dutch banking association

Contact

Tom Rood
Beleidsadviseur
rood@nvb.nl

Date: 17 March 2026

Position Paper

Position Paper on the proposed Regulation on Settlement Finality and amending Directive on financial collateral arrangements (SFR)

Key information

- We welcome the proposal by the European Commission to change the Settlement Finality Directive (SFD) into a Regulation (SFR).
- However the current proposal raises strong concerns because of the introduction of an array of extra regulatory obligations for EU designated systems and third country registered systems. This results in a significant increase of complexity and regulatory burden.
- We propose a simpler mechanism, in line with current best practice in the Netherlands. While reducing regulatory complexity, this alternative meets the goal of achieving certainty about the finality of transactions.

We welcome the proposal by the European Commission to amend the Settlement Finality Directive (SFD) and the Financial Collateral Directive. The proposal to change the SFD into a Settlement Finality Regulation (SFR) will abolish the different implementations by Member States which hamper the development of an EU Savings and Investments Union. However we wish to draw attention to various issues currently proposed in the SFR, in particular when participating in third country systems.

Third Country Systems under the SFD
The SFD has been in existence since 1998 and has undergone multiple amendments over time. Various Member States have exercised the option outlined in recital 7 of the SFD to extend its scope to domestic institutions directly participating in third country systems, as well as to collateral security provided in connection with such participation.

Focus on the limited goals of the SFD and the SFR
In the SFD it is clear that requirements attached to such extension to third country systems should be focussed on the limited goal to achieve, being certainty about the finality of transactions entered in the systems in scope of the SFD, and to prevent that local bankruptcy laws of participating institutions could make these transactions void or invalid retroactively. There should be legal certainty around the timing and

enforceability of settlement, netting and collateral arrangements thereby safeguarding the smooth functioning of financial markets.

Importantly, the SFD doesn't regulate the systems in scope itself. The regulation and supervision of such systems, where necessary, is and should be arranged in other regulations like EMIR for CCP's and CSDR for CSD's. This approach in the SFD, with only a limited range of requirements, should be maintained in the SFR.

However, the proposed SFR introduces a substantial array of additional regulatory obligations for designated systems within the European Union and registered systems established in third countries, set out in articles 3 to 11 for designated systems and articles 12 to 16 for registered systems. We wonder whether such additional requirements are aligned with the limited goals of the SFR, and with the simplification agenda of the European Commission. To ensure the SFR does not add unnecessary complexity or create overlapping regulations with existing EU legislation, we recommend a thorough review of articles 3 to 11 and 12 to 16. Any articles found to be duplicative should be removed.

Third Country Systems under the SFR

Beyond heightened regulations applicable to designated and registered systems, a key challenge arises for EU participants to third country registered systems: only the system operator, not the EU participant, may apply for registration under the SFR. The comprehensive requirements imposed on system operators for registration have the potential to cause significant delays and may discourage operators from registering altogether, which could seriously affect EU participants relying on these systems.

This extra layer of regulatory complexity and the introduction of an "opt in" process is unnecessary, not fit for purpose, and goes far beyond the objective of achieving certainty about the finality of transactions entered in these systems. With regard to third country systems, EU participants to these systems should be able to request registration/ notification of the system to ensure finality of their transactions entered in the system before a possible bankruptcy of the EU participant and legal certainty on settlement of such transactions, netting arrangements and posted collateral. As such the limited scope of requirements currently in the SFD is more suitable for this.

Another point is that in article 1 of the SFR there seems to be an unbalance in protection of EU designated systems and third country registered systems. Article 1 (2) appears to limit the protection for third country to transfer orders. Protection of the SFR however should also cover other important elements as netting (including close out netting) and collateral. Also netting and collateral provided in connection with a registered third country system should be protected against the bankruptcy of a participant. We see no reason to differ in the SFR protection against bankruptcy of EU participants of designated EU systems and registered third country systems. To clarify this, we would propose to add netting and collateral in article 1 (2) next to transfer orders.

Proposed alternative
With regard to bringing third country systems in scope for the SFR, we propose a far simpler mechanism, following the practice currently used in the Netherlands. After Brexit, the Netherlands was one of the Member States which extended the scope of the SFD, to participation of domestic institutions in third country systems. The requirements prior to joining such a third country system are straightforward: market participants only need to notify the Dutch Central Bank of their intention to participate and supply the system's contact details, confirming that the system is based in a country where the Central Bank is also a member of the Bank of International Settlements. Adopting a similar approach for third country systems (with notification to ESMA, the ECB or the NCA) would significantly simplify the SFR, create flexibility because EU participant notify third country systems and ease the regulatory burden for both EU participants and these third country system operators.

How does the SFR relate to the BRRD
Finally, it is important to clarify the relationship between the SFR and the Bank Recovery and Resolution Directive (BRRD), especially given that many system participants are banks. For instance, it is assumed that bail-in instruments and resolution stay powers under the BRRD will not be used to limit transaction finality or undermine the legal certainty of settlements, netting, or posted collateral within these systems. Further clarification on this matter would be highly valued.