ECSDA CSDR
Penalties Framework

Latest updated 20 November 2019
ECSDA SETTLEMENT FAILS PENALTIES FRAMEWORK

Contents

Glossary ................................................................................................................................................... 5
Introduction ............................................................................................................................................ 8
1 ECSDA CSDR Penalties Framework - key considerations ............................................................. 11
2 Penalties Lifecycle and Business Days Calendar ........................................................................ 13
  2.1 Intra-CSD settlement fails ..................................................................................................... 13
  2.1.1 Business Days ................................................................................................................... 13
  2.1.2 Daily Reporting ................................................................................................................. 14
  2.1.3 Monthly Events ............................................................................................................... 15
  2.1.4 Monthly Appeal Period ................................................................................................... 16
  2.1.5 Monthly aggregated amounts ......................................................................................... 17
  2.1.6 Monthly payment (collection & redistribution) ............................................................ 18
  2.2 Cross-CSD settlement fails (for CSD direct links to other CSDs) ........................................... 18
  2.2.1 Business Days ................................................................................................................. 18
  2.2.2 Daily Reporting ............................................................................................................... 19
  2.2.3 Monthly Events .............................................................................................................. 20
  2.2.4 Monthly Appeal Period .................................................................................................. 21
  2.2.5 Monthly aggregated amounts ....................................................................................... 21
  2.2.6 Monthly payment (collection and redistribution) .......................................................... 22
3 Penalties Scope .................................................................................................................................. 23
  3.1 Instructions subject to cash penalties – General Scope ........................................................... 23
  3.2 Instructions subject to cash penalties - Cross-CSD Settlement Scope ..................................... 23
  3.3 Instruments subject to penalties ............................................................................................ 24
4 Identification of the party to be penalised ....................................................................................... 26
  4.1 Late Matching Fail Penalty (LMFP) ...................................................................................... 26
  4.1.1 LMFP special case: “already matched” instructions ......................................................... 26
  4.2 Settlement fail penalty (SEFP) ............................................................................................. 26
5 Reference data required for penalty calculations ........................................................................... 28
  5.1 List of instruments subject to penalties ............................................................................... 28
  5.2 Daily reference price .......................................................................................................... 28
9.12 Scenario Bridge ................................................................. 59
9.13 Reconciliation aspects ........................................................ 59
  9.13.1 CSD participant insolvency ........................................... 59
  9.13.2 Suspension of settlement ............................................. 60
10 Collection & Redistribution of Penalties (Payment) ................. 61
  10.1 General overview ............................................................ 61
    10.1.1 T2S-In CSDs payments processing ............................... 62
  10.2 Step 1: Penalties Collection from CSD Participants ............... 63
    10.2.1 Payment via direct debits and/or cash transfers ............... 64
    10.2.2 Payment via PFOD transactions .................................. 64
    10.2.3 Payment via a payment bank ...................................... 64
  10.3 Step 2: Penalties Redistribution from Penalties receiving CSD to its participants .......... 65
    10.3.1 Cash transfers ......................................................... 65
    10.3.2 Payment via PFOD transactions .................................. 65
    10.3.3 Payment via a payment bank ...................................... 65
11 Reporting .............................................................................. 66
  11.1 Reporting formats .......................................................... 66
    11.1.1 ISO20022 messages ................................................... 67
    11.1.2 ISO15022 messages ................................................... 67
    11.1.3 Alternative reporting solutions .................................... 68
  11.2 Generic Reporting content ............................................... 68
    11.2.1 Information blocks for penalty reporting ....................... 68
    11.2.2 Mandatory fields ..................................................... 69
  11.3 Message types .............................................................. 70
    11.3.1 Daily penalties report ................................................ 70
    11.3.2 Monthly aggregated report ....................................... 71
    11.3.3 Payment pre-advices ................................................ 71
12 Miscellaneous ....................................................................... 73
  12.1 Penalties Activation process ............................................. 73
  12.2 Contingency And Exceptions Handling ............................... 73
    12.2.1 Delayed delivery of CSD reports ................................. 73
    12.2.2 Exceptional situations where the cash penalty mechanism should not be applied .. 73
  12.3 CCP-related aspects – under discussion with EACH ..................... 74
12.3.1 CSD participants that are CCPs .......................................................... 74
12.3.2 Penalties calculation and collection process for CCPs ..................... 75

Annexes ........................................................................................................... 77
Annex I - T2S documents ............................................................................. 77
Annex II - Other documents and references ............................................. 77
Annex III - Settlement scenarios ................................................................. 78
Annex IV - List of CSDs using the Framework as market practice .......... 78
Annex V – Penalties Activation Process Examples (see framework chapter 12.1) 78
<table>
<thead>
<tr>
<th>Acronym or abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BD</td>
<td>Business day(s)</td>
</tr>
<tr>
<td>CA</td>
<td>Competent Authority(ies); relevant supervisor(s)/ regulator(s) of the CSD</td>
</tr>
<tr>
<td>Calculating-CSD</td>
<td>CSD subject to CSDR where the actual settlement (fail) is taking place; the Calculating-CSD will calculate, report and collect/ distribute penalties to its participants (that may as well be CSDs); also in cross-CSD settlement fails scenarios involving direct links, to avoid duplication of penalties calculation and reconciliation issues between linked CSDs, penalties shall exclusively be calculated by the Calculating-CSD.</td>
</tr>
<tr>
<td>CCP</td>
<td>Central Counterparty</td>
</tr>
<tr>
<td>CSD</td>
<td>Central Securities Depository</td>
</tr>
<tr>
<td>ECB</td>
<td>European Central Bank</td>
</tr>
<tr>
<td>ESMA</td>
<td>European Securities and Markets Authority</td>
</tr>
</tbody>
</table>
| ISD                     | Intended Settlement Date; date on which the settlement instruction shall settle (same meaning as “Requested Settlement Date (RSD)”)
<p>| LMFP                    | Late matching Fail Penalty; penalty that applies due to the matching taking place after the ISD. See also “SEFP”. |</p>
<table>
<thead>
<tr>
<th>Acronym or abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partial redistribution</td>
<td>Redistribution of cash penalties by a CSD to receiving participants or CSDs even when not all dues have been fully collected by the paying CSD on the 17th Business Day. “Partial redistributions” may be applied, e.g. to limit cash balances on a CSD’s own penalties cash account or contingency situations. Pre-condition is that the full amount expected to be received by a single CSD or CSD participant can be paid (i.e. no “partial payments” apply; see also “Partial payment”).</td>
</tr>
<tr>
<td>Partial payment</td>
<td>Payment of only a portion of the full amount expected to be received by a single CSD or CSD participant; “partial payments” shall not be applied for any penalties payments unless required in contingency or other exceptions handling (e.g. insolvency) situations. See also “Partial redistribution”.</td>
</tr>
<tr>
<td>Party</td>
<td>A “party” may be defined by a CSD either on BIC (approach as applied by T2S, i.e. T2S CSDs will use the “T2S Party BIC” to define the party) or CSD participant securities account number or LEI level. The CSD-role under national law and domestic market models or settlement platforms (e.g. T2S) have to be considered as well in this respect. Hence, the usage of harmonised definitions across all CSDs is not achievable.</td>
</tr>
<tr>
<td>RTS</td>
<td>Regulatory Technical Standard, which are endorsed by the European Commission by means of a delegated act supplementing an EU Regulation or a Directive</td>
</tr>
<tr>
<td>SDR</td>
<td>CSDR Settlement Discipline Regime; amongst others, prescribing CSD settlement functionalities, measures to prevent settlement fails (incl. penalties, mandatory buy-ins and sanctions to participants) and reporting to be provided. The standards describing the regime in detail can be found here: <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.230.01.0001.01.ENG&amp;toc=OJ:L:2018:230:TOC">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.230.01.0001.01.ENG&amp;toc=OJ:L:2018:230:TOC</a></td>
</tr>
<tr>
<td>Acronym or abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>SEFP</td>
<td>Settlement Fail Penalty; penalty that applies due to the non-settlement of a matched transaction on or after its ISD</td>
</tr>
<tr>
<td>T2S</td>
<td>Target 2 Securities; European Central Bank (ECB) centralised settlement platform</td>
</tr>
<tr>
<td>T2S CSDR TF</td>
<td>Task Force composed of representatives from ECB, Central Banks, CSDs, ECSDA and the Banking community to discuss requirements towards and solutions of T2S related to CSDR</td>
</tr>
</tbody>
</table>
INTRODUCTION

On 23 July 2014, the European Parliament and the Council have issued Regulation (EU) No 909/2014 (later, CSDR\(^1\)) aiming at the harmonisation of the regulatory environment of securities settlement and Central Securities Depositories in the European Union.


The introduction to the DR states:

“One of the main objectives of the Regulation is to improve the safety and efficiency of securities settlement, in particular for cross-border transactions, by ensuring that buyers and sellers receive their securities and money on time and without risks. To achieve this objective, the Regulation harmonises the timing and framework for securities settlement in the Union. In particular, it provides for a set of measures to prevent and address failures in the settlement of securities transactions (‘settlement fails’), commonly referred to as settlement discipline measures.”

This ECSDA CSDR Settlement Fails Penalties Framework (later, “the Framework”) is the effort of compliance with the Regulation and harmonisation of settlement penalties mechanisms across CSDs subject to CSDR or regulation alike and constitutes a market practice for the CSDs mentioned in Annex IV of the Framework.\(^3\)

The Framework solely focuses on the settlement fails penalties-related aspects of the CSDR settlement discipline regime.

European CSDs also take into account the regulatory and contextual elements as described below and having led the CSDs to develop the present Framework:

(i.) The Framework recognises the importance of the provisions of CSDR Articles 6 & 7 (with regard to measures to prevent and to address settlement fails), as well as Delegated Regulation 2018/1229 detailing the Settlement Discipline Regime (later, SDR). The provisions aim at increasing settlement efficiency and harmonising settlement discipline measures across the Union through the following four key pillars:

- **Pillar I.** Measures to prevent settlement fails:

---


\(^2\) Full text can be found here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018R1229

\(^3\) The CSDs involved in drafting of the Framework include members of ECSDA subject to the CSDR or aiming at compliance with equivalent legislation, as well as NBB-SSS (the National Bank of Belgium Securities Settlement System) and BOGS (the Bank of Greece Securities Settlement System). The full list of CSDs using the Framework as a market practices can be found in Annex IV.
• Trade allocations and confirmations (obligation for Investment Firms, not applicable to CSDs);
• Automation of CSDs’ settlement processes and reporting of “manual interventions”;
• Settlement instructions mandatory matching fields;
• CSDs’ settlement functionalities aiming at preventing settlement fails (e.g. bilateral cancellation, hold & release, partial settlement) and possible derogation from the requirements to offer partial settlement and hold & release functionalities by CSDs under certain conditions.

Pillar II. Requirements to monitor and report settlement fails:
• CSDs are required to monitor and analyse settlement fails and CSD participants’ settlement efficiency, including setting up working groups to define measures to improve efficiency;
• Settlement efficiency/ fails reporting to authorities, CCPs/ Trading Venues and the public.

Pillar III. Requirements for CSDs to charge cash penalties to users that cause settlement fails (sole subject of this ECSDA Penalties Framework):
• For matched settlement instructions failing to settle on the Intended Settlement Date (ISD), daily calculation, (at least) monthly collection, distribution and reporting of penalties to CSD participants are required to be applied by CSDs subject to CSDR or alike regulation.

Pillar IV. Rules requiring a mandatory buy-in:
• Receiving trading parties and CCPs are required to initiate a mandatory buy-in after a specific period of time after the ISD (the CSD role is limited to information gathering and regulatory reporting).

(ii.) The CSDR SDR RTS foresee an implementation on 13th September 2020.4
(iii.) Pursuant to delegated acts, any relevant additional ESMA clarification (once officially published) will be taken into account in the Framework.
(iv.) Settlement penalties are applicable to CSD participants, including CSDs when these have established a CSD-link with a CSD applying CSDR SDR penalties.
(v.) The parameters and penalty rates for the calculation of cash penalties for settlement fails have been adopted and officially published in March 2017 (“Cash Penalties Calculation Delegated Act”).

4 We understand that some flexibility until November 2020 will be provided by the policy makers, although this will only be confirmed in Q3 2019.
(vi.) T2S CSDs and the Eurosystem (via the “T2S CDR Task Force”) jointly identified the necessary changes to the T2S platform and to facilitate T2S CSDs’ compliance with CSDR. As a result, the following documents were created (see Annex for details):

- T2S penalty mechanism document and subsequent specifications in the T2S Change Request 654;
- Penalty lists – Messages overview (ISO20022 format, only; transposition into ISO15022 messages is ongoing by SWIFT); and
- List of clarifications sent to ESMA (note that an additional list of items requiring clarifications has been submitted by ECSDA to ESMA).

Please note that a number of penalties-related elements mentioned in this Framework have been explicitly excluded from the T2S CSDR Task Force discussions and the documents resulting from it, such as:

i. Agreement on the list of financial instruments subject to penalties and sourcing of a “golden data feed” for the purposes of cash penalties calculation;
ii. Collection and redistribution of cash penalties (i.e. the actual payment of cash penalties); and
iii. Reporting and messaging from CSDs to their participants and between CSDs.
1 **ECSDA CSDR Penalties Framework - Key Considerations**

1. The ECSDA Framework (market practice) is applicable to all CSDs subject to the EU CSDR or alike regulation. The list of CSDs that adopt the Framework can be found in the Annex to the Framework. In case a CSD does not comply with the Framework in a specific aspect (due to e.g. legislative or operational boundaries), it will provide the relevant information to ECSDA and its participants accordingly.

2. The Framework aims at ensuring that all CSDs implement the provisions in a harmonised way, neutral of whether settlement takes place in or outside of T2S, and neutral to the systems that are used by CSDs to process settlement fails penalties.

3. The CSDR penalties mechanism will be set up by all CSDs subject to CSDR. If a CSD already applies a penalties regime, this shall be adapted to or replaced by the CSDR Settlement Discipline Regime (SDR) requirements. Beyond CSDR, CSDs may additionally introduce or use supplementary tools (e.g. if required by a regulator or deemed reasonable by the CSD for its local market) in order to ensure high settlement efficiency.

4. ESMA and T2S documents served as basis for creating this Framework. Large parts of the Framework are fully aligned and have been sourced from the discussions at the T2S CSDR Task Force as mentioned in the “T2S Penalty Mechanism” document (version October 2017) and the subsequent T2S Change Request CR654. For CSDs using the T2S settlement platform, in case of inconsistency between the ECSDA Framework and the relevant T2S documentation, the latter shall prevail. The Framework also covers penalties related aspects that are not subject to the T2S CSDR Task Force documents (when they are not covered by the T2S scope as noted in the Framework Introduction).

5. This document may be subject to changes, e.g. due to various working assumptions taken due to pending ESMA feedback or ongoing discussions within ECSDA or the market community. Material changes compared to the previous latest published Framework version are highlighted in light grey colour.

6. The Framework is shared with other relevant stakeholders (i.e. CSD participants, ECB, Central Counterparties, ESMA and other European Union and national authorities) with the aim of alignment and information sharing.

