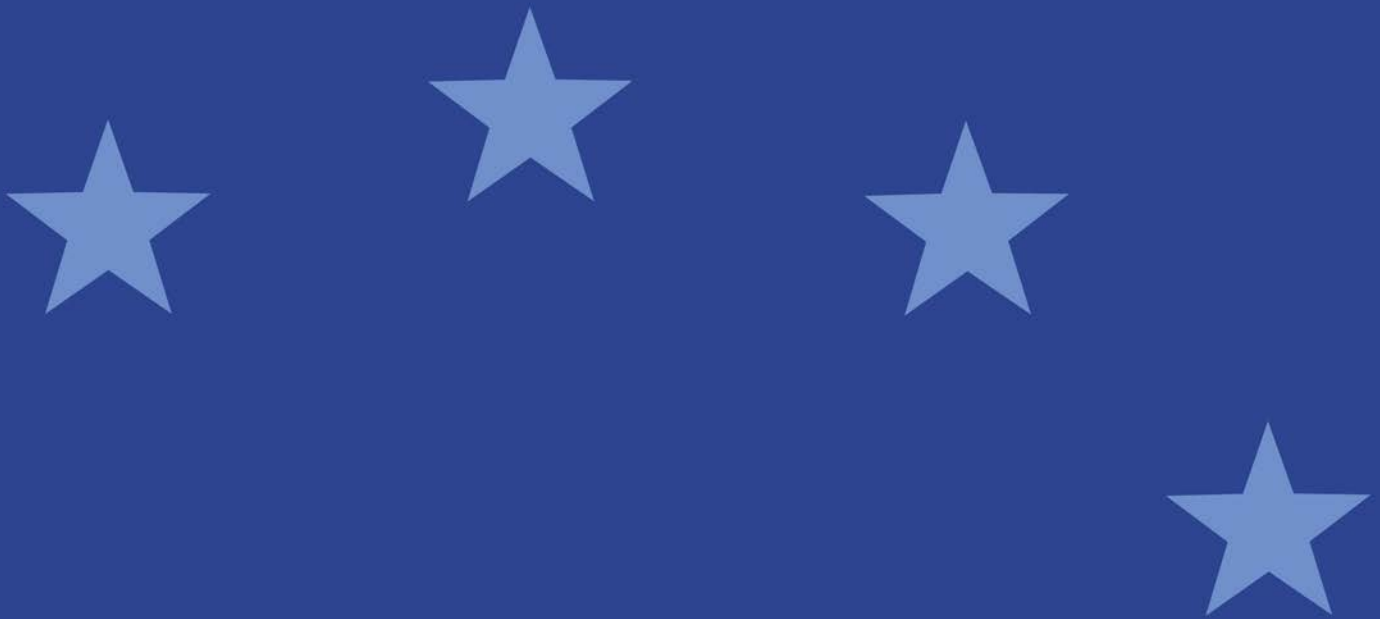


Response Form to the Consultation Paper

Guidelines on Settlement Fails Reporting under Article 7(1) of CSDR



Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex IV. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **20 February 2019**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

- Insert your responses to the questions in the Consultation Paper in the present response form.
- Please do not remove tags of the type <ESMA_QUESTION_SFR_1>. Your response to each question has to be framed by the two tags corresponding to the question.
- If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
- When you have drafted your response, name your response form according to the following convention: ESMA_SFR_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_SFR_ABCD_RESPONSEFORM.
- Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" ☞ "Consultation on Securitisation Repositories Application Requirements").

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be

publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

The collection of confidential responses is without prejudice to the scope of Regulation (EC) No 1049/2001¹. Possible requests for access to documents will be dealt in compliance with the requirements and obligations laid down in Regulation (EC) No 1049/2001.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading Legal Notice

Who should read this paper

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest to central securities depositories (CSDs) as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014² (CSDR).

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, (OJ L 145, 31.5.2001, p. 43–48)

² 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 Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1-72).

General information about respondent

Name of the company / organisation	European Central Securities Depository Association (ECSDA)
Activity	Financial Market Infrastructures
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	EEA and broader Europe

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_SFR_1>

The European Central Securities Depository Association (ECSDA) welcomes the issuance of this Consultation Paper on the guidelines of Fails reporting under Article 7(1).

