## Basic information

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|---|---|
| **1996/0126(COD)**<br><br>COD - Ordinary legislative procedure (ex-codecision procedure)<br>Directive | Procedure completed |
| Banks: settlement finality in payment and securities settlement systems<br><br>Amended by 2008/0082(COD)<br>Amended by 2009/0161(COD)<br>Amended by 2010/0250(COD)<br>Amended by 2012/0029(COD)<br>Amended by 2016/0362(COD)<br><br>**Subject**<br><br>2.50.04.02 Electronic money and payments, cross-border credit transfers | |

## Key players

European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| JURI Legal Affairs, Citizens' Rights | LEHNE Klaus-Heiner (PPE) | 25/09/1996 |

| Former committee responsible | Former rapporteur | Appointed |
|---|---|---|
| JURI Legal Affairs, Citizens' Rights | LEHNE Klaus-Heiner (PPE) | 25/09/1996 |

| Former committee for opinion | Former rapporteur for opinion | Appointed |
|---|---|---|
| ECON Economic and Monetary Affairs, Industrial Policy | KATIFORIS Giorgos (PSE) | 28/11/1996 |

Council of the European Union

| Council configuration | Meetings | Date |
|---|---|---|
| General Affairs | 2085 | 1998-04-27 |
| Economic and Financial Affairs ECOFIN | 2032 | 1997-10-13 |
| Economic and Financial Affairs ECOFIN | 2014 | 1997-06-09 |

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| | | COM(1996)0193 | Summary |

| | | | |
|---|---|---|---|
| 30/05/1996 | Legislative proposal published | | |
| 17/06/1996 | Committee referral announced in Parliament, 1st reading | | |
| 19/03/1997 | Vote in committee, 1st reading | | Summary |
| 19/03/1997 | Committee report tabled for plenary, 1st reading | A4-0097/1997 | |
| 08/04/1997 | Debate in Parliament | | |
| 04/07/1997 | Modified legislative proposal published | COM(1997)0345 | Summary |
| 13/10/1997 | Council position published | 09962/1/1997 | Summary |
| 23/10/1997 | Committee referral announced in Parliament, 2nd reading | | |
| 05/01/1998 | Vote in committee, 2nd reading | | Summary |
| 05/01/1998 | Committee recommendation tabled for plenary, 2nd reading | A4-0005/1998 | |
| 28/01/1998 | Debate in Parliament | | Summary |
| 27/04/1998 | Act approved by Council, 2nd reading | | |
| 19/05/1998 | Final act signed | | |
| 19/05/1998 | End of procedure in Parliament | | |
| 11/06/1998 | Final act published in Official Journal | | |

## Technical information

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| **Procedure reference** | 1996/0126(COD) |
| **Procedure type** | COD - Ordinary legislative procedure (ex-codecision procedure) |
| **Procedure subtype** | Legislation |
| **Legislative instrument** | Directive |
| **Amendments and repeals** | Amended by 2008/0082(COD)<br>Amended by 2009/0161(COD)<br>Amended by 2010/0250(COD)<br>Amended by 2012/0029(COD)<br>Amended by 2016/0362(COD) |
| **Legal basis** | EC Treaty (before Amsterdam) E 100A |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | JURI/4/09393 |

## Documentation gateway

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee report tabled for plenary, 1st reading/single reading | | A4-0097/1997<br>OJ C 132 28.04.1997, p. 0005 | 19/03/1997 | |
| Text adopted by Parliament, 1st reading/single reading | | T4-0142/1997<br>OJ C 132 28.04.1997, p. 0067-0074 | 09/04/1997 | Summary |

| | | | | |
|---|---|---|---|---|
| Committee recommendation tabled for plenary, 2nd reading | | A4-0005/1998<br>OJ C 034 02.02.1998, p. 0004 | 05/01/1998 | |
| Text adopted by Parliament, 2nd reading | | T4-0052/1998<br>OJ C 056 23.02.1998, p. 0012-0027 | 29/01/1998 | Summary |

**Council of the EU**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Council position | 09962/1/1997<br>OJ C 375 10.12.1997, p. 0034 | 13/10/1997 | Summary |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(1996)0193<br>OJ C 207 18.07.1996, p. 0013 | 30/05/1996 | Summary |
| Modified legislative proposal | COM(1997)0345<br>OJ C 259 26.08.1997, p. 0006 | 04/07/1997 | Summary |
| Commission communication on Council's position | SEC(1997)1844 | 16/10/1997 | Summary |
| Commission opinion on Parliament's position at 2nd reading | COM(1998)0151 | 13/03/1998 | Summary |
| Follow-up document | COM(2005)0657 | 15/12/2005 | Summary |

