ISDA commentary on the Settlement Finality Regulation

7 April 2026

In the following, references to SFR are to the Proposal for a Regulation of the European Parliament and the Council on settlement finality and repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements published by the European Commission on 4 December 2025. In addition, references to SFD are to Directive 98/26/EC on settlement finality and references to FCD are to Directive 2002/47/EC on financial collateral arrangements.

Executive summary

Settlement Finality Regulation

ISDA welcomes the Commission's proposal to replace the SFD with SFR and to amend the FCD, as targeted changes to the existing regimes under SFD and FCD would remove key barriers to their effective operation.

We have various technical comments on the SFR as it applies to EU designated systems. However, much of this document discusses third country systems, whose situation, whilst considerably improved, remains inadequately addressed in the proposed SFR. As we highlighted in our response to the 2025 Savings and Investment Union (SIU) consultation, **the lack of a requirement in the SFD for Member States to extend the insolvency protections under the SFD to third-country systems creates one of the most significant barriers to the effective operation of the EU settlement finality framework**. There is a risk that third-country systems may not be willing to admit as members participants from Member States that have not implemented protections for third-country systems pursuant to Recital 7 of the SFD. Without such protections, access to international financial markets for EU entities may not be possible reducing choice and increasing prices for EU persons and businesses. Even where Member States have provided protections to third-country systems pursuant to Recital 7, the extent and nature of such protections can vary. **Therefore, we support the principle that there should be a new harmonized regime under which Member States must provide insolvency protections to systems governed by the law of a third country.**

We note that the requirements for designation of EU systems and registration of third-country systems are highly detailed and may be further specified in EBA and ESMA RTS. We consider that harmonisation could be achieved through a less prescriptive framework.

We have identified several key issues regarding the proposed framework for third-country systems:

- ***Scope of insolvency protections.*** The scope of insolvency protections provided to registered third-country systems by the new framework is unduly restricted. The new regime

should make clear that the insolvency protections under SFR apply to the operator of a registered third-country system not only to participants in those systems. This seems intended, but there is currently an inconsistency between the scoping provisions of the SFR and its operative provisions in this regard, which may result in an uncertainty. The scope of insolvency protections for registered third-country systems should also be the same as for designated EU systems under SFR and should not be restricted to the protection of transfer orders. (See section 1.1 for more detail).

- ***Qualifying EU participants.*** In addition, the scope of insolvency protections for registered third-country systems should not be limited to the insolvency of qualifying institutions that are participants in the system (credit institutions and investment firms, public authorities and publicly guaranteed undertakings, payment institutions and electronic money institutions). SFR already recognises that both designated and registered systems may define their own membership criteria to admit a wider class of entities as participants and SFR provides designated EU systems with protections from insolvency proceedings in relation to any of their 'participants' regardless of their nature. Registered third-country systems should have the same protection in relation to any of their participants established in the EU. (See section 1.2 for more detail).
- ***Conditions for registration (moments of finality).*** The conditions for registration of third-country systems should not require them to comply with EU-specific requirements with respect to the way in which their rules address the moments of finality. The conditions for registration already specify that the system must comply in all material respects with global principles of financial market infrastructures, which include requirements as to what the rules of financial market infrastructures should contain regarding the moments of finality. (See section 1.3 for more detail).
- ***Conditions for registration (existing EU participant).*** The proposed conditions for registration of third-country systems should not require that applicant non-EU systems already have a participant established in the Member State at the time of the application. The conditions should recognize that a third-country system may not be willing or lawfully be able to admit a local participant unless and until the system is registered under SFR, so should allow a registering authority in a Member State to register a third-country system in advance of that system actually admitting a participant in that Member State (See section 1.4 for more detail).
- ***Protections under other EU legislation.*** SFR should also amend other EU legislation to provide protection to third-country systems registered under SFR corresponding to that afforded to EU systems designated under SFR (and authorised or recognised CCPs). In particular, these amendments should ensure that registered third-country systems have the same protections from resolution-related actions as designated EU systems. (See section 1.5 for more detail).

In addition:

- ***Transitional provisions.*** The transitional provisions in SFR should be amended to provide additional time where there are delays in processing applications for designation or registration under the new regime. Transitional provisions should also apply to third-country systems benefiting from any form of existing insolvency protections under national law, even if these do not exactly match those provided in SFD. Competent authorities should also apply streamlined procedures when processing applications from existing EU systems designated under SFD and existing third-country systems benefiting from protections under national law. (See section 1.6 for more detail).
- ***Indirect participants.*** It is currently unclear whether or not the indirect participation category is available to third-country systems. SFR should expressly give registering authorities the option to treat indirect participants in third-country systems as participants on similar grounds to the grounds applicable to EU designated systems. SFR should also give Member States more flexibility as which entities can be treated as indirect participants, both in relation to designated and registered systems. (See section 1.7 for more detail).
- ***Conflict of laws rules.*** The conflict of laws rules in Article 25(2) SFR should apply the principle that the lex situs governs accounts held at a branch or office in a Member State of a legal entity with its registered office in another jurisdiction. In addition, SFR should make clear that the system operator and participants are free to choose the law governing the system, i.e., that there is party autonomy as to choice of law (albeit that a system can only be designated under SFR if the system is governed by the law of a Member State and one of the participants has its head office in the Member State in question). (See section 1.8 for more detail).
- ***Third-country stablecoins.*** The definition of 'funds' in SFR should recognise that third-country systems may use stablecoins as settlement assets that do not qualify as e-money or e-money tokens in the EU. (See section 1.9 for more detail).
- ***Responsibility of system operators of EU systems.*** The SFR would impose onerous conditions on operators seeking designation of an EU system under SFR as to their responsibilities, liabilities and accountability with respect to the system, including, where the system operator is a consortium of entities, a condition that all entities will be jointly and severally accountable, responsible and liable for the operation of the system. The SFR should impose more proportionate conditions on operators seeking designation of their system under SFR. (See section 1.10 for more detail).
- ***Other proposed changes***. We propose other changes relating to: the definition of 'settlement'; the definition of 'transfer order'; the definition of 'collateral'; the conditions for withdrawal of registration of third-country systems; the definition of 'final settlement'; the notification of insolvency proceedings to system operators; the timing of the realization of collateral security; and the amendment of other EU legislation to make clear the relationship between that legislation and SFR. (See section 1.11 for more detail).

Financial Collateral Directive

- ***Definition of cash.*** The definition of 'cash' in the FCD should be aligned with other legislation so that it encompasses e-money and other stablecoins, including third-country stablecoins as proposed in section 1.9 in relation to the SFR. (See section 2.1 for more detail).
- ***Definition of financial instruments.*** SFR proposes a national option to expand the definition of 'financial instrument' in FCD to include other financial instruments covered by MiFID which are negotiable on the capital market. The legal status and proprietary nature of tokenised assets can vary across EU Member States. This, combined with national implementations of the FCD, can lead to differing levels of clarity and certainty regarding the use of tokenised assets as collateral. Legal clarity at the FCD level would benefit the market by providing a harmonised and predictable environment for the use of tokenised assets as financial collateral. In order to avoid differing implementations of the FCD in this respect, the FCD should provide a uniform definition of 'financial instrument' covering all financial instruments as defined in MiFID which are negotiable on the capital market. (See section 2.2 for more detail).
- ***Definitions of possession and control.*** SFR amends the FCD so that any reference to an 'account', 'registration' or 'register' shall be understood to include any form of record including based on DLT. However, it may not be sufficient just to add a reference to DLT in the definition of these terms in order for FCD to offer an appropriate level of protection. Key FCD concepts such as 'possession', 'control', 'accounts', and 'book-entry' (which are critical for the perfection and enforceability of financial collateral arrangements) do not neatly translate to all forms of tokenised assets. We make specific recommendations to clarify the concept of 'possession' and 'control'. (See section 2.3 for more detail).
- ***Eligible collateral providers and takers.*** The limitations regarding the list of eligible collateral providers and collateral takers under the FCD affect both traditional and DLT-based financial collateral arrangements. The key consideration for the FCD's scope should be the nature of the activities undertaken and the systemic importance of the entities involved, rather than the specific technology (such as DLT) used to record or transfer collateral. The FCD should at least be extended to include central securities depositories (to the extent that they are not already in scope as settlement agents or otherwise), as these entities are a key part of EU financial market infrastructure. (See section 2.4 for more detail).
- ***Relevant financial obligations.*** The title transfer financial collateral arrangements encompassed by the FCD protections are limited to those that secure or otherwise cover the performance of 'relevant financial obligations' (see the definition of 'title transfer financial collateral arrangement' at Article 2(1)(b)). We recommend that the restriction on the definition of 'relevant financial obligations' be removed. This would allow market participants to obtain FCD protections without having to segregate into FCD eligible and non-FCD eligible arrangements portfolios of transactions that would otherwise comprise a single arrangement. (See section 2.5 for more detail.)

- ***Choice of law.*** The choice of law rules in FCD for book entry securities collateral should be amended to align with the rules in the SFR to identify the location of accounts held at branches or offices of a legal entity and in cases where it is not possible to identify the location of the relevant account (e.g., because the account is in decentralised form). (See section 2.6 for more detail.)

Annex 1 to this paper sets out proposed amendments to SFR and Annex 2 sets out proposed amendments to other EU legislation.

Detailed commentary

1. Settlement Finality Regulation

1.1. Third country systems framework - Scope of insolvency protections is unduly restricted

(a) Protection should clearly apply to the operator of a registered system and their operators not only participants

Article 1(2), first sub-paragraph, SFR provides as follows (emphasis added):

> This Regulation also lays down requirements for the registration of third-country systems in one or several Member States in order to enable institutions established in those Member States, which participate in those third-country systems, to benefit from the extension of the insolvency protection provided for in Articles 17, 19, 22(1), 23, 24 and 25(1) to transfer orders entered into in such third-country systems.

The underlined wording might suggest that the registration of third-country systems is designed only to protect EU participants. However, the protections in the SFR are also intended to protect those systems, including the operators of those systems, against the insolvency of their participants. SFR should be amended to make clear that registered third-country systems and their operators benefit from the protections in the SFR in relation to the insolvency of their participants in the same way as designated EU systems and their operators.

