KELER - Depository Announcement 9-24

On the Detailed Rules on the Management of Penalties

Effective Date: 2, September 2024

Content

1. General information

1.1. Introductory provisions

The purpose of this Depository Announcement is to set out the details of the sanction mechanism for penalties that KELER is obliged to apply in order to enforce the settlement discipline in conjunction with the provisions of Chapter II.4.9 on Settlement Discipline of the General Business Rules of KELER (General Terms and Conditions of Business). The application of the sanction mechanism is required the CSDR[1] and the related Settlement Discipline Regulation (SDR)[2], and the provisions established by KELER in this Depository Announcement are aligned with these rules.

From the measures affecting settlement discipline, this Depository Announcement details the process and conditions for the application of penalties, the sending of the related reports, and the way in which penalties are collected and distributed.

1.2. Date of review

This announcement is to be continuously reviewed, but at latest

- every two years, by the last working day of the quarter in which it takes effect;
- if there is a change to the rules due to legal changes or for any other reason.

1.3. Scope of regulation

Subject matter: The penalty mechanism applied by KELER to participants (defaulting participants) that cause failure of settlements as part of the penalty mechanism under Article 7(2) of the CSDR.

Persons addressed: the Account Holders participating in the KELER Clearing System and KELER KSZF subject to Article 19 of Article 19 of Regulation (EU) No 2018/1229.

1.4. Related regulatory documents

- 3-01 General Terms and Conditions of KELER,
- Depository Annoucement No 9-20 On the detailed rules for the handling of settlement orders
- Depository Annoucement No. 9-11 On deadlines for receipt, execution and withdrawal of orders
- 3-02 KELER Tariff of Charges

[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] 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 2

1.5. Related legislation and supervisory regulatory instruments:

KELER has established the rules and procedures for penalties based on the following rules and regulatiosn, recommendations and other documents:

- Regulation (EU) No 909/2014 of the European Parliament and of the Council on improving securities settlement within the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (CSDR)

- 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 (SDR)

- Commission Delegated Regulation (EU) 2017/389 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council as regards the parameters for the calculation of penalties for non-compliance and the activities of CSDs in host Member States

- Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 (MiFIR)

- ESMA Questions and Answers - Implementation of the Regulation (EU) No 909/2014 on improving securities settlement in the EU and on central securities depositories

- ECSDA CSDR Penalties Framework.

1.6. Regulations to be repealed

None

1.7. Version tracking

- The earlier version of this Annouccement: v2
- The previous version of this Annouccement: v1.2
  Effective date of the previous Annoucement: April 1,2023

1.8. Terms and abbreviations used in the Annoucement

Terms and expressions used in this Depository Annoucement shall have the meaning given to them in the General Terms and Conditions of Business and in the relevant laws and the ECSDA Framework.

BOTH - CUT-OFF after both parties instructions are in HOLD state

CSD - Central Securities Depository

CUT-OFF - Deadline for settlement within one day

DF - Delivery Free of Payment

DVP - Delivery versus Payment

ECSDA - European Central Securities Depositories Association

ESMA - European Securities and Markets Authority

FITRS - Financial Instruments Transparency System / ESMA database

HOLD - The instruction is in a hold state

INBC - Related settlement order in the same pool is missing (possible for FOP transfers)

ISD - Scheduled settlement date of instruction

LACK - Unsecured status of a security

LINK - Related settlement order in the same pool has failed (possible for FOP transfers) or when the expiring leg of a repo transaction has not been completed due to the failure of the initial leg

LMFP - Late Matching Fail Penatly: penalty for late matching

MONY - Own instruciton unsecured

OTHR - Other reason for failure

PBD - Penalties Business Day: a business day relevant to the management of penalties

PFOD - transfer of funds related to securities, but no securities settlement

PFOD-PAIR - Instructions for the settlement of penalties

PREA -Species instruction is in HOLD status in this case. Indicates defaulting party when imposing a penalty.

PRCY - Partner instruction is in Hold status. Indicates a defaulting party when imposing a penalty

RELEASE - The instruction is in a released for settlement status.

RF - Receipt Free of Payment

RVP - Receive versus Payment

SEFP - Settlemetn Fail Penalty: a penalty to be charged for default

2. Application of penalties

Pursuant to Article 7(2) of the CSDR, KELER shall impose penalties on Account Holders causing failed settlements in the Settlement System.

The penalty, as one of the sanction mechanisms provided for by law, does not form part of the revenues of KELER, but is transferred to the innocent Account Holder affected by the failed settlement.

As for the management of penalties, KELER also follows the recommendations of the European Central Securities Depositories Association (ECSDA)[3], i.e. it applies the guidelines summarised in the ECSDA CSDR Penalties Framework document.

2.1. Financial instruments and instructions subject to a penalties

Penalties shall apply to transactions concluded on both trading venues and on the OTC market.

Penalties may be imposed on matched[4] settlement instructions that have not been settled on the intended settlement date and are for the settlement of MiFID II/MiFIR financial instruments (transferable securities, money market instruments, units in collective investment undertakings, emission allowances) that:

- are tradable on an EU trading venue, or
- may be cleared by an EU CCP
- except for shares whose primary trading venue is in a third country.