7. According to CSDR and SDR RTS, the following principles must be applied by all EU CSDs:
   - A CSD shall provide for a cash penalty mechanism for participants that caused settlement fails.

---

5 A CSD may decide to subscribe to the Framework also in cases when it is based in an EU third country jurisdiction and is subject to the legislation declared equivalent to the CSDR or even ahead of the recognition of non-EU legislation equivalent to the CSDR by the European Commission.

6 Please see the list of CSDs using the Framework as the market practice in Annex IV.

7 See ECB website for the latest version of the CR: https://www.ecb.europa.eu/paym/target/t2s/governance/html/changerequests.en.html
Cash penalties are to be calculated on a daily basis for each business day that a matched (free of, with or against) payment settlement instruction fails to settle on or after its Intended Settlement Date (ISD), including those instructions that are “on hold” or failing due to a lack of cash.

Penalties shall also apply to instructions that matched in the securities settlement system after their ISD (“late matching”, e.g. due to instruction entry after ISD).

Cash penalties are calculated as from the ISD until the actual settlement or (bilateral) cancellation date of the instruction, considering:

- Settlement Fail Penalty (SEFP): once the instruction is matched, penalties apply earliest from the ISD or the matching date (when matching took place after ISD and no settlement occurred on the matching date) to the date of actual settlement or cancellation of the instruction, in addition to Late Matching Fail penalties, when applicable;
- Late Matching Fail Penalty (LMFP): penalties apply retroactively from the ISD until the actual matching date.

As a general rule, penalty amounts shall be rounded up to maximum two decimals.

For settlement fails involving multiple CSDs (cross-CSD settlements), SDR penalties, if applicable, shall be calculated only by one CSD (the “Calculating-CSD”, i.e. the CSD where settlement is actually taking place based on the “actual place of settlement” concept). This also means that an Investor-CSD being a participant in another CSD (e.g. Issuer CSD) shall comply with the Terms & Conditions of the latter CSD.

Daily reports shall be provided to the CSD participants in order to allow them to reconcile and calculate the recharge of the penalty to their underlying clients where applicable.

CSDs must redistribute the penalties only once they have been collected from their participants.

The full amount collected as a penalty shall be redistributed to the participant that suffered from the fail at least on a monthly basis.

Instructions with a CCP as counterparty:

- CSD must calculate and report penalties for participants that are CCPs but not actually collect/distribute any penalties;
- CSDs must ensure that CCPs collect and redistribute fails penalties from/to the relevant clearing members and provide a monthly report to the CSDs.

The cash penalties shall not be configured as a revenue source for the CSD.

---

8 Note: Both, a late matching fail penalty (LMFP) and a settlement fail penalty (SEFP), can apply on a single instruction; they may be charged to the delivering, receiving or both participants, depending on which of the two participants caused a) the late matching and b) the settlement fail. However, LMFP and SEFP cannot both apply for the same business day: either LMFP or SEFP can occur, depending on the matching timestamp (being before or after the CSD’s settlement cut-off time).

9 This is currently under consideration by the authorities. Hence, related provisions may be subject to a change.

10 However, CSDs have the possibility to charge for the cost of development and maintenance of their penalty system as a fee separate from the actual penalties amounts calculations and processing.
2 PENALTIES LIFECYCLE AND BUSINESS DAYS CALENDAR

This chapter covers the penalties lifecycle for both, intra-CSD and cross-CSD settlement fails scenarios:

A. Daily events:
   i. Daily Calculations
   ii. Daily Reporting

B. Monthly events:
   i. Monthly Appeal Period
   ii. Monthly Aggregated Amounts Provision
   iii. Monthly Payment (Collection and Redistribution)

Note about the “appeal period”: “appeals” refer to the exceptional correction or update of previously calculated and reported penalties upon CSD or participant request (e.g. due to the application of incorrect or updated reference data) and limited to the cases provided in the ESMA CSDR Q&A.

Messaging and reporting aspects are covered in chapter 11 of this document.

2.1 INTRA-CSD SETTLEMENT FAILS

Daily and monthly events apply for the business days defined below.

2.1.1 Business Days

Applicable business days calendars:

- the CSD’s own settlement calendar;
- the payment system calendar of the relevant currency.

Business days are those days on which an instruction can settle in the own CSD or, in case of settlement versus payment when the payment is executed outside the CSD system, the payment system applicable to the relevant currency (“opening days”).

Based on the above, a penalty shall not be applied:

- for ‘free of payment’ instructions: for the days when the CSD settlement system is closed.
- for ‘against payment’ instructions (when the payment is executed outside the CSD system): for the days when the CSD settlement system or the payment system of the relevant currency is closed.

Note: the calendars of the CSDs and the payment systems should be retained for at least three months for penalties calculation purposes.
Daily calculations:

A CSD shall calculate daily penalties for each instruction that:

i. failed to settle on its intended settlement date (SEFP); or
ii. matched after its intended settlement date (LMFP).

For the computation of the Settlement Fail Penalties (SEFP), it is required to consider the (possibly different FOP and DVP) settlement cut-off times of the CSD.

For the computation of the Late Matching Fail Penalties (LMFP), it is required to consider the end of the business day as matching could still occur until then.

Daily penalties calculations for every single failed settlement instruction shall be completed by the CSD as soon as possible to make the daily reports available to its participants (including other directly linked CSDs) in a timely manner, i.e. optimally latest by midday (12:00 p.m. CET) on the business day following the settlement fail. No “intraday” penalties calculation or reporting applies.

These daily penalties reports might also contain a bilateral net of the penalties, per CSD, currency and counterparty (the provision of such bilateral net amounts is at the discretion of the CSD).

Daily penalties can only be calculated by CSDs when all relevant reference data is known to them. For instance, the daily reference price of the security will likely only be available to CSDs during the following business day. As such, the penalties will be calculated for instructions that failed to settle on the previous business day (please also refer to the assumptions in chapter 5.2).

For every failing settlement instruction, the CSD will calculate, for each party, the net penalties (i.e. the single credit or debit net amount) per CSD, currency and counterparty on a daily basis.

Under exceptional circumstances (see ESMA CSDR Q&A “Settlement Discipline Questions 4 – Cash penalties: scope”), daily penalties previously calculated by the CSD for the current calendar month, could be amended (i.e. re-calculated due to changes in applicable reference data) or removed (i.e. cancelled) on any business day until the appeal period has ended (see chapters 2.1.4/ 2.2.4 for details).

Daily penalties previously removed by the CSD for the current calendar month, could be re-included on any business day until the appeal period has ended. If the applicable reference data has changed, the penalty will be re-calculated.

The penalties calculation methods are described in chapter 7.

2.1.2 Daily Reporting

CSDs will send a daily penalty report to their participants when there are new, amended, removed or re-included penalties during the day.

The penalty calculation period shall be one calendar month. For each business day, CSDs may generate:

- either a single report; or
two separate reports: one for the new penalties and one for the amended, removed or re-included ones, if applicable.

**First MONTH (computation and reporting of penalties)**

CSDs shall report penalties for each “party” and aggregated per counterparty (a participant in this same CSD).

In the case no penalty is to be applied (i.e. no failed transaction resulted in new penalties, amendments, removals or re-inclusions) for one reporting day for a party, a “no activity” report may be sent.

CSDs shall deliver the daily reports to their participants after the closing of the settlement day on which (new or previous) penalties were calculated, amended, removed or re-included and latest until midday (12:00h p.m. CET) on the following business day. Penalties for fails on a Friday will be calculated and reported either on Saturday, or Sunday, or Monday morning, depending on the CSD’s own operational day (but in all cases the business day date shall be the one of Monday).

### 2.1.3 Monthly Events

All CSDs shall follow the same monthly timetable to ensure that the appeal period and penalty finalisation occur on the same date.

ECSDA may maintain a ‘Penalties calendar’ indicating the closing dates throughout the year for settlement and payment systems that shall be considered by all CSDs subject to SDR and used in regard to the penalties payment process business days.

The below timeline for the monthly reporting, assessment and payment process applies:

---

12 CSDs may offer such ‘no activity’ reports upon subscription so its participants will be able to choose to receive these reports.
Following MONTH (provision of aggregated amounts and payment)

Note that “payment pre-advises” are usually not provided by CSDs as the monthly reports and/or PFOD instructions provide the necessary penalty amounts information; therefore, “pre-advises” are only generic mentioned or described in this Framework.

2.1.4 Monthly Appeal Period

CSDs shall apply a dedicated appeal period for CSD participants to assess single settlement fails penalty calculations, on an exceptional basis, within and post the end of a calendar month.

Reasons for appeals may be the situations listed in the ESMA CSDR Q&As “Settlement Discipline Questions 4 – Cash penalties: scope”:

- ISIN suspension from trading or settlement (e.g. due to “undue creation or deletion of securities” reconciliation issues);
- Settlement instructions involving cash settlement outside the securities settlement system operated by the CSD if, on the respective day, the relevant payment system is closed for settlement;

---

13 While this is stated in the ESMA Q&As, ESMA advised ECSDA this is not meant to be mandatory but a non-exhaustive example for cases when CSD may not need to apply penalties. In this specific case, CSDs are usually not aware of the suspension taking place at trading level, hence, will not waive any penalties that were calculated.
- Technical impossibilities at the CSD level that prevent settlement, such as: a failure of the infrastructure components, a cyber-attack, network problems.

The appeal period ends at close of business on the 10th business day of the following month for CSD participants.

Appeals can be lodged by CSD participants at any time during the calendar month, as from the moment of computation and reporting of the penalty, and until (and including) the 10th business day of the following month.

Any amendment requested after the appeal period ended cannot be taken into account by the CSD.

Each time that an appeal is accepted by a CSD, and a change is applied to a penalty, it will be reported on the following business day. Updates made by the CSD on the 11th business day of the following month will be reported on the 12th business day (the same way as it is done for any other business day).

By close of business on the 12th business day of the following month, any adjustment resulting from appeals shall be completed by the CSD, to be reported on the 13th business day by midday (12:00 p.m. CET) at the latest.

In order to apply for an appeal, sufficient information needs to be provided by the CSD participant to the CSD, covering at least:
- the reference of the penalty as well as the failed transaction details,
- the reason for the appeal; and
- the expected penalty amount and calculation details to be applied.

Appeals represent an exception handling by CSDs; until further notice, each CSD will design its own processes considering e.g. its GTCs, communication requirements to submit an appeal and providing the outcome of the appeal assessment to the appealing participant.

2.1.5 Monthly aggregated amounts

On the 14th business day of the following month, the CSD will report the monthly aggregated amounts for the penalties of the previous month (i.e. the aggregated amounts of the penalties computed for the business days of the previous month).

For each party, per currency and counterparty, the CSD will sum up all the cash penalties that this party can be expecting to be credited or debited with.

If the net-result is a credit, the party can expect a cash payment from this counterparty. If the result is a debit, the party will have to pay this counterparty.

Thus, the monthly reporting shall include, per currency and per party, all the net amounts against each of its counterparties for the penalties computed for the business days of the previous month.

Note: the monthly reports will not include the details of each gross penalty (that is only available in the daily reports).

For additional information on the monthly aggregated amounts, please refer to chapter 7.4 “Monthly cash penalties aggregation and global net amounts”.
2.1.6 Monthly payment (collection & redistribution)

On the 17th business day of the following month, the CSD (and its participants) shall perform the payment process, i.e. the CSD shall collect and redistribute the penalties amounts to/ from its participants.

Note: for each party, the net amount (to be paid or to be received by a CSD participant) shall be reported by the CSD latest on the 15th business day thereby providing time to perform FX transactions (if required) before the payment date (17th business day).

Each CSD participant will have to pay (for each currency, if applicable) the exact amount as reported by the CSD.

Fails involving CCPs are excluded from the monthly payment process (but part of the daily and monthly reports).

As described in chapter 10, depending on their set-up (having/ not having a banking license) and national specificities, CSDs will use different models for the actual penalties’ payments processing; intra-CSD payment processes may also differ from the cross-CSD payments.

The following possible payment models were identified:

1. CSD triggers direct debits and/ or cash transfers;
2. CSD generates PFOD instructions;
3. Cash is transferred using a payment bank.

CSDs may define appropriate measures (to be described in the relevant contractual documents with the CSD participants) to ensure CSD participants comply with their payment obligations to the CSD on time on the 17th business day to avoid delays and processing issues due to a lacking or incomplete penalties collection by the CSD.

For detailed information about the monthly payment process, please refer to chapter 10.

2.2 CROSS-CSD SETTLEMENT FAILS (FOR CSD DIRECT LINKS TO OTHER CSDs)

Daily and monthly events apply for the business days defined below.

2.2.1 Business Days

Applicable business days calendars:

- the CSD’s own settlement calendar;
- the penalties Calculating-CSD’s settlement calendar\(^{14}\);
- the payment system calendar of the relevant currency.

\(^{14}\) Note: The calendars of the CSDs and the payment systems should be retained for at least three months for penalties calculation purposes.
Business days are those days on which an instruction can settle in the Calculating-CSD’s settlement system or, in case of settlement versus payment, when the payment is executed outside the CSD system, the payment system applicable to the relevant currency (“opening days”).

In order to allow CSDs to be able to assess the relevant European CSD’s opening days for securities and cash processing, the relevant information shall be provided to ECSDA by the respective CSDs and be made publicly available by ECSD.

Based on the above, a penalty shall not be applied:

- for ‘free of payment’ instructions: for the days when the Calculating-CSD settlement system is closed;
- for ‘against payment’ instructions (when the payment is executed outside the CSD system): for the days where the Calculating-CSD’s settlement system or the payment system of the currency was closed.

Daily calculations:

The same process than the one mentioned in chapter 2.1.1 shall apply when the CSD is acting as an Issuer-CSD (for an Investor-CSD).

In line with the “actual place of settlement” concept, if the CSD is acting as an Investor-CSD, it shall wait for the daily amounts to be provided by the Calculating-CSD where settlement is actually taking place and report them afterwards to its own participants.

To avoid procedural complexity and reconciliation issues, the Investor-CSD shall not make own penalty calculations but rely on the Calculating-CSD.\(^{15}\)

The daily calculation performed by the Calculating-CSD considers the Investor-CSD as a standard participant (in the other CSD’s books). It means that the Calculating-CSD cannot provide the daily penalties at the level of the Investor-CSD’s participants.

The Calculating-CSD shall report the daily penalties to the Investor-CSD, as soon as possible and optimally latest by midday (12:00 p.m. CET) on the business day following the settlement fail, in order for the Investor-CSD to report these cross-CSD penalties in a timely manner to its own participants.

2.2.2 Daily Reporting

The same process than the one mentioned in chapter 2.1.2 shall apply when the CSD is acting as penalties Calculating-CSD (for an Investor-CSD).

CSDs shall send a daily penalty report to their CSD participants when there are new, amended, removed or re-included penalties.

