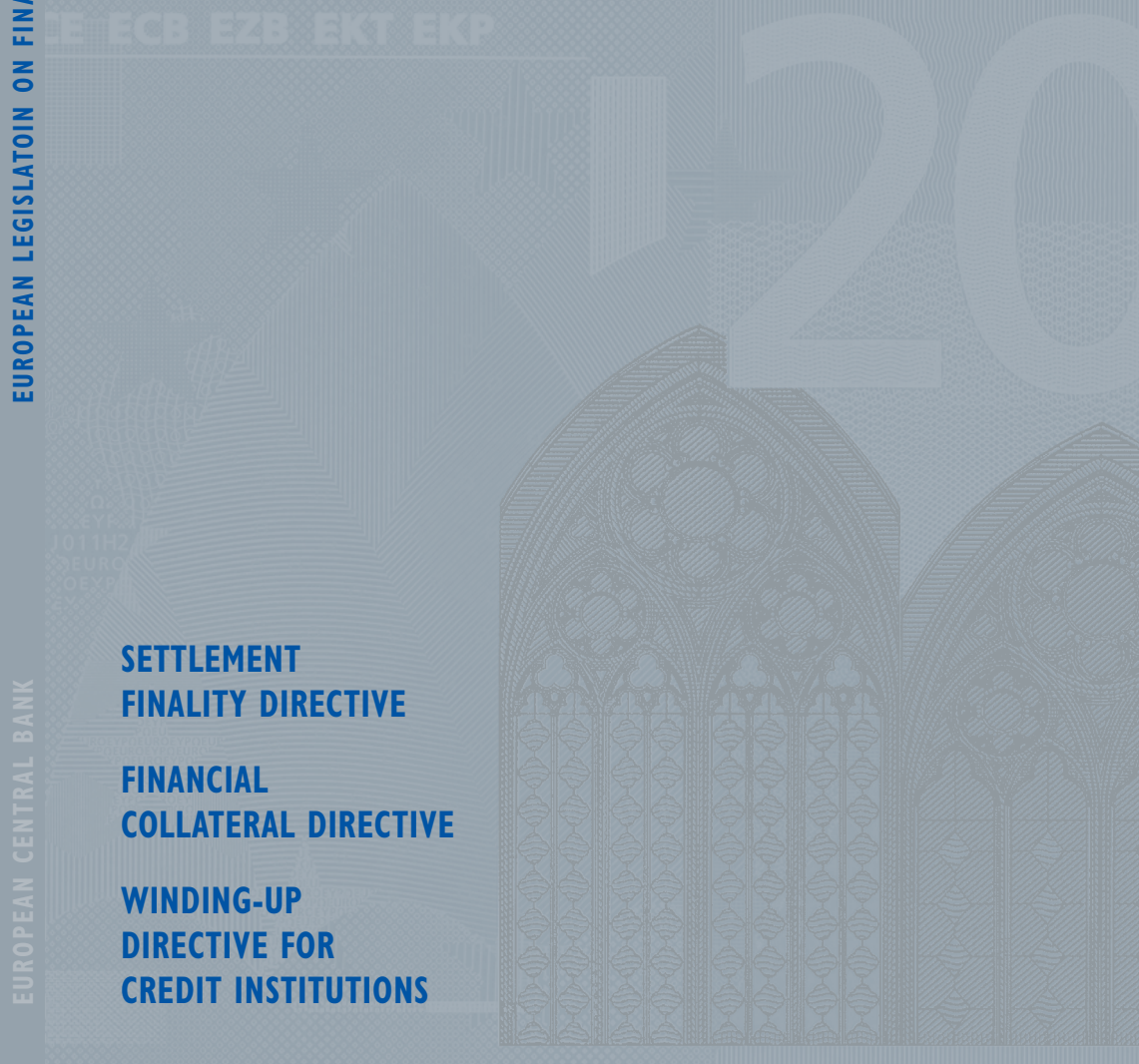
EUROPEAN CENTRAL BANK

EUROSYSTEM

EUROPEAN LEGISLATION ON FINANCIAL MARKETS



SETTLEMENT FINALITY DIRECTIVE

FINANCIAL COLLATERAL DIRECTIVE

WINDING-UP DIRECTIVE FOR CREDIT INSTITUTIONS

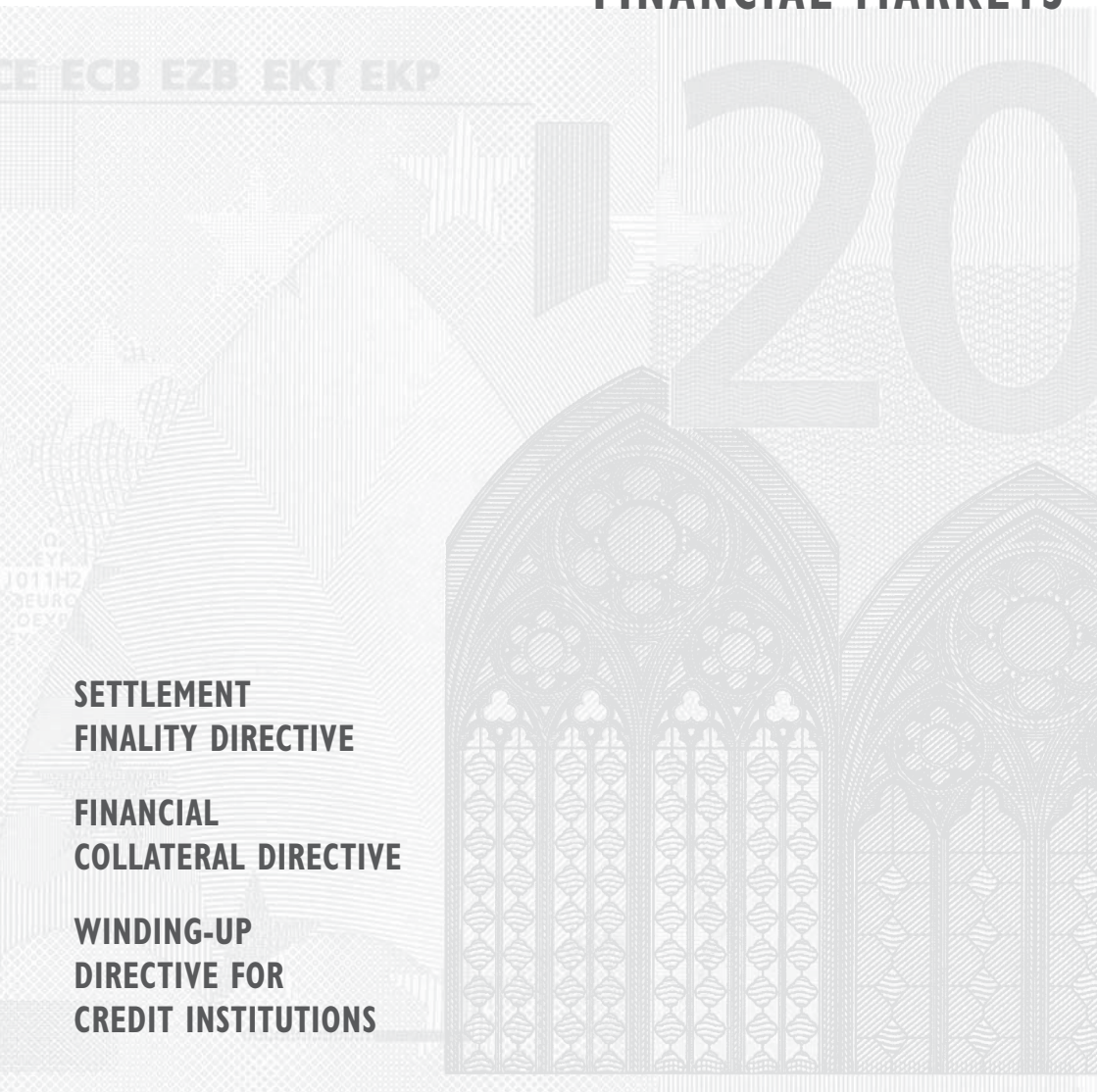
EUROPEAN LEGISLATOIN ON FINANCIAL MARKETS

EUROPEAN CENTRAL BANK

EUROPEAN CENTRAL BANK

EUROSYSTEM

EUROPEAN LEGISLATION ON FINANCIAL MARKETS



SETTLEMENT FINALITY DIRECTIVE

FINANCIAL COLLATERAL DIRECTIVE

WINDING-UP DIRECTIVE FOR CREDIT INSTITUTIONS

Address
Kaiserstrasse 29
60311 Frankfurt am Main
Germany

Postal address
Postfach 16 03 19
60066 Frankfurt am Main
Germany

Telephone
+49 69 1344 0

Website
http://www.ecb.int

Fax
+49 69 1344 6000

Telex
411 144 ecb d

ISSN 1830-7604 (print)
ISSN 1830-7582 (online)

CONTENTS

FOREWORD

It is with great pleasure that I introduce this new publication in the ECB's legal booklet series. To date, the European Central Bank (ECB) has produced two legal booklets, concerning: (i) Institutional provisions – Statute of the ESCB and of the ECB and Rules of Procedure, published in October 2004; and (ii) a Guide to consultation of the European Central Bank by national authorities regarding draft legislative provisions, published in June 2005. Thanks to their positive reception, it has been decided to publish further booklets. Among the topics identified by the ECB's Legal Services for publication in this format are those parts of the European legislation on financial markets which are more relevant to the tasks of the Eurosystem.

The selected European legislation on financial markets is considered to be important for the ECB and the ESCB as it provides the legislative framework within which central banks operate. The three major components of the financial systems are the institutions, the markets and the infrastructure. Financial integration and financial stability, including the avoidance of systemic risk, are closely related and the integration of financial markets cannot take place without a properly integrated cross-border payment, clearing and settlement infrastructure. Arrangements for financial stability and crisis management also need to take account of the fact that the liquidity and solvency problems of financial institutions may affect more than one country. In this context, the legal framework for resolving the problems arising from insolvent credit institutions in the EU is especially important.

In order to give easy access to these areas of EU law, the ECB has decided to publish this booklet which focuses on three of the more frequently consulted Community legal acts in the areas of financial institutions and market infrastructure, namely the Settlement Finality Directive, the Financial Collateral Directive and the Winding-up Directive for credit institutions. Many other related EU legal acts in the financial field were considered but it was decided not to include them here, due to the publication format and other constraints. However, additional financial law directives may be covered by forthcoming publications in this series.

The publication of these selected directives is intended mainly as a portable compilation of closely related EU legal acts and background material, brought together to serve the practical needs of central bank colleagues and others who may have to deal with or refer to them on a regular basis. It is not intended to deal with these directives exhaustively, nor to examine or discuss in depth all the issues arising from them or the developments related to them, but merely to serve as a useful reference tool for central bank experts and other interested parties. I hope that this legal booklet will fulfil these purposes.

Frankfurt am Main, June 2007

Antonio Sáinz de Vicuña
General Counsel

I INTRODUCTION

Article 105 of the Treaty establishing the European Community requires the ESCB to support the general economic policies of the Community. The integration of financial markets across the EU is a Community objective fully supported by the ECB/ESCB, given that a well integrated financial system is pivotal to the smooth and effective implementation of monetary policy and contributes to the efficiency of the euro area economy through the reduction of financing costs and the improved allocation of financial resources.

The directives covered in this booklet are of crucial importance for the integration of financial markets across Member States, and their implementation at national level provides the legislative framework to enable the members of the ESCB to carry out the basic tasks entrusted to them by the Treaty.

This booklet is divided into three parts, presenting the major EU legal acts in the field of financial market law relating to settlement systems, the provision of financial collateral and the insolvency of credit institutions, namely:

– The Directive on settlement finality in payment and securities settlement systems ('Settlement Finality Directive')[1];

– The Directive on financial collateral arrangements ('Financial Collateral Directive')[2]; and

– The Directive on the reorganisation and winding up of credit institutions ('Winding-up Directive for credit institutions' or 'Winding-up Directive')[3].

The full text of each of the directives is accompanied by a brief introductory text based on the summaries made publicly available by the European Communities[4] and by references to the existing national implementation measures (as at the date of publication of this booklet) and to relevant EMI/ECB opinions. A separate concluding section contains a non-exhaustive list of bibliographical notes and references to articles, books, reports, policy statements and other documentation.

1 Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).
2 Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).
3 Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ L 125, 5.5.2001, p. 15).
4 The introductory texts are adapted from SCADPlus, "Activities of the European Union", http://europa.eu/scadplus/info_scad_en.htm, © European Communities, 1998-2007. Only European Union legislation printed in the paper edition of the Official Journal of the European Union is deemed authentic.

2 SETTLEMENT FINALITY DIRECTIVE

2.1 BACKGROUND

The Settlement Finality Directive aims to reduce the systemic risk associated with operating and participating in payment and securities settlement systems ('systems'), and in particular the risk associated with the insolvency of a participant in such a system. To this end, the Settlement Finality Directive lays down common rules stipulating that (i) transfer orders and netting must be legally enforceable, (ii) transfer orders may not be revoked once they have been entered into the system, (iii) the insolvency of a participant may not have retroactive effects and that (iv) the insolvency law applicable is the law of the Member State whose laws govern the relevant system. It further stipulates that collateral security provided by a participant to a system or a central bank may not be affected by the opening of insolvency proceedings against that participant. In this way, the Settlement Finality Directive contributes to the efficient and secure operation of payment and securities settlement systems, thereby reinforcing the stability of the single financial market.

The institutions covered by the Settlement Finality Directive are supervised credit institutions and investment firms, central banks and other public authorities, and any undertaking whose head office is outside the Community and whose functions correspond to those of Community credit institutions or investment firms.

Member States must notify the Commission about which systems (governed by the law of the Member State concerned) are included in the scope of the Settlement Finality Directive. The systems, for their part, must notify the Member State whose law is applicable to them of the participants in the system (including any possible indirect participants) as well as any change in the composition of the system. Member States may also impose supervision or authorisation requirements on systems. Furthermore, any person with a legitimate interest may require an institution to inform him of the systems in which it participates and the rules governing their functioning.

Transfer orders and netting are legally enforceable and binding on third parties, even in the event of insolvency proceedings against a participant, provided that the transfer orders were entered into a system before the moment of opening of such insolvency proceedings. Where, exceptionally, transfer orders are entered into a system after the moment of opening of insolvency proceedings and are carried out on the day of opening of such proceedings, they are binding on third parties only if the settlement agent, the central counterparty or the clearing house can prove that they were not aware, nor should have been aware, of the opening of such proceedings.

The moment of entry of a transfer order into a system is defined by the rules of that system. A payment order may not be revoked by a direct participant or by a third party as from the moment defined by the rules of the system.

Insolvency proceedings may not have retroactive effects. A Member State whose competent judicial or administrative authority has taken a decision regarding the insolvency of a participant in a system must immediately notify the other Member States concerned. In the event of insolvency proceedings being opened against a participant in a system, the rights and obligations connected with that participation are determined by the law governing the system in question.

As regards the effects of insolvency on collateral security, the Settlement Finality Directive expressly states that the rights of a participant in a system, as well as the rights of the central banks of the Member States and of the European Central Bank, to collateral security provided to them may not be affected by insolvency proceedings against the institution which has provided the collateral security.

Where collateral security is provided in the form of securities (including rights in securities), the rights of the relevant participants and of the national central banks and the ECB are determined by the laws of the Member State where their rights are legally recorded on a register, account or centralised deposit system, thus being governed by the law of the place of the relevant intermediary approach (PRIMA).

On 15 December 2005, the Commission published its Evaluation Report on the Settlement Finality Directive[1], as required by Article 12 of the Directive. The report concludes that, in general, the Settlement Finality Directive is seen to be functioning well and the Member States are satisfied with its effects. The report finds that the Directive increases protection against risks, and establishes legal certainty and predictability for both domestic and cross-border system participants. However, given recent technical developments and the increasing levels of cross-border activity, the Commission considers that there may be a need to improve and clarify the Settlement Finality Directive, to ensure that the law keeps pace with changes in the financial markets. The report identifies ten main issues that should be studied in order to see whether the functioning of the Directive could be improved. These issues include complex questions such as the number of Member States' laws that may apply within a particular system, and the possible conflict of insolvency laws where the law governing a system is different from the law of the Member State where the system is located. It also specifies a number of technical issues such as: the clarification of certain definitions ('arrangement', 'insolvency proceedings', 'participant' and 'indirect participant'); the treatment of electronic money institutions as defined in Directive 2000/46/EC[2]; the clarification of the moment of entry of a transfer order into a system and the scope of 'collateral security'[3]; and an obligation to give direct notification to the ECB

1 http://europa.eu.int/comm/internal_market/financial-markets/settlement/index_en.htm

2 Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions, (OJ L 275, 27.10.2000, p. 39).

3 In particular in view of the changes announced to the Eurosystem collateral framework (the 'Single List'), which will include bank loans as eligible collateral (Cf. the ECB press release of 30 May 2005, 'First step towards the introduction of the single list of collateral provided for in the revised version of the "General Documentation"', at http://www.ecb.int/press/pr/date/2005/html/pr050530.en.html.).

and to the Commission in the event of insolvency, given their roles as overseer and system operator and as holder of the Community register of systems, respectively.

The Commission has expressed its intention to consult the Member States, the financial services industry and the ECB on these issues in the course of 2007. This consultation will take into account the important changes in the area of payment and securities settlement systems which could have an influence on the Settlement Finality Directive. While this Directive was an adequate response to the risks to systemic stability, as they were perceived in the 1990s, the environment in which the systems operate has since changed considerably. Due to cross-border mergers, consolidations and increased cross-border participation, systems may be exposed to a much higher degree of multi-jurisdictionality than was the case when they were mostly domestic operations. Furthermore, the roles of clearing houses and central counterparties have become increasingly important. This could warrant the development of ideas about introducing provisions in the Settlement Finality Directive to cater for the specific risks inherent in clearing or cross-border systems, in addition to providing clarity on those concepts which are used in the Directive and which have given rise to diverging interpretations.

2.2 DIRECTIVE TEXT

DIRECTIVE 98/26/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 May 1998

on settlement finality in payment and securities settlement systems

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Monetary Institute[2],

Having regard to the opinion of the Economic and Social Committee[3],

1 OJ C 207, 18. 7. 1996, p. 13, and OJ C 259, 26. 8. 1997, p. 6.
2 Opinion delivered on 21 November 1996.
3 OJ C 56, 24. 2. 1997, p. 1.

Acting in accordance with the procedure laid down in Article 189b of the Treaty[4],

(1) Whereas the Lamfalussy report of 1990 to the Governors of the central banks of the Group of Ten Countries demonstrated the important systemic risk inherent in payment systems which operate on the basis of several legal types of payment netting, in particular multilateral netting; whereas the reduction of legal risks associated with participation in real time gross settlement systems is of paramount importance, given the increasing development of these systems;

(2) Whereas it is also of the utmost importance to reduce the risk associated with participation in securities settlement systems, in particular where there is a close connection between such systems and payment systems;

(3) Whereas this Directive aims at contributing to the efficient and cost effective operation of cross-border payment and securities settlement arrangements in the Community, which reinforces the freedom of movement of capital in the internal market; whereas this Directive thereby follows up the progress made towards completion of the internal market, in particular towards the freedom to provide services and liberalisation of capital movements, with a view to the realisation of Economic and Monetary Union;

(4) Whereas it is desirable that the laws of the Member States should aim to minimise the disruption to a system caused by insolvency proceedings against a participant in that system;

(5) Whereas a proposal for a Directive on the reorganisation and winding-up of credit institutions submitted in 1985 and amended on 8 February 1988 is still pending before the Council; whereas the Convention on Insolvency Proceedings drawn up on 23 November 1995 by the Member States meeting within the Council explicitly excludes insurance undertakings, credit institutions and investment firms;

(6) Whereas this Directive is intended to cover payment and securities settlement systems of a domestic as well as of a cross-border nature; whereas the Directive is applicable to Community systems and to collateral security constituted by their participants, be they Community or third country participants, in connection with participation in these systems;

(7) Whereas Member States may apply the provisions of this Directive to their domestic institutions which participate directly in third country systems and to collateral security provided in connection with participation in such systems;

---

4 Opinion of the European Parliament of 9 April 1997 (OJ C 132, 28. 4. 1997, p. 74), Council Common Position of 13 October 1997 (OJ C 375, 10. 12. 1997, p. 34) and Decision of the European Parliament of 29 January 1998 (OJ C 56, 23.2.1998). Council Decision of 27 April 1998.

