



European Securities and  
Markets Authority

# Consultation Paper

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



## Responding to this paper

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

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

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

All contributions should be submitted online at [www.esma.europa.eu](http://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.

The collection of confidential responses is without prejudice to the scope of Regulation (EC) No 1049/2001<sup>1</sup>. Possible requests for access to documents will be dealt in compliance with the requirements and obligations laid down in Regulation (EC) No 1049/2001.

## Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading Legal Notice

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

## **Who should read this paper**

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest to central securities depositories (CSDs) as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014<sup>2</sup> (CSDR).

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<sup>2</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (*OJ L 257, 28.8.2014, p. 1-72*).

# Table of Contents

- I. Executive Summary ..... 4
- II. Background and Mandate ..... 5
- III. Proposed Guidelines on Settlement Fails Reporting under Article 7(1) of CSDR..... 6
  - III.1 Scope ..... 6
  - III.2 Legislative references, abbreviations and definitions..... 7
- IV.1 Purpose ..... 9
- IV.2 Compliance and reporting obligations..... 9
- IV.3 Guidelines on settlement fails reporting under Article 7(1) of CSDR ..... 10
- VI. Annexes..... 21
  - IV.1 Annex I – Settlement scenarios – settlement fails reporting ..... 21
  - IV.2 Annex II – Examples for reporting settlement fails based on the reason or outcome of the settlement fail ..... 32
  - IV.3 Annex III – Summary of questions..... 35
  - IV.4 Annex IV – Preliminary high-level cost-benefit analysis ..... 37

## **I. Executive Summary**

### **Reasons for publication**

In order to ensure the consistent application of Article 7(1) of CSDR<sup>3</sup> and Article 14 of the Commission Delegated Regulation (EU) 2018/1229<sup>4</sup>, ESMA has decided to issue Guidelines on the scope, reporting architecture and exchange of information between ESMA and the competent authorities regarding settlement fails, based on the reports submitted by CSDs.

### **Contents**

Section II contains information on the background and mandate, while Section III contains the proposed guidelines.

Annex IV sets out a summary of the questions contained in this paper and Annex V includes a high-level cost-benefit analysis for the guidelines.

### **Next Steps**

ESMA will consider the feedback it will receive to this consultation with a view to finalising the guidelines by July 2019.

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<sup>3</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012

<sup>4</sup> Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline

## **II. Background and Mandate**

1. According to Article 7(1) of CSDR, for each securities settlement system it operates, a CSD shall establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1). It shall provide regular reports to the competent authority and relevant authorities, as to the number and details of settlement fails and any other relevant information, including the measures envisaged by CSDs and their participants to improve settlement efficiency. The competent authorities shall share with ESMA any relevant information on settlement fails.
2. The Commission Delegated Regulation (EU) 2018/1229 specifies the details of the reports on settlement fails referred to in Article 7(1) of CSDR.
3. In order to ensure the common, uniform and consistent application of Article 7(1) of CSDR and Article 14 of the Commission Delegated Regulation (EU) 2018/1229, ESMA has decided to issue Guidelines on the reporting architecture and exchange of information between ESMA and the competent authorities regarding settlement fails, based on the reports submitted by CSDs.
4. In order to ensure a consistent implementation of the relevant provisions of the Commission Delegated Regulation (EU) 2018/1229, the guidelines clarify the scope of the data to be reported by CSDs and the types of transactions and operations that should or should not be included.

### **III. Proposed Guidelines on Settlement Fails Reporting under Article 7(1) of CSDR**

#### **III.1 Scope**

##### **Who?**

1. These guidelines apply to competent authorities and CSDs as defined in Article 2(1)(1) of CSDR.

##### **What?**

2. These guidelines apply in relation to Article 7(1) of CSDR and Article 14 of the Commission Delegated Regulation (EU) 2018/1229.

##### **When?**

3. These guidelines apply from the date of entry into force of the 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 [13 September 2020].

## III.2 Legislative references, abbreviations and definitions

### Legislative references

<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC <sup>5</sup>
<i>CSDR</i>	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 <sup>6</sup>
Commission Delegated Regulation (EU) 2018/1229	Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline <sup>7</sup>
<i>FCD</i>	Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements <sup>8</sup>
<i>SFD</i>	Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems <sup>9</sup>
<i>MiFID II</i>	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU <sup>10</sup>
<i>MiFIR</i>	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 <sup>11</sup>
<i>MAR</i>	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the

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<sup>5</sup> OJ L 331, 15.12.2010, p. 84.

<sup>6</sup> OJ L 257, 28.8.2014, p. 1–72

<sup>7</sup> OJ L 230, 13.9.2018, p. 1–53

<sup>8</sup> OJ L 168, 27/06/2002, p. 0043 – 0050

<sup>9</sup> OJ L 166, 11.6.1998, p. 45–50

<sup>10</sup> OJ L 173, 12.6.2014, p. 349–496

<sup>11</sup> OJ L 173, 12.6.2014, p. 84–148



European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC<sup>12</sup>

SSR

Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps<sup>13</sup>

### Abbreviations

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

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<sup>12</sup> OJ L 173, 12.6.2014, p. 1-61

<sup>13</sup> OJ L 86, 24.3.2012, p. 1-24

## **IV.1 Purpose**

4. These guidelines are based on Article 16(1) of the ESMA Regulation. The purpose of these guidelines is to ensure common, uniform and consistent application of Article 7(1) of CSDR as well as the relevant provisions of the Commission Delegated Regulation (EU) 2018/1229 on settlement discipline, including the exchange of information between ESMA and the competent authorities regarding settlement fails.

## **IV.2 Compliance and reporting obligations**

### **Status of the guidelines**

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

### **Reporting requirements**

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

## **IV.3 Guidelines on settlement fails reporting under Article 7(1) of CSDR**

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

- 1. Guideline 1: When reporting to competent authorities and relevant authorities as to the number and details of settlement fails and any other relevant information in accordance with Article 7(1) of CSDR, a CSD should send separate reports for each securities settlement system it operates, including the following financial instruments:**
  - a) financial instruments that are initially recorded or centrally maintained in CSDs authorised in the EU, i.e. financial instruments in relation to which an EU CSD acts in an issuer CSD capacity;**
  - b) financial instruments that are recorded in an EU CSD that acts in an investor CSD capacity for the respective financial instruments, even though they may be initially recorded or centrally maintained outside of CSDs authorised in the EU.**

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

- 2. Guideline 2: CSDs should report settlement fails data broken down according to the liquidity of the financial instruments and whether the settlement instructions and settlement fails relate to transactions executed on an SME growth market, thus reflecting the types of penalty rates specified in the Commission Delegated Regulation (EU) 2017/389<sup>14</sup>**
- 3. Having regard to Articles 13 and 14 of the Commission Delegated Regulation (EU) 2018/1229, and Article 2 of the Commission Delegated Regulation (EU) 2017/389, CSDs should provide data broken down according to the following types of financial instruments in the reports they send to competent authorities under Article 7(1) of CSDR:**
  - i) transferable securities as defined in point (a) of Article 4(1)(44) of MiFID II:**
    - a. that have a liquid market within the meaning of point (b) of Article 2(1)(17) of MiFIR, excluding shares referred to in point (c) below;**
    - b. that do not have a liquid market within the meaning of point (b) of Article 2(1)(17) of MiFIR, excluding shares referred to in point (c) below;**
    - c. if the related transactions have been executed on an SME growth market;**
  - ii) sovereign debt as defined in Article 4(1)(61) of MiFID II;**

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<sup>14</sup> Commission Delegated Regulation (EU) 2017/389 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council as regards the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host Member States