The above criteria for establishing whether a financial instrument should be considered subject to a penalty are determined on the basis of the databases maintained by ESMA:

- Instruments admitted to trading venues in the EU are included in the Financial Instruments Data System (FIRDS)[5] database.
- The list of shares whose primary trading venue is outside the EU can be determined on the basis of the Short Selling Regulation (SSR)[6] list.

New or changed data in the ESMA databases are taken into account from the business day following the change.

KELER calculates the penalty for all instructions failed in its own settlement system, including for intra-CSD settlements on the T2S platform. However, no penalties apply to securities blocking transactions, as these transactions do not constitute settlement instructions and do not result in the transfer of financial assets between accounts.

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[3] Detailed information on penalties is provided in the ECSDA CSDR Penalties Framework document. (The latest version available upon the editing of this Depository Announcement is available here: https://ecsda.eu/wp-content/uploads/2021/10/2021_10_05_ECSDA_CSDR_Penalties_Framework.pdf)

[4] Unmatched settlement instructions shall not be subject to penalties, i.e. they can only be taken into account for the purposes of applying a penalty after having been successfully matched. For details, see Chapter 3.3

[5] https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds

[6] https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_mifid_shsexs

If the settlement failure does not take place in the settlement system of KELER but in the system of a foreign CSD subject to CSDR through the intermediation of KELER, or an entity that voluntarily applies a penalty mechanism not covered by the CSDR, the calculation and reporting of the penalties for these settlement instructions shall be the responsibility of the CSD concerned. KELER receives these reports from its Nostro account managers (currently SIX SIS - Switzerland and KDPW - Poland).

KELER also sends daily and monthly reports to its clients on the penalties received from foreign CSDs, and the settlement of penalties levied and passed on by these external settlement venues is also performed by KELER by the debiting or crediting of the client accounts kept with KELER.

Account Holders are responsible for allocating, reporting and passing on the penalty amounts to their clients.

2.2. Types of Penalties and calculation

The following two types of penalties are distinguished, depending on when the matching of the settlement instructions concerned took place in relation to the intended settlement date or cut-off date.

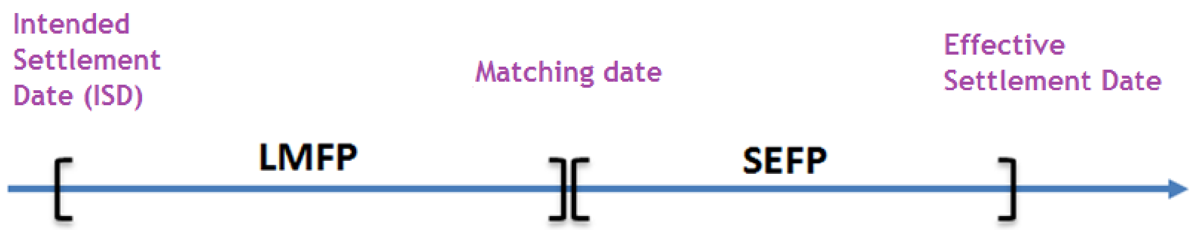


Figure 1 - Types of penalties depending on the intended settlement date

2.3. LMFP (Late Matching Fail Penalty)

If settlement instructions are successfully matched on the business day following the intended settlement date (ISD), or the matching takes place on the intended settlement date but after the settlement cut-off time, before the close of the relevant business day, a late matching penalty may be imposed retroactively for up to several business days (N) at a time, from the intended settlement date to the matching date.

The Account Holder who was the last to submit a settlement instruction shall be liable to pay the penalty. (Including the case where both Account Holders submitted their instructions after the ISD cut-off time.)

In the case of LMFP, the penalty detection date is the same as the date of matching.

Calculation formula for DF, RF, RVP, DVP (i.e. instructions resulting in actual securities movement), where the projection basis for the penalty is the market value of the failed security quantity:

Calculation formula for PFOD instructions (i.e. instructions with no actual securities movement):
In this case, the basis for calculating the penalty is as follows:

Therefore, the penalty calculated for late matching is the sum of the individual penalties calculated for each penalty date (business day).

If a settlement instruction matched in advance is submitted late, the selling (transferring) Account Holder in the instruction shall be deemed to be the at-fault party in default and the penalty shall be thus charged to the seller. However, the selling Account Holder, if approved by the buying Account Holder, may lodge an appeal with KELER to request the reallocation of the penalty to the other party. If the failure was caused by the third party (trading venue) that submitted the instruction, the Account Holders concerned may claim the reimbursement of the amount of the penalty directly from the trading venue, outside the penalty mechanism operated by KELER.

Please note that for securities accounts where the Account Holder has enabled automatic transfer crediting, i.e. where a transfer order (FOP TRAD) from the transferring Account Holder causes KELER to generate a matching settlement instruction on behalf of the receiving Account Holder, in the case of a failed settlement instruction submitted by the transferring party after the ISD cut-off time, the receiving Account Holder shall be deemed to be at fault, given that the instruction automatically generated on its behalf was accepted later according to timestamping.

2.4. SEFP (Settlement Fail Penalty)

Penalty calculated for the period between the intended and effective settlement date(s), payable for settlement instructions that are matched on the intended settlement date, by the applicable CUT-OFF, but not settled on the intended settlement date or on the following business day(s). (To instructions matched after CUT-OFF, the LMFP shall be applied, see 3.3.1.) On any business day, only the SEFP for that day will be charged, i.e. in the case of consecutive failures over several days, SEFP penalties will be calculated separately for each business day.

