



European Securities and
Markets Authority

Final Report

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



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1 Executive summary

Reasons for publication

According to Article 9(1) of CSDR¹, 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.

The Commission Delegated Regulation (EU) 2017/391² (RTS on internalised settlement) further specifies the content of the internalised settlement reporting, while the Commission Implementing Regulation (EU) 2017/393³ (ITS on internalised settlement) specifies the templates and procedures for the reporting and transmission of information on internalised settlement.

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.

On 10 July 2017, ESMA published a Consultation Paper (CP) on Guidelines on Internalised Settlement Reporting under CSDR⁴. The consultation closed on 14 September 2017. ESMA received 16 responses⁵ (including one confidential response), mostly from banking and investment firms associations. The answers received are available on ESMA's website unless respondents requested otherwise. ESMA also sought the advice of the Securities and Markets Stakeholder Group's (SMSG). This paper summarises and analyses the responses to the CP and explains how the responses have been taken into account. ESMA recommends reading this report together with the CP to have a complete view of the rationale for the Guidelines.

Contents

Section 2 contains information on the background and mandate; section 3 contains the feedback statement; Annex I includes a high-level cost-benefit analysis for the Guidelines; Annex II refers to the consultation of the SMSG; Annex III contains the full text of the final Guidelines.

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 Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012

² 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

³ 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

⁴ Please see the following link: https://www.esma.europa.eu/sites/default/files/library/esma70-151-457_consultation_paper_on_csd_r_guidelines_on_internalised_settlement_reporting.pdf

⁵ Please see the following link for the public responses: <https://www.esma.europa.eu/press-news/consultations/consultation-guidelines-internalised-settlement-reporting-under-article-9>



Next steps

The Guidelines in Annex II will be translated into the official languages of the European Union and published on the ESMA website. The Guidelines will apply from the date of their publication on ESMA's website in all official languages of the EU.

Within two months of the publication of the translation of the guidelines into the official languages of the European Union on the ESMA website, each national competent authority will have to confirm whether it complies or intends to comply with those guidelines. In the event that 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.

Legislative references

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
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
RTS on internalised settlement	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
ITS on internalised settlement	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

Acronyms

CP	Consultation Paper
CSD	Central Securities Depository
EC	European Commission
ESMA	European Securities and Markets Authority
EU	European Union
SSS	Securities settlement system

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 RTS on internalised settlement further specifies the content of the internalised settlement reporting, while the ITS on internalised settlement 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 RTS on internalised settlement, 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.

3. Feedback statement

5. The industry welcomed ESMA's initiative to issue Guidelines on internalised settlement reporting, in order to ensure the consistent application of Article 9 of CSDR. Respondents to the CP expressed their support for achieving the intended regulatory and supervisory objective, while at the same time ensuring an effective and efficient implementation for the industry as a whole.

Q1 in the CP: 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.

General criteria

6. Respondents broadly agreed with ESMA on the scope of the data to be reported by settlement internalisers. At the same time, respondents mentioned that certain aspects would benefit from additional clarifications.
7. Some respondents suggested adding a generic definition listing what criteria should be met for transactions to fall within the scope of reporting. ESMA agreed with the proposal, and included a list of attributes which should be present for a settlement instruction to be in scope of internalised settlement reporting (para. 10 of the final Guidelines). One of the criteria specifies that the 'settlement instruction results or is supposed to result in a transfer of securities from one securities account to another in the books of the settlement internaliser, without any external parallel securities movement along the holding chain'. This would also cover the cases where the instruction fails to settle.

Geographical scope of financial instruments to be reported

8. While some respondents expressed their support for ESMA's objective to have a comprehensive approach on the scope of the reporting obligation of Article 9 of CSDR, most respondents argued for limiting the scope of financial instruments to be reported.
9. According to the majority of respondents, only those financial instruments can be subject to the reporting obligation which can be settled in a securities settlement system (SSS) of a CSD authorised under CSDR, and would have settled there if settlement were not internalised. Several respondents suggested focusing on the intended settlement field (PSET) in the client instruction to determine which securities transactions fall within the scope of reporting. Where there is no entry in the intended settlement field, one respondent suggests that custodians would determine the PSET by contacting the client.
10. Having analysed the arguments put forth by respondents, ESMA believes that using the information in the PSET field in the clients' instructions would shift the responsibility of determining whether or not financial instruments are in scope from settlement internalisers to their clients. Moreover, ESMA considers that it is not certain that the PSET field is used in all cases, and, if, in the cases where it is used, the information included in the PSET field accurately reflects the information about the relevant EU issuer CSD or investor CSD. In line with the proposal in the CP, the Guidelines clarify that the scope covers financial instruments in relation to which an EU CSD acts in an issuer CSD capacity or in an investor CSD capacity (para. 14 of the final Guidelines).

Transfer of securities between two accounts of the same client

11. Most respondents argued that the transfer of securities between two accounts of the same client should be moved within the scope of the data to be reported by settlement internalisers. This would simplify how settlement internalisers liaise with clients, and reduce the burden for them.
12. Having regard to the public consultation input, ESMA has amended the Guidelines to clarify that the transfer of securities between two accounts of the same client should be in scope (para. 11(g) of the final Guidelines).