- iii) transferable securities as defined in point (b) of Article 4(1)(44) of MiFID II, other than sovereign debt referred to in point (ii) above:
    - a. if the related transactions have not been executed on an SME growth market;
    - b. if the related transactions have been executed on an SME growth market;
  - iv) transferable securities as defined in point (c) of Article 4(1)(44) of MiFID II:
    - a. if the related transactions have not been executed on an SME growth market;
    - b. if the related transactions have been executed on an SME growth market;
  - v) exchange-traded funds (ETFs):
    - a. if the related transactions have not been executed on an SME growth market;
    - b. if the related transactions have been executed on an SME growth market;
  - vi) units in collective investment undertakings, other than ETFs:
    - a. if the related transactions have not been executed on an SME growth market;
    - b. if the related transactions have been executed on an SME growth market;
  - vii) money-market instruments, other than sovereign debt referred to in point (ii) above:
    - a. if the related transactions have not been executed on an SME growth market;
    - b. if the related transactions have been executed on an SME growth market;
  - viii) emission allowances:
    - a. if the related transactions have not been executed on an SME growth market;
    - b. if the related transactions have been executed on an SME growth market;
  - ix) other financial instruments:
    - a. if the related transactions have not been executed on an SME growth market;
    - b. if the related transactions have been executed on an SME growth market.
4. In order to determine whether a financial instrument is liquid or not, CSDs can use the information published by ESMA in the Financial Instruments Transparency System (FIRTS)<sup>15</sup> in accordance with MiFID II and MiFIR, together with the list published by ESMA in the Financial Instruments Reference Data System (FIRDS)<sup>16</sup> under Article 27 of Regulation (EU) No 600/2014 (MiFIR) and Article 4 of Regulation (EU) No 596/2014 (MAR). If the information in terms of liquidity for specific shares is not available, the respective shares should be considered as illiquid for the purpose of reporting settlement fails.
5. In order to determine whether a settlement instruction is related to a transaction which has been executed on an SME growth market, CSDs should check that this information has been included in both settlement instructions (matched), which should be checked against the List of SME growth markets<sup>17</sup> published by ESMA according to Article 33(6) of (MiFID II). If the information is not available, then CSDs should treat the settlement instructions as not related to a transaction which has been executed on an SME growth market.

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<sup>15</sup> [https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_fitrs\\_files](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_fitrs_files)

<sup>16</sup> [https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_firds](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds)

<sup>17</sup> [https://registers.esma.europa.eu/publication/searchRegister?core=esma\\_registers\\_upreg#](https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_upreg#)

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

6. **Guideline 3: In accordance with point e) of Article 1 and Article 16(1) of the Commission Delegated Regulation (EU) 2018/1229, for the purpose of the reports on settlement fails under Article 7(1) of CSDR, a CSD should take into account all matched settlement instructions entered into the securities settlement system it operates, where matching is required in accordance with Article 5(2) of the Commission Delegated Regulation (EU) 2018/1229.**

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

7. **Guideline 4: The following types of transactions and operations should be considered out of scope of settlement fails reporting, given that they are not fulfilling the objective of the settlement discipline regime (as outside of the participants' control):**
- a) **corporate actions on stock, such as cash distributions (e.g. cash dividend, interest payment), securities distributions (e.g. stock dividend; bonus issue), reorganisations (e.g. conversion, stock split, redemption, tender offer);**
  - b) **primary market operations, meaning the process of initial creation of securities, whereby the securities are created, but they have not yet been subscribed for, so no capital has been raised;**
  - c) **creation and redemption of fund units, meaning the technical creation and redemption of fund units, unless such creation and redemption of fund units is done through transfer orders in a securities settlement system operated by a CSD;**
  - d) **T2S realignment operations.**

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

**Q5: Are there other types of realignment operations than those used in T2S? What are the characteristics of those realignment operations? Could those realignment**

operations fail? How can realignment operations be identified by CSDs? Please provide details and examples.

**B) Data reporting parameters**

8. **Guideline 5:** For the purpose of the reports on settlement fails under Article 7(1) of CSDR, CSDs should include each separate settlement instruction they receive in the aggregate figures, as follows:
- a) In the case of intra-CSD settlement, the CSD (issuer CSD or investor CSD) should report both legs of a transaction, i.e. it should report the two settlement instructions received.
  - b) In the case where more than one CSD is involved in the settlement of a transaction through standard, customised, indirect links or interoperable links, each CSD should report the settlement instructions received in relation to a transaction.
9. Please see the settlement scenarios included in Annex I to these Guidelines.

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

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

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

10. **Guideline 6:** The term 'volume' mentioned in the Annexes to the Commission Delegated Regulation (EU) 2018/1229 should be read as 'the number of settlement instructions'.
11. **Guideline 7:** The reports on settlement fails under Article 7(1) of CSDR and Article 14 of the Commission Delegated Regulation (EU) 2018/1229 should include the number and value of settled instructions during the period covered by the reports, in addition to the number and value of settlement fails, and the number and value of settlement instructions.

**Q9:** Do you think it would be useful for CSDs to report also 'settled instructions', in addition to 'settlement fails' and 'total instructions'? Would this add operational

**complexities to the reporting? Please provide arguments supporting your comments and suggestions.**

12. **Guideline 5: Settlement instructions should be considered as ‘failing settlement instructions’ (and included in the data regarding ‘settlement fails’) from the moment when settlement on the intended settlement date (ISD) is no longer possible.**
13. Settlement instructions should be included in the data regarding ‘settlement fails’ if they are still pending on the ISD after the settlement processing related to the respective settlement instructions submitted by the relevant cut-off time has been completed. The cut-off time is the deadline set by a system operator for the acceptance of transfer orders for a given settlement cycle, for the relevant settlement instructions, i.e. there could be different cut-off times for different settlement instructions.
14. If, during a period covered by a report, a settlement instruction fails to settle for several business days after the ISD, including in the case where the settlement instruction is cancelled, then it should be reported as “failed” by taking into account each business day when it fails to settle. It should be reported as “settled” if it is settled during the period covered by the report.
15. **Guideline 6: The rate of settlement fails should be calculated by taking into account recurring settlement fails (i.e. settlement fails that last more than one business day).**
16. For the aggregated figures included in the monthly reports as per Table 1 of Annex I to the Commission Delegated Regulation (EU) 2018/1229, CSDs should take into account the sum of the number or of the value of individual settlement instructions eligible for settlement on each business day of the month.
17. Please see the following example for the number of settlement instructions (“settlement instructions (SIs) entered” are shown for illustration purposes only). The settlement fails rate on a specific business day is calculated as follows: all failed SIs on a business day divided by the total SIs on a business day (from the current business day and the previous business days).

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

18. The rate of settlement fails should be calculated by taking into account recurring settlement fails, by counting each business day on which a settlement instruction fails to settle.

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

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

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

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

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

Reporting logic:

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

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

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



Rate of fails	50%	50%	100%	0%		50%	60%	100%	0%
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**Q12: Do you have any comments or suggestions regarding the proposed approach for reporting partially settled instructions? Please provide arguments supporting your comments and suggestions.**

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

22. Please see the following example: a DVP instruction with counter value 100€ matches on ISD+3 and settles intraday (the late matching fail is reflected as if it had been entered on ISD, for both monthly and daily breakdowns, in accordance with Tables 1 and 2 of Annex I to the Commission Delegated Regulation (EU) 2018/1229).