**Other institutions and bodies**

| Institution/body | Document type | Reference | Date | Summary |
|---|---|---|---|---|
| EESC | Economic and Social Committee: opinion, report | CES1254/1996<br>OJ C 056 24.02.1997, p. 0001 | 31/10/1996 | Summary |

**Additional information**

| Source | Document | Date |
|---|---|---|
| European Commission | EUR-Lex | |

**Final act**

Directive 1998/0026
OJ L 166 11.06.1998, p. 0045 Summary

# Banks: settlement finality in payment and securities settlement systems

1996/0126(COD) - 13/03/1998 - Commission opinion on Parliament's position at 2nd reading

The Commission delivers a favourable opinion on the three amendments to the text of the common position and amends its proposal accordingly. These amendments seek to: - delete a provision which would have allowed the Member States to protect their national systems by allowing the possibility of adopting more stringent rules than those laid down by the directive; - stress the exceptional nature of the cases in which transfer orders entered into a system after the opening of insolvency proceedings are valid; - reverse the burden of proof: transfer orders entered after the opening of insolvency proceedings are only valid if the 'system' can prove that it was unaware and should not have been aware of the opening of these proceedings; - specify whose unawareness of the opening of insolvency proceedings is relevant for a transfer order entered into the system after this point to be valid, namely the central counterparty, the clearinghouse or the settlement agent; - allow the final users of payment or securities settlement systems, namely the customer, to be informed of which system his bank or investment firm uses to transfer money or securities for his account as well as of the main rules governing the functioning of these systems.

# Banks: settlement finality in payment and securities settlement systems

1996/0126(COD) - 09/04/1997 - Text adopted by Parliament, 1st reading/single reading

By adopting the report by Mr Heiner LEHNE (EPP, All), the European Parliament amended the proposal for a directive on settlement finality and collateral security with a view to offering those concerned better protection. It calls for a change to the title of the proposal, which should deal with the treatment of payment systems and securities settlement systems in the context of insolvency proceedings concerning credit or securities institutions. A further important amendment deals with the tasks of the Member States: the latter are called on to amend their insolvency laws in accordance with the directive in order to ensure that the functioning of payment systems and securities settlement systems is not disrupted by insolvency proceedings concerning credit or securities institutions. Parliament also urges that the moment of opening of insolvency proceedings against an institution participating in an EC system should be deemed to be the moment when the Community authority officially notifies the national supervisory authority of the opening of the proceedings. The national supervisory authority should officially notify the other participants in the system of the opening of the proceedings.

# Banks: settlement finality in payment and securities settlement systems

1996/0126(COD) - 30/05/1996 - Legislative proposal

OBJECTIVE: the proposal for a European Parliament and Council Directive has three objectives: - to reduce the legal risks associated with participation in payment systems, in particular as regards the legal validity of netting agreements and the enforceability of collateral security; - to ensure that in the internal market payments may be made free of impediments, thus contributing to the efficiency and the cost-effective operation of cross-border payment arrangements in the EU; - by taking into account collateral constituted for monetary policy purposes, to contribute to developing the necessary legal framework in which the future European Central Bank may develop its monetary policy. The proposal also seeks to bring about further integration of EC banks into the domestic payments systems of other EC Member States and to prepare the third stage of EMU. CONTENT: the proposal for a directive contains the following main provisions: - section I defines its scope and the necessary terms; - section II lays down the general principle that the legal validity of payment netting must be recognized under all jurisdictions concerned and that its effects must be binding on third parties; - section III provides for the irrevocability of payment orders in accordance with the rules of the payment system concerned; - section IV lays down a general principle whose objectives are as follows: . to ensure that insolvency proceedings do not have a retroactive effect on the rights and obligations of participants; . to determine which insolvency law is applicable to the rights and obligations in connection with direct participation in a payment system in the event of insolvency proceedings against a participant in that payment system; - section V lays down a general principle whose objective is to insulate collateral security from the effects of the insolvency law of the Member State of a failed participant. These provisions merely set out the general objectives pursued, leaving implementation to the Member States.