Netting operations

13. The majority of respondents argued that netting should be out of scope as long as the actual settlement takes place on the books of a CSD (even if the settlement instruction itself is a result of different trades being offset, shaped or netted). However, if the net settlement happens between accounts on the books of the custodian, it should fall into the scope of the reporting. The respondents argued that in a pairing-off situation the risk element of the transaction would still be settled within the CSD, and the pairing-off helps to reduce risk. One respondent suggested that ESMA should clarify that any aggregation of trading activity prior to the settlement instruction's generation would not be considered in the scope for reporting. Some respondents suggested that “transactions subject to netting as defined in point (k) of Article 2 of Directive 98/26/EC at the level of the settlement internaliser” should instead be added to para.12(g) of the Guidelines included in the CP, with the clarification that only the net difference that is settled at the level of the settlement internaliser should be included.
14. ESMA has carefully balanced the various arguments mentioned by stakeholders. At the same time, ESMA notes that the approach supported by the majority of respondents would add to the complexity of reporting, and would not be consistent with the definition of ‘internalised settlement instruction’ under Article 1(1) of the RTS on internalised settlement. Therefore, ESMA decided to clarify that a settlement internaliser should report all settlement instructions which meet the conditions specified in the guidelines, irrespective of any netting performed by that settlement internaliser (para. 13 of the final Guidelines). Given the definition of ‘internalised settlement instruction’, the Guidelines also clarify that netting performed by CCPs should not be in the scope of internalised settlement reporting,

Other comments

15. Most respondents agreed with points 11(a-d) of the draft Guidelines included in the CP. Several respondents requested more clarification of the term “primary market purchases or sales of securities” in 11(a). ESMA will assess if further clarifications should be provided in the future through additional supervisory convergence measures (e.g. “primary market purchases” are where the initial issue has been purchased, thereby raising capital of the issuer; by contrast, the initial creation is where the securities are created, but they have not yet been subscribed for, so no capital has been raised or created).
16. Following the suggestion made by several respondents, ESMA clarified the reference to “investment funds”, rather than “funds” (para. 11(e) of the final Guidelines).
17. In accordance with the proposal made by several respondents, ESMA agreed to delete the reference in point to “reallocations of collateral for securities lending” (point 11(l) of the draft Guidelines included in the CP), on the grounds that these transactions would already be covered by points 11(b) and (c).
18. Further to the suggestion made by several respondents, ESMA decided to delete the reference to “intra-group transactions” in point 11(g) of the draft Guidelines included in the CP.
19. While respondents agreed that pure cash payments, not related to securities transactions, (point 12(e) of the draft Guidelines included in the CP) should be outside the scope of reporting, they also noted that settlement internalisers may not always be aware of the relationship between cash and securities transactions. Since cash payments are covered in the RTS on internalised settlement, ESMA believes that the reference should be kept in the Guidelines.
20. One respondent asked for ESMA’s guidance on how the classification of ISO messages would be attributed to the categories set out in the RTS on internalised settlement. ESMA will further assess if clarifications should be provided regarding the mapping of ISO categories with the RTS categories of transactions as part of future supervisory convergence measures.

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

Reporting at different level of a securities holding chain

21. Respondents agreed with the logic provided in para. 15 of the draft Guidelines included in the CP, that internalised settlement should be reported at the level where it takes place, however they found that the example provided in the respective paragraph could be misleading – if entity A has to give an instruction to entity B in order to transfer the securities between sub-accounts, it is B that internalises the settlement. Some respondents also argued that the term sub-account may need to be further clarified. ESMA decided to delete the example in para. 15 of the draft Guidelines included in the CP (para. 16 of the final Guidelines).

Reporting internalised settlement activity conducted by EU settlement internalisers through their branches operating outside the EU

22. While some respondents suggested making it explicitly clear that branches of the EU entities operating in third countries have no reporting obligation, other respondents had the interpretation that no settlement internalisation reporting would be required for transactions which are internalised in third-country branches, irrespective of the underlying financial instrument.
23. ESMA would like to highlight that it was not the intention to exclude from the scope of reporting the internalised settlement activity conducted by EU settlement internalisers through their branches operating outside the EU, given that this would not be in line with Article 9 of CSDR, since a branch has no legal personality and is part of the EU company. It should be noted that a similar approach has been used in the case of transaction reporting under Article 26 of MiFIR (see Transaction Reporting Q&A 12 published by ESMA under MiFIR⁶).
24. Moreover, excluding internalised settlement activity conducted by EU settlement internalisers through their branches operating outside the EU might create the potential for circumventing the reporting obligation (e.g. EU settlement internalisers may channel their activity through their branches operating in third countries in order to avoid the reporting requirement).
25. Therefore, ESMA decided to clarify in the updated Guidelines that reporting the internalised settlement activity conducted by EU settlement internalisers through their branches operating outside the EU is required, as long as this activity covers financial instruments which are in scope of Article 9 of CSDR.
26. With regard to the level of granularity of reporting the internalised settlement activity conducted by EU settlement internalisers through their branches operating outside the EU, the final Guidelines specify that a settlement internaliser should send one report for the activity of its branches in third countries to the competent authority in the Member State where it is established (para. 17(c) of the final Guidelines).