See proposed new recital 12a to SFR and proposed amendments to Article 1(2) SFR in Annex 1.

(b) Scope of insolvency protection for registered systems should be the same as for designated systems

Article 1(2) SFR provides that the insolvency protection provided for in Articles 17, 19, 22(1), 23, 24 and 25(1) SFR apply in relation to registered third-country systems. However, the protection provided to designated EU systems by the first sentence of Article 18(1) and the first sentence of Article 21(1) should also apply to registered third-country systems, in order to ensure that the scope of insolvency protection afforded to registered third-country systems is the same as for designated EU systems.

In addition, there is inconsistency between the wording in Articles 17, 19, 22(1), 23, 24 and 25(1) SFR as to the application of those Articles in relation to registered systems. In some cases, the wording explicitly refers to both designated and registered systems (see Articles 17(1), 19, 23 and 25(1) SFR). However, in other cases, the wording does not refer explicitly to designated or registered systems or refers to 'systems' or 'participants', which would include systems that are not designated or registered and participants in such systems (see Articles 17(2), 22(1) and 24 SFR). The wording of the operative provisions conferring insolvency protections should specifically refer to both designated and registered systems where applicable.

See proposed amendments to Article 1(2), 17(2), 18(1), 21(1) and 24 in Annex 1.

(c) Insolvency protection should not be limited to transfer orders

Article 1(2) SFR provides as follows (emphasis added):

> This Regulation also lays down requirements for the registration of third-country systems in one or several Member States in order to enable institutions established in those Member States, which participate in those third-country systems, to benefit from the extension of the insolvency protection provided for in Articles 17, 19, 22(1), 23, 24 and 25(1) to transfer orders entered into in such third-country systems.
>
> In the case of an insolvency of a member of such a system [viz a third-country system], transfer orders entered by that member shall be protected where both the following conditions are met:
>
> (a) the member participates in a registered system as defined in Article 2(1), point (9);
>
> (b) the member is an institution as defined in Article 2(1), point (10)(a)(i) to (iv) and (b), established in the Member State which has registered that system under Article 12.

The underlined wording might suggest that the insolvency protections in the specified articles only apply in relation to 'transfer orders entered into in such registered third-country systems'. There is a risk that this wording could significantly limit the scope of the insolvency protections provided for in the specified articles which would otherwise apply much more broadly than solely in relation to transfer orders e.g., they cover the enforceability of netting and collateral, general protection from non-retroactivity and the governing law in the event of insolvency proceedings. This wording might also mean that registered third-country systems have more limited protection against the insolvency of their EU participants than the SFR (or the existing SFD) confers on designated (EU) systems in relation to their EU participants (where there is no similar limitation on the scope of the specified articles). It may also mean that registered third-country systems have more limited protection than afforded by existing national regimes that extend the protection of SFD to third-country systems (pursuant to Recital 7 of the SFD). This could result in ambiguity regarding the scope of protections applicable to third-country systems as well as caveats and assumptions in legal opinions provided to systems in Member States where participations are located. Legal uncertainty of this kind might affect the willingness or lawful ability of third-country systems to admit EU entities as participants.

Article 1(2) SFR should be amended to remove the restrictive wording and a corresponding amendment should be made to recital 13 SFR.

See proposed amendments to recital 13 SFR and Article 1(2) SFR in Annex 1.

1.2. **Third country systems framework - Scope of insolvency protections limited to insolvency of qualifying participants**

Article 1(2) SFR, second sub-paragraph, SFR provides as follows (emphasis added):

> In the case of an insolvency of a member of such a system [viz a third-country system], transfer orders entered by that member shall be protected where both the following conditions are met:
>
> (a) the member participates in a registered system as defined in Article 2(1), point (9);
>
> (b) the member is an institution as defined in Article 2(1), point (10)(a)(i) to (iv) and (b), established in the Member State which has registered that system under Article 12. (emphasis added)

Similarly, Article 12, first sentence, SFR provides as follows (emphasis added)

> Each of the registering authorities in any of the Member States in which a member participating in a third-country system is established may decide to register such a third-country system in accordance with the procedure set out in Article 13, provided that the member is an institution as defined in Article 2(1), points (10)(a)(i) to (iv), or Article 2(1), point (10)(b).

The underlined wording in these provisions limits the protection conferred on third-country systems to cases where the system's EU participants are credit institutions, investment firms, public authorities, publicly guaranteed undertakings, payment institutions or electronic money institutions.

This wording is unduly limiting. For example, it might restrict the ability of EU central securities depositories (CSDs), central counterparties (CCPs) and EU operators of or settlement agents for payment or other systems to become participants in third-country systems. Only some EU CSDs, CCPs and system operators are authorised as credit institutions (and these institutions are unlikely to be authorised as investment firms, payment institutions or electronic money institutions). There may also be other classes of financial or non-financial entity that could become (sponsored) members of third-country systems that would not be covered by the proposed wording e.g., insurance companies, financial institutions and investment funds. This wording may also mean that registered third-country systems have more limited protection than afforded by existing national regimes that extend the protection of SFD to third-country systems (pursuant to Recital 7 of the SFD).

The definition of 'participant' in Article 2(1), point (15)(a)(vii) and (b), SFR already recognises that both designated and registered systems may define their own membership criteria to admit a wider class of entities as participants and SFR provides designated EU systems with protections from insolvency proceedings in relation to any of their 'participants' regardless of their nature. Registered third-country systems should have the same protection in relation to any of their participants established in the EU.

SFR should be amended to extend the protection with respect to insolvency proceedings relating to any participant in a designated system admitted in accordance with the rules of the system so long as the participant is established in the relevant Member State.

See proposed amendments to Articles 1(2) and 12 SFR in Annex 1.

1.3. **Third country systems framework - Conditions for registration require third-country systems to comply with EU requirements**

Article 14 SFR sets out the conditions for registration of third-country systems (emphasis added):

> A registering authority may register a third-country system in its Member State only where all of the following conditions are met:
>
> (a) the system has common rules and standardised procedures for the settlement, clearing, or execution of transfer orders between the participants;
>
> (b) the system is authorised or supervised in the country of its establishment or in the country under which law the third-country system is governed;
>
> (c) the system is governed by a law that upholds the principles of settlement finality;
>
> (d) the system identifies clearly in its common rules and standardised procedures all of the following moments:
>
> (i) the moment of entry of a transfer order into the system referred to in Article 18(1);
>
> (ii) the moment of irrevocability of a transfer order entered into the system referred to in Article 20(1);
>
> (iii) the moment of final settlement of a transfer order entered into a system referred to in Article 21(1).
>
> (e) the system operator of the system is adequately structured and financed;
>
> (f) the system complies in all material respects with global principles of financial market infrastructures.

Principle 8 of the Principles for Financial Market Infrastructure (PFMI, here) provides that an FMI:

> "should provide clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, an FMI should provide final settlement intraday or in real time."

In addition, under key considerations, Principle 8 states that:

> "An FMI's rules and procedures should clearly define the point at which settlement is final"
>
> "An FMI should clearly define the point after which unsettled payments, transfer instructions, or other obligations may not be revoked by a participant."

Point (f) of Article 14 SFR already makes it a condition of registration that a third-country system complies in all material respects with the PFMI, including Principle 8.

However, point (d) of Article 14 SFR goes beyond the requirements of the PFMI by requiring that the third-country system's rules and procedures also clearly identify the moment of entry of transfer orders in the system referred to in Article 18(1) SFR, in addition to stating the moment of irrevocability and the moment of final settlement as referred to in Articles 20(1) and 21(1) SFR. There is therefore a risk that Member State authorities reject the applications of systems which materially comply with the PFMI merely because the systems' rules and procedures do not meet these additional requirements.

Furthermore, Article 21(3), point (e), and Article 21(4), point (e), SFR empower ESMA and the EBA to develop RTS specifying the rules for determining the moment of entry of transfer orders in the system, the moment of irrevocability and the moment of final settlement under the relevant Articles. Those provisions do not explicitly limit the scope of the RTS to designated systems. Therefore, there is a risk that the final versions of the RTS specify rules which apply to registered and third-country systems which are incompatible with the relevant third country law or the third-country system's rules and procedures, resulting in Member State authorities rejecting the applications of systems which materially comply with the PFMI merely because the systems' rules and procedures do not comply with EU-specific requirements set out in the RTS.

Article 14 SFR should be amended by deleting point (d) and Article 21(3) and (4) and Article 21(3), point (e) and Article 21(4), point (e), SFR should be amended to make clear that any RTS only apply to designated systems.

See proposed amendments to Articles 14 and 21 SFR in Annex 1.

1.4. Third country systems framework - Conditions for registration may require that applicant non-EU systems already have a member established in the Member State

Article 12 SFR provides as follows (emphasis added):

> Each of the registering authorities in any of the Member States <u>in which a member participating in a third-country system is established</u> may decide to register such a third-country system in accordance with the procedure set out in Article 13, provided that the member is an institution as defined in Article 2(1), points (10)(a)(i) to (iv), or Article 2(1), point (10)(b). Each of those registering authorities shall assess the application for registration of the third-country system.

The underlined wording may mean that a Member State authority can only grant registration where the applicant third-country system has already admitted a participant in that Member State. However, in practice, the third-country system may not be willing or lawfully be able to admit a local participant unless and until the Member State has granted registration because otherwise the system may not be able to verify that it has adequate protection in the event of the insolvency of that participant.

Article 12 should be amended to allow a registering authority in a Member State to register a third-country system in advance of that system actually admitting a participant in that Member State.

See proposed amendments to Article 12 in Annex 1.

1.5. Third country systems framework - Aligning the treatment of registered third-country systems with the treatment of designated EU systems under other EU legislation

Several provisions of the Bank Recovery and Resolution Directive (BRRD), the Single Resolution Mechanism Regulation (SRMR), the CCP Recovery and Resolution Directive and the Insurance Recovery and Resolution Directive (IRRD) provide additional protections from resolution-related actions to:

- EU systems designated under SFD;
- EU CCPs authorised under EMIR; and
- third-country CCPs recognised under EMIR.