The penalty detection date for a SEFP-type penalty is the same as the date of settlement failure.

The penalties (SEFPs) are determined on the basis of the status and the reason for failure of the settlement instruction concerned at the end of the settlement window (i.e. CUT-OFF time) relevant for the transaction type concerned. This reason determines whether a penalty is to be imposed on the instruction and which counterparty is subject to the penalty.

Accordingly, for example, in the case of a DVP-type settlement instruction, KELER will look at the relevant settlement cut-off, i.e. the status at 5.30 p.m.: the seller may be subject to penalties due to lack of securities (LACK), the buyer due to a shortage of funds (MONY), and both parties may be subject to penalties simultaneously for instructions held in hold status (PREA, BOTH) (if both parties' instructions are held).

Calculation formula for DF, RF, DVP, RVP instructions (i.e. instructions resulting in actual securities movement):

SEFP = Penalty rate * Securities daily reference price* Securities quantity

Calculation formula for PFOD instructions (i.e. instructions with no actual securities movement):

SEFP = Penalty Rate (overnight credit rate) * Settlementamount

2.5. Calculation methods and penalty rates

The calculation method to be used determines the type of penalty rate.

- A **SECU-type calculation method** shall be used for the following types of settlement instructions resulting in actual securities movements:
  - DF: Delivery Free of Payment
  - RF: Receipt Free of Payment
  - DVP: Delivery versus Payment

The penalty is calculated on the basis of the market value of the quantity of securities failed, i.e. the quantity of securities multiplied by the reference price of the security on the date of failure.

In the case of partial settlement, only the remaining outstanding amount of securities is taken into account.
The applicable penalty rates are set out in Table 1 (see below).
Under the SECU-type calculation methodology, a penalty may be calculated if the settlement instruction of the party at fault has one of the following settlement reason codes at the settlement CUT-OFF time on the relevant business day:

- PENF (Flng) / LACK: lack of securities
- PENF (Flng) / PREA or BOTH*: on hold (by one party or both parties)
- PENF (Flng) / INBC: related settlement instruction in the same pool missing (possible for FOP transfers)
- PENF (Flng) / LINK**: related settlement instruction in the same pool has failed (possible for FOP transfers) or when, in the case of repo transactions, the maturing leg has not been settled due to the failure of the initial leg
- PENF (Flng) / OTHR: in the case of other reasons for failure.

Table 1: Penalty rates to be used for the calculation of penalties (basis point)[7]

(In brackets, the classification of the financial instrument concerned according to the CFI code under the CSDR)

Liquid shares (SHRS)	*1.00 bp*
Illiquid shares (SHRS)	*0.50 bp*

[7] For details, see: Regulation EU 2017/389

Government securities (SOVR)	*0.10 bp*
Corporate bonds (DEBT, MMKT)	*0.20 bp*
Financial instruments traded on SME growth markets (e.g. BSE Xtend), excluding bonds (SHRS)*	*0.25 bp*
Bonds traded on SME growth market (DEBT,MMKT)*	*0.15 bp*
For other financial instruments (SECU, ETFS, UCIT, EMAL, OTHR)	*0.50 bp*

1 basis point (bp) = 0.01 %

Transactions on the SME growth market are identified by KELER on the basis of the MIC code of the Place of Trade in the settlement instruction, if this information is provided.

Illiquid shares are defined on the basis of the ESMA FITRS[8] database (Financial Instruments Transparency).

- A **MIXE calculation method** shall be used for RVP (Receive versus Payment) type settlement instructions. In this case, the market value of the failed securities is the basis for calculation.
  In this case, the penalty rate is the official interest rate charged by the central bank issuing the settlement currency for overnight credit[9], which may not be less than 0. (That is, in the case of a negative interest rate, the amount of the penalty is 0.)
  For each business day, the 1/360th of the published annual interest rate is used for the calculation, i.e. the daily interest rate, which is to be used in the penalty reports as well.

- A **CASH-type calculation method** shall be used for PFOD-type settlement instructions. Since there is no actual movement of securities in these transactions and therefore no market value of the securities can be interpreted, the basis for the calculation of the penalty is the matched settlement amount.
  The penalty rate is equal in this case as well to the official interest rate charged by the central bank issuing the settlement currency on a daily credit basis, which cannot be less than 0. (That is, in the case of a negative interest rate, the amount of the penalty is 0.) See above.

  Under a MIXE or CASH-type methodology, a penalty may be imposed, if the settlement instruction of the party at fault has one of the following reasons for failure on the relevant business day, at the time of the settlement cut-off:
  - PENF (Flng) / MONY: Money unsecured (Buyer)
  - PENF (Flng) / PREA or BOTH*: on hold (by one party or both parties)
  - PENF (Flng) / LINK**: in the case of repo transactions, the maturing leg has not been settled

[8] https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_fitrs_files

[9] For HUF see: https://www.mnb.hu/en/monetary-policy/monetary-policy-instruments/policy-rate-and-interest-rate-corridor/overnight-standing-facilities (O/N covered loan rate), for EUR: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/key_ecb_interest_rates/html/index.en.html (Marginal Lending Facility Rate) (Marginal facility rate)

due to the failure of the initial leg (only for MIXE calculation method)
- PENF (Flng) / OTHR: in the case of other reasons for failure

*If both parties' instructions are on hold at the relevant cut-off time, both the delivering and the receiving party will be charged a penalty according to the relevant calculation method. On this basis, for FOP-type instructions, the amounts of each penalty will be the same but of an opposite sign, so that they will ultimately sum to 0.
In the case of the withholding of settlement instructions against payment by both parties (BOTH reason), different calculation methods and penalty rates applied to DVP and RVP instructions may result in different penalty amounts!

