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NOTE

From: Mr Steven Maijor, Chair of the European Securities and Markets Authority
On: 28 August 2020
To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

Subject: ESMA's draft RTS on a further postponement of the CSDR RTS on
settlement discipline

Delegations will find attached the ESMA's draft RTS on a further postponement of the CSDR RTS on settlement discipline.

E-MAIL



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The Chair
28 August 2020
ESMA70-156-3728

Valdis Dombrovskis
Executive Vice-President responsible
for an Economy that Works for People
European Commission
Rue de la Loi 200
1049 Brussels
Belgium

IN 007970 2020
28.08.2020

Ref: ESMA's draft RTS on a further postponement of the CSDR RTS on settlement discipline

Dear Executive Vice-President Dombrovskis, *Dear Valdis,*

I am writing to you to submit ESMA's final report on postponing the date of entry into force of 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 ('RTS on settlement discipline').

In view of the COVID-19 situation and in line with your letter dated 24 June 2020, ESMA has given due consideration to the implementation challenges that market participants have raised in their preparations for the new settlement discipline regime under CSDR.

ESMA therefore considers that a further postponement of the date of entry into force of this regime by one year, i.e. until 1 February 2022, would be appropriate for finalising the implementation of the necessary processes and IT arrangements.

Given that the proposed amendment is limited in scope, as well as the urgency to have legal certainty as to the new date of entry into force of the settlement discipline regime in order for market participants to prepare for the implementation, ESMA has not conducted an open public consultation in accordance with the third subparagraph of Article 10(1) of the ESMA Regulation. However, ESMA has consulted the Securities and Markets Stakeholder Group, and has conducted a high-level analysis of the costs and benefits. ESMA has also cooperated closely with the members of the European System of Central Banks.

ESMA • 201-203 rue de Bercy • CS 80910 • 75589 Paris Cedex 12 • France • Tel. +33 (0) 1 58 36 43 21 • www.esma.europa.eu



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Should you or your staff want to discuss further the subject matter of the report or require any further detailed information please do not hesitate to contact me or Fabrizio Planta, Head of the Markets and Data Reporting Department (fabrizio.planta@esma.europa.eu).

Yours sincerely,

A handwritten signature in black ink, appearing to be 'SM' with a flourish.

Steven Maijoor

CC: Ms Irene Tinagli, MEP, Chair of the Committee on Economic and Monetary Affairs
European Parliament

Mr Olaf Scholz, President of the ECOFIN Council, Council of the European Union

Mr John Berrigan, Director General, DG Financial Stability, Financial Services and
Capital Markets Union, European Commission

Mr Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European
Union

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Final Report

CSDR RTS on Settlement Discipline – Postponement until 1 February 2022

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Acronyms used

CSD	Central Securities Depository
CSDR	Central Securities Depositories Regulation – Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012
ESCB	European System of Central Banks
ESMA	European Securities and Markets Authority
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
NCA	National Competent Authority
RTS	Regulatory Technical Standards
RTS on settlement discipline	Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline

1 Executive Summary

Reasons for publication

This final report presents a new draft regulatory technical standard ('RTS') on postponing the date of entry into force of Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline¹ ('RTS on settlement discipline').

The initial date of entry into force of the RTS on settlement discipline was 13 September 2020. On 4 February 2020, ESMA adopted a report suggesting to the European Commission the postponement of the entry into force of the RTS on settlement discipline until 1 February 2021. To this effect, ESMA proposed an amendment to the RTS on settlement discipline and on 8 May 2020, the European Commission adopted Commission Delegated Regulation (EU) 2020/1212 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline, which has now been published in the Official Journal of the EU².

Having regard to the severe impact of the COVID-19 pandemic on the overall implementation of regulatory and IT projects by CSDs and their participants, as well as by other financial market infrastructures, it appears that it would be extremely difficult for these market stakeholders to comply with the requirements of the RTS on settlement discipline by 1 February 2021.

On 24 June 2020, in light of the stakeholders' representations about the impact of COVID-19, the European Commission invited ESMA to consider whether a further postponement of the date of entry into force of the RTS on settlement discipline would be appropriate and,

¹ OJ L 230, 13.9.2018, p. 1.