(8) Whereas Member States should be allowed to designate as a system covered by this Directive a system whose main activity is the settlement of securities even if the system to a limited extent also deals with commodity derivatives;

(9) Whereas the reduction of systemic risk requires in particular the finality of settlement and the enforceability of collateral security; whereas collateral security is meant to comprise all means provided by a participant to the other participants in the payment and/or securities settlement systems to secure rights and obligations in connection with that system, including repurchase agreements, statutory liens and fiduciary transfers; whereas regulation in national law of the kind of collateral security which can be used should not be affected by the definition of collateral security in this Directive;

(10) Whereas this Directive, by covering collateral security provided in connection with operations of the central banks of the Member States functioning as central banks, including monetary policy operations, assists the European Monetary Institute in its task of promoting the efficiency of cross-border payments with a view to the preparation of the third stage of Economic and Monetary Union and thereby contributes to developing the necessary legal framework in which the future European central bank may develop its policy;

(11) Whereas transfer orders and their netting should be legally enforceable under all Member States' jurisdictions and binding on third parties;

(12) Whereas rules on finality of netting should not prevent systems testing, before the netting takes place, whether orders that have entered the system comply with the rules of that system and allow the settlement of that system to take place;

(13) Whereas nothing in this Directive should prevent a participant or a third party from exercising any right or claim resulting from the underlying transaction which they may have in law to recovery or restitution in respect of a transfer order which has entered a system, e.g. in case of fraud or technical error, as long as this leads neither to the unwinding of netting nor to the revocation of the transfer order in the system;

(14) Whereas it is necessary to ensure that transfer orders cannot be revoked after a moment defined by the rules of the system;

(15) Whereas it is necessary that a Member State should immediately notify other Member States of the opening of insolvency proceedings against a participant in the system;

(16) Whereas insolvency proceedings should not have a retroactive effect on the rights and obligations of participants in a system;

(17) Whereas, in the event of insolvency proceedings against a participant in a system, this Directive furthermore aims at determining which insolvency law is applicable to the rights and obligations of that participant in connection with its participation in a system;

(18) Whereas collateral security should be insulated from the effects of the insolvency law applicable to the insolvent participant;

(19) Whereas the provisions of Article 9(2) should only apply to a register, account or centralized deposit system which evidences the existence of proprietary rights in or for the delivery or transfer of the securities concerned;

(20) Whereas the provisions of Article 9(2) are intended to ensure that if the participant, the central bank of a Member State or the future European central bank has a valid and effective collateral security as determined under the law of the Member State where the relevant register, account or centralized deposit system is located, then the validity and enforceability of that collateral security as against that system (and the operator thereof) and against any other person claiming directly or indirectly through it, should be determined solely under the law of that Member State;

(21) Whereas the provisions of Article 9(2) are not intended to prejudice the operation and effect of the law of the Member State under which the securities are constituted or of the law of the Member State where the securities may otherwise be located (including, without limitation, the law concerning the creation, ownership or transfer of such securities or of rights in such securities) and should not be interpreted to mean that any such collateral security will be directly enforceable or be capable of being recognised in any such Member State otherwise than in accordance with the law of that Member State;

(22) Whereas it is desirable that Member States endeavour to establish sufficient links between all the securities settlement systems covered by this Directive with a view towards promoting maximum transparency and legal certainty of transactions relating to securities;

(23) Whereas the adoption of this Directive constitutes the most appropriate way of realising the abovementioned objectives and does not go beyond what is necessary to achieve them,

HAVE ADOPTED THIS DIRECTIVE:

SECTION I

SCOPE AND DEFINITIONS

Article 1

The provisions of this Directive shall apply to:

(a) any system as defined in Article 2(a), governed by the law of a Member State and operating in any currency, the ecu or in various currencies which the system converts one against another;

(b) any participant in such a system;

(c) collateral security provided in connection with:

– participation in a system, or

– operations of the central banks of the Member States in their functions as central banks.

Article 2

For the purpose of this Directive:

(a) 'system' shall mean a formal arrangement:

– between three or more participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, with common rules and standardised arrangements for the execution of transfer orders between the participants,

– governed by the law of a Member State chosen by the participants; the participants may, however, only choose the law of a Member State in which at least one of them has its head office, and

– designated, without prejudice to other more stringent conditions of general application laid down by national law, as a system and notified to the Commission by the Member State whose law is applicable, after that Member State is satisfied as to the adequacy of the rules of the system.

Subject to the conditions in the first subparagraph, a Member State may designate as a system such a formal arrangement whose business consists of the execution of transfer orders as defined in the second indent of (i) and which to a limited extent executes orders relating to other financial instruments, when that Member State considers that such a designation is warranted on grounds of systemic risk.

A Member State may also on a case-by-case basis designate as a system such a formal arrangement between two participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, when that Member State considers that such a designation is warranted on grounds of systemic risk;

(b) 'institution' shall mean:

– a credit institution as defined in the first indent of Article 1 of Directive 77/780/EEC[5]including the institutions set out in the list in Article 2(2) thereof, or

– an investment firm as defined in point 2 of Article 1 of Directive 93/22/EEC[6] excluding the institutions set out in the list in Article 2(2)(a) to (k) thereof, or

– public authorities and publicly guaranteed undertakings, or

– any undertaking whose head office is outside the Community and whose functions correspond to those of the Community credit institutions or investment firms as defined in the first and second indent,

which participates in a system and which is responsible for discharging the financial obligations arising from transfer orders within that system.

If a system is supervised in accordance with national legislation and only executes transfer orders as defined in the second indent of (i), as well as payments resulting from such orders, a Member State may decide that undertakings which participate in such a system and which have responsibility for discharging the financial obligations arising from transfer orders within this system, can be considered institutions, provided that at least three participants of this system are covered by the categories referred to in the first subparagraph and that such a decision is warranted on grounds of systemic risk;

5 First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions (OJ L 322, 17.12.1977, p. 30). Directive as last amended by Directive 96/13/EC (OJ L 66, 16.3.1996, p. 15).

6 Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 141, 11.6.1993, p. 27). Directive as last amended by Directive 97/9/EC (OJ L 84, 26.3. 1997, p. 22).

(c) 'central counterparty' shall mean an entity which is interposed between the institutions in a system and which acts as the exclusive counterparty of these institutions with regard to their transfer orders;

(d) 'settlement agent' shall mean an entity providing to institutions and/or a central counterparty participating in systems, settlement accounts through which transfer orders within such systems are settled and, as the case may be, extending credit to those institutions and/or central counterparties for settlement purposes;

(e) 'clearing house' shall mean an entity responsible for the calculation of the net positions of institutions, a possible central counterparty and/or a possible settlement agent;

(f) 'participant' shall mean an institution, a central counterparty, a settlement agent or a clearing house.

According to the rules of the system, the same participant may act as a central counterparty, a settlement agent or a clearing house or carry out part or all of these tasks.

A Member State may decide that for the purposes of this Directive an indirect participant may be considered a participant if it is warranted on the grounds of systemic risk and on condition that the indirect participant is known to the system;

(g) 'indirect participant' shall mean a credit institution as defined in the first indent of (b) with a contractual relationship with an institution participating in a system executing transfer orders as defined in the first indent of (i) which enables the abovementioned credit institution to pass transfer orders through the system;

(h) 'securities' shall mean all instruments referred to in section B of the Annex to Directive 93/22/EEC;

(i) 'transfer order' shall mean:

– any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, a central bank or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system, or

– an instruction by a participant to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise;

(j) 'insolvency proceedings' shall mean any collective measure provided for in the law of a Member State, or a third country, either to wind up the participant or to reorganise it,

where such measure involves the suspending of, or imposing limitations on, transfers or payments;

(k) 'netting' shall mean the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants either issue to, or receive from, one or more other participants with the result that only a net claim can be demanded or a net obligation be owed;

(l) 'settlement account' shall mean an account at a central bank, a settlement agent or a central counterparty used to hold funds and securities and to settle transactions between participants in a system;

(m) 'collateral security' shall mean all realisable assets provided under a pledge (including money provided under a pledge), a repurchase or similar agreement, or otherwise, for the purpose of securing rights and obligations potentially arising in connection with a system, or provided to central banks of the Member States or to the future European central bank.

SECTION II

NETTING AND TRANSFER ORDERS

Article 3

1. Transfer orders and netting shall be legally enforceable and, even in the event of insolvency proceedings against a participant, shall be binding on third parties, provided that transfer orders were entered into a system before the moment of opening of such insolvency proceedings as defined in Article 6(1).

Where, exceptionally, transfer orders are entered into a system after the moment of opening of insolvency proceedings and are carried out on the day of opening of such proceedings, they shall be legally enforceable and binding on third parties only if, after the time of settlement, the settlement agent, the central counterparty or the clearing house can prove that they were not aware, nor should have been aware, of the opening of such proceedings.

2. No law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings, as defined in Article 6(1) shall lead to the unwinding of a netting.

3. The moment of entry of a transfer order into a system shall be defined by the rules of that system. If there are conditions laid down in the national law governing the system as to the moment of entry, the rules of that system must be in accordance with such conditions.

Article 4

Member States may provide that the opening of insolvency proceedings against a participant shall not prevent funds or securities available on the settlement account of that participant from being used to fulfil that participant's obligations in the system on the day of the opening of the insolvency proceedings. Furthermore, Member States may also provide that such a participant's credit facility connected to the system be used against available, existing collateral security to fulfil that participant's obligations in the system.

Article 5

A transfer order may not be revoked by a participant in a system, nor by a third party, from the moment defined by the rules of that system.

SECTION III

PROVISIONS CONCERNING INSOLVENCY PROCEEDINGS

Article 6

1. For the purpose of this Directive, the moment of opening of insolvency proceedings shall be the moment when the relevant judicial or administrative authority handed down its decision.

2. When a decision has been taken in accordance with paragraph 1, the relevant judicial or administrative authority shall immediately notify that decision to the appropriate authority chosen by its Member State.

3. The Member State referred to in paragraph 2 shall immediately notify other Member States.

Article 7

Insolvency proceedings shall not have retroactive effects on the rights and obligations of a participant arising from, or in connection with, its participation in a system earlier than the moment of opening of such proceedings as defined in Article 6(1).

Article 8

In the event of insolvency proceedings being opened against a participant in a system, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system.

SECTION IV

INSULATION OF THE RIGHTS OF HOLDERS OF COLLATERAL SECURITY FROM THE EFFECTS OF THE INSOLVENCY OF THE PROVIDER

Article 9

1. The rights of:

– a participant to collateral security provided to it in connection with a system, and

– central banks of the Member States or the future European central bank to collateral security provided to them,

shall not be affected by insolvency proceedings against the participant or counterparty to central banks of the Member States or the future European central bank which provided the collateral security. Such collateral security may be realised for the satisfaction of these rights.

2. Where securities (including rights in securities) are provided as collateral security to participants and/or central banks of the Member States or the future European central bank as described in paragraph 1, and their right (or that of any nominee, agent or third party acting on their behalf) with respect to the securities is legally recorded on a register, account or centralised deposit system located in a Member State, the determination of the rights of such entities as holders of collateral security in relation to those securities shall be governed by the law of that Member State.

SECTION V

FINAL PROVISIONS

Article 10

Member States shall specify the systems which are to be included in the scope of this Directive and shall notify them to the Commission and inform the Commission of the authorities they have chosen in accordance with Article 6(2).

The system shall indicate to the Member State whose law is applicable the participants in the system, including any possible indirect participants, as well as any change in them.

In addition to the indication provided for in the second subparagraph, Member States may impose supervision or authorisation requirements on systems which fall under their jurisdiction.

Anyone with a legitimate interest may require an institution to inform him of the systems in which it participates and to provide information about the main rules governing the functioning of those systems.

Article 11

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 11 December 1999. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive. In this Communication, Member States shall provide a table of correspondence showing the national provisions which exist or are introduced in respect of each Article of this Directive.

Article 12

No later than three years after the date mentioned in Article 11(1), the Commission shall present a report to the European Parliament and the Council on the application of this Directive, accompanied where appropriate by proposals for its revision.

Article 13

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 19 May 1998.

For the European Parliament	*For the Council*
The President	*The President*
J. M. GIL-ROBLES	G. BROWN

2.3 NATIONAL IMPLEMENTING MEASURES[1]

BELGIUM

1. Loi du 28 avril 1999 visant à transposer la Directive 98/26/CE du 19 mai 1998 concernant le caractère définitif du règlement dans les systèmes de paiement et de règlement des opérations sur titres (Moniteur Belge du 1/06/1999, p. 19563).

   Wet van 28 april 1999 houdende omzetting van Richtlijn 98/26/EG van 19 mei 1998 betreffende het definitieve karakter van de afwikkeling van betalingen en effectentransacties in betalings- en afwikkelingssystemen (Belgisch Staatsblad van 1/06/1999, bldz. 19563).

2. Arrêté royal du 20 décembre 2000 modifiant l'article 2 de la loi du 28 avril 1999 visant à transposer la directive 98/26/CE du 19 mai 1998 concernant le caractère définitif du règlement dans les systèmes de paiement et de règlement des opérations sur titres (Moniteur Belge du 14/02/2001, p. 4109).

   Koninklijk besluit van 20 december 2000 tot wijziging van artikel 2 van de wet van 28 april 1999 houdende omzetting van Richtlijn 98/26/EG van 19 mei 1998 betreffende het definitieve karakter van de afwikkeling van betalingen en effectentransacties in betalings- en afwikkelingssystemen (Belgische Staatsblad van 14/02/2001, bldz. 4109).

3. Arrêté royal du 22 décembre 2003 modifiant l'article 2 de la loi du 28 avril 1999 visant à transposer la directive 98/26/CE du 19 mai 1998 concernant le caractère définitif du règlement dans les systèmes de paiement et de règlement des opérations sur titres et publiant la liste des systèmes de paiement et de règlement des opérations sur titres régis par le droit belge (Moniteur Belge du 16/01/2004, p. 2412 C - 2003/03019).

   Koninklijk besluit van 22 december 2003 tot wijziging van artikel 2 van de wet van 28 april 1999 houdende omzetting van de Richtlijn 98/26/EG van 19 mei 1998 betreffende het definitieve karakter van de afwikkeling van betalingen en effectentransacties in betalings- en afwikkelingssystemen en houdende bekendmaking van de lijst van de betalings- en effectenafwikkelingssystemen die geregeld worden door het Belgisch recht (Belgische Staatsblad van 16/01/2004, bldz. 2412).

4. Arrêté royal du 5 mars 2006 portant modification de l'article 2 de la loi du 28 avril 1999 visant à transposer la Directive 98/26/CE du 19 mai 1998 concernant le caractère définitif du règlement dans les systèmes de paiement et de règlement des opérations sur

1 The data given in this chapter is for information only and no undertaking is given or implied concerning the accuracy or completeness of the data or concerning the legislation to which this data relates.

titres, de l'arrêté royal du 22 décembre 2003 modifiant l'article 2 de la loi du 28 avril 1999 visant à transposer la Directive 98/26/CE du 19 mai 1998 concernant le caractère définitif du règlement dans les systèmes de paiement et de règlement des opérations sur titres et publiant la liste des systèmes de paiement et de règlement des opérations sur titres régis par le droit belge, et de l'arrêté royal du 19 octobre 2005 publiant la liste des systèmes de paiement et de règlement des opérations sur titres régis par le droit belge, en exécution de l'article 2 de la loi du 28 avril 1999 visant à transposer la Directive 98/26/CE du 19 mai 1998 concernant le caractère définitif du règlement dans les systèmes de paiement et de règlement des opérations sur titres (Moniteur Belge du 22/03/2006, p.16488).

Koninklijk besluit van 5 maart 2006 tot wijziging van artikel 2 van de wet van 28 april 1999 houdende omzetting van Richtlijn 98/26/EG van 19 mei 1998 betreffende het definitieve karakter van de afwikkeling van betalingen en effectentransacties in betalings- en afwikkelingssystemen, van het koninklijk besluit van 22 december 2003 tot wijziging van artikel 2 van de wet van 28 april 1999 houdende omzetting van Richtlijn 98/26/EG van 19 mei 1998 betreffende het definitieve karakter van de afwikkeling van betalingen en effectentransacties in betalings- en afwikkelingssystemen en houdende bekendmaking van de lijst van de betalings- en effectenafwikkelingssystemen die geregeld worden door het Belgisch recht, en van het koninklijk besluit van 19 oktober 2005 houdende bekendmaking van de lijst van de betalings- en effectenafwikkelingssystemen die geregeld worden door het Belgisch recht, tot uitvoering van artikel 2 van de wet van 28 april 1999 houdende omzetting van Richtlijn 98/26/EG van 19 mei 1998 betreffende het definitieve karakter van de afwikkeling van betalingen en effectentransacties in betalings- en afwikkelingssystemen (Belgische Staatsblad van 22/03/2006, bldz.16488).

BULGARIA

1. Закон за паричните преводи, електронните платежни инструменти и платежните системи, публикуван в Държавен вестник, брой 31 от 08.04.2005 г., изменен 2006 г.

   (English Translation: Law on Fund Transfers, Electronic Payment Instruments and Payment Systems, published in Darjaven Vestnik, issue 31 of 08.04.2005, amended 2006).

2. Закон за публичното предлагане на ценни книжа, публикуван в Държавен вестник, брой 114 от 30.12.1999 г., изменен 2001, 2002, 2003, 2004, 2005, 2006 г.

   (English Translation: *Public Offering of Securities Law*, published in Darjaven Vestnik, issue 114 of 30.12.1999, amended 2001, 2002, 2003, 2004, 2005, 2006.)

3. Наредба № 3 за паричните преводи и платежните системи, публикувана в Държавен вестник, брой 81 от 11.10.2005 г., изменена 2005 и 2006 г.

   (English Translation: Ordinance № 3 on Fund Transfers and Payment Systems, published in Darjaven Vestnik, issue 81 of 11.10.2005, amended 2005 and 2006.)

CZECH REPUBLIC

1. Zákon č. 124/2002 Sb., o převodech peněžních prostředků, elektronických platebních prostředcích a platebních systémech (zákon o platebním styku).

2. Zákon č. 362/2000 Sb., kterým se mění zákon č. 591/1992 Sb., o cenných papírech, ve znění pozdějších předpisů, a některé další zákony.

3. Zákon č. 125/2002 Sb., kterým se mení nekteré zákony v souvislosti s prijetím zákona o platebním styku.

4. Zákon č. 97/1963 Sb., o mezinárodním právu soukromém a procesním.

5. Zákon České národní rady č. 591/1992 Sb., o cenných papírech.

6. Zákon č. 328/1991 Sb., o konkursu a vyrovnání (after 1.7.2007 will be replaced by Zákon č. 182/2006 Sb. o úpadku a způsobech jeho řešení (insolvenční zákon).

7. Zákon č. 256/2004 Sb., o podnikání na kapitálovém trhu.

8. Zákon č. 257/2004 Sb., kterým se mění některé zákony v souvislosti s přijetím zákona o podnikání na kapitálovém trhu, zákona o kolektivním investování a zákona o dluhopisech.

