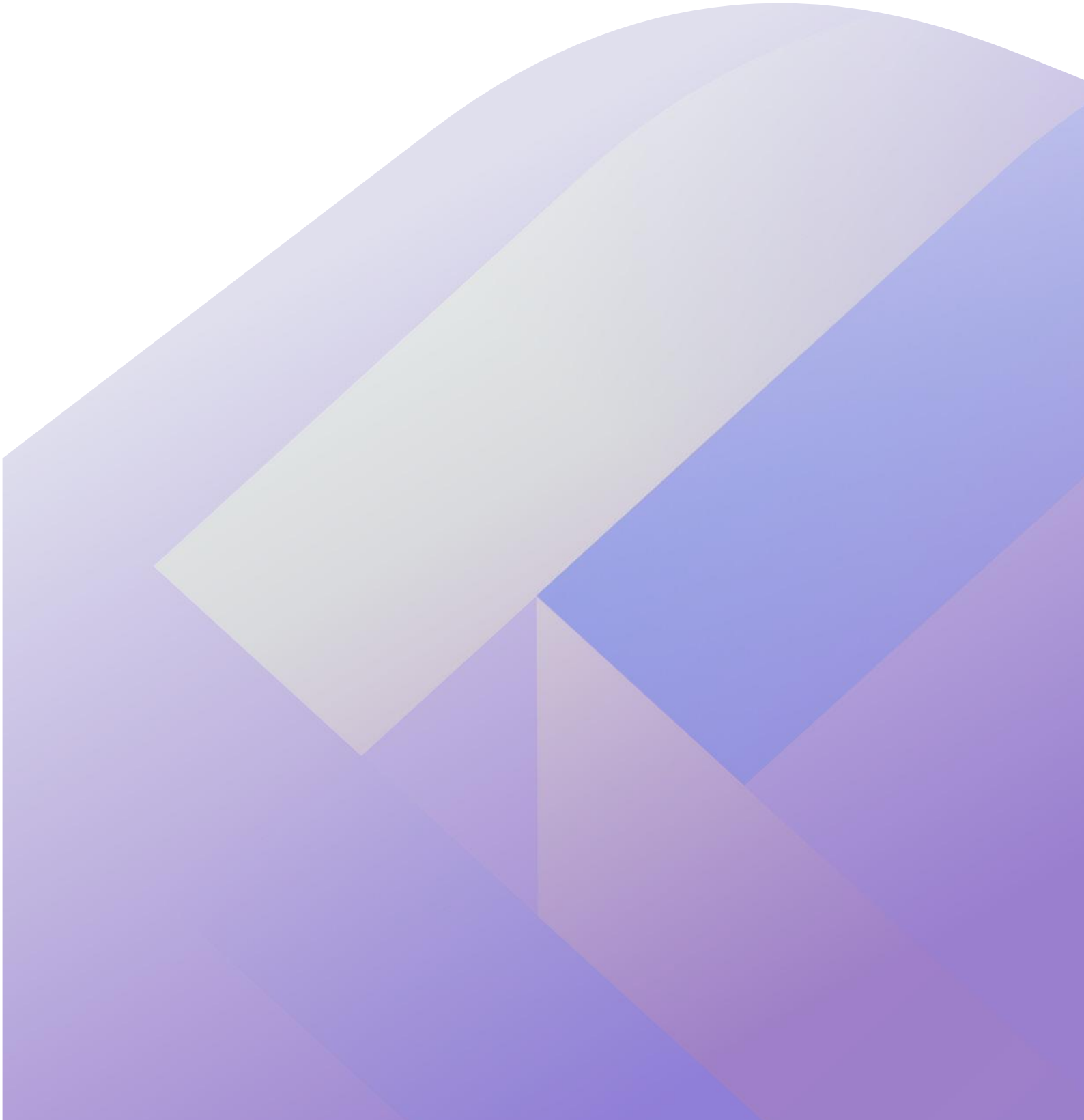
13 February 2025
ESMA74-2119945925-2117

Consultation Paper

On the Amendments to the RTS on Settlement Discipline



Responding to this paper

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

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

ESMA will consider all comments received by **14 April 2025.**

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

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

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

Who should read this paper?

This consultation paper is primarily addressed to central securities depositories (CSDs), CSD participants, investment firms, credit institutions, and their professional clients.

Legislative references

CSDR[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 (OJ L 257, 28.8.2014, p. 1)
CSDR Refit[2]	Regulation (EU) 2023/2845 of the European Parliament and of the Council of 13 December 2023 amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories and amending Regulation (EU) No 236/2012 (OJ L, 2023/2845, 27.12.2023)
ESMAR[3]	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)
RTS on settlement discipline[4]	Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 230, 13.9.2018, p. 1)

[1] ELI: http://data.europa.eu/eli/reg/2014/909/oj
[2] ELI: http://data.europa.eu/eli/reg/2023/2845/oj
[3] ELI: http://data.europa.eu/eli/reg/2010/1095/oj
[4] ELI: http://data.europa.eu/eli/reg_del/2018/1229/oj

List of acronyms

APAC	Asia-Pacific Region
AMI-SeCo	Eurosystem Advisory Group on Market Infrastructures for Securities and Collateral
CCPs	Central Counterparties
CDR 2018/1229 or CDR	Commission Delegated Regulation (EU) 2018/1229 on Settlement Discipline
CP	Consultation Paper
CSDs	Central Securities Depositories
CSDR	Regulation (EU) No 909/2014
DvP	Delivery versus Payment
EC	European Commission
ECB	European Central Bank
EEA	European Economic Area
ESCB	European System of Central Banks
ETF	Exchange Traded Fund
EU	European Union
FOP	Free of Payment
ICSDs	International Central Security Depositories
NCA	National Competent Authority
NTS	Nighttime Settlement
OTC	Over the Counter

RTS	Real-Time Settlement
STP	Straight-Through-Processing
T2S	TARGET2-Securities

Table of Contents

1 Executive Summary

Reasons for publication

CSDR Refit has introduced in Article 6(5) and Article 7(10) of CSDR two mandates for ESMA to develop draft Regulatory Technical Standards (RTS) in relation to settlement discipline measures and tools to improve settlement efficiency.

ESMA is now seeking input on its proposed draft RTS and has prepared this Consultation Paper (CP) to that end.

Respondents to this CP are encouraged to provide the relevant background information, and qualitative and quantitative data on costs and benefits, as well as concrete redrafting proposals, to support their arguments where alternative ways forward are called for. If respondents envisage any technical difficulties in implementing the proposed requirements, they are encouraged to provide details regarding the specific technical and operational challenges and specify the costs involved, which are important for the cost-benefit analysis.

Contents

Section 2 of this Consultation Paper (CP) provides the background for ESMA's assessment, and the proposals detailed in Section 3. The first part of Section 3 outlines specific proposals to amend Commission Delegated Regulation (EU) 2018/1229 (CDR 2018/1229), such as on timing and means for sending allocations and confirmations, on requiring all CSDs to offer hold and release and partial settlement functionalities and to enable automated use of intraday cash credit secured with collateral, as well as on the requirements for CSDs to report top failing participants, and the information on settlement fails to be published by CSDs.

The second part of Section 3 explores additional tools to improve settlement efficiency, for which ESMA's preliminary view is that no regulatory action is required, but on which ESMA would nevertheless like to receive stakeholders' views. These include topics such as the CSD business day schedule, the Standard Settlement Instructions format, the Unique Transaction Identifier (UTI), Place of Settlement (PSET) and Place of Safekeeping (PSAF).

Annex I includes the summary of the questions, Annex II the legislative mandate for developing the draft Regulatory Technical Standards (RTS), while Annex III contains the proposed amendments to CDR 2018/1229.

Next Steps

ESMA will consider the feedback received to this CP and expects to publish a final report and submit the draft RTS to the European Commission by October 2025.

2 Background

1. CSDR Refit (Regulation 2023/2845)[5] has introduced certain amendments to Article 6(5) and 7(10) of CSDR mandating ESMA to develop draft Regulatory Technical Standards (RTS) in relation to settlement discipline measures and tools to improve settlement efficiency. In ESMA's view, this requires an amendment of the existing RTS on settlement discipline, i.e. Commission Delegated Regulation (EU) 2018/1229 on Settlement Discipline.

2. The primary objective of this Consultation Paper (CP) is to explore additional measures and tools to enhance settlement efficiency. These new tools should be based on legislative changes to the empowerment under Article 6(5), on recent experiences with settlement discipline, and on the ESMA Final Report on Shortening the Settlement Cycle, which proposes reducing the settlement cycle to T+1. Moreover, this work considers the technical changes needed to pave the way towards T+1 in the EU[6].

3. To that end, ESMA proposes to introduce some measures and tools through amendments to CDR 2018/1229.

4. ESMA consulted the Market Infrastructure and Payments Committee (MIPC) of the European System of Central Banks (ESCB) when drafting this CP.

5. Due to the strong link between the potential shortening of the settlement cycle in the EU[7] and the improvement of settlement efficiency, this CP takes into account, where relevant, the responses to the ESMA Call for Evidence on the shortening of the settlement cycle[8] referring to procedures that facilitate settlement and measures to encourage and incentivise the timely settlement of transactions.

6. Additionally, ESMA has considered some specific responses received to the ESMA CP on the Technical Advice on the Scope of Settlement Discipline[9], AFME's document "Improving the settlement efficiency landscape in Europe"[10], the EU Industry Report on High-Level Roadmap for Adoption of T+1 in EU Securities Markets[11], and the UK's

[5] Regulation (EU) 2023/2845 of the European Parliament and of the Council of 13 December 2023 amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories and amending Regulation (EU) No 236/2012.
[6] Please see https://ec.europa.eu/commission/presscorner/detail/en/ip_25_446.
[7] Please see the report: ESMA assessment of the shortening of the settlement cycle in the European Union (ESMA74-2119945925-1969).
[8] Call for evidence on shortening the settlement cycle (ESMA74-2119945925-1616).
[9] ESMA74-2119945925-1976.
[10] Please see https://www.afme.eu/publications/reports/details/improving-the-settlement-efficiency-landscape-in-europe.
[11] Please see EUT1-ITF Final Report October 2024 (002).pdf.

Accelerated Settlement Task Force Technical Group (AST Technical Group) draft recommendations report and consultation[12].

7. This CP also takes into account potential amendments to CDR 2018/1229 with regard to the requirements for the calculation and application of cash penalties, as well as for settlement fails monitoring and reporting.

8. Finally, ESMA acknowledges that, although the mandate of this RTS concerns CSDs and their participants, in order to further improve settlement efficiency, all actors involved in the transaction and settlement chain need to be engaged in this exercise. This is all the more relevant if one considers that settlement carried out at CSD level is not always single transaction settlement (one transaction, one settlement instruction), but also reflects the activity of CSD participants, their clients and all the intermediaries along the transaction and settlement chain. For instance, a settlement instruction at CSD level can be the result of netting of several transactions. As a result, some obligations applicable at CSD level can be fulfilled only if CSD participants, the intermediaries along the transaction and settlement chain and end clients provide the relevant information in due time.

3 Assessment and proposals

3.1 Proposed amendments to CDR 2018/1229 on settlement discipline

3.1.1 Timing of allocations and confirmations

9. After a trade has been executed, the parties must allocate the financial instruments or the cash and agree on the terms of the transaction, i.e. the identification of the securities, price, quantity traded, settlement date and the counterparties.

10. During the allocation, clients communicate certain data to the investment firms, once the latter have confirmed that a transaction has been executed. Clients inform about the type of transaction, the ISIN or identifier of the relevant financial instrument, the delivery or the receipt of the financial instrument or cash, the nominal value or the quantity, the identifier of the entity where the financial instruments or the cash are held and the names and numbers of the securities or cash accounts to be credited or debited.

11. The confirmation can be done in different ways, depending mostly on how the transaction was agreed. In EU markets, the counterparties must submit to each other the terms of the trade for verification. When the counterparties to a transaction go through a financial

[12] Please see UK Accelerated Settlement Taskforce - KPMG UK.

intermediary, they receive from their intermediary the information used for confirmation and state whether it corresponds to the agreed trade.

12. After the confirmations have been sent, both parties are contractually bound to each other by the terms of the transaction (obligation to deliver, and possibly obligation to pay). It should be noted that at this stage this mutual commitment has not yet (in most cases) had any effect at the level of the Securities Settlement System (SSS), since the delivery-versus-payment instructions have not yet been sent to the system.

13. In the US settlement process, a similar process is carried out by means of the so-called affirmation, when trade details are verified between the parties involved. This step ensures that all trade instructions and confirmations are accurate before settlement and contributes to prevent mismatches.

14. SEC rule 15c6-2[13] promotes the completion of allocations, confirmations, and affirmations by the end of the trade date for transactions between broker-dealers and their institutional customers. However, affirmations can only be completed if the party to the trade has a TradeSuite ID as this is the only mechanism in the U.S. market to carry out the affirmation of the trades.

CDR 2018/1229

15. Article 2 of CDR 2018/1229 determines that investment firms shall oblige their professional clients to send them written allocations of securities and cash and written confirmations of

[13] 240.15c6-2 Same-day allocation, confirmation, and affirmation.
(a) Any broker or dealer engaging in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a securities transaction that is subject to the requirements of § 240.15c6-1(a) shall:
(1) Enter into a written agreement with the relevant parties to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction; or
(2) Establish, maintain, and enforce written policies and procedures reasonably designed to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.
(b) To ensure completion of the allocation, confirmation, affirmation, or any combination thereof for the transaction as soon as technologically practicable and no later than the end of the day on trade date, the reasonably designed written policies and procedures required by paragraph (a)(2) of this section shall:
(1) Identify and describe any technology systems, operations, and processes that the broker or dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction;
(2) Set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction;
(3) Describe the procedures that the broker or dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date;
(4) Describe how the broker or dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker or dealer experiences delays in promptly completing the confirmation; and
(5) Measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date.

the terms of the transaction after the former have confirmed that the transaction has been executed[14].

16. This article establishes two alternative deadlines for submission of the written allocation and confirmation:

    - Close of business on T; or
    - 12:00 CET on T+1, which is also the relevant deadline for retail clients under Article 3.