In addition, the European Market Infrastructure Regulation (EMIR) and the Regulation on the European Account Preservation Order (EAPO) provide special treatment for EU systems designated under the SFD.

Article 30(2) SFR already ensures that the references in this other EU legislation to systems designated in accordance with SFD will be treated as references to systems designated under SFR.[1]

However, SFR should amend this other legislation to provide registered third-country systems with the same protection and treatment as is provided in relation to designated EU systems.[2]

See proposed amendments to other EU legislation set out in Part 1 of Annex 2.

1.6. Extending the transitional provisions

(a) Transitional provisions should allow extra time in case of delays in processing applications for designation or registration

Article 28(1) and (2) SFR provide as follows:

> 1. By way of derogation from Article 3, a system designated under Directive 98/26/EC prior to [date of entry into force of this Regulation] shall continue to be designated for the purposes of this Regulation (sic)[3] until it is re-designated under that Article or until [5 years after the

[1] Existing EU systems benefiting from the transitional provisions in Article 28(1) SFR are treated as designated under SFR and therefore should also benefit from the protections conferred by the provisions of BRRD and SRMR.

[2] Existing non-EU systems benefiting from the transitional provisions in Article 28(2) SFR are treated as registered under SFR and therefore should benefit from the protections conferred by the amended provisions of this other legislation.

[3] The text should probably read "... shall be considered as designated for the purposes of this Regulation ..." (compare the wording in Article 28(2) SFR).

entry into force of this Regulation], whichever is earlier. In the meantime, the Member State law on the designation of a system shall continue to apply.[4]

2. By way of derogation from Article 12, a third-country system to which a Member State has extended the protections granted under Directive 98/26/EC prior to [entry into force of this Regulation] shall be considered as registered in that Member State for the purposes of this Regulation until it is registered in accordance with that Article in that same Member State or until [5 years after the date of entry into force of this Regulation], whichever is earlier.

However, these provisions do not allow existing systems to continue to benefit from the protections conferred by SFR where they apply for designation or registration before the end of the five-year transitional period but their application has not yet been determined by the end of that period. Compare e.g., Article 89(4) EMIR which envisaged that existing EU and non-EU CCPs that applied for authorisation or recognition before a specified deadline could continue to provide services until a decision was made on their application.

For example, there may be delays in the designation or registration of existing systems because of delays in the adoption of the regulatory and implementing technical standards specifying the information to be provided by applicants and the formats for providing that information under Article 12(12) to (15). SFR requires ESMA and the EBA, in close cooperation with the ESCB, to deliver drafts of these within one year of entry into force, but it may be difficult to meet this deadline, in particular if ESMA and the EBA decide to exercise their power to develop regulatory technical standards further specifying the conditions for designation of EU systems (under Article 5(2) and (3) SFR). In any event, even when the ESAs deliver draft technical standards on time, there are often significant delays before the Commission adopts the standards and they are published in the Official Journal.

Article 28(1) and (2) SFR should be amended so that, if an application for designation or registration is pending at the end of the five-year period after entry into force, the system continues to be treated as designated or registered under SFR until the system is re-designated or registered, the application is rejected or the application is withdrawn.

See proposed amendments to Article 28(1) and 28(2) SFR in Annex 1.

(b) Transitional provisions should apply to third-country systems benefiting from any form of existing protections under national law

In some cases, Member States may have extended to third-country systems some but not all the protections granted to EU systems under the SFD, e.g., they may have only extended the benefit of provisions of Article 8 SFD applying the third-country law when determining the rights or obligations of participants in the third-country system. In other cases, national law may have extended comparable but not identical protections to existing third-country systems.

[4] The second sentence of Article 28(1) appears to conflict with the first sentence of Article 28(1) which treats existing EU systems as if they were designated under SFR.

Article 28(2) should be amended to make clear that all existing third-country systems benefiting from insolvency protections under national law should be considered as registered under SFR to ensure that there is no loss of protection on the entry into force of SFR.

See proposed amendments to Article 28(2) SFR in Annex 1.

(c) Competent authorities should apply streamlined procedures to existing systems seeking designation or registration

In addition, SFR should be amended so that, where an EU system designated under the national laws implementing the SFD or a third-country system benefiting from the transitional provisions applies to a competent authority for re-designation or registration under the SFR, the competent authority must ensure that the process is as streamlined as possible and that information already held by the competent authority is taken into account.

See proposed new Article 28(2a) and (2b) SFR in Annex 1.

1.7. Treatment of indirect participants

The legislative proposal does not deal with indirect participants in a satisfactory way. SFR should be amended as follows:

- Article 12 (registration of third-country systems) SFR should give registering authorities the option to treat indirect participants in third-country systems as participants on similar grounds to the grounds applicable to EU designated systems under Article 7(1), third sub-paragraph, SFR;
- The definition of 'indirect participant' in Article 2(1), point (17), SFR should give Member States more flexibility as which entities are treated as indirect participants, both in relation to designated and registered systems;
- Article 2(2)(b) SFR should allow the Commission to amend the definition of 'indirect participant' in Article 2(1), point (17), SFR to include natural or legal persons based on the experience of cases where such persons are allowed to participate in DLT systems;
- the references to 'members' of a third-country system in Articles 1(2), 2(1), point (15)(b) and 12 SFR should be replaced by references to 'participants'.

See proposed amendments to Articles 1(2), 2(1), points (15)(b) and (17), 2(2)(b) and 12 SFR in Annex 1.[5]

[5] Corresponding changes might be made to the references to 'member' in Article 13(3), (12)(a) and (14)(a) SFR.

1.8. Conflicts of laws rules

(a) Clarification of application of Article 25 (Collateral security)

Article 25(2) and (3) SFR extend Article 9(2) SFD which applies a 'place of relevant intermediary (PRIMA)' approach to choice of law in relation to collateral provided in relation to designated EU systems and EU central banks where the securities are held on a register, account or centralised deposit system in a Member State (pending EU implementation of Hague Convention). However, SFR should be amended to make clear that the references to 'participants', 'system operators' and 'systems' in Article 25(2) and (3) are limited to designated EU systems and their participants and operators in line with the corresponding provisions of Article 9(2) SFD.

Article 25(2), second subparagraph, SFR sets out a new provision providing that, for the purposes of Article 25(2), first subparagraph, SFR the location of a register, account or centralised deposit held at a legal entity shall be the Member State where that entity has its registered office. However, this provision deviates from the established principle of *lex situs* in relation to accounts held at branches of an EU entity in another Member State, which could generate legal risk where matters relating to collateral are governed by the law of the Member State in which the entity has its registered office while other proprietary matters are governed by the law of the Member State where the branch is located. This provision also does not address the situation where a third-country entity holds accounts at a branch or office in a Member State. This provision should be amended so that the location of registers, accounts or centralised deposits held at branches or offices in the EU of both EU and non-EU entities is the Member State where the branch is located (alternatively, this second subparagraph could be deleted).

Article 25(3) SFR should also be amended to make clear what choice of law rule applies to determine the rights of a Member State central bank or the ECB in relation to collateral security in a case where it is not possible to identify the location of the relevant register, account or centralised deposit system in accordance with Article 25(2).

See proposed amendments to Article 25(2) and (3) SFR in Annex 1.

(b) Clarification that party autonomy applies to the law governing a designated or registered system

Article 2(a), second indent, SFD makes clear that the participants are free to choose the law governing a designated system, i.e., that there is party autonomy as to choice of law (albeit that a system can only be designated under SFD if the system is governed by the law of a Member State and one of the participants has its head office in the Member State in question). This has the effect that other references in SFD to the law governing a designated system are read as referring to the law chosen by the participants (see Articles 1(a), 3(3), 8, 9(2) and 12a SFD).

SFR includes several provisions referring to the law governing a system. See Articles 2(1), point (2), 3(1) and (2), 4(1), 5(1)(a) and (f), 6(5)(a)[6], 14(b) and (c), 15(2)(f), 24 and 25(3) SFR (and also see recitals 8 and 21 SFR). Article 3(2) SFR preserves the rule in the second indent of Article 2(a), second indent, SFD that it is a condition of designation of a system governed by the law of a Member State that at least one of the participants in that system must have its head office in the Member State whose law governs the system. Article 2(1), point (2), also defines a third-country system as one not governed by the law of a Member State. However, SFR should be amended to make clear that the references to the law governing a system are references to the law chosen by the system operator and participants.

See proposed new Article 2(1a) SFR in Annex 1.

1.9. Use of stablecoins by third-country systems

Third-country systems may use stablecoins as settlement assets that do not qualify as e-money under the usual definition of that term because they do not constitute a claim on the issuer and are not issued by an EU authorised electronic money institution.

It is not clear whether those stablecoins would be 'funds' for the purposes of the definition of 'transfer order' and related provisions in SFR even though:

- the definition of 'funds' in SFR encompasses electronic money (by referencing the definition in the proposed Payment Services Regulation, which like the current definition in the Payment Services Directive (PSD), covers central bank money issued for retail use, scriptural money and electronic money); and
- the Markets in Crypto-assets Regulation (MiCAR) treats 'e-money tokens' as electronic money (Article 48(2)).

SFR should be amended to make clear that, in relation to a registered system, references to 'funds' include a reference to electronic money as defined in Article 2, point (2), of the E-money Directive issued by a third-country entity that is not authorised under that Directive and e-money tokens (as defined in Article 3(1), point (7), MiCAR) issued by such a third-country entity.

See proposed amendments to Article 2(1), point (21), SFR in Annex 1.

1.10. Responsibility of system operators

Article 5(1), points (j), (l) and (m), SFR provide that:

- the system operator of a designated system must be legally accountable, responsible and liable for the operation of the system, including for any links to other systems and the relationship to third parties and to the authorities;
- where the system operator consists of a network of nodes operating under a common governance and supervision framework, the common rules and standardised procedures of

[6] The paragraphs of Article 6 are incorrectly numbered (4) to (7) instead of (1) to (4).

the system shall ensure that one undertaking is legally accountable, responsible and liable for the operation of the system; and

- where the system operator is a consortium of entities, all entities shall be jointly and severally accountable, responsible and liable for the operation of the system.

