

Targeted consultation on the review of the Directive on settlement finality in payment and securities settlement systems

Fields marked with * are mandatory.

Introduction

Background to this consultation

The [Settlement Finality Directive \(SFD\)](#) aims to reduce systemic risk arising from the insolvency of participants in payment and securities settlement systems (systems). The SFD protects a duly designated, notified and published system (SFD system) and its participants – whether domestic or foreign – from the legal uncertainty and unpredictability inherent in the opening of insolvency proceedings against one of their number. It does so, by stipulating protections for the irrevocability and finality of transfer orders entered into an SFD system, thus, preventing them from being interfered with in such proceedings (settlement finality). It also provides for the enforceability of the netting of transfer orders, from the effects of the insolvency of a participant.

Moreover, the SFD ring-fences collateral security provided either in connection with participation in an SFD system or in the monetary operations of the Member States' central banks or the European Central Bank (ECB) from the effects of the insolvency of the collateral provider.

Settlement finality was not enacted lightly since it constitutes an exception to the equal treatment of creditors upon the opening of insolvency proceedings as well as to the principle of universality of insolvency proceedings. It was deemed justified by the overriding public interest in avoiding systemic contagion risks throughout the EU. This is why systemically important systems are covered by the SFD.

Since its adoption, the SFD was amended five times. In 2008/2009, the first review took place. The [Commission's 2005 evaluation report](#) concluded that the SFD worked well and had its intended effect. The amendments, therefore, aimed at keeping up with the latest market and regulatory developments, especially the increasing interoperability of SFD systems and the addition of credit claims to the types of financial collateral covered by the definition of collateral security. Afterwards there were another four amendments, the focus of which was to incorporate amendments made in other EU Regulations or Directives, which were introduced to deal with the aftermath of the financial crisis (i.e. the [ESAs Directive](#), [EMIR](#), [CSDR](#) and [BRRD 2](#)).

Report on the Directive

During the legislative process for the BRRD 2, the European Parliament (EP) sought to extend the protections of the SFD to any non-EU system (third-country system) where at least one (direct) participant had its head office in the EU. The EP's proposals were not adopted; [Article 12a](#) was added to the SFD requiring the Commission to report by 28 June 2021 on how Member States apply the SFD to their domestic institutions which participate directly in systems governed by the law of a third-country and to collateral security provided in connection with their participation. If appropriate, the Commission shall provide a proposal for revision of the SFD. The Commission services intend to take the opportunity to consider a wide range of specific areas where targeted action may be necessary for the SFD to continue its functioning. Even though the Commission concluded during the last review, that the SFD worked well, the impact of new developments in a changing business, technological and regulatory environment should be considered.

Considering not only the issue raised in Article 12a but a wider range of areas is deemed appropriate, given the fact that the last review took place in 2008/2009. In parallel, [issues regarding the closely linked Directive 2002/47/EC on financial collateral arrangements \(FCD\) are considered](#). Two issues that are dealt with in the FCD consultation are also important for the SFD: recognition of 'close-out netting provision' and 'financial collateral' ('cash' and 'financial instruments' the two most commonly used forms of 'collateral security' under the SFD). A first discussion with Member States on both, SFD and FCD related issues, took place in October 2020.

Responding to this consultation

The purpose of this consultation is to receive stakeholders' views and experiences regarding the functioning of the SFD in general and the protection of third-country systems in particular. The responses to this consultation will provide important guidance to the Commission services in preparing the final report and legal proposals where appropriate.

Responses to this consultation are expected to be most useful where issues raised in response to the questions are supported with **a detailed narrative and quantitative data (where appropriate)**, and accompanied by **specific suggestions for solutions** to address them in the Directive.

All interested stakeholders are invited to respond to the questions set out below; please note that some questions are only addressed to specific stakeholders.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-sfd-fcd-review@ec.europa.eu.

More information on

- [this consultation](#)
- [the consultation document](#)
- [settlement finality](#)
- [the related targeted consultation on the review of the Financial Collateral Directive \(FCD\)](#)
- [the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)

- Public authority
- Trade union
- Other

* First name

Jörg

* Surname

Faulhaber

* Email (this won't be published)

joerg.faulhaber@dsgv.de

* Organisation name

255 character(s) maximum

GBIC - German Banking Industry Committee

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

- Afghanistan
- Åland Islands
- Djibouti
- Dominica
- Libya
- Liechtenstein
- Saint Martin
- Saint Pierre and Miquelon

- Albania
- Algeria
- American Samoa
- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Lithuania
- Luxembourg
- Macau
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname

- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine

- | | | | |
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| <input type="radio"/> China | <input type="radio"/> Israel | <input type="radio"/> Papua New Guinea | <input type="radio"/> United Arab Emirates |
| <input type="radio"/> Christmas Island | <input type="radio"/> Italy | <input type="radio"/> Paraguay | <input type="radio"/> United Kingdom |
| <input type="radio"/> Clipperton | <input type="radio"/> Jamaica | <input type="radio"/> Peru | <input type="radio"/> United States |
| <input type="radio"/> Cocos (Keeling) Islands | <input type="radio"/> Japan | <input type="radio"/> Philippines | <input type="radio"/> United States Minor Outlying Islands |
| <input type="radio"/> Colombia | <input type="radio"/> Jersey | <input type="radio"/> Pitcairn Islands | <input type="radio"/> Uruguay |
| <input type="radio"/> Comoros | <input type="radio"/> Jordan | <input type="radio"/> Poland | <input type="radio"/> US Virgin Islands |
| <input type="radio"/> Congo | <input type="radio"/> Kazakhstan | <input type="radio"/> Portugal | <input type="radio"/> Uzbekistan |
| <input type="radio"/> Cook Islands | <input type="radio"/> Kenya | <input type="radio"/> Puerto Rico | <input type="radio"/> Vanuatu |
| <input type="radio"/> Costa Rica | <input type="radio"/> Kiribati | <input type="radio"/> Qatar | <input type="radio"/> Vatican City |
| <input type="radio"/> Côte d'Ivoire | <input type="radio"/> Kosovo | <input type="radio"/> Réunion | <input type="radio"/> Venezuela |
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| <input type="radio"/> Cuba | <input type="radio"/> Kyrgyzstan | <input type="radio"/> Russia | <input type="radio"/> Wallis and Futuna |
| <input type="radio"/> Curaçao | <input type="radio"/> Laos | <input type="radio"/> Rwanda | <input type="radio"/> Western Sahara |
| <input type="radio"/> Cyprus | <input type="radio"/> Latvia | <input type="radio"/> Saint Barthélemy | <input type="radio"/> Yemen |
| <input type="radio"/> Czechia | <input type="radio"/> Lebanon | <input type="radio"/> Saint Helena Ascension and Tristan da Cunha | <input type="radio"/> Zambia |
| <input type="radio"/> Democratic Republic of the Congo | <input type="radio"/> Lesotho | <input type="radio"/> Saint Kitts and Nevis | <input type="radio"/> Zimbabwe |
| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Lucia | |

* Field of activity or sector (if applicable):

- Auditing
- Central Counterparties (CCPs)
- Central Securities Depositories (CSDs)
- Clearing house

- Credit institution
- Credit rating agencies
- E-money institution
- European supervisory authority
- Insurance
- Investment firm
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Market infrastructure operation (except CCPs, CSDs, Stock exchanges)
- Member State Authority other than a National supervisory authority
- National supervisory authority
- Organisation representing European consumers' interests
- Organisation representing European retail investors' interests
- Payment institution
- Pension provision
- Publically guaranteed undertaking
- Settlement agent
- Stock exchanges
- System operator
- Technology company
- Other
- Not applicable

* Please specify your activity field(s) or sector(s):

Banking

* Are you a system operator under the SFD?

