



European Securities and  
Markets Authority

# Consultation Paper

**Guidelines on Internalised Settlement Reporting under Article 9 of CSDR**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

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

ESMA will consider all comments received by **14 September 2017**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### Publication of responses

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

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

### Data protection

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

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

All interested stakeholders are invited to respond to this consultation. In particular, this paper may be specifically of interest to settlement internalisers as defined in point (11) of Article 2(1) of Regulation (EU) No 909/2014<sup>2</sup> (CSDR).

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



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## Acronyms

CP	Consultation paper
ESMA	European Securities and Markets Authority
EU	European Union

# 1 Executive Summary

## Reasons for publication

In order to ensure the consistent application of Article 9 of CSDR, ESMA has decided to issue Guidelines on the reporting architecture and exchange of information between ESMA and the competent authorities regarding internalised settlement.

## Contents

Section 2 contains information on the background and mandate, while Section 3 contains the proposed guidelines.

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

## Next Steps

ESMA will consider the feedback it will receive to this consultation with a view to finalising the guidelines by Q1 2018.

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## 2 Background and mandate

1. According to Article 9(1) of CSDR, settlement internalisers shall report to the competent authorities of their place of establishment on a quarterly basis the aggregated volume and value of all securities transactions that they settle outside securities settlement systems. Competent authorities shall, without delay, transmit the information received to ESMA and shall inform ESMA of any potential risk resulting from that settlement activity.
2. The Commission Delegated Regulation (EU) 2017/391<sup>3</sup> further specifies the content of the internalised settlement reporting, while the Commission Implementing Regulation (EU) 2017/393<sup>4</sup> specifies the templates and procedures for the reporting and transmission of information on internalised settlement.
3. In order to ensure the common, uniform and consistent application of Article 9 of CSDR, ESMA has decided to issue Guidelines on internalised settlement reporting and on the exchange of information between the competent authorities and ESMA regarding internalised settlement.
4. In order to ensure a consistent implementation of the relevant provisions of the Commission Delegated Regulation (EU) 2017/391, the guidelines clarify the scope of the data to be reported by settlement internalisers and the types of transactions and operations that should or should not be included.

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<sup>3</sup> Commission Delegated Regulation (EU) 2017/391 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards further specifying the content of the reporting on internalised settlements (*OJ L 65, 10.3.2017, p. 44–47*)

<sup>4</sup> Commission Implementing Regulation (EU) 2017/393 of 11 November 2016 laying down implementing technical standards with regard to the templates and procedures for the reporting and transmission of information on internalised settlements in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council (*OJ L 65, 10.3.2017, p. 116–144*)



## **3 Proposed guidelines**

### **3.1 Scope**

#### **Who?**

1. These guidelines apply to competent authorities designated under Article 11 of CSDR and to settlement internalisers as defined in Article 2(1)(11) of CSDR.

#### **What?**

2. These guidelines apply in relation to internalised settlement reporting and to the exchange of information between ESMA and competent authorities regarding internalised settlement in accordance with Article 9(1) of the CSDR.

#### **When?**

3. These guidelines apply from [insert the date of their publication on ESMA's website in all official languages of the EU].

### **3.2 Definitions**

4. The terms used in these guidelines have the same meaning as in the CSDR and in the Commission Delegated Regulation (EU) 2017/391<sup>5</sup>.

## **5. Purpose**

6. The purpose of these guidelines is to ensure common, uniform and consistent application of Article 9 of CSDR as well as the relevant provisions of the Commission Delegated Regulation (EU) 2017/391 and the Commission Implementing Regulation (EU) 2017/393. They also specify the exchange of information between ESMA and the competent authorities regarding internalised settlement.

### **3.3 Compliance and reporting obligations**

#### **3.3.1 Status of the guidelines**

7. This document contains guidelines issued under Article 16 of the ESMA Regulation<sup>6</sup>. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with guidelines.

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<sup>6</sup> Regulation (EU) No 1095/2010 of 24 November 2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



8. Competent authorities to whom these guidelines are addressed should comply by incorporating them into their supervisory practices.

### **3.3.2 Reporting requirements**

9. Competent authorities to whom these guidelines are addressed must notify ESMA whether they comply or intend to comply with these guidelines, with reasons for non-compliance, within two months of the date of publication of the guidelines on ESMA's website in all EU official languages. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website. Once completed, the notification form shall be sent to ESMA using the following email address: [csdr.data@esma.europa.eu](mailto:csdr.data@esma.europa.eu).
10. Settlement internalisers are not required to report whether they comply with these guidelines.

