ECSDA CSDR

Penalties Framework

ECSDA SETTLEMENT FAILS PENALTIES FRAMEWORK

Contents

GLOSSARY

Acronym or abbreviation	Description
BD	Business day(s); see also 'PBD' (Penalties Business Day) Settlement: Business days are those days on which an instruction can settle in the CSD (and in the relevant payment system in case of settlement versus payment); such 'opening days' are excluding, for instance, week-ends. Note: regarding Penalties reference data, the publication of the ESMA databases used for penalties reference date, BDs can influence the eligibility for the penalties period of a security (see Framework Annex V, Rules RE16 'Rule for the validity of reports published on days that are not business days', RE18 'Rule for processing ESMA DB validity dates when setting up penalties´ eligibility' and RE20 'Rule for assessing the Availability date of FITRS/Equities files').
CA	Competent Authority(ies); relevant supervisor(s)/ regulator(s) of the CSD
Calculating-CSD	CSD subject to CSDR where the actual settlement (fail) is taking place; the Calculating-CSD will calculate, report and collect/ distribute penalties to its participants (that may as well be CSDs); also in cross-CSD settlement fails scenarios involving direct links, to avoid duplication of penalties calculation and reconciliation issues between linked CSDs, penalties shall exclusively be calculated by the Calculating-CSD. Note for T2S: regardless of the (Investor- or Issuer-) CSD role for the financial instruments of the transactions subject to penalties in T2S and due to the absence of a 'Calculating CSD', it is the T2S platform that centrally calculates and reports to each T2S CSD (and counterparty CSD in case of cross-CSD fails) the penalties involving its and the counterparty CSDs´ participants. For T2S cross-CSD penalties the collection & redistribution is performed separately for each 'pair' of involved T2S CSDs (i.e. the penalties amounts for fails between CSD A and CSD B are not commingled with the fails between CSD A and CSD C).
CCP	Central Counterparty
CSD	Central Securities Depository
CSDR	Regulation (EU) no 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 ('EU CSD-Regulation'). Note

Acronym or abbreviation	Description
	that CSDR applies to both, CSDs and International Central Securities Depositories (ICSDs, i.e. Clearstream Banking Luxembourg or Euroclear Bank). See https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0909. For the full package of related texts including standards and guidelines, see https://www.esma.europa.eu/regulation/post-trading/settlement.
DR	EU Delegated Regulation. In the Framework, and unless specified otherwise, DR relates to penalty reference prices and applicable rates. See http://eur-lex.europa.eu/eli/reg_del/2017/389/oj
ECB	European Central Bank
ESMA	European Securities and Markets Authority
Global Net Amount (GNA)	Represents the penalties 'net' (i.e. the gross amount to be received minus the gross amount to be paid) cash amount to be paid or to be received by each party for each currency and 'actual place of settlement' (CSD-link or settlement platform). Different scenarios apply: - Intra-CSD penalties: the CSD corresponds to the 'actual place of settlement' and calculates a sole global net amount for each participant and currency. - Cross-CSD penalties – T2S: For the T2S settlement platform being the 'actual place of settlement', one global net amount is calculated per party, currency, and every counterparty CSD (i.e. separate global net amounts for each cross-CSD penalties payment). - Cross-CSD penalties – non-T2S: The Calculating-CSD being the 'actual place of settlement' calculates a sole global net amount per participant (including Investor-CSDs) and currency, i.e. the same approach as for 'Intra-CSD penalties' applies. Therefore, in the case of an Investor -CSD with bilateral links to e.g. two Issuer-CSDs, each Issuer-CSD calculates a separate global net amount towards the CSD participating in its system (i.e. the Investor-CSD). As a result, the Investor-CSD may report and process separate global net amounts per CSD-link towards its participants.

Acronym or abbreviation	Description
ISD	Intended Settlement Date date on which the settlement instruction shall settle (same meaning as 'Requested Settlement Date (RSD)').
LMFP	Late matching Fail Penalty; penalty that applies due to the matching taking place <u>after</u> the ISD. See also 'SEFP'.
MiFID II/ MiFIR	Markets in Financial Instrument Directive II; Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065&from=EN Markets in Financial Instrument Regulation; Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0600&from=en
Partial redistribution	Redistribution of cash penalties by a CSD to receiving participants or CSDs even when not all dues have been fully collected by the paying CSD on the 18th Penalties Business Day (PBD). 'Partial redistribution' may be applied, e.g. to limit cash balances on a CSD´s own penalties cash account (including to comply with local regulations) or exception handling situations. Pre-condition is that the full amount expected to be received by a single CSD or CSD participant can be paid (i.e. no 'partial payments' apply; see also 'Partial payment').
Partial payment	Payment of only a portion of the full amount expected to be received by a single CSD or CSD participant; 'partial payments' shall not be applied for any penalties payments unless required in exception handling (e.g. insolvency) situations. See also 'Partial redistribution'.
Party	A 'party' may be defined by a CSD either by: - BIC (approach applied by the T2S platform, i.e. T2S CSDs will use the 'T2S Party BIC' to define the 'party', i.e. the 'party 1' from an ISO standard perspective); or - CSD participant securities account number; or - LEI.

Acronym or abbreviation	Description
	The CSD-role under national law and domestic market models or settlement platforms (e.g. T2S) have to be considered as well in this respect. Hence, the usage of harmonised definitions across all CSDs is not achievable.
PBD	'Penalties Business Day'; to be used for the penalties-specific monthly reporting, appeals, and payment processing by a CSD. A "PBD" is any day of the year except for 01st January and 25th December and Saturdays, Sundays. The term was introduced in the Framework in March 2020 at the request of CSD customers in order to ensure a consistent counting of days across CSDs and to limit differences in the penalties lifecycle across multiple CSDs. However, it is not achievable that all CSDs apply the PBD concept in all occasions, especially when the CSD settlement or central bank payment system is closed on a PBD. Therefore, if possible, the appeal deadlines and monthly reporting dates may be preponed to the previous BD while the payment date would be postponed to the next possible BD.[1]
RTS	Regulatory Technical Standard, which is endorsed by the European Commission by means of a delegated act supplementing an EU Regulation or a Directive
SDR	CSDR Settlement Discipline Regime; amongst others, prescribing CSD settlement functionalities, measures to prevent settlement fails (incl. penalties, mandatory buy-ins and sanctions to participants), and reporting to be provided. The standards describing the regime in detail can be found here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.230.01.0001.01.ENG&toc=OJ:L:2018:230:TOC
SEFP	Settlement Fail Penalty; penalty that applies due to the non-settlement of a matched transaction on or after its ISD
SFD	EU Settlement Finality Directive; 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

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[1] Assessmemt on ECSDA level is ongoing with regard to the reporting timing aspect.

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8 | P a g e

Acronym or abbreviation	Description
	http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:166:0045:0050:EN:PDF
SMPG	SWIFT Securities Market Practice Group
SSR	Short Selling Regulation; Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0236&from=EN
T2S	Target 2 Securities; European Central Bank (ECB) centralised settlement platform
T2S CSDR TF	Task Force composed of representatives from ECB, Central Banks, CSDs, ECSDA and the Banking community to discuss requirements towards and solutions of T2S related to CSDR

INTRODUCTION

On 23 July 2014, the European Parliament and the Council have issued Regulation (EU) No 909/2014 (later, CSDR[2]) aiming at the harmonisation of the regulatory environment of securities settlement and Central Securities Depositories in the European Union.

On 13 September 2018, the European Commission officially published Delegated Regulation (DR) 2018/1229, supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards (RTS) on the Settlement Discipline Regime (later, SDR)[3].

The introduction to the DR states:

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

This ECSDA CSDR Settlement Fails Penalties Framework (later, 'the Framework') is the effort of compliance with the Regulation and harmonisation of settlement penalties mechanisms across CSDs subject to CSDR or regulation alike and constitutes a **market practice** for CSDs .[4]

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

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

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

      Pillar I.   Measures to prevent settlement fails:

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[2] 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). The Regulation and delegated acts can be found here: https://www.esma.europa.eu/regulation/post-trading/settlement
[3] Full text can be found here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018R1229
[4] The CSDs involved in drafting of the Framework include members of ECSDA subject to the CSDR or aiming at compliance with equivalent legislation, as well as NBB-SSS (the National Bank of Belgium Securities Settlement System) and BOGS (the Bank of Greece Securities Settlement System).

- Trade allocations and confirmations (obligation for Investment Firms, not applicable to CSDs);

- Automation of CSDs´ settlement processes and reporting of 'manual interventions';

- Settlement instructions mandatory matching fields;

- CSDs´ settlement functionalities aiming at preventing settlement fails (e.g. bilateral cancellation, hold & release, partial settlement) and possible derogation from the requirements to offer partial settlement and hold & release functionalities by CSDs under certain conditions.

Pillar II. Requirements to monitor and report settlement fails:

- CSDs are required to monitor and analyse settlement fails and CSD participants´ settlement efficiency, including setting up working groups to define measures to improve efficiency;

- Settlement efficiency/ fails reporting to authorities, CCPs/ Trading Venues, and the public.

Pillar III. Requirements for CSDs to charge cash penalties to users that cause settlement fails (the sole subject of this ECSDA Penalties Framework):

- For matched settlement instructions failing to settle on the Intended Settlement Date (ISD), daily calculation, (at least) monthly collection, distribution, and reporting of penalties to CSD participants are required to be applied by CSDs subject to CSDR or alike regulation.

Pillar IV. Rules requiring a mandatory buy-in[5]:

- Receiving trading parties and CCPs are required to initiate a mandatory buy-in after a specific period after the ISD (the CSD role is limited to information gathering and regulatory reporting).

(ii.) In May 2020, the EU Commission Delegated regulation 2020/1212[6] amended the date of entry into force of the CSDR SDR RTS to 01st February 2021[7]. However, a further delay until 01st February 2022 was adopted by another EU Commission delegated regulation issued on 23.10.2020[8].

(iii.) Any relevant additional clarification (once officially published) by the European Authorities will be taken into account in the Framework.

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[5] The entry into force of these rules has been delayed beyond 01st February 2022 to a date that is yet to be defined.
[6] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R1212&from=EN
[7] https://www.esma.europa.eu/press-news/esma-news/esma-proposes-amend-technical-standards-in-view-postponing-entry-force-csdr
[8] https://ec.europa.eu/transparency/regdoc/rep/3/2020/EN/C-2020-7186-F1-EN-MAIN-PART-1.PDF

(iv.) Settlement penalties are applicable to CSD participants, including CSDs when these have established a CSD-link with a CSD applying CSDR SDR penalties.

(v.) The parameters and penalty rates for the calculation of cash penalties for settlement fails have been adopted and officially published in March 2017 ('Cash Penalties Calculation Delegated Act').

(vi.) T2S CSDs and the Eurosystem (via the 'T2S CDR Task Force') jointly identified the necessary changes to the T2S platform and to facilitate T2S CSDs' compliance with CSDR.

As a result, the following documents were created (see Annexes I and II for details):

- T2S penalty mechanism document and subsequent specifications in the T2S Change Request 654;

- Penalty lists – Messages overview (ISO20022 format, only; transposition into ISO15022 messages is ongoing by SWIFT); and

- List of clarifications sent to ESMA (note that an additional list of items requiring clarifications has been submitted by ECSDA to ESMA).

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

i. Agreement on the list of financial instruments subject to penalties and sourcing of a 'golden data feed' for the cash penalties calculation;
ii. Collection and redistribution of cash penalties (i.e. the actual payment of cash penalties); and
iii. Reporting and messaging from CSDs to their participants and between CSDs.

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12 | P a g e

1   ECSDA CSDR PENALTIES FRAMEWORK - KEY CONSIDERATIONS

1. The ECSDA Framework (market practice) applies to all CSDs subject to the EU CSDR (text with EEA relevance) or alike regulation[9]. In case a CSD does not comply with the Framework in a specific aspect (due to e.g. legislative or operational boundaries), it should provide the relevant information to its participants accordingly.

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

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

4. ESMA and T2S documents served as the basis for creating this Framework. Large parts of the Framework are fully aligned and have been sourced from the discussions at the T2S CSDR Task Force as mentioned in the 'T2S Penalty Mechanism' document (version October 2017) and the subsequent T2S Change Request CR654[10]. For CSDs using the T2S settlement platform, in case of inconsistency between the ECSDA Framework and the relevant T2S documentation, the latter shall prevail. The Framework also covers penalties related aspects that are not subject to the T2S CSDR Task Force documents (when they are not covered by the T2S scope as noted in the Framework introduction[11]).

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

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

7. According to CSDR and final ESMA RTS, the following principles must be applied by all EU CSDs:
   - A CSD shall provide for a cash penalty mechanism for participants that caused settlement fails.
   - Cash penalties are to be calculated on a daily basis for each business day that a matched (free of, with or against) payment settlement instruction fails to settle on or after its

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

[10] See ECB website for the latest version of the CR:
https://www.ecb.europa.eu/paym/target/t2s/governance/html/changerequests.en.html

[11] In context of SDR RTS Art. 20, T2S CSDs signed a specific document, separate from the T2S Framework Agreement and ECSDA Penalties Framework, to comply with the respective CSDR requirements described in this Article and the subsequent ESMA Q&A.

Intended Settlement Date (ISD), including those instructions that are 'on hold' or failing due to a lack of cash.

- Penalties shall also apply to instructions that matched in the securities settlement system *after* their ISD ('late matching', e.g. due to instruction entry after ISD).
- Cash penalties are calculated *as from* the ISD until the actual settlement or (bilateral) cancellation date of the instruction, considering[12]:
  - Settlement Fail Penalty (SEFP): once the instruction is matched, penalties apply earliest from the ISD or the matching date (when matching took place after ISD and no settlement occurred on the matching date) to the date of actual settlement or cancellation of the instruction, in addition to Late Matching Fail penalties, when applicable;
  - Late Matching Fail Penalty (LMFP): penalties apply retroactively from the ISD until the actual matching date.
- As a general rule, penalty amounts shall be rounded up to maximum of two decimals.
- For settlement fails involving multiple CSDs (cross-CSD settlements), SDR penalties, if applicable, shall be calculated only by one CSD (the 'Calculating-CSD', i.e. the CSD where settlement is actually taking place based on the 'actual place of settlement' concept). This also means that an Investor-CSD being a participant in another CSD (e.g. Issuer CSD) shall comply with the Terms & Conditions of the latter CSD.
- Daily reports shall be provided to the CSD participants in order to allow them to reconcile and calculate the recharge of the penalty to their underlying clients where applicable.
- CSDs must redistribute the penalties only once they have been collected from their participants.
- The full amount collected as a penalty shall be redistributed to the participant that suffered from the fail at least on a monthly basis and latest until the end of the month following the fail date (fail month + 1).
- Instructions with a CCP as counterparty (see CSDR SDR RTS Article 19 amended on 11 August 2023): for penalties calculated after 01st September 2024, CSDs shall apply Articles 16, 17 and 18, hence, CSDs must calculate, report and collect/ distribute any penalties for participants that are CCPs
- The cash penalties shall not be configured as a revenue source for the CSD[13].

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

[13] However, CSDs have the possibility to charge for the cost of development and maintenance of their penalty system as a fee separate from the actual penalties amounts calculations and processing.

2 PENALTIES LIFECYCLE AND BUSINESS DAYS CALENDAR

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

A. **Daily events:**
   i. Daily Calculations
   ii. Daily Reporting
B. **Monthly events:**
   i.   Monthly Appeal Period
   ii. Monthly Aggregated Amounts Provision
   iii. Monthly Payment (Collection and Redistribution)

For the 'Monthly Appeal Period', 'appeals' refer to the exceptional correction or update of previously calculated and reported penalties upon CSD or participant request (e.g. due to the application of incorrect or updated reference data) and limited to the cases provided in the ESMA CSDR Q&A.

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

2.1 INTRA-CSD SETTLEMENT FAILS

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

2.1.1 Business Days calendars

Applicable business days calendars:

- the CSD´s own settlement calendar[14];

- the payment system calendar of the relevant currency.

Business days are those days on which an instruction can settle in the CSD (and in the relevant payment system in case of settlement versus payment); such "opening days" are excluding, for instance, week-ends.

Based on the above, a penalty <u>shall not be applied</u>:

- for 'free of payment' instructions: for the days when the CSD settlement system is closed.

- for 'against payment' instructions: for the days when the CSD settlement system and/ or the payment system of the relevant currency is closed (if the cash leg is to be settled in the payment system of the relevant currency).

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

2.1.2 Penalties Business Days (PBD)

ECSDA Member CSDs agreed on common principles for a harmonised process in the definition and counting of "business days" for the CSDR penalties management. For clarity, such specific "business days" are called "Penalties Business Days" (PBD). The PBDs may differ from the actual "business days" of a CSD's settlement system or of a relevant payment system's calendar (see 2.1.1).

2.1.3 Daily calculations

A CSD shall calculate daily penalties for each instruction that:

    i.   failed to settle on its intended settlement date (SEFP); or
    ii.   matched after its intended settlement date (LMFP[15]).

For the daily calculation (and reporting), the CSD's own calendar is to be applied; if the CSD is closed on a specific day, it will not calculate any penalties.

For the computation of the Settlement Fail Penalties (SEFP) as well as the Late Matching Fail Penalties (LMFP), the (possibly different for FOP and DVP) CSD settlement cut-off times must be considered.

Daily penalties calculations for every single failed settlement instruction shall be completed by the CSD as soon as possible to make the daily reports available to its participants (including other directly linked CSDs) in a timely manner, i.e. the penalties Calculating-CSDs shall report until midday (12:00 p.m. Central European Time (CET)) while CSD´s depending on the reporting of a settlement platform (like T2S) or Calculating-CSD shall provide their reports ideally until latest 14:00 p.m. CET on the business day following the settlement fail. No "intraday" penalties calculation or reporting applies.

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

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

Under exceptional circumstances (see ESMA CSDR Q&A "Settlement Discipline Questions 4 – Cash penalties: scope"), daily penalties previously calculated by the CSD or penalty engine (e.g. T2S) for the current calendar month, could be amended (i.e. re-calculated due to changes in applicable

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[15] For the specific case of 'partially successful buy-in' related settlement instructions, please refer to Chapter 7.

reference data) or removed (i.e. cancelled) on any business day prior to the monthly report generation(see Chapters 22.1.6/ 2.2.4 for details).

The penalties calculation methods are described in Chapter 7.

2.1.4   Daily Reporting

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

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

  i.   either a single report; or
  ii.   two separate reports: one for the new penalties and one for the amended, removed or re-included ones, if applicable (e.g. such as described in the T2S penalty mechanism´s approach).

The "business days" used for penalties management may differ from the "actual business day" of a CSD or payment system calendar. Hence, the term "Penalties Business Day" (PBD) was introduced that applies to the below diagram.