17. The term 'close of business' is not further specified in CDR 2018/1229 or in any other Level 2 or Level 3 measures.

Figure 1: Simplified overview of the current **deadlines** for **allocations and confirmations** set out by Article 2(2) and Article 3 of CDR 2018/1229:

Source: ESMA

Views from previous consultations and from other jurisdictions

18. According to the majority of respondents to the ESMA Call for Evidence on the shortening of the settlement cycle, allocation and confirmation should take place on T to meet a future T+1 requirement. In particular, one respondent requested that "allocation and confirmation

[14] Recital (4) of CDR "Investment firms should ensure that they have all the necessary settlement information in time to allow for an effective and efficient settlement of transactions. In 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."
Recital (5) of CDR 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 the internal automation in place 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.

should be made by the end of the trading day. However, it should be determined at a later stage whether the end of the day should be considered 23:59 CET or 04:59 CET"[15].

19. In the US, where allocations, confirmations, and affirmations must be completed 'by the end of trade date' the Final Rule of shortening the securities transaction settlement cycle[16] did not specify the term 'end of the day trading date'. The Final Report indicates that not defining it would enable firms to maximize their internal processes to meet the appropriate cut-off times. In their view "different sectors of the market, different types of asset classes or market participants, and different operational processes (e.g. cross-border transactions) may have varying processing deadlines, some of which may need to be earlier than end of the day to facilitate trade processing".

20. The AST Technical Group Consultation (SETT 01.00) recommends that for T+1 all post-trade activities must be completed and instructions submitted by:

    - Confirmed instruction receipt by 21:00 on T: UK domiciled counterparty or their agent.
    - Confirmed instruction receipt by 06:00 on T+1: non-UK domiciled counterparty or their agent.

21. To achieve that deadline, the AST Technical Group recommends that the exchange of allocation and confirmation data and the matching on a platform that supports an electronic trade confirmation should be completed as soon as reasonably practicable but in any event by no later than the above-mentioned deadlines.

22. Therefore, the allocation and confirmation of the trades should be carried out before those deadlines (21:00 on T and 6:00 on T+1, as the case may be) to enable custodians to prepare and submit the Standard Settlement Instruction (SSI).

Proposal from the EU Industry Task Force

23. The Task Force recommends the removal of the current exemption for transactions executed after 16.00 CET, which today are not required to be allocated and confirmed until the morning of T+1. Market participants will need to ensure that late trades can be allocated and confirmed by end of the trade date, making use of automated solutions where possible.

24. The current text of Article 2.2 also provides for an extension to the deadline for parties based in a different time zone, which the Task Force recommends retaining to provide non-domestic clients, in particular APAC clients, sufficient time to ensure compliance with

[15] Other relevant responses along the same line: German Banking Association, Italian Banking Association and ASSOSIM to Q15 of the Call for Evidence on shortening the settlement cycle https://www.esma.europa.eu/press-news/consultations/call-evidence-shortening-settlement-cycle#responses

[16] Please see https://www.sec.gov/files/rules/final/2023/34-96930.pdf, p. 100.

the requirements. However, it proposes that this is brought forward from 12.00 CET to 10.00 CET.

25. Additionally, the Task Force recommends that industry associations develop and endorse as 'best practice/recommendation' sending allocations and confirmations intraday rather than end of the day.

Proposal from the EU Industry Task Force
Article 2 of CDR 2018/1229

[…]
2. Professional clients shall ensure that written allocations and written confirmations referred to in paragraph 1 are received by the investment firm by one of the following deadlines:

(a) by close of business on the business day preceding the intended settlement date of the transaction ~~on which the transaction has taken place~~ where the investment firm and the relevant professional client are within the same time zone;
(b) by ~~12.00 CET~~ 10.00 CET on the business day following that on which the transaction has taken place where ~~one of the following occurs: (i)~~ 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.
~~(ii) the orders have been executed after 16.00 CET of the business day within the time zone of the investment firm.~~

3.1.1.1 Analysis and proposal

26. To enhance the timely settlement of transactions, pre-settlement matching should be carried out without delays. To this end, ESMA sees room for improvement in the timing concerning the submission of written allocations and confirmations by clients. Therefore, it is proposed below that the general principle that professional clients should send their written allocations and confirmations to investment firms by COB on T has been extended also to written allocations and confirmations of orders executed after 16:00 CET.

27. Following the same approach, while ESMA believes that professional clients operating with a time difference of more than two hours and retail clients should have more time to send written allocations and confirmations to investment firms than professional clients. Their deadline should be brought forward from 12:00 to 10:00 CET on the business day following that on which the transaction has taken place.

28. However, a different proposed option could be to set out an obligation for investment firms to notify to their professional clients the execution details of their orders as soon as these orders are executed (in a way that allows straight-through-processing) so clients can promptly start the allocation and confirmation process. Should this obligation be adopted, instead of having fixed deadlines, clients should be allowed a maximum number of

business hours to allocate and confirm executed trades after notification by the investment firm.

29. Finally, ESMA did not take into account the EU Industry Task Force's suggestion to refer, in letter (a), to the 'business day preceding the intended settlement date of the transaction' instead of 'the business day on which the transaction has taken place'. This is because i) ESMA believes that written allocations and confirmations should be sent by COB on T, as currently envisaged in the CDR, and also with a view to a move to T+1; and ii) the amendment suggested by the EU Industry Task Force would allow more time to send written allocations and confirmations to professional clients than to retail clients and professional clients in different time zones, which is not in line with the current CDR approach.

Proposed amendments to Article 2 and 3 of CDR 2018/1229:

Article 2 of CDR 2018/1229
Measures concerning professional clients

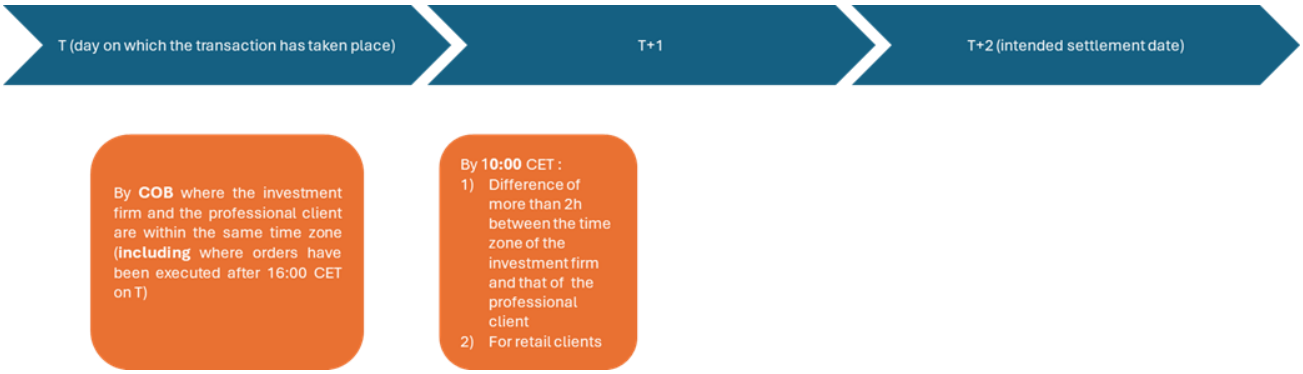
[···]
2. Professional clients shall ensure that written allocations and written confirmations referred to in paragraph 1 are received by the investment firm by one of the following deadlines:

(a) by close of business on the business day on which the transaction has taken place where the investment firm and the relevant professional client are within the same time zone;
(b) by ~~12.00 CET~~ 10.00 CET on the business day following that on which the transaction has taken place where ~~one of the following occurs: (i)~~ 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.
~~(ii) the orders have been executed after 16.00 CET of the business day within the time zone of the investment firm.~~

Article 3 of CDR 2018/1229
Measures concerning retail clients

Investment firms shall require their retail clients to send them all the relevant settlement information for transactions referred to in Article 5(1) of Regulation (EU) No 909/2014 by ~~12.00~~ 10.00 CET on the business day after that on which the transaction has taken place within the time zone of the investment firm, unless that client holds the relevant financial instruments and cash at the same investment firm.

Figure 2: Simplified overview of the proposed amendments to the **deadlines** for **allocations and confirmations** set out by Article 2(2) and Article 3 of CDR 2018/1229:



Source: ESMA

Q1: Do you agree with the proposed amendments to Articles 2(2) and 3 of CDR 2018/1229?

Q2: Would you see merit in introducing an obligation for investment firms to notify their professional clients the execution details of their orders as soon as these orders are fulfilled (in a way that allows STP)? If yes, should it be cumulative to the proposed amendments to Articles 2(2) and 3 of CDR 2018/1229?

Q3: If you support an obligation for investment firms to notify their professional clients the execution as soon as the orders are fulfilled, do you think that clients should be allowed a maximum number of business hours for the allocations and confirmations from the moment of notification by investment firms, instead of having fixed deadlines? If yes, how many hours would be necessary for that?

Q4: Should CDR 2018/1229 further specify the term 'close of business' for the purpose of Article 2(2)? If yes, how should this take into account the business day at CSD level?

Q5: Should the 10:00 CET deadline for professional clients in different time zones and retail clients be brought forward to 07:00 CET on T+1, to be aligned with the UK deadline?

Q6: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

3.1.2 Means for sending allocations and confirmations

CDR 2018/1229

30. Article 2 provides that investment firms shall require their professional clients to send them written allocations of securities or of cash[17] and written confirmation of their acceptance of the terms of the transaction[18]. The written confirmation may also be included in the written allocation.

31. The current framework envisages electronic communications through the international open communication procedures and standards for messaging and reference data referred to in Article 35 of CSDR only as an option that shall be offered by investment firms to their professional clients[19].

ESMA Guidelines on standardised procedures and messaging protocols under Article 6(2) of Regulation (EU) No 909/2014[20]

32. In line with Article 2(3) of CDR 2018/1229, Guideline 3 foresees that it is not necessary to send neither a written allocation nor a written confirmation when the investment firm is provided with the necessary settlement information referred to in Article 2(1) of CDR 2018/1229 in respect of that transaction in advance of the timeframes referred to in Article 2(2). The provision of the necessary information can be made **orally**[21] or through systems granting to the investment firm access to the relevant information (such as through the access to a centralised database).

33. In addition, Guideline 4 clarifies that "Where the investment firm and the professional client agree that the professional client should send a written confirmation and/or allocation in accordance with Article 2(1) of the Commission Delegated Regulation (EU) 2018/1229, any communication procedure allowing for written communication through mail, faxes or electronic means should be accepted".

34. The admission of non-electronic means of communication was explained in the Guidelines' Final Report: a concern specific to German law was raised by one respondent, relating to the fact that under German law "written form" means paper sent by mail. The respondent noted that it is a common practice under German law to accept "equivalent to written form" i.e. "text form" exchanged through a durable medium and it was therefore suggested to clarify that the use of a durable medium (including electronic communication) would be sufficient. ESMA noted that the concept of "durable medium" cannot be introduced through the Guidelines as this would go beyond the requirements set out in CSDR and in the RTS on Settlement Discipline.

[17] Article 2(1), first subparagraph.
[18] Article 2(1), third subparagraph.
[19] Article 2(1), fourth subparagraph.
[20] ESMA70-151-2641.
[21] This reference was further explained in paragraph 20 of the Final Report of the guidelines: some respondents also indicated that in practice, for bonds markets, voice (on a recorded line which parties can refer to in the event of a dispute) is widely used to provide initial allocation, followed or not by electronic confirmation and that it would be good to allow for oral communication of the allocation.

35. It is worth noting that Article 4(1)(62) of MiFID II defines “durable medium” as any instrument which:

    - enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
    - allows the unchanged reproduction of the information stored.

36. ‘Electronic format’ is defined in Article 4(1)(62a) of MiFID II as any durable medium other than paper.

    Views from previous consultations and from other jurisdictions

37. Two associations recommended that the method used to exchange written allocations and confirmations should enable STP. Along the same line, other financial market infrastructures underlined the increased need for automation among CSD participants and their clients, alongside further harmonisation and standardisation of processes across the value chain.

38. One respondent recommended in their reply to the Call for Evidence on shortening the settlement cycle the use of ‘electronic platforms and mechanisms […] for the trade confirmation, allocation and matching process”.

39. AFME’s report on settlement efficiency in Europe identified as one of the reasons for the relatively lower European settlement rates “manual” counterparties who are typically less sophisticated market participants with relatively low levels of market activity. Issues can typically arise at the allocation and matching stage, where allocations are not provided in an STP format or through standard channels (e.g. via email).

40. The AST Technical Group recommended that the exchange of allocation and confirmation data and the matching of a platform that supports an electronic trade confirmation should be made “electronically using a recognized industry standard and corresponding data dictionary”.

    Proposal from the EU Industry Task Force

41. The regulation can be improved to help ensure that potential mismatches at the CSD are identified during the allocation process and to support settlement efficiency by aligning allocation requirements with CSD-level matching requirements.

42. Given the strong support for the regulation to cover how the communication concerning written allocations is exchanged as well as the timing to support automation and standardisation, the EU Industry Task Force recommends making it mandatory to send the written allocation and the written confirmation electronically.

3.1.2.1 Analysis and proposal

43. Written allocations and confirmations should be processed in an expedite manner to avoid delays and to increase settlement efficiency. This can only be achieved by adopting STP formats and, therefore, requiring that written allocations and confirmations are sent in an electronic, machine-readable format. ESMA believes that the CDR 2018/1229 should be amended accordingly.

44. ESMA has slightly departed from the proposal from the EU Industry Task Force to make clearer that both allocations and confirmations have to be made in accordance with Article 4(1)(62a) of MiFID II, which defines “electronic format’ as any durable medium other than paper.

45. Alternatively, optionality for investment firms could be introduced to set deadlines based on whether a machine-readable format of the communication is used. In such case, earlier deadlines for non-machine-readable formats should be set, so clients are disincentivised to use them.

46. Guidelines 3 and 4 of the ESMA Guidelines on standardised procedures and messaging protocols under Article 6(2) of Regulation (EU) No 909/2014 should be amended accordingly at a later stage.

Proposed amendment to Article 2 of CDR 2018/1229:

Article 2 of CDR 2018/1229

1. Investment firms shall require their professional clients to send them written allocations of securities or of cash to the transactions referred to in Article 5(1) of Regulation (EU) No 909/2014, identifying the accounts to be credited or debited. Those written allocations shall specify the following:

[…]
Written allocations shall include all other information required by the investment firm for facilitating the settlement of the transaction.

Written allocations shall be sent in an electronic, machine-readable format.

Investment firms that have received confirmation of the execution of a transaction order placed by a professional client shall ensure through contractual arrangements that the professional client confirms its acceptance of the terms of the transaction in writing, using an electronic, machine-readable format, within the timeframes set out in paragraph 2. That written confirmation may also be included in the written allocation.

Q7: Do you agree to make the use of electronic and machine-readable format that allow for STP mandatory for written allocations and confirmations?

