



European Securities and
Markets Authority

Final Report

CSDR RTS on Settlement Discipline – postponed entry into force



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Acronyms used

CSD	Central Securities Depository
CSDR	Central Securities Depositories Regulation – 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
ESCB	European System of Central Banks
ESMA	European Securities and Markets Authority
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
NCA	National Competent Authority
RTS	Regulatory Technical Standards
RTS on settlement discipline	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

1 Executive Summary

Reasons for publication

This final report presents a new draft regulatory technical standard ('RTS') on postponing 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 discipline¹ ('RTS on settlement discipline').

Given the extensive IT developments which are needed for the implementation of the new settlement discipline requirements, stakeholders have highlighted the need for more time before the entry into force of the already published RTS on settlement discipline. The date of entry into force is currently 13 September 2020.

Having regard to additional time needed due to new developments mentioned by stakeholders and reflected in this report, such as the envisaged go live date of the penalty mechanism jointly established by CSDs that use a common settlement infrastructure, the estimated time needed for the IT system changes, the development of ISO messages, market testing and adjustments to legal arrangements between the parties concerned, ESMA considers it to be appropriate to provide for more time before the start of the application of the new settlement discipline requirements under the RTS on settlement discipline.

Given that the proposed amendment is limited in scope and is beneficial for the concerned market participants, ESMA has not conducted any open public consultation in accordance with the third subparagraph of Article 10(1) of ESMA Regulation². However, ESMA has consulted the Securities and Markets Stakeholder Group ('SMSG'), and has conducted a high-level analysis of the costs and benefits. ESMA has also cooperated closely with the members of the European System of Central Banks ('ESCB').

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This paper provides explanations for the proposal to postpone the entry into force of the RTS on settlement discipline. Section I explains the background to ESMA's proposal, Section II details the rationale for the RTS amendment, Section III outlines ESMA's proposal, and Section IV covers the way forward.

Next Steps

This Final Report is sent to the European Commission, and ESMA is submitting the draft regulatory technical standards presented in the Annex for endorsement in the form of a Commission Delegated Regulation, i.e. a legally binding instrument applicable in all Member States of the European Union. Following the endorsement of the RTS by the European

Commission, the Commission Delegated Regulation will then be subject to the non-objection of the European Parliament and of the Council.

2 Final report

2.1 Background

1. The current date of entry into force of the RTS on settlement discipline is 13 September 2020. The new CSDR settlement discipline regime will affect a wide range of market participants (CSDs, CCPs, trading venues, investment firms, credit institutions) and authorities, and will require significant IT system changes, market testing and adjustments to legal arrangements between the parties concerned.
2. A specific case is the one under Article 20 of the RTS on settlement discipline, according to which “CSDs that use a common settlement infrastructure, including where some of their services or activities have been outsourced as referred to in Article 30(5) of Regulation (EU) No 909/2014, shall jointly establish the penalty mechanism referred to in Article 7(2) of Regulation (EU) No 909/2014 and jointly manage the modalities for the calculation, application, collection and distribution of cash penalties in accordance with this Regulation.” In accordance with this requirement, Central Securities Depositories (CSDs) which use TARGET2-Securities³ (T2S) have mandated the Eurosystem to build a common T2S penalty mechanism. The T2S penalty mechanism will provide a single cash penalty calculation engine and reference data source, as well as common reporting and operational tools for all T2S CSDs.
3. The T2S penalty mechanism is a major development in the T2S landscape to support T2S CSDs in their compliance with the CSDR⁴ settlement discipline regime, providing a single source for the calculation and reporting of cash penalties. Substantial implementation efforts have to be deployed both at the level of the Eurosystem and of the CSDs, including for testing activities, in order to accommodate the testing requirements commanded by the implementation of a major functionality within a limited timeframe. Market participants

¹ OJ L 230, 13.9.2018, p. 1.

² 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.

³ T2S is a Eurosystem service aimed at facilitating post-trading integration by offering core, neutral and borderless pan-European cash and securities settlement in central bank money, so that euro area and non-euro area participating CSDs can provide their customers with harmonised and commoditised delivery-versus-payment (DVP) settlement services in an integrated technical environment with cross-border capabilities.

⁴ 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.

across the value chain (e.g. clients of CSD participants) will also need to mobilise substantial time and resources to adapt to the new cash penalty framework.