First MONTH (computation and reporting of penalties)

Daily reporting of penalties computed for 1st business day of the month

Daily reporting of penalties computed for last business day of First month
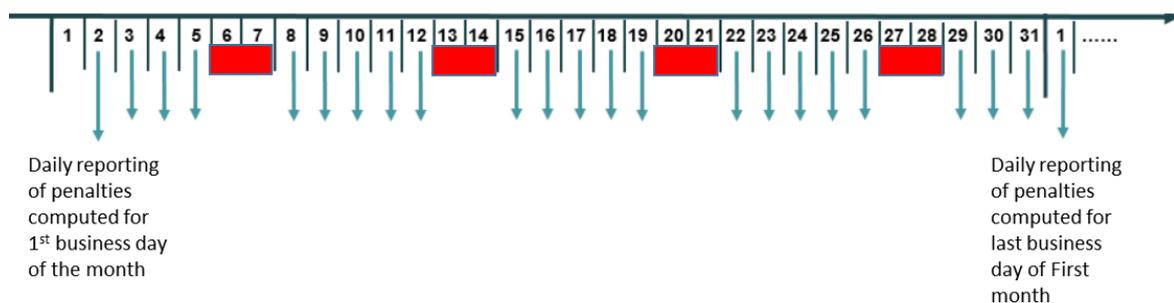
CSDs shall report penalties for each "party" and aggregated per counterparty (i.e. a participant in this same CSD).

In case when no penalty is to be applied (i.e. no failed transaction resulted in new penalties, amendments, removals or re-inclusions) for one reporting day for a party, a 'no activity' report may be sent[16].

CSDs shall deliver the daily reports to their participants after the closing of the settlement day on which (new or previous) penalties were calculated, amended, removed or re-included on the following business day. Daily reports will be provided in line with the CSD´s settlement system

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[16] CSDs may offer such 'no activity' reports upon subscription, so that its participants are able to choose to receive these reports.

business days calendar and reporting schedule but shall be provided by Calculating-CSDs until 12:00 p.m. CET, latest (general note: penalties for fails on a Friday will be calculated and reported either on Saturday, Sunday or Monday; in all cases, the business day date shall be the one of Monday).

2.1.5 Monthly Events

All CSDs shall follow the same principles to ensure that the appeal period and monthly penalty reporting are finished prior to the 16th PBD.

The 'business days' used for penalties management may differ from the 'actual business days' of a CSD or payment system calendar. Hence, the term 'Penalties Business Day' (PBD) was introduced that applies to the below diagram, illustrating the timeline for the monthly reporting, assessment and payment process:

Following MONTH (provision of aggregated amounts and payment)
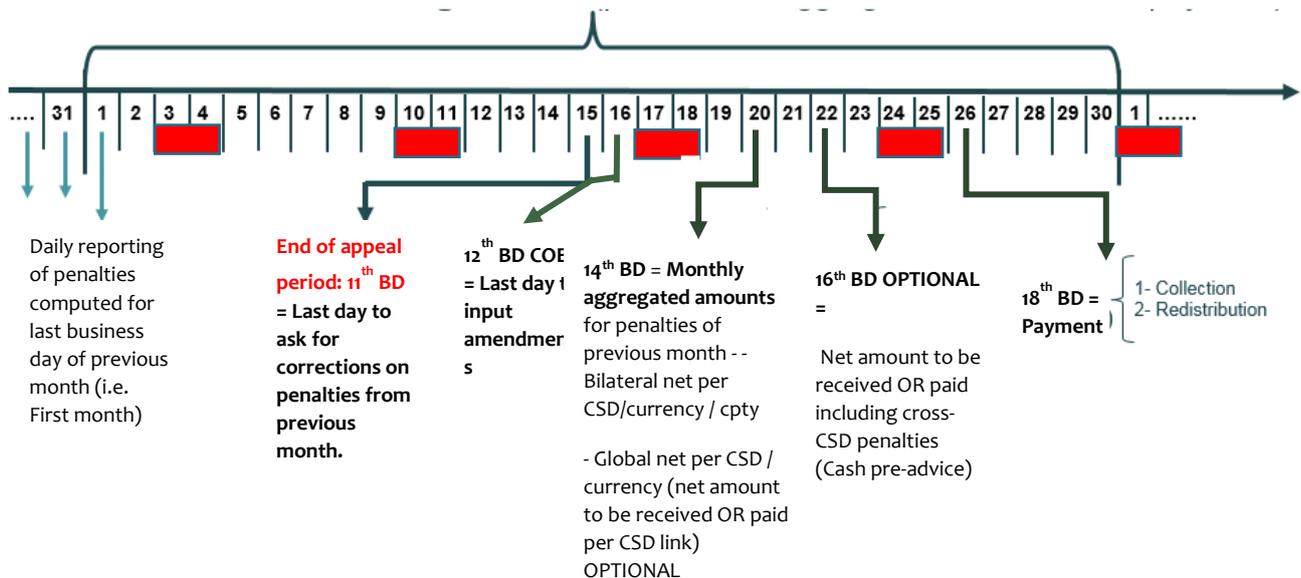
Daily reporting of penalties computed for last business day of previous month (i.e. First month)

End of appeal period: 11th BD = Last day to ask for corrections on penalties from previous month.

12th BD COB = Last day t input amendmer s

14th BD = Monthly aggregated amounts for penalties of previous month - - Bilateral net per CSD/currency / cpty

- Global net per CSD / currency (net amount to be received OR paid per CSD link) OPTIONAL

16th BD OPTIONAL = Net amount to be received OR paid including cross-CSD penalties (Cash pre-advice)

18th BD = Payment

1- Collection
2- Redistribution

'Payment pre-advices' are usually not provided by CSDs as the monthly reports and/ or PFOD instructions provide the necessary penalty amounts information. Therefore, 'pre-advices' are only generically mentioned or described in this Framework.

2.1.6   Monthly Appeal Period

CSDs shall apply a dedicated appeal period for CSD participants to assess single settlement fails penalty calculations, <u>on an exceptional basis</u>, within and maximum up to a defined point in time post the end of a calendar month.

The appeal period shall generally end on the 10th PBD (included) of the following month. If a CSD is closed on this date, the appeal period may close prior to the 10th PBD, so no appeal can be processed after.

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

- ISIN suspension from trading[17] or settlement (e.g. due to 'undue creation or deletion of securities' reconciliation issues);
- Settlement instructions involving cash settlement outside the securities settlement system operated by the CSD if, on the respective day, the relevant payment system is closed for settlement;
- Technical impossibilities at the CSD level that prevent settlement, such as a failure of the infrastructure components, a cyber-attack, and network problems.

In the absence of a single central source, the reference prices applied by CSDs may slightly deviate for a single instrument that can be settled in multiple CSDs; such deviations do not represent a valid reason for lodging 'appeals' towards the CSDs (see also Chapter 5.2).

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

Each time that an appeal is accepted by a CSD, and a change is applied to a penalty, a "penalty update" report will be provided. Updates made by the CSD or penalty engine (e.g. T2S) after the 10th PBD of the following month will be reported at the latest one day before the monthly report generation. Penalties updates shall be provided by the Calculating-CSDs until midday (12:00 p.m. CET), while CSD depending on the reporting of a settlement platform (like T2S) or a Calculating-CSD shall provide their reports ideally until 14:00 p.m. CET.

In order to apply for an appeal, sufficient information needs to be provided by the CSD participant to the CSD, covering at least:

- Reference of the penalty as well as the failed transaction details,
- Reason for the appeal; and
- Expected penalty amount and calculation details to be applied.

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

Appeals represent an exception handling by CSDs; until further notice, each CSD will design its own processes considering e.g. its GTCs, communication requirements to submit an appeal and providing the outcome of the appeal assessment to the appealing participant[18].

2.1.7 Monthly aggregated amounts

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

The 14th PBD is the last day when the monthly reporting shall be sent. If the CSD is closed on this day, the monthly reporting may be sent prior to the 14th PBD.

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

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

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

It is recommended that one 'global net amount' (the amount to be received minus the amount to be paid) will be provided by the CSDs in the monthly report on the 14th PBD. Otherwise, <u>PFODs shall be generated by CSDs on the 16th PBD, but latest before the start of the 18th PBD, serving to timely notify the 'global net amount' to be debited from/ credited to the CSD participants.</u>

The monthly reports will include only a subset of the details of each gross penalty that are provided in the daily reports.

For additional information, please refer to Chapter 7.4 'Monthly cash penalties aggregation and global net amounts'.

2.1.8 Monthly payment (collection & redistribution)

On the 18th PBD of the following month, the CSD (and its participants) shall perform the payment process, i.e. the CSD shall collect and redistribute the penalties amounts to/ from its participants.

If the CSD and/ or the payment system of the currency is closed on the 18th PBD, the payment shall be done on the next possible business day.

For each party, the net amount (to be paid or to be received by a CSD participant) shall be reported by the CSD at the latest on the 16th PBD thereby providing time to perform FX transactions (if required) before the payment date (18th PBD).

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[18] Appeals can only be raised from parties/ participants that maintain a contractual relationship with the CSD.

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

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

The following possible payment models were identified:

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

CSDs may define appropriate measures (to be described in the relevant contractual documents with the CSD participants) to ensure CSD participants comply with their payment obligations to the CSD on time on the 18th PBD to avoid delays and processing issues due to a lacking or incomplete penalties collection by the CSD.

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

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

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

2.2.1 Business Days calendars

Applicable business days calendars used for the penalties purposes can be the following:

- Calculating-CSD´s settlement penalties calendar[19];

- Payment system's calendar of the relevant currency.

Business days are those days on which an instruction can settle in the Calculating-CSD (and in the relevant payment system in case of settlement versus payment); such 'opening days' exclude, for instance, weekends.

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

- For the 'free of payment' instructions: for the days when the Calculating-CSD settlement system is closed;
- For the 'against payment'' instructions: for the days when the Calculating-CSD´s settlement system and/ or the payment system of the relevant currency is closed (if the cash leg is to be settled in the payment system of the relevant currency).

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[19] Note: The calendars of the CSDs and the payment systems should be retained for at least three months for penalties calculation purposes.

2.2.2　Penalties Business Days (PBD)

The concept of 'Penalties Business Days', as described in Chapter 2.1.2, is used to achieve a harmonised process across CSDs. This is of paramount importance in the management of the cross-CSD settlement fails penalties processing.

2.2.3　Daily calculations

For the daily calculation (and reporting), the Calculating-CSD´s calendar is to be applied. If the Calculating-CSD is closed on a specific day, it will not calculate any penalty.

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

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

To avoid procedural complexity and reconciliation issues, the Investor-CSD shall not make its own penalty calculations but rely on the Calculating-CSD[20].

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

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

2.2.4　Daily Reporting

The same process as the one mentioned in Chapter 2.1.4 shall apply when the CSD is acting as penalties Calculating-CSD (for an Investor-CSD).

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

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[20] If all involved CSDs are subject to CSDR, only the CSD where settlement is actually taking place shall calculate the penalties; all CSDs involved will have to report and collect/ redistribute. Note for T2S external settlement, T2S will (until further notice) calculate in any case. T2S CSDs will replace these penalties by the ones reported by the Calculating-CSD. Please refer to Chapter 9 'Cross-CSD settlement fails' and Annex III for a description of all settlement scenarios.

The sending of the daily reporting will depend on the CSDs´ settlement system business days calendars.

The daily reporting shall segregate the penalties resulting from the intra-CSD activity, and the ones resulting from the cross-CSD activity. In such a case, the CSD participant might receive up to four reports, for the same business day:

1. Report including all-new intra-CSD penalties;
2. Report including the penalties intra-CSD which were amended, removed or re-included (unless included in the 'new penalties' report);
3. Report including all-new cross-CSD penalties;
4. Report including the penalties cross-CSD which were amended, removed or re-included (unless included in the 'new penalties' report).

The Calculating-CSDs shall provide the daily reports until midday (12:00 p.m. CET), while the CSD depending on the reporting of a settlement platform (like T2S) or of other Calculating-CSDs shall provide their reports ideally until 14:00 p.m. CET. The receiving CSD will in turn report these penalties to its participants. Thus, CSD participants should consider that cross-CSD penalties may be reported later than intra-CSD penalties (depending on the time of receipt from the Calculating-CSD).

The penalty information shall be passed on to the part of the failing settlement instruction, as it appears in the Investor-CSD´s records.

In the case of a CSD link, the failing party may be a participant or an underlying client of a participant of the relevant linked CSD. In the case of indirect and operated direct[21] links, the information flow is longer compared to a direct link, i.e. it could go from the CSD reporting the penalties to the intermediary acting on behalf of the CSD to the customer of the intermediary (i.e. the CSD), and then to the underlying CSD participant. How this information flow is technically ensured is subject to specification by the involved CSDs.

2.2.5   Monthly Events

The monthly events, in a cross-CSD scenario, are identical to the ones in an Intra-CSD scenario for the 'First month' (see Chapter 2.1.3).

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

The 'business days' used for penalties management may differ from the 'actual business days' of a CSD or payment system calendar. Hence, the term 'Penalties Business Day' (PBD) is introduced that applies to the below diagram, illustrating the timeline for the monthly reporting, assessment and payment process:

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[21] 'Operated' means the CSD has a direct link/ account with the other CSD that is operated by an agent.

Following MONTH (provision of aggregated amounts and payment)
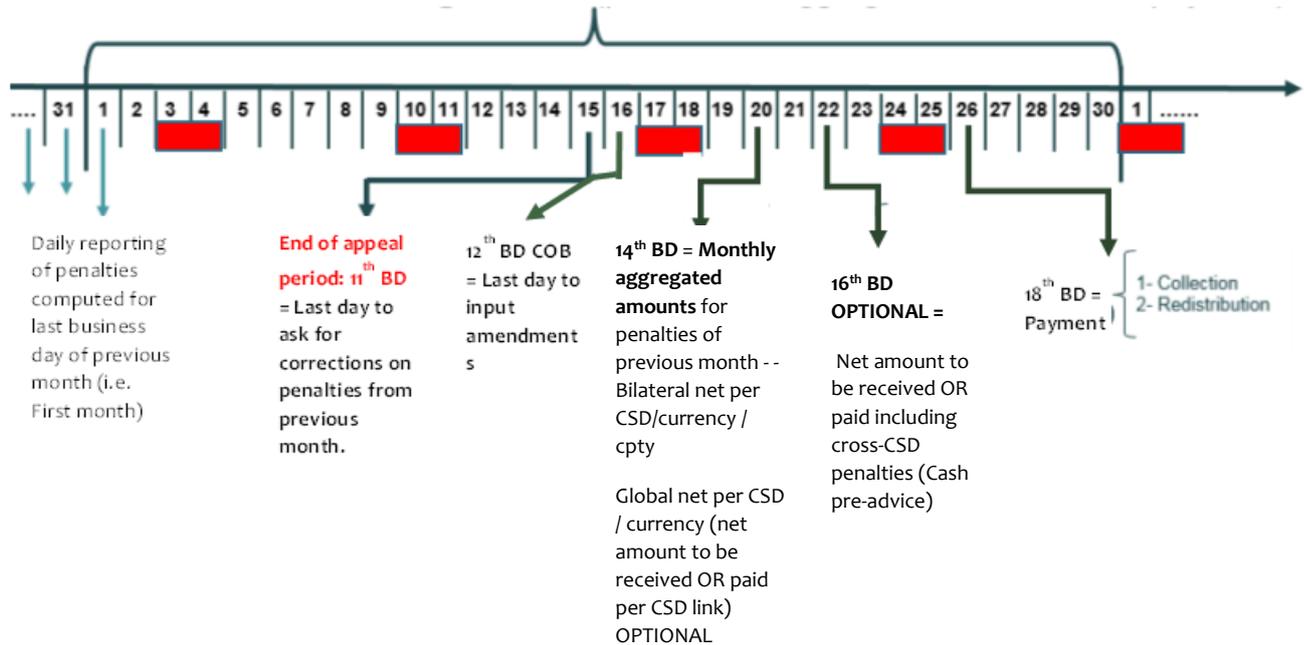
Daily reporting of penalties computed for last business day of previous month (i.e. First month)

End of appeal period: 11th BD = Last day to ask for corrections on penalties from previous month.

12th BD COB = Last day to input amendments

14th BD = **Monthly aggregated amounts** for penalties of previous month - - Bilateral net per CSD/currency / cpty

Global net per CSD / currency (net amount to be received OR paid per CSD link) OPTIONAL

16th BD **OPTIONAL =**

Net amount to be received OR paid including cross-CSD penalties (Cash pre-advice)

18th BD = Payment

1- Collection
2- Redistribution

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

2.2.6   Monthly Appeal Period

While the general process as described in Chapter 2.1.6 applies, in a cross-CSD context, the appeal period ends at the close of business on the 11th PBD of the following month. It allows CSDs to still pass on to other CSDs the appeals requested by CSD participants on the 10th PBD. At the close of business on the 11th Penalties Business Day, CSDs shall no longer request appeals to other CSDs. In case the 11th PBD is a CSD closing date, the appeal end date may be advanced to an earlier date. It means that the end of the appeal period for participants (planned on the 10th PBD) may also be moved to an earlier date.

An appeal requested, at the latest, until the 10th PBD by a CSD participant (in line with Chapter 2.1.5) and accepted by a CSD, must be sent to the other CSD on the 11th PBD so that it can be considered in the "penalty update" report and monthly report generation.

By close of business on the 12th PBD of the following month, any adjustment resulting from appeals shall be completed by the CSD or penalty engine (e.g. T2S), to be reported on the 13th PBD ideally, at the latest, until 14:00h p.m. CET.

Any Investor-CSD may request an appeal to the Issuer-CSD to remove penalties caused by technical impossibilities at the CSD, as referred to in Chapters 2.1.6, and for any reason deemed justified by the Investor-CSD. The Investor-CSD will lodge an appeal including its reasoning at the Issuer-CSD during the applicable appeal period. The Issuer-CSD will process the appeal as received from the Investor-CSD and remove the penalty applied by the Issuer-CSD.

2.2.7 Monthly aggregated amounts

The general process will be identical to the one described for Intra-CSD settlement fails (see Chapter 2.1.7). The 14th PBD is the last day when the monthly reporting shall be sent. If the Calculating-CSD or the calculating settlement platform is closed on this day, the monthly reporting may be sent prior to the 14th PBD.

It is recommended that one 'global net amount' be provided by the Calculating-CSD in the monthly report on the 14th PBD. Alternatively or in addition, PFODs shall be generated by CSDs on the 16th PBD but, at the latest, before the start of the 18th PBD, serving to timely notify the 'global net amount' to be debited from/ credited to the parties/ CSD participants.

For additional information, please refer to Chapter 7.4 'Monthly cash penalties aggregation and global net amounts'.

2.2.8 Monthly payment (collection and redistribution)

In a cross-CSD scenario, the process will slightly differ compared to 2.1.8, as CSDs are not themselves responsible for supplying the funds to proceed with the penalties payment.

On the 18th PBD of the month, all involved CSDs shall have collected the amounts due by their participants (including those that are CSDs themselves), in order to be able to start the payment process across CSDs.

If the CSD and/ or the payment system of the currency is closed on the 18th PBD the payment will have to be done on the next possible business day.

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

CSDs may define appropriate measures (to be described in the relevant contractual documents with the CSD participants) to ensure CSD participants comply with their payment obligations (in each currency reported) to the CSD on time on the 18th PBD to avoid delays and processing issues due to a lacking or incomplete penalties collection.

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

3   PENALTIES SCOPE

Several aspects (mainly content and technical) related to the usage of the ESMA databases mentioned in this section are currently discussed amongst CSDs and are subject to ESMA clarification. Hence, the Framework may be adapted at a later stage.

3.1   INSTRUCTIONS SUBJECT TO CASH PENALTIES – GENERAL SCOPE

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

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

WORKING ASSUMPTION (ESMA/EC to confirm): The only exemptions are:

  i. Settlement transactions that do not represent 'transfer orders[22] according to the second indent of point (i) of Article 2 of Directive 98/26/EC [Settlement Finality Directive];

  ii. Corporate actions on stock (ISO transaction code equals 'CORP');

  iii. Technical instructions, e.g. T2S automatic realignments;

  iv. T2S Settlement restrictions[23].

