

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

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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
<b>SCOPE AND DEFINITIONS</b>						
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	Law <sup>1</sup>	A: 2 P: 1	The provisions of this Law apply, irrespective of the currency or currencies in which the operations are carried out, to: (a) the Systems which are determined pursuant to the provisions of Article 10 of this Law and to the following Systems:  a) Payment systems  1° the system entitled "Settlement System of Payment Orders in Real Time" ("HERMES"), from the date of the initiation its operation;  2° the system entitled "Settlement System of Payment Orders in Euro in Real Time" ("EURO - HERMES"), which, until the date of accession of Greece to the third stage of the EMU, forms a part of HERMES;  3° the payments through the	HERMES is a payment system for large amounts charged with <i>real time</i> settlement regarding domestic and cross-border inter-banking payment orders, as well as client payment orders. It constitutes the Greek component of TARGET, the European payment system. By virtue of Act 46/21.12.2000 of the Monetary Policy Council, HERMES and EURO - HERMES were merged into one system regulated by the abovementioned Act.  The Athens Netting Office was established in 1928 and its purpose is the settlement of cheques, which are brought to it by Participant banks and have been issued against other

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					<p>INTERLINKING mechanism of the Trans-European System for Settlement Payment Orders in Real Time (TARGET) to and from EURO-HERMES and after its abolishment or merger with HERMES, the payments from and to that System;</p> <p>4. the system entitled "System of Monitoring Transaction on Titles in Book Entry Form" ("DEMATERIALIZED TITLES"), provided for by Law 2198/1994 and administered and supervised by the Bank of Greece;</p> <p>5. the Athens Netting Office;</p> <p>6. the system entitled "Dematerialised Securities System" (SAT), which is administered by the societe anonyme "Central Securities Depository S.A", supervised by the Capital Markets Commission and provided for by Decision 9820/16.03.1999 of the Board of Directors</p>	<p>Participant Banks.</p> <p>SAT is the dematerialised securities system organised and run by the Central Securities Depository, which is charged with the clearing and settlement of transactions concluded on or outside the markets of the Athens Stock Exchange, concerning securities listed on any of the markets of the Athens Stock Exchange.</p> <p>The Clearing and Settlement System of Transactions On Derivatives is charged with the clearing and settlement of transactions concluded on the Athens Derivatives Exchange.</p>

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					of the Capital Markets Commission;  7. the system entitled “Clearing and Settlement System of Transactions On Derivatives” administered by the <i>societe anonyme</i> “Athens Derivative Exchange Clearing House” (ET.E.S.E.P), supervised by the Capital Markets Commission and provided for by Law 2533/1997 and Decision 25/04.08.1999 of the Board of Directors of the Athens Derivative Exchange Clearing House.	
A: 1 N: b	(b) any participant in such a system;	N	Law	A: 2 P: 2	This Law also applies to the domestic and foreign Participants in Domestic Systems, as well as to domestic Participants in Systems of other Member States.	
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	N	Law	A: 2 P: 3	(c) Collateral Security as defined in Article 1 (m) provided in connection with Systems as well as the monetary policy acts and other operations of the European Central Bank, the Bank Of Greece and the other	

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	functions as central banks.				central banks of the Member States in their functions as central banks.	

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A: 2	For the purpose of this directive:		Law	A:1	For the purpose of this Law	
A: 2 N: a S: 1	'system' shall mean a formal arrangement:	N	Law	A: 1 P: a S: 1	"System" is an arrangement regulated by legislation, regulation or contractually with common and standardised rules:	
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	Law	A: 1 P: a S: 1 N: i	a) between three or more participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, for the execution of transfer orders between the participants	
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	Law	A: 1 P: a S: 1 N: ii	(b) governed by the law of a Member State chosen by the participants under the condition that the in that Member State in which at least one of the participants has its head office, and	
A: 2 N: a S: 1	-designated, without prejudice to other more stringent conditions of general application laid down by	N	Law	A: 1 P: a S: 1	(c) which arrangement has been notified as a System to the European Commission by a Member State after that Member State is	

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	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 adequacy of the rules of the system.			N: iii	satisfied as to the adequacy of the rules of the system	
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	Law	A: 1 P: a S: 2	A legislative or regulatory arrangement or a contract, fulfilling the conditions of Article 1 (a) s.1 above and 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, such as derivatives contracts on merchandise, which has been characterised as a System by a Member State and has been notified to the Commission.	
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	D	Law	A: 1 P: a S: 3	A legislative or regulatory arrangement or a contract between two participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible	

