

Directive 98/26/EC on Settlement Finality in Payment and Securities Settlement Systems

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Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
	SCOPE AND DEFINITIONS					
A: 1 N: a	The provisions of this Directive shall apply to: (a) any system as defined in Article 2(a), governed by the law of a Member State and operating in any currency, the EURO or in various currencies which the system converts one against another;	N				The Directive was transposed by an Act which does not adopt the Directive word by word. Rather, the existing Insolvency Act, the Banking Act, Securities Deposit Act, and the Securities Trading Act were amended. The amendment of the above statutes serves the transposition of the Directive in relation to the use of payment and security

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						settlement systems, which are governed by the Directive.
A: 1 N: b	(b) any participant in such a system;	N				
A: 1 N: c	(c) collateral security provided in connection with: -participation in a system, or -operations of the central banks of the Member States in their functions as central banks.	N				

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A: 2	For the purpose of this directive:					
A: 2 N: a S: 1	'system' shall mean a formal arrangement:	N	Insol- vency Act (InsO)	A: 96 P: 2 S: 2, 3	A system within the meaning of the first sentence shall be a written agreement in accordance with Article 2 letter a of Directive 98/26/EC of the European Parliament and of the Council of May 1998 on settlement finality in payment and securities settlement systems (Official Journal of the European Communities No. L 166 page 45) reported to the Commission of the European Communities by the Deutsche Bundesbank or the competent authority of another member state or contracting party of the Agreement on the European Economic Area. Systems from third states shall be deemed equivalent to the systems named in the second sentence where they largely meet the preconditions stipulated in Article 2 letter a of Directive 98/26/EC.	Article 96 paragraph 2 sentences 2 and 3 of the Insolvency Act refer to Article 2 letter a of Directive 98/26/EC. The legislature refrained from including a separate definition of "System" into the German Insolvency Act. Rather, it included a reference to the definition used in the Directive to ensure a

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						consistent interpretation. Thus, the separate elements of the definition used in the Directive did not have to be defined in the Insolvency Act.

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A: 2 N: a S: 1	-between three or more participants, without counting 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 execution of transfer orders between the participants,	N				Article 96 paragraph 2 sentences 2 and 3 of the Insolvency Act refer to Article 2 letter a of Directive 98/26/EC.
A: 2 N: a S: 1	-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	N				Article 96 paragraph 2 sentences 2 and 3 of the Insolvency Act refer to Article 2 letter a of Directive 98/26/EC.
A: 2 N: a S: 1	-designated, without prejudice to other more stringent conditions of general application laid down by national law, as a system and notified to the Commission by the Member State whose law is applicable, after that Member State is satisfied as to the	N				Article 96 paragraph 2 sentences 2 and 3 of the Insolvency Act refer to Article 2 letter a of Directive

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	adequacy of the rules of the system.					98/26/EC.
A: 2 N: a S: 2	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.	D				Article 96 paragraph 2 sentences 2 and 3 of the Insolvency Act refer to Article 2 letter a of Directive 98/26/EC.
A: 2 N: a S: 3	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 the grounds of systemic risk;	D				Article 96 paragraph 2 sentences 2 and 3 of the Insolvency Act refer to Article 2 letter a of Directive 98/26/EC.
A: 2	`institution' shall mean:	N				

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N: b S: 1	-a credit institution as defined in the first indent of Article 1 of Directive 77/780/EEC including the institutions set out in the list in Article 2(2) thereof, or		Germ-an Bank-ing Act Germ-an Bank-ing Act (KW G)	A: 1 P: 1 S: 1 N: 1 A: 1 P: 3 d	Credit institutions are enterprises which conduct banking business commercially or on a scale which requires a commercially organised business undertaking. Banking business comprises 1. the acceptance of funds from others or of other repayable funds from the public unless the claim to repayment is securitised in the form of bearer or order debt certificates, irrespective of whether or not interest is paid (deposit business) Deposit-taking credit institutions are credit institutions which receive deposits or other repayable funds from the public and conduct lending business. Securities trading firms are institutions which are not deposit-taking credit institutions and which conduct banking business within the meaning of subsection 1 sentence 1 numbers 4 or 10 or which provide financial services within the meaning of subsection 1 a sentence 2 numbers 1 to 4 unless the banking business or financial services are	Although the word "credit institution" reflects only a part of the banking transactions, it is the general concept for the companies of all categories of the German credit system. The definition of the term "credit institution" of Directive 77/780/EEC is equivalent to the transcription of "banking business" in Article 1 KWG.