****** In case of a LINK failure reason, the penalty will be automatically charged to both parties involved. However, only the Account Holder who caused the failure of the related (linked) settlement instruction will be considered as the party actually at fault. The Account Holder to be actually penalised and the correct amount of the penalty will be determined manually. KELER will subsequently remove the penalty charged to the innocent Account Holder. The Account Holder(s) concerned may submit an appeal to KELER to have the automatically calculated penalty corrected.

Calculation algorithms		
Transaction type	*Direction*	*Calculation algorithm*
FOP_TRAD FOP_OWNI FOP_SUBS FOP_REDM FOP_MTNS	Both	SECU
DVP_TRAD DVP_SUBS DVP_REDM DVP_PDSS DVP_PRMT DVP_BSEF DVP_BSEA DVP_MTNS REPO_SZALL	DELI	SECU
DVP_TRAD DVP_SUBS DVP_REDM DVP_PDSS DVP_PRMT DVP_BSEF DVP_BSEA DVP_MTNS REPO_SZALL	RECE	MIXE
PFOD_TRAD PFOD_MTNS	Both	CASH

2.6. Currency of the penalties

The currency in which the amount of the penalties (and also the collection or distribution) calculated by KELER is denominated in the case of failed settlements between KELER accounts (intra-CSD):

- if the type of the original settlement instruction is FOP, then the penalty shall be calculated in HUF (also for transactions in securities denominated in foreign currency or for reference prices recorded in foreign currency). KELER determines the amount of the penalty applicable to the FOP settlement instruction based on the exchange rate published at the ECB website in the case of EUR and based on the exchange rate published by MNB in the case of currencies other than EUR (e.g. USD, CHF, GBP).

- if the settlement method is DVP, the penalty is also calculated in the original currency of the settlement instruction.

The currency denomination of the penalties incurred at foreign CSDs is determined by the respective CSDs, and KELER shall report and settle the penalties in the currency in which they are received from its Nostro account manager.

2.7. Daily reference price of the security

For the purpose of calculating the penalty, the market value (price) on the day of fail is determined as follows:

- For equity-type financial instruments, the closing price of the most relevant trading venue (MRM - most relevant market) in terms of liquidity is used, if available. The MIC code indicating the MRM market is contained in the ESMA FITRS database.

- For other financial instruments, the price of the EU trading venue with the highest turnover is used. ESMA will publish a list of the trading venues with the highest turnover assigned to ISINs on a quarterly basis for each financial instrument, based on trading data from the previous quarter, starting in February 2022.

- If the closing price from the trading venue which is most relevant/ has the highest turnover is not available for a given fail date, the last available closing price from that trading venue will be considered to apply. In the absence of a closing price for the trading venue assigned to the security from a date not more than 30 days before the given date, KELER may use a price determined in accordance with its own methodology, including prices published by depositaries and market makers or calculated on a net asset value basis, or, in the absence of an available market price, may use a valuation of the securities at par value.

KELER may also adjust the penalties previously calculated ex-post due to a change in a reference price already used in the reference price system, if the change in the reference price relates to a business day for which a penalty has already been calculated.

In accordance with international practice, the market prices used for the calculation and their sources are not shown in the penalty reports.

3. Penalty reporting, reports

For each penalty, KELER identifies the Account Holder who caused the fail, i.e. the party at fault, who is liable to pay the penalty, and the innocent party, who will be the beneficiary of the penalty. For the purposes of penalties, counterparties are always identified per KELER Account Holder (per KELER Main Account, i.e. based on the first 4 characters of the Central Securities Account Number), and therefore the penalty reports are always prepared at this level, i.e. KELER does not provide a sub-account or underlying principal/clearing member breakdown in its reports.

KELER reports penalties by default in the form of MT537 or semt.044 (via KID). (The message types are the same for daily and monthly reports.)

If the message format chosen by the client is not available for technical reasons, KELER may alternatively, as a substitute, send notifications of the relevant penalty items by electronic mail to the contact persons previously notified to KELER.

The Account Holder may request changes to the setting and subscription rules for reports (channel, zero report) by sending a duly signed electronic document to clientservice@keler.hu via the KELER Central Client Service.

3.1. Daily report

Following failures in its own settlement system, KELER will send a daily report on the penalties to be paid by or credited to the Account Holder and newly detected on any business day, and the details of the related settlement instructions, no later than 12.00 noon on the following business day, as scheduled.

If a previously recorded penalty is amended or cancelled on a business day, the next report will also include these amendments with the original date of detection of the penalty.

The daily reports issued by KELER will include both new penalties for that day and penalties amended or cancelled on that day.

