

# Final Report

## Guidelines on Settlement Fails Reporting under Article 7 of CSDR



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## I. Executive Summary

### Reasons for publication

In order to ensure the consistent application of Article 7(1) of CSDR<sup>1</sup> as supplemented by Articles 14 and 39 of the RTS on settlement discipline<sup>2</sup>, ESMA has decided to issue Guidelines on the scope and exchange of information between ESMA and the competent authorities regarding settlement fails, based on the reports submitted by CSDs.

On 20 December 2018, ESMA published a Consultation Paper (CP) on Guidelines on Settlement Fails Reporting under CSDR<sup>3</sup>. The consultation closed on 20 February 2019. ESMA received 8 responses (including one confidential response). The non-confidential responses are published on the ESMA website<sup>4</sup>. ESMA also sought the advice of the Securities and Markets Stakeholder Group (MSG) in December 2018. The finalisation of these Guidelines has been put on hold for a while given the two postponements of the entry into force of the RTS on settlement discipline. This paper summarises and analyses the responses to the CP and explains how the responses have been taken into account.

### Contents

Section II contains the feedback statement. Annex I includes a high-level cost-benefit analysis for the Guidelines. Annex II includes the reference to the advice of the MSG. The Guidelines are set out in Annex III.

### Next Steps

The Guidelines set out in Annex III will be translated into the official languages of the European Union and published on the ESMA website.

Within two months from 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.

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<sup>1</sup> 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)

<sup>2</sup> Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 230, 13.9.2018, p.1)

<sup>3</sup> Please see the following link: <https://www.esma.europa.eu/press-news/consultations/consultation-guidelines-settlement-fails-reporting-under-article-71-csdr>

<sup>4</sup> Please see the following link: <https://www.esma.europa.eu/press-news/consultations/consultation-guidelines-settlement-fails-reporting-under-article-71-csdr>

## II. Feedback Statement

1. CSDs welcomed ESMA's initiative to issue Guidelines on settlement fails reporting, in order to ensure the consistent application of Article 7 of CSDR. Respondents to the CP expressed their support for achieving the intended regulatory and supervisory objective, while at the same time ensuring an effective and efficient implementation of the reporting requirements.

### A) Scope of data to be reported by CSDs

**Q1: Do you have any comments or suggestions regarding the financial instruments which should be covered by the reports on settlement fails? Please provide arguments supporting your comments and suggestions.**

2. The majority of respondents agreed that the scope of the settlement fails reporting obligation is the result of the joint application of Article 7(1) and Article 7(13) of CSDR, which only excludes transactions in shares for which the principal trading venue is located in a third country.
3. According to several respondents, all transactions eligible for settlement in a securities settlement system should be reported regardless of where a financial instrument is issued. They also highlighted that this approach would be less cumbersome to manage from an operational standpoint than having to manage a set of exemptions.
4. A few respondents mentioned that the reports on settlement fails should cover the same scope of financial instruments as cash penalties to ensure coherence between the reported settlement fails and the settlement fails subject to penalties.
5. ESMA agrees with the views mentioned above and proposes to clarify in Guideline 1 that a CSD should send separate reports for each securities settlement system it operates, covering all transactions in financial instruments referred to in Article 5(1) of CSDR, recorded in the CSD, excluding shares that have the principal venue for the trading located in a third country.

**Q2: Do you believe it would be useful for CSDs to provide data by taking into account the liquidity of the financial instruments and whether the settlement instructions and settlement fails relate to transactions executed on an SME growth market, thus reflecting the types of penalty rates specified in the Commission Delegated Regulation (EU) 2017/389? Would this add operational complexities to the reporting? Please provide arguments supporting your comments and suggestions.**

6. The majority of the respondents did not support the proposal to provide data by taking into account the liquidity and other information related to financial instruments, as this would add complexities to settlement fails reporting since this would require combining

reference data from various sources and databases and would multiply the parameters to be used. According to one respondent, increasing the number of parameters and conditions used for the reporting will not be commensurate with the reduction of settlement fails. Aiming at limiting the costs for the market in line with the European Commission's initiative to review the costs of supervisory reporting, the respondent advised to carefully balance the costs versus the benefits of the reporting and limit the granularity of the information to what is fundamentally necessary for further analysis/actions by competent authorities.

7. Only two respondents expressed support for the proposed Guideline 2 as included in the CP.
8. Having regard to the feedback received from stakeholders, ESMA has deleted Guideline 2 (paragraphs 2-5 of the draft Guidelines as included in the CP). Therefore, the liquidity of the financial instruments and whether the settlement instructions and settlement fails relate to transactions executed on an SME growth market will not be taken into account for the purpose of the settlement fails reports.

**Q3: Do you have any comments or suggestions regarding the fact that a CSD should only take into account matched instructions where matching is required? Please provide arguments supporting your comments and suggestions.**

9. Respondents were evenly divided regarding the best approach on whether only matched instructions should be reported or whether unmatched instructions should also be taken into account. While some respondents considered that the proposed approach was more consistent with the settlement discipline regime, others felt that unmatched instructions should also be used.
10. Given the references to matched settlement instructions in the RTS on settlement discipline, ESMA proposes maintaining the Guideline according to which only matched settlement instructions should be reported where matching is required.

## **B) Data reporting parameters**

**Q4: Do you have any comments or suggestions regarding the scope of the data that should be included in the reports on settlement fails? Please provide arguments supporting your comments and suggestions.**

11. Respondents to the CP were generally in favour of providing clarity on the scope through the Guidelines. At the same time, they wanted more details in some areas and sent further proposals of types of transactions and operations that should be out of scope of settlement fails reporting (e.g. on primary market operations, realignment operations, auto-collateralisation operations).
12. Initially, ESMA considered the possibility of clarifying the scope of transactions/operations subject to settlement fails reporting in the Guidelines (having in mind a potential alignment with the scope of cash penalties, as well as the approach taken in

the case of the Guidelines on internalised settlement reporting<sup>5</sup>). After further consideration, it was assessed that the scope of transactions/ operations subject to settlement fails reporting and the scope of cash penalties cannot be fully aligned, since there can be settlement fails that are not caused by participants (and therefore not subject to cash penalties) that should nevertheless be reported and monitored (e.g. settlement fails caused by CSD system failures, court orders, etc). The broad scope for settlement fails reporting is also supported by ECSDA, as it would be easier to implement (not having to manage exemptions). Therefore, ESMA proposes not including a list of transactions and operations to be considered out of scope of settlement fails reporting in the Guidelines. The European Commission may consider issuing a Q&A on the transactions and operations to be considered out of scope of settlement fails reporting.

**Q5: Are there other types of realignment operations than those used in T2S? What are the characteristics of those realignment operations? Could those realignment operations fail? How can realignment operations be identified by CSDs? Please provide details and examples.**

13. Some respondents provided a list of operations that, in their view, should be excluded from the settlement discipline regime as they are not in the participants' control.
14. One respondent mentioned that auto-collateralisation operations are other types of realignment concluded with a National Central Bank (NCB). These operations with the NCB can fail when the participant cannot return the cash lent by the NCB. In that case, there is already a penalty rate applied by NCB, and the same participant should not be penalised twice for the same operation.
15. ESMA considers that the examples mentioned above are relevant in the context of the application of cash penalties, and not for settlement fails reporting. As mentioned in relation to Q4 above, ESMA is of the view that the scope of transactions/ operations subject to settlement fails reporting and the scope of cash penalties cannot be fully aligned, since there can be settlement fails that are not caused by participants (and therefore not subject to cash penalties) that should nevertheless be reported and monitored. ESMA considers that the scope of settlement fails reporting is broad and it should be based on settlement instructions (transfer orders as defined in the SFD) which are eligible for settlement in a securities settlement system operated by an EEA CSD.

**Q6: Do you have comments or suggestions regarding the settlement scenarios included in Annex I to the Guidelines? Do you think there are additional scenarios which would be relevant? Please provide arguments supporting your comments and suggestions.**

16. The majority of respondents agreed with the scenarios in context of settlement in EU CSDs. According to several respondents, transactions where the place of settlement is outside of a CSD in the EU, should be considered as out of EU CSDs' reporting scope,

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<sup>5</sup> [esma70-151-1258\\_final\\_report - csdr\\_guidelines\\_on\\_internalised\\_settlement\\_reporting.pdf\(europa.eu\)](#)

and this would follow the same logic as for penalties and buy-in management. At the same time, according to one respondent (which supported the approach as described in Annex 1 of the Guidelines included in the CP), the approach was deemed consistent with the reporting of cash penalties that the T2S penalty mechanism would provide to T2S CSDs.