The rules and procedures of designated systems should define and appropriately limit the legal responsibilities and liabilities of those operating the system to participants, other systems to which the system is linked and to third parties to the extent relevant. However, it is unrealistic to expect that one operator will accept complete unlimited legal responsibility and liability for the operation of a system, including for the defaults of other members of a consortium, let alone joint and several liability.

These provisions also refer to the accountability of the system operator to the authorities. Article 8 SFR already provides for the duties of a system operator and Article 9 already provides that withdrawal of designation is the sanction for non-compliance with these duties.

The SFR should be amended to require that the rules and common procedures clearly identify the legal responsibilities and liabilities of the system operator and where there is more than one operator to require the application to identify which entities are responsible for compliance with the duties in Article 8 SFR and to designate a single entity to receive notices from the designating authority.

See proposed amendments to Article 5(1), points (j), (l) and (m), SFR in Annex 1.

1.11 Other proposed changes

(a) Definition of 'settlement' (Article 2(1), point (3), SFR)

Article 2(1), point (3), SFR defines settlement by reference to the definition of settlement in Article 2(1), point (7), of the Central Securities Depositories Regulation. However, that definition only relates to the transfer of securities transactions and does not define the settlement of payments or other instruments, even though the term 'settlement' is used in SFR to cover the settlement of all kinds of transfer orders (see, e.g., Articles 14(a) and (d)(iii) and 21(1) SFR). The inclusion of the definition may also cause confusion in relation to Article 21(1) which defines 'final settlement'. SFR should be amended to delete the definition, which appears to be unnecessary.

See proposed amendment to Article 2(1), point (3), SFR in Annex 1.

(b) Definition of 'transfer order' (Article 2(1), point (20), SFR)

The definition of transfer order in Article 2(1), point (20)(a), SFR should be amended to align with the definition of transfer order in Article 2(i) SFD as that definition covers two different types of instructions.

See proposed amendment to Article 2(1), point (20)(a), SFR in Annex 1.

(c) Definition of 'collateral' (Article 2(1), point (27), SFR)

Article 19(1) SFR expands the definition of collateral for the purposes of that Article to include a default fund and margins provided to an EU CCP. This could cause confusion as to whether the term 'collateral' has a different meaning in other provisions. In addition, SFR uses the term 'collateral' and 'collateral security' interchangeably without providing a definition of the latter term (see, e.g., Articles 19 and 25 SFR), when SFD used the single term 'collateral security'.

SFR should be amended to expand the definition of collateral to cover default funds and margins (and to make clear that the definition defines the term 'collateral security' as well) and to delete the wording covering default funds and margins in Article 19 (1) (which will then be unnecessary)

See proposed amendments to Articles 2(1), point (27), and 19(1) SFR in Annex 1.

(d) Grounds for withdrawing registration (Article 16(1), point (b), SFR)

SFR should be amended to align the grounds for withdrawal of registration of a registered system in Article 16(1), point (b), SFR with the grounds for withdrawal of the designation of a designated system in Article 9(1), point (b), SFR in that it should allow the system operator of a registered system to avoid withdrawal of registration by taking requested remedial action within a set timeframe.

See proposed amendments to Article 16(1), point (b), in Annex 1.

(e) Definition of final settlement (Article 21(1) SFR)

The definition of final settlement in Article 21(1), first sentence, SFR should be amended to align more closely with the definition in Principle 8 of the PFMI[7] and in terms that also encompass the final settlement of transactions other than securities transactions. It should also be made clear that the moment of final settlement is as determined by the rules and procedures of the system.

See proposed amendments to Article 21(1), first sentence, in Annex 1.

(f) Notification of insolvency proceedings to system operators (Article 22(1) and (2) SFR)

Article 22(1) SFR should be amended to make clear that it defines the moment of opening of insolvency proceedings in relation to a participant in a designated or registered system, or the operator of a designated system, in line with Articles 17(1) and 19(1) SFR.

Article 22(1) SFR provides for notification of decisions opening insolvency proceedings against a participant, via the central database, to ESMA, EBA, the ESCB, the European Systemic Risk Board and other Member States. SFR should be amended to require Member States' designating and registering authorities to notify system operators of designated and registered systems of those decisions. This is important because Article 17(1), second subparagraph, SFR provides that in certain circumstances transfer orders shall only be legally enforceable and binding on third parties where

[7] "Final settlement is defined as the irrevocable and unconditional transfer of an asset or financial instrument, or the discharge of an obligation by the FMI or its participants in accordance with the terms of the underlying contract".

the system operator can prove that, at the time that such transfer orders become irrevocable, it was neither aware, nor should have been aware, of the opening of insolvency proceedings.

See proposed amendments to Article 22(1) and (2) SFR in Annex 1.

(g) Realisation of collateral security (Article 25(1), second subparagraph, SFR)

Article 25(1), SFR should be amended to make clear that collateral security provided to a system operator, participant or central bank may be realised immediately, notwithstanding insolvency proceedings against the provider, in accordance with the terms under which the collateral is provided (compare Article 4 FCD).

See proposed amendments to Article 25(1), second subparagraph, SFR in Annex 1.

(h) Amendment of other EU legislation

Part 2 of Annex 2 sets out amendments to other EU legislation to make clear that the provisions of the SFD prevail notwithstanding the provisions of that legislation.

2. Financial Collateral Directive

2.1. Definition of "cash"

SFR amends Article 1(4) FCD by adding the following subparagraphs in point (a): 'For the purpose of this Directive, references to cash, financial instruments and credit claims shall include where they are issued or recorded using DLT. ...'

The current definition of cash in Article 2(1), point (d), FCD is as follows: (d) 'cash' means money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits;'.

SFR should be amended so that the definition of 'cash' aligns with the definition of 'funds' in the proposed Payment Services Regulation so that it encompasses e-money and other stablecoins, but including third-country stablecoins as proposed in section 1.9 above in relation to the definition of 'funds' in SFR.

See proposed amendments to Article 31(2) SFR amending Article 2(d) FCD in Annex 1.

2.2. Clarity regarding use of tokenised assets as financial collateral

SFR amends Article 1(4) FCD to make clear that:

> For the purpose of this Directive, references to cash, financial instruments and credit claims shall include where they are issued or recorded using DLT.
>
> Member States may extend the scope of financial instruments to be covered by this Directive to include the instruments referred to as 'financial instrument' in Article 4(1), point (15), of Directive 2014/65/EU where these are negotiable on the capital market.

The legal status and proprietary nature of tokenised assets can vary across EU Member States. This, combined with national implementations of the FCD, can lead to differing levels of clarity and certainty regarding the use of tokenised assets as collateral.

Legal clarity at the FCD level would benefit the market by providing a harmonised and predictable environment for the use of tokenised assets as financial collateral.

In order to avoid differing implementations of the FCD in this respect, the FCD should align the definition of 'financial instrument' in FCD with the MiFID definition of 'financial instrument' to the extent that the latter includes instruments negotiable on the capital market which are not already covered by the existing FCD definition.

See proposed amendments to Article 31(1) and (2) SFR amending Articles 1(4)(a) and 2(e) FCD in Annex 1.

2.3. Definition of possession and control, accounts, book-entry

SFR amends the FCD so that any reference to an 'account', 'registration' or 'register' shall be understood to include any form of record including based on DLT. However, it may not be sufficient just to add a reference to DLT in the definition of these terms in order for FCD to offer an appropriate level of protection.

Key FCD concepts such as 'possession', 'control', 'accounts', and 'book-entry' (which are critical for the perfection and enforceability of financial collateral arrangements) do not neatly translate to all forms of tokenised assets.

These assets can be structured in various ways, and each structure has different operational and legal characteristics that can impact how FCD provisions apply, particularly concerning the creation, perfection, and enforcement of security interests. For example, existing legal precedent and guidance in relation to the boundaries of the concept of 'possession or control' by the collateral taker will not necessarily provide the market with the same degree of certainty in relation to tokenized assets as it does for traditional assets. While the use of tokenization and smart contract techniques may in some cases make it easier to demonstrate practical control, further complexity can arise in relation to certain arrangements, for example where the operational movement of assets is controlled through an automated smart contract, which cannot be interfered with by the collateral taker.

In some jurisdictions there may be uncertainty around the legal mechanisms for the effective transfer of tokenised assets that comprise a 'Digital Object of Property', including for the purposes of effecting or enforcing collateral in accordance with the FCD.

Digital Objects of Property are generally recorded to an address that is typically a hash of a public key which corresponds cryptographically to a unique private key. That private key is required to sign/authenticate any transfer of Digital Objects of Property recorded to the corresponding public key address. There may or may not be any account overlay to this.

Similarly, the recording of interests on a distributed ledger may not necessarily align with established interpretations of 'book-entry' securities systems, which often presuppose a specific type of intermediated holding structure and set of operational rules.

We believe further analysis and potentially targeted clarifications or guidance at an EU level are needed to address these points.

By way of specific recommendations, the FCD could be amended to make it clear that the fact that the collateral-provider has the following rights set out below, will not prevent the collateral-taker from having 'possession' or 'control' of the collateral whether the collateral is held in the collateral-taker's accounts or held via a third-party custodian:

1) account name: the collateral may be held in an account in the name of either the collateral-provider or the collateral-taker;

2) income: to the extent that any income (e.g. interest, coupons or dividends) accrues in respect of the financial collateral (at least where the security has not become enforceable), the collateral-provider will be entitled to withdraw such income from the account;

3) notices: if any notices are received in respect of any collateral in the form of securities, the collateral-provider will be entitled to receive a copy of them;

4) voting rights: to the extent that any voting rights attached to any securities forming part of the collateral become exercisable (if the security has not become enforceable), the collateral-provider will be entitled to exercise such voting rights;

5) valuation: to the extent that the value of the collateral or the secured obligations are not readily observable (as, for example, where the secured obligations are derivatives, which may have an uncertain and fluctuating value), the collateral-provider may be responsible for determining the value of the collateral or the secured obligations; and

6) insolvency: if the collateral-taker becomes insolvent, the collateral-provider will generally be entitled to require the custodian to return the collateral to the collateral-provider (although only after certifying that it has discharged the secured obligations); and

7) automated collateral management services: the provision of a standing instruction to a third party custodian or collateral manager to provide automated substitutions, return of excess collateral or transfers or reinvestment of income (e.g. interest, coupons or dividends).

