SDR RTS

September 2022

1. Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 18 members from 14 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to provide feedback to the ESMA consultation on "*Amendment of Article 19 of CSDR RTS on Settlement Discipline*" henceforth ("the consultation" and/or "the proposed amendment").

2. Executive Summary

EACH welcomes the ESMA proposal to amend Article 19 of the CSDR Settlement Discipline Regime (SDR). EACH believes that a single standardised system for the collection and distribution of penalties would achieve the same result as the two currently in place in a far more simple and efficient manner. Routing all penalties via CSDs would resolve many issues of operational and risks and costs. Importantly, further to our discussions we understand that the single regime proposed is also supported by CSDs and their respective participants alike, and is regarded by all as a solution to improving CSDR SDR.

Furthermore, EACH also welcomes the capacity for CCPs to recover any losses from penalties imbalances, and that a CCP may establish the means of doing so in their rulebook.

3. Answers to the Consultation questions

Q1: Do market participants support removing the special process of collection and distribution of penalties by CCPs for cleared transactions? Please provide justifications, if possible supported by quantitative data.

EACH welcomes the ESMA proposal to remove the special process provided by Article 19 of Settlement Discipline Regime (henceforth "Article 19 SDR").

We believe that the collection and distribution of all penalties should be through a single mechanism, as proposed by ESMA in its consultation. As stated in previous responses (linked [here](#) and [here](#)), EACH sees the double penalties systems currently provided by CSDR SDR as complex, costly, inefficient and unnecessarily duplicative for CCPs, CSDs, CCP members and CSD participants.

The single penalties mechanism provided by the suggested ESMA amendment would be more efficient and would resolve legal and operational risks posed by running two parallel systems, as well as eliminating unnecessary operating costs. Below we include diagrams of both the current duplicative system and the proposed single penalties system to visualise the latter system's efficiency (Figures 1 and 2).

EACH would like to stress that we understand that this move to a single system is explicitly supported by CSDs and participants, in particular also in the context of improving the SDR overall since its launch in February 2022.

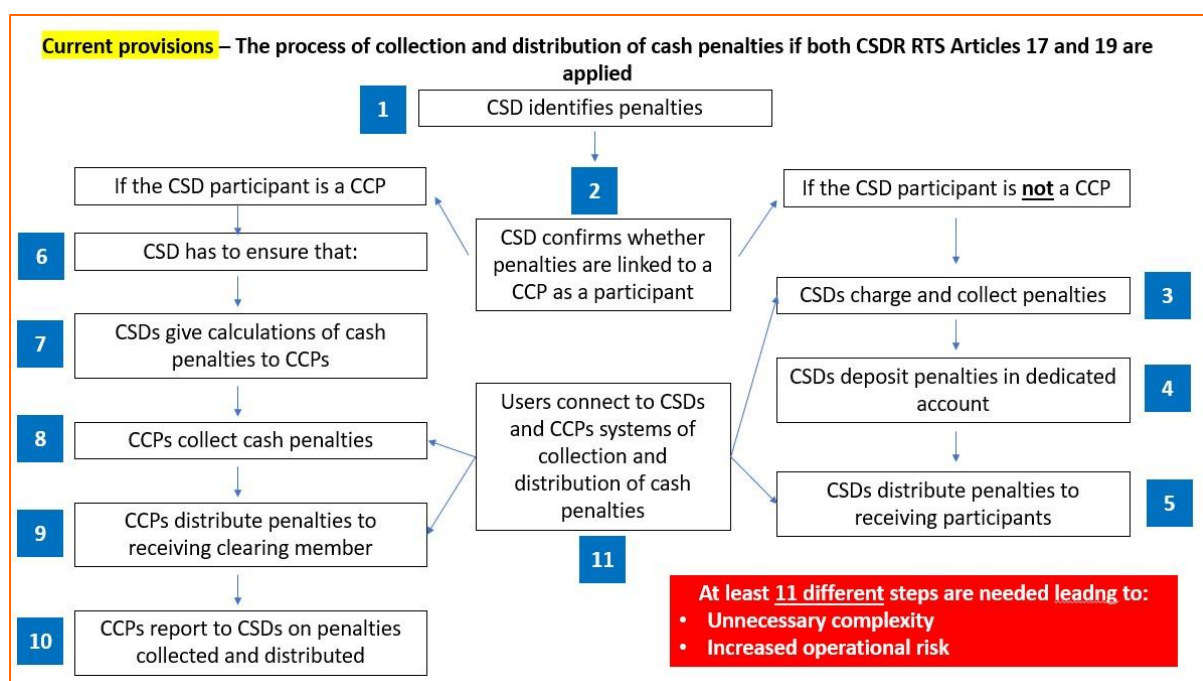


Figure 1 - Penalties process with the application of both CSDR SDR RTS Articles 17 and 19

