EU Settlement Finality Regulation

AFME Submission to "Have Your Say" Process

MARCH 2026

The Association for Financial Markets in Europe (AFME) welcomes the European Commission's proposed Settlement Finality Regulation (SFR), which modernises the existing Settlement Finality Directive to accommodate distributed ledger technology (DLT) and other emerging technologies while preserving critical protections for transfer orders, netting, and collateral. AFME supports the SFR's overarching objective of enhancing legal certainty and market integration in the Savings and Investments Union (SIU). However, we identify several areas requiring refinement to ensure technological neutrality, operational feasibility, and cross-border consistency. As a general comment, we recommend that the SFR focuses on increasing harmonisation and decreasing regulatory complexity, whilst maintaining flexibility for system operators.

DLT Definitions

The proposed SFR amends key definitions to promote technological neutrality, explicitly accommodating DLT-based systems.

AFME views these definitional updates as a positive step towards ensuring the SFR is fit for DLT-based systems and assets. Nevertheless, challenges persist in mapping these definitions to broader account maintenance requirements under the Central Securities Depositories Regulation (CSDR). The SFR framework presumes an accountable person for maintenance of account structures, which does not align with fully decentralised models. We further note that Article 5(j) proposes that the system operator is "legally accountable, responsible and liable for the operation of the system", which again may not be fully compatible with potential decentralised models with no single central operator. AFME recommends distinguishing between permissioned DLT networks, which are broadly compatible, and permissionless networks, which raise governance and oversight concerns.

Definition of Settlement

The SFR proposal includes a definition of settlement by reference to Article 2(1)(7) of the CSDR, i.e. the completion of a securities transaction where it is concluded with the aim of discharging the obligations of the parties to that transaction through the transfer of cash or securities. This narrow definition excludes other types of system covered under the SFR, such as payments systems.

Moments of Finality

Aligned with Principle 8 of the PFMI principles, the SFR requires designated systems to specify the moment of transfer order entry, the moment of irrevocability, and the moment of final settlement. It further mandates ESMA to develop draft Regulatory Technical Standards (RTS), if necessary, to specify these moments, including their application in DLT contexts.

AFME recognises that the existing SFD has historically placed significant weight on the rules of the system (assuming the system is designated under member state national law), and we encourage that the SFR appropriately seeks a balance between prescription and harmonisation. The regulation's purpose is to deliver legal certainty rather than impose platform standardisation, particularly as DLT models remain experimental. Any RTS must emerge from thorough, detailed consultation – and take into account designation under

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national law - to prevent over-prescription that could stifle innovation and create uncertainty about compatibility with national law.

Third-Country Systems Designation
The SFR establishes clear conditions for designating EU financial market infrastructures (FMIs) as systems and registering third-country systems.

AFME notes inconsistencies between recitals and operative provisions regarding third-country systems, which should be resolved in the final text.

The proposal should amend the Bank Recovery and Resolution Directive (BRRD) and Single Resolution Mechanism Regulation (SRMR) to extend equivalent protections to registered third-country systems as those afforded to designated EU systems (or authorised/recognised CCPs). Greater clarity is also needed on SFR-BRRD interactions, particularly confirming that BRRD bail-in tools and resolution stays will not interfere with transaction finality, netting, or collateral protections—given many participants are banks.

Protections for third-country systems should extend to all admitted members, not merely EU participants.

***Alternative Approach for Third-Country Systems**: AFME proposes a simpler mechanism, mirroring the Netherlands' post-Brexit practice under the SFD. EU participants would notify their national authority of their intent to join a third-country system—providing system contact details and confirming the system's jurisdiction has a central bank that is a Bank for International Settlements (BIS) member. This notification-based model would simplify compliance, enhance flexibility, and align with the SFR's limited scope. Accordingly, Articles 3-11 (EU systems) and 12-16 (registered systems) could be deleted, reducing regulatory burdens on participants and operators.*

Participants
The SFR does not harmonise the definition of an "indirect participant" as a participant, deferring instead to national law. AFME recommends inserting a common definition directly into the SFR to eliminate national divergences and promote consistent application.

Collateral security and the need for further harmonisation
Article 25, paragraph 1, helpfully builds on existing SFD protections regarding protection in respect of collateral security, however, we believe that the opportunity should be taken to rectify a serious omission: this provision should also clarify that satisfaction of these rights includes both right of retention of collateral as well as its right of sale. This would ensure a harmonised approach across Member States in the context of insolvency, which at the moment is not the case under diverse national laws. AFME proposes adding a provision for immediate sale rights to bolster safe and timely cross-border settlement, supporting broader SIU objectives.

The current wording of the SFR proposal inadequately addresses safeguards for those market participants acting as "Settlement Agents", who should be protecting their position in cases of insolvency proceedings opened either against i) the Principal they are settling a securities transaction for, or ii) the securities subject to the transfer. Some states have adequately addressed this risk in national legislation, but many have not, creating an unlevel playing field across the EEA.

By way of example, the Italian Legislative Decree n. 210, dated 12 April 2001, enacted to transpose and apply the Settlement Finality Directive, in its consolidated version currently in force at Article 5 states:

«Following the opening of insolvency proceedings against a participant or system operator of an interoperable system, the settlement agent may use, in the name and on behalf of the insolvent entity, for the purposes of fulfilling its obligations related to participation in the system or an interoperable system that arose before the opening of insolvency proceedings: a) funds

and financial instruments available on the insolvent entity's settlement account; b) credit lines opened in favor of the insolvent entity against an existing guarantee and intended to satisfy that entity's obligations to the system. »

We are aware that few other Member States have adopted similar legislation providing for similar safeguards: we believe a common approach along the lines of the approach taken in Italy should be reflected in the legal text of the EC Proposal once it undergoes the legislative procedure across the European Parliament and the Council.

Article 25, paragraph 2, identifies as the law governing on rights of participants (and others) with regard to collateral security taken on financial instruments "legally recorded on a register, including where recorded on a distributed ledger, account or centralised deposit system located in a Member State" as the law of "that Member State". This could be read grammatically to refer solely to the law of the Member State of the centralised deposit system, which we believe is not the intended result. We believe this language could be improved and further clarified to make it clear that the law of the Member State that applies is to be determined with reference to the location of the account or register of the relevant participant, system operator, central bank of a Member State, the European Central Bank or any nominee (as applicable) - and not to include any agent or third party acting on any of their behalf. We agree – as set out in Art. 25.3 – that it is sensible to refer to the law of governing the system or the interoperability arrangement referenced in paragraph 1 where the location of register, account or centralised deposit system cannot be determined.

Transitional Provisions

The transitional provisions set out in Article 28 may create a 'cliff edge' risk for both EU and third country systems, in cases where the system has submitted an application for designation or registration before the end of the five-year transitional period, but the application has not yet been determined. Consideration should be given to treating systems that are (a) currently designated/registered under SFD and (b) have an in-flight application under SFR at the end of the transition period, as designated/registered until the status of the application is concluded.