As we share the need of addressing some discrepancies and pitfalls in the fails reporting, we thank ESMA for having taken this initiative of harmonising the fails reporting requirements. Beyond the mere purposes of the settlement fails reporting, the proposed guidelines also influence certain provisions related to settlement discipline measures.

We would like to use the opportunity of the consultation:

1. to provide feedback on the most important aspects of the regulatory reporting, as well as
2. to stress the relevance of some issues, which are not tackled in the consultation paper.

Main points on the regulatory reporting

- I. We would generally advise to carefully **balance costs vs. benefits of the reporting and limit the granularity of the information** to what is fundamentally necessary for further actions of competent authorities.
- II. We stress the **fundamental importance of having more clarity on the instrument and instruction scope of the fails reporting**, as well as the scope of other settlement discipline measures.

- III. We believe that the **scope of the requirements should be limited to transactions in financial instruments which the parties settle in an EU CSD**. Hence, transactions where the actual place of settlement is outside of an EU CSD should be considered as out of scope of the reporting by EU (Investor-)CSDs.
- IV. **We would kindly ask for providing the definition of the ISO 20022 or XML message (draft) format to be used for reporting, as soon as possible and ahead of the issuance of the final version of these guidelines.** Else, we fear that the timely compliance with the guidelines would be at risk.

Complementary reflections to issues covered in the consultation

I. Under CSDR, CSDs are required to report Settlement Fails to competent authorities on a monthly and annual basis. At the same time, Article 14 of Regulation 2018/1229 specifies that CSDs shall report more frequently, if requested by competent authority. The delegated regulation, therefore, allows requests for additional information.

We would, hence, appreciate more clarity on the process for such ad-hoc requests. For example:

- 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, based on Recital 14 of Regulation 2018/1229³, CSDs would be given explanations on the reasons of the ad-hoc requests.

II. Under the draft Guidelines, additional information could be compared to provisions on ad-hoc requests in article 14 of Regulation 2018/1229. For example, this is relevant in relation to “Guideline 2”, where CSDs are requested **to report settlement fails data, broken down according to the liquidity of the financial instruments and whether the settlement instructions and settlement fails relate to transactions executed on an SME growth market. This level of specification goes beyond the regulation and, therefore, represent additional requirements.** We see that this additional information comes on top of requirements already present in Level I and II rules, and hence would much appreciate the authorities to consider if this information is fundamentally needed in this context and if so could they provide an explanation with regard to the reasons for this request.

- III. We would kindly ask ESMA to confirm **if the Guidelines on settlement fails reporting are intended to be aligned with all key aspects of the Settlement Discipline Regime**, being:
1. Settlement fails monitoring and reporting,
 2. Settlement penalties and
 3. Buy-ins.

³ Recital 14 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.”

This specifically refers to the scope of financial instruments (covering only ISINs relevant under MIFID II/ R or all ISINs that are eligible for settlement in the reporting CSD(?)) to be considered in the reports.

In order to reach consistency among the various aspects of the Settlement Discipline Regime, we would advise to bring **the timings of reporting closer for all aspects**.

- (i) One example of this lack of consistency is the timing of monthly reporting: the reporting on Settlement fails is expected to be sent on the 5th business day of the following month, with two fields indicating the number and value of the penalties. On the other hand, the reporting on the penalties amounts collected and redistributed by CSDs will only be available on the 14th business day of the following month. Hence, the final penalties amounts will not be available on the 5th business day. Having a gap between both reports might lead to deviations.
- (ii) This is also valid for the yearly reporting, and the reporting to be made public on the CSDs website. It shall also be clarified whether these guidelines apply as well to the CSDs' reporting to be made public on the CSDs website.

IV. Finally, we kindly request ESMA to clarify **whether instructions that are failing as they are put “on hold” are to be considered in the reporting and under which fail reason** (proposal: “lack of cash” when the receiving instruction is on hold, “lack of securities” when the delivering instruction is on hold).

<ESMA_COMMENT_SFR_1>

Questions

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.

<ESMA_QUESTION_SFR_1>

We would much appreciate to understand if the scope of instruments is intentionally broader than the one of other settlement discipline measures (i.e. penalties and buy-ins).