17. According to one respondent, more scenarios with regard to third countries may be relevant, covering for instance indirect links.
18. After further reflection, ESMA has decided not to include a list of scenarios in the Guidelines, given that they were designed having in mind the application of cash penalties primarily. Given the broad scope of settlement fails reporting, which should be based on settlement instructions (transfer orders as defined in the SFD) which are eligible for settlement in a securities settlement system operated by an EEA CSD, ESMA considers it is better not to mix the application of cash penalties with settlement fails reporting in the Guidelines.

**Q7: Do you see any operational burdens related to reporting by an Investor CSD even when it receives only one settlement instruction which it sends to another CSD (e.g. Issuer CSD) through a CSD link? What about in the case where the Issuer CSD is a third-country CSD? Please provide arguments supporting your comments and suggestions.**

19. According to one respondent, settlement finality would be reached in the CSD acting as place of settlement (PSET) CSD (in most cases also being the Issuer CSD). Thus, the Issuer CSD would report intra-CSD settlement where they act as PSET, which would include settlement performed by the Investor CSD as a participant (cross-CSD settlement). The Issuer CSD would report both legs of the transaction when they act as a PSET CSD, and the Investor CSD would report the individual leg, instructed by the participant of the Investor CSD, routed to the Issuer CSD for settlement and already matched there.
20. According to the same respondent, for third-country CSDs, such reporting would not be consistent with the application of cash penalties since settlement finality would not occur within EU.
21. Regarding T2S, no operational burden has been identified for scenarios involving T2S, as, according to the input received, a settlement fail would always materialise on T2S on the basis of matched settlement instructions, even in scenarios where the Issuer CSD is external to T2S, and would be reported to the relevant T2S CSD(s). The only problem may be where the Issuer CSD is a third-country CSD and the respective financial instrument is considered in scope of the settlement fails reporting, as T2S CSDs may have to exclude the settlement instruction from the reporting (assuming the settlement fails reporting scope is the same as the one used for cash penalties).
22. One respondent mentioned they did not detect any operational burdens.

23. As also mentioned in relation to Q6, after further reflection, ESMA has decided not to include a list of scenarios in the Guidelines, given the broad scope of settlement fails reporting, which should be based on settlement instructions (transfer orders as defined in the SFD) which are eligible for settlement in a securities settlement system operated by an EEA CSD.

**Q8: Can such settlement instructions as mentioned in Q7 be subject to settlement fails? If the answer is no, please explain why. If the answer is yes, please specify the cases/reasons that may lead to settlement fails.**

24. According to the majority of respondents, such settlement instructions as mentioned in Q7 in the CP can be subject to settlement fails.
25. According to some respondents, the one-legged cross CSD instruction can fail at the Investor CSD level, when cash or securities provisioning checks are performed as well as at issuer CSD level, e.g. due to lack of securities or cash of one or both participants.
26. One respondent mentioned that reporting the settlement instruction that an Investor CSD receives in the context of a standard or customized link is relevant, since those instructions are similar to realignment instructions. According to the respondent, those transactions can never fail from the Investor CSD side when the prefunding and the prepositioning mechanism is in place to ensure that CSDs are not exposed to any settlement risk in the context of a link.
27. According to one respondent, in the context of settlement scenarios involving T2S, a settlement fail will always materialise in T2S on the basis of matched settlement instructions, even in scenarios where the Issuer CSD is external to T2S. Settlement instructions mentioned in Q7 in the CP can fail and should be subject to settlement fails reporting, except in the case where the Issuer CSD is a third-country CSD as per the proposed approach in Annex I to the Guidelines included in the CP (assuming the settlement fails reporting scope is the same as the one used for cash penalties).
28. ESMA agrees that such settlement instructions as mentioned in Q7 in the CP can be subject to settlement fails from the Investor CSD side, if the prefunding and the prepositioning mechanism is not in place to ensure that CSDs are not exposed to any settlement risk in the context of a link. As mentioned above, ESMA considers that the scope of settlement fails reporting is broad, and it should be based on settlement instructions (transfer orders as defined in the SFD) which are eligible for settlement in a securities settlement system operated by an EEA CSD.

**Q9: Do you think it would be useful for CSDs to report also 'settled instructions', in addition to 'settlement fails' and 'total instructions'? Would this add operational complexities to the reporting? Please provide arguments supporting your comments and suggestions.**



29. The views were split. Some respondents claimed that this may add complexities to the reporting, while other respondents mentioned the opposite.
30. According to one respondent, reporting settled instructions allows to reflect more accurately the reporting of partially settled instructions as envisaged in Guideline 7 in the CP (where on a settlement day, a settlement instruction can be both settled and failed).
31. According to two respondents, this additional requirement could be useful only where an efficiency-threshold mechanism which triggers the application of penalties would be introduced.
32. Based on further input requested from ECSDA, ECSDA confirmed that, in general, providing settled instructions information would not add complexities for CSDs, as data on settled instructions are available.
33. ESMA proposes keeping the requirement to report also 'settled instructions', as this approach allows to reflect more accurately the reporting of partially settled instructions, and would also be in line with internalised settlement reporting.

**Q10: Do you have any comments or suggestions regarding the proposed approach for calculating the rate of settlement fails by taking into account recurring settlement fails? Please provide arguments supporting your comments and suggestions.**

34. The respondents agreed with the proposed approach in the CP. However, some further clarifications regarding the failed settlement instructions that are ultimately cancelled would be welcomed, in particular if on the day when a settlement instruction is cancelled, it should be reported as 'failed' or not reported.
35. ESMA clarified in the Guidelines that settlement instructions that are cancelled before the relevant cut-off time should not be reported either in the 'total' or 'failed' categories (only for the day when the settlement instructions are cancelled and only for the part of the settlement instructions that is cancelled).

**Q11: How could the information on the duration of settlement fails be captured in the reporting template (to be potentially included in Table 2 of Annex I of the Commission Delegated Regulation (EU) 2018/1229)? Would it be useful to split the daily data depending on the number of days for which settlement instructions have been failing (fully or partially)? Would this add operational complexities to the reporting? Please provide arguments supporting your comments and suggestions.**

36. The respondents have not provided suggestions on the ways to collect information about the duration of settlement fails. They argued against including this kind of information in the reports, given the following arguments:
- increased processing time and complexity of the reports;
  - this kind of details could reduce the visibility of the reports;

- the duration of settlement fails is related to the single settlement instruction and not to the aggregated data;
- this requirement is not included in the RTS on settlement discipline;
- the added value of this reporting is questionable and is not commensurate with the aim to reduce settlement fails.

37. One respondent asked to clarify what “weighted for the value of the settlement fail” actually means and how the “weighing” should be defined by CSDs in accordance with the RTS on settlement discipline (Annex I, Table 1, line 41).

38. Having regard to the arguments put forward by respondents, ESMA agrees not to include clarifications in the Guidelines on collecting more detailed information about the duration of settlement fails, other than that explicitly required in the RTS on settlement discipline (i.e. the average duration of settlement fails).

39. In order to provide further guidance on the RTS requirement mentioned above, ESMA has included a formula in the Guidelines for the calculation of the average duration of settlement fails (please see Guideline 11): the sum of the values of all settlement fails reported in the current reporting period (whether or not the ISD falls in the same reporting period) divided by the sum of the values of settlement fails on ISD reported in the current reporting period (the ISD falls in the same reporting period). An example is also included in Annex III to the Guidelines.

**Q12: Do you have any comments or suggestions regarding the proposed approach for reporting partially settled instructions? Please provide arguments supporting your comments and suggestions.**

40. The majority of respondents did not agree with the proposed calculation for the volume of the partially settled instructions, and suggested to report a partially settled instruction as failed, until the moment it is completely settled.

41. Following a request for clarification regarding the feedback provided in response to the CP, ECSDA confirmed that they were fine with the approach proposed in the CP, i.e. that a CSD should report a partially settled instruction as both failed and settled, as long as the settlement instruction is not fully settled.

