

Directive 98/26/EC of the European Parliament and of the Council of 19
May 1998 on settlement finality in payment and securities settlement systems

SECTION I

SCOPE AND DEFINITIONS

Article 2

For the purpose of this Directive:

- (a) ‘system’ shall mean a formal arrangement:
- [^{F1}between three or more participants, excluding the system operator of that system, a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, with common rules and standardised arrangements for the clearing, whether or not through a central counterparty, or execution of transfer orders between the participants]
 - governed by the law of a Member State chosen by the participants; the participants may, however, only choose the law of a Member State in which at least one of them has its head office, and
 - [^{F2}designated, without prejudice to other more stringent conditions of general application laid down by national law, as a system and notified to the European Securities and Markets Authority by the Member State whose law is applicable, after that Member State is satisfied as to the adequacy of the rules of the system.]

Subject to the conditions in the first subparagraph, a Member State may designate as a system such a formal arrangement whose business consists of the execution of transfer orders as defined in the second indent of (i) and which to a limited extent executes orders relating to other financial instruments, when that Member State considers that such a designation is warranted on grounds of systemic risk.

A Member State may also on a case-by-case basis designate as a system such a formal arrangement between two participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, when that Member State considers that such a designation is warranted on grounds of systemic risk^[F1].

^[F3]An arrangement entered into between interoperable systems shall not constitute a system;]

- (b) ‘institution’ shall mean:
- [^{F1}a credit institution as defined in Article 4(1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)⁽¹⁾ including the institutions listed in Article 2 of that Directive,
 - an investment firm as defined in Article 4(1)(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments⁽²⁾, excluding the institutions set out in Article 2(1) thereof,]
 - public authorities and publicly guaranteed undertakings, or

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- any undertaking whose head office is outside the Community and whose functions correspond to those of the Community credit institutions or investment firms as defined in the first and second indent,

which participates in a system and which is responsible for discharging the financial obligations arising from transfer orders within that system.

If a system is supervised in accordance with national legislation and only executes transfer orders as defined in the second indent of (i), as well as payments resulting from such orders, a Member State may decide that undertakings which participate in such a system and which have responsibility for discharging the financial obligations arising from transfer orders within this system, can be considered institutions, provided that at least three participants of this system are covered by the categories referred to in the first subparagraph and that such a decision is warranted on grounds of systemic risk;

- (c) [^{F4}‘central counterparty’ or ‘CCP’ shall mean a CCP as defined in point (1) of Article 2 of Regulation (EU) No 648/2012;]
- (d) ‘settlement agent’ shall mean an entity providing to institutions and/or a central counterparty participating in systems, settlement accounts through which transfer orders within such systems are settled and, as the case may be, extending credit to those institutions and/or central counterparties for settlement purposes;
- (e) ‘clearing house’ shall mean an entity responsible for the calculation of the net positions of institutions, a possible central counterparty and/or a possible settlement agent;
- (f) [^{F4}‘participant’ shall mean an institution, a central counterparty, a settlement agent, a clearing house, a system operator or a clearing member of a CCP authorised pursuant to Article 17 of Regulation (EU) No 648/2012;]
- (g) [^{F1}‘indirect participant’ shall mean an institution, a central counterparty, a settlement agent, a clearing house or a system operator with a contractual relationship with a participant in a system executing transfer orders which enables the indirect participant to pass transfer orders through the system, provided that the indirect participant is known to the system operator;]
- (h) [^{F1}‘securities’ shall mean all instruments referred to in section C of Annex I to Directive 2004/39/EC;]
- (i) ‘transfer order’ shall mean:
 - [^{F1}any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, a central bank, a central counterparty or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system, or]
 - an instruction by a participant to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise;
- (j) ‘insolvency proceedings’ shall mean any collective measure provided for in the law of a Member State, or a third country, either to wind up the participant or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments;
- (k) ‘netting’ shall mean the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants either

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issue to, or receive from, one or more other participants with the result that only a net claim can be demanded or a net obligation be owed;

- (l) [^{F1}‘settlement account’ shall mean an account at a central bank, a settlement agent or a central counterparty used to hold funds or securities and to settle transactions between participants in a system;]
- (m) [^{F1}‘collateral security’ shall mean all realisable assets, including, without limitations, financial collateral referred to in Article 1(4)(a) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements⁽³⁾, provided under a pledge (including money provided under a pledge), a repurchase or similar agreement, or otherwise, for the purpose of securing rights and obligations potentially arising in connection with a system, or provided to central banks of the Member States or to the European Central Bank;]
- (n) [^{F3}‘business day’ shall cover both day and night-time settlements and shall encompass all events happening during the business cycle of a system;
- (o) ‘interoperable systems’ shall mean two or more systems whose system operators have entered into an arrangement with one another that involves cross-system execution of transfer orders;
- (p) ‘system operator’ shall mean the entity or entities legally responsible for the operation of a system. A system operator may also act as a settlement agent, central counterparty or clearing house.]

Textual Amendments

- F1** Substituted by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 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 (Text with EEA relevance).
- F2** Substituted by Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (Text with EEA relevance).
- F3** Inserted by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 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 (Text with EEA relevance).
- F4** Substituted by Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC.

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- (1) [^{F1}OJ L 177, 30.6.2006, p. 1.]
- (2) [^{F1}OJ L 145, 30.4.2004, p. 1.]
- (3) [^{F1}OJ L 168, 27.6.2002, p. 43.]

Textual Amendments

- F1** Substituted by [Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 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 \(Text with EEA relevance\).](#)