\(^{15}\) If all involved CSDs are subject to CSDR, only the CSD where settlement is actually taking place shall calculate the penalties; all CSDs involved will have to report and collect/ redistribute. Note for T2S external settlement, T2S will (until further notice) calculate in any case. It will be up to the T2S CSDs to remove these penalties and replace them by the ones reported by the Calculating-CSD. Please refer to chapter 9 “Cross-CSD settlement fails” and Annex III for a description of all settlement scenarios.
The daily reporting shall segregate the penalties resulting from the intra-CSD activity, and the ones resulting from the cross-CSD activity. In such a case, the CSD participant might receive up to four reports, for the same business day:

- a report including all new intra-CSD penalties;
- unless included in the “new penalties” report, a report including the penalties intra-CSD which were amended, removed or re-included;
- a report including all new cross-CSD penalties;
- unless included in the “new penalties” report, a report including the penalties cross-CSD which were amended, removed or re-included.

Calculating-CSDs (and, upon receipt from the Calculating-CSD, the Investor-CSDs) shall deliver the daily reports to their participants until midday (12:00 p.m. CET) on the following business day at the latest. The receiving CSD will in turn report these penalties to its participants. Thus, CSD participants should consider that cross-CSD penalties may be reported later than intra-CSD penalties and, hence, after midday (12:00 p.m. CET) on this same business day (depending on the time of receipt from the Calculating-CSD).

The penalty information shall be passed on to the part of the failing settlement instruction, as it appears in the Investor-CSD’s records (see Glossary regarding the definition of a “party”).

In case of a CSD-link, the failing party may be a participant or an underlying client of a participant of the relevant linked CSD. In case of indirect and operated direct\textsuperscript{16} links, the information flow is longer compared to a direct link, i.e. it could go from the CSD reporting the penalties to the intermediary acting on behalf of the CSD to the customer of the intermediary (i.e. the CSD), and then to the underlying CSD participant. How this information flow is technically ensured is subject for specification by the involved CSDs.

\textbf{2.2.3 Monthly Events}

The monthly events, in a cross-CSD scenario, are identical to the ones in an intra-CSD scenario for the ‘First month’.

A difference applies related to the end of the appeal period (as highlighted in red).

\textsuperscript{16} “Operated” means the CSD has a direct link/ account with the other CSD that is operated by an agent.
Note that “payment pre-advices” are usually not provided by CSDs as the monthly reports and/or PFOD instructions provide the necessary penalty amounts information; therefore, “pre-advices” are only generic mentioned or described in this Framework.

2.2.4 Monthly Appeal Period

In a cross-CSD context, the appeal period ends at close of business on the 11th business day of the following month. It allows CSDs to still pass on to other CSDs the appeals requested by CSD participants on the 10th business day. At close of business on the 11th business day, CSDs shall no longer request appeals to other CSDs.

An appeal requested latest until the 10th business day by a CSD participant (in line with chapter 2.1.5) and accepted by a CSD, must be sent to the other CSD on the 11th business day, and thus will be reported to the CSD participant on the 12th business day (depending on the settlement chain).

By close of business on the 12th business day of the following month, any adjustment resulting from appeals shall be completed by the CSD, to be reported on the 13th business day by midday (12:00h p.m. CET) at the latest.

2.2.5 Monthly aggregated amounts

The process will be identical to the one described in intra-CSD. The monthly aggregated amounts will include the cross-CSD penalties separated by CSD.

In a cross-CSD scenario, the monthly aggregated amounts will be calculated per CSD-link, meaning that the (bilateral) net amounts will be calculated for each CSD, per currency and counterparty.
For additional information on the monthly aggregated amounts, please refer to chapter 7.4.

2.2.6 Monthly payment (collection and redistribution)

In a cross-CSD scenario, the process will slightly differ compared to 2.1.6, as CSDs are not themselves responsible for supplying the funds to proceed with the penalties payment.

One “global net” (being the amount to be received minus the amount to be paid) per CSD-link will be provided by the Calculating-CSD in the monthly report on the 14th business day. Note: it is not possible to sum-up amounts that pertain to various CSD-links. Hence, the Calculating-CSDs shall calculate a single amount per every CSD-link and currency.

On the 17th business day of the month, all involved CSDs shall have collected the amounts due by their participants (including those that are CSDs themselves), in order to be able to start the payment process across CSDs.

Each CSD participant and CSD will have to pay (for each currency, if applicable) the exact amount as reported by the other CSD.

CSDs may define appropriate measures (to be described in the relevant contractual documents with the CSD participants) to ensure CSD participants comply with their payment obligations (in each currency reported) to the CSD on time on the 17th business day to avoid delays and processing issues due to a lacking or incomplete penalties collection.

For detailed information about the monthly payment process, please refer to Chapter 10.
3 Penalties Scope

3.1 Instructions Subject to Cash Penalties – General Scope

Settlement fails penalties shall be calculated for all settlement instructions, free of, against or with payment, that are:

- matched (prior, on or after their Intended Settlement Date (ISD)), and
- failing to settle on and after their ISD.

The only exemptions are:

- Settlement transactions that do not represent “transfer orders” according to the second indent of point (i) of Article 2 of Directive 98/26/EC [Settlement Finality Directive];
- Corporate actions on stock (ISO transaction code equals “CORP”);
- Technical instructions, e.g. T2S automatic realignments;

For reference, T2S Settlement restrictions mention the following instructions:

- (T2S) Auto-collateralisation operations, while automatically generated, are considered in scope.
- Primary issuance settlements are in scope (except the process of initial creation of securities which cannot be regarded as a “transfer order” from a legal standpoint).
- Treatment of Investment Funds redemptions/ subscriptions order routing instructions (CSD model vs. TA model/ transfer order vs. settlement instructions model). For CCP-related aspects, please refer to chapter 12.3.

3.2 Instructions Subject to Cash Penalties - Cross-CSD Settlement Scope

In context of settlement transactions beyond the CSD’s own system, various scenarios were elaborated by T2S CSDR Task Force and ECSDA, yet to be officially endorsed by ESMA. These must be considered by CSDs to define if a failing instruction is actually subject to penalties; please refer to chapter 9 for details.

In summary, an “actual place of settlement” concept applies:

- when the actual settlement is taking place in a CSD subject to CSDR, penalties shall be calculated and applied by this CSD (“Calculating-CSD”); the (Investor-)CSD being a

---

17 Definition: “Any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, a central bank, a central counterparty or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system, or an instruction by a participant to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise.”
18 A T2S Settlement restriction is an Intra-position movement. It is used to manage restriction on a securities position which can be: a securities blocking; a securities reservation; or a securities earmarking.
19 T2S CSDR TF wording; note re. Investment funds issuance (creation/ redemption), based on ECB feedback: unlike for corporate actions where the issuers are paying CSD participants, there is generally no obligation on the side of participants, for Issuance and Fund Investment the counterparties are CSD participants who are buyers, so these shall be considered as normal transactions, subject to penalties.
participant of the other CSD is obliged to report the penalties further to its own participants and also perform the cash collection and redistribution process;

- when the actual settlement is taking place in a third country CSD (not subject to CSDR), no (CSDR) penalties shall apply.

For reference regarding T2S processes:

- T2S will always calculate and report the penalties, even if T2S is not the actual place of settlement; hence, it will be up to the T2S CSDs to remove these penalties and replace them by the ones reported by the Calculating-CSD;

- when settlement takes place between two Investor-CSDs, the subsequent realignment transactions on Issuer-CSD level shall not be subject to settlement fails penalties, independent if the Issuer-CSD is inside or outside T2S, as stated in chapter 3.1.

### 3.3 INSTRUMENTS SUBJECT TO PENALTIES

Settlement fails penalties must be calculated in case a matched settlement instruction in scope of SDR is failing to settle and the instrument to be transferred is:

- a CSD-eligible MiFID II/ MiFIR financial instrument:
  - admitted to trading or traded on an EU trading venue (see ESMA FIRDS database); or
  - cleared (or eligible for clearing) by an EU CCP.

- excluding shares when their principal trading venue is located in a third country.

Note: the relevant MiFID II/ MiFIR financial instruments types are:

- transferable securities [i.e. equity- and bond- (like) instruments (including ETFs) and giving a right to buy or sell any of those],

- money-market instruments,

- UCITS, and

- emission allowances.

I.e. to derive the concrete list of ISINs subject to SDR, a CSD shall:

a) use the ESMA FIRDS database for MiFID II/ MiFIR instruments;

---


Note: “complete” and “delta” files are provided by ESMA. CSDs shall consider both files for their daily updates to ensure full ISIN coverage. As the FIRDS database also contains instruments that are not CSD-eligible (like derivatives), CSDs should limit the query to instruments being eligible in their CSD settlement system. When ISIN scope changes (i.e. ISINs were added or removed) are identified, these shall be considered by CSDs as of the next fail date (hence, no retroactive changes to already calculated penalties will apply, in line with T2S processes).

21 CSDR Art. 7.13 states: “This [CSDR] Article 7 shall not apply where the principal venue for the trading of shares is located in a third country. The location of the principal venue for the trading of shares shall be determined in accordance with Article 16 of Regulation (EU) No 236/2012.”. See “Short Selling Regulation (SSR)” exempted instrument list: [https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_mifid_shsexs](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_mifid_shsexs)
b) identify the ISINs eligible for settlement in the CSD; and

c) eliminate those shares that are exempted from the Short Selling Regulation.

As the FIRDS database is updated daily at 09.00h a.m., in order to avoid discrepancies between CSDs and to be in line with T2S processing timelines, CSDs shall always consider the FIRDS (complete as well as delta) files as available at the end-of-fail day (example: fail date 15.04.19; penalty calculation date/time 16.04.19 10:30h a.m., i.e. the FIRDS file published as of 15.04.19 end of day shall be used).

Please also refer to chapter 5 for the reference data required to calculate penalties.
4 IDENTIFICATION OF THE PARTY TO BE PENALISED

4.1 Late Matching Fail Penalty (LMFP)

Any settlement instruction being in scope of the penalties calculation that is matched after the relevant CSD settlement cut-off time of its ISD will be subject to computation of Late Matching Fail Penalties (LMFP) for the business day when it is matched and (retroactively) for each past business day that it failed to settle.

The penalty is charged to the participant who was last to enter or modify the relevant settlement instruction (e.g. ‘accepted timestamp’ is later than the one of the counterparty’s instruction) for the periods between the ISD and the day of matching of the instruction; when both parties send their instructions “late” after the ISD, only one of the two counterparts of a transaction will be imposed with a LMFP.

Please also refer to chapter 7 regarding the special handling in case of only partially successful buy-ins.

4.1.1 LMFP special case: “already matched” instructions

If a CSD is offering the possibility to send settlement instructions as already matched (i.e. both instructions are sent at the same time as matched, often used for CCP instructions), these settlement instructions will be subject to computation of LMFPs in case they are sent late.

It is not always possible for the CSD to determine the failing party by comparing the accepted timestamps (as both legs have the same timestamp).

In some cases, the penalty will be applied to the instructing party of the two settlement instructions (i.e. the party who sent the instructions to the CSD). Therefore, it will be up to the instructing party (e.g. CCP) to inform the CSD to whom to allocate the penalty (i.e. the delivering or the receiving participant) and enable the CSD to adjust the penalty assignment accordingly22.

In other cases, the penalty might not be applicable to the instructing party of the two settlement instructions, as this instructing party does not have an account in the CSD books (e.g. electronic trading platforms). In such a case, the delivering party might be the one to be penalised by default. It will be up to the delivering party, in agreement with the instructing party, to request the CSD to perform a re-allocation of the penalty to the receiving party if it was the real defaulting party.

4.2 Settlement Fail Penalty (SEFP)

Any settlement instruction being in scope of the penalties’ calculation that:

i) is matched before the relevant cut-off of a given business day; and

22 Such a case will likely be very rare, as CCPs are normally sending their settlement instructions prior to the ISD.
ii) has reached its ISD; and

iii) **fails to settle** on that ISD or on the day it is matched (late, i.e. after ISD) and after the ISD,

shall be subject to computation of Settlement Fail Penalties (SEFP) for each business day the instruction is failing to settle.

A settlement instruction that “fails to settle on ISD” must be understood as a settlement instruction that is not cancelled and remaining to be settled, fully or partially, by the time of the end of settlement processing of the relevant CSD (settlement cut-off time).

The relevant cut-off is the key point in time to take a “snapshot” of the status and fail reason of a settlement instruction and determine its eligibility for penalty application. A penalty shall be imposed to a CSD participant if its settlement instruction fulfils, at the time of the end of processing of the relevant settlement cut-off, any of the below conditions:

- the instruction is **“on hold”** (note: when “on hold” is identified for one instruction, no additional check for a “lack of cash” or “lack of securities” of the counterparty instruction shall be made by the CSD); or
- the instruction **failed the settlement eligibility or provision check**, i.e. the fail reason associated to this instruction is “lack of securities” or “lack of cash” (note: when “lack of securities” is identified no additional fail check for a “lack of cash” of the counterparty instruction shall be made by the CSD).

It is possible that the two counterparts of a transaction are imposed with a SEFP, for example, when both legs of a matched instruction are “on hold” until the CSD settlement processing cut-off time. In such scenario, both parties will be imposed with a SEFP (i.e. the delivering party will be charged with “lack of securities” penalties and the receiving party with “lack of cash” penalties).
5 REFERENCE DATA REQUIRED FOR PENALTY CALCULATIONS

In order to calculate the daily settlement fails penalties, the information described in this chapter needs to be available to or sourced by CSDs.

When reference data (e.g. CFI code, security reference price) required to calculate penalties is missing by the calculation date, penalty amounts shall be set to “zero” until the data becomes available.

The latest point in time for consideration of new (or updated) reference data by the CSD shall be the 11th business day of the following month. That means if new or updated data for calculating penalties is available to the CSD only after the 11th business day, no retroactive penalties calculations or adaptations should be made by CSDs.

Please refer to chapter 8 related to updated reference data leading to changes of previously calculated penalties.

5.1 LIST OF INSTRUMENTS SUBJECT TO PENALTIES

For the identification of instruments in scope, please refer to chapter 3.3.

In short, using ESMA publicly available information, the CSD-eligible ISINs listed in the MiFID II/ MiFIR “FIRDS” database to be diminished by those shares exempted from the EU Short Selling Regulation (SSR) will be considered for the penalties application.

5.2 DAILY REFERENCE PRICE

CSDs need to source (or derive) and apply a reference price for each day when the settlement instructions fail to settle. It shall be in line with CSDR price determination rules23 for those securities eligible for settlement in the CSD and whenever the instrument is in the scope of the CSDR penalty regime:

- instrument is in scope of MiFID II/ MiFIR (see ESMA FIRDS database):
  - shares and similar: closing price of the “most relevant market” (MRM) in terms of liquidity (MRM information is available in the FIRDS database);
  - other instruments: closing price of the trading venue “with the highest turnover” Rules for “HIGHEST TURNOVER” information derivation in FIRDS are expected to be provided by ESMA in early 2020);
  - for instruments for which no updated daily MiFID II/ MiFIR price is available, use the latest MiFID II/ MiFIR price (whatever the age) or - when no MiFID II/ MiFIR price is available at all - a price as determined by the CSD.

Considering the above, for MiFID II/ MiFIR instruments, CSDs must source (usually via their data vendors) the applicable prices from the MiFID II/ MiFIR Trading Venue relevant for a single instrument, using the ESMA FIRDS database (note: ESMA does not publish the trading prices):


Due to the huge size of the database (containing more than twelve million entries, including derivatives), the data must be extracted and electronically checked for relevant updates on a daily basis.

