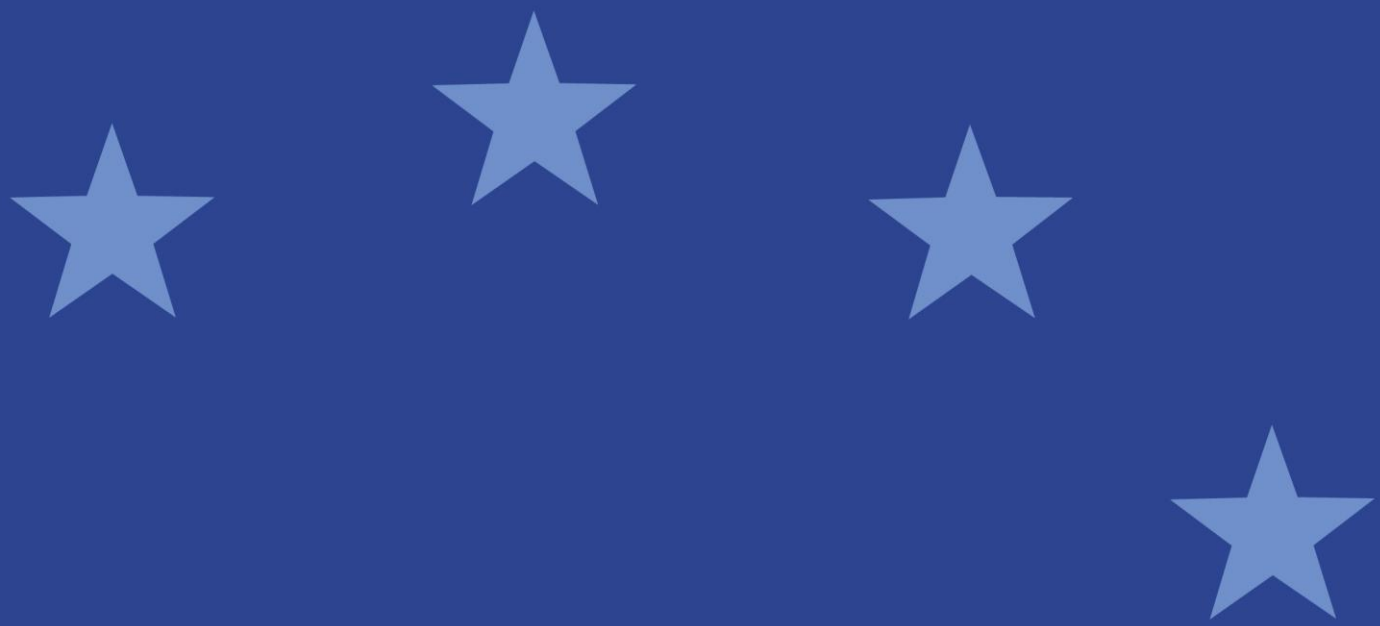
esma European Securities and Markets Authority

Final Report

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



8 October 2019 | ESMA70-151-2641

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1 Executive Summary

Reasons for publication

Article 6(2) of Regulation (EU) No 909/2014[1] (CSDR) requires investment firms to take measures to limit the number of settlement fails, which shall at least consist of arrangements with their professional clients ensuring prompt communication of an allocation of securities to the transaction, confirmation of that allocation and confirmation of the acceptance or rejection of the terms in good time before the intended settlement date.

This requirement has been further specified in Article 2 of the Regulatory Technical Standards (RTS) on settlement discipline (Commission Delegated Regulation (EU) 2018/1229)[2], in respect of the content of this allocation message and deadlines for sending these messages.

Article 6(2), third paragraph, of CSDR requires ESMA to issue, in close co-operation with members of the ESCB, guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010[3] (ESMAR) on the standardised procedures and messaging protocols to be used for complying with this requirement.

This final report follows the consultation paper (CP) issued in December 2018 to seek the views of external stakeholders on a first draft of guidelines addressing this issue. A total of 11 responses were received (including 2 confidential ones), which were taken into account by the European Securities and Markets Authority (ESMA) when preparing the final guidelines that are included here as Annex IV.

Contents

Section 2 contains the feedback to the responses received to the CP and highlights where ESMA has changed the proposed guidelines following the consultation.