# Banks: settlement finality in payment and securities settlement systems

1996/0126(COD) - 29/01/1998 - Text adopted by Parliament, 2nd reading

In adopting the recommendation for second reading by Mr Klaus LEHNE (PPE, D), the European Parliament amended the common position on the proposal for a directive to protect customers in the event of a banking institution going bankrupt. In particular, Parliament inserted a provision stipulating that if, in exceptional cases, transfer orders are entered into a system after insolvency proceedings have been opened and are executed on the date on which those proceedings are opened, they shall not be legally enforceable and shall be binding on third parties only on condition that the settlement agent, the central counterparty and the clearing house can prove that they did not know, or ought not to have known, that insolvency proceedings had been opened. Parliament also deleted a provision (Article 11) which would have allowed Member States to protect their national systems by adopting stricter rules than required by the Directive.

# Banks: settlement finality in payment and securities settlement systems

1996/0126(COD) - 13/10/1997 - Council position

The common position of the Council is in keeping with the spirit of a large number of amendments proposed by the European Parliament, primarily with regard to the following points: - the inclusion of systems for the regulation of securities operations within the scope of the directive; - the fact that the

directive is applied to systems operating in various currencies which the system converts one against another; - the inclusion of a clause determining the moment at which an insolvency procedure is considered opened for the purpose of the directive; - the establishment of a notification procedure within the framework of which the competent authorities are to be informed of the insolvency of a participant in the system. It should be noted that, in comparison with the Commission's proposal, the common position: - does not cover the participation of Community institutions in third-country systems, but restricts the scope of the directive to systems governed by the legislation of a Member State; - does not specifically refer to monetary policy operations in the definition of the applicability to constituted guarantees, though it does refer to the operations of banks when the latter act ex officio. The common position also differs from the Commission's proposal in respect of definitions: a) the common position is based on the definitions of "payment system" and "Community payment system", but amends these definitions by adding certain legal guarantees. In particular: - a system must be a formal agreement which comprises common rules and standard procedures for the execution of transfer orders between participants; - the minimum number of participants is fixed at three institutions rather than two; - the legislation governing the system is defined as legislation chosen by the participants (the Council has not accepted Parliament's amendment relating to the place where a settlement or book entry takes place); - it is required that the designation as a system be undertaken by the Member State whose legislation is applicable; - the Member State designating a system ensure that the operating rules of the system are adequate; - only those systems are covered which enforce orders relating to money or securities, as defined by the directive; b) in order to reinforce the stability of the systems covered by the directive, the common position introduces certain criteria determining which enterprises may participate in a system: c) the common position adds a new element by giving Member States the choice of incorporating indirect participants in their systems, under certain conditions; d) following the introduction, in the amended proposal, of securities settlement systems, the definition of "payment order" has been amended and replaced by the term "transfer order", which henceforth includes transfers of money and securities. As far as compensation and transfer orders are concerned, the common position: - sets out the key element in the directive, namely that compensation and transfer orders take effect in law and can be used in evidence by third parties even in the case of insolvency proceedings against a participant; - introduces a new measure specifying that transfer orders executed after the opening of insolvency proceedings are treated as transfer orders entered into a system prior to the opening of insolvency proceedings provided that the system did not have prior knowledge of the opening of these proceedings; - lays down specific rules governing the definition of the moment of introduction of a transfer order into a system; - leaves it to the system to define the rules governing the cancellation of a transfer order. As regards measures relating to insolvency proceedings, the common position: - introduces a provision defining the moment of opening of insolvency proceedings as the moment when the judicial or administrative authority hands down its decision; - requires that each Member State designate an authority which shall be informed by the judicial or administrative authority of the decision it has taken; - requests the Member State in which the insolvency proceedings have been opened to notify all other Member States of these proceedings; - states that the insolvency proceedings against a participant in a system may not have a retroactive effect on the rights and obligations of a participant. Lastly, the common position fixes the date of entry into force by reference to the date of publication of the directive.

# Banks: settlement finality in payment and securities settlement systems

1996/0126(COD) - 31/10/1996 - Economic and Social Committee: opinion, report

The Economic and Social Committee approved the Commission's proposal for a directive, which sets out to reduce the systemic risks inherent in inter-bank payments which are the subject of netting. It considers that the directive is necessary for the completion of the internal market and the legal framework in which the future European central bank will operate. The Committee feels however that the scope of the directive should whenever necessary include securities transactions and securities settlement systems.