- Yes, of a securities settlement system
- Yes, of a payment system
- Yes, of a securities settlement system and of a payment system
- No, but I provide feedback on their behalf
- No
- Don't know / no opinion / not relevant

*

Are you a system operator of a non-SFD designated system based on the law of a Member State of the European Union?

- Yes, of a securities settlement system
- Yes, of a payment system
- Yes, of a securities settlement system and of a payment system
- No, but I provide feedback on their behalf
- No
- Don't know / no opinion / not relevant

* Are you a system operator of a system based on the law of a third-country (non EU country)?

- Yes, of a securities settlement system
- Yes, of a payment system
- Yes, of a securities settlement system and of a payment system
- No, but I provide feedback on their behalf
- No
- Don't know / no opinion / not relevant

* Are you a (direct) participant of a system designated and notified under the SFD?

- Yes, of a securities settlement system
- Yes, of a payment system
- Yes, of a securities settlement system and of a payment system
- No, but I provide feedback on their behalf
- No
- Don't know / no opinion / not relevant

* Are you a clearing member of an EMIR authorised CCP?

- Yes
- No, but I provide feedback on their behalf
- No
- Don't know / no opinion / not relevant

* Are you an indirect participant of a system designated and notified under the SFD?

- Yes, of a securities settlement system
- Yes, of a payment system
- Yes, of a securities settlement system and of a payment system

- No, but I provide feedback on their behalf
- No
- Don't know / no opinion / not relevant

* Are you a client of a clearing member of an EMIR authorised CCP?

- Yes
- No, but I provide feedback on their behalf
- No
- Don't know / no opinion / not relevant

* Are you a (direct) participant of a system based on the law of a third-country (non EU country)?

- Yes, of a securities settlement system
- Yes, of a payment system
- Yes, of a securities settlement system and of a payment system
- No, but I provide feedback on their behalf
- No
- Don't know / no opinion / not relevant

* Are you an indirect participant of a system based on the law of a third-country (non EU country)?

- Yes, of a securities settlement system
- Yes, of a payment system
- Yes, of a securities settlement system and of a payment system
- No, but I provide feedback on their behalf
- No
- Don't know / no opinion / not relevant

Is there anything else you would like to mention?

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association, 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

1. Participation in systems governed by the law of a third-country

The [Settlement Finality Directive \(SFD, Directive 98/26/EC\)](#) covers systems governed by the law of a Member State but not those governed by the law of a third-country. Credit institutions and investment firms may, however, participate in an SFD system even when their head office is in a third-country (third-country participant). The protections of the SFD apply fully and without discrimination in the event of the insolvency of a third-country participant in an SFD system. However, since the SFD does not cover third-country systems regardless of whether such systems are established inside or outside the EU, transactions and collateral posted by EU participants in such systems and related netting are not protected under the SFD.

Recital 7 of the SFD recalls that it is up to Member States to apply the provisions of the SFD to their domestic institutions, which participate directly in third country systems, and to collateral security provided in connection with participation in such systems.

During the legislative process for the BRRD 2 the European Parliament (EP) sought to extend the protections of the SFD to any third-country system where at least one (direct) participant had its head office in the EU. The EP's proposals were not adopted. Article 12a was added to the SFD requiring the Commission to report by 28 June 2021 on how Member States apply the SFD to their domestic institutions which participate directly in systems governed by the law of a third-country and to collateral security provided in connection with their participation. If appropriate, the Commission shall provide a proposal for revision of the SFD.

Question 1.1 Should EU institutions that participate in third-country systems be protected by the SFD?

- Yes
- No
- Don't know / no opinion / not relevant

Question 1.1.1 Please explain your answer to Question 1.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The objective of the SFD is to protect designated, systematically important systems, its operators and its participants from systemic risk. When trying to protect EU-participants from systemic risk, this protection does not end at the EU borders.

The SFD did indeed originally not include third country systems, meaning that EU-participants in those systems are generally not protected under the SFD. Many member states have, however, extended the SFD protection when transposing the SFD following Recital 7, others have not. This does not only lead to an unequal treatment of EU-participants in the event of an insolvency occurring in a third country system, it would also lead to the contagion with systematic risk from such unprotected participants to participants of other member states who would be protected under their own jurisdiction.

Brexit would be a good example: all EU-participants of a system located in the UK, being a designated system under the SFD, had been protected in case of the insolvency of another participant as long as the UK was a member state and remained protected until the end of the transition period. If a participant from a member state which does not extend the SFD protection to third country systems ("limited SFD scope member state"), for instance, had become insolvent, this insolvency would not have affected a German participant of the relevant UK system until the end of the transition period. With the end of the transition period, however, the same participants of the same UK-system would no longer be protected in the same way but rather suffer from a dysfunctional impact:

While participants from a member state with extended SFD protection ("extended SFD scope member state") would remain protected in case of an insolvency of participants from the same or another extended SFD scope member state (i.e. an "inner-circle-protection"), this would result in diametrically opposed results in case of an involvement of participants from limited SFD scope member states. As a consequence, the insolvency of a participant from a limited SFD scope member state would no longer be covered by the SFD protection and thus open the possibility of challenges from the insolvency administrator against the effectiveness (finality) of settlements in the relevant UK system.

These challenges would affect both system and the other participants relying on the (legal) finality of this system's settlements. This is particularly concerning because the intended SFD protection for participants from extended SFD scope member states is in fact rendered null and void. To make things worse, participants from a limited SFD scope member state would be protected in a reverse situation, although the member state did not intend to protect its participants: since the German transposition of the SFD covers

third-country systems in the interest of the protection of all participants (not only those in Germany), the participants from the same limited SFD scope member state would fully benefit from the SFD protection in case of an insolvency of a German participant. This outcome is clearly unreasonable and also results in larger systemic uncertainties and risks which can only be prevented by a EU-wide harmonisation regarding the extension of the SFD protection to (qualified) third-country settlement systems.

UK settlement systems have identified this risk emanating from participants from limited SFD scope member state and have indicated that they would be forced to exclude participants from such member states unless the SFD protection is extended under the applicable member state law. Such exclusion would, however, also cause serious problems and risks, as this would effectively cut-off a section of EU market participants from settlement systems which would also have wider repercussions for the EU markets.

Also from the perspective of the system (operator), the core principle laid down in Art. 8 SFD, according to which the rights and obligations of the insolvent participant should be determined by the law governing the system, should be respected.

Therefore, the SFD should cover designated third country systems without any opt-outs. This would mean that third country systems would have to be considered as comparable to SFD systems (for the purpose of protection from systemic risk). Where no common assessment is possible (e.g. through ESMA), at least harmonisation throughout the EU should be achieved regarding recognition approvals on member states level.