3.2. Monthly report

The monthly report is based on the finalised penalty data for the previous month, i.e. it includes those penalty items with an active status whose penalty detection date falls in the month preceding the month in which the report is sent. (For example, a monthly report in April would include penalties detected between 1 and 31 March.)

The monthly reports include the aggregated net amount of penalties per currency and per settlement partner, as well as the global net amount of penalties actually to be settled against the Account Holder.

The amount to be settled by KELER (global net amount), from 2 September 2024, does include also the amounts of penalties calculated for transactions cleared by the CCP, with regard to Article 19 of EU Regulation 2018/1229.

The monthly report does not include the details of the calculation of the individual penalty amounts and the details of the corresponding settlement instruction.

3.3. Reporting of penalties from foreign CSDs

If a cross-border instruction of a KELER Account Holder to an external (EU) settlement venue fails, the corresponding penalty is calculated by the foreign CSD and reported directly to KELER as participant or, in case of an indirect link, to the Nostro account manager of KELER. KELER will process such information and reports to produce separate daily and monthly reports on external penalties. Thus, a KELER Account Holder who is affected for a given business day (or month) not only by a failure within KELER but also by cross-border transactions as reported by the foreign securities depository will receive several reports for a business day or month.

The reports will be prepared separately at the level of the Nostro account managers of KELER (SIX SIS and KDPW) and these reports on external penalties will be sent by KELER to the Account Holder concerned by 2.00 p.m. on the business day following the given day, as scheduled.

Please note that KELER can only send reports on penalties calculated by foreign securities depositories if it has received and processed them itself. The processing of foreign penalties may sometimes take some time due to the different data content of the reports provided by the individual account managers or underlying CSDs and the multiple actors involved in the settlement chain.

For this reason, KELER's reports on foreign penalties may contain levels of detail different from those on the penalties from KELER's own Settlement System, i.e. for example, certain calculation details or certain data on the underlying instruction may not be provided to our Account Holders!

3.4. Zero report

Upon request, the Account Holder may also request zero (daily and monthly) reports, which are also prepared for business days on which no new penalty was recorded or no previous penalty was modified (daily report), and a zero monthly report is generated even if the Account Holder did not have an active status penalty for the relevant month.

The zero daily report is scheduled to be completed by 2.00 p.m. on business days, taking into account any penalties from foreign securities depositories.

By default, a zero report is not generated for all Account Holders, only on request.

3.5. Life cycle of penalties, penalty calendar

KELER determines the days for the reporting, appealing against and the settling of penalties on the basis of a standardised Penalties Business Calendar, harmonised between countries, in line with the ECSDA CSDs Procedures. Accordingly, all days except Saturdays, Sundays, 25 December and 1 January are considered as Penalties Business Days (PBD). KELER publishes the calendar of penalties for the year on its website at the following address: https://www.keler.hu/Root/Sites/KELER/Kapcsolat/Elérhetőségeink[DNA1] [VH2]

KELER also sets the following dedicated days and deadlines for penalties affecting its own Settlement System. *(All dedicated business days listed below should be regarded as PBDs.)*

1) The Account Holder may lodge an appeal with KELER on the 10th business day of the month (no later than 5.00 p.m.) with regard to the penalty for the previous month[10]

2) A foreign CSD (investor CSD) Account Holder holding an account with KELER can appeal to KELER on the 11th business day of the month (no later than 5.00 p.m.) regarding the penalty for the previous month.

3) The last day on which KELER may make adjustments to the penalty calculated for the previous month is the 12th business day of the month.

4) The monthly report, including aggregates based on the finalised penalties for the previous month, is sent to Account Holders by KELER on the 14th business day.

5) On the 15th business day, (PAIR type) PFOD instructions are generated and sent to the settlement system, with the intended settlement day of the 18th business day.

6) The collection and distribution of penalties are scheduled for the 18th business day of the month. This day will be the intended settlement date for PFOD (PAIR type) transactions.

If a PBD day listed in Sections 1 to 5 falls on a day that is not a KELER business day (i.e. when no settlement service is provided by KELER), the given transaction is due on the last day before the given PBD which is also a business day for KELER.

If the 18th business day of the month that is relevant for penalty management (PBD) is not a KELER business day, the settlement of PFOD instructions for the settlement of penalties (Section 6) is due on the subsequent KELER business day.

3.6 Appeals, modification of penalties

KELER Account Holders are expected to check the penalty reports on a daily basis and to report to their underlying clients any penalties due to or payable by such clients.

Account Holders may lodge an appeal, if they do not agree with the calculated penalty and the reason for their appeal is one of the following.

<u>The grounds for appeal</u> may include the following:

- *Calculation error:* A discrepancy between the amount of the penalty reported by KELER and the

[10] In the case of an appeal against a penalty calculated by a foreign CSD, the deadline for receipt of the appeal by KELER is 5.00 p.m. on the 9th PBD (if the 9th PBD is not a KELER business day, the deadline for the appeal is 5.00 p.m. on the preceding KELER business day.)

amount determined by the Account Holder. Typically, this may be due to errors in the master data, e.g. the classification of the financial instrument, its liquidity, the calculation of the penalty rate applied, etc., which may lead to an incorrect result.

- *Missing penalty:* Where the failed settlement instruction is not included in the daily report sent by KELER, but the financial instrument included in the order is subject to a penalty.

