

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

Article 3

Formal requirements

1 Member States shall not require that the creation, validity, perfection, enforceability or admissibility in evidence of a financial collateral arrangement or the provision of financial collateral under a financial collateral arrangement be dependent on the performance of any formal act.

[^{F1}Without prejudice to Article 1(5), when credit claims are provided as financial collateral, Member States shall not require that the creation, validity, perfection, priority, enforceability or admissibility in evidence of such financial collateral be dependent on the performance of any formal act such as the registration or the notification of the debtor of the credit claim provided as collateral. However, Member States may require the performance of a formal act, such as registration or notification, for purposes of perfection, priority, enforceability or admissibility in evidence against the debtor or third parties.

By 30 June 2014, the Commission shall report to the European Parliament and to the Council on whether this paragraph continues to be appropriate.]

2 Paragraph 1 is without prejudice to the application of this Directive to financial collateral only once it has been provided and if that provision can be evidenced in writing and where the financial collateral arrangement can be evidenced in writing or in a legally equivalent manner.

[^{F13} Without prejudice to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts⁽¹⁾ and national provisions concerning unfair contract terms, Member States shall ensure that debtors of the credit claims may validly waive, in writing or in a legally equivalent manner:

- (i) their rights of set-off vis-à-vis the creditors of the credit claim and vis-à-vis persons to whom the creditor assigned, pledged or otherwise mobilised the credit claim as collateral; and
- (ii) their rights arising from banking secrecy rules that would otherwise prevent or restrict the ability of the creditor of the credit claim to provide information on the credit claim or the debtor for the purposes of using the credit claim as collateral.]

Textual Amendments

- F1** 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 \(Text with EEA relevance\).](#)

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

(1) [^{F1}OJ L 95, 21.4.1993, p. 29.]

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