



European Securities and
Markets Authority

Final Report

Draft regulatory technical standards on settlement discipline under the Regulation No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (CSDR)



Table of Contents

Acronyms	2
1 Executive Summary	3
2 Introduction	4
3 Settlement Discipline	6
3.1 Measures to prevent settlement fails (Article 6 CSDR)	6
3.1.1 Allocations and confirmations.....	6
3.1.2 Automation and manual intervention	8
3.1.3 Mandatory matching.....	8
3.1.4 CSD functionalities.....	9
3.2 Monitoring settlement fails (Article 7(15)(a) CSDR)	10
3.3 Measures to address settlement fails (Article 7 CSDR)	14
3.3.1 Cash penalties	14
3.3.2 The buy-in process.....	18
3.3.3 Conditions for a participant to consistently and systematically fail	36
3.4 Entry into force	37
Annex I Buy-in chart	38
Annex II Legislative mandate to develop draft technical standards	39
Annex III Draft RTS on settlement discipline	40
Annex IV Impact assessment	111

Acronyms

CCP	Central counterparty
EC	European Commission
CP	Consultation Paper
CSD	Central Securities Depository
CSDR	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
DA	Delegated Act to be adopted by the EC
DP	Discussion Paper
ESMA	European Securities and Markets Authority
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
EU	European Union
ITS	Implementing Technical Standards
OTC	Over-the-counter
RTS	Regulatory Technical Standards

1 Executive Summary

Reasons for publication

Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (CSDR) requires ESMA to develop draft technical standards (RTS) and implementing technical standards (ITS) in relation to several provisions of that Regulation.

On 28 September 2015, ESMA already submitted to the European Commission the draft RTS and ITS on CSD Requirements and the draft RTS and ITS on Internalised Settlement.

In relation to the draft technical standards ESMA consulted stakeholders on two occasions: the first consultation on a Discussion Paper (DP) was conducted from 20 March to 22 May 2014. The second consultation, which included the proposed draft RTS and ITS, was conducted from 18 December 2014 to 19 February 2015.

ESMA launched a third consultation focusing only on the operation of the buy-in process from 30 June to 6 August 2015.

Given the need to analyse the responses received following ESMA's Consultation Paper on the buy-in process, which closed on 6 August 2015, as well as the need to continue the discussions with the European Commission on the legal feasibility of the options to be considered regarding the entity responsible for the execution of the buy-in the case of transactions not cleared by a CCP, ESMA is has delayed the delivery of the draft RTS on Settlement Discipline, which are now included in this Final Report.

Contents

This Final Report includes the feedback from the second and third consultations and the proposed changes made by ESMA in key areas. It covers the draft RTS on Settlement Discipline, and the related Impact Assessment.

Next Steps

Following the submission of the draft RTS to the European Commission, it has three months to decide whether to endorse ESMA's draft technical standards.

2 Introduction

1. Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (CSDR) requires ESMA to develop draft technical standards (RTS) and implementing technical standards (ITS) in relation to several provisions of that Regulation.
2. On 28 September 2015, ESMA already submitted to the European Commission the draft RTS and ITS on CSD Requirements and the draft RTS and ITS on Internalised Settlement.
3. In relation to the draft technical standards ESMA consulted stakeholders on two occasions: the first consultation on a Discussion Paper (DP) was conducted from 20 March to 22 May 2014. The second consultation, which included the proposed draft RTS and ITS, was conducted from 18 December 2014 to 19 February 2015. In response to the Consultation Paper, ESMA received more than 100 responses from trade associations, market participants, issuers, professional bodies, and national authorities.
4. ESMA launched a third consultation focusing only on the operation of the buy-in process from 30 June to 6 August 2015.
5. Given the need to analyse the responses received following ESMA's Consultation Paper on the buy-in process, which closed on 6 August 2015, as well as the need to continue the discussions with the European Commission on the legal feasibility of the options to be considered regarding the entity responsible for the execution of the buy-in the case of transactions not cleared by a CCP, ESMA has delayed the delivery of the draft RTS on Settlement Discipline, which are now included in this Final Report.
6. The ESMA Securities and Markets Stakeholder Group (SMSG) established under Regulation (EU) No 1095/2010 establishing the European Supervisory Authority (ESMA Regulation) was also consulted and was requested to provide an opinion in accordance with Articles 10 and 15 of that regulation. In addition, ESMA consulted the European Banking Authority (EBA) and involved the European System of Central Banks (ESCB) on the drafting of the relevant technical standards where close cooperation was required under CSDR, through a task force composed of an equal number of central bankers and securities regulators.
7. This Report also includes an impact assessment, which results from ESMA research and contact with stakeholders and also input from an external consultant. The latter performed a number of interviews, surveys and research that complemented, in an independent manner, ESMA's own analysis. Although data gathering proved a challenge, data on costs was particularly difficult due to reduced stakeholder feedback in that regard. The impact assessment performed is therefore rather qualitative, with limited quantitative evidence. As noted, this reflects the reduced stakeholder feedback on the matter but also the CSDR timeline and the fact that it is the first time that CSDs

are regulated EU-wide and that certain information is currently not recorded by CSDs and other market participants.

8. A phase-in for the implementation of the settlement discipline requirements is proposed by ESMA, given that the proposed measures will require significant IT system changes at the level of CSDs, CCPs, trading venues and their participants.

3 Settlement Discipline

3.1 Measures to prevent settlement fails (Article 6)

Article 6 CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the measures to be taken by investment firms in accordance with the first subparagraph of paragraph 2 of Article 6 of CSDR, the details of the procedures facilitating settlement referred to in paragraph 3 of Article 6 of CSDR, and the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4 of Article 6 of CSDR.

9. Under Article 6 of CSDR, ESMA is required to specify the measures to be taken by investment firms to limit the number of settlement fails, the details of the procedures facilitating settlement, and the details of the measures to encourage and incentivise the timely settlement of transactions.
10. The following measures have been introduced: (1) allocations and confirmations, (2) automation and limitation of manual intervention, (3) mandatory matching, (4) other functionalities and derogations depending on the proportionality of imposing such functionalities to CSDs, in respect of which we have consulted and gathered the following elements.

3.1.1 Allocations and confirmations

Application to clients

11. According to some respondents, requirements regarding confirmation and allocations should also apply to clients in order to facilitate the enforcement of regulatory requirements for the investment firms.
12. In order to facilitate STP, ESMA believes that investment firms should offer their professional clients the possibility to send confirmation and allocation details electronically, through the international open communication procedures and standards for messaging and reference data.

Data fields

13. *Place of settlement*: Some respondents wanted to add this field to alleviate future matching and settlement issues, as in the future there will probably be several potential settlement options.
14. *Transaction type*: Most respondents having commented on this field were against it. They mentioned that there are no agreed international standards to feed properly this field, and the use of it may therefore delay implementation and lead to increased settlement fails without providing added value. However, one respondent mentioned that this field is mandatory in ISO 15022 Message MT 514 Trade Allocation Instruction. Some respondents supported the inclusion of the transaction data in order to ensure the correct understanding of the nature of the transaction from trading to settlement (and of the trade date in order to facilitate the correct processing of corporate action transactions).

15. *Identifier of the entity that maintains the securities*: There was a call for clarification whether this should be BIC (current market practice) or LEI (EMIR).
16. The majority of CSD respondents mentioned that the fields required for trade confirmations needed to be consistent with the fields used in the further processing of the transaction (e.g. for the matching of instructions). One respondent emphasized that the fields required for trade confirmations should not be required as mandatory fields for settlement (where different operational requirements are required).

Automation

17. Several respondents called for further automation, arguing that electronic affirmation is necessary in order to reduce risk. Therefore, they proposed to replace "written" in the draft with "automated".

Timeframes

18. The timeframes were supported by almost all respondents, except for a couple of respondents that called for more flexibility (e.g. when dealing with clients in other time zones).
19. Several respondents supported the use of the same deadline all over Europe. The respondents that proposed a deadline (for time zone differences), proposed noon CET on the business day following the trade day.

Other issues

20. *Definitions*: Several respondents do not agree with ESMA's use of "confirmation" and "allocations", and advocated that these terms should be defined (confirmation represents all specific information to the trade: price, ISIN code, client information; allocation encompasses the detail of a global order in terms of quantity and breakdown per clients, it does not include the settlement instructions details). Confirmation and allocation both relate to the agreement of the transaction itself rather than on specific settlement information. It was mentioned that the addition of settlement data may prove to extend the time necessary to confirm and allocate transactions.
21. One respondent mentioned that the draft RTS imposes new proprietary messages and standards which are not replicated by ISO and which would be complex to implement and could be largely unacceptable for international clients. Another respondent stressed that the ISOs are dynamic standards, which are constantly maintained and enhanced. Given this, and the need for STP, they proposed that ESMA should provide direction on the use of ISO 15022 and ISO 20022.
22. Several respondents advocated that settlements instructions should be sent to CSDs as close to T as possible to allow for investigation into exceptions.
23. Having regard to the CP feedback, ESMA changed the deadline for confirmation and allocations in the case of late executions/time zone differences to 12 pm CET. ESMA also removed "transaction type" as a mandatory field, and clarified that the obligations on allocation/confirmation only apply to transactions referred to in Article 5(1) of Regulation (EU) No 909/2014. At the same time, ESMA believes that it is useful to

cover settlement information in the allocations and confirmations, in order to facilitate the settlement process.

3.1.2 Automation and manual intervention

24. STP and the reporting of manual interventions were generally acknowledged to be ‘the way forward’ but many reservations were raised. Several respondents stated that manual interventions would be required as part of operational, risk management and compliance efficiency, in emergency situations.
25. Several respondents mentioned that any measures that are too prescriptive could become obsolete very quickly and that flexibility should prevail.
26. Given the importance of STP, ESMA believes a CSD should process all settlement instructions on an automated basis. A CSD should also report any type of manual intervention by the CSD in relation to the settlement process to the competent authority within 30 days of the manual intervention. With regard to a definition of manual intervention, ESMA proposes that it should cover the following:
 - (a) in relation to a received settlement instruction, the action of delaying or modifying the feed to the securities settlement system, or any modification of the received settlement instruction outside of the existing automated procedures;
 - (b) in relation to the processing of received settlement instructions in the settlement engine, any kind of manual intervention outside of the automated processes, including the management of IT incidents.

3.1.3 Mandatory matching

27. Mandatory matching was generally accepted by most respondents, but many made the point that there should be more exemptions and more flexibility. Corporate action processing, account allocations, instructions that are the result of a Court Order should be included in the exemptions from matching. There was a call for a new exemption to be added for transactions between accounts managed by the same participant. According to the respondents, the list should not be exhaustive and more exemptions should be approved by competent authority.
28. According to one respondent, the wording of the article should not prevent CSDs from matching in the cases included in the exemptions from matching. Some respondents stated that imposing certain matching fields goes beyond the Level 1 mandate. Several respondents argued ‘trade date’ and ‘transaction type’ should not be mandatory matching fields, as this could adversely impact settlement performance and would require significant work to harmonise, including changes to ISO standards.
29. Having regard to the CP feedback, ESMA has decided not to include ‘transaction type’ as a mandatory matching field, as this might negatively impact the matching rates and thus reduce settlement efficiency, but ESMA has kept ‘trade date’, as this information is important in the case of processing corporate actions, as well as in the monitoring of the intended settlement date (ISD). Although the transaction type will not be included in the mandatory matching fields, it would still need to be included in the settlement instruction

as CSDs need to apply different settlement discipline regimes depending on the transaction type, so this information needs to be transmitted to the CSD.

30. Several respondents mentioned that, legally speaking, matching (in the sense of binding for settlement purposes) can only occur at the level of the CSD and CCPs should not be required to perform the matching. It was mentioned that matching by CCPs is not always possible (e.g. if participants use two CCPs). One respondent agreed CCPs should have the ability to send 'already matched' instructions, but should not be mandated to do so.
31. Having regard to the CP feedback, given that matching by CCPs is not always possible, ESMA has removed the requirement for CCPs to send already matched settlement instructions.
32. There was general acceptance of tolerance matching values.
33. Having regard to the CP feedback, ESMA proposes that a CSD should require that settlement instructions sent by participants are matched through the functionality offered by the CSD, prior to settlement, except in the following circumstances:
 - (a) the settlement instructions are accepted by the CSD as already matched by trading venues, CCPs or other entities or are matched by the CSD itself;
 - (b) FoP instructions which consist of transfers of financial instruments between different accounts opened in the name of the same participant or managed by the same account operator.

3.1.4 CSD functionalities

34. While there was some support for the proportionality regarding CSD functionality, several respondents mentioned that no exceptions for certain CSDs should be made to ensure level playing field and harmonisation.
35. ESMA believes that CSDs should have sound and efficient system functionalities, policies and procedures that enable them to facilitate and incentivise settlement on the ISD. However, in order to ensure that the system functionalities that a CSD should offer to reduce settlement failures are proportionate to the CSD's actual settlement fails observed in the past, ESMA believes that certain system functionalities (hold-and-release mechanism and partial settlement facility) should not be compulsory if:
 - (a) the value of settlement fails in the securities settlement system operated by a CSD does not exceed EUR 2.5 billion per year; and
 - (b) the rate of settlement fails based on the number of settlement instructions, or based on the value of settlement instructions, for the securities settlement system operated by the CSD is below 0.5 per cent per year.
36. Given that according to the CP feedback, the recycling functionality was considered to be a functionality that all CSDs can be expected to offer, ESMA has excluded it from the list of exemptions where the proportionality principle would apply as mentioned above.

3.2 Monitoring Settlement Fails (Article 7(15)(a))

37. Under point a) of Article 7(15) of CSDR, ESMA is required to specify the details of the system monitoring settlement fails of transactions in financial instruments and the reports on settlement fails that a CSD has to establish for each securities settlement system it operates.
38. Overall, respondents supported the strategy for the creation of a single rulebook in the EU regarding the monitoring of settlement fails. However, several respondents argued that a re-calibration of the type of information CSDs will have to monitor and report could contribute to significantly lower implementation costs by reducing complexity and focusing on the information items which are truly necessary for CSDR compliance. A major concern that has been raised by some respondents is around the fact that CSDs can only identify and provide information that they have access to. It was also emphasised that the monitoring and reporting requirements on settlement fails under Article 4 of the draft RTS presented in the CP (now Article 13 of the new draft RTS) need to reflect the solutions found on other issues, including matching fields, penalty mechanism and buy-in rules.

Details of the system monitoring settlement fails

Status of settlement instructions

Respondents argued that the proposed segregation regarding the records of the status of the settlement instructions should be a minimum and CSDs could include additional pieces of information in accordance with the current international agreements on the ISO messages, reports and queries. CSDs will have to use the information included in the ISO messages, queries and reports in order to identify and record the information about the ISD and the status of settlement instructions. If there are inconsistencies of the proposed RTS with the ISO standards, the CSDs and their participants will have to develop records with different information to what is currently managed via the ISO messages, reports and queries.

39. There was a call for clarification regarding the term “per intended settlement date” used in Article 4 of the draft RTS presented in the CP. Article 13(1) of the new draft RTS now requires CSDs to identify and gather settlement-related information and settlement fails per ISD. The understanding is that CSDs are expected to monitor the related items on a daily basis, rather than having to group all items according to their ISD.
40. In order to have an overview of settlement fails on a daily basis, as well as of the duration of each settlement fail that may trigger the buy-in process, ESMA proposes that a CSD should monitor all the settlement fails for each ISD, including the length of such settlement fails based on the number of business days in which a transaction fails to be settled after its ISD.
41. As regards Article 4(1)(f) of the draft RTS presented in the CP on “recycled settlement instructions”, several respondents argued that it should be deleted as it is redundant. Recycled settlement instructions are either pending settlement on ISD, in which case they are covered under Article 4(1)(a), or they have failed and are thus covered under

Article 4(1)(e), until they are settled or cancelled. In addition, no ISO code currently exists to identify recycled transactions (either in T2S or outside T2S).

42. Having regard to the CP feedback, ESMA has deleted the requirement on recycled settlement instructions.
43. Having regard to the CP feedback, ESMA has amended the details to be covered by a CSD system monitoring settlement fails including types of transactions, types of financial instruments, types of settlement instructions and types of securities accounts, and the currency in which the settlement instructions are denominated.

Reasons for settlement fails

44. Several respondents mentioned that, in addition to a lack of securities or a lack of cash, there are other reasons for settlement fails, such as the linking of an instruction with the settlement of another instruction which is not yet settled, the sending of late instructions, or temporary restrictions for settlement with a certain ISIN code. These reasons are captured by ISO codes¹ and should be available in the reports. In line with the definition of "settlement fail" in the CSDR Level 1 text, penalties should in principle only be applied in case of fails due to a lack of securities or cash or instructions on hold.
45. Furthermore, respondents mentioned that, in case of fails due to a lack of cash, CSDs often do not have access to information regarding the "missing amount" of cash in the cash accounts maintained by their participants, typically at the central bank. Similarly, CSDs in omnibus markets often do not have access to information on the missing part of securities on such account.
46. Having regard to the CP feedback, ESMA proposes that a CSD monitors the reasons for a settlement fail based on the information available to the CSD (see Article 13 (1)(a)).

Types of financial instruments

As regards the "types of asset classes" defined in Article 4(2)(d) of the draft RTS presented in the CP, some respondents mentioned that are not consistent with the categories used by ESMA to determine the applicable penalty rate in the draft technical advice and the categories proposed in the context of the buy-in rules. In the case of penalties for instance, ESMA suggests in its draft technical advice that a different penalty rate should apply to government bonds and corporate bonds. Such a distinction is however not foreseen in fails reporting under Article 4(2)(d)(ii) of the draft RTS presented in the CP, which covers all bonds under a single category, although different penalty rates would apply. To be meaningful, fails reporting should reflect the categories of financial instruments subject to different penalty rates and subject to different buy-in rules.

¹ http://www.iso20022.org/standardsrepository/public/wqt/Description/mx/dico/codesets/_aFGlxdp-Ed-ak6NoX_4Aeg_-870507202

47. Having regard to the CP feedback, ESMA has amended the proposed types of financial instruments (see Article 13(1)(c)) as follows:
- a) transferable securities referred to in point (a) of Article 4(1)(44) of Directive 2014/65/EU;
 - b) sovereign debt referred to in Article 4(1)(61) of Directive 2014/65/EU;
 - c) transferable securities referred to in point (b) of Article 4(1)(44) of Directive 2014/65/EU, other than those referred to in point b);
 - d) exchange-traded funds (ETFs);
 - e) transferable securities referred to in point (c) of Article 4(1)(44) of Directive 2014/65/EU, other than those referred to in point d);
 - f) units in collective investment undertakings, other than ETFs;
 - g) money-market instruments, other than those referred to in point b);
 - h) emission allowances;
 - i) other financial instruments.