42. ESMA has maintained the approach proposed in the CP as referred to in the paragraph above.

**Q13: Can you please provide estimates regarding the cases where a late matching instruction is received containing an ISD within the previous month?**

43. Only one respondent provided the requested data: in November 2018, 9.97% of the settlement instructions at the level of the CSD contained an ISD within the previous months (not only the previous one, but from July to October 2018). Based on additional input from ECSDA, cases where a late matching instruction is received containing an ISD within the previous month are not frequent.

**Q14: Do you have any comments or suggestions regarding the proposed approach for treating late matching instructions? Which option do you prefer? Please provide arguments supporting your comments and suggestions.**

44. The majority of the respondents advise to reconsider the suggestion to modify and resubmit the reports for the previous months. They are supporting this position with the following arguments:

- high operational efforts;
- increased processing time;
- not in line with the internalised settlement reporting;
- the numbers of such instructions are expected to be marginal as the new settlement discipline regime would impose cash penalties;
- the added value is questionable.

45. Given the stakeholders' feedback according to which such cases would be marginal and would create operational complexities for CSDs with low added value, ESMA proposes not to ask CSDs to resubmit monthly reports if they receive late matching instructions containing an intended settlement date (ISD) within the previous month.

**Q15: What would be an adequate tolerance level (for figures related to: values, volumes, rates) for the discrepancies between the annual report and the aggregated figures in the related monthly reports?**

46. While some respondents believed that there should not be any discrepancies between the annual report and the aggregated figures, one respondent proposed 100% tolerance level as, in their view, the introduction of tolerance calculations/considerations would complicate the process.

47. In order to allow for flexibility regarding where to set the threshold based also on the practical experience once CSDs will start submitting annual reports on settlement fails, ESMA proposes not to include a predefined threshold in the Guidelines. If there are significant discrepancies between the annual report and the aggregated figures in the monthly reports, CSDs should verify the reasons for the discrepancies and should resubmit the corrected reports.

**Q16: Do you have any comments or suggestions regarding the proposed approach for reporting settlement fails based on the reason (cause) of each settlement fail? Please provide arguments supporting your comments and suggestions. Please see the two Options which have been considered, together with the related examples, in Annex II to these Guidelines.**

48. Some respondents asked for further clarifications regarding how the CSD can determine if a settlement fail is caused by a 'failure to deliver cash' or a 'failure to deliver securities' when more than one reason code of failure for a settlement instruction applies, and some of them result in both 'failure of cash' and 'failure of securities'. A suggested approach would be to check the securities leg first, and if there is a

settlement fail, no further checks would be done on the cash leg. This approach would be aligned with the foreseen behaviour of the T2S platform for cash penalties calculations. It should also be noted that, normally, several optimisation tools would be available in a securities settlement system, which would prevent failure of cash to happen; thus, these situations should be marginal.

49. One respondent sent a proposal on possible reason codes for settlement fails (covering for instance instructions on hold, insufficient financial instruments in delivering participant's account, account blocked, etc). The respondent also asked for a clarification on if and how to take into account the nature of the settlement instructions (versus/with payment) and who failed (delivering or receiving party).
50. As suggested by stakeholders, ESMA has clarified in the Guidelines that CSDs should check the securities leg first, and if there is a settlement fail, no further checks would need to be done on the cash leg.
51. ESMA has also provided further guidance under Guideline 10 (paragraphs 32-45) on how to report settlement fails depending on the reason (cause) of each settlement fail, considering various other parameters, such as:
- the type of settlement instructions,
  - if the instructions are put on hold (by one or both participants),
  - if there are late matching settlement fails.
52. Concrete examples can be found in Annex II to the Guidelines.

**Q17: Which Option regarding the treatment of business days in the monthly reports on settlement fails is preferable from an operational perspective? Please provide arguments supporting your comments and suggestions.**

53. The majority of the respondents supported Option 2, i.e. reporting only the business days of the respective months. According to one respondent, this would align with the application of cash penalties and would result in a clearer structure of the report. Furthermore, Option 1 would unnecessarily increase the report size when covering weekends as non-business days.
54. Some respondents expressed support for one single option taken by all CSDs, to encourage European harmonisation, and the adoption of the most common calendar across Europe.
55. Given the stakeholders' input, ESMA clarified in Guideline 12 that the monthly reports on settlement fails should include only the business days of the respective month.

**Q18: Do you have any comments or suggestions regarding the currencies? Please provide arguments supporting your comments and suggestions.**

56. The majority of the respondents understand that the proposal is that the value conversion into EUR should be carried out using the official exchange rate of the ECB of the last day of the reporting period (where that official exchange rate of the ECB is available) and apply the same exchange rate for all the days in the month, as this would be in line with the RTS on settlement discipline.

57. ESMA confirms this understanding which is in accordance with the second subparagraph of Article 14(1) of the RTS on settlement discipline.

58. ESMA has kept the proposal as per the CP according to which, for the data per currency in which the settlement instructions are denominated, which has to be included in the monthly reports as per Table 1 of Annex I to the RTS on settlement discipline, CSDs should provide the values in EUR, while specifying the original currencies (please see Guideline 13, paragraphs 48 and 49, including the example).

**Q19: Do you have any comments or suggestions regarding the proposed approach for reporting the value of financial instruments included in DwP/RWP settlement instructions? Please provide arguments supporting your comments and suggestions.**

59. The majority of respondents mentioned that, unlike for penalties calculations, DVP/RVP settlement instructions countervalue are not requested to be recalculated using the MIFID II/ MiFIR closing price of the financial instrument, but rather using the cash settlement amount as included in the settlement instructions. They suggest using a similar approach for reporting DwP/RwP settlement instructions.

60. ESMA agrees with the proposal put forward by stakeholders for reporting the value of DwP/RwP instructions. In addition, ESMA has provided more details on the method for the valuation and representation of settlement instructions which should be used by CSDs for all types of settlement instructions foreseen in the RTS on settlement discipline (please see Annex I to the Guidelines).

**Q20: Do you have any comments or suggestions regarding the proposed ranking? Please provide arguments supporting your comments and suggestions.**

61. According to some respondents, a tie is considered to occur with a low probability. In order to distinguish tied data, a simpler approach would be to expand the assessment of the rates by CSDs to an additional decimal.

62. ESMA clarifies in the Guidelines that, in order to determine the ranking (according to the rates of settlement fails based on the value and the number of settlement fails), CSDs should be able to use more than two decimals (even though, for reporting purposes, CSDs need to report the rates of settlement fails as percentages with up to 2 decimal places), as this is foreseen in the RTS on settlement discipline. In case of a tie in the 20th or 10th rank, more than 20 or 10 entries would be reported, respectively. If for instance participants X and Y are tied for the 10th rank, they should both be reported; in order to determine which should be reported as being ranked 10th and

which should be reported as being ranked 11th, the alphabetical order of the participants' names may be used.

### **C) Process for the submission of settlement fails reports**

**Q21: Do you have any comments or suggestions regarding the proposed process for the submission of settlement fails reports? Please provide arguments supporting your comments and suggestions.**

63. Some respondents highlighted the urgent need to define the ISO 20022 or XML message format, that should ideally be published prior to the final guidelines' issuance.

64. Respondents were right when making those observations at that time. However, in February 2020 the ISO 20022 message definition XSD schemas developed by ESMA for settlement fails reporting were approved and published by the Registration Authority. ESMA has also transmitted them to the NCAs, relevant authorities and ECSDA.

**Q22: Do you have any additional comments or suggestions regarding the proposed guidelines? Please provide arguments supporting your comments and suggestions.**

65. Respondents raised a series of additional questions; the key comments are included below.

66. Some respondents asked for confirmation on whether settlement restrictions (such as reservation, blocking or earmarking) would be included when reporting settlement fails. ESMA would like to mention that this is not envisaged in the RTS on settlement discipline, which refers to the reporting of settlement instructions defined in point e) of Article 1 of the RTS on settlement discipline as transfer orders according to point (i) of Article 2 of the SFD.

67. Some respondents mentioned that, for the identification of the transaction types, CSDs would apply the ISO code of the participant causing the settlement fail if the codes are not provided in both instructions or differ between the receipt and delivery instruction leg. ESMA would recommend that CSDs make the transaction type a mandatory matching field. Please see also the ESMA Settlement Discipline Q&A 6 c)<sup>6</sup>.

