



Annex 26 to the GTC of OeKB CSD  
Settlement Discipline  
Regime

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## Definitions

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<b>CSDR</b>	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
<b>Commission Delegated Regulation (EU) No. 2017/389</b>	Commission Delegated Regulation (EU) 2017/389 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council as regards the parameters for the calculation of cash penalties for settlement fails and the operations of CSDs in host Member States
<b>Commission Delegated Regulation (EU) 2018/1229</b>	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
<b>ECSDA Framework</b>	ECSDA CSDR Settlement Fails Penalties Framework (available at ECSDA Website <a href="#">Link</a> )

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# 1. Penalty Mechanism

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OeKB CSD has implemented procedures for a Penalty Mechanism according to article 7 (2) CSDR and according to Commission Delegated Regulation (EU) 2018/1229.

OeKB CSD follows an European harmonised approach in all aspects of the Penalty Mechanism, which is outlined in the ECSDA Framework.

## 1.1 Securities and transactions in scope of Penalty Mechanism

OeKB CSD identifies the financial instruments subject to cash penalties on business day D+1, based on data available from ESMA registers and databases (as well as based on other sources of information, if the necessary information is not covered by the ESMA registers and databases) on business day D (i.e. the date of publication in the ESMA registers and databases or other sources of information) according to [ESMA Q&As](#). The following registers and databases published by ESMA are used by OeKB CSD for the application of cash penalties under article 7 of CSDR:

- (1) To identify the financial instruments referred to in article 5(1) of CSDR which are admitted to trading or traded on a trading venue, and the asset type to which they belong, as well as the trading venues on which they are admitted to trading or traded, for the purpose of determining the market values referred to in article 7 of the Commission Delegated Regulation (EU) 2017/389:

[Financial Instruments Reference Database \(FIRDS\)](#)

- (2) To identify the most relevant market in terms of liquidity referred to in article 4 (1) (a) of MiFIR, for the purpose of determining the market values referred to in article 7 (a) of the Commission Delegated Regulation (EU) 2017/389:

[Financial Instruments Transparency System \(FITRS\)](#)

- (3) To identify the shares referred to in article 7 (13) of CSDR, having their principal trading venue in a third country, which are exempted from the application of cash penalties under article 7 of CSDR:

[List of exempted shares \(having their principal trading venue located in a third country\)](#)

OeKB CSD has ordered those required data for daily supply to T2S Penalty Mechanism at a professional Data Vendor.

- (4) To verify if the place of trading indicated in a settlement instruction is an SME growth market, for the purpose of applying the penalty rates referred to in points 3 and 6 of the Annex to the Commission Delegated Regulation (EU) 2017/389:

[List of Trading Venues/ Systematic Internalisers/ Data Reporting Service Providers](#)

An application of different penalty rates for SME growth markets is implemented in T2S Penalty Mechanism.

Transaction types Intra, Cross and External with transaction qualifier CORP and technical instructions by OeKB CSD are not in scope of settlement fails penalties.

## 1.2 Settlement Fails Penalties Reporting

OeKB CSD sends a semt.044 and MT537 Daily Penalty Report for transaction types Intra and Cross based on calculations of T2S Penalty Mechanism per Party BIC. In addition to that OeKB CSD sends MT537 Daily Settlement Fails Reports for transaction type External based on calculations of our custodian. OeKB CSD provides participants with empty Daily Settlement Fails Reports if there are no settlement fail transactions of the previous business day which are in scope of Penalty Mechanism.

In case of incorrect penalties OeKB CSD corrects those penalties and sends a Modified Penalty Report with corrected penalties on the following business day. There are no empty Modified Reports.

For transaction type Intra in non-euro currencies (e.g. USD), T2S Penalty Mechanism is not able to penalize the correct Party BIC in case of lack of money. In such cases OeKB CSD will automatically perform a switch of that penalty which will be shown in the next Modified Report.

On 14<sup>th</sup> business day of the following month OeKB CSD sends a Monthly Penalty Report. If there are no penalties during the whole previous month there will be an empty Monthly Penalty Report.

In all Settlement Fails Reports send by OeKB CSD transactions with CCPs are included.

Details about MT537 are shown in Annex 18 (User Manual Settlement SWIFT ISO 15022) of the GTC of OeKB CSD.

## 1.3 Penalty Rates

Depending on the category of financial instruments following rates apply.