Note:

- (T2S) Auto-collateralisation operations, though automatically generated, are considered in scope.
- OPEN ITEM (ESMA/EC to clarify): Primary issuance settlements are in scope (except the process of the initial creation of securities which cannot be regarded as a 'transfer order' from a legal standpoint[24]).
- OPEN ITEM (ESMA/EC to clarify): treatment of Investment Funds redemptions/ subscriptions order routing instructions (CSD model vs. TA model/ transfer order vs. settlement instructions model).

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[22] Definition: 'Any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, a central bank, a central counterparty or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system, or an instruction by a participant to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise.'

[23] A T2S Settlement restriction is an Intra-position movement. It is used to manage restriction on a securities position which can be: a securities blocking; a securities reservation; or a securities earmarking.

[24] T2S CSDR TF wording; note re. Investment funds issuance (creation/ redemption), based on ECB feedback: unlike for corporate actions where the Issuers are paying CSD participants, there is generally no obligation on the side of participants, for Issuance and Fund Investment the counterparties are CSD participants who are buyers, so these shall be considered as normal transactions, subject to penalties.

3.2 INSTRUCTIONS SUBJECT TO CASH PENALTIES - CROSS-CSD SETTLEMENT SCOPE

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

In summary, an 'actual place of settlement' concept applies:

- when the actual settlement is taking place in a CSD subject to CSDR, penalties shall be calculated and applied by this CSD ('Calculating-CSD'); the (Investor-) CSD being a participant of the other CSD is obliged to report the penalties further to its own participants and also perform the cash collection and redistribution process;
- when the actual settlement is taking place in a third country CSD (not subject to CSDR), no (CSDR) penalties shall apply.

Notes regarding T2S:

a. T2S always calculates and reports the penalties, even if T2S is not the actual place of settlement; hence, it is up to the T2S CSDs to remove these penalties and replace them by the ones reported by the Calculating-CSD (i.e. the 'external CSD' in T2S terms);

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

3.3 INSTRUMENTS SUBJECT TO PENALTIES

Settlement fails penalties must be calculated in case a matched settlement instruction in scope of SDR is failing to settle and the instruments to be transferred are[25]:

- CSD-eligible MiFID II/ MiFIR financial instruments:
  - admitted to trading or traded on an EU trading venue (see ESMA FIRDS databases[26]); or
  - cleared (or eligible for clearing) by an EU CCP.

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[25] See also ESMA Q&A 4 on Settlement Discipline (https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-2_csdr_qas.pdf)

[26] https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds Note: '"As the FIRDS database also contains instruments that are not CSD-eligible (like derivatives), CSDs should limit the query to instruments being eligible in their CSD settlement system.

Please consider the ECSDA Penalties Reference Data Rules & Recommendations in Annex V.

- excluding shares when their principal trading venue is located in a third country[27].

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

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

- money-market instruments,

- UCITS, and

- emission allowances.

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

a) use the ESMA FIRDS database for MIFID II/ MiFIR instruments;
b) identify the ISINs eligible for settlement in the CSD; and
c) eliminate those shares that are exempted from the Short Selling Regulation.

Please also refer to Chapter 5 for the reference data required to calculate penalties and consider the ECSDA Reference Data Rules & Recommendations in Annex V.

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

4 IDENTIFICATION OF THE PARTY TO BE PENALISED

4.1 LATE MATCHING FAIL PENALTY (LMFP)

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

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

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

4.1.1 LMFP special case: 'already matched' instructions

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

In such cases, it is not always possible for the CSD (and never possible for the T2S settlement platform) to determine the real failing party by comparing the accepted timestamps (as both legs have the same timestamp).

In such cases, the penalty will be applied to the instructing party of the two settlement instructions (i.e. the party who sent the instructions to the CSD).

When the instructing party is one of the counterparties of the failed settlement transaction, it will be up to the instructing party (e.g. CCP) to inform the CSD to whom to allocate the penalty (i.e. the delivering or the receiving participant) and enable the CSD to adjust the penalty assignment accordingly[28].

When the instructing party is a third party, the penalty might not be applicable to the instructing party of the two settlement instructions as this instructing party does not have an account in the CSD´s books (e.g. electronic trading platforms/ Trading Venues). In such a case, if there is no request to re-allocate the penalty to one of the counterparties during the appeal period, the delivering party might be the one to be penalised by default. It will be up to the delivering party,

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[28] Such a case will likely be very rare, as CCPs are normally sending their settlement instructions prior to the ISD.

in agreement with the receiving party, to request the CSD to perform a re-allocation of the penalty to the receiving party if the receiving party was the real defaulting party.

Note: the penalised party may claim its dues outside the CSD penalty mechanism if the real failing party does not have a securities account in the CSD´s books or is no party in the settlement transaction (when, for instance, a Trading Venue is the real failing party, the penalty will be charged to the delivering party by default; the delivering party may pass on its penalty bilaterally to the Trading Venue).

4.2 SETTLEMENT FAIL PENALTY (SEFP)

Any settlement instruction being in scope of the penalties' calculation that

  i.   is matched **before** the relevant cut-off of a given business day; and
  ii.   has reached its ISD; and
  iii.   **fails to settle** on that ISD or the day it is matched (late, i.e. after ISD) and after the ISD,

shall be subject to the computation of Settlement Fail Penalties (SEFP) for each business day the instruction is failing to settle. A settlement instruction that 'fails to settle on ISD' must be understood as a settlement instruction that is not cancelled and remaining to be settled, fully or partially, by the time of the end of settlement processing of the relevant CSD (settlement cut-off time).

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

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

Note: Settlement Fails Penalties (SEFP) apply in addition to LMFP as described in Chapter 4.1. when the 'matched-late' instruction is not actually settled before the CSD settlement cut-off time of the matching business day.

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

5 REFERENCE DATA REQUIRED FOR PENALTY CALCULATIONS

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

When reference data (e.g. CFI code, security reference price) required to calculate penalties is missing by the calculation date, penalty amounts shall be set to 'zero' until the data becomes available unless the latest available reference data can be applied by the CSD until it is updated.

The latest point in time for consideration of new (or updated) reference data by the **CSD is prior to the monthly reporting**. That means if new or updated data for calculating penalties are available to the CSD or penalty engine (e.g. T2S) only after the monthly report is generated, no retroactive penalties calculations or adaptations can be made by CSDs or the penalty engine.

Please refer to Chapter 8 related to updated reference data leading to changes in previously calculated penalties.

In addition, the information contained in Annex V 'ECSDA Penalties Reference Data Rules & Recommendations' of this Framework should be considered.

5.1 LIST OF INSTRUMENTS SUBJECT TO PENALTIES

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

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

5.2 DAILY REFERENCE PRICE

CSDs need to source (or derive) and apply a reference price for each day when the settlement instructions fail to settle. The prices applied shall be in line with CSDR price determination rules[29] for the securities in the scope of the CSDR penalty regime and eligible for settlement in the CSD and considering information in the ESMA FIRDS and FITRS databases:

    i.   for shares and similar instruments: apply the closing price of the 'most relevant market' (MRM) in terms of liquidity (the MRM information – but no price data - is available in the ESMA FITRS database);

    ii.   for other instruments: apply the closing price of the 'most relevant market' (MRM) in terms of 'highest turnover' (trading venue to be derived from the ESMA FIRDS

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[29] See Article 7 of the Delegated Regulation: http://eur-lex.europa.eu/eli/reg_del/2017/389/oj

database) whereby the MRM is assessed according to rule RE17- Rule for the definition of the 'Most relevant market' (MRM) by liquidity and highest turnover' in Annex V[30] (;

iii. For instruments for which no updated daily MiFID II/ MiFIR price is available, use the latest available price from a MiFID II/ MiFIR or other trading venue or - when no trading venue price is available at all - a price as determined by the CSD (see below).

In case of lacking MiFID II/ MiFIR or trading venue price data, two situations should be considered as follows:

- Where a market value can be derived, the CSD will apply a market price determined by the CSD, according to the price determination method approved by the CSD´s National Competent Authority[31];

- Where no market value is available at all, CSDs will use:

  - for debt instruments: nominal value (in the ISIN denomination currency);

  - for non-debt instruments: default price (e.g. issue price).

Considering the above, CSDs must source (usually via their data vendors) the applicable prices from the individual MIFID II/ MiFIR trading venue relevant for a single instrument, identifying the relevant trading venue by using the ESMA FITRS and FIRDS databases[32]:

- For shares and similar (covered in the ESMA FITRS database):

  – the relevant information can be found here: https://www.esma.europa.eu/databases-library/registers-and-data

  – use file 'Financial Instruments Transparency System (FITRS)' to open: https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_fitrs_files

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[30] The new ESMA file published every three months for fixed income securities is under ECSDA review.
[31] In such case, the reference prices applied by CSDs may deviate for a single (EU or non-EU) instrument that can be settled in multiple CSDs. However, the impact would be limited to intra-CSD settlement fails (as for cross-CSD settlement fails, the 'actual place of settlement' concept applies, see Chapter 9).

[32] Please note that ESMA does not publish the trading prices.

- For other instruments than shares (covered in the ESMA FIRDS database):

  – the relevant information can be found here: https://www.esma.europa.eu/databases-library/registers-and-data

  – use file 'Financial Instruments Reference Database (FIRDS)' to open:

  https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds

DRAFT V7.0 – Publicly available to relevant stakeholders
Key changes of the version are highlighted in a light grey colour.

33 | P a g e

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

In the absence of a single central source, the reference prices applied by CSDs may slightly deviate for a single instrument that can be settled in multiple CSDs. Such deviations do not represent a valid reason for lodging 'appeals' towards the CSDs (see also Chapters 2.1.6, 2.2.6).

For all technical issues related to the ESMA databases, the ESMA Support Team can be reached at support@esma.europa.eu.

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

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

Example

An FOP instruction with Intended Settlement Date 05.10.18 only matches (but does not settle) on 07.10.18 – reference prices for 05.10., 06.10. (for LMFP calculation) and 07.10.18 (for SEFP

calculation) are to be applied (assuming that these are business days and the CSD system was open for settlement).

Therefore, CSDs are required to source and store market price data for all instruments in the scope of the penalty regime on a daily basis[33]. In the absence of a single European price feed or source for all CSDs, this has to be managed individually by CSDs via their data vendors, unless CSDs can source price data themselves.

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

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

The amount imposed by the penalty should be calculated:

- For against payment settlement fails, in the currency of the cash leg.

  Note that the ICSDs Euroclear Bank SA/ NV and Clearstream Banking Luxembourg S.A., in their role of the penalties Calculating-CSDs for their internal and Bridge settlement fails, use a single currency (EUR) for all their penalties calculations (related to both, free of and against payment settlement fails). The default currency does not apply to penalties calculated by other CSDs and reported to the ICSDs for settlement instructions that actually failed to settle outside the two ICSDs´ settlement systems and the Bridge.

- For free of payment settlement fails:

  – either in the currency of the underlying security if the instrument is quoted in nominal or per cent (usually fixed income instruments); or

  – in the currency of the daily reference price, if the underlying security is quoted in units (usually shares); or

  – in a default currency, as defined by and eligible for settlement in the Calculating-CSD or settlement platform.

This may lead to the need to calculate penalties in another currency (see Chapter 6).

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[33] For instruments with specific features like pool factors, CSDs shall apply the price as sourced from the Trading Venue or determined by the CSD, without any special modifications for penalties calculation purposes.

5.3 INSTRUMENT TYPE

The instrument type classification will be derived from a CFI code mapping table included in Annex II (Document 2).

The 'Financial Instrument Type' is a classification of securities according to which CSDs shall report settlement fails to regulators, as laid out in the CSDR SDR RTS Annex 1, table 1[34].

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

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

CFI Code Structure	Type of Financial Instrument
Position 1 of the code is 'E'	SHRS
Position 1 of the code is 'D' and position 4 is 'T' or 'C', or position 2 is 'N'	SOVR
Position 1 of the code is 'D', position 2 is neither 'Y' or 'N' and Position 4 is neither 'T' nor 'C'	DEBT
Position 1 of the code is 'R'	SECU
Position 1 of the code is 'C' and position 2 is 'E'	ETFS
Position 1 of the code is 'C' and position 2 is not 'E'	UCIT
Position 1 of the code is 'D', position 2 is 'Y' and position 4 is neither 'T' nor 'C'	MMKT
Position 1 is 'T', position 2 is 'T' and position 3 is 'N'	EMAL
Residual category	OTHR

5.4 INSTRUMENT LIQUIDITY/ ILLIQUIDITY CLASSIFICATION

The liquidity indicator is a binary classification of securities that, for the penalties calculation, only applies to shares, i.e. when the Financial Instrument Type of the security is 'SHRS' and specifies if the security is 'Liquid' or 'Illiquid'[35].

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[34] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.230.01.0001.01.ENG&toc=OJ:L:2018:230:TOC
[35] See Rules RE15 and RE20 of the 'ECSDA Rules & Recommendations' document in Annex V for details.

For instruments not listed in the FITRS Equity Transparency Calculation Results at all and for instruments for which the CFI code starts with 'E' but that are not listed in the relevant FITRS 'Equity Instruments' file, the applicable value shall be 'illiquid'.

This classification of securities is an attribute of the securities subject to penalties and must be derived by the CSDs from the ESMA database: https://www.esma.europa.eu/databases-library/registers-and-data

- Use the file 'Financial Instruments Transparency System (FITRS)' to open and filter on 'Instrument Type' equals 'Equity Instruments'.

- 'Please refer to the detailed ESMA information:
  https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_fitrs_files
- Then use the link to ' Instructions on how to download and use transparency results files' and use the document stored under:
  https://www.esma.europa.eu/sites/default/files/library/esma65-8-5240_firds_download_and_use_of_full_and_delta_transparency_results_files.pdf '

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Key changes of the version are highlighted in a light grey colour.

37 | P a g e

In summary, FULECR/ DLTECR records occur in one of the following cases and are to be assessed according to Rule RE19 'Rule for usage of FITRS reporting markers' of the 'ECSDA Penalties Reference Data Rules & Recommendations' document in Annex V:

Reporting period	Type of calculation	Type of instrument	Period of application
Empty	Estimates	Equity/ Equity-like	Liquidity and LIS/ SMS thresholds apply **from first trading date for six weeks** Calculation results may be updated e.g. when refined estimates are provided NCAs or ESMA.
Four calendar weeks	Calculations based on first four weeks of trading	Equity/ Equity-like	Liquidity and LIS/ SMS thresholds apply **from six calendar weeks after the first trading date, until the next yearly calculation as per table 24**
1/Jan/Y – 31/Dec/Y	Yearly calculations	Equity/ Equity-like	Liquidity and LIS/ SMS thresholds apply **from 1 April of year (Y+1) until 31 March of year (Y+2)**

For all technical issues related to the ESMA databases, the ESMA Support Team can be reached at 'support@esma.europa.eu', copying also 'FITRS-Secondary-Markets@esma.europa.eu'.

5.5 INSTRUMENT TRADING SEGMENT 'SME GROWTH MARKET' - PLACE OF TRADING INFORMATION

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

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

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

The list of SME Growth Market Trading Venues can be found on the ESMA website:

https://www.esma.europa.eu/databases-library/registers-and-data

Use file: 'MiFID II/MiFIR TV/SI/DRSP' to open:

https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_upreg

Considering the attached screenshot:

- set filter in selection field 'SME' to 'YES';
- in order to see the MIC[36], the detailed view 'More Info' must be opened.

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[36] As of 23.07.2021, the following venues´ MICs represent EU SME Growth Markets: XAIM, GBUL, XZAP, DSME, SSME, FSME, ALXP, XESM, ALXL, ALXB, XETW, XETS, FRAS, NSME, XNCO, WMTF, GROW, XSAT.

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39 | P a g e

5.6 INSTRUMENT CATEGORY PENALTY RATE

Considering all the previously mentioned decision criteria, CSDs shall apply the ESMA penalty rates as quoted below and published as such in the Delegated Regulation 2017/389[37]:

Type of fail	Rate
1. Settlement fail due to **a lack of shares that have a liquid market** within the meaning of point (b) of Article 2(1)(17) of Regulation (EU) No 600/2014, excluding shares referred to in point 3	1,0 basis point
2. Settlement fail due to **a lack of shares that do not have a liquid market** within the meaning of point (b) of Article 2(1)(17) of Regulation (EU) No 600/2014, excluding shares referred to in point 3	0,5 basis point
3. Settlement fail due to a **lack of financial instruments traded on SME growth markets**, excluding debt instruments referred to in point 6	0,25 basis point
4. Settlement fail due to a **lack of debt instruments** issued or guaranteed by: (a) a sovereign issuer as defined in Article 4(1)(60) of Directive 2014/65/EU; (b) a third country sovereign issuer; (c) a local government authority; (d) a central bank; (e) any multilateral development bank referred to in the second subparagraph of Article 117(1) and in Article 117(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (¹);	0,10 basis point

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[37] European 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. Published at: http://eur-lex.europa.eu/eli/reg_del/2017/389/oj When applicable, updates will be proposed and published by ESMA.

(f) the European Financial Stability Facility or the European Stability Mechanism.	
5. Settlement fail due to a **lack of debt instruments other** than those referred to in points 4 and 6	0,20 basis point
6. Settlement fail due to a **lack of debt instruments traded on SME growth markets**	0,15 basis point
7. Settlement fail due to a **lack of all other financial instruments** not covered in points 1 to 6	0,5 basis point
8. Settlement fail due to a **lack of cash**	Official interest rate for overnight credit charged by the central bank issuing the settlement currency with a floor of 0 (zero)[38]

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

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

The cash discount rate is the official interest rate of the central bank issuing the settlement currency that should evidence the borrowing costs for that currency.

For EUR, this is the 'marginal lending facility rate' which is published on the ECB website[39].

For penalties calculations, the annual cash discount rate shall be divided by 360 days in order to generate the applicable daily penalty rate.

Discount rates in percentages shall be reported up to ten digits after the comma; the rounding rule RE11 'Rule for cash discount penalty rates' as defined in the 'ECSDA Penalties Reference Data Rules & Recommendations' (see Annex V of the Framework) applies, i.e. rounding to the next higher digit when the 11th digit's value is five or higher.

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[38] As this is an annual rate, a conversion to a 'daily rate' (by dividing the rate by 360 days) shall be applied for penalties the calculations (see Chapter 5.7).
[39] Discount rates would be updated by the corresponding to the currency EU Central Banks. For the ECB rates, please see
http://www.ecb.europa.eu/stats/policy_and_exchange_rates/key_ecb_interest_rates/html/index.en.htmll

Example: annual rate for currency XYZ is 0.05% - daily rate in % is 0.05/360= 0.000138888889% à daily penalty rate is: 0.0001388889%.

In the absence of a common definition of the CSDR legal text term 'discount rate', ECSDA defined a table describing for each currency which Central Bank rate concretely shall be used by CSDs for penalties calculation purposes (note: the attached file serves as illustration, the interest rates and website links displayed therein are not updated through this ECSDA Framework document. For DKK, the 'proxy' rate calculation rule of the Danish National Bank from July 2021 is displayed).

Currencies Discount
Rates_Update_26082(

5.8   FOREIGN EXCHANGE RATES (FX)

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

As explained in Chapter 6, for FOP instructions related penalties, a penalty calculation in another currency may be required.

