

Financial Market Infrastructure and Settlement Finality

Financial Markets Infrastructure
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These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

Post-trade and the Capital Markets Union

- Safe and efficient **financial market infrastructures** contribute to the development of the Capital Markets Union

Financial Market Infrastructures

- Removal of all barriers linked to clearing and settlement / Post Trading
- It should be as easy to buy, own and sell foreign securities as domestic ones
- Promote financial stability, legal certainty and efficiency

Financial Market Infrastructures

- Legal framework
 - 1998 - Settlement Finality Directive (SFD)
 - 2002 - Financial Collateral Directive (FCD)
 - 2012 - European Markets Infrastructure Regulation (EMIR)
 - 2014 - Central Securities Depositories Regulation (CSDR)
 - 2016 - Securities Financing Transactions Regulation (SFTR)

Settlement Finality Directive 98/26/EC

Origin

- Creation of EMU
- Need to ensure stability of payment systems
- Increased cross-border exposure
- Realisation of the Single Market

SFD - Objectives

- Certainty of payment and securities settlement definitions, principles and laws
- Reduce **systemic risk** associated with the transfer of financial instruments and payments in payment and securities settlement systems
- Protect against effects of **insolvency proceedings** against transaction participants
- Promote **financial stability**

SFD – Scope - 1

- Designated payment and securities settlement **systems** including
- any **participant** in such a system
- **Collateral security** provided in connection with:
 - Participation in a system, or
 - Operations of the Central Banks in their functions as Central Banks

SFD – Scope - 2

Participants to designated systems may be

- financial institutions, e.g. banks
- systems operators, such as central securities depositories (CSDs) or central counterparties (CCPs)

SFD – key provisions - 1

- Regulates designated **systems** used by participants to **transfer financial instruments and payments**
- Guarantees that **financial product transfer and payment orders** which enter into such systems are **finally settled**

SFD – key provisions - 2

Settlement finality 1 - Enforceability

- Transfer orders of financial products are **contractually enforceable** (also applicable to any associated payment netting, i.e. situations where debt and claims are offset between participants) when **entered into the system**
- Enforceable even when a participant is subject to **insolvency proceedings**, if transfer order entered
 - before the proceedings started
 - up to 24 hours afterwards to cover situations where transactions are entered into at times when relevant records are unavailable, e.g. overnight

SFD – key provisions - 3

Settlement Finality 2 – Irrevocability

- Participants or third parties cannot revoke transfer orders **from the moment defined by the rules of the system**

Uniform rules

- where **multiple** settlement and payment systems are in operation SFD ensures application of **uniform rules** from the moment the transactions are entered into in order to avoid difficulties arising from incompatible regulations

SFD – key provisions - 3

Guarantees in insolvency situations

- **No retroactive effect** of insolvency proceedings against a participant on rights and obligations of other participants
- Insulates the rights of **holders of collateral security** from the effects of the insolvency of the provider

SFD – main implications

- **Member States**

- ✓ Requirement to designate to the European Securities and Markets Authority (ESMA)
 - the national **systems** and the respective **system operators** which are to be included in the scope of the SFD (Article 10)
 - the **national authorities** that must be notified when insolvency proceedings are opened against a participant or a system operator (Article 6.2)

Additional information

https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-markets/post-trade-services/settlement-finality_en

https://ec.europa.eu/info/law/settlement-finality-directive-98-26-ec_en

Further information (e.g. list of designated systems, list of designated authorities) is published by ESMA on its website at <https://www.esma.europa.eu/regulation/post-trading/settlement#title-paragrah-5>