ISDA Safe, Efficient Markets

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ISDA LEGAL OPINIONS & BREXIT

A number of pieces of EU legislation provide certain benefits in relation to contractual arrangements between EU/EEA-based counterparties and contractual arrangements governed by the law of an EU/EEA Member State. This document seeks to provide a high level overview of some considerations in the light of Brexit, with a focus on whether there are any Member State requirements in local law in relation to the implementation of the Winding Up Directive and Financial Collateral Directive. The areas discussed below are not a comprehensive list of considerations and is provided for information purposes only. Brexit may have an impact on other related areas[1] and legal advice should be sought.[2] The below considerations are subject to the absence of any agreement to the contrary. References to legal opinions are to the latest legal opinion published on ISDA's opinion library as of the date of this document.

Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels 1 Recast Regulation") and the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters ("Lugano Convention 2007")

A benefit of contractual arrangements between EU/EEA-based counterparties is the automatic recognition of jurisdiction and judgments under the Brussels 1 Recast Regulation and the Lugano Convention 2007. Post Brexit, enforcement of judgements of the English courts will no longer be governed by the Brussels 1 Recast Regulation or the Lugano Convention 2007 and directly enforced in EU/EEA (except Liechtenstein). For background, please see the definition of Convention Court in section 14 of the 2002 ISDA Master Agreement.

Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms ("BRRD")

A benefit of a contractual arrangement governed by the law of an EU/EEA Member State is the recognition of bail-in under BRRD. Article 55 of the BRRD requires credit institutions and other financial institutions in scope include a recognition of bail in clause[3] provided such liability is (a) not excluded under Article 44(2); (b) not a deposit; (c) governed by the law of a third country (non-EU/EEA law); and (d) issued or entered into after the date on which a Member State applies the provisions adopted in order to transpose the requirement. In the event of Brexit,

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[1] Additional information on Brexit can be found in ISDA's Brexit FAQs.
[2] If you have any questions please contact the ISDA contacts listed at the bottom of this document. Details of ISDA's opinions counsel can be found here.
[3] A contractual term whereby the creditor or party to the agreement creating the liability recognises that liability may be subject to the write-down and conversion powers and agrees to be bound by any reduction of the principal or outstanding amount due, conversion or cancellation that is effected by the exercise of those powers by a resolution authority.

agreements governed by English law would require the inclusion of such provision.

Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) ("EIR Recast")

The EIR Recast has direct effect in the EU. Denmark is not a party to this regulation.

Article 16 imposes a Member State requirement to benefit from the exemption in relation to detrimental acts. It states, "Point (m) of Article 7(2) [(the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors)] shall not apply where the person who benefited from an act detrimental to all the creditors provides proof that: (a) the act is subject to the law of a Member State other than that of the State of the opening of proceedings; and (b) the law of that Member State does not allow any means of challenging that act in the relevant case."

Additional considerations are noted under Belgium, Finland, Germany, Greece, Netherlands, Norway, Portugal and Slovenia below.

Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements ("Financial Collateral Directive")

Under Article 1 of the Financial Collateral Directive, each party to a financial collateral arrangement must belong to one of the stated categories. In most Member States, there is no requirement for each party to be domiciled in the EU/EEA as indicated below. However, please note different considerations apply in the Czech Republic, Germany, Iceland, Liechtenstein and Slovenia.

Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions ("Winding Up Directive")

Article 30 provides that "Article 10 shall not apply as regards the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole, where the beneficiary of these acts provides proof that: - the act detrimental to the creditors as a whole is subject to the law of a Member State other than the home Member State, and — that law does not allow any means of challenging that act in the case in point."

Whether this EU/EEA Member State requirement is implemented in local law is outlined below and where applicable counsel note other articles, which may impose requirements as to Member State law.