CSDs must then source the relevant FX rate for the relevant currency of the failing settlement instruction (for EUR, various FX rates are published by ECB on their website[40]; in case FX rates are missing or other cross-rates (e.g. SEK/ DKK) are needed, these must be sourced by CSDs preferably from the respective National Central Bank issuing the currency).

Foreign exchange rates applied will not be reported in the daily and monthly reporting.

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[40] http://www.ecb.europa.eu/stats/exchange/eurofxref/html/index.en.html

6 PENALTIES CURRENCIES CONVERSIONS NEEDS

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

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

An issue related to the penalties collection/ redistribution due to divergent currencies can materialise only in a free of payment[41] settlement fails scenario where the penalty currency applied by the Calculating-CSD is not eligible in the Investor-CSD(s) or settlement platform (e.g. the T2S settlement platform). CSDs may in such cases require payments to be arranged by their participants to/ via payment banks.

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

- either in the currency of:

    i. the underlying security if the instrument is quoted in nominal or percent (usually fixed income instruments); or

    ii. the daily reference price if the underlying security is quoted in units (usually shares);

    or

- in a default currency as defined by and eligible for settlement in the Calculating-CSD.

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

1. It calculates the penalty in the currency of the reference price;
2. It converts the daily penalty amount into the CSD´s default currency and rounds the amount up at least to the first two decimals;
3. It reports the (converted) penalty amount in the currency actually to be credited/ debited in the daily penalty reporting, per CSD, currency, and counterparty.

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[41] For against payment transactions, by definition, the settlement currency must be eligible in all CSDs involved in the settlement; this applies for intra- and cross-CSD settlements. In case the reference price is deviating from the currency of the cash leg, conversion into the settlement currency must be applied by the penalties Calculating-CSD. In case of fails due to lack of cash, the penalty amount shall always be calculated in the currency of the cash leg.

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

No cash is actually to be exchanged on a daily basis, but payments are only made once a month.

<u>Cross-CSD settlement fails</u>

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

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

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

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

<u>Intra-CSD settlement fails</u>

In an intra-CSD context, no FX issues should occur. The currency to be used for the penalties is at the discretion of the Calculating-CSD. For DVP instructions, the currency of the cash leg should be applied (see Chapter 5.2).

7 CALCULATION METHODS OF THE CASH PENALTIES

As also described in Chapter 9, the (obligation for the) calculation of penalties depends on the settlement platform:

- For T2S, as the T2S penalty mechanism knows both, the receipt and delivery leg of the transaction, the involved CSDs can rely on T2S to calculate the penalties.

- For intra-CSD settlements outside T2S, the CSD on whose platform settlement takes place is calculating the penalties.

- For non-T2S cross-CSD settlements, the (Issuer-)CSD where the ultimate settlement takes place calculates the penalties for both legs of the transaction.

For Bridge settlement, the delivering (I)CSD performs the calculation. Note: in relation to Chapters 7.3 and 7.4, the term 'party' refers to 'T2S party BIC' (where the T2S settlement platform is calculating the penalties. The term 'CSD-link' refers to settlement fails outside T2S (i.e. the Issuer-CSD is the Calculating-CSD).

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

Note regarding partially successful buy-ins[42] and LMFP:

CSDR RTS Article 16.3[43] (referring to Art. 27.10 (c), 29.11 (b) and 31.11 (b)) stipulates that cash penalties shall apply to new settlement instructions that are representing the remaining (i.e. not bought-in) part of the failing transaction only as of the date of entry into the CSD system but not from the ISD of that instruction.

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

- MT54x/ ISO15022: sequence E 'Settlement Details' must contain field 22F:: STCO/REGL/BSSP.
- sese/ ISO20022 (e.g. T2S): code 'BSSP' to be used, see T2S CR717 and 728 for details.

Note: SWIFT implemented a new code "BPSS" in November 2021. CSDs using the MT537 or sese/ 20022 messaging should communicate to their participants whether they support the new "BPSS" coding (and by which date) or not.

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[42] The entry Into force of these rules has been delayed beyond 01st February 2022 to a date that is yet to be defined.

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

Important note: only when these values are present on <u>both</u>, the receipt and delivery instruction, LMFP would not be applied under this exemption rule.

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

Example

- Party A has a delivery to Party B for 300 shares that fails for 4 days (SEFP and LMFP, if instructed after ISD, is applied)

- On ISD+4, a buy-in is initiated by Party B with Buy-in Agent C. The buy-in is only successful for 200 shares, the subsequent delivery from Party C to Party B settles on ISD. (If the buy-in settlement instruction was instructed or settled after ISD, SEFP and LMFP will be applied as normal).

- Upon settlement of the 200 shares, the initially failing instruction of 300 shares between Party A and Party B should be cancelled by both parties.

- Additionally, unless cash compensation is applied, the remaining 100 shares need to be instructed by both parties A and B for matching and settlement, normally using the ISD of the original instruction and containing the respective 'BSSP' coding for the CSDs to be able to apply the 'exceptional instruction entry date' rule not to apply LFMP.

7.1   SETTLEMENT FAIL PENALTY (SEFP)

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

The amount imposed by the penalty must be calculated depending on:

  i.   the type of transaction formed by the two matched settlement instructions using reference data,

  ii.   penalty rate of the ISIN or discount rate (Central Bank interest rate on cash) for the financial instrument exchanged by the transaction and

  iii.   whether the instruments need to be delivered or received by the counterparty.

It is to be noted that:

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

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

Type of transaction	SEFP
- Delivering versus Payment (DVP) - Delivering Free of Payment (DFP) - Receiving Free of Payment (RFP)	Penalty based on the quantity of securities failed to be delivered and Security penalty rate of the relevant asset type[44].
- Receiving versus Payment (RVP)	Penalty based on the quantity of securities failed to be delivered and the discount rate of the relevant currency.
- Debiting Payment Free of Delivery (DPFOD) - Crediting Payment Free of Delivery (CPFOD)	Penalty based on the amount of cash failed to be delivered and the discount rate of the relevant currency.
- Delivering with Payment (DWP) - Receiving with Payment (RWP)	Penalty will be the sum of: - Penalty based on the quantity of securities failed to be delivered and Security penalty rate of the relevant asset type; and - Penalty based on the amount of cash failed to be delivered and the discount rate of the currency.

If a fail is due to an instruction that is put 'on hold', such instruction is to be considered as the failing one, and the above-mentioned formulas have to be applied.

The formulas to calculate the penalty imposed by a Settlement Fail Penalty (SEFP) are the following:

- ▪ **i. For a failing DVP, DFP or RFP Settlement Instruction (including when 'on hold'):**

    SEFP = Security Penalty Rate**Reference Price**Quantity

    − **Security Penalty Rate** is the penalty rate stored in Static Data for the relevant asset type (derived from the ISIN and Place of trade) and the business day for which the penalty is calculated;

    − **Reference Price** is the price stored in static data for the ISIN of the instruction and the business day for which the penalty is calculated;

    − **Quantity** is the quantity of securities failed to be delivered, which is the quantity of the instruction remaining to be settled at the time of the end of processing of the relevant cut-off.

- ▪ **ii. For a failing RVP Settlement Instruction (including when 'on hold'):**

    SEFP = Cash Discount Penalty Rate**Reference Price**Quantity

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[44] Penalty rate as determined in the relevant ESMA Delegated Act.

- **Cash Discount Penalty Rate** is the discount rate of the relevant currency stored in Static Data divided by 360 and the business day for which the penalty is calculated.

- **Reference Price** is the price stored in Static Data for the ISIN of the instruction and the business day for which the penalty is calculated.

- **Quantity** is the quantity of securities failed to be delivered, which is the quantity of the instruction remaining to be settled at the time of end of processing of the relevant cut-off.

- **iii. For a failing DPFOD or CPFOD Settlement Instruction (including when 'on hold'):**

  SEFP = Cash Discount Penalty Rate***Amount**

  - **Cash Discount Penalty Rate** is the discount rate of the relevant currency stored in Static Data divided by 360 and the business day for which the penalty is calculated.

  - **Amount** is the cash amount failed to be delivered, which is the amount of the instruction remaining to be settled at the time of end of processing of the relevant cut-off[45].

- **iv. For a failing DWP or RWP Settlement Instruction (including when 'on hold'):**

  SEFP = Security Penalty Rate***** Reference Price***** Quantity + Cash Discount Penalty Rate***** Amount

  - Security Penalty Rate*****Reference Price*****Quantity as described in (i);

  - Cash Discount Penalty Rate***** Amount as described in (iii).

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

The penalties calculated should be retained for 3 months.

7.1.1 Illustrative penalties calculation examples

1. Failing DVP or DFP settlement instruction (SEFP) – lack of securities

Delivery of 5,000 (liquid or illiquid) shares ("SHRS"), traded on an SME Growth Market Trading Venue, failing due to "lack of securities" for 2 days after the ISD, penalty reference price day 1 = 25.—EUR/ day 2 = 27.—EUR. Please also refer to Chapter 5 for reference data information.

- Formula: Security Penalty Rate*Reference Price*Quantity

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[45] Rationale: Although the CSDR prescribes to use the security quantity and reference price for the calculation of all settlement fail penalties, for DPFOD and CPFOD settlement instructions where the ISIN quantity is zero, the cash amount is used to compute the penalty (approach as confirmed by ESMA in their Q&A as updated on 03rd August 2022). Please note the special handling in case of partially successful buy-ins as described in the Framework Chapter 7.

Fail day 1:

0.25 basis points * 25 *5,000

= 0.0025% * 125,000 EUR

= 3.13 EUR

Fail day 2:

0.25 basis points * 27 *5,000

= 0.0025% * 135,000 EUR

= 3.38 EUR

Total SEFP amount = 3,13 EUR + 3,38 EUR = 6.51 EUR (due to be paid by the securities delivering participant).

2. Failing RVP settlement instruction (SEFP) – lack of cash

Delivery of 5,000 (liquid or illiquid) shares ("SHRS"), failing due to "lack of cash" for 2 days after the ISD, penalty reference price day 1 = 25.—EUR/ day 2 = 27.—EUR, for EUR, the ECB "marginal lending facility rate" applies. Please also refer to Chapter 5 for reference data information.

- ▪ Formula: Cash Discount Penalty Rate*Reference Price*Quantity

Fail day 1:

(0.25%/ 360) * 25 *5,000

= 0.0006944444 * 125,000 EUR

= 0.87 EUR

Fail day 2:

(0.25%/ 360) * 25 *5,000

= 0.0006944444 * 135,000 EUR

= 0.94 EUR

Total SEFP amount = 0.87 EUR + 0.94 EUR = 1.81 EUR (due to be paid by the cash-delivering participant).

Note that the examples also apply in the case of "Late Matching Fail Penalties" (LMFP; see also Framework Chapters 4.1 and 7.2). The only difference is that the failing participant is identified by who was "last to enter or modify" the relevant settlement instruction after the ISD.

7.2 LATE MATCHING FAIL PENALTY (LMFP)

For settlement instructions that are matched in the CSD system only after the relevant cut-off of their Intended Settlement Date (ISD), penalties shall be calculated only once (i.e. on the business day when they are matched) but considering all the previous business days where the instruction failed to settle due to the late matching[46].

Settlement Fail Penalties (SEFP) and Late Matching Fail Penalties (LMFP) shall follow the same principles for their computation.

7.2.1 Number of days considered in the computation of LMFP

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

1. **When the instruction can still settle on the business day when it is matched:**

   - This scenario relates to those instructions matched after their ISD (late matching) but matched at a point in time when it is still possible to settle them on the business day when they are matched (i.e. matched before the relevant cut-off for Matching Business day).

   - The LMFP shall be calculated for each business day as from the ISD until and excluding, the business day when the instruction is matched.

   - In case the instruction does not settle on the business day when it is matched (even if it was possible because it arrived before the cut-off) then, a separate calculation will have to be performed for an additional SEFP.

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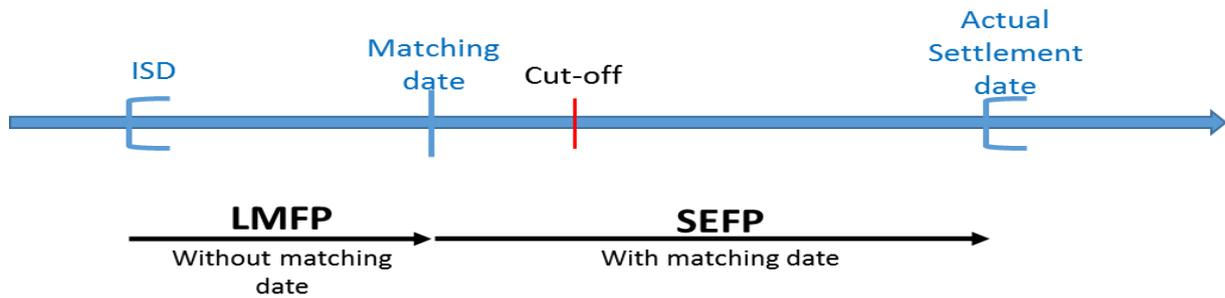
The matching date is excluded from the LMFP and included in the SEFP.

2. **When the instruction can no longer settle on the business day when it is matched:**

- This scenario relates to those instructions matched, on or after the ISD, at a point in time when it is not possible to settle them on the business day when they are matched because it is after the relevant cut-off.

- The LMFP shall be calculated for each business day as from the ISD until, and including, the business day when the instruction is matched.
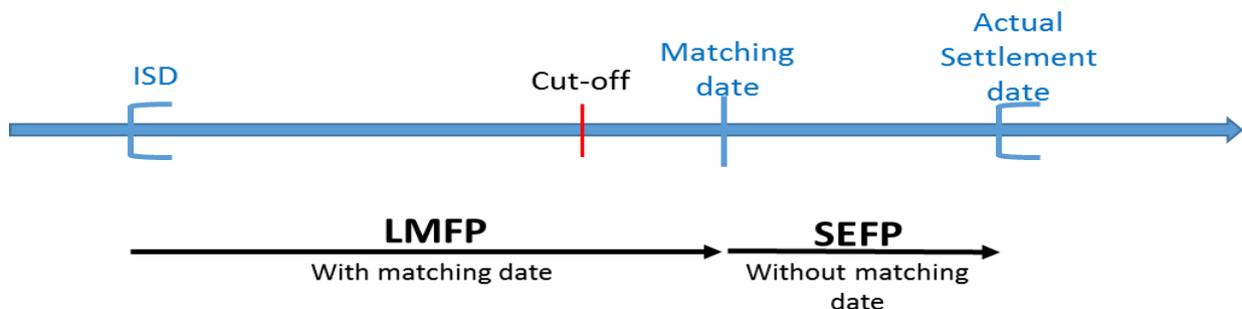
The matching date is included in the LMFP and excluded from the SEFP.

7.2.2 Formulas to be used

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

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

LMFP = Security Penalty Rate*Reference Price*Quantity

- **Security Penalty Rate** is the penalty rate stored in Static Data for the relevant asset type (derived from the ISIN and Place of trade) and for the relevant business day.

- **Reference Price** is the price stored in Static Data for the ISIN of the instruction and for the relevant business day.

– **Quantity** is the quantity of securities failed to be delivered, which is the matched quantity of the Settlement Instruction.

ii. For an RVP received late:

LMFP = Cash Discount Penalty Rate***** Reference Price***** Quantity**,** where;

– **Cash Discount Penalty Rate** is the discount rate of the relevant currency stored in Static Data divided by 360 and the business day for which the penalty is calculated;

– **Reference Price** is the price stored in Static Data for the ISIN of the instruction and the relevant business day.

– **Quantity** is the quantity of securities failed to be delivered, which is the matched quantity of the instruction.

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

LMFP = Security Penalty Rate ***** Reference Price***** Quantity, where:

– **Security Penalty Rate** is the penalty rate stored in Static Data for the relevant asset type (derived from the ISIN and Place of trade) and for the relevant business day;

– **Reference Price** is the price stored in Static Data for the ISIN of the instruction and the relevant business day**;**

– **Quantity** is the quantity of securities failed to be delivered, which is the matched quantity of the instruction.

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

– LMFP = Cash Discount Penalty Rate***** Amount;
– **Cash Discount Penalty Rate** is the discount rate of the relevant currency stored in Static Data divided by 360 for the relevant business day;
– **Amount** is the cash amount failed to be delivered, which is the matched cash amount of the Settlement Instruction.

v. For a DWP or RWP received late:

– LMFP = Security Penalty Rate ***** Reference Price ***** Quantity + Cash Discount Penalty Rate ***** Amount;

– Security Penalty Rate*****Reference Price*****Quantity as described in (i)**;**

– Cash Discount Penalty Rate***** Amount as described in (iv).

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

7.3 DAILY BILATERAL NET PER COUNTERPARTY

In addition to the gross penalties calculated on a daily basis, a bilateral net amount per CSD link, (only relevant for cross-CSD fails with non T2S CSDs), per currency and counterparty must be provided.

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

Thus, for a given party, the bilateral net amount (due or entitled) against a given counterparty is:

- The sum of all the penalties (SEFP + LMFP) calculated at the failed instruction level that this party is entitled to receive (reported as credit) from a given counterparty (i.e. to be paid by this counterpart) in a CSD;

minus

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

Three scenarios apply:

1. Intra CSD scenario[47]: daily bilateral net with each counterparty in this CSD (at party level).
2. Cross-CSD scenario ('**T2S in CSDs**'): daily bilateral net with each T2S CSD (at party level).
3. Cross-CSD scenario (**non-'T2S in CSDs**'): daily bilateral net per CSD-link (CSD level).

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

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

7.4 MONTHLY CASH PENALTIES AGGREGATION AND GLOBAL NET AMOUNTS

7.4.1 Monthly bilateral net per counterparty

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

When calculating the monthly aggregated amounts, the CSD will consider the last available value of the amount of each penalty aggregated (i.e. the CSD will take into account all updates performed

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[47] This scenario covers as well parties/ participants at the Issuer-CSD that are CSDs.

until the end of the penalties appeal period for CSDs, i.e. changes until and including the 11th PBD of the following month).

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

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

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

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

Minus

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

Subsequently, for each party/ CSD-link, a bilateral 'net amount per counterparty' is calculated.

Three scenarios apply:

1. Intra CSD scenario[48]: monthly bilateral net with each counterparty in this CSD (at party level).
2. Cross-CSD scenario ('**T2S in CSDs'**): monthly bilateral net with each counterparty T2S CSD (at party level).
3. Cross-CSD scenario (**non-'T2S in CSDs'**): monthly bilateral net per CSD-link (CSD participant level).

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

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

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

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[48] This scenario covers as well participants at the Issuer-CSD that are also CSDs (i.e. Investor-CSDs).

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

Minus

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

The total of the bilateral nets will result in:

- a global net per CSD (for intra-CSD), and/ or
- a global net for per counterparty-CSD for cross CSD with T2S-in CSDs scenarios. For instance, a global net between CSD A and CSD B (note: there is no "place of settlement" concept applied by the T2S penalty mechanism), and/ or a global net per CSD-link (for cross-CSD with non-'T2S in CSDs' scenario). For instance, a global net between a) CSD B and CSD A where CSD B is the actual place of settlement, and b) between CSD B and CSD A where CSD A is the actual place of settlement. The 'global net' amount resulting from this calculation and will either be an amount due by the party (i.e. to be paid by the party), or an amount to be received by the party.