8) if the collateral is held via a third-party custodian: if the custodian has prior ranking security interests, liens or contractual set-off rights for their customary fees and expenses.

We also consider that where emission allowances are included within the definition of 'financial instrument' the Commission should undertake a review to confirm that the current conditions of 'control' and 'possession' are suitable or whether something further should be included in order to capture the possibilities of title transfer and security interest of these assets.

2.4. List of eligible collateral providers and takers

SFR does not propose any changes to the list of eligible collateral providers and takers under the FCD. The limitations regarding the list of eligible collateral providers and collateral takers under the FCD affect both traditional and DLT-based financial collateral arrangements.

The key consideration for the FCD's scope should be the nature of the activities undertaken and the systemic importance of the entities involved, rather than the specific technology (such as DLT) used to record or transfer collateral.

However, it is worth noting that technological neutrality could be adversely affected if new types of entities which are central to DLT-based collateral ecosystems (e.g., certain operators of DLT platforms facilitating collateral transactions, or crypto-asset service providers acting in a capacity analogous to traditional financial intermediaries in collateral chains), do not fall within the FCD's current or reasonably expanded scope. If such entities are not eligible as collateral takers or providers, it could limit the FCD's applicability to innovative DLT-based collateral structures.

The FCD should at least be extended to include central securities depositories (to the extent that they are not already in scope as settlement agents or otherwise) as eligible collateral providers or takers, as these entities are a key part of EU financial market infrastructure.

See proposed amendments to Article 31(1) SFR amending Article 1(2), point (d), FCD in Annex 1.

2.5. Expansion of the title transfer financial collateral arrangements covered by the FCD

The title transfer financial collateral arrangements encompassed by the FCD protections are limited to those that secure or otherwise cover the performance of 'relevant financial obligations' (see the definition of 'title transfer financial collateral arrangement' at Article 2(1)(b)). While the definition of 'security financial collateral arrangement' is not limited in the same way, the protections afforded to those arrangements are structured by reference to 'relevant financial obligations' and limited accordingly. Relevant financial obligations are restricted to obligations that give a right to cash settlement and/or delivery of financial instruments (as defined in the FCD). Many derivatives encompass obligations other than the payment of cash and the delivery of financial instruments as defined in the FCD, such as physically settled bullion and commodity derivatives. Transacting of such derivatives under the same collateralised master agreement as derivatives which relate only to relevant financial obligations may deprive that entire collateral arrangement, and any related close-out netting provision, of FCD protections.

We agree with the statement of the European Commission set out in its June 2020 document 'Working Document on Collateral from the Commission to relevant bodies for consultation' that 'There seems to be no reason to limit the types of exposure that should be covered. [...]To attempt to distinguish different transactions would be difficult to achieve and burdensome to operate and would appear to serve no useful purpose'. This has proved to be the case as, in order to obtain any FCD protections, industry participants are required to segregate into FCD eligible and non-FCD eligible arrangements portfolios of transactions that would otherwise comprise a single

arrangement. We would recommend that the restriction on the definition of 'relevant financial obligations' be removed.

See proposed amendments to Article 31(2) SFR amending Article 2(1), point (f), FCD in Annex 1.

2.6. Choice of law rules

Article 9 FCD sets out of choice of law rules applying the law of the place of the relevant account in relation to book entry securities collateral. These rules are similar to those set out in Article 25(2), (3) and (4) SFR which apply the law of the place of the relevant register, account or centralised deposit system, including those in decentralised form, in relation to rights to collateral provided in relation to designated systems or to EU central banks or the ECB.

SFR amends the definition of 'account' in FCD to include accounts in decentralised form (see new Article 2(p) FCD and new Article 2(4) FCD added by SFR). However, FCD should also be amended to include provisions corresponding to those in Article 25(2), second subparagraph, and Article 25(3) SFR to identify the location of accounts held at branches and to address a case where it is not possible to identify the location of the relevant account (e.g., because it is held in decentralised form).

See proposed new Article 31(3) and (4) SFR amending Article 9 FCD in Annex 1.

Contacts

Perrine Herrenschmidt: pherrenschmidt@isda.org

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Annex 1

Proposed amendments to SFR and FCD

References to section numbers are to sections of the detailed commentary on the SFR. References to Articles are to Articles of SFR (unless otherwise indicated).

Section	Article	Amended text
1.1	Recital (12a) (new)	A third-country system that is registered under this Regulation in a Member State should benefit from the same protections in relation to the insolvency of participants established in that Member as are afforded under this Regulation to a designated system in relation to the insolvency of its participants. The exemptions, protections, and other safeguards applicable to designated systems under other Union acts should also apply to third-country systems registered under this Regulation, including those under Directive 2014/59/EU of the European Parliament and of the Council ( ), Regulation (EU) No 655/2014 of the European Parliament and of the Council ( ), Regulation (EU) No 806/2014 of the European Parliament and of the Council ( ), Regulation (EU) No 806/2014 of the European Parliament and of the Council( ) and Directive (EU) 2025/1 of the European Parliament and of the Council( ).
1.1(c)	Recital 13	The reduction of systemic risk requires, in particular, the finality of settlement and the enforceability of collateral security. Transfer orders and ~~their~~ netting should therefore be legally enforceable in all Member States and binding on third parties. Rules on enforceability of netting should not prevent systems from testing, before the netting takes place, whether orders that have entered the system comply with the rules of that system and allow the settlement of that system to take place.
1.1 1.2 1.7	1(2)	This Regulation also lays down requirements for the registration of third-country systems in one or several Member States in order to enable ~~institutions~~ their participants established in those Member States~~, which participate in those third-country systems,~~ and those third-country systems and their operators when dealing with those participants to benefit from the ~~extension of the~~ insolvency protection provided for in Articles 17, 18(1), 19, 21(1), 22(1), 23, 24 and 25(1) ~~to transfer orders entered into in such third-country systems~~. In the case of an insolvency of a person participating in ~~member of~~ such a system, the insolvency protection provided for in Articles 17, 18(1), 19, 21(1), 22(1), 23, 24 and 25(1) shall apply ~~transfer orders entered by that member shall be protected~~ where both the following conditions are met:

Section	Article	Amended text
		(a) the system is ~~member participates in~~ a registered system as defined in Article 2(1), point (9); (b) the person is a participant ~~member is an institution~~ as defined in Article 2(1), point (15)(b) ~~(10)(a)(i) to (iv) and (b)~~, established in the Member State which has registered that system under Article 12.
1.7	2(1)	(15) 'participant' means any of the following entities, which participates in a system: (a) for designated systems, any of the following: (i) an institution; (ii) a CSD; (iii) a settlement agent; (iv) a clearing house; (v) a system operator; (vi) a clearing member of a CCP authorised pursuant to Article 17 of Regulation (EU) No 648/2012; (vii) an entity other than the entities listed in points (i) to (vi) allowed under the rules of that designated system; (b) for registered systems, any ~~member~~ entity allowed under the rules of that registered system;
1.11(a)	2(1)	~~(3) 'settlement' means settlement as defined in Article 2(1), point (7), of Regulation (EU) No 909/2014 of the European Parliament and of the Council;~~
1.7	2(1)	(17) 'indirect participant' means any entity ~~of the entities listed in point (15)(a)(i) to (v)~~ that has a contractual relationship with a participant in a designated system or a registered system executing transfer orders which enables the entity to pass transfer orders through the designated system or registered system;
1.11(b)	2(1)	(20) 'transfer order' means any of the following instructions, including instructions that require the use of a cryptographic key or other device or method to digitally sign:

Section	Article	Amended text
		(a) an instruction by a participant to place at the disposal of a recipient ~~or member~~ an amount of funds or an instruction which results in the assumption or discharge of a payment obligation as laid down in the rules of the system; (b) an instruction by a participant to transfer the title to, or interest in, financial instruments and other instruments, where authorised by the system, including in relation to collateral arrangements and clearing, recorded by means of a book-entry or electronic recording on a register having a similar function or otherwise;
1.9	2(1)	(21) 'funds' means funds as defined in Article 3, point (30), of [Regulation on payment services in the internal market (EU) [PSR] and, in relation to a registered system, electronic money, as defined in Article 2, point (2). of Directive 2009/110/EC [E-money Directive], issued by a third-country entity that is not authorised under that Directive and e-money tokens. as defined in Article 3(1), point (7), Regulation (EU) 2023/1114 [MiCAR], issued by such a third-country entity;
1.11(c)	2(1)	(27) 'collateral' and 'collateral security' ~~means~~ mean all realisable assets, including, without limitation, those financial instruments and funds, including those issued or recorded using distributed ledger technology, including in tokenised form, and financial collateral referred to in Article 1(4), point (a), of Directive 2002/47/EC, provided under a pledge, a title transfer arrangement, a repurchase or similar agreement, or otherwise, for the purpose of securing rights and obligations potentially arising in connection with or related to a system, or provided to central banks of the Member States or to the European Central Bank and including any default fund held by a CCP authorised under Article 14 of Regulation (EU) No 648/2012 in accordance with Article 42 of that Regulation and margins as referred to in Article 41 of that Regulation and any comparable default fund held by or margins provided to a third-country CCP;
1.8(b)	2(1a) (new)	References in this Regulation to the law governing a system are references to the law chosen by the system operator and participants in the system.
1.7	2.2	The Commission shall be empowered to adopt delegated acts in accordance with Article 27 to amend any of the following: (a) the definition of transfer order laid down in paragraph 1, point (20), where necessary to ensure that new types of assets subject to settlement, clearing or payment in designated systems are covered by the protections provided in this Regulation;