Q8: Would you see merit in introducing optionality for investment firms to set deadlines based on whether an electronic, machine-readable format of the communication is used? In such case, do you agree that an earlier deadline could be set for non-machine readable formats, so clients are disincentivised to use them? Which should be such deadline?

Q9: Please provide quantitative evidence regarding the use of non-machine readable formats for written allocations and confirmations.

Q10: Would it be necessary to introduce a similar obligation in other steps of the settlement chain? If yes, please elaborate.

Q11: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

3.1.3 The use of international open communication procedures and standards for messaging and reference data to exchange allocations and confirmations

CDR 2018/1229

47. Article 2(1) sets out that written allocations shall specify at least certain fields[22] that can be expanded by the investment firms.

[22] […] Those written allocations shall specify the following:
(a) one of the following types of transaction:
(i) purchase or sale of securities;
(ii) collateral management operations;
(iii) securities lending/borrowing operations;
(iv) repurchase transactions;
(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) the nominal value for debt instruments, and the 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 names and numbers of the securities or cash accounts to be credited or debited.

48. As mentioned above, electronic communication of the written allocations and confirmations exchanged through the international open communication procedures and standards for messaging and reference data referred to in Article 35 of CSDR is envisaged as an option that should be offered by investment firms.

49. ESMA provided clarifications on the international open communication procedures and standards referred to in Article 35 of CSDR in its Q&As on CSDR[23].

50. In those, ESMA clarified that the use by CSDs of "messaging standards other than international open communication procedures and standards (such as internal or domestic standards) in their communication procedures with the participants of the securities settlement systems they operate, and the market infrastructures they interface with, would not fulfil this requirement, even with a mapping from domestic standards to international open communication procedures and standards such as the SWIFT/ISO standards".

Guidelines on standardised procedures and messaging protocols under Article 6(2) of Regulation (EU) No 909/2014

51. Furthermore, Guideline 4 indicates that where electronic means are used, the investment firm should offer the option to its professional clients of using the international open communication procedures and standards for messaging and reference data as defined in Article 2(1)(34) of CSDR**,** except in the following two cases:

- where such internationally accepted standards are not "available on a fair, open and non-discriminatory basis to any interested party" or do not exist, until international standards become available; and

- where the use of internationally accepted standards does not allow to "limit the settlement fails" for an investment firm and its professional clients, as long as such lack of efficiency can be evidenced.

52. Finally, Guideline 4 clarifies that if the investment firm offers to use both international and internal (or domestic) messaging standards, the professional client can decide to use either of them.

Views from previous consultations and from other jurisdictions

53. One association noted in their reply to the Call for Evidence on shortening the settlement cycle that "[…] to prevent matching issues manifesting at the settlement matching level (i.e. at the CSD), the matching criteria used in all pre-settlement platforms will need to fully

Written allocations shall include all other information required by the investment firm for facilitating the settlement of the transaction.

[23] Q&As on Implementation of the Regulation (EU) No 909/2014 on improving securities settlement in the EU and on central securities depositories (ESMA70-156-4448), question 4a.

align with the market convention of the CSDs. For example, with SSIs and within the cash tolerance prescribed in CSDR's delegated regulation for settlement discipline"[24].

54. Another response to the Call for Evidence on shortening the settlement cycle, recommended the adoption of ISO Standards (ISO 15022 and ISO 20022) for trade settlement as globally recognised and standardised frameworks for messaging and data exchange in financial services. In their view, the use of ISO 15022 and ISO 20022 would promote greater consistency and interoperability across the industry, streamlining trade settlement documentation processes and enable faster and more accurate trade confirmations and settlements.

55. The AST Technical Group recommended that the exchange of allocation and confirmation data and the matching of a platform that supports an electronic trade confirmation should be made "electronically using a recognized industry standard and corresponding data dictionary".

Proposal from the EU Industry Task Force

56. The regulation can be improved to help ensure that potential mismatches at the CSD are identified during the allocation process and to support settlement efficiency by aligning allocation requirements with CSD-level matching requirements.

57. However, the EU Industry Task Force does not explicitly recommend amending Article 2(1) last paragraph of CDR 2018/1229 or the Guidelines.

3.1.3.1 Analysis and proposal

58. ESMA sees merit in amending CDR 2018/1229 to make the electronic communication of the written allocation and confirmation exchanged through the international open communication procedures and standards for messaging and reference data referred to in Article 35 of CSDR mandatory.

59. ESMA considers that international standards, including international data usage and exchange standards, in particular the ISO 20022 data dictionary and messaging standard, need to be used by all parties involved along the entire transaction and settlement chain whenever A2A messages/data is exchanged.

60. Whereas the use of international open standards promotes competition in the single market and contributes to overcoming fragmentation of national markets, ISO 20022 as

[24] Please also see another reply to the Call for Evidence on shortening the settlement cycle: "Any latency or inaccuracy will put pressure on what are already today time-sensitive processes, that can lead to delays in matching and ultimately settlement. Settlement agents'/custodians' controls include performing various integrity checks such as sanction screening, cash/credit provision controls and validation of settlement instruction messaging formats before releasing the clients' instructions for matching at CSDs ahead of the CSDs' instruction cut-off times: all of this makes the timely and accurate transmission of the instructions for the trading parties fundamental".

the common messaging standard would ensure automated exchange of information among market participants. This would also lead to a consistent approach across multiple reporting flows where market participants are already using this standard (i.e. in settlements and supervisory reporting), resulting in efficiency and better data quality, given the use of common data definitions and formats across all stakeholders and multiple reporting systems. Finally, ISO 20022 provides robust governance framework allowing for collaboration of relevant stakeholders on the development of reporting messages.

61. At the same time, ESMA is aware that it may require one off implementation costs for market participants to change their legacy systems. However, given that ISO 20022 is already broadly used, the implementation cost could be minimised due to synergies with other reporting systems, and it would allow for lower maintenance cost in the long term.

62. At this stage, ESMA only proposes to amend CDR 2018/1229 to prescribe the mandatory use of international open communication procedures and standards. However, it also seeks the views of market participants regarding the potential use of ISO 20022 as a common communication procedure and standard for messaging and reference.

63. Guideline 4 of the ESMA Guidelines on standardised procedures and messaging protocols under Article 6(2) of Regulation (EU) No 909/2014 should be amended accordingly at a later stage.

Proposed amendments to Article 2(1), fourth subparagraph of CDR 2018/1229:

Article 2 of CDR 2018/1229
Measures concerning professional clients

1. [⋯]
Investment firms shall ~~provide~~ require their professional clients ~~with the option of~~ to send~~ing~~ the written allocation and written confirmation ~~electronically through the~~ using international open communication procedures and standards for messaging and reference data referred to in Article 35 of Regulation (EU) No 909/2014.

Q12: Do you agree with the proposed amendment to Article 2 of CDR 2018/1229?

Q13: Do you agree that settlement efficiency would improve if all parties in the transaction and settlement chain used a single set of standards based on the latest international standards, such as the ISO 20022 messaging standards, in particular whenever A2A messages and data are exchanged? If not, please elaborate. How long would it take for all parties to adapt to ISO20022?

Q14: Can you provide figures (by number and type of financial entities, jurisdictions) regarding the current use of international open communication procedures and standards such as: a) ISO 20022, b) ISO 15022, c) others (please specify)?

Q15: Do you agree with the proposal of the EU Industry Task Force whereby allocation requirements should be aligned with CSD-level matching requirements? If not, please elaborate.

Q16: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

3.1.4 Onboarding of new clients

CDR 2018/1229

64. Article 2(3) provides that where investment firms receive the necessary settlement information referred to in paragraph 1 in advance of the timeframes referred to in paragraph 2, they may agree in writing with their professional clients that the relevant written allocations and written confirmations are not to be sent.

Guidelines on standardised procedures and messaging protocols under Article 6(2) of CSDR

65. Guideline 3 further develops this point by indicating that where no written confirmation or allocation is sent in accordance with Article 2(3) of the CDR 2018/1229, the investment firm should ensure that it is provided with the necessary settlement information referred to in Article 2(1) of CDR 2018/1229 in respect of that transaction in advance of the timeframes referred to in Article 2(2) thereof, **including orally or** through systems granting to the investment firm access to the relevant information (such as through the access to a centralised database).

Views from previous consultations and from other jurisdictions

66. One association noted in their response to the Call for Evidence on shortening the settlement cycle that with a move to T+1 settlement, having the correct static data for settlement becomes even more crucial, with additional importance placed on having a robust onboarding process to ensure that client data is correct. Incorrect SSIs, following an onboarding process and insufficient time available after pre-matching could be a source of additional settlement fails under T+1.

67. Likewise, the March 2024 UK AST report[25] considered market standards for onboarding all new accounts to include all data necessary to settle a trade as one of operational changes to be mandated in the course of 2025.

68. Additionally, the UK AST Technical Group recommended that UK regulated venues which execute trades in securities in scope for T+1, but are not eligible for CCP clearing, should mandate the SSI & KYC onboarding of accounts of member firms as a condition for new membership and mandate the continued review by members of their own accounts and those of other members[26]. This is because where non-CCP-eligible products are traded on a UK regulated venue and settled bilaterally, it is impossible to see who the settlement client or account is until after the point of trade. Should the client or account not already be onboarded, there is even less time to perform customer due diligence and ingest SSIs that will be necessary under T+1. The membership of UK regulated venues is, however, a closed group and therefore it should be possible to pre-onboard all potential clients and accounts in advance.

69. This topic has not been addressed by the EU Industry Task Force.

3.1.4.1 Analysis and proposal

70. ESMA's preliminary view is that having the static data for settlement in advance would improve settlement efficiency in any case. Additionally, it would also facilitate settlement within the compressed T+1 timeframe.

71. Therefore, ESMA would like to gather the views of market participants on whether a regulatory change in CDR 2018/1229 should be introduced to require that "Investment firms shall collect all data necessary to settle a trade from professional clients during their onboarding and keep that information updated at all times". Paragraph 17(c) of Guideline 3 of ESMA Guidelines on allocations and confirmations should be amended at a later stage.

[25] Please see https://assets.publishing.service.gov.uk/media/6603f31bc34a860011be762c/Accelerated_Settlement_Taskforce_Report.pdf
[26] Please see https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2024/09/uk-ast-technical-group-draft-report-and-recommendations.pdf, p. 49.

Proposal to add a new paragraph (1a) at the beginning of Article 2 of CDR 2018/1229:

Article 2 of CDR 2018/1229 **Measures concerning professional clients**
(1a) Investment firms shall collect all data necessary to settle a trade from professional clients during their onboarding and keep that information updated at all times.

Q17: Do you agree with the proposed regulatory change to introduce an obligation for investment firms to collect the data necessary to settle a trade from professional clients during their onboarding and to keep it updated? If not, please explain.

Q18: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

3.1.5 Hold & Release

CDR 2018/1229

72. Article 8 determines that CSDs shall set up a hold and release mechanism that consists of both of the following:

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

73. Article 12 enables CSDs to disapply the hold & release functionality when the value or the rate of settlement fails do not exceed certain thresholds. The rationale of that provision was specified in recital (11) of the CDR: “The obligation on CSDs to have system functionalities should depend on the settlement efficiency of those CSDs. Certain system functionalities should therefore not be compulsory if the value and the rate of settlement fails in the securities settlement system operated by a CSD do not exceed certain predefined thresholds”.

Views from previous consultations and from other jurisdictions

74. The AFME report on “Improving the settlement efficiency landscape in Europe” [27] addresses this point from two angles:

- from a regulatory perspective, they conclude this functionality should be operational in all CSDs: “Authorities should consider the deletion of Article 12 of the RTS on CSDR settlement discipline, which exempts certain CSDs from the requirements to provide a partial settlement and hold and release mechanism”;

- from a behavioural perspective they find that trading parties, or their intermediaries, only release instructions to the CSD on Settlement Date or when inventory is in place: “Such an approach impedes the matching process and delays the identification of potential matching issues. Settlement intermediaries can instead instruct “on hold” as a more pragmatic approach which allows the early identification and resolution of exceptions, optimising the opportunity for timely settlement”.

75. The AFME report did not provide figures on this and ESMA could not identify the CSDs that do not provide the hold and release functionality.

76. The UK AST Technical Group also recommends that “participants settling in CREST should look to submit transactions for matching as soon as they have received and validated a client’s trade instruction (SETT 01.00, 02.00). However, if they do not have the resources (typically available stock and/or credit) to settle the trade, they must manage the trade using the existing ‘Hold and Release’ functionality[28].

77. The reason is that it will reduce operational and counterparty risk by confirming that a legal trade is positioned and ready for settlement between counterparties. It allows for full or partial settlement as soon as positions become available, and the settlement is released.

78. T2S offers this functionality to CSDs and directly connected participants[29].

3.1.5.1 Analysis and proposal

79. ESMA notes that most CSDs already offer this functionality and sees merit in requiring the hold and release functionality to be used consistently across all CSDs, as it is a useful tool to reduce settlement fails.

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[27] Please see https://www.afme.eu/publications/reports/details/improving-the-settlement-efficiency-landscape-in-europe, p. 16 and 25.
[28] Please see https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2024/09/uk-ast-technical-group-draft-report-and-recommendations.pdf, p.42.
[29] Please see https://www.ecb.europa.eu/paym/target/target-professional-use-documents-links/t2s/sdd/shared/pdf/T2S_BFD_vR2024NOV.en.pdf?61ae1e6b2e3419904395b6cdcadd1d22.

80. As a consequence, ESMA proposes to delete Article 12 of CDR 2018/1229 and to amend Article 23 and field No. 19 of Table I of Annex II of CDR 2018/1229 accordingly.

3.1.6 Partial settlement

81. As a preliminary point, it is worth noting that partial settlement may appear in different forms:

- **Auto Partial Settlement**: this feature allows transactions to be automatically partially settled throughout the day. If the full quantity of securities is not available, the CSD will settle whatever portion is available, reducing the risk of settlement failures and associated penalties. This process is automatic and does not require manual intervention once set up.

- **Partial Release**: this functionality allows participants to manually release part of a transaction that has been placed on hold. This means that if a transaction is on hold due to insufficient securities, the available securities can be released for settlement. Unlike auto partial settlement, this requires manual action to release the securities. Again, the counterparty to the transaction can refuse this possibility. This type would encompass 'hold and partial release' instructions where the counterparty puts on hold full settlement while enabling the partial release of the settlement instruction up to the amount of cash/securities available.