Identification of branches

⁶ Please see the following link: https://www.esma.europa.eu/sites/default/files/library/esma70-1861941480-56_qas_mifir_data_reporting.pdf

27. One respondent noticed that branches do not have LEI and it might be difficult to identify branches correctly.
28. ESMA decided to recommend including a separate field to identify the country where branches operate, in addition to the LEI of the settlement internaliser.
29. In the case of branches of EU settlement internalisers operating outside the EU, ESMA proposes that they should be identified by the code 'TS' (third-country state).

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

Reporting on an intended settlement date (ISD) basis versus an actual settlement date (ASD) basis

30. Regarding reporting parameters, many respondents called for reporting to take place on an actual settlement date (ASD) basis rather than on an intended settlement date (ISD) basis.
31. ESMA believes that it is essential to have harmonised processes for reporting both internalised settlement under Article 9 of CSDR (reporting by settlement internalisers) and settlement fails under Article 7 of CSDR (reporting by CSDs), in order to have consistent and comparable data. Moreover, the approach used for reporting settlement fails will have an impact for the calculation of cash penalties for settlement fails according to Article 7 of CSDR.
32. In ESMA's view, ISD-based reporting appears more in line with the concept of settlement fail as defined in CSDR and more suited to the monitoring of the effects of settlement discipline measures, like the application of mandatory cash penalties and buy-ins, on the settlement efficiency. To ensure consistency, ISD-based reporting would entail that settlement instructions that are eventually cancelled but failed for one or several settlement days are included in the reporting for each day where they fail to settle, and that aggregation of volume and value should be done per reporting period.
33. ASD-based reporting would not provide the same granularity in the monitoring and reporting of, and instructions that are eventually cancelled, would not be reflected in the reporting.
34. Having regard to the above, ESMA considers that the ISD-based reporting should be used for reporting internalised settlement (as proposed in the CP).

Issuer CSD and financial instruments identification

35. ESMA recommends that settlement internalisers should include the first two characters of the ISINs in the reports (para. 19 of the final Guidelines). In accordance with Article 2(1) of the RTS on internalised settlement, the LEI of the Issuer CSD should also be filled in by the settlement internaliser; potentially, several Issuer CSDs could be included in relation to securities identified by the same two characters of the ISINs. The Issuer CSD country code should not be filled in by the settlement internaliser, as it will be determined by the ESMA CSDR IT system. This approach addresses the supervisory objectives in relation to the underlying securities, and would also ensure more consistent and more reliable data, for the purpose of data comparability. Moreover, this would ensure a more agile reporting system better equipped to deal with market developments.

Q4 in the CP: 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?

36. Several respondents mentioned that financial institutions currently abide by the ISO 15022 standard, and that migration to the ISO 20022 standard might be an issue. One respondent suggested using the XBRL standard, which is used by EBA, EIOPA, ECB and SRB. ESMA considers that XBRL is ideally suited for financial statements and not for the context of CSDR reporting. Using ISO 20022 is consistent with the approach used for sending reports to ESMA under EMIR, MIFID II/MIFIR, SFTR and MAR. ESMA also believes that the use of ISO 20022 should be encouraged, in order to ensure standardisation and consistency across market participants in the EU in relation to financial services.

37. The majority of respondents called for the XSD schema to be published and highlighted that it should remain stable for the foreseeable future and not subject to material alterations. ESMA intends to publish the candidate ISO 20022 message definition XSD schema in Q2 2018.

Q5 in the CP: 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.

38. Several respondents called for a testing process prior to the first reporting cycle. According to respondents, the new reporting system should be tested between settlement internalisers and national competent authorities; a sufficiently long testing phase (3 months before first report) would be welcomed.
39. With regard to the transmission of reports by settlement internalisers to competent authorities, it should be noted that this process will be managed by each competent authority. ESMA will implement an IT solution facilitating the transmission of reports by competent authorities to ESMA, based on the reports received by competent authorities from settlement internalisers. ESMA will have an adequate testing period with competent authorities, and settlement internalisers will be encouraged to liaise with the competent authorities in the process.
40. Several respondents called for a prompt confirmation of receipt to be sent by competent authorities to settlement internalisers upon receipt of the reports from the latter.
41. As mentioned above, the transmission of reports by settlement internalisers to competent authorities will be managed by each competent authority. The CSDR IT system that will be developed by ESMA will follow the standardised REGISTERS mechanisms already used by ESMA. In particular, each submission will be time-stamped upon receipt and a feedback file will be dispatched to the competent authority upon processing.
42. Some respondents suggested the possibility for settlement internalisers to send the reports directly to ESMA or via a trade repository or single IT platform. ESMA would like to mention that, according to Article (9) of CSDR, settlement internalisers are required to report to competent authorities.