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

8 CHANGES TO PREVIOUSLY CALCULATED PENALTIES

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

T The latest point in time for consideration of new (or updated) reference data by the CSD is prior the monthly reporting. That means if new or updated data for calculating penalties are available to the CSD or penalty engine (e.g. T2S) only after the monthly report was generated, no retroactive penalties calculations or adaptations can be made by the CSDs or penalty engine.

Note that, in addition to the following penalties changes activities steps, T2S foresees a 'switch' mechanism[49]; as this is not considered relevant for non-T2S settlements it is not covered in this Framework.

8.1 REMOVAL OF EXISTING PENALTIES

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

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

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

- On the business day following the removal of the penalty, the CSD shall report the removal, either in the Daily Report (with the penalties computed for the previous day) or in the report of updated/ modified penalties.

- Within this report, the penalties that have been set to zero will be reported with:

    – New amount equal to zero;

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

- Status 'Removed';

- The standard removal reason code (see SWIFT SMPG Market Practice in Annex II, item 4); and

- Optionally, a further description (free text) of the reason for the removal (provided by the CSD).

8.2 RE-INCLUSION OF A PREVIOUSLY REMOVED PENALTY

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

When a penalty is re-included, CSDs shall calculate the penalty amount again as it may have changed due to updates in the reference data since it was removed. This recalculation shall be performed by the CSD in its next daily recalculation process[50].

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

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

- Status 'Active'; and

- The standard reintroduction reason code (see SWIFT SMPG Market Practice in Annex II, item 4).

8.3 RE-ALLOCATION OF AN EXISTING PENALTY

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

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

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[50] For T2S-in CSDs, the amount of the cash penalty, as it was when the penalty was removed, is reported by T2S; this amount may change afterwards due to a subsequent recalculation by T2S (penalty is considered as 'to be recalculated after being modified').

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

- For the initially penalised party and its counterparty:

  - Status 'Removed';

  - A reason code to reflect the re-allocation (see SWIFT SMPG Market Practice in Annex II, item 4); and

  - Optionally, a description (free text) of the reason for the re-allocation (provided by the CSD).

- For the 'newly' penalised party and its counterparty:

  - Status 'Active';

  - A reason code to reflect the re-allocation (see SWIFT SMPG Market Practice in Annex II, item 4);

  - Optionally a description (free text) of the reason for the re-allocation (provided by the CSD); and

  - A reference of the original penalty that has been re-allocated.

8.4 UPDATE OF EXISTING PENALTIES

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

The latest point in time for consideration of new (or updated) reference data by the CSD is prior to the monthly reporting. That means if new or updated data for calculating penalties are available to the CSD or penalty engine (e.g. T2S) only after the monthly report was generated, no retroactive penalties calculations or adaptations can be made by CSDs or penalty engine.

After the recalculation of a penalty, CSDs shall provide either the Daily Report (with the penalties computed for the previous day), or the report of updated penalties, including:

- New updated amount and values; and

- Reason code 'Updated'.

9 CROSS-CSD SETTLEMENT FAILS

9.1 BACKGROUND

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

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

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

Note for T2S: there is no Calculating-CSD as the T2S settlement platform is the relevant penalties calculating system. 'T2S CSDs' send the daily and monthly penalties reports to their participants based on the information received from the T2S penalties system.

Relying on the Calculating-CSD avoids that CSDs calculate penalties in parallel (which anyway is not always feasible, as e.g. late matching information is only available to the settling CSD), possibly leading to deviating results (e.g. due to different reference prices) and reconciliation needs[51].

Based on the Calculating-CSD´s input, all its participants need to ensure the actual timely collection and redistribution of the monthly penalty amounts[52] is triggered. Investor CSD(s) is/ are responsible for the full collection and timely payment of the penalty amounts to the Calculating-CSD.

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

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

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[51] This approach is the same as today for those markets where penalties already apply.
[52] Note for T2S external settlement, T2S will (until further notice) calculate penalties in any case. T2S CSDs will replace these penalties by the ones reported by the Calculating-CSD (see as well Chapter 2.2.1).

9.2 Scenario 1A
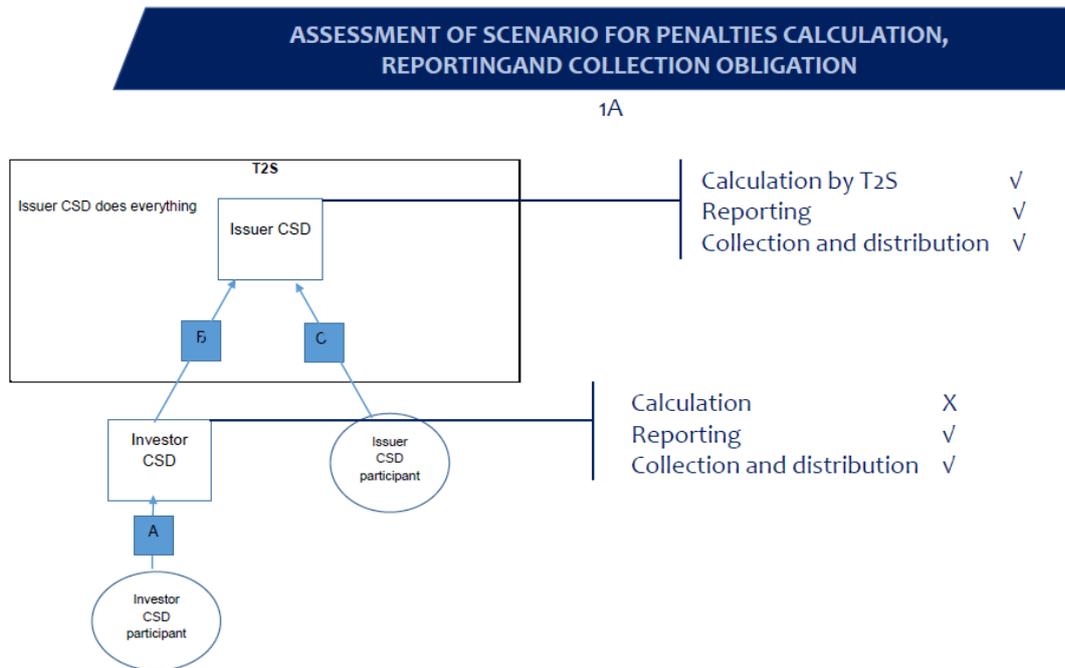
ASSESSMENT OF SCENARIO FOR PENALTIES CALCULATION, REPORTINGAND COLLECTION OBLIGATION

1A

Calculation by T2S	√
Reporting	√
Collection and distribution	√

Calculation	X
Reporting	√
Collection and distribution	√

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

9.3 Scenario 1B
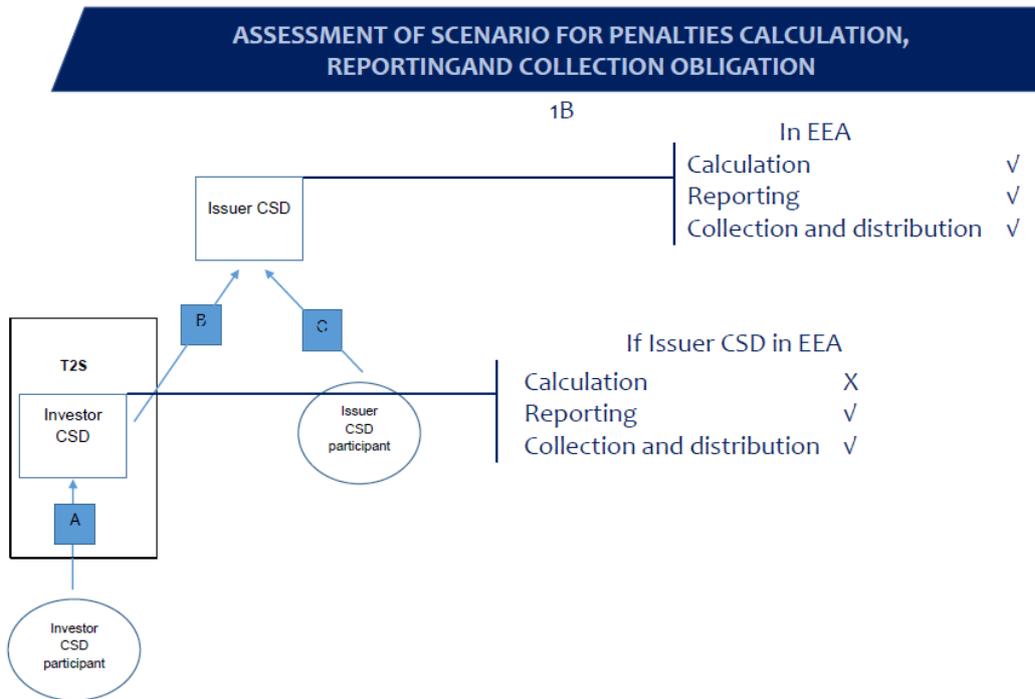
Only the Issuer-CSD (being the Calculating-CSD) receives both legs of the transaction, allowing it to calculate the ultimate penalties.

Note regarding T2S: Due to the current T2S design, even for the single T2S leg, penalties will be calculated by T2S. T2S CSDs will replace these penalties with the ones reported by the Calculating-CSD (see as well Chapter 2.2).

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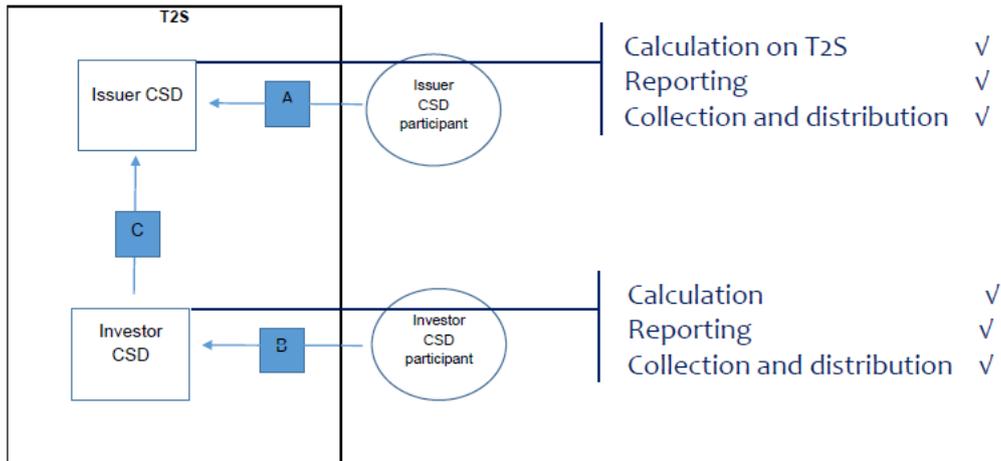
Due to its single settlement platform, T2S is able to calculate penalties for both legs of the T2S transaction.

9.5 SCENARIO 2A
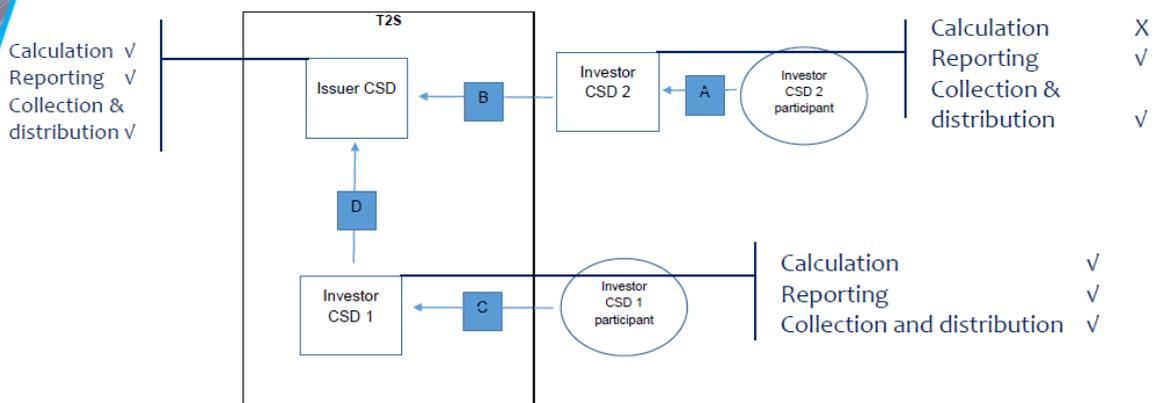
Due to its single settlement platform, T2S is able to calculate penalties for both legs of the T2S transaction.

9.6 SCENARIO 2B
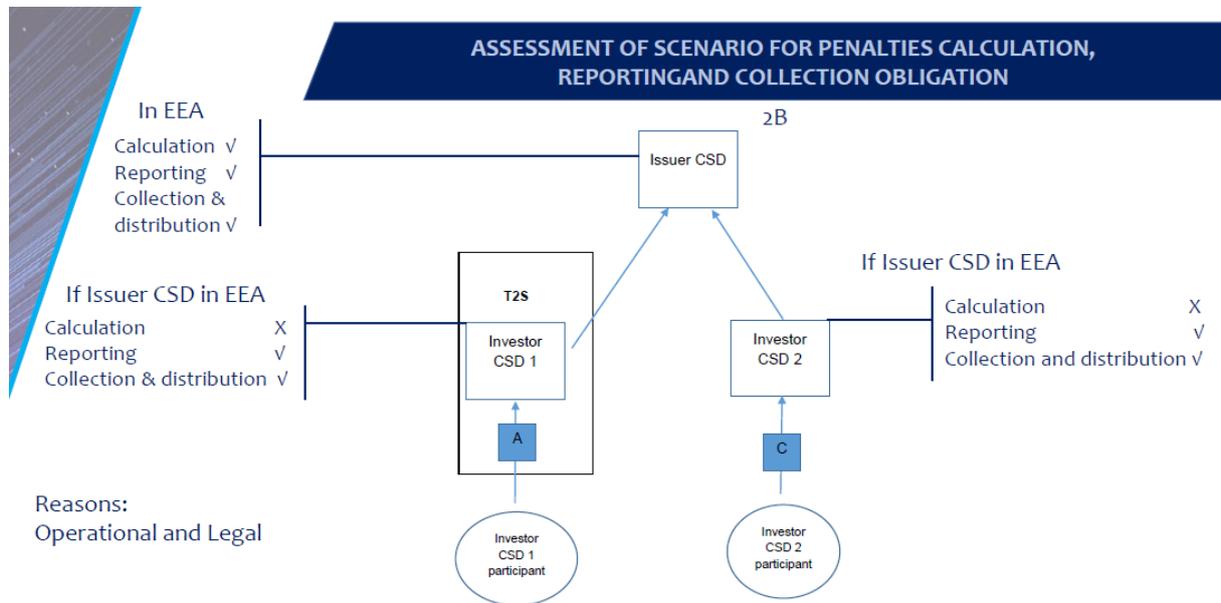
Only the Issuer-CSD (being the Calculating-CSD) receives both legs of the transaction.

For the 'T2S-in CSDs', due to the current T2S design, even for the single T2S leg, penalties will be calculated by T2S. 'T2S-in CSDs' will replace these penalties with the ones reported by the Calculating-CSD (see as well as Chapter 2.2).

9.7 SCENARIO 2C
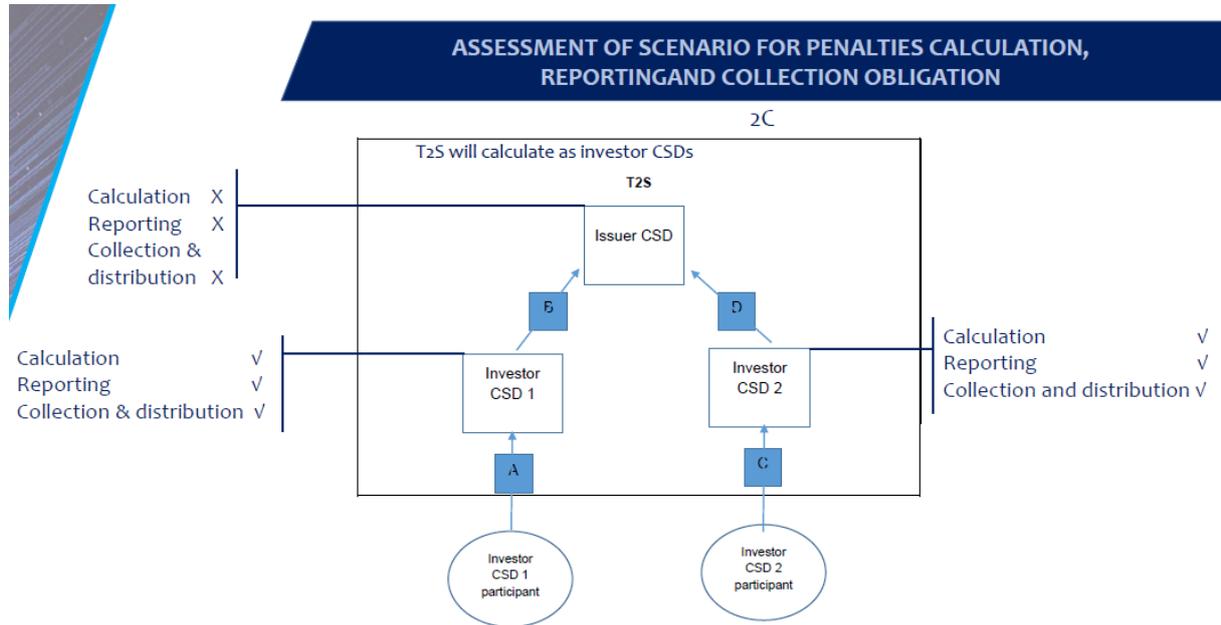
Due to its single settlement platform, T2S is able to calculate penalties for both legs of the T2S transaction.

9.8 SCENARIO 2D
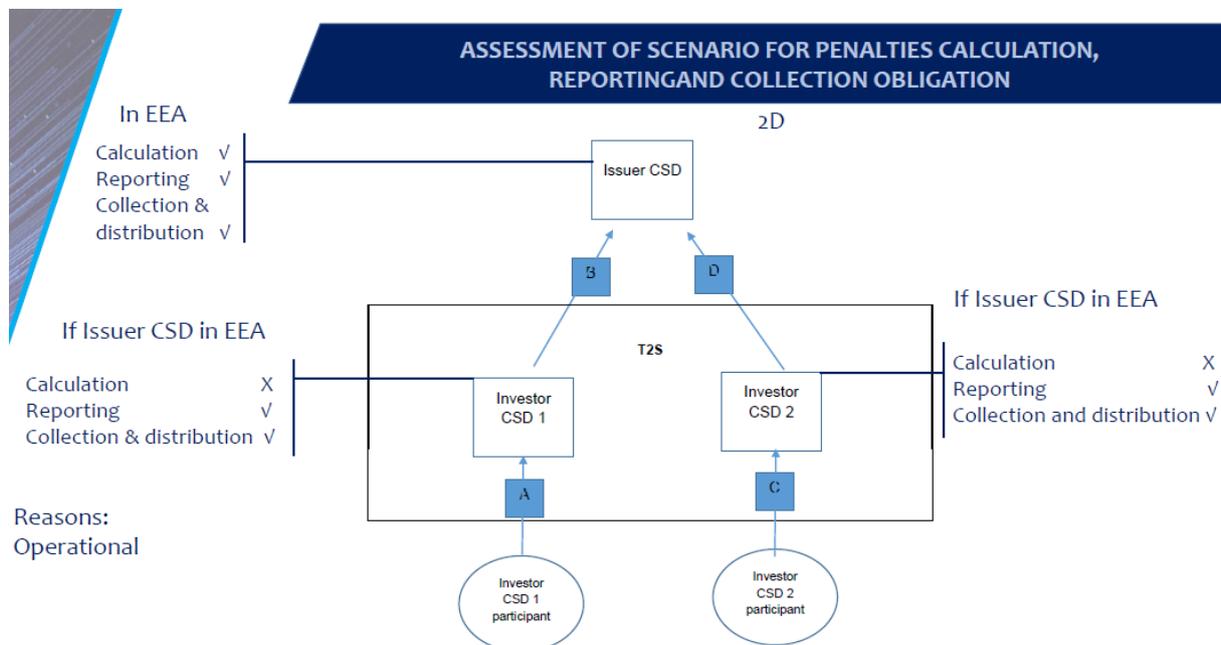
Only the Issuer-CSD (being the Calculating-CSD) receives both legs of the transaction, allowing it to calculate the ultimate penalties.