Section	Article	Amended text
		(b) the definition of participant laid down in paragraph 1, point (15) and the definition of indirect participant laid down in paragraph 1, point (17), to add natural or legal persons, based on the experience of cases where such persons are allowed to participate in a DLT settlement system subject to Regulation (EU) 2022/858.
1.10	5(1)	A designating authority shall designate a system in accordance with Article 3, only where the designating authority is satisfied that all of the following conditions are fulfilled: (a) the system is governed by the law of the Member State of the designating authority; (b) at least one of the participants to in the system is established in the Member State of the designating authority; (c) the system has common rules and standardised procedures for the settlement, clearing, or execution, as applicable, of transfer orders between the participants; (d) the system has clearly identified in its common rules and standardised procedures the moments of finality that fulfil the requirements set out in Articles 18, 20 and 21. (e) the common rules and standardised procedures of the system stipulate, where relevant in accordance with Article 7, the requirements for participation in the system; (f) there are no apparent conflicts between the common rules and standardised procedures of the system and the law governing the system; (g) the system operator is able to ensure adequate monitoring of compliance of its system with the common rules and standardised procedures of the system it operates; (h) the system operator is capable of operating the system, is of sufficiently good repute and has sufficient experience to ensure the sound and prudent management of the system; (i) the system operator has enough financial resources to operate the system; (j) the common rules and standardised procedures of the system clearly identify what liability the system operator or, where more than one entity is the system operator, each such entity has under those rules and procedures to

Section	Article	Amended text
		participants in relation to the operation of the system; ~~the system operator is legally accountable, responsible and liable for the operation of the system, including for any links to other systems and the relationship to third parties and to the authorities;~~ (k) the system operator has put in place sufficient measures to mitigate the risks related to the operation of the system; (l) where more than one entity is the system operator, the application identifies which entity or entities is responsible for compliance with the duties under Article 8 and designates one such entity as the legal representative for receiving communications from the designating authority on behalf of all such entities in relation to the operation of the system. ~~where the system operator consists of a network of nodes operating under a common governance and supervision framework, the common rules and standardised procedures of the system shall ensure that one undertaking is legally accountable, responsible and liable for the operation of the system~~; ~~(m) where the system operator is a consortium of entities, all entities shall be jointly and severally accountable, responsible and liable for the operation of the system.~~
1.2 1.4 1.7	12	~~Each of the~~ A registering authority ~~authorities~~ in ~~any of the~~ a Member State ~~States in which a member participating in a third-country system is established~~ may decide to register such a third-country system in accordance with the procedure set out in Article 13, provided that a participant in that third-country system is established in that Member State or the application for registration by the system operator of that third-country system indicates that the system operator wishes to consider a request by a person established in that Member State for admission as a participant in the third-country system ~~the member is an institution as defined in Article 2(1), points (10)(a)(i) to (iv), or Article 2(1), point (10)(b)~~. Each ~~of those~~ registering ~~authorities~~ authority to which a system operator of a third-country system applies for registration shall assess the application for registration of the third-country system. A Member State may, in exceptional circumstances and for the purposes of this Regulation, consider an indirect participant as a participant in a registered system where the indirect participant is known to the system operator and the participants of the registered system, and where that is warranted on the grounds of systemic risk. That possibility shall, however, not limit the responsibility of the participant

Section	Article	Amended text
		through which the indirect participant passes transfer orders to the registered system.
1.3	14	A registering authority may register a third-country system in its Member State only where all of the following conditions are met: (a) the system has common rules and standardised procedures for the settlement, clearing, or execution of transfer orders between the participants; (b) the system is authorised or supervised in the country of its establishment or in the country under which law the third-country system is governed; (c) the system is governed by a law that upholds the principles of settlement finality; ~~(d) the system identifies clearly in its common rules and standardised procedures all of the following moments:~~ ~~(i) the moment of entry of a transfer order into the system referred to in Article 18(1);~~ ~~(ii) the moment of irrevocability of a transfer order entered into the system referred to in Article 20(1);~~ ~~(iii) the moment of final settlement of a transfer order entered into a system referred to in Article 21(1).~~ (e) the system operator of the system is adequately structured and financed; (f) the system complies in all material respects with global principles of financial market infrastructures.
1.11(d)	16(1)	A registering authority shall withdraw the registration of a registered system where any of the following conditions is met: (a) the third-country system operator has obtained the registration by making false statements or by any other irregular or unlawful means; (b) the third-country system operator or the system it operates, as applicable, no longer complies with the conditions set out in Article 14 and the system operator has not taken the remedial actions requested by the designating authority within a set timeframe;

Section	Article	Amended text
		(c) the third-country system operator or the system it operates, as applicable, has seriously or systematically infringed the conditions for registration laid down in Article 14.
1.1(b)	17(2)	No law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings, as provided for in Article 22(1), in relation to a participant in a designated system or a participant in a registered system established in a Member State where the third-country system is registered or in relation to a system operator of a designated system shall lead to the unwinding of netting, or the disapplication of close-out netting provisions as referred to in Article 2(1), point (n), of Directive 2002/47/EC of the European Parliament and of the Council.
1.1(b)	18(1)	Article 18(1). The moment of entry of a transfer order into a designated system shall be determined by the common rules and standardised procedures of that system. If the common rules and standardised procedures of a registered system make provision for the moment of entry of a transfer order, the moment of entry of a transfer order into that registered system shall be determined by the those rules and procedures for the participants in that registered system established in Member States where the third-country system is registered in accordance with the law governing that registered system.
1.11(c)	19(1)	The opening of insolvency proceedings against a participant or a system operator of an interoperable system shall not prevent funds or financial instruments available on the settlement account or on accounts holding collateral~~, including default fund contributions such as contributions to a pre-funded default fund held by a CCP in accordance with Article 42 of Regulation No 648/2012 and margins as referred to in Article 41 of Regulation No 648/2012, where applicable,~~ of that participant or system operator from being used to fulfil that participant's obligations in the designated system, or registered system in the Member State where the participant is established, or in an interoperability arrangement on the business day of the opening of the insolvency proceedings.
1.1(b) 1.11(e)	21(1)	Settlement shall be final when the transfer of funds, financial instruments or other instruments is irrevocable and unconditional or the discharge of ~~the~~ obligations by the system or a participant in accordance with the terms of a transaction ~~of the parties to a transaction~~ is completed in an unconditional and irrevocable manner as determined by the common rules and standardised procedures of each a designated system or a registered system in relation to participants established in

Section	Article	Amended text
		Member States where the third-country system is registered~~, in accordance with the applicable law for transfer of ownership and other rights~~. A designated system that is based on DLT shall implement mechanisms guaranteeing deterministic and legally enforceable finality moments.
1.3	21(3)	ESMA may, in close cooperation with the ESCB, for clearing and securities settlement systems not operated by a CSD, and taking into account the specificities of different types of systems, and the mechanics of those systems, develop draft regulatory technical standards to specify the rules for determining all of the following: (a) the moment of entry of transfer orders into a designated system, referred to in Article 18(1); (b) for DLT-based designated systems, when and how the moment of entry of a transfer order into the system, referred to in Article 18(1), occurs when a transaction is recorded in the ledger according to the system's consensus rules; (c) the moment, referred to in Article 20(1), in which a transfer order that entered into the designated system cannot be revoked; (d) for DLT-based designated systems, how the moment, referred to in Article 20(1), in which a transfer order that entered into the system cannot be revoked by a participant or by a third party coincides with the point at which consensus is final and the record cannot be reversed under the technical protocol of that system; (e) the moment of final settlement referred to in paragraph 1 in relation to designated systems; (f) for DLT-based designated systems, how the moment of final settlement referred to in paragraph 1 could be defined for probabilistic or layered finality models, which may not meet the absolute legal certainty but may still be able to achieve legal certainty depending on the structure and rules of the system. The Commission shall be empowered to adopt delegated acts to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.
1.3	21(4)	EBA may, in close cooperation with the ESCB, and taking into account the specificities of different types of payments systems and the mechanics of

Section	Article	Amended text
		the systems, develop draft regulatory technical standards to specify the rules for determining all of the following: (a) the moment of entry of transfer orders into a designated system referred to in Article 18(1); (b) for DLT-based designated systems, when and how the moment of entry of a transfer order into the system, referred to in Article 18(1), occurs when a transaction is recorded in the ledger according to the system's consensus rules; (c) the moment, referred to in Article 20(1), in which a transfer order that entered into the designated system cannot be revoked; (d) for DLT-based designated systems, when and how the specific moment in which a transfer order that entered into the system cannot be revoked by a participant or by a third party coincides with the point at which consensus is final and the record cannot be reversed under the technical protocol of that system; (e) the moment of final settlement referred to in paragraph 1 <u>in relation to designated systems</u>; (f) for DLT-based designated systems, how the moment of final settlement, referred to in paragraph 1, could be defined for probabilistic or layered finality models, which may not meet the absolute legal certainty but may still be able to achieve legal certainty depending on the structure and rules of the system. The Commission shall be empowered to adopt delegated acts to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.
1.1(b) 1,11(f)	22(1)	For the purpose of this Regulation, the moment of opening of insolvency proceedings <u>in a Member State</u> <u>in relation to a participant in a designated system or a registered system or the system operator of a designated system</u> shall be the moment the judicial or administrative authority concerned hands down its decision.
1.11(f)	22(2)	When a decision has been taken in accordance with paragraph 1, the judicial or administrative authority concerned shall immediately notify that decision to a competent authority responsible for collecting that information, appointed pursuant to Article 10(1). It shall immediately notify, via the central database,

Section	Article	Amended text
		ESMA, EBA, the ESCB, the European Systemic Risk Board and other Member States thereof. Where the participant subject to the decision is a participant in a designated system, the designating authority shall immediately notify the system operator of the designated system. Where the participant subject to the decision is a participant in a registered system and is established in a Member State in which that system is registered, the registering authority in that Member State shall immediately notify the system operator of the registered system.
1.1(b)	24	In the event of insolvency proceedings being opened against a participant in a designated system or a participant in a registered system established in a Member State where the third-country system is registered, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system.
1.11(g)	25(1)	The rights of a system operator or of a participant to collateral security provided to them in connection with a designated system, a registered system for its participants established in the Member States where the system is registered, or an interoperability arrangement, and the rights of central banks of the Member States or the European Central Bank to collateral security provided to them, shall not be affected by insolvency proceedings against any of the following: (a) the participant in the designated or the registered system concerned or in an interoperability arrangement; (b) the system operator of an interoperable system which is not a participant; (c) a counterparty to the central bank of a Member State; (d) a counterparty to the European Central Bank; (e) any third party which provided the collateral security. Notwithstanding such insolvency proceedings, such ~~Such~~ collateral security may be immediately realised for the satisfaction of those rights subject to the common rules and standardised procedures of the designated system or registered system, the rules governing the interoperability arrangement or the contract or other arrangement governing the rights of the central banks of the Member States or the European Central Bank to the collateral security.

