

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

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Austria – final report

Directive 98/26/EC			Member State's Legislation			
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Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	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	FinG	A: 1 N: 1	§ 1  The provisions of this federal law shall apply to: 1. Any system as defined in § 2, operating in any currency or in various currencies which the system converts one against another;	This Act applies to the payment and securities settlement systems as defined in paragraph 2 (1).
A: 1 N: b	(b) any participant in such a system;	N	FinG	A: 1 N: 2	2. Any participant in such a system;	This Act applies to any participant in such a system No deviation

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<sup>3</sup> Directive was realised in several Acts: Act on Settlement Finality in Payment and Securities Settlement Systems (FinG), Bankruptcy Act (KO), Equalisation Act (AO), National Banking Act (NBG)

<sup>4</sup> With regard to interpretation issues with transformation of the Directive in National Law we have had extensive discussions with the responsible person for transformation of the Directive in National Law, Mr. Heinrich Lorenz from the Ministry of Finance.

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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	FinG	A: 1 N: 3	3.For security provided in connection with participation in a system and for security provided in connection with operations of the central banks of the Member States of the EEA agreement or ECB in their functions as central banks.	This Act also applies to the collateral security provided in connection with participation in a system.

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A: 2	For the purpose of this directive:					
A: 2 N: a S: 1	'system' shall mean a formal arrange- ment:	N	FinG	A: 2 P: 1	System in the sense of this fed- eral law shall mean an ar- rangement for the execution of payments and transfer orders according to § 10 under the common rules and unified gui- delines,	“System” means an agreement In the Act the word “formal” is missing., <b>but the Austrian Finality Act defines, that the agreement follows common and standardized rules. This implies that the ar- rangement is formal.</b> In context with the national legal system the term “agreement” refers to all binding arrangements which are legally enforceable and therefore complies with the Directive irre- spective of their form.
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	FinG	A: 2 P: 1 N: 1	Agreed on between – irrespec- tive of the regulation in para- graph 3, sentence 2 - three or more participants, without counting a possible settlement agent, a possible central coun- terparty, a possible clearing house or a possible indirect	“System” means an arrangement between at least three participants without counting a possible set- tlement agent, a possible central counterparty or clearing house or a possible indirect participant.

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					participant;	

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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	FinG	A: 2 P: 1 N: 2	Governed by the law of a Member State of the EEA chosen by the participants. The participants have to choose the law of a Member State of the EEA in which one of them has its head office;	<p>The Act states the following: “governed by the law of a Member State chosen by the participants; the participants <b>have to</b> decide for the law of a Member State in which one of the participants has its head office”.</p> <p>The Act uses the word “have to” instead of “may”, <b>whereas both have the same meaning. As a result of both expressions the participants can only choose the (in the sense of one) law of a Member State in which at least one of them has his head office, what therefore means that National Law is not stricter than the Directive.</b></p>

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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 adequacy of the rules of the system.	N	FinG	A: 2 P: 1 N: 3  A: 2 P: 2	Named to the Commission according to Article 10, paragraph 1 of the directive 98/26/EC by the Member State of the EEA, whose law is applicable according to Art. 2 letter a, third bullet point of the directive 98/26/EC  The Austrian Central Bank (OeNB) has to approve on application of the participants by notice an agreement subject to domestic law for the execution of payment and transfer orders according to § 10 under common rules and unified premises which meet the prerequisites Z 1 and 2 if the rules are suitable. As soon as it has adopted the agreement as a system, according to Article 2 lit a second	The Member State whose law is applicable has to notify the system to the Commission  The Act does not take into account that the system is a formal arrangement without prejudice to other more stringent conditions of general application. According to Article 2 paragraph 2 of the Finalitätsgesetz the Austrian Central Bank has to approve an agreement as a system if " <u>the rules are suitable</u> ". Whether the rules are suitable or not is subject of evaluation by the OeNB.