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

23. If a monthly report has been sent by a CSD in accordance with Article 14 of the Commission Delegated Regulation (EU) 2018/1229, and a late matching instruction is received containing an ISD within the previous month, the already submitted reports should be modified and resubmitted by the CSD as follows:

**Option 1** – On a daily basis.

**Option 2** – On a monthly basis (e.g. the updated report for March should be submitted at the same time as the new report for April).

24. In addition, if there are significant discrepancies between the annual report and the aggregated figures in the monthly reports, CSDs should resubmit the amended monthly reports after the submission of the annual report.

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

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

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

25. **Guideline 9: For the purpose of the daily data referred to in Table 2 of Annex I to the Commission Delegated Regulation (EU) 2018/1229, in order to distinguish between settlement fails due to “failure to deliver securities” and those due to “failure to deliver cash”, CSDs should take into account the reason (cause) of each settlement fail.**
26. Please see some examples for reporting settlement fails based on the reason (cause) of each settlement fail:
- a) In the case of DVP/RVP instructions, if there is a settlement fail because of the failure to deliver securities, both the corresponding DVP and RVP instructions should be reported in the section “failure to deliver securities”.
  - b) In the case of DWP/RWP instructions, if there is a settlement fail because of the failure to deliver securities, both the corresponding DWP and RWP instructions should be reported in the section “failure to deliver securities”.
27. The volume and value of the total instructions should be reported in both sections “failure to deliver cash” and “failure to deliver securities” in Table 2 of Annex I to the Commission Delegated Regulation (EU) 2018/1229. On the contrary, with regard to the remaining columns in Table 2, data should only be reflected in the relevant section (“failure to deliver cash” and “failure to deliver securities”) depending on the reason (cause) of each settlement fail.

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

28. **Guideline 10: The monthly reports on settlement fails referred to in Article 14(1) of the Commission Delegated Regulation (EU) 2018/1229 should include:**

**Option 1** - all calendar days of the respective month and explicitly state the non-business days, OR

**Option 2** - only the business days of the respective month.

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

**29. Guideline 11: Given the provisions of Article 14(1) of the Commission Delegated Regulation (EU) 2018/1229, all values included in the reports on settlement fails referred to therein should be provided in EUR.**

30. Given the provisions of Article 14(1) of the Commission Delegated Regulation (EU) 2018/1229, any value conversion into EUR shall be carried out using the official exchange rate of the ECB (where available) of the last day of the reporting period where that official exchange rate of the ECB is available.

31. For the data per currency in which the settlement instructions are denominated which has to be included in the monthly reports as per Table 1 of Annex I to the Commission Delegated Regulation (EU) 2018/1229, CSDs should provide the values in EUR, while specifying the original currencies.

Please see the following example regarding item 22 of Table 1 of Annex I to the Commission Delegated Regulation (EU) 2018/1229:

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

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

**32. Guideline 12: In order to report the value of financial instruments included in DwP/RWP settlement instructions, CSDs should use the value of the financial instruments referred to in Article 32(3) of the same Regulation, given that there is no correlation between the financial instruments and the cash amount included in the respective instructions.**

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

**33. Guideline 13: The top 20 ISINs that are the object of settlement fails, and the top 10 direct participants with the highest rates of settlement fails (as mentioned in Table 1 of Annex I to the Commission Delegated Regulation (EU) 2018/1229), should be listed starting with the highest rate of settlement fails. It is possible**

that more than 20 or 10 entries could be reported in case of a tie in the 20th or 10th rank, respectively, and in this case, the tied entities should be listed in alphabetical order according to the ISIN/LEI string.

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

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

- 34. Guideline 14: Competent authorities should send ESMA all reports they receive from the CSDs in their jurisdiction in accordance with Article 7(1) of CSDR and Article 14 of the Commission Delegated Regulation (EU) 2018/1229.**
35. Competent authorities should ensure that CSDs submit the monthly and annual reports in accordance with Article 7(1) of CSDR and Article 14 of the Commission Delegated Regulation (EU) 2018/1229 in an XML format, conforming with agreed candidate ISO 20022 message definition XSD schemas, to be published by ESMA, which should then be used by competent authorities when submitting the data to ESMA.
36. Competent authorities should submit to ESMA the individual reports they receive from CSDs after having validated them.
37. Following the validation checks performed by the ESMA dedicated IT system, such as data transmission validation rules (e.g. not corrupted file), data format validation rules (e.g. abides to the ISO-20022 XSD schema), and data content validation rules, competent authorities will receive a feedback file confirming reception or notifying of validation errors.
38. In case of validation errors notified by ESMA, competent authorities should check the data with the CSDs and should provide feedback to ESMA. If necessary, competent authorities should resubmit the corrected data to ESMA.
39. For the monthly reports on settlement fails referred to in Article 14(1) of the Commission Delegated Regulation (EU) 2018/1229, the reporting periods should be full calendar months (e.g. 1 January to 31 January), with the exception of the first monthly report covering the period from the date of entry into force of the Commission Delegated Regulation (EU) 2018/1229 (i.e. 13 September 2020) to 30 September 2020.
40. In accordance with Article 14(1) of the Commission Delegated Regulation (EU) 2018/1229, CSDs shall send monthly reports on settlement fails to their competent authorities by close of business on the fifth business day of the following month. Competent authorities should submit the respective reports to ESMA by the tenth business day of the following month. The first monthly report should be sent by CSDs to their competent authorities by close of business on 7 October 2020.
41. For the annual reports on settlement fails referred to in Article 14(2) and Article 15 of the Commission Delegated Regulation (EU) 2018/1229, the reporting periods should be full years (e.g. 1 January 2021 to 31 December 2021), with the exception the first

annual report covering the period from the date of entry into force of the Commission Delegated Regulation (EU) 2018/1229 (i.e. 13 September 2020) to 31 December 2020.

42. In accordance with Article 14(2) of the Commission Delegated Regulation (EU) 2018/1229, by 20 January of each year, CSDs shall send annual reports on settlement fails, including the measures planned or taken by CSDs and their participants to improve the settlement efficiency of the security settlement systems they operate. Competent authorities should submit the respective reports to ESMA by 31 January of each year. The first annual report should be sent by CSDs to their competent authorities by 20 January 2021.

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

**Q22: Do you have any additional comments or suggestions regarding the proposed Guidelines on settlement fails reporting? Please provide arguments supporting your comments and suggestions.**