Annex I provides the legislative mandate, Annex II provides the opinion of the Securities Markets Stakeholders Group, Annex III sets out ESMA's view on the costs and benefits associated with these guidelines and Annex IV contains the text of the guidelines.

Next Steps

The guidelines in Annex IV will be translated into the official languages of the European Union and published on the ESMA website.

Within two months from the publication of the translations, each national competent authority will have to confirm whether it complies or intends to comply with those guidelines. If a national competent authority does not comply or intend to comply with those guidelines, it will have to inform ESMA stating its reasons. ESMA will then publish the fact that a national competent authority does not comply or does not intend to comply with those guidelines.

2 Summary of consultation responses

1. The consultation ran between 20 December 2018 and 20 February 2019 and received 11 responses, including two confidential ones. They came mainly from European- and national-wide market industry associations, but also from corporations. ESMA staff has liaised with the respondents where necessary to clarify certain issues of their comments.

2.1 Scope

Q1 - Personal scope

Guideline 1*: Investment firms and their professional clients should exchange the information required under Article 6 of Regulation (EU) No 909/2014 depending on their roles in each transaction.*

Q1*:* ***Do you have any additional comments or suggestions regarding the proposed guideline? Please provide arguments supporting your comments and suggestions.***

2. There was a general agreement on the proposed personal scope.

3. The proposed guideline provided that in a securities transaction, the respective roles of each entity should be considered. This was intended for cases where two investment firms would face each other in a transaction, in order to determine which of them was to be considered as the client of the other in that particular transaction.

4. In this respect, most of the respondents commented that the concept of "role" and the consequences of such determination should be further specified.

5. **ESMA's response**: New paragraph 14 of the Guidelines clarifies that the required role analysis should allow to identify which entity should be considered as the investment firm and as the client for the purposes of applying these guidelines. We have further clarified in new paragraphs 15 and 16 thereto that the reference to 'professional clients' in CSDR should be understood as a reference to the list provided in MIFID II (irrespective of the individual categorisation of their clients made at the investment firm level).

[1] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012

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

[3] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC

Q2 - Material scope

Guideline 2*: Investment firms and their professional clients should apply the requirements set out in Article 6(2) of Regulation (EU) No 909/2014 and Article 2 of the RTS on Settlement Discipline, in relation to transactions in financial instruments referred to in Article 5(1) of Regulation (EU) No 909/2014, that are executed on a trading venue or not, cleared by a CCP or not, and settled in an EU CSD.*

Q2: Do you have any additional comments or suggestions regarding the proposed guideline? Please provide arguments supporting your comments and suggestions.

6. Many respondents made a call for having a harmonised scope throughout all CSDR requirements, including settlement discipline and internalised settlement, certain respondents noting that the approach taken here seemed to differ from the Guidelines on internalised settlement.

7. **ESMA's response**: ESMA tries as much as possible to align the scopes of the various requirements under CSDR. However, the scopes of the different provisions depend on their wording and where such wording leaves some room for interpretation, account should be taken of the purposes of the relevant provisions and therefore the different provisions may have different scopes.

   The wording of the settlement discipline provisions clearly aims at limiting settlement fails in securities settlement systems of CSDs, while the wording of internalised settlement reporting provisions aims at measuring the materiality of the settlement of securities transactions occurring outside of securities settlement systems. Given that internalised settlement reporting provisions do not refer to the instruments mentioned in Article 5(1) of CSDR, it is considered that they have a broader scope and encompass also other financial instruments.

8. There was also a call from certain respondents for clarification of scope of settlement discipline requirements as provided in Article 7 of CSDR, and that those financial instruments that are excluded from the penalties application *ab origine* should be clearly identifiable.

9. **ESMA's response:** whereas Articles 6 and 7 of CSDR both are in the Settlement Discipline section of CSDR, their scopes slightly differ. Both articles refer to "*transactions in financial instruments referred to in Article 5(1) of CSDR*", however paragraphs 11 and 12 of Article 7 limit the scope of its requirements in respect of certain failing participant where certain conditions are met (i.e. if the failing participant is a CCP or if insolvency proceeding s are opened against the failing participant) and paragraph 13 creates other exemption in respect of shares, when the principal venue for their trading is in a third country.

