

# Final Report

**CSDR Guidelines on Access by a CSD to the Transaction Feeds of a  
CCP or of a Trading Venue under Regulation (EU) No 909/2014**





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# 1 Executive summary

## Reasons for publication

Article 53 of CSDR foresees access by other market infrastructures to CSDs, as well as access by CSDs to other market infrastructures.

Pursuant to this Article, ESMA is required to develop draft RTS to specify the risks to be taken into account by CSDs when carrying out a comprehensive risk assessment, and by competent authorities when assessing the reasons for refusal, to grant access to CCPs and trading venues, and the elements of the procedure referred to in paragraph 3 of Article 53 of Regulation (EU) No 909/2014. ESMA submitted those draft RTS on 28 September 2015. The European Commission adopted these draft RTS on 11 November 2016 and they were published in the Official Journal on 10 March 2017.

ESMA considers that there is a need to specify also the conditions under which access by CSDs to the trading feeds of CCPs and trading venues could be refused, especially as this type of access between infrastructures is not covered under Regulation (EU) No 600/2014 (MIFIR) and related MIFIR RTS either.

These guidelines thus provide elements on the risks to be taken into account by a CCP or a trading venue when carrying out a comprehensive risk assessment following a request for access to their trading feeds by a CSD, on which the competent authority of the CCP or the competent authority of the trading venue will base its assessment of the reasons for refusal to provide services by the CCP or by the trading venue, for the purposes of Article 53 of Regulation (EU) No 909/2014.

ESMA consulted the market from 18 December 2014 to 19 February 2015 for the purpose of elaborating such guidelines.

Having analysed:

- (a) the 11 responses received to that consultation,
- (b) Articles 89 and 90 of the RTS on CSD Requirements, and
- (c) Articles 35 and 36 of MIFIR, on the non-discriminatory access in respect of a CCP and to a trading venue and the related MIFIR RTS,

the draft guidelines proposed in the consultation paper have been amended as shown in Annex II.

## Content

Section 2 provides feedback on the stakeholder's contributions received by ESMA in response to the consultation paper published in December 2014.

Annex I provides the cost-benefit analysis for the guidelines and **Annex II presents the full text of the final guidelines** on access by a CSD to the transaction feed of a CCP or of a trading venue.

## Next steps

The guidelines in Annex II will be translated into the official languages of the European Union and published on ESMA website. The guidelines will apply from [the date that is two months after their publication on ESMA's website in all official languages of the EU].

Within two months of the publication of the translations, each national competent authority will have to confirm whether it complies or intends to comply with those guidelines. In the event that a national competent authority does not comply or intend to comply with those guidelines, it will have to inform ESMA, stating its reasons. ESMA will then publish the fact that a national competent authority does not comply or does not intend to comply with those guidelines.

## Acronyms

CCP	Central counterparty
EC	European Commission
CCP	Central Counterparty
CP	Consultation Paper on the Access to a CCP or a Trading Venue by a CSD (ref. ESMA/2014/1565) <sup>1</sup>
CSD	Central Securities Depository
CSDR	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, OJ L 257, 28.8.2014, p.1
ESMA	European Securities and Markets Authority
ESMAR	ESMA Regulation <i>i.e.</i> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
EU	European Union
MIFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ L 173, 12.6.2014, p.84
MIFIR RTS	Commission Delegated Regulation (EU) .../... <sup>2</sup> of 24.6.2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties
MS	Member State
RTS	Regulatory Technical Standards
RTS on CSD Requirements	Commission Delegated Regulation (EU) 2017/392 of 11.11.2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 with regard to regulatory

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<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1565\\_csd\\_r\\_gl.pdf](https://www.esma.europa.eu/sites/default/files/library/2015/11/2014-1565_csd_r_gl.pdf)

<sup>2</sup> Not yet published

technical standards on authorisation, supervisory and operational requirements for central securities depositories (including its annex)

T2S

Target-2 Securities

## 2 Feedback statement

### 2.1 General comments

1. ESMA received 11 responses to the CP published in December 2014. Responses were received from CSDs (and their association), trading venues (and their association), CCPs and banking associations.

