EBA CLEARING

EBA CLEARING response to the consultation on the proposed Settlement Finality Regulation[1]

The Settlement Finality Directive (SFD) has provided a remarkably stable and robust legal framework for over 20 years (which have seen most other regulatory frameworks considerably changed) and EU-based systems rely on the central concepts of the SFD, as reflected in their system rules. Whilst the objective of this review is clear and important, it is also important to avoid upsetting these robust proven concepts unnecessarily.

In this sense, EBA CLEARING welcomes the evolution from a directive to a regulation which, in an EU cross-border context, opens opportunities for reduced fragmentation, heightened legal certainty and more efficient processes. However, it also considers that the SFD, in its current form, effectively achieves the objective of mitigating systemic risk for all financial market infrastructures (FMIs) in scope. The SFD should only be revised to the extent necessary to continue to achieve this policy objective.

EBA CLEARING would like to highlight to the European Commission the following points:

- The proposed Settlement Finality Regulation (the Regulation) should be fit for all systems, **including payment systems**, which we observed are largely absent from the impact assessment, and therefore risk the Regulation containing language that is inadequate for payment systems.

- The proposed Regulation would significantly increase the scope of the supervision of designated systems by the designated authority, as compared to the current regime. With regard to payment systems that are already overseen by the Eurosystem, the proposed SFR supervisory regime would be duplicative with Oversight requirements, and would be administered by different authorities (the designating authority, for the SFR, and the Eurosystem, for Oversight), creating a risk of conflicting interpretations and/or inefficient duplication of efforts by the system operator and by the authorities. We propose the existing oversight frameworks are leveraged by the European Commission, in line with its pledges for “Better regulation” and “Simplification”.

- In terms of specific definitions in the proposal, we note that in particular the definition of “funds” should be expanded to also include wholesale central bank funds. Further, a new narrower “transfer order” definition brings uncertainties, overlooking payments systems specifics, such as direct debit orders.

- EBA CLEARING would also appreciate additional explanation as to why any “entity” can now become a participant in a designated payment system without the same safeguards as promoted for non-bank PSPs in the Instant Payments Regulation.

- An EU third-country system regime should also favour reciprocity for EU designated systems abroad, not merely protect transfer orders in third countries from EU insolvency rules.

- The revision of the SFD is also an opportunity to improve information sharing between the authorities and the industry. While the proposed SFR formalises information sharing between authorities in the event of the insolvency of a participant, it fails to introduce a mechanism to also inform FMIs that a participant is insolvent. Specifically, EBA CLEARING proposes that all types of FMI should directly receive a notification of an insolvency proceeding, either from ESMA or via the central database envisaged in the legislation.

- Finally, it is critical that the transition from the SFD to the SFR is as smooth as possible for systems that are already designated under the SFD. Indeed, some of EBA CLEARING’s systems have been designated under the SFD for decades. Participants in these systems rely on the legal certainty provided by the SFD and any potential interruption to this certainty would be very serious. In particular, EBA CLEARING is concerned by the EBA’s authority to issue RTS on the designation requirements. There is no deadline in which the EBA must issue such RTS, and systems cannot apply for redesignation until such RTS are issued.

EBA CLEARING has elaborated these points further in the attachment to this submission, but we remain available for any clarifications or any other information that might be helpful to the European Commission in its legislative activities.

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[1] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on settlement finality and repealing Directive 98/26/EC and amending Directive 2002/47/EC on financial collateral arrangements.

Annex I: Detailed EBA CLEARING proposals regarding the proposed Settlement Finality Regulation