DENMARK

Lov 2000-04-26 nr. 283 om ændring af lov om værdipapirhandel m.v.

GERMANY

1. Gesetz vom 8. Dezember 1999 zur Änderung insolvenzrechtlicher und kreditwesentlicher Vorschriften (BGBl. I 1999, 2384).

Acts/Codes amended in course of the implementation:

– Insolvenzordnung (Insolvency Code, InsO): §§ 96 Abs. 1 und 2, 147 Abs. 1, 166 Abs. 2, 233 Abs. 1

– Einführungsgesetz zur Insolvenzordnung (Act introducing the Insolvency Code, EGInsO): Art 102 Abs. 4

– Gesetz über das Kreditwesen (Banking Act, KWG): §§ 2 Abs. 4, 24 b, 46 a Abs. 1, 46 b Abs. 1 und 2, 53 Abs. 3

– Depotgesetz (Safe Custody Act, DepotG): § 17 a.

2. Überweisungsgesetz vom 21. Juli 1999. (BGBl. I 1999, 1642)

   Codes amended in course of the implementation:

   – Bürgerliches Gesetzbuch (BGB): §§ 674 a, 676 d

   – Insolvenzordnung (Insolvency Code, InsO): § 116 S. 3.

ESTONIA

1. Väärtpaberituru seadus.

2. Võlaõigusseadus.

3. Krediidiasutuste seadus.

4. Pankrotiseadus.

5. Eesti väärtpaberite keskregistri seadus.

6. Eesti Panga maksesüsteemide alusdokumentatsiooni kinnitamine.

7. Asjaõigusseaduse, Eesti väärtpaberite keskregistri seaduse, krediidiasutuste seaduse, kindlustustegevuse seaduse, pankrotiseaduse, võlaõigusseaduse, rahvusvahelise eraõiguse seaduse ja väärtpaberituru seaduse muutmise seadus.

IRELAND

European Communities (Finality of Settlement in Payment and Securities Settlement Systems) Regulations, 1998. S.I. No. 539 of 1998.

GREECE

Νόμος 2789/2000, ΦΕΚ Α'21/11.2.2000 'Προσαρμογή του ελληνικού δικαίου προς την Οδηγία αρ. 98/26/ΕΚ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 19.5.1998 σχετικά με το αμετάκλητο του διακανονισμού στα συστήματα πληρωμών και στα συστήματα διακανονισμού χρηματοπιστωτικών μέσων και άλλες διατάξεις.

SPAIN

Ley 41/1999, de 12 de noviembre, sobre sistemas de pagos y de liquidación de valores.

FRANCE

1. Code Monétaire et Financier:

Livre 1 relatif à la monnaie, Titre 4 relatif à la Banque de France:

– article L141-4, 2ème paragraphe sur le super-privilège protégeant les droits des banques centrales membres du SEBC en cas de faillite ainsi qu'en cas de procédures exécutoire ou conservatoire prononcées contre une de ses contreparties.

Livre 3 relatif aux Services, Titre 3 sur les systèmes de paiement et de règlement et de livraison d'instruments financiers):

Dans la partie législative du code:

– article L330-1 définissant les systèmes de paiement et sur l'immunisation des systèmes de paiements contre la faillite d'un de leurs participants

– article L330-2 sur l'immunisation des garanties constituées dans le cadre de systèmes de paiements contre la faillite et contre les procédures exécutoires et conservatoires.

Dans la partie réglementaire du code:

– Article R330-1 sur la procédure de notification des systèmes à la Commission.

– Article R330-2 sur la communication entre les systèmes de paiement et la Banque de France ou l'Autorité des Marchés Financiers

– Article R330-3 sur la communication d'informations aux tiers

Livre 4 relatif aux marchés, titre 4 sur les entreprises de marché et les chambres de compensation, chapitre 2 sur les chambres de compensation:

– Article L442-1 et suivants relatifs aux seules chambres de compensation intervenant dans le cadre de la surveillance des positions, l'appel des marges et, le cas échéant, la liquidation d'office des positions.

2. Règlement Général de l'Autorité des Marchés Financiers (Livre 5, Titre 5):

   Dispositions plus détaillées relatives aux obligations des systèmes de règlement et livraisons d'instruments financiers.

ITALY

Decreto Legislativo 12 aprile 2001 n. 210, "Attuazione della direttiva 98/26/CE sulla definitività degli ordini immessi in un sistema di pagamento o di regolamento titoli", in G.U., serie gen., 7 giugno 2001 n. 130.

CYPRUS

Ο περί του Αμετάκλητου του Διακανονισμού στα Συστήματα Πληρωμών και στα Συστήματα Διακανονισμού Αξιογράφων Νόμος του 2003 και 2006 (N.8(I)/2003 και N.118(I)/2006).

LATVIA

Likums "Par norēķinu galīgumu maksājumu un finanšu instrumentu norēķinu sistēmās".

LITHUANIA

1. Lietuvos Respublikos atsiskaitymų baigtinumo mokėjimo ir vertybinių popierių atsiskaitymo sistemose įstatymas Nr. IX-1597.

2. Lietuvos Respublikos atsiskaitymų baigtinumo mokėjimo ir vertybinių popierių atsiskaitymo sistemose įstatymo 2, 3, 5, 7, 8 ir 10 straipsnių pakeitimo įstatymas Nr. X-563.

3. Lietuvos banko valdybos nutarimas Nr. 173 „Dėl mokėjimo sistemos LITAS-RLS ir mažmeninių mokėjimų sistemos LITAS-MMS“.

4. Lietuvos banko valdybos nutarimas Nr. 86 „Dėl Lietuvos banko ir mokėjimo sistemos LITAS dalyvių dienos ir vienos nakties atpirkimo sandorių sudarymo ir vykdymo taisyklių patvirtinimo“, pakeistas nutarimu Nr. 155.

5. Lietuvos banko valdybos nutarimas Nr. 155 „Dėl Lietuvos banko valdybos 2004 m. gegužės 20 d. nutarimo Nr. 86 „Dėl Lietuvos banko ir mokėjimo sistemos LITAS dalyvių dienos ir vienos nakties atpirkimo sandorių sudarymo ir vykdymo taisyklių patvirtinimo“ pakeitimo“.

6. Lietuvos banko valdybos nutarimas Nr. 84 „Dėl Mokėjimo ir vertybinių popierių atsiskaitymo sistemų registravimo, duomenų tvarkymo ir skelbimo tvarkos patvirtinimo“.

7. Lietuvos banko valdybos nutarimas Nr. 27 „Dėl Informacijos, susijusios su mokėjimo ir vertybinių popierių atsiskaitymo sistemomis, jų operatoriais ir dalyviais, pateikimo Europos Bendrijų Komisijia, Europos Sąjungos bei Europos laisvosios prekybos asociacijos valstybių atsakingoms institucijoms ir sistemų operatoriams tvarkos patvirtinimo“.

8. Lietuvos banko valdybos 2003 m. rugsėjo 11 d. nutarimas Nr. 92 „Dėl Mokėjimo ir vertybinių popierių atsiskaitymo sistemų priežiūros politikos patvirtinimo“.

9. Lietuvos banko valdybos nutarimas Nr. 160 „Dėl Sistemiškai svarbių mokėjimo sistemų vertinimo metodikos patvirtinimo“.

10. Lietuvos Respublikos Lietuvos banko įstatymo 8 ir 53 straipsnių pakeitimo įstatymas Nr. IX-1598.

11. Lietuvos Respublikos Lietuvos banko įstatymo 1, 6, 7, 8, 11, 12, 14, 18, 19, 20, 25, 31, 33, 35, 36, 38, 47, 49, 50, 53, 54, 541, 55 straipsnių, ketvirtojo ir penktojo skirsnių pavadinimų pakeitimo, 26, 27, 28, 29, 30, 32, 37 straipsnių pripažinimo netekusiais galios ir įstatymo priedo papildymo įstatymas Nr. X-569.

12. Lietuvos Respublikos bankų įstatymas Nr. IX-2085

13. Lietuvos Respublikos bankų įstatymo 2, 14, 20, 46, 53, 55, 65, 69, 72, 90, 91, 92 straipsnių ir įstatymo priedo pakeitimo įstatymas Nr. X-273.

14. Lietuvos Respublikos įmonių bankroto įstatymo 10 ir 14 straipsnių pakeitimo ir 32 straipsnio papildymo įstatymas Nr. IX-1600

15. Lietuvos Respublikos įmonių bankroto įstatymo 1, 10, 14 straipsnių papildymo įstatymas Nr. X-564.

16. Lietuvos Respublikos įmonių restruktūrizavimo įstatymo 1, 9 straipsnių papildymo ir pakeitimo įstatymas Nr. X-565.

17. Lietuvos Respublikos finansų įstaigų įstatymo 2, 4, 45 straipsnių pakeitimo ir papildymo įstatymas Nr. IX-2067.

LUXEMBOURG

Loi du 12 janvier 2001 portant transposition de la directive 98/26/CE concernant le caractère définitif du règlement dans les systèmes de paiement et de règlement des opérations sur titres dans la loi modifié du 5 avril 1993 relative au secteur financier et complétant la loi du 23 décembre 1998 portant création d'une commission de surveillance du secteur financier.

HUNGARY

2003. évi XXIII. törvény a fizetési, illetve értékpapír-elszámolási rendszerekben történő teljesítés véglegességéről.

MALTA

Central Bank of Malta Directive No 2 in terms of the Central Bank of Malta Act (Cap. 204) – Payment and Securities Settlement Systems.

NETHERLANDS

1. Wet van 17 december 1998 tot wijziging van de Wet toezicht kredietwezen 1992 en de Faillissementwet met betrekking tot het definitieve karakter van de afwikkeling van betalingen en effectentransacties in betalings-en effectenafwikkelsystemen Staatsblad 1998, 714/715.

2. Regeling van 17 augustus 1999, Stcrt 159, houdende aanwijzing systemen in de zin van artikel 212a van de Faillissementswet.

AUSTRIA

Bundesgesetz über die Wirksamkeit von Abrechnungen in Zahlungs- sowie Wertpapierlieferund -abrechnungssystemen (Finalitätsgesetz) BGBl. I No. 1999/123, as amended.

POLAND

1. Ustawa z 24 sierpnia 2001 o ostateczności rozrachunku w systemach płatności i systemach rozrachunku papierów wartościowych oraz zasadach nadzoru nad tymi systemami.

2. Rozporządzenie Ministra Finansów z 6 czerwca 2003 w sprawie określenia systemów, w których istnieje ryzyko systemowe.

3. Rozporządzenie Rady Ministrów z 29 lipca 2003 w sprawie określania sposobów powiadamiania Narodowego Banku Polskiego, Komisji Papierów Wartościowych i Giełd oraz podmiotów prowadzących system płatności lub system rozrachunku papierów wartościowych.

PORTUGAL

Regarding Securities Settlement Systems:

1. Artigos 283º a 286º do Código dos Valores Mobiliários, aprovado pelo Decreto-Lei n.º 486/99 de 13 de Novembro de 1999 (D.R. Série I-A, n.º 265, de 13/11/1999, p. 7968).

Regarding Payment Systems:

2. Decreto-Lei n.º 221/2000 de 9 de Setembro de 2000 (D.R. Série I-A, n.º 209, de 9/9/2000, p. 4783).

3. Aviso do Banco de Portugal nº 8/2000 de 31 de Outubro de 2000 (D.R. Série I-B, nº 261, de 11/11/2000, p. 6338).

ROMANIA

Legea nr. 253 privind caracterul definitiv al decontării în sistemele de plăți și în sistemele de decontare a operațiunilor cu instrumente financiare (Monitorul Oficial nr. 566 din 28 iunie 2004).

SLOVENIA

1. Zakon o plačilnem prometu (Uradni list RS, št. 110/06 - uradno prečiščeno besedilo).

2. Zakon o nematerializiranih vrednostnih papirjih (Uradni list RS, št. 2/07 - uradno prečiščen.

3. Zakon o trgu vrednostnih papirjev (Uradni list RS 51/06 - uradno prečiščeno besedilo besedilo).

4. Zakon o prisilni poravnavi, stečaju in likvidaciji (Uradni list RS, št. 67/93, 39/97 in 52/99).

5. Zakon o finančnih zavarovanjih (Uradni list RS, št. 81/06 - uradno prečiščeno besedilo) 6. . - Pravila poslovanja KDD Centralne klirinško depotne družbe d.d.

SLOVAKIA

1. Zákon č. 483/2001 Z. z. o bankách a o zmene a doplnení niektorých zákonov.

2. Zákon č. 566/2001 Z. z. o cenných papieroch a investičných službách a o zmene a doplnení niektorých zákonov (zákon o cenných papieroch).

3. Zákon č. 510/2002 Z. z. o platobnom styku a o zmene a doplnení niektorých zákonov.

4. Zákon č. 7/2005 Z. z. o konkurze a reštrukturalizácii a o zmene a doplnení niektorých zákonov.

5. Zákon 97/1963 Zb., o medzinárodnom práve súkromnom a procesnom.

FINLAND

1. Laki eräistä arvopaperi- ja valuuttakaupan sekä selvitysjärjestelmän ehdoista, 1084/26.11.1999.

2. Laki arvo-osuustileistä annetun lain 5a §:n muuttamisesta, 1085/26.11.1999.

SWEDEN

1. Lag (1999:1309) om system för avveckling av förpliktelser på finansmarknaden.

2. 8 kap. 7 och 10 §§ konkurslagen (1987:672).

3. 1 kap. 1 § and 5 kap. 1 § lagen (1991:980) om handel med finansiella instrument.

UNITED KINGDOM

The Financial Markets and Insolvency (Settlement Finality) Regulations 1999, SI 1999/2979, as last amended by the Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2007, SI 2007/832.

Gibraltar: the Financial Markets and Insolvency (Settlement Finality) Regulations 2002, 2002/090.

2.4 RELATED EMI/ECB OPINIONS

EMI Opinion on the Settlement Finality Directive (CON/1996/9), EU, 21.5.1998.

ECB Opinion on settlement finality in payment and securities settlement systems (CON/1999/1), Spain, 26.5.1999.

ECB Opinion on cross-border credit transfers and settlement finality in payment and securities settlement systems (CON/1999/7), Austria, 23.7.1999.

ECB Opinion on settlement finality in payment and securities settlement systems (CON/1999/9), Sweden, 26.8.1999.

ECB Opinion on settlement finality in payment and securities settlement systems (CON/1999/19), Luxembourg, 20.1.2000.

ECB Opinion on settlement finality in payment and securities settlement systems (CON/2005/28), Cyprus, 10.8.2005.

ECB Opinion on settlement finality in payment and securities settlement systems (CON/2006/5), Lithuania, 16.2.2006.

3 FINANCIAL COLLATERAL DIRECTIVE

3.1 BACKGROUND

The Financial Collateral Directive introduces a Community framework for financial collateral, within a broader European legal framework for financial institutions and insolvency proceedings. It is addressed to the Member States, which are required to repeal certain national rules, should such rules exist, in order to improve the legal certainty and simplicity of collateral arrangements. The Financial Collateral Directive applies only to contracting parties belonging to specific categories such as: public sector bodies (excluding publicly guaranteed undertakings), central banks and international financial institutions, supervised financial institutions, central counterparties, settlement agents and clearing houses. A further category consists of companies[1], provided the counterparty is one of the entities referred to above; however, Member States may exclude this last category.

The Financial Collateral Directive provides for rapid and non-formalistic establishment and enforcement procedures. Member States may not make the creation, validity, perfection, enforceability or admissibility of a financial collateral arrangement dependent on the performance of any formal act. It does not apply to certain aspects of civil law such as restitution arising from mistake, error or lack of legal capacity. In addition, Member States must ensure that collateral takers are able to realise financial collateral in one of the following ways: (i) from financial instruments by sale or appropriation and by setting off their value against, or applying their value in discharge of, the relevant financial obligations; or (ii) from cash by setting off the amount against or applying it in discharge of the relevant financial obligations.

Appropriation of financial collateral is only possible if this has been agreed in the arrangement. Member States which did not allow appropriation on 27 June 2002 are not obliged to recognise it. Member States are responsible for ensuring the right to use financial collateral and for ensuring that a financial collateral arrangement can take effect in accordance with its terms. Member States must recognise applicable close-out netting provisions, even if the collateral taker or provider is subject to winding-up proceedings or reorganisation measures. Equally, the application of close-out netting provisions may not be blocked by any purported assignment, judicial or other attachment, or other disposition of or in respect of such rights.

The Financial Collateral Directive also stipulates that certain insolvency provisions do not apply. Financial collateral arrangements or the provision of financial collateral may not be declared invalid or void or be reversed on the sole basis that they have been concluded or that the financial collateral has been provided: (i) on the day of the commencement of

1 Defined as ‘a person other than a natural person, including unincorporated firms and partnerships’; cf. the Financial Collateral Directive, Article 1(2)(e).

winding-up proceedings or reorganisation measures, but prior to the order or decree making that commencement; or (ii) in a prescribed period prior to, and defined by reference to, the commencement of such proceedings or measures or by reference to the making of any order or decree. The Directive also lays down provisions applicable in the event of a conflict of laws, extending the conflict of laws rule in Article 9(2) of the Settlement Finality Directive (i.e. the rule applying the law of the place where the relevant account is maintained) to all collateral in the form of book entry securities.

On 20 December 2006, the Commission published its Evaluation Report on the Directive on Financial Collateral Arrangements (2002/47/EC)[2]. As most Member States transposed the Financial Collateral Directive after the deadline for implementation set by the Directive (only nine did do in the course of 2005) and as there is limited experience of the use of the Financial Collateral Directive, the Commission considers it premature to make a final assessment of its impact. Yet, the overall conclusion is that the Financial Collateral Directive is functioning well and, by removing the administrative burdens and legal formalities that previously hampered collateral procedures in the EU, this directive has made the taking of financial collateral and the enforcement of collateral obligations simpler and more efficient. In drawing this conclusion, the report frequently refers to ECB statements and statistics. Based on its findings, the Commission proposes the following next steps: (i) extend eligible collateral to credit claims; (ii) maintain the opt-out provisions on the scope; (iii) delete Article 4(3) at the next revision of the Financial Collateral Directive; (iv) no further action as regards the right of use; (v) further explore the possibility for improving the general EU framework for netting, and (vi) improve the conflict-of-laws regime.

The report places a lot of emphasis on credit claims as a new type of eligible asset for Eurosystem collateral, and proposes an extension of the Financial Collateral Directive's scope to include credit claims. The Commission is not suggesting covering credit claims in general, but only those that would be eligible for Eurosystem purposes.

As regards the opt-out provisions for the personal and material scope, although the Commission notes that there is not widespread use of Member States' right to limit the scope (rather the opposite), it does see a need for action. The result of this would be a continuation of the current diversity of application and thus fragmentation in the EU. The upcoming discussions in the Council may provide an opportunity to reopen this point. Also, it is suggested there should be improved protection for close-out netting. Whilst not ruling out a general revision of the relevant *acquis* (including the Winding-up Directive, the Settlement Finality Directive and the Insolvency Regulation[3]), the Commission sees a need for further reflection on this matter for improvements going beyond the scope of the Financial Collateral Directive.

2 http://ec.europa.eu/internal_market/financial-markets/docs/collateral/fcd_report_en.pdf

3 Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1).

As regards the conflict of laws regime, the Commission is of the opinion that there is not a sufficient level of legal certainty at present, either at the international level or at Community level. Therefore, if the Council decides not to go forward with the Convention of 5 July 2006 adopted by the Hague Conference on Private International Law on the law applicable to dispositions of securities held through an indirect holding system[4], Article 9 of the Financial Collateral Directive (as well as Article 9 of the Settlement Finality Directive and Article 24 of the Winding-up Directive) would still have to be amended to improve the situation within the Community by specifying the exact criteria for determining the relevant location of the account.