By following this information sourcing process, the reference prices applied by CSDs are expected to be identical for a single instrument that can be settled in multiple CSDs.

- Instrument is out of MiFID II/ MiFIR scope:
− market price determined by the CSD, according to its price determination method as approved by the CSD’s National Competent Authority24;
− where no market value is available, CSDs will use:
  ▪ for debt instruments: nominal value (in the ISIN denomination currency);
  ▪ for non-debt instruments: default price (e.g. issue price).

The daily reference price used for calculating the fails penalties is the price of each business day when the settlement instruction is subject to penalty calculation (i.e. using maximum three months of historical prices when relevant, e.g. for late matching fails), independently from when the calculation is actually performed.

That means that the reference price for the penalty calculation of each fail day shall be the one of the relevant fail dates.

For example: a FOP instruction with Intended Settlement Date 05.10.18 only matches (but does not settle) on 07.10.18 – reference prices for 05.10., 06.10. (for LMFP calculation) and 07.10.18 (for SEFP calculation) are to be applied, assuming these are business days and the CSD system was open for settlement).

Therefore, CSDs are required to source and store market price data for all instruments in scope of the penalty regime on a daily basis25. In the absence of a single European price feed or source for all CSDs, this has to be managed individually by CSDs via their data vendors, unless CSDs can source price data themselves.

Note that reference price data shall not be reported or otherwise made available to parties other than the responsible CSD or its penalties mechanism provider (i.e. the penalty messages as described in chapter 11 shall contain “NONREF” or remain blank in the respective price fields).

The application of identical reference prices for the same ISIN by CSDs in a cross-CSD settlement context is ensured by the process design as CSDs shall always use the penalties calculation as provided to them from the Calculating-CSD where settlement is actually taking place (“actual place of settlement” concept; see detailed scenarios in chapter 9), i.e. the penalties as calculated and reported by this CSD to its participants (that may as well be CSDs) shall always be applied as such by the CSDs involved in the settlement chain.

Price data must be available before daily penalties applicable for the single fail date can be calculated. CSDs shall, therefore, send the penalties data and reports to their customers including other CSDs latest by midday (12:00 p.m. CET) (see chapter 2 for details).

24 In such case, the reference prices applied by CSDs may deviate for a single (EU or non-EU) instrument that can be settled in multiple CSDs. However, the impact would be limited to intra-CSD settlement fails (as for cross-CSD settlement fails, the “actual place of settlement” concept applies, see chapter 9).

25 For instruments with specific features like pool factors, CSDs shall apply the price as sourced from the Trading Venue or determined by the CSD, without any special modifications for penalties calculation purposes.
The amount imposed by the penalty shall be calculated:

- for against payment settlement fails:
  1. in the currency of the cash leg.

- for free of payment settlement fails:
  1. either in the currency of the underlying security if the instrument is quoted in nominal or per cent (usually fixed income instruments); or
  2. in the currency of the daily reference price if the underlying security is quoted in units (usually shares);
  3. or a default currency as defined by and eligible for settlement in the Calculating-CSD

This may lead to a FX conversion need (see chapter 6 for details).

5.3 INSTRUMENT TYPE

1. The instrument type classification will be derived from a CFI code mapping table, to be maintained by ESMA.

The “Financial Instrument Type” is a classification of securities according to which CSDs shall report settlement fails to regulators, as laid out in the CSDR SDR RTS Annex 1, table 16.

This classification is also relevant, together with the Liquidity and SME Growth Market classifications for the identification of the applicable penalty rate for any given failed settlement instruction.

Therefore, CSDs shall, for each security, derive the Financial Instrument Type classification from the CFI Code of the same security, according to the following mapping table (currently under review by ESMA; source: T2S CR654 dd. 04.10.2018):

<table>
<thead>
<tr>
<th>CFI Code Structure</th>
<th>Type of Financial Instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td>Position 1 of the code is “E”</td>
<td>SHRS</td>
</tr>
<tr>
<td>Position 1 of the code is “D” and position 4 is “T” or “C”, or position 2 is “N”</td>
<td>SOVR</td>
</tr>
<tr>
<td>Position 1 of the code is “D”, position 2 is neither “Y” or “N” and Position 4 is neither “T” nor “C”</td>
<td>DEBT</td>
</tr>
<tr>
<td>Position 1 of the code is “R”</td>
<td>SECU</td>
</tr>
<tr>
<td>Position 1 of the code is “C” and position 2 is “E”</td>
<td>ETFS</td>
</tr>
<tr>
<td>Position 1 of the code is “C” and position 2 is not “E”</td>
<td>UCIT</td>
</tr>
</tbody>
</table>

Position 1 of the code is “D”, position 2 is “Y” and position 4 is neither “T” nor “C”

| Position 1 is "T", position 2 is "T" and position 3 is "N" | MMKT |
| Position 1 is "T", position 2 is "T" and position 3 is "N" | MMKT |
| Residual category | EMAL |
| Residual category | OTHR |

5.4 Instrument Liquidity/ILLIQUIDITY CLASSIFICATION

The liquidity indicator is a binary classification of securities that, for the purpose of penalties calculation, only applies to shares, i.e. when the Financial Instrument Type of the security is “SHRS” and specifies if the security is “Liquid” or “Illiquid”.

This classification of securities is an attribute of the securities subject to penalties and must be derived by the CSDs from the ESMA database:


Use file “Financial Instruments Transparency System (FITRS)” to open and filter on “Instrument Type” equals “Equity Instruments”.

---

27 The ESMA FITRS database also covers debt instruments liquidity indicators; however, the CSDR penalty rates to be applied (see chapter 5.6) do no refer to liquidity aspects for debt instruments. Note: “complete” and “delta” files for equity instruments are provided by ESMA, CSDs shall consider both files for their daily updates to ensure full ISIN coverage. When liquidity flag changes or newly entered ISINs are identified, these shall be considered by CSDs as of the next fail date (hence, no retroactive changes to already calculated penalties will apply, in line with T2S processes).
Note: Liquidity information updates are published annually by ESMA in Q1 but are only valid from 01st April; hence, such updates shall be considered by CSDs only as of the “valid from” date, not the ESMA publication date.

5.5 Instrument Trading Segment “SME Growth Market” - Place of Trading Information

The SME Growth Market indicator is a binary classification of securities that applies for any type of securities and that specifies whether the security is listed in a SME Growth Market.

For the sake of identifying the applicable penalty rate, CSDs need to identify whether the instrument to be settled was actually traded on an EU SME Growth Market by verifying both, the receiving and delivering instruction of the settlement transaction.

Only when both instructions show the same “Place of trading” four-digit MIC (Market Identifier Code) the reduced penalty rate applicable to SME instruments shall be applied.

The list of SME Growth Market Trading Venues can be found on the ESMA website: https://www.esma.europa.eu/databases-library/registers-and-data

Use file: “MiFID II/MiFIR TV/SI/DRSP” to open:
Considering the attached screenshot:

- set filter in selection field “SME” to “YES”;
- in order to see the MIC28, the detailed view “More Info” must be opened.

As of 01.08.2019, the following venues’ MICs represent EU SME Growth Markets: XAIM, AIMX, GBUL, XZAP, DSME, SSME, FSME.
5.6 **INSTRUMENT CATEGORY PENALTY RATE**

Considering all the previously mentioned decision criteria, CSDs shall apply the ESMA penalty rates as quoted below and published as such in the Delegated Regulation 2017/389:

<table>
<thead>
<tr>
<th>Type of fail</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Settlement fail due to a lack of shares that have a liquid market within the meaning of point (b) of Article 2(1)(17) of Regulation (EU) No 600/2014, excluding shares referred to in point 3</td>
<td>1.0 basis point</td>
</tr>
<tr>
<td>2. Settlement fail due to a lack of shares that do not have a liquid market within the meaning of point (b) of Article 2(1)(17) of Regulation (EU) No 600/2014, excluding shares referred to in point 3</td>
<td>0.5 basis point</td>
</tr>
<tr>
<td>3. Settlement fail due to a lack of financial instruments traded on SME growth markets, excluding debt instruments referred to in point 6</td>
<td>0.25 basis point</td>
</tr>
</tbody>
</table>

---

4. **Settlement fail due to a lack of debt instruments** issued or guaranteed by:
   
   - (a) a sovereign issuer as defined in Article 4(1)(60) of Directive 2014/65/EU;
   - (b) a third country sovereign issuer;
   - (c) a local government authority;
   - (d) a central bank;
   - (e) any multilateral development bank referred to in the second subparagraph of Article 117(1) and in Article 117(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council;
   - (f) the European Financial Stability Facility or the European Stability Mechanism.

   **0.10 basis point**

5. **Settlement fail due to a lack of debt instruments other than those referred to in points 4 and 6**

   **0.20 basis point**

6. **Settlement fail due to a lack of debt instruments traded on SME growth markets**

   **0.15 basis point**

7. **Settlement fail due to a lack of all other financial instruments** not covered in points 1 to 6

   **0.5 basis point**

8. **Settlement fail due to a lack of cash**

   Official interest rate for overnight credit charged by the central bank issuing the settlement currency with a floor of 0 (zero)\(^{30}\)

   **5.7 CENTRAL BANK DISCOUNT RATE (PENALTIES DUE TO LACK OF CASH)**

   CSDs must source the relevant interest rate for the currency of the failing settlement instruction in case the fail reason is “lack of cash”.

---

\(^{30}\) As this is an annual rate, a conversion to a “daily rate” shall be applied for penalties the calculations (see chapter 5.7).
The cash discount rate is the official interest rate of the central bank issuing the settlement currency that should evidence the borrowing costs for that currency.

For Euro, this is the “marginal lending facility rate” which is published on the ECB website\textsuperscript{31}.

For penalties calculations, the annual cash discount rate shall be divided by 365 days in order to generate the applicable daily penalty rate.

5.8 FOREIGN EXCHANGE RATES (FX)

For non-EUR currencies, the relevant Central Banks’ Foreign exchange (FX) rates shall be consulted.

As explained in chapter 6, for FOP instructions related penalties, a FX conversion to another currency may be required.

CSDs must then source the relevant FX rate for the relevant currency of the failing settlement instruction (for EUR, various FX rates are published by ECB on their website\textsuperscript{32}; in case FX rates are missing or other cross-rates (e.g. SEK/ DKK) are needed, these must be sourced by CSDs preferably from the respective National Central Bank issuing the currency).

\textsuperscript{31} Discount rates would be updated by the corresponding to the currency EU Central Banks. For the ECB rates, please see http://www.ecb.europa.eu/stats/policy_and_exchange_rates/key_ecb_interest_rates/html/index.en.html

6 PENALTIES CURRENCIES CONVERSIONS NEEDS

This chapter suggests an approach for scenarios involving multiple CSDs when the currency of the reference price or cash penalty is calculated in a currency that is not eligible at the Calculating-CSD or Investor-CSD.

As it is the responsibility of the CSD being a participant to the Calculating-CSD to ensure the payment is executed towards the Calculating-CSD in the currency as reported, the handling of a potential cash conversion is ultimately left to the discretion of the participating CSD.

An issue related to the penalties collection/ redistribution due to divergent currencies can materialise only in a free of payment33 settlement fails scenario where the penalty currency applied by the Calculating-CSD is not eligible in the participating CSD(s) or settlement platform (e.g. T2S). CSDs may in such cases require payments to be arranged by their participants to/ via payment banks.

Generally, the instrument reference price currency shall be applied by the Calculating-CSD, i.e. the amount imposed by the penalty shall be calculated in one of the following ways:

a) use either the denomination currency of the underlying security, if the instrument is quoted in nominal or per cent (usually fixed income instruments); or
b) use the currency of the daily reference price, if the underlying security is quoted in units (usually shares).

If a currency is not eligible at the Calculating-CSD (i.e. settlement or cash accounts in the reported currency are not available for participants), unless CSDs require payments to be arranged by their participants to/ via payment banks, a currency conversion process shall apply by the Calculating-CSD (using a default currency to be defined by the CSD) as follows:

- The Calculating-CSD performs the following actions:
  1. calculates the penalty in the currency of the reference price;
  2. converts the daily penalty amount into the CSD’s default currency and rounds the amount up at least to the first two decimals;
  3. per CSD, currency and party, reports the penalty amount and FX rate applied on the reference price in the daily penalty reporting.

- The Calculating-CSD subsequently only reflects the converted currency amount in its monthly reports (and payment pre-advices, if applicable).

33 For against payment transactions, by definition, the settlement currency must be eligible in all CSDs involved in the settlement; this applies for intra- and cross-CSD settlements. In case the reference price is deviating from the currency of the cash leg, conversion into the settlement currency must be applied by the penalties Calculating-CSD. In case of fails due to lack of cash, the penalty amount shall always be calculated in the currency of the cash leg.
Note that no cash is actually to be exchanged on a daily basis, but payments are only made once a month.

**Cross-CSD settlement fails**

In case the Investor-CSD does not offer cash accounts/settlement in the currency applied by the Calculating-CSD, the Calculating-CSD may be paid by the Investor-CSD (or the Investor-CSD by its underlying participants) via a payment bank.

As described before, the penalty currency(ies) to be processed is defined by the Calculating-CSD. Subsequently, Investor-CSDs should, if possible, collect from/pay to their underlying clients in the currency as reported by the Calculating-CSD in order to avoid that FX exposures or cash imbalances occur on the level of the Investor-CSDs.

After receipt from the Calculating-CSD, the Investor-CSD reports the penalties further to its underlying participants and secures the collection/redistribution of the penalty amounts on a monthly basis, if possible, in each currency as reported by the Calculating-CSD. Hence, the Investor-CSD(s) being participants of the Calculating-CSD, shall provide the following reporting in the currency(ies) as applied by the Calculating-CSD:

1. the daily reporting of penalties;
2. the monthly aggregated reporting of penalties over the calculation period per currency and party;
3. the aggregated amounts to be collected/redistributed per currency and party.

**Intra-CSD settlement fails**

In an intra-CSD context, no FX issues will occur. The currency to be used for the penalties is at the discretion of the Calculating-CSD; however, for DVP instructions, the currency of the cash leg should be applied.
7 Calculation Methods of the Cash Penalties

- As also described in chapter 9, the (obligation for the) calculation of penalties depends on the settlement platform:
  - for T2S, as the T2S penalty mechanism knows both, the receipt and delivery leg of the transaction, the involved CSDs can rely on T2S to calculate the penalties.
  - for intra-CSD settlements outside T2S, the CSD on whose platform settlement takes place is calculating the penalties.
  - For non-T2S cross-CSD settlements, the (Issuer-)CSD where the ultimate settlement takes place calculates the penalties for both legs of the transaction.
  - For Bridge settlement, the delivering (I)CSD performs the calculation.

As a general rule, all penalty amounts shall be rounded up by CSDs at least to the first two decimals.

Note re. partially successful buy-ins:

CSDR RTS Article 16.3\textsuperscript{34} (referring to Art. 27.10 (c), 29.11 (b) and 31.11 (b)) stipulates that cash penalties shall apply to new settlement instructions resulting from a partially successful buy-in (i.e. representing the remaining part of the transaction that could not be bought in) only as of the date of entry into the CSD system (i.e. not from the ISD).