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					bullet point of the Directive 98/26/EC as the responsible unit according to Art. 10 sec. 1 of the Directive 98/26/EC it has to report the system to the European Commission.	
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	FinG	A: 2 P: 3	To avoid any systemic risks an agreement in the meaning of par. 1 Z 1 and 2 can be adopted as a system even if beside payment and transfer orders according to § 10 orders regarding other financial instruments shall be processed in minor volumes.	The option was executed.  Overall the content of the Act is the same as in the Directive, although National Law does not use the same wording as stated in the Directive.  The Directive uses the words “warranted on grounds of systemic risk” whereas the Act states “prevention of possible systemic risks”. After consultation with the responsible person for transformation <sup>4</sup> of the Directive in National

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						Law we came to the conclusion, that “prevention of possible systemic risks” is the more common term in the Austrian legislation, with same meaning and consequences.

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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	FinG	A: 2 P: 3 S: 1  A: 2 P: 3 S: 2  A: 2 P: 4 S: 1	Further, but not in the afore mentioned case, an agreement according to par 1 may be adopted as a system to avoid eventual systemic risks if it is an agreement only between two participants without counting an offsetting house, central counterparty or clearing house or an indirect participant.  Agreements which were reported by the other member countries of the EEC after execution of proceeding according to par 3 shall apply accordingly. The Austrian National Bank has to report systems which it has adopted according to par 3 to the European Commission according to par. 2.	The option was executed.  For the prevention of possible systemic risks an arrangement can be recognized as system if the arrangement is only between two participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant.

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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 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.	N	FinG	A: 3 P: 1 N: 1 to 4	Institutions are: 1. Austrian credit institutions and credit institutions as defined in the first indent of Article 1 of Directive 77/780/EEC (5) including the institutions set out in the list in Article 2(2) of the same Directive; 2. An investment firm as defined in point 2 of Article 1 of Directive 93/22/EEC (6) excluding the institutions set out in the list in Article 2(2)(a) to (k) in the same Directive; 3. Public authorities and publicly guaranteed undertakings; 4. 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 <del>Z1 and Z2</del> ,= not applicable which participates in a system and which is responsible for discharging the financial obligations arising from transfer and payment orders within that	The definition of "Institutions" in the legal rule uses the same wording as the German translation of the Directive and therefore completely corresponds to 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	FinG  NBG	A: 3 P: 2  A: 44a	If a system subject to domestic law executes only transfer orders according to § 10 par. 1 Z 2, other enterprises which are liable for the fulfillment of payment and transfer orders within the system may also be adopted as institutions. This is only possible if there are at least three members of the system which are in one of the categories of par 1 and if the Austrian National Bank approves this on request of the participants in each single case considering the systemic risks.	The option was executed.  The content of the National Law complies with the Directive. For the acceptance of participants as an institution an authorisation of the Austrian National Bank is necessary.
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	N	FinG	A: 4	Central counterparty is an entity which is interposed between the institutions in a system and which acts as the ex-	The central counterparty acts as exclusive counterparty of the institutions.  There is no difference between

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	institutions with regard to their transfer orders;				clusive counterparty of these institutions with regard to their transfer and payment orders.	National Law and Directive.
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	FinG	A: 5	Settlement agent is an entity providing to institutions and/or a central counterparty participating in systems, settlement accounts through which transfer and payment orders within such systems are settled and, as the case may be, extending credit to those institutions and/or central counterparties for settlement purposes.	The Act complies completely with the Directive There is no difference between National Law and Directive.
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 settle-	N	FinG	A: 6	Clearing house is an entity responsible for the calculation of the net positions of institutions, a possible central counterparty	The Act complies completely with the Directive There is no difference between National Law and Directive.

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	ment agent;				and/or a 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	FinG	A: 7	(1) A participant is an institution, a central counterparty, a settlement agent or a clearing house. (2) 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 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 sys-	The Act complies completely with the Directive. There is no difference between National Law and Directive.