Jurisdiction	Opinion Type	Any Member State requirement in jurisdiction's implementation/interpretation of:		Other points to note[4]
		Winding Up Directive (i.e. Article 30)	Financial Collateral Directive (i.e. for both parties to be domiciled in the EU/EEA)	
Austria	Netting	No		Some statements made in the netting opinion (e.g. on international jurisdiction of credit institutions and insurance undertakings) may only apply to institutions and insurance undertakings domiciled in the EEA. For example, this may impact on the statements concerning multi-branch netting.
	Collateral		No	No
Belgium	Netting	No. Pursuant to Article 369 of the Belgian Banking Act (which implements Article 25 of the Winding Up Directive) the effects of a (Belgian) insolvency proceeding on netting agreements are exclusively determined by the law governing such agreements. According to a majority view in Belgian legal writing, this means that the application of potential claw-back provisions contained in the (Belgian) lex concursus, is excluded.		Article 370 of the Belgian Banking Act (which implements the "shall not effect" rule of Article 21 of the Winding Up Directive) only grants protection to e.g. pledges, if the pledged collateral is deemed to be located in another EEA Member state. The same goes for Article 8 of the EIR Recast.
	Collateral		No. Within the limits of the Financial Collateral Directive, Belgian law grants protection to financial collateral and netting arrangements that are concluded	

[4] Note overview above.

			between parties both qualifying as a "public or financial legal person" within the meaning of the Belgian Financial Collateral Act. The list of entities qualifying as a "public or financial legal person" includes, inter alia, credit institutions and investment firms (without distinguishing between EEA and non-EEA incorporated entities), as well as "any other foreign legal entity qualifying in its country of origin as an entity falling under one of the categories listed in Article 1 (2) (a) up to and including (d) of the Financial Collateral Directive". The protection granted by the Belgian Financial Collateral Act should therefore apply to arrangements concluded between counterparties that both fall under one of the categories listed in Article 1 (2) (a) up to and including (d) of the Financial Collateral Directive and this irrespective of their country of origin (i.e. EEA or non-EEA).	
Cyprus	Netting	Yes. Article 30 has been implemented in Cyprus in section 33(7) of the Business of Credit Institutions Law 1997, which provides that: "Where a reorganisation measure provides for rules relating to the voidness, voidability or unenforceability of acts detrimental to the creditors as a whole performed before the adoption of the measure, the provisions of the Companies Law	No	No

		or the Cooperative Societies Law, as the case may be, do not apply, unless the beneficiary of the detrimental act proves that the act detrimental to the creditors as a whole is subject to the law of a member-state other than of the Republic, and that law does not allow any means of challenging that act in the specific case.” On this basis, the position in Cyprus reflects the position as stipulated under Article 30, and requires that the law of a Member State other than Cyprus must govern the act in order for Cypriot rules on detrimental acts not to apply.		
	Collateral		No	No
Czech Republic	Netting	No		No
	Collateral		Yes	No
Denmark	Netting	Yes. The Danish implementation of Article 30 of the Winding Up Directive only applies to the laws of a country within the EEA.		No
	Collateral		No. The list of counterparties eligible for the benefit of the Danish netting and collateral regime is not limited to entities located in a Member State – see Section 196 of the Danish Capital Markets Act.	No
Finland	Netting	Yes. Article 30 As regards the conflict law rules in insolvency of Finnish credit institutions, the Commercial Bank Act refers to “Provisions applicable within the European Economic Area relating to applicable law”. Articles 23, 25 and 26 However, as in Articles 23, 25 and 26 of the Winding up Directive, the implementing provisions in Finnish law regarding		No. See below.