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					confined to foreign exchange, units of account or derivatives within the meaning of subsection 11 sentence 4 number 5. Securities trading banks are credit institutions which are not deposit-taking credit institutions and which conduct banking business within the meaning of subsection 1 sentence 2 numbers 4 or 10 or provide financial services within the meaning of subsection 1 a sentence 2 numbers 1 to 4.	For the rest Article 1 paragraph 2 number 1 KWG is in conformity with the term "credit institution" in Directive 77/780/EEC. In Article 1 Paragraph 3 d Sentence 1 KWG the term deposit-taking credit institution is defined in accordance with the requirements of Directive 77/780/EEC. Therefore, all German credit

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						institutions are deposit-taking credit institutions within the EU's understanding of deposit-taking credit institutions. As a result, all German credit institutions with concession to accept and to accommodate credits are credit institutions within the meaning of the definition of the EU in Directive 98/26/EC.

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	-an investment firm as defined in point 2 of Article 1 of Directive 93/22/EEC excluding the institutions set out in the list in Article 2(2)a to (k) thereof, or		Securi-ties Trading Act (WpHG)	A: 2 P: 4	Securities Services Providers within the meaning of this Act are banks, financial service providers and other businesses operating pursuant to Article 53 paragraph 1 sentence 1 of the Banking Act who provide Securities Services, regardless of whether or not in connection with Ancillary Securities Services, as a business or to an extent requiring a commercially organised business operation.	The term Securities Services Providers in Article 2 paragraph 4 WpHG meets the requirements of the Directive and consequently fulfils their qualifications. Article 2 of the Transformation Act of October 22, 1997 of Directive 93/22/EEC has amended the term in accordance with the Directive (BGBI Part I 1997, 2518, 2558;

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	<p>-public authorities and publicly guaranteed undertakings, or</p> <p>-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,</p>		<p>Basic Law</p> <p>Germ-an Bank-ing Act</p>	<p>A: 130 P: 1 S: 1</p> <p>A: 53 P: 1 S: 1</p>	<p>Administrative agencies and other institutions that serve the public administration or the administration of justice and are not based on Land law or on agreements between the federal states, as well as the Administrative Union of South West German Railways and the Administrative Council for Postal and Telecommunications Services for the French Occupation Zone, shall be placed under the control of the Federal Government.</p> <p>If an enterprise domiciled abroad maintains a branch in Germany which conducts banking business or provides financial services, that branch is deemed to be a credit institution or a financial services institution.</p>	<p>Part I 1997, 2567).</p> <p>The concept of a public corporation exists in the German legal system; it is laid down in Article 130 of the Basic Law. This meets the requirements of the Directive.</p> <p>Publicly guaranteed undertakings do not exist in the German legal system.</p> <p>Article 53 Paragraph 1 Sentence 1 applies to</p>

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	which participates in a system and which is responsible for discharging the financial obligations arising from transfer orders within that system.					enterprises that are domiciled abroad. "Abroad" means outside the Community, since there is a specific provision, Article 53 b of the German Banking Act, which applies to enterprises domiciled in other EC- Member States. Thus, Article 53 Paragraph 1 Sentence 1 of the German Banking Act meets the requirements of the Directive.

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A: 2 N: b S: 2	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;	D				The term has not been transposed into German law.
A: 2 N: c	`Central counterparty' shall mean an entity which is interposed between the institutions in a system and which acts as the exclusive counterparty of these institutions with regard to their transfer orders;	N				There exists no statutory definition of the term "central counterparty" in German law. Nevertheless, the

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						understanding of the term in the German legal system is the same as in the Directive. Thus the requirement of the Directive is satisfied.
A: 2 N: 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.	N				Although the definition of the term "settlement agent" has not been transposed into German law, it is understood in the German legal system as being an entity which provides to institutions and/or to a central counterparty