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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	FinG	A: 7 P: 3	(3) In individual cases, the Austrian National Bank can deem an indirect participant to a participant for the purpose of this Federal Act in a system subject to Austrian law, if this is justified under the aspect of systematic risk and if the indirect participant is known to the system.	The option was executed.  The Austrian National Bank can appropriate for a system whose law is subject to national law upon request of a participant that an indirect participant is considered as participant if it is warranted on the grounds of systemic risk and on condition that the indirect participant is known to the system.  According to National Law only the National Bank can appropriate that an indirect participant is considered as participant. This means that an authorisation of the Austrian National Bank is necessary. Furthermore it is necessary that

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						the system is subject to Austrian 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	FinG	A: 8	An indirect participant is a credit institution as defined in § 3 Abs. 1 Z1 with a contractual relationship with an institution participating in a system executing transfer orders as defined in § 10 Abs. 1 Z1 which enables the afore mentioned credit institution to pass transfer orders through the system.	The Act complies completely with the Directive There is no difference between National Law and Directive.
A: 2 N: h	`securities´ shall mean all instruments referred to in section B of the Annex to Directive 93/22/EEC;	N	FinG	A: 9	Securities are all instruments referred to in section B of the Annex to Directive 93/22/EEC.	The Act complies completely with the Directive There is no difference between National Law and Directive.
A: 2 N: i	`transfer order´ shall mean: -any instruction by a participant to place at the disposal of a recipient an amount	N	FinG	A: 10 P: 1	Transfer orders are: 1. Any order by a participant to place at the disposal of a re-	The Act complies completely with the Directive except the word “in-struction”. The content corre-

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<sup>3</sup> Directive was realised in several Acts: Act on Settlement Finality in Payment and Securities Settlement Systems (FinG), Bankruptcy Act (KO), Equalisation Act (AO), National Banking Act (NBG)

<sup>4</sup> With regard to interpretation issues with transformation of the Directive in National Law we have had extensive discussions with the responsible person for transformation of the Directive in National Law, Mr. Heinrich Lorenz from the Ministry of Finance.

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	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>ipient 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 (order for payment), or</p> <p>2. An order 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 (order for transfer).</p>	<p>sponds with the Directive.</p> <p>National Law uses the word “order” instead of “instruction” according to the Directive. This is the only difference between National Law and the Directive. In the Austrian legal terminology the term “order” refers to a binding instruction based on an underlying agreement (see our remarks to A 2 N a S 1). This term has the same meaning as defined in the Directive.</p>
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	N	FinG	A: 11	Insolvency proceedings is any collective measure provided for in the law of a Member State of the EEA, or a third country, either to wind up the	The Act complies completely with the Directive. There is no difference between National Law and Directive.

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Article <sup>1</sup>	Text	Appli-cability <sup>2</sup>	Refe-rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	measure involves the suspending of, or imposing limitations on, transfers or payments;				participant or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments.	
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	FinG	A: 12	Netting is 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 content of the National Law complies with the Directive. According to National Law it is possible to do netting separate from payment orders and securities settlement systems.
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	N	FinG	A: 13	Settlement account is an account at a central bank, a settlement agent or a central counterparty used to hold funds	The Act complies completely with the Directive There are no differences between National Law and the Directive.

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1	2	3	4	5	6	7
Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	transactions between participants in a system;				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	FinG	A: 14	Security is 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 of the EEA or to the European central bank.	In general the content of the National Law complies with the Directive beside one issue that the National Law does not include the collateralisation of rights. The National Law does not use the word "collateral" and also does not include the collateralisation of " <b>rights</b> ". According to the Austrian legal system the term "obligation" covers obligations of participants to the system as well as obligations of the system to the participants. Therefore there is no deviation to the Directive. <sup>4</sup>

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	<b>NETTING AND TRANSFER OR- DERS</b>					