10. Although both Articles are in the same CSDR chapter, the exemptions are only in respect of the requirements created under Article 7 and cannot be applied *mutatis mutandis* to

Article 6. Moreover, Articles 6 and 7 are addressed to different entities (CSDs in the case of Article 7, investment firms in the case of Article 6(2)). We do therefore not think there is a legal basis to interpret the scope of Articles 6 and in the same way.

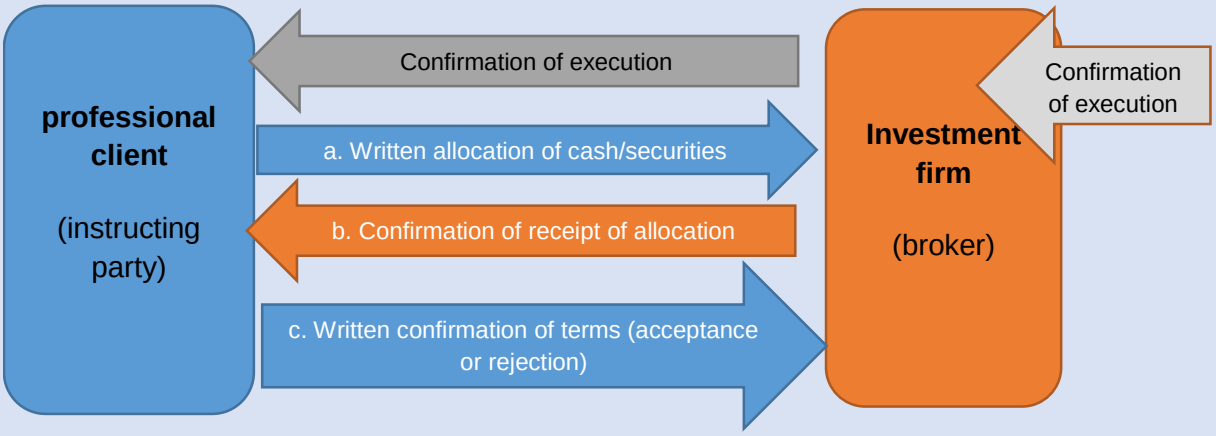
11. One respondent expressed concerns as to the enforceability of the Article 6(2) requirement when parties are not supervised by EU regulators.

12. **ESMA's response**: the requirements set out in Article 6(2) of CSDR apply to EU investment firms, which are supervised by EU authorities and should ensure that their arrangements allow for prompt communication of the necessary settlement information, notwithstanding the nationality of their professional clients.

2.2 Standardised procedures and messaging protocols

Q3 - Communication procedures: workflow description

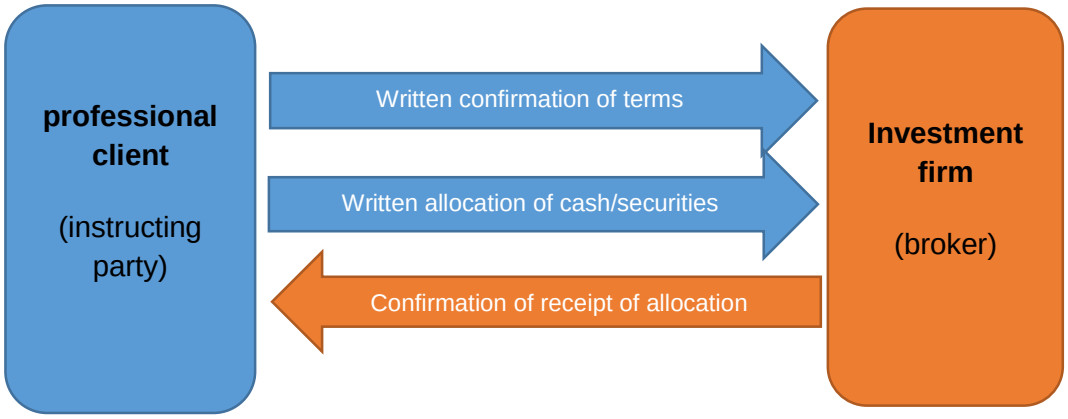
***Guideline 3**: The measures limiting settlement fails described in Article 6(2) of Regulation (EU) No 909/2014 and further specified in Article 2(1) of the RTS on Settlement Discipline include three steps, but the written confirmation can be included in the written allocation if the investment firm and its professional client agree to it contractually, the sending of the allocation by the client could imply the client's confirmation of the terms of the transaction.*



Q3: Do you agree with the workflow described here (for your information, various workflows identified on the market have been illustrated in the Annex)? Should other steps be recommended? If so, please specify.