In addition, beyond the fails reporting aspects, we would kindly ask ESMA to confirm the scope of instruments for penalties and buy-ins: we understood that the scope of financial instruments for those purposes should be based on the CSD-eligible instruments listed in the FIRDS database, with the exclusion of those that are mentioned in the Short Selling Regulation (SSR) exemptions list. Nevertheless, we still sense the lack of clarity on the concrete list of financial instruments (ISINs) in scope of CSDR Article 7(10) as described in our response to Q4.

Indeed, the scope of reporting obligations is the result of the joint application of article 7(1) of CSDR and article 7(13), which in our view excludes only transactions in shares for which the principal shares trading venue is located in a third country. Therefore, according to our understanding, all failed transactions settled within a securities settlement system shall be included in the report regardless of where a financial instrument is issued. Applying reporting obligations on any transaction in any CSD-eligible instruments is less cumbersome to manage from an operational standpoint than the limiting the scope of financial instruments subject to cash penalties. Therefore, we kindly ask ESMA to confirm the instrument scope.

<ESMA_QUESTION_SFR_1>

Q1 : 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

Q2 the Commission Delegated Regulation (EU) 2017/389? Would this add operational complexities to the reporting? Please provide arguments supporting your comments and suggestions.

<ESMA_QUESTION_SFR_2>

Before going into further considerations, we would like to highlight that increasing the number of parameters and conditions used for the reporting, will not be commensurate with the reduction of settlement fails. Being conscious of this fact and aiming at limiting the costs for the market in line

with the European Commission's initiative to review the costs of supervisory reporting⁴, we would generally advise to carefully balance the costs vs. benefits of the reporting and limit the granularity of the information to what is fundamentally necessary for further analysis/actions of competent authorities.

Our more detailed comments are provided below:

- Independently from the categorisation of the instrument to liquid, non-liquid or SME, the system functionalities and settlement efficiency measures are the same. From that perspective, the segregation based on this parameter would be of limited relevance.
- For Financial instruments not admitted to trading within the EU (if they are considered in scope of the reporting of settlement fails), the liquidity indicator will not be available in the FIRDS/FITRS lists, which could create misleading figures from the liquidity point of view would these instruments be flagged as being “illiquid” in the absence of data.

ESMA is also asked to clarify that the MIFID II/ MIFIR liquidity indicator should only be reported for shares while it may be available for debt instruments as well.

- As the SME matching information is available to the reporting CSD only for a limited number of settlement scenarios (i.e. when both legs settle at the CSD, see Annex I; point 5. of the guidelines should therefore be rephrased and linked to the applicable scenarios) and the number of transactions subject to this category is expected to be very low compared to the overall volumes, this additional granularity of information does not justify its integration in the reporting.

As regards the check to determine whether a transaction has been executed on an SME growth market trading venue, if the scope of financial instruments subject to settlement fails reporting is for any reason different than the scope of financial instruments subject to cash penalties (see also answer to question 1), the information will not be provided to T2S CSDs through the T2S penalty mechanism reporting and will have to be catered through a new functionality inside or outside T2S.

- Finally, note that point 4. of the guidelines refers to “FIRTS” information while it should read “FITRS” Financial Instruments Transparency System.

<ESMA_QUESTION_SFR_2>

- 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.

⁴ Better regulation consultation – Fitness Check of supervisory reporting requirements
https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-5063271_en

<ESMA_QUESTION_SFR_3>

For the sake of consistency with SDR RTS and to ease the data collection process, we propose to consider only actually matched failed settlement instructions to be mentioned in the report. The same logic is applied to the settlement fails penalties management.

<ESMA_QUESTION_SFR_3>

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.

<ESMA_QUESTION_SFR_4>

- ECSDA appreciates the intended clarification of scope, aiming to illustrate that transactions, for which monitoring does not fulfill the objective of the settlement discipline regime, are out of scope of settlement fails reporting.

We agree that (a) corporate actions on stock, (2) primary market operations (including creation and redemption of fund units) and (3) realignment operations are out of scope of settlement fails reporting, as such transactions are deemed outside of the participant's control and thus not relevant in terms of fails reporting. This is in line with Articles 5 and 7 of CSDR, which convey the policy intention of monitoring failed transactions which settle in a securities settlement system operated by a CSD and that do not settle on the Intended Settlement Date.