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

43. The majority of respondents have raised the issue of the determination/calculation of the market value of free of payment transactions (Article 2(3) of the RTS on internalised settlement). According to the respondents, the determination of the price for each ISIN based on liquidity or higher turnover or pre-determined methodology from a different market or venue is not something that each settlement internaliser would be able to support in a consistent manner. Different service providers may use different sources for the same ISIN. The respondents called for guidance on whether the potential differences in the prices used by vendors would be acceptable or whether, in order to facilitate consistent implementation, ESMA may consider the appointment/creation of a public source from where settlement internalisers will be able to extract the price per ISIN based on the RTS requirements. ESMA will further assess the possibility of issuing supervisory convergence measures in order to facilitate the consistent determination/calculation of the market value of free of payment transactions.
44. A couple of respondents argued that banks which perform securities settlement only for retail clients should not be regarded as settlement internalisers, as the risks are minimal in such cases. ESMA believes that this would not be in line with CSDR and the RTS and ITS on internalised settlement, given the provisions of Article 9 of CSDR, and the explicit references to retail clients and free of payment instructions in the RTS and ITS on internalised settlement.

Annexes

Annex I – Cost-benefit analysis

Background

46. In order to provide reliable data on the scale of securities settlement outside securities settlement systems and to ensure that the risks arising can be monitored and addressed, any institutions other than CSDs that settle securities transactions outside a securities settlement system should report their settlement activities to the competent authorities concerned. The recipient competent authorities should subsequently transmit that information to ESMA and should inform ESMA of any potential risk resulting from such settlement activities. Furthermore, ESMA should monitor such settlement activities and take into account the potential risks that they might create.
47. The RTS on internalised settlement further specifies the content of the internalised settlement reporting, while the ITS on internalised settlement specifies the templates and procedures for the reporting and transmission of information on internalised settlement.
48. 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.
49. 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.

50. 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.
51. 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.
52. The Guidelines on internalised settlement reporting under Article 9 of CSDR 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.

The impact of ESMA Guidelines

53. In light of the main focus of these Guidelines, ESMA developed a preliminary assessment considering the benefits and costs of the key policy choices presented for consultation. As already clarified in the preliminary impact analysis annexed to the CP, a qualitative assessment of costs and benefits can be provided also considering that in many cases both costs and benefits are direct consequences of the application of the new requirements stemming from CSDR and the RTS and ITS on internalised settlement.
54. Since the new requirements have been set out under CSDR and the RTS and ITS on internalised settlement, the impact of the current guidelines should be considered in light of those legal provisions that they support. While market participants will likely incur certain costs for implementing these guidelines, they will also benefit from the increased legal certainty and the harmonised application of the requirements across Member States.

Benefits

55. These guidelines set out an additional level of detail regarding internalised settlement reporting. By pursuing the objective of ensuring a consistent and harmonised implementation and application of the new requirements, the Guidelines will make sure that the objectives of CSDR and of the RTS and ITS on internalised settlement can be achieved across Member States, without imposing undue additional burdens on stakeholders. The Guidelines should facilitate consistent reporting and increased data quality.

56. It is possible to summarise the main benefits linked to the Guidelines as follows:

- a) consistent and streamlined reporting;
- b) increased data quality;
- c) reduced burden for market participants through the provision of a standardised reporting template;
- d) reduction of risks linked to regulatory or supervisory arbitrage due to an increased degree of harmonisation and more consistent supervisory convergence;
- e) positive effects from improved harmonisation and standardisation on the costs and the processes of implementation for market participants acting as settlement internalisers;
- f) positive effects from improved harmonisation and standardisation for competent authorities of costs and activities needed for the implementation of the new supervisory process.

Costs

57. In its preliminary assessment developed at the time of the publication of the CP, ESMA mentioned that the costs implied by these Guidelines can be summarised as the cost of changing current market practices, where necessary.

58. It should also be noted that the specific costs triggered by these Guidelines should not be significant for market participants and competent authorities, given the fact that they are required to comply with the new CSDR rules on internalised settlement reporting.

59. The incremental costs that market participants will face when implementing the necessary measures in order to comply with the internalised settlement reporting requirements (including but not limited to these Guidelines) will be both one-off and ongoing costs, arguably linked to the following:

One-off costs

- a) Initial IT investments;
- b) Procedural and organisational arrangements (business, compliance and legal);
- c) Organisational and HR costs (linked to the new activities for the compliance function; costs due to the training of staff and resources needed at management level).

On-going costs

- a) Running IT costs;
- b) Control and compliance costs;
- c) Costs related to the exchange of information between settlement internalisers and their branches.

60. ESMA believes that the policy options adopted in this area provide the most cost-efficient solution, taking into consideration the relevant legislative framework, to achieving the general objectives of these Guidelines.

Conclusion

61. The majority of costs will stem directly from the application of the new CSDR requirements on internalised settlement reporting, rather than the ESMA Guidelines. The overall resources associated with these Guidelines will facilitate the achievement of a higher degree of harmonisation in the implementation and supervision of the internalised settlement reporting requirements. ESMA also considers that the increased harmonisation in the interpretation and application of the internalised settlement reporting requirements across Member States will minimise the potential adverse impact on market participants linked to compliance costs. These benefits will outweigh all associated costs in respect of the Guidelines.