For the 'T2S-in CSDs', due to the current T2S design, even for the T2S legs, penalties will be calculated by T2S. T2S CSDs will replace these penalties with the ones reported by the Calculating-CSD (see as well as Chapter 2.2).

9.9 SCENARIO 2E
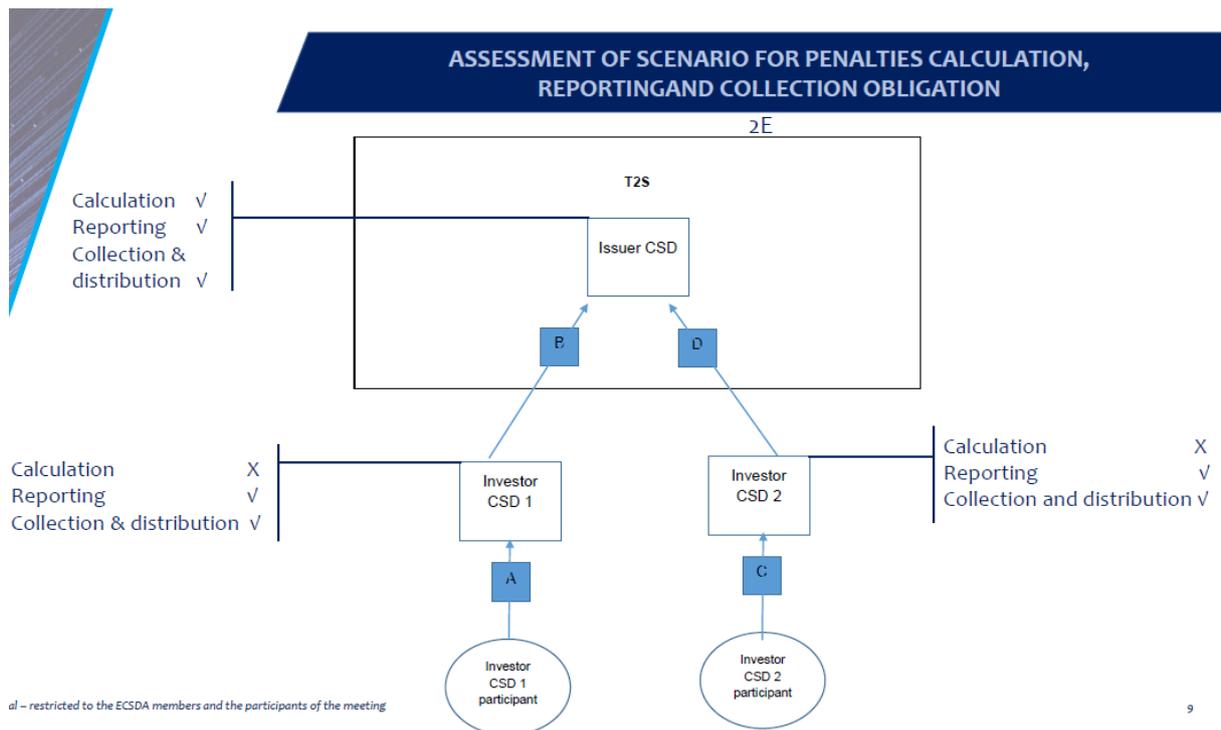
Due to its single settlement platform, T2S is able to calculate penalties for both legs of the T2S transaction.

9.10 SCENARIO 2F
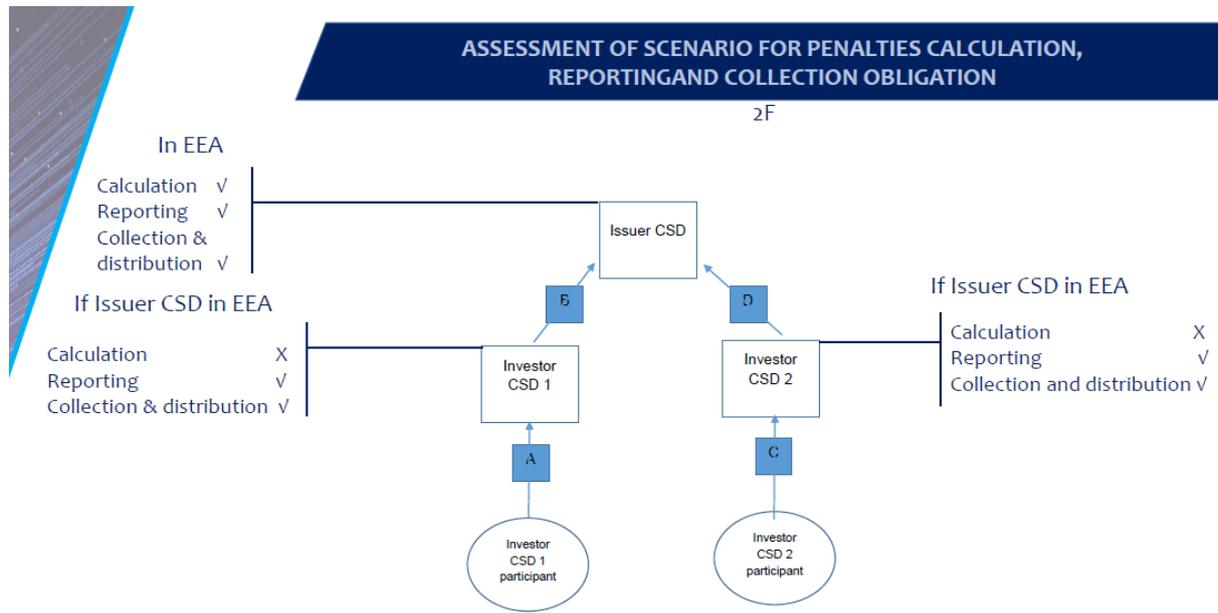
ASSESSMENT OF SCENARIO FOR PENALTIES CALCULATION, REPORTINGAND COLLECTION OBLIGATION

2F

In EEA
Calculation √
Reporting √
Collection & distribution √

If Issuer CSD in EEA
Calculation X
Reporting √
Collection & distribution √

If Issuer CSD in EEA
Calculation X
Reporting √
Collection and distribution √

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

9.11 SCENARIO 2X

ASSESSMENT OF SCENARIO FOR PENALTIES CALCULATION, REPORTINGAND COLLECTION OBLIGATION

2X

In EEA
Calculation √
Reporting √
Collection & distribution √

If Issuer CSD in EEA
Calculation X
Reporting √
Collection & distribution √

If Issuer CSD in EEA
Calculation X
Reporting √
Collection and distribution √

Reasons:
Operational

Key changes of the version are highlighted in a light grey colour.

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

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

Assumptions:
    Step 1: Issuer CSD reports penalties to the Investor CSD 2 (as the Issuer CSD has no relationship with Investor CSD 1)
    Step 2: Investor CSD 2 reports penalties to the Investor CSD1
Collection and Redistribution follow the same steps.

9.12 SCENARIO BRIDGE

Issuer CSD not subject to CSDR– case 20: ICSDs are investor CSD
Settlement between Euroclear Bank and Clearstream Banking Luxembourg
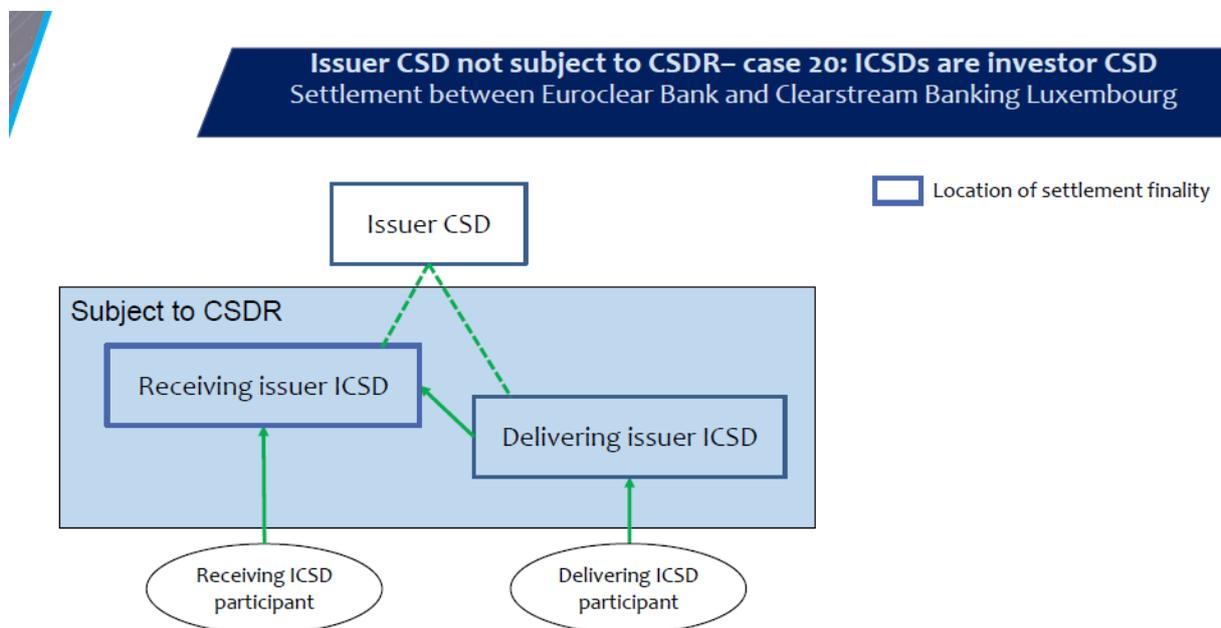
- Settlement taking place between both ICSDs, no movement in issuer CSD
- One ICSD to calculate penalties
- Both ICSDs to report penalties to their participants and regulators
- Both ICSDs to collect/distribute penalties from/to their participants

23

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

10 COLLECTION & REDISTRIBUTION OF PENALTIES (PAYMENT)

10.1 GENERAL OVERVIEW

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

CSDs applying this Framework shall perform the actual 'collection and redistribution' of the applied penalties via the relevant payment process only once, in the following month on the 18th PBD (if the CSD and/ or the payment system of the currency is closed on the 18th PBD, the payment shall be done on the next possible business day).

CSDs, via their participants, shall collect/ redistribute the full amount of penalties on the 18th PBD of the month as described in Chapter 2.

Regarding T2S, Chapter 10.1.1 must be considered.

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

The full penalty amounts shall be collected and redistributed to the participant that suffered from the fail latest until the end of the month following the fail date (fail month + 1). To mitigate market impacts in case of delays in the payments collection, a CSD may redistribute the cash it has received on the 18th PBD to receiving participants, as well as other CSDs for cross-CSD penalties, already even when not all dues have been fully collected and apply a 'partial redistribution'. In such case, the relevant receiving participants and CSDs must be paid the full amount expected by them and not only a portion (i.e. no 'partial payments' apply by the CSD).

CSDs shall segregate penalties cash flows in their own books from any other activities, hence, CSDs shall use a single (or may use several, e.g. in case of multiple links) dedicated penalties cash account(s).

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

CSDs may use different models for the actual penalties payments processing:

Key changes of the version are highlighted in a light grey colour.

1. CSD triggers direct debits[53] and/ or cash transfers;
2. CSD generates PFOD instructions (T2S model, see Chapter 10.1.1);
3. Cash transfer using a payment bank[54].

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

CSDs may define appropriate measures (to be described in the relevant contractual documents with the CSD participants) to ensure penalty amounts due are available to the CSD and CSD participants comply with their payment obligations to the CSD on time to avoid delays and processing issues due to a lacking or incomplete penalties collection by the 18th PBD.

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

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

All steps shall be performed completely on the 18th PBD for every currency involved (note: if the CSD and/ or the payment system of the currency is closed on the 18th PBD, the payment shall be done on the next possible business day).

As a result, penalties cash-related information must be transferred by all involved parties at least in a near-time mode as the use of end of day cash statements would not allow for the timely payment process completion by the involved parties including (I)CSDs and their agents (if applicable) in case of settlement chains.

Participants that are CSDs will be treated the same way as any other CSD-participant.

10.1.1   T2S-In CSDs payments processing[55]
In the context of ESMA RTS on Settlement Discipline Article 20 ('CSDs that use a common settlement infrastructure'), T2S-In CSDs agreed to commonly apply a PFOD payment process.

Participants shall fund their relevant T2S DCAs in time to ensure PFOD penalties can settle in the T2S night-time settlement cycle (NTS) for value 18th PBD to avoid payment delays.

T2S-In CSDs, via their participants, shall collect/ redistribute the full amount of penalties on the 18th PBD of the month as described in Chapter 2 before cash redistributions are executed. Pre-condition

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[53] Note that ESMA was asked to acknowledge the risks related to CSDs not being allowed to perform direct debits in some EU countries and to consider appropriate mechanisms to enforce the timely payment of due amounts.

[54] Option 3 is least preferred by CSDs due to extended payment chains (via CCBs), increasing risk of delayed payments. However, for foreign currency transactions it may be the only feasible option.
[55] Note that non-T2S CSDs may apply a similar process and the rules described in this Chapter whenever possible and applicable.

is that the full amount expected to be received by a single CSD or CSD participant can be paid (i.e. no 'partial payments' apply).

Cross-CSD payments

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

All (delivery and receipt) PFODs should be generated at the same time.

All T2S-In CSDs shall use a single dummy ISIN LU2128008567 (debt instrument, CFI code TRFMXX, i.e. qualified as Financial Instrument Type 'OTHR' as per Framework Chapter 5.3[56]).

No 'already matched' process applies, i.e. each CSD needs to instruct its own settlement leg on the 16th PBD to ensure timely matching.

PFOD criteria	
Transaction Type	PAIR
Trade Date	16th PBD of the following month
Intended Settlement Date	18th PBD of the following month[57]
Dummy ISIN code	LU2128008567
Partial Indicator	No partial allowed (NPAR in T2S platform)
Priority Indicator	Highest possible for the CSDs (for instance, 001 in T2S platform)
Modification Allowed	No for CSD participants that are not CSDs Yes for CSD participants that are CSDs[58]
Hold and Released	Released
Common reference	Not to be used
2nd level matching	Dedicated or standard[59] CSD penalty BIC
Matching status	To be matched
Delivery/ Receipt	The CSD creating its leg of the PFOD is to be considered as the 'party': - a CPFOD (PFOD-CRDT, crediting cash) will be used to collect cash on the CSD penalties cash account, thus being a debit for the counterparty CSD => collection - a DPFOD (PFOD-DBIT, debiting cash) will be used to distribute cash from the CSD penalties cash account, thus being a credit for the counterparty CSD => re-distribution

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[56]CSDs may apply blocking rules for their customers to avoid usage of the dummy ISIN.
[57] Or, if not corresponding to a T2S BD, the subsequent next T2S BD.
[58] Investor-CSDs in an Issuer-CSD must be able to use the hold/ release functionality.
[59] Some CSDs may decide to use their 'standard" BIC code and link it to a dedicated penalty cash account (DCA), while others may decide to create a dedicated BIC code for penalties management.

	If the 'party' CSD has to **receive a penalty amount** è C**PFOD for delivery** (to credit the 'party' CSD DCA) If the 'party' CSD has to **pay a penalty amount** è D**PFOD for receipt** (to debit the 'party' CSD DCA)

Intra-CSD payments

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

PFOD criteria	
Transaction Type	PAIR
Trade Date	16th PBD of the following month
Intended Settlement Date	18th PBD of the following month[60]
Dummy ISIN code	LU2128008567
Partial Indicator	No partial allowed (NPAR in T2S platform)
Priority Indicator	Highest possible for the CSDs (for instance, 001 in T2S platform)
Modification Allowed	No for CSD participants that are not CSDs Yes for CSD participants that are CSDs[61]
Hold and Released	Released
Common reference	Not to be used
2nd level matching	Participant BIC code (linked to the default settlement cash account)
Matching status	Already matched
Delivery/ Receipt	As the transaction is already matched, both legs are created and matched by the CSD: - a CPFOD (PFOD-CRDT, crediting cash) will be used to collect cash on the CSD penalties cash account, thus being a debit for the CSD customer => collection - a DPFOD (PFOD-DBIT, debiting cash) will be used to distribute cash from the CSD penalties cash account, thus being a credit for the CSD customer => re-distribution

10.2 STEP 1: PENALTIES COLLECTION FROM CSD PARTICIPANTS

Participants must ensure their cash accounts are funded or dues paid to the dedicated CSD penalties cash account by the start of the CSD's first settlement processing cycle on the 18th PBD

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[60] Or, i if not corresponding to a T2S BD, the subsequent next T2S BD
[61] Investor-CSDs in an Issuer-CSD must be able to use the 'hold/ release' functionality.

but at latest 2 hours prior to the cut-off time of the relevant currency payment system; see as well Chapter 2 for details.

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

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

Regarding T2S, Chapter 10.1.1 must also be considered.

No tolerance between the amount to be paid as reported by the CSD and the amount actually collected by the CSD is allowed, i.e. CSD participants must pay exactly the amount as calculated and reported by the CSD. Should the amount received by a CSD not represent the one expected, the CSD may not be able to perform the penalties redistribution to its participants (including other CSDs in a cross-CSD penalties scenario).

There are different mechanisms available to the CSDs on how to collect the penalties; depending on the payment model, the relevant cash account number information may need to be provided to participants and relevant other CSDs.

10.2.1   Payment via direct debits and/ or cash transfers

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

CSD participants must have adequately funded their cash account on time on the 18th PBD. In case the participant cash account is not sufficiently funded; the direct debit may lead to the consumption of granted credit lines or an account overdraft[62].

10.2.1.2   *Cash transfer*

In the case when a direct debit is not feasible, the CSD participants will have to actively transfer the amounts due to the dedicated cash account of the CSD by the start of the relevant currency

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[62] If the cash account is owned by a (Investor-) CSD, it shall not go into negative, considering that CSDs have to first collect the cash from their own participants.

payment system´s processing cycle on the 18th PBD but at latest 2 hours prior the cut-off time of the payment system; see as well Chapter 2 for details.

10.2.2 Payment via PFOD transactions

This process will be applied by T2S-In CSDs intra- and cross-CSD payments.

On the 16th PBD, but at the latest before the start of the 18th PBD, the CSD will create PFOD instructions to receive the cash amounts from its participants that have to pay penalties.

CSD participants must have adequately funded their relevant cash account in order for the PFOD to timely settle on the 18th PBD.

