

Guidelines

On the Process for the Calculation of the Indicators to Determine the Substantial Importance of a CSD for a Host Member State





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I. Executive Summary

1 Reasons for publication

1. Article 24 of Regulation (EU) No 909/2014¹ (CSDR) establishes various cooperation measures between home and host Member States' competent authorities where a CSD provides its services cross-border. More specifically, Article 24(4) of CSDR provides that home and host competent authorities and the home and host relevant authorities shall establish formal cooperation arrangements for the supervision of a CSD where the activities of such CSD have become “of substantial importance for the functioning of the securities markets and the protection of the investors” in the host Member State.
2. The Commission Delegated Regulation (EU) 2017/389² specifies the criteria under which the operations of a CSD in a host Member State could be considered “of substantial importance for the functioning of the securities markets and the protection of the investors” in the host Member State. In order to calculate the relevant indicators based on these criteria, competent authorities need to use aggregated data at EU level. However, individual competent authorities may face challenges in collecting and aggregating all the relevant data from CSDs across the EU. In addition, such an approach may lead to duplication of efforts for the competent authorities and may generate risks regarding the use of inconsistent data.
3. Given the need to use consistent data aggregated at EU level for the calculation of the indicators based on the criteria specified in the Commission Delegated Regulation (EU) 2017/389, ESMA has decided to issue Guidelines on the process for the collection, processing and aggregation of the data and information necessary for the calculation of the indicators to determine the substantial importance of a CSD for a host Member State.
4. Having regard to ESMA's task to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture through the establishment of consistent, efficient and effective supervisory practices, ESMA should undertake a coordination role in the process of centralising and aggregating the data received from CSDs, including central banks acting as CSDs. Competent authorities should perform the calculations for the indicators based on the data centralised and aggregated by ESMA.

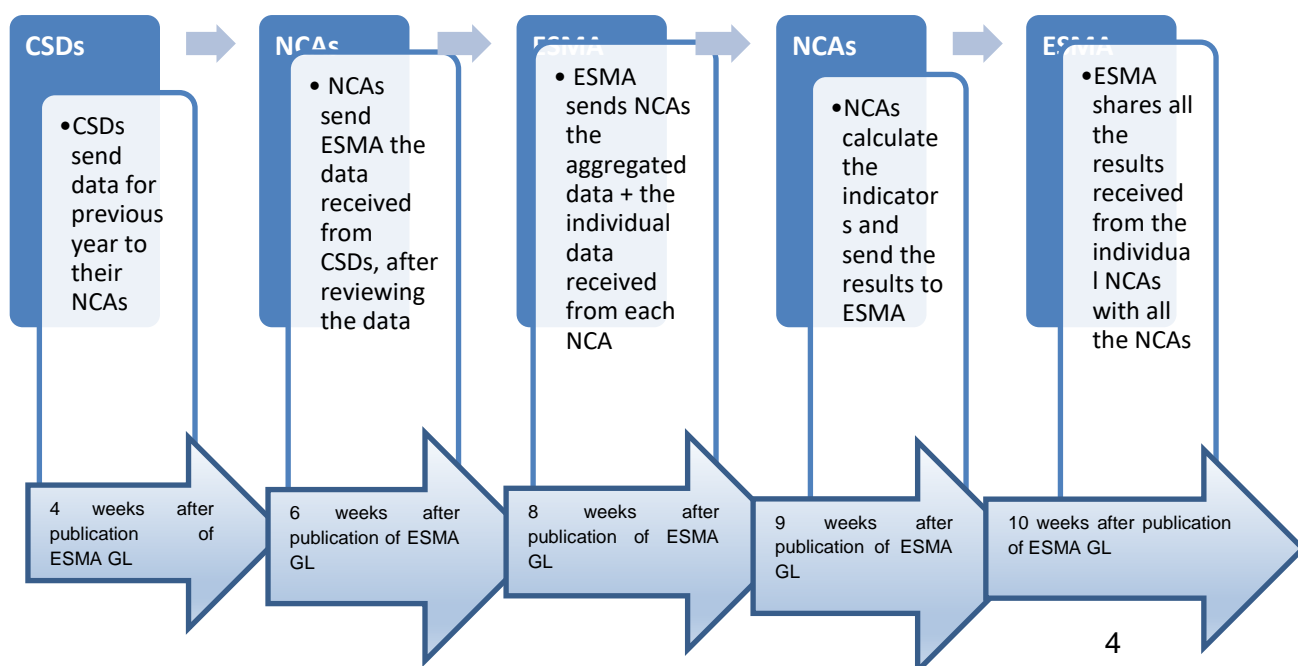
¹ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