13. There was a large call to clarify the chronology. Most respondents commented that the confirmation of the terms of transaction occurs when transactions are completed, as per MIFID II requirements, and cannot happen after the allocation, as a confirmation of the terms of a transaction would introduce uncertainty at settlement level.

14. **ESMA's response**: The confirmation of the terms of the transaction that is referred to in Article 6(2) of CSDR seems to be linked to the notification confirming execution of the order that the investment firm must send to its clients as per Article 59 of the Commission Delegated Regulation (EU) 2017/65[4]. Indeed, Article 2(1) of the RTS on Settlement Discipline confirms that the CSDR confirmation is a confirmation by the client of its acceptance of the terms of the transaction. The new Guideline 3 clarifies this requirement, as illustrated in the below diagram:



15. Some respondents suggested that the compliance with CSDR of the workflows pictured in the consultation annex should be explicitly acknowledged in the Guidelines.

16. **ESMA's response:** the purpose of the Guidelines should not be to validate or assess specific industry workflow – this means that the few industry solutions described in the CP were included there as examples only and cannot be part of our Guidelines. However, we have clarified in paragraph 17(c) of the Guidelines that, under Article 2(3) of the RTS on Settlement Discipline, 'reception of information by the investment firm' should be understood broadly as including "systems granting to the investment firm access to the relevant information (such as through the access to a centralised database)".

Q4(a) - Communication procedures

***Guidelines 4**: Each of the steps should be completed through either manual or automated communication channels as long as the channel used allows for written communication.*

Q4(a) Do you have any additional comments or suggestions regarding the proposed guideline? Please provide arguments supporting your comments and suggestions.

17. Respondents indicated that in most cases, the client will not send an allocation if he disagrees with terms of execution, and that the confirmation is therefore implicit, included in the allocation.

[4] COMMISSION DELEGATED REGULATION (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

18. **ESMA's response**: the possibility to include the confirmation in the allocation is provided for in the third subparagraph of Article 2(1) of the RTS on Settlement Discipline. In addition, we have clarified that "included in the allocation" could mean "implied by the sending of the allocation", provided this has been explicitly agreed between the investment firm and its professional client. This is mentioned in new paragraph 17(b) of the Guidelines.

19. Respondents also pointed out to the redundancy of exchanging settlement details for each transaction, noting that the current market practice already ensures the exchange of settlement details through SSIs (standing/standard settlement instructions) usually included in initial agreement signed by the parties, and which might be revoked or amended when needed with a notice.

20. Some respondents also indicated that in practice, for bonds markets, voice (on a recorded line which parties can refer to in the event of a dispute) is widely used to provide initial allocation, followed or not by electronic confirmation and that it would be good to allow for oral communication of the allocation.

21. **ESMA's response**: Article 2(3) of the RTS on Settlement Discipline provides that: "*Where investment firms receive the necessary settlement information referred to in paragraph 1 in advance of the timeframe referred to in paragraph 2, they may agree in writing with their professional clients that the relevant written allocations and confirmations are not to be sent.*"

22. As Article 2(3) of the RTS on Settlement Disciplinegrants a significant flexibility to the investment firm and its client to organise their communication procedures, new paragraph 17(c) of the Guidelines clarifies that different arrangements between the investment firm and its client are possible, including oral communication of the relevant information, where the relevant conditions are met.

23. A concern specific to German law was raised by one respondent, relating to the fact that under German law "written form" means paper sent by mail. The respondent noted that it is a common practice under German law to accept "equivalent to written form" i.e. "text form" exchanged through durable medium and it was therefore suggested to clarify that the use of a durable medium (including electronic communication) would be sufficient.

24. **ESMA's response**: the concept of "durable medium" cannot be introduced through the Guidelines as this will go beyond the requirements set out in CSDR and in the RTS on Settlement Discipline. "In writing" has been clarified in new Guideline 4, by specifying that "any communication procedure allowing for written communication through mail, faxes or electronic means should be accepted".