68. One respondent asked for clarification on how to identify the top 10 participants with the highest rates of settlement fails (given the requirement to include this information in the reports), given the need to identify the participants responsible for settlement fails. They gave the following example: if Party A has to deliver to Party B, and Party A put on hold his settlement instruction, both settlement instructions failed. ESMA considers that in this case party A should be considered responsible for the fail of both settlement instructions. ESMA has also clarified in Guideline 16 that these Guidelines should also apply for the purpose of determining participants considered as

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<sup>6</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-2\\_csd\\_r\\_qas.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-2_csd_r_qas.pdf)



consistently and systematically failing to deliver in a security settlement system, as referred to in Article 7(9) of CSDR and in Article 39 of the RTS on settlement discipline.

69. One respondent sent a potential mapping of transaction codes and the transaction types foreseen in the RTS on settlement discipline. ESMA recommends that such a mapping is discussed and agreed at the level of ECSDA before it is submitted to ESMA to be discussed with the CSD NCAs in order to ensure supervisory convergence.
70. One respondent asked for more clarity on the process for ad-hoc requests that may be formulated by NCAs, i.e. if these requests would be made on a regular basis, or if they can rather be made on a case-by-case basis or both, and if CSDs would be given explanations on the reasons of the ad-hoc requests (please see Recital 14 of the RTS on settlement discipline<sup>7</sup>). ESMA considers that as it is up to each NCA to decide when they ask for more frequent or additional information on settlement fails, as foreseen in the last subparagraph of Article 14(1) of the RTS on settlement discipline. Where feasible, ESMA will endeavour to coordinate with the NCAs in this respect in order to ensure supervisory convergence and to streamline the requests as much as possible.
71. One respondent pointed to the fact that, according to the RTS on settlement discipline, the monthly settlement fails reports should be sent by the 5th business day of the following month, with two fields indicating the number and value of the penalties. At the same time, the ECSDA CSDR Penalties Framework envisages that the reporting on the penalties amounts collected and redistributed by CSDs would only be available on the 14th business day of the following month. Hence, the final penalties amounts may not be available on the 5th business day. In order to have final data on the applied penalties, ESMA proposes in Guideline 15 that CSDs should send data regarding the number and value of cash penalties (as mentioned in fields 39 and 40 of Table 1 of Annex I to the RTS on settlement discipline) in relation to penalties processed (i.e. collected and distributed) during the reporting month covering the previous month.
72. One respondent mentioned that cash penalties should not be applied after the opening of insolvency proceedings against a participant. ESMA emphasizes that the topic of these Guidelines is settlement fails reporting, and not the application of cash penalties. In respect of the comment raised by the respondent, ESMA would like to mention the ESMA Q&A on the scope of cash penalties – Settlement Discipline Q&A 4b, which clarifies that as of the date of the opening of insolvency proceedings against a participant, Article 7(12) of CSDR applies and, therefore, Article 7(2) of CSDR on cash penalties shall cease to apply to the settlement fails caused by the insolvent participant. However, ESMA considers that any related settlement fails should still be reported, given that the requirement on settlement fails reporting is covered under Article 7(1) of CSDR, which is not covered by the exemption foreseen in Article 7(12) of CSDR<sup>8</sup>.

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<sup>7</sup> Recital 14 of the RTS on settlement discipline states that “Competent authorities should also be entitled to request additional information on settlement fails or more frequent reporting as necessary so that they can perform their tasks.”

<sup>8</sup> According to Article 7(12) of CSDR, paragraphs 2 to 9 of Article 7 of CSDR shall not apply if insolvency proceedings are opened against the failing participant.

## **Annexes**

### **Annex I – Cost-benefit analysis**

#### **Background**

1. According to Article 7(1) of CSDR, for each securities settlement system it operates, a CSD shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1). It shall provide regular reports to the competent authority and relevant authorities, as to the number and details of settlement fails and any other relevant information, including the measures envisaged by CSDs and their participants to improve settlement efficiency. The competent authorities shall share with ESMA any relevant information on settlement fails.
2. The RTS on settlement discipline specifies the details of the reports on settlement fails referred to in Article 7(1) of CSDR. In particular, regarding Articles 14 and 39 of the RTS on settlement discipline, the objective of these Guidelines is to clarify the scope of the data to be reported by CSDs, the representation and valuation of financial instruments, the types of transactions and operations that should not be included, as well as how to report settlement fails based on the reason (cause) of the settlement fails.
3. These Guidelines are based on Article 16(1) of the ESMA Regulation. The purpose of these guidelines is to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure common, uniform and consistent application of Article 7(1) of CSDR as well as Articles 14 and 39 of the RTS on settlement discipline, including the exchange of information between ESMA and the competent authorities regarding settlement fails, and the content of such reporting.
4. Article 16 (2) of the ESMA Regulation requires ESMA, where appropriate, to analyse the potential costs and benefits relating to the guidelines. It also states that cost-benefit analyses must be proportionate in relation to the scope, nature and impact of the Guidelines.
5. The objective of performing a cost-benefit analysis is to assess the costs and benefits of the various policy or technical options which were analysed during the process of drafting the Guidelines.
6. The Guidelines are issued at the initiative of ESMA in accordance with Article 16 of ESMA Regulation.
7. ESMA has considered the relevant factors mentioned in the ESMA Regulation by taking due account of the nature, scale and complexity of the risks inherent in the CSD business in particular related to settlement. CSDs contribute to a large degree in maintaining post-trade infrastructures that safeguard financial markets and give market participants confidence that securities transactions are executed properly and in a timely manner, including during periods of extreme stress. Due to their key position in the settlement process, the securities settlement systems operated by CSDs are of a systemic importance for the functioning of securities markets.



8. As reflected in the Feedback Statement, ESMA has taken into account the input received from stakeholders in order to ensure the proportionality of the proposed Guidelines, while meeting the policy objectives. For instance, given the stakeholders' input according to which such cases would be marginal and would create operational complexities for CSDs with low added value, ESMA proposes not to ask CSDs to resubmit monthly reports if they receive late matching instructions containing an intended settlement date (ISD) within the previous month; the majority of such instructions would be included in the annual reports.
9. There are directly applicable provisions in CSDR that may not apply in a uniform, consistent and coherent way within the Union in the absence of a necessary clarification from ESMA on the exchange of information between the competent authorities and ESMA with regard to settlement fails.

### **The impact of ESMA Guidelines**

10. In light of the main focus of these Guidelines, ESMA developed a preliminary assessment considering the benefits and costs of the key policy choices presented for consultation. As already clarified in the preliminary impact analysis annexed to the CP, a qualitative assessment of costs and benefits can be provided also considering that in many cases both costs and benefits are direct consequences of the application of the new requirements stemming from CSDR and the RTS on settlement discipline.
11. Since the new requirements have been set out under CSDR and the RTS on settlement discipline, the impact of the current Guidelines has to be considered in light of those legal provisions that they support. While CSDs will likely incur certain costs for implementing these guidelines, they will also benefit from the increased legal certainty and the harmonised application of the requirements across Member States.

### **Benefits**

12. These guidelines further clarify settlement fails reporting. By pursuing the objective of ensuring a consistent and harmonised implementation and application of the new requirements, the Guidelines will make sure that the objectives of CSDR and of the RTS on settlement discipline can be achieved across Member States, without imposing undue additional burdens on stakeholders. The Guidelines should facilitate consistent reporting and increased data quality.
13. It is possible to summarise the main benefits linked to the Guidelines as follows:
  - a) consistent and streamlined reporting;
  - b) increased data quality;
  - c) reduced burden for CSDs through the provision of a standardised reporting template;
  - d) reduction of risks linked to regulatory or supervisory arbitrage due to an increased degree of harmonisation and more consistent supervisory convergence;
  - e) positive effects from improved harmonisation and standardisation on the costs and the processes of implementation for CSDs;
  - f) positive effects from improved harmonisation and standardisation for competent authorities of costs and activities needed for the implementation of the new supervisory process.

## **Costs**

14. In its preliminary assessment developed at the time of the publication of the CP, ESMA mentioned that the costs implied by these Guidelines can be summarised as the cost of changing current market practices, where necessary.
15. It should also be noted that the specific costs triggered by these Guidelines should not be significant for CSDs and competent authorities, given the fact that they are required to comply with the new CSDR rules on settlement fails reporting.
16. The incremental costs that CSDs will face when implementing the necessary measures in order to comply with the settlement fails reporting requirements will be both one-off and ongoing costs, arguably linked to the following:

### **One-off costs**

- a) Initial IT investments;
- b) Procedural and organisational arrangements (business, compliance and legal);
- c) Organisational and HR costs (linked to the new activities for the compliance function; costs due to the training of staff and resources needed at management level).