		set-off, netting agreements and repurchase agreement do not refer to the law of a Member State.		
	Collateral		No. According to the Finnish Act on Financial Collateral Arrangements, the Act is applied when the Collateral Provider is an Institution, or when the Collateral Prover is not an institution but the Collateral Taker is, provided in such case that the Collateral is either account money or publicly traded securities. Institution is defined in the Act, and the definition includes also foreign financial institutions (banks, special institutions under public law, central banks, insurance companies etc.) as well as other legal persons, which undertake similar activities. Thus the definition is quite broad and is not limited to only entities in Finland or in the EU/EEA area.	EIR Recast - The Finnish Supreme Court has in its decision KKO 2014:99 given its opinion on the interpretation of the article. In its decision the court ruled, that in procedural matters (such as the timeframe of recovery) the applicable law shall be the same law, which is applied to the insolvency proceedings in general (lex concursus) in accordance with the Insolvency Regulation, and the procedural preconditions for recovery shall be determined in accordance with the law applicable to the insolvency proceedings. Thus, under the decision, article 16 may only be used as a defence in situations, where the recovery is disputed on basis of substantive law.
France	Netting	Yes. Article 30 of the Directive 2001/24/EC of 4 April 2001 (as amended from time to time) is implemented by Article L. 613-31-7 of the French Monetary and Financial Code (the "**M&F Code**") which provides that "(…) the provisions of the law of the Member State in which the winding-up proceedings were opened relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole shall not apply where the beneficiary of these acts provides proof that the act is subject to the law of another Member State and that that law does not allow any means of challenging that act in the case in point. In the case of reorganisation measures, the		BRRD - M&F Code implements the BRRD. Please see French opinions.

		rule provided for in the preceding subparagraph shall only apply to acts prejudicial to creditors entered into prior to the adoption of such a measure."		
	Collateral		No. The list of Eligible Entities (as defined in Jones Day's legal opinion) for the benefit of the French netting and collateral regime is not limited to entities located in a Member State but also includes any "non-resident establishment having a comparable status"(Article L. 211-36, I, 1° of the M&F Code	See above.
Germany	Netting	No. Section 339 German Insolvency Code ("**InsO**") has a wider scope than Article 30 of the Winding Up Directive as it does not limit the non-avoidance privilege (for legal acts governed by a law other than the law of the opening of proceedings) to the law of Member States. The privilege is worded broadly and therefore should apply to any other law, provided the general preconditions of Section 339 InsO are met (e.g. relevant law does not allow any means of challenging legal act; benefiting person provides proof). See additional information on the Winding Up Directive below.		BRRD - implemented by German Recovery & Resolution Act ("**SAG**") (see sections 55 and 60a SAG)) CRR credit institutions and CRR investment firms - Articles 3 and 9 of the Winding Up Directive is implemented in Section 46e German Banking Act - exclusive responsibility of regulatory authorities in home Member States for proceedings and the non-admittance of secondary / territorial proceedings in other Member States would no longer apply to UK branches of German institutions which may in relevant scenarios affect the fact pattern for the multibranch netting analysis.

	Collateral		With respect to collateral providers: No With respect to collateral receivers: unclear. Pursuant to the German implementation of the Financial Collateral Directive (Section 1(17) sent. 4 KWG) collateral providers from non-member states are equivalent to the collateral providers mentioned in Section 1(17) sentence 1 KWG, provided they essentially correspond to the entities listed in Article 1(2) lit. (a) to (e) of the Financial Collateral Directive. Whether Section 1(17) KWG can be interpreted so as to also include collateral arrangements with non-member state collateral receivers is unclear.	See above. Winding Up Directive - Deviating from Article 21 of the Winding Up Directive, the German implementation (Sec. 351 InsO) (a) does not restrict the scope to insolvency procedures governed by the law of an EU Member State but (b) only covers scenarios where the insolvent party is located outside Germany/foreign insolvency proceedings with relevant assets being located in Germany ("inbound" scenario). If the parties agree on using a margin mechanism involving rights in rem, Article 21 of the Winding Up Directive would – if it was transposed verbatim – block the general lex fori rule only in cases where insolvency procedures are governed by the law of an EU Member State. However, Section 351 InsO does not demand that the law of an EU Member State governs the insolvency procedures in the above-mentioned "inbound" scenario. However, given that Section 351(1) InsO should only apply to the "in-bound" scenario which is outside the scope of German opinions, the excessive