48. This classification is more granular than the one included in the technical advice on penalties. This will ensure a better monitoring, while maintaining consistency between the two.

Types of transactions

49. As regards the "*types of transactions*" listed in Article 4(2)(e) of the draft RTS presented in the CP, respondents made several suggestions to ensure consistency with ISO standards.
50. Respondents also proposed that, in order to collect information on the place of trading or clearing for fails monitoring purposes, the technical standards should require CSDs and their participants to use the ISO fields "place of trading" and "place of clearing". For the "place of trading", the Market Identification Code ISO 10383 could be used if the instruction is resulting from a trade concluded on a trading venue. When the field is left blank, the settlement instruction would be considered as an OTC instruction. For the "place of clearing", the BIC of the CCP could be included in the settlement instruction. In case of a blank field, the instruction would be considered as non-CCP-cleared.
51. Respondents proposed that, if it is deemed necessary to identify CCP-cleared trades, ESMA should consider introducing a separate field to provide this information.
52. Having regard to the CP feedback, ESMA has amended the types of transactions to be covered by the system monitoring settlement fails (see Article 13(1)(d) of the draft RTS) by including also a separate requirement on the place of trading and of clearing (where applicable), as follows:
- a) purchase or sale of financial instruments;
 - b) collateral management operations;
 - c) securities lending/borrowing operations;
 - d) repurchase transactions;
 - e) other transactions.

Working flow with participants

53. As regards Article 4(2) of the draft RTS presented in the CP on the "*working flow*" with the top ten participants, there was support for the spirit of ESMA's proposal, but some respondents mentioned that such a working flow should not be specified in Level 2 legislation. CSDs fully recognised the need to establish a dialogue with their most important participants in terms of settlement fails as part of their broader efforts to improve settlement efficiency. However, they believed not appropriate to determine by law that this work stream should be composed in all cases of the "*top ten participants with the highest rates of settlement fails*". The absolute number of 10 participants is arbitrary and does not take into account other factors that are important to determine participants which should be involved in the "*working flow*". An absolute number ignores the diversity of CSDs in terms of size and total number of participants, which for EU CSDs currently ranges between less than 15 to nearly 1500. According to the respondents, the proposal also did not take into account the existing level of settlement efficiency and the urgency to involve a wide range of participants, if need be. Finally, a high fail rate as such is not necessarily an indicator that a participant should be represented in a work flow to improve settlement efficiency. If the fail rate is calculated just based on a few trades, there might be other more active participants that would be better placed to provide valuable input to the work of such group. Overall, CSDs could be required to establish a work flow with participants to improve settlement efficiency, but that CSDs should have the right to decide themselves on the most appropriate composition of this group.
54. Having regard to the CP feedback, ESMA proposes that a CSD should set up working arrangements with the most relevant participants with the highest rates of settlement fails in terms of either number or value, as well as, if applicable, with relevant CCPs and trading venues, in order to analyse the main reasons for settlement fails (see Article 13(2) of the draft RTS).

Reports to public authorities

55. There was support for the reporting requirements to public authorities set out in Article 5 of the draft RTS presented in the CP, and for the general structure of the two templates provided in Annex I. The items in the reports to competent authorities should be built as much as possible using the available ISO standards on messages, queries and reports. This would ensure wider market harmonisation (see Article 14 of the new draft RTS).

Public disclosure

56. There was support for Article 6 of the draft RTS presented in the CP on the disclosure of settlement fail data to the public. However, regarding the template in Annex II included in the CP, in order to be consistent with reporting templates sent to public authorities, CSDs should report values in "EUR or equivalent", *i.e.* in local currency rather than having to convert value amounts in EUR.
57. In order to ensure consistency and comparability of the data, ESMA proposes that all values (both in the reports to the public authorities and in the reports to be made public) should be provided in EUR (see Article 15 of the new draft RTS).

3.3 Measures to address settlement fails (Article 7)

Anti-avoidance rules for cash penalties and buy-in

58. In the CP, ESMA proposed an anti-circumvention provision in order to ensure that the buy-in process and the cash penalties mechanism be applied by all CSDs, CCPs and trading venues in a consistent manner and irrespective of the model they adopt e.g. CSDs may participate or not in T2S, CCP may use a trade date netting model or a continuous net settlement model. This difference in models or systems should not lead to a different application of the regulation: the cash penalty should be applied as from the first day of the settlement fail and for as long as the fail remains outstanding and the timeframe for the buy-in process should be computed in the same manner.
59. Respondents generally supported the view that the regulation should apply in the same manner irrespective of the model adopted by the CCP, CSD or trading venue. However, some called for deleting the specific provision and instead clarifying the articles providing for the relevant obligations. They explained that the drafting of the specific provision could give rise to uncertainty and limit the ability of participants and CCPs to optimise their process; they also noted that as settlement discipline is part of the authorization and supervision process, there would be a control on its application.
60. In view of the comments received from stakeholders, ESMA agrees to delete that specific provision and clarified the requirements in the relevant provisions.

3.3.1 Cash penalties

Article 7(15)(b) of CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the process for the collection and redistribution of cash penalties and any other possible proceeds from such penalties.

61. Under the Article 7(15)(b) of CSDR, ESMA is required to specify the process for the collection and redistribution of cash penalties that will support the enhancement of settlement efficiency.
62. In line with the CP, the draft RTS related to the collection of the cash penalty, its redistribution and the situation where a CCP is involved are covered under this report, whereas the technical advice related to the level of penalties is included in another report.
63. The ESMA proposal received a large support. Stakeholders acknowledged that it is important to harmonize the penalty mechanism and to apply a single model across the European Union.

64. Some respondents called for a clarification of the exact scope of penalties and proposed to distinguish depending on the transaction types, particularly considering corporate actions and collateral movements. Others considered that instructions related to corporate events, collateral management, portfolio transfers, automatic securities lending, intra account movements or UCITS should be excluded from settlement discipline requirements.
65. In this respect, ESMA notes that the CSDR does not grant a mandate for ESMA to further determine through RTS the scope of application of the penalty mechanism and that according to the CSDR all failed settlement instructions are subject to penalties.

The collection of cash penalties

66. In the CP, ESMA proposed to adopt a harmonised approach across CSDs and to apply the collection and the redistribution of the cash penalties on a gross basis *i.e.* with regard to all the settlement instructions that fail to settle on ISD as this would allow for a common outcome whatever the settlement model adopted by CSDs would be.
67. In their answers, stakeholders agreed that participants should be able to settle in different markets knowing that the same penalty mechanism would apply as this would ensure a level playing field among different CSDs and their participants. They also supported that the mechanism should not disadvantage one settlement system over another, *i.e.* direct holding system and indirect holding systems. In their contribution, most stakeholders supported the proposed approach.
68. ESMA therefore proposes in the final report to adopt a gross penalty mechanism whereby the penalty applies on each matched settlement instruction that is failing on ISD, including those that are on hold. Indeed, the on hold function does not change the ISD but allows a participant to suspend settlement of an instruction, for instance when the instruction is for a client that has not received the financial instrument in the client omnibus account of the participant. The “on hold” function aims at preventing the use by a participant of client A’s assets for settling client B’s instruction.
69. With this approach, the CSD will be able to automate the collection of the cash penalty, the participant will know the transaction to which the penalty applies to and as a result will be in a position to recharge it to its clients.
70. Stakeholders agreed that a penalty should also apply to settlement instructions that are entered into the securities settlement system after their ISD or matched after their ISD. In these situations, the penalty should be calculated as of the ISD, irrespective of the date when it is entered into the securities settlement system, or when it is matched. Respondents called for a clarification of who would pay the penalty in case of late matching or late entry into the settlement system. They shared different scenarios and proposals.
71. ESMA considered the different proposals and the need for a simple and efficient approach that would ease implementation. The attached draft RTS specifies that the penalty is charged to the last participant to enter or modify the relevant settlement instruction for the periods between the ISD and the matching of the instruction. Indeed,

the approach is simple to implement: it is the participant that is causing the fail for that period to pay, because the instruction is not in the system or it is not correctly entered into the system. If a transaction matches after the last modification, it means that it was the last participant that modified it that was not allowing the transaction to match. The draft RTS also considers the fact that, as CSDs do not propose for the settlement of non-matched instructions or instructions that are not in the system, they do not identify and keep track of whether the securities or the cash are available in the relevant account.

72. For the subsequent period, between the matching of the instructions in the system and its settlement, the CSD is attempting settlement and identifies the participant that is causing the settlement fail. The penalty therefore applies to that participant that does not have the securities or the cash.
73. Respondents agreed with ESMA's proposal that the participant should be able to net the amount due with the amount it should receive. With this approach, the penalty mechanism would reach the same outcome in a direct holding model and in an indirect holding model. However, stakeholders called for CSDs' to make the daily calculation and information available to participants.
74. ESMA agrees that daily information should be made available as need be to the participants in order to allow them to recharge the penalty to their underlying clients. The draft RTS attached to this report has been amended to reflect this requirement for CSDs.
75. On partials, respondents commented that most CSDs (and it will be the case also in T2S) use a threshold that can be set by reference to the volume of financial instruments or to their value when triggering their partial settlement process. They stressed that there would be a difference between the penalty collected and distributed due to thresholds applied for partials, opt-out and other system functionalities which may create "unfairness" in the penalty system.
76. The current draft RTS require CSDs to provide partial settlement functionality to their participants and thresholds can be justified by operational reasons or reasons linked to the structure of the financial instrument. Should thresholds be excessive or not be justified they could be assessed as preventing compliance with the RTS requirement. Therefore, it is ESMA's view that in most situations the level of the threshold would lead to minimal differences for the calculation of the penalty.
77. However, as the draft RTS requires CSDs to offer partial settlement functionality to its participants and mandates the application of partials on the last business day of the extension period, ESMA considers that it is appropriate to apply the penalty on the settlement instruction that failed to settle on the ISD irrespective of whether part of the financial instruments were available. This approach constitutes an appropriate balance between respecting the contractual choice of the participants to opt for partials or not and enhancing settlement efficiency as partials will become mandatory a few days after the settlement fails.

The redistribution of the cash penalties

78. Stakeholders generally supported ESMA proposal that the full amount collected as a penalty should be redistributed to the participant that suffered from the fail at least on a monthly basis. The immunisation principle in case of chains of settlement fails was understood as those participants that are in the middle of the chain would have to pay a penalty but would also receive the amount of the penalty collected from the previous transaction. However, some respondents raised the issue of the cost of the penalty regime.
79. In view of stakeholders' comments, ESMA maintains in the draft RTS the proposed approach and clarifies that the cost of the penalty mechanism cannot be deducted from the amount of the penalty collected. Furthermore, the implementation costs should be lower compared to the mechanism proposed in the CP given that the penalty will apply to the failed instructions without regard to potentially available financial instruments when participants have chosen to dis-apply the partial functionality as described in the section related to the collection of the cash penalties. The mechanism aims at having a deterrent effect and enhancing settlement efficiency while limiting related costs.

The situation where a CCP is involved

80. Generally, stakeholders supported the proposal that when a CCP is involved as a failing participant or as a failed participant, the penalty should not be collected from or paid by the CCP but that the CSD should provide the calculation to the CCP that should collect and redistribute the penalty from/to its clearing members. However, some respondents called for the CCP not to have any involvement in the penalty mechanism.
81. ESMA has further analysed the approach and decided to maintain it as it allows to reach the appropriate outcome for the penalty mechanism *i.e.* incentivise timely settlement of the instruction without interfering with the CCP specific role and profile, and supports the immunisation principle whereby in case of chain of transactions, the penalty would be paid and collected so the entities suffering and causing the fail would net the two amounts. The deterrent effect applies to cleared transactions without impact on the CCP. Finally, the developments for CCPs are limited as they would rely on the calculation performed by the CSD. CSDs pass on the relevant information to CCPs so that CCPs can charge and distribute to their clearing members.
82. The mechanism applies in the same manner to the different clearing models and will ensure that the penalty is applied as long as the settlement instruction remains unsettled.

CSDs using a common settlement infrastructure

83. Stakeholders understand the benefit of managing jointly the cash penalty system. However, some called for a requirement that would leave some room in the implementation. For instance they considered that the RTS should not designate the entity that would have to offer the service to the different CSDs. Regarding interoperable systems, they noted that they should not be in the scope of this provision as CSDs only have detailed agreements on how to cooperate technically and keep separate settlement platforms.

84. ESMA agrees that interoperable systems have arrangements that differ from those of CSDs using a common settlement infrastructure, and do not have similar issues to manage their penalty mechanism as those systems would have access to the necessary information to apply it. The RTS has therefore been reviewed in order to exclude the CSDs having interoperable links from the scope of this provision: Article 19 of the new draft RTS refers only to CSDs that use a common settlement infrastructure.

85. On the level of details to be provided in the draft RTS, in view of some stakeholders answers, ESMA has focused the drafting of the RTS to reflect the core requirement *i.e.* ensure that the relevant CSDs jointly manage the procedures for cash penalties and establish the modalities for the collection and redistribution of cash penalties. The relevant CSDs will have the ability to decide on the best way for them to achieve that outcome.

The cost of the penalty system

86. Some respondents called for clarification on whether the cost of the penalty system should be borne by all participants or be distributed to participant on the basis of their settlement fails.

87. In that respect, ESMA proposes in Article 20 of the draft RTS that the costs of the penalty mechanism that are charged to participants are separate from the cash penalties and are clearly disclosed to the participants. This disclosure aims at providing transparency on the mechanism and its related costs to the participants. The draft RTS further specifies that the costs should not be allocated on the basis of the gross penalties charged to participants as it could result in a concentration of the cost allocation to a limited number of participants and be seen as a shadow penalty.

3.3.2 The buy-in process

Article 7(15) (c) to (h) of CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify (...) (c) the details of operation of the appropriate buy-in process including the timeframes to deliver the financial instruments, (d) the circumstances under which the extension period could be prolonged, (e) the timeframe that renders buy-in ineffective for operations composed of several transactions, (f) a methodology for the calculation of the cash compensation when buy-in fails or is not possible, (g) the conditions under which a participant is deemed consistently and systematically to fail to deliver the financial instruments, and (h) the settlement information a CSD shall provide to CCP and trading venues to enable them to process the buy-in.

88. Under the Article 7(15)(c) of CSDR, ESMA is required to specify the process for the operation of the buy-in.

89. ESMA issued two CPs covering the buy-in, a general one (between 18 December 2014 to 19 February 2015) covering all the draft TS that ESMA has to develop under CSDR,

and a second one focusing only on the operation of the buy-in process from 30 June to 6 August 2015.

90. In the initial CP, ESMA developed draft RTS aiming at harmonising the buy-in process and at limiting undue risks for CSDs, CCPs and trading venues. It was proposed that the buy-in would be executed by auction or by a buy-in agent that could be appointed by the infrastructure or the receiving participant. Given that the failing participant was unable to cure the fail during the extension period, it was considered appropriate to give the possibility to the receiving participant to appoint the buy-in agent so that, ultimately, the financial instruments are delivered to the receiving participant.

Scope of application/mandate

91. In their answers to the initial CP, some respondents called for clarification with regard to the scope of application of the buy-in rules with reference to the geographical scope and to the scope of transactions and financial instruments. Some respondents expressed the need to provide for a sell-out mechanism as the settlement fail may be due to the lack of cash.
92. ESMA notes that the scope of application of the buy-in rules is defined by the scope of CSDR² itself, which applies to the settlement of financial instruments in the Union (see Article 1(1) of the CSDR except where the principal venue for the trading of shares is located in a third country (See Article 7(13) of CSDR).
93. In respect of transactions concerned, some respondents argued that instructions not resulting from a trade *i.e.* from a transaction with an economic purpose, such as a portfolio transfer, a re-alignment or margins, should be excluded from the scope of the buy-in rules.
94. It is important to stress that ESMA has no specific mandate in order to further determine the scope of application of the buy-in rules with regard to the geographical scope, the financial instruments or transactions within or outside the scope of the buy-in provisions and that the Level 1 text does not provide for a sell-out mechanism.

No definition of 'buy-in'

95. In their answers to both consultation papers, stakeholders called for a better definition of the buy-in process.

Given that the term is used in the CSDR without being defined, ESMA believes that the description of the buy-in laid down in the draft RTS is appropriate and that further definition or detailed description could impact the flexibility required in order to allow for different buy-in models. Furthermore, as the term 'buy-in' has been introduced in the CSDR, it is for the Level 1 text to incorporate a request for a definition as generally RTS cannot define terms already used in Level 1. ESMA does therefore not propose to further define or describe buy-in.

² See in particular Articles 7(3), 5(1) and 1(1) and (2) of the CSDR

Situations where buy-in cannot occur

96. Two types of situations have been identified in the draft RTS: (i) those cases where buy-in is impossible and (ii) those cases in respect of which buy-in would be ineffective.

Situations where buy-in is not possible

97. Respondents to the initial CP agreed that it is important to determine situations where buy-in is not possible. Some of them considered that buy-in is not possible where the instruments no longer exist (redeemed or suspended, blocked, converted, etc.), others where the instruments are not available due to lack of liquidity (e.g. free float below 40%, buy-in against sole market-maker) or suggested that power of appreciation should be left to the national competent authorities. All stakeholders that expressed a view in that respect favoured a non-exhaustive list of circumstances where buy-in would not be possible. Some others considered that seeking competent authority approval before deciding whether a buy-in is not possible would slow down the decision-making process and suggested that there should be a set of instruments/scenarios pre-determined in the rules of the CCP, CSD or trading venue.

98. In view of the importance to have a harmonized approach, in the draft RTS ESMA uses a criteria-based approach and defines the situations where buy-in would not be possible. One of these cases is when the financial instruments are not available.

99. Further to the second consultation, a second case for impossibility of buy-in has been set out in respect of non-CCP-cleared transactions. This case relates to the circumstance in which the failing trading venue member or trading party is subject to insolvency proceedings. This would limit the cases in which a buy-in would be initiated and buy-in costs would be triggered, which could potentially not be covered by the failing trading venue member or trading party, and which, according to the Level 1, would have to be covered by the CSD participant. Consequently, this reduces the risk for CSD participants and the need for them to ask for collateral in relation to transactions they settle on behalf of their clients.

100. Given that the buy-in for non-CCP-cleared transactions is executed at the level of the trading venue member or trading party (see below), if they are insolvent ahead of the start of the buy-in process, it can already be envisaged that the buy-in will not be successful.

101. Therefore, in case buy-in is impossible, no buy-in shall be launched and a cash compensation shall be due. The cash compensation will be a credit toward the insolvent failing party.

102. Should other parties (e.g. the failing participant) be responsible for covering the exposures of the failing trading venue member or trading party, the nature of the transaction would be altered. In particular, an uncovered transaction for which the trading party faces the potential risk of default of the other trading party would be transformed into a covered transaction, which would imply its collateralisation by the party facing the risk of the default of the failing trading party.