- *The party at fault is disputed:* In rare cases, it is only after the automatic calculation of the penalty that it can be decided ex-post which of the participants involved in the settlement instruction is the party actually at fault and liable to pay the penalty. Such cases may include the following:

  - In the case of an already matched order submitted late by Market Infrastructure, the LMFP will be automatically allocated to the transferring party as the party at fault.

  - In the case of failure of linked FOP transfers or repo transactions due to a LINK reason, the penalty may be imposed on both parties automatically.

- *Erroneously imposed penalty:* In the exceptional cases listed in the ESMA CSDR Q&A[11], a central securities depository may waive the application of a penalty:

  - Insolvency proceedings are opened against the participant

  - The trading or settlement of a financial instrument with the relevant ISIN code is suspended due to unjustified security creation discovered during reconciliation.

  - In the case of a settlement instruction where cash settlement takes place outside the Settlement System and the relevant payment system has a settlement holiday on the intended settlement date.

  - A technical problem in the system of the Central Securities Depository that prevents settlement on time, e.g. in case of the an infrastructure components, cyber attack, network problems.

KELER may reject an appeal in the event of a discrepancy between the reference price of the security used for the calculation of the penalty and the price challenged by the Account Holder, provided that the discrepancy between the prices indicated by the Account Holder and those applied by KELER does not exceed 20%.

<u>Deadline for appeals:</u> Account Holders may submit an appeal from the receipt of the daily report until the designated deadline of the month following the month in question. (see Section 3.5)

In all cases, we kindly ask our esteemed clients to **notify KELER of their appeal requests** and comments

[11] https://www.esma.europa.eu/press-news/esma-news/esma-updates-csdr-qas-10 *(Settlement Discipline Questions 4 – Cash penalties: scope)*

as soon as possible in the case of any alleged errors or circumstances giving rise to an appeal, in order to allow sufficient time for the investigation of the same. We would like to draw your attention to the fact that the procedures for penalties calculated by foreign CSDs may take considerably longer due to the length of the settlement chain.

If the foreign account manager (CSD) charges any fees in connection with an appeal initiated by a KELER Account Holder, for example for an unfounded appeal, KELER is entitled to pass on these fees to the Account Holder concerned.

The Account Holders can request a review of the penalties by sending an e-mail to penalty@keler.hu. The e-mail sent in connection with the appeal must include all data and information necessary to identify and verify the penalty in question, including, but not limited to:

- the account holder's securities account number with KELER,
- the unique or common penalty reference reported by KELER,
- the reason for the appeal,
- the details of the calculation that the account holder considers justified,
- in the case of a missing penalty item, the identification of the failed settlement instruction.

The appeal is examined by KELER and, if the appeal is justified, KELER amends, re-includes or removes the calculated penalty. (Appeals concerning a foreign CSD are forwarded by KELER to the external account manager.)

The result of the appeal is communicated by KELER in a reply letter sent to the party that submitted the appeal and, in the case of a modification or cancellation of a penalty, the modified (new) record is also shown in the subsequent daily report, with the original date of detection being kept, but a new penalty status or reason being identified.

KELER may also make changes to the calculated penalty items without lodging appeal, on or before the 12th business day of the month (PBD), if any master data or parameter used for the calculation (e.g. market price of the security, type of security) subsequently changes in its own system or if KELER discovers an error affecting the calculation of the penalty within its own control. (Or if it receives a change notification from a foreign securities depository.)

If a penalty item is modified or subsequently recorded by KELER, the item appears in the subsequent daily report to be sent to the Account Holders concerned.

3.7. Settlement of penalties

Dedicated cash accounts for the settlement of penalties, where the collection and distribution can be implemented by KELER using PFOD instructions, are set up for each Account Holder according to the following default set of rules:

- In the case of HUF:
  - for credit institutions: account number held at MNB
  - for non-financial institution clients: KELER account number of own type (unless the MNB account number is the default settlement cash account under a separate contract)

- Other currencies: for all clients: number of KELER FX account number of own type

If you require a different configuration from the above, please contact the Client Service of KELER at clientservice@keler.hu.

Please note that the Account Holder must have a settlement account in the currency of the penalty, as well as a PENTLY securities sub-account for the payment of penalties imposed on or to the benefit of the Account Holder as a sanction as defined in Article 7 of Regulation (EU) No. 909/2014 for the failure of the settlement. The client accounts (cash and security) related to the settlement of the penalty will not be cancelled as long as there is any penalty settlement transaction not yet settled.

After the netting of the penalty amounts for the previous month, on the 15th business day of the month (PDB), KELER prepares the future value-dated and already matched PFOD (transaction type: PAIR) instructions which will be used to collect and distribute the penalties on the 18th business day of the month (PBD) or, if this day is not a KELER business day, on the subsequent KELER business day.

If a cross-border transaction of a KELER Account Holder is also subject to a penalty by a foreign CSD, the amounts payable to the Nostro account manager of KELER will be settled by a separate PFOD order, in addition to the penalties calculated by KELER.

The netting of penalties incurred by foreign CSDs is performed at the level of the Nostro account managers of KELER (per currency), even if the KELER Account Holder has incurred penalties at several EU CSDs through the given Nostro account manager in the given month.