				implementation (“gold-plating”) is not relevant. “Outbound” scenarios are not covered by Sec-tion 351(1) InsO. EIR Recast - According to Article 8 the following applies if relevant assets are in a Member State: The opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, moveable or immove-able assets belonging to the debtor which are situated within the territory of an-other Member State at the time of the opening of proceedings.
Greece	Netting	No		Greek counsel does not rely on Article 30 of the Winding Up Directive for the purposes of the netting opinion. Article 9 of the Winding Up Directive does not differentiate between the law of Member States of the EU and the law of non-member states and should apply irrespective of the governing law of the ISDA agreement. However, it is also supported that this article does not apply when the law governing the set off is a law of a third country (see page 41 of the netting opinion).

				Greek counsel does not rely on Article 16 of the EIR Recast for the purposes of the collateral opinion.
	Collateral		No. No Member State requirement imposed by Greek Collateral Law.	See above.
Hungary	Netting	Yes		In case of an ISDA MA entered into between a non-EEA counterparty and a non-institutional (i.e. corporate) Hungarian counterparty, the foreign counterparty may not be able to close-out Transactions in the course of a 120 days preliminary moratorium period ordered with respect to a non-institutional (i.e. corporate) Hungarian counterparty. In addition, subject to certain exemptions available under the MiFID II regime, non-EEA counterparties are only permitted to enter into derivatives transactions with Hungarian counterparties as a regular activity through a Hungarian branch.
	Collateral		No	See above
Iceland	Netting	Yes		The Winding Up Directive has only been partly implemented into Icelandic law.
	Collateral		Yes	No
Ireland	Netting	Yes.		No

		Article 30 has been implemented in Ireland by regulation 37 of the European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011. Regulation 37 reflects the terms of Article 30 and so encompasses only legal acts "subject to the law of another Member State". The term "another Member State" is defined as "a Member State, other than the State" and the term "Member State" is defined as meaning "a Member State of the European Union" which, as the Winding Up Directive has been incorporated into the EEA Agreement, is interpreted as also encompassing reference to any other contracting parties to the EEA Agreement. This issue is addressed in the analysis set out in the netting opinion (see Appendix 6, section 5), given that such opinion encompasses Agreements governed by the laws of: • an EU27 Member State (France and Ireland); • a jurisdiction (England) in respect of which, pursuant to Article 127 (Scope of the transition) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the "Withdrawal Agreement"), and during the "transition period" set out therein, "Union Law" (as defined therein) shall unless otherwise provided for in the Withdrawal Agreement "…produce in respect of and in the United Kingdom, the same legal effects as those which it produces within the [European] Union and its Member States, and shall be interpreted and applied in accordance with the same methods and general principles as those applicable within the [European] Union"; and • a third country (the State of New York). For completeness, addressed in the netting opinion (see Appendix 6, section 7) is the view encountered that Article 25 of the Winding Up Directive should be treated as limited in its scope of application to the laws of a Member State. However, there is nothing on the face of the Winding-Up Directive or the		

		Irish 2011 Regulations to support that view and counsel considers that the express reference to the laws of a Member State, in the context of Article 30 of the Winding Up Directive and regulation 37 of the Irish 2011 Regulations, indicates that the contrary is the case.		
	Collateral		No	No
Italy	Netting	Yes. In order for safe-harbour from claw-back to apply, the applicable law must be the law of a Member State. Please see the legal opinion.		No
	Collateral		No	No
Liechtenstein	Netting	Yes. According to legal writing in Liechtenstein the relevant provisions in the Liechtenstein Banking Act transposing the Winding Up Directive (e.g. Art. 25) are only applicable, if the non-insolvent party is established in a Member State of the EEA or Switzerland. For further information please see the ISDA Netting Opinion for Liechtenstein.		Financial Collateral Directive – According to implementation in Liechtenstein, both parties must be domiciled in the EU/EEA/Switzerland. However, a change in law to the effect that the transposition law of the Financial Collateral Directive will also be applicable to non-EEA Counterparties is envisaged to enter into force on 1 January 2021. In this regard we refer to the update provided to ISDA and circulated to members dated 10 June 2020. Insolvency proceedings – The restricted applicability of certain provisions of the Banking Act with respect to non-EEA counterparties (Art. 60a to 60z BA) is in particular relevant with regard to multibranch parties, as separate insolvency proceedings over the assets of a Liechtenstein