4. The T2S penalty mechanism is expected to go live during the weekend of 21-22 November 2020. According to information provided by the ECB, an earlier implementation date would put a high risk on the quality of the software delivered in production due to shorter development and/or testing times and is not deemed manageable. Likewise, market readiness is also under tight constraints with the current implementation timeline. Finally, it would also require a change in the SWIFT ISO standards release yearly schedule which is agreed among stakeholders worldwide (21-22 November 2020 being the go-live date for the 2020 annual release). Although the majority of EU CSDs are part of T2S, ESMA considers that other CSDs may face similar constraints, as well as the CSD participants that will be subject to the cash penalty regime.
5. Another important change brought about by the CSDR settlement discipline regime is the mandatory buy-in process. The CSDR buy-in process requires significant changes to current market practices and contractual arrangements, involving a wide range of market participants (CSDs, CCPs, trading venues, investment firms, credit institutions), and major IT developments, including new or updated ISO messages.
6. Additionally, CSDs have to change their systems and procedures and have to put in place new functionalities in order to facilitate and incentivise settlement on the intended settlement date, as well as in order to monitor and address settlement fails.
7. Last but not least, CSDs have to send monthly and annual settlement fails reports to the competent and relevant authorities, which in turn will be sent by competent authorities to ESMA. For this, CSDs, competent authorities and ESMA have to put in place IT systems for the submission and the reception of the reports, which will be based on ISO 20022 compliant messages.

2.2 Rationale of the proposed amendment

8. Given the extent and the impact of the settlement discipline regime, which will affect a wide range of market participants (CSDs, CCPs, trading venues, investment firms, credit institutions) and authorities, and having regard to the input from stakeholders and the additional time needed due to new developments, such as the envisaged go live date of the T2S penalty mechanism, the estimated time needed for the necessary IT system changes, for the development and the updating of ISO messages, market testing and adjustments to legal arrangements between the parties concerned, ESMA considers it to be appropriate to provide for more time before the start of the application of the new settlement discipline requirements under the RTS on settlement discipline.
9. Taking into account the 22 November 2020 go live date for the ISO messages annual release, and for the T2S penalty mechanism, as well as the need to have a reasonable buffer to cover for operational complexities after the go live, and in order to avoid an overlap

with the end of the year/ beginning of the year system freeze, ESMA believes that 1 February 2021 would be an appropriate date for the entry into force of the RTS on settlement discipline.

2.3 Proposed amendment

10. ESMA's proposal (see Annex II) covers the postponement of the date of entry into force of the RTS on settlement discipline until 1 February 2021.
11. Given that the proposed amendment is limited in scope and is beneficial for the concerned market participants, ESMA has not conducted any open public consultation in accordance with the third subparagraph of Article 10(1) of ESMA Regulation. However, ESMA has consulted the Securities and Markets Stakeholder Group (SMSG), and has conducted a high-level analysis of the costs and benefits. ESMA has also cooperated closely with the members of the ESCB.

2.4 Way forward

12. From a process point of view, ESMA considers that it would be disproportionate to conduct an open public consultation in view of the following:
 - a. the targeted nature of the amendment and its limited scope;
 - b. the amendment is due to reflect input already provided by market participants;
 - c. the expected impact of the proposed change will represent a relief for market participants.
13. This amendment to the RTS on settlement discipline will thus be submitted directly to the European Commission for review and endorsement. The process that follows the adoption of draft RTS by the European Commission is a non-objection period by the European Parliament and Council before they can then be published in the Official Journal and subsequently enter into force.

3 Annexes

3.1 Annex I – ESMA mandate to develop draft technical standards

Article 6(5) of Regulation (EU) No 909/2014

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 be taken by investment firms in accordance with the first subparagraph of paragraph 2, the details of the procedures facilitating settlement referred to in paragraph 3 and the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

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(15) of Regulation (EU) No 909/2014

Measures to address settlement fails

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

(a) the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1;

(b) the processes for collection and redistribution of cash penalties and any other possible proceeds from such penalties in accordance with paragraph 2;

(c) the details of operation of the appropriate buy-in process referred to in paragraphs 3 to 8, including appropriate time-frames to deliver the financial instrument following the buy-in process referred to in paragraph 3. Such time-frames shall be calibrated taking into account the asset type and liquidity of the financial instruments;

(d) the circumstances under which the extension period could be prolonged according to asset type and liquidity of the financial instruments, in accordance with the conditions referred to in point (a) of paragraph 4 taking into account the criteria for assessing liquidity under point (17) of Article 2(1) of Regulation (EU) No 600/2014;

(e) type of operations and their specific time-frames referred to in point (b) of paragraph 4 that renders buy-in ineffective;

- (f) a methodology for the calculation of the cash compensation referred to in paragraph 7;
- (g) the conditions under which a participant is deemed consistently and systematically to fail to deliver the financial instruments as referred to in paragraph 9; and
- (h) the necessary settlement information referred to in the second subparagraph of paragraph 10.

ESMA shall submit those draft regulatory technical standards to the Commission by 18 June 2015.

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.

3.2 Annex II – Advice of the Securities and Markets Stakeholder Group

In accordance with Article 10(1) and Article 37(1) of the ESMA Regulation, ESMA has requested the advice of the Securities and Markets Stakeholder Group (SMSG). The SMSG has not provided any comments.