KELER will generate as many PFOD instructions for each Account Holder as the number of the account managers which penalties have been incurred with and of the currencies in which the penalties are due for collection/distribution. (In terms of netting, it is currently possible at the level of KELER, SIX SIS and KDPW.)

Once PFOD instructions with a PAIR transaction code have been accepted by the settlement system, KELER informs the client of the amount to be actually settled and the account number to be debited or credited by means of a status message relevant to the instruction (MT548, sese.024).

Based on this notification, the account holder to be debited shall ensure, on the intended settlement date of the PFOD instruction, no later than the commencement of the settlement period (7.00 a.m.), that the balance kept in its account for the collection of penalties is sufficient to secure the settlement of the penalty to be paid.

After the opening of the 18th business day, KELER attempts to collect the amount of the penalties through the PFOD transaction. Instructions to debit penalties are sent to the settlement system in RELEASED status and instructions to credit penalties to Account Holders are sent to the settlement system in HOLD status.

On the basis of successfully settled PFOD instructions, the amounts collected are held by KELER in a dedicated cash account until all outstanding penalties are settled. The crediting of penalties to eligible Account Holders, i.e. the release of PFOD instructions kept in hold state, will only commence, once all debits (collections) have been successfully settled for all Account Holders. Also, penalties from foreign

CSDs will be credited after the amount has been credited to KELER's account by a third party account managing entity.

The PFOD instructions for the settlement of penalties are generated by KELER with the following main data:

Transaction type	PAIR
ISIN	LU2128008567
Trade date	15th PBD (possible deviation due to holidays)
Intended settlement date	18th PBD (possible deviation due to holidays)
Settlement quantity	0
Settlement amount and currency	Global net amount (based on monthly report)
Account Holder's securities account number	XXXXPENLTY *where 'XXXX' denotes the first 4 characters of the participant's central securities account number (main account number) and 'PENLTY' denotes the dedicated sub-account for the settlement of the penalty (last 6 characters of the central securities account number)*
Settlement counterparty's securities account number	9999PENLTY
Settlement counterparty's matching BIC	KELRHUHBXXX

The following procedure is applied by KELER in the **handling of penalty defaults**, if any:

No Account Holder receives a penalty credit on the 18th business day (PBD) until KELER has collected the amounts due in full from all Account Holders, that is, the settlement of the relevant PFOD instructions will be suspended by KELER until such time (in HOLD status).

- If a PFOD instruction is not settled by 9.00 a.m. on the 18th business day (PBD) at the latest due to a lack of funds, KELER will declare a default and send a notice to the defaulting Account Holder by electronic mail. (A default fee will be charged after such occurrence!)

- If the debit remains unsuccessful until 1.00 p.m. on the given day, KELER will notify all Account Holders of the default through the usual communication channels (website or KID annoucement).

- If the Account Holder to be debited is still in default at 9.00 a.m. on the subsequent business day, KELER will declare a new day of default and send a new notice to the Account Holder. (At the same time, a new default fee will be charged for such occurrence.)

- If the debit is not settled by 1.00 p.m. on the business day following the intended settlement date, KELER will recalculate the payment items of the defaulting and all affected Account Holders in a special procedure and generate new PFOD instructions.

- At the same time, the original PFOD instructions for crediting all Account Holders that would have expected to be credited based on the amount to be debited to the defaulting Account Holder are also cancelled.

Together with the recalculation and the generation of new PFOD instructions, the other non-defaulting Account Holders are credited with the amounts collected so far, i.e. the settlement instructions held until then are released for settlement (HOLD->RELEASE).

- The PFOD instructions created as a result of the recalculation and still pending on the last business day of the month in question are deleted from the system by KELER before the close of the last business day of the month. A default fee is charged for the outstanding PFOD instruction for debit for each business day until cancellation, including the day of cancellation.
- After the month-end cancellation of PFOD instructions by KELER, the Account Holders (and their clients) concerned may enforce their claims against each other bilaterally outside KELER's penalty mechanism.

Repeated breaches of payment discipline may give rise to the suspension and termination of the KELER membership. Furthermore, the cases concerned may be reported to the competent national authority, including the identification the Account Holder.

KELER also applies the rules relevant to defaults on the settlement of penalty, if the securities or cash account needed for the settlement of the PAIR PFOD instruction is missing for reasons within the control of the Account Holder. (And, in the case of a missing account, KELER will not make any payment to the Account Holder as long as such account has been opened and the contract substantiating such fact has been signed by the Account Holder.)

KELER charges the fees indicated in the applicable Fee Schedule in connection with the penalty procedures and may pass on the fees charged by any foreign CSD to the Account Holder concerned.

3.8. Procedure to be followed in the event of an insolvency procedure

KELER will not charge any penalty for default caused by an Account Holder subject to an insolvency procedure for any settlement fails occurring after the date of announcement of the procedure.

The penalties calculated until the date of announcement of the procedure are handled separately by KELER both in the monthly report and for penalty collection purposes, i.e. they are not taken into account for the determination of the global net amount.

3.9. Handling of penalties due for transactions cleared by the central counterparty

According to Article 19 of Regulation (EU) 2018/1212, applicable from 2 September 2024, penalties related to settlement orders submitted by CCPs for cleared transactions shall be calculated, collected from and allocated to the participants by the CSDs. Accordingly, as of 2 September 2024, in the event of failure of settlement orders for transactions submitted and cleared by the KELER KSZF, the penalties will be calculated, collected and allocated to the parties by KELER, as opposed to the previous mechanism where the KELER KSZF, and not the KELER, collected and allocated the penalties.