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	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;				indirect participant which has been characterised as a System by a Member State and has been notified to the Commission.	
A: 2 N: b S: 1	`institution' shall mean: -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 -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 -public authorities and publicly guaranteed undertakings, or -any undertaking whose head office is outside the Community and whose functions correspond to	N	Law	A: 1 P: b	Institution shall mean: -credit institutions as defined in Article 2 (1) of Law 2076/1992 <sup>2</sup> , including the institutions set out in Article 3 (2) and Article 3 (3) of above law <sup>3</sup> and Article 2 (2) of Directive 77/780/EEC, or, -investment services firm as defined in Article 2 (3) of Law 2396/1996 <sup>4</sup> , excluding the institutions set out in Article 3 (1) of above law and in the list in Article 2(2)a to (k) of Directive 93/22/EEC, - public authorities and publicly guaranteed undertakings; - any institution whose head office is outside the Community and whose functions correspond to those of the credit	

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	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.				institutions or investment services firms as defined in the first and second indent, provided that they are under a respective supervision and; -any undertaking having been characterised as an institution pursuant to the procedure of Article 11 (1) of the Law for domestic systems or respective procedures for systems of other Member States which participates in a system and which is responsible for discharging the financial obligations arising from transfer orders within that system.	
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	D				

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	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;					
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	Law	A: 1 P: 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.	
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,	N	Law	A: 1 P: 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	

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	extending credit to those institutions and/or central counterparties for settlement purposes.				counterparties for settlement purposes.).	
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 settlement agent;	N	Law	A: 1 P: e	Clearing house shall mean an entity responsible for the calculation of the net positions of institutions, a possible central counterparty and/or possible settlement agent;	
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	Law	A: 1 P: f	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.	
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	D	Law	A: 11 P: 2	By a Decision of the Minister of Finance, following a recommendation of the Governor of the Bank of Greece, the application of the Law may be extended to	

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	warranted on the grounds of systemic risk and on condition that the indirect participant is known to the system;				Indirect Participants in a System if it is warranted on the grounds of systemic risk and on condition that the Indirect Participant is known to the System;.	
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	Law	A: 1 P: g	Indirect participant' shall mean a credit institution as defined in the first indent of (b) of Article 1 of the Law with a contractual relationship with an institution participating in a payment System executing transfer orders as defined in the first indent of para. (i) of the Law which enables the abovementioned credit institution to pass transfer orders through the system;	
A: 2 N: h	`securities' shall mean all instruments referred to in section B of the Annex to Directive 93/22/EEC;	N	Law	A: 1 P: h	Financial Instruments shall mean all instruments referred to in sentence (a) of para.1 of Article 2 of Law 2396/1996.	The Law does not give a definition of Financial Instruments. The Law refers to "Financial Instruments" as defined in sentence a of para.1 of Article 2 <sup>5</sup> of Law 2396/1996, which transposed EC Directive 93/22/EEC.
A: 2	`transfer order' shall mean:	N	Law	A: 1	Transfer order' shall mean:	

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N: i	-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 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;			P: i	-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 any instruction of a Participant which results in the assumption or discharge of a payment obligation as defined by the rules of the system, or -any 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;	
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,	N	Law	A: 1 P: j	Insolvency proceedings shall mean any collective measure provided for in the law of a Member State, or a third country, which involves the suspending of, or imposing limitations on, the power to dispose such as bankruptcy, special insolvent liquidation or reorganisation/administration,;	The definition of “insolvency proceedings” for the purposes of the Law is an exact translation in to Greek of the definition provided in the relevant provision of the European Directive. As far as Greek law is concerned this

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	transfers or payments;					provision of the Law is very wide and covers all kinds of insolvency proceedings, which may be imposed under Greek law.
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 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;	N	Law	A: 1 P: k	Set-Off 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 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;	The term "netting" has been translated in Greek as "set-off", which is a specific legal term under Greek law. Under Greek law there are two broad categories of set off, which are legal set-off and contractual set-off. Both are a legal way of extinguishing an obligation. A legal set-off (Article 440 GCC et sec.) results in the extinguishments of obligations/debts mutually owed between two persons to the extent they overlap,