Partial settlement in T2S[30]

82. In case of partial settlement, T2S settles only a part of the quantity and amount specified in a settlement instruction (SI). The unsettled portion of the SI will remain pending and will be subject to recycling, with the aim to also settle the remaining quantity/amount specified in the SI. After each partial settlement, the SI details will be updated to specify the remaining quantity and cash amount to be settled. All SIs may include a partial settlement indicator, to which the following rules apply:

- if no partial settlement indicator is presented, PART (partial settlement allowed) will be applied as default value;

- if at least one counterparty specifies NPAR (no partial settlement), T2S will not apply partial settlement.

83. Partial settlement indicators can be amended after an SI was accepted by T2S. However, it is not possible to update the partial settlement indicator after a part of the instruction is

[30] Please see T2S Scope Defining Documents available here: https://www.ecb.europa.eu/paym/target/target-professional-use-documents-links/t2s/sdd/html/index.en.html. Please note that certain T2S specifications may be subject to change as part of the change and release management process, e.g., the number of partial settlement windows or the thresholds.

already partially settled. Partial settlement is triggered in case of lack of securities only. It is not triggered if there is a lack of cash in case of DVP or DWP instructions.

84. Partial settlement thresholds:

- cash: configured by the T2S operator, per currency (for EUR: 10,000€ for unit-denominated ISINs, 100,000€ for amount-denominated ISINs); below these amounts the instruction is not considered for partial settlement;
- quantity: based on the Minimum Settlement Unit (MSU) of the ISIN.

85. Partial settlement for settlement instructions is performed only during one dedicated NTS sequence and five dedicated RTS windows. During a single partial settlement window, an instruction eligible to partial settlement can be partially settled several times. It is possible to settle the remaining part of an SI in total outside the partial settlement window. Only a partial settlement including yet another remaining quantity needs to be processed within a partial settlement window.

Partial release functionality in T2S[31]

86. This allows CSD participants to release a transaction for part of the quantity (limited to the delivery side). Partial release was designed as an innovative, automatable way to maximise settlement out of omnibus accounts when the underlying client(s) of CSD participants have provisioned less than the full quantity instructed to T2S.

87. With partial release, the delivering party can allow the settlement of an instruction only up to a quantity defined by itself, thus ensuring that the highest possible quantity/value settles without unduly using other resources potentially available on the delivering securities account.

CDR 2018/1229

88. Article 10 only provides that CSDs shall allow for the partial settlement of settlement instructions.

89. CSDs may not apply the partial settlement functionality when the value or the rate of settlement fails do not exceed certain thresholds[32].

Views from previous consultations and from other jurisdictions

[31] Please see T2S Scope Defining Documents available here: https://www.ecb.europa.eu/paym/target/target-professional-use-documents-links/t2s/sdd/html/index.en.html.
[32] Please see Article 12 of the CDR.

90. The feedback received to the Call for Evidence on shortening the settlement cycle and additional evidence suggest the existence of two different issues:

- from a regulatory perspective, the AFME report on "Improving the Settlement Efficiency Landscape in Europe[33]" concluded that "Authorities should consider the deletion of Article 12 of the RTS on CSDR settlement discipline, which provides a derogation for certain CSDs from the requirements to provide a partial settlement and hold and release mechanism"[34]; a survey carried out by AFME in relation to 39 CSDs within the European region, including UK and Switzerland, disclosed that 17 CSDs do not offer auto partial settlement and 23 CSDs do not offer partial release;
- from a behavioral perspective, some respondents to the Call for Evidence on shortening the settlement cycle noted that some brokers do not allow partial settlement, potentially leaving the counterparty subject to a (higher) penalty. Other replies requested that all participants should be more 'agnostic', i.e. deliver and receive at the same time as much as possible to provide equal liquidity in the system[35].

91. The UK AST Technical Group consultation recommends the systematic use of auto partialling/splitting by all market participants. They indicated that the auto-partialling/splitting functionality is already available from Euroclear UK & International today but on an optional basis and that, to optimise settlement efficiency ahead of T+1, this must be used systematically and enforced by the CSD and/or regulation. Auto-splitting should be applied as a default at CSD level (with limited hold and partial release opt-outs available if and where necessary) via the Post-trade Code of Conduct.

Proposal from the EU Industry Task Force

92. The EU Industry Task Force indicated that the industry is actively working on promoting the usage of auto-partial and partial release functionality, as well as processes such as "shaping" of transactions, which are essential to optimising settlement of available inventory. This work should continue through the development of best practice recommendations by the industry.

93. In the Task Force's view, auto-partial and partial release should be supported by all CSDs and custodians, to enable auto-partial settlement, including in omnibus accounts. Further analysis should be carried out to assess the feasibility for CSDs to optimise auto-partial

[33] Please see https://www.afme.eu/Portals/0/DispatchFeaturedImages/AFME_SettlementEfficiency2023_07%20final.pdf, p.25.
[34] Some respondents noted that CSDs offer some features that are not widespread across the EU financial markets including partial settlement, auto-borrowing or pools of securities available for lending by participants to fill complete or partial shortfalls where sellers have insufficient securities to meet their delivery obligations (automatic pool lending facilities).
[35] Likewise, the AFME report on Improving the Settlement Efficiency Landscape in Europe considered that other behavioral issues that could impact settlement efficiency are "counterparties placing a block on their account to prevent the delivery or receipt of partial settlements. This practice means that, at a market-wide level, available inventory in the securities settlement system is not fully optimised".

settlement by increasing the frequency and harmonisation of auto-partial settlement batch processing times.

94. In particular, the Task Force recommends ESMA to include this topic as a focus area for the upcoming consultation on “measures to prevent settlement fails”.

3.1.6.1 Analysis and proposal

95. ESMA agrees with the EU Industry Taks Force on the importance of partial settlement and proposes to delete Article 12 of CDR 2018/1229 so that all CSDs offer the partial settlement functionality.

96. However, ESMA believes that a certain degree of flexibility should be left to the parties, as some stakeholders may have an economic interest in not receiving a partial settlement only. For this reason, ESMA sees merit in introducing a mechanism whereby matched settlement instructions shall be eligible for partial settlement, unless one of the participants opts out from partial settlement.

97. Furthermore, partial settlement may not be useful for some types of transactions, such as collateral operations with central banks or initial issuances. Therefore, ESMA would like to consult the industry on which transactions should be excluded from the use of partial settlement.

98. Currently, some CSDs apply fees to every partial settlement of a settlement instruction, meaning that if, for instance, the same instruction is partial settled 3 times over a day, both participants will be charged 3 times the fee of an instruction.

99. ESMA finds that partial settlement is an effective tool to reduce settlement fails. Therefore, it should be set as the default option offered by CSDs. It should be used unless one of the participants decides to opt out from this functionality or where instructions are put on hold by participants.

100. Considering the above, Article 12 of CDR 2018/1229 should be deleted and Article 10 amended.

Proposed amendments to Article 10 of CDR 2018/1229:

Article 10 of CDR 2018/1229 **Partial settlement**
CSDs shall allow for the partial settlement of settlement instructions. Matched settlement instructions shall be eligible for partial settlement, unless one of the participants opts out from partial settlement or a settlement instruction is put on hold.

Q19: Do you agree with the proposed amendment to Article 10 of CDR 2018/1229? If not, please elaborate.

Q20: Do you agree with the deletion of Article 12 of CDR 2018/1229? If not, please elaborate.

Q21: Do you have other suggestions to incentivise partial settlement? If yes, please elaborate.

Q22: Do you think that some types of transactions should not be subject to partial settlement? If yes, could you provide a list and the supporting reasoning?

3.1.7 Auto-collateralisation

101. Auto-collateralisation is a credit operation that is triggered when a buyer does not have sufficient funds to settle a securities transaction, to improve its cash position. The credit provided must be secured using securities. At the end of the day all auto-collateralisation operations are reimbursed to prevent the extension of overnight credit[36].

102. In T2S, the auto-collateralisation functionality applies to two types of credit:

- credit from a central bank to a payment bank, also called central bank auto-collateralisation, as the central bank is the credit provider and the payment bank the credit consumer;
- credit from a payment bank to one of its clients (CSD participant), also called client auto-collateralisation, in which case the payment bank is the credit provider and its client the credit consumer.

103. There are two types of collateral used for auto-collateralisation in the T2S system:

- the securities which are about to be purchased. These can be used as collateral for obtaining the necessary credit to complete the purchase. In this case the auto-collateralisation is defined as on flow. The buyer needs to have sufficient cash to cover the possible “haircut” on that collateral;
- other securities already held by the buyer. When these are used as collateral, the auto-collateralisation is defined as on stock.

[36]Please see: https://www.ecb.europa.eu/paym/target/target-professional-use-documents-links/t2s/shared/pdf/T2S_SpecialSeries_issue2.pdf.

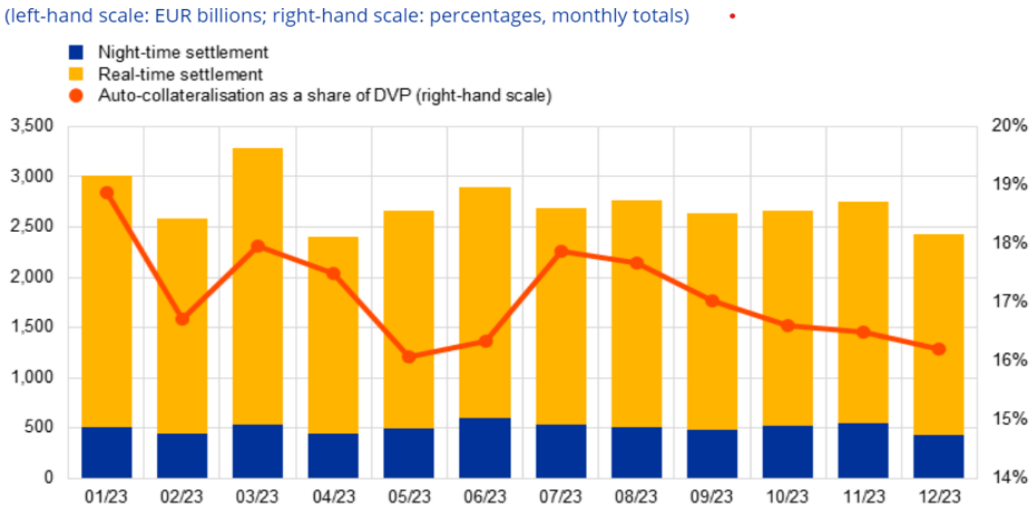
104. T2S relies on both auto-collateralisation on flow and auto-collateralisation on stock, thus reducing liquidity needs for the purpose of settlement, and allowing for smoother settlement cycles.

CDR 2018/1229

105. There are no references to the provision of liquidity in CDR 2018/1229.

Views from previous consultations and from other jurisdictions

106. The T2S governance contribution to the Call for Evidence on shortening the settlement cycle indicated that T2S auto-collateralisation provides significant liquidity for DvP settlement (around 18%) and is mostly triggered during the RTS phase (due to the higher value of transactions settling during RTS).



Current usage of auto-collateralisation in T2S

107. One association, in their reply to the Call for Evidence on shortening the settlement cycle, considered that it is important to automatise this service offered by both national central banks and banks in general to their counterparties in transactions, to facilitate the automatic provision of intraday cash credit, secured with collateral, to mitigate, at least during the beginning of T+1 implementation, the negative impact on liquidity availability.

3.1.7.1 Analysis and proposal

108. Given its impact on settlement efficiency, ESMA is considering revising CDR 2018/1229 to require CSDs to facilitate an automated optional use of intraday cash credit secured with collateral by payment/settlement banks.

109. CSDs could use a common settlement infrastructure to establish a joint auto-collateralisation mechanism (similarly to what is currently envisaged in Article 20 of the CDR 2018/1229 for the penalty system).

Proposed amendment to Article 11 of CDR 2018/1229:

Article 11
Additional facilities and information

[…]

5. CSDs shall facilitate the provision of intraday cash credit secured with collateral via an auto-collateralisation facility.

Q23: Do you agree with the introduction of an obligation for CSDs to facilitate the provision of intraday cash credit secured with collateral via an auto-collateralisation facility? If not, please elaborate.

Q24: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

3.1.8 Real-time gross settlement versus batches

CDR 2018/1229

110. Article 11(4) provides that CSDs shall offer participants either real-time gross settlement throughout each business day or a minimum of three settlement batches per business day. The three settlement batches shall be spread across the business day in accordance with market needs, based on a request by the user committee of the CSD.

Views from previous consultations and from other jurisdictions

111. The AFME report on “Improving the settlement efficiency landscape in Europe” detected that 11 CSDs did not offer real-time settlement. They recommended that “market participants should collaborate through relevant industry fora, including the ECB AMI-SeCo SEG to define the optimal means to promote and optimise settlement by reviewing current batch times”.

112. A reply to the Call for Evidence on shortening the settlement cycle concluded that Article 11(4) should be amended to mandate the provision of real-time gross settlement for all settlement instructions, including partials, in all CSDs[37].

113. Other associations suggested that matching and settlement at the level of CSDs should be done on a "near-continuous" basis rather than in fixed batches. According to these respondents, batches add latency in the matching and settlement process, reducing time available for remedial action and restricting the flow of inventory.

114. The EU Industry Task Force does not address this point in their recommendations.

3.1.8.1 Analysis and proposal

115. ESMA sees merit in asking the industry's view on whether the CDR 2018/1229 should be amended to require all CSDs to offer real-time gross settlement for a minimum window of time of each business day as well as a number of settlement batches.

116. In particular, ESMA seeks input on the possible length of the minimum window of time of each business day for real-time gross settlement and the minimum number of settlement batches that should be offered, per business day.

Q25: Should CDR 2018/1229 be amended to require all CSDs to offer real-time gross settlement for a minimum window of time of each business day as well as a minimum number of settlement batches? Please provide arguments to justify your answer.

Q26: What should be the length of the minimum window of time of each business day for real-time gross settlement and the minimum number of settlement batches that should be offered, per business day? Please provide arguments to justify your answer.

Q27: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

3.1.9 Reporting top failing participants

117. ESMA believes that further guidance may be needed to clarify the approach to be used by CSDs when reporting top failing participants (based on the settlement fail rates per participant) under Article 14(1) of CDR 2018/1229.

[37] Please also see the response of FIA EPTA to Q1 available here https://www.esma.europa.eu/press-news/consultations/call-evidence-shortening-settlement-cycle.

118. For the sake of the monitoring of participants consistently and systematically failing to deliver securities under Article 39 of CDR 2018/1229, only fails caused by the participant are considered, as required in Article 39(2). Fails caused by the participant's counterparty are not considered. ESMA believes that the same approach should be used when CSDs report the top 10 failing participants.

