

# 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	<b>Act1<sup>1</sup></b>	A: 266 P: 1 S:1  A: 2 P: 1	Securities settlement systems are created by a written arrangement.  CVM regulates the securities, the public offers relating to them, the markets where the public offers are negotiated, <b>settlement and intermediation of the securities operations</b> , as well as the respective legal framework of supervision and sanction.	There is a self-regulation by the participants in the systems. The system defines its functioning rules. According to the stipulated in the art. 372 of the Portuguese Securities Code [CVM (Act1)-Código de Valores Mobiliários], hereinafter referred to as CVM (Act1), within the limits of the law and regulation, the settlement systems may individually regulate the activities they manage. Nevertheless, these rules are subject to registration at CMVM, for control of conformity with the applicable law.

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			<b>Act2<sup>2</sup></b>	A: 1 P: 1	This Act regulates the payment systems in respect to the definitive stage of the financial settlement, namely in case of bankruptcy or equivalent proceedings applied to some of its participants.	There is a self-regulation by the participants in the systems.
				A: 1 P: 2 N: a	This Act applies to the payment systems operating in any currency or in several currencies which the system converts one against another.	
			<b>Act3<sup>3</sup></b>	A: 1 P: 1	This regulation is applicable to the securities settlement systems registered with CMVM.	
			<b>Act3</b>	A: 1 P: 3	The references regarding securities systems and to its operating entities involve the systems referred to in the art. 61°, b) and art. 99° (1; 2) of the CVM. (Please refer to end note no 10)	This Regulation establishes in complement with the CVM (Act1) provisions of the securities settlement systems rules and executes the referred provisions, whoever the management systems entity.

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A: 1 N: b	(b) any participant in such a system;	N	<b>Act1</b>	A: 267 N: a	The following entities can be participants in a settlement system, independently of being a member of its managing entity: - Credit institutions, investment companies and institutions with corresponding functions that are authorised to operate in Portugal;	
			<b>Act1</b>	A: 267 N: b	- Public entities and the companies that benefit from State guarantees.	
			<b>Act2</b>	A: 1 P: 2 N: b	This Act is applicable to the participants in the payment systems.	

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A: 1 N: 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	<b>Act1</b>		Cf. infra Section 284 of the Act, pages 45 and 46	Although section 284 of the Act1 refers that collateral securities are not affected by the opening of bankruptcy proceedings, company recovering or recuperation of the guarantor entity, it cannot be considered as a direct transposition of A:1 N: c of the directive.
			<b>Act2</b>	A: 1 P: 2 N: c	Collateral security established in connection with: -Participation in a system, or -Operations of the central banks of the Member States and of the European Central Bank, in their typical functions as central banks.	This provision, unlike the one established by the Directive, extends its applicability to the collateral security provided in connection with the operations of the European Central Bank.

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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: 2	For the purpose of this directive:					
A: 2 N: a S: 1	'system' shall mean a formal arrangement:	N	<b>Act1</b>	A: 266 P: 1	This Act applies to the securities settlement systems created by a written arrangement.  Cf. supra Preliminary Note	For the sake of clarity, we decided to enumerate the payment systems and the securities settlement systems. First we shall enumerate the payment systems (Act4, Act 5, Act6 and Act 7) and subsequently we shall enumerate the securities settlement systems (Act 1, Act 8).
			<b>Act2</b>	A: 2 N: a	"System" shall mean a written arrangement	
			<b>Act4<sup>4</sup></b>	Single Article	The following systems are included by the dispositions of Act2 relative to the finality Directive in Payment systems::  a) <i>Sistema de pagamento de grandes transacções</i> (Real Time Gross Settlement System - <b>SPTG</b> ) b) <i>Sistema de Compensação Interbancária</i> (Interbank Clearing System – <b>SICOI</b> ) c) <i>Sistema de Liquidação de Outros Depositantes</i> (Settlement System of Other Depositors - <b>SLDO</b> )	

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			<b>Act<sup>5</sup></b>		<i>Sistema de pagamento de grandes transacções</i> (Real Time Gross Settlement System - <b>SPTG</b> )	<p>“SPTG” is a payment system for large amounts with real time settlement of “gross amounts” (without netting) regarding inter-banking cash payment orders.</p> <p>The SPGT is a system that integrates the “Trans-European Automated Real-time Gross-settlement Express transfer System (<b>TARGET</b>)”, created by the European Central Bank, it is a system enabled to make cross-border payments.</p>
			<b>Act<sup>6</sup></b>		<i>Sistema de Compensação Interbancária</i> (Interbank Clearing System – <b>SICOI</b> )	<p>“SICOI” is a net settlement system.</p> <p>The operating rules of the SICOI automated interbank clearing are based on its</p>