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						<p>provided they are of the same nature as to their object and they are due and payable.</p> <p>A consensual/contractual set-off is a much more loose type of set-off on the basis of the principle of the freedom of contract as provided in Article 361 GCC. Its legal effect of extinguishing debts/obligations in whole or in part takes place under the set-off terms agreed by the contracting parties, provided that such agreement and/or its legal effect does not prejudice Greek public policy legal provisions, including provisions intended to protect the interests of third parties; It is notable that such provisions may invalidate legal set-off</p>

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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	Law	A: 1 P: 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.	
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 potentially arising in connection with a system, or provided to central banks of the Member States or to the European central bank.	N	Law	A: 1 P: m	As Security within the meaning of this section are considered all realisable assets or monies provided under a pledge or a guarantee or a repurchase agreement 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.	The definition of "Security" for the purposes of the Law is almost an exact translation in to Greek of the definition provided in the relevant provision of the European Directive. As far as Greek law is concerned this provision of the Law is very wide and covers all kinds of security, which may be granted under Greek law. In the provision of the Law "guarantee" is inserted in addition to pledge and repo, as part of the indicative list of

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						security within the meaning of the Law.. There seems to be no mention of the nature of obligations that may be secured when the collateral taker is a Member State central bank or the European Central Bank, so that presumably security may be granted to them for all kinds of obligations, even those not arising in connection to a System.
	<b>NETTING AND TRANSFER ORDERS</b>					
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	N	Law	A: 3 P: 1 S: 1	Transfer orders and netting shall be legally valid and enforceable and binding against any third party, even in the event of Insolvency Proceedings against a Participant, provided that transfer Orders were entered into the System before the moment of opening of such Insolvency	The slight change of wording might indicate upon strict interpretation that the provision of the Law is more protective than the Directive. According to Greek law a transaction may be legally enforceable but not

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	opening of such insolvency proceedings as defined in Article 6(1).				Proceedings as defined in Article 5.	binding on third parties, e.g. under Greek law an assignment of debt, which is not notified to the debtor is legally enforceable between the parties but not binding on the debtor or other third parties. However, this much depends on the interpretation and intended effect of the Directive itself and it seems that considering the effect of Article 3 (1) of the Directive, as discerned in the Preamble (11) the Greek provision and the Directive provision have the same intended effect so that the binding effect on third parties is not provided only in the event of insolvency proceedings against a Participant. <sup>6</sup>
A: 3	Where, exceptionally, transfer	N	Law	A: 3	Where transfer orders are entered into a	The Greek legislator has

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P: 1 S: 2	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 the opening of such proceedings.			P: 1 S: 2	system after the moment of opening of Insolvency Proceedings and under the condition that their clearance initiates on the day of opening of such Insolvency Proceedings, they shall be legally enforceable and binding on third parties only if, the Administrator of the System (the settlement agent, the central counterparty or the clearing house) proves that it had no knowledge of the opening of such proceedings.	stipulated that the transfer orders are legally enforceable and binding on third parties "on the condition that" their clearance initiates on the day of opening of such Insolvency Proceedings, whereas the Directive appears to consider as the only necessary condition the lack of knowledge. Furthermore, whereas the Directive refers to transfer orders that are "carried out" on the day of opening of Insolvency Proceedings, the provision of the Law refers to initiation of "clearance". Hence, although there appears to be a discrepancy between the two provisions, in practice the two points in time coincide, as has been clarified upon discussions with the officials of

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

Greece – final report

Directive 98/26/EC			Member State's Legislation			
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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
						the Systems.  Finally, pursuant to what is provided by the Directive, the burden of proof rests with the Administrator of the System, but this provision also sets a presumption of knowledge, i.e. the procedure of Article 6 of the Law (notification by the Bank of Greece about the publication of the decision)
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	Law	A: 3 P: 2	The validity of a Netting is not affected by legal provisions on the setting aside of "acts producing a legal effect" ( <i>dikaiopraxies</i> , actes juridiques) concluded before the moment of opening of Insolvency Proceedings, as defined in Article 5.	In execution of section 3 (2) of the Directive, the purpose of section 3 (2) of the Law is to rule out any possibility of netting being overturned by other provisions of Greek law (e.g. civil law provisions) in addition to provisions of Greek bankruptcy law and Greek special insolvent liquidation law <sup>7</sup> .