25. On the use of international open communication procedures and standards for messaging and reference data referred to in Article 35 of CSDR, one response highlighted that this would be difficult for smaller firms. However, most respondents welcome the clarification, indicating that the use of international standards is common market practice and that the full automation of all the trade lifecycle should be promoted.

26. **ESMA's response**: the last paragraph of Article 2(1) of the RTS on Settlement Discipline makes it mandatory for investment firms to offer its client the option to use international standards, however, it has been agreed to clarify that the two cases justifying a disapplication of Article 35 of CSDR will be available here as well, in line with the CSDR Q&A, CSD Question 4(a) (cf. new paragraphs 20 to 22 of the Guidelines).

27. One response highlighted the need for the guidelines to address cases of late or incomplete communication of information.

28. **ESMA's response**: As already indicated in paragraphs 23 and 24 of the draft Guidelines neither CSDR nor the RTS on Settlement Discipline provide for the consequences of such failures and this issue can therefore not be addressed in the Guidelines. It is clarified in new paragraph 18 of the Guidelines that the consequences of such delay or failure could be addressed by the investment firm and its client in their contractual agreement.

Q4(b) - Template for written confirmations and allocations

Q4(b) Do you see a need to develop a template for written allocations and confirmations not sent electronically?

29. They were split views on this issue among the respondents. Certain respondents supported the template, highlighting that it would be useful to provide standardisation and harmonisation, that it would allow not to force small to medium entities to migrate to ISO 20022. For manual processes, it has also been argued that a template could be useful to standardise data fields and formats, as stepping-stone to full automation, with some flexibility to be allowed to accommodate the differing data associated with each asset class.

30. However, arguments against the publication of such template were brought to our attention, in particular:
    - enough channels of communication are already in place to allow for prompt exchange of pertinent data;
    - this might undermine the incentive to move to electronic means;
    - the content of standard messages for instructions and confirmations available on a fair, open and non-discriminatory basis.

31. **ESMA's response**: no template for written communication will be designed.

Q5 - Allocation message: clarifications needed?

Q5: Is any clarification needed in respect of the content of certain items? If so, please indicate. For instance, should the information to be communicated under fields (f) "*trade price of the financial instrument"* **or (i)** *"total amount of cash that is to be delivered or received"****, or any other field be further specified?***

32. The responses showed there was no need for clarification but for flexibility:
    - Field (b) ISIN of the financial instrument: flexibility would be welcome even when ISIN is available, as other identifiers may provide more granular identification of the line of stack that was traded in the case of dual-listed securities;
    - Fields (j), (k), (l): flexibility would be needed here as well as some market practices may require a higher level of detail than the level of entity;
    - In general, keep the format open.

33. **ESMA's response**: neither CSDR nor Commission Delegated Regulation (EU) 2017/565 provide for the use of a specific content for the fields required in the allocation. On the ISIN issue, as long as the ISIN is provided, parties can provide for additional identifiers allowing for more granular identification as needed.

34. There was a call from several respondents to clarify that the use of a central repository to store settlement information is compliant with Article 6(2) requirement.

35. **ESMA's response**: this has been clarified in new paragraph 17(c) of the Guidelines (see points 16 and 17 above for more details).

Q6 - Allocation message: additional fields needed?

Q6: Do you believe any additional information should be required by the investment firm for facilitating the settlement of the transaction? If so, please specify.

36. Several respondents made the suggestions to add a reference to the place of settlement, using the PSET and/or the PSAF fields used in ISO 20002. They said that this would be helpful to ensure a prompt and successful settlement, in particular in a T2S environment.

37. **ESMA's response:** it was further clarified with the respondents that indeed such information is not known by the investment firms and its client at the stage of the confirmation nor at that of the allocation of the relevant securities or cash to the transaction and until the settlement has occurred. It has thus been decided that such reference would not be added to the requirements.

Q7 - Allocation message: final price of the transaction

Guideline 5*: The investment firm should provide its professional client with the final price of the transaction by the time the client confirms the terms of the transaction to the investment firm.*

Q7: Do you have any additional comments or suggestions regarding the proposed guideline? Please provide arguments supporting your comments and suggestions.