				branch of a bank or investment firm whose registered office is outside the EEA and Switzerland can be initiated in Liechtenstein (Art. 114 (3) PCA). This provision is also subject to revision. The revised provision, which will enter into force on 1 January 2021 seems to allow for insolvency proceedings to be opened with regards to foreign entities with a branch in Liechtenstein.
Lithuania	Netting	Yes		BRRD – implemented by the Law on Financial Sustainability. See Article 87 for implementation of Article 55 BRRD. Financial Collateral Directive - Netting legislation follows the Financial Collateral Directive in respect of the list of eligible counterparties to the qualified financial agreements. Entities listed in items (a),(c) and (d) of Article 1(2)should be organised in, and, if applicable, licensed and supervised by supervisory institutions of the Member States (should include supervised branches of non-EEA financial institutions established in Lithuania).
Luxembourg	Netting	No. Luxembourg law goes beyond the Member State requirement of article 30 of the Winding Up Directive on the “applicable law” point. Further to the implementation of article 30 into		No

		Luxembourg law in 2004, the relevant provision is currently embedded in article 148 of the Luxembourg act of 18 December 2015 on the resolution, reorganisation and winding up measures of credit institutions and certain investment firms and on deposit guarantee and investor compensation schemes as amended which provides as follows (free translation): "Detrimental acts (1) Article 131 [note: which implements article 10 of the Winding Up Directive] shall not apply with regard to the rules on nullity, annulment or unenforceability of acts detrimental to all the creditors where the person who has benefited from these acts provides proof: - that the acts detrimental to all the creditors are subject to a law other than Luxembourg law [note: Article 30 of the Winding Up Directive only refers to the law of a Member State other than the home Member State], and - that this foreign law does not provide for any means challenging these acts in the relevant case. (2) Where the decision of the Tribunal ordering the suspension of payments defines the rules on nullity, annulment or unenforceability of the acts detrimental to all creditors realised prior to the application of the request at the registry of the Tribunal or the notification to the institution, Article 123(2) shall not apply in the cases laid down in paragraph 1".		
	Collateral		No	No. Contractual recognition of bail-in (art. 55 of the BRRD): article 55 requires that, when EEA banks (among other institutions caught by the BRRD) enter into contracts governed by non-EEA law, they must include a "contractual recognition provision" in the agreement under which their counterparties accept that liabilities arising under the

				agreement are potentially subject to a reduction of the principal in a bail-in situation. In case of Brexit, UK law governed contracts would be among the non-EEA law contracts and would therefore have to include such contractual recognition provision.
Malta	Netting	Yes. Local implementation of Article 30 of the Winding Up Directive contains a Member State requirement but it also extends to EEA States (as noted below). The relevant provision is Regulation 31 of the Credit Institutions (Reorganisation and Winding-UP) Regulations (Subsidiary Legislation 371.12) which provides as follows: Regulation 31 (1): Regulation 11 shall not apply as regards the rules Detrimental acts relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole, where the beneficiary of these acts provides proof that: (a) the act detrimental to the creditors as a whole is subject to the law of a Member State or EEA State other than the home State, and (b) that law does not allow any means of challenging that act in the case in point.		There is a Member State requirement in implementation of the Insurance Undertakings Winding Up Directive (Member State and EEA).
	Collateral		No. As a general rule - Financial Collateral Regulations (FCR) apply to specific categories of collateral takers / providers. Based on the list set out in the FCR, some categories would appear to be limited to Member State entities e.g. in relation to a	