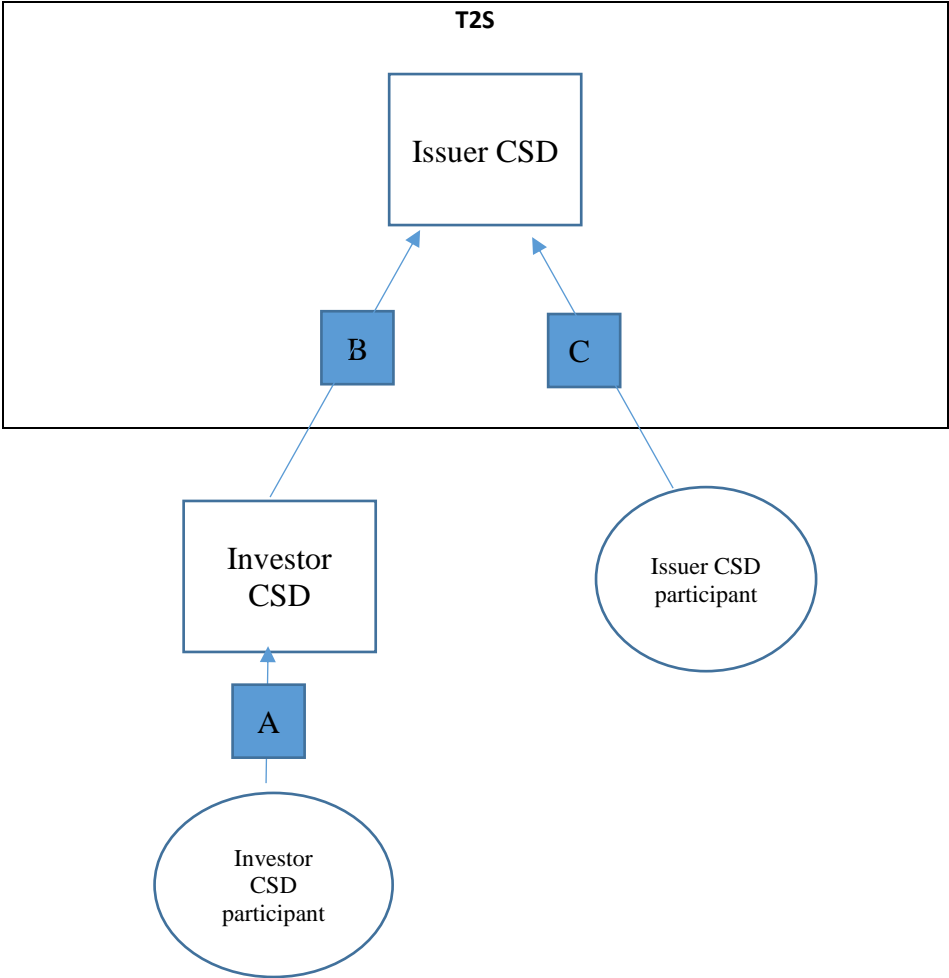
# VI. Annexes

## IV.1 Annex I – Settlement scenarios – settlement fails reporting

General comments applicable to all listed scenarios:

- 'Issuer CSD' can also be read as 'Investor CSD' (in the case of scenarios involving longer chains).
- Third-country CSDs should not be subject to the reporting obligation under Article 7(1) of CSDR.

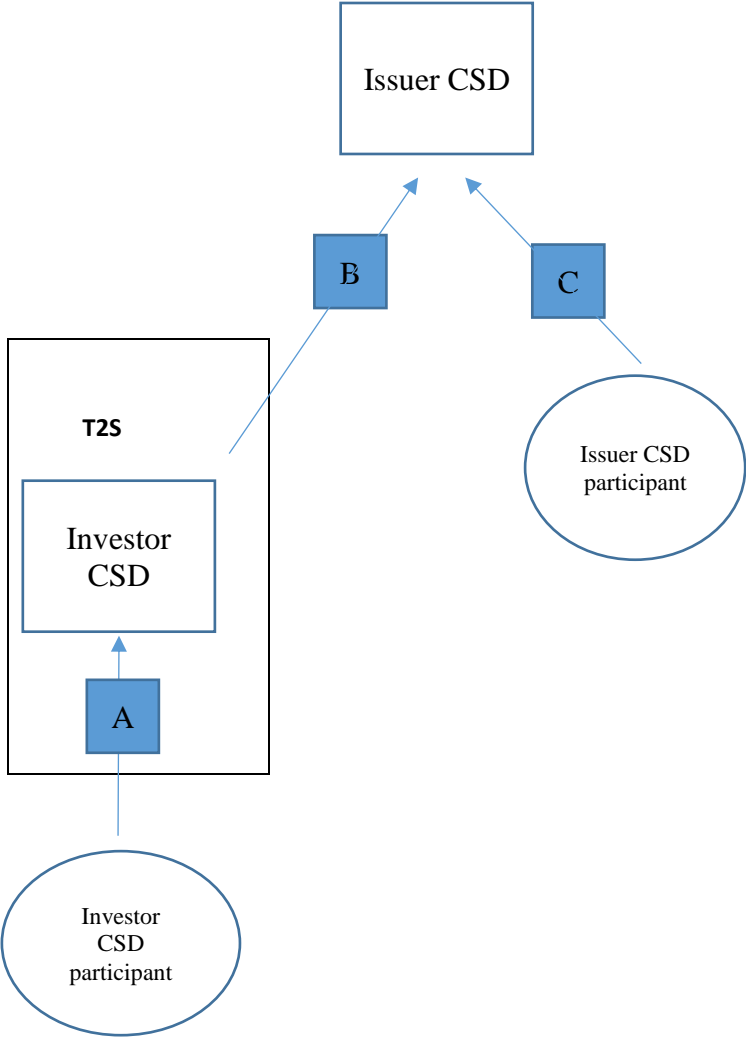
### Settlement Scenario 1



Issuer CSD reports 2 instructions (B and C)

Investor CSD reports 1 instruction (A)

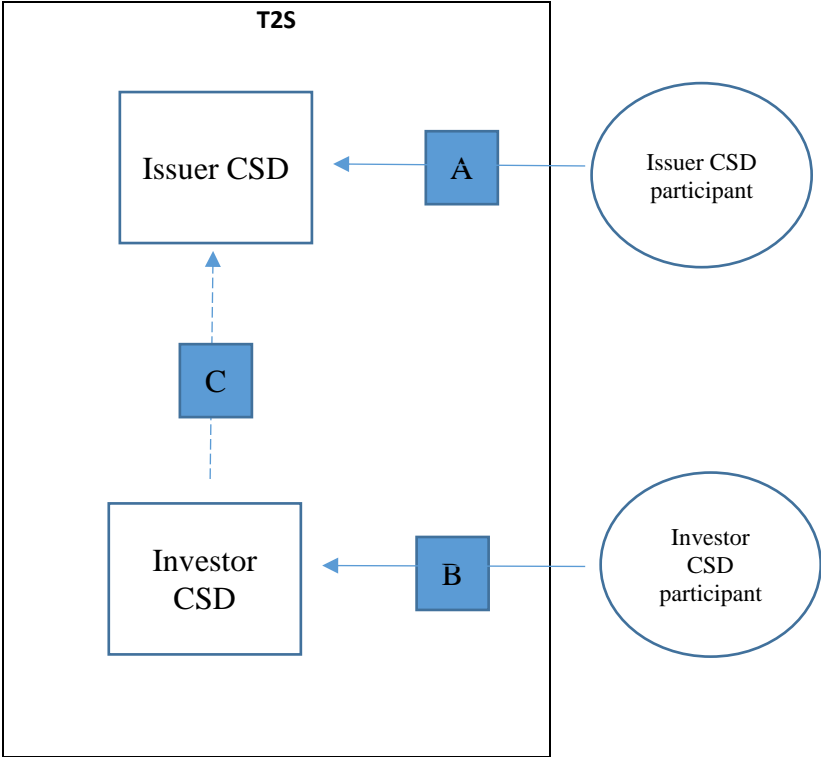
**Settlement Scenario 2**



Issuer CSD reports 2 instructions (B and C)

Investor CSD reports 1 instruction (A)