103. Given that this change of the nature of a transaction would imply a significant cost for securities transactions, which is contrary to the objectives of the Capital Market Union, ESMA identified the solution described above which would not change the relationship between trading parties and the nature of the transaction.

Operations in respect of which buy-in would be ineffective

104. In the initial CP, ESMA considered that whenever the ISD of the second leg of the transaction was before or on the day when the timeframe for the delivery of the financial instruments would have elapsed, the buy-in addressing the fail of the first leg of the transaction would have been ineffective.

105. Most respondents do not support the proposal to distinguish between the legs of the transaction although they note that the Level 1 text is setting a determined framework with limited scope for the RTS. They consider that the proposed approach is highly inflexible and would lead to severe distortion of bond markets, that it would increase costs of market makers and investors active in institutional lending and repo markets, would reduce markets liquidity and supply for lending. They argue that costs will far outweigh potential income of engaging in securities financing transaction (SFT) activity although these transactions are vital for market liquidity and support settlement efficiency.

106. In particular, some stakeholders stressed that the proposed approach was complex both operationally and legally and would create very different demand and supply skews depending on the fixed terms of the transactions. They thought that lenders would no longer be incentivized to lend securities where there is even the remote possibility of being bought in and that intermediaries/repo desks would adjust their price for fixed terms that are in the scope of buy-in rules as in a low margin business, participants are extremely sensitive to any increase in their costs. They also stressed the impact on Basel III net stable funding ratio which seeks to reduce financial institutions reliance on short term sources of finance such as term repo.

107. Some respondents suggested excluding all securities financing transactions (SFTs) not exceeding 30 days and all SFTs in bonds.

108. Given that the settlement instruction does not contain information on whether it relates to the first or second leg of the SFT, in view of the difficulties to implement and enforce the rule as well as the estimated impacts of the previous proposal, ESMA has revised its approach. Therefore, in consideration of the length of time of the extension period, the delivery period, the ability to defer the buy-in, ESMA proposes a global approach whereby buy-in would be ineffective for those SFTs concluded for a maximum of 30 business days.

109. ESMA's mandate relates to the determination of the timeframe that renders buy-in ineffective for certain types of transactions and ESMA has no mandate on the scope of application of the exemption related to the categories of financial instruments. As a result, ESMA cannot consider for the draft RTS any provision aiming at excluding the SFTs in bonds from the scope of the buy-in rules.

Mandatory partial settlement at the end of the extension period

110. Respondents expressed a large support for making partial settlement mandatory at the end of the extension period. They called for an early application of that functionality stressing that it would allow interdependent chains of settlement instructions to benefit from more opportunity to settle. Some stakeholders proposed to apply partials as early as ISD+1.
111. Respondents noted that the partial functionality for financial instruments should respect the minimum settlement quantity and settlement unit multiple of the ISIN and that care should be given to mandatory partials for clients' omnibus accounts as it could conflict with client asset rules. Some noted that reservation should not be used as it could lead to use another client's financial instruments.
112. Given the support for partials and the benefit of simplification, ESMA revised the RTS in order to make partials mandatory on the last business day of the extension period. This was considered an appropriate balance between the respect of the contractual choice made by participant to opt out of the partial functionality offered by the CSD and enhancing settlement efficiency. Indeed mandating partials earlier would have resulted in disregarding the possibility to opt out from partials proposed in the draft RTS.
113. By mandating partials, the quantity of financial instruments available in the account of the failing participant will settle and the instruction will remain outstanding for the remaining part. The buy-in will be processed for the remaining part of the instruction only. The penalty will also apply on that remaining part only.
114. ESMA agrees that for a participant having an omnibus client account, although securities of the type to be delivered are standing on the account, they cannot be used for the settlement of an instruction when they belong to another client. This may be the case where the instruction is for client A but the securities standing on the account belong to client B. In this case, the instruction could be put on hold. The mandatory partial delivery would not apply to instructions that are on hold and the buy-in would be executed for the full instruction. It is the responsibility of the participant to ensure that the instruction is kept with the right status as it is the only one having the information on the holding of its underlying clients' assets in an omnibus account.

Details of operation of the buy-in

115. In view of stakeholders' calls for clarification of the buy-in process, ESMA provides a step by step approach allowing stakeholders to have a better understanding of who does what and when in the different scenarios. In order to improve settlement efficiency, an appropriate buy-in process should be subject to the initial verification that the buy-in is possible in respect of the relevant transactions and parties thereto, run up to the delivery of the relevant financial instruments or to the notification of the cash compensation to be due, and to the cancellation of the relevant settlement instruction.

The entity executing the buy-in

116. The determination of the entity in charge of executing the buy-in for non-CCP-cleared transactions has been one of the most controversial issues in relation to setting up a mandatory buy-in process, and has been the focus of the second CP. In the draft RTS attached to this report, ESMA has excluded CSDs and trading venues from the possible entities executing buy-in. As for the entity actually in charge of executing the buy-in, CSDR places the responsibility on the CCP for CCP-cleared transactions and for non-CCP-cleared transactions, ESMA proposes in its draft RTS to place it at the trading level.

No active involvement of CSDs

117. In the answers to the initial CP, there was no support for the proposal that CSDs would be involved in the buy-in. Most respondents considered that CSDs have no means and expertise to manage buy-in, that they should only have a passive role and not take any related risks. Those respondents proposed instead that CSDs should monitor settlement activity, receive information on the status of buy-in and report to participants.

118. Some stakeholders stressed that buy-in is not a settlement discipline measure but a tool to manage counterparty risk and should be enforced at trading level. In this respect some stakeholders noted that as CSDs have no contract and no communication flow with trading parties, passing the risks and costs through the chain would not be optimal. Furthermore, they raised the issue of cross border settlement where CSDs would have no means to identify the counterparties in other CSDs.

119. ESMA agrees with these concerns and has dropped any active role or responsibility of CSDs with regard to the execution of the buy-in.

No active involvement of trading venues

120. ESMA agrees that the buy-in rules should not negatively impact the risk profile of the trading venues and understands the concerns raised by stakeholders.

121. In the draft RTS attached to the second CP, ESMA inserted an obligation for trading venues to provide in its rules for an obligation for its members to appoint a buy-in agent in case of a settlement fail and that, in case of non-execution of this obligation by its member, the trading venue shall appoint the buy-in agent.

122. In their answer to the consultation, some stakeholders noted that this would change the risk profile of the trading venue that would become liable vis-a-vis the buy-in agent. They therefore requested that ESMA withdraw that requirement. Given that there should be no impact on the risk profile of the trading venue, that requirement has been withdrawn from the proposed draft RTS.

123. Stakeholders belonging to the trading venue industry pointed out that a trading venue should not be responsible for appointing a buy-in agent, as it may be unaware of the details of the trade. Therefore a requirement for the appointment of a buy-in agent by

the trading venue in case the trading venue member would not appoint itself such buy-in agent in time would increase the risk profile of trading venues.

124. The following arguments were raised:

- (a) Under MifiD 2, a trading venue is not permitted to be a counterparty to any trades executed across its system. Hence, a trading venue is not a participant in any settlement system and is not aware of – or involved by the CSD and/or the competent authority – when a trade has failed to settle, and particularly whether or not a buy-in agent has been appointed.
- (b) Where there is no CCP for the instruments traded on a given market venue, counterparties settle bilaterally with one another and the trading venue will not be integrated into the clearing workflow for these bilateral trades, it will not dispose of information about settlement fails.
- (c) In cases where the failing participant itself fails to reimburse the buy-in agent eventually, the trading venue might be exposed to additional legal risks under national civil law as the buy-in agent might now try to get compensated by the trading venue as the principal of the buy-in process. This may possibly lead to a legal compulsion for the trading venues to establish e.g. an additional system of collaterals.

125. Respondents added that to avoid any gaps in the enforceability of this solution, the appointment of the buy-in agent should be the legal responsibility of the trading party itself.

126. ESMA modified its draft RTS to remove any responsibility in respect of the execution of the buy-in from the trading venue itself.

For CCP-cleared transactions, the CCP shall execute the buy-in.

127. This rule is clearly set out in paragraph (a) of article 7(10) of CSDR itself. Respondents from the CCP industry agreed that neither the trading venue member nor the clearing members should execute the buy-in, as the CCPs have at their disposal all the necessary information and should therefore perform the buy-in directly. The CCP indeed becomes the counterparty to the submitted transactions and is therefore a party to the transaction that failed to settle.

128. ESMA has detailed in the draft RTS the process a CCP and its clearing members shall follow in case of buy-in.

For non-CCP-cleared transactions, the buy-in shall be executed at trading level.

129. Article 7(10) of CSDR does not precisely designate the entity that should be liable for the execution of the buy-in process for settlement fails relating to non-CCP-cleared transactions.

130. In the second CP, which was fully dedicated to this issue, ESMA proposed to determine which entity should execute the buy-in among the 3 following options:

- option 1 – the trading level party;

- option 2 – the trading level party with payment of the cash compensation by the participant as a fall-back;
 - option 3 – the participant.
131. Although stakeholders made it clear they generally do not support the mandatory buy-in set out in the CSDR, they considered in their majority that option 1 is the “least worst”. Respondents massively rejected both option 2 and option 3 (no support for option 2 and only 3 stakeholders expressed support for option 3).
132. To summarise, as reported by stakeholders in their responses, once the participant is responsible for the payment of the cash compensation, it will ask for collateral. According to their arguments (but not to their numbers, as some figures for collateral are much lower in option 2 than in option 3), the collateral requested in options 2 and 3 would be the same, but option 2 would be more complex to be implemented.
133. Regarding options 2 and 3, stakeholders consider that the collateral cost would be broadly similar, but that in option 2 they would, in addition, have the communication burden. However it is worth noting that in option 3, an efficient communication flow through the settlement chain will also need to be set up: the trading parties will want to know what is going on as they have collateral at risk.
134. The main argument in favour of **option 1** is the absence of the need to collateralise the transactions. Also, the trading level appears to be the right level to impose the obligation because trading parties have good incentives to initiate a buy-in process in case of a settlement fail or to claim cash compensation if buy-in is not possible, and to make the real defaulter aware of his responsibilities to a transaction. Trading parties are indeed the ones with the strongest interest in the finalisation of the trade. In addition, trading parties have all the necessary information to implement the buy-in (in particular for OTC transactions, knowing who their failing counterparty is).
135. The main weakness of option 1 appeared to be its enforceability, as the performance of the buy-in process would be transferred to the trading parties through contracts between the intermediaries in the settlement chain. Stakeholders agree that a robust contractual framework is required and consider that the trading parties have a strong incentive to get their transaction settled and to implement the buy-in.
136. The main argument raised by respondents against **options 2 and 3** was that both would increase the risk profile of CSD participants. Most respondents addressed those two options together as the fall-back of option 2 was seen as equivalent to option 3 itself. However, option 2 has been described as the worst of all, holding the weaknesses of both option 1 and option 3.
137. The most stringent criticisms made to both options are the increase of the risk profile for the CSD participants and its corollary, the increase of the cost of the settlement.
138. Most respondents pointed out that the role of settlement agent was not to assume the principal risk for settlement (counterparty risk), and that it would fundamentally change its role as intermediary, by transferring risk from the trading level parties to the

settlement agents, imposing responsibility for performance of transactions which essentially makes them a guarantor of settlement for its clients. Therefore, it would have to protect itself against that risk, likely by the way of collateralisation by end-investors of any trades that it sends DvP instructions for.

139. According to certain respondents, options 2 and 3 would also have a negative impact in case of links established or to be established between CSDs. Any CSD acting as an investor CSD would appear to be subject to the same terms and conditions as all other participants and hence to the whole set of the Settlement Discipline requirements, meaning they would also be accountable for buy-in costs and cash compensation. Accordingly, CSDs would need to collect collateral from participants to protect themselves, thus dis-incentivising cross-CSD links.
140. As far as the estimated of costs is concerned, the pricing of the collateral required under options 2 and 3 is, according to stakeholders, very complex. Further factors to be considered are the fail rates of the type of transaction involved, the firms' own inventory, leverage and level of sophistication, as well as the implied cost of sourcing and funding the required collateral. Also, the demand of collateral management services will need to be weighed against the need to manage other financial resource constraints such as balance sheet, liquidity and capital.
141. Very different estimates for collateral amounts needed were provided by the respondents. Some stakeholders estimated as €140bn the value of collateral required for the sole OTC securities transactions market (5% of the value of this market). According to the calculations made by a respondent from the repo industry, the collateral cost linked to the implementation of option 3 in the Union could amount to €543bn.
142. According to various respondents, other costs should also be taken into account such as costs related to credit assessments for the purpose of collateralisation. Several stakeholders also pointed out that a buy-in indicates to the market that securities will be purchased no matter the price and sellers will adjust offer prices. Less liquid securities would, therefore, have a greater buy-in premium.
143. The responses also referred to the potential regulatory and capitalisation ramifications for the participants under this option, who would effectively be behaving like trading parties in the event of a buy-in.
144. Some respondents noted that additional costs could be incurred from just getting the information needed to start any buy-in process (cost of the settlement fail analysis). Whereas CSD's participants only handle settlement instructions, without asking their clients for more information, they could simply not distinguish between a settlement instruction resulting from an OTC transaction or from a non-OTC or cleared transaction (except if its counterparty is known as a CCP). Also, additional costs could arise in relation to the need for new processes in back offices, reporting costs, the costs of searching for and defining a buy-in agent and also establishing legal opinions in every trading entities.

145. Some stakeholders also made a more general criticism of the negative impact such solutions would have on the economy. They pointed out at the overall detrimental effect of this solution on collateral availability, which could create risks of market makers not operating due to the buy-in requirements (thus reducing overall market liquidity). The collateralisation required would be difficult to organise. In addition, it is likely that part of the current collateral may be “transferred” or topped by intermediaries in the chain, creating a dead pile of investable money set aside “just in case”, also drawing collateral away from system, at a high cost for the economy.
146. Stakeholders warned that EU CSDs would be at a disadvantage if such solution was chosen, arguing that liquidity would migrate to non-EU CSDs, with potentially negative effects on investment and issuance in the EU.
147. The specific criticism addressed to **option 2** is the uncertainty it creates for the CSD participants and that it would disincentivise the trading parties from executing the buy-in: given the choice between invoking a buy-in and allowing the fall back process to start, the trading level party, who may have no direct relationship with the CSD participant, may decide that it has no interest in setting the buy-in process in motion for commercial or practical purposes. According to the calculations made by a respondent from the repo industry, the collateral cost appeared to be a bit lower to cover the fall-back under option 2 (€90bn). This calculation is probably justified by the fact that option 2 excluded from the fall-back the cases in which the trading party defaults.
148. One of the main issues identified with option 1 and option 2 (pre-fall back) relates to the enforceability means of the buy-in obligation vis-a-vis trading level parties. With **option 3** to the contrary, as the participant is directly bound by the CSD rules, it will be possible for the competent authorities to obtain direct information in order to monitor application and compliance with the buy-in rules.
149. Therefore, in consideration of these arguments and in particular of the fact that the implementation of options 2 or 3 would likely increase the costs of securities settlement in a disproportionate manner, ESMA has drafted a RTS on buy-in based on option 1 (therefore hinging on the trading parties).
150. It is important to point out however that CSDR, while not being entirely clear on the allocation of responsibilities directly refers to participants in several instances of Article 7: paragraph (6) on the payment of price difference and paragraph (8) on the payment of the buy-in costs refer only to participants. Even if paragraph (7) does not set out who should pay the cash compensation, it designates the receiving participant as the payee.
151. Given these Level 1 requirements, although the draft RTS provides that the liabilities for the execution of the buy-in as well as for the above-mentioned payments are set out at trading level, it was not possible for ESMA to entirely remove the participants from the process.
152. What the RTS achieves within this limited mandate and explicit requirements in the CSDR is to contain the participants’ liability to the payment of the price difference or buy-in costs in the sole hypothesis where the failing trading-level party would not pay its

part (this should happen only in very limited cases, like the insolvency of such party occurring after the end of the extension period) and to clarify that the participants shall never be responsible for the payment of the cash compensation (see below the “Cash Compensation” section for more details on this).

Identification of the ‘trading-level party’ in respect of transactions not cleared by a CCP

153. In the situation where the transaction is not cleared by a CCP but is executed on a trading venue, the CSDR provides that the trading venue shall include in its internal rules an obligation for its members and its participants to apply the buy-in measures. Therefore it is possible to refer to the receiving trading venue member for being responsible for the buy-in as it would be the trading party in this case. This approach reconciles stakeholders’ comments with an efficient buy-in process.
154. In the situation where the transaction is not cleared by a CCP and is not executed on a trading venue, the trading-level party should be the actual counterparties to the relevant transaction.
155. Some respondents stressed that some trading parties are entering into transactions through agents. For instance in securities lending, the agent lender and prime broker may act for underlying principal to the transactions. They requested that the buy-in could be executed by the agent on behalf of their clients.
156. In this respect, ESMA clarified in the draft RTS definitions that the trading party is the one acting as principal in a securities transaction - so the regulatory obligation is only on the principal. Therefore, in the event the latter delegates the performance of its obligations under the buy-in process, it would still remain liable for compliance with the requirements.
157. ESMA has therefore identified in the draft RTS the trading-level party as referring to the party at the origin of the transaction behind the settlement fail – which, depending on the type of transaction, can be either (i) the ‘trading venue members’ in transactions not cleared by a CCP but executed on a trading venue or (ii) the original ‘trading parties’ acting as principal in OTC transactions not cleared by a CCP.

Buy-in agent requirements

158. It was suggested in several answers to the second CP that buy-in agents should be licensed as investment firms, appointed well in advance and rightly controlled to prevent any bad behaviour.
159. ESMA notes that the activity performed by a buy-in agent falls within the scope of investment services under MIFID (execution for third party account or negotiation on own account) and can thus only be performed by an entity incorporated in the EU or in a foreign country, authorised or allowed to provide such investment services in the EU. There is therefore no need to add such a requirement in the draft RTS.

160. In addition, Article 25(1) of the draft RTS provides that “*each party shall set up the appropriate procedures (...) in order to ensure they can implement the buy-in process without delay*”. ESMA considers that an early appointment of the buy-in agent should be part of these ‘appropriate procedures’.

161. Regarding the execution of the buy-in, ESMA notes that the best execution rules provided for in MiFID will apply and will provide comfort that all reasonable steps to obtain the best possible result for the clients are taken (this has been expressly specified in the draft RTS in respect of the buy-in agent).

