

FINALITY Directive

Reference text: Directive 98/26/EC on settlement finality in payment and securities settlement systems.

Link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:166:0045:0050:EN:PDF>

Date of effect: 11/06/1998 (date of publication in OJ)

Presentation

The Directive on settlement finality adopted in May 1998 applies to payment and securities settlement systems and to any participant in this system. This regulation mainly strives to eliminate the legal factor of the “systemic risk” inherent to these systems, i.e. the risk that the failure of one counterparty does not entail the failure of other participants, or even the system itself: to this end, it enables the continuation of execution of payments initiated before an insolvency and prevents retroactive cancellation of payments. It also applies to collateral constituted within the framework of the participation in a system, and to operations of the central banks of the Member States in their capacity of central banks.

The Finality Directive defines the payment system as a formal agreement, entered into between at least three participants (mainly credit institutions) to which may be added a settlement organisation (for final accounting of the said settlements), a central counterparty or a clearing house, comprising common rules and standardised procedures for the execution of settlement/delivery instructions between participants.

The “Finality” Directive was modified on 6 May 2009 by Directive 2009/44/EC in order to extend its scope and improve protection in a context of development of links between payment and settlement/delivery systems. Initially, the systemic risk was considered only to be able to result from banks executing payments directly in the system. The financial crisis demonstrated that other entities participating indirectly in systems could also create a systemic risk (investment firms, central counterparties). The protection of operations in the event of insolvency is also henceforth extended to cover not only payment orders made between the participants in a system, but also payment orders made from system to system. The protection of transfers between systems was in fact not sufficient since the times of transition from one system to another and the times of irrevocability of transfer orders in each of the systems were not themselves coordinated.

Current situation:

19 May 1998: adoption of Directive 98/26/EC known as the Finality Directive

6 May 2009: adoption of Directive 2009/44/EC modifying Directive 98/26/EC

Next steps: Not applicable

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