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

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

10.2.3 Payment via a payment bank

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

CSD participants, via their payment bank, must ensure the CSD´s penalty account is credited latest on the 18th PBD of the month by 09:00 a.m. CET but latest 2 hours prior to the cut-off time of the relevant currency payment system.

10.3 STEP 2: PENALTIES REDISTRIBUTION FROM PENALTIES RECEIVING CSD TO ITS PARTICIPANTS

When the (full or partial) collection from the CSD participants (incl. other CSDs) was processed, the CSD shall initiate to redistribute the cash collected to its participants to clean the CSD´s dedicated penalties cash account.

Three mechanisms are available for payments from the cash receiving CSD to its participants. Their choice is depending on the payment model, the relevant cash account number information may need to be provided to participants and relevant other CSDs.

10.3.1 Cash transfers

The CSD transfers the amounts due to the relevant cash accounts of its participants. Such credit shall take place only once the payments due have been (fully or partially) collected on the 18th PBD.

10.3.2 Payment via PFOD transactions

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

On the 16th PBD, but at the latest before the start of the 18th PBD, the CSD will create PFOD instructions to deliver the cash amounts to its participants that shall be credited with penalties.

The intra-CSD PFOD instructions will be created as 'already matched' (if this functionality does exist in the CSD). Upon settlement, these PFODs will debit the CSD´s dedicated penalties cash account and credit the CSD participants´ relevant cash accounts.

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

10.3.3 Payment via a payment bank

CSDs may outsource the penalties payment process to a third party acting as a payment bank. Credits to the CSD participants will take place only if the payments due have been) collected on the 18th PBD.

11 REPORTING

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

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

Proprietary solutions to report penalties may be used by CSDs as additional (User-to-Application; U2A) communication means[63], for example to support participants´ demand or address market-specific aspects.

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

However, the specifications agreed with and made available by the standards-setting organisations, like SWIFT, apply.

It is recommended that the CSDs provide a 'global net amount' per counterparty CSD in their monthly reports on the 14th PBD. Otherwise, PFODs shall be generated by CSDs prior to the 18th PBD serving to timely notify the 'global net' amount to be debited from/ credited to the CSD participants.

As PFOD instructions and/ or the monthly penalties reports will contain the 'net amount' due to be paid or received by a participant, no dedicated payment pre-advices per currency will be issued by the CSDs.

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

Please also refer to Annex IV for illustrative examples in relation to the daily and monthly reporting.

11.1 REPORTING FORMATS

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

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

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

11.1.1 ISO20022 messages

T2S/ 4CB is created dedicated daily and monthly penalties ISO20022 <u>customized</u> T2S semt.044 messages.

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

- It is a message dedicated to penalty reporting and its peculiarities (new information fields);

- It uses the most recent ISO standard in XML format;

- It has hierarchical blocks, repetitive for every party. These repetitive party blocks will contain repetitive blocks for counterparties, with the specific penalties' information (report->party->counterparty->penalty). These repetitive blocks might ease the processing of reports further down the line as they will already contain the needed block of information; and

- The proposed message contains fields going beyond the potential group of mandatory fields and can possibly accommodate also optional and additional fields if needed.

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

11.1.2 ISO15022 messages

11.1.2.1 *Penalties calculation reporting:*

Based on the T2S ISO20022 messages content and structure, the existing ISO15022 messages MT537 and MT548 [64] were adapted by SWIFT in November 2019 to cover penalties-related information by introducing a 'PENA' sequence. However, the MT548 is only usable for the reporting of daily penalties but <u>not</u> the monthly aggregated reporting.

The SWIFT SMPG provided a detailed market practice for the use of ISO 15022 MT537 and ISO 20022 semt.044 penalties messages (see Annex II, item 4 of this Framework document), i.e. no additional mapping (in case messages received in ISO20022 need to be processed in ISO15022 or vice versa) on message fields level is provided by SWIFT.

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

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[64] The adapted MT message were made available in November 2019. Please refer to the SMPG, Standards MT Release November 2019, Settlement and Reconciliation; the following Change Requests relevant to the CSDR Settlement Discipline were implemented: CR 001449, CR 001446, CR 001463, CR 001447.

- MT537 (Statement of transactions) and MT548 (Securities Settlement Status Advice) adaptations to contain a dedicated new 'PENA' sequence specific to the penalties reporting, in order to avoid any rejection of a 'standard' MT537 or MT548 received after the settlement of the transaction.

- The MT537/ 548 'PENA' messages will include new fields and repetitive blocks containing information such as:

  - late matching/ settlement fail;

  - reporting of underlying transaction;

  - penalty ID;

  - credit/debit indicators;

  - calculation parameter references.

  The new fields correspond to the new ISO20222 message in their content and level, although there might be alternative approaches to the content of some fields if the nature of the field requires it.

- The penalties amounts contain an 'N' (debit) indicator for amounts to be paid by the CSD participant.

11.1.2.2 *Penalties collection and redistribution (payments) reporting:*

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

Payment pre-advices for amounts to be paid or received shall be issued on the 16th PBD and latest prior to the 18th PBD; no payment confirmations are required to be issued once the payment has been executed.

For further details, see Chapter 11.3.3.

11.1.3 Alternative reporting solutions

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

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

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

11.2 GENERIC REPORTING CONTENT

11.2.1 Information blocks for penalty reporting

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

However, in order to harmonise the interpretation of the relevant fields on a pan-European level, the intended hierarchy and content of those fields are described below.

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

- Level of aggregation;
- Reporting element.

These levels, in technical terms, correspond to repetitive blocks within the reports, regardless of which ISO format is used.

This way, the high-level report consists of repetitive blocks, each one representing an individual reporting segment/ level:

T - Technical level

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

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

This level of information provided refers to high-level reports or master reports which are available to CSDs (either produced by themselves or by third parties as in the case of the T2s Penalty Mechanism).

B - Participant level

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

C - Counterparty/ Penalty level

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

11.2.2   Mandatory fields

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

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

- Instruction/ transaction ID;
- Day for which the penalty was computed.

In order to understand the penalty, the recipient would need[65]:

- Security penalty rate and/ or the penalty Central Bank cash discount rate for the currency;
- SME Growth Market indicator (only for those settlement fails where the transaction was actually concluded on an SME Growth Market trading venue and the same SME Trading venue MIC code is used in the receiving and delivering settlement instruction);
- Liquidity indicator (for shares); and
- Number of securities to which the penalty applies (in case of partial settlements).

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

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

11.3   MESSAGE TYPES

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

1. Daily reporting of new and/ or updated/ modified penalties;

2. Monthly aggregated reporting of the penalties over the period;

3. Payment pre-advices via cash or settlement messages or proprietary communication means (pre-advices may not be issued when the CSD applies the PFOD payment process or the 'monthly report' already displays the 'global net' amount to be paid or received by a CSD participant).

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[65] Note that the 'reference price' as well as the price source used by the CSD for the penalty calculation for the failing instrument will not be displayed; the respective message field, if part of the report, may be blank or contain 'NONREF' or similar information.

11.3.1   Daily penalties report

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

1. The one applicable to the failing party (i.e. party imposed with the penalty), and

2. The one applicable to the non-failing party (i.e. party entitled to receive the penalty).

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

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

Within the messages:

- The party is a repetitive block in order to be able to include all the information in a single message. The CSD shall report cash penalties for a given party sorted by CSD (for cross-CSD fails), currency, and counterparty of the penalty (i.e. non-failing or failing party, respectively).
- Each penalty computed for a given business day and reported to the failing/ non-failing party and/ or its CSD shall include the information described in Chapter 11.2.
- It is understood that an individual penalty contained in the report of a specific participant will have a mirror entry (debit vs. credit) in the penalty report of the relevant counterparty, i.e. will be on the participant level reported in two penalty reports.
- The daily reports contain only the amounts and information for a specific business day, i.e. they do not reflect exposures accrued in the course of several fail days.

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

11.3.2   Monthly aggregated report

On the 14th PBD of the following month, CSDs shall provide the monthly aggregated penalties report (see Chapter 7).

This report shall include, per CSD, currency and party, the bilateral and 'global' (when applied by the CSD, see Chapter 7.4.2) net amounts of the penalties against each of its counterparties, computed for all the business days of the previous month.

11.3.3 Payment pre-advices

In regard to the timeline of the collection and redistribution process, the payment pre-advice (if applicable) is to be issued by the CSD on the 16th PBD of the following month[66].

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

11.3.3.1 *Cash messages*

For the cash messages, the mandatory fields are:

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

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

11.3.3.2 *Settlement messages*

Various settlement messages can be used to report the net amount to be received/ paid, such as the following:

- Settlement instructions;
- Statement of transactions;
- Status advice etc.

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

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

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[66] Note that payment pre-advice messages are not (e-)invoices. Therefore, they shall not contain the elements listed in Article 6 of EC Directive 2014/55/EU as not to be perceived as such.

12 MISCELLANEOUS

12.1 PENALTIES ACTIVATION PROCESS

This section was removed as the penalty mechanisms of all EU/ EEA CSDs were activated since 01 February 2022.

12.2 EXCEPTIONS HANDLING

12.2.1 Delayed delivery of CSD penalties reports

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

12.2.2 Exceptional situations where the cash penalties should not be applied

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

i.   ISIN suspension from settlement due to an 'undue creation/ deletion of securities' reconciliation break;
ii. ISIN suspension from trading[67];
iii. Settlement instructions involving cash settlement outside the securities settlement system operated by the CSD if, on the respective day, the relevant payment system is closed for settlement;
iv. Technical impossibilities at the CSD level that prevent settlement, such as: a failure of the infrastructure components, a cyber-attack, network problems.

Note: in all or some occasions, penalties may continue to be calculated and reported by the CSD but removed afterwards. Also note that suspension of an ISIN from settlement does not impact the principle eligibility of the ISIN for SDR penalties application, hence, penalties will continue to be calculated and reported by the CSD(s) and removed afterwards.

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

According to the ESMA Q&As, CSDs should report the concrete cases falling in the above-mentioned categories to their competent authorities who may ask the CSDs to apply cash penalties in the future in similar cases if they consider the non-application of penalties unjustified.

12.3 CCP Related Aspects

This section was removed as the CCP-penalties are processed in the same way as any other penalties, since September 2024.

DRAFT V7.0 – Publicly available to relevant stakeholders
84 | *P a g e*
Key changes of the version are highlighted in a light grey colour.

ANNEXES

ANNEX I- T2S DOCUMENTS

1. T2S CR654:

https://www.ecb.europa.eu/paym/target/t2s/governance/html/changerequests.en.html

2. Penalty lists – Draft message (ISO 20022) overview (updated version 04 March 2020)

T2S_0654_URD_Ann
ex 5a_semt_044_001_

3. Latest list of T2S CSDR TF items for clarification sent to ESMA:

2017-06-28 - List of
CSDR Items for clarif

ANNEX II - OTHER DOCUMENTS AND REFERENCES

1. Link to ESMA website re. CSDR:

https://www.esma.europa.eu/regulation/post-trading/settlement

2. CFI code mapping table (ECSDA version dd. October 2020 as shared with ESMA):

2020_10_21
-CSDR_CFI_code_map

3. SWIFT SMPG Market Practice for penalties reporting and penalties adjustments reason codes (status codes 'ACTV' or 'REMO' to be used with the reason code to be provided as 'additional information'):
https://www.smpg.info/fileadmin/documents/3_Settlement%20and%20Reconciliation%20WG/A_Final%20Global%20Market%20Practices/SMPG_MP_SR_CSDR_Penalties_reporting.pdf

 a. Reason codes for penalty removal (as proposed by T2S, 08.04.2019, based on ESMA CSDR Q&A section 'Settlement Discipline Questions 4 – Cash penalties: scope'):
  i. INSO – Insolvency
  ii. SESU – Settlement Suspended
  iii. SUSP – Trading status suspended
  iv. SEMP - Settlement on multiple platforms (applies in case the cash settlement is outside the CSD settlement system and the payment system is closed)
  v. TEIM (ISO 15022)/ TECH (ISO 20022) – Technical impossibilities
  vi. OTHR – any other case (requires a narrative text to be added)
 b. Reason code for penalty recalculation or re-inclusion:
  i. UPDT – update of a penalty due to change in the relevant reference data or penalty re-inclusion.
 c. Reason code for penalty re-allocation:
  i. RALO - re-allocation of a penalty from the instructing party to the delivering/ receiving party or from the failing party to the non-failing party or vice versa.

ANNEX III - SETTLEMENT PENALTIES SCENARIOS (EXCLUDING SCENARIO 2X)

Doc1 - Non-T2S CSDR SD penalties s

Doc2 -T2S CSDR SDR scenarios- upda

Key changes of the version are highlighted in a light grey colour.

ANNEX IV – PENALTIES AMOUNTS REPORTING – ILLUSTRATIVE EXAMPLES[68]

1. Daily reporting

- Gross penalties calculated on a daily basis

	CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
Inx 1	I	A	I	B	EUR	-100	Intra-CSD
Inx 1	I	B	I	A	EUR	+100	Intra-CSD
Inx 2	I	A	I	B	EUR	+50	Intra-CSD
Inx 2	I	B	I	A	EUR	-50	Intra-CSD
Inx 3	I	A	I	C	EUR	-20	Intra-CSD
Inx 3	I	C	I	A	EUR	+20	Intra-CSD
Inx 4	I	A	I	C	DKK	+10	Intra-CSD
Inx 4	I	C	I	A	DKK	-10	Intra-CSD
Inx 5	I	A	II	Unknown	DKK	-10	Cross-CSD (PSET CSD I)
Inx 5	II	B	I	A	DKK	+10	Cross-CSD (PSET CSD I)
Inx 6	I	A	II	Unknown	DKK	+20	Cross-CSD (PSET CSD I)
Inx 6	II	B	I	A	DKK	-20	Cross-CSD (PSET CSD I)
Inx 7	I	B	I	A	EUR	+150	Intra-CSD
Inx 7	I	A	I	B	EUR	-150	Intra-CSD
Inx 8	I	B	I	C	EUR	-25	Intra-CSD
Inx 8	I	C	I	B	EUR	+25	Intra-CSD
Inx 9	I	C	II	B	EUR	+250	Cross-CSD (PSET CSD II)
Inx 9	II	B	I	Unknown	EUR	-250	Cross-CSD (PSET CSD II)
Inx 10	I	C	II	D	EUR	-300	Cross-CSD (PSET CSD II)
Inx 10	II	D	I	Unknown	EUR	+300	Cross-CSD (PSET CSD II)
Inx 11	I	A	I	A	DKK	+625	Intra-CSD
Inx 11	I	A	I	A	DKK	-625	Intra-CSD
Inx 12	I	B	III	Unknown	EUR	+28	Cross-CSD (PSET CSD I)
Inx 12	III	C	I	B	EUR	-28	Cross-CSD (PSET CSD I)
Inx 13	I	B	III	B	EUR	-49	Cross-CSD (PSET CSD III)
Inx 13	III	B	I	Unknown	EUR	+49	Cross-CSD (PSET CSD III)

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[68] The scenarios were enriched to cover as well the T2S platform as PSET.

Inx 14	I	A	II	C	DKK	+23	Cross-CSD (PSET II)
Inx 14	II	C	I	Unknown	DKK	-23	Cross-CSD (PSET II)
Inx 15	IV	E	V	Unknown	EUR	-10	Cross-CSD (PSET T2S)
Inx15	V	F	IV	Unknown	EUR	+10	Cross-CSD (PSET T2S)
Inx16	IV	G	V	Unknown	EUR	+25	Cross-CSD (PSET T2S)
Inx16	V	F	IV	Unknown	EUR	-25	Cross-CSD (PSET T2S)
Inx17	V	H	VI	Unknown	EUR	+7	Cross-CSD (PSET T2S)
Inx17	VI	I	V	Unknown	EUR	-7	Cross-CSD (PSET T2S)
Inx18	IV	E	V	Unknown	EUR	+50	Cross-CSD (PSET T2S)
Inx18	V	F	IV	Unknown	EUR	-50	Cross-CSD (PSET T2S)

- Daily bilateral net amount per CSD, per currency & per counterparty (view per CSD participant)

For party A in CSD I

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
I	A	I	B	EUR	-200	Intra-CSD
I	A	I	C	EUR	-20	Intra-CSD
I	A	I	C	DKK	+10	Intra-CSD
I	A	II	Unknown	DKK	+10	Cross-CSD (PSET CSD I)
I	A	I	A	DKK	0	Intra-CSD
I	A	II	C	DKK	+23	Cross-CSD (PSET II)

For party B in CSD I

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
I	B	I	A	EUR	+200	Intra-CSD
I	B	I	C	EUR	-25	Intra-CSD
I	B	III	Unknown	EUR	+28	Cross-CSD (PSET CSD I)
I	B	III	B	EUR	-49	Cross-CSD (PSET CSD III)

For party B in CSD II

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
II	B	I	A	DKK	-10	Cross-CSD (PSET CSD I)
II	B	I	Unknown	EUR	-250	Cross-CSD (PSET CSD II)

For party B in CSD III

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
III	B	I	Unknown	EUR	+49	Cross-CSD (PSET CSD III)

For party C in CSD I

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
I	C	I	A	EUR	+20	Intra-CSD
I	C	I	A	DKK	-10	Intra-CSD
I	C	I	B	EUR	+25	Intra-CSD
I	C	II	B	EUR	+250	Cross-CSD (PSET CSD II)
I	C	II	D	EUR	-300	Cross-CSD (PSET CSD II)

For party C in CSD II

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
II	C	I	Unknown	DKK	-23	Cross-CSD (PSET II)

For party C in CSD III

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
III	C	I	B	EUR	-28	Cross-CSD (PSET CSD I)

For party D in CSD II

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
II	D	I	Unknown	EUR	+300	Cross-CSD (PSET CSD II)

For party E in CSD IV

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
IV	E	V	Unknown	EUR	+40	Cross-CSD (PSET T2S)

For party F in CSD V

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
V	F	IV	Unknown	EUR	-65	Cross-CSD (PSET T2S)

For party G in CSD IV

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
IV	G	V	Unknown	EUR	+25	Cross-CSD (PSET T2S)

For party H in CSD V

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
V	H	VI	Unknown	EUR	+7	Cross-CSD (PSET T2S)

For party I in CSD VI

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
VI	I	V	Unknown	EUR	-7	Cross-CSD (PSET T2S)

- Daily bilateral net amount per CSD, per currency & per counterparty (view per CSD):

CSD I

CSD	CSD	Currency	Penalties	Comment
I	I	EUR	0	Intra-CSD
I	I	DKK	0	Intra-CSD
I	II	EUR	-50	Cross-CSD (PSET CSD II)
I	II	DKK	+10	Cross-CSD (PSET CSD I)
I	II	DKK	+23	Cross-CSD (PSET II)
I	III	EUR	+28	Cross-CSD (PSET CSD I)
I	III	EUR	-49	Cross-CSD (PSET CSD III)

CSD II

CSD	CSD	Currency	Penalties	Comment
II	I	DKK	-10	Cross-CSD (PSET CSD I)
II	I	DKK	-23	Cross-CSD (PSET II)
II	I	EUR	+50	Cross-CSD (PSET CSD II)

CSD III

CSD	CSD	Currency	Penalties	Comment
III	I	EUR	+49	Cross-CSD (PSET CSD III)
III	I	EUR	-28	Cross-CSD (PSET CSD I)

CSD IV

CSD	CSD	Currency	Penalties	Comment
IV	V	EUR	+65	Cross-CSD (PSET T2S)