## **4 Guidelines on internalised settlement reporting**

### **4.1 Scope of data to be reported by settlement internalisers**

11. The following types of transactions and operations should be considered in scope of internalised settlement reporting:
  - a) purchase or sale of securities (including primary market purchases or sales of securities);
  - b) collateral management operations (including triparty collateral management operations or auto-collateralisation operations);
  - c) securities lending or securities borrowing;
  - d) repurchase transactions;
  - e) transactions subject to netting as defined in point (k) of Article 2 of Directive 98/26/EC<sup>7</sup> at the level of the settlement internaliser;
  - f) transfers of securities between accounts of different funds (funds with or without legal personality should be treated as clients);
  - g) intragroup transactions;

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<sup>7</sup> 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

- h) execution of transfer orders by a settlement internaliser on its own account, to the extent that they result from securities transactions with clients of the settlement internaliser;
- i) title transfer financial collateral arrangements as defined in point (b) of Article 2(1) of Directive 2002/47/EC<sup>8</sup> (SFD)
- j) security financial collateral arrangements as defined in point (c) of Article 2(1) of SFD, where there is a transfer of securities between accounts;
- k) inheritance and gifts, where there is a transfer of securities between accounts;
- l) reallocations of collateral for securities lending;
- m) corporate actions on flow represented by transformations.

12. The following types of transactions and operations should be considered out of scope of internalised settlement reporting:

- a) corporate actions on stock, such as cash distributions (e.g. cash dividend, interest payment), securities distributions (e.g. stock dividend; bonus issue), reorganisations (e.g. conversion, stock split, redemption, tender offer);
- b) corporate actions on flow represented by market claims;
- c) primary market operations, meaning the process of initial creation of securities, including the creation and redemption of fund units;
- d) transfers of securities between two accounts of the same client;
- e) pure cash payments, not related to securities transactions;
- f) transactions executed on a trading venue and transferred by the trading venue to a CCP for clearing or to a CSD for settlement;
- g) transactions that are settled by a CSD, and transactions that are cleared; however, if transactions are netted outside a CSD or a CCP and it is only the netted part that is sent to the CSD or the CCP, then the part of the transactions not sent to the CSD or the CCP should be reported;
- h) security financial collateral arrangements as defined in point (c) of Article 2(1) of Directive 2002/47/EC, as long as there is no transfer of securities between accounts;
- i) alignments of book-entry positions to reflect the settlement of instructions by CSDs or other entities in the holding chain of securities (e.g. in case of a transfer of securities

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<sup>8</sup> Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements

between accounts opened with the CSD, mirroring/reflecting the transfer in the books of a CSD's participants).

13. The following types of financial instruments should be considered in scope of internalised settlement reporting:
  - a) financial instruments that are initially recorded or centrally maintained in CSDs authorised in the EU;
  - b) financial instruments initially recorded and/or centrally maintained outside of CSDs authorised in the EU but settled in an EU CSD;
14. The category “other financial instruments” referred to in Article 2(1)(g)(ix) of the Commission Delegated Regulation (EU) 2017/391 should cover any financial instruments that would not be categorised under any of the types explicitly mentioned in Article 2(1)(g) of the Regulation, and which meet the conditions specified in paragraph 13.

**Q1: Do you have any comments or suggestions regarding the scope of the data to be reported by settlement internalisers? Please provide arguments supporting your comments and suggestions.**

## 4.2 Entities responsible for reporting to competent authorities

15. Internalised settlement can happen at different levels of a securities holding chain (global custodians, subcustodians, etc.), and it should be reported at the level where it takes place. Each settlement internaliser should be responsible for reporting the settlement that has been internalised in its books only.

Please see also the following example: an omnibus account with technical sub-accounts opened by entity A in the books of entity B. Entity B is aware of the securities movements between the two technical sub-accounts, but legally the transferred securities belong to the same “omnibus account” of the bank A. In this case, entity A needs to report, given that it is the one that manages the transfer of the securities, and therefore internalises the settlement of the respective instructions.

16. According to Article (9)(1) of CSDR, a settlement internaliser established in a Member State shall report to the competent authority in that Member State.
17. A settlement internaliser should send separate reports covering data from its branches (irrespective of where the branches are located in the Union) to the competent authority in its home Member State. Branches should not report directly to the competent authorities. Please see the example in paragraph 20.



18. Competent authorities of Member States where branches of third country entities internalise settlement instructions through their books should ensure that these branches report to them the information required under Article 9(1) of CSDR.

**Q2: Do you have any comments or suggestions regarding the entities responsible for reporting to competent authorities? Please provide arguments supporting your comments and suggestions.**

### 4.3 Data reporting parameters

19. Competent authorities should ensure that settlement internalisers submit the data in accordance with Article 9 of CSDR in an XML format based on the ISO-20022 compliant XSD schema to be published by ESMA, which should then be used by competent authorities when submitting the data to ESMA.

20. Settlement internalisers should fill in, for each report, the country code field referred to in the template set out in Annex I of Regulation (EU) 2017/393 depending on the Member State in which they operate.

Please see the following example: A settlement internaliser established in Member State A, which has a branch in Member State B, and two branches in Member State C should send three reports to the competent authority in Member State A:

- a) One report covering its activity in Member State A (specifying the country code of Member State A);
- b) One report covering the activity of its branch in Member State B (specifying the country code of Member State B);
- c) One report covering the activity of its two branches in Member State C (specifying the country code of Member State C).