Whilst the clarification of scope is helpful, ECSDA believes that the proposed wording enters into a level of detail which is not required to achieve the policy objective and which could ultimately raise more questions than bring clarity. We, hence, recommend not to include such level of detail into this guidance on settlement fails reporting.

- However, we would appreciate more clarity on the alignments transfers between beneficial owner accounts (which are usual transfers in a direct holding market). While in an indirect holding market, these transactions are not processed at CSD level, they are managed by the CSD in a direct holding market. We would like to ask ESMA to consider a way of ensuring same treatment of instructions in direct and indirect holding markets in Europe (i.e. the inter-participant trades should be in scope of the reports on settlement fails in all markets irrespective of the account types and/or holding model maintained in the CSD). On the opposite, transactions or movements that are executed intra-participant and do not relate to trades, collateral management operations, securities lending and securities borrowing or repurchase transactions should not be subject to settlement discipline (i.e. settlement fails, penalties & buy-in) as being irrelevant for settlement efficiency.

<ESMA_QUESTION_SFR_4>

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.

<ESMA_QUESTION_SFR_5>

In general, CSDs have at least the following types of transactions that are excluded from the participants' control, and hence sanctioning these transactions would not fulfil the objective of the settlement discipline regime. We believe that they are to be considered as out of scope of the settlement fails reporting, the penalties and the buy-in management.

These transactions are:

- Transactions auto-generated by the CSD: collateral management related transactions (main reasoning: those instructions are generated by the CSD, hence, out of the participants' control; in addition, such fails are already being penalized by Central Banks, i.e. additional settlement fails penalties would result in a sort of duplication of penalties);
- CSD auto-generated net realignments to move position between different depositories;
- CSD auto-generated gross realignments supporting transactions between different CSDs;
- CSD auto-generated gross realignments supporting specific transactions;
- Bridge realignments (see settlement scenario 11; such transactions can be identified by the qualifier "REAL" used).

While all of the above types of transactions can result in a settlement fail, they remain outside of the CSD participants' control.

In addition to these specific types of transactions, there are also specific restrictions (or events), that are falling outside the CSD participants' control, and have to be out of scope of the Settlement Discipline Regime. These includes, for instance:

- Sanctions,
- Anti-money laundering proceedings,
- Court order enforcing,
- Risk management checks and procedures,
- Monitoring by Compliance, and similar.

These events can happen in any CSD, so should be out of scope by all CSDs for harmonisation purposes.

<ESMA_QUESTION_SFR_5>

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.

<ESMA_QUESTION_SFR_6>

- We agree with the scenarios in context of settlement in EU CSDs.
- However, transactions where the place of settlement is outside of a CSD in the EU, should be considered as out of EU CSDs' reporting scope (following the same logic as for penalties and buy-in management). We refer to the Consultation Paper on standardised procedures and messaging protocols, which clearly defines the scope to be applied: *“There is however a condition as to their place of settlement which should occur in a securities settlement system governed by the law of a Member State (Articles 2(1)(10) and 5(1) of Regulation (EU) No 909/2014), therefore, the scope of this requirement **should be limited to transactions** in financial instruments which the parties intend to settle in an EU CSD.”*
- Additionally, more scenarios **with regard to third countries** may be relevant. For instance, scenario 9 could be complemented with at least three additional scenarios being:
 - A) Replace Investor CSD 2 with a non-CSD participant (a more common scenario than scenario 9)
 - B) Indirect link where Investor CSD 1 participant is an Investor CSD too (3).
 - C) Indirect link where Investor CSD 3 uses a participant which is not a CSD to link up to the issuer CSD market (also a common scenario).

Please also refer to our response on Q7.

<ESMA_QUESTION_SFR_6>

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.