4 In the EU, the Hague Convention's adoption should imply amendments to some EU legal acts, namely the Settlement Finality Directive of 1998; the Insolvency Regulation of 2000; the Directives on the Reorganisation and the Winding-up of credit institutions and insurance undertakings of 2001; and the Financial Collateral Directive of 2002.

3.2 DIRECTIVE TEXT

DIRECTIVE 2002/47/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 6 June 2002

on financial collateral arrangements

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Central Bank[2],

Having regard to the opinion of the Economic and Social Committee[3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[4],

Whereas:

(1) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems[5] constituted a milestone in establishing a sound legal framework for payment and securities settlement systems. Implementation of that Directive has demonstrated the importance of limiting systemic risk inherent in such systems stemming from the different influence of several jurisdictions, and the benefits of common rules in relation to collateral constituted to such systems.

(2) In its communication of 11 May 1999 to the European Parliament and to the Council on financial services: implementing the framework for financial markets: action plan, the Commission undertook, after consultation with market experts and national authorities, to work on further proposals for legislative action on collateral urging further progress in the field of collateral, beyond Directive 98/26/EC.

1 OJ C 180 E, 26.6.2001, p. 312.
2 OJ C 196, 12.7.2001, p. 10.
3 OJ C 48, 21.2.2002, p. 1.
4 Opinion of the European Parliament of 13 December 2001 (not yet published in the Official Journal), Council Common Position of 5 March 2002 (not yet published in the Official Journal) and Decision of the European Parliament of 15 May 2002.
5 OJ L 166, 11.6.1998, p. 45.

(3) A Community regime should be created for the provision of securities and cash as collateral under both security interest and title transfer structures including repurchase agreements (repos). This will contribute to the integration and cost-efficiency of the financial market as well as to the stability of the financial system in the Community, thereby supporting the freedom to provide services and the free movement of capital in the single market in financial services. This Directive focuses on bilateral financial collateral arrangements.

(4) This Directive is adopted in a European legal context which consists in particular of the said Directive 98/26/EC as well as Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions[6], Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings[7] and Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings[8]. This Directive is in line with the general pattern of these previous legal acts and is not opposed to it. Indeed, this Directive complements these existing legal acts by dealing with further issues and going beyond them in connection with particular matters already dealt with by these legal acts.

(5) In order to improve the legal certainty of financial collateral arrangements, Member States should ensure that certain provisions of insolvency law do not apply to such arrangements, in particular, those that would inhibit the effective realisation of financial collateral or cast doubt on the validity of current techniques such as bilateral close-out netting, the provision of additional collateral in the form of top-up collateral and substitution of collateral.

(6) This Directive does not address rights which any person may have in respect of assets provided as financial collateral, and which arise otherwise than under the terms of the financial collateral arrangement and otherwise than on the basis of any legal provision or rule of law arising by reason of the commencement or continuation of winding-up proceedings or reorganisation measures, such as restitution arising from mistake, error or lack of capacity.

(7) The principle in Directive 98/26/EC, whereby the law applicable to book entry securities provided as collateral is the law of the jurisdiction where the relevant register, account or centralised deposit system is located, should be extended in order to create legal certainty regarding the use of such securities held in a cross-border context and used as financial collateral under the scope of this Directive.

(8) The lex rei sitae rule, according to which the applicable law for determining whether a financial collateral arrangement is properly perfected and therefore good against third

6 OJ L 125, 5.5.2001, p. 15.
7 OJ L 110, 20.4.2001, p. 28.
8 OJ L 160, 30.6.2000, p. 1.

parties is the law of the country where the financial collateral is located, is currently recognised by all Member States. Without affecting the application of this Directive to directly-held securities, the location of book entry securities provided as financial collateral and held through one or more intermediaries should be determined. If the collateral taker has a valid and effective collateral arrangement according to the governing law of the country in which the relevant account is maintained, then the validity against any competing title or interest and the enforceability of the collateral should be governed solely by the law of that country, thus preventing legal uncertainty as a result of other unforeseen legislation.

(9) In order to limit the administrative burdens for parties using financial collateral under the scope of this Directive, the only perfection requirement which national law may impose in respect of financial collateral should be that the financial collateral is delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral taker or of a person acting on the collateral taker's behalf while not excluding collateral techniques where the collateral provider is allowed to substitute collateral or to withdraw excess collateral.

(10) For the same reasons, the creation, validity, perfection, enforceability or admissibility in evidence of a financial collateral arrangement, or the provision of financial collateral under a financial collateral arrangement, should not be made dependent on the performance of any formal act such as the execution of any document in a specific form or in a particular manner, the making of any filing with an official or public body or registration in a public register, advertisement in a newspaper or journal, in an official register or publication or in any other matter, notification to a public officer or the provision of evidence in a particular form as to the date of execution of a document or instrument, the amount of the relevant financial obligations or any other matter. This Directive must however provide a balance between market efficiency and the safety of the parties to the arrangement and third parties, thereby avoiding inter alia the risk of fraud. This balance should be achieved through the scope of this Directive covering only those financial collateral arrangements which provide for some form of dispossession, i.e. the provision of the financial collateral, and where the provision of the financial collateral can be evidenced in writing or in a durable medium, ensuring thereby the traceability of that collateral. For the purpose of this Directive, acts required under the law of a Member State as conditions for transferring or creating a security interest on financial instruments, other than book entry securities, such as endorsement in the case of instruments to order, or recording on the issuer's register in the case of registered instruments, should not be considered as formal acts.

(11) Moreover, this Directive should protect only financial collateral arrangements which can be evidenced. Such evidence can be given in writing or in any other legally enforceable manner provided by the law which is applicable to the financial collateral arrangement.

(12) The simplification of the use of financial collateral through the limitation of administrative burdens promotes the efficiency of the cross-border operations of the European Central Bank and the national central banks of Member States participating in the economic and monetary union, necessary for the implementation of the common monetary policy. Furthermore, the provision of limited protection of financial collateral arrangements from some rules of insolvency law in addition supports the wider aspect of the common monetary policy, where the participants in the money market balance the overall amount of liquidity in the market among themselves, by cross-border transactions backed by collateral.

(13) This Directive seeks to protect the validity of financial collateral arrangements which are based upon the transfer of the full ownership of the financial collateral, such as by eliminating the so-called re-characterisation of such financial collateral arrangements (including repurchase agreements) as security interests.

(14) The enforceability of bilateral close-out netting should be protected, not only as an enforcement mechanism for title transfer financial collateral arrangements including repurchase agreements but more widely, where close-out netting forms part of a financial collateral arrangement. Sound risk management practices commonly used in the financial market should be protected by enabling participants to manage and reduce their credit exposures arising from all kinds of financial transactions on a net basis, where the credit exposure is calculated by combining the estimated current exposures under all outstanding transactions with a counterparty, setting off reciprocal items to produce a single aggregated amount that is compared with the current value of the collateral.

(15) This Directive should be without prejudice to any restrictions or requirements under national law on bringing into account claims, on obligations to set-off, or on netting, for example relating to their reciprocity or the fact that they have been concluded prior to when the collateral taker knew or ought to have known of the commencement (or of any mandatory legal act leading to the commencement) of winding-up proceedings or reorganisation measures in respect of the collateral provider.

(16) The sound market practice favoured by regulators whereby participants in the financial market use top-up financial collateral arrangements to manage and limit their credit risk to each other by mark-to-market calculations of the current market value of the credit exposure and the value of the financial collateral and accordingly ask for top-up financial collateral or return the surplus of financial collateral should be protected against certain automatic avoidance rules. The same applies to the possibility of substituting for assets provided as financial collateral other assets of the same value.

The intention is merely that the provision of top-up or substitution financial collateral cannot be questioned on the sole basis that the relevant financial obligations existed before that financial collateral was provided, or that the financial collateral was provided during

a prescribed period. However, this does not prejudice the possibility of questioning under national law the financial collateral arrangement and the provision of financial collateral as part of the initial provision, top-up or substitution of financial collateral, for example where this has been intentionally done to the detriment of the other creditors (this covers inter alia actions based on fraud or similar avoidance rules which may apply in a prescribed period).

(17) This Directive provides for rapid and non-formalistic enforcement procedures in order to safeguard financial stability and limit contagion effects in case of a default of a party to a financial collateral arrangement. However, this Directive balances the latter objectives with the protection of the collateral provider and third parties by explicitly confirming the possibility for Member States to keep or introduce in their national legislation an a posteriori control which the Courts can exercise in relation to the realisation or valuation of financial collateral and the calculation of the relevant financial obligations. Such control should allow for the judicial authorities to verify that the realisation or valuation has been conducted in a commercially reasonable manner.

(18) It should be possible to provide cash as collateral under both title transfer and secured structures respectively protected by the recognition of netting or by the pledge of cash collateral. Cash refers only to money which is represented by a credit to an account, or similar claims on repayment of money (such as money market deposits), thus explicitly excluding banknotes.

(19) This Directive provides for a right of use in case of security financial collateral arrangements, which increases liquidity in the financial market stemming from such reuse of "pledged" securities. This reuse however should be without prejudice to national legislation about separation of assets and unfair treatment of creditors.

(20) This Directive does not prejudice the operation and effect of the contractual terms of financial instruments provided as financial collateral, such as rights and obligations and other conditions contained in the terms of issue and any other rights and obligations and other conditions which apply between the issuers and holders of such instruments.

(21) This Act complies with the fundamental rights and follows the principles laid down in particular in the Charter of Fundamental Rights of the European Union.

(22) Since the objective of the proposed action, namely to create a minimum regime relating to the use of financial collateral, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. This Directive lays down a Community regime applicable to financial collateral arrangements which satisfy the requirements set out in paragraphs 2 and 5 and to financial collateral in accordance with the conditions set out in paragraphs 4 and 5.

2. The collateral taker and the collateral provider must each belong to one of the following categories:

(a) a public authority (excluding publicly guaranteed undertakings unless they fall under points (b) to (e)) including:

(i) public sector bodies of Member States charged with or intervening in the management of public debt, and

(ii) public sector bodies of Member States authorised to hold accounts for customers;

(b) a central bank, the European Central Bank, the Bank for International Settlements, a multilateral development bank as defined in Article 1(19) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions[9], the International Monetary Fund and the European Investment Bank;

(c) a financial institution subject to prudential supervision including:

(i) a credit institution as defined in Article 1(1) of Directive 2000/12/EC, including the institutions listed in Article 2(3) of that Directive;

(ii) an investment firm as defined in Article 1(2) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field[10];

(iii) a financial institution as defined in Article 1(5) of Directive 2000/12/EC;

(iv) an insurance undertaking as defined in Article 1(a) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating

9 OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37).

10 OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).

to direct insurance other than life assurance[11] and a life assurance undertaking as defined in Article 1(a) of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance[12];

(v) an undertaking for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[13];

(vi) a management company as defined in Article 1a(2) of Directive 85/611/EEC;

(d) a central counterparty, settlement agent or clearing house, as defined respectively in Article 2(c), (d) and (e) of Directive 98/26/EC, including similar institutions regulated under national law acting in the futures, options and derivatives markets to the extent not covered by that Directive, and a person, other than a natural person, who acts in a trust or representative capacity on behalf of any one or more persons that includes any bondholders or holders of other forms of securitised debt or any institution as defined in points (a) to (d);

(e) a person other than a natural person, including unincorporated firms and partnerships, provided that the other party is an institution as defined in points (a) to (d).

3. Member States may exclude from the scope of this Directive financial collateral arrangements where one of the parties is a person mentioned in paragraph 2(e).

If they make use of this option Member States shall inform the Commission which shall inform the other Member States thereof.

4. (a) The financial collateral to be provided must consist of cash or financial instruments.

(b) Member States may exclude from the scope of this Directive financial collateral consisting of the collateral provider's own shares, shares in affiliated undertakings within the meaning of seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts[14], and shares in undertakings whose exclusive purpose is to own means of production that are essential for the collateral provider's business or to own real property.

11 OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council.

12 OJ L 360, 9.12.1992, p. 1. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council.

13 OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2001/108/EC of the European Parliament and of the Council. (OJ L 41, 13.2.2002, p. 35).

14 OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).

5. This Directive applies to financial collateral once it has been provided and if that provision can be evidenced in writing.

The evidencing of the provision of financial collateral must allow for the identification of the financial collateral to which it applies. For this purpose, it is sufficient to prove that the book entry securities collateral has been credited to, or forms a credit in, the relevant account and that the cash collateral has been credited to, or forms a credit in, a designated account.

This Directive applies to financial collateral arrangements if that arrangement can be evidenced in writing or in a legally equivalent manner.

Article 2

Definitions

1. For the purpose of this Directive:

(a) "financial collateral arrangement" means a title transfer financial collateral arrangement or a security financial collateral arrangement whether or not these are covered by a master agreement or general terms and conditions;

(b) "title transfer financial collateral arrangement" means an arrangement, including repurchase agreements, under which a collateral provider transfers full ownership of financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations;

(c) "security financial collateral arrangement" means an arrangement under which a collateral provider provides financial collateral by way of security in favour of, or to, a collateral taker, and where the full ownership of the financial collateral remains with the collateral provider when the security right is established;

(d) "cash" means money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits;

(e) "financial instruments" means shares in companies and other securities equivalent to shares in companies and bonds and other forms of debt instruments if these are negotiable on the capital market, and any other securities which are normally dealt in and which give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange or which give rise to a cash settlement (excluding instruments of payment), including units in collective investment undertakings, money market instruments and claims relating to or rights in or in respect of any of the foregoing;

(f) “relevant financial obligations” means the obligations which are secured by a financial collateral arrangement and which give a right to cash settlement and/or delivery of financial instruments.

Relevant financial obligations may consist of or include:

(i) present or future, actual or contingent or prospective obligations (including such obligations arising under a master agreement or similar arrangement);

(ii) obligations owed to the collateral taker by a person other than the collateral provider; or

(iii) obligations of a specified class or kind arising from time to time;

(g) “book entry securities collateral” means financial collateral provided under a financial collateral arrangement which consists of financial instruments, title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary;

(h) “relevant account” means in relation to book entry securities collateral which is subject to a financial collateral arrangement, the register or account – which may be maintained by the collateral taker – in which the entries are made by which that book entry securities collateral is provided to the collateral taker;

(i) “equivalent collateral”:

(i) in relation to cash, means a payment of the same amount and in the same currency;

(ii) in relation to financial instruments, means financial instruments of the same issuer or debtor, forming part of the same issue or class and of the same nominal amount, currency and description or, where a financial collateral arrangement provides for the transfer of other assets following the occurrence of any event relating to or affecting any financial instruments provided as financial collateral, those other assets;

(j) “winding-up proceedings” means collective proceedings involving realisation of the assets and distribution of the proceeds among the creditors, shareholders or members as appropriate, which involve any intervention by administrative or judicial authorities, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory;

(k) “reorganisation measures” means measures which involve any intervention by administrative or judicial authorities which are intended to preserve or restore the financial situation and which affect pre-existing rights of third parties, including but not limited to

measures involving a suspension of payments, suspension of enforcement measures or reduction of claims;

(l) "enforcement event" means an event of default or any similar event as agreed between the parties on the occurrence of which, under the terms of a financial collateral arrangement or by operation of law, the collateral taker is entitled to realise or appropriate financial collateral or a close-out netting provision comes into effect;

(m) "right of use" means the right of the collateral taker to use and dispose of financial collateral provided under a security financial collateral arrangement as the owner of it in accordance with the terms of the security financial collateral arrangement;

(n) "close-out netting provision" means a provision of a financial collateral arrangement, or of an arrangement of which a financial collateral arrangement forms part, or, in the absence of any such provision, any statutory rule by which, on the occurrence of an enforcement event, whether through the operation of netting or set-off or otherwise:

(i) the obligations of the parties are accelerated so as to be immediately due and expressed as an obligation to pay an amount representing their estimated current value, or are terminated and replaced by an obligation to pay such an amount; and/or

(ii) an account is taken of what is due from each party to the other in respect of such obligations, and a net sum equal to the balance of the account is payable by the party from whom the larger amount is due to the other party.

2. References in this Directive to financial collateral being "provided", or to the "provision" of financial collateral, are to the financial collateral being delivered, transferred, held, registered or otherwise designated so as to be in the possession or under the control of the collateral taker or of a person acting on the collateral taker's behalf. Any right of substitution or to withdraw excess financial collateral in favour of the collateral provider shall not prejudice the financial collateral having been provided to the collateral taker as mentioned in this Directive.

3. References in this Directive to "writing" include recording by electronic means and any other durable medium.

Article 3

Formal requirements

1. Member States shall not require that the creation, validity, perfection, enforceability or admissibility in evidence of a financial collateral arrangement or the provision of financial

collateral under a financial collateral arrangement be dependent on the performance of any formal act.

2. Paragraph 1 is without prejudice to the application of this Directive to financial collateral only once it has been provided and if that provision can be evidenced in writing and where the financial collateral arrangement can be evidenced in writing or in a legally equivalent manner.

Article 4

Enforcement of financial collateral arrangements

1. Member States shall ensure that on the occurrence of an enforcement event, the collateral taker shall be able to realise in the following manners, any financial collateral provided under, and subject to the terms agreed in, a security financial collateral arrangement:

(a) financial instruments by sale or appropriation and by setting off their value against, or applying their value in discharge of, the relevant financial obligations;

(b) cash by setting off the amount against or applying it in discharge of the relevant financial obligations.

2. Appropriation is possible only if:

(a) this has been agreed by the parties in the security financial collateral arrangement; and

(b) the parties have agreed in the security financial collateral arrangement on the valuation of the financial instruments.

3. Member States which do not allow appropriation on 27 June 2002 are not obliged to recognise it.

If they make use of this option, Member States shall inform the Commission which in turn shall inform the other Member States thereof.

4. The manners of realising the financial collateral referred to in paragraph 1 shall, subject to the terms agreed in the security financial collateral arrangement, be without any requirement to the effect that:

(a) prior notice of the intention to realise must have been given;

(b) the terms of the realisation be approved by any court, public officer or other person;

(c) the realisation be conducted by public auction or in any other prescribed manner; or

(d) any additional time period must have elapsed.

5. Member States shall ensure that a financial collateral arrangement can take effect in accordance with its terms notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider or collateral taker.

6. This Article and Articles 5, 6 and 7 shall be without prejudice to any requirements under national law to the effect that the realisation or valuation of financial collateral and the calculation of the relevant financial obligations must be conducted in a commercially reasonable manner.

Article 5

Right of use of financial collateral under security financial collateral arrangements

1. If and to the extent that the terms of a security financial collateral arrangement so provide, Member States shall ensure that the collateral taker is entitled to exercise a right of use in relation to financial collateral provided under the security financial collateral arrangement.

2. Where a collateral taker exercises a right of use, he thereby incurs an obligation to transfer equivalent collateral to replace the original financial collateral at the latest on the due date for the performance of the relevant financial obligations covered by the security financial collateral arrangement.

Alternatively, the collateral taker shall, on the due date for the performance of the relevant financial obligations, either transfer equivalent collateral, or, if and to the extent that the terms of a security financial collateral arrangement so provide, set off the value of the equivalent collateral against or apply it in discharge of the relevant financial obligations.

3. The equivalent collateral transferred in discharge of an obligation as described in paragraph 2, first subparagraph, shall be subject to the same security financial collateral agreement to which the original financial collateral was subject and shall be treated as having been provided under the security financial collateral arrangement at the same time as the original financial collateral was first provided.

4. Member States shall ensure that the use of financial collateral by the collateral taker according to this Article does not render invalid or unenforceable the rights of the collateral taker under the security financial collateral arrangement in relation to the financial collateral

transferred by the collateral taker in discharge of an obligation as described in paragraph 2, first subparagraph.