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
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	FinG	A: 15 P: 1 S: 1	Payment and transfer orders which are submitted to a System according to § 2 before the decision on the opening of insolvency proceedings over the assets of a participant do not lapse with the opening of insolvency proceedings. The settlement of such orders are not affected by the opening of the insolvency proceeding. A payment or transfer order cannot be revoked from the point of time which is determined by the rules of this by a participant to a system nor by a third party with influence on the system.	<p>The National Law states that transfer orders do not expire weather they were entered into the system before <b>adopting a resolution</b> about opening an insolvency proceeding. According to the Directive the legal consequences are in force with the opening of an insolvency proceeding. According to illustrative notice to paragraph 15 in connection with article 6 (1) of the Directive both regulations have the same meaning and consequences. Both terms are based on the point of time of adopting a resolution and the consequences are in force at the same time.</p> <p>As every right which does not expire remains legally enforceable there is no deviation from the directive</p>

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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	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
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 the opening of such proceedings.	N	FinG	A: 15 P: 2	Where 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 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.	The content of the National Law complies with the Directive. This rule was transformed together with article 6 (1) of the Directive. According to the Directive the legal consequences are in force with the opening of an insolvency proceeding. According to illustrative notice to paragraph 15 in connection with article 6 (1) of the Directive both regulations have the same meaning and consequences. Both terms are based on the point of time of adopting a resolution and the consequences are in force at the same time.
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	N	FinG	A: 15 P: 1 S: 2, 3		The content of the National Law complies with the Directive.  Opening of insolvency proceedings do not lead to the unwinding

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1	2	3	4	5	6	7
Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	unwinding of a netting.					of a netting.
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	FinG	A: 10 P: 2	The time at which the payment or transfer order is brought into the system is determined by the regulation of the system. means of a book entry on a register, or otherwise (order for transfer).	The content of the National Law complies with the Directive.
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			Option was not executed.	N/A
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 se-	D			Option was not executed.	N//A

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Article <sup>1</sup>	Text	Appli-cability <sup>2</sup>	Refe-rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	curity to fulfil that participant's obligations in the system.					
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	FinG	A: 15 P: 1 S: 3	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.	

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Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	<b>PROVISIONS CONCERNING IN-SOLVENCY 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 or administrative authority handed down its decision.	N	FinG  FinG	A: 15 P: 1 S: 1  A: 15 P: 2	The content of the National Law complies with the Directive.	Without adopting the Directive the consequences of insolvency proceedings would begin with the next day. According to secondary material the consequences of insolvency proceedings shall begin with the point of time of adopting a resolution about opening an insolvency proceedings.
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	KO  FinG  AO	A: 75 P: 1 S: 9  A: 19  A: 5 P: 1 S: 5	The National Law complies completely with the Directive.	There is no corresponding paragraph in the Act on settlement finality in payment and securities settlements systems but there is a corresponding regulation in the bankruptcy act whereas the administrative authority has to inform the Austrian National Bank (it's the authority chosen by Austria) about the opening of insol-

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Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
						vency proceedings. Paragraph 19 of the Act also states that the Ministry of Finance informs the commission that the other Member States have to inform the Austrian National Bank about the opening of insolvency proceedings in other Member States.
A: 6 P: 3	The Member State referred to in paragraph 2 shall immediately notify other Member States.	N	FinG	A: 20	The Austrian National Bank has to inform the other authorities concerning the opening of insolvency proceedings.	The Directive states that the Member State has to inform the other Member States whereas the National Law states that the Austrian National Bank has to inform the other authorities.
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	FinG	A: 15 P: 1 S: 1, 2	Opening of insolvency proceedings have no retroactive influence on the duties and rights of the participants.	
A: 8	In the event of insolvency proceedings	N	FinG	A: 16	In the event of insolvency pro-	The content of the Directive cor-

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Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	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.				ceedings being opened over the assets of 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	responds with National Law.  The National Law states in case of opening of insolvency proceedings about the <b>assets</b> whereas the Directive do not refer to the assets. According to Austrian Law you can open an insolvency proceedings only about the assets.