Delivery of relevant financial instruments after the start of the buy-in: to buy-in agent only

162. Some stakeholders raised the issue of whether a failing clearing member, trading venue member or trading party would be able to remedy a failed transaction and intervene once the extension period expires. They asked for clarification on whether the failing entity could intervene directly during the buy-in process and deliver the financial instruments to the receiving party if it obtains securities after the extension period. A number of reasons were cited as to why it was important for a failing participant to be able to remedy the fail, including the fact that executing a buy-in when the failing participant is able to settle the instruction would generate a double amount of financial instruments, whereas if the failing participant is able to remedy the fail, this would reduce overall buy-ins and eliminate risk and costs for participants in a position to deliver after the extension period.

163. ESMA understands that this is an important point and revised the draft RTS in order to clarify that the failing party can still deliver the financial instruments to the receiving party as long as the buy-in agent has not been appointed or an auction has not been launched and, after the appointment of the buy-in agent or the launch of the auction, the relevant financial instruments could be delivered to the receiving party exclusively with the prior agreement of the buy-in agent or as a participant in the auction.

Appropriate contractual arrangements and procedures

164. Answers received to the second CP insisted on the fact that all options would require strong contractual arrangements along the whole settlement chain *i.e.* involving the CSD participants, the trading venue members, clearing members, trading parties, their clients and any intermediary in between, together with enhanced information flows to ensure the buy-in requirements are effectively applied.

165. Respondents stressed the need for contractual provisions required for the structuring of information flows, the enforcement of buy-in and the management of payment flows and their instruction through the intermediaries’ chain. An intermediary would be unable to demand reimbursement from its client. An intermediary would only contractually commit itself to reimbursing the CSD participant for the cost of the cash compensation if the intermediary was sure of obtaining reimbursement itself from its client. The longer the chain of intermediaries, the greater the number of contractual obligations which each link in the chain would have to agree on and enforce.

166. ESMA has therefore introduced in the draft RTS an obligation for all parties in the settlement chain to be bound by appropriate contractual arrangements with their relevant counterparties incorporating the buy-in process obligations, and to run satisfying due diligences in order to ensure such arrangements actually allow for the enforceability of applicable buy-in requirements, even in the case some parties are located outside of the EU.

Strengthening of the information flow throughout the settlement chain

167. Many respondents highlighted that a difficulty to implement option 1 could arise from the need to set up efficient information and notification flows through the chain of intermediaries from the CSD participants to the trading parties. A technical system and process will actually need to be devised that can keep all parties informed of the status of the buy-in in real time. One respondent noted that having complex chains would be operationally inefficient and pose a greater risk of procedural failure compared to a scenario in which the CSD participant arranged the buy-in.

168. Respondents argued that under option 2 fall-back and option 3, a CSD's participant will send/cancel instructions only when requested by its client. Operationally this means that the CSD's participant at each stage of the buy-in process will need to pass on the information to its client all along the custody chain until the trading entity.

169. Finally, it appears clear for stakeholders that the implementation of a mandatory buy-in process may require new messaging, using the current intermediary chain to provide the notices between parties, but not building a new process and may need to develop appropriate reporting capabilities to allow for the information to be sent in an automated way.

The notifications

170. Notifications to be made in the course of the buy-in process should allow information to flow to the relevant parties and smooth compliance with the buy-in requirements. In order to ensure clarity of the process, the entities that are required to send and receive the notifications are clearly identified in the different situations *i.e.* for transactions cleared by a CCP, for transactions executed on a trading venue and not cleared by a CCP, for transactions not executed on a trading venue and not cleared by a CCP.

Partially successful buy-in

171. Stakeholders generally supported in their answers to the initial CP that when the buy-in is successful for a part only, e.g. for a buy-in of 20 securities A, it may be successful for 15 securities only, that part be delivered to the entity responsible for executing the buy-in, who would then have the choice for the remaining part (5 securities A) to defer the buy-in or receive a cash compensation. ESMA therefore keeps this approach.

Cash compensation

Calculation of the cash compensation

172. The CSDR provides that the cash compensation is paid to the receiving participant. This is a one way process, and ESMA determines the methodology for its calculation.

173. In the initial CP, it was proposed that when participants have agreed in advance the price to settle the cash compensation or the method to determine such price, the choice of the participants would be respected and that, in the absence of such pre-agreed choice, the price would be set by the buy-in agent. The determination of the price would depend on whether a recent price would be available on the relevant trading venues or not. When the price of the previous day would be available on the trading venue, the closing price would be used. In case such a price is not available, the buy-in agent would have to refer to available market prices.
174. Respondents considered that trading parties should be able to set a price for cash compensation, that settlement participants (acting in an agency capacity) should not be involved in this process of establishing a compensation mechanism, as it would expose them to undue risk, and create room for potential dispute by their underlying clients.
175. Some stakeholders noted that the proposed mechanism should work both ways *i.e.* the seller needs to compensate the buyer if market prices increase but the buyer does not need to compensate the seller if market prices decrease. They indicated that the buyer would have been impacted by price decreases if the settlement had happened.
176. Stakeholders asked for more guidance on the calculation and expressed concerns regarding the possibility to abuse of the mechanism.
177. ESMA keeps the approach whereby the methodology for the calculation of the cash compensation can be agreed in advance and refines the rules when it is not the case. ESMA refers to the closing price of the most relevant market in terms of liquidity as determined in MIFIR. These markets will be clearly identified and will allow having a common approach across locations. In the absence of such a price, the buy-in agent or the CCP is required to refer to available market prices in order to determine a price that is as near as possible to that of the market.
178. A respondent to the second CP considered that the cash compensation should allow to compensate potential financial loss, including corporate entitlements, funding and other operational costs, accrued interest, foreign exchange exposure and liquidity risk of the CCPs. This would be applicable in most of the cases to trades for which a cash compensation must be performed for less or low liquid securities and would reflect the risk of the receiving party of not being able to execute a replacement purchase (assuming that there is still a commercial reason to buy the concerned financial instrument) without any loss by using the received cash compensation. Not using a risk-based component for the calculation of the cash compensation would lead to an increase of the risk for CCPs and change their risk profile.
179. It appears that in some markets, the market price does not include exchange rates variations, accrued interest or corporate entitlements. It is therefore proposed that the cash compensation should include a mark up to cover the exchange rates variations, accrued interest or corporate entitlements if not be reflected in the market price.

180. ESMA agrees with the suggestion to include a mark-up covering objective factors such as exchange rates variation as well as corporate entitlements or accrued interest, when not already included in the market value of the financial instrument, and believes that the purpose of this provision should be to focus on determining the difference between the initial price and the current price so that the failing participant does not benefit from the settlement fail, and not to compensate the receiving participant for any potential financial loss. However, ESMA also believes that a simple reference to a risk-based cash compensation, without a delimitation of the components that such cash compensation should cover, would introduce too much flexibility on the price to be used, with significant risk of different application across the EU, which might be difficult to address through supervisory convergence tools.

181. ESMA thus proposes that the cash compensation should be based on the following:

(a) the difference between the market value of the relevant financial instruments, determined by the buy-in agent or the CCP for the business day before the payment of the cash compensation, and the settlement amount included in the failed settlement instruction, for settlement instructions against payment; or

(b) the difference between the market value of the relevant financial instruments, determined by the buy-in agent or the CCP for the business day before the payment of the cash compensation, and the market value of the respective financial instruments, determined by the buy-in agent or the CCP for the day when the transaction that failed to settle was executed, for settlement instructions free of payment.

182. ESMA also considers that the cash compensation should include a component reflecting exchange rates variation, corporate entitlements or accrued interest when not already included in the market value of the financial instrument. The market value and the component reflecting exchange rates variation, corporate entitlements or accrued interest should be disclosed separately and transparently to both the clearing members, trading venue members and trading parties.

Market to be used as reference for the calculation of the cash compensation

183. Concerning the market to be used as reference for pricing, according to one stakeholder, it has to be taken in consideration that CCPs as well as buy-in agents may have no access and technical connection to every market where the relevant financial instrument is listed. Therefore, neither the prices agreed on such market nor the relevant volume could be considered. As a consequence the price taken in consideration should be determined considering the market(s) to which the buy-in agent or the CCP are connected for a certain financial instrument.

184. ESMA believes that the price of the buy-in should be reflective of the actual market conditions; therefore the buy-in agent and the CCP should identify the most relevant market in terms of liquidity across the EU and determine the market value across different trading venues or brokers. This is particularly important in order to create a single post-trade market. A similar approach was adopted in ESMA's Technical Advice on the level of penalties for settlement fails (submitted to the European Commission in August 2015): wherever the CSD is located within the Union, the same price should be

used for similar instruments in order to determine the penalty. The same arguments apply in the case of the calculation of the cash compensation by CCPs or buy-in agents.

Payment of the cash compensation

185. The CSDR does not explicitly provide for who should pay the cash compensation to the receiving participant. In the answers to the second CP, respondents showed very strong opposition to the fact that the failing participant could have to pay for the cash compensation either directly or in case the entity responsible for the settlement fail would not pay itself. This would entail the collateralisation of transactions not cleared by a CCP, which are usually uncollateralised, at an important cost for the market participants, and also for the markets in terms of liquidity.

186. ESMA believes that in order to be consistent with the solution adopted in respect of the identity of the entity responsible for executing the buy-in, and taking into account the consideration already made above on the nature of the transactions and on the consequences of moving the responsibility to the failing participant, the latter should not have to pay the cash compensation.

Other payment obligations under the buy-in process

187. It should be noted that whereas for cash compensation the trading party will always be considered as solely liable (even if it defaults after the buy-in has been initiated), the CSDR refers explicitly to the liability of the failing participant in the following cases:

- a) for the payment of the difference where the trade price is higher than the buy-in price (Article 7(6));
- b) for reimbursing buy-in costs to the entity that executes the buy-in (Article 7(8)).

Therefore, the participant's liability for these payments cannot be removed through the draft RTS.

188. However, ESMA proposes in the draft RTS to clarify that the failing trading party or failing trading venue member, as applicable, should be primarily responsible for the payment of the buy-in costs and price difference and that the failing participant's liability comes only as a second step, when the failing trading party or trading venue member would not pay despite their obligation to do so.

189. ESMA believes this should lower the need for collateralisation of these transactions as payment by the failing participant should only be required in case an insolvency proceeding was opened against the failing trading party or trading venue member in after the launch of the buy-in (as, according to the draft RTS, an insolvency check needs to be made just before buy-in is launched).

190. The chart in Annex I summarises in a visual manner the different steps and the logic of the buy-in process for non-CCP-cleared transactions.

Reporting obligations in respect of buy-in

191. Stakeholders complained about the amount of reporting required through the settlement chain and argued that all are not necessary for the performance of the buy-in

or the appropriate supervision of the process. In particular, they consider that CCPs should not report to the CSD as the CCP manages the buy-in process and the CSD will see the settlement instructions resulting from the buy-in process through instructions. Some consider that similarly, trading venues should not report to the CSD and that the trading party should be responsible for the reporting to the CSD.

192. ESMA proposes to limit reporting requirements from CCPs and trading venues to CSDs to:

- a) the results of the buy-in (including the number and value of the bought-in securities); and
- b) the payment of the cash compensation (including the amount of the cash compensation);
- c) the information necessary to identify each new settlement instruction resulting from the buy-in process in case the buy-in is successful in part.

Buy-in timeframes

193. When a settlement instruction fails to settle, the participant can still cure the fail during the extension period. At the end of the extension period however, if the settlement has not taken place, the buy-in will be processed with the aim of getting the financial instruments delivered to the receiving participant. If buy-in does not allow for the delivery of all missing financial instruments after the first delivery period, the entity executing buy-in can choose to go for a deferral period.

Extension period

194. Some respondents suggested that the extension period should be 7 days for all fixed income securities in order to minimise the impact of buy-in. Others supported that approach by explaining that the asset class criteria should be considered first, and before the liquidity, and that therefore a 7 day period for all bonds should be considered due to the structural issues of that asset class.

195. A major concern raised by some respondents was related to the definition of liquidity for bonds and its tie-in to the MiFID/MiFIR definition. They considered that using the current definition would result in reducing the extension period for a large number of non-liquid bonds to 4 days. They generally believed that unless there are significant modifications, the methodology proposed in the MiFID/MiFIR technical standards is likely to define a large universe of fixed income products as liquid when they would by most other measures clearly not be liquid. They therefore called for a 7 business day extension period for all fixed income instruments.

196. A number of respondents called for a central list of liquid instruments maintained by ESMA which would be updated periodically.

197. For less liquid shares and SME growth market instruments, in their contributions, some stakeholders called for an extension period as long as possible given the volatility

and lack of liquidity in such markets. They stressed that this would also simplify and make consistent the application of the buy-in regime.

198. ESMA notes that the definition of liquidity proposed for bonds in the scope of MIFID/MIFIR relates to transparency. It would not be consistent with the purpose of the provision under CSDR that relates to the extension period. Furthermore, bonds do have specific features that make them particular. As a result, ESMA revised the draft RTS in order to have a 7 business-days extension period for all bonds.

199. Regarding less liquid shares and other instruments, ESMA agrees that a 7 business days extension period would be appropriate. Regarding SME growth market instruments, the CSDR already grants them a 15 day extension period.

Deadlines for the delivery of financial instruments as a result of a buy-in

200. Some respondents indicated that extension period and delivery periods should be harmonised and call for a sufficient delivery period for the SME Growth market instruments. They stress that SME Growth Market instruments are a specific category of instruments.

201. As long as the feature of the financial instruments allow, ESMA agrees with the harmonisation argument. Indeed, it supports a streamlined and efficient implementation of the requirements.

202. ESMA proposes in the draft RTS that the delivery period be of 4 business days for liquid shares. This is the same length of time as for the extension period. The liquidity is defined by reference to MIFID and MIFIR which will harmonise and leverage the work done in this scope. For the other financial instruments, the delivery period is of 7 business days.

203. All bonds, exchange traded funds, depositary receipts, certificates and other financial instruments have a specific nature that involve that more time is needed in order for the buy-in to be performed. As a result, it is not necessary to refer to their liquidity in order to set the timeframe for their delivery to the receiving participant. Instead, they should all be subject to the same timeframe of 7 business days.

204. Furthermore ESMA agrees that SME growth markets instruments represent a specific category of instruments as considered in the CSDR. Given their specificities they benefit from the longer delivery period of 7 business days without making further distinctions based on other criteria such as liquidity.

Information provided by CSDs to CCPs and trading venues in respect of buy-in

205. Under Article 7(15)(h) of CSDR, ESMA is required to specify the settlement information a CSD shall provide to CCPs and trading venues in order to enable them to fulfil their obligations related to buy-in.

206. In the initial CP, ESMA proposed a requirement on the provision of the information related to the current status of the instruction sent by the CCP or the trading venue to the CSD.
207. Most respondents supported the proposal. They welcomed it as in most cases this is current practice and noted that it would be useful to indicate what the CCP or trading venue will do with the information.
208. Some stakeholders noted that when a trading venue does not send the instruction directly to the CSD, the CSD is not in a position to identify the trading venue and this is treated as an OTC. They added that when the trading venue is known they may not have a contractual relationship with the CSD and established communication channel. It was suggested that information should be provided to the trading venue only upon request from the relevant trading venue.
209. ESMA streamlined the related draft RTS clarifying that, based on the information included in the settlement instructions entered into the securities settlement system it operates, a CSD shall provide to the relevant CCPs and trading venues information concerning their settlement fails including the identification of the transactions. For transactions executed on a trading venue which are not cleared by a CCP, and in the absence of a direct transaction feed from the trading venue to the CSD, the participant shall identify the trading venue and the transactions in its settlement instruction. In the absence of such information, the transactions shall be deemed not to be executed on a trading venue.

3.3.3 Conditions for a participant to consistently and systematically fail

210. Under point (15)(g) of Article 7 of CSDR, ESMA is required to specify the conditions under which a participant is deemed consistently and systematically to fail to deliver the financial instructions.
211. In the initial CP, ESMA proposed to perform the assessment over a 12-month period and over a certain number of days using a threshold set at a 10% deviation, in value or volume, of the settlement efficiency rate of each securities settlement system.
212. Some stakeholders noted that the suspension should only occur for participants when they act as settlement agents for their own principal or proprietary trading and should exclude activity for which the participant acts as settlement agent for third parties. Others called for an exemption for market makers in non-liquid SME instruments, for a higher deviation rate, for regular information and alerts by CSDs when the participant reaches certain thresholds.
213. Respondents called for a non-automatic suspension, stressing that this is an extreme measure that can only be used as a last resort solution for a serious problem and could only be implemented after careful consideration of the circumstances in each case and in close consultation with the competent authority.

214. ESMA noted that pursuant to the CSDR, there is no automatism in the decision to suspend a participant. Indeed, the CSDR provides that, in its procedure related to the suspension of participants that consistently and systematically fail, the CSD, CCP or trading venue should give to the participant the possibility to submit its observations and should duly inform their competent authorities. ESMA has therefore not repeated this point in its proposal.

215. ESMA has further analysed the point made by stakeholders regarding market-makers and agrees to re-consider its approach given their role in providing liquidity. However, given that market making is not always clearly defined, instead of providing for a specific threshold, in the draft RTS, ESMA increases the deviation rate from 10% to 15%. The draft RTS clarifies that for the purpose of the calculation, only the settlement fails caused by that participant are taken into account.