#	Provision	Comment	Suggested text (if applicable)
1	Recital (10) of introduction The list of entities that can be considered as participants in a system should take into account the different participation models adopted by systems, while ensuring that the aim to protect the financial system from systemic risk is met. To that end, the entities to be admitted as participants should fulfil certain conditions to avoid creating unnecessary risks for the system in which they participate. Such conditions should, however, not impose additional requirements where the system operator already applies admission requirements to the system under Union law when admitting new entities as participants to its designated systems, as in the case of central counterparties (CCPs) and central security depositories (CSDs). It should be possible to include as participants in a system entities that perform validation or consensus functions that are essential for maintaining settlement integrity.	The operators of payment systems also already apply admission requirements under Union law, in particular, the SIPS Regulation, PSD2 and the proposed Payment Services Regulation. Therefore, payment systems should be included in this list, along with CCPs and CSDs. As noted below, the proposed Article 7(2) SFR would duplicate the admission requirements already applicable to payment system operators through these other Union laws.	*Recital (10) of introduction* *The list of entities that can be considered as participants in a system should take into account the different participation models adopted by systems, while ensuring that the aim to protect the financial system from systemic risk is met. To that end, the entities to be admitted as participants should fulfil certain conditions to avoid creating unnecessary risks for the system in which they participate. Such conditions should, however, not impose additional requirements where the system operator already applies admission requirements to the system under Union law when admitting new entities as participants to its designated systems, as in the case of* ***payment systems,*** *central counterparties (CCPs) and central security depositories (CSDs). It should be possible to include as participants in a system, entities that perform validation or consensus functions that are essential for maintaining settlement integrity.*
2	Recital (16) of introduction Member States should immediately notify each other of the opening of insolvency proceedings against a participant in the system. Insolvency proceedings should not have a retroactive effect on the rights and obligations of participants in a system.	As further set out below in relation to Article 22(2), FMIs need to also be notified immediately of the opening of insolvency proceedings against a participant, to be able to reduce systemic risks. The SFR should address, unify and modernise the existing cross border notification to FMIs to avoid that it is left to juxtaposed national approaches instead in an otherwise single transfer order market.	N/A
3	**Article 2(1)(3)** **Definitions** "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;	The proposed definition of settlement would not include settlement in a payment system and therefore is not appropriate. EBA CLEARING submits that it is not necessary to include a definition of settlement in the SFR. Alternatively, to the extent such a definition is required, we propose using the definition in the PFMIs: **"***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***."**	*Alternative 1:* ~~*means settlement as defined in Article 2(1), point (7), of Regulation (EU) No 909/2014 of the European Parliament and of the Council*~~; ***[delete definition]*** Alternative 2: ~~*means settlement as defined in Article 2(1), point (7), of Regulation (EU) No 909/2014 of the European Parliament and of the Council*~~ ***"[final] settlement" means the irrevocable and unconditional transfer of an asset or financial instrument, or the discharge of an obligation in accordance with the terms of the underlying contract.***"
4	**Article 2(1)(5)** **Definitions** "securities settlement system" means a system whose activity consists of the settlement of transfer orders;	This definition - specifically the blanket reference to "transfer orders" is too broad and would include payment systems.	"*securities settlement system' means a system whose activity consists of the settlement of transfer orders,* ***other than a payment system;"***
5	**Article 2(1)(7)** **Definitions** "clearing system"	This definition is potentially encompassing also payment systems as there is no strict definition of "clearing services" and a large definition of "clearing house". As we understand this is not meant to be, we advise to clarify that payment systems are not in scope.	N/A
6	**Article 2(1)(15)** **Definitions**	It would be helpful to include an explanation in the recitals regarding the addition of point (vii) in the definition of "participant". Just a year ago, the	N/A