² 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 (OJ L 65, 10.3.2017, p. 1–8)



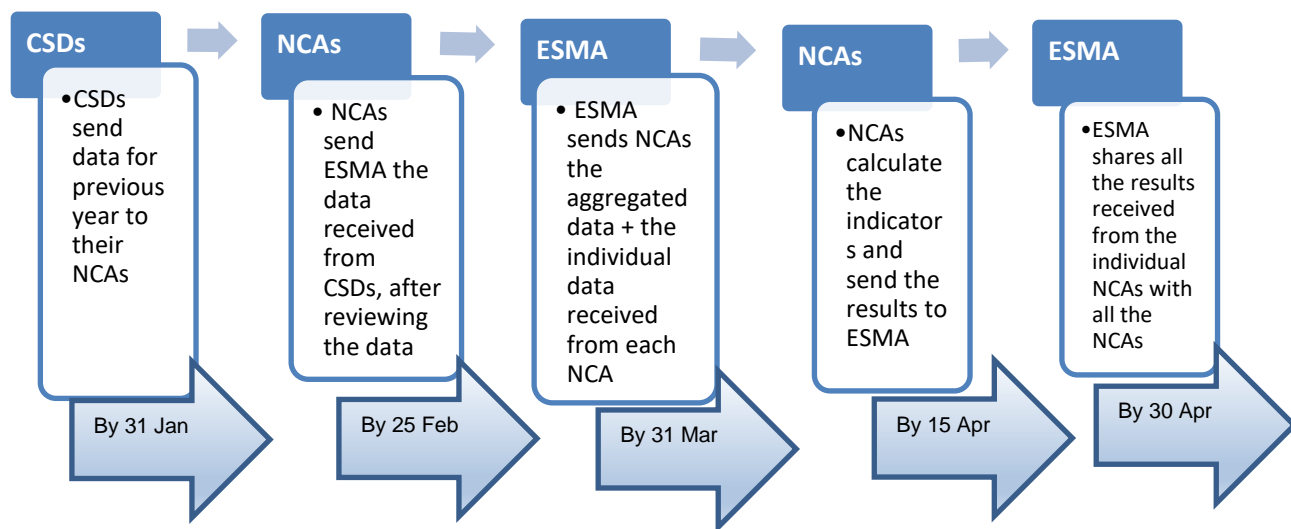
5. Even though the indicators will not be calculated for central banks acting as CSDs (given that they are exempted from certain CSDR requirements under Article 1(4) of CSDR), it is important that central banks acting as CSDs should send the relevant data which will be used to determine the values for the denominators, in order to have a full picture of the activity at EU level for the respective indicators.
6. In order to ensure a consistent application of the relevant provisions of the Commission Delegated Regulation (EU) 2017/389, the guidelines clarify the scope of the data to be reported for the purpose of the calculation of the relevant indicators, by providing examples regarding the types of transactions and operations that should be included, as well as examples regarding the types of transactions and operations that should not be included.
7. In the pursuit of the same objective, and in particular to ensure a harmonised and consistent approach for data reporting across CSDs for the purpose of the calculation of the indicators based on the criteria referred to in points (a) and (b) of Article 6(1) of the Commission Delegated Regulation (EU) 2017/389, these guidelines propose common parameters for reporting settlement instructions (i.e. without double-counting settlement instructions depending on the manner in which they are settled: through CSD links or not). These parameters would not affect the application of substantive rules related to settlement, including in relation to Directive 98/26/EC and national securities and property laws.
8. Having regard to the date of entry into force of the Commission Delegated Regulation (EU) 2017/389, these guidelines describe a general process to be used for the data collection and calculation of the indicators starting with 1 January 2018, as well as an initial process to be used for the first application of the general process in 2017 covering the reporting period of 1 January to 31 December 2016.

Outline of Initial Process (to be applied in 2017)





Outline of General Process (to be applied from 1 January 2018)



2 Content

9. Section II includes the full text of the Guidelines on the Process for the Calculation of the Indicators to Determine the Substantial Importance of a CSD for a Host Member State.

3 Next steps

10. The guidelines in Section II will be translated into the official languages of the European Union and published on ESMA's website.



II. Guidelines on the Process for the Calculation of the Indicators to Determine the Substantial Importance of a CSD for a Host Member State

1 Scope

Who?

1. These guidelines apply to competent authorities designated under Regulation (EU) No 909/2014³ (CSDR).

What?

2. These guidelines apply in relation to the process for the collection, processing and aggregation of data and information necessary for the calculation of the indicators to determine the substantial importance of a CSD for the functioning of the securities markets and the protection of investors in a host Member State, in accordance with Article 24(4) of CSDR.