Section	Article	Amended text
		The rights of a system operator to the collateral security it provided to another system operator in connection with an interoperability arrangement shall not be affected by insolvency proceedings against the receiving system operator.
1.8(a)	25(2)	The rights of participants in designated systems, system operators of designated systems, a central bank of a Member State, the European Central Bank and of any nominee, agent or third party acting on their behalf with respect to the financial instruments, including rights in those financial instruments, which are provided as collateral security that is legally recorded on a register, including where recorded on a distributed ledger, account or centralised deposit system located in a Member State, shall be governed by the law of that Member State. For the purposes of the first subparagraph, the location of a register, account or centralised deposit held at a branch or office in a Member State of a legal entity shall be the Member State where that ~~entity has its registered~~ branch or office is located.
1.8(a)	25(3)	Where it is not possible to determine the location of a register, account or centralised deposit system in accordance with paragraph 2, the determination of the rights of participants in designated systems, system operators of designated systems, a central bank of a Member State or the European Central Bank, and the rights of any nominee, agent or third party acting on their behalf, with respect to the financial instruments provided as collateral security, shall be governed by the law governing the system or the interoperability arrangement referred to in paragraph 1 or the law governing the arrangement under which the collateral is provided to the central bank or the European Central Bank, as applicable.
1.6(a)	28(1)	By way of derogation from Article 3, a system designated under Directive 98/26/EC prior to [date of entry into force of this Regulation] shall ~~continue to~~ be considered as designated for the purposes of this Regulation: (a) until the system ~~it~~ is re-designated under that Article or until [5 years after the entry into force of this Regulation], whichever is earlier, or (b) if the system operator applies for designation of that system under Article 3 before [5 years after the entry into force of this Regulation] and the application is still pending on that date, until the system is re-designated under that Article, a decision has been made rejecting the application or the application is withdrawn. ~~In the meantime, the Member State law on the designation of a system shall continue to apply.~~

Section	Article	Amended text
1.6(a) 1.6(b)	28(2)	By way of derogation from Article 12, a third-country system to which a Member State has extended one or more of the protections granted under Directive 98/26/EC (or has applied similar protections) prior to [entry into force of this Regulation] shall be considered as registered in that Member State for the purposes of this Regulation: (a) until the systemis registered in accordance with that Article in that same Member State or until [5 years after the entry into force of this Regulation], whichever is earlier, or (b) if the system operator applies for registration of the system under Article 12 in that same Member State before [5 years after the entry into force of this Regulation] and the application is still pending on that date, until the system is registered in accordance with that Article in that Member State, a decision has been made rejecting the application or the application has been withdrawn.
1.6(c)	28(2a)	Where the system operator of a system designated under Directive 98/26/EC prior to [date of entry into force of this Regulation] applies for re-designation of the system under Article 3, the designating authority shall ensure that the process is as streamlined as possible and that information any information relating to the system or system operator already held by the designating authority is taken into account.
1.6(c)	28(2b)	Where the system operator of a third-country system to which a Member State has extended one or more of the protections granted under Directive 98/26/EC (or applied similar protections) prior to [entry into force of this Regulation] applies for registration of the system in accordance with Article 12 in that Member State, the registering authority in that Member State shall ensure that the process is as streamlined as possible and that any information relating to the system or system operator already held by the registering authority is taken into account.
	31	Directive 2002/47/EC [FCD] is amended as follows:
2.4	31(-1a)	(-1a) in Article 1(2), point (d) is replaced by the following: '(d) a central counterparty, central securities depository, settlement agent or clearing house, as defined respectively in Article 2(1), points (11), (12), (13) and (14), of Regulation (EU) .../... [on settlement finality], including similar institutions regulated under national law acting in the futures, options and derivatives markets to the extent not covered by that Regulation, and a person, other than a natural person, who acts in a trust or representative capacity on behalf of any one or more

Section	Article	Amended text
		persons that includes any bondholders or holders of other forms of securitised debt or any institution as defined in points (a) to (d);'
2.2	31(1)	(1) in Article 1(4), the following subparagraphs are added in point (a): 'For the purpose of this Directive, references to cash, financial instruments and credit claims shall include where they are issued or recorded using DLT. ~~Member States may extend the scope of financial instruments to be covered by this Directive to include the instruments referred to as 'financial instrument' in Article 4(1), point (15), of Directive 2014/65/EU where these are negotiable on the capital market.';~~
2.1	31(2)	Article 2 is amended as follows: (-1a) in paragraph 1, point (d) is replaced by the following: (d) 'cash' means money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits and includes electronic money as defined in Article 2, point (2). of Directive 2009/110/EC [E-money Directive] and e-money tokens, as defined in Article 3(1), point (7), of Regulation (EU) 2023/1114 [MiCAR] issued by an institution authorised under Directive 2009/110/EC or by a third-country entity that is not authorised under that Directive;
2.2	31(2)	(-2a) in paragraph 1, point (e) is replaced by the following: (e) 'financial instruments' means shares in companies and other securities equivalent to shares in companies and bonds and other forms of debt instruments if these are negotiable on the capital market, and any other securities which are normally dealt in and which give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange or which give rise to a cash settlement (excluding instruments of payment), including units in collective investment undertakings, money market instruments and claims relating to or rights in or in respect of any of the foregoing and any other financial instruments, as defined in Article 4(1), point (15), of Directive 2014/65/EU, where these are negotiable on the capital market;
2.5	31(2)	(-2b) in paragraph 1, point (f) is replaced by the following: (f) 'relevant financial obligations' means any obligations which are secured by a financial collateral arrangement.

Section	Article	Amended text
		Relevant financial obligations may consist of or include: (i) present or future, actual or contingent or prospective obligations (including such obligations arising under a master agreement or similar arrangement); (ii) obligations owed to the collateral taker by a person other than the collateral provider; (iii) obligations of a specified class or kind arising from time to time; or (iv) obligations which give a right to cash settlement and/or delivery of financial instruments or which give a right to any other performance.
2.6	31(4) (new)	(4) Article 9 is amended as follows: (a) in paragraph 1, the following subparagraphs are added: 'For the purposes of the first subparagraph, the location of an account held at a branch or office of a legal entity shall be the country where that branch or office is located.'
2.6	Article 31(4) (new)	(b) the following paragraph (3) is added: '(3) Where it is not possible to determine the location of an account for the purposes of the paragraph 1, the matters specified in paragraph 2 arising in relation to book entry securities collateral shall be governed by the law governing the financial collateral arrangement.'

Annex 2

Proposed amendments to other EU legislation

Part 1 of this Annex sets out proposed amendments to the following legislation to ensure that registered systems are accorded similar treatment to that accorded to designated systems, particularly in relation to resolution-related action:

- Bank Recovery and Resolution Directive (BRRD);
- Single Resolution Mechanism Regulation (SRMR);
- Regulation on CCP Recovery and Resolution;
- Insurance Recovery and Resolution Directive (IRRD);
- European Market Infrastructure Regulation (EMIR);
- Regulation on the European Account Preservation Order (EAPO).

Part 2 of this Annex sets out proposed amendments to the following legislation to ensure that SFR has precedence over other acts which might be considered to include conflicting provisions:

- Credit Institutions (Winding up) Directive (CIWUD);
- Rome I Regulation;
- Insolvency Regulation**.**

Part 1

1. Bank Recovery and Resolution Directive (BRRD)[8]

Article 33a Power to suspend certain obligations

"2. The power referred to in paragraph 1 of this Article shall not apply to payment or delivery obligations to the following:

(a) systems and operators of systems designated in accordance with Directive 98/26/EC;"

[8] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.

Replace point (a) of Article 33a(2) with the following:

'(a) systems and operators of systems designated or registered in accordance with [Regulation (EU) …/… on settlement finality];'

Article 44 Scope of bail-in tool

"2. Resolution authorities shall not exercise the write down or conversion powers in relation to the following liabilities whether they are governed by the law of a Member State or of a third country:

…

(f) liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated in accordance with Directive 98/26/EC or to their participants and arising from the participation in such a system, or to CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation;"

Replace point (f) of Article 44(2) with the following:

'(f) liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated or registered in accordance with [Regulation (EU) …/… on settlement finality] or to their participants and arising from the participation in such a system, or to CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation;'

Article 69 Power to suspend certain obligations

"4. Any suspension under paragraph 1 shall not apply to payment and delivery obligations owed to the following:

(a) systems and operators of systems designated in accordance with Directive 98/26/EC;"

Replace point (a) of Article 69(4) with:

'(a) systems and operators of systems designated or registered in accordance with [Regulation (EU) …/… on settlement finality];'

Article 70 Power to restrict the enforcement of security interests

"2. Resolution authorities shall not exercise the power referred to in paragraph 1 of this Article in relation to any of the following:

(a) security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC;"

Replace point (a) of Article 70(2) with:

'(a) systems and operators of systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality];'

Article 71 Power to temporarily suspend termination rights

"3. Any suspension under paragraph 1 or 2 shall not apply to:

(a) systems or operators of systems designated for the purposes of Directive 98/26/EC;"

Replace point (a) of Article 71(2) with:

'(a) systems and operators of systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality];'

Article 80: Partial transfers: protection of trading, clearing and settlement systems

"1. Member States shall ensure that the application of a resolution tool does not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the resolution authority: [...]"