119. Please see the example in the box below:

Example

During one month Participant A is involved in 10 transactions:

- 5 transactions (with 10 corresponding settlement instructions, i.e. 2 instructions per transaction) settle by ISD
- 5 transactions (with 10 corresponding settlement instructions) fail to settle by ISD (for one business day):
    - 3 transactions (with 6 corresponding settlement instructions) failed because Participant A failed to deliver
    - 2 transactions (with 4 corresponding settlement instructions) failed because Participant B failed to deliver

Out of 10 transactions (20 settlement instructions) in which Participant A is involved, if Participant A is responsible for the settlement fail of 3 transactions (6 instructions), Participant A's settlement fail rate (by number of instructions) should be calculated as follows: (6/20)*100 = 30%

CSDs should report for Participant A:

- Total (Volume): 20
- Total Settled (Volume): 10
- Total Failed (Volume): 6 (only those settlement fails caused by Participant A)
- Failed Rate (Volume): 30%

3.1.9.1 Analysis and proposal

120. ESMA believes that, in addition to the clarification mentioned above, the current definition of top 10 failing participants needs to be revised. Currently, CSDs report the top 10 failing participants in absolute terms. Under this approach, smaller counterparties with few transactions may find themselves in the top failing participants, based on fail rates, if these few transactions fail. However, these smaller players may not have a significant impact on CSDs and financial markets as a whole. Therefore, top failing participants should be determined based on at least two criteria, namely (i) the fail rate, and (ii) the

share of the participant's fails (volume and/or value) in the total volume and/or value processed by the CSD.

121. For example, it would be more important to capture a large participant with a fail ratio of 12% representing 20% of the overall settlement volumes at CSD level, than a small participant that has a fail ratio of 20% but representing less than 1% of the overall settlement volumes at CSD level. The impact of the fails of the large participant on the overall CSD settlement efficiency would be greater.

122. Having regard to the above, ESMA proposes to revise the approach for reporting top failing participants under Article 14(1) of CDR 2018/1229 to take into account the share of a participant's settlement fails in the total volume and value of settlement instructions processed by the CSD. This could be done in addition to the current approach for reporting top failing participants in absolute terms (see the example in the section above).

Proposed amendments to Table 1 of Annex I of CDR 2018/1229:

Point 17:

Top 10 participants with the highest rates of settlement fails during the period covered by the report (based on number of settlement instructions), ranked based on the proportion of the settlement fails caused by each participant, compared to the overall number of settlement instructions at the level of the securities settlement system.

The reference in the right-side column under point 17 to "Total number of settlement instructions per participant" should be replaced by: Total number of settlement instructions at the level of the securities settlement system during the period covered by the report.

Point 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), ranked based on the proportion of the settlement fails caused by each participant, compared to the overall value of settlement instructions at the level of the securities settlement system.

The reference in the right-side column under point 18 to "Total value (EUR) of settlement instructions per participant" should be replaced by: Total value (EUR) of settlement instructions at the level of the securities settlement system during the period covered by the report.

Q28: Do you agree with the proposed amendments to Table 1 of Annex I of CDR 2018/1229? If not, please elaborate.

Q29: Should top 10 failing participants be reported both in absolute terms (current approach) and in relative terms (according to the proposed amendments to Table 1 of Annex I of CDR 2018/1229)?

Q30: Do you have additional suggestions regarding the requirements for CSDs to report settlement fails data specified in Annex I and Annex II of CDR 2018/1229? If yes, please elaborate.

3.1.10 Reporting the reasons for settlement fails

123. Article 13 of CDR 2018/1229 requires CSDs to establish a system that enables them 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. That system shall, for each settlement fail, collect information on, among others, the reason for the settlement fail, based on the information available to the CSD. However, CSDs often do not have visibility on the reasons for settlement fails at participants' level.

3.1.10.1 Analysis and proposal

124. ESMA believes that Article 13(1)(a) of CDR 2018/1229 should be amended to specify that the reason for settlement fails at participants' level should be provided by the participants where this information is not available to the CSD.

Proposed amendment to Article 13(1)(a) of CDR 2018/1229:

Article 13(1)(a)

the reason for the settlement fail, based on the information available to the CSD or to be provided by participants, where this information is not available to the CSD;

Q31: Do you agree with the proposed amendments to Article 13(1)(a) of CDR 2018/1229? Or can you suggest alternative options so that CSDs have visibility of the root causes of settlement fails at participants level?

Q32: Based on the experience since the implementation of the settlement discipline regime under CSDR, please describe the main root causes of settlement fails identified so far. Please specify the relevant categories in more granular terms, going beyond "lack of securities", "lack of cash" and "instructions put on hold".

Q33: According to Article 13(2) of the CDR, CSDs shall establish working arrangements with their top failing participants to analyse the main reasons for settlement fails. Do you believe that this provision has proven useful in analysing the root causes of fails and in preventing them? Do you have suggestions on other actions which CSDs could take with respect to top failing participants?

3.1.11 CSDs' public disclosure on settlement fails

125. According to Article 15 of CDR 2018/1229, CSDs are required to publish information on settlement fails on an annual basis. The information is specified in Annex III of CDR 2018/1229.

126. ESMA considers that it may be useful to ask CSDs to also publish a breakdown by asset type, and that Annex III of CDR 2018/1229 should be amended in this respect.

3.1.11.1 Analysis and proposal

127. ESMA proposes to amend Annex III of the CDR 2018/1229 to include information on the breakdown of the settlement fails per asset class.

Proposed rows to be added to Table 1 of Annex III:

Table 1 of Annex III of CDR 2018/1229		
Data covering types of financial instruments		
19.	Number of settlement instructions for each type of financial instruments	For each type of financial instruments: Up to 20 numerical characters reported as whole numbers without decimals.
20.	Number of settlement fails (covering both settlement fails for lack	For each type of financial instruments: Up to 20 numerical characters reported as whole numbers without decimals.

	of securities and lack of cash) for each type of financial instruments	
21.	Annual 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	For each type of financial instruments the rate shall be expressed as a percentage value up to 2 decimal places.
22.	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.
23.	Value (EUR) of settlement fails (covering both settlement fails for 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.
24.	Annual rate of settlement fails for each type of financial instruments, based on value (value of settlement fails/value of settlement instructions for each type of financial instruments	For each type of financial instruments the rate shall be expressed as a percentage value up to 2 decimal places.

Q34: Do you agree with the proposed amendments to Table 1 of Annex III of CDR 2018/1229 to include information on the breakdown of the settlement fails per asset class? If not, please elaborate.

Q35: Do you think that CSDs should publish additional information on settlement fails? If yes, please specify.

Q36: Should the frequency of publication of settlement fails data by CSDs increase? Which should be the right frequency?

3.2 Additional tools to improve settlement efficiency

3.2.1 Unique transaction identifier (UTI)

128. The unique transaction identifier (UTI) is a unique alpha-numeric code made up of 52 characters that is assigned to a securities trade. It is part of the ISO table and namely the ISO 23897:2020.

129. The UTI assigned to each financial transaction ensures that it can be accurately identified and tracked throughout its lifecycle. The UTI is used in regulatory reporting to help authorities monitor and analyse trading activities, ensuring transparency and reducing the risk of market abuse. The UTI is envisaged by the Dodd-Frank Act, EMIR, SFTR and REMIT.

130. SWIFT published Market Guidelines and Implementation Summary in relation to the UTI for settlement of securities trades[38]. This document specifies that "the generation and initial exchange of a UTI value occurs as part of the trade allocation, confirmation and affirmation processes between the buyer and seller. UTI values are generated by the allocating entity or the electronic platforms that facilitate the allocation and confirmation processes between an instructing party and their executing counterparty".

CDR 2018/1229

131. There are no references to the UTI in CDR 2018/1229.

Views from previous consultations and from other jurisdictions

[38] Available here: https://www.swift.com/swift-resource/251828/download.

132. One respondent to the Call for Evidence on shortening the settlement cycle, emphasised that further adoption of UTIs could enhance transparency and automation in the post-trade process across the EU. This would help increase transparency into post trade workflows and help expedite identification of exceptions that would aide settlement accuracy. Moreover, central matching allows, inter alia, identifiers to be generated in post-trade messaging.

133. Another reply to the Call for Evidence also recommended promoting real-time settlement status and end-to-end visibility through the use of a UTI, which can help facilitate real-time tracking and monitoring of trades.

Proposal from the EU Industry Task Force

134. The EU Industry Task Force indicated that, while industry adoption of a UTI could facilitate prompt identification and resolution of mismatches, this step is not a pre-requisite for moving to T+1. However, it remains a potential area for the industry to further explore.

3.2.1.1 Analysis and proposal

135. At this stage, ESMA does not find sufficient evidence supporting the mandatory use of the UTI. At the same time, ESMA considers that the use of the UTI should be encouraged as a market practice.

136. Furthermore, ESMA notes that UTIs are very informative and beneficial for settlement efficiency in the context of individual transaction settlement (one transaction, one settlement instruction).

Q37: Do you agree that the use of UTI should not be made mandatory through a regulatory change?

Q38: What are your views on the use of UTI in general and in the case of netted transactions specifically?

3.2.2 SSIs format

CDR 2018/1229

137. Paragraphs (3) and (4) of Article 5 provide that CSDs shall require participants to use a number of matching fields in the settlement instructions for their matching but they do not impose a specific format.

Views from previous consultations and from other jurisdictions

138. One respondent to the Call for Evidence on shortening the settlement cycle, noted that ESMA should consider the importance of SSIs and their role in settlement efficiency, as incorrect or missing SSIs are a major contributor to trade/settlement failure. These issues occur because several market participants insist on using manual methods when sharing SSI information. This, in turn, leads to a degree of ambiguity as there are no standard templates to be used. Furthermore, some market participants continue to rely on internal data storage, such as outdated SSI materials, which may lead to settlement failure. This is the reason why a centralised SSI repository and facilitating a harmonised SSI taxonomy is critical. Utilising a central SSI repository provides transparency, increases automation and significantly reduces trade failure, because all market participants contribute SSI data, access SSI data and enrich this data into the post trade processes.

139. An association considered it necessary to incentivise the exchange of SSIs through the relevant electronic systems at the date on which the trade has taken place. One industry association suggested enforcing a repository for SSIs.

140. The UK AST Technical Group explicitly endorsed the Core Principles and manual templates contained in the Financial Standard Board's Standard for Sharing SSIs[39]. This recommendation fosters the timely and accurate sharing and authentication of SSIs by (a) further encouraging the use of automated solutions, both by account owners and any custodians who may manage their SSIs; and (b) creating templates which facilitate any residual manually shared SSIs to be automatically ingested by receiving counterparties.

Proposal from the EU Industry Task Force

141. There are currently no pan-European market standards in place to specify in which format SSIs should be structured, stored, and shared in the EEA region. The need for certainty on the accuracy and validity of SSIs is essential in a T+1 environment.

142. Market standards for the storage and use of SSIs should consider:

- the addition of new or updated SSIs within firms' internal systems that are subject to fraud prevention policies, requiring validation to be completed before instructions can be utilised. Unless SSIs are stored by market participants in an approved repository these processes and associated steps, such as call-backs, can be time-consuming. In an accelerated settlement environment, this could result in delays in sending instructions to the market with the potential for impact on timely settlement;
- an approach which requires market participants to utilise market-wide, interoperable SSI repositories may be considered, to ensure SSIs can be sourced and updated in an efficient and timely manner;

[39] Please see https://assets.kpmg.com/content/dam/kpmg/uk/pdf/2024/09/uk-ast-technical-group-draft-report-and-recommendations.pdf, p.48. Please also see https://fmsb.com/wp-content/uploads/2024/08/20240712_FMSB-Standard-SSI_Final.pdf.

- aligning with or leverage the UK AST recommendations on the electronic storage and sourcing of SSIs, in line with EU competitiveness objectives.

143. They conclude recommending the industry to develop market standards for the storage and exchange of SSIs.

3.2.2.1 Analysis and proposal

144. ESMA notes the commitment made by the industry and its preliminary view is that a regulatory change is not needed. Nonetheless, ESMA would like to take this opportunity to ask whether the market participants agree with this approach.

Q39: Should the market standards for the storage and exchange of SSIs be left to the industry or is regulatory action at EU level necessary?

3.2.3 Place of settlement (PSET) as mandatory field of written allocations

145. In the context of an allocation, the place of settlement (PSET) refers to the location where the final transfer of securities or funds will take place. This is the place where the ownership of securities is officially transferred from the seller to the buyer, and where funds are moved from the buyer to the seller. The PSET is typically specified in the settlement instructions. However, ESMA notes that the PSET may change along the settlement chain in the case of netting.

CDR 2018/1229

146. Article 2(1) does not include any reference to the place of settlement in the fields referring to the allocation of cash and securities.

Views from previous consultations and from other jurisdictions

147. AFME's report on settlement efficiency in Europe identified as reasons for the relatively lower European settlement rates that counterparties must "proactively communicate and agree the place of settlement to reduce the likelihood of a mismatch". It concluded that the PSET should be a mandatory matching field in all allocation and pre-settlement matching tools.

148. Several respondents to the Call for Evidence on shortening the settlement cycle (including individual respondents and associations) suggested including additional settlement data and information on the matching and allocation, such as the PSET. As an example, one association suggested making this field a mandatory matching field to compile during the allocation and confirmation phases.

149. The UK AST Technical Group, in its paper, has recommended that the PSET should be clarified at an earlier stage, i.e. when onboarding the client[40].

150. T2S uses ISO20022 messages in which the PSET element ('PSET' is the ISO15022 label of this message element) corresponds to the 'receiving/delivering depository' message element. This field is already a mandatory matching field in T2S.

Proposal from the EU Industry Task Force

151. The Task Force considers the PSET to be a critical piece of information necessary to ensure timely settlement. The industry has identified PSET mismatches as a common cause of settlement fails. There is therefore widespread support for PSET to be included in allocations as best practice, including by both:

- brokers in their block instructions to the client;
- clients in their written allocations to the broker.

152. To help expedite issues arising from a mismatch in PSET, the industry could consider developing a common template for instructing cross-border realignments, which should be accepted by all CSDs where feasible.

3.2.3.1 Analysis and proposal

153. At this stage, ESMA believes that the PSET should not be included as one of the mandatory fields to be specified in written allocations under Article 2(1) of the CDR 2018/1229. Nonetheless, ESMA sees the harmonised use of PSET as a best practice which would help reducing settlement fails.

154. ESMA's preliminary view is that such best practice should rather be determined by the industry. However, in determining the PSET, it should be considered that it may vary across the settlement chain in the case of netting.

Q40: How can the PSET contribute to improve settlement efficiency and reduce settlement fails? Do you have suggestions on how to make the use of PSET more consistent across the market? If yes, please elaborate.