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	“participant” […] (a) (vii) an entity other than the entities listed in points (i) to (vi)	co-legislators mandated the access to payment systems for non-bank PSPs through the “Instant Payments Regulation” (IPR), an extended access which was transparently argued and explained. To date, access to SFD designated systems has been limited to sectorally regulated institutions, excluding the direct participation of e.g. retail investors, or unregulated corporations. A focused approach was justified as SFD circumvents by exception normal insolvency rules and supervisions of participants helped keeping certain risks in controls (insolvency, IT risks, etc). The IPR access extension to non-bank PSPs also conditioned access to safeguards for the stability and integrity of payment systems. Such considerations - or at least an impact analysis of the IPR changes - are singularly absent from the draft and the impact assessment only considered access to “trading venues” to propose this addition. In this context, EBA CLEARING is wondering if it is indeed the intention of the legislator to mandate the access by any entity for all FMIs, especially payment systems for which access has just been extended. The terminology should further clarify what is meant by an “entity”, which we assume to refer to a “legal entity”, as opposed to individuals	
7	Article 2 (1) (17) **Definitions** “indirect participant” means any of the entities listed in point (15)(a)(i) to (v) that has a contractual relationship with a participant in a designated system executing transfer orders which enables the entity to pass transfer orders through the designated system	New SFR definition is broader than the definition in SFD Article 2(g): “*shall mean an institution, a central counterparty, a settlement agent, a clearing house or a system operator with a contractual relationship with a participant in a system executing transfer orders which enables the indirect participant to pass transfer orders through the system,* ***provided that the indirect participant is known to the system operator.***” EBA CLEARING would welcome a recital explaining the reason for the change in the definition, to obtain assurance that there is continuity with the existing SFD definition.	N/A
8	**Article 2(1)(20)** **Definitions** “transfer order” means any of the following of the following instructions, including instructions that require the use of a cryptographic key or other device or method to digitally sign: (a) an instruction by a participant to place at the disposal of a recipient or member an amount of funds 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) The redrafting of the transfer order creates uncertainty due to the fact that it overlooks some specifics applicable to payments systems. The SFD provides two distinct types of instructions. Systems have built their own “transfer order” concept based on either of those two terms. Their commingling in the SFR creates a narrower concept that exists today and risks excluding from scope transfer orders that are currently protected under the SFD. EBA CLEARING would welcome keeping these two distinct concepts separate: “the instruction... to place … an amount of funds” vs the instruction of a participant “which results in the assumption or discharge of a payment obligation”. In addition, it would be helpful to avoid adding surcharges to those key definitions, as they may increase uncertainties (see point 3 below).	“***Article 2(1)(20)*** ***Definitions*** *'transfer order” means any of the following of the following instructions, including instructions that require the use of a cryptographic key or other device or method to digitally sign:* *(a) an instruction by a participant to place at the disposal of* ~~*a recipient or member*~~ ***a receiving participant, or to debit a paying participant of,*** *an amount of funds****, or an instruction by a participant*** *which results in the assumption or discharge of a payment obligation****, in each case*** *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;*

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		2) Coverage of direct debits: Payment systems designated under the SFD process “transfer orders” for both “credit transfers” and “direct debits”. Such payments have as instructor the participant that is also the recipient of the funds, therefore such instructions result in a debit rather than making funds available to a third party. The definition currently proposed in Article 2(1)(20) (a) does not cover the concept of a direct debit order. Given that direct debits are also processed by payment systems we would request that the SFR either: • Clarifies that both credit transfers and direct debits are in scope of the SFR in the Recitals (or elsewhere as the Commission deems appropriate) or • modifies the definition in Article 2(1)(20) to ensure that direct debits orders are not excluded. 3) The addition of “member” in point (20)(a) does not seem necessary and creates a doubt whether ‘members’ are ‘recipients’, which we understand they are in this case as well.	
9	**Article 2(1)(21)** **Definitions** “funds” means funds as defined in Article 3, point (30) of [PSR]	The draft PSR provides that: “‘funds’ means central bank money issued for retail use, scriptural money and electronic money;”. According to the draft PSR, the notion of ‘central bank money issued for retail use’ covers cash as well as digital central bank money. However, the recital of the draft PSR excludes “wholesale central bank funds” from the definition of funds. Payment systems are supposed to use “wholesale central banks funds” to ensure final settlement (as per oversight requirements-PFMI). Therefore, the PSR definition of “funds” is not appropriate to define transfer orders in the SFR. Using the PSR definition of “funds” would also exclude central bank run systems that transfer wholesale funds. Under the proposed PSR definition, such systems would no longer qualify for designation under the SFR.	We suggest to either omit the definition of funds (as per current SFD) or use a broader definition including any central bank money such as: ***“Article 2(1)(21)*** ***Definitions*** *“funds” means ~~funds as defined in Article 3, point (30) of [PSR]~~* ***central bank money, scriptural money*** *and electronic money.”*
10	**Article 2(1)(25)** **Definitions** ‘settlement account’ means an account used to settle transfer orders or used to hold settlement assets, including cash, funds and financial instruments, and, where used for extending credit for settlement purposes, operated by a central bank, a settlement agent or a clearing house;	The current proposed definition of “funds” already includes cash and, if this definition is retained, it would not be necessary to include “cash” as a separate category in this list.	***“Article 2(1)(25)*** ***Definitions*** *‘settlement account’ means an account used to settle transfer orders or used to hold settlement assets, including* ***~~cash,~~*** *funds and financial instruments, and, where used for extending credit for settlement purposes, operated by a central bank, a settlement agent or a clearing house;*
11	**Article 2(1)(26)** **Definitions** ‘account’ means a record, including a centralised or decentralised digital or electronic record, on which cash, financial instruments or other assets may be credited or debited or otherwise recorded to register a change in the record;	Further to our comments with respect to the definitions of “funds” and “settlement account”, the definition of “account” should be improved for coherency e.g. refer to “funds” rather than “cash”.	***“Article 2(1)(26)*** ***Definitions*** *‘account’ means a record, including a centralised or decentralised digital or electronic record, on which* ***~~cash~~ funds****, financial instruments or other assets may be credited or debited or otherwise recorded to register a change in the record;*

