

Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements

Article 1

Subject matter and scope

1 This Directive lays down a Community regime applicable to financial collateral arrangements which satisfy the requirements set out in paragraphs 2 and 5 and to financial collateral in accordance with the conditions set out in paragraphs 4 and 5.

2 The collateral taker and the collateral provider must each belong to one of the following categories:

- a a public authority (excluding publicly guaranteed undertakings unless they fall under points (b) to (e)) including:
 - (i) public sector bodies of Member States charged with or intervening in the management of public debt, and
 - (ii) public sector bodies of Member States authorised to hold accounts for customers;
- [^{F1}b a central bank, the European Central Bank, the Bank for International Settlements, a multilateral development bank as referred to in Annex VI, Part 1, Section 4 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⁾, the International Monetary Fund and the European Investment Bank;]
- c a financial institution subject to prudential supervision including:
 - (i) [^{F1}a credit institution as defined in Article 4(1) of Directive 2006/48/EC, including the institutions listed in Article 2 of that Directive;
 - (ii) 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⁾;
 - (iii) a financial institution as defined in Article 4(5) of Directive 2006/48/EC;
 - (iv) an insurance undertaking as defined in Article 1(a) of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance (third non-life insurance Directive)⁽³⁾ and an assurance undertaking as defined in Article 1(1)(a) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance⁽⁴⁾;
 - (v) an undertaking for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)⁽⁵⁾;
 - (vi) a management company as defined in Article 1a(2) of Directive 85/611/EEC;
- d a central counterparty, settlement agent or clearing house, as defined respectively in Article 2(c), (d) and (e) of Directive 98/26/EC, including similar institutions regulated under national law acting in the futures, options and derivatives markets to the extent

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not covered by that Directive, and a person, other than a natural person, who acts in a trust or representative capacity on behalf of any one or more persons that includes any bondholders or holders of other forms of securitised debt or any institution as defined in points (a) to (d);

- e a person other than a natural person, including unincorporated firms and partnerships, provided that the other party is an institution as defined in points (a) to (d).

3 Member States may exclude from the scope of this Directive financial collateral arrangements where one of the parties is a person mentioned in paragraph 2(e).

If they make use of this option Member States shall inform the Commission which shall inform the other Member States thereof.

4

[^{F1}a The financial collateral to be provided shall consist of cash, financial instruments or credit claims;]

- b Member States may exclude from the scope of this Directive financial collateral consisting of the collateral provider's own shares, shares in affiliated undertakings within the meaning of seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts⁽⁶⁾, and shares in undertakings whose exclusive purpose is to own means of production that are essential for the collateral provider's business or to own real property.

[^{F2}c Member States may exclude from the scope of this Directive credit claims where the debtor is a consumer as defined in Article 3(a) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers⁽⁷⁾ or a micro or small enterprise as defined in Article 1 and Article 2(2) and (3) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises⁽⁸⁾, save where the collateral taker or the collateral provider of such credit claims is one of the institutions referred under Article 1(2)(b) of this Directive.]

5 This Directive applies to financial collateral once it has been provided and if that provision can be evidenced in writing.

The evidencing of the provision of financial collateral must allow for the identification of the financial collateral to which it applies. For this purpose, it is sufficient to prove that the book entry securities collateral has been credited to, or forms a credit in, the relevant account and that the cash collateral has been credited to, or forms a credit in, a designated account. [^{F2}For credit claims, the inclusion in a list of claims submitted in writing, or in a legally equivalent manner, to the collateral taker is sufficient to identify the credit claim and to evidence the provision of the claim provided as financial collateral between the parties.]

[^{F2}Without prejudice to the second subparagraph, Member States may provide that the inclusion in a list of claims submitted in writing, or in a legally equivalent manner, to the collateral taker is also sufficient to identify the credit claim and to evidence the provision of the claim provided as financial collateral against the debtor or third parties.]

This Directive applies to financial collateral arrangements if that arrangement can be evidenced in writing or in a legally equivalent manner.

[^{F3}6 Articles 4 to 7 of this Directive shall not apply to any restriction on the enforcement of financial collateral arrangements or any restriction on the effect of a security financial collateral arrangement, any close out netting or set-off provision that is imposed by virtue of Title IV, Chapter V or VI of Directive 2014/59/EU of the European Parliament and of the Council⁽⁹⁾, or

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to any such restriction that is imposed by virtue of similar powers in the law of a Member State to facilitate the orderly resolution of any entity referred to in points (c)(iv) and (d) of paragraph 2 which is subject to safeguards at least equivalent to those set out in Title IV, Chapter VII of Directive 2014/59/EU.]

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** 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 \(Text with EEA relevance\)](#).
- F3** Inserted by [Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations \(EU\) No 1093/2010 and \(EU\) No 648/2012, of the European Parliament and of the Council \(Text with EEA relevance\)](#).

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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 228, 11.8.1992, p. 1.]
- (4) [^{F1}OJ L 345, 19.12.2002, p. 1.]
- (5) OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2001/108/EC of the European Parliament and of the Council. (OJ L 41, 13.2.2002, p. 35).
- (6) OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council (OJ L 283, 27.10.2001, p. 28).
- (7) [^{F2}OJ L 133, 22.5.2008, p. 66.]
- (8) [^{F2}OJ L 124, 20.5.2003, p. 36.]
- (9) [^{F3}Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).]

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** 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).
- F3** Inserted by Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (Text with EEA relevance).