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Greece – final report

Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	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	Law	A: 3 P: 3	Domestic Systems are governed by clear rules, which define the moment of entry of a transfer Order into the System.	The Preparatory Report to the Law refers explicitly to article 3 (3) of the Directive <sup>8</sup> . More particularly, this provision, pursuant to the Preparatory Report to the Law, provides that the Systems must be governed by clear rules and regulations which define the moment of entry of a transfer Order into the System, as it is deemed necessary to secure the irrevocability of the transfer orders after a specific moment in time. <sup>9</sup>
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	D	Law	A: 4 S: 1	Funds or Securities of a Participant available on the settlement account of that participant may be used to fulfil the participant's obligations in the system, which have been borne up until and including the day of the opening of the Insolvency Proceedings.	Section 4 (1) of the Law applies the possibility granted by section 4 of the Directive providing that funds or securities available on the settlement account of a participant can be used to fulfil the participant's obligations in

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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	opening of the insolvency proceedings.					the system which have been borne up until and including the day of the opening of the Insolvency Proceedings. This provision achieves the segregation of the available funds in the settlement account from the insolvency estate and provides for a privilege in favour of the System. The provision for this privilege was deemed necessary for the extinction to the extent possible of the systemic risk.
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	Law	A: 4 S: 2	The credit facility granted to such a Participant in the System against available, existing collateral security may be used to fulfil that Participant's obligations in the system.	
A: 5	A transfer order may not be revoked by a participant in a	N	Law	A: 3 S: 3	Domestic Systems are governed by clear rules which define the moment after which	The Preparatory Report to the Law refers explicitly to article

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Directive 98/26/EC			Member State's Legislation			
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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	system, nor by a third party, from the moment defined by the rules of that system.				such Order cannot be revoked neither by a Participant nor by a third party.	5 of the Directive. <sup>10</sup> More particularly, this provision, pursuant to the Preparatory Report to the Law, provides that the Systems must be governed by clear rules and regulations which define the moment of entry of a transfer Order into the System, as well as the moment after which a transfer order may not be revoked either by a participant or by a third party, as it is deemed necessary to secure the irrevocability of the transfer orders after a specific moment in time. <sup>11</sup>
	<b>PROVISIONS CONCERNING INSOLVENCY PROCEEDINGS</b>					
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	N	Law	A: 5 P: 1	The moment of opening of Insolvency Proceedings shall be the moment when the relevant judicial or administrative authority's decision was published.	

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	or administrative authority handed down its decision.					
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	Law	A: 5 P: 2	The relevant judicial or administrative authority shall immediately notify that decision to the Bank Of Greece. Such serving of the decision must have been effected: (a) within the same day on which the decision of the court was published, or (b) prior to the publication of the decision of the administrative authority in the Government Gazette.	This provision specifies the meaning of immediate notification by setting specific time limits for such notification and making a distinction between court decisions and administrative authorities decisions.
			Law	A: 5 P: 3	Court decisions by virtue of which Insolvency Proceedings are opened must contain the exact time of their publication and order their serving to the Bank of Greece.	By way of extension to the scope of the European Directive, court decisions by virtue of which Insolvency Proceedings are opened must contain the exact time of their publication and the non-notification of bankruptcy petitions or in general petitions for the opening of Insolvency Proceedings against a Participant renders such
			Law	A: 5 P: 4	Bankruptcy petitions or in general petitions for the opening of Insolvency Proceedings against a Participant in Systems of Article 10 (1) of the Law are	

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
			Law	A: 13 P: 2	considered void if not served to the Bank of Greece.  The Systems notify immediately the Bank of Greece of any petition notified to them, pursuant to Article 5 (4) of the Law.	petitions void.
			Law	A: 13 P: 3	The Bank of Greece notifies immediately the Capital Markets Commission of any notification that comes to her knowledge concerning an Institution supervised by the Capital Markets Commission	
A: 6 P: 3	The Member State referred to in paragraph 2 shall immediately notify other Member States.	N	Law	A: 6 P: 1	The Bank of Greece shall notify immediately, and definitely within the day that the decision for the opening of the Insolvency Proceedings was served to it, pursuant to para 2 of Article 5, the European central bank and the Competent Authorities.	
A: 7	Insolvency proceedings shall not have retroactive effects on the rights and obligations of a participant arising from, or in	N	Law	A: 7	Insolvency proceedings shall not have retroactive effects on the rights and obligations of a participant in a Domestic System arising from, or in connection with,	