3.4 Entry into force: 24-month phase-in

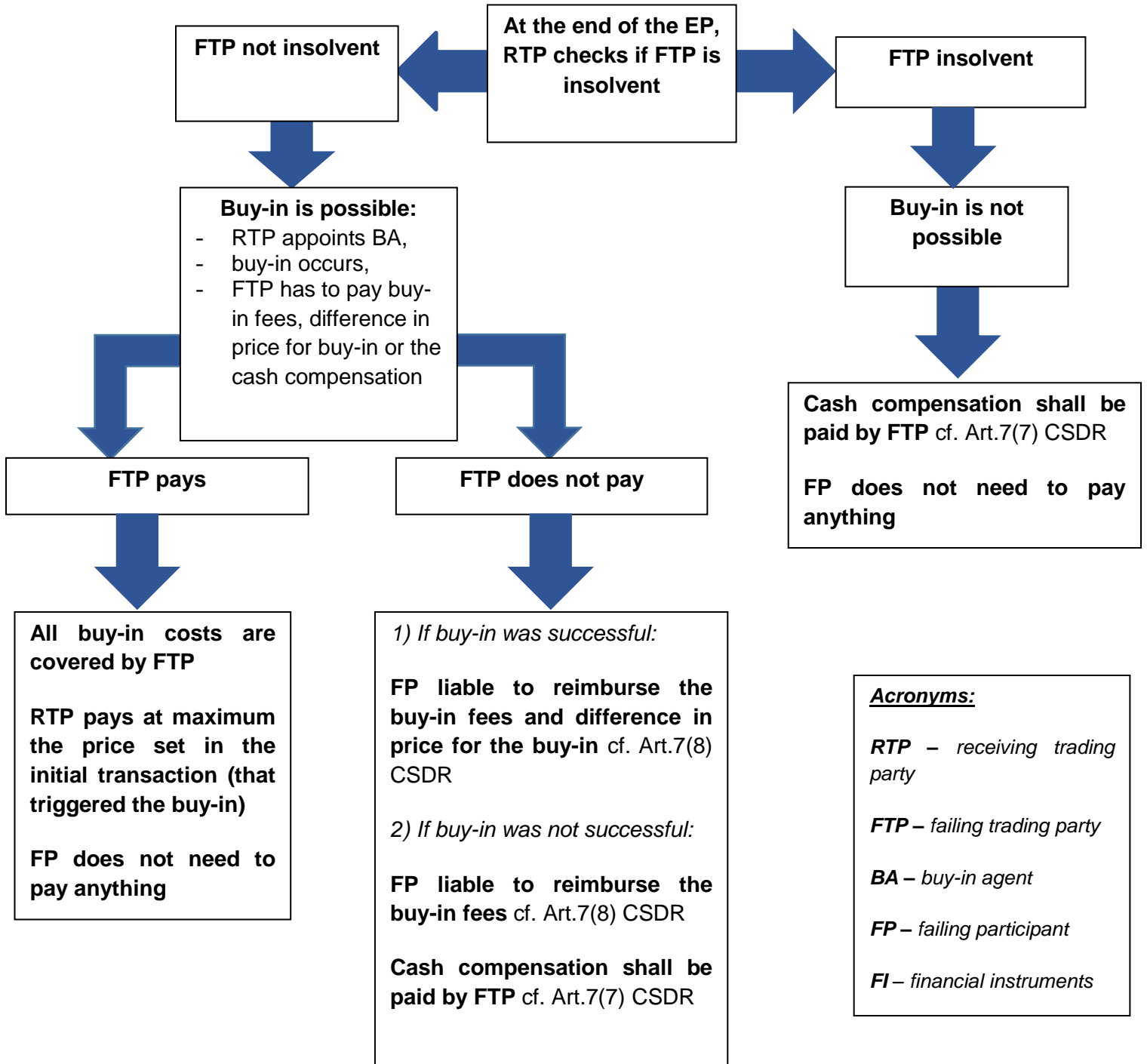
216. Respondents to the buy-in CP generally requested that the RTS be implemented after the final wave of T2S given the focus required on that project, the dependency for the development of the settlement discipline measures and the time needed to prepare for it. In the draft RTS, ESMA proposes an entry into force of the Regulation related to settlement discipline 24 months following its publication in the Official Journal.

ANNEXES

Annex I

Buy-in Chart

Buy-in execution for transactions not cleared by a CCP



Annex II

Legislative mandate to develop draft technical standards

Article 6 of CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the measures to be taken by investment firms in accordance with the first subparagraph of paragraph 2, the details of the procedures facilitating settlement referred to in paragraph 3 and the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4.

Article 7 of CSDR

ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify:

- (a) the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1;
- (b) the processes for collection and redistribution of cash penalties and any other possible proceeds from such penalties in accordance with paragraph 2;
- (c) the details of operation of the appropriate buy-in process referred to in paragraphs 3 to 8, including appropriate time frames to deliver the financial instrument following the buy-in process referred to in paragraph 3. Such time frames shall be calibrated taking into account the asset type and liquidity of the financial instruments;
- (d) the circumstances under which the extension period could be prolonged according to asset type and liquidity of the financial instruments, in accordance with the conditions referred to in point (a) of paragraph 4 taking into account the criteria for assessing liquidity under point (17) of Article 2(1) of Regulation (EU) No 600/2014;
- (e) type of operations and their specific timeframes referred to in point (b) of paragraph 4 that renders buy-in ineffective;
- (f) a methodology for the calculation of the cash compensation referred to in paragraph 7;
- (g) the conditions under which a participant is deemed consistently and systematically to fail to deliver the financial instruments as referred to in paragraph 9; and
- (h) the necessary settlement information referred to in the second subparagraph of paragraph 10.

Annex III

Draft Technical Standards on Settlement Discipline



EUROPEAN COMMISSION

Brussels, XXX
[...] (2012) XXX draft

COMMISSION DELEGATED REGULATION (EU) No .../..

of XXX

[...]

COMMISSION DELEGATED REGULATION (EU) /2016

of []

**supplementing Regulation (EU) No 909/2014 of the European Parliament
and of the Council with regard to regulatory technical standards on
settlement discipline**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012³, and in particular Article 6(5) and Article 7(15) thereof,

Whereas:

- (1) The provisions in this Regulation are closely linked, since they deal with measures to deter settlement fails and to encourage settlement discipline, with the monitoring of settlement fails, with the collection and distribution of cash penalties for settlement fails and with the operational details of the buy-in process. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view of and a compact access to them by persons subject to the obligations, it is appropriate to include them in a single Regulation.
- (2) In view of the global nature of financial markets, due regard should be given to the Principles for Financial Market Infrastructures, which have been issued by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions (CPSS-IOSCO Principles) in April 2012 and which serve as a global benchmark for regulatory requirements for central securities depositories (CSDs). The Recommendations for Securities Settlement Systems, issued by the Committee on Payment and Settlement Systems and the International Organisation of Securities Commissions, covering trade confirmation, settlement cycles, and securities lending, should also be taken into account.
- (3) In order to ensure consistent application of, and to clearly identify a limited number of concepts stemming from, Regulation (EU) No 909/2014, as well as to specify the technical terms necessary to apply this Regulation, a number of terms should be defined.
- (4) Investment firms should ensure that they have all the necessary settlement information in a timely manner to allow for an effective and efficient settlement of transactions. In

³OJ L 257, 28.8.2014, p. 1.

particular, investment firms that do not have the necessary settlement information should communicate with their clients to obtain the information relevant for an efficient settlement, including the standardised data needed for the settlement process.

- (5) Straight through processing (STP) should be encouraged, since market-wide use of STP is essential both for maintaining high settlement rates as volumes increase and for ensuring timely settlement of cross-border trades. Moreover, both direct and indirect market participants should have in place the internal automation that is necessary to take full advantage of the available STP solutions. In this respect, investment firms should offer their professional clients the possibility of sending confirmations and allocation details electronically, in particular by using international open communication procedures and standards for messaging and reference data. Furthermore, CSDs should facilitate STP and, when processing settlement instructions, should use processes designed to work on an automated basis by default.
- (6) A CSD should also offer matching possibilities throughout the day to promote settlement early on the intended settlement date.
- (7) A CSD should require from participants to its securities settlement system that they use a list of mandatory matching fields for the matching of settlement instructions to facilitate settlement and to ensure consistency across securities settlement systems.
- (8) CSDs should have sound and efficient system functionalities, policies and procedures that enable them to facilitate and incentivise settlement on the intended settlement date.
- (9) A CSD should give participants real-time access to information on the status of their settlement instructions in the securities settlement system it operates to encourage and incentivise timely settlement by participants.
- (10) A CSD should offer participants to its securities settlement system real-time gross settlement (RTGS) or at least several daily settlement possibilities throughout every business day, in order to complete final settlement intraday.
- (11) The obligation for a CSD to have system functionalities should depend on the settlement efficiency of a CSD. Certain system functionalities should therefore not be compulsory if the value and the rate of settlement fails in the securities settlement system operated by the CSD do not exceed certain predefined low thresholds.
- (12) To facilitate the monitoring of settlement fails, a CSD should use a harmonised methodology to report settlement fails to the competent authorities and relevant authorities. That methodology should cover a common list of items to be reported as well as the frequency of the reports. Settlement instructions entered into the securities settlement system operated by the CSD should be monitored for each day until they have either been settled or cancelled.
- (13) A CSD should set up working arrangements with the participants with the highest rates of settlement fails, as well as, if feasible, with relevant central counterparties (CCPs) and trading venues, in order to identify the main reasons for settlement fails.

- (14) Competent authorities should have access to additional information on settlement fails or be entitled to request more frequent reporting so that they can perform their tasks. Competent authorities receiving more detailed or more frequent information on settlement fails should share that information with the relevant authorities without undue delay.
- (15) It is necessary to set out detailed provisions concerning the identification of all transactions that remain unsettled after the intended settlement date, the implementation of the buy-in process where applicable, and the application of the penalty mechanisms established by a CSD, including the time of calculation and the collection and distribution of cash penalties, so that a consistent application of requirements on settlement discipline for CSDs can be ensured.
- (16) CSDs should use a single template for disclosing settlement fails data to the general public to promote transparency and facilitate the comparability of settlement fails across the EU.
- (17) Rules set out on the processes for the collection and distribution of cash penalties for settlement fails should be applied in coherence with the delegated act referred to in Regulation (EU) No 909/2014 that specifies the parameters for the calculation of the level of cash penalties.
- (18) Cash penalties should be charged and collected by CSDs on a regular basis and at least once a month, to ensure that the cash penalties for settlement fails are applied consistently. Since a participant may also act as an agent for his clients, the relevant CSD should provide him with sufficient details regarding the penalty calculation to enable him to recover the cash penalty from his underlying clients.
- (19) It is important that the cash penalty levied in the event of a settlement fail does not constitute a source of revenue for a CSD. The cash penalty should therefore be paid into a separate account of the CSD, which should be used exclusively for the collection and distribution of those penalties. The penalties collected should neither be used to finance the implementation, maintenance and operation of the penalty mechanism.
- (20) The risk profile of a CSD should not be altered due to its operation of the penalty mechanism. A CSD should therefore not face credit risks that stem from the failure of participants to pay the cash penalty due.
- (21) In certain cases, a transaction may be part of a chain of further transactions, in which case a settlement instruction may depend on another one and the settlement of one instruction may allow the settlement of several instructions down the chain. The fail of one settlement instruction may thus have knock-on effects, resulting in the failure of subsequent settlement instructions. Due regard should therefore be had to chains of settlement instructions, by requiring that the full amount of the cash penalty is distributed through the chain up to the participant that suffered from the settlement fail.
- (22) For practical reasons and in order to limit the number of cash transfers, CSDs should net the amount due to a participant against the amount to be paid by that same participant. A CSD should provide the participant sufficient information on the calculation of the

amounts he is to receive to enable him, where appropriate, to transfer the amounts due to his clients.

- (23) The penalty mechanism should apply to all failed transactions including cleared transactions. Where the failing participant is a CCP, however, the penalty should not be due by that CCP, but by the relevant clearing member. For that purpose, the CSD should provide the CCP with all the necessary information on the settlement fail and the calculation of the penalty to enable the CCP to charge a penalty to the relevant clearing member and to redistribute the collected amount to the clearing member that suffered from the subsequent settlement fail on the same financial instruments.
- (24) When CSDs use a common settlement infrastructure, they should work closely together to ensure the appropriate implementation of the penalty mechanism.
- (25) In order to support an integrated market for securities settlement, the buy-in process should be harmonised. Given the importance of incentivising timely actions to address settlement fails, it is important to keep all relevant involved parties informed during the buy-in process.
- (26) A settlement instruction may fail for the entire quantity of financial instruments included in that instruction, even if some of the financial instruments are available for delivery in the account of the failing participant. As the purpose of a buy-in process is to improve settlement efficiency and in order to minimise the number of buy-ins, an appropriate buy-in process should be subject to the mandatory application of partial settlement to the relevant settlement instruction.
- (27) Mandatory partial settlement on the last business day of the extension period strikes the right balance between the rights of the buyer to receive the financial instruments initially acquired and the need to minimise the number of financial instruments subject to buy-in. For the same reason, every bought-in financial instrument should be delivered, even if the bought-in quantity does not allow for the full settlement of the relevant settlement instruction.
- (28) Mandatory partial settlement should not apply to settlement instructions that have been put on hold by a participant, because in such case the financial instruments in the respective account may not belong to the client for which the settlement instruction has been entered into the securities settlement system.
- (29) In order to reinforce the obligations set out in Regulation (EU) No 909/2014 and in this Regulation, all parties in the settlement chain should implement appropriate contractual arrangements with their relevant counterparties, which should incorporate the buy-in process obligations, and which should be enforceable in all relevant jurisdictions. Legal opinions may be used in order to certify that the contractual arrangements are enforceable in all relevant jurisdictions.
- (30) In order to improve settlement efficiency, an appropriate buy-in process should be subject to the initial verification that the buy-in is possible in respect of the relevant transactions and parties thereto, run up to the delivery of the relevant financial instruments or to the

notification of the cash compensation to be due, and to the cancellation of the relevant settlement instruction.

- (31) The buy-in process should provide for a way to address settlement fails without increasing the risk profile of CSDs or trading venues. A CSD or a trading venue should, therefore, not execute the buy-in on its own account.
- (32) Given the different entities that may be involved in the buy-in process, all entities need to be informed of the status of the buy-in process at key points in time. This information should be exchanged by way of a notification in order for the relevant entities to be alerted on the status of the actions to settle the transaction and take further action as need be.
- (33) For transactions that are not cleared by a CCP, in order to set up an efficient buy-in process and to avoid that other parties or participants become liable for obligations contracted by the trading parties or trading venue members, the parties that originally concluded the relevant transaction should be responsible for the execution of the buy-in.
- (34) Given that the buy-in agent should act upon request of a party that does not bear the related costs, the buy-in agent should act according to best execution requirements and protect the interest of the failing clearing member, trading venue member or trading party.
- (35) In order to limit the number of buy-ins and preserve the liquidity of the market for the relevant financial instruments, the failing clearing member, trading venue member or trading party, as applicable, should be allowed to deliver the relevant financial instruments to the CCP, the receiving trading venue members or trading parties through their participant up to the moment when the failing clearing member, trading venue member or trading party is informed that the buy-in agent is appointed or an auction is launched. As from that point in time, in order to prevent a situation where the receiving clearing member, trading venue member or trading party would receive twice the financial instruments, the failing clearing member, trading venue member or trading party should be able to take part in the auction or to deliver the financial instruments to the buy-in agent exclusively and subject to its prior consent. As a transaction may in some cases be part of a chain of transactions and result in different settlement instructions, in order to avoid having a buy-in performed for each settlement fail along the chain, the parties involved in the buy-in process may coordinate their actions amongst themselves and inform the CSD accordingly.
- (36) Transactions not cleared by a CCP are generally uncollateralised; therefore each trading party or trading venue member bears the counterparty risk. Moving this risk to other entities such as the failing participants would force the latter to cover their exposure to counterparty risk with collateral. This market development could transform uncollateralised transactions into collateralised ones and would increase the costs of securities settlement in a disproportionate manner. The failing trading party or failing trading venue member, as applicable, should therefore be primarily responsible for the payment of the buy-in costs, the related price difference and the cash compensation. The failing participants should, however, cover the buy-in costs and the related price

difference when the failing trading parties or trading venue members do not pay such costs in accordance with their obligations. Where the buy-in fails or is not possible, the failing participant should not be called to pay the cash compensation in case the failing trading party or trading venue member does not fulfil its obligation, given that the responsibility for the payment lies on the latter and it should not be transferred to the participant.

- (37) The receiving participant should receive the bought-in financial instruments, cash compensation, or any price difference in the financial instruments subject to buy-in for the account of the CCP, the receiving clearing members, trading venue members or trading parties that it represents. Where this Regulation refers to delivery obligations of the bought-in financial instruments, or to payment obligations of the cash compensation or of any price difference in the financial instruments subject to buy-in, of the CCPs, failing clearing members, trading venue members and trading parties, the settlement of such obligations should therefore ultimately be performed through the reception of financial instruments or cash by the receiving participants.
- (38) With the aim to balance the uncertainty resulting from the buy-in and the interests of the parties to complete the transaction, in case the buy-in fails, and in the absence of express communication on whether to extend the buy-in period within the prescribed timeframe, cash compensation should be paid.
- (39) In order to protect the CCP, receiving trading venue member or receiving trading party, the bought-in financial instruments should be delivered directly to the CCP, receiving trading venue member or receiving trading party, as applicable, and the initial settlement instruction that triggered the buy-in process should be put on hold and eventually cancelled.
- (40) In order to calculate and apply penalties for settlement fails appropriately after the end of the extension period, relevant settlement instructions should be cancelled and substituted with new settlement instructions each business day on which financial instruments are received by CCPs, trading venue members or trading parties, as applicable, as a result of a buy-in execution. Cash penalties should apply to each new settlement instruction from the day it is entered into the securities settlement system.
- (41) To ensure a smooth functioning of securities settlement systems operated by CSDs, the certainty of the timeline of the buy-in process as well as of the timeline of the payment of the cash penalties for settlement fails, the relevant settlement instructions should be cancelled upon delivery of the financial instruments or, if they are not delivered, upon the payment of the cash compensation or at the latest on the second business day after the notification of the amount of cash compensation due.
- (42) In case the price of the financial instruments agreed at the time of the trade is higher than the price paid at the execution of the buy-in, the price difference is in favour of the receiving clearing member, trading venue member or trading party, as applicable, and should not be paid twice, given that the receiving clearing member, trading venue member or trading party, as applicable, would not pay the price agreed at the time of the

trade as the initial settlement instruction, that triggered the buy-in process, would be cancelled, but only the price due for the execution of the buy-in.

- (43) In order to ensure an efficient settlement process, the extension period, which takes place before the launch of the buy-in process, should be sufficiently long and depend on the asset type and liquidity of the financial instruments. Where shares have a sufficiently liquid market to be easily sourced, the extension period before the launch of the buy-in process should not be extended, in order to provide an incentive to the relevant parties to settle failed transactions in a timely manner. To the contrary, shares that do not have a liquid market should benefit from a longer extension period. Debt instruments should also benefit from a longer extension period given their greater cross-border dimension or importance for the smooth and orderly functioning of the financial markets, allowing more time to the relevant parties to obtain the assets that failed to be settled.
- (44) Given that the measures to address settlement fails related to buy-in and penalties may require significant IT system changes, market testing and adjustments to legal arrangements between the parties concerned, including CSDs and other market participants, sufficient time should be allowed for the application of the relevant measures, to ensure that the CSDs and other parties concerned meet the necessary requirements.
- (45) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission.
- (46) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁴, ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of that Regulation. In developing the draft regulatory technical standards on which this Regulation is based, ESMA has also worked in close cooperation with the members of the European System of Central Banks,

HAS ADOPTED THIS REGULATION:

⁴ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

CHAPTER I

Article 1

Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) ‘clearing member’ means an undertaking as defined in point (14) of Article 2 of Regulation (EU) 648/2012 of the European Parliament and of the Council;
- (b) ‘exchange-traded fund (ETF)’ means a fund as defined in point (46) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council;
- (c) ‘execution of orders’ means ‘execution of orders on behalf of clients’ as defined in point (5) of Article 4(1) of Directive 2014/65/EU;
- (d) ‘insolvency proceedings’ when used in respect of a trading venue member or in respect of a trading party means any collective measure provided for in the law of a Member State, or a third country, either to wind up the trading venue member or trading party, as applicable, or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments;
- (e) ‘retail client’ means a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU;
- (f) ‘settlement instruction’ means a transfer order as defined in point (i) of Article 2 of Directive 98/26/EC of the European Parliament and of the Council;
- (g) ‘trading party’ means a party acting as principal in a securities transaction referred to in point (c) of the first sub-paragraph of Article 7(10) of Regulation (EU) No 909/2014;
- (h) ‘trading venue member’ means a member or a participant of a trading venue.