The global net amount calculated by KELER for each Account Holder will now also include the penalties related to transactions cleared by CCPs, and the amount of these penalties will be included in the amount of PFOD-type orders generated by KELER ~~.~~

If the settlement order is submitted by the KELER KSZF, the CCPA is indicated in the Party Capacity Indicator (:22F::TRCA) field of the daily penalty report.

In both the KELER and the KELER KSZF daily penalty reports the Amount Computed Flag (:17B::CMPU) will display a value of "Y" (YES).

4. Contact details

- **KELER:**

The following contact details are available for questions and problems related to penalties:

- daily operational matters, appeals: penalty@keler.hu
- setting and modifying report subscription rules: clientservice@keler.hu
- reporting errors in the delivery of reports, technical problems: servicedesk@keler.hu

- **Account holder:**

Please be informed that all reports, information and notices related to penaltiesare sent by default by CEleur to the operational contact person(s) for settlements. In the absence of a dedicated Operational Contact, notifications will be sent to the person(s) notified on the Contractor's Master Data Form.

If you would like to notify more persons for the purposes of managing penalties, or to expand the number of persons to be notified (e.g. by providing a group e-mail address), please use the form on the KELER website to indicate your request:

https://www.keler.hu/KELER/KELERKapcsolattartok

KELER excludes its liability if the Account Holder fails to comply with its obligation to change and notify data and damages and consequences arise due to the notifications sent to the incorrect contact person or the failure to do so!

5. Appendix

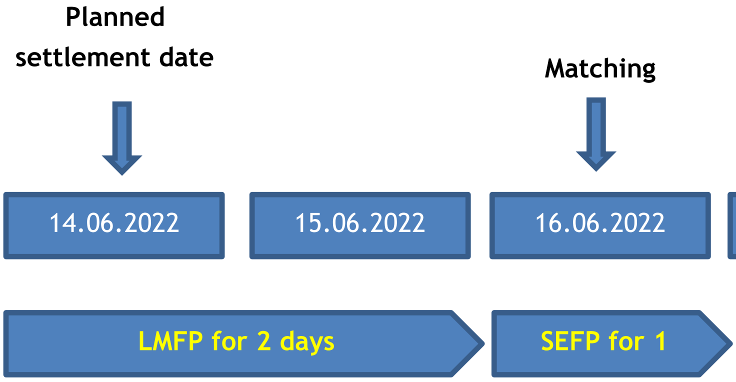
Example:

The details of a failed (fictitious) transaction are as follows:

- *Scheduled settlement date:*	*14.06.2022*
- *Settlement method:*	*Against payment (APMT)*
- *Settlement currency:*	*HUF*
- *Securities quantity to be settled:*	*25,000*
- *Type of security:*	*Liquid shares (SHRS)*
- *Penalty rate:*	*1.0 bp (=0.0001)*
- *Market price of a security on each day:*	
○ *14.06.2022:*	*HUF 15,000*
○ *15.06.2022:*	*HUF 15,300*
○ *16.06.2022:*	*HUF 14,600*
- *Overnight credit rate (HUF):*	*4.9 %*
- *Timestamp of acceptance of the Seller's (DVP) instruction:*	*16.06.2022 13:00:00*

- *Timestamp of acceptance of the Buyer's (RVP) instruction: 14.06.2022 08:05:00*
- *Matching date: 16.06.2022 13:00:01*

The Seller in the example submits his order two business days later than the planned settlement date, so the successful pairing of the two parties' orders can only take place on 16.06.2022.However, the transaction is not completed on 16.06.2022, as the Buyer's cash account is unsecured. Settlement will only take place one day later, on 17.06.2022.



Based on the above, the first time a failure is detected is on 16.06.2022, as only from this date onwards can the orders be considered as even. On the following business day (17.06.2022), the following penalties will be calculated by KELER.

1. For 2 business days between 14.06.2022 and 16.06.2022: LMFP, party at fault: the Seller. For the two business days, the penalties are calculated for the two business days at the same time, combined. As the type of order is DVP, the calculation algorithm is SECU, i.e. the daily reference price of the security and the penalty rate:

   - 14.06.2022: 25,000 pcs x HUF 15,000 x 0.0001 = HUF 37,500
   - 15.06.2022: 25,000 pcs x HUF 15,300 x 0.0001 = HUF 38,250

   For 2 days in total: HUF 75,750 (LMFP)

2. On 16.06.2022, the Buyer's RVP order is uncovered (with PENF / MONY status) at the end-of-day CUT-OFF, therefore the offending party is the Buyer, and the amount of the penalty is calculated on the basis of his order for 1 day. The calculation algorithm = MIXE, i.e. the penalty rate is 1/360 of the daily O/N HUF credit rate, which is calculated by applying the market value of the defaulted security quantity:

   25,000 pcs x HUF 14,600 x (0.049 /360= 0.000136111) = HUF 49,681 (SEFP)

The above penalties will be reported by KELER on 16.06.2022 (Penalty Detection Date), by 12.00 noon on 17.06.2022 via the daily penalty reports.