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1	2	3	4	5	6	7
Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	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	FinG	A: 17	The rights of: a participant to security provided to it in connection with a system and central banks of the Member States of the EEA or the European central bank to 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 future European central bank which provided the collateral security. Such collateral security may be realised for the satisfaction of these rights. Claims according to civil law	The content of the National Law complies with the Directive.

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Directive 98/26/EC			Member State's Legislation			
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Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
					including the avoidance ac- cording to bankruptcy act with respect to legal acts which are set outside the system are not affected.	
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	FinG	A: 18	Claims to securities which were granted to participants or a Central Bank of a member country of the EEA or the European Central Bank within a system for securing liabilities are subject to the following law: 1. If the rights evoked due to the entry into a register in a member country of the EEA the law of this country 2. Of the right evoked by accounting by a central custody system which was implemented in a member country of	The National Law does not use the same words as the Directive but the content corresponds with the Directive.

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					the EEA the law of this country 3. If the rights evoked by the accounting for in a account in a member country of the EEA the law of this country.	
	<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	NBG  FinG  FinG	A: 44a  A: 2 P: 2 S: 2  A: 19	The Federal Minister of Finance informs the European Commission that the Austrian National Bank as domestic governing authority according to Art 6 par 2 of the Directive 98/26/EC has to be informed of the opening of insolvency proceedings over the assets of participants in a system.	The content of the National Law complies with the Directive.
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	N	FinG	A: 21	Participants including indirect participants of each system have to declare themselves as participants or indirect partici-	Paragraph 21 of the National Law corresponds with the contents of the Directive although the National Law does not use the same

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Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	any change in them.				pants to the Austrian National Bank. Each change in the status of direct of indirect participant has to be reported immediately to the Austrian National Bank by the participant. Who omits this notification commits an administrative offence and has to be fined with a cash penalty up to 21,800 Euros by the authority.	words as the Directive.  In the National Law there is a specific regulation for those who neglect this duty. Those who neglect this duty are penalised by the authority with a fine up to EUR 21.800.
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	FinG  NBG	A: 2 P: 2 S: 1  A: 44a		The content of the National Law complies with the Directive.
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	N	FinG	A: 22	Anyone who has a legal interest can request information about the systems in which it participates as well as the material rules for the functioning	The National Law complies completely with the Directive.

<sup>1</sup> A = article; P = paragraph; S = sentence; N = number ;

<sup>2</sup> N = normal (mandatory requirement to be transposed); O = option (mandatory requirement with an option for transposition); D = discretion; n. a. = not applicable

<sup>3</sup> Directive was realised in several Acts: Act on Settlement Finality in Payment and Securities Settlement Systems (FinG), Bankruptcy Act (KO), Equalisation Act (AO), National Banking Act (NBG)

<sup>4</sup> With regard to interpretation issues with transformation of the Directive in National Law we have had extensive discussions with the responsible person for transformation of the Directive in National Law, Mr. Heinrich Lorenz from the Ministry of Finance.

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	systems.				of those systems.	
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	FinG	A: 23	(1) This federal act will come into force on December 10, 1999. (2) § 21 in as amended by federal act BGBl. I Nr. 98/2001 comes into force on January 1, 2002.	According to paragraph 23 National Law the Act became effective on December 10, 1999.  According to information given by the clerk in charge of the transposition the notification of the transposition was executed in due form.
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	FinG	A: 2		The National Law refers to the Directive in some paragraphs. For example there is a reference to this Directive in paragraph 2 (1) S 3 and 2 (2) of the National Law. The official publication of the explanatory notice to the FinG contains a reference to the Directive.
A: 11 P: 2	Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt	N		N/A	No corresponding rule in the Austrian Act.	According to information given by the clerk in charge of the transposition the notification of

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Directive 98/26/EC			Member State's Legislation			
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Article <sup>1</sup>	Text	Appli- cability <sup>2</sup>	Refe- rence <sup>3</sup>	Article (A; P; S; N) <sup>1</sup>	Content	Remarks
	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.					the transposition was executed in due form.
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.			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.			N/A	
A: 14	This Directive is addressed to the Member States.	n. a.			N/A	

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