Q41: Do you agree that the PSET should not be made a mandatory field of written allocations under Article 2(1) of CDR 2018/1229? If you have a different view, please elaborate.

[40] Please see https://assets.publishing.service.gov.uk/media/6603f31bc34a860011be762c/Accelerated_Settlement_Taskforce_Report.pdf, p.42.

3.2.4 Place of safe keeping (PSAF) and place of settlement (PSET) as mandatory fields of settlement instructions

155. The place of safe keeping or PSAF is a field of the settlement instructions that identifies the location where the financial instruments are/will be safekept[41]. This is typically the account or system where the securities are stored and managed by a custodian or financial institution. It should be noted that the PSAF, as the PSET, may change along the settlement chain in case of netting, therefore there may be no relationship between the data/instructions sent from clients and that of brokers sent to CSDs. In the case of netting, the PSAF does not travel through the settlement netting chain unaltered.

CDR 2018/1229

156. Article 5(3) and (4) of the CDR establish that CSDs shall require participants to use a minimum number of matching fields in their settlement instructions for matching but does not refer to the PSAF nor to the PSET.

Views from previous consultations and from other jurisdictions

157. One association considered that, given the fragmented nature of European capital markets, it should be mandatory for all custodian's statements of holdings (commonly communicated via an MT535 SWIFT message) to disclose exactly where securities are held within (CSD or ICSD) such that they can be instructed to the correct location.

3.2.4.1 Analysis and proposal

158. ESMA considers that the exchange of this information by means of an additional field of the settlement instructions could contribute to settlement efficiency. However, at this stage, it lacks sufficient evidence supporting a regulatory action to include PSAF/PSET as mandatory fields in the settlement instructions.

159. The use of the PSET in the context of a potential industry-developed template for instructing cross-border realignments has been considered. A similar template, if made compulsory for CSDs, could help the efficiency of cross-border realignments.

160. However, it should be noted that cross-border realignments are carried out via settlement instructions, thus, the issue behind such proposal lies in the fact that currently CSDs have adopted different settlement instruction formats.

[41] Please see https://www.iso20022.org/15022/uhb/mt541-44-field-94a.htm.

161. For example, a CSD may require the use of the BIC code to identity the counterparty in the instruction, while another CSD may require the use of a different code. CSDs may also require different mandatory fields (e.g. one CSD may require the financial instrument name while another may not). This means that intermediaries have to adjust their procedures for generating settlement instructions depending on the CSD where the instruction is expected to settle.

Q42: Do you agree that the decision to use the PSAF and the PSET in the settlement instructions should be left to the industry?

Q43: What are the current market practices regarding the use of PSAF and PSET, in particular in the case of netting along the trading and settlement chain?

3.2.5 Transaction type

162. One of the changes brought by CSDR Refit refers to the further specification of the scope of the settlement discipline rules to make them more operational and better tailored to the diversity of market operations and transactions that can potentially be subject to the regime.

163. In order to ensure a smooth and orderly functioning of the financial markets concerned, the settlement discipline regime should not automatically penalise every individual settlement fail regardless of the context, or the parties involved. As such, Article 7(3), point (b) of CSDR, sets out that the penalty mechanism shall not apply to operations that are not considered as trading. In this context, Article 7(9) of CSDR empowered the EC to adopt delegated acts to supplement the CSDR by specifying these operations and, in turn, the EC has requested a Technical Advice (TA) to ESMA covering this aspect42.

164. In July 2024, to gather views from the market, ESMA launched a consultation paper to assess the underlying causes of settlement fails not attributable to participants and the operations not to be considered as trading43. The written responses provided possible ways to filter out those identified operations that should not be considered as trading. Some respondents shared the view that it could be explored whether the ISO transaction codes currently used in T2S could be harmonised across CSDs and be required as a matching field for the purposes of filtering out such operations.

[42] It is worth mentioning that the TA also requested ESMA to specify the underlying causes of settlement fails that are considered as not attributable to the participants in the transaction (Article 7(3), point (a)). Such underlying causes of settlement fails not attributable to participants and the operations not to be considered as trading, will be exempted from the scope of the cash penalties and mandatory buy-ins.

[43] Consultation Paper - Technical Advice on the Scope of CSDR Settlement Discipline (ESMA74-2119945925-1976).

165. Some respondents to the CP on the scope of the settlement discipline proposed that the transaction type should be established as a matching criterion, meaning that both parties involved in the transaction must clearly indicate it in their settlement instructions.

166. Differently, other respondents warned against making the transaction code a matching criterion, since this could lead to a high number of matching fails. At the moment, two instructions with different transaction codes can match and settle while, if the transaction code becomes a matching field, it would no longer be the case. In their view, this would lead to an increased number of settlement fails.

3.2.5.1 Analysis and proposal

167. Feedback from the ESMA Consultation Paper on the Scope of Settlement Discipline suggests that CSDs can only ex-ante filter non-trading operations when such non-trading operations can be unequivocally identified by an ISO transaction code, and that a rule should be defined in case parties do not submit identical transaction codes[44].

168. ESMA's preliminary view is that the transaction type should not become a mandatory matching field under Article 5(4) of the CDR. Given the lack of consistent usage of the transaction codes, if a mandatory matching criterion is adopted, settlement instructions may not match and settle, hence, there would be an increase in the number of settlement fails.

Q44: Do you agree that the transaction type should not become a mandatory matching field under Article 5(4) of CDR 2018/1229?

Q45: Do you think the lists mentioned in Article 2(1)(a) and Article 5(4) of CDR 2018/1229 should be updated? If yes, please specify.

3.2.6 Timing for sending settlement instructions to the securities settlement system (SSS)

CDR 2018/1229

169. Article 2 provides that investment firms shall oblige their professional clients to send them written allocations of securities and cash and written confirmations of the terms of the transaction after the former has confirmed that the transaction order has been executed.

[44] https://www.esma.europa.eu/sites/default/files/2024-07/ESMA74-2119945925-1976_CSDR_Consultation_Paper_on_Technical_Advice_on_Scope_of_Settlement_Discipline.pdf

170. However, CDR 2018/1229 does not foresee any timing for the submission of settlement instructions to the SSS.

Views from previous consultations and from other jurisdictions

171. The AST Technical Group Consultation recommends that all post-trade activities must be completed and instructions submitted for T+1 by:

- confirmed instruction receipt by 21:00 on T: UK domiciled counterparty or their agent;
- confirmed instruction receipt by 06:00 on T+1: non-UK domiciled counterparty or their agent, confirmed instruction receipt.

Proposal from the EU Industry Task Force

172. It is strongly recommended that all market participants, where possible and efficient to do so, send instructions intraday rather than in bulk at the end of the day. Getting the instruction sent to the CSD at the earliest opportunity on trade date is beneficial in a T+1 environment to identify any mismatching at the earliest opportunity which will give the trade the best chance of settling in the night-time settlement (NTS) where available.

173. Once a trade has been confirmed or broker-matched, the broker's settlement instruction should be sent to the custodian, settlement agent or CSD without delay and avoid holding up instructions to be sent in batches. Once the broker has confirmed the allocation, the investment manager should send their settlement instruction to the global custodian (or other intermediary) without delay and avoid holding up instructions to be sent in batches.

3.2.6.1 Analysis and proposal

174. ESMA considers that introducing a deadline for the submission of settlement instructions may be unnecessary under a T+1 environment where market practices should necessarily streamline the different steps of the process. A deadline for submission of settlement instructions may be introduced once industry discussions on T+1 have taken place. At this stage, ESMA deems that amending CDR 2018/1229 is not necessary.

Q46: What are your views on whether market participants should send settlement instructions intra-day rather than in bulk at the end of the day?

Q47: Do you consider it necessary to introduce a deadline for the submission of settlement instructions through a regulatory amendment to CDR 2018/1229? If yes, what should be such a deadline? Please provide arguments to justify your answers.

3.2.7 Alignment of CSDs' opening hours, real-time/night-time settlement and cut-off times

Alignment of CSDs' opening hours

CDR 2018/1229

175. CDR 2018/1229 does not foresee any measures to align the CSDs opening hours.

Views from previous consultations and from other jurisdictions

176. Recommendation 9 of the AFME report on Improving the settlement efficiency landscape in Europe[45] established that "market participants should review solutions to remove barriers to timely cross-border settlement. CSD cycles and market cut-offs should be widely aligned, including partial settlement cycles which currently differ substantially".

177. One association, in its reply to the Call for Evidence on shortening the settlement cycle considered that "to enhance operational efficiency and promote a synchronized financial ecosystem, industry-wide adjustments would be necessary. Firstly, there is a call for coordinated CSD opening hours on a pan-European level, fostering alignment in the timing of securities settlement activities. This coordination aims to streamline cross-border transactions and ensure a cohesive approach to market operations".

178. Various respondents considered as key milestones for the transition to T+1 the adaptation to timelines for start times and deadlines, e.g. start-of settlement for Intended Settlement Day in T2S and the alignment of target schedule with trading venues, Clearing Members and CSDs[46].

Proposal from the EU Industry Task Force

179. Industry participants should agree on a new 'daily timetable' for trading, clearing, settlement and ancillary processes.

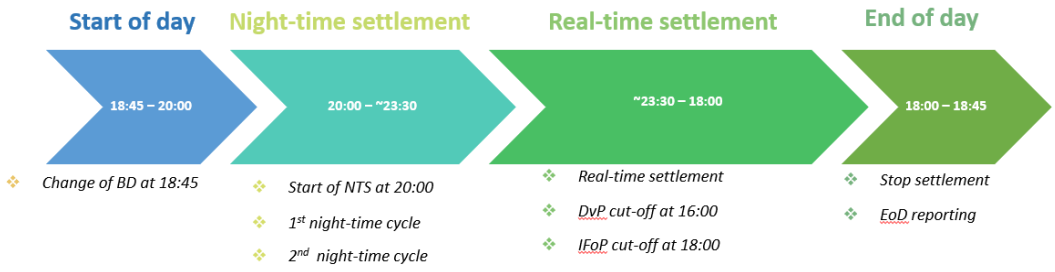
180. CSDs to conduct further analysis on current cut-offs to accept input instructions.

T2S night-time settlement and real-time settlement

[45] Please see: https://www.afme.eu/Portals/0/DispatchFeaturedImages/AFME_SettlementEfficiency2023_07%20final.pdf.
[46] For example: "The process/scheduling with regards to T2S needs to be aligned (possible delay of day/and obviously night-time settlement, delivery-versus-payment cut-off times, increased day-time settlements). A later start-of-settlement in T2S agreed by all stakeholders could ensure that CCPs can send settlement instructions for trades concluded on trade date T before and that all these instructions are considered already in the first settlement run. On the other hand, this would further reduce the total time to fulfil settlements before settlement cut-off on T+1". Another example: "[…] with the T2S nighttime settlement (NTS) instruction cut-off at 20:00 CET on S-1, in a T+1 scenario it is highly likely, at least currently, that in normal conditions a proportion of CCP to member instructions will not be matched in T2S by the start of the NTS.
If, as is likely the case, there is a strong benefit to having CCP transactions settle in the NTS then an increased buffer is required between a CCP's end-of-day trade processing and the T2S NTS cut-off time. So as not to impose earlier cut-offs for trading, which goes against current trends, a pushing back of the T2S NTS cut-off by several hours would seem necessary".

181. The importance of the T2S night-time settlement (NTS) has recently been underlined by the EU Industry Task Force: both the NTS and the real-time settlement (RTS) batches include optimisation tools, in particular technical netting where “T2S groups transactions into a set and applies technical netting on the set by calculating the net quantities and amounts to be settled on an all-or-none basis. These net quantities and amounts are the basis for the checks against the available resources and if needed for the assessment of intraday credit to be provided”.

182. The critical distinction between night-time and day-time settlement is that, during the night, the technical netting is completed first so that it applies to all the instructions presented for settlement, whereas during the day it comes after an RTS window and thus applies only on instructions that failed to settle. The night-time technical netting is the optimal way to achieve high levels of settlement efficiency. Moreover, its design supports participants like CCPs and clearing members who have a flat position, and more broadly any on-exchange transactions (i.e. those transactions in scope of CSDR Article 5). To maximise the benefits of this powerful tool, all instructions must reach the T2S Securities Settlement System before the start of the NTS. Moreover, due to their central role, CCPs need not only to take part in this process but also to have their instructions settled as a priority.



Current T2S settlement day

CDR 2018/1229

183. CDR 2018/1229 does not foresee any measures to align the CSDs opening hours.

Views from previous consultations and from other jurisdictions

184. One industry association considered that a migration to T+1 would require a deeper review of current market operating times, both at trading and at settlement level. At the trading level there has been a push in recent years in several markets to extend trading hours until late in the evening, partly motivated by the aim to increase the overlap with US operating hours and thereby facilitating cross-border business. However, in a T+1 environment late trading hours will pose a particular challenge as this leaves very little time to conclude post-trade processes on T+0. Without changes to current market

operating times, a move to T+1 would likely lead to a shift of significant settlement volumes from the efficient NTS to RTS during the day. In order to avoid this and maintain the efficiency of the settlement system, NTS cut-offs will likely have to be reviewed, both within T2S as well as (I)CSDs outside of T2S.

185. More specifically, another industry association also noted that a large number of trades are executed in the run up to market close. The start of T2S's securities settlement overnight process is 20:00 CET for T2S. ICSDs and non-T2S markets begin night-time settlement processing at times that may be before or after T2S's. One market participant considered that approximately 80% of cleared trades settle through the overnight batch, which suggests that there will be a need for CCPs and clearing members to revise timing schedules (including with respect to margin presumably). Two respondents noted that an extension of the cut-off for T2S night-time settlement might be necessary.

186. One respondent to the Call for Evidence on shortening the settlement cycle also noted that with the T2S NTS instruction cut-off at 20:00 CET on S-1, in a T+1 scenario it is highly likely, at least currently, that in normal conditions a proportion of CCP to member instructions will not be matched in T2S by the start of the NTS. If, as is likely the case, there is a strong benefit to having CCP transactions settle in the NTS then an increased buffer is required between a CCP's end-of-day trade processing and the T2S NTS cut-off time. So as not to impose earlier cut-offs for trading, which goes against current trends, a pushing back of the T2S NTS cut-off by several hours would seem necessary.