### **On-going costs**

- a) Running IT costs;
- b) Control and compliance costs.

17. ESMA believes that the policy options proposed in this area provide the most cost-efficient solution, taking into consideration the relevant legislative framework, to achieving the general objectives of these Guidelines.

## **Conclusion**

18. The majority of costs will stem directly from the application of the new CSDR requirements on settlement fails reporting, rather than from the ESMA Guidelines. The overall resources associated with these Guidelines will facilitate the achievement of a higher degree of harmonisation in the implementation and supervision of the settlement reporting fails requirements. ESMA also considers that the increased harmonisation in the interpretation and application of the settlement fails reporting requirements across Member States will minimise the potential adverse impact on CSDs linked to compliance costs. These benefits will outweigh all associated costs in respect of the Guidelines.



## **Annex II – Advice of the Securities and Markets Stakeholder Group**

In accordance with Article 16 of the ESMA Regulation, ESMA has requested the advice of the Securities and Markets Stakeholder Group (SMSG). The SMSG has not provided any comment.

## **Annex III - Guidelines on Settlement Fails Reporting under Article 7 of CSDR**

### **1. Scope**

#### **Who?**

1. These Guidelines apply to competent authorities designated under Article 11 of CSDR and to CSDs as defined in Article 2(1)(1) of CSDR.

#### **What?**

2. These Guidelines apply in relation to Article 7(1) of CSDR and Articles 14 and 39 of the RTS on settlement discipline.

#### **When?**

3. These Guidelines apply from the date of entry into force of the RTS on settlement discipline.

### **2. Legislative references, abbreviations and definitions**

#### **Legislative references**

<i>ESMA Regulation</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 <sup>9</sup>
<i>CSDR</i>	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 <sup>10</sup>
RTS on settlement discipline	Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline <sup>11</sup>

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<sup>9</sup> *OJ L 331, 15.12.2010, p. 84*

<sup>10</sup> *OJ L 257, 28.8.2014, p. 1*

<sup>11</sup> *OJ L 230, 13.9.2018, p. 1*



<i>FCD</i>	Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements <sup>12</sup>
<i>SFD</i>	Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems <sup>13</sup>
<i>MiFID II</i>	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU <sup>14</sup>
<i>MiFIR</i>	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 <sup>15</sup>
<i>MAR</i>	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC <sup>16</sup>
<i>SSR</i>	Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps <sup>17</sup>

## Abbreviations

<i>CP</i>	Consultation Paper
<i>CSD</i>	Central securities depository
<i>EC</i>	European Commission
<i>ESMA</i>	European Securities and Markets Authority
<i>EU</i>	European Union
<i>ISD</i>	Intended settlement date
<i>DVP</i>	Delivery versus Payment

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<sup>12</sup> OJ L 168, 27/06/2002, p. 43

<sup>13</sup> OJ L 166, 11.6.1998, p. 45

<sup>14</sup> OJ L 173, 12.6.2014, p. 349

<sup>15</sup> OJ L 173, 12.6.2014, p. 84

<sup>16</sup> OJ L 173, 12.6.2014, p. 1

<sup>17</sup> OJ L 86, 24.3.2012, p. 1



<i>FOP</i>	Free of Payment
<i>DWP</i>	Delivery with Payment
<i>RWP</i>	Receive with Payment

### **3. Purpose**

4. These Guidelines are based on Article 16(1) of the ESMA Regulation. The purpose of these guidelines is to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure common, uniform and consistent application of Article 7(1) of CSDR as well as Articles 14 and 39 of the RTS on settlement discipline, including the exchange of information between ESMA and the competent authorities regarding settlement fails, and the content of such reporting.
5. According to Article 7(1) of CSDR, for each securities settlement system it operates, a CSD shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1). It shall provide regular reports to the competent authority and relevant authorities, as to the number and details of settlement fails and any other relevant information, including the measures envisaged by CSDs and their participants to improve settlement efficiency. The competent authorities shall share with ESMA any relevant information on settlement fails.
6. The RTS on settlement discipline specifies the details of the reports on settlement fails referred to in Article 7(1) of CSDR.
7. In particular, regarding Articles 14 and 39 of the RTS on settlement discipline, the objective of these Guidelines is to clarify the scope of the data to be reported by CSDs, the representation and valuation of financial instruments, as well as how to report settlement fails based on the reason (cause) of the settlement fails.

### **4. Compliance and reporting obligations**

#### **Status of the guidelines**

8. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and CSDs must make every effort to comply with these Guidelines.
9. Competent authorities to which these Guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at CSDs. In this case, competent authorities should ensure through their supervision that CSDs comply with the guidelines.

## Reporting requirements

10. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these Guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
11. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.
12. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.
13. CSDs are not required to report whether they comply with these Guidelines.

## 5. Guidelines on settlement fails reporting under Article 7 of CSDR

### I. Scope of data to be reported by CSDs

14. **Guideline 1:** When reporting to competent authorities and relevant authorities in accordance with Article 7(1) of CSDR, a CSD should send separate reports for each securities settlement system it operates, covering all financial instruments referred to in Article 5(1) of CSDR, recorded in the CSD, excluding shares that have the principal venue for the trading located in a third country.
15. In accordance with Article 7(13) of CSDR, CSDs should not include in the reports data regarding shares for which the principal venue for the trading is located in a third country. For the purpose of determining the location of the principal venue for the trading of shares in accordance with Article 16 of SSR, CSDs should use the List of Exempted Shares under the Short Selling Legal Framework<sup>18</sup> published by ESMA.
16. In order to report financial instruments in accordance with the categories referred to in Article 13(1)(c) of the RTS on settlement discipline, CSDs may use the Financial Instruments Reference Data System (FIRDS)<sup>19</sup> published by ESMA in accordance with Article 27 of MiFIR and Article 4 of MAR, and the ISIN ANNA Lookup Service<sup>20</sup> to obtain the CFI<sup>21</sup> codes. CSDs may use a mapping table with the CFI codes published by ECSDA for the purposes of CSDR implementation.
17. CSDs should report all settlement instructions that are in the scope of Article 7(1) of CSDR, irrespective of whether they relate to transactions that are executed on a trading venue or to OTC transactions.

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<sup>18</sup> [https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_mifid\\_shsexs](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_mifid_shsexs)

<sup>19</sup> [https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_firds](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds)

<sup>20</sup> <https://www.anna-web.org/standards/isin-iso-6166/>

<sup>21</sup> Classification of Financial Instruments – ISO 10962

18. **Guideline 2:** For the purpose of the reports on settlement fails under Article 7(1) of CSDR, a CSD should take into account all matched settlement instructions entered into the securities settlement system it operates, as well the instructions referred to in point c) of Article 5(2) of the RTS on settlement discipline for which matching is not required.

## II. Data reporting parameters

19. **Guideline 3:** The term 'volume' in respect of settlement instructions mentioned in the Annexes to the RTS on settlement discipline should be read as 'the number of settlement instructions'.
20. **Guideline 4:** The reports on settlement fails under Article 7(1) of CSDR as supplemented by Article 14 of the RTS on settlement discipline should include the number and value of settled instructions during the period covered by the reports, which can be calculated by deducting the number and value of settlement fails from the number and value of settlement instructions.
21. **Guideline 5:** Settlement instructions should be considered as 'failing settlement instructions' (and included in the data regarding 'settlement fails') from the moment when settlement on the intended settlement date (ISD) is no longer possible due to a lack of securities or cash and regardless of the underlying cause.
22. Settlement instructions (submitted by the relevant cut-off time) should be included in the data regarding 'settlement fails' if they are still pending after the relevant settlement cycle has been completed. The cut-off time is understood as the deadline set by a system operator for the acceptance of settlement instructions for a given settlement cycle, for the relevant settlement instructions, i.e. there could be different cut-off times for different settlement instructions.
23. If, during a period covered by a report, a settlement instruction fails to settle for several business days after the ISD, including in the case where the settlement instruction is cancelled after the relevant cut-off time, then it should be reported as "failed" by taking into account each business day when it fails to settle. It should be reported as "settled" if it is settled during the period covered by the report.
24. Settlement instructions that are cancelled before the relevant cut-off time should not be reported either in the 'total' or 'failed' categories (only for the day when the settlement instructions are cancelled and only for the part of the settlement instructions that is cancelled).
25. **Guideline 6:** The rate of settlement fails should be calculated by taking into account recurring settlement fails as well (i.e. settlement fails that last more than one business day).
26. For the aggregated figures included in the monthly reports as per Table 1 of Annex I to the RTS on settlement discipline, CSDs should take into account the sum of the number or of the value, respectively, of individual settlement instructions eligible for settlement on each business day of the month.
27. Please see the following example for the number of settlement instructions ("settlement instructions (SIs) entered" are shown for illustration purposes only). The settlement fails



rate on a specific business day is calculated as follows: all failed SIs on a business day divided by the total SIs on a business day (settlement instructions may have an ISD equal to the current business day or previous business days).