38. Many respondents indicated that the final information on price is already required under Article 59(4)(m) of Commission Delegated Regulation (EU) 2017/565 (international messaging standards such as ISO messages have indeed been adapted to comply with these requirements). Some respondents also added that mentioning it in these Guidelines could even be confusing, possibly reopening negotiations on price at the settlement stage.

39. **ESMA's response**: Guideline 5 has been deleted and a reference has been included in the guidelines to make the link between this requirement and the execution confirmation to be sent by the investment firm to its client according to Article 59(4) of Commission Delegated Regulation (EU) 2017/565 (cf. new Guideline 3).

Q8 - Contractual agreement

Guideline 6*: Parties may include aspects of the agreed procedure in a framework agreement governing their relationship such as the document referred to in Article 25(5) of Directive 2014/65/EU and specified in Article 58 of Commission Delegated Regulation (EU) 2017/565.*

Q8: Do you have any additional comments or suggestions regarding the proposed guideline? Please provide arguments supporting your comments and suggestions.

40. Several respondents made a call here to avoid having to exchange static settlement information in respect of each transaction as this would be excessive, too bulky and technically useless and would alternatively recommend the use of SSIs, which are exchanged in advance of trades and updated as necessary.

41. **ESMA's response**: the possibility to have diverse arrangements in place between investment firms and professional clients, including providing for prior exchange of the relevant settlement information, has been clarified in new paragraph 17 of Guideline 3 (see points 22 and 23 above for more details). Proposed Guideline 6 has therefore been deleted.

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3 Annexes

3.1 Annex I – Legislative mandate to develop guidelines

Regulation (EU) No 909/2014

Article 6

Measures to prevent settlement fails

2. Notwithstanding the requirement laid down in paragraph 1, investment firms authorised pursuant to Article 5 of Directive 2014/65/EU shall, where applicable, take measures to limit the number of settlement fails.

Such measures shall at least consist of arrangements between the investment firm and its professional clients as referred to in Annex II to Directive 2014/65/EU to ensure the prompt communication of an allocation of securities to the transaction, confirmation of that allocation and confirmation of the acceptance or rejection of terms in good time before the intended settlement date.

ESMA shall, in close cooperation with the members of the ESCB, issue guidelines in accordance with Article 16 of Regulation (EU) No 1095/2010 on the standardised procedures and messaging protocols to be used for complying with the second subparagraph of this paragraph.

3.2 Annex III – Opinion of the Securities and Markets Stakeholder Group

In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA requested the opinion of the ESMA Securities and Markets Stakeholder Group (SMSG). The SMSG decided not to provide an opinion.

3.3 Annex II – Cost-benefit analysis

42. Article 16 of the ESMAR requires ESMA, where appropriate, to analyse the potential costs and benefits relating to the proposed guidelines.

43. Article 6(2) of CSDR requires the investment firm and its professional clients to set at least arrangements to ensure the prompt communication of an allocation of securities to the transaction, confirmation of that allocation and confirmation of the acceptance or rejection of terms in good time before the intended settlement date. This article requires ESMA to issue guidelines (in close co-operation with the members of ESCB) on the standardised procedures and messaging protocols to be used for complying with that requirement. The choices or options envisaged by ESMA while drafting these guidelines were therefore rather limited.

	Description
Benefits	These guidelines are aimed at providing clarity on the type of arrangements investment firms should set up with their professional clients in order to ensure that they are provided with the relevant settlement information in time to limit the number of settlement fails. It should assist investment firms for the purposes of complying with the requirements set out in Article 6(2) of the CSDR. They should also assist the competent authorities for their monitoring and supervisory activities.
Compliance costs - ***One-off*** - ***On-going***	In principle, these guidelines should not impose additional burden on the investment firms, their professional clients or competent authorities, as they do not entail a change of the current market practices and leave a rather large flexibility in organising their relationship (eventual cost of setting up new arrangements between investment firms and their professional clients are arising directly from the provisions laid down in the CSDR).

3.4 Annex IV – Guidelines

I. Scope

Who?

1. These guidelines apply to investment firms and to competent authorities of investment firms.

What?

2. These guidelines apply in relation to the requirements under Article 6(2) and in particular to the standardised procedures and messaging standards to be used for complying with the second subparagraph of Article 6(2) of Regulation (EU) No 909/2014.

When?

3. These guidelines apply from the date of entry into force of the Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline.

