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

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The Committee on Economic and Monetary Affairs adopted the report drafted by Piia-Noora **KAUPPI** (EPP-ED, FI) and made some amendments to the proposal for a directive 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.

The committee is of the opinion that the Commission proposal for a recast of both directives is sound and coherent to the existing EU legislation. Nevertheless, it proposes few substantial, as well as a number of minor clarifications.

The main amendments adopted in committee (1st reading of the codecision procedure) aim to:

- **clarify definitions of interoperable systems** in order to improve legal certainty in the application of Directive 98/26/EC to such systems;

- specify that national supervisors should ensure, before approving the establishment of an interoperable system, that the operators of the systems establishing the interoperable system have agreed to the extent possible on common rules at the moment of entry into the interoperable system. National supervisors should ensure in advance that the rules at the moment of entry into an interoperable system are coordinated, insofar as possible and necessary, in order to avoid legal uncertainty in the event of a defaulting participating system;

- clarify that it is not the system but the system operator - which is a legal person - that is considered a participant. The latter part brings clarity to the position of the system operator who must have knowledge of whom they have responsibilities towards;

- define more precisely the definition of the respective responsibilities of a direct and an indirect participant;

- ensure that all collateral accepted as such in Directive 2002/47/EC is treated similarly also for the purposes of this Directive thus bringing the two Directives in line with each other;

- make an addition to the definitions so that Directive 98/26/EC covers night time settlements as intended by the European Commission draft;

- replace the term ‘system’ in the definition of ‘interoperable systems’, by ‘arrangements’ (entered into by two or more systems) so as to avoid creating confusion between interoperability and a system as such and hence suggesting that the intention is to establish a new category of systems;

- make the systems more transparent and to include necessary specifications to regulate transitional conditions in the entry into force of Directive 98/26/EC;

- provide that Member States may impose supervision or authorisation requirements on

- systems which fall under their jurisdiction;

- provide that 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;

- extend the scope of the directive to include **inter-bank loans** as eligible collateral, instead of just central bank loans as the original proposal suggested;

- exclude **consumer credit** as well as **credit for small enterprises** from the scope of the Directive;

- clarify that the inclusion in a list between the parties can have the function of delivery of a credit claim as well;

- provide that Member States should not be able to impose requirements on the provision of a credit claim as financial collateral (save as provided in the directive), their ability to require formalities in relation for the purposes of perfection, priority, or enforceability needs to be retained, and should not be removed after a transitional period.