

CSD-R SETTLEMENT DISCIPLINE – FAQ

The information contained in this FAQ section is provided on an informative basis only with no guarantees of completeness, accuracy or timeliness. Please consult the referenced documentation elsewhere on www.nbbsss.be for the full legal and operational information.

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1. Computation of cash penalties

1.1. As an Issuer/Issuing Agent, how does the CFI affect the penalty rate?

The right CFI ensures the right security penalty rate. The security penalty rate is defined based on the type of instrument and whether or not it is traded on SME growth markets. The type of instrument is derived from the CFI code of the security, so having the correct CFI code guarantees that the correct penalty rate will be applied. The CFI code of a security is defined by the National Numbering Agency (NNA) based on the Terms and Conditions of the security. We advise to mention as explicitly as possible all elements that can influence the definition of the CFI code (e.g. state guarantee status).

1.2. How will the Late Matching Fail Penalty (LMFP) be calculated?

In the current fines system (that will be removed on 01/02/2022 at the entry into force of the CSD-R Settlement Discipline), an instruction entering the system with an Intended Settlement Date (ISD) in the past shall be charged with a fixed fine. Under the Settlement Discipline regime, a LMFP will be computed based on the number of days between the ISD and the matching date, so the penalty can be far higher than the previous fine. Please be advised to pay attention to the Intended Settlement Date.

1.3. Are cash penalties settled in EUR?

In principle, cash penalties are settled in EUR. For more details, please consult slide 3 of [the CSD-R Settlement Discipline presentation](#) at the NBB-SSS User Committee on 06/12/2021.

1.4. Why is a security excluded from cash penalties ?

As explained in the first info-session (https://www.nbb.be/doc/ti/nbbsss/20191112_infosession/20th_information_session_nbb-sss_csd-r_sd.pdf), the scope of instruments subject to the CSD-R settlement discipline is :

- CSD-eligible MiFID II/ MiFIR financial instrument:
 - admitted to trading or traded on an EU trading venue; or
 - cleared (or eligible for clearing) by an EU CCP.
- excluding shares when their principal trading venue is located in a third country.

This definition is in line with the ECSDA CSD-R Penalties Framework (https://ecsd.eu/wp-content/uploads/2021/10/2021_10_05_ECSDA_CSDR_Penalties_Framework.pdf), which is the market practice for the application of the CSD-R Settlement Discipline, and is also reflected in the Annex 30 of the NBB-SSS Terms and Conditions (https://www.nbb.be/doc/ti/nbbsss/annexes/annex_30_settlement_discipline_regime.pdf).

Therefore, if a security is not admitted to trading on an EU trading venue and not cleared by an EU CCP, it will not be eligible and not in the Financial Instrument Reference Database (FIRDS) of the European Securities and Markets Authority (ESMA).

If you wish to check if a security issued in the NBB-SSS is subject to the CSD-R Settlement Discipline, you have two possibilities :

- On the NBB-SSS platform (Ramses), go in “Static Data”, “Securities”, “List” then search for the security (using its ISIN code for example). Once identified, you can find the attribute “Subject to Cash Penalties” under the tab “Properties” of the security.
- In the FIRDS database online search (https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds), you can search for a security by inputting its ISIN code in the field “Instrument identification code”. If the search displays “No data found”, then it means that the security is not eligible, else it is eligible.

1.5. What is the Cash discount penalty rate ?

As explained in the Annex 30¹ of the NBB-SSS Terms & Conditions, the cash discount rate is the official interest rate of the central bank issuing the settlement currency that should evidence the borrowing costs for that currency (i.e. it is the official interest rate for overnight credit charged by the central bank issuing the settlement currency with a floor of 0 and divided by 360).

For EUR, it the Marginal lending facility rate, which is available on the Key ECB interest rates website².

2. Reporting of cash penalties

2.1. How can I follow up on my institution’s penalties?

You can check your penalties in the RAMSES GUI (the platform of the NBB-SSS).

As explained during the an info session³, you can also subscribe to the following cash penalties reports (semt.044 MX message):

- Daily
 - Daily Cash Penalty List : newly computed penalties for the previous business day

¹ https://www.nbb.be/doc/ti/nbbsss/annexes/annex_30_settlement_discipline_regime.pdf

² https://www.ecb.europa.eu/stats/policy_and_exchange_rates/key_ecb_interest_rates/html/index.en.htm

³ https://www.nbb.be/doc/ti/nbbsss/20200612_infosession/4-csd-settlement-discipline.pdf

- List of Modified Penalties : penalties removed, re-included, re-allocated, switched, recalculated
 - Sent by T2S at the latest at 12:00, forwarded by the NBB-SSS after having received it
- Monthly
 - Full list of active penalties for the month
 - Without calculation and transaction details
 - With the counterparty CSD aggregated amounts to be paid or received
 - Sent by T2S at the latest at 12:45 on the 14th BD, forwarded by the NBB-SSS after having received it and added the global net amounts

2.2. How can my institution receive the semt.044 messages?

If you want to receive penalties reports (ISO20022 semt.044 messages through SWIFT) from :

- The NBB-SSS :
 - If not already done, ask your SWIFT administrator to subscribe to the NBB-SSS Close User Group.
 - Please fill, sign and return the second page of [annex 1.a](#) using e-signed email to sss@nbb.be. You can subscribe independently to :
 - Daily Cash Penalty List & List of Modified Penalties : fill the line “Penalties Report – Daily” with your SWIFT DN (like “ou=prod,o=nbbebebb,o=swift “)
 - Monthly reports : fill the line “Penalties Report – Daily” with your SWIFT DN
- T2S (only for DCPs and be aware that the global net amounts are not reported in the monthly reports sent by T2S) : please connect to the T2S GUI and subscribe to the reports.