Annex II - Opinion of the Securities and Markets Stakeholder Group

62. 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.

Annex III – Guidelines on Internalised Settlement Reporting under Article 9 of CSDR

I. Scope

Who?

1. These guidelines apply to competent authorities designated under Article 11 of CSDR⁷ 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].

II. Definitions

4. The terms used in these guidelines have the same meaning as in the CSDR and in the Commission Delegated Regulation (EU) 2017/391⁸.

III. Purpose

5. 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) 2017/393⁹, including the exchange of information between ESMA and the competent authorities regarding internalised settlement.

⁷ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1–72)

⁹ 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)

IV. Compliance and reporting obligations

4.1. Status of the guidelines

6. This document contains guidelines issued under Article 16 of the ESMA Regulation¹⁰. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with guidelines.
7. Competent authorities to whom these guidelines are addressed should comply by incorporating them into their national legal 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.

4.2 Reporting requirements

8. 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.
9. Settlement internalisers are not required to report whether they comply with these guidelines.

V. Guidelines on internalised settlement reporting

5.1 Scope of data to be reported by settlement internalisers

10. All of the following attributes should be present for a settlement instruction to be in scope of internalised settlement reporting:
 - a) a settlement internaliser receives a settlement instruction from a client regarding settlement of a securities transaction and the settlement instruction is not forwarded in its entirety to another entity along the holding chain;
 - b) such a settlement instruction results or is supposed to result in a transfer of securities from one securities account to another in the books of the settlement

¹⁰ 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).

internaliser, without any external parallel securities movement along the holding chain).

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) transfers of securities between accounts of different investment funds (funds with or without legal personality should be treated as clients);
- f) 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;
- g) transfer of securities between two securities accounts of the same client;
- h) title transfer financial collateral arrangements as defined in point (b) of Article 2(1) of Directive 2002/47/EC¹¹ (FCD);
- i) security financial collateral arrangements as defined in point (c) of Article 2(1) of FCD, where there is a transfer of securities between accounts;
- j) 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;

¹¹ Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27/06/2002, p. 0043 – 0050)

- d) creation and redemption of fund units;
 - 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.
13. A settlement internaliser should report all settlement instructions which meet the conditions specified in these guidelines, regardless of any netting performed by that settlement internaliser. Netting performed by CCPs should not be in the scope of internalised settlement reporting.
- Please see the examples in the Annex.
14. 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, i.e. financial instruments in relation to which an EU CSD acts in an issuer CSD capacity;
 - b) financial instruments that are recorded in an EU CSD that acts in an investor CSD capacity for the respective financial instruments, even though they may be initially recorded or centrally maintained outside of CSDs authorised in the EU.
15. 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 these guidelines.

5.2 Entities responsible for reporting to competent authorities

16. Internalised settlement can happen at different levels of a securities holding chain (global custodians, sub-custodians, 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.

17. A settlement internaliser should send the information required under Article 9(1) of CSDR, in the following reports, to the competent authority in the Member State where it is established:

- a) one report for its activity in the Member State where it is established (including the activity of its branches in that Member State);
- b) separate reports for the activity of its branches per Member State;
- c) one report for the activity of its branches in third countries.

Please see the following example:

A settlement internaliser established in Member State A, which has two branches in Member State A, one branch in Member State B, two branches in Member State C, one branch in third country D and two branches in third country E, should send four reports to the competent authority in Member State A, as follows:

- a) one report covering its activity in Member State A, including the activity of its branches in that Member State (specifying the country code of Member State A);
- b) one report covering the activity of its branch in Member State B (specifying the branch country code of Member State B, in addition to the settlement internaliser country code of Member State A);
- c) one report covering the activity of its two branches in Member State C (specifying the branch country code of Member State C, in addition to the settlement internaliser country code of Member State A);
- d) one report covering the activity of its branches in third country D and third country E (specifying the branch country code TS, in addition to the settlement internaliser country code of Member State A).

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, in consolidated reports covering their activity in each Member State.

Please see the following example:

A settlement internaliser established in a third country has a branch in Member State A, and two branches in Member State B. The following should apply:

- a) The competent authority in Member State A should ensure that it receives one report covering the internalised settlement activity of the branch in Member State A.

- b) The competent authority in Member State B should ensure that it receives one report covering the internalised settlement activity of the two branches in Member State B.

5.3 Data reporting parameters

19. Competent authorities should ensure that settlement internalisers include the first two characters of the ISINs in the reports.

In accordance with Article 2(1) of the Commission Delegated Regulation (EU) 2017/391, the LEI of the Issuer CSD should also be filled in by the settlement internaliser; potentially, several Issuer CSDs could be included in relation to securities identified by the same two characters of the ISINs. The Issuer CSD country code should not be filled in by the settlement internaliser, as it will be determined by the ESMA CSDR IT system.