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12	**Article 2 (1)(34)** **Definitions** 'national competent authority' means the competent authority in the Member State where the system operator is established	In the case of payment systems overseen by the Eurosystem, we suggest that the "national competent authority" is replaced by the competent authority for the oversight of the system in accordance with the Eurosystem Revised Oversight Framework (or the relevant national rules outside the eurozone), for consistency and efficiency. Regarding the competent authorities, we believe that the current wording could result in payment systems facing up to three different authorities having concurrent powers, introducing the risk of duplication, or conflict of competences: - designation authorities of the country whose laws govern the system - "national competent authorities" in the country of incorporation of the system operator - Overseer, a national or the European central bank. This complexity will favour systems having mostly national footprints and disadvantage systems with EU cross-border reach.	***"Article 2 (1)(34)*** ***Definitions*** *'~~national~~ competent authority' means the competent authority in the Member State where the system operator is established* ***or in case of payment systems, the Union or Member State authority competent for the oversight of the system"***
13	**Article 4(2)** **Procedure for granting and refusing resignation […]** (2) The application shall be immediately shared with all of the following: (a) the designating authority; (b) where applicable, the national competent authority; (c) ESMA; (d) EBA for systems operating transfer orders set out in Article 2(1), point (20)(a); (e) The ESCB	1) It is understood that the applicant will only share an application with the designating authority and that the latter will "immediately" share such application with the authorities listed here. We would appreciate a confirmation that this means applicants are not expected to share the application themselves with the authorities. 2) The reference to "designating authority" in Art 42(a) mentioned already in Art 4(1) makes the process unclear.	*"****Article 4(2)*** ***Procedure for granting and refusing resignation […]*** *(2) The application shall be immediately shared* ***by the designating authority*** *with all of the following:* *~~(a) the designating authority;~~* ***[omitting point (a)]*** *~~(b)~~ (a) where applicable, the ~~national~~ competent authority;* *~~(c)~~ (b) ESMA;* *~~(d)~~ (c) EBA for systems operating transfer orders set out in Article 2(1), point (20)(a);* *~~(e)~~ (d) The ESCB*
14	**Article 5(1)(e-k)** **Conditions for designation […]** 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: […] (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;	In the case of payment systems, the requirements listed in Article 5(1)(e) to (k) are already verified on an ongoing basis by competent oversight authorities under the oversight frameworks of the Eurosystem (PFMIs, SIPS Regulation). EBA CLEARING proposes carving out these requirements in the case of designated systems that are overseen by the Eurosystem, to avoid duplicative or conflicting supervisory/oversight expectations from different authorities with respect to the same payment system. Such an approach would also be more consistent with the Commission's Better Regulation initiatives.	***"Article 5(1)(e-k)*** ***Conditions for designation […]*** *"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: […]* *(e)…..* *(k)the system operator has put in place sufficient measures to mitigate the risks related to the operation of the system;* ***The SIPS Regulation shall be considered lex specialis in relation to points (e) to (k) above for payment systems that are subject to oversight by the Eurosystem and subject to equivalent requirements under the SIPS Regulation (EU) 2025/1355 (ECB/2025/22)."***