Penalty rates applicable to settlement fails according to the Annex Commission Delegated Regulation (EU) No. 2017/389:

Type of fail	Rate
1. Settlement fail due to a lack of shares that have a liquid market within the meaning of point (b) of Article 2(1)(17) of Regulation (EU) No 600/2014, excluding shares referred to in point 3	1,0 basis point
2. Settlement fail due to a lack of shares that do not have a liquid market within the meaning of point (b) of Article 2(1)(17) of Regulation (EU) No 600/2014, excluding shares referred to in point 3	0,5 basis point

<p>3. Settlement fail due to a lack of financial instruments traded on SME growth markets, excluding debt instruments referred to in point 6</p>	<p>0,25 basis point</p>
<p>4. Settlement fail due to a lack of debt instruments issued or guaranteed by:</p> <ul style="list-style-type: none"> <li>a) a sovereign issuer as defined in Article 4(1)(60) of Directive 2014/65/EU;</li> <li>b) a third country sovereign issuer;</li> <li>c) a local government authority;</li> <li>d) a central bank;</li> <li>e) any multilateral development bank referred to in the second subparagraph of Article 117(1) and in Article 117(2) of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>1</sup></li> <li>f) the European Financial Stability Facility or the European Stability Mechanism</li> </ul>	<p>0,10 basis point</p>
<p>5. Settlement fail due to a lack of debt instruments other than those referred to in points 4 and 6</p>	<p>0,20 basis point</p>
<p>6. Settlement fail due to a lack of debt instruments traded on SME growth markets</p>	<p>0,15 basis point</p>

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<sup>1</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

7. Settlement fail due to a lack of all other financial instruments not covered in points 1 to 6	0,5 basis point
8. Settlement fail due to a lack of cash	Official interest rate for overnight credit charged by the central bank issuing the settlement currency with a floor of 0

#### 1.4 Collection and Distribution of Settlement Fails Penalties

OeKB CSD calculates the participant´s Global Net Amount based on the amounts shown in the monthly report, with the exception of amounts resulting from failed transactions of which at least one participant has been a CCP. On 15<sup>th</sup> business day OeKB CSD instructs the relevant NCBs with PFOD accordingly with Intended Settlement Date 17<sup>th</sup> business day.

Participants with a negative Global Net Amount are obliged to fund their respective T2S DCA on start of the 17<sup>th</sup> business day (10:00 am CET at the latest) in order to allow settlement of the PFOD instruction.

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## 2. Settlement Efficiency

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Participants can monitor their Settlement Efficiency Rate in the Settlement Client daily.

OeKB CSD identifies the top 10 participants with the highest settlement fail rates in volume and the top 10 participants with the highest settlement fail rates in value on a monthly basis. These participants are reported to the competent and relevant authority by OeKB CSD.

According to article 13 (2) Commission Delegated Regulation (EU) 2018/1229 OeKB CSD has established working arrangements with these top 10 participants to analyse the main reasons for the settlement fails.

The working arrangement with these top 10 participant stipulated in article 13 (2) Commission Delegated Regulation (EU) 2018/1229 is as follows:

- OeKB CSD informs the top 10 participants concerned on the 1<sup>st</sup> business day of the month following the calculation.
- The informed participants have to submit the form ([Appendix 1](#)) to OeKB CSD until the 3<sup>rd</sup> business day of the month following the calculation.

Details about the queries and display of the Settlement Efficiency Rates are shown in Annex 17 (User Manual Settlement Client) of the GTC of OeKB CSD.



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### 3. Suspension Mechanism

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According to article 39 Commission Delegated Regulation (EU) 2018/1229 a participant will be suspended if the participant consistently and systematically fails to deliver in the SSS, where its rate of settlement efficiency, determined by reference to the number or to the value of settlement instructions, is at least 15% lower than the rate of settlement efficiency of the SSS, during at least a relevant number of days over the 12 previous months.

According to article 7 (9) CSDR OeKB CSD has established a procedure with CCP.A GmbH and Wiener Börse AG, that enables OeKB CSD, CCP.A GmbH and Wiener Börse AG to suspend, in consultation with their respective competent authorities, any participant that fails consistently and systematically to deliver the financial instruments referred to in article 5(1) CSDR on the Intended Settlement Date and to disclose to the public its identity after having given that participant the opportunity to submit its observations and provided that the competent authorities of OeKB CSD, CCP.A GmbH and Wiener Börse AG, and of that participant have been duly informed.

**The procedure is as follows:**

- OeKB CSD informs the participant(s) concerned immediately after the 12 months period.
- The participant(s) concerned have to submit the form ([Appendix 2](#)) to the OeKB CSD within one week.

