

COLLATERAL Directive

Reference text: Directive 2002/47/EC on collateral agreements

Link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:168:0043:0050:EN:PDF>

Date of effect: 27/06/2002 (date publication of publication in OJ)

Presentation

The objective of the “Collateral” Directive is to institute a minimum community legal framework aiming to limit the credit risk in financial transactions through constituting collateral with either constitution of surety or transfer of property, and relating to cash, financial instruments and, since 6 May 2009, private claims. The personal scope of the “Collateral Directive” is limited however to collateral agreements entered into between a collateral creator and a collateral taker which both belong to one of the following categories: public authorities; public sector organisations; central bank; or financial institution subject to prudential surveillance (including coordinated UCITS). The Collateral Directive aims to ensure the effectiveness of collateral agreements by requiring Member States to recognise the effectiveness of this collateral both by limiting the formal requirements that can be provided by the national laws as conditions of validity or enforceability of collateral agreements and by providing swift and informal execution procedures.

The directive also stipulates that certain provisions on insolvency are not applicable. A collateral agreement cannot be declared null and void or be cancelled solely due to the fact that it has been entered into or the assets have been constituted as collateral:

- on the day of winding-up proceedings are instigated or streamlining measures are taken, but before delivery of an order or judgment to this end;
- during a period determined before instigation of winding-up proceedings,

The text also provides the law applicable in the event of conflict of laws. The law applicable to the collateral agreement, and notably the rules of enforceability on third parties, is determined by that of the place of location of the account in which the securities given as collateral are registered

The “Collateral” Directive was modified by Directive 2009/44/EC to integrate private claims as collateral for cross-border transactions as since 1 January 2007 the Central European Bank has recognised private claims of professionals as collateral admissible for credit operations of the Eurosystem.

Current situation:

27 June 2002: publication of Directive 2002/47/EC known as the Collateral Directive

6 May 2009: publication of Directive 2009/44/EC modifying Directive 2002/47/EC

Next steps: Not applicable

SGSS/SMI Contact: Alain Rocher (alain.rocher@sgss.socgen.com)
Sylvie Bonduelle (sylvie.bonduelle@sgss.socgen.com)