Settled and failed instructions (based on volume – number of instructions)							
	Daily					Monthly	
	Day 1	Day 2	Day 3	Day 4		4 days	
Settled	3	2	5	4		14	Settled
Failed	1	2	3	1		7	Failed
Total	4	4	8	5		21	Total
Rate of fails	25%	50%	35.50%	20%		33.33%	Rate of fails
SIs entered	4	3	6	2		15	SIs entered
SIs recycled	0	1	2	3		6	SIs recycled

28. **Guideline 7:** For the purpose of the reports on settlement fails under Article 7(1) of CSDR, a CSD should report a partially settled instruction as both failed and settled, as long as the settlement instruction is not fully settled.

29. Please see the following example to illustrate the proposed approach: DVP instruction with counter value 100€ partially settles for 50€ at ISD, 20€ at ISD+1 and 30€ to full settlement on ISD+3.

#### Cumulative settlement amounts

ISD	ISD+1	ISD+2	ISD+3
50/100	70/100	70/100	100/100

#### Reporting logic:

**Volume (number):** The settlement instruction is reported as failed as long as it is not fully settled, and as settled for each business day where the instruction settles, partially or fully.

**Value:** For each business day on which a settlement instruction is not fully settled, the partially settled value on that day is reported as settled, the remaining value to be settled is reported as failing.

Reporting of the settled and failing part									
	Volume					Value			
	ISD 50/100	ISD+1 70/100	ISD+2 70/100	ISD+3 100/100		ISD 50/100	ISD+1 70/100	ISD+2 70/100	ISD+3 100/100
Settled	1	1	0	1		50	20	0	30
Failed	1	1	1	0		50	30	30	0
Total	2	2	1	1		100	50	30	30
Rate of fails	50%	50%	100%	0%		50%	60%	100%	0%

30. **Guideline 8:** CSDs should report late matching instructions as settlement fails for each business day as from the ISD.

31. Please see the following example: a DVP instruction with counter value 100€ matches on ISD+3 and settles intraday (the late matching fail is reflected as if it had been entered on ISD, for both monthly and daily breakdowns, in accordance with Tables 1 and 2 of Annex I to the RTS on settlement discipline).

Reporting as settled and failed for previous settlement days										
	Volume					Value				
	ISD	ISD+1	ISD+2	ISD+3		ISD	ISD+1	ISD+2	ISD+3	
Settled	0	0	0	1		0	0	0	100	
Failed	1	1	1	0		100	100	100	0	
Total	1	1	1	1		100	100	100	100	
	Monthly Volume					Monthly Value				
Settled					1					100
Failed					3					300
Total					4					400
Failed rate					75%					75%

32. If there are significant discrepancies between the annual report and the aggregated figures in the monthly reports, CSDs should verify the reasons for the discrepancies and should resubmit the corrected reports.

33. **Guideline 9:** CSDs should capture the value of all settlement instructions, whereby each settlement instruction represents the value of either its securities component or its cash component.

34. Please see Annex I for more details on the method for the valuation and representation of settlement instructions which should be used by CSDs.

35. **Guideline 10:** For the purpose of the daily data referred to in Table 2 of Annex I to the RTS on settlement discipline (Table 2), in order to distinguish between settlement fails due to “failure to deliver securities” and those due to “failure to deliver cash”, CSDs should take into account the reason (cause) of each settlement fail, in the format referred to in Guideline 17.

36. The volume and value of all settlement instructions should be reported as “Total Instructions” both under “failure to deliver securities” and “failure to deliver cash”.

37. The volume and value of all settlement instructions which are settled should be reported as “Settled Instructions” both under “failure to deliver securities” and “failure to deliver cash”.

38. On the contrary, the volume and value of all settlement instructions which are not settled should only be reported as “Settlement fails” in the relevant section (“failure to deliver cash” and “failure to deliver securities”), depending on the reason (cause) of each settlement fail.

39. A CSD should check the securities leg first and, if there is a settlement fail, no further checks on the cash leg would need to be performed.
40. Regarding **DVP/RVP settlement instructions** which are not settled, if there is a settlement fail because of the failure to deliver securities (including where the DVP instruction is on hold), both DVP/RVP settlement instructions should be reported in the section “failure to deliver securities”. The same applies in case of late matching, where the (securities) delivering participant has matched the pair of corresponding settlement instructions last.
41. If there is a settlement fail because of the failure to deliver cash (including where the RVP instruction is on hold), both settlement instructions should be reported in the section “failure to deliver cash”. The same applies in case of late matching, where the (cash) delivering participant has matched the pair of corresponding settlement instructions last.
42. If both DVP/RVP settlement instructions are on hold and in case of late matching instructions that are entered into the system as already matched, one settlement instruction should be reported in the section “failure to deliver securities” and one settlement instruction should be reported in the section “failure to deliver cash”.
43. Regarding **DWP/RWP settlement instructions** which are not settled, if there is a settlement fail because of the failure to deliver securities, both settlement instructions should be reported in the section “failure to deliver securities”.
44. If there is a settlement fail because of the failure to deliver cash, both DWP/RWP settlement instructions should be reported in the section “failure to deliver cash”.
45. If one or both DWP/RWP settlement instructions is/are on hold, one settlement instruction should be reported in the section “failure to deliver securities” and one settlement instruction should be reported in the section “failure to deliver cash”. The same applies in case of late matching, independently of the participant that has matched the pair of corresponding settlement instructions last.
46. Where settlement fails refer to **DPFOD/CPFOD settlement instructions**, including where the settlement instructions are on hold, both settlement instructions should be reported in the section “failure to deliver cash”. The same applies in case of late matching, independently of the participant that has matched the pair of corresponding settlement instructions last.
47. Where settlement fails refer to **DFP/RFP settlement instructions**, including where the settlement instructions are on hold, both settlement instructions should be reported in the section “failure to deliver securities. The same applies in case of late matching, independently of the participant that has matched the pair of corresponding settlement instructions last.
48. For more details on how to report settlement fails for the different types of settlement instructions, please see the examples included in Annex II.
49. **Guideline 11:** The average duration of settlement fails to be reported by CSDs in accordance with line 41 of Table 1 of the Annex I to the RTS on settlement discipline (the difference between actual settlement date and intended settlement date, weighted for the value of the settlement fail) should be calculated as follows:

The sum of the values of all settlement fails reported in the current reporting period (whether or not the ISD falls in the same reporting period) divided by the sum of the values of settlement fails on ISD reported in the current reporting period (the ISD falls in the same reporting period).

Please see the example in Annex III.

50. **Guideline 12:** The monthly reports on settlement fails referred to in Article 14(1) of the RTS on settlement discipline should include only the business days of the respective month.
51. **Guideline 13:** In accordance with Article 14(1) of the RTS on settlement discipline, all values included in the reports on settlement fails referred to therein should be provided in EUR.
52. For the data per currency in which the settlement instructions are denominated which has to be included in the monthly reports as per Table 1 of Annex I to the RTS on settlement discipline, CSDs should provide the values in EUR, while specifying the original currencies.

Please see the following example regarding item 22 of Table 1 of Annex I to RTS on settlement discipline:

*Value of settlement instructions per currency in which the settlement instructions are denominated during the period covered by the report -> "Currency = USD, Value = 500,000"* means that the value of settlement instructions denominated in USD was 500,000 EUR.