II. Legislative references and abbreviations

II.1 Legislative references

Regulation (EU) No 909/2014	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[5]
Commission Delegated Regulation (EU) 2018/1229	Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline
Regulation (EU) No 1095/2010	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and

[5] *OJ L 257, 28.8.2014, p. 1-72*

	Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC6
Directive 2014/65/EU	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
Commission Delegated Regulation (EU) 2017/565	Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

II.2 Abbreviations

EC	European Commission
ESFS	European System of Financial Supervision
ESMA	European Securities and Markets Authority
EU	European Union

III. Purpose

4. These guidelines are based on Article 6(2) of Regulation (EU) No 909/2014. The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure the common, uniform and consistent application of the second subparagraph of Article 6(2) of Regulation (EU) No 909/2014 as supplemented by Article 2 of Commission Delegated Regulation (EU) 2018/1229.

5. The requirement laid down in Article 6(2) of Regulation (EU) No 909/2014 and further specified in Article 2 of Commission Delegated Regulation (EU) 2018/1229 is focused on the preparation of the settlement process: investment firms should ensure that they have all the necessary settlement details as much as possible on the business day on which the transaction takes place. To achieve this, investment firms that do not already have the necessary settlement information should communicate with their clients in order to obtain the respective information, which should include standardised data useful for the settlement process.

[6] *OJ L 331, 15.12.2010, p. 84.*

6. In particular, under Article 6(2) of Regulation (EU) No 909/2014, investment firms are expected, where applicable, to take measures to limit the number of settlement fails. Pursuant to this article, ESMA has developed regulatory technical standards to specify inter alia the details of the allocation and confirmation measures and of the procedures between investment firms and their professional clients facilitating settlement, which have been included in Article 2 of the Commission Delegated Regulation (EU) 2018/1229.

7. To complement this, ESMA is also expected pursuant to the same article to develop guidelines on the standardised procedures and messaging protocols to be used to comply with this requirement.

8. These guidelines therefore aim to clarify the scope of the requirement contained in Article 6(2) of Regulation (EU) No 909/2014 and provide guidance on the standardised procedures and messaging standards used for the purposes of compliance with such requirement.

IV. Compliance and reporting obligations

IV.1 Status of the guidelines

9. In accordance with Article 16(3) of the Regulation (EU) No 1095/2010, competent authorities and financial market participants must make every effort to comply with these guidelines.

10. Competent authorities to which these guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at financial market participants. In this case, competent authorities should ensure through their supervision that financial market participants comply with the guidelines.

IV.2 Reporting requirements

11. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.

12. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.

13. Financial market participants are not required to report whether they comply with these guidelines.

V. Guidelines

V.1 Scope

Guideline 1*:* Investment firms should ensure that, where applicable, the requirements set out under Article 6(2) of Regulation (EU) No 909/2014 are complied with by them and their professional clients considering their roles in each securities transaction.

14. When two entities licensed as investment firms are facing each other in a transaction on financial instruments referred to in Article 5(1) of Regulation (EU) No 909/2014, the respective roles of each entity in the concerned transaction should be analysed in order to identify which entity should be considered as the investment firm and as the client for the purposes of applying these requirements.

15. The requirements set out under Article 6(2) of Regulation (EU) No 909/2014 should apply only to relationships involving an investment firm and a professional client within the scope of Directive 2014/65/EU. This means that when Directive 2014/65/EU does not apply to certain persons (e.g. persons exempted under Article 2 of Directive 2014/65/EU), such requirements should not apply either.

16. For the avoidance of doubt, an entity which belongs to the list provided for by Section I of Annex II to Directive 2014/65/EU should be considered a professional client for the purposes of Article 6(2) of Regulation (EU) No 909/2014, irrespective of the fact that the investment firm might have, generally or for some specific transactions or services, categorized it as an eligible counterparty, within the meaning of article 30(2) of Directive 2014/65/EU, or a non-professional client.

