

How the European Commission's review of the Settlement Finality Directive is Linked to the Development of Open Finance in Europe



[Financial Institutions](#), [Payment Service Providers](#), [Banking](#)

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On 12 February 2021, the European Commission launched a [public consultation on the review of the Settlement Finality Directive \(SFD\)](#), which closed earlier this month.

The consultation – as well as the review of the SFD that the consultation announces – covers the following aspects of the directive, including;

1. The participation in systems governed by the law of a third-country
2. Participants in systems governed by the law of a European Union member state
3. Technological innovation – while the SFD is meant to be technologically neutral, the EC has received input that some of the SFD's requirements create obstacles to the use of distributed ledger technology (DLT) and crypto-assets
4. Protections granted under the SFD vis-à-vis collateral security
5. The issue of settlement finality under the SFD in respect of both entry into the system and irrevocability aspects

When it comes to the second point, participants in systems governed by the law of a European Union member state, the SFD lists the participants that are eligible to participate directly in an SFD system and benefit from the protection offered. Furthermore, the SFD gives member states the option to decide that – for the purposes of the SFD – an “indirect participant” may be considered a “participant” if justified on the grounds of systemic risk. Only “indirect participants” that fall under the categories eligible for direct participation may be considered as (direct) “participants” under this derogation.

E-money institutions (EMIs) under the E-Money Directive (EMD2) and payment institutions (PIs) under the Payment Services Directive (PSD2) are not currently eligible participants under the SFD. **In its [Retail Payment Strategy \(RPS\)](#), the EC announced that it would, in its SFD review, consider extending the scope of the SFD to include EMIs and PIs, as some EU member states have individually introduced national solutions that allow EMIs and PIs either direct or indirect participation in payment systems. In the European Commission's view, this has led to several issues including level playing field, fragmentation, etc. The SFD review may consequently be the occasion to add them to the list of eligible participants when they fulfil certain criteria.**

Currently, the operator of a payment system that is not designated under the SFD is not an eligible type of SFD participant. **Stakeholders pointed out that this prevents these payment system operators from participating in TARGET2, where payment orders in euro are processed and settled in central bank money. Adding them to the list of (direct) SFD participants would open up the possibility of allowing their participation in the European Central Bank (ECB) TARGET2 scheme,** which is the real-time gross settlement (RTGS) system owned and operated by the Eurosystem..

While Europe prepares for a legislative proposal for a new “Open Finance” framework, which the European Commission RPS (regulatory procedure with scrutiny) announced for mid-2022, a direct SFD participation for EMIs and PIs under a forthcoming reviewed SFD could reduce credit and liquidity risks arising from settlement in commercial bank money – and it could set the basis for Open Finance in Europe. Could the review of the SFD be the first step towards the European Open Finance framework?

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