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	(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 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;		
15	**Article 5(3)** **Conditions for designation […]** (3) EBA may, in close cooperation with the ESCB, develop draft regulatory technical standards to further specify the conditions referred to in paragraph 1 for payment systems. 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 of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/201039.	As noted above with regard to Article 5(1), the regulatory technical standards should not apply to payment systems that are subject to oversight by the Eurosystem.	***"Article 5(3)*** ***Conditions for designation […]*** *(3)* ***For payment systems that are not subject to oversight by the Eurosystem under the SIPS Regulation (EU) 2025/1355 (ECB/2025/22),*** *EBA may, in close cooperation with the ESCB, develop draft regulatory technical standards to further specify the conditions referred to in paragraph 1 for payment systems……"*
16	**Article 6(5)(a) - (g)** **Notification of a designated system […]** 2. The notification referred to in paragraph 1 shall contain at least all of the following information, as of the date of the designation: (a) the identification of the system, the law governing the system, the system operator and the designating authority; (b) the date on which the system was designated; (c) the Member State in which the system operator is established and the national competent authority, where applicable; (d) whether the system is a securities settlement system, a clearing system or a payment system; (e) the finality moments of the system as specified in its rules in accordance with Articles 18, 20 and 21; (f) the participants to the system; (g) the common rules and standardised procedures of the system;	Consistent with and for the reasons noted under our suggestion re. Article 2(1)(34) SFR defining 'national competent authority', in the case of payment systems overseen by the Eurosystem, we suggest that the "national competent authority" is replaced by the '**competent authority'** for the oversight of the system in accordance with the Eurosystem Revised Oversight Framework, for consistency and efficiency. For consistency and to avoid duplicative supervisory monitoring of payment systems, the "competent authorities" should be the existing national or European overseers, rather than new national-only authorities.	***"Article 6(5)(a) - (g)*** ***Notification of a designated system […]*** *2. The notification referred to in paragraph 1 shall contain at least all of the following information, as of the date of the designation:* *(a) the identification of the system, the law governing the system, the system operator and the designating authority;* *(b) the date on which the system was designated;* *(c) the Member State in which the system operator is established and the* ~~***national***~~ *competent authority, where applicable;(d) whether the system is a securities settlement system, a clearing system or a payment system;* *(e)* ~~*the finality moments of the system as specified in its rules in accordance with Articles 18, 20 and 21;*~~ ***[left intentionally blank];*** *(f) the participants to the system;* *(g)* ~~*the common rules and standardised procedures of the system;*~~ ***a summary of key rules and procedures of the system;[…]"***
17	**Article 6(7) referring to Article 6(5)(e)/(g)**	Article 6(5)(g) mandates the publication by ESMA of "[…] the common rules and standardised procedures of the system". Generally, Article 6(5)	

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	Notification of a designated system […] ESMA shall publish in a standardised format the information referred to in paragraph 2, point (a) to (g), and any updates thereto in accordance with paragraph 3, point (c), on its website without undue delay and no later than 2 working days after receipt of that information. ESMA shall specify the date when updates to the information on its website were made and which information was updated.	mandates standardised transparency publication for information on financial market infrastructures (FMIs). FMIs, however, already have obligations of transparency on **relevant elements of their rules and key procedures** sanctioned under Union legislation implementing the CPMI-IOSCO PFMIs (e.g. the SIPS Regulation). SFR creates duplication with this provision. Second, the obligation of transparency of the draft SFR is broader as it creates a blanket obligation to publish rules and procedures, where PFMIs was concerned with providing useful transparency for the information of relevant stakeholders. The SFR approach is inadequate for the following reasons: - The rules of a system are typically long and complex legal or technical documents. A full publication will only serve an audience of utmost specialists, lawyers, consultants, data harvesters (including fraudsters, counterfeiters, third country regimes), etc. - The blanket disclosure can be harmful to core European infrastructures as they reveal their essential designs. Rules and procedures of systems are proprietary and confidential, disclosed in full only - for security and commercial reasons - to relevant parties such as vetted-participants and oversight authorities, under appropriate confidentiality safeguards while existing PFMIs transparency obligations make available useful information to the boarder public. Thirdly, EU FMIs are obliged by EU law to complete and disclose publicly responses to the CPMI-IOSCO Disclosure framework for financial market infrastructures, an internationally comprehensive standard for providing information relevant to the public and their relevant stakeholders. The SFR would largely duplicate these transparency obligations and create alternative standards, which is not in line with the “Better Regulation” approach of the EU and inefficient in a global context. Instead, we suggest that the system operator could provide the link to their PFMI disclosure report to ESMA (or, for the specific Article 6(5)(g) aspects, a summary of the rules/procedures as relevant to designation under the SFR). Regarding the publication of the finality moments (point (e)), as explained in the impact assessment of the Commission, this transparency measure seems only relevant in relation to one type of FMI to be subject to the SFR, namely CSDs. Accordingly, we would suggest that requirements in respect of such publication be addressed in the appropriate FMI legislation.	
18	**Article 7(2)** **Participants in designated systems […]** (2) A system operator of a designated system may accept a	The admission criteria of payment systems are already overseen by the Eurosystem under the SIPS Regulation and the Revised Oversight Framework for Retail Payment Systems. EBA CLEARING also notes that the current Payment Services Directive and the proposed Payment	***“Article 7(2)*** ***Participants in designated systems […]***

