

European financial markets: financial collateral arrangements and legal certainty, consequences on the SMEs

2001/0086(COD) - 06/06/2002 - Final act

PURPOSE : to create a uniform minimum regime for the provision of securities and cash collateral.

COMMUNITY MEASURE : Directive 2002/47/EC of the European Parliament and of the Council on financial collateral arrangements. **CONTENT** : this Directive creates a uniform EU legal framework to limit credit risk in financial transactions through the provision of securities and cash as collateral.

Collateral is the property (such as securities) provided by a borrower to a lender to minimise the risk of financial loss to the lender in the event of the borrower failing to meet in full their financial obligations to the lender. Current rules applied to the use of collateral throughout the EU are complex and impractical resulting in uncertainty regarding the effectiveness of collateral as protection in cross-border transactions. Creation of a clear, uniform pan-EU legal framework for the use of collateral would contribute to the greater integration and cost-efficiency of European financial markets by encouraging cross-border business and creating a more competitive European financial market. The Directive creates a uniform minimum regime for the provision of securities and cash as collateral under both pledge and title transfer structures, including repurchase agreements, also called "repos" (where the securities are sold against cash, with a simultaneous agreement to repurchase equivalent securities at a specific price at a future date or on demand). 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. 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. The Directive deals with the following aspects: - formal requirements; - enforcement of financial collateral arrangements; - right of use of financial collateral under security financial collateral arrangements; - recognition of title transfer financial collateral arrangements; - recognition of close-out netting provisions; - certain insolvency provisions disapplied; - conflict of laws. 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. **ENTRY INTO FORCE** : 27/06/2002. **IMPLEMENTATION** : 27/12/2003.