**Settlement Scenario 3**



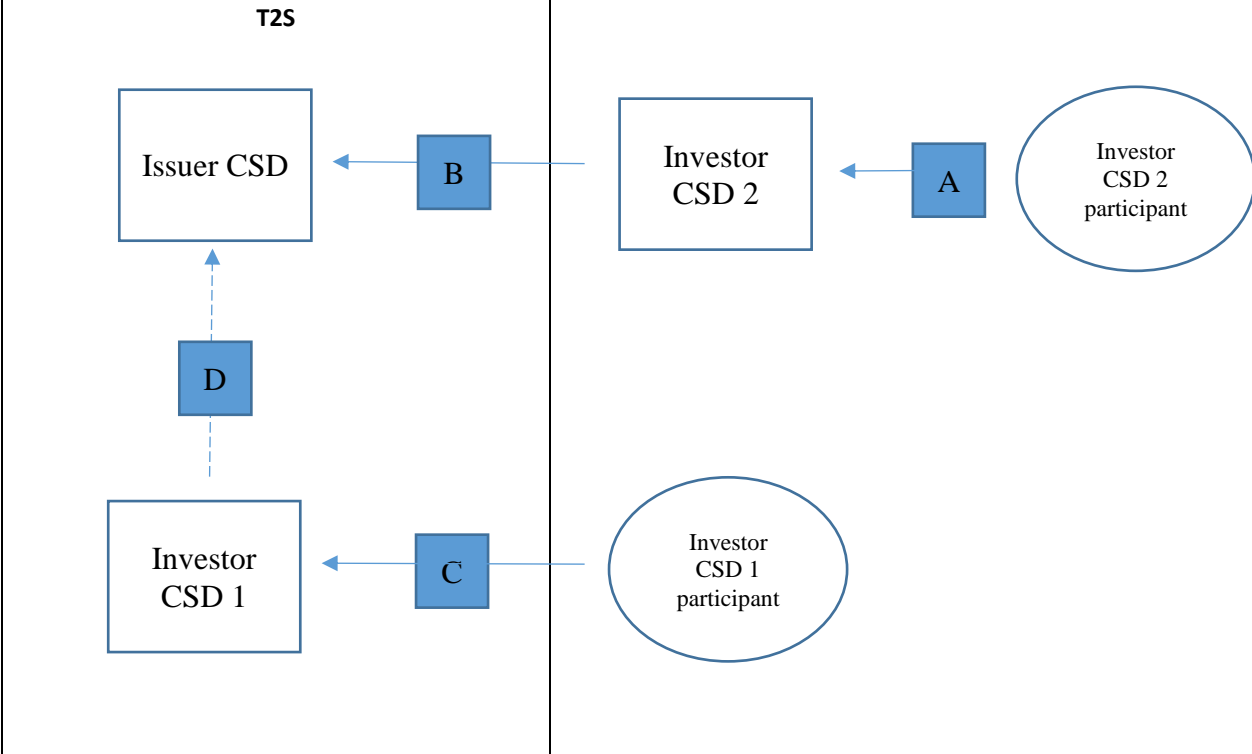
Issuer CSD reports 1 instructions (A)

Investor CSD reports 1 instruction (B)

C is a T2S realignment instruction



**Settlement Scenario 4**



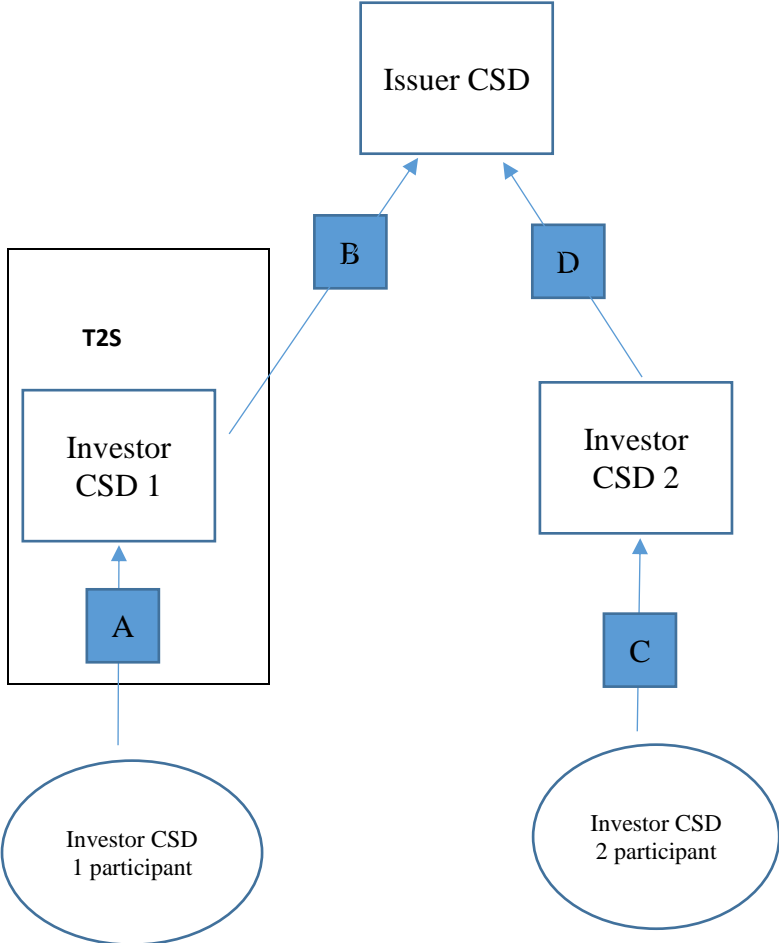
Issuer CSD reports 1 instruction (B)

Investor CSD 1 reports 1 instruction (C)

Investor CSD 2 reports 1 instruction (A)