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	system member to the system only where that member meets all of the following conditions: (a) it has the capacity and ability to meet the obligations arising from its participation in the system; (b) it has the capacity and ability to mitigate the risks resulting from its participation in the system; (c) it complies with the rules of the system. A system operator of a designated system shall establish admission criteria, differentiating per type of participant where relevant. Such admission criteria shall be non-discriminatory, transparent and objective to ensure fair and open access to the designated system. A system operator of a designated system shall ensure that the system members comply with the conditions set out in the first subparagraph on an ongoing basis and shall have timely access to the information relevant for such assessment.	Services Regulation also include the regulation of the admission criteria to payment systems. The SFR, as currently drafted, would potentially become a triple layer of regulation of the access criteria of payment systems. This is unnecessary and inconsistent with the Commission's Better Regulation initiative. Further, the purpose of the SFR is to mitigate settlement finality risk; it is not intended to be a supervisory framework for payment systems or to regulate the commercial relationship between payment systems and their participants. **EBA CLEARING proposes removing overseen payment systems from the scope of Article 7(2).**	*(2)…..* ***The SIPS Regulation shall be considered lex specialis in relation to points (2)(a) to (c) above for payment systems that are subject to oversight by the Eurosystem and subject to equivalent requirements under the SIPS Regulation (EU) 2025/1355 (ECB/2025/22)."***
19	**Article 8(2)(b)** **Duties of a system operator of a designated system […]** The system operator shall notify, without undue delay, to the designating authority of any of the following: […] (a) any material changes that affect or may affect the system operator's compliance, and that of the system it operates, with the provisions of this Regulation; (b) any changes to the list of information provided for in Article 6(2), points (a) to (g).	The notification requirement in Article 8(2)(b) seems unduly burdensome, particularly given that this information would already be communicated on FMIs' websites, as required by the disclosure requirements under the PFMIs. Instead, and in the spirit of the Commission's Better Regulation initiative, ESMA could publish links to FMIs' websites which are already required to be updated regularly. Lists of participants can vary greatly at frequent intervals and a notice to authorities is not effective (costs, risk of time gap, contradictions in info stored, etc), while authorities could force FMI to publish those lists at their costs, so that authorities and other stakeholders are sure to access at all times a single authoritative list. As this publication corresponds to the practice of FMIs, it would also be the least impactful legislative option with the same degree of certainty for the authorities to have this information.	***"Article 8(2)(b)*** ***Duties of a system operator of a designated system […]*** *(2) The system operator shall notify, without undue delay, to the designating authority of any of the following: […]* ***~~(a)any material changes that affect or may affect the system operator's compliance, and that of the system it operates, with the provisions of this Regulation;~~*** ***(a) any changes to their published responses to the CPMI-IOSCO Disclosure framework for financial market infrastructures or the link on their website to such publication provided for in Article 6(4);*** ***(b) any change to the link on its website to the regularly updated list of participants provided for in Article 6(2) point (d)."***
20	**Article 9(2)** **Withdrawal of designation […]** (2) A designating authority shall only decide to withdraw the designation of a system after it has informed the national competent authority and requested an opinion on the appropriateness of withdrawing the designation. The opinion shall be requested from ESMA and the ESCB for the withdrawal of the designation for securities settlement systems and clearing systems, or from EBA and the ESCB, for the withdrawal of the designation for payment systems.	1) In the case of payment systems that are overseen, the designating authority should contact the relevant Overseer. N.B.: Refer to our comment regarding the defined term 'national competent authority' under Article 2 (1)(34) above. 2) The process laid out in the last paragraph of the article must also apply to payment systems. The overseer of payment systems should also be requested to consent before any withdrawal occurs. It is unclear from the draft why such a consent requirement should only apply to specific types of systems under this legislation (excluding	***"Article 9(2)*** ***Withdrawal of designation*** *(2) A designating authority shall only decide to withdraw the designation of a system after it has informed the **~~national~~** competent authority and requested an opinion on the appropriateness of withdrawing the designation. The opinion shall be requested from ESMA and the ESCB for the withdrawal of the designation for securities settlement systems and clearing systems, or from EBA and the ESCB, for the withdrawal of the designation for payment systems.*