CHAPTER II

MEASURES TO PREVENT SETTLEMENT FAILS

Article 2

Measures concerning professional clients to limit the number of settlement fails

1. An investment firm authorised pursuant to Article 5 of Directive 2014/65/EU of the European Parliament and of the Council⁵ (‘investment firm’) shall require its professional client to send it written allocations of securities or of cash to the transactions referred to in

⁵Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Article 5(1) of Regulation (EU) No 909/2014 for the accounts of that client that have to be credited or debited. That allocation shall specify the following:

- (a) the type of transaction, either ;
 - (i) purchase or sale of securities;
 - (ii) collateral management operations;
 - (iii) securities lending/borrowing operations;
 - (iv) repurchase transactions; or
 - (v) other transactions, which can be identified by more granular ISO codes;
- (b) the International Securities Identification Number (ISIN) of the financial instrument or where the ISIN is not available, some other identifier of the financial instrument;
- (c) the delivery or the receipt of financial instruments or cash;
- (d) nominal value for debt instruments, and quantity for other financial instruments;
- (e) the trade date;
- (f) the trade price of the financial instrument;
- (g) the currency in which the transaction is expressed;
- (h) the intended settlement date of the transaction;
- (i) the total amount of cash that is to be delivered or received;
- (j) the identifier of the entity where the securities are held;
- (k) the identifier of the entity where the cash is held;
- (l) the securities account name/number and/or cash account name/number;

The written allocation shall also contain all other information required by the investment firm for facilitating the settlement of the transaction.

The investment firm that has received the confirmation of the execution of a transaction order placed by a professional client shall ensure through contractual arrangements that this professional client confirms in writing its acceptance of the terms of the transaction within the timeframes set out in paragraph 2. That written confirmation may also be included in the allocation.

An investment firm shall offer its professional clients the possibility to send the allocation and the written confirmation electronically, through the international open communication procedures and standards for messaging and reference data referred to in Article 35 of Regulation (EU) No 909/2014.

2. The allocation and written confirmation referred to in paragraph 1 shall reach the investment firm:

- (a) on the business day within the time zone of the investment firm on which the transaction has taken place; or,

(b) at the latest by 12.00 CET of the business day following the business day on which the transaction has taken place:

- (i) where there is a difference of more than two hours between the time zone of the investment firm and the time zone of the relevant professional client; or
- (ii) where the orders have been executed after 16.00 CET of the business day in the time zone of the investment firm.

The investment firm shall confirm to the professional client receipt of the allocation and of the written confirmation within two hours of that receipt. Where the allocation and the written confirmation reaches the investment firm later than one hour before the investment firm's close of business, the investment firm shall confirm receipt of the allocation and of the written confirmation within one hour after the start of business on the next business day.

3. Where the investment firm has received the necessary settlement information for a transaction referred to in paragraphs 1 and 2 in advance of the timeframes referred to in paragraph 2, it may agree in writing with the professional client that the allocation and written confirmation are not to be sent.

4. Paragraphs 1, 2 and 3 shall not apply to professional clients holding their relevant securities and cash at the investment firm.

Article 3

Measures concerning retail clients to limit the number of settlement fails

An investment firm shall require its retail clients to send it all the relevant settlement information for a transaction at the latest by 12.00 CET on the business day after the transaction has taken place in the time zone of the investment firm, unless that client holds the relevant financial instruments and cash at the investment firm.

Article 4

Settlement facilitation and processing

1. A CSD shall process all the settlement instructions on an automated basis.

2. A CSD that has intervened manually in the automated settlement process shall report each new type of manual intervention to the competent authority within 30 days of its occurrence.

A manual intervention occurs:

- (a) when the feed of a received settlement instruction into the securities settlement system has been delayed or modified or when that settlement instruction itself has been modified outside of the automated procedures.
- (b) when in the processing of received settlement instructions in the settlement engine an intervention takes place outside of the automated procedures, including the management of IT incidents.

The CSD shall not use any type of manual intervention that the competent authority considers inappropriate for the smooth functioning of the securities settlement system.

Article 5

Matching and population of settlement instructions

1. A CSD shall provide to participants a functionality to support fully automated, continuous real-time matching of settlement instructions throughout each business day.
2. A CSD shall require that settlement instructions sent by participants be matched through the functionality referred to in paragraph 1 prior to their settlement, except:
 - (a) where the CSD has accepted that the settlement instruction has already been matched by trading venues, CCPs or other entities;
 - (b) where the CSD itself has matched the settlement instruction;
 - (c) in the case of free of payment (FoP) settlement instructions referred to under Article 13(1)(i)(i), which consist of orders for transfers of financial instruments between different accounts opened in the name of the same participant or managed by the same account operator.

An account operator referred to in subparagraph (c) shall include an entity that has a contractual relationship with a CSD and that operates securities accounts maintained by that CSD by means of recording book entries into the securities accounts.

3. A CSD shall require from participants that they use the following matching fields in their settlement instructions for the matching of settlement instructions:
 - (a) the type of settlement instruction, as referred to in point (h) of Article 13(1);
 - (b) the intended settlement date of the settlement instruction;
 - (c) the trade date;
 - (d) the currency except in the case of FoP settlement instructions;
 - (e) the settlement amount, except in the case of FoP settlement instructions;
 - (f) the nominal value for debt instruments, or the quantity for other financial instruments;
 - (g) the delivery or receipt of the financial instruments or cash;
 - (h) the ISIN of the financial instrument;
 - (i) the identifier of the participant that delivers the financial instruments or cash;
 - (j) the identifier of the participant that receives the financial instruments or cash;
 - (k) the identifier of the CSD of the participant's counterparty, in case of CSDs that use a common settlement infrastructure, including in the circumstances referred to in Article 30(5) of Regulation (EU) No 909/2014;
 - (l) other matching fields required by the CSD for facilitating the settlement of transactions.

4. In addition to the fields referred to under paragraph 3, CSDs shall require their participants to use in their settlement instructions a field indicating the transaction type based on the following taxonomy:

- (a) purchase or sale of securities;
- (b) collateral management operations;
- (c) securities lending/borrowing operations;
- (d) repurchase transactions; or
- (e) other transactions (which can be identified by more granular ISO codes as provided by the CSD).

Article 6

Tolerance levels

For the purpose of matching, a CSD shall set tolerance levels for settlement amounts.

The tolerance level shall represent the maximum difference between the settlement amounts in two corresponding settlement instructions that would still allow matching.

For settlement instructions in EUR, the tolerance level per settlement instruction shall be 2 EUR for settlement amounts of up to 100 000 EUR, and 25 EUR for settlement amounts of more than 100 000 EUR. For settlement instructions in other currencies, the tolerance level per settlement instruction shall be of equivalent amounts based on the official exchange rate of the ECB, where available.

Article 7

Cancellation facility

A CSD shall set up a bilateral cancellation facility that enables participants to cancel bilateral matched settlement instructions that form part of the same transaction.

Article 8

Hold and release mechanism

A CSD shall set up a hold and release mechanism that shall consist of:

- (a) a hold mechanism that allows pending settlement instructions to be blocked by the instructing participant for the purpose of settlement; and
- (b) a release mechanism that allows pending settlement instructions that have been blocked by the instructing participant to be released for the purpose of settlement.

Article 9

Recycling

A CSD shall recycle settlement instructions that have resulted in a settlement fail until they have been settled or bilaterally cancelled.

Article 10

Partial settlement

A CSD shall offer participants the option to settle their settlement instructions partially.

Article 11

Additional facilities and information

1. A CSD shall offer participants the possibility to be informed about a pending settlement instruction of their counterparties, either within one hour after the first unsuccessful attempt to match that instruction, or immediately after such an unsuccessful attempt when that attempt has been made within the five-hour period before the cut-off of the intended settlement date or after the intended settlement date.

2. A CSD shall provide participants access to real-time information on the status of their settlement instructions in its securities settlement system, and more specifically information on:

- (a) pending instructions, which can still settle on ISD;
- (b) failed settlement instructions, which cannot settle anymore on ISD;
- (c) fully settled settlement instructions;
- (d) partially settled settlement instructions, including the settled part and the missing part of either financial instruments or cash;
- (e) cancelled settlement instructions, including information whether it is cancelled by the system or by the participant.

For each of the categories of settlement instructions above, the following information shall be provided:

- (i) whether an instruction is matched or not matched;
- (ii) whether an instruction can settle partially;
- (iii) whether an instruction is on hold;
- (iv) where relevant, what the reasons are for instruction being pending or failing.

3. A CSD shall offer participants either real-time gross settlement (RTGS) throughout each business day or minimum three settlement batches per business day. The three settlement batches shall be spread across the business day in accordance with market needs evidenced through a request of the user committee of the CSD.

Article 12

Derogation

1. Articles 8 and 10 shall not apply where in the securities settlement system operated by the CSD the following conditions are both met:

- (a) the value of settlement fails does not exceed EUR 2.5 billion per year; and
- (b) the rate of settlement fails, based either on the number of settlement instructions or on the value of settlement instructions, is lower than 0.5 % per year.

The rate of settlement fails based on the number of settlement instructions shall be calculated by dividing the number of settlement fails by the number of settlement instructions entered into the securities settlement system during the relevant period.

The rate of settlement fails based on the value of settlement instructions shall be calculated by dividing the value in EUR of settlement fails by the value of settlement instructions entered into the securities settlement system during the relevant period.

2. Before 20 January of each year, the CSD shall assess whether the conditions referred to in the first paragraph have occurred and shall inform the competent authority of the results of that assessment in accordance with Annex II.

3. A CSD shall implement the requirements referred to in Articles 8 and 10 within one year after the moment when the assessment carried out by the CSD indicates that the following conditions are both met:

- (a) the value of settlement fails exceeds EUR 2.5 billion per year; and
- (b) the rate of settlement fails, based either on the number of settlement instructions or on the value of settlement instructions, is higher than 0.5 % per year.

CHAPTER III

MEASURES TO ADDRESS SETTLEMENT FAILS

SECTION 1

Monitoring settlement fails

Article 13

Details of the system monitoring settlement fails

1. A CSD shall establish a system that enables it to monitor the number and value of settlement fails for every intended settlement date, including the length of each settlement fail expressed in business days, and, for each settlement fail, the following information shall be gathered:

- (a) the reason for the settlement fail, based on the information available to the CSD;

- (b) any settlement restrictions through the blocking, reservation or earmarking of financial instruments that make them unavailable for settlement, or the blocking or reservation of cash that make it unavailable for settlement;
- (c) the type of financial instruments concerned by the settlement fail, within the following categories:
 - (i) transferable securities referred to in point (a) of Article 4(1)(44) of Directive 2014/65/EU;
 - (ii) sovereign debt referred to in Article 4(1)(61) of Directive 2014/65/EU;
 - (iii) transferable securities referred to in point (b) of Article 4(1)(44) of Directive 2014/65/EU, other than those mentioned under point ii);
 - (iv) transferable securities referred to in point (c) of Article 4(1)(44) of Directive 2014/65/EU;
 - (v) exchange-traded funds (ETFs);
 - (vi) units in collective investment undertakings, other than ETFs;
 - (vii) money-market instruments, other than those mentioned under point (ii);
 - (viii) emission allowances;
 - (ix) other financial instruments.
- (d) the type of transaction concerned by each settlement fail, within the following categories:
 - (i) purchase or sale of financial instruments;
 - (ii) collateral management operations;
 - (iii) securities lending/borrowing operations;
 - (iv) repurchase transactions;
 - (v) other transactions, which can be identified by more granular ISO codes as provided by the CSD.
- (e) the place of trading and of clearing of the concerned financial instruments, where applicable;
- (f) whether it is an intra-CSD settlement instruction, where the failing and the receiving parties are participants in the same securities settlement system; or
- (g) whether it is a cross-CSD settlement instruction, where the failing and the receiving parties are participants in two different securities settlement systems or one of the participants is a CSD.
- (h) the type of settlement instructions concerned by the settlement fail, within the following categories:
 - (i) FoP settlement instructions that consist of deliver free of payment (DFP) and receive free of payment (RFP) settlement instructions;

- (ii) delivery versus payment (DVP) and receive versus payment (RVP) settlement instructions.
 - (iii) delivery with payment (DWP) and receive with payment (RWP) settlement instructions;
 - (iv) payment free of delivery (PFOD) settlement instructions.
- (i) the type of securities accounts connected to the settlement fail, covering:
- (i) a participant's own account;
 - (ii) a participant's client individual account;
 - (iii) a participant's client's omnibus account.
- (j) the currency in which the settlement instructions are denominated.
2. A CSD shall set up working arrangements with the most relevant participants with the highest rates of settlement fails as referred to in Annex I as well as, if applicable, with relevant CCPs and trading venues, to analyse the main reasons for the settlement fails.

Article 14

Reports on settlement fails to public authorities

1. Before the end of the fifth business day of the following calendar month, a CSD shall report to the competent authority and the relevant authorities the information referred to in Annex I for the securities settlement systems it operates for each calendar month. That report shall include the relevant values in EUR. Where available, the official exchange rate of the ECB of the last day of the reporting period shall be used for conversion of those values into EUR.

A CSD shall report more frequently and provide additional information on settlement fails if so requested by the competent authority.

2. Before 20 January of each year, a CSD shall report to the competent authority and the relevant authorities the information referred to in Annex II, including the measures planned or taken by the CSD and the participants to improve the settlement efficiency of the security settlement systems it operates.

A CSD shall regularly monitor the application of the measures referred to in the first subparagraph and it shall provide the competent authority and the relevant authorities upon their request with any relevant findings resulting from such monitoring.

3. The information referred to in paragraphs 1 and 2 shall be provided in a machine-readable format.

4. The value of settlement instructions referred to in Annexes I to III shall be calculated as follows:

- (a) in the case of settlement instructions against payment, the settlement amount of the cash leg;

- (b) in the case of FoP settlement instructions, the market value of the financial instruments referred to in Article 32(4) or, if not available, the nominal value of the financial instruments.

Article 15

Public disclosure on settlement fails

The CSD shall publish on its website for free the information set out in Annex III for the securities settlement system it operates, including the relevant values in EUR.

Where necessary and available, the official exchange rate of the ECB on the last day of the reporting period shall be used for conversion of those values into EUR.

The information shall be published in a language customary in the sphere of international finance and shall be machine-readable.

SECTION 2

Cash Penalties

Article 16

Collection of cash penalties

1. The cash penalties shall be calculated and applied by the CSD for each settlement instruction that fails to settle. For the calculation of cash penalties, settlement instructions that fail to settle shall be deemed to include settlement instructions that have been put on hold by a participant.

When matching is required pursuant to Article 5(2) the cash penalty shall only be charged when settlement instructions are matched.

2. The cash penalty shall be calculated and applied at the end of each business day on which the settlement instruction fails to settle

3. Where a settlement instruction has been entered into the securities settlement system or has been matched after the intended settlement date, the cash penalty shall be calculated and applied as from the intended settlement date.

4. In case of settlement instructions matched after the intended settlement date, the cash penalty for the period between the intended settlement date and the business day prior to matching shall be paid by the last participant who has entered or modified the relevant settlement instruction in the securities settlement system.

5. A CSD shall charge and collect at least monthly the net amount of cash penalties to be paid by each participant. On a daily basis, the CSD shall provide to participants the details of the calculation of the penalties for every failed settlement instruction, indicating the account to which each failed settlement instruction refers.

6. A CSD shall receive the collected cash penalties into a dedicated cash account.

Article 17

Redistribution of cash penalties

1. The CSD shall redistribute to the receiving participants that suffered from a settlement fail the net amount of cash penalties that it has collected in accordance with Article 16, at least monthly.
2. On a daily basis, a CSD shall provide the receiving participants with the details of the calculation of the cash penalties for each failed settlement instruction, indicating the account to which the failed settlement instruction refers to.

Article 18

Penalty mechanism for a participant that is a CCP

1. A CSD shall not charge or redistribute a cash penalty for a settlement fail in respect of which a CCP is either a failing participant or a receiving participant.
2. Where paragraph 1 applies, on a daily basis, a CSD shall provide the CCP with the calculation of the cash penalties for the failed settlement instructions that the CCP has submitted to the CSD.
3. The CSD shall ensure that the CCP requests the clearing members that caused the settlement fails to pay to it the cash penalties referred to in paragraph 2.
4. The CSD shall ensure that the CCP redistributes the cash penalties received in accordance with paragraph 3 to the clearing members that suffered from the CCP's failure to deliver the relevant securities.
5. Every calendar month, the CCP shall report to the CSD on the penalties it has collected and redistributed.

Article 19

CSDs that use a common settlement infrastructure

CSDs that use a common settlement infrastructure, including in the circumstances referred to in Article 30(5) of Regulation (EU) No 909/2014, shall jointly manage the calculation, application, collection and redistribution of cash penalties. They shall establish the modalities for that calculation, application, collection and redistribution in accordance with Regulation (EU) No 909/2014.

Article 20

Costs of the penalty mechanism

1. A CSD shall not use the collected cash penalties to cover costs related to the penalty mechanism.

2. A CSD shall charge to the participants the costs of the penalty mechanism separately from the cash penalties. The amount of those costs shall be disclosed in detail to the participants. Those costs shall not be charged on the basis of gross penalties applied to each participant.

SECTION 3

Details of operation of the buy-in process

SUB-SECTION 1

General

Article 21

Buy-in not possible

A buy-in shall be deemed as not possible only in the following cases:

- (a) for transactions cleared by a CCP, where the relevant financial instruments no longer exist;
- (b) for transactions not cleared by a CCP, where the relevant financial instruments no longer exist or where the failing trading venue member or the failing trading party is subject to insolvency proceedings.

Article 22

Ineffective buy-in process

1. The following operations shall be deemed to be composed of several transactions as referred to in point (b) of Article 7(4) of Regulation (EU) No 909/2014:

- (a) operations where a party sells financial instruments against cash to another party ('first transaction'), with a commitment of the latter party to sell equivalent financial instruments to the former party for a price that is determined or determinable ('second transaction');
- (b) operations where a party transfers financial instruments to another party ('first transaction'), with a commitment of the latter party to return equivalent financial instruments to the first party ('second transaction').