D is a T2S realignment instruction

**Settlement Scenario 5**

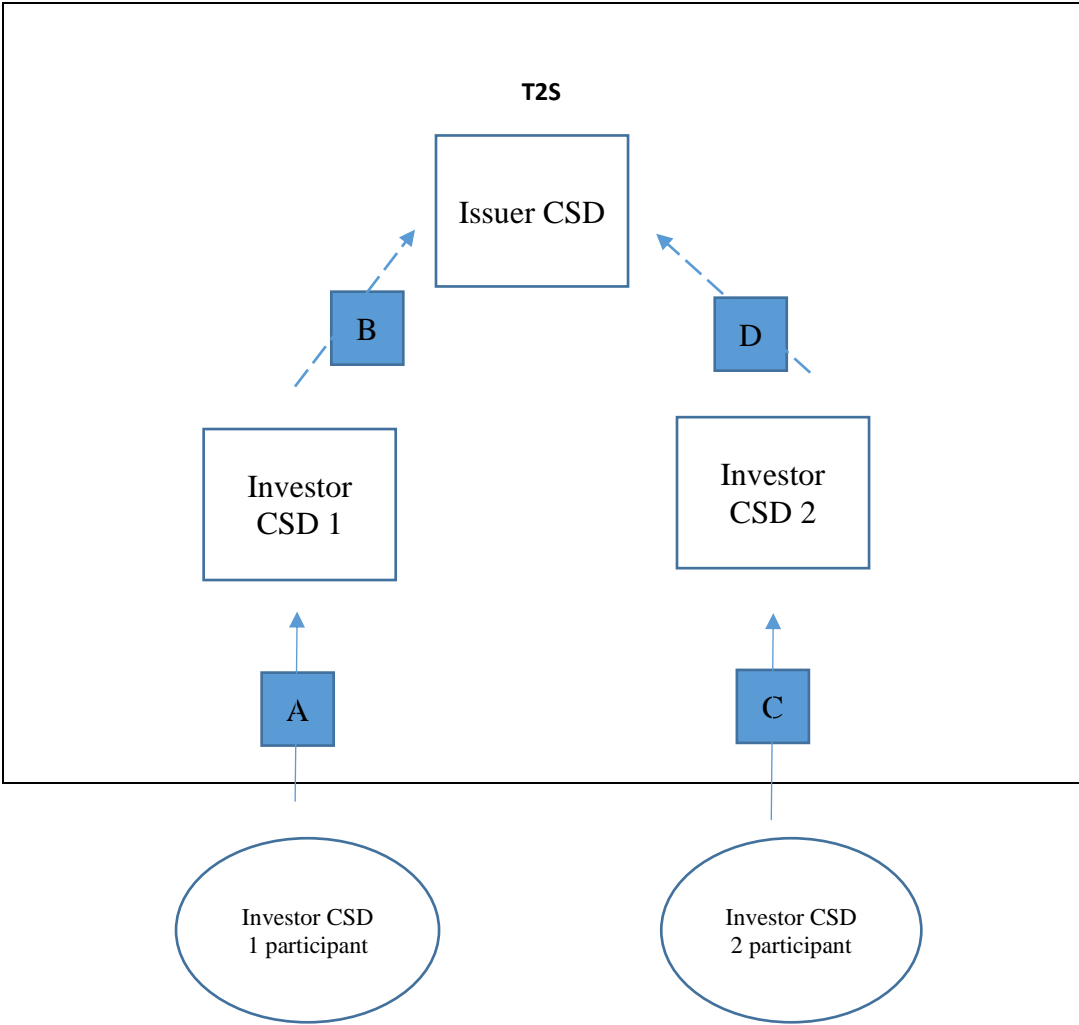


Issuer CSD reports 2 instructions (B and D)

Investor CSD 1 reports 1 instruction (A)

Investor CSD 2 reports 1 instruction (C)

**Settlement Scenario 6**

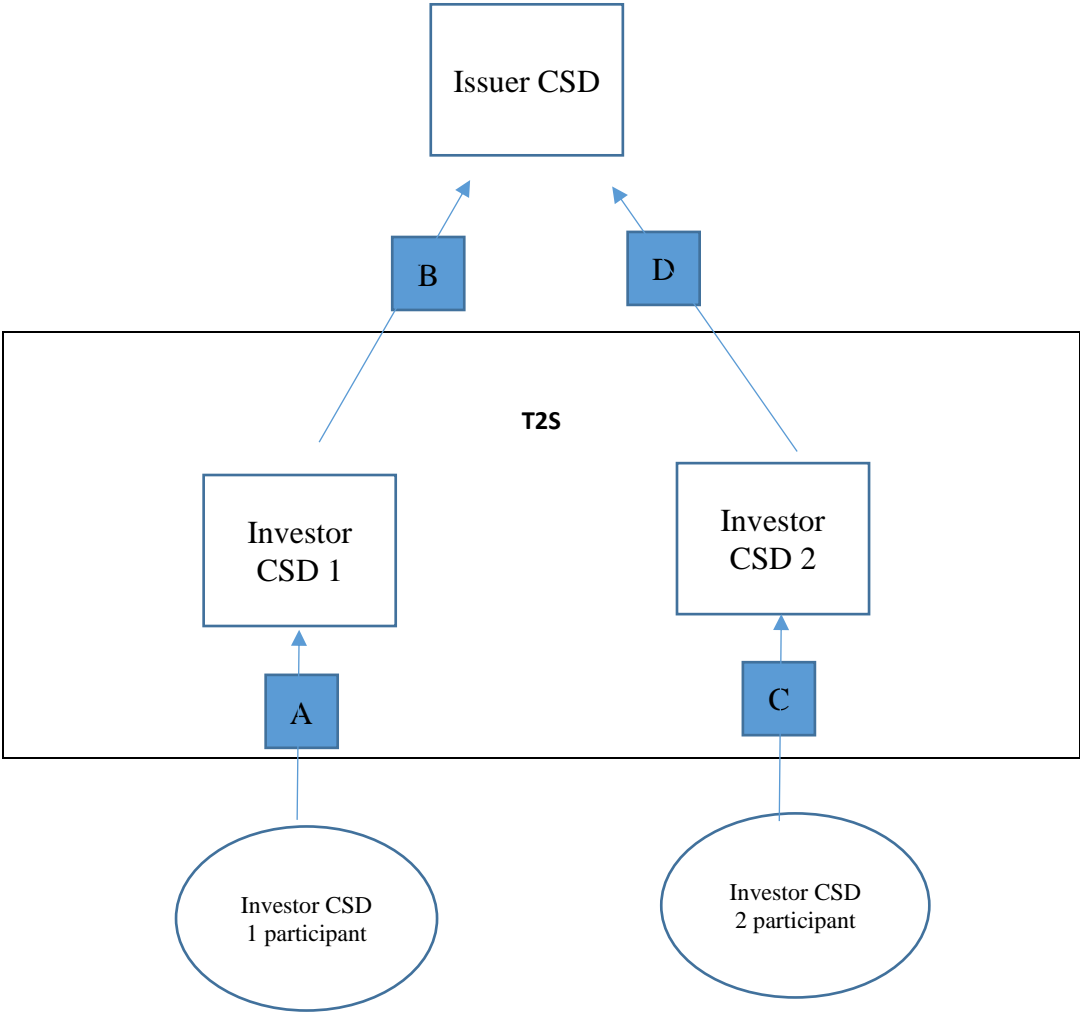


Investor CSD 1 reports 1 instruction (A)

Investor CSD 2 reports 1 instruction (C)

Issuer CSD does not report anything (B and D are T2S realignment instructions)