5. If an enforcement event occurs while an obligation as described in paragraph 2 first subparagraph remains outstanding, the obligation may be the subject of a close-out netting provision.

Article 6

Recognition of title transfer financial collateral arrangements

1. Member States shall ensure that a title transfer financial collateral arrangement can take effect in accordance with its terms.

2. If an enforcement event occurs while any obligation of the collateral taker to transfer equivalent collateral under a title transfer financial collateral arrangement remains outstanding, the obligation may be the subject of a close-out netting provision.

Article 7

Recognition of close-out netting provisions

1. Member States shall ensure that a close-out netting provision can take effect in accordance with its terms:

(a) notwithstanding the commencement or continuation of winding-up proceedings or reorganisation measures in respect of the collateral provider and/or the collateral taker; and/or

(b) notwithstanding any purported assignment, judicial or other attachment or other disposition of or in respect of such rights.

2. Member States shall ensure that the operation of a close-out netting provision may not be subject to any of the requirements that are mentioned in Article 4(4), unless otherwise agreed by the parties.

Article 8

Certain insolvency provisions disapplied

1. Member States shall ensure that a financial collateral arrangement, as well as the provision of financial collateral under such arrangement, may not be declared invalid or void or be

reversed on the sole basis that the financial collateral arrangement has come into existence, or the financial collateral has been provided:

(a) on the day of the commencement of winding-up proceedings or reorganisation measures, but prior to the order or decree making that commencement; or

(b) in a prescribed period prior to, and defined by reference to, the commencement of such proceedings or measures or by reference to the making of any order or decree or the taking of any other action or occurrence of any other event in the course of such proceedings or measures.

2. Member States shall ensure that where a financial collateral arrangement or a relevant financial obligation has come into existence, or financial collateral has been provided on the day of, but after the moment of the commencement of, winding-up proceedings or reorganisation measures, it shall be legally enforceable and binding on third parties if the collateral taker can prove that he was not aware, nor should have been aware, of the commencement of such proceedings or measures.

3. Where a financial collateral arrangement contains:

(a) an obligation to provide financial collateral or additional financial collateral in order to take account of changes in the value of the financial collateral or in the amount of the relevant financial obligations, or

(b) a right to withdraw financial collateral on providing, by way of substitution or exchange, financial collateral of substantially the same value,

Member States shall ensure that the provision of financial collateral, additional financial collateral or substitute or replacement financial collateral under such an obligation or right shall not be treated as invalid or reversed or declared void on the sole basis that:

(i) such provision was made on the day of the commencement of winding-up proceedings or reorganisation measures, but prior to the order or decree making that commencement or in a prescribed period prior to, and defined by reference to, the commencement of winding-up proceedings or reorganisation measures or by reference to the making of any order or decree or the taking of any other action or occurrence of any other event in the course of such proceedings or measures; and/or

(ii) the relevant financial obligations were incurred prior to the date of the provision of the financial collateral, additional financial collateral or substitute or replacement financial collateral.

4. Without prejudice to paragraphs 1, 2 and 3, this Directive leaves unaffected the general rules of national insolvency law in relation to the voidance of transactions entered into during the prescribed period referred to in paragraph 1(b) and in paragraph 3(i).

Article 9

Conflict of laws

1. Any question with respect to any of the matters specified in paragraph 2 arising in relation to book entry securities collateral shall be governed by the law of the country in which the relevant account is maintained. The reference to the law of a country is a reference to its domestic law, disregarding any rule under which, in deciding the relevant question, reference should be made to the law of another country.

2. The matters referred to in paragraph 1 are:

(a) the legal nature and proprietary effects of book entry securities collateral;

(b) the requirements for perfecting a financial collateral arrangement relating to book entry securities collateral and the provision of book entry securities collateral under such an arrangement, and more generally the completion of the steps necessary to render such an arrangement and provision effective against third parties;

(c) whether a person's title to or interest in such book entry securities collateral is overridden by or subordinated to a competing title or interest, or a good faith acquisition has occurred;

(d) the steps required for the realisation of book entry securities collateral following the occurrence of an enforcement event.

Article 10

Report by the Commission

Not later than 27 December 2006, the Commission shall present a report to the European Parliament and the Council on the application of this Directive, in particular on the application of Article 1(3), Article 4(3) and Article 5, accompanied where appropriate by proposals for its revision.

Article 11

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 27 December 2003 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 12

Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Communities.

Article 13

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 6 June 2002.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	A. M. BIRULÉS Y BERTRÁN

3.3 NATIONAL IMPLEMENTING MEASURES[1]

BELGIUM

Loi du 15 décembre 2004 relative aux sûretés financières et portant des dispositions fiscales diverses en matière de conventions constitutives de sûreté réelle et de prêts portant sur des instruments financiers (Moniteur belge du 01/02/2005, p. 2961).

Wet van 15 december 2004 betreffende financiële zekerheden en houdende diverse fiscale bepalingen inzake zakelijkezekerheidsoveenkomsten en leningen met betrekking tot financiële instrumenten (Belgisch Staatsblad van 01/02/2005, bldz/2961).

BULGARIA

Закон за договорите за финансово обезпечение, публикуван в Държавен вестник, брой 68 от 22.08.2006.

(English Translation: Financial Collateral Arrangements Law, published in Darjaven Vestnik, issue 68 of 22.08.2006.)

CZECH REPUBLIC

1. Zákon č. 97/1963 Sb., o mezinárodním právu soukromém a procesním.

2. Občanský zákoník.

3. Zákon o konkursu a vyrovnání.

4. Zákon č. 509/1991 Sb., kterým se mění, doplňuje a upravuje občanský zákoník.

5. Obchodní zákoník.

6. Zákon č. 21/1992 Sb., o bankách.

7. Zákon č. 122/1993 Sb., kterým se mění a doplňuje zákon č. 328/1991 Sb., o konkursu a vyrovnání.

8. Zákon č. 42/1994 Sb., o penzijním připojištění se státním příspěvkem a o změnách některých zákonů souvisejících s jeho zavedením.

1 The data given in this chapter is for information only and no undertaking is given or implied concerning the accuracy or completeness of the data or concerning the legislation to which this data relates.

9. Zákon, kterým se mění a doplňuje zákon č. 21/1992 Sb., o bankách, ve znění pozdějších předpisů, doplňuje zákon č. 513/1991 Sb., obchodní zákoník, ve znění pozdějších předpisů, a zákon č. 328/1991 Sb., o konkurzu a vyrovnání, ve znění pozdějších předpisů.

10. Zákon č. 87/1995 Sb., o spořitelních a úvěrních družstvech a některých opatřeních s tím souvisejících a o doplnění zákona České národní rady č. 586/1992 Sb., o daních z příjmů, ve znění pozdějších předpisů.

11. Zákon, kterým se mění zákon č. 21/1992 Sb., o bankách, ve znění pozdějších předpisů a některé další zákony.

12. Zákon č. 363/1999 Sb., o pojišťovnictví a o změně některých souvisejících zákonů (zákon o pojišťovnictví).

13. Zákon č. 126/2002 Sb., kterým se mění zákon č. 21/1992 Sb., o bankách, ve znění pozdějších předpisů, zákon č. 219/1995 Sb., devizový zákon, ve znění pozdějších předpisů, zákon č. 593/1992 Sb., o rezervách pro zjištění základu daně z příjmů, ve znění pozdějších předpisů, zákon č. 239/2001 Sb., o České konsolidační agentuře a o změně některých zákonů (zákon o České konsolidační agentuře), ve znění zákona č. 15/2002 Sb., zákon č. 513/1991 Sb., obchodní zákoník, ve znění pozdějších předpisů, a zákon č. 363/1999 Sb., o pojišťovnictví a o změně některých souvisejících zákonů (zákon o pojišťovnictví), ve znění pozdějších předpisů.

14. Zákon, kterým se mění zákon č. 363/1999 Sb., o pojišťovnictví a o změně některých souvisejících zákonů (zákon o pojišťovnictví), ve znění pozdějších předpisů, a některé další zákony.

15. Zákon č. 189/2004 Sb., o kolektivním investování.

16. Zákon č. 256/2004 Sb., o podnikání na kapitálovém trhu.

17. Zákon č. 377/2005 Sb., o doplňkovém dozoru nad bankami, spořitelními a úvěrními družstvy, institucemi elektronických peněz, pojišťovnami a obchodníky s cennými papíry ve finančních konglomerátech a o změně některých dalších zákonů (zákon o finančních konglomerátech).

DENMARK

Lov 2003-12-19 nr. 1171 om ændring af lov om værdipapirhandel m.v., lov om finansiel virksomhed med flere love.

GERMANY

Gesetz vom 5. April 2004 zur Umsetzung der Richtlinie 2002/47/EG vom 6. Juni 2002 über Finanzsicherheiten und zur Änderung des Hypothekenbankgesetzes und anderer Gesetze (BGBl. I 2004, 502).

Codes/Acts amended for the implementation:

– Insolvenzordnung (Insolvency Code, InsO): §§ 21. Abs. 2, 81 Abs. 3, 96 Abs. 2, 104 Überschrift sowie Abs. 2 und 3, 130 Abs. 1, 147 Abs. 1, 166 Abs. 2 und 3, 223 Abs. 1 und 340 Abs. 3

– Einführungsgesetz zur Insolvenzordnung (Act introducing the Insolvency Code, EGInsO): Art 103b

– Bürgerliches Gesetzbuch (Civil Code, BGB): § 1259, § 1279, § 1295

– Depotgesetz (Safe Custody Act, DepotG): § 16

– Kreditwesengesetz (Banking Act, KWG): §§ 1 Abs. 16 und 17, 24b Abs. 1, 46 a Abs. 1

– Versicherungsaufsichtsgesetz (Insurance Supervision Act, VAG): § 89 Abs. 1

– Gesetz über Bausparkassen (Building Societies Act, BausparkG): § 15

ESTONIA

1. Asjaõigusseadus.

2. Võlaõigusseadus.

3. Pankrotiseadus.

4. Krediidiasutuste seadus.

5. Kindlustustegevuse seadus.

6. Eesti väärtpaberite keskregistri seadus.

7. Rahvusvahelise eraõiguse seadus.

8. Väärtpaberituru seadus.

9. Kindlustustegevuse seadus.

10. Asjaõigusseaduse, Eesti väärtpaberite keskregistri seaduse, krediidiasutuste seaduse, kindlustustegevuse seaduse, pankrotiseaduse, võlaõigusseaduse, rahvusvahelise eraõiguse seaduse ja väärtpaberituru seaduse muutmise seadus.

IRELAND

1. European Communities (Financial Collateral Arrangements) Regulations 2004. S.I. No. 1 of 2004.

2. European Communities (Financial Collateral Arrangements) (Amendment) Regulations 2004. S.I. No. 89 of 2004.

GREECE

Νόμος 3301/2004, ΦΕΚ Α'263/23.12.2004, 'Συμφωνίες παροχής χρηματοοικονομικής ασφάλειας, εφαρμογή των Διεθνών Λογιστικών Προτύπων και άλλες διατάξεις'.

SPAIN

Real decreto ley 5 /2005, de 11 de marzo, de reformas urgentes para el impulso a la productividad y para la mejora de la contratación pública (del artículo segundo al artículo decimoséptimo y disposición adicional tercera).

FRANCE

Code Monétaire et Financier, Livre 4 relatif aux Marchés, Titre 3 relatif aux négociations sur instruments financiers, chapitre 1er relatif aux dispositions générales:

Section 1: transfert de propriété des titres et mise en gage:

– Article L431-4: régime du nantissement de compte d'instrument financier

Section 2: compensation et cessions de créances :

– article L431-7: champ d'application des sections 2 et 3 et compensation multilatérale avec déchéance du terme

– article L431-7-1: cession simplifiée de créances

– article L431-7-2: immunisation de la compensation et de la cession de créances vis-à-vis du droit de la faillite.

Section 3: Garanties

– article L431-7-3: simplification de la constitution et de la réalisation des garanties à titre de sûreté et à titre translatif de propriété

– article L431-7-4: opposabilité en droit français des garanties constituées sous un droit étranger

– article L431-7-5: immunisation des garanties vis-à-vis du droit de la faillite.

ITALY

Decreto legislativo 21 maggio 2004 n. 170, "Attuazione della direttiva 2002/47/CE, in materia di contratti di garanzia finanziaria", in G.U., serie gen., 15 luglio 2004 n. 164.

CYPRUS

Ο περί των Συμφωνιών Παροχής Χρηματοοικονομικής Εξασφάλισης Νόμος του 2004, N. 43(I)/2004.

LATVIA

1. Finanšu instrumentu tirgus likums.

2. Finanšu nodrošinājuma likums.

3. Likums "Par uzņēmumu un uzņēmējsabiedrību maksātnespēju".

LITHUANIA

1. Lietuvos Respublikos civilinis kodeksas, civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas Nr. VIII – 1864.

2. Lietuvos Respublikos atsiskaitymų baigtinumo mokėjimo ir vertybinių popierių atsiskaitymo sistemose įstatymo 2 ir 9 straipsnių pakeitimo įstatymas Nr. IX-2128.

3. Lietuvos Respublikos įmonių bankroto įstatymo 10 ir 14 straipsnių pakeitimo įstatymas Nr. IX-2129.

4. Lietuvos Respublikos įmonių restruktūrizavimo įstatymo 9 straipsnio pakeitimo įstatymas Nr. IX-2130.

5. Lietuvos Respublikos Lietuvos banko įstatymo 53 straipsnio pakeitimo įstatymas Nr. IX-2131.

6. Lietuvos Respublikos finansinio užtikrinimo susitarimų įstatymas Nr. IX-2127.

7. Lietuvos Respublikos Lietuvos banko įstatymo 1, 6, 7, 8, 11, 12, 14, 18, 19, 20, 25, 31, 33, 35, 36, 38, 47, 49, 50, 53, 54, 54^1, 55 straipsnių, ketvirtojo ir penktojo skirsnių pavadinimų pakeitimo, 26, 27, 28, 29, 30, 32, 37 straipsnių pripažinimo netekusiais galios ir įstatymo priedo papildymo įstatymas Nr. X-569.

LUXEMBOURG

Loi du 5 août 2005 sur les contrats de garantie financière portant:– transposition de la directive 2002/47/CE du Parlement Européen et du Conseil du 6 juin 2002 concernant les contrats de garantie financière;– modification du Code de Commerce;– modification de la loi du 1er août 2001 concernant la circulation de titres et d'autres instruments fongibles;– modification de la loi du 5 avril 1993 relative au secteur financier;– modification du règlement grand-ducal du 18 décembre 1981 concernant les dépôts fongibles de métaux précieux et modifiant l'article 1er du règlement grand-ducal du 17 février 1971 concernant la circulation de valeurs mobilières;– abrogation de la loi du 21 décembre 1994 relative aux opérations de mise en pension;– abrogation de la loi du 1er août 2001 relative au transfert de propriété à titre de garantie.

HUNGARY

1. 1959. évi IV. törvény a Magyar Köztársaság Polgári Törvénykönyvéről.

2. 1979. évi 13. évi törvényerejű rendelet a nemzetközi magánjogról.

3. 2001. évi CXX. törvény a tőkepiacról.

4. 1994. évi LIII. törvény a bírósági végrehajtásról.

5. 1991. évi XLIX. törvény a csődeljárásról és a felszámolási eljárásról.

MALTA

Set-off and Netting on Insolvency Act (Cap. 459) – Financial Collateral Arrangements Regulations, 2004:

LN 177 of 2004, as amended by LN 388 of 2004, LN 417 of 2004, LN 53 of 2005 and LN 401 of 2005.

NETHERLANDS

Wet van 22 december 2005 tot uitvoering van Richtlijn nr. 2002/47/EG van het Europees Parlement en de Raad van de Europese Unie van 6 juni 2002 betreffende financiëlezekerheidsovereenkomsten. Staatsblad 2006, 15/16.

AUSTRIA

Bundesgesetz über Sicherheiten auf den Finanzmärkten (Finanzsicherheiten-Gesetz – FinSG), BGBl. I No. 117/2003, Section I.

POLAND

1. Ustawa z 2 kwietnia 2004 o niektórych zabezpieczeniach finansowych.

2. Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego.

3. Ustawa z 28 lutego 2003 Prawo upadłościowe i naprawcze.

PORTUGAL

Decreto-Lei n.° 105/2004 de 8 de Maio (D.R. Série I-A, n.º 108, 8/5/2004, p. 2939).

ROMANIA

Ordonanța nr. 9 din 22 ianuarie 2004 privind unele contracte de garanție financiară, publicată în Monitorul Oficial nr. 78 din 30 ianuarie 2004, aprobată cu modificări și completări de Legea nr. 222 pentru aprobarea Ordonanței Guvernului nr. 9/2004 privind unele contracte de garanție financiară (Monitorul Oficial nr. 508 din 7 iunie 2004).

SLOVENIA

Zakon o finančnih zavarovanjih (Uradni list RS, št. 81/06 - uradno prečiščeno besedilo).

SLOVAKIA

1. Zákon č. 635/2004 Z. z., ktorým sa mení a dopĺňa zákon č. 566/2001 Z. z. o cenných papieroch a investičných službách a o zmene a doplnení niektorých zákonov (zákon o cenných papieroch) v znení neskorších predpisov a o zmene a doplnení niektorých zákonov.

2. Zákon č. 7/2005 Z. z. o konkurze a reštrukturalizácii a o zmene a doplnení niektorých zákonov.

3. Zákon č. 336/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 566/2001 Z. z. o cenných papieroch a investičných službách a o zmene a doplnení niektorých zákonov (zákon o cenných papieroch) v znení neskorších predpisov a o zmene a doplnení niektorých zákonov.

FINLAND

1. Rahoitusvakuuslaki, 11/20.1.2004.

2. Laki arvopaperimarkkinalain 4 luvun 5 §:n muuttamisesta, 12/20.1.2004.

3. Laki arvo-osuustilleistä annetun lain muuttamisesta, 13/20.1.2004.

SWEDEN

1. 5 kap. 16 § and 8 kap. 10 § Konkurslagen (1987:672).

2. 3 kap. 1 and 3 §§ lagen (1991:980) om handel med finansiella instrument2 kap. 20 and 21 §§ lagen (1996:764) om företagsrekonstruktion.

3. 15 kap. 10 § lagen (2004:297) om bank- och finansieringsrörelse.

UNITED KINGDOM

The Financial Collateral Arrangements (No. 2) Regulations 2003, SI 2003/3226.

Gibraltar: the Financial Collateral Arrangements Act 2004, Act No. 2004-32, as amended by the Financial Collateral Arrangements (Amendment) Act 2005, Act No. 2005-28.

3.4 RELATED EMI/ECB OPINIONS

ECB Opinion on the Financial Collateral Directive (CON/2001/13), EU, 13.06.2001.

ECB Opinion on financial collateral arrangements (CON/2003/11), Austria, 26.6.2003.

ECB Opinion on financial collateral arrangements (CON/2004/27), Belgium, 4.8.2004.

ECB Opinion on financial collateral arrangements (CON/2005/12), Luxembourg, 25.5.2005.

ECB Opinion on financial collateral (CON/2006/24), Slovenia, 22.5.2006.

4 WINDING-UP DIRECTIVE FOR CREDIT INSTITUTIONS

4.1 BACKGROUND

The Winding-up Directive for credit institutions was identified by the Financial Services Action Plan (FSAP) as a top priority and it fills a major gap in the financial services legislation. Its adoption came at a time when financial services and personal investment were booming, following slow progress (it was first proposed in 1985) due to disputes on, among other things, designating competent authorities.

Before the Winding-up Directive was adopted, if a credit institution which had branches in several Member States had to be wound up and its assets divided between its creditors, the authorities in each Member State where it was represented could initiate separate insolvency proceedings. This could lead to conflicts of jurisdiction and could mean that the creditors would not always be treated equally. Similarly, if an institution had to be reorganised, the approaches could differ from one Member State to another. The Winding-up Directive was designed to guarantee consumer protection in such cases.