Guideline 2: The requirements set out in Article 6(2) of Regulation (EU) No 909/2014 should apply in respect of transactions in financial instruments referred to in Article 5(1) of Regulation (EU) No 909/2014, i.e.:

a. transferable securities, as defined in point 35 of Article 2(1) of Regulation (EU) No 909/2014;

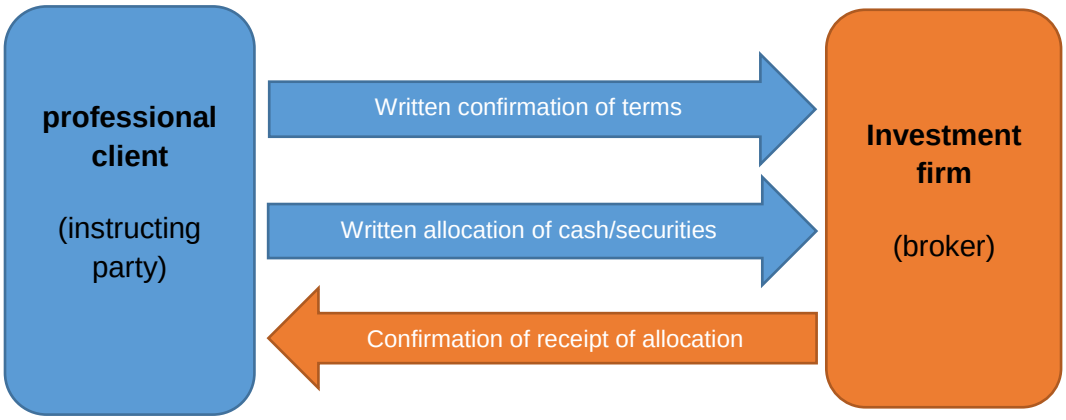
b. money-market instruments, as defined in point 37 of Article 2(1) of Regulation (EU) No 909/2014,

c. units in collective undertakings, as defined in point 38 of Article 2(1) of Regulation (EU) No 909/2014, and

d. emission allowances, as defined in point 39 of Article 2(1) of Regulation (EU) No 909/2014.

V.2 Standardised procedures and messaging protocols

Guideline 3: An investment firm should contractually agree with its professional client on the communication procedures and messaging protocols to be used between them to implement the measures aiming at limiting settlement fails described in Article 6(2) of Regulation (EU) No 909/2014, which measures could be illustrated as follows:



17. The investment firm and its professional client may arrange for the prompt communication of this information in various ways:

    a. **Sending of both a written confirmation and a written allocation** by the professional client to its investment firm, as specified in Article 2(1) of the Commission Delegated Regulation (EU) 2018/1229; or

    b. **No sending of a written confirmation**: Where the written confirmation is included in the written allocation in accordance with Article 2(1), third subparagraph, of the Commission Delegated Regulation (EU) 2018/1229, the investment firm and the professional client may agree that the written confirmation of the terms of the transaction could be provided in an additional field included in the written allocation, or implied in the sending of the written allocation corresponding to that transaction; or

    c. **No sending of written confirmation nor written allocation**: Where no written confirmation or allocation is sent in accordance with Article 2(3) of the Commission Delegated Regulation (EU) 2018/1229, the investment firm should ensure that it is provided with the necessary settlement information referred to in Article 2(1) of the Commission Delegated Regulation (EU) 2018/1229 in respect of that transaction in advance of the timeframes referred to in Article 2(2) thereof, including orally or through systems granting to the investment firm access to the relevant information (such as through the access to a centralised database).

18. The consequences of the late communication of, or failure to communicate, the written allocation and confirmation (or of part of the information requested therein) to the investment firm are not addressed in Regulation (EU) No 909/2014, nor in the Commission Delegated Regulation (EU) 2018/1229. The consequences of such delay or failure could be addressed by the investment firm and the professional client in their contractual agreement.

19. The arrangements agreed between the investment firm and its professional client could be included in any contractual agreement, including in the framework agreement governing their relationship such as the document referred to in Article 25(5) of Directive 2014/65/EU and specified in Article 58 of Commission Delegated Regulation (EU) 2017/565.

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

20. Where electronic means are used, the investment firm should offer to its professional clients the option of using the international open communication procedures and standards for messaging and reference data as defined in Article 2(1)(34) of Regulation (EU) No 909/2014, except in the following two cases:
    a. where such internationally accepted standards are not "*available on a fair, open and non-discriminatory basis to any interested party*" or do not exist, until international standards become available; and

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

21. If the investment firm offers to use both international and internal (or domestic) messaging standards, the professional client can decide to use either of them.