3.3 Annex III – High-level cost benefit analysis

3.3.1 Executive Summary

Pursuant to Article 10(1) of the ESMA Regulation, ESMA shall conduct open public consultations on draft RTS and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft RTS concerned or in relation to the particular urgency of the matter.

ESMA considers that it would be disproportionate to conduct an open public consultation in view of the following:

- a. the targeted nature of the amendment and its limited scope;
- b. the amendment is due to reflect input already provided by market participants;
- c. the expected impact of the proposed change will be beneficial for market participants.

3.3.2 Introduction

Given the extent and the impact of the settlement discipline regime, affecting a wide range of market participants (CSDs, CCPs, trading venues, investment firms, credit institutions) and authorities, and requiring significant IT system changes, development of ISO messages, market testing and adjustments to legal arrangements between the parties concerned, ESMA proposes to amend the RTS on settlement discipline in order to delay its entry into force until 1 February 2021.

3.3.3 Baseline

The purpose of the amending draft RTS on settlement discipline proposed in Annex IV hereto is to delay its entry into force until 1 February 2021.

3.3.4 Cost benefit analysis

Postponing the date of entry into force of the RTS on settlement discipline until 1 February 2021

On the basis of the analysis below, ESMA concludes that the benefits of postponing the date of entry into force of the RTS on settlement discipline until 1 February 2021 outweigh the costs.

Policy objective	To allow for sufficient time for market participants and authorities to make the necessary IT system changes, to develop and update the relevant ISO messages, and to put in place the legal arrangements needed for the implementation of
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	the settlement discipline regime under the RTS on settlement discipline.
Technical proposal	To postpone the date of entry into force of the RTS on settlement discipline until 1 February 2021.
Benefits	<ul style="list-style-type: none"> - Sufficient time for market participants and authorities to make the necessary IT system changes, to develop and update the relevant ISO messages, and to put in place the legal arrangements needed for the implementation of the settlement discipline regime under the RTS on settlement discipline. - Avoid the risk of non-compliance with legal requirements due to technical impossibilities. - Legal certainty and transparency for the market.
Costs	<ul style="list-style-type: none"> - The expected impact of the proposed change will represent a relief for market participants and authorities. - No additional costs are envisaged.

3.4 Annex IV – Draft regulatory technical standards

COMMISSION DELEGATED REGULATION (EU) .../..
amending the Commission Delegated Regulation (EU) 2018/1229
supplementing Regulation (EU) No 909/2014 of the European Parliament
and of the Council with regard to regulatory technical standards on
settlement discipline, as regards the date of entry into force

of []

(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 236/2012⁵, and in particular Article 6(5) and Article 7(15) thereof,

Whereas:

- (1) The Commission Delegated Regulation (EU) 2018/1229 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline specifies measures to prevent and address settlement fails and to encourage settlement discipline, by monitoring settlement fails, collecting and distributing cash penalties for settlement fails and by specifying the operational details of the buy-in process.
- (2) Given the extent and the impact of the settlement discipline regime, affecting a wide range of market participants (CSDs, CCPs, trading venues, investment firms, credit institutions), and having regard to the input from stakeholders and the additional time

⁵ OJ L 257, 28.8.2014, p. 1

needed due to new developments, such as the envisaged go live date of the penalty mechanism jointly established by CSDs that use a common settlement infrastructure, the estimated time needed for the necessary IT system changes, the development and the updating of ISO messages, market testing and adjustments to legal arrangements between the parties concerned, the European Securities and Markets Authority (ESMA) considers it to be appropriate to provide for more time before the start of the application of the new settlement discipline requirements under the Commission Delegated Regulation (EU) 2018/1229.

- (3) The date of entry into force of entry into force of the Commission Delegated Regulation (EU) 2018/1229 should be extended until 1 February 2021
- (4) The Commission Delegated Regulation (EU) 2018/1229 should therefore be amended accordingly.
- (5) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the European Commission pursuant to the procedure in Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁶.
- (6) Given the limited scope and the expected impact of the necessary amendment to the Commission Delegated Regulation (EU) 2018/1229, and the fact that the amendment is due to reflect input already provided by market participants, ESMA has not conducted any open public consultation. ESMA has nevertheless conducted a high-level analysis of the potential related costs and benefits, and has requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council. In developing the draft regulatory technical standards, ESMA has also worked in close cooperation with the members of the European System of Central Banks.
- (7) It is necessary to provide legal certainty to market participants as quickly as possible. Therefore, this Regulation should enter into force on the day following that of its publication,

HAS ADOPTED THIS REGULATION:

⁶ 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).

Article 1

Amendment to the Commission Delegated Regulation (EU) 2018/1229

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

Article 42 is replaced by the following:

“This Regulation shall enter into force on 1 February 2021.”

Article 2

Entry into force and application

This Regulation shall enter into force on the day 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.

Done at Brussels,

For the Commission

The

President

[For the Commission

On behalf of the President

[Position]