² Commission Delegated Regulation (EU) 2020/1212 of 8 May 2020 amending Delegated Regulation (EU) 2018/1229 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline, OJ L 275, 24.8.2020, p. 3–4

if that was the case, to present a proposal for amendment of the relevant RTS in this respect to the European Commission³.

Having regard to the arguments put forth by stakeholders, ESMA considers that a further postponement of the date of entry into force of the RTS on settlement discipline would be appropriate, and hereby presents a proposal for a new amendment of the relevant RTS in order to postpone its entry into force until 1 **February** 2022.

Given that the proposed amendment is limited in scope and reflects the input provided by market participants calling for this delay, as well as the urgency to have legal certainty as to the new date of entry into force of the settlement discipline regime in order for market participants to prepare for the implementation accordingly, ESMA has not conducted any open public consultation in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1095/2010 (ESMA Regulation)⁴. However, ESMA has consulted the Securities and Markets Stakeholder Group ('SMSG') and has conducted a high-level analysis of the costs and benefits. ESMA has also cooperated closely with the members of the European System of Central Banks ('ESCB').

Content

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

Next Steps

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

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https://www.esma.europa.eu/sites/default/files/library/ec_letter_to_esma_on_rts_on_settlement_discipline.pdf

⁴ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331, 15.12.2010, p. 84.

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

2 Final report

2.1 Background

The new CSDR settlement discipline regime will affect a wide range of market participants (CSDs, CCPs, trading venues, investment firms, credit institutions) and authorities, and will require significant IT system changes, market testing and adjustments to legal arrangements between the parties concerned.

The initial date of entry into force of the RTS on settlement discipline was 13 September 2020.

Stakeholders including CSDs, CCPs, trading venues, investment firms and credit institutions, had indicated that due to new developments, such as the envisaged implementation on 21-22 November 2020 of the penalty mechanism jointly established by CSDs that use a common settlement infrastructure, more time was needed to adapt to the measures specified in the RTS on settlement discipline. Affected stakeholders had also indicated that more time was needed for the necessary IT system changes, for the development and update of ISO messages, and for market testing and changes to the contractual arrangements between the parties concerned. On 4 February 2020, ESMA adopted a report suggesting to the European Commission the postponement of the entry into force of the RTS on settlement discipline until 1 February 2021. To this effect, ESMA proposed an amendment to the RTS on settlement discipline and on 8 May 2020, the European Commission adopted Commission Delegated Regulation (EU) 2020/1212 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline, which has now been published in the Official Journal of the EU⁵.

However, according to input from stakeholders, due to the pressure as a result of COVID-19 on core operations, activities not strictly related to contingency plans and running the business had to be de-prioritised as of March 2020 in most jurisdictions. In particular, financial institutions had to carry on their activities on a remote basis, which put their IT resources under considerable pressure. In May and June 2020, the European Commission and ESMA received a number of requests to postpone the date of entry into force of the settlement discipline regime beyond the new proposed deadline of 1 February 2021, both from the CSDs and from a broader range of market participants, highlighting that compliance by this date would be extremely challenging.

⁵ Commission Delegated Regulation (EU) 2020/1212 of 8 May 2020 amending Delegated Regulation (EU) 2018/1229 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline, OJ L 275, 24.8.2020, p. 3–4

On 24 June 2020, in the light of the stakeholders' representations about the impact of COVID-19, the European Commission invited ESMA to consider whether a further postponement of the date of entry into force of the RTS on settlement discipline would be appropriate and, if that was the case, to present a proposal for amendment of the relevant RTS in this respect to the European Commission⁶. Indeed, the implementation of the settlement discipline regime requires a wide range of market participants (CSDs, CCPs, trading venues, investment firms, credit institutions) to make important changes to their systems. In particular, the CSDR cash penalties regime and buy-in process require significant changes to the current market practices and contractual arrangements, involving major IT developments.

Additionally, CSDs have to change their systems and procedures and have to put in place new functionalities in order to facilitate and incentivise settlement on the intended settlement date, as well as in order to monitor and address settlement fails.

Last but not least, CSDs have to send monthly and annual settlement fails reports to the competent and relevant authorities, which in turn will be sent by competent authorities to ESMA. IT systems have to be put in place for the submission and the reception of the reports, which will be based on ISO 20022 compliant messages.