Under the Winding-up Directive, if a credit institution with branches in other Member States fails, its winding-up will be subject to a single bankruptcy proceeding initiated in the Member State where the credit institution has its head office (the home Member State) and will thus be governed by a single bankruptcy law (in accordance with the principle of universality). This approach is consistent with the 'home state control' principle that is the basis for the Banking Directive[1]. Moreover, the single entity approach has been adopted for credit institutions. In relation to the Winding-up Directive, this means that a credit institution is wound up as one legal entity, and its assets in its home State and in any host State are encompassed in the liquidation.

The Winding-up Directive provides that reorganisation and winding-up measures will be fully effective in all Member States and as against third parties, and in particular they will be conducted in accordance with the principle of unity, so there is only one competent court/authority to decide on the reorganisation measures/insolvency of the debtor. Where reorganisation measures are decided on, the administrator must publish an extract from the decision in the Official Journal of the European Communities and in two national newspapers in each host Member State within a certain deadline.

Known creditors established in other Member States must be similarly informed (equal treatment). They must be informed rapidly and individually in the official language or one of the official languages of the home Member State. The heading of the form used must be

1 Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1).

in all the official languages of the EU and creditors may submit claims in the official language or one of the official languages of 'their' Member State. In addition, the liquidators must keep creditors regularly informed on the progress of the winding-up process.

The administrative or judicial authorities of the home Member State are required to inform, without delay and by any available means, the competent authorities of the Member State in which the branch is established of their decision to open winding-up proceedings.

A credit institution must be wound up in accordance with the laws applicable in its home Member State insofar as the Directive does not provide otherwise. If the head office of the institution is in a third country, the Member State in which the branch is established will be regarded as the home Member State.

The Winding-up Directive provides for carve-outs and conflict of laws rules as exceptions to the principle of the application of the home Member State rules as regards the effects of reorganisation measures and winding-up proceedings on employment relationships (law applicable to employment contracts), contracts conferring the right to make use of or acquire immovable property (law of the Member State in which the property is located) and rights in respect of immovable property subject to registration (law of the Member State in which the register is kept). The *lex rei sitae* will apply to the enforcement of proprietary rights in instruments recorded in a register or account (law of the Member State where the account or register is located). Transactions carried out in the context of a regulated market will be governed solely by the law of the contract which governs such transactions. Lastly, the effects of reorganisation measures and winding-up proceedings on a pending lawsuit will be governed by the law of the Member State in which the lawsuit is pending.

The Winding-up Directive provides for the recognition of set-off in the event of insolvency. Furthermore, it stipulates that netting agreements and repurchase agreements are to be governed solely by the law of the contract governing such agreements.

In the absence of, or following the failure of reorganisation measures, the authorisation of the institution will be withdrawn in accordance with Article 17(1)(d) of the Banking Directive (2006/48/EC).

The Winding-up Directive also provides that all administrative authorities involved in information or consultation procedures are bound by professional secrecy in accordance with the Banking Directive (2006/48/EC), whilst judicial authorities continue to be bound by existing national provisions.

4.2 DIRECTIVE TEXT

DIRECTIVE 2001/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 4 April 2001

on the reorganisation and winding up of credit institutions

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the Economic and Social Committee[2],

Having regard to the opinion of the European Monetary Institute[3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[4],

Whereas:

(1) In accordance with the objectives of the Treaty, the harmonious and balanced development of economic activities throughout the Community should be promoted through the elimination of any obstacles to the freedom of establishment and the freedom to provide services within the Community.

(2) At the same time as those obstacles are eliminated, consideration should be given to the situation which might arise if a credit institution runs into difficulties, particularly where that institution has branches in other Member States.

(3) This Directive forms part of the Community legislative framework set up by Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions[5]. It follows therefrom that,

1 OJ C 356, 31.12.1985, p. 55 and OJ C 36, 8.2.1988, p. 1.
2 OJ C 263, 20.10.1986, p. 13.
3 OJ C 332, 30.10.1998, p. 13.
4 Opinion of the European Parliament of 13 March 1987 (OJ C 99, 13.4.1987, p. 211), confirmed on 2 December 1993 (OJ C 342, 20.12.1993, p. 30), Council Common Position of 17 July 2000 (OJ C 300, 20.10.2000, p. 13) and Decision of the European Parliament of 16 January 2001 (not yet published in the Official Journal). Council Decision of 12 March 2001.
5 OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37).

while they are in operation, a credit institution and its branches form a single entity subject to the supervision of the competent authorities of the State where authorisation valid throughout the Community was granted.

(4) It would be particularly undesirable to relinquish such unity between an institution and its branches where it is necessary to adopt reorganisation measures or open winding-up proceedings.

(5) The adoption of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes[6], which introduced the principle of compulsory membership by credit institutions of a guarantee scheme in their home Member State, brings out even more clearly the need for mutual recognition of reorganisation measures and winding-up proceedings.

(6) The administrative or judicial authorities of the home Member State must have sole power to decide upon and to implement the reorganisation measures provided for in the law and practices in force in that Member State. Owing to the difficulty of harmonising Member States' laws and practices, it is necessary to establish mutual recognition by the Member States of the measures taken by each of them to restore to viability the credit institutions which it has authorised.

(7) It is essential to guarantee that the reorganisation measures adopted by the administrative or judicial authorities of the home Member State and the measures adopted by persons or bodies appointed by those authorities to administer those reorganisation measures, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims and any other measure which could affect third parties' existing rights, are effective in all Member States.

(8) Certain measures, in particular those affecting the functioning of the internal structure of credit institutions or managers' or shareholders' rights, need not be covered by this Directive to be effective in Member States insofar as, pursuant to the rules of private international law, the applicable law is that of the home State.

(9) Certain measures, in particular those connected with the continued fulfilment of conditions of authorisation, are already the subject of mutual recognition pursuant to Directive 2000/12/EC insofar as they do not affect the rights of third parties existing before their adoption.

(10) Persons participating in the operation of the internal structures of credit institutions as well as managers and shareholders of such institutions, considered in those capacities, are not to be regarded as third parties for the purposes of this Directive.

6 OJ L 135, 31.5.1994, p. 5.

(11) It is necessary to notify third parties of the implementation of reorganisation measures in Member States where branches are situated when such measures could hinder the exercise of some of their rights.

(12) The principle of equal treatment between creditors, as regards the opportunities open to them to take action, requires the administrative or judicial authorities of the home Member State to adopt such measures as are necessary for the creditors in the host Member State to be able to exercise their rights to take action within the time limit laid down.

(13) There must be some coordination of the role of the administrative or judicial authorities in reorganisation measures and winding-up proceedings for branches of credit institutions having head offices outside the Community and situated in different Member States.

(14) In the absence of reorganisation measures, or in the event of such measures failing, the credit institutions in difficulty must be wound up. Provision should be made in such cases for mutual recognition of winding-up proceedings and of their effects in the Community.

(15) The important role played by the competent authorities of the home Member State before winding-up proceedings are opened may continue during the process of winding up so that these proceedings can be properly carried out.

(16) Equal treatment of creditors requires that the credit institution is wound up according to the principles of unity and universality, which require the administrative or judicial authorities of the home Member State to have sole jurisdiction and their decisions to be recognised and to be capable of producing in all the other Member States, without any formality, the effects ascribed to them by the law of the home Member State, except where this Directive provides otherwise.

(17) The exemption concerning the effects of reorganisation measures and winding-up proceedings on certain contracts and rights is limited to those effects and does not cover other questions concerning reorganisation measures and winding-up proceedings such as the lodging, verification, admission and ranking of claims concerning those contracts and rights and the rules governing the distribution of the proceeds of the realisation of the assets, which are governed by the law of the home Member State.

(18) Voluntary winding up is possible when a credit institution is solvent. The administrative or judicial authorities of the home Member State may nevertheless, where appropriate, decide on a reorganisation measure or winding-up proceedings, even after voluntary winding up has commenced.

(19) Withdrawal of authorisation to pursue the business of banking is one of the consequences which winding up a credit institution necessarily entails. Withdrawal should not, however, prevent certain activities of the institution from continuing insofar as is necessary or

appropriate for the purposes of winding up. Such a continuation of activity may nonetheless be made subject by the home Member State to the consent of, and supervision by, its competent authorities.

(20) Provision of information to known creditors on an individual basis is as essential as publication to enable them, where necessary, to lodge their claims or submit observations relating to their claims within the prescribed time limits. This should take place without discrimination against creditors domiciled in a Member State other than the home Member State, based on their place of residence or the nature of their claims. Creditors must be kept regularly informed in an appropriate manner throughout winding-up proceedings.

(21) For the sole purpose of applying the provisions of this Directive to reorganisation measures and winding-up proceedings involving branches located in the Community of a credit institution of which the head office is situated in a third country, the definitions of "home Member State", "competent authorities" and "administrative or judicial authorities" should be those of the Member State in which the branch is located.

(22) Where a credit institution which has its head office outside the Community possesses branches in more than one Member State, each branch should receive individual treatment in regard to the application of this Directive. In such a case, the administrative or judicial authorities and the competent authorities as well as the administrators and liquidators should endeavour to coordinate their activities.

(23) Although it is important to follow the principle that the law of the home Member State determines all the effects of reorganisation measures or winding-up proceedings, both procedural and substantive, it is also necessary to bear in mind that those effects may conflict with the rules normally applicable in the context of the economic and financial activity of the credit institution in question and its branches in other Member States. In some cases reference to the law of another Member State represents an unavoidable qualification of the principle that the law of the home Member State is to apply.

(24) That qualification is especially necessary to protect employees having a contract of employment with a credit institution, ensure the security of transactions in respect of certain types of property and protect the integrity of regulated markets functioning in accordance with the law of a Member State on which financial instruments are traded.

(25) Transactions carried out in the framework of a payment and settlement system are covered by Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems[7].

7 OJ L 166, 11.6.1998, p. 45.

(26) The adoption of this Directive does not call into question the provisions of Directive 98/26/EC according to which insolvency proceedings must not have any effect on the enforceability of orders validly entered into a system, or on collateral provided for a system.

(27) Some reorganisation measures or winding-up proceedings involve the appointment of a person to administer them. The recognition of his appointment and his powers in all other Member States is therefore an essential factor in the implementation of decisions taken in the home Member State. However, the limits within which he may exercise his powers when he acts outside the home Member State should be specified.

(28) Creditors who have entered into contracts with a credit institution before a reorganisation measure is adopted or winding-up proceedings are opened should be protected against provisions relating to voidness, voidability or unenforceability laid down in the law of the home Member State, where the beneficiary of the transaction produces evidence that in the law applicable to that transaction there is no available means of contesting the act concerned in the case in point.

(29) The confidence of third-party purchasers in the content of the registers or accounts regarding certain assets entered in those registers or accounts and by extension of the purchasers of immovable property should be safeguarded, even after winding-up proceedings have been opened or a reorganisation measure adopted. The only means of safeguarding that confidence is to make the validity of the purchase subject to the law of the place where the immovable asset is situated or of the State under whose authority the register or account is kept.

(30) The effects of reorganisation measures or winding-up proceedings on a lawsuit pending are governed by the law of the Member State in which the lawsuit is pending, by way of exception to the application of the lex concursus. The effects of those measures and procedures on individual enforcement actions arising from such lawsuits are governed by the legislation of the home Member State, in accordance with the general rule established by this Directive.

(31) Provision should be made for the administrative or judicial authorities in the home Member State to notify immediately the competent authorities of the host Member State of the adoption of any reorganisation measure or the opening of any winding-up proceedings, if possible before the adoption of the measure or the opening of the proceedings, or, if not, immediately afterwards.

(32) Professional secrecy as defined in Article 30 of Directive 2000/12/EC is an essential factor in all information or consultation procedures. For that reason it should be respected by all the administrative authorities taking part in such procedures, whereas the judicial authorities remain, in this respect, subject to the national provisions relating to them,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Directive shall apply to credit institutions and their branches set up in Member States other than those in which they have their head offices, as defined in points (1) and (3) of Article 1 of Directive 2000/12/EC, subject to the conditions and exemptions laid down in Article 2(3) of that Directive.

2. The provisions of this Directive concerning the branches of a credit institution having a head office outside the Community shall apply only where that institution has branches in at least two Member States of the Community.

Article 2

Definitions

For the purposes of this Directive:

– "home Member State" shall mean the Member State of origin within the meaning of Article 1, point (6) of Directive 2000/12/EC;

– "host Member State" shall mean the host Member State within the meaning of Article 1, point (7) of Directive 2000/12/EC;

– "branch" shall mean a branch within the meaning of Article 1, point (3) of Directive 2000/12/EC;

– "competent authorities" shall mean the competent authorities within the meaning of Article 1, point (4) of Directive 2000/12/EC;

– "administrator" shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer reorganisation measures;

– "administrative or judicial authorities" shall mean such administrative or judicial authorities of the Member States as are competent for the purposes of reorganisation measures or winding-up proceedings;

– “reorganisation measures” shall mean measures which are intended to preserve or restore the financial situation of a credit institution and which could affect third parties’ pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

– “liquidator” shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer winding-up proceedings;

– “winding-up proceedings” shall mean collective proceedings opened and monitored by the administrative or judicial authorities of a Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;

– “regulated market” shall mean a regulated market within the meaning of Article 1, point (13) of Directive 93/22/EEC;

– “instruments” shall mean all the instruments referred to in Section B of the Annex to Directive 93/22/EEC.

TITLE II

REORGANISATION MEASURES

A. Credit institutions having their head offices within the Community

Article 3

Adoption of reorganisation measures – applicable law

1. The administrative or judicial authorities of the home Member State shall alone be empowered to decide on the implementation of one or more reorganisation measures in a credit institution, including branches established in other Member States.

2. The reorganisation measures shall be applied in accordance with the laws, regulations and procedures applicable in the home Member State, unless otherwise provided in this Directive.

They shall be fully effective in accordance with the legislation of that Member State throughout the Community without any further formalities, including as against third parties in other Member States, even where the rules of the host Member State applicable to them do not provide for such measures or make their implementation subject to conditions which are not fulfilled.

The reorganisation measures shall be effective throughout the Community once they become effective in the Member State where they have been taken.

Article 4

Information for the competent authorities of the host Member State

The administrative or judicial authorities of the home Member State shall without delay inform, by any available means, the competent authorities of the host Member State of their decision to adopt any reorganisation measure, including the practical effects which such a measure may have, if possible before it is adopted or otherwise immediately thereafter. Information shall be communicated by the competent authorities of the home Member State.

Article 5

Information for the supervisory authorities of the home Member State

Where the administrative or judicial authorities of the host Member State deem it necessary to implement within their territory one or more reorganisation measures, they shall inform the competent authorities of the home Member State accordingly. Information shall be communicated by the host Member State's competent authorities.

Article 6

Publication

1. Where implementation of the reorganisation measures decided on pursuant to Article 3(1) and (2) is likely to affect the rights of third parties in a host Member State and where an appeal may be brought in the home Member State against the decision ordering the measure, the administrative or judicial authorities of the home Member State, the administrator or any person empowered to do so in the home Member State shall publish an extract from the decision in the Official Journal of the European Communities and in two national newspapers in each host Member State, in order in particular to facilitate the exercise of the right of appeal in good time.

2. The extract from the decision provided for in paragraph 1 shall be forwarded at the earliest opportunity, by the most appropriate route, to the Office for Official Publications of the European Communities and to the two national newspapers in each host Member State.

3. The Office for Official Publications of the European Communities shall publish the extract at the latest within twelve days of its dispatch.

4. The extract from the decision to be published shall specify, in the official language or languages of the Member States concerned, in particular the purpose and legal basis of the decision taken, the time limits for lodging appeals, specifically a clearly understandable indication of the date of expiry of the time limits, and the full address of the authorities or court competent to hear an appeal.

5. The reorganisation measures shall apply irrespective of the measures prescribed in paragraphs 1 to 3 and shall be fully effective as against creditors, unless the administrative or judicial authorities of the home Member State or the law of that State governing such measures provide otherwise.

Article 7

Duty to inform known creditors and right to lodge claims

1. Where the legislation of the home Member State requires lodgement of a claim with a view to its recognition or provides for compulsory notification of the measure to creditors who have their domiciles, normal places of residence or head offices in that State, the administrative or judicial authorities of the home Member State or the administrator shall also inform known creditors who have their domiciles, normal places of residence or head offices in other Member States, in accordance with the procedures laid down in Articles 14 and 17(1).

2. Where the legislation of the home Member State provides for the right of creditors who have their domiciles, normal places of residence or head offices in that State to lodge claims or to submit observations concerning their claims, creditors who have their domiciles, normal places of residence or head offices in other Member States shall also have that right in accordance with the procedures laid down in Article 16 and Article 17(2).

B. Credit institutions having their head offices outside the Community

Article 8

Branches of third-country credit institutions

1. The administrative or judicial authorities of the host Member State of a branch of a credit institution having its head office outside the Community shall without delay inform, by any available means, the competent authorities of the other host Member States in which the institution has set up branches which are included on the list referred to in Article 11 of Directive 2000/12/EC and published each year in the Official Journal of the European Communities, of their decision to adopt any reorganisation measure, including the practical effects which that measure may have, if possible before it is adopted or otherwise immediately thereafter. Information shall be communicated by the competent authorities of

the host Member State whose administrative or judicial authorities decide to apply the measure.

2. The administrative or judicial authorities referred to in paragraph 1 shall endeavour to coordinate their actions.

TITLE III

WINDING-UP PROCEEDINGS

A. Credit institutions having their head offices within the Community

Article 9

Opening of winding-up proceedings – Information to be communicated to other competent authorities

1. The administrative or judicial authorities of the home Member State which are responsible for winding up shall alone be empowered to decide on the opening of winding-up proceedings concerning a credit institution, including branches established in other Member States.

A decision to open winding-up proceedings taken by the administrative or judicial authority of the home Member State shall be recognised, without further formality, within the territory of all other Member States and shall be effective there when the decision is effective in the Member State in which the proceedings are opened.

2. The administrative or judicial authorities of the home Member State shall without delay inform, by any available means, the competent authorities of the host Member State of their decision to open winding-up proceedings, including the practical effects which such proceedings may have, if possible before they open or otherwise immediately thereafter. Information shall be communicated by the competent authorities of the home Member State.

Article 10

Law applicable

1. A credit institution shall be wound up in accordance with the laws, regulations and procedures applicable in its home Member State insofar as this Directive does not provide otherwise.

2. The law of the home Member State shall determine in particular:

(a) the goods subject to administration and the treatment of goods acquired by the credit institution after the opening of winding-up proceedings;

(b) the respective powers of the credit institution and the liquidator;

(c) the conditions under which set-offs may be invoked;

(d) the effects of winding-up proceedings on current contracts to which the credit institution is party;

(e) the effects of winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending, as provided for in Article 32;

(f) the claims which are to be lodged against the credit institution and the treatment of claims arising after the opening of winding-up proceedings;

(g) the rules governing the lodging, verification and admission of claims;

(h) the rules governing the distribution of the proceeds of the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in re or through a set-off;

(i) the conditions for, and the effects of, the closure of insolvency proceedings, in particular by composition;

(j) creditors' rights after the closure of winding-up proceedings;

(k) who is to bear the costs and expenses incurred in the winding-up proceedings;

(l) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 11

Consultation of competent authorities before voluntary winding up

1. The competent authorities of the home Member State shall be consulted in the most appropriate form before any voluntary winding-up decision is taken by the governing bodies of a credit institution.

2. The voluntary winding up of a credit institution shall not preclude the adoption of a reorganisation measure or the opening of winding-up proceedings.