53. **Guideline 14:** The top 10 direct participants with the highest rates of settlement fails and the top 20 ISINs that are the object of settlement fails (as mentioned in fields 17-18 and 37-38, respectively, of Table 1 of Annex I to the RTS on settlement discipline), should be listed starting with the highest rate of settlement fails.
54. In order to determine the ranking (according to the rates of settlement fails based on the value and the number of settlement fails), CSDs should be able to use more than two decimals (even though, for reporting purposes, CSDs need to report the rates of settlement fails as percentages with up to 2 decimal places). In case of a tie in the 20th or 10th rank, more than 20 or 10 entries would be reported, respectively.

Please see the following example:

- 1 – Participant A
- 2 – Participant B
- 3 – Participant C
- 4 – Participant D
- ...
- 10 – Participant X
- 11 – Participant Y

(Participants X and Y are tied for the 10th rank, therefore they should both be reported; in order to determine which should be reported as being ranked 10th and which should

be reported as being ranked 11th, the alphabetical order of the participants' names may be used.)

55. **Guideline 15:** CSDs should send data regarding the number and value of cash penalties (as mentioned in fields 39 and 40 of Table 1 of Annex I to the RTS on settlement discipline) in relation to penalties processed (i.e. collected and distributed) during the reporting month covering the previous month.
56. The number of cash penalties to be reported should reflect the number of settlement instructions referring to failing participants.

Please see the example below:

There are the following settlement fails: 2 DVP instructions to deliver 50 securities and receive 100 EUR, and 2 corresponding RVP instructions to receive 50 securities and pay 100 EUR. Each pair of settlement instructions (DVP/RVP) fails for the inability of the participant(s) to deliver securities. The number of penalties reported should be 2 (the 2 DVP instructions to deliver 50 securities and receive 100 EUR).

57. **Guideline 16:** These Guidelines should also apply for the purpose of determining participants considered as consistently and systematically failing to deliver in a security settlement system, as referred to in Article 7(9) of CSDR and in Article 39 of the RTS on settlement discipline.

### **III. Process for the submission of settlement fails reports**

58. **Guideline 17:** Competent authorities should send ESMA all reports they receive from the CSDs in their jurisdiction in accordance with Article 7(1) of CSDR as supplemented by Article 14 of the RTS on settlement discipline.
59. Competent authorities should ensure that CSDs submit the monthly and annual reports in accordance with Article 7(1) of CSDR and Article 14 of the RTS on settlement discipline in an XML format and using the templates developed in accordance with the ISO 20022 methodology, agreed and communicated by ESMA to the competent authorities, which should then be used by competent authorities when submitting the data to ESMA.
60. Following the validation checks performed by the ESMA dedicated IT system, such as data transmission validation rules (e.g. not corrupted file), data format validation rules (e.g. abides to the ISO-20022 XSD schema), and data content validation rules, competent authorities will receive a feedback file confirming reception or notifying of validation errors.
61. In case of validation errors notified by ESMA, competent authorities should check the data with the CSDs and should provide feedback to ESMA. If necessary, competent authorities should resubmit the corrected data to ESMA.
62. In accordance with Article 14(1) of the RTS on settlement discipline, CSDs shall send monthly reports on settlement fails to their competent authorities and relevant authorities by close of business on the fifth business day of the following month. Competent authorities should submit the respective reports to ESMA as soon as

possible after having received them, but no later than the tenth business day of the month.

63. The first monthly reports to be sent by CSDs should cover the month including the date of the entry into force of the RTS on settlement discipline (e.g. if the entry into force is on 1 February, then the first monthly report should be sent by CSDs by close of business on the fifth business day in March, covering data for the month of February).
64. In accordance with Article 14(2) of the RTS on settlement discipline, by 20 January of each year, CSDs shall send annual reports on settlement fails, including the measures planned or taken by CSDs and their participants to improve the settlement efficiency of the security settlement systems they operate. Competent authorities should submit the respective reports to ESMA as soon as possible after having received them, but no later than 31 January of each year.
65. The first annual reports to be sent by CSDs should cover the year including the date of the entry into force of the RTS on settlement discipline (e.g. if the entry into force is on 1 February, then the first annual report should be sent by CSDs by 20 January of the following year, covering data for the previous year starting from the entry into force of the RTS on settlement discipline).

## Annex I – Method for the valuation and representation of settlement instructions (SIs)

SIs represent the value of all SIs (one single component per SI)

Instruction type	Representation / Valuation
DVP/RVP	<p>There is a securities component and a cash component for each pair of SIs</p> <p>The securities component can be conventionally associated to the DVP SI, while the cash component can be conventionally associated to the RVP SI</p> <p>Each SI is valued as the settlement amount of the SI itself (*)</p> <p>Each pair of SIs is represented as twice the settlement amount of each SI</p> <p><b>All DVP and RVP SIs should be considered under the SFR regime and each SI should be valued as the settlement amount of the SI itself</b></p>
DWP/ RWP	<p>There is a securities component and a cash component for each pair of SIs</p> <p>The securities component can be conventionally associated to the DWP SI, while the cash component can be conventionally associated to the RWP SI</p> <p>Each SI is valued as the settlement amount of the SI itself</p> <p>Each pair of SIs is represented as twice the settlement amount of each SI</p> <p><b>All DWP and RWP SIs should be considered under the SFR regime and each SI should be valued as the settlement amount of the SI itself</b></p>
DPFOD/CPFOD	<p>Each SI is valued as the settlement amount of the SI itself</p> <p>Each pair of SIs is represented as twice the settlement amount of each SI</p> <p><b>All DPFOD and CPFOD SIs should be considered under the SFR regime and each SI should be valued as the settlement amount of the SI itself</b></p>
DFP/RFP	<p>Each SI is valued as the market value of the securities to be delivered/received (**)</p> <p>Each pair of SIs is represented as twice the market value of the securities to be delivered/received</p> <p><b>All DFP and RFP SIs should be considered under the SFR regime and each SI should be valued as the market value of the securities to be delivered/received</b></p>

(\*) Article 14(4)(a) of the RTS on settlement discipline

(\*\*) Article 14(4)(b) the RTS on settlement discipline

## Annex II – Examples of reporting settlement fails based on the reason of the settlement fail

### 1) DVP/RVP Settlement Instructions (SIs)

**The value** of a pair of DVP/ RVP SIs should be reported as follows:

- a) Twice the settlement amount of a SI, in the “total instructions”
- b) In case of a settlement fail:
  - i) twice the settlement amount of a SI, in the section “failure to deliver securities” (if the reason for the settlement fail is failure to deliver securities) or
  - ii) twice the settlement amount of a SI, in the section “failure to deliver cash” (if the reason for the settlement fail is failure to deliver cash) or
- c) In case of SIs put on hold by both participants:
  - i) the settlement amount of a SI, in the section “failure to deliver securities” and
  - ii) the settlement amount of a SI, in the section “failure to deliver cash”

**The volume (number)** of a pair of DVP/ RVP SIs should be reported as follows:

- a) 2 SIs, in the “total instructions”
- b) In case of a settlement fail:
  - i) 2 SIs, in the section “failure to deliver securities” (if the reason for the settlement fail is failure to deliver securities) or
  - ii) 2 SIs, in the section “failure to deliver cash” (if the reason for the settlement fail is failure to deliver cash) or
- c) In case of SIs put on hold by both participants:
  - i) 1 SI, in the section “failure to deliver securities” and
  - ii) 1 SI, in the section “failure to deliver cash”

#### Examples:<sup>22</sup>

- ✓ 1 DVP instruction to deliver 50 securities and receive 100 EUR, and corresponding RVP instruction to receive 50 securities and pay 100 EUR
- ✓ Total number of DVP/RVP SIs = 10 (5 DVP and 5 RVP)
- ✓ Total value of securities for DVP/RVP SIs = 1,000 EUR (based on the settlement amount of the cash leg)
- ✓ *Settlement fails:* 1 DVP instruction to deliver 50 securities and receive 100 EUR, and corresponding RVP instruction to receive 50 securities and pay 100 EUR (2 settlement instructions for a value of 100 EUR each)
  - a) settlement fail due to failure to deliver securities
  - b) settlement fail due to failure to deliver cash
  - c) settlement fail due to SIs being put on hold by both participants (settlement fail due to failure to deliver securities and failure to deliver cash)

### 2) DWP/RWP SIs

**The value** of a pair of DWP/ RWP SIs should be reported as follows:

- a) Twice the settlement amount of a SI, in the “total instructions”

<sup>22</sup> For the purpose of this example, we assume all DVP/RVP SIs have the same value. The same applies for the examples for the other types of SIs.