In order for CSDs to be able to comply with this requirement, the relevant CSD participants (including CCPs) should apply a market practice in such instances, requesting them to provide a specific qualifier in their settlement instructions; otherwise, CSDs cannot ensure the avoidance of LMFP calculations on an automated basis:

ISO15022/ MT54x: both instructions must contain in sequence B “Trade Details”, field 22F::RPOR//BYIY\textsuperscript{35}.

ISO20022 (e.g. T2S): code “BSSP” will be used, the message structure is yet to be defined (see e.g. sese.023).

Note: only when these values are present on both, the receipt and delivery instruction, LMFP would not be applied under this exemption rule.

Alternatively, CSD participants may adapt the ISD for such new instructions to a later date to avoid LMFP.

\textsuperscript{34} “(…) Where new settlement instructions are entered into the securities settlement system for any non-delivered financial instruments in accordance with Article 27(10), Article 29(11) or Article 31(11) [these Articles refer to partial buy-ins], cash penalties shall apply to the new settlement instructions from the day those instructions are entered into the securities settlement system.”

\textsuperscript{35} The differentiation to the buy-in instruction using the same BYIY code is made by the qualifier (“22F:: SETR// BYIY” vs. “RPOR//BYIY”); the code “BSSP” cannot be applied as it is not yet available in ISO 15022.
7.1 Settlement Fail Penalty (SEFP)

Once a failing settlement instruction has been identified as subject to computation of SEFP according to the detection rules described in chapter 3 and it was determined that a penalty is imposed (refer to chapter 4), the CSD can calculate the penalty to be applied.

The amount imposed by the penalty must be calculated depending on: (i) the type of transaction formed by the two matched settlement instructions using reference data, (ii) penalty rate of the ISIN or discount rate (Central Bank interest rate on cash) for the financial instrument exchanged by the transaction and (iii) whether the instruments need to be delivered or received by the counterparty.

It is to be noted that:

- when a settlement fail reason “lack of securities” has been identified by the CSD, no additional fail check for a “lack of cash” shall be made by the CSD.
- for currencies aspects, please refer to chapters 7.3 and 7.4 for various calculation examples.

The following table summarises the basis for calculating the penalty amount for each type of transaction:

<table>
<thead>
<tr>
<th>Type of transaction</th>
<th>SEFP</th>
</tr>
</thead>
</table>
| - Delivering versus Payment (DVP)  
  – Delivering Free of Payment (DFP)  
  - Receiving Free of Payment (RFP) | Penalty based on the quantity of securities failed to be delivered and Security penalty rate of the relevant asset type[^36]. |
| - Receiving versus Payment (RVP) | Penalty based on the quantity of securities failed to be delivered and the discount rate of the relevant currency. |
| - Debiting Payment Free of Delivery (DPFOD)  
  - Crediting Payment Free of Delivery (CPFOD) | Penalty based on the amount of cash failed to be delivered and the discount rate of the relevant currency. |
| - Delivering with Payment (DWP)  
  - Receiving with Payment (RWP) | Penalty will be the sum of:  
  - Penalty based on the quantity of securities failed to be delivered and Security penalty rate of the relevant asset type; and  
  - Penalty based on the amount of cash failed to be delivered and the discount rate of the currency. |

Note: if a fail is due to an instruction which is put “on hold”, such instruction is to be considered as the failing one, and the above-mentioned formulas have to be applied.

[^36]: Penalty rate as determined in the Delegated Act where the penalty rates have been set.
The formulas to calculate the penalty imposed by a Settlement Fail Penalty (SEFP) are the following:

i. For a failing DVP, DFP or RFP Settlement Instruction (including when “on hold”):
   \[
   \text{SEFP} = \text{Security Penalty Rate} \times \text{Reference Price} \times \text{Quantity}
   \]
   - **Security Penalty Rate** is the penalty rate stored in Static Data for the relevant asset type (derived from the ISIN and Place of trade) and the business day for which the penalty is calculated;
   - **Reference Price** is the price stored in static data for the ISIN of the instruction and the business day for which the penalty is calculated;
   - **Quantity** is the quantity of securities failed to be delivered, which is the quantity of the instruction remaining to be settled at the time of end of processing of the relevant cut-off.

ii. For a failing RVP Settlement Instruction (including when “on hold”):
   \[
   \text{SEFP} = \text{Cash Discount Penalty Rate} \times \text{Reference Price} \times \text{Quantity}
   \]
   - **Cash Discount Penalty Rate** is the discount rate of the relevant currency stored in Static Data divided by 365 and the business day for which the penalty is calculated.
   - **Reference Price** is the price stored in Static Data for the ISIN of the instruction and the business day for which the penalty is calculated.
   - **Quantity** is the quantity of securities failed to be delivered, which is the quantity of the instruction remaining to be settled at the time of end of processing of the relevant cut-off.

iii. For a failing DPFOD or CPFOD Settlement Instruction (including when “on hold”):
   \[
   \text{SEFP} = \text{Cash Discount Penalty Rate} \times \text{Amount}
   \]
   - **Cash Discount Penalty Rate** is the discount rate of the relevant currency stored in Static Data divided by 365 and the business day for which the penalty is calculated.
   - **Amount** is the cash amount failed to be delivered, which is the amount of the instruction remaining to be settled at the time of end of processing of the relevant cut-off.

iv. For a failing DWP or RWP Settlement Instruction (including when “on hold”):
   \[
   \text{SEFP} = \text{Security Penalty Rate} \times \text{Reference Price} \times \text{Quantity} + \text{Cash Discount Penalty Rate} \times \text{Amount}
   \]

---

37 **Rationale**: Although the CSDR prescribes to use the security quantity and reference price for the calculation of all settlement fail penalties, for DPFOD and CPFOD settlement instructions where the ISIN quantity is zero, the assumption (ESMA to confirm) is to use the cash amount to compute the penalty.
- Security Penalty Rate*Reference Price*Quantity as described in (i);
- Cash Discount Penalty Rate* Amount as described in (iii).

Note 1: the penalties amounts might be reported with various decimals, but the monthly payment amounts shall be rounded up at least to the first two decimals.

Note 2: the penalties calculated should be retained for 3 months.

7.2 **LATE MATCHING FAIL PENALTY (LMFP)**

For settlement instructions that are matched in the CSD system only after the relevant cut-off of their Intended Settlement Date (ISD), penalties shall be calculated only once (i.e. on the business day when they are matched) but considering all the previous business days where the instruction failed to settle due to the late matching. Settlement Fail Penalties (SEFP) and Late Matching Fail Penalties (LMFP) shall follow the same principles for their computation.

7.2.1 **Number of days considered in the computation of LMFP**

The number of days to consider in the formula to calculate the amount imposed by a Late Matching Fail Penalty (LMFP) will differ depending on whether the instruction subject to LMFP can either still settle, or no longer settle, on the business day when the instruction is matched (i.e. depending on whether it is matched before or after the relevant cut-off for the Matching Business Day).

1. **When the instruction can still settle on the business day when it is matched:**
   - This scenario relates to those instructions matched after their ISD (late matching) but matched at a point in time when it is still possible to settle them on the business day when they are matched (i.e. matched before the relevant cut-off for Matching Business day).
   - The LMFP shall be calculated for each business day as from the ISD until, and excluding, the business day when the instruction is matched.
   - In case the instruction does not settle on the business day when it is matched (even if it was possible because it arrived before the cut-off) then, a separate calculation will have to be performed for an additional SEFP.

---

Amendments could still be performed on these LMFP, in case of reference data updates for instance.
The matching date is excluded from the LMFP and included in the SEFP.

2. **When the instruction can no longer settle on the business day when it is matched:**
   - This scenario relates to those instructions matched, on or after the ISD, at a point in time when it is not possible to settle them on the business day when they are matched, because it is after the relevant cut-off.
   - The LMFP shall be calculated for each business day as from the ISD until, and including, the business day when the instruction is matched.

The matching date is included in the LMFP and excluded from the SEFP.

### 7.2.2 Formulas to be used

Note: Everything will be the same as for instructions that can still settle but, additionally, the business day when the instructions are matched must be included.

**i. For a DVP, DFP or RFP received late:**

\[
\text{LMFP} = \text{Security Penalty Rate} \times \text{Reference Price} \times \text{Quantity}
\]

- **Security Penalty Rate** is the penalty rate stored in Static Data for the relevant asset type (derived from the ISIN and Place of trade) and for the relevant business day.
- **Reference Price** is the price stored in Static Data for the ISIN of the instruction and for the relevant business day.
- **Quantity** is the quantity of securities failed to be delivered, which is the matched quantity of the Settlement Instruction.
ii. For a RVP received late:

\[ \text{LMFP} = \text{Cash Discount Penalty Rate}\times \text{Reference Price}\times \text{Quantity}, \]

- **Cash Discount Penalty Rate** is the discount rate of the relevant currency stored in Static Data divided by 365 and the business day for which the penalty is calculated;
- **Reference Price** is the price stored in Static Data for the ISIN of the instruction and the relevant business day.
- **Quantity** is the quantity of securities failed to be delivered, which is the matched quantity of the instruction.

iii. For a RVP received late and as an already matched instruction:

\[ \text{LMFP} = \text{Security Penalty Rate}\times \text{Reference Price}\times \text{Quantity}, \]

- **Security Penalty Rate** is the penalty rate stored in Static Data for the relevant asset type (derived from the ISIN and Place of trade) and for the relevant business day;
- **Reference Price** is the price stored in Static Data for the ISIN of the instruction and the relevant business day;
- **Quantity** is the quantity of securities failed to be delivered, which is the matched quantity of the instruction.

iv. For a DPFOD or CPFOD received late (ISIN quantity is 0):

- \( \text{LMFP} = \text{Cash Discount Penalty Rate}\times \text{Amount}; \)
- **Cash Discount Penalty Rate** is the discount rate of the relevant currency stored in Static Data divided by 365 for the relevant business day;
- **Amount** is the cash amount failed to be delivered, which is the matched cash amount of the Settlement Instruction.

v. For a DWP or RWP received late:

\[ \text{LMFP} = \text{Security Penalty Rate}\times \text{Reference Price}\times \text{Quantity} + \text{Cash Discount Penalty Rate}\times \text{Amount}; \]

- **Security Penalty Rate**\(\times\)\(\text{Reference Price}\times\text{Quantity} \)as described in (i);
- **Cash Discount Penalty Rate**\(\times\)\(\text{Amount} \)as described in (iv).

Note: the penalties calculated should be retained for 3 months.

### 7.3 Daily Bilateral Net per Counterparty

In addition to the gross penalties calculated on a daily basis, a bilateral net amount per CSD (only relevant for cross-CSD fails), per currency and counterparty must be provided.

For each relevant business day, a net amount is calculated for the party against each of its counterparties.

Thus, for a given party, the bilateral net amount (due or entitled) against a given counterparty is:
The sum of all the penalties (SEFP + LMFP) calculated at the failed instruction level that this party is entitled to receive (reported as credit) from a given counterparty (i.e. to be paid by this counterpart) in a CSD;

Minus

The sum of all the penalties (SEFP + LMFP) calculated at the failed instruction level that are imposed to the party (reported as debit) and to be paid to the same counterparty in the same CSD.

If the result is a positive amount, the bilateral net amount will be a credit for the party (i.e. an amount entitled from the counterpart) and if the result is a negative amount, the bilateral net amount will be a debit (i.e. an amount due to the counterpart).

Note: No netting is to be performed across CSDs and currencies, i.e. a net by CSD, currency and counterparty must be applied.

7.4 MONTHLY CASH PENALTIES AGGREGATION AND GLOBAL NET AMOUNTS

7.4.1 Monthly bilateral net per counterparty

On the 14th business day of the month, bilateral net amounts of the penalties computed for all the business days of the previous month is calculated per CSD, currency and party against each of its counterparties.

When calculating the monthly aggregated amounts, the CSD will consider the last available value of the amount of each penalty aggregated (i.e. the CSD will take into account all the modifications performed until the end of the penalties appeal period for CSDs, i.e. changes until and including the 11th business day of the following month).

This aggregation of the monthly penalties per CSD, currency and counterparty (i.e. bilateral net amounts) allows to:

- Isolate the amounts of the CCPs that shall not be collected and redistributed by the CSD;
- Isolate non-payments from CSD participants (i.e. participants affected by a non-payment of its counterpart as well as the amount that cannot be distributed by the CSD since it was not collected could be easily identified);
- Provide a netting as required by the CSDR;
- Reduce the required liquidity.

Accordingly, for each CSD, party and currency, the monthly bilateral net amount equals to:

- The sum of all the cash penalties of the previous month in the relevant currency, that the party is entitled to receive (reported as credit) from a given counterparty (i.e. to be paid by this counterparty);

---

39 This means, that penalties amounts cannot be netted (“mixed”) between CSDs in scenarios where CSD A is Investor-CSD at Issuer-CSD B and CSD B is Investor-CSD at Issuer-CSD A.
Minus

- The sum of all the cash penalties of the previous month in the relevant currency and that were imposed to the party (reported as debit), and to be paid to the same counterparty.

Subsequently, for each party of a CSD, a “net amount per counterparty” is calculated.

If the result is a positive amount, the bilateral net amount will be a credit for the party (i.e. an amount entitled to be received from the counterpart) and if the result is a negative amount, the bilateral net amount will be a debit (i.e. an amount due to the counterpart).

7.4.2 Global Net (monthly amount to be paid or to be received)

Either on the 14th business day (when no payment pre-advice is sent) or on the 15th business day (in case of sending a payment pre-advice) of the month, a “global net amount” of the monthly nets (by counterparty) bilateral amounts are calculated per CSD and currency for each CSD party.

The date for sending this information will depend on the payment process chosen by the CSD, and the CSD’s own internal process. It will be at the discretion of the CSD whether to send the global nets on the 14th BD or the 15th BD.

Accordingly, for each CSD, currency and party, the monthly net amount equals to:

- The sum of all the net bilateral amounts in the relevant currency, that the party is entitled to receive (reported as credit and for all counterparties);

Minus

- The sum of all the net bilateral amounts in the relevant currency and that were imposed to the party (reported as debit and for all counterparties).

The “global net” amount resulting from this calculation and will either be an amount due by the party (i.e. to be paid by the party), or an amount to be received by the party.

This amount will either be reported via the monthly report, a payment pre-advice or through PFOD instructions (the process depends on the CSD payment process and the CSD settlement platform) to the CSD participants. Please refer to chapter 11.3.3 for details.

CCP-transactions:

Settlement transactions in which one party is a CCP will be reported by the CSD (see chapter 12.3) but shall be excluded from the actual cash collection/ redistribution process.
8 CHANGES TO PREVIOUSLY CALCULATED PENALTIES

Updates of previous penalty calculations shall be done by the CSD as soon as the reference data becomes available to the CSD and considering the appeal period.

The latest point in time for consideration of new (or updated) reference data by the CSD shall be the 11th business day of the following month. That means if new or updated data for calculating penalties is available to the CSD only after the 11th business day, no retroactive penalties calculations or adaptations should be made by CSDs.