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

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

22. If during a quarter covered by a report, an internalised settlement instruction fails to settle for several days after the intended settlement date (ISD), including in the case where the settlement instruction is cancelled, 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 an internalised 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 (considering double side reporting):

Settled		Failed		Total	
Volume	Value (EUR)	Volume	Value (EUR)	Volume	Value (EUR)
2	200	6	600	8	800

23. In accordance with Article 1(1) of the Commission Implementing Regulation (EU) 2017/393, (i) the period that the first report shall cover goes from 1 April 2019 until 30 June 2019; and (ii) settlement internalisers shall send the first report to the competent authorities by 12 July 2019.

5.4 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

24. Competent authorities should ensure that settlement internalisers submit the data in accordance with Article 9 of CSDR in an XML format, conforming with an agreed candidate ISO 20022 message definition XSD schema, to be published by ESMA, which should then be used by competent authorities when submitting the data to ESMA.

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

26. 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.

27. In case of validation errors notified by ESMA, 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.

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

28. 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.

29. 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.

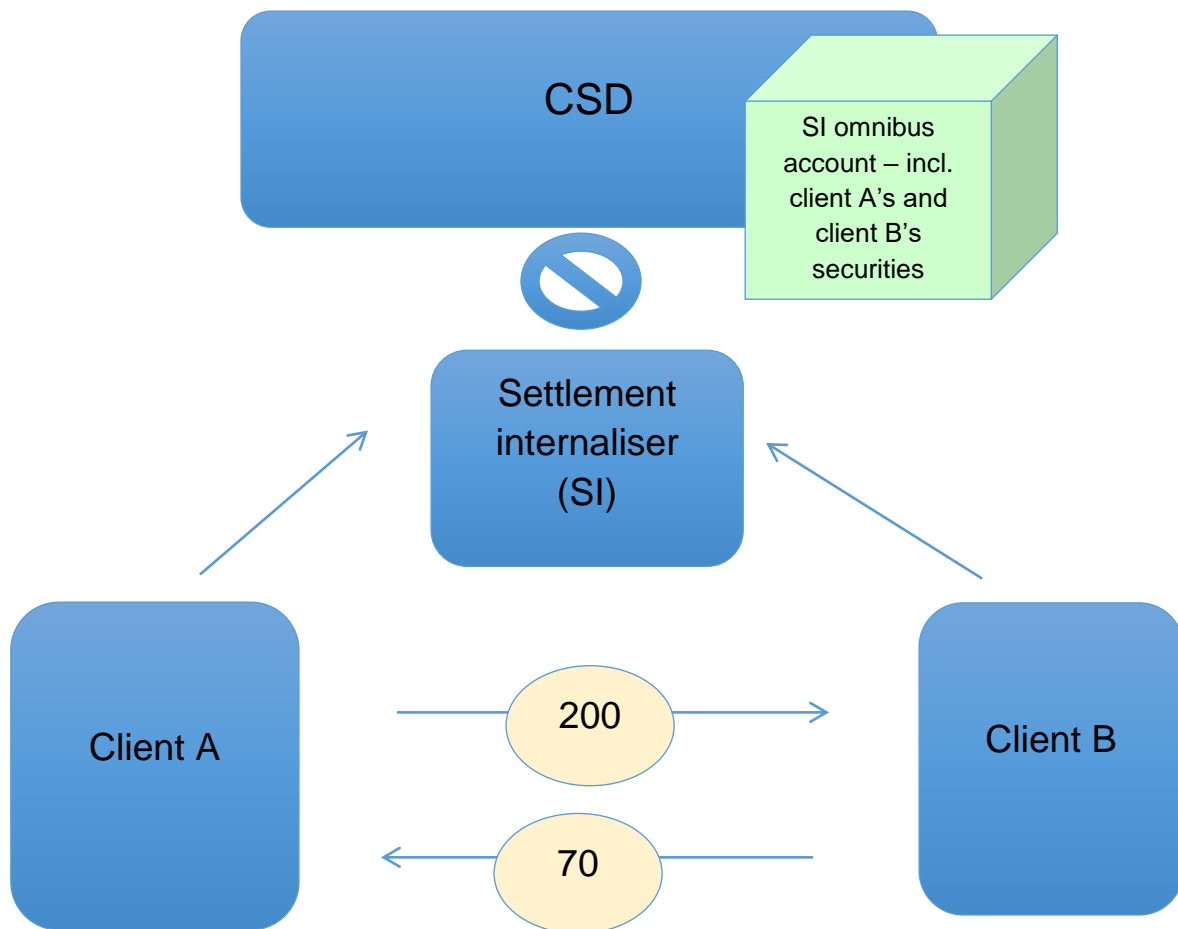
5.6 Access to data by competent authorities

30. 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 country code for branches, the issuer CSD LEI and country code, the first two characters of the ISINs). All competent authorities should be able to access data on third-country securities.

Annex to the Guidelines - Scenarios Diagrams and Examples of Reporting

The following list is not necessarily exhaustive.

SCENARIO 1 – The settlement internaliser (SI) has one omnibus account at the CSD, including both client A's and client B's securities. SI does not send any instruction to the CSD in relation to the instructions the SI has received from its clients.