Please note that there is a fee of 0.25 EUR per semt.044 message. Taking into consideration that there are two daily reports and one monthly report, with approximately 22 working days per month, this would lead to a monthly fee cost of around 11.25 EUR $((2*22)+1)*0.25$ EUR) when subscribing to all semt.044 messages.

2.3. Will NBB-SSS send MT537 messages for the penalties?

As explained in our [first info-session](#) on 12/11/2019 and repeated in the other presentations, the NBB-SSS will not send any MT messages for cash penalties (including the hybrid MT537 for cash penalties) as the overall aim is the migration to ISO20022 messaging for all NBB-SSS traffic.

2.4. Is there any difference of content between the CSD-R penalties reports sent by T2S to DCPs and the ones sent by the NBB-SSS to its participants (T2S ICPs)?

- Daily reports sent from T2S to DCPs: these reports should be the same as the daily reports sent by the NBB-SSS.
- Monthly report sent from T2S to DCPs: these reports should be the same as the daily reports sent by the NBB-SSS EXCEPT that the NBB-SSS adds (if there are any penalty to report) global net amounts per currency and CSD under <AggtdAmt> / <CtrPtyCSDAggtdAmt> / <GblNetAmt>.

3. Appeal of cash penalties

3.1. By when to appeal a penalty?

The appeal period of a cash penalty ends on the 10th business day of the month following its computation. It means that for each penalty, there are at least 10 business days to ask questions about a penalty and eventually to appeal. As processing an appeal takes time, please closely follow up your penalties and investigate as soon as possible to avoid appealing late.

3.2. What reasons are considered as valid to introduce an appeal ?

The current valid reasons for an appeal are documented in the ESMA Q&A on CSD-R⁴ and are:

- ISIN suspension from trading or settlement
- Settlement instructions involving cash settlement outside the securities settlement system operated by the CSD if, on the respective day, the relevant payment system is closed for settlement
- Technical impossibilities at the CSD level that prevent settlement

4. Collection and redistribution of cash penalties

4.1. How can we be informed of the amounts that will be credited or debited on our DCA ?

There are actually two ways to know which amounts will be credited or debited from your DCA :

- In the monthly report (to which you can subscribe and only in ISO20022), you can find the global net amounts (per currency and CSD under <AggtdAmt> / <CtrPtyCSDAggtdAmt> / <GblNetAmt>) which are the amounts that will be debited or credited.
- As the NBB-SSS generates the instructions to debit or credit the DCA on the 15th business day with intended settlement date on the 17th business day, if you monitor your instructions you will also be able to monitor the amounts that will be credited or debited.

⁴ <https://www.esma.europa.eu/rules-databases-library/questions-and-answers>

4.2. How will cash penalties be collected and redistributed?

The Participant's main DCA will be used to collect and redistribute the cash penalties using PFoD instructions. For the Participants having more than one DCA, the DCA linked to the own Securities Account will be used.

4.3. How can we monitor the PFoD instructions generated by the NBB-SSS for the collection and redistribution ?

Here are two of the possible ways :

4.3.1. SWIFT messages

If you have subscribed to MT54x messages, then you will receive the following messages :

1) MT548 for settlement status and processing advice as soon as the NBB-SSS creates the PFoD instruction(s)

2) When a PFoD instruction settles :

- MT545 for receive against payment confirmation (in case you pay a global net amount)
- MT547 for deliver against payment confirmation (in case you receive a global net amount)

4.3.2. Ramses

On the NBB-SSS platform, you can follow-up the PFoD instruction(s) by going into "Settlement", "Instructions", "List" and then look for the instructions using the ISIN LU2128008567 (which is used only for the PFoDs related to the collection and redistribution of cash penalties).

5. Miscellaneous

5.1. How will this be implemented?

See communication sent to the Participants on 26/10/2021:

Reference: [NBB-SSS Terms and conditions v. 1/2/2022](#) and updates of the [Annexes to the NBB-SSS T&C v. 1/2/2022](#).

The T&C were first consulted with the NBB-SSS User Committee and have recently been approved by the NBB Board. The new T&C and annexes are applicable as from 1 February 2022.

Main changes:

1. *Installation of the CSD-R Settlement Discipline (was postponed from 1 February 2021 towards 1 February 2022 as decided by the European Commission).*
 - a. *Art.6.3.5: Settlement fails.*
 - b. *Art.8.3: Penalties for settlement fails (between Participants), see new Annex 30.*
2. *Updated fees.*

- a. *Art. 8.1.3: Daily and monthly reporting of CSDR Settlement Discipline penalties: message fee for semt.044 at 0,25 EUR.*
- b. *Art.8.1.8: Penalty regime fee: new flat fee at 200 EUR/month to cover the penalty regime.*
- c. *Art.8.2: abolition of previous fines at 100 EUR/200 EUR (from Participants to NBB-SSS): for shortage of securities (LACK), for shortage of liquidity on the DCA/FCA (MONY), for non-released Instructions (HOLD), for late Instructions (LATE).*

5.2. Is it correct that the buy-in regime has been postponed?

Yes. The European Parliament and the European Council have officially agreed to postpone the implementation of the mandatory buy-in regime included in the CSD-R Settlement Discipline. The NBB-SSS has therefore prepared a new version of its Terms & Conditions without the buy-in regime. Nevertheless, this new version (that will enter into force on 01/02/2022) will only be published when an official legal text endorsing the postponement has been published.

5.3. When does the Dry Run of the T2S penalty mechanism end?

The T2S Penalty mechanism is being tested in "Dry Run" until the entry in force on 1/02/2022. The penalties computed during the Dry Run will not be collected and redistributed and will not be cleaned (removed, amount put to 0,...) in order to avoid massive update reports.