When?

3. These guidelines apply from 28/03/2018.

2 Definitions

4. Terms used in these guidelines have the same meaning as in the CSDR and in the Commission Delegated Regulation (EU) 2017/389⁴.

3 Purpose

5. The purpose of these guidelines is to ensure common, uniform and consistent application of the provisions of Article 24(4) of CSDR. In particular, they provide guidance on the process for the collection, processing and aggregation of data and on the information necessary for the calculation of the indicators to determine the substantial importance of a

³ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directive 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

⁴ 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 (OJ L 65, 10.3.2017, p. 1–8)



CSD for the functioning of the securities markets and the protection of investors in a host Member State.

4 Compliance and reporting obligations

4.1 Status of the guidelines

6. This document contains guidelines issued under Article 16 of the ESMA Regulation⁵. In accordance with Article 16(3) of the ESMA Regulation competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.
7. Competent authorities to whom these guidelines are addressed should comply by incorporating them into their supervisory practices.

4.2 Reporting requirements

8. Competent authorities to whom these guidelines are addressed must notify ESMA [*to: csdr.data@esma.europa.eu*] whether they comply or intend to comply with these guidelines, with reasons for non-compliance, within two months of the date of their publication. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available on ESMA's website. However, in order to ensure the smooth and timely implementation of the process for the collection, processing and aggregation of data for the calculation of indicators referred to in these guidelines, it is advisable that competent authorities notify ESMA as soon as possible, and preferably within two weeks of the date of publication of these guidelines.
9. The date of publication of these guidelines means the date of their publication on ESMA's website in all official languages of the EU.
10. Central securities depositories (CSDs) are not required to report whether they comply with these guidelines.

⁵ 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).



5 Guidelines on determining the substantial importance of a CSD for a host Member State

5.1 Scope of data to be reported by CSDs

11. Competent authorities should ensure that CSDs, including central banks acting as CSDs, report the relevant data and information in the format provided in the templates included in the Annex. The list of CSDs (including central banks acting as CSDs) specified in the templates included in the Annex should be updated by the competent authorities on an annual basis.
12. All the values reported by CSDs, including Central Banks acting as CSDs, should be expressed in EUR, and the exchange rates used should be specified. The exchange rates used should be those valid for the last day of the calendar year for which data is reported. Where available, the exchange rate of the European Central Bank should be used for the conversion of other currencies into euros.
13. For the purposes of the criteria referred to in points (a) and (b) of Article 5(1) of the Commission Delegated Regulation (EU) 2017/389, CSDs, including central banks acting as CSDs, should use data pertaining to valid securities on 31 December of the previous calendar year, which should not include cancelled securities issues.
14. Competent authorities should ensure that CSDs, including central banks acting as CSDs, use the market value for each ISIN, applicable on 31 December of the previous calendar year and identified in accordance with Article 7 of Commission Delegated Regulation (EU) 2017/389, when determining the market value for the purposes of the indicators based on the criteria referred to in points (a) and (b) of Article 5(1) of the Commission Delegated Regulation (EU) 2017/389.
15. The data for the indicators based on the criteria referred to in points (a) and (b) of Article 6(1) of the Commission Delegated Regulation (EU) 2017/389 should include values of settlement instructions settled by each CSD, based on the following data reporting parameters:
 - a) The data should include absolute values of settlement by each CSD covering the previous calendar year.
 - b) All categories of settlement instructions settled by a CSD should be included, irrespective of whether they relate to transactions that are executed on a trading venue or on an OTC basis.
 - c) For operations composed of several transactions, such as securities repurchase or lending agreements, both legs should be reported once settled.
 - d) In the case of intra-CSD settlement, the CSD (issuer CSD or investor CSD) should report both legs of a transaction, i.e. it should report the two settlement instructions received.
 - e) In the case where more than one CSD is involved in the settlement of a transaction through standard, customised or indirect links, only the CSD (issuer CSD or investor CSD) settling the two legs of the transaction should report. It should report the two



settlement instructions received. The investor CSD “settling” only one leg of the transaction should not report.

- f) In the case of cross-CSD settlement by CSDs using a common settlement infrastructure or through interoperable links, each CSD should report the single settlement instruction received in relation to a transaction.

16. The settlement instructions could be related to the following types of transactions:

- 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/borrowing operations;
- d) repurchase transactions;
- e) others (including corporate actions on flows, i.e. market claims and transformations).

