

## Consultation response

# Review of the Settlement Finality Directive



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2019, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

## Revision of the Settlement Finality Directive (SFD)

AmCham EU welcomes the opportunity to respond to the European Commission public consultation on the revision of the Settlement Finality Directive. AmCham EU would like to comment in particular on three aspects of the consultation:

- The recognition of third country settlement systems;
- The scope of eligible participants in settlement systems; and
- The application of the Settlement Finality Directive to new technologies.

### Recognition of third country settlement systems

Recital 7 of the Settlement Finality Directive (SFD) builds in the possibility for EU Member States to recognise the designation of third country settlement systems. We believe that the revision to the SFD should grant EU participants in third country settlement systems even greater certainty in the future.

**The revised SFD should establish a common standard for the recognition of third country settlement systems.**

In particular the common standard should cover the recognition of settlement systems designated in third countries as systemically important, and reflect the principles and/or requirements of EU legislation and international standards, most notably as regards the appropriate and robust risk assessments, the ability to determine the point of irrevocability beyond which settlement may not be countermanded; and access settlement systems where they have been assessed by the system as having met the relevant risk assessment criteria.

**A common minimum standards approach would contribute to much needed harmonisation** whilst still granting national supervisors and settlement systems a degree of flexibility to reflect different needs, risks and sizes of different settlement systems operating in Europe.

Based on these common minimum standards, the revised SFD should contain provisions allowing the European Commission to assess and deem equivalent third countries' regimes where any settlement finality designation criteria function in accordance with SFD and/or international common minimum or higher standards. **Third country designated settlement systems should be able to rely on a simplified notification procedure to the relevant authority in EU Member States when the settlement system has been deemed or assessed as equivalent.**

### Scope of eligible participants in settlement systems

Payment institutions and e-money institutions are regulated entities. **A payment institution and e-money institution license should be allowed to become direct participants subject to a successful rigorous risk assessment.** Opening up direct participation to non-bank payment providers sits at the centre of the EU's Retail Payment Strategy.

Firstly, it will make payments faster, as payment institutions and e-money institutions would be able to settle payments themselves and choose to become participants in instant payment schemes. And secondly, it would reduce costs. When payment institutions and e-money institutions have the option whether or not to pursue direct participation, they can decide themselves which option is most commercially viable and will benefit their end customers.

**The risk assessment should mainly cover in particular the potential liquidity risk and credit risks. However, such measures should also meet the principles of proportionality.**

## Application of the Settlement Finality Directive to new technologies

AmCham EU believes that **the SFD should be technology neutral**. With the adoption of Markets in Crypto-assets (MiCA) and in light of current market trends we believe distributed ledger technology (DLT) enabled financial services solutions could emerge in the future. AmCham EU believes that the SFD should be future-proof and cater for such use cases, not least in the context of possible central bank digital currency (CBDC) applications.