### 2.2 Utility of the guidelines

2. There was broad support for specifying further the treatment of the request by a CSD of access to a transaction feed to a trading venue or CCP, by issuing guidelines for CCPs and trading venues to ensure consistent, uniform and coherent application of Article 53 by all entities subject to CSDR.
3. ESMA aligned – and, where appropriate, adapted – the wording of the draft guidelines proposed in the CP to the wording adopted in the RTS on CSD Requirements.
4. ESMA analysed the MIFIR and MIFIR RTS requirements in respect of access by a trading venue to a CCP (and vice-versa) and considered that the MIFIR RTS did not include any additional provisions that would be relevant for the guidelines under the CSDR.
5. There was support for ESMA's general approach that granting and refusing access to transaction feeds by a trading venue or a CCP should mirror and when necessary adapt the risk considerations that CSDs must apply when considering a request for access to its own systems. This means that the framework for providing access for a CSD to transaction feeds of a CCP or a trading venue should include consideration of issues that might be detrimental to the safety and soundness of market infrastructures, or threaten the smooth and orderly functioning of the financial markets.
6. However, an association of CSD participants questioned the need for these guidelines as there are already examples of trading venues and CCPs connecting directly to CSDs. It was also mentioned that this proposal conflicts with the concept, and benefits, of T2S.
7. The association mentioned the expectation that most trading venues and CCPs will choose to become "Directly Connected Participants" (DCPs) at T2S and may also choose to use the services of a single CSD or custodian, as opposed to remaining directly connected to each issuer CSD. "Obliging" the trading venue or CCP to agree to access requests from other issuer or investor CSDs (providing it meets the risk criteria set out in the proposal) may erode, according to the respondent, many of the benefits of the T2S DCP model such as a single messaging interface, format, service level and pricing structure. The possible consequence of multiple CSD connections in a T2S world (as opposed to a single connection via a custodian or CSD) will be higher costs in the form of CSD transaction fees, technology and operations, and legal effort and resource. Importantly, risk criteria alone should not be the sole consideration for a trading venue or CCP when considering a



CSD access request. CCPs and trading venues should also have the flexibility to consider the efficiency of the operating model and be free to choose the most optimal and robust model for themselves, their participants and the market in general and should not be forced to agree to a CSD access request just because they meet the risk guidelines set out in this proposal.

8. ESMA believes that the right of CSDs to have access, on a non-discriminatory and transparent basis to the transaction feeds of CCPs and trading venues cannot be questioned, as such right is specified in the CSDR. Furthermore, it should be noted that the DCP model in T2S has precisely been created to allow for CSD participants to interface with T2S in an identical way, irrespective of whether they are participants in one or several CSDs. Particularly the following points on T2S connectivity, messages and transaction costs should be underlined:
  - T2S allows for a single technical connection, using the identical ISO20022 format, irrespective of whether a DCP is a participant in one or several CSDs.
  - T2S transaction fees and related status messages will not vary, irrespective of whether the same volume of transactions is traded across one or several CSDs. Only the cost of queries and reports could vary with the number of CSDs a participant is connected to, as these are segregated per CSD.
9. Some respondents mentioned that it should be clarified that the guidelines are on access to transaction feeds of a CCP or a trading venue by a CSD, not on access of a CSD to the full membership of a trading venue (as trading venue member) or a CCP (as clearing member).
10. ESMA has clarified this in the proposed Guidelines.
11. One respondent mentioned that the guidelines should include a complaint procedure for CSDs to the competent authorities in case the CSD's access is denied.
12. In that respect, ESMA notes that the complaint procedure referred to in Article 53(3) of the CSDR is specified by Article 90 of the RTS on CSD requirements, which also applies to complaints relating to access being denied to CSDs by CCPs or trading venues.

### 2.3 Types of risks

13. There was broad support for the 3 categories of risks identified in the guidelines (legal, financial, operational).
14. Several respondents also highlighted that the guidelines should establish a harmonised minimum set of risk factors and not an exhaustive list so that trading venues and CCPs could comply with their Level 1 obligation to perform a "comprehensive" risk assessment.

15. One respondent however mentioned that the guidelines should confirm that the only reasons for refusal of access to a transaction feed that trading venues or CCPs can use are based on reasons of legal, financial or operational risk and not for other, competitive reasons.
16. According to the same respondent, the provision of a transaction feed by a trading venue or CCP to a CSD means that the trading venue or CCP provides a technical feed of transactions/instructions to the CSD for settlement. The CSD will – as a result - be able to provide its participants with settlement possibilities in other instruments. Opening access to such transaction feeds is therefore a crucial element in the competitive environment of CSDs. The provision of a transaction feed however does not expose the trading venue or CCP to the same risk as becoming a participant in a CSD. The reasons for refusal of access to a transaction feed by a trading venue or CCP will very likely not be the result of concerns about legal, financial or operational risk, but rather be about competitive issues. The respondent also mentioned that for this reason, Article 53 (3) of the CSDR provides that the party receiving a demand for access to its transaction feed “*shall not deny a request on the grounds of loss of market share*”.
17. ESMA agrees that access of a CSD to the transaction feeds of a trading venue or of a CCP does expose them to the same risks as a CSD granting access to its systems to a trading venue or a CCP, and has consequently adapted the conditions set out in the RTS on CSD Requirements for the latter case.
18. Respondents also mentioned several additional factors that should be considered in a comprehensive risk assessment:

- Reliability of CSD in its role as collateral location, in particular in terms of legal accessibility to the assets in case of default of the CSD;

ESMA believes this factor is covered by the criteria to be taken into account under the legal risk assessment (cf. paragraph 5.1 (a) of the guidelines).