			public authority, whereas other categories are worded much more widely e.g. credit institutions which can be licensed in a recognised jurisdiction i.e. any one of (1) Member State or EEA, (2) OECD country, (3) signatory to IOSCO Multilateral Memorandum of Understanding, or (4) any other jurisdiction with whom the MFSA has a Memorandum of Understanding covering securities. Please see opinion for the full list of categories and any jurisdictional qualifications applying with respect to same.	
Netherlands	Netting	Article 23 No. The Dutch implementation of Article 23 (Article 212w Fw) does not make a distinction between the applicable law being that of an EEA Member State or a non-EEA Member State. We find it the better argument that the set-off rule should also apply if the law applicable to the bank's claim is the law of a non-EEA Member State. The same should apply as described with regard to Article 9(1) EIR Recast, and, in case of insurers, pursuant to Article 288 Solvency II (Article 213r Fw). Article 30 Yes, The beneficiary can only rely on this safeguard if the legal act is governed by the laws of a Member State (Article 212ee Dutch Bankruptcy Act, *Faillissementswet*, "**Fw**"). Same in case of insurers pursuant to Article 290 Solvency II (Article 213z Fw).		See entry below under “Collateral”.
	Collateral		No	The considerations with respect to the NY ISDA documentation

				will apply analogously. Notable considerations include: ▪ Enforcement of UK judgements – see overview above. In order to obtain a judgment which is enforceable, a claim has to be brought before the Netherlands courts. Given the submission in the UK ISDA documentation to the jurisdiction of the UK courts, the Netherlands courts can however (subject to certain conditions) be expected to give conclusive effect to a final and enforceable judgment of such UK court without re-examination or re-litigation. ▪ Although safeguards under the EIR Recast, Banks Winding-up Directive and Solvency II in respect of set-off (and netting) should also apply to non-EEA governed contracts and claims thereunder, there is no formal guidance available confirming this. ▪ Safeguards under the EIR Recast, Banks Winding-up Directive

				and Solvency II in respect of in rem rights over assets located in another Member State will no longer apply to assets located in the UK, although similar principles may follow from Dutch private international law. ▪ See BRRD overview above.
Norway	Netting	Yes. Article 30 has been implemented in Norway by the Financial Enterprises Regulation Section 21a-13, which entered into force on 1 January 2020. Section 21a-13 sets out that Section 21a-4 on choice of law in winding-up proceedings, implementing Article 10, shall not apply as regards the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole, where the beneficiary of these acts provides proof that: - the act detrimental to the creditors as a whole is subject to the law of a member state other than the home state, and - that law does not allow any means of challenging that act in the case in point.		EIR Recast - The Norwegian Parliament has adopted amendments to the Norwegian Insolvency Act which inter alia implements article 16 of EU Insolvency Regulation, however the Ministry of Justice has not yet effectuated the new sections in accordance with the resolution by the Norwegian Parliament.
	Collateral		No. The Norwegian Act on Financial Collateral does not include a requirement for both parties to be domiciled in the EU/EEA.	As above.
Poland	Netting	No. Article 30 of the Credit Institution Winding–up Directive has been implemented in Poland by the relevant provisions of the		Recognition of judgments – see overview above. UK insolvency proceedings would be subject to