Question 1.2 Please bring the following options in an order, attributing 1 to the option that you consider most suited and 4 to the option that you consider least suited:

	1 (most suited)	2	3	4 (least suited)
Criteria for protection should be set at EU level. Also, decisions to extend the protection should be taken at EU level. This ensures a level playing field in the EU and predictability for market participants.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Criteria for protection should be set at EU level. However, decisions to extend the protection should be taken at national level. This ensures greater harmonization within the EU but gives the possibility to consider national market characteristics and laws.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Criteria for protection should be set by each Member State. Also, decisions to extend the protection should be taken by each Member State. They know best their national market and possible implications and interactions with national laws.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Question 1.3 In case the scope of the SFD was to be extended to EU institutions participating in third-country systems: How should this be done?

- The provisions of the SFD should apply directly to the third-country system in their entirety
- The SFD should defer to the protections conferred by the applicable third-country law
- Some SFD provisions should apply directly to the third-country system, whilst some provisions should defer to the protections conferred by the applicable third-country law
- Don't know / no opinion / not relevant

Question 1.4 Do you see the need to carry out an assessment whether the applicable third-country law provisions are comparable to the SFD's?

- An assessment to which extent the applicable third-country law provisions are comparable to the SFD's should be carried out
- There is no need for an assessment
- An assessment should be carried out only in certain cases (e.g. for certain systems or certain third-countries)
- An assessment to which extent its provisions are comparable to the SFD's should be carried out only for certain provisions
- Don't know / no opinion / not relevant

Question 1.4.1 Please evaluate for which of the following provisions such an assessment should be carried out:

	1 (not relevant)	2 (rather not relevant)	3 (neutral)	4 (rather relevant)	5 (fully relevant)	Don't know - No opinion - Not applicable
eligibility to participate in the third-country system directly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
eligibility to participate in the third-country system indirectly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
the moment of entry into the system, the moments of irrevocability and settlement finality within the system (notably whether such moments are left to the rules of the system or are mandated by the third country law governing the system)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
the settlement finality provisions (notably the extent to which transfer orders and collateral security as well as their netting are protected from being interfered with)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
the definition of a system	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
provisions regarding interoperability of systems	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
the application of the settlement finality provision without discrimination between domestic and foreign participants	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
the compatibility of any provisions on conflict of laws	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Other



Question 1.5 In case the SFD should provide criteria for the assessment for designation of a third-country system: What is your opinion regarding the following statements?

a) SFD protection should only be extended to third-country systems, if the third country extends protections towards SFD systems.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 a)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SFD seeks to protect EU-participants in third-country systems. Only the rules regarding the third-country system are therefore important. Although it would be useful if the third-country law acknowledged the rules of a SFD system (meaning that the SFD overrules the national insolvency rules of that third-country) it would be no prerequisite in order to protect EU-participants participating in third-country systems.

b) Information about insolvency of a participant in the third-country system should be provided in a timely manner by the third-country system operator.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 b)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

c) Information about insolvency of a domestic participant should be provided in a timely manner by the third-country national authorities.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 c)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

d) Systemic importance of the third-country system should be prerequisite.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 d)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Systemic importance would be a reason to recognise the third-country system as an SFD system. This would, however, be part of the assessment whether the third country system is to be designated as an SFD system. It would not have to be a legal requirement explicitly laid down in the SFD text.

e) Adequacy of the rules of the system should be given.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 e)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

f) Only systems that are as strict as the SFD regarding the provisions about (direct) participation should be eligible for designation.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 f)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

g) Only systems that are as strict as the SFD regarding the provisions about indirect participation should be eligible for designation.

- 1 - Disagree
-

- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 g)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

h) No discrimination between EU institutions and other institutions should be made by the third-country system.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 h)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It should be clear that only the law governing the system determines the rights and obligations of any insolvent participant arising from the participation in the system. The system should be entitled to reject participants from other jurisdictions where no clarity exists whether the insolvency law applicable to that participant respects the effects of the irrevocability and finality rules of the system.

i) All participants have to be known to the system operator.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral

- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 i)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

j) The country of establishment of the system operator should be considered.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 j)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

k) The country where the infrastructure is located, maintained and/or operated should be considered.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree

- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 k)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

l) The third-country law governing the system should fulfill the assessment criteria as indicated in my response under question 1.4.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 l)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The third-country insolvency law governing the system must respect the irrevocability and finality rules of the system. It should also accept the extent to which transfer orders and collateral security as well as their netting are protected from being interfered with as stipulated by the third-country system.

m) The volume and value of transactions either cleared, settled or otherwise executed through the third-country system in the three calendar years preceding this year should be considered.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
-

Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 m)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

n) Cooperative oversight arrangements with the third country concerned should be prerequisite.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 n)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

o) In the case of CCPs the recognition of the CCP concerned under Article 25 of EMIR should be prerequisite.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 o)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Extending the SFD protection means protection from systemic risk. It does not require that the rules and laws governing the system are equivalent to EU-law.

p) In the case of CSDs the recognition of the CSD concerned under Article 25 of CSDR should be prerequisite.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 p)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Extending the SFD protection means protection from systemic risk. It does not require that the rules and laws governing the system are equivalent to EU-law.

q) The criteria should be the same for all third-country systems regardless by which third-country law they are governed.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Do you have comments/explanations on your opinion to proposal 1.5 q)? If so, please provide them here:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The criteria regarding the rules of the system stipulating irrevocability of transfer orders and finality of settlement as well as their recognition by the applicable insolvency law should be the same for all third-country systems. The criteria under which circumstances the system may be considered systemically important can differ.

r) Other: please indicate other assessment criteria that you consider useful:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 1.6 In case the scope of the SFD was to be extended to EU institutions participating in third-country systems: Should the scope be extended to EU institutions participating in third-country payment and security settlement systems?

- Only to payment systems
- Only to security settlement systems
- To both, payment and security settlement systems
- Don't know / no opinion / not relevant

Question 1.6.1 Please explain your answer to question 1.6:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Extending the scope means protecting EU institutions as widely as possible. The assessment of the system in question – whether it should be recognized as a designated SFD system or not – should meet the requirements accordingly. Extending the scope would also mean that no contagion risk is transferred onto EU-participants from other system participants. Trust in the functioning of the system is of highest relevance. This applies to both securities settlement systems and payment systems – see also the case of Continuously Linked Settlement („CLS“) etc.....

Question 1.7 Should the scope of the SFD be extended to all EU-institutions participating in third-country systems without discrimination?

- Yes
- No
- Don't know / no opinion / not relevant

Question 1.7.1 Please explain your answer to question 1.7:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Extending the scope of the SFD means protecting EU-participants. The protection would however only be effective if all EU-participants are covered by the SFD protection equally. Otherwise, unintended adverse consequences could arise. See also our example set out in Q 1.1 above.

Question 1.7.2 If the scope of the SFD should only be extended to certain EU institutions: On which basis should a selection take place?

	1 (disagree)	2 (rather not agree)	3 (neutral)	4 (rather agree)	5 (fully agree)	Don't know - No opinion - Not applicable
Size of the institution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Systemic relevance for the financial market of the Member State in which the institution is located	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Amount that the institution is participating with in the system	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Type of participant (e.						

g. only banks, investment firms, ...)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other risk based criteria	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Designation of a third-country system if the scope was to be extended

Question 1.8 Should the assessment for designation of a third-country system be done on a case-by-case basis?