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						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. Therefore the demands of the Directive are met.
A: 2 N: e	`clearing house' shall mean an entity responsible for the calculation of the net positions of institutions, a possible central counterparty and/or possible	N				In the German clearing system, the "Deutsche Börse Gruppe"

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	settlement agent;					e.g. is responsible for calculation of the net positions. This meets the requirements of the Directive.
A: 2 N: f S: 1, 2	`participant´ shall mean an institution, a central counterparty, a settlement agent or a clearing house. According to the rules of the system, the same participant may act as a central counterparty, a settlement agent or a clearing house or carry out part or all of these tasks.	N				The term "participant" is mentioned in Article 166 Paragraph 2 Sentence 2 Insolvency Act, Article 2 Paragraph 4 , Article 102 Paragraph 4 Introductory Act to the Insolvency Act and Article 46 Paragraph 2 of the Banking Act. This meets the

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						requirements of the Directive.
A: 2 N: f S: 3	A Member State may decide that for the purposes of this Directive an indirect participant may be considered a participant if it is warranted on the grounds of systemic risk and on condition that the indirect participant is known to the system;	D				The term was not transposed into German national law.
A: 2 N: g	`indirect participant´ shall mean a credit institution as defined in the first indent of (b) with a contractual relationship with an institution participating in a system executing transfer orders as defined in the first indent of (i) which enables the abovementioned credit institution to pass transfer orders through the system;	N				The term "indirect participant" is not defined in German national law. Nevertheless the German understanding of the term meets the requirements of the definition of the Directive.
A: 2 N: h	`securities´ shall mean all instruments referred to in section B of the Annex to Directive 93/22/EEC;	N	Securi- ties Depos	A: 1 S: 1	Securities in the sense of this law are shares, kuxe, interim certificates, realm bank portion lights, interests-, share in the profits and talons	Article 1 paragraph 1 sentence 1

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			it Act (Depo tG) Securi ties Tradi ng Act	A: 2 P: 1 S: 1,2	on the owner reading or debenture bonds transferred by endorsement, furthermore other securities, if there are justifiable, with exception of notes and paper money. Securities within the meaning of this Act are, regardless of whether or not certificates have been issued: 1. shares, certificates representing shares, debt securities, profit participation securities, warrants; and 2. other securities comparable to shares or debt securities provided that they are capable of being traded on the market. Securities are also shares issued by a German or non-German investment company.	Securities Deposit Act and Article 2 paragraph 1 sentences 1 and 2 Securities Trading Act define the term, admittedly with different application areas. Nevertheless the Directive is transposed sufficiently by these regulations.
A: 2 N: i	`transfer order` shall mean: -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 or a settlement agent, or	N	Civil Code	A: 676 d	An interposed credit institution is obligated by a payment contract vis- à- vis another credit institution to transmit an amount of transfer within the scope of bank transfers to another credit institution or the credit institution of a	

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	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;		Civil Code	A: 676 S: 1	beneficiary. The termination of an agency contract which contains the forwarding of securities or replevins of securities by booking or in another way (Contract of transfer),...	
A: 2 N: 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;	N	Insolv-ency Act	A:1 S:1	The insolvency proceedings shall serve the purpose of collective satisfaction of a debtor`s creditors by liquidating the debtor`s assets and by distributing the proceeds, or by reaching an arrangement in an insolvency plan, particularly in order to save the enterprise.	The insolvency proceedings are defined in Article 1 sentence 1 Insolvency Act (Aims of...) and they serve as a basis for the entire Insolvency Act.
A: 2 N: 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	N	Civil Code	A: 387	When two persons owe each other benefits which are of the same type, each party can set off his benefits against the claim of the other as soon as he can require his benefit and	

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	participants either 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;			A: 389	effectuate the benefit to which he is obligated to. The result of the set-off is that the debts, as far as they correspond, are considered to be lapsed by the time in which they stand vis-à-vis for a qualified set-off.	
A: 2 N: 1	`settlement account´ shall mean an account at a central bank, a settlement agent or a central counterparty used to hold funds and securities and to settle transactions between participants in a system;	N				The term "settlement account", as used by German law, is the account in which the accounting balance is debited or credited.
A: 2 N: m	`collateral security´ shall mean all realisable assets 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	N				The term is incidental of the German Civil Code, particularly of its third Book.