ESMA acknowledges that during this unprecedented time, due to the necessity to set up remote working arrangements, these financial institutions have had to focus their efforts on the implementation of effective contingency plans to ensure day-to-day operational and cyber resilience, and that the COVID-19 pandemic seriously impacted the overall implementation of regulatory and IT projects by CSDs and their participants as a consequence. In particular, the burden placed on IT resources prevented them from finalising certain complex projects, including those needed for the implementation of settlement discipline requirements. Therefore, it appears difficult for them to comply with the requirements of the RTS on settlement discipline by 1 February 2021.

2.2 Rationale of the proposed amendment

Given the delay caused by the COVID-19 pandemic to the implementation of necessary preparations to enable compliance with the settlement discipline regulatory requirements by market participants, and having regard to the input from a wide range of stakeholders which will be affected by the settlement discipline regime, ESMA considers it to be appropriate to provide for more time before the start of the application of the new settlement discipline requirements under the RTS on settlement discipline.

Taking into account the uncertainties linked to the evolution of the COVID-19 pandemic and the length and extent of the COVID-19-related measures taken at EU and at Member States level, ESMA believes that a further postponement of the entry into force of the RTS on settlement discipline until 1 February 2022 would be appropriate.

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https://www.esma.europa.eu/sites/default/files/library/ec_letter_to_esma_on_rts_on_settlement_discipline.pdf

2.3 Proposed amendment

ESMA's proposal (see Annex IV) covers the postponement of the date of entry into force of the RTS on settlement discipline until 1 February 2022.

Given that the proposed amendment is limited in scope and reflects the substantial input already provided by market participants calling for this delay, as well as the urgency to have legal certainty as to the new date of entry into force of the settlement discipline regime in order for market participants to prepare for the implementation accordingly, ESMA has not conducted any open public consultation in accordance with the third subparagraph of Article 10(1) of ESMA Regulation. Indeed, ESMA considers that running such a consultation would be highly disproportionate both for ESMA and stakeholders, as this process would only produce a repetition of the contributions already received and would challenge the achievement of the proposed change in time to avoid unnecessary pressure on the market, in this exceptional context.

Nevertheless, ESMA has consulted the Securities and Markets Stakeholder Group (SMSG) and has conducted a high-level analysis of the costs and benefits. ESMA has also cooperated closely with the members of the ESCB.

2.4 Way forward

This amendment to the RTS on settlement discipline will be submitted to the European Commission for review and endorsement. The process that follows the adoption of draft RTS by the European Commission is a non-objection period by the European Parliament and Council before they can then be published in the Official Journal and subsequently enter into force.

3 Annexes

3.1 Annex I – ESMA mandate to develop draft technical standards

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

Measures to prevent settlement fails

5. ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the measures to be taken by investment firms in accordance with the first subparagraph of paragraph 2, the details of the procedures facilitating settlement referred to in paragraph 3 and the details of the measures to encourage and incentivise the timely settlement of transactions referred to in paragraph 4.

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

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 7(15) of Regulation (EU) No 909/2014

Measures to address settlement fails

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

- (a) the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1;
- (b) the processes for collection and redistribution of cash penalties and any other possible proceeds from such penalties in accordance with paragraph 2;
- (c) the details of operation of the appropriate buy-in process referred to in paragraphs 3 to 8, including appropriate timeframes to deliver the financial instrument following the buy-in process

referred to in paragraph 3. Such timeframes shall be calibrated taking into account the asset type and liquidity of the financial instruments;

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

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

(f) a methodology for the calculation of the cash compensation referred to in paragraph 7;

(g) the conditions under which a participant is deemed consistently and systematically to fail to deliver the financial instruments as referred to in paragraph 9; and

(h) the necessary settlement information referred to in the second subparagraph of paragraph 10.

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

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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

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

3.3 Annex III – High-level cost benefit analysis

3.3.1 Executive Summary

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

As indicated in section 2.3 above, given the input already received from market participants, ESMA considers that it would be highly disproportionate to conduct an open public consultation at this stage both in relation to the scope and impact of the draft RTS concerned, as well as in relation to the particular urgency of the matter. Nevertheless, ESMA has conducted a high-level analysis of the potential costs and benefits of the proposed amendment.