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	[…] Where the designated system is a CSD or a CCP, the designating authority shall not withdraw the designation without the consent of the authority responsible for the supervision of that CSD or CCP.	payment systems).	*[…]* *Where the designated system is a CSD,* ***~~or~~*** *a CCP,* ***or a payment system****, the designating authority shall not withdraw the designation without the consent of the authority responsible for the supervision of that CSD or CCP* ***or for the oversight of such payment system****."*
21	**Article 14 (c)** **Conditions for registration […]** A registering authority may register a third-country system in its Member State only where all of the following conditions are met: […] (c) the system is governed by a law that upholds the principles of settlement finality;	EBA CLEARING would suggest that authorities may also consider, in reviewing this point (c) under Article 14, whether the law governing the system to be registered provides for a reciprocal extension of settlement finality safeguards for transfer orders executed in EU "designated systems" by entities established under such law. In particular, the existence of a provision similar to Articles 24 and 25(2)/(3) SFR below, in the law governing the system to be registered, should be seen favourably. The third-country regime created in the SFR would thereby foster the protection and smooth operation of European systems, not merely the protection of foreign systems.	***"Article 14 (c)*** ***Conditions for registration […]*** *A registering authority may register a third-country system in its Member State only where all of the following conditions are met:* *[…]* *(c) the system is governed by a law that upholds the principles of settlement finality;* *[…]* ***In assessing point (c), the registering authority shall assess and may take into consideration whether the relevant governing law provides for reciprocal settlement finality safeguards for designated systems."***
22	**Article 18(1)** **Moment of entry of a transfer order into a designated system** (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. Such determination shall take account of the receipt and registration of the transfer order by the system.	It is important that the SFR is technology agnostic. The moment of entry should not necessarily take account of abstract technical steps, such as a "registration" of the transfer order or the technical "receipt". The last sentence of (1) as drafted, would require payment systems to implement a specific new procedure of "registration" that is not necessarily existing today, depending on the design of the system; and could result in the transfer order losing its Settlement Finality protection (e.g. if the "receipt" and the "registration" are for technical or other reasons are not correlated).	***"Article 18(1)*** ***Moment of entry of a transfer order into a designated system*** *(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. Such determination ~~shall~~* ***may*** *take account of the receipt ~~and~~* ***or, if applicable, the*** *registration of the transfer order by the system."*
23	**Article 20(1)** **The moment of irrevocability of transfer orders** Each designated system shall determine the specific moment where, in its system, a participant or a third party cannot revoke a transfer order. Such determination shall take account of the moment when a transfer order that entered into the system was confirmed by the system and where the processing of the order could not be reversed.	Similar to our comment on Article 18(1) above, the SFR should be technology agnostic, set principles or definitions rather than technical steps. As drafted, the SFR requires the mandatory implementation of a new "confirmation procedure" of transfer order. Such a "confirmation" is unnecessary and would require additional technical steps, possibly hampering the existing efficient technical and contractual design for the irrevocability moment. i.e., this new requirement bars the possibility of having concurrent irrevocability and entry, which is more efficient in cases where real-time processing occurs.	***"Article 20(1)*** ***The moment of irrevocability of transfer orders*** *Each designated system shall determine the specific moment where, in its system, a participant or a third party cannot revoke a transfer order. Such determination ~~shall~~* ***may*** *take account of the moment when a transfer order that entered into the system was confirmed by the system and where the processing of the order could not be reversed."*
24	**Article 21(4)** **Final settlement** (4) EBA may, in close cooperation with the ESCB, and taking into account the specificities of different types	1) It is critical that the SFR continues, like the SFD, to provide legal certainty for FMIs and their participants. This is best achieved through a stable legal framework.	***"Article 21(4)*** ***Final Settlement*** *(4)* ***For DLT-based designated systems****, EBA may, in close cooperation*