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	potentially arising in connection with a system, or provided to central banks of the Member States or to the European central bank.					
	NETTING AND TRANSFER ORDERS					
A: 3 P: 1 S: 1	Transfer orders and netting shall be legally enforceable and, even in the event of insolvency proceedings against a participant, shall be binding on third parties, provided that transfer orders were entered into a system before the moment of opening of such insolvency proceedings as defined in Article 6(1).	N	Insolv ency Act	A: 95 P: 1 S: 3	Set- off shall be excluded if the claim against which a set- off is to be effected will be unconditioned and mature before it may be set off.	German law already provides that netting arrangements are resistant to being affected by consequences of the insolvency proceedings. Article 95 paragraph 1 sentence 3 of the Insolvency Act states that a set-off is not possible when the claim against which the

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						set- off should take place becomes unconditional and due before the set-off can take place. However, Article 94 of the Insolvency Act protects contractual set-off in insolvency.
A: 3 P: 1 S: 2	Where, exceptionally, transfer orders are entered into a system after the moment of opening of insolvency proceedings and are carried out on the day of opening of such proceedings, they shall be legally enforceable and binding on third parties only if, after the time of settlement, the settlement agent, the central counterparty or the clearing house can prove that they were not aware, nor should have been aware, of	N				This special case does not require transformation into German law, because the assets cannot be debited by a payment contract after the insolvency proceedings have been opened. The

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	the opening of such proceedings.					authority of administration and disposal of the assets is handed over to the insolvency administrator. Admittedly, the confidence of those who act without knowledge of the opening of the insolvency proceedings and of those who rely on the continuance of the payment treaty should be protected. This need for protection is

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						accomodated in Article 116 in conjunction with Article 115 of the Insolvency Act. Under the terms of the newly inserted Article 96 paragraph 2 of the Insolvency Act this also applies when the status of the possibility to offset was affected in a voidable way. To end all doubts, Article 95 paragraph 1 sentence 3 of the Insolvency Act is not applicable in

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
A: 3 P: 2	No law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings, as defined in Article 6(1) shall lead to the unwinding of a netting.	N	Insolv-ency Act	A: 96 P: 2 S: 1	Paragraph 1 as well as Article 95 paragraph 1 sentence 3 shall not oppose the set-off of claims and benefits from transfer, payment or assignment agreements introduced into a system serving to implement such agreements where set-off is effected at the latest on the day of opening of the insolvency proceedings.	the field of secured systems. Article 3 paragraph 2 of the Directive states that the netting must not be unwound by the setting aside of contracts and transactions before insolvency proceedings were opened. As a consequence, Article 96 of the Insolvency Act had to be amended. In its previous version Article 96 Number 3 of the

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
						Insolvency Act stated that the netting could be unwound provided that the creditor acquired the possibility for set-off as a result of a voidable act. Where the creation of a set-off- situation was seen as being voidable (i.e. as an incongruent cover), set-off would be impossible, if the set-off- situation was created one month before the start of the insolvency

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
						proceedings. This consequence was incompatible with the intention of the Directive. Article 96 paragraph 2 of the Insolvency Act now states that Article 93 Paragraph 1 Insolvency Act is inapplicable in connection with netting systems. As a result the netting can no longer be unwound, even if a set-off-situation was created shortly before the start of

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
			Insol-vency Act	A: 147 P: 1 S: 2	Sentence 1 is applicable to legal acts underlying the claims and benefits named in Article 96 paragraph 2 sentence 1 provided that the clearing including the settlement of balances is not rescinded or the regarding transfer, payment and assignment contracts become ineffective because of the rescission.	the insolvency proceedings. Sentence 1 of Article 147 of the Insolvency Act states that transactions carried out after the opening of the insolvency proceedings and having legal effect under sections 892 and 893 of the Civil Code, 16 and 17 of the Act Governing Rights in Registered Ships and Ships under

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Germany – final report

Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
						Construction and 16 and 17 of the Act Governing Rights in Aircraft may be rescinded in accordance with the provisions governing the rescission of transactions carried out before the insolvency proceedings were opened. Sentence 2 of Article 147 of the Insolvency Act ensures that the transactions entered into a payment system cannot be unwound.