- Financial cost for the CCP or trading venue to connect directly to CSDs.

ESMA believes this factor is captured through the financial risk assessment, more precisely through the criteria relating to the financing of “*any customised component required to enable access*” (cf. paragraph 5.2 (b) of the guidelines).

- Compatibility of the scope of the settlement services offered by the CSD and the financial instruments traded by the trading venue or cleared by the CCP;

ESMA has amended the minimal requirements for operational risk assessment in the guidelines accordingly (cf. paragraph 5.3 (a) of the guidelines).

- Knowledge of the market on which the CCP or trading venue operates, and of local market practices;
- Compatibility of the technical interfaces respectively used by the CSD and by the CCP or trading venue;
- Possibility for the CCP or trading venue to continue using certain functionalities (in particular circuit breaker features in case of excessive volatility or “stop button” feature in case of default of one of their members);
- Possibility for the CCP or trading venue to continue providing certain services to their members (such as provision of liquidity, credit, specific reporting, tax services, enhanced asset servicing, communication protocols) or whether it would lead to major changes in the CCP or trading venue service offering;
- Possibility for the CCP or trading venue to continue applying its risk methodology and managing the default of a member according to the default management process of this CCP or trading venue;

ESMA considers that the criteria defined in the guidelines for the operational risk assessment are generic enough to capture these factors to the extent necessary (cf. paragraphs 5.3 (b) and (d) of the guidelines).

- Finally, one respondent raised the issue of the quality of link arrangements in place between CSDs, the absence of which might hinder the ability to settle between members using different CSDs, with a potential cost for the CCP, as it would have to anticipate the amount of cash required to settle a transaction, potentially exposing the CCP to liquidity risk.

ESMA considers that it is not for the market infrastructures to assess such criteria: it should indeed be assessed by the competent authorities of the CSDs, either during the authorisation or review and evaluation phase in relation to the relevant CSDs, or when the respective link arrangements are established.

## Annexes

### Annex I – Cost-benefit analysis

1. The guidelines are of an optional nature, i.e. they are not issued pursuant to a specific mandate, but are issued on the basis of Article 16 of the ESMAR in order to ensure uniform, consistent and coherent application of Article 53(3) of the CSDR.
2. Article 16 of the ESMAR requires ESMA, where appropriate, to analyse the potential costs and benefits relating to proposed guidelines.
3. There are directly applicable provisions in the CSDR that might not apply in a uniform, consistent and coherent way within the Union in the absence of a clarification from ESMA on the risks to be taken into account by a CCP or a TV when carrying out a comprehensive risk assessment following a request for access by a CSD to their trading feed, as well as to be reviewed by the competent authority of the CCP or of the trading venue when it assesses the reasons for refusal to provide transactions feed by the CCP or by the TV, in accordance with Article 53 of the CSDR.
4. These directly applicable obligations relate to the fact a CCP and a TV shall provide transaction feeds on a non-discriminatory and transparent basis to a CSD upon request by the CSD. The CCP and the TV shall be able to deny access only where such access would affect the smooth and orderly functioning of the financial markets or cause systemic risk. It shall not deny a request on the grounds of loss of market share. A CCP or a TV that refuses access to a CSD shall provide the CSD with full written reasons for such refusal based on a comprehensive risk assessment.

	Description
Benefits	<p>The absence of guidelines on the risks to be taken into account by a CCP or a TV when carrying out a comprehensive risk assessment following a request for access by a CSD, as well as when the competent authority of the CCP or the competent authority of the TV assesses the reasons for refusal to provide services by the CCP or by the TV, might have the following consequences:</p> <p>(a) An un-level playing field between entities subject to the CSDR established in different MS;</p> <p>(b) A lack of clarity among stakeholders on the risks to be taken into account by a CCP or a TV when carrying out a comprehensive risk assessment following a request for access by a CSD, as well as when the competent authority of the CCP or the competent authority of the TV assesses the reasons for refusal to provide services by the CCP or by the TV.</p>

	<p>Therefore, the main benefit arising from the guidelines would be a clearer and more uniform application of Articles 53(1) and 53(3) of the CSDR across the Union. This should contribute to limit the number of complaints from CSDs for refusal of access to competent authorities of the trading venues and CCPs.</p>
<p>Compliance costs</p> <ul style="list-style-type: none"> <li>- One-off</li> <li>- On-going</li> </ul>	<p>For CCPs and trading venues, cost of changing current market practices, where necessary. It might call into question certain business models, mainly the integrated model of trading venues/CCP/CSD.</p> <p>For CCPs and trading venues competent authorities, cost of setting up new procedures.</p> <p>The benefits brought by the proposal significantly outweigh the costs.</p>

## **Annex II – Guidelines on Access by a CSD to the transaction feeds of CCPs and trading venues**

### **1 Scope**

#### **Who?**

1. These guidelines apply to competent authorities of CCPs and trading venues.

#### **What?**

2. These guidelines apply in relation to risks to be taken into account by a CCP or a trading venue when carrying out a comprehensive risk assessment following a request for access to the transaction feed of the CCP or of the trading venue.