3.3.2 Introduction

Given the impact of the COVID-19 pandemic on the implementation of changes in the market participants' systems and the extent of the changes required for the implementation of the settlement discipline regime, ESMA proposes to amend the RTS on settlement discipline in order to delay its entry into force until 1 February 2022.

3.3.3 Baseline

The purpose of the amending draft RTS on settlement discipline proposed in Annex IV hereto is to delay its entry into force until 1 February 2022.

3.3.4 Cost benefit analysis

Postponing the date of entry into force of the RTS on settlement discipline until 1 February 2022

On the basis of the analysis below, ESMA concludes that the benefits of postponing the date of entry into force of the RTS on settlement discipline until 1 February 2022 outweigh the costs.

Policy objective	To allow for sufficient time for market participants and authorities to make the necessary IT system changes, to develop and update the relevant ISO messages, and to put in place the legal arrangements needed for the implementation of the settlement discipline regime under the RTS on settlement discipline.
Technical proposal	To postpone the date of entry into force of the RTS on settlement discipline until 1 February 2022.
Benefits	<p>Sufficient time for market participants and authorities to make the necessary IT system changes, to develop and update the relevant ISO messages, and to put in place the legal arrangements needed for the implementation of the settlement discipline regime under the RTS on settlement discipline.</p> <p>Avoid the risk of non-compliance with legal requirements due to technical impossibilities.</p> <p>Lower the risk of disorderly and fragmented implementation due to the heterogeneity of COVID-19 national situations and measures, as delaying the date of entry into force to a later date should allow for a more harmonised implementation across the EU.</p> <p>The expected impact of the proposed change will represent a relief for market participants and authorities.</p> <p>Legal certainty and transparency for the market.</p>
Costs	No additional costs are envisaged.

3.4 Annex IV – Draft regulatory technical standards

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

of []

(text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012⁷, and in particular Article 6(5) and Article 7(15) thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2018/1229⁸ specifies measures to prevent and address settlement fails, and to encourage settlement discipline. Those measures include monitoring settlement fails and collecting and distributing cash penalties for settlement fails. Delegated Regulation (EU) 2018/1229 also specifies the operational details of the buy-in process.

⁷ OJ L 257, 28.8.2014, p. 1

⁸ 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 (OJ L 230 13.9.2018, p. 1).

- (2) The entry into force of Delegated Regulation (EU) 2018/1229 was deferred until 1 February 2021 according to Delegated Regulation (EU) 2020/1212⁹.
- (3) Stakeholders have indicated that the COVID-19 pandemic has seriously impacted the overall implementation of regulatory projects and IT deliveries by CSDs and their participants. During this unprecedented time, financial institutions have had to focus their efforts on the implementation of effective contingency plans to ensure day-to-day operational and cyber resilience, which limited the IT capacity of institutions to carry out certain complex projects, including for those required to comply with the settlement discipline. Therefore, it is appropriate to provide stakeholders with more time to complete the necessary preparations required for the application of the settlement discipline requirements, and the entry into force of Delegated Regulation (EU) 2018/1229 should accordingly be further deferred.
- (4) Delegated Regulation (EU) 2018/1229 should therefore be amended accordingly.
- (5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority (ESMA).
- (6) ESMA has not conducted any open public consultations, as it would be deemed highly disproportionate given the scope and the expected impact of this amendment being limited. ESMA has also taken account of the previously provided input from the market participants. Moreover, in these unforeseen circumstances it is urgent to provide legal certainty as to a new date of entry into force of the settlement discipline regime in order for market participants to prepare for the implementation accordingly. ESMA has nevertheless conducted a high-level analysis of the potential related costs and benefits and has requested the advice of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council¹⁰. In developing the draft regulatory technical standards, ESMA has also cooperated with the members of the European System of Central Banks,

HAS ADOPTED THIS REGULATION:

⁹ Commission Delegated Regulation (EU) 2020/1212 of 8 May 2020 amending Delegated Regulation (EU) 2018/1229 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (OJ L 275, 24.8.2020, p. 3–4).

¹⁰ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

Article 1

Amendment to Delegated Regulation (EU) 2018/1229

Article 42 of Delegated Regulation (EU) 2018/1229 is replaced by the following:

“Article 42

Entry into force

This Regulation shall enter into force on 1 February 2022.”

Article 2

Entry into force and application

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President
