

Banks and financial markets: settlement finality in payment and securities settlement systems; financial collateral arrangements as regards linked systems and credit claims

2008/0082(COD) - 06/05/2009 - Final act

PURPOSE: to extend the scope of Directive 2002/47/EC to credit claims and to clarify and simplify Directive 98/26/EC.

LEGISLATIVE ACT: Directive 2009/44/EC of the European Parliament and of the Council amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims.

CONTENT: following a first reading agreement with the European Parliament, the Council adopted a directive amending Directives 98/26/EC and Directive 2002/47/EC. This Directive responds to certain changes in the area of payment and securities settlement systems. The main change is the increasing number of linkages between systems, which, at the time when Directive 98/26/EC was drafted, used to operate almost exclusively on a national and independent basis.

The Directive points out that in the case of interoperable systems, a lack of coordination as to which rules apply on the moment of entry and irrevocability may expose participants in one system, or even the system operator itself, to the spill-over effects of a default in another system. In order to limit systemic risk, the Directive ensures that system operators of interoperable systems coordinate the rules on the moment of entry and irrevocability in the systems they operate. The concept of an interoperable system and the responsibility of system operators is clarified.

Accordingly, the main objective of the amendments is to bring the rules on settlement finality in payment and securities settlement systems as well as on financial collateral arrangements in line with the latest market and regulatory developments, and to strengthen the tools for managing instability and turmoil in financial markets by:

- protecting the increasing number of linkages between systems to ensure the proper functioning of settlement systems;
- establishing a harmonised legal framework for the use of credit claims as collateral in cross-border transactions to increase market liquidity and promote better availability of credit.

To achieve this, the Directive includes provisions:

- extending the protection of the settlement finality directive to night-time settlement and to settlement between interoperable systems;
- broadening the scope of the protection provided by Directive 98/26/EC and Directive 2002/47/EC to include credit claims in order to facilitate their use throughout the EU;
- introducing a number of simplifications and clarifications to facilitate the application of the two Directives (for instance the mobilisation of credit claims can no longer be invalidated on the grounds that it was not registered or that the debtor has not been notified).

ENTRY INTO FORCE: 30/06/2009.

TRANSPOSITION: 30/12/2010.