Note that, in addition to the following penalties changes activities steps, T2S foresees a “switch” mechanism; as this is not considered being relevant for non-T2S settlements it is not covered in this Framework.

8.1 REMOVAL OF EXISTING PENALTIES

In the circumstances described in chapters 2.1.4 and 2.2.4 (“Monthly Appeal Period”), CSDs may remove an already computed and reported penalty (i.e. set the penalty amount to “zero”) latest until (and including) the 11th business day of the following month.

When the removal of a penalty is performed, the CSD shall use a standard to specify the reason for the removal (see Framework Annex II, item 4 “Penalties adjustments reason codes” for details). Such removals would need to be communicated to the National Competent Authorities.

The CSD shall also report the removal of a penalty in the relevant Daily Report:

- On the business day following the removal of the penalty, the CSD shall report the removal, either in the Daily Report (with the penalties computed for the previous day), or in the report of modified penalties.
- Within this report, the penalties that have been set to zero will be reported with:
  - New amount equal to zero;
  - Status “Removed”;
  - The standard removal reason code (see Annex II); and

40 Switch between the failing and non-failing party of a cash penalty: this functionality caters inter alia for cases where a transaction is settled on multiple platforms, i.e. where settlement on T2S depends on the fulfilment of a condition outside T2S. For example, when cash settlement takes place outside T2S while the settlement of securities takes place in T2S, Conditional Securities Deliveries (CoSD) may be used by T2S Actors to block the securities in T2S until cash settlement takes place on the relevant platform. Depending on the CoSD configuration and the business scenario, T2S could compute and assign the penalty to the incorrect party (i.e. to the delivering instead of to the receiving participant or vice versa), e.g. because the free-of-payment delivery in T2S is failing, while as it is due to the lack of cash of the counterparty on the external cash settlement platform. Hence, in order to allow the CSD to make the required ex-post correction, the CSD shall be able to swap the failing party and the non-failing party of the cash penalty.
8.2 **RE-INCLUSION OF A PREVIOUSLY REMOVED PENALTY**

CSDs may re-include already removed penalties as from when e.g. updated information becomes known to the CSD and latest until (and including) the 11th business day of the following month.

When a penalty is re-included, CSDs shall calculate the penalty amount again as it may have changed due to updates in the reference data since it was removed. This recalculation shall be performed by the CSD in its the next daily recalculation process.

CSDs shall report the re-inclusion (penalty with status “active”) to both, the failing and the non-failing parties.

On the following business day after the re-inclusion of the penalty, the CSD shall report the re-inclusion, either in the Daily Report (with the penalties computed for the previous day), or in the report of modified penalties:

- Amount of the cash penalty as it was when the penalty was removed;
- Status “Active”; and
- The standard reintroduction reason code (yet To Be Defined (TBD); see Annex II, item 4).

8.3 **RE-ALLOCATION OF AN EXISTING PENALTY**

CSDs may re-allocate penalties, e.g. for a LMFP (Late Matching Fail Penalty), when the penalised party is not the real defaulting one (i.e. need to re-allocate the penalty from the instructing party to the delivering or receiving party, or from the delivering party to the receiving one).

The CSD shall re-calculate the amount of the penalty (because a different formula for calculating the penalty may apply, or due to changes in the reference data).

On the following business day after the re-allocation of the penalty, the CSD shall provide either the Daily Report (with the penalties computed for the previous day) or the report of modified penalties, including the following information:

- For the initially penalised party and its counterparty:
  - Status “Removed”;
  - A reason code to reflect the re-allocation (yet TBD; see Annex II, item 4); and
  - Optionally, a description (free text) of the reason for the re-allocation (provided by the CSD).

- For the ‘newly’ penalised party and its counterparty:
  - Status “Active”;
  - A reason code to reflect the re-allocation (yet TBD; see Annex II, item 4);
- Optionally a description (free text) of the reason for the re-allocation (provided by the CSD); and
- A reference of the original penalty that has been re-allocated.

8.4 UPDATE OF EXISTING PENALTIES

Upon changes of values of the attributes of the securities subject to penalties (e.g. the reference price of the financial instrument), CSDs shall recalculate affected penalties (i.e. those that used the modified reference data in their calculation) and update the penalty in case their details have changed, for example if there is a new amount due/entitled to receive.

CSDs shall recalculate and update a penalty after changes in the related reference data as from when the updated information is known and latest until (and including) the 11th business day of the following month. On the following day, after the recalculation of a penalty, CSDs shall provide either the Daily Report (with the penalties computed for the previous day), or the report of modified penalties, including:

- New updated amount and values; and
- Reason code “Updated”.

Publicly available to relevant stakeholders
9 CROSS-CSD SETTLEMENT FAILS

9.1 BACKGROUND

The settlement fails scenarios listed in this chapter have been discussed with ESMA and informally approved.

The following scenarios consider whether or not a CSD in the settlement chain is actually subject to CSDR and also illustrate which CSD is responsible for the calculation, reporting and/or collection/redistribution of penalty amounts, including when CSDs settle via the T2S platform.

Generally, the scenarios apply an “actual place of settlement” concept, i.e. only the CSD where matching and settlement is ultimately taking place (i.e. where settlement finality is reached) is responsible for calculating the penalties (the “Calculating-CSD”) and report them to its underlying participants (that may as well be CSDs) for processing.

Relying on the Calculating-CSD avoids that CSDs are calculating penalties in parallel (which anyway is not always feasible as e.g. late matching information is only available to the settling CSD), possibly leading to deviating results (e.g. due to different reference prices) and reconciliation needs.

Based on the Calculating-CSD’s input, all its participants need to ensure the actual timely collection and redistribution of the monthly penalty amounts is triggered. Investor CSD(s) is/are responsible for the full collection and timely payment of the penalty amounts to the Calculating-CSD.

In essence, the CSDR penalties must be applied by all involved CSDs whenever the ultimate matching and settlement is taking place in a CSD that is subject to CSDR (and if the underlying instrument and transaction are actually subject to the penalties regime), and in compliance with the CSD’s Terms and Conditions that bind all participants of that CSD, including when they are themselves CSDs (in or outside CSDR reach), as it is the case for CSD-direct links.

In case of a purely intra-CSD (i.e. CSD-internal settlement), the actual penalties application depends on whether or not the CSD itself is subject to CSDR or to an equivalent legislation.

---

41 This approach is the same as today for those markets where penalties already apply.
42 Note for T2S external settlement, T2S will (until further notice) calculate penalties in any case. It will be up to the T2S CSDs to remove these penalties and replace them by the ones reported by the Calculating-CSD.
9.2 SCENARIO 1A

Due to its single settlement platform, T2S is able to calculate penalties for both legs of the T2S transaction.
9.3 **SCENARIO 1B**

Only the Issuer-CSD (being the Calculating-CSD) receives both legs of the transaction, allowing it to calculate the ultimate penalties.

Note regarding T2S: Due to current T2S design, even for the single T2S leg, penalties will be calculated by T2S that may be overwritten by the Investor-CSD based on the Issuer-CSD’s reporting.
9.4 Scenario 1C

Due to its single settlement platform, T2S is able to calculate penalties for both legs of the T2S transaction.

---

9.5 Scenario 2A

Due to its single settlement platform, T2S is able to calculate penalties for both legs of the T2S transaction.
### 9.6 Scenario 2B

Only the Issuer-CSD (being the Calculating-CSD) receives both legs of the transaction, allowing it to calculate the ultimate penalties.

Note regarding T2S: Due to current T2S design, even for the single T2S leg, penalties will be calculated that may be overwritten by the Investor-CSD based on the Issuer-CSD’s reporting.

### 9.7 Scenario 2C

T2S will calculate as Investor CSDs
Due to its single settlement platform, T2S is able to calculate penalties for both legs of the T2S transaction.

### 9.8 Scenario 2D

Only the Issuer-CSD (being the Calculating-CSD) receives both legs of the transaction, allowing it to calculate the ultimate penalties.

Note regarding T2S: due to current T2S design, even for the T2S legs, penalties will be calculated that may be overwritten by the Investor-CSDs based on the Issuer-CSD's reporting.
9.9 **Scenario 2E**

Due to its single settlement platform, T2S is able to calculate penalties for both legs of the T2S transaction.

9.10 **Scenario 2F**
Only the Issuer-CSD (being the Calculating-CSD) receives both legs of the transaction, allowing it to calculate the ultimate penalties.

**9.11 SCENARIO 2X (NEW)**

CSD 2 (e.g. CBF; Euroclear France) is Investor CSD for the Issuer CSD (e.g. CBL; Euroclear Bank) and at the same time technical Issuer for CSD 1 in the same ISIN; Investor CSD 1 participant is delivering to the Issuer CSD Participant.

Only the Issuer-CSD (being the Calculating-CSD) receives both legs of the transaction, allowing it to calculate the ultimate penalties.

Assumptions:

- **Step 1:** Issuer CSD reports penalties to the Investor CSD 2 (as the Issuer CSD has no relationship with Investor CSD 1).
- **Step 2:** Investor CSD 2 reports penalties to the Investor CSD1.

Collection and Redistribution follows the same steps.
9.12 **SCENARIO BRIDGE**

Note that the ICSDs´ realignment transactions on Issuer-CSD level are separately handled outside the Bridge settlement flow.

9.13 **RECONCILIATION ASPECTS**

Cross-CSD reconciliation differences are likely to occur at least in the following situations:

9.13.1 **CSD participant insolvency**

CSDs should exchange information in case a CSD participant becomes insolvent, leading to the inability of the CSDs to (fully) collect the penalties due and act according to ESMA Q&As as updated on 02.10.2019 as follows:

“As of the date of the opening of insolvency proceedings against a participant, Article 7(12) of CSDR applies and, therefore, Article 7(2) shall cease to apply to the settlement fails caused by the insolvent participant and consequently:

i. Cash penalties should no longer be calculated in respect of settlement fails caused by the insolvent participant;

ii. Cash penalties calculated in respect of settlement instructions involving the insolvent participant until that date should be managed separately i.e. not be included in the aggregated net amounts referred to in Article 17 of the RTS on Settlement Discipline; and
iii. Cash penalties should not apply to settlement instructions relating to the liquidation of positions of an insolvent participant.”

Hence, penalties caused by non-insolvent participants need to continue to be calculated and collected by the CSD.

ECSDA analysis is ongoing; the penalties processing will be detailed at a later stage. As a side note, it should also be considered that cash accounts closures (for reasons including or other than insolvency, on the level or a cash correspondent, central bank or other payment service provider) may occur independent from the settlement/ penalties process. Hence, CSD participants shall ensure the penalties payments are made on time even in such situations.

9.13.2 Suspension of settlement

CSDR SDR RTS stipulate that no penalties shall be applied once a CSD has suspended settlement of an ISIN, e.g. due to an “undue creation/ deletion of securities” reconciliation break.

Similar to insolvency handling, CSDs should exchange information in case e.g. an Investor-CSD suspends an ISIN from settlement as such suspension may require consideration in the penalties application process.

The process will be detailed at a later stage.
10 COLLECTION & REDISTRIBUTION OF PENALTIES (PAYMENT)

10.1 GENERAL OVERVIEW

“Collection and redistribution of penalties” refers to the actual exchange of penalties cash-amounts (i.e. the penalties payments; separate for every single currency in which penalties were calculated and reported by a CSD) resulting from the calculation process as described in chapter 7.

CSDs applying this Framework shall perform the actual “collection and redistribution” of the applied penalties via the relevant payment process only once, in the following month on the 17th business day.

CSDs, via their participants, shall collect/ redistribute the full amount of penalties on the 17th business day of the month as described in chapter 2.

CSDs shall not take any financial or counterparty risks; in case participants fail to pay, the CSD itself will fail to pay further to its participants and potentially other CSDs that are expecting the cash. The CSD should inform its participants about payment delays but cannot be held liable for such delays caused by CSD participants.

To mitigate market impacts, a CSD may redistribute the cash it has received on the 17th BD to receiving participants, as well as other CSDs for cross-CSD penalties, already even when not all dues have been fully collected and apply a “partial redistribution”. In such case the relevant receiving participants and CSDs must be paid the full amount expected by them and not only a portion (i.e. no “partial payments” apply by the CSD).

Regarding T2S, chapter 10.1.1 must be considered.

CSDs shall use their own dedicated penalties cash accounts for the purpose of this process. CSDs may use a single or several (e.g. in case of multiple links) dedicated cash accounts. The relevant cash account number information needs to be provided to participants and relevant CSDs.

In relation to their participants, CSDs will use by default the participants’ cash account linked to the settlement account (only if allowed by a CSD, a participant may assign a dedicated penalties cash account as long as this complies with the CSD’s payment process). Participants not yet having a cash account communicated to/ held at a CSD will be required to define one.

CSDs may use different models for the actual penalties’ payments processing; the following possible payment models were identified:
1. CSD triggers direct debits\(^{43}\) and/or cash transfers;
2. CSD generates PFOD instructions (T2S model, see chapter 10.1.1);
3. Cash transfer using a payment bank\(^{44}\).

CSDs shall inform their participants of the applicable payment method(s).

CSDs may define appropriate measures (to be described in the relevant contractual documents with the CSD participants) to ensure penalty amounts due are available to the CSD and CSD participants comply with their payment obligations to the CSD on time to avoid delays and processing issues due to a lacking or incomplete penalties collection by the 17\(^{th}\) business day.

The process of collection and redistribution has to be managed in a phased approach to make sure CSDs do not pre-finance any payment. The overall payment process consists of the following phases:

- Collection from the CSD participants (as well as receiving the subsequent payments from other CSDs) that are due to pay penalties;
- Redistribution from a penalties-receiving CSD to its participants.

All steps shall be performed completely on the 17\(^{th}\) Business Day for every currency involved.

Participants that are CSDs will be treated the same way as any other CSD-participant\(^{45}\).

### 10.1.1 T2S-In CSDs payments processing

In order to comply with ESMA RTS on Settlement Discipline Article 20 (“CSDs that use a common settlement infrastructure”), T2S-In CSDs shall commonly apply a PFOD payment process.

Participants shall fund their relevant T2S DCAs in time to ensure PFOD penalties can settle in the T2S night-time settlement cycle (NTS) for value 17\(^{th}\) business day to avoid payment delays.

T2S-In CSDs, via their participants, shall collect/redistribute the full amount of penalties on the 17\(^{th}\) business day of the month as described in chapter 2 before cash redistributions are executed (“Partial redistributions” shall be limited e.g. to reduce cash balances on a CSD’s own penalties cash account or contingency situations. Pre-condition is that the full amount expected to be received by a single CSD or CSD participant can be paid (i.e. no “partial payments” apply).

---

\(^{43}\) Note that ESMA was asked to acknowledge the risks related to CSDs not being allowed to perform direct debits in some EU countries and to consider appropriate mechanisms to enforce the timely payment of due amounts.

\(^{44}\) Option 3 is least preferred by CSDs due to extended payment chains (via CCBs), increasing risk of delayed payments. However, for foreign currency transactions it may be the only feasible option.

\(^{45}\) With the exception of being able to modify pending payment settlement (PFOD) instructions; see chapter 10.1.1.
10.1.1.1 Cross-CSD payments:

For cross-CSDs payments, CSDs using the T2S settlement platform will commonly apply the PFOD method for settlement fail penalties payments reported by T2S resulting from T2S transactions and in T2S eligible currencies.