- Yes. This is most appropriate as criteria which are specific to a certain system should be considered (see my answers to question 1.5 above).
- No. It is sufficient to assess the third-country law in general regarding comparability.
- Don't know / no opinion / not relevant

Question 1.9 Should a regular evaluation be required whether the requirements for a designation are still met?

- Yes
- No
- Don't know / no opinion / not relevant

Question 1.9.1 Please explain your answer to question 1.9:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 1.9.1 If your answer to question 1.9 is yes: In which frequency should an evaluation be required?

- Annually
- Every two years
- Every three years
-

- At the discretion of the designating authority
- Other
- Don't know / no opinion / not relevant

2. Participants in systems governed by the law of a Member State

The SFD lists the participants that are eligible to participate directly in an SFD system and benefit from the protection offered by the SFD. (Direct) participants are, among others, credit institutions, investment firms, public authorities, CCPs, system operators and clearing members of an EMIR authorized CCP.

Furthermore, the SFD gives Member States the option to decide that, for the purposes of the SFD, an 'indirect participant' may be considered a 'participant', if that is justified on the grounds of systemic risk. Only 'indirect participants' that fall under the categories eligible for direct participation, may be considered as (direct) 'participants' under this derogation.

Largely, the SFD does not mandate the legal form of eligible participants. Both natural and legal persons that come under the definitions are eligible to participate, except for CCPs which must be legal persons. Investment firms must be legal persons under [MiFID 2](#) although Member States are allowed to authorise natural persons as investment firms subject to conditions.

E-money institutions under the [E-Money Directive \(EMD 2\)](#) and payment institutions under the [Payment Services Directive \(PSD 2\)](#) are not currently eligible participants under the SFD. In its [Retail Payment Strategy](#), the Commission announced that it would consider, in its SFD review, extending the scope of the SFD to include e-money and payment institutions, subject to appropriate supervision and risk mitigation. In the absence of a harmonised SFD solution at EU level, some Member States have introduced national solutions that allow e-money and payment institutions either direct or indirect participation in payment systems, provided they fulfil certain criteria. This situation has led to level playing field issues between Member States, fragmentation of the European retail payment market and legal uncertainty regarding the cross-border recognition of settlement finality on SFD payment systems with wider national participation. It might be worth considering to add them to the list of eligible participants when they fulfil certain criteria to ensure a level playing field and provide legal certainty in a cross-border context. In the public consultation on the EU's retail payments strategy, nearly 43% of respondents thought that direct participation in SFD qualifying systems should be allowed, whilst nearly 32% thought that indirect participation through banks was sufficient¹.

Currently, the operator of a payment system that is not designated under the SFD is not an eligible type of SFD participant. Stakeholders raised the issue that this prevents these payment system operators from participating in TARGET2 (TARGET2 is the real-time gross settlement (RTGS) system owned and operated by the Eurosystem), where payment orders in euro are processed and settled in central bank money. They argue that (direct) participation of these payment system operators in TARGET2 (being SFD designated systems) would reduce the use of commercial bank money for settlement and the related credit and liquidity risk. Principle 9 of the principles for financial market infrastructures (PFMI) asks relevant (i.e. systemically important) financial market infrastructures to reduce credit and liquidity risks by conducting "its money settlements in central bank money where practical and available. If central bank money is not used, an FMI should minimise and strictly control the credit and liquidity risk arising from the use of commercial bank money." Adding them to the list of (direct) SFD participants would open up the possibility to allow their participation in TARGET2. While this could reduce credit and liquidity risk arising from settlement in commercial bank money, it has to be ensured at the same time that any risks arising for SFD systems are adequately mitigated.

Since the adoption of [EMIR](#), CCPs have been added to the list of eligible (direct) SFD participants. However, CSDs as defined in Article 2(1)(1) of the [CSDR](#) are not explicitly included although their participation is implicitly covered in their function as 'settlement agents' and 'system operators'. Yet, Article 39(1) of the CSDR, requires Member States to

designate and notify securities settlement systems operated by CSDs in accordance with the SFD. Adding them to the list of (direct) participants would further clarify that they benefit from the SFD protection also in those cases, where they do participate in a system but not in the function of 'settlement agent' or 'system operator'.

¹ See [consultation for retail payments](#). A sizeable majority of respondents thought that direct participation should be allowed because non-banks are too dependent on banks. Some respondents thought that fees charged by banks were too high or that banks restricted access to bank accounts to non-banks. Others thought that indirect participation through banks was sufficient because non-banks offered indirect access at reasonable conditions or because the cost of direct participation would be too high.

Question 2.1 Should the list of currently eligible SFD participants be either limited or extended or otherwise modified? Please explain your reasons for each type of participant where relevant.

- No need for modifications
- Should be extended
- Should be limited. Some participants should no longer be eligible
- Should be otherwise modified
- Don't know / no opinion / not relevant

Question 2.1.1 Please specify how it should be otherwise modified:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SFD covers three types of infrastructures as system operators: payment systems, CSD operating securities settlement systems and CCP operating clearing systems: CSD-SSSs, the extension/inclusion of indirect participants is discussed. Participants of SSS are custody banks. Clients of such participants can be other custody banks acting as intermediaries of a custody chain. This means that they act as indirect participants whose insolvency might also cause (systemic) risk to the participants of an SSS. Furthermore, CSDs act as participants in other CSD SSSs. The CSD-participants of the participating CSD could – theoretically – be considered indirect participants of the other CSD SSS. We believe that this is the reason, why the SFD used to grant member states the option to include an indirect participant as a participant “on the grounds of systemic risk and on condition that the indirect participant is known to the system” Art. 2 (f) SFD. It has been reported that the divergent transposition of such an option leads to an unequal treatment of settlement instructions (transfer orders) in case of an insolvency in a cross-border settlement scenario. This would lead to problems, in particular, if two instruction owning CSDs proceed differently, e.g. where one CSD would like to cancel the instruction because of the insolvency of the indirect participant but the other CSD is not allowed to do so, however the instructions are already matched.

However, it is not clear which entities should or could be included as indirect participants. It is also not clear whether, in the example listed in the paragraph above, a cross-border settlement involves only one or two (linked) systems. Clear and concrete criteria should therefore exist as to which entities are to be included in the SFD protection. Furthermore, indirect participants usually do not send settlement instructions (transfer orders) to the system in question. Therefore, it is unclear how the finality moments (entry, irrevocability, enforceability) should be recorded in the absence of an input into the system. It should be borne in mind that the SFD seeks to protect the system, the system operator and the functioning of the system. Any final settlement is therefore also enforceable and binding on third parties (Art. 3 SFD), meaning all parties along the custody chain. It should thus be clarified how an indirect participant is identified, which actions of such an indirect participant and which moments have legal effects in connection with the SFD protection, in case

indirect participants are to be included by the SFD.

It is of utmost importance that the SFD takes a harmonised decision. In our view it would be beneficial if Art 3 SFD further clarified that any insolvency outside the system is irrelevant.

CCP clearing systems: With regard to CCPs for derivatives clearings, the SFD protections should be revised at least in three respects:

- First, it should be clarified that the SFD protections apply in case of an insolvency of a participant (and also indirect participants (see below)) as well as the insolvency of a CCP as a system itself.
- Secondly, it should be considered to clarify the extent to which payments and deliveries of securities to the CCP and from the CCP are covered by the SFD protections.
- Thirdly, in view of the fact that only a minority of market participants are direct members of a CCP and that the majority therefore relies on intermediaries to obtain access to clearing it should be considered to extend SFD protections to such intermediaries in order to cover the entire access channels and the payments and deliveries made via these channels and protect the other clearing members and intermediaries in case of an insolvency of an intermediary.

