

CSD participant default rules and procedures

DACSI's response to ESMA's consultation
"Guidelines on participant default rules and procedures under CSDR"

Version 1.1

Date 30 June 2016

DACSI (the Dutch Advisory Committee Securities Industry) is the principal trade association in The Netherlands for firms active in the securities industry. The association represents the interests of its members as users/clients of infrastructure providers in the field of securities, e.g. exchanges, central counterparties, central securities depositories. With 11 members, DACSI represents the vast majority of the banks active in The Netherlands, and positions the Dutch view to the market infrastructure service providers and the regulatory authorities in The Netherlands and the European Union.

Karspeldreef 14
1101 CK Amsterdam Zuidoost
The Netherlands
t : +31 20 763 0996
e : secretariat@dacsi.nl
w : www.dacsi.nl

With this document we respond to ESMA's consultation of 31 May 2016 on Guidelines on participant default rules and procedures under CSDR (ESMA/2016/732).

General remark

In addition to the specified questions DACSI proposes that the existence of proper rules according to these Guidelines should be conditional to a CSD's authorisation.

Answers to questions

Question 1: Procedure for establishing participant default rules and procedures

Do you consider other stakeholders should be involved in the definition of the default rules and procedures of a CSD? If so, which ones, and what should be the level of their involvement?

Yes, in DACSI's opinion two other stakeholders should be involved: the CSD's competent authority (being involved in the application of the procedures) and T2S (as de facto operator of the settlement system). Furthermore, once established, the rules and procedures should be available in the public domain.

Question 2: Acknowledgement of a participant's default

Do you think that such acknowledgement process is appropriate? In particular, do you consider it necessary for the CSD to verify the information regarding the default with the designated authority under the SFD before the CSD can take any action, or should the CSD be able to start taking actions based on its reasonable assessment of the participant's situation and on the reliability of the source that informed the CSD in the first place?

Yes, we consider such process appropriate.

DACSI stresses that proper verification is a necessary element in this process before action is taken, in order to avoid damage that could result from acting on incorrect information.

The request to CSD participants to notify their default (as specified in par. 15) "as soon as possible" is a proper request as part of the terms and conditions between the CSD and its participants. However, it should be made clear – clearer than the current wording - that such notification is not a necessary element in this acknowledgement process. Information from any source (par. 14) and verification with the proper authority (par. 16) should be sufficient for application of the default procedure. Actions to be taken should not be conditional to a defaulting participant's notification, where unconventional circumstances or adverse incentives may hinder timely communication.

Question 3: Actions a CSD may take in case of default

Do you consider that the actions listed are appropriate, or that other actions should be listed? Should certain actions be mandatory, depending for instance on the type or size of default, the characteristics of the participant or the CSD or any other criteria?

In DACSI's opinion two actions are to be added:

1. stop executing settlement instructions (while continuing accepting new instructions, which will be frozen pending the procedure)
2. eliminate instructions under particular conditions

No actions should be mandatory on ESMA level, as this would make the procedure too rigid.

The trigger for actions to be taken (par. 19 reads “when a default occurs”) should be made more specific to reflect the nature of the procedure: “when the application of a default procedure is activated (as in par. 17)”.

Is it a complicating factor when the participant’s competent authority is not an EU authority?

Question 4: Implementation of the default procedures

Do you think other items should be included in the internal plans?

No, we consider this sufficient.

Question 5: Communication on the implementation of the default procedures

Do you think that information on the implementation of the default rules and procedures should be transmitted to other stakeholders? If so, which other stakeholders?

Yes, we propose adding to the list in par. 24(b): T2S (as de facto operator of the settlement system), where T2S has to undertake action following this information.

Question 6: Periodic testing and review of participant default procedures

Do you think that such testing and reviewing processes are appropriate?

Yes, DACSI thinks that the CSD’s competent authority should take part in such tests, as it has a role in triggering the procedure.