All (delivery and receipt) PFODs should be generated at the same time; PFOD trade date would be 15th business day, ISD the 17th business day of the payment month. PFODs should contain the highest possible settlement priority. In case second level matching information is required, a dedicated CSD penalty BIC may be used.

All T2S-In CSDs shall use a single dummy ISIN (at least for cross-CSD PFOD penalties payments).

No “already matched” process applies, i.e. each CSD needs to instruct its own settlement leg on the 15th business day to ensure timely matching.

10.1.1.2 Intra-CSD payments:

For intra-CSD payments, unless communicated otherwise by a CSD, PFOD will be applied like for cross-CSD payments. However, the instructions will be generated by the CSD on behalf of its participants, as “already matched”, non-modifiable and should be “released”.

10.2 Step 1: Penalties Collection from CSD Participants

Participants must ensure their cash accounts are funded or dues paid to the dedicated CSD penalties cash account by the start of the CSD’s first settlement processing cycle on the 17th business day but latest 2 hours prior the cut-off time of the relevant currency payment system; see as well chapter 2 for details.

CSDs due to pay penalties to another CSD shall do so upon (partial or full) collection of the penalties from their participants.

Note that only one “global net” amount will be exchanged across CSDs, i.e. a CSD shall either pay to or receive penalties from another CSD as otherwise the payment process cannot be executed (“lock” situation where both CSDs would be waiting for the other to pay as otherwise they cannot redistribute the penalties to the other CSD). See chapter 11 for details.

Regarding T2S, chapter 10.1.1 must be considered.

No tolerance between the amount to be paid as reported by the CSD and the amount actually collected by the CSD is allowed, i.e. CSD participants must pay exactly the amount as calculated and

---

46 To avoid operational risks in case of incomplete penalties collection for CSD participants that are themselves CSDs, it is required that pending instructions are modifiable (i.e. can be put “on hold”).
reported by the CSD. Should the amount received by a CSD not represent the one expected, the CSD may not be able to perform the penalties redistribution to its participants (including other CSDs in a cross-CSD penalties scenario).

There are different mechanisms available to the CSDs on how to collect the penalties:

**10.2.1 Payment via direct debits and/or cash transfers**

**10.2.1.1 Direct debit**

Whenever legally and/or contractually allowed, the CSD may collect the penalties by directly debiting the relevant cash accounts of its participants. Such process will avoid delays and differences in the amounts expected and collected by the CSD and subsequent blocking of the cash distribution process.

CSD participants must have adequately funded their cash account on time on the 17th business day. In case the participant cash account is not sufficiently funded; the direct debit may lead to an account overdraft.

**10.2.1.2 Cash transfer**

In the case when direct debit is not feasible, the CSD participants will have to actively transfer the amounts due to the dedicated cash account of the CSD by the start of the CSD’s first settlement processing cycle on the 17th business day but latest 2 hours prior the cut-off time of the relevant currency payment system; see as well chapter 2 for details.

**10.2.2 Payment via PFOD transactions**

This process will be applied by T2S-In CSDs at least for their cross-CSD payments.

On the 15th business day, the CSD will create PFOD instructions to receive the cash amounts from its participants that have to pay penalties.

CSD participants must have adequately funded their relevant cash account in order for the PFOD to timely settle on the 17th business day.

In the CSD’s penalties collection process, the PFOD settlement will lead to a debit of the CSD participant’s cash account (e.g. T2S DCA) and a credit of the CSD’s penalties cash account.

Note: With the use of the PFOD instructions, the rules of the settlement platform will be applied (i.e. recycling, reporting or other relevant rules).

**10.2.3 Payment via a payment bank**

In some cases (and currencies), the penalties payment process may involve a third party acting as a payment bank for a CSD participant.

CSD participants, via their payment bank, must ensure the CSD’s penalty account is credited latest on the 17th business day of the month by 09:00 a.m. CET but latest 2 hours prior the cut-off time of the relevant currency payment system.
10.3 **Step 2: Penalties Redistribution from Penalties Receiving CSD to its Participants**

Only after the collection from the CSD participants (and other CSDs) was processed, it shall initiate the payments to redistribute the cash due to its participants to clean the CSD’s dedicated penalties cash-account.

Three mechanisms are available for payments from the receiving CSD to its participants:

10.3.1 **Cash transfers**

The CSD transfers the amounts due to the relevant cash accounts of their participants. Such credit shall take place only once the payments due have been (fully or partially) collected on the 17th business day.

10.3.2 **Payment via PFOD transactions**

This process will be applied by T2S-in CSDs at least for their cross-CSD payments.

Ahead of the 17th business day, the CSD will create PFOD instructions to deliver the cash amounts to its participants that shall receive penalties.

CSD PFOD instructions will be created as “already matched” instructions (if this functionality does exist in the CSD). These PFODs will debit the CSD’s dedicated penalties cash account and credit the CSD participants’ relevant cash accounts.

Note: With the use of the PFOD instructions, the rules of the Settlement platform will be applied (i.e. recycling, reporting or other relevant rules).

10.3.3 **Payment via a payment bank**

CSDs may outsource the penalties payment process to a third party acting as a payment bank. Credits to the CSD participants will take place only if the payments due have been (fully or partially,) collected on the 17th business day.
11 REPORTING

For the purpose of exchanging penalties information between CSDs and their participants (including those that are CSDs) in a Straight Through Processing fashion, penalties reports content and formats used by CSDs shall be harmonised. Such approach will enable all involved parties to apply a common messaging and communication process, by using ISO reports for Application-to-Application (A2A) message exchanges.

This is especially relevant in the context of cross-CSD settlement and customers being participants of multiple CSDs.

Proprietary solutions to report penalties may be used by CSDs as additional (User-to-Application; U2A) communication means, for example to support participants’ demand or address market specific aspects.

This Framework chapter focuses on providing a high-level overview of the information to be provided in the respective messages and reports.

However, the final specifications will be agreed with and made available by the standards setting organisations, like SWIFT.

The “global net” amount per counterparty CSD and currency shall be provided in the monthly report.

As PFOD instructions are generated by the CSD on the 15th BD and/or the monthly penalties reports will contain the “net amount” due to be paid or received by a participant, no dedicated payment pre-advises per currency will be issued by the CSDs.

In case of penalties removal, re-integration and/or re-calculation, the net penalties per counterparty and currency provided in the previous daily reports will not be updated (recalculated); however, the penalty updates will be considered for the calculation of the monthly penalty amounts.

11.1 REPORTING FORMATS

CSDs should use the ISO20022 and/or ISO15022 messages, when they are available.

This section describes penalty reports, as well as subsequent cash payment-related messages.

---

47 For the exceptional cases where a CSD may use other standards, please refer to the ESMA Questions and Answers to the CSDR on article 35, CSD Question 4 (a) under the Conduct of business rules. The document can be found here: https://www.esma.europa.eu/press-news/esma-news/esma-updates-csdr-qas-0
11.1.1 ISO20022 messages

T2S/4CB is finalizing the design of the dedicated daily and monthly penalties ISO20022 customized T2S semt.044 messages. Once developed, the T2S message will also be made available outside T2S in addition to a general SWIFT version; CSDs are free to decide which version they use.

For the ISO20022 format, a Pillar III semt.044 message dedicated to penalty messaging will be used. The features of this message are as follows:

- It is a message dedicated to penalty reporting and its peculiarities (new information fields);
- It uses the most recent ISO standard in XML format;
- It will have hierarchical blocks, repetitive for every party. These repetitive party blocks will contain repetitive blocks for counterparties, with the specific penalties’ information (report->party->counterparty->penalty). These repetitive blocks might ease the processing of reports further down the line as they will already contain the needed block of information; and
- The proposed message contains fields going beyond the potential group of mandatory fields and can possibly accommodate also optional and additional fields if needed.

The penalties amounts will contain a “credit” (for amounts to be received by the CSD participant) or “debit” (for amounts to be paid by the CSD participant) indicator.

11.1.2 ISO15022 messages

11.1.2.1 Penalties calculation reporting:

Based on the T2S ISO20022 messages content and structure, the existing ISO15022 messages MT537 and MT548\(^{48}\) will be adapted by SWIFT to cover penalties related information by introducing a “PENA” sequence. However, the MT548 will only be usable for the reporting of daily penalties but not the monthly aggregated reporting.

The necessary mapping (when messages received in ISO20022 need to be processed in ISO15022 or vice versa) on message fields level must yet be initiated by SWIFT.

The following development of the standard was agreed by the SWIFT SMPG:

- MT537 (Statement of transactions) and MT548 (Securities Settlement Status Advice) adaptations to contain a dedicated new “PENA” sequence specific to the penalties reporting, in order to avoid any rejection of a ‘standard’ MT537 or MT548 received after the settlement of the transaction.
- The MT537/548 “PENA” messages will include new fields and repetitive blocks containing information such as late matching/settlement fail; reporting of underlying transaction;

\(^{48}\) The adapted MT message will be made available in November 2019. Please refer to the SMPG, Standards MT Release November 2019, Settlement and Reconciliation; the following Change Requests relevant to the CSDR Settlement Discipline are expected to be implemented: CR 001449, CR 001446, CR 001463, CR 001447.
penalty ID; credit/debit indicators; calculation parameter references. The new fields will correspond to the new ISO20222 message in their content and level, although there might be alternative approaches to the content of some fields, if the nature of the field requires it.

- The penalties amounts will contain a “N” (debit) indicator for amounts to be paid by the CSD participant.

11.1.2.2 Penalties collection and redistribution (payments) reporting:

Unless a PFOD payment process is applied (see chapter 10) or the “monthly report” already displays the ”global net” amount to be paid or received by a CSD participant, CSDs shall inform their participants of the actual amounts (debit or credit) of the penalties via a dedicated ”payment pre-advice” (using cash or settlement messages or proprietary communication means, whichever the CSD deems more appropriate).

Payment pre-advises for amounts to be paid or received shall be issued on the 15th business day; no payment confirmations are required to be issued once the payment has been executed.

For further details, see chapter 11.3.3.

11.1.3 Alternative reporting solutions

In addition to the above-mentioned messages, CSDs may develop User to Application (U2A) interfaces or alternative forms of penalties related reporting for the benefit of their participants.

For U2A, formats other than XML (i.e. csv, xls, xlsx) might be used.

Baseline reporting solutions are however ISO15022 and ISO20022 messages, which represent the minimum and mandatory reporting to be offered by all CSDs to their participants.

11.2 Generic Reporting content

11.2.1 Information blocks for penalty reporting

The corresponding SWIFT ISO messages described in chapter 11.1 refer to the content of relevant information fields.

However, in order to harmonise the interpretation of the relevant fields on a pan-European level, the intended hierarchy and content of those fields are described below. The detailed, final mapping on message fields level must yet be initiated by SWIFT.

The penalty reports will have a hierarchical structure wherein the level within the hierarchy will indicate:

- the level of aggregation;
- the reporting element.

These levels will, in technical terms, correspond to repetitive blocks within the reports, regardless of which ISO format is used.
This way, the high-level report will consist of repetitive blocks, each one representing an individual reporting segment/level:

**T - Technical level**

This type of data is of a technical nature stating the specifics of a report. This sort of information - being metadata and being, therefore, mandatory for every produced report - falls not strictly within the hierarchical division of provided information.

**A - Report issuer level** (If the non-T2S CSD itself manages the calculation process, then this level becomes obsolete)

This level of information provided refers to high-level reports or master reports which are available to CSDs (either produced by themselves or by third parties as in the case of the T2S Penalty Mechanism).

**B - Participant level**

This level of reporting states information relating to a specific participant (be it a regular participant, CCP, Investor-CSD or other).

**C - Counterparty/ Penalty level**

At this level, a specific participant will be informed within the positions against specific counterparties about the actual penalties. This applies for daily reports, as well as monthly reports with the details at penalty and transaction level.

**11.2.2 Mandatory fields**

Mandatory fields ensure that the recipient of a penalty report will always be able to identify a failing settlement instruction subject to a penalty, i.e. even though he would have to use information from his internal sources. Mandatory fields have to comply with the mapping standards of the penalty reporting.

For example, a penalty report recipient would be informed about the amount of a penalty. In order to identify the settlement instruction, the recipient would need to know:

- the instruction/transaction ID;
- the day for which the penalty was computed.

In order to understand the penalty, the recipient would need:

- the Security penalty rate and/ or the penalty Central Bank cash discount rate for the currency;
- the SME Growth Market indicator (only for those settlement fails where the transaction was actually concluded on a SME Growth Market trading venue and the same SME Trading venue MIC code is used in the receiving and delivering settlement instruction);

---

49 Note that the “reference price” as well as the price source used by the CSD for the penalty calculation for the failing instrument will not be displayed; the respective message field, if part of the report, may be blank or contain “NONREF” or similar information.
- the Liquidity indicator (for shares); and
- the number of securities to which the penalty applies (in case of partial settlements).

Thereby it is made sure that in a cross-CSD context, the receiving CSD will always be able to allocate the penalty correctly to its underlying participants.

Penalties and penalty aggregates in penalty reports will be always reported in the currency in which the penalty amounts were calculated, i.e. no conversion will take place except for the possible conversion during the calculation process (see chapters 6 and 7.4).

**11.3 MESSAGE TYPES**

There are several types of reporting on penalties throughout the month (see chapter 2):

1. Daily reporting of penalties;
2. Monthly aggregated reporting of the penalties over the period;
3. Payment pre-advices via cash or settlement messages or proprietary communication means (pre-advices may not be issued when the CSD applies the PFOD payment process or the “monthly report” already displays the “global net” amount to be paid or received by a CSD participant).

**11.3.1 Daily penalties report**

Daily penalties are computed for and reported to the relevant **failing and non-failing party**. The CSD will hence report twice each penalty computed:

1. The one applicable to the failing party (i.e. party imposed with the penalty), and
2. The one applicable to the non-failing party (i.e. party entitled to receive the penalty).

The **failing party** and the **non-failing party** are the two counterparts instructing the settlement transaction and consequently the respective **owner of the involved securities account**.

It shall be noted that, in case of a “cross-CSD scenario” (see chapter 9), the CSD will consider the other involved CSD as the owner of the relevant securities account of the underlying settlement instruction.

Within the messages:

- The party will be a repetitive block in order to be able to include all the information in a single message. The CSD shall report cash penalties for a given party sorted by CSD (for cross-CSD fails), currency and counterparty of the penalty (i.e. non-failing or failing party, respectively).
- Each penalty computed for a given business day and reported to the failing/ non-failing party and/ or its CSD shall include the information described in chapter 11.2.
• It is understood that an individual penalty contained in the report of a specific participant will have a mirror entry (debit vs. credit) in the penalty report of the relevant counterparty, i.e. will be on the participant level reported in two penalty reports.

• The daily reports contain only the amounts and information for a specific business day, i.e. they do not reflect exposures accrued in the course of several fail days.

Note that T2S and SWIFT confirmed on 26.03.2019 the availability of the information listed in these bullets in the foreseen ISO20022 semt.044 and ISO15022 MT537/548 messages.