Payment systems: We assume that the existing rules (direct participation of banks, not of payment and e-money institutions) do not hinder innovation or pose an obstacle for competition and market access. We consider the participation of e-money and payment institutions as reachable parties via European banks to be sufficient. Furthermore, extending the access to the payment systems to less regulated institutions could lead to increased risks (also beyond the scope of the current SFD) and undermine the level playing field with highly regulated European banks. This can be in particular the case, if non-European players use the less stringent regulatory regimes of payments institutions to gain access to the European market.

If the COM considers extending the respective access, besides amending the respective personal scope of the SFD, it should also aim at further reducing the different national rules and discretions which are in effect prevalent today and cause regulatory complexity, fragmentation and uneven competitive conditions.

Furthermore, possible additional systemic risks for the CSMs and the payments sector in general following the extension of eligible participants has to be taken into account.

Question 2.2 Should participation in an SFD system be limited to legal persons?

- Yes
- No
- Don't know / no opinion / not relevant

Question 2.2.1 Please explain your answer to question 2.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Access to a system and protection in the case of an insolvency should be differentiated. The SFD aims at protecting the system operator and the participants of a designated, notified and published system in order to reduce systemic risk associated with the insolvency of another system participant. This is, because a participant's insolvency should not interfere with the rules of the system and protect the system operator but also, meaning an intermediary's insolvency, would hit multiple clients behind such an intermediary. Clients or end investors should, however, not carry the risk of the intermediary who usually is a legal person and who connects them to the system. In order to protect trust in the system, settlement finality overrules other insolvency laws.

We believe that the SFD protection was introduced because of the intermediated structure of a designated system. Participants in such a system are therefore by nature legal persons and not natural persons (like retail clients). A retail investor would neither send a transfer order directly to the system nor would there be a

need for a special treatment since the effects of settlement finality also extend along the custody chain down to the retail investor (Art. 3 SFD).

For this reason, we are also sceptical about an application of the SFD on permissionless DLT-systems which aim to connect end investors (like retail clients).

See also our responses to Section 3

Question 2.3.1 What is your opinion about *payment institutions* being (potential) participants?

- Should not be direct participants
- Should be direct participants (only)
- Should only be indirect participants who may be considered direct participants, if that is justified on the grounds of systemic risk
- Should be direct participants and indirect participants who may be considered direct participants, if that is justified on the grounds of systemic risk
- Other
- Don't know / no opinion / not relevant

Please specify what you mean by other in your response to question 2.3.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The existing rules (direct participation of banks, not of payment or e-money institutions) do not hinder innovation or have the effect to be an obstacle for market access. Art. 35 (2) PSD2 ensures that banks offer services to payment institutions and e-money institutions and therefore guarantee access to the reach of such systems.

If the Commission considers granting non-bank PSPs access to payment infrastructures, any possible additional systemic risks on the CSMs and the payments sector in general has to be taken into account. Payment and e-money institutions are not subject to the same stringent regulations like banks with the effect of possible differences in risk governance and depth.

Therefore, objective measures, including the instruments of providing adequate guarantees or collateral, should be in place and applied to ensure that any broader direct access does not create systemic impacts in terms of risk and resilience of payment systems. Otherwise, higher risks could be carried into the system, eventually posing costs on CSM providers and their participants.

Question 2.3.2 What is your opinion about *e-money institutions* being (potential) participants?

- Should not be direct participants
- Should be direct participants (only)
- Should only be indirect participants who may be considered direct participants, if that is justified on the grounds of systemic risk
-

Should be direct participants and indirect participants who may be considered direct participants, if that is justified on the grounds of systemic risk

- Other
- Don't know / no opinion / not relevant

Please specify what you mean by other in your response to question 2.3.2:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The existing rules (direct participation of banks, not of payment or e-money institutions) do not hinder innovation or have the effect to be an obstacle for market access. Art. 35 (2) PSD2 ensures that banks offer services to payment institutions and e-money institutions and therefore guarantee access to the reach of such systems.

If the Commission considers granting non-bank PSPs access to payment infrastructures, any possible additional systemic risks on the CSMs and the payments sector in general has to be taken into account. Payment and e-money institutions are not subject to the same stringent regulations like banks with the effect of possible differences in risk governance and depth.

Therefore, objective measures, including the instruments of providing adequate guarantees or collateral, should be in place and applied to ensure that any broader direct access does not create systemic impacts in terms of risk and resilience of payment systems.

Otherwise, higher risks could be carried into the system, eventually posing costs on CSM providers and their participants.

Question 2.4 Please state your opinion on the following:

a) If payment institutions and e-money institutions are added to the list of participants, they should be subject to a specific risk assessment.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please provide some comments/explanations on your opinion to proposal 2.4

a):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer under 2.3.

b) Payment institutions and e-money institutions should only be made eligible SFD participants if ‘warranted on grounds of systemic risk’.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please provide some comments/explanations on your opinion to proposal 2.4

b):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer under 2.3.

c) If payment institutions and e-money institutions are added to the list of participants, no particular risk assessment is needed.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please provide some comments/explanations on your opinion to proposal 2.4

c):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See answer under 2.3.

Question 2.5 Which risks should be considered in a specific risk assessment (mentioned in question 2.5.) for payment and e-money institutions?

How could such a risk assessment look like?

Please state your opinion on the following:

a) IT risks should be considered.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please provide some comments/explanations on your opinion to proposal 2.5

a):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Credit institutions are subject to stringent rules and supervisory with respect to operational and IT risks, e.g. stemming from the Union Law on prudential requirements. This risk mitigating and managing framework goes along with positive effects on the stability and risk profile within payments systems, which in turn are highly dependent on functioning IT and organizational processes.

Extending the access to payment institutions or e-money institutions would require a thorough assessment how these market participants can be deemed to be equally secure. We understand for instance the Digital Operational Resilience Act ("DORA") as a comparable approach in that sense

b) Operational risks (other than IT risks) should be considered.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please provide some comments/explanations on your opinion to proposal 2.5

b):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Credit institutions are subject to stringent rules and supervisory with respect to operational and IT risks, e.g. stemming from the Union law on prudential requirements. This risk mitigating and managing framework goes along with positive effects on the stability and risk profile within payments systems, which in turn are highly dependent on functioning IT and organizational processes.

Extending the access to payment institutions or e-money institutions would require a thorough assessment how these market participants can be deemed to be equally secure.

c) Credit risk should be considered.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please provide some comments/explanations on your opinion to proposal 2.5

c):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Credit institutions are subject to stringent rules and supervisory with respect to capital and liquidity requirements, e.g. stemming from the Union law on prudential requirements. This risk mitigating and managing framework goes along with positive effects on the stability and risk profile within payments systems, which in turn depend on sound financial situations of their participants.

Extending the access to payment institutions or e-money institutions would require a thorough assessment how these market participants can be deemed to be equally secure.

d) Liquidity risk should be considered.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please provide some comments/explanations on your opinion to proposal 2.5

d):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Credit institutions are subject to stringent rules and supervisory with respect to capital and liquidity requirements, e.g. stemming from the Union law on prudential requirements.