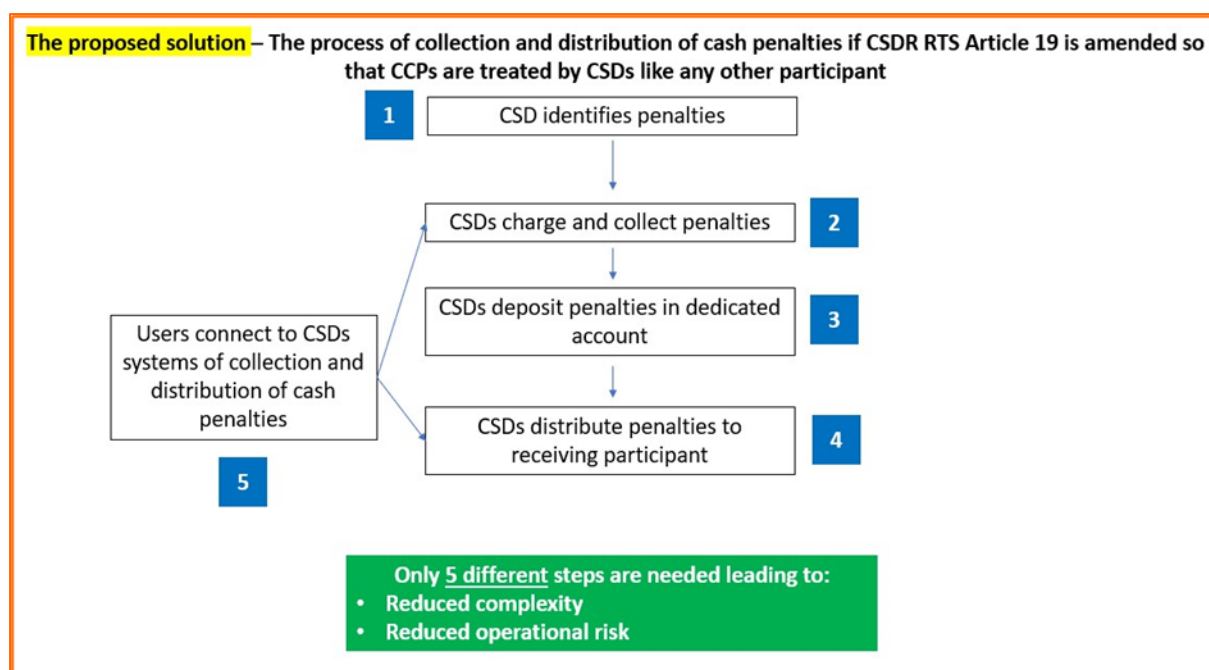


Figure 2 - Penalties process with CSDs treating collecting and redistributing all penalties

Q2: Do market participants support amending Article 19 of the CDR on Settlement Discipline as suggested in Annex IV? Please provide justifications, if possible supported by quantitative data.

EACH supports the essence of ESMA proposed amendments to Article 19 SDR, as we believe they go in the direction of achieving a single mechanism for the collection and distribution of penalties.

We would however suggest some editorial changes (See Box 1 on the next page) to ensure that the text proposed is aligned with the Level 1 (first two edits) and provides legal certainty that CSDs are in charge of i, ii and iii (third edit).

Furthermore, EACH also supports the gist of the amendment to Article 19(b) as it gives the CCPs the legal remit to recover any losses from imbalances, and that CCPs can establish the mechanism to do so in their rulebook. It is important for EACH that CCPs may recover losses from penalties imbalances, because as the consultation paper notes, these losses stem from penalties, where failure to deliver was not the fault of the seller.

We would however suggest deleting the sentence '*received from or paid to the other CSD participants pursuant to point (a)*' as we consider it unnecessary to clarify who the CCPs receive from and pay to. In addition, we respectfully believe that the reference is incorrect as CCPs do not have contacts with CSD participants.

Box 1 – Changes suggested

Article 19 - Penalty mechanism ~~for transactions cleared by a CCP~~ ***where the participant is a CCP***

~~“With respect to settlement fails related to transactions cleared by CCPs~~ ***Where the failing or the receiving participant is a CCP,***

(a) CSDs shall

- (i) calculate and apply the cash penalties in accordance with Article 16;
- (ii) collect from and distribute to their participants the net amount of cash penalties in accordance with Article 17; ***and***
- (iii) manage costs relating to the application of the cash penalties mechanism to such transactions in accordance with Article 18.

(b) CCPs may allocate to their clearing members the net amount of penalties, credit or debit, ~~received from or paid to the other CSD participants pursuant to point (a).~~ In such cases, CCPs shall establish relevant mechanism in their rules.”

Q3: Do market participants support delaying the application of the envisaged amendment by six months after the publication of the amending RTS in the Official Journal of the EU? If not, what would be appropriate implementation period in your view? Please provide explanations.

EACH supports the 6-month delay of the envisaged amendment and that all market participants implement at the same time, as opposed to a staggered approach.’

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