		Polish bankruptcy law (the Bankruptcy Law). In particular, Article 469 of the Bankruptcy Law states that the provisions on invalidity or ineffectiveness of a legal act detrimental to creditors do not apply if the laws applicable to that act do not provide for ineffectiveness of transactions detrimental to creditors. The scope of Article 469 of the Bankruptcy Law seems to be broader than the one under Article 30 of the Credit Institution Winding–up Directive because under the Polish implementation the law applicable to the act does not have to be EEA law. It means that Article 469 of the Bankruptcy Law will be applicable notwithstanding the law governing the underlying contract (e.g. whether the ISDA Master Agreement is governed by any EEA or not any EEA law).		recognition through the proceedings conducted by a Polish bankruptcy court. The relevant provisions of the Bankruptcy Law in that respect are based on the United Nations Commission on International Trade Law Model Law on Cross-Border Insolvency (UNCITRAL Model Law). Please note that Poland has not excluded financial institutions from the provisions of Bankruptcy Law that adapt the UNCITRAL Model Law. The recognition of UK insolvency proceedings in Poland does not prevent the initiation by the Polish court of separate bankruptcy proceedings with respect to UK entity. Provided that the relevant UK insolvency is recognised, the rules relating to the ineffectiveness or unenforceability of actions taken by the UK bankrupt regarding its assets located in Poland will be determined in accordance with Polish law.
	Collateral		No	See above.
Portugal	Netting	Yes. Article 20(3) of the Law on Liquidation of Credit Institutions and Financial Companies establishes that Portuguese law shall not apply as regards the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole, where the beneficiary of these acts		EIR Recast - Article 287 of Portuguese Insolvency Law establishes that the termination or annulation of legal acts detrimental to the creditors is inadmissible when the

		provides proof that: — the act detrimental to the creditors as a whole is subject to the law of a Member State other than the home Member State, and — that law does not allow any means of challenging that act in the case in point		beneficiary of these acts prove that these acts are subject to a law that does not allow any means of challenging it. This is not limited to a law of a Member State. Re the choice of law, Article 41 of the Portuguese Civil Code requires that the chosen law has a reasonable connection with any of the elements of the relevant agreement. In relation to the enforceability of close-out netting provisions in case of a multibranch party, the answers will differ in the case of an European union branch or of a branch of a non-european union bank. Please refer to pages 39 to 45 of the netting opinion.
	Collateral		No	
Romania	Netting	Yes. Article 30 of the Bank's Winding Up Directive was transposed under Article 272 of the Romanian Banking Act (GEO no.99/2006, as subsequently amended), as follows: "*Romanian legislation relating to the voidability of fraudulent acts detrimental to the creditors does not apply in case the beneficiary of such an act proves that the act, as a whole, is governed by the law of another Member State and such law does not allow any means of challenging that act in the case at hand*".		BRRD - Article 55 of the BRRD was implemented under Article 349 of the Romanian Recovery and Resolution Act (Law no. 312/2015).
	Collateral		No. Article 1(2) and (3) of the Financial Collateral Directive was	See above.

			transposed under Article 3 of the Romanian Collateral Ordinance (GO no. 9/2004, as subsequently amended), as follows: "*The collateral taker and the collateral provider must each belong to one of the following categories:* *(a) a public authority (excluding publicly guaranteed undertakings unless they fall under points (b) to (d) below) including:* *1. public sector bodies of Romania and of Member States, charged with or intervening in the management of public debt, and* *2. public sector bodies of Romania and of Member States, authorized to hold accounts for customers;* *(b) a central bank, the European Central Bank, the Bank for International Settlements, a multilateral development bank, the International Monetary Fund and the European Investment Bank;* *(c) a financial institution subject to prudential supervision including:* *(i) a credit institution, as defined in Government Emergency Ordinance no. 99/2006, as approved, amended and completed by Law no. 227/2007, as subsequently*	

			amended and completed (the "**Banking Act**") (i.e. as defined under EC Regulation 575/2013); *(ii) an investment firm, as defined in the Banking Act* (i.e. as defined under EC Regulation 575/2013)*;* *(iii) a financial institution, as defined in the Banking Act* (i.e. as defined under EC Regulation 575/2013)*;* *(iv) an insurance company, an insurance-reinsurance company, a reinsurance company and insurance brokers, as defined by Law no. 32/2000 regarding the insurance activity and insurance supervision, as subsequently amended and completed;* *(v) an undertaking for collective investment in transferable securities (UCITS), as defined in Law no. 297/2004 regarding the capital market, as subsequently amended and completed* (the "**Capital Market Act**"); *(vi) an investment management company, as defined in the Capital Market Act;* *(d) a central counterparty, a settlement agent or a clearing house, as such is defined by law, and a legal person or an entity with no legal personality (with*	