This risk mitigating and managing framework goes along with positive effects on the stability and risk profile

within payments systems, which in turn depend on sound financial situations of their participants. Extending the access to payment institutions or e-money institutions would require a thorough assessment how these market participants can be deemed to be equally secure.

e) Other, please specify:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 2.6 In case a risk assessment is deemed useful: How often should risks be assessed?

- Annually (and ad hoc when necessary)
- Every two years (and ad hoc when necessary)
- As defined by a competent authority
- Don't know / no opinion / not relevant

Question 2.6.1 Please elaborate on your answer to question 2.6:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

EU legislation should provide a general framework with certain degrees of freedom reflecting the individual significance and probable risk aspects of different institutions. However, in order to avoid national fragmentation, this framework should be binding for each member state and it could be considered to yield supervisory powers to the European level. The respective periods should take into account possible greater risks and a lower degree of regulation and supervision of payment institutions and e-money institutions compared to other participants.

Question 2.7 Do you agree with adding CSDs to the list of participants covered by the SFD?

- Yes
- No
- Don't know / no opinion / not relevant

Question 2.7.1 Please explain your answer to question 2.7:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It does not seem absolutely necessary to add the CSD as it is included in the SFD as operator of a system. However, a CSD can also be a participant in another CSD SSS, a so called investor CSD (see also CSDR – Links) or a participant of a third-country SSS. Therefore, it should be clarified that CSDs are also participants covered by the SFD.

Question 2.8 What do you think of adding operators of EU payment systems that are not designated under the SFD to the list of participants covered by the SFD?

- All payment system operators of EU systems that are not designated under the SFD should be eligible participants under the SFD if risks for SFD systems are adequately mitigated.
- Participation should only be possible based on the grounds of systemic risk.
- Even though credit and liquidity risk related to settlement in commercial bank money are reduced, other risks stemming from their participation in SFD systems increase. Therefore, only if they qualify as another type of SFD participant (e.g. a credit institution) they are good to participate.
- Other
- Don't know / no opinion / not relevant

Question 2.9 What do you think of limiting the number of eligible SFD participants by replacing or complementing the current list of eligible participants by an approach that is based on a risk assessment for participants?

- This is a good idea, as it ensures that only entities which are really systemically important benefit from the SFD protection (in case of a purely risk based approach: notwithstanding their legal form (whether they are a bank, investment firm, payment institution, e-money institution etc.))
- This is too difficult from an operational point of view and will therefore jeopardize the aim of a risk based approach (as risks cannot be appropriately monitored and considered when they actually occur)
- Other
- Don't know / no opinion / not relevant

Please specify what you mean by 'other' in your answer to question 2.9:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

All (direct) participants of an SFD system should be treated equally. We cannot see any reason why excluding certain participants or limiting the number of participants in a system would be useful. It will lead to an unharmonised application and protection in the event of an insolvency which should be avoided.

Question 2.9.1 Please explain your answer and specify how such a risk assessment could look like, whether it should replace or complement the current list of eligible participants and how often it should take place:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

3. SFD and technological innovation

The SFD is meant to be technologically neutral. Tech neutrality is primarily achieved by referring key requirements (e.g. the moments of entry into the system and irrevocability) to the rules of the SFD system, rather than mandating them in the SFD, itself. This approach, has largely allowed SFD systems to develop as needed, without major legislative change, so far.

The Commission has received input from various stakeholders who argue that some of the SFD's requirements create obstacles to the use of distributed ledger technology (DLT) and crypto-assets¹. Their main concerns refer to the application of the SFD in a decentralised permission-less DLT and in a context where multilateral as opposed to mainly bilateral relationships prevail. The most important issues for permission-less DLT are that there is no centralised operator, unidentified participants can enrol without restriction and functions can be attributed simultaneously to several participants. As the existence of a system operator defining the rules of a system and clear legal responsibility are important for the functioning of the SFD, this poses considerable challenges whether the SFD provisions can actually apply and if so under which conditions.

As there is not enough experience yet of the benefits and risks associated with the use of DLT, the Commission has adopted a [proposal for a pilot regime on DLT market infrastructures \(the pilot; COM/2020/594 final\)](#) using a sandbox approach to allow experimentation by derogating from certain EU financial markets provisions.

The pilot enables CSDs to operate 'DLT securities settlement systems' outside the scope of the SFD, but does not preclude CSDs from operating 'DLT securities settlement systems' within the SFD as stakeholder feedback suggests that this may well be possible for permissioned DLT under certain circumstances, where the system operator could design the system and its rules to be SFD compliant, possibly subject to some specification or clarification of the SFD to enhance legal certainty. Furthermore, the pilot does not apply to DLT payment systems. Hence, it could be useful to specify and clarify, in the current review, certain definitions and concepts in the SFD (e.g. system, transfer order, book-entry, settlement account and agent, conflict of laws, links with other financial market infrastructures). This could ensure they are tech neutral when applied to permissioned DLT based payment systems as well as DLT securities settlement systems that are not covered by the pilot. Feedback received so far by the Commission in this respect provided very mixed results and has not allowed for the full specification of those obstacles and potential solutions or proposals.

Stakeholders indicate further, that not only Member States transpose the existing SFD requirements differently but also national competent authorities (NCAs) interpret them differently, which might lead to legal uncertainty. Clarifying certain concepts and definitions in the SFD could hence help avoiding diverging national interpretations and transpositions and resulting legal uncertainty.

¹ On 19 December 2019, Commission services launched a [consultation on markets in crypto-assets](#). A part of the respondents gave replies to one or more SFD related questions (e.g. around 40% of overall respondents had an opinion on the application of SFD definitions). The responses were mixed and conflicting. Some thought that the SFD as it currently stands or with minor changes is sufficiently tech neutral to accommodate DLTs and crypto-assets, whilst others thought further clarification or specification was needed. The reasons for further changes and how to make them were not always clearly stated. See also [ESMA's 'Advice - Initial Coin Offerings and Crypto-Assets'](#), January 2019; ['30 recommendation on regulation, innovation and finance' by the 'Expert Group on Regulatory Obstacles to Financial Innovation' \(ROFIEG\)](#), December 2019 and ['The potential impact of DLTs on securities post-trading harmonisation and on the wider EU financial market integration' by the 'Advisory Group on Market Infrastructures for Securities and Collateral' \(AMI-Seco\)](#), September 2017.

Question 3.1 Do you consider the SFD to be technologically neutral?

- Yes, everything is sufficiently clear no matter the technology used.
- No, I do not know how to apply certain concepts or definitions of the SFD for specific technologies which creates legal uncertainty (please explain under question 3.5.).
- Don't know / no opinion / not relevant

Question 3.2 Do you agree that the concepts of the SFD do not work in a permissionless DLT environment?

- Yes, important concepts of the SFD do not work in a permissionless DLT environment, especially as legal responsibilities might be unclear. It is indeed problematic that there is no centralised operator, unidentified participants can enroll without restriction and functions can be attributed simultaneously to several participants.
- No, I do not see any problem to apply the concepts of the SFD in a permissionless DLT environment. (Please provide detailed information of how you think settlement finality under the SFD can be achieved despite the lack of a centralised operator, the fact that unidentified participants can enroll without restrictions and that functions can be attributed simultaneously to several participants.)
- Don't know / no opinion / not relevant

Question 3.3 Do you agree that the scope of the current review of the SFD should be limited to considering the tech neutrality of the SFD in the context of permissioned DLTs where the system operator could design the system and its rules so as to be SFD compliant?