<ESMA_QUESTION_SFR_7>

- Finality will be reached in the CSD acting as place of settlement (PSET) CSD (in most cases also being the Issuer CSD). Thus, the Issuer CSD will report intra-CSD settlement where they act as PSET, this will include settlement made by the Investor CSD, as a participant (thus being cross CSD in their view). The Issuer CSD would report both legs of the instruction, where they act as a PSET CSD, and the Investor CSD would report the individual leg, instructed by the participant of the Investor CSD, which are routed to the Issuer CSD for settlement and already matched there.
- For third-country CSDs, such reporting would not be consistent with other data requirements since finality would not occur within EU (see answer to Q6). If the investor CSD is to report these transactions, it would not be consistent with the penalties management where those transactions are clearly excluded. If ESMA intention is to stick for harmonisation across all Settlement Discipline topics, then we recommend to exclude these transactions from the reporting on settlement fails. Regarding T2S, no operational burden has been identified for

scenarios involving T2S, as a settlement fail will always materialise on T2S on the basis of matched settlement instructions, even in scenarios where the Issuer CSD is external to T2S, and be reported to the relevant T2S CSD(s). However, in the case where the Issuer CSD is a third-country CSD and the security is considered in scope of the settlement fails reporting, T2S CSDs may have to exclude the settlement instruction from the reporting should the fails reporting scope be the same as the one for penalties purposes.

<ESMA_QUESTION_SFR_7>

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.

<ESMA_QUESTION_SFR_8>

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.

<ESMA_QUESTION_SFR_8>

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.

<ESMA_QUESTION_SFR_9>

Increasing the number of parameters and conditions used for the reporting will not be commensurate with the reduction of settlement fails, although will increase related costs.

The data would be available in the CSD systems.

<ESMA_QUESTION_SFR_9>

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.

<ESMA_QUESTION_SFR_10>

We agree with the approach. However, the consideration of failed instructions that are ultimately cancelled in the monthly report is unclear. We would appreciate clarification on whether these are e.g. to be considered as “settled” in the absence of a reporting category “cancelled”.

In this context, paragraph 14 reads “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, 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.” We would appreciate the confirmation on the case when an instruction is cancelled after its ISD: Our assumption is that CSDs have to take into account such instruction during the days where the instruction failed, but not the day when the instruction is cancelled (neither in total and failed amounts).

<ESMA_QUESTION_SFR_10>

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.

<ESMA_QUESTION_SFR_11>

- We would like to highlight that increasing the number of parameters and conditions used for the reporting, will not be commensurate with the reduction of settlement fails.
- If the report has to be calculated considering each day for which settlement instructions have been failing, it would increase the processing time to obtain the report without adding value to the initial objective for transparency and to reduce settlement fails. In such case, all the CSDs would have to calculate, for each day and transaction type, ‘n’ math operations considering ‘n’ as the number of ISD where there is, at least, one settlement instruction failed. The Intended Settlement Date itself is not enough to deduct the duration of the fail (if it was received late for instance).
- A split of the daily data depending on the number of days of the fail will add complexity to the reporting, without providing any added value. We suggest adapting item 41 to display the duration split by the financial instrument type as stated in Annex I, Table 2.
- Additionally, we would kindly ask ESMA to clarify what “**weighted for the value of the settlement fail**” actually means and how the “weighting” shall be defined by CSDs.

<ESMA_QUESTION_SFR_11>

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.

<ESMA_QUESTION_SFR_12>

A partially settled instruction should be reported as failed, until the moment it is completely settled. At the same time, the value failed should only include the part of the instruction which has not been settled yet.

We would need to have a better view on how to report a remaining part which was cancelled.

<ESMA_QUESTION_SFR_12>

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

<ESMA_QUESTION_SFR_13>

CSDs cannot provide this information at this stage as the required “late matching” indication is not yet stored or can only be derived with significant efforts. A late matching instruction of a previous month can be received on the following month. The month is not considered as a fixed term for CSD participants. A late matching fail can happen either intra-month or between two months without any distinction.).

Importantly, CSDs should not be required to amend any previously provided reports.

<ESMA_QUESTION_SFR_13>

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.

<ESMA_QUESTION_SFR_14>

We would advise to reconsider this requirement for the following reasons:

- It is not in line with the “Internalized settlement” reports requirements for internalizers that does not oblige them to revalidate/ recalculate and resend reports.
- Additionally, due to the overall size of data to be processed and the assumed insignificant portion of “late matchings”, this would not be commensurate with the reduction of settlement fails.
- Providing an updated report will increase the processing time to obtain the report, with a low added value (as the number of such cases should remain minimum) to the initial objective of transparency and reduction of settlement fails.