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Directive 98/26/EC			Member State's Legislation			
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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	connection with, its participation in a system earlier than the moment of opening of such proceedings as defined in Article 6(1).				its participation in such System which have been borne earlier than the notification to that System of the opening of the Insolvency Proceedings pursuant to Article 6(3).	
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	Law	A: 8	The law governing the System shall also govern, in the case of an opening of Insolvency Proceedings against a Participant, the rights and obligations of that Participant arising from or linked to its participation in the System.	<p>This provision is important since it lays down a rule of private international law by determining clearly the applicable law concerning the rights and obligations of a Participant, against which Insolvency Proceedings have been opened.</p> <p>Hence in the case of the opening of Insolvency Proceedings against a Participant in a Domestic System, Greek law will be applicable for the rights and obligations of that Participant linked to its participation in the</p>

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Directive 98/26/EC			Member State's Legislation			
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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
						System independent of the country of the registered seat of such Participant.

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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 <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	<b>INSULATION OF THE RIGHTS OF HOLDERS OF COLLATERAL SECURITY FORM THE EFFECTS OF THE INSOLVENCY OF THE PROVIDER</b>					
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	Law	A: 9 P: 1	Collateral Security granted to: - a Participant within the operation context of a System, or - central banks of the Member States or the European Central Bank to collateral security provided to them, shall not be subject to dissolution, lifting or extinguishment nor shall it be affected by insolvency proceedings against the Participant or the counterparty to central banks of the Member States or the European Central Bank, which provided the collateral security.	Paragraphs 1 and 2 of this Article have as a purpose the protection of the collateral security granted by a Participant in connection to his participation in a System or by a counterparty of central banks or the European Central Bank, both in the event of the opening of Insolvency Proceedings as well as in the event of a simple delay in the fulfilment of his obligations and also set a procedure for the compulsory disposal of the securities granted as collateral security.
			Law	A: 9 P: 2	If there exists a debt of a Participant in a System or a counterparty of a Member State central bank or/and the European	

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
					<p>Central Bank due and payable for a time period longer than 24 hours, the securities, listed on an exchange, on which security has been constituted, it is allowed (for such securities) by way of derogation from the provisions on compulsory liquidation upon execution and following the notification of the debtor by a document with certified date, to be liquidated by the Settlement Agent or the Central counterparty of the System, the central bank or the European Central Bank, or, in case the securities are due and payable, the debts arising from them to be redeemed by the Settlement Agent or the Central counterparty of the System, the central bank or the European Central Bank in their own name. The liquidation takes place on-exchange through a member of the stock exchange which is determined by Settlement Agent or the Central counterparty of the System, the central bank or the European Central Bank and/or off-exchange, in case the</p>	<p>As concerns paragraphs 2 and 3, these are to a considerable extent similar to to the respective provisions of the Statute of the Bank Of Greece.</p>

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1	2	3	4	5	6	7
Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
			Law	A: 9 P: 3	<p>object of the security is government securities or securities, which are not listed on the Athens Stock Exchange. The proceeds of such liquidation are used by way of priority for the satisfaction of the secured claim. When the security has been granted in the form of a securities sale and repurchase contract and the Participant or counterparty under the obligation to repurchase defaults as to the performance of its obligation for the payment of the price, the Settlement Agent or the Central counterparty of the System, the central bank or the European Central Bank may immediately dispose of freely the securities they had purchased.</p> <p>The provisions of legislation which are applied on the constitution of a pledge and the compulsory liquidation upon execution of such pledge and the distribution of the proceeds thereof are applicable also for the constitution and the compulsory</p>	

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

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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
					liquidation upon execution of a pledge on dematerialised titles of the Hellenic republic in favour of the European Central Bank and the central banks of the Member States, as well as for the distribution of the proceeds thereof.	
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 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.	N	Law	A: 9 P: 4	Where Collateral Security is constituted over securities or rights in securities are provided in favour of Participants within the System operating context or central banks of the Member States or the European central bank, with a legal recording of their right (or that of any nominee, agent or third party acting on their behalf) on a System or register or a system of registration or an account or the books of a central bank of a Member State or the Central European Bank, the said right, especially as to its lawful constitution, validity and the procedure of compulsory liquidation upon execution shall be governed by the law of the Member State in which its recording was	This provision sets a private international law rule for the determination of the applicable law relevant to the rights of the collateral taker in the case that securities or interests in Securities have been granted as security and the registration of the right of the collateral taker has taken place lawfully as to its formal validity in a System, Register, Central Depository System, Account or central bank or European Central Bank books. Furthermore this provision provides that the applicable law which governs