- Yes
-

No

- Don't know / no opinion / not relevant

Question 3.3.1 Please explain your answer to question 3.3:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The SFD does not regulate technological issues regarding the system used. It rather demands member states to adapt national insolvency rules in a way that respects the SFD irrevocability and settlement finality in the case of an insolvency of a system participant and states that only the law governing the system determines the rights and obligations of that participant resulting from the participation in the system. Therefore, we consider the SFD as generally tech neutral. However, the systems protected under the SFD are protected because of the intermediated way they work. A centralized system operator must be able to rely on the instructions matched in the system and then processed. A system proceeding in a different way – irrespective of the actual underlying technology – may be subject to different rules and concepts. This would relate to the notion of treating equal things equally but unequal things unequally.

Question 3.4 Do you think that first experience with the [pilot regime for market infrastructures based on DLT \(COM/2020/594 final\)](#) should be gained before considering possible issues in the SFD?

- Yes, this will show problems resulting from the use of DLT that have to be considered in the SFD.
- No, there are already issues which have to be addressed for the use in a DLT environment as they currently create legal uncertainty.
- Don't know / no opinion / not relevant

Question 3.4.1 Please elaborate on your answer to question 3.4, if necessary:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The use of the DLT is still evolving. Before making amendments of the SFD on a purely theoretical basis, we would suggest gaining more experience with new technologies in a laboratory or sandbox approach. The current pilot regime for DLT market infrastructures is a good example although it would not, to our understanding, cover payment or clearing systems. Other testing environment is possible. We believe that DLT-SSSs would not – for the time being – be considered designated SFD systems, due to the immature stage and considerably low systematic impact. Therefore sound testing and practical assessment of transactions on a DLT-system should take place before any legislative changes are made in the SFD. Furthermore, the different way how transfers are processed under the application of the DLT as well as the different roles and functions of system operators and/or participants should also be thoroughly analysed and assessed. Similar to the timeline in the pilot regime, but not necessarily in parallel, the SFD could be reviewed in e.g. three years in order to assess the need for amendment due to possible issues when applying DLT.

Question 3.5 Should any of the definitions or concepts in the SFD be clarified or amended to apply explicitly in a permissioned DLT context?

3.5.1 Definition of a system

a) Should the definition of a system be clarified or amended to apply explicitly in a permissioned DLT context?

- Yes
- No
- Don't know / no opinion / not relevant

3.5.2 Definition of transfer order

a) Should the definition of transfer order be clarified or amended to apply explicitly in a permissioned DLT context?

- Yes
- No
- Don't know / no opinion / not relevant

3.5.3 Concept of book-entry

a) Should the concept of book-entry be clarified or amended to apply explicitly in a permissioned DLT context?

- Yes
- No
- Don't know / no opinion / not relevant

3.5.4 Definition of settlement account

a) Should the definition of settlement account be clarified or amended to apply explicitly in a permissioned DLT context?

- Yes
- No
- Don't know / no opinion / not relevant

3.5.5 Definition of settlement agent

a) Should the definition of settlement agent be clarified or amended to apply explicitly in a permissioned DLT context?

- Yes
- No
-

Don't know / no opinion / not relevant

3.5.6 Links with other financial market infrastructures and trading venues (traditional or DLT based)

a) Should the links with other financial market infrastructures and trading venues (traditional or DLT based) be clarified or amended to apply explicitly in a permissioned DLT context?

- Yes
- No
- Don't know / no opinion / not relevant

3.5.7 Concept of conflict of laws

a) Should the concept of conflict of laws be clarified or amended to apply explicitly in a permissioned DLT context?

- Yes
- No
- Don't know / no opinion / not relevant

3.5.8 Other

a) Is there any other definition or concept that should be clarified or amended to apply explicitly in a permissioned DLT context?

- Yes
- No
- Don't know / no opinion / not relevant

b) Please specify what other definition or concept should be clarified or amended to apply explicitly in a permissioned DLT context?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 3.6 Are there any other amendments to the SFD that should be considered to deal with opportunities and/or risks that are specific to a permissioned DLT based SFD system?

- Yes
- No
- Don't know / no opinion / not relevant

4. Protections granted under the SFD vis-à-vis collateral security

The definition of 'collateral security' under the SFD covers 'all realisable assets', including financial collateral covered by the FCD. Such financial collateral includes cash, financial instruments and credit claims and is discussed in the [targeted consultation on the FCD](#).

Article 9(1) of the SFD insulates collateral security given in connection with participation in an SFD system or in connection with monetary operations involving the national central banks of the Member States (NCBs) or the ECB from the effects of the insolvency of the collateral giver where the latter is a:

- participant in a system or in an interoperable system
- system operator of an interoperable system that is not a participant
- counterparty to the NCBs or ECB
- third party that provided the collateral security

However, Article 9(1) of the SFD does not protect collateral security provided by the client of a participant in an SFD system (e.g. a counterparty clearing its derivatives) from the effects of the opening of insolvency proceedings against the participant (e.g. a clearing member) or the system operator (e.g. a CCP) beyond any protection afforded by sectoral legislation (e.g. EMIR or CSDR).

Question 4.1 Should the protection in Article 9(1) of the SFD be extended to clients of participants in an SFD securities settlement system in the event of the insolvency of that participant?

- Yes
- Yes, but only for certain SFD securities settlement systems
- Yes, but only to certain clients of participants
- No
- Don't know / no opinion / not relevant

Question 4.1.1 Please explain your answer to question 4.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Enforceability of collateral needs to be protected. Insolvency of the intermediary holding the collateral must be irrelevant. Collateral is to secure the collateral taker and not the intermediary becoming insolvent. The objective of collateral is to secure the collateral taker. Therefore, the relationship between collateral giver and collateral taker should be considered and intermediaries between them should not pose any risk. Hence, an insolvency of an intermediary should not impair the possibility of the collateral taker to use the collateral.

In fact, Art. 9 SFD takes this into account in the German language version of the SFD. The enforceability of collateral security is not limited to the system operator and the participant but rather granted to the “holder” (Inhaber) of collateral. Therefore, the SFD protection should be broadened and collateral should be enforceable for the participant as well as all parties beyond the participant in connection with the system (i.e. granting access to the system).

Question 4.2 In case the protection in Article 9(1) of the SFD was extended to clients of participants in an SFD securities settlement system: How useful do you consider the following conditions?

a) The client should be known to the system operator.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please explain why you provided that response to question 4.2 a):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For CSDs: If the client of a participant needs to enforce the collateral received through a transaction in the system, it would have a claim against its own client. The system operator does not need to know those indirect participants, since moments of insolvency proceedings are irrelevant to the system operator. The realization of the collateral would take place via the system participant (when sending the according settlement instructions/transfer orders).

b) The client should have to fulfill criteria that are predefined by the system operator, e.g. regarding the client's credit/risk assessment.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please explain why you provided that response to question 4.2 b):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For CSDs: If the client of a participant needs to enforce the collateral received through a transaction in the system, it would have a claim against its own client. The system operator does not need to know those indirect participants, since moments of insolvency proceedings are irrelevant to the system operator. The realization of the collateral would take place via the system participant (when sending the according settlement instructions/transfer orders).

c) The client should have its own segregated account.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please explain why you provided that response to question 4.2 c):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

For CCPs: yes
For CSDs: not necessarily. Identification can also be done in omnibus accounts.

d) The client should provide collateral security to secure transactions exceeding the threshold under EMIR (whereupon they are obliged to centrally clear their transactions).