# Banks: settlement finality in payment and securities settlement systems

1996/0126(COD) - 04/07/1997 - Modified legislative proposal

The amended proposal from the European Commission accepts the amendments of the European Parliament which essentially seek: - to amend the title of the proposal: the latter concerns the reduction of the systemic risk associated with participation in securities payment and settlement systems; - to include systems for securities payment and settlement in the scope of the directive; - to introduce derived instruments into the definition of monetary policy operations. However, the Commission was unable to accept those amendments which seek primarily: - to indicate that Member States should amend their legislation on insolvency in accordance with the directive, in order to avoid any disruption in the case of insolvency of one of the participants in the system; - to provide that the articles establishing the system should be lodged with the authorities responsible for the monitoring of the participating institutions; - to provide for the publication of a communication indicating that articles have been lodged and that these may be freely consulted; - to amend the criterion of localisation (which determines whether a system is a Community system coming under the terms of the directive); - to determine the moment of opening of insolvency proceedings; - to delete the article which determines the legislation on insolvency applying in the event of default of a participant.

# Banks: settlement finality in payment and securities settlement systems

1996/0126(COD) - 16/10/1997 - Commission communication on Council's position

The Commission considers that the text of the common position retains the substance of its proposals and of the amendments of the European Parliament. It therefore proposes to give its approval to the common position.

# Banks: settlement finality in payment and securities settlement systems

1996/0126(COD) - 15/12/2005 - Follow-up document

This is an evaluation report on the Settlement Finality Directive 1998/26/EC (SFD) which entered into force in 1999. At the time of its adoption the SFD applied to the fifteen EU Member States. Later, it was extended to the ten new Member States. It also applies to the EEA States, Norway, Iceland and Liechtenstein. The main objectives of the evaluation report are firstly, to analyse the process by which the SFD has been implemented and secondly, to identify a list of potentially problematic issues that could become the subject of future revision. It is not the purposes of this report to present any amendments to the existing Directive. This may follow at a later date, in which case any amendments may be based on this report's conclusions. In addition any proposed amendments would be subject to an impact assessment report. The report's findings are based on information provided to the Commission by the Member States and the European Central Bank. Having analysed and assessed the information received the Commission draws three conclusions.

Firstly, the SFD is functioning well and the Member States show a high level of satisfaction vis-à-vis its application.

Secondly, there is some need for clarifications, improvements, better definitions and, in certain cases, simplification.

Thirdly, the Commission will begin a dialogue with both the Member States and the ECB in the course of 2006 and within the framework of the "European Securities Committee" the purpose of which will be to identify which issues should become the subject of future amendments to the Directive. The dialogue will take account of payment and securities settlements systems. The Commission suggests that it may propose legal instruments to increase the efficiency and safety of clearing and settlement services during 2006. Lastly, the Commission notes that the proposal for the Community's signature to the Hague Securities Convention may need to be taken into account.

# Banks: settlement finality in payment and securities settlement systems

1996/0126(COD) - 19/05/1998 - Final act

OBJECTIVE: to reduce the systemic risk associated with participation in securities payment and settlement systems and reduce to a minimum disruptions to a system, by means of an insolvency procedure against a participant in the system. COMMUNITY MEASURE: Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems. SUBSTANCE: the Directive confers legal validity on payment netting, lays down that, once entered in a securities payment or settlement system, transfer orders are irrevocable, that insolvency proceedings may not be enforced retroactively and that the insolvency legislation applicable is that of the Member State of the system concerned. The Directive stipulates that: - transfer orders and netting shall be legally enforceable and binding on third parties in the event of insolvency proceedings against a participant in the system; - the right to security provided in connection with participation in a system is not affected by insolvency proceedings against the participant who has provided the security; - the moment of opening of insolvency proceedings is the moment when the relevant judicial or administrative authority hands down its decision. Security provided to central banks of the Member States or the future European Central Bank is also covered by the Directive. Thus the Directive helps to improve the effectiveness of securities payment and settlement systems and reduce their cost, while providing a legal framework for the harmonious functioning of monetary policy under EMU. ENTRY INTO FORCE: 16/06/1998 DEADLINE FOR TRANSPOSITION: 11/12/1999