Article 12

Withdrawal of a credit institution's authorisation

1. Where the opening of winding-up proceedings is decided on in respect of a credit institution in the absence, or following the failure, of reorganisation measures, the authorisation of the institution shall be withdrawn in accordance with, in particular, the procedure laid down in Article 22(9) of Directive 2000/12/EC.

2. The withdrawal of authorisation provided for in paragraph 1 shall not prevent the person or persons entrusted with the winding up from carrying on some of the credit institution's activities insofar as that is necessary or appropriate for the purposes of winding up.

The home Member State may provide that such activities shall be carried on with the consent, and under the supervision, of the competent authorities of that Member State.

Article 13

Publication

The liquidators or any administrative or judicial authority shall announce the decision to open winding-up proceedings through publication of an extract from the winding-up decision in the Official Journal of the European Communities and at least two national newspapers in each of the host Member States.

Article 14

Provision of information to known creditors

1. When winding-up proceedings are opened, the administrative or judicial authority of the home Member State or the liquidator shall without delay individually inform known creditors who have their domiciles, normal places of residence or head offices in other Member States, except in cases where the legislation of the home State does not require lodgement of the claim with a view to its recognition.

2. That information, provided by the dispatch of a notice, shall in particular deal with time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims or observations relating to claims and the other measures laid down. Such a notice shall also indicate whether creditors whose claims are preferential or secured in re need lodge their claims.

Article 15

Honouring of obligations

Where an obligation has been honoured for the benefit of a credit institution which is not a legal person and which is the subject of winding-up proceedings opened in another Member State, when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings. Where such an obligation is honoured before the publication provided for in Article 13 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of winding-up proceedings; where the obligation is honoured after the publication provided for in Article 13 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

Article 16

Right to lodge claims

1. Any creditor who has his domicile, normal place of residence or head office in a Member State other than the home Member State, including Member States' public authorities, shall have the right to lodge claims or to submit written observations relating to claims.

2. The claims of all creditors whose domiciles, normal places of residence or head offices are in Member States other than the home Member State shall be treated in the same way and accorded the same ranking as claims of an equivalent nature which may be lodged by creditors having their domiciles, normal places of residence, or head offices in the home Member State

3. Except in cases where the law of the home Member State provides for the submission of observations relating to claims, a creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it arose and its amount, as well as whether he alleges preference, security in re or reservation of title in respect of the claim and what assets are covered by his security.

Article 17

Languages

1. The information provided for in Articles 13 and 14 shall be provided in the official language or one of the official languages of the home Member State. For that purpose a form shall be used bearing, in all the official languages of the European Union, the heading

"Invitation to lodge a claim. Time limits to be observed" or, where the law of the home Member State provides for the submission of observations relating to claims, the heading "Invitation to submit observations relating to a claim. Time limits to be observed".

2. Any creditor who has his domicile, normal place of residence or head office in a Member State other than the home Member State may lodge his claim or submit observations relating to his claim in the official language or one of the official languages of that other Member State. In that event, however, the lodgement of his claim or the submission of observations on his claim shall bear the heading "Lodgement of claim" or „Submission of observations relating to claims" in the official language or one of the official languages of the home Member State. In addition, he may be required to provide a translation into that language of the lodgement of claim or submission of observations relating to claims.

Article 18

Regular provision of information to creditors

Liquidators shall keep creditors regularly informed, in an appropriate manner, particularly with regard to progress in the winding up.

B. Credit institutions the head offices of which are outside the Community

Article 19

Branches of third-country credit institutions

1. The administrative or judicial authorities of the host Member State of the branch of a credit institution the head office of which is outside the Community shall without delay inform, by any available means, the competent authorities of the other host Member States in which the credit institution has set up branches on the list referred to in Article 11 of Directive 2000/12/EC and published each year in the Official Journal of the European Communities, of their decision to open winding-up proceedings, including the practical effects which these proceedings may have, if possible before they open or otherwise immediately thereafter. Information shall be communicated by the competent authorities of the first abovementioned host Member State.

2. Administrative or judicial authorities which decide to open proceedings to wind up a branch of a credit institution the head office of which is outside the Community shall inform the competent authorities of the other host Member States that winding-up proceedings have been opened and authorisation withdrawn.

Information shall be communicated by the competent authorities in the host Member State which has decided to open the proceedings.

3. The administrative or judicial authorities referred to in paragraph 1 shall endeavour to coordinate their actions.

Any liquidators shall likewise endeavour to coordinate their actions.

TITLE IV

PROVISIONS COMMON TO REORGANISATION MEASURES AND WINDING-UP PROCEEDINGS

Article 20

Effects on certain contracts and rights

The effects of a reorganisation measure or the opening of winding-up proceedings on:

(a) employment contracts and relationships shall be governed solely by the law of the Member State applicable to the employment contract;

(b) a contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated. That law shall determine whether property is movable or immovable;

(c) rights in respect of immovable property, a ship or an aircraft subject to registration in a public register shall be governed solely by the law of the Member State under the authority of which the register is kept.

Article 21

Third parties' rights in re

1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the rights in re of creditors or third parties in respect of tangible or intangible, movable or immovable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – belonging to the credit institution which are situated within the territory of another Member State at the time of the adoption of such measures or the opening of such proceedings.

2. The rights referred to in paragraph 1 shall in particular mean:

(a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;

(d) a right in re to the beneficial use of assets.

3. The right, recorded in a public register and enforceable against third parties, under which a right in re within the meaning of paragraph 1 may be obtained, shall be considered a right in re.

4. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).

Article 22

Reservation of title

1. The adoption of reorganisation measures or the opening of winding-up proceedings concerning a credit institution purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of the adoption of such measures or opening of such proceedings the asset is situated within the territory of a Member State other than the State in which the said measures were adopted or the said proceedings were opened.

2. The adoption of reorganisation measures or the opening of winding-up proceedings concerning a credit institution selling an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the adoption of such measures or the opening of such proceedings the asset sold is situated within the territory of a Member State other than the State in which such measures were adopted or such proceedings were opened.

3. Paragraphs 1 and 2 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).

Article 23

Set-off

1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim.

2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).

Article 24

Lex rei sitae

The enforcement of proprietary rights in instruments or other rights in such instruments the existence or transfer of which presupposes their recording in a register, an account or a centralised deposit system held or located in a Member State shall be governed by the law of the Member State where the register, account, or centralised deposit system in which those rights are recorded is held or located.

Article 25

Netting agreements

Netting agreements shall be governed solely by the law of the contract which governs such agreements.

Article 26

Repurchase agreements

Without prejudice to Article 24, repurchase agreements shall be governed solely by the law of the contract which governs such agreements.

Article 27

Regulated markets

Without prejudice to Article 24, transactions carried out in the context of a regulated market shall be governed solely by the law of the contract which governs such transactions.

Article 28

Proof of liquidators' appointment

1. The administrator or liquidator's appointment shall be evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the administrative or judicial authority of the home Member State.

A translation into the official language or one of the official languages of the Member State within the territory of which the administrator or liquidator wishes to act may be required. No legalisation or other similar formality shall be required.

2. Administrators and liquidators shall be entitled to exercise within the territory of all the Member States all the powers which they are entitled to exercise within the territory of the home Member State. They may also appoint persons to assist or, where appropriate, represent them in the course of the reorganisation measure or winding-up proceedings, in particular in host Member States and, specifically, in order to help overcome any difficulties encountered by creditors in the host Member State.

3. In exercising his powers, an administrator or liquidator shall comply with the law of the Member States within the territory of which he wishes to take action, in particular with regard to procedures for the realisation of assets and the provision of information to employees. Those powers may not include the use of force or the right to rule on legal proceedings or disputes.

Article 29

Registration in a public register

1. The administrator, liquidator or any administrative or judicial authority of the home Member State may request that a reorganisation measure or the decision to open winding-up proceedings be registered in the land register, the trade register and any other public register kept in the other Member States.

A Member State may, however, prescribe mandatory registration. In that event, the person or authority referred to in the preceding subparagraph shall take all the measures necessary to ensure such registration.

2. The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

Article 30

Detrimental acts

1. Article 10 shall not apply as regards the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole, where the beneficiary of these acts provides proof that:

– the act detrimental to the creditors as a whole is subject to the law of a Member State other than the home Member State, and

– that law does not allow any means of challenging that act in the case in point.

2. Where a reorganisation measure decided on by a judicial authority provides for rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole performed before adoption of the measure, Article 3(2) shall not apply in the cases provided for in paragraph 1 of this Article.

Article 31

Protection of third parties

Where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, a credit institution disposes, for consideration, of:

– an immovable asset,

– a ship or an aircraft subject to registration in a public register, or

– instruments or rights in such instruments the existence or transfer of which presupposes their being recorded in a register, an account or a centralised deposit system held or located in a Member State,

the validity of that act shall be governed by the law of the Member State within the territory of which the immovable asset is situated or under the authority of which that register, account or deposit system is kept.

Article 32

Lawsuits pending

The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the credit institution has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.

Article 33

Professional secrecy

All persons required to receive or divulge information in connection with the information or consultation procedures laid down in Articles 4, 5, 8, 9, 11 and 19 shall be bound by professional secrecy, in accordance with the rules and conditions laid down in Article 30 of Directive 2000/12/EC, with the exception of any judicial authorities to which existing national provisions apply.

TITLE V

FINAL PROVISIONS

Article 34

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 5 May 2004. They shall forthwith inform the Commission thereof.

National provisions adopted in application of this Directive shall apply only to reorganisation measures or winding-up proceedings adopted or opened after the date referred to in the first subparagraph. Measures adopted or proceedings opened before that date shall continue to be governed by the law that was applicable to them at the time of adoption or opening.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

3. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 35

Entry into force

This Directive shall enter into force on the date of its publication.

Article 36

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 4 April 2001.

For the European Parliament *The President*	*For the Council* *The President*
N. FONTAINE	B. ROSENGREN

4.3 NATIONAL IMPLEMENTING MEASURES[1]

BELGIUM

1. Loi du 19 novembre 2004 modifiant la loi du 22 mars 1993 relative au statut et au contrôle des établissements de crédit, la loi du 9 juillet 1975 relative au contrôle des entreprises d'assurances, la loi du 2 août 2002 relative à la surveillance du secteur financier et aux services financiers et la loi du 28 avril 1999 visant à transposer la Directive 98/26/CE du 19 mai 1998 concernant le caractère définitif du règlement dans les systèmes de paiement et de règlement des opérations sur titres (Moniteur belge du 28/12/2004, p. 85854).

   Wet van 19 november 2004 tot wijziging van de wet van 22 maart 1993 op het statuut van en het toezicht op de kredietinstellingen, de wet van 9 juli 1975 betreffende de controle der verzekeringsondernemingen, de wet van 2 augustus 2002 betreffende het toezicht op de financiële sector en de financiële diensten en de wet van 28 april 1999 houdende omzetting van Richtlijn 98/26/EG van 19 mei 1998 betreffende het definitieve karakter van de afwikkeling van betalingen en effectentransacties in betalings- en afwikkelingssystemen (Belgische Staatsblad van 28/12/2004, bldz. 85854).

2. Loi du 6 décembre 2004 modifiant notamment, en matière de procédures d'insolvabilité, la loi du 22 mars 1993 relative au statut et au contrôle des établissements de crédit et la loi du 19 juillet 1975 relative au contrôle des entreprises d'assurances (Moniteur belge du 28/12/2004, p. 85856).

   Wet van 6 december 2004 tot wijziging, wat insolventieprocedures betreft, van inzonderheid de wet van 22 maart 1993 op het statuut van en het toezicht op de kredietinstellingen en de wet van 9 juli 1975 betreffende de controle der verzekeringsondernemingen (Belgische Staatsblad van 28/12/2004, bldz. 85856).

BULGARIA

1. Закон за кредитните институции, публикуван в Държавен вестник, брой 59 от 21.07.2006 г.

   (English Translation: Law on Credit Institutions, published in Darjaven Vestnik, issue 59 of 21.07.2006.)

1 The data given in this chapter is for information only and no undertaking is given or implied concerning the accuracy or completeness of the data or concerning the legislation to which this data relates.

2. Закон за банковата несъстоятелност, публикуван в Държавен вестник, брой 92 от 27.09.2002 г., изменен 2003, 2004, 2005, 2006 г.

   (English Translation: *Law on Bank Bankruptcy*, published in Darjaven Vestnik, issue 92 of 27.09.2002, amended 2003, 2004, 2005, 2006.)

CZECH REPUBLIC

1. Zákon č. 21/1992 Sb., o bankách.

2. Zákon č. 156/1994 Sb., kterým se mění a doplňuje zákon č. 21/1992 Sb., o bankách, ve znění pozdějších předpisů, doplňuje zákon č. 513/1991 Sb., obchodní zákoník, ve znění pozdějších předpisů, a zákon č. 328/1991 Sb., o konkurzu a vyrovnání, ve znění pozdějších předpisů.

3. Zákon č. 16/1998 Sb., kterým se mění a doplňuje zákon č. 21/1992 Sb., o bankách, ve znění pozdějších předpisů.

4. Zákon č. 165/1998 Sb., kterým se mění zákon č. 21/1992 Sb., o bankách, ve znění pozdějších předpisů, a některé další zákony.

5. Zákon č. 126/2002 Sb., kterým se mění zákon č. 21/1992 Sb., o bankách, ve znění pozdějších předpisů, zákon č. 219/1995 Sb., devizový zákon, ve znění pozdějších předpisů, zákon č. 593/1992 Sb., o rezervách pro zjištění základu daně z příjmů, ve znění pozdějších předpisů, zákon č. 239/2001 Sb., o České konsolidační agentuře a o změně některých zákonů (zákon o České konsolidační agentuře), ve znění zákona č. 15/2002 Sb., zákon č. 513/1991 Sb., obchodní zákoník, ve znění pozdějších předpisů, a zákon č. 363/1999 Sb., o pojišťovnictví a o změně některých souvisejících zákonů (zákon o pojišťovnictví), ve znění pozdějších předpisů.

6. Zákon č. 87/1995 Sb., o spořitelních a úvěrních družstvech a některých opatřeních s tím souvisejících a o doplnění zákona České národní rady č. 586/1992 Sb., o daních z příjmů, ve znění pozdějších předpisů.

7. Zákon č. 100/2000 Sb., kterým se mění zákon č. 87/1995 Sb., o spořitelních a úvěrních družstvech a některých opatřeních s tím souvisejících a o doplnění zákona České národní rady č. 586/1992 Sb., o daních z příjmů, ve znění pozdějších předpisů, a některé další zákony.

8. Zákon č. 280/2004 Sb., kterým se mění zákon č. 87/1995 Sb., o spořitelních a úvěrních družstvech a některých opatřeních s tím souvisejících a o doplnění zákona č. 586/1992 Sb., o daních z příjmů, ve znění pozdějších předpisů, ve znění pozdějších předpisů, a zákon č. 586/1992 Sb., o daních z příjmů, ve znění pozdějších předpisů.

9. Zákon č. 256/2004 Sb., o podnikání na kapitálovém trhu.

10. Zákon č. 56/2006 Sb., kterým se mění zákon č. 256/2004 Sb., o podnikání na kapitálovém trhu, ve znění pozdějších předpisů, a další související zákony.

11. Zákon č. 377/2005 Sb., o doplňkovém dohledu nad bankami, spořitelními a úvěrními družstvy, institucemi elektronických peněz, pojišťovnami a obchodníky s cennými papíry ve finančních konglomerátech a o změně některých dalších zákonů (zákon o finančních konglomerátech).

12. Zákon č. 57/2006 Sb., o změně zákonů v souvislosti se sjednocením dohledu nad finančním trhem.

13. Zákon č. 513/1991 Sb., Obchodní zákoník.

14. Zákon č. 216/2005 Sb., kterým se mění zákon č. 513/1991 Sb., obchodní zákoník, ve znění pozdějších předpisů, zákon č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů, zákon č. 189/1994 Sb., o vyšších soudních úřednících, ve znění pozdějších předpisů, a zákon č. 358/1992 Sb., o notářích a jejich činnosti (notářský řád), ve znění pozdějších předpisů.

15. Zákon č. 97/1963 Sb., o mezinárodním právu soukromém a procesním.

16. Zákon č. 182/2006 Sb., o úpadku a způsobech jeho řešení (insolvenční zákon).

DENMARK

Bekendtgørelse 2004-06-24 nr. 674 om lovvalg mv. ved penge- og realkreditinstitutters samt udstedere af elektroniske penges betalingsstandsning, tvangsakkord, tvangsopløsning eller konkursI medfør af § 248 i lov om finansiel virksomhed, jf. lovbekendtgørelse nr. 1268 af 19. december 2003.

GERMANY

1. Gesetz vom 10. Dezember 2003 zur Umsetzung aufsichtrechtlicher Bestimmungen zur Sanierung und Liquidation von Versicherungsunternehmen und Kreditinstituten (BGBl. I 2003, 2478).

   Acts/Codes amended in course of the implementation:

Kreditwesengesetz (Banking Act, KWG): §§ 46 d, 46 e, 46 f (specific deviations for EU credit institutions from general conflict of law provisions in §§ 335 to 358 Insolvency Code).

2. Gesetz vom 14. März 2003 zur Neuregelung des Internationalen Insolvenzrechts (BGBl. I 2003, 345).

Acts/Codes amended in course of the implementation:

Insolvenzordnung (Insolvency Act/InsO): §§ 335 to 358 (codifying in general the conflict of law rules for international insolvencies – outside EU Reg. 2000/1346).

ESTONIA

1. Krediidiasutuste seadus.

2. Krediidiasutuste seaduse ja äriseadustiku muutmise seadus.

IRELAND

European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2004. S.I. No. 198 of 2004.

GREECE

Νόμος[2] 3458/2006, ΦΕΚ Α 94/8.5.2006 'Εξυγίανση και εκκαθάριση των πιστωτικών ιδρυμάτων και άλλες διατάξεις'.

SPAIN

Ley 6/2005, de 22 de abril, sobre saneamiento y liquidación de las entidades de crédito.

FRANCE

Code monétaire et financier: (Livre 6 relatif aux institutions en matière bancaire et financière, Titre 1 relatifs aux institutions communes aux établissements de crédit et aux

2 i.e. Law.

entreprises d'investissement, chapitre 3 relatif à la commission bancaire, section 6 relatif aux traitement des établissements de crédit et des entreprises d'investissement en difficulté, sous-section 2 relative aux mesures d'assainissement et de liquidation des établissements de crédit communautaires).

Partie législative: Articles L613-31-1 à L613-31-10

Partie réglementaire: Articles R613-24 à R613-27.

ITALY

Decreto legislativo 9 luglio 2004 n. 197, "Attuazione della direttiva 2001/24/CE in materia di risanamento e liquidazione degli enti creditizi", in G.U., serie gen., 5 agosto 2004 n. 182.

CYPRUS

1. Ο περί Τραπεζικών Εργασιών (Τροποποιητικός) (Αρ. 2) Νόμος του 2004, N.15(I)/2004. (Μέρος XIII (άρθρα 33–33N) των περί Τραπεζικών Εργασιών Νόμων του 1997–2005.)

2. Ο περί Συνεργατικών Εταιρειών (Τροποποιητικός) (Αρ. 2) Νόμος του 2004, N.170(I)/2004. (Μέρος XIIA (άρθρα 51A–51Γ) των περί Συνεργατικών Εταιρειών του 1985–2007.)

LATVIA

Kredītiestāžu likums.

LITHUANIA

1. Lietuvos Respublikos bankų įstatymas Nr. IX-2085.

2. Lietuvos Respublikos įmonių bankroto įstatymas Nr. IX-216.

3. Lietuvos Respublikos įmonių bankroto įstatymo 10 ir 14 straipsnių pakeitimo ir 32 straipsnio papildymo įstatymas Nr. IX-1600.