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please explain why you provided that response to question 4.2 d):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

e) Other, please specify and explain why:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

5. Settlement finality under the SFD

The SFD bestows settlement finality on SFD systems. To determine what is covered and how it is covered, the SFD refers to two specific moments that must be defined in the rules of the system: entry into the system and irrevocability.

In this regard, stakeholders indicated what they consider shortcomings in the SFD. They state that the legal duty for an SFD system to specify the moments of entry into the system and irrevocability as well as where settlement is both enforceable and irrevocable, is not clearly stipulated in the SFD (see also [EPTF Report](#), 15 May 2017). Furthermore, in their opinion, the settlement finality provisions of the SFD do not accommodate the specificities of clearing systems both under business-as-usual and market stress conditions (e.g. where commodities derivative contracts reached maturity or when a CCP's default management procedures kicked-in). Additionally, they raised the point that there was no provision in the SFD for ensuring that the moment of settlement finality is identical in relation to both the cash and securities legs of a transaction settled based on 'delivery-versus-payment'. Especially in the event of the insolvency of a participant in an SFD system, different finality timestamps in interoperable systems could cause problems. A transaction could be final, protected and executable in one system, while being neither final nor executable in another system (e.g. relevant in case of a CCP and a CSD of which one settles the cash leg and the other settles the securities leg of the transaction).

Question 5.1 Do you agree with the concerns raised regarding the settlement finality and notification about insolvency proceedings under the SFD?

a) The legal duty for an SFD system to specify the moments of entry into the system and irrevocability as well as where settlement is both enforceable and irrevocable should be clearly stipulated in the SFD.

- 1 - Disagree
- 2 - Rather not agree

- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please explain your answer to question 5.1 a):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

b) The settlement finality provisions of the SFD should accommodate the specificities of clearing systems both under business-as-usual and market stress conditions more clearly.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please explain your answer to question 5.1 b):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

c) A provision in the SFD for ensuring that the moment of settlement finality is identical in relation to both the cash and securities legs of a transaction settled on the basis of 'delivery-versus-payment' is needed.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
-

- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please explain your answer to question 5.1 c):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The DvP mechanism ensures that delivery only takes place when payment is made meaning that settlement finality of the securities leg is reached only when the cash leg is also final.

d) The SFD needs to be amended to ensure that different times of finality do not cause problems in interoperable systems.

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
- 5 - Fully agree
- Don't know / no opinion / not relevant

Please explain your answer to question 5.1 d):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

e) The SFD should clearly stipulate, that a system operator should also be immediately notified about the opening of insolvency proceedings (in addition to an authority chosen by the Member State, the ESRB, ESMA and other Member States).

- 1 - Disagree
- 2 - Rather not agree
- 3 - Neutral
- 4 - Rather agree
-

5 - Fully agree

Don't know / no opinion / not relevant

Please explain your answer to question 5.1 e):

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

f) Other, please specify and explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 5.2 Would your answer change if the SFD would be extended to cover third-country systems?

Yes

No

Don't know / no opinion / not relevant

6. The SFD and other Regulations/Directives

The proper functioning of the SFD also requires clarity regarding its interaction with other relevant legislation, especially insolvency legislation. When the SFD was adopted, (pre-) insolvency and insolvency-like proceedings (e.g. regulatory moratoria) were governed by national law. Since then, the EU has adopted the [BRRD](#), the [Insolvency Regulation](#) as well as the [Second Chance Directive](#) and the [Framework for the recovery and resolution of central counterparties](#).

The Commission's services are interested in possible other legislation where provisions may not be sufficiently clear in their interaction with the SFD or vice versa.

Question 6.1 Is there any (insolvency or other) legislation where provisions are not sufficiently clear in terms of their interaction with the SFD or the other way round?

6.1.1 Insolvency Regulation (Regulation (EU) 2015/848)

- Yes
- No
- Don't know / no opinion / not relevant

6.1.2 Second Chance Directive (Directive (EU) 2019/1023)

- Yes
- No
- Don't know / no opinion / not relevant

Please explain why you think the provisions of the **Second Chance Directive (Directive (EU) 2019/1023) are not sufficiently clear in terms of their interaction with the SFD or the other way round.**

Please also explain how this matter might be solved:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Relation to SFD is up to national decision (opt-out). Details of interaction with the SFD are unclear because subject to the national rules of the member states.

6.1.3 BRRD (Directive (EU) 2014/59/EU)

- Yes
- No
- Don't know / no opinion / not relevant

Please explain why you think the provisions of the **BRRD2 (Directive (EU) 2019/879) are not sufficiently clear in terms of their interaction with the SFD or the other way round.**

Please also explain how this matter might be solved:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In the recovery regime (not in the SFD) it should be clarified which effects moratoria or other intervention rights have in comparison with the insolvency of a system participant. The current terms seem appropriate which is why we do not see any need to change the compromise in the BRRD for the time being. In case of any amendments coherence and consistency between the legal acts are of an essence.

6.1.4 Framework for the recovery and resolution of central counterparties (Regulation (EU) 2021/23)

- Yes
- No
- Don't know / no opinion / not relevant

Please explain why you think the provisions of the Framework for the recovery and resolution of central counterparties (Regulation (EU) 2021/23) are not sufficiently clear in terms of their interaction with the SFD or the other way round.

Please also explain how this matter might be solved:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

See response in No. 3 (BRRD). The scope and range of intervention rights are stipulated in the recovery and resolution framework which is why also their effects and impact need to be considered here.

6.1.5 PSD2 (Directive (EU) 2015/2366)

- Yes
- No
- Don't know / no opinion / not relevant

6.1.6 If there is any (insolvency or other) other legislation where provisions are not sufficiently clear in terms of their interaction with the SFD or the other way round, please specify which ones, explain why, and explain how this matter might be solved:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

7. Other issues

The Commission's services are interested in possible other matters that stakeholders may have encountered in the context of the SFD that might be important for the review.

Question 7.1 To what extent have inconsistencies in the transposition of the SFD caused cross-border issues, which would merit further harmonisation?

Please provide examples of such instances:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 7.2 Is there anything else you would like to mention?

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) below. **Please make sure you do not include any personal data in the file you upload if you want to remain anonymous.**

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

Useful links

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[Consultation document \(https://ec.europa.eu/info/files/2021-settlement-finality-review-consultation-document_en\)](https://ec.europa.eu/info/files/2021-settlement-finality-review-consultation-document_en)

[Related targeted consultation on the review of the Financial Collateral Directive \(https://ec.europa.eu/info/publications/finance-consultations-2021-financial-collateral-review_en\)](https://ec.europa.eu/info/publications/finance-consultations-2021-financial-collateral-review_en)

[More on settlement finality \(https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-mark/post-trade-services/settlement-finality_en\)](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-mark/post-trade-services/settlement-finality_en)

[Specific privacy statement \(https://ec.europa.eu/info/files/2021-settlement-finality-review-specific-privacy-statement_en\)](https://ec.europa.eu/info/files/2021-settlement-finality-review-specific-privacy-statement_en)

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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