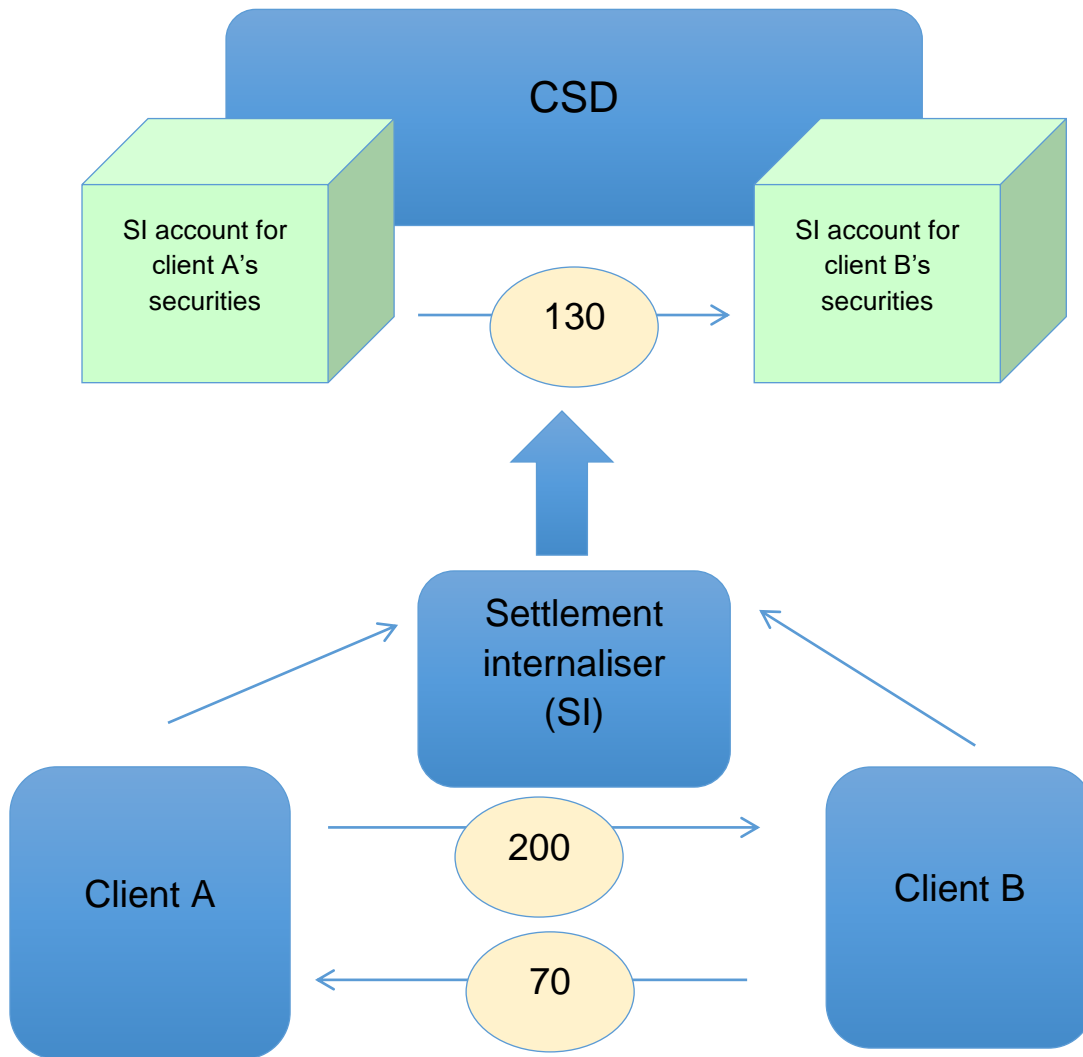


Examples of reporting¹²: (SI reports all internalised settlement instructions regardless of any possible netting) – SI reports 4 instructions: **200x2** and **70x2**

- 1) Client A deliver 200 securities to client B
- 2) Client B receive 200 securities from client A
- 3) Client B deliver 70 securities to client A
- 4) Client A receive 70 securities from client B

¹² For simplicity, the examples only look at the securities leg.

SCENARIO 2 – The settlement internaliser (SI) has two securities accounts at the CSD, one for client A’s securities and one for client B’s securities. SI sends instructions to the CSD for the settlement of the net difference in relation to the instructions the SI has received from its clients.



Examples of reporting¹³: (SI reports all internalised settlement instructions regardless of any possible netting) – SI reports 4 instructions (for the part that is not submitted for settlement in the CSD): **70x4**

- 1) Client B deliver 70 securities to client A
- 2) Client A receive 70 securities from client B
- 3) Client A deliver 70 securities to client B