187. The preliminary analysis of the T2S Governance body did consider the possibility of postponing the start of NTS (e.g. at 22:00 or 23:00 CET) with a later finish (e.g. 02:00 CET). This option would keep the benefits of the current NTS phase (i.e. maximal volumes settling in a limited number of sequences/cycles) and would require less T2S implementation efforts than other scenarios. In addition, it could allow to process CCP flows in priority in the settlement day compared to other flows[47], as is the case in a T+2 environment, although the clear timing of future CCP flows is not clear at this stage. However, some drawbacks were identified with this approach:

- non-optimal system resource consumption as T2S would be in a longer idle phase where it does not process/settle (e.g. between the start of a new T2S business day at 18:45 and 22:00 CET);
- implications on staff availability and consequently operational costs (i.e. T2S Operator and CSDs would need to extend the onsite support of their staff until the start of NTS); and

[47] If CCP-related settlement instructions are submitted for the first NTS cycle, they are processed with a higher level of settlement priority compared to settlement instructions sent by CSD participants, as described in UDFS June 2024 Table 64 – Levels of priorities.

- the overall daily T2S settlement window would be reduced from today's 22 hours to 20 hours or less, depending on the scenario. This goes against the current market trends of extending the settlement windows and operating hours.

188. Therefore, this scenario was not the preferred option from a T2S Operator perspective unless there is strong evidence provided by the T2S stakeholders to the opposite for supporting such settlement processes/business day in T2S. Instead, they considered that other approaches such as starting the NTS phase as today but adding several sequences/cycles until later in the night would be preferable.

Proposal from the EU Industry Task Force

189. It is essential to preserve the optimisation benefits of the NTS batches, to protect liquidity and settlement efficiency levels. Therefore, T2S timetables could be revised to ensure as much flow as possible can be processed in the NTS. Ideally, settlement should not commence whilst trading and CCP clearing activities are still taking place and whilst it is still technically 'trade date' from an operational processing point of view – a line will therefore need to be drawn between post execution processing and the start of settlement.

190. With these points in mind, the Task Force discussed the changes to the respective NTS cycles that could be required (allowing sufficient time for T2S / CSDs to report the outcome of the NTS, so that ISD activities and RTS are not impeded).

191. As an example, a third T2S batch could also be considered, to support optimisation, and to collect any trades instructed by clients from the APAC region, which may have missed the first two NTS batches. This third batch could be scheduled between 6.00 – 8.00 on ISD, i.e. a 'daylight batch'. In any case, we note the importance of ensuring that CCPs can continue to have priority settlement in the first batch.

192. The Task Force recommends T2S to consider the feasibility of a delay to the start of NTS cycles, and potential introduction of a third batch in the early morning.

CSDs' cut-off times

CDR 2018/1229

193. CDR 2018/1229 does not foresee any measures to specify the CSDs' cut-off times.

Views from previous consultations and from other jurisdictions

194. One industry association considered it beneficial to undertake a review of CSDs' settlement calendars and cut-offs (DVP and FOP) with the aim to harmonize these across the EU. Since currently the DVP settlement window for the majority of (but not all) CSDs is until 16:00 CET, this association recommended that settlement window to be extended until at least 17:30 CET. Also, FOP cut offs are later than DVP and so you can have a re-registration (of shares from one CSD to another) or stock loan transaction, which settles

FOP after the DVP cut off. This means the trade being covered by the re-registration or stock loan fails to settle even though the shares come in that day.

Proposal from the EU Industry Task Force

195. Further consideration by CSDs and T2S should also be given to a potential extension of DvP and FoP settlement cut-off deadlines. This could provide market participants with additional time to complete settlement. Consideration should also be given to broader impacts on other regulations that rely on “end of day” principles – for example the time that corporate action entitlements are struck on record date, as defined in the Shareholder Rights Directive II. In particular, alignment of DvP and FoP cut-offs may be beneficial for facilitating securities lending activity. In today’s environment, a FoP stock borrow, booked to satisfy a DvP delivery obligation, can settle before the FoP cut-off but after the DvP cut-off.

196. The borrower therefore incurs both a settlement fail and the cost of borrowing/holding the securities overnight. On the other hand, having a FoP window can also be beneficial to facilitate the last posting of collateral after payment systems are closed.

197. There could also be potential benefits for US investors, whose working day typically starts a few hours before European settlement close. An extension of settlement hours could provide more opportunity for matching and inventory exceptions to be resolved with US clients.

3.2.7.1 Analysis and proposal

198. In the context of the move to T+1, T2S is considering whether to adapt its settlement day schedule, in particular with regard to the start time, number and duration of night-time settlement cycles.

199. At this stage, ESMA does not have evidence indicating a need for regulatory amendments to align the CSDs' opening hours and business day schedules.

200. Nonetheless, ESMA sees merit in consulting stakeholders on whether CSDs’ opening hours should be aligned and on the ideal business day schedule including real-time settlement, night-time settlement and cut-off times.

Q48: Do you agree that CSDs’ business day schedule should be left to the industry? If not, please elaborate.

Q49: What would be, in your view, the ideal business day schedule for CSDs taking also into account real-time settlement, night-time settlement and cut-off times? Should they be aligned? Please provide arguments.

3.2.8 Shaping

201. Shaping is the practice of splitting the delivery of large amounts of securities or collateral into several smaller deliveries. It is important to note that shaping is an operational process that usually applies at the level of the settlement instruction, i.e. after trade execution and trade confirmation[48].

202. As such, shaping does not change the legal obligation on the delivering party to deliver the full agreed amount of securities/collateral, but it helps to reduce the economic impact of settlement fails on the market and can also significantly reduce firms' intraday liquidity consumption, i.e. the need for firms to use intraday credit to fund delays in the settlement process.

203. Shaping can either be agreed bilaterally between counterparties or it can be applied automatically at the level of the relevant market infrastructure (trading venue, CCP or CSD)[49].

CDR 2018/1229

204. There are no references to 'shaping' in CDR 2018/1229.

Views from previous consultations and from other jurisdictions

205. Two respondents' replies to the Call for Evidence on shortening the settlement cycle indicated that "shaping and partialling should be less voluntary and should be improved before T+1 for CSDs, CCPs and bilateral trades". One association considered that shaping is one of the necessary pre-requisites to arrive to T+1. For them, shaping is a functionality which is not yet fully available and/or used sufficiently.

206. It is worth noting that the T2S governance contribution to the T+1 report considered that "at this stage, the need for new T2S tools and functionalities, such as e.g. automated shaping[50], has not been identified as needed to support a transition to T+1".

207. The UK AST Technical Group consultation recommends the systematic use of auto shaping of large settlement instructions in both repo and cash markets to clips of 50 million nominal (GBP, USD or EUR). Shaping requires bilateral agreement and consequently is not widely applied by market participants. The market via financial market infrastructures and industry associations should confirm the level of cap to be included in the relevant market practice. This should then be applied either by market participants (on a bilateral basis) or, preferably, automatically by trading platforms or the CSD. The CSD should

[48] Please see https://www.icmagroup.org/assets/Uploads/ERCC-discussion-paper-on-settlement-efficiency.pdf?vid=2#:~:text=Shaping%20is%20the%20practice%20of,trade%20execution%20and%20trade%20confirmation.
[49] For the difference between partial settlement and shaping please see https://www.icmagroup.org/assets/Uploads/Compilation-of-ERCC-BP-on-settlement-efficiency.pdf?vid=2, paragraph 2.71.
[50] Splitting a settlement instruction with a large cash nominal value into smaller ones.

enforce the rule, either by automatically shaping large instructions or by rejecting all instructions above the specified cap.

Proposal from the EU Industry Task Force

208. To improve efficiency, the industry can […] develop new solutions that enhance the capacity to mobilise and increase the availability of inventory, such as shaping.

209. The industry is actively working on promoting the usage of auto-partial and partial release functionality, as well as processes such as “shaping” of transactions, which are essential to optimising settlement of available inventory. This work should continue through the development of best practice recommendations by the industry.

210. Recommendation/market practice: Industry to develop best practice recommendations to encourage greater use of shaping, including where possible at the level of financial market infrastructure (including T2S).

3.2.8.1 Analysis and proposal

211. Shaping and auto partial settlement have the same aim, i.e. the settlement of part of the instruction when the seller does not have the securities needed available to settle the entire instruction. Shaping would be applied by the CSD provided that the amount of the instruction is higher than the shaping clip (e.g. 50 million Euro). The result would be splitting the instruction into smaller ones, each one of a size equal to the shaping clip. For example, an instruction of 230 Euro million would be split into 4 instructions of 50, 50, 50 and 80 million Euro, respectively (generally each one would be billed by the CSD as a distinct instruction).

212. The shaping clip would be far higher than the auto partial settlement threshold, so shaping would be less efficient than auto partial settlement in improving settlement efficiency.

213. CDR 2018/1229 already requires CSDs to offer partial settlement, except those falling under Article 12 of the CDR derogation. Differently, shaping is not required by CDR 2018/1229. T2S for example does not offer shaping, so, if made mandatory, CSDs/T2S would need to develop a new shaping tool with the costs it entails.

214. Additionally, there is already an existing market practice at the level of ICMA51. On this basis and considering the partial settlement functionality and/or auto-collateralisation in T2S would already achieve the same purpose in most cases, the costs and benefits of implementing automated shaping appear limited and should be carefully evaluated.

[51] Please see https://www.icmagroup.org/assets/ICMA_Secondary-Market-Best-Practice-in-support-of-settlement-efficiency_June-2022.pdf.

Furthermore, the technical impacts of implementing such tool would have to be assessed along with the implementation lead time.

215. Therefore, ESMA does not deem it necessary to make shaping mandatory through an amendment of CDR 2018/1229. However, ESMA encourages market participants and CSDs to adopt shaping as a best practice.

Q50: Do you agree that shaping should be adopted as best practice? If you do not agree and believe that it should be adopted as regulatory change, please indicate which should be the most adequate size to shape transactions per type of financial instrument.

3.2.9 Automated securities lending

216. ICMA, in their ERCC best practices in support of settlement efficiency[52] notes that the two (I)CSDs and some CSDs operate auto-borrowing or automatic pool lending facilities. These are pools of securities made available for lending by participants to fill complete or partial shortfalls where sellers have insufficient securities to meet their delivery obligations.

217. Lenders earn a share of the fees charged to borrowers. Fees tend to be higher than in the securities lending market in order to discourage over-reliance on these facilities at the expense of internal settlement efficiency. Participation as a lender or a borrower is voluntary. The (I)CSDs typically indemnify lenders and take liens on the securities accounts of borrowers. Lending is anonymous and subject to limits related to holdings. Auto-borrowing plays a key role in reducing settlement failures, but its efficacy depends on participants signing up to these facilities as both lenders and borrowers. It is desirable for all CSDs to offer auto-borrowing facilities. It is best practice for all participants to sign up as borrowers to such facilities and, where practicable, for participants to sign up as lenders. As full use as possible should be made of these facilities.

218. Their best practice recommendation for all participants in (I)CSDs to sign up as borrowers to auto-borrowing or automatic pool lending facilities and, where practicable, to sign up as lenders. As full use as possible should be made of these facilities.

CDR 2018/1229

219. CDR 2018/1229 does not refer to automated securities lending as a compulsory functionality.

Views from previous consultations and from other jurisdictions

[52] Please see https://www.icmagroup.org/assets/Uploads/Compilation-of-ERCC-BP-on-settlement-efficiency.pdf?vid=2

220. ESMA received limited feedback in response to the Call for Evidence, suggesting that CSDs should offer pools of securities available for lending by participants to cover complete or partial shortfalls when sellers lack sufficient securities to meet their delivery obligations (automatic pool lending facilities).

221. In particular, one association noted that securities lending is an important market mechanism to ease trade settlement through so-called “fails coverage programmes”. Based on feedback from their members, despite the availability of some automated tools, a lot of securities lending is still unfortunately executed and instructed in a non-STP process. Hence, the compressed timeframe associated to the migration to T+1 will substantially shorten the time available to identify and cover short positions and, as a consequence, could result in i) an increase in settlement fails and a potential increase of cash penalties (all other things being equal) and ii) in the longer term, in a behavioural change with a related reduction of liquidity from the market

222. However, there are no references to automated securities lending in either the AFME report, the AST Technical Group consultation or the EU Industry Task Force.

3.2.9.1 Analysis and proposal

223. ESMA’s preliminary view is that this tool could be useful, although it is not strictly necessary. Implementing automated securities lending would require significant changes for some CSDs, particularly if a common settlement infrastructure for a joint auto-borrowing mechanism is used, similar to what is envisaged under Article 20 of the CDR.

224. As a consequence, ESMA does not propose any regulatory changes in this area.

Q51: Do you see the need for a regulatory action in this area? If yes, please elaborate.

3.2.10 Other proposals regarding settlement discipline measures and tools to improve settlement efficiency

Q52: Do you have other proposals regarding settlement discipline measures and tools to improve settlement efficiency in areas not covered in the previous sections? Please give examples and provide arguments and data where available. If relevant, please also include the specific proposed amendments to CDR 2018/1229.

3.2.11 Costs and Benefits

Q53: For all the topics covered in this CP please provide your input on the envisaged costs and benefits using the table below. Please include any operational challenges and the time it may take to implement the proposed requirements. Where relevant, additional tables, graphs and information may be included in order to support the arguments or calculations presented in the table below.

ESMA or respondent's proposal		
	Qualitative description	Quantitative description/ Data
Benefits		
Compliance costs: - One-off - On-going		
Costs to other stakeholders		
Indirect costs		

4 Annexes

Annex I: Summary of questions

Q1: Do you agree with the proposed amendments to Articles 2(2) and 3 of CDR 2018/1229?

Q2: Would you see merit in introducing an obligation for investment firms to notify their professional clients the execution details of their orders as soon as these orders are fulfilled (in a way that allows STP)? If yes, should it be cumulative to the proposed amendments to Articles 2(2) and 3 of CDR 2018/1229?

Q3: If you support an obligation for investment firms to notify their professional clients the execution as soon as the orders are fulfilled, do you think that clients should be allowed a maximum number of business hours for the allocations and confirmations from the moment of notification by investment firms, instead of having fixed deadlines? If yes, how many hours would be necessary for that?

Q4: Should CDR 2018/1229 further specify the term 'close of business' for the purpose of Article 2(2)? If yes, how should this take into account the business day at CSD level?

Q5: Should the 10:00 CET deadline for professional clients in different time zones and retail clients be brought forward to 07:00 CET on T+1, to be aligned with the UK deadline?

Q6: Can you suggest any other means to achieve the same objective? If yes, please elaborate

Q7: Do you agree to make the use of electronic and machine-readable format that allow for STP mandatory for written allocations?

Q8: Would you see merit in introducing optionality for investment firms to set deadlines based on whether an electronic, machine-readable format of the communication is used? In such case, do you agree that an earlier deadline could be set for non-machine readable formats, so clients are disincentivised to use them? Which should be such deadline?