4. Lietuvos Respublikos įmonių bankroto įstatymo 1 straipsnio pakeitimo įstatymas Nr. IX-1711.

5. Lietuvos Respublikos įmonių bankroto įstatymo 4, 10 ir 18 straipsnių pakeitimo įstatymas Nr. IX-1463.

6. Lietuvos Respublikos įmonių bankroto įstatymo 10, 11, 13, 19, 23, 27, 32 straipsnių pakeitimo ir papildymo įstatymas Nr. IX-1332.

7. Lietuvos Respublikos įmonių bankroto įstatymo 11 ir 22 straipsnių papildymo įstatymas Nr. IX-1272.

8. Lietuvos Respublikos įmonių bankroto įstatymo 2, 6, 7, 8, 9, 10, 11, 12, 15, 26, 29, 32, 35, 37 straipsnių pakeitimo ir papildymo bei įstatymo papildymo ketvirtuoju (1) skirsniu ir 13(1) straipsniu įstatymas Nr. IX-1200.

9. Lietuvos Respublikos įmonių bankroto įstatymo 11 ir 31 straipsnių pakeitimo įstatymas Nr. IX-665.

10. Lietuvos Respublikos akcinių bendrovių įstatymo pakeitimo įstatymas Nr. IX-1889.

11. Lietuvos Respublikos Lietuvos banko įstatymo 8, 11, 42, 43, 45, 46 ir 47 straipsnių pakeitimo įstatymas Nr. IX-2069.

12. Lietuvos Respublikos civilinis kodeksas, civilinio kodekso pavirtinimo, įsigaliojimo ir įgyvendinimo įstatymas Nr. VIII-1864.

13. Lietuvos Respublikos bankų įstatymas Nr. IX-2085.

14. Lietuvos Respublikos bankų įstatymo 2, 14, 20, 46, 53, 55, 65, 69, 72, 90, 91, 92 straipsnių ir priedo pakeitimo įstatymas Nr. X-273.

15. Lietuvos Respublikos vertybinių popierių rinkos įstatymo pakeitimo ir papildymo įstatymas Nr. X-270.

LUXEMBOURG

Loi du 19 mars 2004 portant transposition dans la loi modifiée du 5 avril 1993 relative au secteur financier de la directive 2001/24/CE du Parlement européen et du Conseil du 4 avril 2001 concernant l'assainissement et la liquidation des établissements de crédit.

HUNGARY

1. 1996. évi CXII. törvény a hitelintézetekről és pénzügyi vállalkozásokról.

2. 2001. évi CXX. törvény a tőkepiacról.

3. 1999. évi CXXIV. törvény a Pénzügyi Szervezetek Állami Felügyeletéről.

4. 2006. évi V. törvény a cégnyilvánosságról, a bírósági cégeljárásról és a végelszámolásról.

5. 1997. évi CXXXII. törvény a külföldi székhelyű vállalkozások magyarországi fióktelepeiről és kereskedelmi képviseleteiről.

6. 1991. évi XLIX. törvény a csődeljárásról és a felszámolási eljárásról.

7. 1979. évi 13. évi törvényerejű rendelet a nemzetközi magánjogról.

8. 1959. évi IV. törvény a Magyar Köztársaság Polgári Törvénykönyvéről.

MALTA

Banking Act (Cap. 371) – Credit Institutions (Reorganisation and Winding-up) Regulations, 2004 – LN 228 of 2004.

NETHERLANDS

Wet van 7/4/2005 tot wijziging van het Wet toezicht kredietwezen 1992 en van de Faillissementswet in verband met de uitvoering van richtlijn nr. 2001/24/EG van het EP en de Raad van de EU van 4/4/2001 betreffende de sanering en de liquidatie van kredietinstellingen (PbEG L 125). Staatsblad 2005, 208.2. – Besluit van 27/4/2005, houdende vaststelling van het tijdstip van inwerkingtreding van de Wet van 7/4/2005 tot wijziging van het Wet toezicht kredietwezen 1992 en van de Faillissementswet in verband met de uitvoering van richtlijn nr. 2001/24/EG van het EP en de Raad van de EU van 4/4/2001 betreffende de sanering en de liquidatie van kredietinstellingen (PbEG L 125). Staatsblad 2005, 237.

AUSTRIA

Bundesgesetz, mit dem die Konkursordnung, die Ausgleichsordnung, das Insolvenzrechtseinführungsgesetz, das Bankwesengesetz und das Versicherungsaufsichtsgesetz

geändert werden (Bundesgesetz über das Internationale Insolvenzrecht – IIRG), BGBl. I No. 36/2003.

POLAND

1. Ustawa z 28 lutego 2003 Prawo upadłościowe i naprawcze

2. Ustawa z 29 sierpnia 1997 Prawo bankowe

3. Ustawa z dnia 29 lipca 2005 r. o obrocie instrumentami finansowymi

PORTUGAL

Decreto-lei n.º 199/2006 de 25 de Outubro (D.R., I Série, n.º 206 de 25/10/2006, p. 7382).

ROMANIA

Ordonanța Guvernului nr. 10 privind falimentul instituțiilor de credit, publicată în Monitorul Oficial nr. 84 din 30.01.2004, aprobată cu modificări şi completări de Legea nr. 278/2004 pentru aprobarea Ordonanței Guvernului nr. 10 privind procedura reorganizării judiciare şi a falimentului instituțiilor de credit (Monitorul Oficial, Partea I nr. 579 din 30 iunie 2004).

SLOVENIA

1. Zakon o bančništvu (Uradni list RS, št. 131/06).

2. Zakon o prisilni poravnavi, stečaju in likvidaciji (Uradni list RS, št. 67/93, 39/97 in 52/99).

3. Zakon o mednarodnem zasebnem pravu in postopku (Uradni list RS, št 56/99).

4. Zakon o finančnih zavarovanjih (Uradni list RS, št. 81/06 – uradno prečiščeno besedilo).

SLOVAKIA

1. Zákon č. 483/2001 Z. z. o bankách a o zmene a doplnení niektorých zákonov.

2. Zákon č. 149/2001 Z. z., ktorým sa mení a dopĺňa zákon Národnej rady Slovenskej republiky č. 566/1992 Zb. o Národnej banke Slovenska v znení neskorších predpisov a ktorým sa mení a dopĺňa zákon č. 21/1992 Zb. o bankách v znení neskorších predpisov.

3. Zákon Národnej rady Slovenskej republiky č. 566/1992 Zb. o Národnej banke Slovenska.

4. Zákon č. 603/2003 Z. z. , ktorým sa mení a dopĺňa zákon č. 483/2001 Z. z. o bankách a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.

5. Zákon č. 7/2005 Z. z. o konkurze a reštrukturalizácii a o zmene a doplnení niektorých zákonov.

FINLAND

1. Laki liikepankeista ja muista osakeyhtiömuotoisista luottolaitoksista annetun lain muuttmisesta, 408/19.5.2004.

2. Laki osuuspankeista ja muista osuuskuntamuotoisista luottolaitoksista annetun lain muuttamisesta, 409/19.5.2004.

3. Laki säästöpankkilain muuttamisesta, 410/19.5.2004.

4. Laki luottolaitostoiminnasta annetun lain 12 §:n muuttamisesta, 411/19.5.2004.

5. Laki talletuspankin toiminnan väliaikaisesta keskeyttämisestä annetun lain muuttamisesta, 412/19.5.2004.

6. Laki ulkomaisen luotto- ja rahoituslaitoksen toiminnasta Suomessa annetun lain muuttamisesta, 413/19.5.2004.

SWEDEN

1. Lag (2005:1047) om internationella förhållanden rörande försäkringsföretags och kreditinstituts insolvens.

2. Lag om ändring i lagen om ändring i förmånsrättslagen (1970:979).

UNITED KINGDOM

The Credit Institutions (Reorganisation and Winding up) Regulations 2004, SI 2004/1045.

Gibraltar: the Credit Institutions (Reorganisation and Winding Up) Act 2005, Act No. 2005-58.

4.4 RELATED EMI/ECB OPINIONS

ECB Opinion on the Winding-up Directive for credit institutions (CON/1996/2), EU, 30.10.1998.

5 REFERENCES, BIBLIOGRAPHICAL NOTES AND RELATED MATERIAL

5.1 REFERENCES

Bates, C., 'European regulatory reform: the pace quickens', Butterworths *Journal of International Banking and Financial Law*, April 2003, pp. 121-126.

Benjamin, J., *Interests in securities*, Oxford University Press 2000.

Benjamin, J., 'Conflicts of Law and Interests in Securities', in K. Tyson Quah: *Cross-Border Securities (Repo, Lending and Collateralisation)*, FT Law & Tax (1997).

Benjamin, J., 'Recharacterisation risk and conflict of laws', *Journal of International Banking and Financial Law*, 1997, and its updated version in the Oxford Colloquium on Collateral and Conflict of Laws (same review, special supplement, 1998).

Bossu, W., 'De Richtlijn betreffende financiëlezekerheidsovereenkomsten: inhoudelijke analyse', in M. Tison (ed.): *Sûretés bancaires et financières – Bancaire en financiële zekerheden, Série: Cahiers AEDBF/EVBFR*-Belgium No 15, Bruxelles, Bruylant, 2004.

Deguée, J.-P., 'La directive 2001/24/CE sur l'assainissement et la liquidation des établissements de crédit: une solution aux défaillances bancaires internationales?', *Euredia* 2001-2002/1.

Deguée, J.-P., 'The *Winding-up Directive finally establishes* uniform private international law for banking insolvency proceedings', European Business Law Review 2004, Vol. 15, No 1.

Deguée, J.-P., and Devos, D., 'La loi relative aux sûretés financières du 15 décembre 2004 – Lignes directrices', *Revue de Droit bancaire et financier*, 2005.

Devos, D., 'Legal protection of payment and securities settlement systems and of collateral transactions in European Union legislation', paper presented at the 2006 Seminar on current developments in monetary and financial law – Law And Financial Stability (IMF, October 2006); at *http://www.Imf.Org/External/Np/Seminars/Eng/2006/Mfl/Dd.Pdf*.

Devos, D., 'Specific Cross-Border Problems Regarding Bank Insolvencies and European Harmonization Efforts' in M. Giovanoli and G. Heinrich (Eds.): *International Bank Insolvencies – A Central Bank Perspective*, 1999.

Devos, D., 'Collateral transactions in Payment and Securities Settlement Systems: the EU framework' in (Belgian) *Revue de Droit bancaire et financier*, 2002.

Devos, D., 'The Directive 2002/47/EC on Financial Collateral Arrangements of 6 June 2002' published in September 2003 in *Mélanges offerts à Jean-Victor Louis*, Vol. II.

Devos, D., 'Protection juridique des systèmes de paiement et de règlement-titres en Belgique' in *Revue de la Banque*, 2000.

Devos, D., 'La directive européenne 98/26/CE concernant le caractère définitif du règlement dans les systèmes de paiement et de règlement des opérations sur titres', *Euredia* 1999.

Devos, D., 'The European Directive of 19 May 1998 on Settlement Finality in Payment and Securities Settlement Systems', in Prof. Ferrarini, and Hopt, Wymeersch (Eds.): *Capital Markets in the Age of the Euro*, Kluwer Law International 2002.

Economou, S., 'La proposition de directive européenne sur les contrats de garantie financière', Bull. *Joly Bourse*, 2002, chron., 1.

Fentiman, R., 'Cross-border securities collateral; Redefining recharacterisation risk', Oxford Colloquium, 1998.

Goode, R., 'Security Entitlements as Collateral and the Conflict of Laws', Oxford Colloquium 1998, Special supplement to the *Journal of International Banking and Financial law*.

Guynn, R., and N. Marchand, 'Transfer of pledge of securities held through depositories' in: *The law of cross-border securities transactions*, Sweet & Maxwell (1999).

Kanda, H., 'Financial Collateral Transactions – What are they?', ECB Insolvency Symposium, 30 September 2003.

Keijser, T. R. M. P., *Financial collateral arrangements: the European collateral directive considered from a property and insolvency law perspective*, Kluwer, Deventer 2006.

Keller, C., 'Die EG-Richtlinie 98/26 vom 19.5.1998 über die Wirksamkeit von Abrechnungen in Zahlungs- sowie Wertpapierliefer- und -abrechnungssystemen und ihre Umsetzung in Deutschland' in *Zeitschrift für Wirtschafts- und Bankrecht*, 2000.

Keller, C., 'Die Wertpapiersicherheit im Gemeinschaftsrecht', *Bank- und Kapitalmarktrecht* (BKR) 2002, pp. 347-348.

Löber, K., 'The developing EU legal framework for clearing and settlement of financial instruments', ECB Legal Working Paper series No 1 (2006); at *http://www.ecb.int/pub/pdf/scplps/ecblwpl.pdf*.

Löber, K., 'The changing legal landscape for clearing and settlement in the European Union', *Uniform Law Review* NS Vol. X 2005-1/2, p. 155 et seq.

Löber, K. and Klima, E., 'Directive 2002/47/EC on financial collateral arrangements and its implementation by the European Union Member States', *JIBLR* March 2006.

Löber, K., 'Der Entwurf einer Richtlinie für Finanzsicherheiten', BKR 3/2001.

Löber, K., 'Die EG-Richtlinie über Finanzsicherheiten', BKR 2002, p. 601.

Löber, K., 'The German Implementation of the EU Directive on Financial Collateral Arrangements', *JIBLR* 2005, p. 72 et seq.

Löber, K., 'Die Haager Konvention über das auf bestimmte Rechte an verwahrten Wertpapieren anwendbare Recht', *BKR* 2003, p. 265.

Löber, K., Paech, P., 'Interconnecting Law of Securities Holding and Transfer', *Journal of International Banking and Financial Law*, 1/2007.

Michalski, M. and Zdzieborski, R., 'Ustawa o niektórych zabezpieczeniach finansowych. Komentarz', Twigger, Warszawa, 2005.

Marino, R., 'Italy's implementation of directive 2002/47/CE on financial collateral arrangements: an overview', *European Business Law Review* 2005, Vol. 16, No 5.

Morton, G., 'Modernization of EU financial law: the directive on financial collateral arrangements', *Euredia*, 2003/1.

Obermüller and Hartenfels, 'Finanzsicherheiten', BKR 2004, p. 440.

Pagès, H., and D. Humphrey, 'Settlement finality as a public good in large-value payment systems', ECB Working Paper No 506, July 2005; at *http://www.ecb.int/pub/pdf/scpwps/ecbwp506.pdf*

Parolai, R., P. Stoffel-Munck, A. Fabrice, 'Les sûretés en matière financière projetées dans une ère nouvelle par la directive Collateral: l'introduction du droit d'utilisation : le "re-use" à la française, une quasi-propriété?', *Banque & droit: la pratique du droit bancaire* 2005, No 104, November-December.

Partsch, O., 'Analysis of the current legal framework for clearing and settlement services in the European Union', *Euredia* 2005, p. 15, p. 26 et seq.

Pigot, H., 'Steps towards the harmonisation of collateral law in Europe', *Butterworths Journal of International Banking and Financial Law*, October 2000.

Pitt, C., 'Improving the legal basis for settlement finality', *Butterworths Journal of International Banking and Financial Law*, October 2003.

Potok, R., 'Article 9(2) European Union finality directive', *Butterworths Journal of International Banking and Financial Law*, July-August 1999.

Potok, R., Cross-Border Collateral: Legal Risk and the Conflict of Laws, Butterworths 2002.

Potok, R., 'Legal certainty for securities held as collateral' in *International Financial Law Review*, December 1999.

Sekolec, J., 'The UNCITRAL Model Law on Cross-Border Insolvency', in M. Giovanoli and G. Heinrich (Eds): *International Bank Insolvencies – A Central Bank's Perspective*, 1999.

Seeldrayers, H., 'De Europese Richtlijn inzake zekerheidsovereenkomsten – Krachtlijnen en artikelsgewijze commentaar', *T. Fin. R.*, 2003-1 and 2003-2.

Smart, P., Cross-Border Insolvency (1998).

Stenström, M./Contact Group on the legal and institutional underpinnings of the international financial system, 'Cross-border aspects of insolvency', annex to Report on 'Insolvency Arrangements and Contract Enforceability', BIS, September 2002; at *http://www.bis.org/publ/gten06.pdf*

Turing, D., 'The EU Collateral Directive', *Butterworths Journal of International Banking and Financial Law*, May 2002.

Turing and Lester, 'Implementation of the EU Directive on Financial Collateral Arrangements in the United Kingdom', *JIBLR 2005*, p. 65 et seq.

T'Kint, F., and W. Derijcke, 'La directive 2002/47/CE concernant les contrats de garantie financière au regard des principes généraux du droit des sûretés', *Euredia*, 2003/1.

Vereecken, M., and Nijenhuis, A. (Eds.), Settlement finality in *the European Union: the EU directive and its implementation in selected jurisdictions*, The Hague, Kluwer 2003.

Wood, P. R., International Insolvency Treaties in Law and Practise of International Finance, Sweet & Maxwell (1995).

'The Oxford Colloquium on Collateral and Conflict of laws' held at St John's College (Oxford Univ.), *Butterworths Journal of International Banking and Financial Law*, September 1998.

5.2 FURTHER READING

Glossary of the European Monetary Institute's publication 'Payment Systems in the European Union', Blue Book 2nd ed., April 1996, at *http://www.ecb.int/pub/pdf/othemi/bluebook119en.pdf*

A glossary of terms used in payments and settlement systems, BIS, March 2003, at *http://www.bis.org/publ/cpss00b.pdf*

Report of the Committee on on Payment and Settlement Systems: 'Interbank Netting Schemes of the Central Banks of the Group of Ten Countries', BIS, November 1990, at *http://www.bis.org.publ/cpss04.pdf*

Report of the Committee on Payment and Settlement Systems: 'Cross-border Securities Settlements', BIS, 1995, at *http://www.bis.org.publ/cpss12.pdf*

Report of the Committee on Payment and Settlement Systems: 'Cross-border collateral arrangements', BIS, 2006, at *http://www.bis.org.publ/cpss71.pdf*

Standards on the use of securities settlement systems for the purposes of ESCB monetary policy transactions, EMI, 1998, at *http://www.ecb.int/mopo/pdf/implement/assets/sssstandards1998.pdf*

Developments in the EU framework for financial regulation, supervision and stability, ECB Monthly Bulletin Nov. 2004, p. 81, at *http://www.ecb.int/pub/pdf/mobu/mb200411en.pdf*

Integration and efficiency in collateral markets – a central bank perspective – Speech by Gertrude Tumpel-Gugerell, Member of the Executive Board of the ECB, Euroclear Collateral Solutions Workshop and Conference, Brussels, 1 March 2005, at *http://www.ecb.int/press/key/date/2005/html/sp050301.en.pdf*

EFMLG Report: Protection for bilateral insolvency set-off and netting agreements under EC law, October 2004, at *http://www.efmlg.org/Docs/report_on_netting_final_301004.pdf*

EFMLG Report: The regulation of close-out netting in the new Member States of the European Union, October 2005, at *http://www.efmlg.org/Docs/EN_EFMLG_netting%20report%20incl%20annex_clean_Oct2005.pdf*

Report from the Commission – Evaluation report on the Settlement Finality Directive 98/26/EC (EU 25) (COM(2005) 657 final), at *http://ec.europa.eu/internal_market/financial-markets/docs/settlement/evaluation_report_en.pdf*

Report from the Commission to the European Parliament and the Council Evaluation Report on the Financial Collateral Arrangements Directive (2002/47/EC) (COM(2006) 833 final), at *http://ec.europa.eu/internal_market/financial-markets/docs/collateral/fcd_report_en.pdf*

European Commission, DG Internal Market and Services, Financial Markets Infrastructure: Presentation on the EC Collateral Directive – at *http://ec.europa.eu/internal_market/financial-markets/docs/collateral/directive-presentation_en.pdf*

ISSN 1830760-4