

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)

Article 2

Amendments to Directive 2002/47/EC

Directive 2002/47/EC is hereby amended as follows:

- (1) Recital 9 shall be replaced by the following:
 - (9) In order to limit the administrative burdens for parties using financial collateral under the scope of this Directive, the only perfection requirement regarding parties which national law may impose in respect of financial collateral should be that the financial collateral is under the control of the collateral taker or of a person acting on the collateral taker's behalf while not excluding collateral techniques where the collateral provider is allowed to substitute collateral or to withdraw excess collateral. This Directive should not prohibit Member States from requiring that a credit claim be delivered by means of inclusion in a list of claims..
- (2) Recital 20 shall be replaced by the following:
 - (20) This Directive does not prejudice the operation or effect of the contractual terms of financial instruments or credit claims provided as financial collateral, such as rights, obligations or other conditions contained in the terms of issue of such instruments, or any other rights, obligations or other conditions which apply between the issuers and holders of such instruments or between the debtor and the creditor of such credit claims..
- (3) The following recital shall be added: [Recital 12 in RELEC_STO]
 - (23) This Directive does not affect the rights of Member States to impose rules to ensure the effectiveness of financial collateral arrangements in relation to third parties as regards credit claims..
- (4) Article 1 shall be amended as follows:
 - (a) paragraph 2(b) shall be replaced by the following:
 - (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;;
 - (b) in paragraph 2(c), points (i) to (iv) shall be replaced by the following:
 - (i) a credit institution as defined in Article 4(1) of Directive 2006/48/EC, including the institutions listed in Article 2 of that Directive;

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.

- (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⁾;
- (c) paragraph 4(a) shall be replaced by the following:
- (a) The financial collateral to be provided shall consist of cash, financial instruments or credit claims;
- (d) in paragraph 4, the following point shall be added:
- (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⁽⁵⁾ 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⁽⁶⁾, 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.;
- (e) paragraph 5 shall be amended as follows:
- (i) in the second subparagraph, the following sentence shall be added:

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.;
 - (ii) the following subparagraph shall be inserted after the second subparagraph:

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..
- (5) Article 2 shall be amended as follows:

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.

- (a) paragraph 1 is amended as follows:
 - (i) points (b) and (c) shall be replaced by the following:
 - (b) “title transfer financial collateral arrangement” means an arrangement, including repurchase agreements, under which a collateral provider transfers full ownership of, or full entitlement to, financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations;
 - (c) “security financial collateral arrangement” means an arrangement under which a collateral provider provides financial collateral by way of security to or in favour of a collateral taker, and where the full or qualified ownership of, or full entitlement to, the financial collateral remains with the collateral provider when the security right is established;
 - (ii) the following point shall be added:
 - (o) “credit claims” means pecuniary claims arising out of an agreement whereby a credit institution, as defined in Article 4(1) of Directive 2006/48/EC, including the institutions listed in Article 2 of that Directive, grants credit in the form of a loan.;
- (b) in paragraph 2, the second sentence shall be replaced by the following:

Any right of substitution, right to withdraw excess financial collateral in favour of the collateral provider or, in the case of credit claims, right to collect the proceeds thereof until further notice, shall not prejudice the financial collateral having been provided to the collateral taker as mentioned in this Directive..
- (6) Article 3 shall be amended as follows:
 - (a) in paragraph 1, the following subparagraphs shall be added:

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.;
 - (b) the following paragraph shall be added:

3. Without prejudice to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts⁽⁷⁾ and national provisions concerning

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.

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..

(7) Article 4 shall be amended as follows:

- (a) in paragraph 1, the following point shall be added:
 - (c) credit claims, by sale or appropriation and by setting off their value against, or applying their value in discharge of, the relevant financial obligations.;
- (b) in paragraph 2, point (b) shall be replaced by the following:
 - (b) the parties have agreed in the security financial collateral arrangement on the valuation of the financial instruments and the credit claims.;
- (c) paragraph 3 shall be deleted.

(8) In Article 5, the following paragraph shall be added:

6. This Article shall not apply to credit claims..

(9) The following Article shall be inserted after Article 9:

Article 9a

Directive 2008/48/EC

The provisions of this Directive shall be without prejudice to Directive 2008/48/EC..

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) [OJ L 177, 30.6.2006, p. 1.](#);
- (2) [OJ L 145, 30.4.2004, p. 1.](#)
- (3) [OJ L 228, 11.8.1992, p. 1.](#)
- (4) [OJ L 345, 19.12.2002, p. 1.](#);
- (5) [OJ L 133, 22.5.2008, p. 66.](#)
- (6) [OJ L 124, 20.5.2003, p. 36.](#);
- (7) [OJ L 95, 21.4.1993, p. 29.](#).