**Settlement Scenario 7**

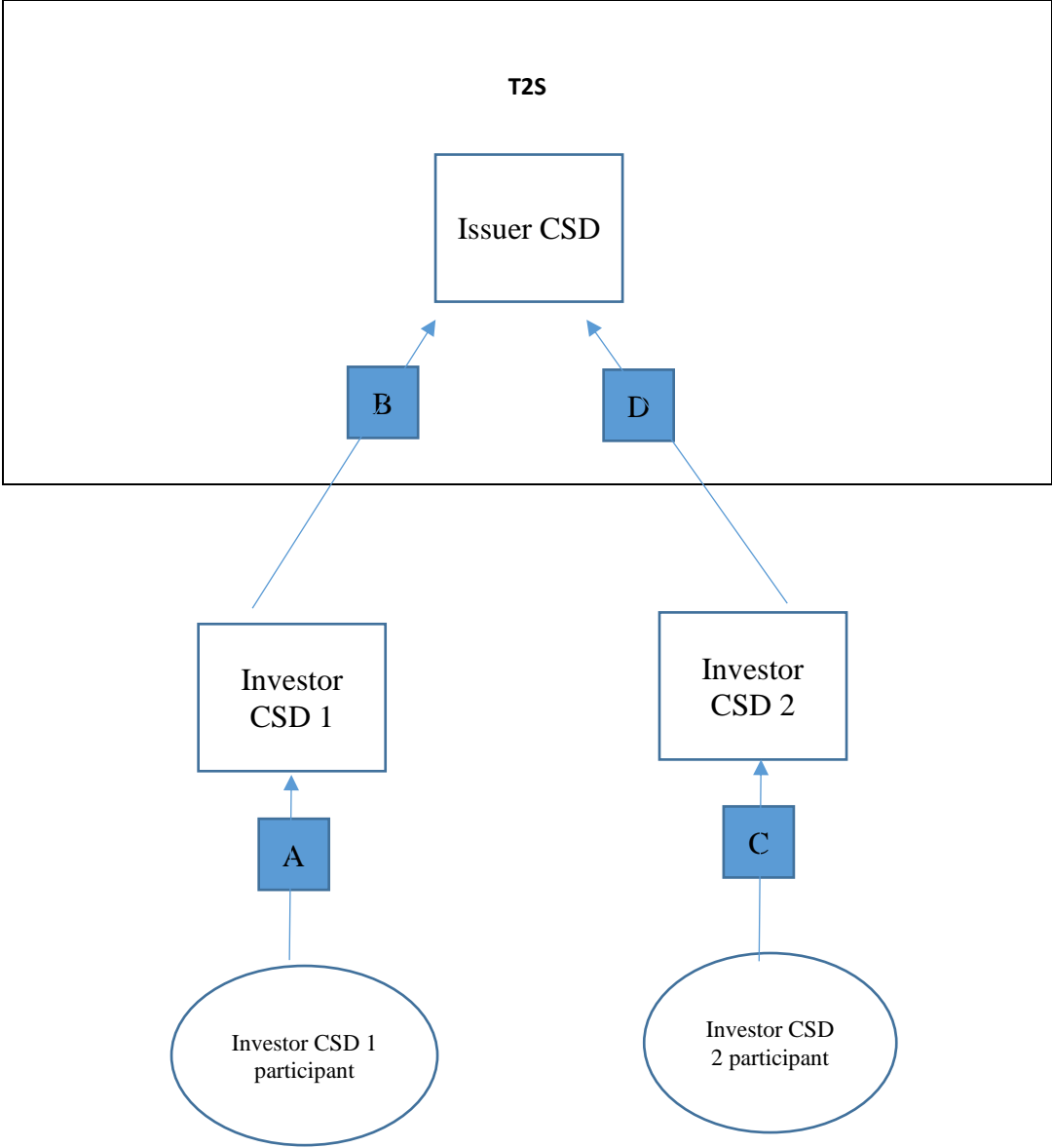


Issuer CSD reports 2 instructions (B and D)

Investor CSD 1 reports 1 instruction (A)

Investor CSD 2 reports 1 instruction (C)

**Settlement Scenario 8**

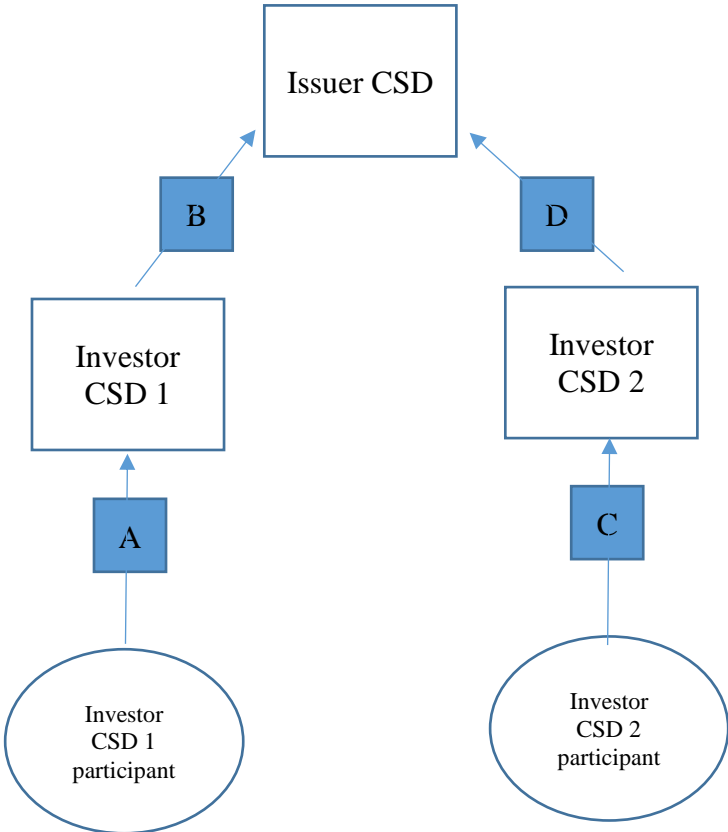


Issuer CSD reports 2 instructions (B and D)

Investor CSD 1 reports 1 instruction (A)

Investor CSD 2 reports 1 instruction (C)

**Settlement Scenario 9**

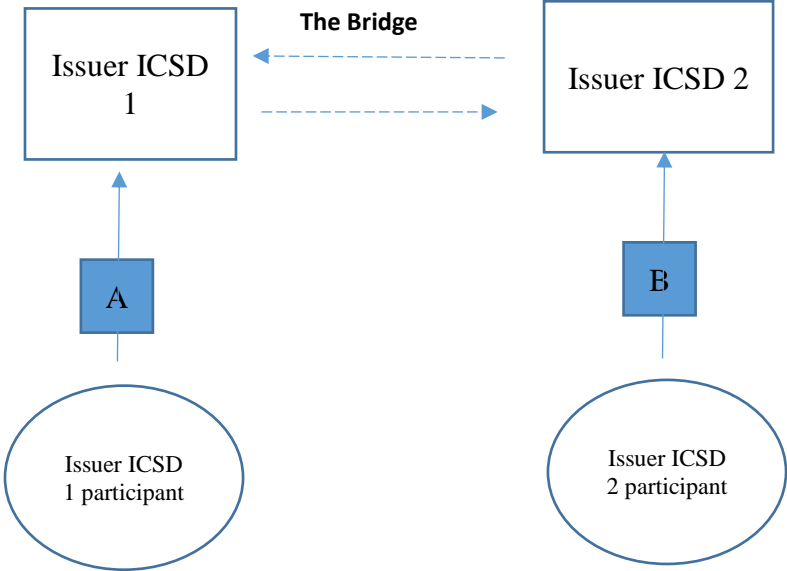


Issuer CSD reports 2 instructions (B and D)

Investor CSD 1 reports 1 instruction (A)

Investor CSD 2 reports 1 instruction (C)

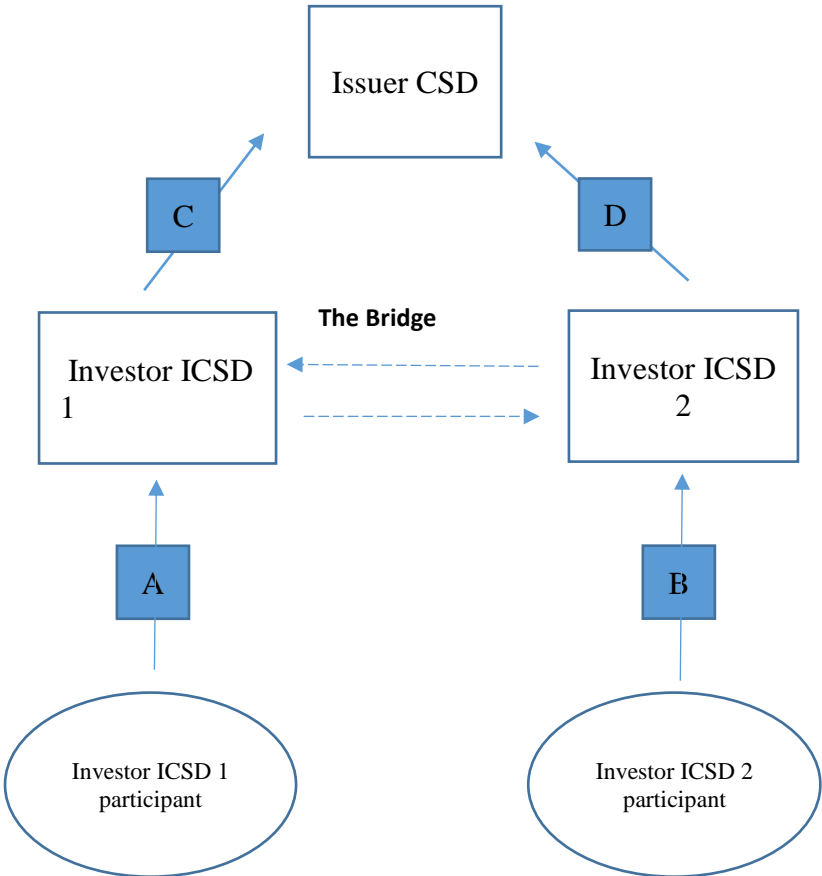
**Settlement Scenario 10**



Issuer ICSD 1 reports 1 instruction (A)

Issuer ICSD 2 reports 1 instruction (B)

**Settlement Scenario 11**



Investor ICSD 1 reports 1 instruction (A)

Investor ICSD 2 reports 1 instruction (B)

Issuer CSD reports 2 instructions (C and D)

*(Note: Instructions A and B settle independently from instructions C and D. Instructions C and D may be the result of several netted instructions.)*



## IV.2 Annex II – Examples for reporting settlement fails based on the reason or outcome of the settlement fail

The following 2 Options have been considered based on the reason or outcome of the settlement fail, with Option 1 being the preferred one from a supervisory perspective.