2. Where an operation is composed of several transactions, the buy-in process shall be deemed to be ineffective where the intended settlement date of the second transaction is set within 30 business days after the intended settlement date of the first transaction.

Article 23

Mandatory application of partial settlement

1. Where, on the last business day of the extension period, some of the relevant financial instruments are available for delivery to the receiving participant and the partial functionality is offered by the CSD in accordance with Article 10, both the receiving and failing clearing members, trading venue members or trading parties, as applicable, shall partially settle the initial settlement instruction.
2. The first subparagraph shall not apply if the relevant settlement instruction is put on hold in accordance with Article 8.

Article 24

Buy-in agent

A buy-in agent shall not have any conflict of interest in the execution of buy-in and shall execute the buy-in on the terms most favourable to the failing clearing member, trading venue member or trading party, as applicable, in accordance with Article 27 of Directive 2014/65/EU.

Article 25

Contractual arrangements and procedures

1. All parties in the settlement chain shall be bound by appropriate contractual arrangements with their relevant counterparties incorporating the buy-in process obligations, as specified in paragraph 2 and shall set up the appropriate procedures, as specified in paragraph 3, in order to ensure they can implement the buy-in process without delay.
2. The contractual arrangements referred to in paragraph 1 shall fully incorporate the requirements and obligations set out in Article 7 of Regulation (EU) No 909/2014 and Articles 26 to 35 of this Regulation, as applicable. Each party in the settlement chain shall ensure that its contractual arrangements with its direct counterparties are enforceable in all relevant jurisdictions.
3. The procedures referred to in paragraph 1 shall ensure the CCPs, clearing members, trading venue members or trading parties, can perform their obligations, including the execution of the buy-in, the payment of cash compensation, of the price difference or of the buy-in costs within the required timeframes, as applicable.
4. The contractual arrangements and the procedures referred to in this Article shall ensure that the relevant parties in the settlement chain receive the necessary information in accordance with the timeframes specified in Articles 26 to 35 of this Regulation to exercise their rights and obligations.

5. The participants shall ensure through appropriate contractual arrangements with their clients that the obligation to comply with the buy-in requirements and in particular Articles 26 to 35 is included and enforceable in all relevant jurisdictions in respect of the relevant parties through the settlement chain.
6. If a transaction is part of a chain of transactions and settlement instructions, in order to avoid that a buy-in performed for each settlement fail along the chain, the parties involved in the buy-in process may coordinate their actions amongst themselves and inform the CSD accordingly.
7. The delivery of bought-in financial instruments to the CCP, the receiving clearing members, trading venue members or trading parties shall be settled in the securities settlement system operated by the CSD through reception of financial instruments by the receiving participants acting on behalf of the CCP, the receiving clearing members, trading venue members and trading parties.
8. The payment of the cash compensation referred to in Article 33 or of the price difference referred to in Article 35(2) to the CCP, the receiving clearing members, trading venue members or trading parties shall be settled through reception of cash by the receiving participants acting on behalf of the CCP, the receiving clearing members, trading venue members and trading parties.

SUB-SECTION 2

Buy-in process for transactions cleared by a CCP

Article 26

Initial verification

1. On the business day following the expiry of the extension period, a CCP shall verify whether buy-in is not possible in accordance with Article 21(a) for any of the transactions cleared by it.
2. Where a buy-in is not possible, the CCP shall notify the amount of the cash compensation calculated in accordance with Article 32 to the failing clearing member. The cash compensation shall be paid in accordance with Article 33(1).
3. Where buy-in is possible, Article 27 shall apply.

Article 27

Buy-in

1. On the day referred to in Article 26(1), the CCP shall launch an auction or appoint a buy-in agent and notify the failing and receiving clearing members.
2. Prior to the receipt of the notification referred to in paragraph 1, the failing clearing member may deliver the financial instruments to the CCP.
3. Following the receipt of a notification referred to in paragraph 1 of appointment of a buy-in agent, the failing clearing member may only deliver the financial instruments to the buy-in agent provided the buy-in agent gives its prior consent to the delivery.

Following the receipt of a notification referred to in paragraph 1 of launch of an auction, the failing clearing member may only deliver the financial instruments to the CCP where the failing clearing member is awarded the auction.

Following the receipt of a notification referred to in paragraph 1, the failing clearing member shall ensure that the relevant settlement instruction relating to the settlement fail is put on hold.

4. At the latest on the last business day of the period determined in accordance with Article 37, the CCP shall notify the results of the buy-in to the failing and receiving clearing members.
5. Where the buy-in is successful in part or in full, the notification referred to in paragraph 4 shall indicate the quantity and price of the bought-in financial instruments.

The CCP shall accept the financial instruments delivered by the buy-in agent or resulting from the auction, pay the price for the delivered financial instruments, subject to the conditions set out in Article 35, and ensure that the bought-in financial instruments are delivered to the receiving clearing members.

At the end of each business day on which bought-in financial instruments are received by the CCP, the CCP shall ensure that the relevant settlement instructions relating to the settlement fail are cancelled and new settlement instructions are entered into the securities settlement system for the non-delivered financial instruments. Cash penalties shall apply to each such new settlement instruction from the day it is entered into the securities settlement system.

6. On the last business day of the period determined in accordance with Article 37, where the buy-in fails, the notification referred to in paragraph 4 shall indicate whether the execution of the buy-in shall be deferred or cash compensation shall be due. In the absence of such indication, cash compensation shall be due.

On the last business day of the period determined in accordance with Article 37, where the buy-in is successful only in part, the notification referred to in paragraph 4 shall indicate whether, for the non-delivered financial instruments, the execution of the buy-in shall be deferred or cash compensation shall be due. In the absence of such indication, cash compensation shall be due.

7. Where the CCP chooses to receive cash compensation, it shall also indicate the amount of such cash compensation it has determined in accordance with Article 32.

The CCP shall pay the cash compensation to the receiving clearing members in accordance with Article 33(1) and shall ensure that the relevant settlement instructions relating to the settlement fail are cancelled upon the payment of the cash compensation or, at the latest, on the second business day after the notification of the amount of cash compensation.

8. Where the CCP chooses to defer the execution of the buy-in, it shall notify the results of the buy-in to the failing and receiving clearing members at the latest on the last business day of the deferral period referred to in Article 38.
9. Where, during the deferral period referred to in Article 38, the buy-in is successful in part or in full, the notification referred to in paragraph 8 shall contain all information referred to in paragraph 5, and the CCP shall proceed in accordance with paragraph 5 with respect to the bought-in financial instruments and each relevant settlement instruction.
10. On the last business day of the deferral period referred to in Article 38, where the buy-in fails or is only successful in part, the notification referred to in paragraph 8 shall also indicate the amount of the cash compensation corresponding to the non-delivered financial instruments determined by the CCP in accordance with Article 32.

The CCP shall pay the cash compensation to the receiving clearing members in accordance with Article 33(1) and shall ensure that the relevant settlement instructions relating to the settlement fail are cancelled upon the payment of the cash compensation or, at the latest, on the second business day after the notification of the amount of cash compensation.

11. The CCP shall provide to the CSD without delay the information notified pursuant to paragraphs 4 and 8 and the information allowing the CSD to identify each new settlement instruction referred to in paragraphs 5 and 9.

SUB-SECTION 3

Buy-in process for transactions not cleared by a CCP but executed on a trading venue

Article 28

Initial verification

1. For transactions not cleared by a CCP but executed on a trading venue, the receiving participant, through its clients, shall inform without undue delay the receiving trading venue member of the existence of a settlement fail.

Upon request from the receiving trading venue member, the trading venue shall disclose to it the identity of the failing trading venue members.

The receiving trading venue member shall verify on the business day following the expiry of the extension period, whether the buy-in is not possible in accordance with Article 21(b).

2. Where buy-in is not possible, the receiving trading venue member shall notify the failing trading venue member the results of the verification in accordance with Article 21(b) and the amount of cash compensation calculated in accordance with Article 32. The cash compensation shall be paid in accordance with Article 33(2).

3. Where buy-in is possible, Article 29 shall apply.

Article 29

Buy-in

1. On the day referred to in Article 28(1), the receiving trading venue member shall appoint a buy-in agent and notify the failing trading venue member.
2. Prior to the receipt of the notification referred to in paragraph 1, the failing trading venue member may deliver the financial instruments directly to the receiving trading venue member
3. Following the receipt of the notification referred to in paragraph 1, the failing trading venue member may only deliver the financial instruments to the buy-in agent provided the buy-in agent gives its prior consent to the delivery.

Following the receipt of a notification referred to in paragraph 1, the failing trading venue member shall ensure that the relevant settlement instruction relating to the settlement fail is put on hold.

4. At the latest on the last business day of the applicable period referred to in Article 37, the receiving trading venue member shall notify the results of the buy-in to the failing trading venue member.
5. Where the buy-in is successful in part or in full, the notification referred to in paragraph 4 shall indicate the quantity and price of the financial instruments.

The receiving trading venue member shall accept the financial instruments delivered by the buy-in agent and shall pay the price for the delivered financial instruments, subject to the conditions set out in Article 35.

At the end of each business day on which bought-in financial instruments are received by the receiving trading venue member, the receiving and failing trading venue members shall ensure the relevant settlement instructions relating to the settlement fail are cancelled and that new settlement instructions are entered into the securities settlement system for non-delivered financial instruments. Cash penalties shall apply to each new settlement instruction from the day when it is entered into the securities settlement system.

6. On the last business day of the applicable period referred to in Article 37, where the buy-in fails or is successful only in part, the notification referred to in paragraph 4 shall indicate whether, for the non-delivered financial instruments, the execution of the buy-in shall be deferred or cash compensation shall be due. In the absence of such indication, cash compensation shall be due.
7. Where the receiving trading venue member chooses to receive cash compensation, the notification referred to in paragraph 4 shall indicate the amount of the cash compensation it has determined in accordance with Article 32.

The failing trading venue member shall pay the cash compensation in accordance with Article 33(2) and both the failing and receiving trading members shall ensure that the relevant settlement instructions relating to the settlement fail are cancelled upon the payment of the cash compensation or at the latest on the second business day after the notification of the amount of cash compensation.

8. Where the receiving trading venue member chooses to defer the execution of the buy-in, it shall notify the results of the buy-in to the failing trading venue member at the latest on the last business day of the deferral period referred to in Article 38.
9. Where, during the deferral period referred to in Article 38, the buy-in is successful in part or in full, the notification referred to in paragraph 8 shall indicate all information referred to in paragraph 5, and the receiving trading venue member, and failing trading venue member as applicable, shall proceed in accordance with paragraph 5 with respect to the bought-in financial instruments and each relevant settlement instruction.
10. On the last business day of the deferral period referred to in Article 38, where the buy-in fails or is successful in part only, the notification referred to in paragraph 8 shall also indicate the amount of cash compensation that the receiving trading venue member has determined in accordance with Article 32 in respect for non-delivered financial instruments.

The failing trading venue member shall pay the cash compensation in accordance with Article 33(2) and both the failing and receiving trading members shall ensure that the relevant settlement instructions relating to the settlement fail are cancelled upon the payment of the cash compensation or, at the latest, on the second business day after the notification of the amount of cash compensation.
11. The receiving trading venue member shall provide to the CSD without delay the information notified pursuant to paragraphs 4 and 8 and the information necessary to identify each new settlement instruction referred to in paragraphs 5 and 9.

SUB-SECTION 4

Buy-in process for transactions not cleared by a CCP and not executed on a trading venue

Article 30

Initial verification

1. The receiving participant, through its clients, shall inform without undue delay the receiving trading party of the existence of a settlement fail. The receiving trading party shall verify, on the business day following the expiry of the extension period, whether the buy-in is not possible in accordance with Article 21(b).
2. Where buy-in is not possible, the receiving trading party shall notify to the failing trading party the reason why buy-in is not possible and the amount of the cash compensation it has calculated in accordance with Article 32. The cash compensation shall be paid in accordance with Article 33(2).
3. Where buy-in is possible, Article 31 shall apply.

Article 31

Buy-in

1. On the day referred to in Article 30(1), the receiving trading party shall appoint a buy-in agent and notify the failing trading party.
2. Prior to the receipt of the notification referred to in paragraph 1, the failing trading party may deliver the financial instruments to the receiving trading party.
3. Following the receipt of the notification referred to in paragraph 1, the failing trading party may only deliver the financial instruments to the buy-in agent provided the buy-in agent gives its prior consent to the delivery.

Following the receipt of a notification referred to in paragraph 1, the failing trading party shall ensure that the relevant settlement instruction relating to the settlement fail is put on hold.

4. At the latest on the last business day of the applicable period referred to in Article 37, the receiving trading party shall notify the results of the buy-in to the failing trading party.
5. Where buy-in is successful in part or in full, the notification referred to in paragraph 4 shall indicate the quantity and value of the financial instruments.

The receiving trading party shall accept the delivery of the financial instruments by the buy-in agent and shall pay the price for the delivered financial instruments subject to the conditions set out in Article 35.

At the end of each business day on which bought-in financial instruments are received by the receiving trading party, the receiving and failing trading parties shall ensure that the relevant settlement instructions relating to the settlement fail are cancelled and that new settlement instructions are entered into the securities settlement system for the non-delivered financial instruments. Cash penalties shall apply to each new settlement instruction from the day it is entered into the securities settlement system.

6. On the last business day of the applicable period referred to in Article 37, where the buy-in fails or results in partial settlement, the notification referred to in paragraph 4 shall also indicate whether, for the non-delivered financial instruments, the buy-in shall be deferred or cash compensation shall be due. In the absence of such indication, cash compensation shall be due.
7. Where the receiving trading party chooses to receive cash compensation, the notification referred to in paragraph 4 shall also indicate the amount of cash compensation corresponding to non-delivered financial instruments that it has determined in accordance with Article 32.

The failing trading party shall pay the cash compensation in accordance with Article 33(3) and both the failing and receiving trading parties shall ensure that the relevant settlement instructions relating to the settlement fail are cancelled upon the payment of the cash compensation or, at the latest, on the second business day after the notification of the amount of cash compensation.

8. Where the receiving trading party chooses to defer the execution of the buy-in, the receiving trading party shall notify the results of the buy-in to the failing trading party at the latest on the last business day of the deferral period referred to in Article 38.
9. Where, during the deferral period referred to in Article 38, the buy-in results in partial or full settlement, the notification referred to in paragraph 8 shall indicate all information referred to in paragraph 5, and the receiving trading party, and failing trading party as applicable, shall proceed in accordance with paragraph 5 with respect to the bought-in financial instruments and each relevant settlement instruction.

10. On the last business day of the deferral period referred to in Article 38, where the buy-in fails or is only partly successful, the notification referred to in paragraph 8 shall indicate the amount of the cash compensation for non-delivered financial instruments that the receiving trading party has determined in accordance with Article 32.

The failing trading party shall pay the cash compensation in accordance with Article 33(3) and both the failing and receiving trading parties shall ensure that the relevant settlement instructions relating to the settlement fail are cancelled upon the payment of the cash compensation or, at the latest, on the second business day after the notification of the amount of cash compensation.

11. The receiving trading party shall ensure that the CSD receives the information notified pursuant to paragraphs 4 and 8 and the information necessary to identify each new settlement instruction referred to in paragraphs 5 and 9.

SUB-SECTION 5

Calculation and payment of the cash compensation, of the buy-in costs and related price difference

Article 32

Calculation of the cash compensation

1. The cash compensation to be paid pursuant to Article 7(7) of Regulation (EU) No 909/2014 shall be calculated according to the methods set out in paragraphs 2 to 5.
2. The cash compensation shall be based on either of the following:
 - (a) the difference between the market value of the relevant financial instruments on the business day before the payment of the cash compensation, and the settlement amount included in the failed settlement instruction, for settlement instructions against payment;
 - (b) the difference between the market value of the relevant financial instruments on the business day before the payment of the cash compensation, and the market value of those financial instruments on the day when the transaction that failed to settle was executed, for settlement instructions free of payment.
3. Where not already included in the market value of the financial instrument, the cash compensation shall include a component reflecting exchange rates variation as well as corporate entitlements or accrued interest.
4. The market value referred to in paragraph 2 shall be determined as follows:
 - (a) for financial instruments referred to in Article 3(1) of Regulation (EU) No 600/2014 admitted to trading on a trading venue within the Union, the value determined on the basis of the closing price of the most relevant market in terms of liquidity referred to in Article 4(6)(b) of Regulation (EU) No 600/2014;

- (b) for financial instruments admitted to trading on a trading venue within the Union other than those referred to in point (a), the value determined on the basis of the closing price of the trading venue within the Union with the highest turnover;
 - (c) for financial instruments other than those referred to in points (a), and (b), the value determined on the basis of a price calculated using a pre-determined methodology approved by the competent authority of the CSD that refers to criteria related to market data, including market prices available across trading venues or investment firms.
5. The market value and the component reflecting corporate entitlements, accrued interest or exchange rates variation shall be disclosed in a detailed breakdown to clearing members, trading venue members and trading parties.
 6. Where the settlement amount included in the failed settlement instruction, for settlement instructions against payment, or the market value of the relevant financial instruments on the day when the transaction that failed to settle was executed, for settlement instructions free of payment, is equal or higher than the market value of the relevant financial instruments on the business day before the payment of the cash compensation and the mark-up referred to in paragraph 2, the cash compensation to be paid pursuant to Article 7(7) of Regulation (EU) No 909/2014 shall be null.

Article 33

Payment of the cash compensation

1. For transactions cleared by a CCP, the CCP shall charge the cash compensation to the failing clearing members and pay the receiving clearing members.
2. For transactions not cleared by a CCP but executed on a trading venue, the failing trading venue members shall pay the cash compensation to the receiving trading venue members.
3. For transactions that are not cleared by a CCP and not executed on a trading venue, the failing trading party shall pay the cash compensation to the receiving trading party.

Article 34

Payment of the costs of the buy-in

The amounts referred to in Article 7(8) of Regulation (EU) No 909/2014 shall be paid by the failing clearing members, trading venue members and trading parties, as applicable.

Article 35

Payment of the price difference

1. Where the price of financial instruments referred to in Article 5(1) of Regulation (EU) No 909/2014 agreed at the time of the trade is higher than the price paid for such financial instruments at the execution of the buy-in pursuant to Articles 27(5), 27(9), 29(5), 29(9), 31(5) and 31(9), the price difference in the case of shares referred to in Article 7(6) of Regulation (EU) No 909/2014 or the corresponding difference for other financial instruments referred to in Article 5(1) of Regulation (EU) No 909/2014 shall be deemed paid.
2. Where the price of financial instruments referred to in Article 5(1) of Regulation (EU) No 909/2014 agreed at the time of the trade is lower than the price paid for such financial instruments at the execution of the buy-in pursuant to Articles 27(5), 27(9), 29(5), 29(9), 31(5) and 31(9), the failing clearing members, trading venue members or trading parties shall be liable for the corresponding difference to the benefit of the CCP, receiving trading venue members or trading parties, as applicable.