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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
					made.	the whole of the security contract including its constitution, the rights of the collateral taker, compulsory execution of the securities is the law of the country in which the System, Register, Central Depository System, Account or central bank or European Central Bank books are situated, even in the case that such registration has been made in a system different from that of the initial or constitutive registration of the securities or such rights. This means that in case that shares or interests in shares of an issuing company registered in Greece have been granted as security within a foreign system and the registration of the right of the collateral taker

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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
						<p>has taken place in such foreign system, registry or account, without a corresponding registration in the Dematerialised Securities System in order to determine the rights of the collateral taker, the applicable law will be not Greek law but the law of the Member State, in which the System, Registry or Account in which the registration of the right of the collateral taker is situated.</p> <p>According to the Preparatory Report to the Law, the abovementioned rights will not be able to be exercised in Greece as against those who are the legal beneficiaries according to Greek law, in case of their parallel registration in a Greek system<sup>12</sup>.</p>

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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	<b>FINAL PROVISIONS</b>					
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	Law	A: 10 P: 1,4  A: 10 P: 3	Without prejudice to Article 2 para 1 of the Law, the Systems which are covered by the provisions of this Law are determined by a decision of the Minister of Finance, following a recommendation by the Governor of the Bank of Greece or the Capital Markets Commission, as concerns the Systems supervised by each authority, which includes the Systems of Article 2(1) and which is published in the Government Gazette. The same applies for any amendment to the above list of such Systems, which are covered by the provisions of this Law.  The Bank of Greece is charged with notifying the European Commission and the Competent Authorities of the List of Systems covered by this Law, pursuant to Article 10 (1) and or any amendment of such list.	The provision of para. 1 determines the procedure for the determination of the systems, which fall within the scope of the Directive, beyond those explicitly referred in Article 2(1) of the Law.  Especially for the systems of Article 1 (a) sections 2 and 3, the recommendation of the Bank of Greece or the Capital Markets Commission must justify the inclusion of such systems from a systemic risk perspective also.

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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
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	Law	A: 12 P: 1	The Domestic Systems shall send to the Bank of Greece a list of the Participants and the Indirect Participants in the system and shall notify it immediately of any later changes to the list of such participants, sending each time a new updated full list.	
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				
A: 10 S: 4	Anyone with a legitimate interest may require an institution to inform him of the systems in which it participates and to provide information about the main rules governing the functioning of those systems.	N	Law	A: 12 P: 2,3	The Bank of Greece and the Systems inform any person having a legitimate interest of whether an Institution is a Participant or an Indirect Participant in a System as well as of the principal operating rules of the said System and especially its Operation regulation.  An Institution is obliged to inform any person having a legitimate interest of whether it is a Participant or an Indirect	

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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
					Participant in a System.	
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			Law 2789/2000 transposing Directive 98/26/EG of 19 May 1998 on settlement finality in payment and securities settlement systems (further: the "Law"), <i>Government gazette</i> , Issue A'21 of 11 February 2000.	The Law came into force on 11 February 2000, upon its publication in the Government gazette).
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				
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	N				

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	correspondence showing the national provisions, which exist or are introduced in respect of each Article of this Directive.					
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 Member States.	n. a.				

<sup>1</sup> Law 2789/2000 transposing Directive 98/26/EG of 19 May 1998 on settlement finality in payment and securities settlement systems (further: the “Law”), *Government gazette*, Issue A’21 of 11 February 2000.

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<sup>2</sup> Law 2076/1992 transposed the Second Banking Directive 89/646/EG on the coordination of legal, regulatory and administrative provisions in connection to the undertaking and exercise of credit institutions activities and amendment of EC Directive 77/780/EEC. Pursuant to Article 2 of said Law, "credit institution" means an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account.

<sup>3</sup> Pursuant to Article 2 (1) of Law 2076/1992, "Credit Institution means a business, the activity of which consists of acceptance of deposits or other returnable funds from the public and the granting of credits on its account.

. Pursuant to Article 2 (3) of Law 2076/1992 'branch' means a place of business which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions; any number of places of business set up in the same Member State by a credit institution with headquarters in another Member State shall be regarded as a single branch;

<sup>4</sup> According to Article 2, para. 3 of Law 2396/1996 *Re: "on Investment Services In Securities, Capital Adequacy of Investment Firms and Credit Institutions and Dematerialised Shares"*, which transposed EC Directive 93/22/EEC, "Investment Firms" are any natural person or legal entity which provides third parties with one or more main investment services on a professional basis.