11.3.2 Monthly aggregated report
On the 14th business day of the following month, CSDs shall provide the monthly aggregated penalties report (see chapter 7).

This report shall include, per CSD, currency and party, the (bilateral or “global”, as defined by the CSD) net amounts of the penalties against each of its counterparties, computed for all the business days of the previous month.

11.3.3 Payment pre-advises
In regard to the timeline of the collection and redistribution process, the payment pre-advice (if applicable) is to be issued by the CSD on the 15th business day of the following month50.

Besides proprietary communication tools that a CSD may use to report the net amount to be paid/redistributed, the following reporting options apply:

11.3.3.1 Cash messages
For the cash messages, the mandatory fields are:

• Cash Account number of the participant (including CSDs) to be debited or credited;
• Cash Account number of the CSD dedicated to the penalties’ management (if applicable);
• Amount to be paid (= debit amount) / Amount to be received (= credit amount);
• Currency;
• Value date of relevant payment; and
• Free text (payment reference, reference to the penalty process, or other).

As indicated, a payment pre-advice message will contain only one amount. That means that the CSD will send out to every participant payment pre-advises only in case there are payments to be processed and, for any of the two possible payment directions (debit and credit), there will be a dedicated pre-advice (i.e. a payment pre-advice message can contain only a credit or a debit amount, but not both).

50 Note that payment pre-advice messages are not (e-)invoices. Therefore, they shall not contain the elements listed in Article 6 of EC Directive 2014/55/EU as not to be perceived as such.
11.3.3.2 Settlement messages
Various settlement messages can be used to report the net amount to be received/paid, such as the following:

- settlement instructions;
- statement of transactions;
- status advice etc.

Settlement messages will be sent for both, the debit and credit amounts.

The Settlement message may contain one or several amounts depending on the type of message to be used (i.e. a statement may contain several amounts).
12 MISCELLANEOUS

12.1 PENALTIES ACTIVATION PROCESS
Cash penalties will only be applied as from the business day where the penalty mechanism is implemented, i.e. there will be no late matching fail penalties applied for business days before the implementation date. Penalties should be computed considering the fails that occur on or after the activation date of the Penalty Mechanism.

Subject to regulators’ toleration, ECSDA CSDs agreed that the activation date for applying CSDR compliant penalties shall be aligned with the one of T2S, i.e. penalties shall start to be applied as of settlement (fail) date 23rd November 2020.

SEFPs (Settlement Fail Penalties) will be computed for instructions that fail to settle on and after the activation date.

LMFPs (Late Matching Fail Penalties) will be computed for instructions matched on and after the activation date.

Main principles:

- No SEFP or LMFP applies for a business day prior to the activation date.
- In case an instruction with ISD prior to the activation date is matched in the settlement system on or after the activation date, the CSD will compute a LMFP. Nevertheless, in the computation of this LMFP, the CSD will not consider the business days prior to the activation date.

Note: “aged instructions” will be relevant for the cash penalties mechanisms as from the activation date (i.e. 23rd November 2020) as penalties will be applied as of this activation date, independent if the intended settlement day is prior to the activation date.

See Annex V for examples.

12.2 CONTINGENCY AND EXCEPTIONS HANDLING

12.2.1 Delayed delivery of CSD reports
In case a CSD cannot deliver a scheduled report on time (see chapter 2), it shall inform its participants as soon as possible about this temporary operational disruption via the standard CSD customer communication means (the same applies in case of delayed payment processing).

12.2.2 Exceptional situations where the cash penalty mechanism should not be applied
In addition to situations where insolvency proceedings are opened against the failing participant, cash penalties should not be applied in the following situations where settlement cannot be performed for reasons that are independent from the involved participants:

- ISIN suspension from settlement due to a reconciliation issue;
i. ISIN suspension from trading;
ii. settlement instructions involving cash settlement outside the securities settlement system operated by the CSD if, on the respective day, the relevant payment system is closed for settlement;
iii. technical impossibilities at the CSD level that prevent settlement, such as: a failure of the infrastructure components, a cyber-attack, network problems.

CSDs should report the concrete cases falling in the above-mentioned categories to their competent authorities, and the competent authorities should have the possibility to ask the CSDs to apply cash penalties in the future in similar cases, if they consider the non-application of penalties unjustified.

12.3 CCP-RELATED ASPECTS

12.3.1 CSD participants that are CCPs

Regarding penalties related to participants that are CCPs, the CSDR Standards stipulate that CSDs shall calculate and report penalties but not actually charge/credit the calculated penalties.

As a result, such failed CCP settlement transactions will as well be excluded from the daily/monthly net amounts calculations.

WORKING ASSUMPTION: In order to apply a harmonised approach for T2S and non-T2S transactions, CSDs may apply a table listing all CCP BICs (such table is used already by T2S today and will be checked by EACH for completeness); this table may need to be enriched e.g. with LEI or other data to allow mapping against CSD participants’ (proprietary format) account data maintained by a CSD to identify transactions that involve a CCP and require special treatment and reporting. Thereby, CCP transactions that are not related to the CCPs’ clearing member business can be eliminated (as e.g. a separate CCP BIC outside the mapping table shall be used in such cases). To illustrate better the application of the general non-charging principle for CSD’s CCP penalty matters, following scenarios display on a more detailed level possible CSD, CCP, CSD participant, CCP clearing member and cross-CSD interactions in regard to which entity is collecting and redistributing penalties in question.

<table>
<thead>
<tr>
<th>Scenario 1 - both instructions of a transaction belong to the same CCP</th>
<th>Instruction X</th>
<th>Instruction Y</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owner of the instruction</td>
<td>CCP A as CCP</td>
<td>CCP A as CCP</td>
</tr>
<tr>
<td>Entity to be charged</td>
<td>CM A of CCP A</td>
<td>CM B of CCP A</td>
</tr>
<tr>
<td>Charging entity</td>
<td>CCP A</td>
<td>CCP A</td>
</tr>
</tbody>
</table>

51 While this is stated in the ESMA Q&As, ESMA advised ECSDA this is not meant to be mandatory but a non-exhaustive example for cases when CSD may not need to apply penalties. In this specific case, CSDs are usually not aware of the suspension taking place at trading level, hence, will not waive any penalties that were calculated.

52 Section is under discussion and may be changed.

53 CSDR requests this information to be provided by the CSD participants when applicable; in case the information is not provided for a CCP-cleared instruction, penalties will be calculated and charged by the CSD.
### Scenario 2- one instruction belongs to the CSD participant and the other to a CCP

<table>
<thead>
<tr>
<th>Owner of the instruction</th>
<th>CCP A as P</th>
<th>P A as P</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entity to be charged</td>
<td>CM A of CCP A</td>
<td>P A as P</td>
</tr>
<tr>
<td>Charging entity</td>
<td>CCP A</td>
<td>CCP A</td>
</tr>
</tbody>
</table>

### Scenario 3- one instruction belongs to CCP A and the other to CCP B, both participants of CSD A

<table>
<thead>
<tr>
<th>Owner of the instruction</th>
<th>CCP A as P</th>
<th>CCP B as P</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entity to be charged</td>
<td>CM A of CCP A</td>
<td>CM C of CCP B</td>
</tr>
<tr>
<td>Charging entity</td>
<td>CCP A directly with CCP B</td>
<td>CCP B directly with CCP A</td>
</tr>
</tbody>
</table>

### Scenario 4- one instruction belongs to CCP A as participant in CSD A (issuer CSD) the other to CCP B as participant of CSD B (investor CSD)

<table>
<thead>
<tr>
<th>Owner of the instruction</th>
<th>CCP A as P</th>
<th>CCP C as P</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entity to be charged</td>
<td>CM A of CCP A</td>
<td>CM E of CCP C</td>
</tr>
<tr>
<td>Charging entity</td>
<td>CCP A directly with CCP B</td>
<td>CCP B directly with CCP A</td>
</tr>
</tbody>
</table>

Table 1- CCP scenarios

*CCP= Central Clearing Counterparty  
CM= Clearing Member of a CCP  
CSD= Central Securities Depository; acts in capacity as a CCP (where relevant RTS articles apply) and also in capacity of a Participant of CSD  
P= Participant of a CSD  
Charging entity= entity collecting and also redistributing moneys (i.e. handling credit and also debit payments)

Hence, CSDs shall exclude from their collection and distribution processes the amounts due to be paid and entitled to be received by a CCP that is a CSD participant and for which the related BIC is part of the “CCP BICs table”.

12.3.2 Penalties calculation and collection process for CCPs

Related to Chapter 12.3.1, the CSD shall ensure that CCPs are provided with the calculation but not actually charge or distribute the penalties.

As such, in the CSD processes, CCP instructions will be included and flagged as such in:

- the computation (for daily calculation);
- the daily reporting;
- the monthly aggregated reporting.

The CSD will not include the CCP activity in the following processes:

- reporting of the amount to be paid and to be received; and
- actual credit or debit payments execution.

Depending on the CCP netting model, CCPs may regularly cancel all failing instructions after the last settlement cycle has finished.

Such CCP-cancellations after the cut-off do not affect the obligation for the calculation of the penalty by the CSD and, subsequently, the CCPs’ penalties processing towards its clearing

---

54 This was informally discussed with ESMA at the settlement discipline workshop on 5 June 2018.
members, i.e. such (cancelled) failed instructions shall still be considered by CSDs for penalties calculation and reporting to the settlement parties.

According to CSDR RTS Art. 19 (d), CCPs shall report to CSDs the amounts they collected and distributed on a monthly basis. EACH and ECSDA agreed that ECSDA will provide a template (word, excel or similar) that shall be used by CCPs to report the required information (via Email, website upload/ entry or other means defined by the CSD).
ANNEXES

ANNEX I- T2S DOCUMENTS

1. T2S CR654:

2. Penalty lists – Draft message (20022) overview (version dd. October 2019)

3. Latest list of T2S CSDR TF items for clarification sent to ESMA:
   2017-06-28 - List of CSDR Items for clarif

ANNEX II - OTHER DOCUMENTS AND REFERENCES

1. Link to ESMA website re. CSDR:

2. CFI code mapping table (T2S CSDR TF version dd. 31.08.18):
   2018-08-31 CFI_CSDR_mapping D

3. Penalties adjustments reason codes:
   a. Reason codes for penalty removal (as proposed by T2S, 08.04.2019, based on ESMA CSDR Q&A section “Settlement Discipline Questions 4 – Cash penalties: scope”):
      i. INSO – Insolvency
ii. SESU – Settlement Suspended
iii. SUSP – Trading status suspended
iv. SEMP - Settlement on multiple platforms (applies in case the cash settlement is outside the CSD settlement system and the payment system is closed)
v. TECH – Technical impossibilities
vi. OTHR – any other case (requires a narrative text to be added)

b. Reason codes for penalty reintroduction [to be added when available]
c. Reason codes for penalty re-allocation [to be added when available]

ANNEX III - SETTLEMENT SCENARIOS

1. ECSDA penalties scenarios (excl. scenario 2X)

[Documents: Doc1 - Non-T2S, Doc2 -T2S CSDR, CSDR SD penalties s SDR scenarios updi]

ANNEX IV - LIST OF CSDS USING THE FRAMEWORK AS MARKET PRACTICE

[To be filled in at a later stage]

ANNEX V – PENALTIES ACTIVATION PROCESS EXAMPLES (SEE FRAMEWORK CHAPTER 12.1)

Note: the examples are based on the assumption that the activation date is Monday 23 November 2020.

Example 1
- A DVP settlement instruction enters and is matched in the settlement system at 10:00 on its ISD (Friday 20 November 2020):
  - The CSD will not compute the SEFP if the instruction fails to settle on Friday, 20 November 2020 because it is before the activation date.
- However, if the instruction fails to settle again in the settlement system on Monday, 23 November 2020 (“ISD+1” for the instruction), then the CSD will compute a SEFP:
- This SEFP is computed because Monday, 23 November is the day of activation of the Mechanism. The SEFP will be computed and reported together with all penalties for Monday, 23 November 2020, i.e. on the daily reporting.

**Example 2**
- A DVP settlement instruction enters and is matched in the settlement system at 14:00 on Friday, 20 November 2020. The instruction has ISD Thursday, 19 November 2020 (i.e. enters and is matched in the settlement system one day after its ISD):
  - The CSD will not compute a LMFP for this instruction because the matching date (Friday, 20 November 2020) is before the activation date.
- If (on top of arriving one day late) the instruction also fails to settle in the settlement system on Friday 20 November 2020 (i.e. on “ISD+1” for the instruction):
  - The CSD will not compute the SEFP because the instruction fails to settle in the settlement system on Friday, 20 November 2020, which is before the activation date of the Mechanism.
- If the instruction fails again to settle in the settlement system on Monday, 23 November 2020 (“ISD+2” for the instruction), then the CSD will compute a SEFP:
  - This SEFP will be computed because Monday, 23 November is the day of activation of the Mechanism. The SEFP will be computed and reported together with all penalties for Monday, 23 November 2020, i.e. on the daily reporting.

**Example 3**
- A DVP settlement instruction enters and is matched in the settlement system at 14:00 on its ISD Monday, 23 November 2020:
  - The CSD will compute the SEFP if the instruction fails to settle on Monday, 23 November 2020, because it is the activation date.

The SEFP will be computed and reported together with all penalties for Monday, 23 November 2020, i.e. on the daily reporting.
- If the instruction fails again to settle in the settlement system on any following day, the CSD will compute related SEFPs.

**Example 4**
- A DVP settlement instruction enters and is matched in the settlement system at 14:00 on Monday, 23 November 2020. The instruction has ISD Friday, 20 November 2020 (i.e. enters and is matched in the settlement system one day after its ISD):
  - The CSD will compute a LMFP for this instruction because the matching date (Monday, 23 November 2020) is the activation date.

In the computation of this LMFP, the CSD will not consider the days prior to the activation date because the securities subject to penalties will have valid from equal to Monday, 23 November 2020. Therefore, in this example, the CSD will consider that there is no applicable business day for this LMFP.
- If (on top of arriving one day late) the instruction also fails to settle in the settlement system on Monday, 23 November 2020 (“ISD+1” for the instruction):
  - The CSD will compute the SEFP because the instruction fails to settle in the settlement system on Monday, 23 November 2020, which is the activation date of the Mechanism. The SEFP will be reported on Tuesday 24 November 2020.
Example 5
- A DVP settlement instruction, enters and is matched in the settlement system at 14:00 on Tuesday, 24 November 2020. The instruction has ISD Friday, 20 November 2020 (i.e. enters and is matched in the settlement system two business days after its ISD):
  - The CSD will compute a LMFP for this instruction:
In the computation of this LMFP, the CSD will not consider the days prior to the activation date because the securities subject to penalties will have valid from equal to Monday, 23 November 2020. Therefore, in this example, the CSD will consider only one business day for the LMFP (i.e. the LMFP will apply just for Monday, 23 November 2020).
The LMFP will be computed and reported on the daily reporting.
- If (on top of arriving two days late) the instruction also fails to settle in the settlement system on Tuesday, 24 November 2020 (“ISD+2” for the instruction):
  - The CSD will compute a SEFP because Tuesday, 24 November 2020 is after the activation date of the mechanism. This additional penalty will be reported on Wednesday 25 November 2020.