CSD V

CSD	CSD	Currency	Penalties	Comment
V	IV	EUR	-65	Cross-CSD (PSET T2S)
V	VI	EUR	+7	Cross-CSD (PSET T2S)

CSD VI

CSD	CSD	Currency	Penalties	Comment
VI	V	EUR	-7	Cross-CSD (PSET T2S)

2. **Monthly reporting**

- Daily bilateral amounts of the business days of the month (view per CSD participant)

BD	CSD	Party	CSD	Cpty	Curr.	Penalties	Comment
Day 1	I	A	I	B	EUR	-200	Intra-CSD
Day 1	I	B	I	A	EUR	+200	Intra-CSD
Day 1	I	A	I	C	EUR	-20	Intra-CSD
Day 1	I	C	I	A	EUR	+20	Intra-CSD
Day 1	I	A	I	C	DKK	+10	Intra-CSD
Day 1	I	C	I	A	DKK	-10	Intra-CSD
Day 1	I	A	II	Unknown	DKK	+10	Cross-CSD (PSET CSD I)
Day 1	II	B	I	A	DKK	-10	Cross-CSD (PSET CSD I)
Day 1	I	A	I	A	DKK	0	Intra-CSD
Day 1	I	A	II	C	DKK	+23	Cross-CSD (PSET II)
Day 1	II	C	I	Unknown	DKK	-23	Cross-CSD (PSET II)
Day 1	I	B	I	C	EUR	-25	Intra-CSD
Day 1	I	C	I	B	EUR	+25	Intra-CSD
Day 1	I	B	III	Unknown	EUR	+28	Cross-CSD (PSET CSD I)
Day 1	III	C	I	B	EUR	-28	Cross-CSD (PSET CSD I)
Day 1	I	B	III	B	EUR	-49	Cross-CSD (PSET CSD III)
Day 1	III	B	I	Unknown	EUR	+49	Cross-CSD (PSET CSD III)
Day 1	II	B	I	Unknown	EUR	-250	Cross-CSD (PSET CSD II)
Day 1	I	C	II	B	EUR	+250	Cross-CSD (PSET CSD II)
Day 1	I	C	II	D	EUR	-300	Cross-CSD (PSET CSD II)
Day 1	II	D	I	Unknown	EUR	+300	Cross-CSD (PSET CSD II)
Day 3	I	A	I	D	EUR	-200	Intra-CSD
Day 3	I	D	I	A	EUR	+200	Intra-CSD
Day 3	I	A	II	Unknown	DKK	-23	Cross-CSD (PSET CSD I)
Day 3	II	B	I	A	DKK	+23	Cross-CSD (PSET CSD I)
Day 3	I	B	I	C	EUR	+18	Intra-CSD
Day 3	I	C	I	B	EUR	-18	Intra-CSD
Day 3	I	B	III	Unknown	EUR	-62	Cross-CSD (PSET CSD I)
Day 3	III	B	I	B	EUR	+62	Cross-CSD (PSET CSD I)
Day 3	I	C	II	D	EUR	-300	Cross-CSD (PSET CSD II)
Day 3	II	D	I	Unknown	EUR	+300	Cross-CSD (PSET CSD II)
Day 5	I	A	I	C	DKK	+10	Intra-CSD
Day 5	I	C	I	A	DKK	-10	Intra-CSD
Day 5	I	B	I	A	EUR	-47	Intra-CSD

Day 5	I	A	I	B	EUR	+47	Intra-CSD
Day 10	I	A	I	B	EUR	+2500	Intra-CSD
Day 10	I	B	I	A	EUR	-2500	Intra-CSD
Day 10	I	A	I	C	EUR	-480	Intra-CSD
Day 10	I	C	I	A	EUR	+480	Intra-CSD
Day 10	I	A	I	C	DKK	+67	Intra-CSD
Day 10	I	C	I	A	DKK	-67	Intra-CSD
Day 10	I	A	II	Unknown	DKK	-19	Cross-CSD (PSET CSD I)
Day 10	II	B	I	A	DKK	+52	Cross-CSD (PSET CSD I)
Day 10	II	D	I	A	DKK	-33	Cross-CSD (PSET CSD I)
Day 10	I	A	I	A	DKK	0	Intra-CSD
Day 10	I	A	II	C	DKK	-857	Cross-CSD (PSET CSD II)
Day 10	II	C	I	Unknown	DKK	+857	Cross-CSD (PSET CSD II)
Day 10	I	B	III	Unknown	EUR	+2368	Cross-CSD (PSET CSD I)
Day 10	III	B	I	B	EUR	-2368	Cross-CSD (PSET CSD I)
Day 10	I	B	III	B	EUR	-56	Cross-CSD (PSET CSD III)
Day 10	III	B	I	Unknown	EUR	+56	Cross-CSD (PSET CSD III)
Day 10	I	C	II	A	EUR	-475	Cross-CSD (PSET CSD II)
Day 10	II	A	I	Unknown	EUR	+475	Cross-CSD (PSET CSD II)
Day 10	I	C	II	B	EUR	-587	Cross-CSD (PSET CSD II)
Day 10	II	B	I	Unknown	EUR	+587	Cross-CSD (PSET CSD II)
Day 15	I	A	II	D	DKK	+70	Cross-CSD (PSET CSD II)
Day 15	I	B	II	D	DKK	-45	Cross-CSD (PSET CSD II)
Day 15	II	D	I	Unknown	DKK	-25	Cross-CSD (PSET CSD II)
Day 15	I	A	I	D	EUR	-65	Intra-CSD
Day 15	I	D	I	A	EUR	+65	Intra-CSD
Day 15	I	A	I	B	EUR	+100	Intra-CSD
Day 15	I	B	I	A	EUR	-100	Intra-CSD
Day 22	I	A	I	C	EUR	+20	Intra-CSD
Day 22	I	C	I	A	EUR	-20	Intra-CSD
Day 22	I	A	II	B	DKK	-50	Cross-CSD (PSET CSD II)
Day 22	II	B	I	Unknown	DKK	+50	Cross-CSD (PSET CSD II)
Day 22	I	A	II	Unknown	EUR	-356	Cross-CSD (PSET CSD I)
Day 22	II	D	I	A	EUR	+356	Cross-CSD (PSET CSD I)
Day 1	IV	E	V	Unknown	EUR	+40	Cross-CSD (PSET T2S)
Day 1	V	F	IV	Unknown	EUR	-65	Cross-CSD (PSET T2S)
Day 1	IV	G	V	Unknown	EUR	+25	Cross-CSD (PSET T2S)

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92 | P a g e

Day 1	V	H	VI	Unknown	EUR	+7	Cross-CSD (PSET T2S)
Day 1	VI	I	V	Unknown	EUR	-7	Cross-CSD (PSET T2S)
Day 15	V	F	IV	Unknown	EUR	-100	Cross-CSD (PSET T2S)
Day 15	IV	G	V	Unknown	EUR	+100	Cross-CSD (PSET T2S)
Day 22	VI	I	V	Unknown	EUR	+30	Cross-CSD (PSET T2S)
Day 22	V	F	VI	Unknown	EUR	-30	Cross-CSD (PSET T2S)

- Monthly bilateral net amount per CSD, per currency & per counterparty (view per CSD)

CSD I

CSD	CSD	Curr	Penalties	Comment
I	I	EUR	0	Intra-CSD
I	I	DKK	0	Intra-CSD
I	II	EUR	-356	Cross-CSD (PSET CSD I)
I	II	DKK	-32	Cross-CSD (PSET CSD I)
I	II	EUR	-1412	Cross-CSD (PSET CSD II)
I	II	DKK	-859	Cross-CSD (PSET CSD II)
I	III	EUR	+2334	Cross-CSD (PSET CSD I)
I	III	EUR	-105	Cross-CSD (PSET CSD III)

CSD II

II	I	EUR	+356	Cross-CSD (PSET CSD I)
II	I	EUR	+1412	Cross-CSD (PSET CSD II)
II	I	DKK	+32	Cross-CSD (PSET CSD I)
II	I	DKK	+859	Cross-CSD (PSET CSD II)

CSD III

CSD	CSD	Curr	Penalties	Comment
III	I	EUR	+105	Cross-CSD (PSET CSD III)
III	I	EUR	-2334	Cross-CSD (PSET CSD I)

CSD IV

CSD	CSD	Curr	Penalties	Comment
IV	V	EUR	+165	Cross-CSD (PSET T2S)

CSD V

CSD	CSD	Curr	Penalties	Comment
V	IV	EUR	-165	Cross-CSD (PSET T2S)

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93 | *Page*

| V | VI | EUR | -23 | Cross-CSD (PSET T2S) |

CSD VI

CSD	CSD	Curr	Penalties	Comment
VI	V	EUR	+23	Cross-CSD (PSET T2S)

- Monthly bilateral net amount per CSD, per currency & per counterparty (view per CSD participant)

For party A in CSD I

CSD	Party	CSD	Cpty	Curr	Penalties	Comment
I	A	I	B	EUR	+2447	Intra-CSD
I	A	I	C	EUR	-480	Intra-CSD
I	A	I	C	DKK	+87	Intra-CSD
I	A	II	Unknown	DKK	-32	Cross-CSD (PSET CSD I)
I	A	I	A	DKK	0	Intra-CSD
I	A	II	C	DKK	-834	Cross-CSD (PSET CSD II)
I	A	I	D	EUR	-265	Intra-CSD
I	A	II	D	DKK	+70	Cross-CSD (PSET CSD II)
I	A	II	B	DKK	-50	Cross-CSD (PSET CSD II)
I	A	II	Unknown	EUR	-356	Cross-CSD (PSET CSD I)

For party A in CSD II

II	A	I	Unknown	EUR	+475	Cross-CSD (PSET CSD II)

For party B in CSD I

CSD	Party	CSD	Cpty	Curr	Penalties	Comment
I	B	I	A	EUR	-2447	Intra-CSD
I	B	I	C	EUR	-7	Intra-CSD
I	B	III	Unknown	EUR	+2334	Cross-CSD (PSET CSD I)
I	B	III	B	EUR	-105	Cross-CSD (PSET CSD III)
I	B	II	D	DKK	-45	Cross-CSD (PSET CSD II)

For party B in CSD II

CSD	Party	CSD	Cpty	Curr	Penalties	Comment
II	B	I	A	DKK	+65	Cross-CSD (PSET CSD I)
II	B	I	Unknown	EUR	+337	Cross-CSD (PSET CSD II)
II	B	I	Unknown	DKK	+50	Cross-CSD (PSET CSD II)

For party B in CSD III

CSD	Party	CSD	Cpty	Curr	Penalties	Comment
III	B	I	Unknown	EUR	+105	Cross-CSD (PSET CSD III)
III	B	I	B	EUR	-2306	Cross-CSD (PSET CSD I)

For party C in CSD I

CSD	Party	CSD	Cpty	Curr	Penalties	Comment
I	C	I	A	EUR	+480	Intra-CSD
I	C	I	A	DKK	-87	Intra-CSD
I	C	I	B	EUR	+7	Intra-CSD
I	C	II	B	EUR	-337	Cross-CSD (PSET CSD II)
I	C	II	D	EUR	-600	Cross-CSD (PSET CSD II)
I	C	II	A	EUR	-475	Cross-CSD (PSET CSD II)

For party C in CSD II

CSD	Party	CSD	Cpty	Curr	Penalties	Comment
II	C	I	Unknown	DKK	+834	Cross-CSD (PSET CSD II)

For party C in CSD III

CSD	Party	CSD	Cpty	Curr	Penalties	Comment
III	C	I	B	EUR	-28	Cross-CSD (PSET CSD I)

For party D in CSD I

CSD	Party	CSD	Cpty	Curr	Penalties	Comment
I	D	I	A	EUR	+265	Intra-CSD

For party D in CSD II

CSD	Party	CSD	Cpty	Curr	Penalties	Comment
II	D	I	Unknown	EUR	+600	Cross-CSD (PSET CSD II)
II	D	I	A	DKK	-33	Cross-CSD (PSET CSD I)
II	D	I	Unknown	DKK	-25	Cross-CSD (PSET CSD II)
II	D	I	A	EUR	+356	Cross-CSD (PSET CSD I)

For party E in CSD IV

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
IV	E	V	Unknown	EUR	+40	Cross-CSD (PSET T2S)

For party F in CSD V

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95 | *P a g e*

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
V	F	IV	Unknown	EUR	-165	Cross-CSD (PSET T2S)
V	F	VI	Unknown	EUR	-30	Cross-CSD (PSET T2S)

For party G in CSD IV

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
IV	G	V	Unknown	EUR	+125	Cross-CSD (PSET T2S)

For party H in CSD V

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
V	H	VI	Unknown	EUR	+7	Cross-CSD (PSET T2S)

For party I in CSD VI

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
VI	I	V	Unknown	EUR	+23	Cross-CSD (PSET T2S)

- Monthly amount to be paid or to be received (view per CSD)

CSD I

CSD	CSD	Curr	Penalties	Comment
I	I	EUR	0	Intra-CSD
I	I	DKK	0	Intra-CSD
I	II	EUR	-356	Cross-CSD (PSET CSD I)
I	II	EUR	-1412	Cross-CSD (PSET CSD II)
I	II	DKK	-32	Cross-CSD (PSET CSD I)
I	II	DKK	-859	Cross-CSD (PSET CSD II)
I	III	EUR	+2334	Cross-CSD (PSET CSD I)
I	III	EUR	-105	Cross-CSD (PSET CSD III)

CSD II

II	I	EUR	+356	Cross-CSD (PSET CSD I)
II	I	EUR	+1412	Cross-CSD (PSET CSD II)
II	I	DKK	+32	Cross-CSD (PSET CSD I)
II	I	DKK	+859	Cross-CSD (PSET CSD II)

CSD III

CSD	CSD	Curr	Penalties	Comment
III	I	EUR	-2334	Cross-CSD (PSET CSD I)

III	I	EUR	+105	Cross-CSD (PSET CSD III)

CSD IV

CSD	CSD	Curr	Penalties	Comment
IV	V	EUR	+165	Cross-CSD (PSET T2S)

CSD V

CSD	CSD	Curr	Penalties	Comment
V	IV	EUR	-165	Cross-CSD (PSET T2S)
V	VI	EUR	-23	Cross-CSD (PSET T2S)

CSD VI

CSD	CSD	Curr	Penalties	Comment
VI	V	EUR	+23	Cross-CSD (PSET T2S)

- Monthly amount to be paid or to be received

For party A in CSD I

CSD	Party	CSD	Curr	Penalties	Comment
I	A	I	EUR	+1702	Intra-CSD
I	A	I	DKK	+87	Intra-CSD
I	A	II	EUR	-356	Cross-CSD (PSET CSD I)
I	A	II	DKK	-32	Cross-CSD (PSET CSD I)
I	A	II	DKK	-814	Cross-CSD (PSET CSD II)

For party A in CSD II

II	A	I	EUR	+475	Cross-CSD (PSET CSD II)

For party B in CSD I

CSD	Party	CSD	Curr	Penalties	Comment
I	B	I	EUR	-2454	Intra-CSD
I	B	III	EUR	+2334	Cross-CSD (PSET CSD I)
I	B	II	DKK	-45	Cross-CSD (PSET CSD II)
I	B	III	EUR	-105	Cross-CSD (PSET CSD III)

For party B in CSD II

CSD	Party	CSD	Curr	Penalties	Comment
II	B	I	DKK	+65	Cross-CSD (PSET CSD I)

II	B	I	EUR	+337	Cross-CSD (PSET CSD II)
II	B	I	DKK	+50	Cross-CSD (PSET CSD II)

For party B in CSD III

CSD	Party	CSD	Curr	Penalties	Comment
III	B	I	EUR	-2306	Cross-CSD (PSET CSD I)
III	B	I	EUR	+105	Cross-CSD (PSET CSD III)

For party C in CSD I

CSD	Party	CSD	Curr	Penalties	Comment
I	C	I	EUR	+487	Intra-CSD
I	C	I	DKK	-87	Intra-CSD
I	C	II	EUR	-1412	Cross-CSD (PSET CSD II)

For party C in CSD II

CSD	Party	CSD	Curr	Penalties	Comment
II	C	I	DKK	+834	Cross-CSD (PSET CSD II)

For party C in CSD III

CSD	Party	CSD	Curr	Penalties	Comment
III	C	I	EUR	-28	Cross-CSD (PSET CSD I)

For party D in CSD I

CSD	Party	CSD	Curr	Penalties	Comment
I	D	I	EUR	+265	Intra-CSD

For party D in CSD II

CSD	Party	CSD	Curr	Penalties	Comment
II	D	I	EUR	+356	Cross-CSD (PSET CSD I)
II	D	I	DKK	-33	Cross-CSD (PSET CSD I)
II	D	I	EUR	+600	Cross-CSD (PSET CSD II)
II	D	I	DKK	-25	Cross-CSD (PSET CSD II)

For party E in CSD IV

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
IV	E	V	Unknown	EUR	+40	Cross-CSD (PSET T2S)

For party F in CSD V

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment

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98 | P a g e

V	F	IV	Unknown	EUR	-165	Cross-CSD (PSET T2S)
V	F	VI	Unknown	EUR	-30	Cross-CSD (PSET T2S)

For party G in CSD IV

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
IV	G	V	Unknown	EUR	+125	Cross-CSD (PSET T2S)

For party H in CSD V

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
V	H	VI	Unknown	EUR	+7	Cross-CSD (PSET T2S)

For party I in CSD VI

CSD	Party	CSD	Counterparty	Currency	Penalties	Comment
VI	I	V	Unknown	EUR	+23	Cross-CSD (PSET T2S)

- As a summary, the amounts to be paid / received are:

Party	Pay / Receive	Curr.	Penalties	To / From	PSET
A	Receive	EUR	+1702	CSD I	Intra-CSD
A	Receive	DKK	+87	CSD I	Intra-CSD
B	Pay	EUR	-2454	CSD I	Intra-CSD
C	Receive	EUR	+487	CSD I	Intra-CSD
C	Pay	DKK	-87	CSD I	Intra-CSD
D	Receive	EUR	+265	CSD I	Intra-CSD
CSD I	Pay	EUR	-356	CSD II	PSET CSD I
CSD I	Pay	EUR	-1412	CSD II	PSET CSD II
CSD I	Receive	EUR	+2334	CSD III	PSET CSD I
CSD I	Pay	EUR	-105	CSD III	PSET CSD III
CSD I	Pay	DKK	-32	CSD II	PSET CSD I
CSD I	Pay	DKK	-859	CSD II	PSET CSD II
CSD II	Receive	EUR	+356	CSD I	PSET CSD I
CSD II	Receive	EUR	+1412	CSD I	PSET CSD II
CSD II	Receive	DKK	+32	CSD I	PSET CSD I
CSD II	Receive	DKK	+859	CSD I	PSET CSD II
CSD III	Pay	EUR	-2334	CSD I	PSET CSD I
CSD III	Receive	EUR	+105	CSD I	PSET CSD III
CSD IV	Receive	EUR	+165	CSD V	PSET T2S
CSD V	Pay	EUR	-165	CSD IV	PSET T2S

| CSD V | Pay | EUR | -23 | CSD VI | PSET T2S |
| CSD VI | Receive | EUR | +23 | CSD v | PSET T2S |

ANNEX V – ECSDA PENALTIES REFERENCE DATA RULES & RECOMMENDATIONS

ECSDA Penalties Reference Data Rules and Recommendations