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Germany – final report

Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
A: 3 P: 3	The moment of entry of a transfer order into a system shall be defined by the rules of that system. If there are conditions laid down in the national law governing the system as to the moment of entry, the rules of that system must be in accordance with such conditions.	N				The fixing of the point in time when the payment is entered into the system and transfer order concerns the question of the receipt of the declaration of intent. Under German law this is subject to personal autonomy.

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Directive 98/26/EC on Settlement Finality in Payment and Securities Settlement Systems

Germany – final report

Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
A: 4 S: 1	Member States may provide that the opening of insolvency proceedings against a participant shall not prevent funds or securities available on the settlement account of that participant from being used to fulfil the participant's obligations in the system on the day of the opening of the insolvency proceedings.	D				Article 4 Sentence 1 of the Directive whose transposition is at Member State's discretion was not transposed. If it were transposed, this would mean a deviation from fundamental principles of German insolvency law according to which the administrator assumes the power to administer the assets with the opening of the insolvency Proceedings. The assets are then used to satisfy the creditors. Presently there is no need to exercise this

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Germany – final report

Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
						Proceedings. The assets are then used to satisfy the creditors. Presently there is no need to exercise this option.
A: 4 S: 2	Furthermore, Member States may also provide that such a participant's credit facility connected to the system be used against available, existing collateral security to fulfil that participant's obligations in the system.	D				
A: 5	A transfer order may not be revoked by a participant in a system, nor by a third party, from the moment defined by the rules of that system.	N				

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Germany – final report

Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
	PROVISIONS CONCERNING INSOLVENCY PROCEEDINGS					
A: 6 P: 1	For the purpose of this Directive, the moment of opening of insolvency proceedings shall be the moment when the relevant judicial or administrative authority handed down its decision.	N	Insolv ency Act	A: 27 P: 2 N: 3	The order opening the insolvency proceedings shall specify the hour when the insolvency proceedings were opened.	Article 6 paragraph 1 of Directive 98/26/EC is equivalent to German law which is already in effect.
A: 6 P: 2	When the decision has been taken in accordance with paragraph 1, the relevant judicial or administrative authority shall immediately notify that decision to the appropriate authority chosen by its Member State.	N	Germ an Banki ng Act	A: 46 b P: 1 S: 5	The court order to initiate the insolvency proceedings shall be specially communicated to the Federal Banking Supervisory Office.	
A: 6 P: 3	The Member State referred to in paragraph 2 shall immediately notify other Member States.	N	Banki ng Act	A: 46 b P: 2	If insolvency proceedings are initiated in respect of an institution which is a participant in a system within the meaning of Article 24 b paragraph 1 Banking Act, the Federal Banking Supervisory Office shall immediately notify the agencies whose names have been communicated by the other states of the	For the content of Article 24 letter b of the Banking Act see the transposition of Article 10 sentence 1 of the

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
					European Economic Area to the Commission of the European Communities. Sentence 1 applies as appropriate to system operators within the meaning of section 24 b Banking Act.	Directive.
A: 7	Insolvency proceedings shall not have retroactive effects on the rights and obligations of a participant arising from, or in connection with, its participation in a system earlier than the moment of opening of such proceedings as defined in Article 6(1).	N				The so called "midnight-regulation" which means that the opening of the proceedings applies retroactively to the beginning of the particular day does not exist in the German legal system. Therefore, there was no need to transpose Article 7 of Directive 98/26/EC into

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
A: 8	In the event of insolvency proceedings being opened against a participant in a system, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system.	N	Introd uctory Act to the Insolv ency Act	A: 102 P: 4	The effects of the insolvency proceedings on the rights and obligations of a member participating in a system in terms of Article 96 paragraph 2 sentence 2 or 3 of the Insolvency Statute underlie the law that is applicable to the system.	German law. Article 8 of the Directive was directly transposed into German law.