21. Settlement internalisers should fill in the first two characters of the relevant ISIN codes in the Issuer CSD country code field referred to in the template set out in Annex I of Regulation (EU) 2017/393. In addition, the information regarding the LEI of the issuer CSD should be provided in the Issuer CSD identifier field, if the settlement internaliser has that information.

22. In the case of XS and EU ISINs, settlement internalisers should only send data based on the first two characters of the ISIN codes, and not identify the issuer CSDs (in order to avoid errors and potential double-counting).

23. Settlement internalisers should include each separate internalised settlement instruction in the aggregate figures (i.e. double side reporting).

24. Volumes should be expressed in the number of internalised settlement instructions.

25. If during a quarter covered by a report, a settlement instruction fails to settle for several days after the intended settlement date (ISD), then it should be reported as “failed” by taking into account each day when it fails to settle. It should be reported as “settled” if it is settled during the quarter covered by the report.

Please see the following example: If during the quarter covered by the report a settlement instruction with a value of 100 euros fails to settle for 3 days, and then it is settled, it should be reported as follows:

Settled		Failed	
Volume	Value (EUR)	Volume	Value (EUR)
1	100	3	300

26. Where available, the exchange rate of the European Central Bank on the last business day of the period covered by the reports should be used for the conversion of other currencies into euros.

27. The period that the first report should cover goes from 1 April 2019 until 30 June 2019; as a consequence, settlement internalisers should send the first report to the competent authorities by 12 July 2019.

**Q3: Do you have any comments or suggestions regarding the proposed data reporting parameters? Please provide arguments supporting your comments and suggestions.**

**Q4: What are your views regarding the proposed requirement according to which settlement internalisers should use an XML format based on an ISO-20022 compliant XSD schema?**

#### 4.4 Process for the submission of internalised settlement reports by competent authorities to ESMA, based on the reports received by the competent authorities from settlement internalisers

28. Competent authorities should submit the data to ESMA in accordance with Article 9 of CSDR in an XML format based on the ISO-20022 compliant XSD schema to be published by ESMA.

29. Competent authorities should submit to ESMA the individual reports they receive from settlement internalisers after having validated them.

30. Following the validation checks performed by the ESMA dedicated IT system, such as data transmission validation rules (e.g. not corrupted file), data format validation rules (e.g. abides to the ISO-20022 XSD schema), and data content validation rules (e.g. the



sum of the settled volume and the failed volume must be equal to the total volume), competent authorities will receive a feedback file confirming reception or notifying of validation errors.

31. In case of validation errors, competent authorities should check the data with the settlement internalisers and should provide feedback to ESMA. If necessary, competent authorities should resubmit the corrected data to ESMA.

**Q5: Do you have any comments or suggestions regarding the proposed process for submission of internalised settlement reports? Please provide arguments supporting your comments and suggestions.**

#### **4.5 Process for the submission of the reports on potential risks resulting from internalised settlement activity by competent authorities to ESMA**

32. Competent authorities should submit the necessary information to ESMA on any potential risk resulting from internalised settlement activity in accordance with Article 9 of CSDR, by using a web entry form within ESMA's secured web interface, which should be filled-in manually, and which should enable end-user identification.
33. Competent authorities should provide valid input on the respective erroneous field, if data errors are identified following validation on the entry form upon the competent authority's web entry form submission.

#### **4.6 Access to data by competent authorities**

34. Each competent authority should be able to access data submitted by itself to ESMA, as well as data submitted by other competent authorities that relate to its jurisdiction (the relevance should be determined by the settlement internaliser country code, the issuer CSD country code, or the first two characters of the ISINs).

**Q6: Do you have any additional comments or suggestions regarding the proposed guidelines? Please provide arguments supporting your comments and suggestions.**



## **5 Annexes**

### **5.1 Annex II – Summary of questions**

**Q1: Do you have any comments or suggestions regarding the scope of the data to be reported by settlement internalisers? Please provide arguments supporting your comments and suggestions.**

**Q2: Do you have any comments or suggestions regarding the entities responsible for reporting to competent authorities? Please provide arguments supporting your comments and suggestions.**

**Q3: Do you have any comments or suggestions regarding the proposed data reporting parameters? Please provide arguments supporting your comments and suggestions.**

**Q4: What are your views regarding the proposed requirement according to which settlement internalisers should use an XML format based on the ISO-20022 compliant XSD schema?**

**Q5: Do you have any comments or suggestions regarding the proposed process for submission of internalised settlement reports? Please provide arguments supporting your comments and suggestions.**

**Q6: Do you have any additional comments or suggestions regarding the proposed guidelines? Please provide arguments supporting your comments and suggestions.**

## 5.2 Annex III – Preliminary high level cost-benefit analysis

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