



**BANK OF ENGLAND**

**David Bailey**  
Executive Director  
Financial Market Infrastructure

6 November 2018

Dear Chief Executive Officer,

1. The Bank of England ('the Bank') wrote to you on 24 July to outline how we envisage the process for offering UK settlement finality protection to systems<sup>1</sup> designated under the EU Settlement Finality Directive (SFD) by an EEA state ('EU systems') would take place, following the UK's withdrawal from the EU.<sup>2</sup>
2. When the UK leaves the EU, it will no longer be part of the EU SFD framework of automatic recognition by each EU Member State of other Member States' SFD designation of domestic systems. The UK Government has now published the draft legislation that will amend the UK Settlement Finality Regulations to give the Bank new powers to grant permanent designation to non-UK, including EU, systems that are not governed by UK law.<sup>3</sup> This includes a temporary SFD designation regime, open to EU systems currently designated under the SFD, in advance of permanent designation being granted.
3. Political agreement was reached in March, between the UK and EU27, that there should be an implementation period until the end of 2020 as part of the UK's Withdrawal Agreement with the EU. Negotiation continues between the EU and UK authorities on the Withdrawal Agreement. The Bank's presumption is that, subject to the Withdrawal Agreement being agreed and ratified, EU systems will be able to continue to operate with the benefit of existing UK settlement finality protections during the implementation period. However, the temporary SFD designation regime will maintain legal certainty for EU systems and their UK participants, whatever the outcome of negotiations between the EU and the UK.
4. This letter provides further detail on the future regime, including the terms under which EU systems may use the temporary SFD designation regime. The regime will not be final until the details of the legislation have been approved by the UK Parliament and come into force. We are communicating now in order to allow EU systems to prepare accordingly.
5. To facilitate those preparations, by both EU systems and the Bank, EU systems that wish to continue to benefit from UK settlement finality protection after the UK's withdrawal from the EU are encouraged to give to the Bank an early indication of their intention to use the temporary SFD designation regime, prior to the legislation coming into force.

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<sup>1</sup> In this context, CCPs, CSDs or payment systems.

<sup>2</sup> The July 2018 letter is available at: <https://www.bankofengland.co.uk/-/media/boe/files/letter/2018/letter-to-eu-systems-designated-under-the-settlement-finality-directive.pdf>.

<sup>3</sup> The draft legislation is available at: <https://www.gov.uk/government/publications/draft-financial-markets-and-insolvency-amendment-and-transitional-provision-eu-exit-regulations-2018>. The Settlement Finality Regulations is available at: <https://www.legislation.gov.uk/ukxi/1999/2979/contents/made>

What will the 'steady state' regime for UK settlement finality designation look like post-EU withdrawal?

6. Following the UK's withdrawal from the EU, UK settlement finality protection will be open to any system, regardless of the system's governing law and the place of establishment of its participants. As is currently the case, the Bank will be responsible for the designation of systems.
7. The requirements that will be placed on all systems, and the process that the Bank will follow, will be broadly similar to those applying today in respect of systems governed by UK law. These include that the system meets the requirements set out in the Schedule of the UK Settlement Finality Regulations relating to: arrangements for monitoring compliance with its rules; default arrangements; rules which specify when transfer orders have been entered into the system and can no longer be revoked; and ensuring the system is able and willing to cooperate with the Bank.
8. The requirements related to the application are set out in Part II and the Schedule of the UK Settlement Finality Regulations as amended by the legislation published last week. The application must be made in the manner directed by the Bank. For example, it will need to be submitted in English. It must also be accompanied by information required by the Bank, including confirmation of the name of the system's regulator and evidence of compliance with relevant domestic regulatory requirements, except where the system or system operator is a UK recognised third-country CCP or CSD. The Bank will carry out the designation process in a proportionate and risk-based manner and may also charge a fee for applications for designation.

Will my system need UK SFD designation post-EU withdrawal?

9. We expect that an EU system may wish to apply for UK SFD designation if it:
  - I. has a participant or participants established in the UK; or
  - II. has an indirect participant or participants that are considered as participants, within the meaning set out in the SFD, established in the UK.
10. We do not envisage that it will be a requirement of UK law for a non-UK system to have any form of UK SFD designation in order to have UK participants.

How should I apply for temporary SFD designation in advance of applying for 'steady state' designation?

11. The temporary SFD designation regime will enable EU systems to continue to benefit from UK SFD protection until the designation process is complete. It is open to those EU systems that are designated under the SFD by an EEA state immediately before the UK withdraws from the EU. The legislation will specify that any EU systems that wish to continue to benefit from UK settlement finality protection must notify the Bank in advance of the UK's withdrawal from the EU.
12. In line with this, any EU systems that wish to continue to benefit from UK settlement finality protection following the UK's withdrawal from the EU are encouraged to indicate their intent to use the temporary SFD designation regime now, prior to the legislation coming into force. If they have completed the survey (link in the cover email) saying they wish to use the temporary SFD designation regime then the Bank will, when the legislation comes into force, treat this as the requisite notification and confirm that it has done so. The EU system can rescind this notification at any point by emailing the Bank.
13. **Please note that we are not able to consider responses received to the 24 July request as formal indications or notifications under the legislation.**
14. To inform market participants, the Bank intends to publish on the Bank website the names of all EU systems that have given an indication of their intention to enter into the temporary SFD designation regime, prior to the legislation coming into force.<sup>4</sup> When giving an indication of their intention to enter into the temporary designation regime, each system will be asked for consent for this publication.

<sup>4</sup> <https://www.bankofengland.co.uk/eu-withdrawal/information-on-the-effect-of-the-uks-withdrawal-from-the-eu-on-fmi-supervision>

15. EU systems may benefit from continued UK settlement finality protection for three years from the point at which the UK withdraws from the EU, to allow for 'steady state' designation to be granted. However, an EU system must apply for 'steady state' designation within 6 months from the point at which the UK withdraws from the EU. Furthermore, UK settlement finality protection will cease where a system is no longer designated under the SFD by an EEA state. The Bank will not charge a fee in respect of the temporary SFD designation regime.

What do I need to do next?

16. EU systems are invited to fill in the online survey linked to in the cover email to:
- I. Provide the full name of the system, as used in the ESMA list of Designated Payment and Securities Settlement Systems,<sup>5</sup> for which temporary SFD designation is sought;
  - II. Provide a nominated primary contact point, including job title and contact details (address, phone number and email address), at the system;
  - III. Indicate whether they give consent for the publication of the name of the relevant system or systems on the Bank website;
  - IV. Confirm that the individual submitting the indication has the appropriate authority to do so.
17. The Bank will update you when the legislation has come into force. Where a notification is made after this point, it should follow the same format as the above.
18. Systems that have given an indication of their intention to enter into the temporary SFD designation regime must inform the Bank as soon as possible if they are no longer designated under the SFD by an EEA state either immediately before or after the UK withdraws from the EU.
19. The Bank stands ready to provide assistance if you have any questions. Please direct your responses to the request above, and any other enquiries, to [SFD-Enquiries@bankofengland.co.uk](mailto:SFD-Enquiries@bankofengland.co.uk), along with a contact name and details for further discussions.

Yours sincerely



David Bailey  
Executive Director

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<sup>5</sup> [https://www.esma.europa.eu/system/files\\_force/library/designated\\_payment\\_and\\_securities\\_settlement\\_systems.pdf](https://www.esma.europa.eu/system/files_force/library/designated_payment_and_securities_settlement_systems.pdf)