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Directive 98/26/EC on Settlement Finality in Payment and Securities Settlement Systems

Germany – final report

Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
	INSULATION OF THE RIGHTS OF HOLDERS OF COLLATERAL SECURITY FROM THE EFFECTS OF THE INSOLVENCY OF THE PROVIDER					
A: 9 P: 1	The rights of: - a participant to collateral security provided to it in connection with a system, and - central banks of the Member States or the European central bank to collateral security provided to them, shall not be affected by insolvency proceedings against the participant or counterparty to central banks of the Member States or the European central bank which provided the collateral security. Such collateral security may be realised for the satisfaction of these rights.	N	Insolv ency Act	A: 166 P: 2 S: 2	This shall not apply if the claim has been assigned to the participant in a system in accordance with Article 96 paragraph 2 sentence 2 or 3 in order to safeguard his claims from the system or to the central bank of a Member State of the European Union or Contracting Party of the Agreement on the European Economic Area or to the European Central Bank.	Article 166 paragraph 2 sentence 2 of the Insolvency Act refers to Article 166 paragraph 2 sentence 1 of the Insolvency Act which states that the insolvency administrator may collect or in another way dispose of a claim assigned by the debtor in order to secure a claim.

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Germany – final report

Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
						Article 166 paragraph 2 sentence 2 was introduced to ensure that the insolvency administrator cannot avail himself of the rights given to him/her in relation to a claim assigned as security, if the claim in question is one against a participant of a payment system that was assigned to an EU Member States Central Bank or to the ECB.

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
			Insol- vency Act	A: 223 P: 1 S: 2	Any derogating provision shall be ruled out in respect of securities provided to 1. the participant in a system in accordance with Article 96 paragraph 2 sentence 2 or 3 to safeguard his claims for the system, or 2. the central bank of a Member State of the European Union or the European Central Bank.	For the content of Article 96 paragraph 2 sentences 2 and 3 of the Insolvency Act see the transposition of Article 2 letter a sentence 1 of the Directive. Article 223 paragraph 1 sentence 2 of the Insolvency Act refers to Article 223 paragraph 1 sentence 1 of the same Act which states that if the insolvency plan does not provide otherwise, the

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Directive 98/26/EC on Settlement Finality in Payment and Securities Settlement Systems

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
						<p>plan shall not affect the right of creditors entitled to obtain separate satisfaction from objects subject to rights of separation.</p> <p>Article 223 paragraph 1 sentence 2 was introduced to prevent that the insolvency plan derogates from the basic rule that the rights of creditors entitled to separate satisfaction shall remain unaffected, where</p>

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
						<p>such creditors are participants in a payment system or a central bank to which securities were provided.</p> <p>For the content of Article 96 paragraph 2 sentences 2 and 3 of the Insolvency Act see the transposition of Article 2 letter a sentence 1 of the Directive.</p>
A: 9 P: 2	Where securities (including rights in securities) are provided as collateral security to participants and/or central banks of the Member States or the European central bank as described in	N	Securi-ties Depos-it Law	A: 17 a	Disposals of securities or shares in accumulative assets which are registered or booked on an account with causative legal effect underlie the law of the state supervising the register in which directly in favour of the	Article 17a of the Securities Deposit Act is a general rule which applies to all securities or

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Directive 98/26/EC on Settlement Finality in Payment and Securities Settlement Systems

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
	paragraph 1, and their right (or that of any nominee, agent or third party acting on their behalf) with respect to the securities is legally recorded on a register, account or centralised deposit system located in a Member State, the determination of the rights of such entities as holders of collateral security in relation to those securities shall be governed by the law of that Member State.				recipient of the disposal the entry in the register is undertaken or the account keeping central office or local branch of the depository which gives the recipient of the disposal the legally constituted credit is situated.	shares in accumulative assets which are registered or booked in an account. The provision thus encompasses the rule of Article 9 paragraph 2 of the Directive.
	FINAL PROVISIONS					
A: 10 S: 1	Member States shall specify the systems which are to be included in the scope of this Directive and shall notify them to the Commission and inform the Commission of the authorities they have chosen in accordance with Article 6(2).	N	Securi-ties Depo-sit Law	A: 24 b P: 1 S: 1,2,3	An institution shall report the intention to operate a system as provided for in Article 2 of Directive 98/26/EC of the European Parliament and Council of May 19, 1998 on settlement finality in payment and securities settlement systems (Official Journal of the European Communities No. L 166 page 45) immediately to the Federal Banking Supervisory Office and the Deutsche Bundesbank and shall name the participants. This also applies to any subsequent change in the participants. The	Article 24 b paragraph 1 of the Securities Deposit Act has directly transposed Article 10 paragraph 1 of the Directive into German Law.