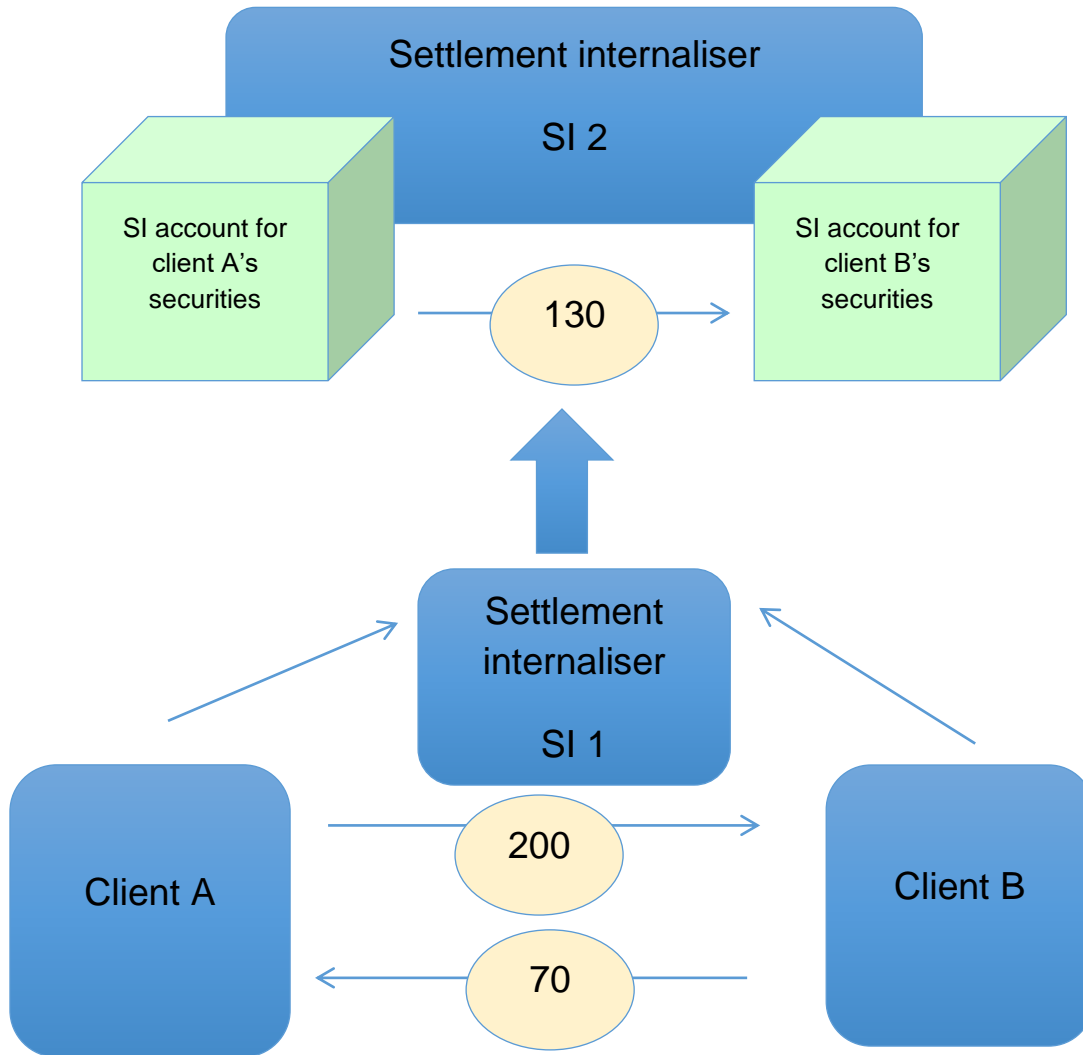
¹³ For simplicity, the examples only look at the securities leg.

4) Client B receive 70 securities from client A

Explanation:

- Regarding the 4 instructions to be reported by SI:
 - o 2 instructions correspond to the transfer of securities from B to A shown in the graph.
 - o the remaining 2 instructions are not explicitly shown in the graph; they are included in the transfer of securities of 200 from A to B.
- In other words, the transfer of securities of 200 from A to B is split in two:
 - o the first part (130) is covered at the level of the CSD, and does not need to be reported as internalised settlement.
 - o the remaining 70 is considered as internalised settlement at the level of SI, and thus must be reported by SI (double-counted).

SCENARIO 3– A settlement internaliser (SI 1) has two securities accounts with another settlement internaliser (SI 2), one for client A’s securities and one for client B’s securities. SI 1 sends instructions to SI 2 for the settlement of the net difference in relation to the instructions the SI 1 has received from its clients.



Examples of reporting¹⁴ (taking into account double side reporting):

- SI 1 reports 4 instructions: **70x4**
 - 1) Client A deliver 70 securities to client B
 - 2) Client B receive 70 securities from client A
 - 3) Client B deliver 70 securities to client A
 - 4) Client A receive 70 securities from client B

- SI 2 reports 2 instructions : **130x2**
 - 1) Client A deliver 130 securities to client B
 - 2) Client B receive 130 securities from client A

Explanation:

- Regarding the 4 instructions to be reported by SI 1:
 - o 2 instructions correspond to the transfer of securities from B to A shown in the graph.
 - o the remaining 2 instructions are not explicitly shown in the graph; they are included in the transfer of securities of 200 from A to B.
- In other words, the transfer of securities of 200 from A to B is split in two:
 - o the first part (130) is covered at the level of SI 2 and will have to be reported as internalised settlement by SI 2 (double-counted).
 - o the remaining 70 is considered as internalised settlement at the level of SI 1, and thus must be reported by SI 1 (double-counted).

¹⁴ For simplicity, the examples only look at the securities leg.