### Option 1 – Reporting settlement fails based on the reason (cause) of the settlement fail

**Examples (reflected in the table below):**

a) In the case of DVP/RVP instructions, if there is a settlement fail because of the failure to deliver securities, both the corresponding DVP and RVP instructions should be reported in the section “failure to deliver securities”.

**Example:** DVP instruction to deliver 50 securities and receive 90 EUR, and corresponding RVP instruction to receive 50 securities and pay 90 EUR -> *settlement fail due to failure to deliver securities*

- total number of DVP/RVP instructions = 10 (5 DVP and 5 RVP)

- total value of securities for DVP/RVP instructions = 900 EUR (the settlement amount of the cash leg<sup>18</sup>)

- total amount of cash for DVP/RVP instructions = 900 EUR

b) In the case of DWP/RWP instructions, if there is a settlement fail because of the failure to deliver securities, both the corresponding DWP and RWP instructions should be reported in the section “failure to deliver securities”.

**Example:** DWP instruction to deliver 40 securities (with counter value 60 EUR) and 50 EUR, and corresponding RWP instruction to receive 40 securities (with counter value 60 EUR) and 50 EUR -> *settlement fail due to failure to deliver securities*

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<sup>18</sup> See point a) of Article 14(4) of the Commission Delegated Regulation (EU) 2018/1229

- total number of DWP/RWP instructions = 10 (5 DWP and 5 RWP)
- total value of securities for DWP/RWP instructions = 600 EUR (based on the market value of the securities)
- total amount of cash for DWP/RWP instructions = 500 EUR

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

	Failure to deliver securities						Failure to deliver cash					
	Settlement fails		Total Instructions		Rate of fails		Settlement fails		Total Instructions		Rate of fails	
	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)
Type of instruction												
DVP <sup>19</sup>	2 <sup>20</sup>	180 <sup>21</sup>	10	900	20%	20%	0	0	10	900	0%	0%
DWP <sup>22</sup>	2 <sup>23</sup>	120 <sup>24</sup>	10	600	20%	20%	0	0	10	500	0%	0%

**Option 2 – Reporting settlement fails based on the outcome of the settlement fail**

**Examples (reflected in the table below):**

a) In the case of DVP/RVP instructions, irrespective of the cause of the settlement fail, the DVP instruction should be reported in the section “failure to deliver securities” and the corresponding RVP instruction should be reported in the section “failure to deliver cash”.

**Example:** DVP instruction to deliver 50 securities and receive 90 EUR, and corresponding RVP instruction to receive 50 securities and pay 90 EUR -> *outcome of the settlement fail is failure to deliver 50 securities and failure to deliver 90 EUR*

<sup>19</sup> Covers DVP and RVP settlement instructions

<sup>20</sup> Covers both the DVP and RVP settlement instructions

<sup>21</sup> Double counted

<sup>22</sup> Covers DWP and RWP settlement instructions

<sup>23</sup> Covers both the DWP and RWP settlement instructions

<sup>24</sup> Double counted

- total number of DVP/RVP instructions = 10 (5 DVP and 5 RVP)
- total value of securities for DVP/RVP instructions = 900 EUR (the settlement amount of the cash leg<sup>25</sup>)
- total amount of cash for DVP/RVP instructions = 900 EUR

b) In the case of DWP/RWP instructions, irrespective of the cause of the settlement fail, they should be reported as follows:

- i) for the volume: one instruction should be included in the section “failure to deliver securities”, and one in the section “failure to deliver securities”;
- ii) for the value: the value of the securities included in the instructions should be reported in the section “failure to deliver cash”, while the cash amount included in the instructions should be reported in the section “failure to deliver cash”.

**Example:** DWP instruction to deliver 40 securities (with counter value 60 EUR) and 50 EUR, and corresponding RWP instruction to receive 40 securities (with counter value 60 EUR) and 50 EUR -> *outcome of the settlement fail is failure to deliver 40 securities (with counter value 60 EUR) and failure to deliver 50 EUR*

- total number of DWP/RWP instructions = 10 (5 DWP and 5 RWP)
- total value of securities for DWP/RWP instructions = 600 EUR (based on the market value of the securities)
- total amount of cash for DWP/RWP instructions = 500 EUR

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

	Failure to deliver securities						Failure to deliver cash					
	Settlement fails		Total Instructions		Rate of fails		Settlement fails		Total Instructions		Rate of fails	
	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)	Volume	Value (€)
<b>Type of instruction</b>												
DVP <sup>26</sup>	1	90	10	900	10%	10%	1	90	10	900	10%	10%
DWP <sup>27</sup>	1	60	10	600	10%	10%	1	50	10	500	10%	10%

<sup>25</sup> See point a) of Article 14(4) of the Commission Delegated Regulation (EU) 2018/1229

<sup>26</sup> Covers DVP and RVP settlement instructions

<sup>27</sup> Covers DWP and RWP settlement instructions

### **IV.3 Annex III – Summary of questions**

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

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

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

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

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

**Q6: Do you have comments or suggestions regarding the settlement scenarios included in Annex I to the Guidelines? Do you think there are additional scenarios which would be relevant? Please provide arguments supporting your comments and suggestions.**  
**Q7: Do you see any operational burdens related to reporting by an Investor CSD even when it receives only one settlement instruction which it sends to another CSD (e.g. Issuer CSD) through a CSD link? What about in the case where the Issuer CSD is a third-country CSD? Please provide arguments supporting your comments and suggestions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **IV.4 Annex IV – Preliminary high-level cost-benefit analysis**

1. Article 16 of the ESMA Regulation requires ESMA, where appropriate, to analyse the potential costs and benefits relating to proposed guidelines. It also states that cost-benefit analyses must be proportionate in relation to the scope, nature and impact of the proposed guidelines.
2. The objective of performing a cost-benefit analysis is to assess the costs and benefits of the various policy or technical options which were analysed during the process of drafting the guidelines.
3. The guidelines included in this CP are of an optional nature, i.e. they are not envisaged in any Regulation, but are issued in line with Article 16 of ESMA Regulation in order to ensure uniform, consistent and coherent application of Union Law.
4. The choices or options envisaged by ESMA while drafting these guidelines were therefore limited to whether to issue these guidelines and ensure a consistent application of CSDR within the Union (which is one of ESMA's tasks) or not issuing them.
5. There are directly applicable provisions in CSDR that would not apply in a uniform, consistent and coherent way within the Union in the absence of a clarification from ESMA on the exchange of information between the competent authorities and ESMA with regard to settlement fails.
6. The costs implied by these guidelines can be summarised as the cost of changing current market practices, where necessary.
7. On the basis of the analysis above, ESMA concludes that the benefits of issuing guidelines on settlement fails reporting outweigh the costs.