			the exception of individuals) who acts in the name or on behalf of any one or more persons that include any bondholders or holders of other forms of debt instruments or any other institution as defined in points (a) to (d).”	
Slovakia	Netting	Yes. Under Slovak implementation, protection against voidability rules (detrimental acts) is limited to transactions governed by a law of a Member State.		EIR Recast - The Regulation is directly applicable and refers to a law of a Member State. Close-out netting agreement (such as the one included in Section 6 of ISDA Master Agreement) should be generally enforceable notwithstanding its governing law. But there may be residual risk in case of separate insolvency proceedings in respect of a Slovak branch of a non-Member State financial institution. This uncertainty follows from interaction between Sections 180(3) and 192(1) of the Slovak Bankruptcy Act No. 7/2005 and it is discussed in part 4.2 (c) of the Slovak netting opinion with regard to New York law governed ISDA Master Agreement. Please see the opinion for the analysis.
	Collateral		No	No
Slovenia	Netting	Yes		BRRD - implemented in Slovenia by Resolution and Compulsory Dissolution of Credit Institutions

				Act; "**ZRPPB**"). With respect to credit institutions, the rule of Article 31 of the Winding Up Directive as transposed under the Slovenian ZRPPB's Article 256 does not impose the Member State requirement. EIR Recast - The rule of Article 17 of the EIR Recast under the Slovenian ZFPPIPP's Article 488 (*Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act*) contrary to the ZRPPB imposes the Member State requirement. Financial Collateral Directive - Although the wording of the Slovenian implementing act (ZFZ) refers to the member state requirement with respect to the parties to a financial collateral arrangement, pursuant to Article 1 of the ZFZ the scope of the ZFZ is to regulate the financial collateral arrangements in accordance with the Financial Collateral Directive. Consequently, the ZFZ should be interpreted in accordance with the wording of the Financial Collateral Directive, which does not impose Member State requirement with respect to both

				parties to the financial collateral arrangement.
Spain	Netting	No		The choice of the laws of England as the governing law of the Master Agreement will be upheld as a valid choice of law by the courts of Spain unless the provisions of English law, as the case may be, are deemed to be contrary to Spanish public order, provided, however, that in any proceedings in a court of Spain, English or New York law, as the case may be, will have to be proved in order to be applied and, in the absence of such proof, such court may apply the laws of Spain. To the extent that a final judgement obtained in an English court would no longer be recognised and enforced by the Courts of Spain on the basis of EC Regulation 44/2001, of 22 December, 2000, on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters the general regime will apply. As such, a final judgment duly rendered by the courts of England, in response to a legal action filed before the courts of England in connection with the Master Agreement would be recognized in Spain will depend on compliance with the

				requirements of Spanish Law 29/2015 on International Judicial Cooperation in Civil Matters (Ley 29/2015, de 30 de julio, de cooperación jurídica internacional en materia civil) (“Law 29/2015”).
	Collateral		No, provided the requirements of RDL 5/2005 in respect of counterparty nature are complied with.	
Sweden	Netting	Yes. Articles 23 and 30 The Swedish implementation of Article 30 (as well as Article 23) of the Winding Up Directive only applies to the laws of a country within the EEA.		No
	Collateral		No	The Swedish implementation of article 3 of the Financial Collateral Directive means that companies under supervision by an authority or comparable entity in an EEA country are excluded from the otherwise applicable formal requirements as stated in the Swedish trading of financial instruments act (1991:980). Consequently, non-EEA companies may be required to abide by such requirements.

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