17. The following types of transactions should be considered out of scope of the 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) primary market operations, meaning the process of initial creation of securities;
- c) creation and redemption of fund units, meaning the technical creation and redemption of fund units, unless such creation and redemption of fund units is done through transfer orders in a securities settlement system operated by a CSD;
- d) realignment operations.

18. The determination of market values for free of payment (FOP) settlement instructions, as referred to in point (b) of Article 6(2) of the Commission Delegated Regulation (EU) 2017/389 should be based on the values as of the day of settlement of each settlement instruction.

19. The country of establishment of the issuer should be taken into account with regard to the criterion referred to in point (a) of Article 5(1) of the Commission Delegated Regulation (EU) 2017/389.

20. The jurisdiction where the parent company is established should be taken into account in the case of participants and other holders of securities accounts referred to in point (b) of Article 5(1) and in point (b) of Article 6(1) of the Commission Delegated Regulation (EU) 2017/389 that are branches.

21. Data to be reported by a CSD should also cover the services provided in relation to the home Member State, as this data is needed in order to calculate the denominators at EU level for the various indicators (e.g. for the purpose of the criterion referred to in point (a) of Article 5(1) of the Commission Delegated Regulation (EU) 2017/389, data to be reported



by a CSD should cover securities issued by issuers from the CSD's home Member State, not only securities issued by issuers from host Member States).

5.2 General process for the collection of data information and the calculation of the indicators to determine the substantial importance of a CSD for a host Member State

22. The general process proposed in this section should be applied from 1 January 2018.
23. Competent authorities should ensure that CSDs, including central banks acting as CSDs, report the relevant data and information for the previous calendar year, which is necessary for the calculation of the indicators based on the criteria specified in the relevant provisions of Articles 5 and 6 of the Commission Delegated Regulation (EU) 2017/389, to them, by 31 January of each year (i.e. data from the 1 January to 31 December of the previous calendar year should be used).
24. Competent authorities should ensure that, prior to the date of application referred to in Article 9(2) of the Commission Delegated Regulation (EU) 2017/389 (two years following the publication of the Regulation in the Official Journal of the EU), CSDs, including central banks acting as CSDs, should only send the information relevant for the criteria referred to in point (a) of Article 5(1) and point (c) of Article 6(1) of the regulation to the competent authorities.
25. After reviewing the data, competent authorities should transmit to ESMA the data received from CSDs, including central banks acting as CSDs, by 25 February of each year.
26. Each competent authority should perform the calculation for the indicators based on the criteria referred to in Articles 5 and 6 of the Commission Delegated Regulation (EU) 2017/389 (as applicable, in respect of each CSD for which it is the home Member State competent authority), upon receipt of the following data from ESMA by 31 March of each year:
 - a) all data received from the individual competent authorities;
 - b) data aggregating the values for the denominators of the indicators based on the criteria referred to in Articles 5 and 6 of the Commission Delegated Regulation (EU) 2017/389, as applicable.
27. Competent authorities should send ESMA the results of the calculation regarding the indicators based on the criteria referred to in Articles 5 and 6 of the Commission Delegated Regulation (EU) 2017/389, as applicable, by 15 April of each year, to enable ESMA to share this information with all the competent authorities by 30 April of each year.
28. The general process specified in this section should also be used once the criteria referred to in Article 5(1)(b) and in Article 6(1)(a) and (b) of the Commission Delegated Regulation (EU) 2017/389 become applicable in accordance with Article 8(2) of the regulation.



5.3 Initial process for the collection of data information and the calculation of the indicators to determine the substantial importance of a CSD for a host Member State

29. For the first application of the general process in 2017 covering the reporting period of 1 January to 31 December 2016, CSDs, including central banks acting as CSDs, as well as competent authorities should apply the general process using the following dates, each date calculated from the date of publication of these guidelines:

- a) CSDs, including central banks acting as CSDs, should report the relevant data necessary for the calculation of the indicators based on the criteria referred to in point (a) of Article 5(1) and point (c) of Article 6(1) of the Commission Delegated Regulation (EU) 2017/389 to the competent authorities, within four weeks;
- b) Competent authorities should transmit to ESMA the data received from CSDs, including central banks acting as CSDs, within six weeks, to enable ESMA to send to competent authorities the aggregated data, as well as the individual data received from each competent authority, within eight weeks;
- c) Competent authorities should send the results for the indicators based on the criteria referred to in point (a) of Article 5(1) and in point (c) of Article 6(1) of the Commission Delegated Regulation (EU) 2017/389 (in respect of each CSD for which they are the home Member State competent authority) to ESMA within nine weeks, to enable ESMA to share this information with all the competent authorities within ten weeks.



6 Annex

6.1 Templates for the collection of data for the substantial importance indicators