Considering the above, a monthly update appears disproportionate with the intended objective of the fails reporting.

<ESMA_QUESTION_SFR_14>

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?

<ESMA_QUESTION_SFR_15>

ECSDA members have expressed a significantly different opinion in this regard: The introduction of tolerances calculations/ considerations would massively complexify the process. We propose a 100% tolerance level if there has to be any at all.

<ESMA_QUESTION_SFR_15>

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.

<ESMA_QUESTION_SFR_16>

- We would like to confirm how the CSD can determine if a 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 into both, 'failure of cash' and 'failure of securities'. A suggested approach would be to check the securities leg first, and if there is a fail, no further checks would be done on the cash leg. This approach is aligned with the foreseen behaviour of the T2S platform for penalties calculations.
- On the other hand, according to Guideline 5, CSDs should take into account the reason (cause) of settlement fail, to distinguish between 'failure to deliver cash' or 'failure to deliver securities'. From our point of view, we believe that there can be some reason codes where it's not clear how to translate these to ESMA reason status.
- Note that several optimisation tools are available in the settlement system, which prevent failure of cash to happen. Thus, these situations should be marginal.

<ESMA_QUESTION_SFR_16>

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.

<ESMA_QUESTION_SFR_17>

CSDs support option 2 (only the business days of the respective month), as this is aligned with the application of the penalties, in the Settlement Discipline Regime, and will result in a clearer

structure in the report. Furthermore, Option 1 would unnecessarily increase the report size when covering as well week-ends as non-business days.

<ESMA_QUESTION_SFR_17>

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

<ESMA_QUESTION_SFR_18>

- Regarding point 30, we understand the value conversion into EUR shall be carried out using the official exchange rate of the ECB **of the last day of the reporting period and apply the same exchange rate for all the days in the month.**
- While we believe it would be clearer to quote the original currency code of the amount (e.g. USD), converted amount (to EUR) and EUR currency code, we acknowledge this is not foreseen in the report specifications as listed in the relevant RTS.

<ESMA_QUESTION_SFR_18>

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.

<ESMA_QUESTION_SFR_19>

- From our point of view, unlike for penalties calculations, DVP/RVP settlement instructions countervalues are not requested to be recalculated using the MIFID II/ R closing price of the instrument, as it is supposed that the different market prices of the financial instrument are taken into account when closing the operation in the correspondent Trade Venue.
- Furthermore, if we follow the proposed approach, we would have to inform of different figures in 'failure to deliver cash' and 'failure to deliver securities', when informing DwP/RwP instructions. As shown in the examples on pages 33 and 34 of the ESMA Consultation Paper, the value of the total instructions when informing 'failure to deliver securities' (600) is different when informing 'failure to deliver cash' (500). In order to be consistent, these two figures should be measured following the same methodology.
- In scenarios of partial settlement, recalculating all the amounts settled and failed would increase substantially the complexity of the generation of the reports.

<ESMA_QUESTION_SFR_19>

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

<ESMA_QUESTION_SFR_20>

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.

<ESMA_QUESTION_SFR_20>

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.

<ESMA_QUESTION_SFR_21>

We do not have comments at this stage. However, in the absence of any draft XML messaging definition, a report availability already by 07.10.2020 appears to us problematic at this stage.

We would therefore highlight the urgent need to define the ISO 20022 or XML message (draft) format, that should ideally be published prior to the final guidelines' issuance.

<ESMA_QUESTION_SFR_21>

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

<ESMA_QUESTION_SFR_22>

We would like to ask for the confirmation of the following points:

- Whether the settlement restrictions (such as reservation, blocking or earmarking) would be included when reporting settlement fails, regarding Commission Delegated Regulation 2018/1229, Art. 13, (1.b).
- CSDs will, for the identification of the transaction types, apply the ISO code of the participant causing the fail if the codes are not provided in both instructions or differ between the receipt and delivery instruction leg.

<ESMA_QUESTION_SFR_22>