Replace the introductory wording of Article 80(1) with the following:

'1. Member States shall ensure that the application of a resolution tool does not affect the operation of systems and rules of systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality], where the resolution authority: [...]'

Article 83 Procedural obligations of resolution authorities

"2. The resolution authority shall notify the institution under resolution and the following authorities, if different:

...

(k) where the institution under resolution is an institution as defined in Article 2(b) of Directive 98/26/EC, the operators of the systems in which it participates."

Replace point (k) of Article 83(2) with the following:

'(j) where the institution under resolution is an participant as defined in Article 2(1), point (15), of [Regulation (EU) .../... on settlement finality] in a system designated or registered in accordance with that Regulation, the operators of the systems in which it participates;'

2. Single Resolution Mechanism Regulation (SRMR)[9]

Article 27 Bail-in tool

"3. The following liabilities, whether they are governed by the law of a Member State or of a third country, shall not be subject to write-down or conversion:

…

(f) liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated in accordance with Directive 98/26/EC of the European Parliament and of the Council ( ) or to their participants and arising from the participation in such a system, or to CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation;"

Replace point (f) of Article 27(3) with the following

'(f) liabilities with a remaining maturity of less than seven days, owed to systems or operators of systems designated or registered in accordance with [Regulation (EU) …/… on settlement finality] or to their participants and arising from the participation in such a system, or to CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation;'

3. Regulation on CCP Recovery and Resolution[10]

Article 2 Definitions

"For the purposes of this Regulation the following definitions apply:

…

(16) 'financial market infrastructure' or 'FMI' means a CCP, a central securities depository, a trade repository, a payment system or another system defined and designated by a Member State under point (a) of Article 2 of Directive 98/26/EC;"

Replace point (16) of Article 2 with the following:

[9] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund

[10] Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties

'(16) 'financial market infrastructure' or 'FMI' means a CCP, a central securities depository, a trade repository, a payment system or another system designated or registered in accordance with [Regulation (EU) .../... on settlement finality];'

***Article 33* Provisions governing the write-down or conversion of instruments of ownership and debt instruments or other unsecured liabilities**

"4. The resolution authority shall not apply the write-down and conversion tool in respect of the following liabilities:

...

(d) liabilities owed to systems or operators of systems designated according to Directive 98/26/EC, to participants to the extent that the liabilities result from their participation in such systems, to other CCPs, and to central banks;"

Replace point (d) of Article 33(4) with the following:

'(d) liabilities owed to systems or operators of systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality], to participants to the extent that the liabilities result from their participation in such systems, to other CCPs, and to central banks;'

Article 55 Power to suspend certain obligations

"3. The resolution authority shall not exercise the power referred to in paragraph 1 to payment and delivery obligations owed to systems or operators of systems designated for the purposes of Directive 98/26/EC, other CCPs, and central banks."

Replace Article 55(3) with the following:

'3. The resolution authority shall not exercise the power referred to in paragraph 1 to payment and delivery obligations owed to systems or operators of systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality], other CCPs, and central banks.'

Article 57 Power to temporarily suspend termination rights

"2. The resolution authority shall not exercise the power referred to in paragraph 1 in relation to systems or operators of systems designated for the purposes of Directive 98/26/EC, other CCPs and central banks."

Replace Article 57(2) with the following:

'2. The resolution authority shall not exercise the power referred to in paragraph 1 in relation to systems or operators of systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality], other CCPs and central banks.'

Article 69 Partial transfers: protection of trading, clearing and settlement systems

"1. The resolution authority shall ensure that the application of a resolution tool does not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the resolution authority:

(a) transfers some but not all of the assets, rights, obligations or liabilities of a CCP under resolution to another entity;

(b) cancels or amends the terms of a contract to which the CCP under resolution is a party or substitutes a purchaser or bridge CCP as a party."

Replace the introductory wording of Article 69(1) with the following:

'1. The resolution authority shall ensure that the application of a resolution tool does not affect the operation of systems and rules of systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality], where the resolution authority:'

Article 72 Procedural obligations of resolution authorities

"1. The resolution authority shall notify the resolution college of the resolution actions it intends to take. That notification shall also indicate whether the resolution actions deviate from the resolution plan.

(e) the operators of the systems covered by Directive 98/26/EC in which the CCP under resolution participates."

Replace point (e) of Article 72(1) with the following:

'(j) where the CCP under resolution is an participant as defined in Article 2(1), point (15), of [Regulation (EU) .../... on settlement finality] in a system designated or registered in accordance with that Regulation, the operators of the systems in which it participates;'

4. Insurance Recovery and Resolution Directive (IRRD)[11]

Article 35 Objective and scope of the write-down or conversion tool

"5. Resolution authorities shall not apply the write-down or conversion tool in relation to the following liabilities whether they are governed by the law of a Member State or of a third country:

...

[11] Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings

(c) liabilities with a remaining maturity of less than seven days, owed to either systems or operators of systems designated in accordance with Directive 98/26/EC or to their participants and arising from the participation in such a system, or to CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (20), pursuant to Article 25 of Regulation (EU) No 648/2012;"

Replace point (c) of Article 35(3) with the following:

'(c) liabilities with a remaining maturity of less than seven days, owed to either systems or operators of systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality] or to their participants and arising from the participation in such a system, or to CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by the European Supervisory Authority (European Securities and Markets Authority) (ESMA), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (20), pursuant to Article 25 of Regulation (EU) No 648/2012;'

Article 49 Power to suspend certain obligations

"4. Any suspension under paragraph 1 shall not apply to payment and delivery obligations owed to the following:

(a) systems and operators of systems designated in accordance with Directive 98/26/EC;

(b) CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation."

Replace point (a) of Article 49 with the following:

'(a) systems and operators of systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality];

Article 50 Power to restrict the enforcement of security interests

"2. Any restriction under paragraph 1 shall not apply to:

(a) security interest of systems or operators of systems designated for the purposes of Directive 98/26/EC;

(b) CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation."

Replace point (a) of Article 50 with the following:

'(a) security interests of systems or operators of systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality];'

Article 51 Power to temporarily suspend termination rights

"3. Any suspension under paragraph 1 or 2 shall not apply to:

(a) systems or operators of systems designated for the purposes of Directive 98/26/EC; or

(b) CCPs authorised in the Union pursuant to Article 14 of Regulation (EU) No 648/2012 and third-country CCPs recognised by ESMA pursuant to Article 25 of that Regulation."

Replace point (a) of Article 51 with the following:

'(a) systems or operators of systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality]; or'

Article 62 Partial transfers: protection of trading, clearing and settlement systems

"1. Member States shall ensure that the application of a resolution tool does not affect the operation of systems and rules of systems covered by Directive 98/26/EC, where the resolution authority does either of the following:

(a) transfers some, but not all of the assets, rights or liabilities of an undertaking under resolution to another entity;

(b) uses the ancillary powers referred to in Article 43 to cancel or amend the terms of a contract to which the undertaking under resolution is a party or to substitute a recipient as a party."

Replace the introductory wording to Article 62(1) with the following:

'1. Member States shall ensure that the application of a resolution tool does not affect the operation of systems and rules of systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality], where the resolution authority does either of the following:'

***Article 65* Procedural obligations of resolution authorities**

"2. Resolution authorities shall notify the undertaking under resolution and the following authorities, if different, of the resolution action referred to in paragraph 1:

...

(j) where the undertaking under resolution is an institution as defined in Article 2, point (b), of Directive 98/26/EC, the operators of the systems in which it participates;"

Replace point (j) of Article 65(2) with the following:

'(j) where the undertaking under resolution is an participant as defined in Article 2(1), point (15), of [Regulation (EU) .../... on settlement finality] in a system designated or registered in accordance with that Regulation, the operators of the systems in which it participates;'

5. European Market Infrastructure Regulation (EMIR)[12]

Article 53 Provision of margins among CCPs

"3. Collateral received in the form of financial instruments shall be deposited with operators of securities settlement systems notified under Directive 98/26/EC."

Replace Article 53(3) with the following:

'3. Collateral received in the form of financial instruments shall be deposited with operators of securities settlement systems designated or registered in accordance with [Regulation (EU) .../... on settlement finality].'

6. Regulation on the European Account Preservation Order (EAPO)[13]

Article 2 Scope

"3. This Regulation does not apply to bank accounts which are immune from seizure under the law of the Member State in which the account is maintained nor to accounts maintained in connection with the operation of any system as defined in point (a) of Article 2 of Directive 98/26/EC of the European Parliament and of the Council."

Replace Article 2(3) with:

'3. This Regulation does not apply to bank accounts which are immune from seizure under the law of the Member State in which the account is maintained nor to accounts maintained in connection with the operation of any designated system or registered system as defined in Article 2(1), point (8) and (9), of [Regulation (EU) .../... on settlement finality].'

Part 2

[1212] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

[13] Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

Relationship with other acts

1. Credit Institutions (Winding up) Directive (CIWUD)[14]

Add the following new Article:

'*Article 31a*

Relationship with other acts

[Regulation (EU) .../... on settlement finality] shall apply notwithstanding this Directive.'[15]

2. Rome I Regulation[16]

Add the following new Article:

'*Article 28a*

Relationship with other acts

Nothing in this Regulation shall prejudice the operation of a system designated or registered in accordance with [Regulation (EU) .../... on settlement finality].' [17]

3. Insolvency Regulation[18]

Add the following new Article:

'*Article 84a*

Relationship with other acts

[Regulation (EU) .../... on settlement finality] shall apply notwithstanding this Regulation.'[19]

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[14] 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

[15] Compare recitals 25 and 26 of CIWUD. Also, compare Article 31 of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

[16] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)

[17] Compare recital 31 Rome I Regulation.

[18] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)

[19] Compare recital 71 to the Insolvency Regulation.