#### **When?**

3. These guidelines apply from [the date that is two months after their publication on ESMA's website in all official languages of the EU].

## 2 Definitions

4. Unless otherwise specified, terms used in these guidelines have the same meaning as in Regulation (EU) No 909/2014. In addition, the following definitions apply:

*EC* European Commission

*ESMA* European Securities and Markets Authority

*EU* European Union

*Regulation (EU) No 909/2014* Regulation (EU) No 909/2014 of the European Parliament and of the Council on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation No 236/2012

*Regulation (EU) No 1095/2010* Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC

### **3 Purpose**

5. The purpose of these guidelines is to specify the risks to be taken into account by a CCP or a trading venue when carrying out a comprehensive risk assessment following a request for access to the transaction feed of the CCP or of the trading venue.



## 4 Compliance and reporting obligations

### 4.1 Status of the guidelines

6. This document contains guidelines issued under Article 16 of Regulation (EU) No 1095/2010. In accordance with Article 16(3) of Regulation (EU) No 1095/2010, competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.
7. Competent authorities to whom these guidelines are addressed should comply by incorporating them into their supervisory practices.

### 4.2 Reporting requirements

8. Competent authorities to whom these guidelines are addressed must notify ESMA whether they comply or intend to comply with these guidelines, with reasons for non-compliance, within two months after their publication on ESMA's website in all official languages of the EU to [CSDR.questions@esma.europa.eu](mailto:CSDR.questions@esma.europa.eu). In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.

## 5 Guidelines

9. Where, in accordance with Article 53(3) of Regulation (EU) No 909/2014, a CCP or a trading venue carries out a comprehensive risk assessment following a request for access by a CSD, and when the competent authority of the CCP or of the trading venue assesses the reasons for refusal to provide services by the CCP or by the trading venue, they should take into account the following risks resulting from such a provision of services:

- (a) legal risks;
- (b) financial risks;
- (c) operational risks.

### 5.1 Legal risks

10. When assessing legal risks following a request for access to trading feed by a CSD, the CCP or the trading venue, and its competent authority should take into account at least the following criteria:

- (a) The CSD does not provide the information needed to assess its compliance with the rules and legal requirements for access of the receiving party, including the legal opinions or any relevant legal arrangements that demonstrate the ability of the CSD to meet its obligations towards the receiving party;
- (b) The CSD does not provide the information, including legal opinions or any relevant legal arrangements, needed to assess its ability to ensure, in accordance with the rules applicable in the Member State of the receiving party, the confidentiality of information provided through the transaction feed;
- (c) In the case of a CSD established in a third country, either of the following:
  - i. the CSD is not subject to a regulatory and supervisory framework comparable to the regulatory and supervisory framework that would be applicable to the CSD if it were established in the Union, or
  - ii. the rules of the CSD concerning settlement finality are not comparable to those referred to in Article 39 of Regulation (EU) No 909/2014.

### 5.2 Financial risks

11. When assessing financial risks following a request for access to trading feed by a CSD, the CCP or the trading venue, and its competent authority should take into account at least the following criteria:

- (a) The CSD does not hold sufficient financial resources to fulfil its contractual obligations towards the receiving party;
- (b) The CSD is not willing or able to finance any customised component required to enable access in accordance with Article 53(1) of Regulation (EU) No 909/2014, to the extent that this is not a discriminatory access condition.

## 5.3 Operational risks

12. When assessing operational risks following a request for access by a CSD, the CCP or the trading venue, and its competent authority, should take into account at least the following criteria:

- (a) The CSD does not have the operational capacity to settle the securities transactions cleared by the CCP or executed on the trading venue;
- (b) The CSD is not able to demonstrate that it can adhere to and comply with the existing risk management rules of the receiving party or it lacks the necessary expertise in that regard;
- (c) The CSD has not put in place business continuity policies and a disaster recovery plan;
- (d) The granting of access requires the receiving party to undertake significant changes of its operations that would affect the risk management procedures and would endanger the smooth functioning of the trading venue or CCP, such as the implementation of ongoing manual processing by such parties.