For transactions cleared by a CCP, the CCP shall charge the price difference referred to in subparagraph 1 to the failing clearing members and pay the receiving clearing members.

SECTION 4

Timeframes for buy-in process

Article 36

Extension period

For the purpose of point (a) of Article 7(4) of Regulation (EU) No 909/2014, the extension period for the financial instruments referred to in Article 5(1) of Regulation (EU) No 909/2014 shall be increased from four to seven business days for all financial instruments other than shares that have a liquid market in accordance with point (b) of Article 2(1)(17) of Regulation (EU) No 600/2014.

Article 37

Timeframes for the delivery of financial instruments

The financial instruments referred to in the first subparagraph of Article 5(1) of Regulation (EU) No 909/2014 shall be delivered to receiving participants following the buy-in process acting on behalf of the CCP, the receiving clearing members trading venue members or trading parties within:

- (a) four business days after the extension period for shares that have a liquid market, in accordance with point (a) or point (b) of Article 2(1)(17) of Regulation (EU) No 600/2014;
- (b) seven business days after the extension period for financial instruments traded on SME growth markets and all other financial instruments.

Article 38

Timeframes in case of deferral of the execution of a buy-in

Where the CCP, the receiving trading venue member or receiving trading party chooses to defer the execution of the buy-in, the appropriate later date as referred in Article 7(7) of Regulation No 909/2014 for delivering the relevant financial instruments shall be determined in accordance with the timeframes referred to in Article 37.

SECTION 5

Systematic delivery failure

Article 39

Consistent and systematic failure to deliver securities

1. A participant shall be deemed to consistently and systematically fail to deliver in a security settlement system when its rate of settlement efficiency determined by reference to the number or to the value of settlement instructions is at least 15% lower than the rate of settlement efficiency of that securities settlement system over the last 12 months, during at least a relevant number of days.

The relevant number of days shall be determined for each participant as 10% of the number of days of activity of that participant in the security settlement system over the last 12 months.

2. When calculating a participant's rate of settlement efficiency, reference shall be made exclusively to settlement fails caused by that participant.

SECTION 6

Settlement information

Article 40

Settlement information for CCPs and trading venues

Based on the information included in the settlement instructions entered into the securities settlement system it operates, a CSD shall provide to the relevant CCPs and trading venues information concerning their settlement fails including the identification of the transactions, of the participants and of the relevant settlement instructions.

Article 41

Settlement information in the absence of direct transaction feed from the trading venue

For transactions executed on a trading venue which are not cleared by a CCP, and in the absence of a direct transaction feed from the trading venue to the CSD, the participant shall identify the trading venue and the transactions in its settlement instruction. In the absence of such information, the transactions shall be deemed not to be executed on a trading venue.

Article 42

Entry into force and application

This Regulation shall enter into force 24 months following the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

[For the Commission

On behalf of the President

[Position]

Annex I: Settlement fails reports to public authorities

I. A) GENERAL INFORMATION TO BE REPORTED BY CSDs TO THE COMPETENT AUTHORITIES AND RELEVANT AUTHORITIES

No.	Details to be reported	Format
1.	Country code for the jurisdiction in which the CSD is established	ISO 3166 2 character country code
2.	Securities settlement system operated by the CSD	Free text
3.	Reporting timestamp (CSD to competent authority/relevant authority)	ISO 8601 date in the UTC time format YYYY-MM-DDThh:mm:ssZ
4.	Reporting period: beginning and end dates of the period covered by the report	ISO 8601 date in the format YYYY-MM-DD-YYYY-MM-DD
5.	CSD Legal Entity Identifier	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code
6.	Corporate name of the CSD	Free text
7.	Name of the person responsible for the report sent by the CSD	Free text
8.	Function of the person responsible for the report sent by the CSD	Free text

9.	Phone number of the person responsible for the report sent by the CSD	Only numeric characters may be used. The phone number must be provided with the country code and the local area code. No special characters may be used.
10.	Email address of the person responsible for the report sent by the CSD	Email addresses must be supplied using the standard email address convention.
11.	Number of settlement instructions during the period covered by the report	Up to 20 numerical characters reported as whole numbers without decimals.
12.	Number of settlement fails during the period covered by the report (covering both settlement fails for lack of securities and lack of cash)	Up to 20 numerical characters reported as whole numbers without decimals.
13.	Rate of settlement fails based on volume (number of settlement fails/number of settlement instructions during the period covered by the report) (covering both settlement fails for lack of securities and lack of cash)	Percentage value up to 2 decimal places.
14.	Rate of settlement fails based on	Percentage value up to 2 decimal places.

	value (EUR) of settlement fails/value of settlement instructions during the period covered by the report) (covering both lack of securities and lack of cash)									
15.	Value of settlement instructions (EUR) during the period covered by the report	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character								
16.	Value of settlement fails (EUR) during the period covered by the report (covering both settlement fails for lack of securities and lack of cash)	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character								
17.	Top 10 participants with the highest rates of settlement fails during the period covered by the report (based on number of settlement instructions)	<table border="1"> <tr> <td>Participant LEI</td> <td>ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code</td> </tr> <tr> <td>Total number of settlement instructions per participant</td> <td>Up to 20 numerical characters reported as whole numbers without decimals.</td> </tr> <tr> <td>Number of settlement fails per participant</td> <td>Up to 20 numerical characters reported as whole numbers without decimals.</td> </tr> <tr> <td>Percentage of settlement fails</td> <td>Percentage value up to 2 decimal places</td> </tr> </table>	Participant LEI	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code	Total number of settlement instructions per participant	Up to 20 numerical characters reported as whole numbers without decimals.	Number of settlement fails per participant	Up to 20 numerical characters reported as whole numbers without decimals.	Percentage of settlement fails	Percentage value up to 2 decimal places
Participant LEI	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code									
Total number of settlement instructions per participant	Up to 20 numerical characters reported as whole numbers without decimals.									
Number of settlement fails per participant	Up to 20 numerical characters reported as whole numbers without decimals.									
Percentage of settlement fails	Percentage value up to 2 decimal places									

		Total value (EUR) of settlement instructions per participant	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
		Value (EUR) of settlement fails per participant	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
		Rate of settlement fails	Percentage value up to 2 decimal places.
18.	Top 10 participants with the highest rates of settlement fails during the period covered by the report (based on value (EUR) of settlement instructions)	For each participant identified by LEI:	
		Participant LEI	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code
		Total value (EUR) of settlement instructions per participant	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
		Value (EUR) of settlement fails per participant	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
		Percentage of settlement fails	Percentage value up to 2 decimal places
		Total number of settlement instructions per	Up to 20 numerical characters reported as whole numbers

		participant	without decimals.
		Number of settlement fails per participant	Up to 20 numerical characters reported as whole numbers without decimals.
		Rate of settlement fails	Percentage value up to 2 decimal places.
19.	Number of settlement instructions per currency in which the settlement instructions are denominated during the period covered by the report	For each ISO 4217 3 character Currency Code the volume will be expressed using up to 20 numerical characters reported as whole numbers without decimals.	
20.	Number of settlement fails per currency in which the settlement instructions are denominated during the period covered by the report	For each ISO 4217 3 character Currency Code the volume will be expressed using up to 20 numerical characters reported as whole numbers without decimals.	
21.	Rate of settlement fails per currency in which the settlement instructions are denominated, based on volume (number of settlement fails/number of settlement instructions per currency, during the period covered by the report)	For each ISO 4217 3 character Currency Code the rate shall be expressed as a percentage value up to 2 decimal places.	

22.	Value of settlement instructions per currency in which the settlement instructions are denominated during the period covered by the report	For each ISO 4217 3 character Currency Code the value shall be expressed using up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
23.	Value of settlement fails per currency in which the settlement instructions are denominated during the period covered by the report	For each ISO 4217 3 character Currency Code the value shall be expressed using up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
24.	Rate of settlement fails per currency in which the settlement instructions are denominated, based on value (value of settlement fails/value of settlement instructions per currency, during the period covered by the report)	For each ISO 4217 3 character Currency Code the rate shall be expressed as a percentage value up to 2 decimal places.
25.	Number of settlement instructions for each type of financial instruments during the period covered by the	For each type of financial instruments: Up to 20 numerical characters reported as whole numbers without decimals.

	report	
26.	Number of settlement fails (covering both settlement fails for lack of securities and lack of cash) for each type of financial instruments during the period covered by the report	For each type of financial instruments: Up to 20 numerical characters reported as whole numbers without decimals.
27.	Rate of settlement fails for each type of financial instruments, based on volume (number of settlement fails/ number of settlement instructions per each type of financial instruments, during the period covered by the report)	For each type of financial instruments the rate shall be expressed as a percentage value up to 2 decimal places.
28.	Value (EUR) of settlement instructions for each type of financial instruments	For each type of financial instruments the value shall be expressed using up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
29.	Value (EUR) of settlement fails (covering both lack of securities and lack of cash) for each type of financial instruments	For each type of financial instruments the value shall be expressed using up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.

30.	Rate of settlement fails for each type of financial instrument, based on value (value of settlement fails/value of settlement instructions for each type of financial instrument, during the period covered by the report)	For each type of financial instruments the rate shall be expressed as a percentage value up to 2 decimal places.
31.	Number of settlement instructions for each type of transactions during the period covered by the report	For each type of transactions the volume shall be expressed using up to 20 numerical characters reported as whole numbers without decimals.
32.	Number of settlement fails (covering both settlement fails for lack of securities and lack of cash) for each type of transactions during the period covered by the report	For each type of transactions the volume shall be expressed using up to 20 numerical characters reported as whole numbers without decimals.
33.	Rate of settlement fails for each type of transactions, based on volume (number of settlement fails/number of settlement instructions per each type of	For each type of transactions the rate shall be expressed as a percentage value up to 2 decimal places.

	transactions, during the period covered by the report)	
34.	Value (EUR) of settlement instructions for each type of transactions	For each type of transactions the value shall be expressed using up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
35.	Value (EUR) of settlement fails (covering both lack of securities and lack of cash) for each type of transactions	For each type of transactions the value shall be expressed using up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
36.	Rate of settlement fails for each type of transactions, based on value (value of settlement fails/value of settlement instructions for each type of transactions, during the period covered by the report)	For each type of transactions the rate shall be expressed as a percentage value up to 2 decimal places.
37.	Top 20 ISINs that are the object of settlement fails, based on the volume of settlement fails;	ISIN code
38.	Top 20 ISINs that are the object of settlement fails based on the	ISIN Code

	value (EUR) of settlement fails.	
39.	Total number of penalties referred to in Article 7(2) of Regulation (EU) No 909/2014, imposed by the CSD	Up to 20 numerical characters reported as whole numbers without decimals.
40.	Total value (EUR) of penalties referred to in Article 7(2) of Regulation (EU) No 909/2014, imposed by the CSD	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
41.	Average duration of settlement fails as number of days (difference between actual settlement date and intended settlement date, weighted for the value of the settlement fail)	Number of days reported as a whole number without decimals.
42.	Main reasons for settlement fails	Free text
43.	Measures to improve settlement efficiency	Free text

II. SETTLEMENT FAILS DAILY DATA

Date (for each reporting day in the month)															
				Failure to deliver securities						Failure to deliver cash					
				Settlement fails		Total Instructions		Rate of fails		Settlement fails		Total Instructions		Rate of fails	
				Volum e	Value (€)	Volum e	Value (€)	Volum e	Value (€)	Volum e	Value (€)	Volum e	Value (€)	Volum e	Value (€)
Type of financial instruments	Type of transaction	Internal vs Cross-system	Type of instruction												
Transferable securities referred to in point (a) of Article	Purchase or sale of financial instruments	Intra-CSD	DVP ⁶												
			DWP ⁷												
			PFOD												
			FoP												

⁶ Covers DVP and RVP settlement instructions

⁷ Covers DWP and RWP settlement instructions

4(1)(44) of Directive 2014/65/EU		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Collateral management operations	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Securities lending and securities borrowing	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Repurchase transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Other transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
Sovereign debt referred to in Article 4(1)(61) of Directive 2014/65/EU	Purchase or sale of financial instruments	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Collateral management operations	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Securities lending and securities borrowing	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Repurchase transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

EN

EN

	Cross-CSD	DVP													
		DWP													
		PFOD													
		FoP													
	Other transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
Transferable securities referred to in point (b) of Article	Purchase or sale of financial instruments	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

4(1)(44) of Directive 2014/65/EU other than sovereign debt referred to in Article 4(1)(61) of Directive 2014/65/EU	Cross-CSD	DVP													
		DWP													
		PFOD													
		FoP													
	Collateral management operations	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Securities lending and securities borrowing	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Repurchase transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Other transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
Transferable securities referred to in point (c) of Article 4(1)(44) of Directive 2014/65/EU	Purchase or sale of financial instruments	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Collateral management operations	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Securities lending and securities borrowing	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Repurchase transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

EN

EN

	Cross-CSD	DVP													
		DWP													
		PFOD													
		FoP													
	Other transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
Exchange-traded funds as defined in point (46) of Article	Purchase or sale of financial instruments	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

4(1) of Directive 2014/65/EU		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Collateral management operations	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Securities lending and securities borrowing	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Repurchase transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Other transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
Units in collective investment undertakings, other than ETFs	Purchase or sale of financial instruments	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Collateral management operations	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Securities lending and securities borrowing	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Repurchase transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

	Cross-CSD	DVP													
		DWP													
		PFOD													
		FoP													
	Other transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
Money market instruments other than Sovereign	Purchase or sale of financial instruments	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

debt referred to in Article 4(1)(61) of Directive 2014/65/EU		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Collateral management operations	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Securities lending and securities borrowing	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Repurchase transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Other transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

EN

EN

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
Emission allowances	Purchase or sale of financial instruments	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Collateral management operations	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

EN

EN

		Cross-CSD	DVP													
			DWP													
			PFOD													
			FoP													
	Securities lending and securities borrowing	Intra-CSD	DVP													
			DWP													
			PFOD													
			FoP													
		Cross-CSD	DVP													
			DWP													
			PFOD													
			FoP													
	Repurchase transactions	Intra-CSD	DVP													
			DWP													
			PFOD													
			FoP													

		Cross-CSD	DVP													
			DWP													
			PFOD													
			FoP													
	Other transactions	Intra-CSD	DVP													
			DWP													
			PFOD													
			FoP													
		Cross-CSD	DVP													
			DWP													
			PFOD													
			FoP													
Other financial instruments	Purchase or sale of financial instruments	Intra-CSD	DVP													
			DWP													
			PFOD													
			FoP													

EN

EN

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Collateral management operations	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Securities lending and securities borrowing	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

EN

EN

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Repurchase transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												
		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												
	Other transactions	Intra-CSD	DVP												
			DWP												
			PFOD												
			FoP												

		Cross-CSD	DVP												
			DWP												
			PFOD												
			FoP												

Annex II: Annual information to be reported by CSDs to the competent authorities and relevant authorities

No	Details to be published	Format
1.	Country code for the jurisdiction in which the CSD is established	ISO 3166 2 character country code
2.	Securities settlement system operated by the CSD	Free text
3.	Reporting timestamp (CSD to competent authority/relevant authority)	ISO 8601 date in the UTC time format YYYY-MM-DDThh:mm:ssZ
4.	Reporting period: beginning and end dates of the period covered by the report	ISO 8601 date in the format YYYY-MM-DD-YYYY-MM-DD
5.	CSD Legal Entity Identifier	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code
6.	Corporate name of the CSD	Free text
7.	Name of the person responsible for the report sent by the CSD	Free text
8.	Function of the person responsible for the report sent by the CSD	Free text
9.	Phone number of the person responsible for the report sent by the CSD	Only numerical characters may be used. The phone number must be provided with the country code and the local area code. No special characters may be used.
10.	Email address of the person responsible for the report sent by the CSD	Email addresses must be supplied using the standard email address convention.
11.	Measures to improve settlement efficiency	Free text

12.	Main reasons for settlement fails (annual summary of the reasons for settlement fails included in the monthly reports)	Free text
13.	Annual volume of settlement instructions	Up to 20 numerical characters reported as whole numbers without decimals.
14.	Annual volume of settlement fails (covering both settlement fails for lack of securities and lack of cash)	Up to 20 numerical characters reported as whole numbers without decimals.
15.	Annual rate of settlement fails based on volume (annual number of settlement fails/annual number of settlement instructions) (covering both settlement fails for lack of securities and lack of cash)	Percentage value up to 2 decimal places
16.	Annual value (EUR) of settlement instructions	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
17.	Annual value (EUR) of settlement fails (covering both settlement fails for lack of securities and lack of cash)	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character
18.	Annual rate of settlement fails based on value (annual value of settlement fails/annual value of settlement instructions) (covering both settlement	Percentage value up to 2 decimal places

	fails for lack of securities and lack of cash)	
--	--	--

Annex III: Reports on settlement fails to be made public

No.	Details to be published	Format
1	Reporting period	ISO 8601 date in the format YYYY-MM-DD-YYYY-MM-DD
2	CSD Legal Entity Identifier	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumeric character code
3	Securities settlement system operated by the CSD	Free text
4	Number of settlement instructions during the period covered by the report	Up to 20 numerical characters reported as whole numbers without decimals.
5	Value (EUR) of settlement instructions during the period covered by the report	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
Data on failure to deliver securities		
6	Number of settlement fails due to failure to deliver securities	Up to 20 numerical characters reported as whole numbers without decimals.
7	Value (EUR) of settlement fails due to failure to deliver securities	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
8	Rate of fails based on volume of settlement instructions	Percentage value up to 2 decimal places.
9	Rate of fails based on value of settlement instructions	Percentage value up to 2 decimal places.
Data on failure to deliver cash		
10	Number of settlement fails due to failure to deliver cash	Up to 20 numerical characters reported as whole numbers without decimals.

11	Value (EUR) of settlement fails due to failure to deliver cash	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
12	Rate of fails based on volume of settlement instructions	Percentage value up to 2 decimal places.
13	Rate of fails based on value (EUR) of settlement instructions	Percentage value up to 2 decimal places
Data covering both settlement fails for lack of securities and lack of cash		
14	Total number of settlement fails (covering both settlement fails for lack of securities and lack of cash)	Up to 20 numerical characters reported as whole numbers without decimals.
15	Total value (EUR) of settlement fails (covering both lack of securities and lack of cash)	Up to 20 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
16	Rate of fails based on volume of settlement instructions	Percentage value up to 2 decimals places
17	Rate of fails based on value of settlement instructions	Up to 5 numerical characters including decimals. At least one character before and one character after the decimal mark shall be populated. The decimal mark is not counted as a numerical character.
18	Measures to improve settlement efficiency	Free text

Annex IV

Impact Assessment