"Main Investment Services", according to Article 2 para. 1 of same Law are:

- reception and transmission, on behalf of investors, of orders in relation to one or more financial instruments;
- execution of such orders for the account of third parties;
- trading in any financial instrument for own account;
- managing portfolios of investments in accordance with mandates given by investors on a discriminatory, client-by-client basis where such portfolios include one or more financial instruments;
- underwriting of issues of the aggregate or part of any financial instrument and/or the placing of such issues

<sup>5</sup> According to Article 2, para. 1 (a) of Law 2396/1996 *Re: "on Investment Services In Securities, Capital Adequacy of Investment Firms and Credit Institutions and Dematerialised Shares"*, "Financial Instruments" are:

- securities and units in collective investment undertakings;
- those classes of financial instruments that are normally traded on the money market (money market instruments);

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- financial futures contracts, including equivalent cash-settled financial instruments;
- forward interest-rate agreements ('FRA's');
- interest-rate, currency and equity swaps
- options to acquire or dispose of any financial instruments mentioned above, including equivalent cash-settled financial instruments; this category includes in particular options on currency and interest rates.

<sup>6</sup> There is an issue as to whether this provision only refers to insolvency law or other civil law provisions e.g. Greek Civil Code Article 939 provisions aiming at the protection of creditors that could affect the legal enforceability and validity of the transfer orders which have been entered into a System prior to the initiation of the insolvency proceedings and the netting carried out pursuant to such transfer orders or whether it also refers to all general Greek law provisions that may have a similar effect i.e. provisions on avoiding transactions on the basis of fraud, mistake, duress, contravention of law and/or bonos mores etc, e.g. Greek Civil Code Article 140. It is derived from the Preparatory Report to the Law that the interpretation to be followed is the narrow one (only insolvency and civil law provisions aiming at creditor protection). This view is also supported by some of the officials of the Systems and the limited legal writing on the issue, whereas the wide view is supported by other officials of the Systems. Nevertheless they all agree that even if the application of general Greek law provisions cannot be excluded such application could not result in the unwinding of the netting nor the revocation of the transfer order after its entrance in the System, in view of the Directive Preamble (13).

However, especially in the case of the SAT, there seems to be a discrepancy as to the rule established in Article 3.1.1 of the Law. Indeed, pursuant to Article 29 of Law 2579/1998, "Following a decision, the Board of Directors of the Athens Stock Exchange may declare as void a trade (on-exchange transaction) which was concluded through the OASHS if according to its judgment the declaration of such trade as void is necessary for the proper functioning of the market or the protection of the interests of the investing public, such as in case the conclusion of a trade is in the judgment of the Board of Directors of the Athens Stock Exchange is the product of fraud. The abovementioned decision of the Board of Directors of the Athens Stock Exchange is taken at the latest within the next working day following the date of the conclusion of the relevant trade and is announced immediately to the Capital Markets Commission. The Capital Markets Commission following a decision of its executive committee may annul the announced decision of the Board of Directors of the Athens Stock Exchange following a decision which must be taken within the next working day following the announcement of the

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decision of the Board of Directors of the Athens Stock Exchange or else the trade which had been declared void does not produce any legal effect whatsoever and in particular as against the counterparties Members and their clients. The Members of the Board of Directors of the Athens Stock Exchange and of the Executive Committee of the Capital Markets Commission are not liable as against the counterparties - Members, their clients or any other person for the adoption or not of a decision as to the nullity or not of a trade, which was concluded through the OASHS". Furthermore, pursuant to Article 27 para.4. of the SAT Regulation "After finality has been reached, the CSD is precluded from modifying, correcting or complementing the trades. By way of exception and by virtue of Art. 29 L. 2579/1998, transactions concluded may be characterized as void and declared so. In such a case, the ASE should by the end of the day communicate to the CSD its decision thereon. By receiving of the relevant notice, these trades are separated from the multilateral settlement and characterized as void. If the Capital Market Commission overrules the decision of the ASE, such trades shall be de-characterized and cleared on the basis of bilateral settlement. If the Capital Market Commission sustains and ratifies the decision of the ASE, the CSD characterizes these trades as finally void in the SAT. The trades characterized as void produce no further effect in the SAT". The obvious effect of these provisions is that contrary to Article 3.1.1. of the Law, a transfer order may be revoked or annulled on the basis of third party claims even after its entry into the system.