#	Provision	Comment	Suggested text (if applicable)
	of payments systems and the mechanics of 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; (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.	The introduction of RTS to be developed by the EBA, and subject to change at any time, will require systems to change their rules. This risks creating legal uncertainty for the systems and its participants and also creates unnecessary burden. Assuming the driver for introducing such RTS is the new DLT technologies for payments, we suggest that such RTS be limited to systems using such design. 2) EBA CLEARING considers that, subject to the amendments suggested above to ensure technological neutrality, the proposed SFR definitions of moments of entry, irrevocability and final settlement are sufficient to ensure interoperability between payment systems and no further clarifications should be needed.	*with the ESCB, and taking into account the specificities of different types of payments systems and the mechanics of 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;* *(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."*
25	**Article 22(2)** **The moment of opening of insolvency proceedings** 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/An, appointed pursuant to Article 10(1). It shall immediately notify, via the central database, ESMA, EBA, the ESCB, the European Systemic Risk Board and other Member States thereof.	EBA CLEARING is of the opinion that the revised SFR should provide for a more efficient and effective notification procedure which would encompass also all FMIs, thus ensuring that different types of FMI can act on the same information and at the same moment in time. The notification procedure to FMIs under the current Article 6 of the SFD boils down to the following: 1. The opening of insolvency proceedings is handed down by a judicial or administrative authority in Member State X (art 6(1)); 2. This judicial or administrative authority in Member State X sends a notification to the appropriate 'SFD authority' in Member State X (art 6(2)); 3. The 'SFD authority' in Member State X notifies the opening of insolvency proceedings to the ESRB, ESMA, appropriate 'SFD authorities' in other Member States (art 6(3)) – and to FMIs in Member State X;	***"Article 22(2)*** ***The moment of opening of insolvency proceedings*** *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, ESMA, EBA, the ESCB, the European Systemic Risk Board and other Member States thereof* ***as well as the system operators of designated or registered systems****."*

#	Provision	Comment	Suggested text (if applicable)
		4. Appropriate 'SFD authorities' in the other Member States notify 'their' FMIs; 5. Upon receipt of the notification FMIs execute the insolvency procedures as laid down in the system rules. This procedure is inefficient resulting in time lags and asynchronous information. In order to improve the speed of the receipt of notifications and to ensure the completeness of notifications, EBA CLEARING suggests that either: (1) FMIs are also given access to the insolvency notification on the central database mentioned in Article 22(2), noting that Article 26(2) already foresees that FMIs will have access to this database; or (2) that ESMA, considering its central role under the revised SFR notifies the opening of insolvency proceedings to all FMIs immediately by forwarding them the notification. Designation or supervisory authorities could also play that role instead; this would however result in asynchronous information of different types of FMIs. A more efficient and rapid notification to FMIs, however implemented, will have a significant impact in terms of timeliness of notification to FMIs outside the country where the actual insolvency event takes place, thus allowing for a more immediate response to the event by applying the relevant default rules and procedures. This will contribute to securing financial stability in a wider cross-border context.	
26	**Article 26(2)** **Central database** A system operator shall have access to the central database as regards the information and documents it submitted to that central database or the documents transmitted to it through that central database by any of the registered recipients.	As described further above with respect to Article 22(2), FMIs should also have access to this database in order to receive notifications of insolvency proceedings against a participant.	***"Article 26(2)*** ***Central database*** *A system operator shall have access to the central database as regards the information and documents it submitted to that central database or the documents transmitted to it through that central database by any of the registered recipients* ***and as regards the notifications pursuant to Article 22(2)."***
27	Article 28 (1) **Transitional provisions** By way of derogation from Article 3, a system designated under Directive 98/26/EC prior to [OP insert date = entry into force of this Regulation] shall continue to be designated for the purposes of this Regulation until it is re-designated under that Article or until [OP insert date= 5 years after the 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.	Requiring systems that are already designated under Directive 98/26/EC to re-apply for designation creates unnecessary legal uncertainty. We propose that systems that are already designated be subject to a fast-track application process, particularly for payment systems that are already overseen.	"***Article 28 (1)*** ***Transitional provisions*** *By way of derogation from Article 3, a system designated under Directive 98/26/EC prior to [OP insert date = entry into force of this Regulation] shall continue to be designated for the purposes of this Regulation until it is re-designated under that Article or until [OP insert date= 5 years after the 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.* ***Systems that are already designated and are overseen shall be subject to a fast-track application process."***