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
					Deutsche Bundesbank will notify the Commission of the European Communities of the systems reported to it after having satisfied itself of the appropriateness of the rules governing the system.	
A:10 S: 2	The system shall indicate to the Member State whose law is applicable the participants in the system, including any possible indirect participants, as well as any change in them.	N				
A: 10 S: 3	In addition to the indication provided for in the second subparagraph, Member States may impose supervision or authorisation requirements on systems which fall under their jurisdiction.	D				The option to subject the systems to supervision or authorisation has not been exercised because of sufficient power of supervision of the Banking Act.
A: 10 S: 4	Anyone with a legitimate interest may require an institution to inform him of	N	Securi-ties	A: 24 b P: 2	An institution shall provide information on the systems within the meaning of Article 24 b	Article 24 b paragraph 2 of the

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Directive 98/26/EC on Settlement Finality in Payment and Securities Settlement Systems

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
	the systems in which it participates and to provide information about the main rules governing the functioning of those systems.		Depos it Law		paragraph 1 in which it is involved and on the basic rules governing their mode of operation to all parties which can demonstrate that they have a legitimate interest in the matter.	Banking Act has directly transposed Article 10 Paragraph 4 of the Directive into German Law.
A: 11 P: 1 S: 1,2	Member States shall bring into force the laws regulations and administrative provisions necessary to comply with this Directive before 11 December 1999. They shall forthwith inform the Commission thereof.	N				In accordance with Article 5 of the Act to amend regulations concerning insolvency and credit system of December 8, 1999 which has transposed Directive 98/26/EC into national law, the Act became effective on the day following publication

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
						(publication occurred in the Federal Gazette on December 10, 1999 part 1 No. 54 page 2384).
A: 11 P: 1 S: 3,4	When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.	N				In the Act to amend regulations concerning insolvency and credit system of December 8, 1999 which is the law transposing Directive 98/26/EG into national law as well as in the several regulations in the particular Acts reference has been made to the

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
						Directive in footnotes.
A: 11 P: 2	Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive. In this Communication, Member States shall provide a table of correspondence showing the national provisions which exist or are introduced in respect of each Article of this Directive.	N				
A: 12	No later than three years after the date mentioned in Article 11(1), the Commission shall present a report to the European Parliament and the Council on the application of this Directive, accompanied where appropriate by proposals for its revision.	n. a.				
A. 13	This Directive shall enter into force on the day of its publication in the <i>Official Journal of the European Communities</i> .	n. a.				
A: 14	This Directive is addressed to the	n. a.				

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
	Member States.					

Insolvenzordnung (**InsO**) = Insolvency Act

Einführungsgesetz zur Insolvenzordnung (**EGInsO**) = Introductory Act to the Insolvency Act

Kreditwesengesetz (**KWG**) = Banking Act

(The Banking Act contains regulations governing the conduct of credit institutions and public supervision of banking. The purpose of the Banking Act is to protect the creditor and to ensure the efficiency of the financial services sector.)

Depotgesetz (**DepotG**) = Securities Deposit Act

(The Securities Deposit Act governs the depositing and acquisition of securities. The purpose of the Act is to protect the depositor (of securities) by maintaining ownership of the security in the safekeeping business and to ensure rapid acquisition of ownership of the security.)

Wertpapierhandelsgesetz (**WpHG**) = Securities Trading Act

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks

Grundgesetz (**GG**) = Basic Law

Bürgerliches Gesetzbuch (**BGB**) = German Civil Code

Directive 98/26/EG of May 19th, 1998 on settlement finality in payment and securities settlement systems was transposed into national law by the Act to amend regulations concerning insolvency and credit system of December 8, 1999 (Federal Law Gazette: BGBl Part 1 No. 54 page 2384 of December 10, 1999).

Since German law already covers wide areas addressed by Directive 98/26/EC, there was no need to transpose the Directive as an independent Act. Thus only selected points of the Directive were transposed in a number of existing Acts. Otherwise, interrelated regulations would have been torn apart which would have been detrimental to legal security and clarity.

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