<sup>7</sup> Although the Preparatory Report to the law refers to "other civil law provisions" in general, all the officials of the Systems unanimously agree that this provision only refers, apart from insolvency law, to those provisions of Civil law aiming at the protection of creditors (Greek Civil Code Article 939 i.e. by reversing any depletion of the debtor's or the insolvent's estate). As to the possible application of other general Greek law provisions e.g. for fraud, see our comments in endnote 6.

<sup>8</sup> This provision does not seem to establish any legal rule apart from a general order to regulators to provide clear rules, which define the moment of entry of a transfer Order into the System.

<sup>9</sup> As concerns all the Systems covered by the Law, with the exception of Hermes, their regulations do not contain a specific provision as to what is the exact moment of entry of such transfer order into the relevant System. The HERMES Rules of Operation provide that the time of entry of transfer orders into the System is the moment in time when such orders are registered into the central computer of the Bank of Greece. Most of the Systems contain clear rules as to the moment of irrevocability and finality of such transfer orders (see endnote 9). Following discussions with the relevant authorities although

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the regulations of some Systems lack such a specific provision, the moment of entry of a transfer order in each System is ascertained by interpretation of such Regulations and it is casually taken into consideration by the Operators e.g. for the SAT, the moment of entry of a transfer order is considered the finalization of the trades by the Central Securities Depository, pursuant to Article 27 para.4. of the SAT Regulation which stipulates that "After averaging, the trades, which had on trial been entered in the SAT, are being finalized forming the final and irrevocable group of trades to be cleared. Operators are notified that finality has been reached through an electronic message."

<sup>10</sup> Again, this provision does not seem to establish any legal rule apart from a general order to regulators to provide clear rules which define the moment after which such transfer order cannot be revoked neither by a Participant nor by a third party.

<sup>11</sup> Hence, as concerns the "Clearing and Settlement System of Transactions On Derivatives", pursuant to Article 14 par. 2 of ETESEP Bod Decision 48/25.07.2000: "The transfer orders as concerns the clearing acts on transactions on derivative products, including as such the netting acts, are final and irrevocable upon their insertion by ETESEP in the clearing system, by virtue of which ETESEP announces to the Members (Participants) of ETESEP the outcome of the clearing".

As concerns Hermes, pursuant to Article VII and Annex 1 of Act of Council of Monetary Policy 46/21.12.2000 (the Regulation of Hermes): "The payment order becomes final and irrevocable from the moment of the debit of the settlement account of the sending participant. The settlement of the payment order cannot be revoked, reversed or annulled by the sending Participant or any third party even in the case of commencement of insolvency proceedings against a Participant."

As concerns SAT, pursuant to Article 27 para.4. of the SAT Regulation: "After finality has been reached, the CSD is precluded from modifying, correcting or complementing the trades" and pursuant to Article 35 of SAT Regulation: "Settlement of every purchase or sale is deemed as final and irrevocable in respect to the debits and credits effected in all relevant cash or securities Accounts pursuant to the stipulations of Art. 3 L. 2789/2000".

On the other hand, for the Athens Netting Office, the operation of which is governed by its Articles, there is no such rule. However, pursuant to discussions held with officials of the Athens Netting Office, a transfer order in their system is considered irrevocable from the moment that the actual netting begins, i.e. from the moment that the electronic system is ordered to commence the netting of the claims from the cheques.

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<sup>12</sup> Preparatory Report to the Law, page 4. This last sentence recognises the ultimate inapplicability of Article 9 (2) of the Directive in case of a collateral taker holding the legal title of the securities by way of pledge in Greece. This is derived from Article 49 of Law 2396/1996, as amended, which provides the following:

"1. For the establishment of a pledge or any other encumbrance over dematerialised shares, the necessary relevant document shall be submitted to the C.S.D S.A by deviation of the effective provisions.

2. The establishment of pledge or any other encumbrance over dematerialised shares can be enforced against anyone, from the time of registration in the C.S.D.S.A records.

3. The C.S.D.S.A shall promptly transmit to the issuing company any document by virtue of which pledge or any other encumbrance is established.

4. In case of seizure of dematerialised shares, the provisions of article 982 to 991 of the Civil Procedure Code apply by analogy in combination with the provisions of article 967 of the Civil Procedure Code."

This legal provision has been inserted in the SAT Regulation as Article 65 para.2. which states that "the pledge of the shares is legally enforceable and binding against third parties as from its registration in the CSD Registry".

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