- b) In case of a settlement fail:
  - i) twice the settlement amount of a SI, in the section “failure to deliver securities” (if the reason for the settlement fail is failure to deliver securities) or
  - ii) twice the settlement amount of a SI, in the section “failure to deliver cash” (if the reason for the settlement fail is failure to deliver cash)
- c) In case of SIs put on hold by one or both participants:
  - i) the settlement amount of a SI, in the section “failure to deliver securities”, and
  - ii) the settlement amount of a SI, in the section “failure to deliver cash”

**The number (volume)** of a pair of DWP/ RWP SIs should be reported as follows:

- a) 2 SIs, in the “total instructions”
- b) In case of a settlement fail:
  - i) 2 SIs, in the section “failure to deliver securities” (if the reason for the settlement fail is failure to deliver securities) or
  - ii) 2 SIs, in the section “failure to deliver cash” (if the reason for the settlement fail is failure to deliver cash)
- c) In case of SIs put on hold by one or both participants:
  - i) 1 SI, in the section “failure to deliver securities”, and
  - ii) 1 SI, in the section “failure to deliver cash”

Examples:

- ✓ 1 DWP instruction to deliver 50 securities and 100 EUR, and corresponding RWP instruction to receive 50 securities and 100 EUR
- ✓ Total number of DWP/RWP SIs = 10 (5 DWP and 5 RWP)
- ✓ Total value of securities for DWP/RWP SIs = 1000 EUR (based on the settlement amount)
- ✓ *Settlement fails:* 1 DWP instruction to deliver 50 securities and 100 EUR, and corresponding RWP instruction to receive 50 securities and 100 EUR
  - a) settlement fail due to failure to deliver securities
  - b) settlement fail due to failure to deliver cash
  - c) settlement fail due to SIs being put on hold by one or both participants (settlement fail due to failure to deliver securities and settlement fail due to failure to deliver cash)

### 3) DPFOD/CPFOD SIs

**The value** of a pair of DPFOD/CPFOD SIs should be reported as follows:

- a) Twice the settlement amount of a SI, in the “total instructions”
- b) In case of a settlement fail (including in the case of SIs put on hold by one or both participants): twice the settlement amount of a SI, in the section “failure to deliver cash”

**The number (volume)** of a pair of DPFOD/CPFOD SIs should be reported as follows:

- a) 2 SIs, in the “total instructions”
- b) In case of a settlement fail (including in the case of SIs put on hold by one or both participants): 2 SI, in the section “failure to deliver cash”

Examples:

- ✓ 1 DPFOD instruction to deliver 100 EUR, and corresponding CPFOD instruction to receive 100 EUR
- ✓ Total number of DPFOD/CPFOD SIs = 10 (5 DPFOD and 5 CPFOD)
- ✓ Total value of securities for DPFOD/CPFOD SIs = 1,000 EUR (based on the settlement amount)
- ✓ *Settlement fails:* 1 DPFOD instruction to deliver 100 EUR, and corresponding CPFOD instruction to receive 100 EUR (2 settlement instructions for a value of 100 each)

- a) settlement fail due to failure to deliver cash
- b) settlement fail due to SIs being put on hold by one or both participants (settlement fail due to failure to deliver cash)

#### 4) DFP/RFP SIs

**The value** of a pair of DFP/RFP SIs should be reported as follows:

- a) Twice the market value of the securities to be delivered/received, in the "total instructions"
- b) In case of a settlement fail (including in the case of SIs put on hold by one or both participants): twice the market value of the securities to be delivered/received, in the section "failure to deliver securities"

**The number (volume)** of a pair of DFP/RFP SIs should be reported as follows:

- a) 2 SIs, in the "total instructions"
- b) In case of a settlement fail (including in the case of SIs put on hold by one or both participants): 2 SI, in the section "failure to deliver securities"

Examples:

- ✓ 1 DFP instruction to deliver 50 securities (with 110 EUR market value), and corresponding RFP instruction to receive 50 securities (with 110 EUR market value)
- ✓ Total number of DFP/RFP SIs = 10 (5 DFP and 5 RFP)
- ✓ Total value of securities for DFP/RFP SIs = 1,100 EUR (based on the market value of the securities)
- ✓ *Settlement fails:* 1 DFP instruction to deliver 50 securities (with 110 EUR market value), and corresponding RFP instruction to receive 50 securities (with 110 EUR market value), (2 settlement instructions for a value of 110 each)
  - a) settlement fail due to failure to deliver securities
  - b) settlement fail due to SIs being put on hold by one or both participants (settlement fail due to failure to deliver securities)

**Date (for each reporting day in the month)**

Type of instruction	Failure to deliver securities								Failure to deliver cash							
	Settled instructions		Settlement fails		Total instructions		Rate of fails		Settled instructions		Settlement fails		Total instructions		Rate of fails	
	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)
DVP/RVP (1a example – failure to deliver securities)	8	800	2	200	10	1,000	20%	20%	8	800	0	0	10	1,000	0%	0%
DVP/RVP (1b example – failure to deliver cash)	8	800	0	0	10	1,000	0%	0%	8	800	2	200	10	1,000	20%	20%
DVP/RVP (1c example – both instructions on hold)	8	800	1	100	10	1,000	10%	10%	8	800	1	100	10	1,000	10%	10%
DWP/RWP (2a example – failure to deliver securities)	8	800	2	200	10	1000	20%	20%	8	800	0	0	10	1000	0%	0%
DWP/RWP (2b example – failure to deliver cash)	8	800	0	0	10	1000	0%	0%	8	800	2	200	10	1000	20%	20%
DWP/RWP (2c example – one or both instructions on hold)	8	800	1	100	10	1000	10%	10%	8	800	1	100	10	1000	10%	10%

DPFOD/CPF OD (3a example – failure to deliver cash)	8	800	0	0	10	1,000	0%	0%	8	800	<b>2</b>	<b>200</b>	10	1,000	20%	20%
DPFOD/CPF OD (3b example one or both instructions on hold)	8	800	0	0	10	1,000	0%	0%	8	800	<b>2</b>	<b>200</b>	10	1,000	20%	20%
DFP/RFP (4a example – failure to deliver securities)	8	880	<b>2</b>	<b>220</b>	10	1,100	20%	20%	8	880	0	0	10	1,100	0%	0%
DFP/RFP (4b example – one or both instructions on hold)	8	880	<b>2</b>	<b>220</b>	10	1,100	20%	20%	8	880	0	0	10	1,100	0%	0%

## Annex III –Example of calculation of the average duration of settlement fails

Consider a reporting month with exactly 4 transactions that failed over several days, with some of the settlement instructions partially settling on some days. More precisely, consider the following data on those settlement fails:

Daily Settlement Fails Reporting <sup>23</sup>							
Transaction	M-1 EOM <sup>24</sup>	Reporting Month (M)					M+1 SOM
		SOM <sup>25</sup>	SOM+1	SOM+3	SOM+4	EOM	
1	100	100	50				
2			40	40	10		
3				20			
4						85	85

Indicator whether the settlement fail occurred on ISD							
Transaction	M-1 EOM	Reporting Month					M+1 SOM
		SOM	SOM+1	SOM+3	SOM+4	EOM	
1	YES						
2			YES				
3				YES			
4						YES	

The sum of all settlement fails in the reporting month, i.e.  $100 + 50 + 40 + 40 + 10 + 20 + 85 = 345$

The sum of all settlement fails on ISD in the reporting month, i.e.  $40 + 20 + 85 = 145$

The duration of settlement fails in the reporting month should be calculated as the ratio<sup>26</sup> thereof, i.e.  $345/145 = 2,4$

<sup>23</sup> Settlement Fails by Value calculated for, and reported in, the Daily Fails Reporting. Note that for the sake of clarity, days with no settlement fails are not included in the example as they do not impact the calculation.

<sup>24</sup> End of the month, i.e. the last business day of the month where settlement fails need to be reported for.

<sup>25</sup> Start of the Month, i.e. the first business day of the month where settlement fails need to be reported for.

<sup>26</sup> According to line 41 of Table 1 of Annex I to the RTS on settlement discipline, the duration should be rounded to one decimal.