Q9: Please provide quantitative evidence regarding the use of non-machine readable formats for written allocations and confirmations.

Q10: Would it be necessary to introduce a similar obligation in other steps of the settlement chain? If yes, please elaborate.

Q11: Can you suggest any other means to achieve the same objective? If yes, please elaborate

Q12: Do you agree with the proposed amendment to Article 2 of CDR 2018/1229?

Q13: Do you agree that settlement efficiency would improve if all parties in the transaction and settlement chain used the latest international standards, such as the ISO 20022 messaging standards, in particular whenever A2A messages and data are exchanged? If not, please elaborate. How long would it take for all parties to adapt to ISO20022?

Q14: Can you provide figures (by number and type of financial entities, jurisdictions) regarding the current use of international open communication procedures and standards such as: a) ISO 20022, b) ISO 15022, c) others (please specify)?

Q15: Do you agree with the proposal of the EU Industry Task Force whereby allocation requirements should be aligned with CSD-level matching requirements? If not, please elaborate.

Q16: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

Q17: Do you agree with the proposed regulatory change to introduce an obligation for investment firms to collect the data necessary to settle a trade from professional clients during their onboarding and to keep it updated? If not, please explain.

Q18: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

Q19: Do you agree with the proposed amendment to Article 10 of CDR 2018/1229? If not, please elaborate.

Q20: Do you agree with the deletion of Article 12 of CDR 2018/1229? If not, please elaborate.

Q21: Do you have other suggestions to incentivise partial settlement? If yes, please elaborate.

Q22: Do you think that some types of transactions should not be subject to partial settlement? If yes, could you provide a list and the supporting reasoning?

Q23: Do you agree with the introduction of an obligation for CSDs to facilitate the provision of intraday cash credit secured with collateral via an auto-collateralisation facility? If not, please elaborate.

Q24: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

Q25: Should CDR 2018/1229 be amended to require all CSDs to offer real-time gross settlement for a minimum window of time of each business day as well as a minimum number of settlement batches? Please provide arguments to justify your answer.

Q26: What should be the length of the minimum window of time of each business day for real-time gross settlement and the minimum number of settlement batches that should be offered, per business day? Please provide arguments to justify your answer.

Q27: Can you suggest any other means to achieve the same objective? If yes, please elaborate.

Q28: Do you agree with the proposed amendments to Table 1 of Annex I of CDR 2018/1229? If not, please elaborate.

Q29: Should top 10 failing participants be reported both in absolute terms (current approach) and in relative terms (according to the proposed amendments to Table 1 of Annex I of CDR 2018/1229)?

Q30: Do you have additional suggestions regarding the requirements for CSDs to report settlement fails data specified in Annex I and Annex II of CDR 2018/1229? If yes, please elaborate.

Q31: Do you agree with the proposed amendments to Article 13(1)(a) of CDR 2018/1229? Or can you suggest alternative options so that CSDs have visibility of the root causes of settlement fails at participants level?

Q32: Based on the experience since the implementation of the settlement discipline regime under CSDR, please describe the main root causes of settlement fails identified so far. Please specify the relevant categories in more granular terms, going beyond "lack of securities", "lack of cash" and "instructions put on hold".

Q33: According to Article 13(2) of the CDR, CSDs shall establish working arrangements with their top failing participants to analyse the main reasons for settlement fails. Do you believe that this provision has proven useful in analysing the root causes of fails and in preventing them? Do you have suggestions on other actions which CSDs could take with respect to top failing participants?

Q34: Do you agree with the proposed amendments to Table 1 of Annex III of CDR 2018/1229 to include information on the breakdown of the settlement fails per asset class? If not, please elaborate.

Q35: Do you think that CSDs should publish additional information on settlement fails? If yes, please specify.

Q36: Should the frequency of publication of settlement fails data by CSDs increase? Which should be the right frequency?

Q37: Do you agree that the use of UTI should not be made mandatory through a regulatory change?

Q38: What are your views on the use of UTI in general and in the case of netted transactions specifically?

Q39: Should the market standards for the storage and exchange of SSIs be left to the industry or is regulatory action at EU level necessary?

Q40: How can the PSET contribute to improve settlement efficiency and reduce settlement fails? Do you have suggestions on how to make the use of PSET more consistent across the market? If yes, please elaborate.

Q41: Do you agree that the PSET should not be made a mandatory field of written allocations under Article 2(1) of CDR 2018/1229? If you have a different view, please elaborate.

Q42: Do you agree that the decision to use the PSAF and the PSET in the settlement instructions should be left to the industry?

Q43: What are the current market practices regarding the use of PSAF and PSET, in particular in the case of netting along the trading and settlement chain?

Q44: Do you agree that the transaction type should not become a mandatory matching field under Article 5(4) of CDR 2018/1229?

Q45: Do you think the lists mentioned in Article 2(1)(a) and Article 5(4) of CDR 2018/1229 should be updated? If yes, please specify.

Q46: What are your views on whether market participants should send settlement instructions intra-day rather than in bulk at the end of the day?

Q47: Do you consider it necessary to introduce a deadline for the submission of settlement instructions through a regulatory amendment to CDR 2018/1229? If yes, what should be such a deadline? Please provide arguments to justify your answers.

Q48: Do you agree that CSDs' business day schedule should be left to the industry? If not, please elaborate.

Q49: What would be, in your view, the ideal business day schedule for CSDs taking also into account real-time settlement, night-time settlement and cut-off times? Should they be aligned? Please provide arguments.

Q50: Do you agree that shaping should be adopted as best practice? If you do not agree and believe that it should be adopted as regulatory change, please indicate which should be the most adequate size to shape transactions per type of financial instrument.

Q51: Do you see the need for a regulatory action in this area? If yes, please elaborate.

Q52: Do you have other proposals regarding settlement discipline measures and tools to improve settlement efficiency in areas not covered in the previous sections? Please give examples and provide arguments and data where available. If relevant, please also include the specific proposed amendments to CDR 2018/1229.

Q53: For all the topics covered in this CP please provide your input on the envisaged costs and benefits using the table below. Please include any operational challenges and the time it may take to implement the proposed requirements. Where relevant, additional tables, graphs and information may be included in order to support the arguments or calculations presented in the table below.

ESMA or respondent's proposal		
	Qualitative description	**Quantitative description/ Data**
Benefits		
Compliance costs: **- One-off** **- On-going**		
Costs to other stakeholders		
Indirect costs		

Annex II: Legislative mandates to develop technical standards

Regulation (EU) 2023/2845 of the European Parliament and of the Council of 13 December 2023 amending Regulation (EU) No 909/2014 as regards settlement discipline, cross-border provision of services, supervisory cooperation, provision of banking-type ancillary services and requirements for third-country central securities depositories and amending Regulation (EU) No 236/2012

CHAPTER III

Settlement discipline

Article 6

Measures to prevent settlement fails

[…]

5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the measures to prevent settlement fails in order to increase settlement efficiency and in particular:

(a) the measures to be taken by investment firms in accordance with paragraph 2, first subparagraph;

(b) the details of the procedures that facilitate settlement referred to in paragraph 3, which could include the shaping of transaction sizes, partial settlement of failing trades and the use of auto-lend/borrow programmes provided by certain CSDs; and

(c) the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by 17 July 2025.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 7

Measures to address settlement fails

[…]

10. 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 conditions under which a participant is deemed to fail, consistently and systematically, to deliver the financial instruments as referred to in paragraph 7.

ESMA shall submit those draft regulatory technical standards to the Commission by 17 January 2025.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Annex III: Proposed amendments to Commission Delegated Regulation (EU) 2018/1229

Commission Delegated Regulation (EU) …/…

of XXX

amending the regulatory technical standards laid down in Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline

(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 236/2012[53] , and in particular Article 6(5) and Article 7(10) thereof,

Whereas:

(1) Commission Delegated Regulation (EU) 2018/1229 lays down regulatory technical standards on settlement discipline requirements by introducing in particular measures on improving settlement efficiency and on preventing and addressing settlement fails. It is necessary to keep those regulatory technical standards up to date with relevant regulatory developments.

(2) To allow for an effective and efficient settlement of transactions, investment firms should ensure that they have all the necessary settlement information in a timely manner. In this respect, investment firms should collect this information during the onboarding of their professional clients and ensure that the information, including the standardised data needed for the settlement process, is kept updated at all times.

(3) 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 the internal automation in place that is necessary to

[53] OJ L 257, 28.8.214, p.1

take full advantage of the available STP solutions. In this respect, investment firms should require their professional clients to send confirmations and allocation in an electronic, machine-readable format. In particular, this should be achieved by using international open communication procedures and standards for messaging and reference data.

(4) CSDs should have sound and efficient system functionalities, policies and procedures that enable them to facilitate and incentivise settlement on the intended settlement date. The effective contribution of certain system functionalities to settlement efficiency has become evident since the application of the settlement discipline regime. It is therefore appropriate to delete Article 12 of Commission Delegated Regulation (EU) 2018/1229 by removing the previous derogation based on the value and the rate of settlement fails in the securities settlement systems operated by CSDs. Article 23 of that Regulation should be amended accordingly.

(5) To enable CSDs to identify the root causes of settlement fails, CSDs should require participants to provide them with the relevant information, where such information is not available to CSDs.

(6) In order to monitor settlement fails in a more efficient manner, only settlement fails for which the participants are responsible should be considered by CSDs when calculating their settlement fail rates.

(7) For the purpose of reporting top failing participants, a CSD should take into account the share of a participant's settlement fails in the total volume and value of settlement instructions processed at the level of the securities settlement system operated by the CSD. Otherwise, smaller participants with few transactions may find themselves in the top failing participants list if their settlement fail rate is considered in absolute terms. This amendment should enable CSDs to identify failing participants that may have a significant impact.

(8) To promote a higher level of transparency, CSDs should publish settlement fails data by asset type.

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2018/1229

Delegated Regulation (EU) 2018/1229 is amended as follows:

(1) Article 2 is amended as follows:

a) the following paragraph is inserted:

"1a. Investment firms shall collect all data necessary to settle a trade from professional clients during their onboarding and keep that information updated at all times".

b) paragraph (1) is amended as follows:

(i) the following subparagraph is inserted after the second subparagraph:

"Written allocations shall be sent in an electronic, machine-readable format".

(ii) the third subparagraph is replaced by the following:

"Investment firms that have received confirmation of the execution of a transaction order placed by a professional client shall ensure through contractual arrangements that the professional client confirms its acceptance of the terms of the transaction in writing, using an electronic, machine-readable format, within the timeframes set out in paragraph 2. That written confirmation may also be included in the written allocation".

(iii) the fourth subparagraph is replaced by the following:

"Investment firms shall require their professional clients to send the written allocation and written confirmation electronically using international open communication procedures and standards for messaging and reference data referred to in Article 35 of Regulation (EU) No 909/2014".

c) In paragraph 2, point (b) is replaced by the following:

"by 10.00 CET on the business day following that on which the transaction has taken place 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".

(2) Article 3 is replaced by the following:

"Investment firms shall require their retail clients to send them all the relevant settlement information for transactions referred to in Article 5(1) of Regulation (EU) No 909/2014 by 10.00 CET on the business day after that on which the transaction has taken place within the time zone of the

investment firm, unless that client holds the relevant financial instruments and cash at the same investment firm".

(3) Article 10 is replaced by the following:

"CSDs shall allow for the partial settlement of settlement instructions. Matched settlement instructions shall be eligible for partial settlement, unless one of the participants opts out from partial settlement or a settlement instruction is put on hold".

(4) In Article 11, the following paragraph is added:

"5. CSDs shall facilitate the provision of intraday cash credit secured with collateral via an auto-collateralisation facility".

(5) Article 12 is deleted.

(6) In Article 13, point (a) of paragraph 1 is replaced by the following:

"the reason for the settlement fail, based on the information available to the CSD or to be provided by participants, where this information is not available to the CSD";

(7) In Article 23, paragraph 1 is replaced by the following:

"Where on the last business day of the extension period referred to in Article 7(3) of Regulation (EU) No 909/2014, some of the relevant financial instruments are available for delivery to the receiving participant, the receiving and failing clearing members, trading venue members or trading parties, as applicable, shall partially settle the initial settlement instruction".

(8) Annex I is amended in accordance with the Annex I to this Regulation.

(9) Annex II is amended in accordance with Annex II to this Regulation.

(10) Annex III is amended in accordance with Annex III to this Regulation.

Article 2

Entry into force and application

This Regulation shall enter into force on […] following that 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.

ANNEX I

In Table 1 of Annex I of Delegated Regulation (EU) 2018/1229**,** Row 17 and row 18 are replaced by the following:

Table 1

General information on settlement fails to be reported by CSDs to the competent authorities and relevant authorities on a monthly basis

17.	Top 10 participants with the highest rates of settlement fails during the period covered by the report (based on number of settlement instructions), ranked based on the proportion of the settlement fails caused by each participant, compared to the overall number of settlement instructions at the level of the securities settlement system.	For each participant identified by LEI	
		Participant LEI	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumerical character code
		Total number of settlement instructions at the level of the securities settlement system during the period covered by the report	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), ranked based on the proportion of the settlement fails caused by each participant, compared to the overall value of settlement instructions at the level of the securities settlement system	For each participant identified by LEI	
		Participant LEI	ISO 17442 Legal Entity Identifier (LEI) 20 alphanumerical character code
		Total value (EUR) of settlement instructions at the level of the securities settlement system 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
		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 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.
		Rate of settlement fails	Percentage value up to 2 decimal places.

ANNEX II

Row 19 of Table 1 of Annex II of Delegated Regulation (EU) 2018/1229 is deleted.

ANNEX III

In Table 1 of Annex III of Delegated Regulation (EU) 2018/1229 the following rows are added

Report on settlement fails to be made public on an annual basis

Table 1

19.	Number of settlement instructions for each type of financial instruments	For each type of financial instruments: Up to 20 numerical characters reported as whole numbers without decimals
20.	Number of settlement fails (covering both settlement fails for lack of securities and lack of cash) for each type of financial instruments	For each type of financial instruments: Up to 20 numerical characters reported as whole numbers without decimals
21.	Annual 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	For each type of financial instruments the rate shall be expressed as a percentage value up to 2 decimal places
22.	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
23.	Value (EUR) of settlement fails (covering both settlement fails for 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.
24.	Annual rate of settlement fails for each type of financial instruments, based on value (value of settlement fails/value of settlement instructions for each type of financial instruments	For each type of financial instruments the rate shall be expressed as a percentage value up to 2 decimal places.