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			<b>Act<sup>7</sup></b>		<i>Sistema de Liquidação de Outros Depositantes</i> (Settlement System of Other Depositors - <b>SLDO</b> )	<p>regulation, issued by the Bank of Portugal.</p> <p>“SLDO” is a specific gross settlement system that is a less sophisticated system than “SPGT” governed by more restrictive rules. It is applicable when one of the financial institutions isn't eligible to participate in the SPGT.</p> <p>These systems are operated and managed by the Bank of Portugal and subject to Act2 according to Act3.</p>
			<b>Act1</b>	A: 271 P: 1	The securities settlement system, with exception of those operated by Bank of Portugal are recognized by register with the Securities Commission.	<p>The law foresees the possibility of the following settlement systems:</p> <p>1 – the systems operated and managed by the Bank of</p>

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			<b>Act8</b>	A:1 P:1	This Act8 comprise the operational rules applicable to the management and functioning of the securities settlement systems managed by INTERBOLSA	Portugal. 2 – the systems registered with the Portuguese Securities Commission. However, in practice the only existing securities settlement systems are those registered with CMVM. According with information provided by CMVM the securities settlement systems registered with it are the ones managed by INTERBOLSA.
				A: 13 S:1	<i>Sistema de Liquidação Geral</i> (General Settlement System - <b>SLG</b> )	SLG is applicable to the following settlement operations: a) stock exchange operations; b) other regulated markets operations; c) out-of-market

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				A:14 P:1	<i>Sistema de Liquidação Plus</i> (Plus Settlement System - <b>SLP</b> )	operations; d) free payment transfers.  SLP is applicable to the following settlement operations:  a) Repurchase operations referred in Regulation of CMVM 8 /2000 (please refer to our endnote 8) b) Buying and selling operations referred in Regulation of CMVM 25/2000 (please refer to our endnote 9)
				A: 14 P:2	<i>Sistema de Liquidação Real Time</i> (Real Time Settlement System – <b>SLRT</b> )	SLRT is applicable to the settlement of buying and selling operations executed out-of-market.

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A: 2 N: a S: 1	-between three or more participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, with common rules and standardised arrangements for the execution of transfer orders between the participants,	N	<b>Act1</b>	A: 266 P: 2	The arrangement shall be underwritten by three or more participants, without counting with the special participants.	Section 268 specifies and identifies special participants.
			<b>Act2</b>	A: 2 N: a	Between, at least, three Institutions (as defined in d), 2° of the Act) with common rules and standardised arrangements which have as principal subject the execution of transfer orders between the participants.	

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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	<b>Act1</b>	A: 272 P: 1	Only the securities settlement systems that satisfy, the following cumulative requirements can be registered at CMVM: - One of the participants has effective head office in Portugal; - Whose managing company, when existing, has effective head office in Portugal; - Portuguese law is applicable in accordance with an express clause of the respective constitutive agreement; - Have adopted compatible rules with this Act1, the regulations of CMVM and of the Bank of Portugal.	The participants in the systems regulate themselves, which means that if they fulfil the cumulative requirements referred to in the Sec. 272 (1) of CVM (Act1) they can choose the Portuguese law as the law applicable to each system.  In this aspect the Portuguese law established more requirements to be fulfilled than the Directive, <a href="#">as follows: “whose managing company, when existing, has effective head office in Portugal; Portuguese law is applicable in accordance with an express clause of the respective constitutive agreement; have adopted compatible rules with the</a>

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						<p><u>Portuguese law” (Provisions of the Securities Portuguese Commission and Bank of Portugal)</u>  <u>Regarding the establishment of Clearnet in Portugal we were informed by the Portuguese authorities that it is not clear to them what kind of model will be adopted regarding the establishment of Clearnet in Portugal.</u>  <u>Many models could be adopted regarding Clearnet in Portugal, as a “displaced” activity, not subject to the supervision of the Portuguese Securities Commission, or on the contrary an activity subject</u></p>

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			<b>Act2</b>	A: 12 P: 1	The system's rules may determine the applicability of the Portuguese law when at least one of the participants has in Portugal the principal and effective head office of its management or the statutory head office.	<p><a href="#">to the supervision of the Portuguese Securities Commission, in this case problems regarding the law applicable to the system may occur similarly with it is happening with Belgium. However is too early to advance a solution at the moment.</a></p> <p>The participants in the systems may indicate in the constitution agreement the choice of the Portuguese law as the applicable law. However, the Portuguese law may only be applicable if the connection elements mentioned in art. 12 of Act2 are entirely fulfilled.</p>

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			<b>Act2</b>	A: 12 P: 2	Except if otherwise stipulated, it is presumed that the Portuguese law is applicable when the financial settlement takes place in Portugal.	Regarding the moment of the financial settlement see endnote no. 8.

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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	<b>Act1</b>	A: 271 P:1  A:271 P:2  A:271 P:3  A: 269 P: 3	The securities settlement system, with exception of those operated by Bank of Portugal are recognized by register with the Securities Commission  The CMVM is the relevant authority to notify the European commission of the systems recognized by the Commission, which will in turn notify the Bank of Portugal.  The Bank of Portugal by Notice appoints the settlement systems managed by it, notifying the European commission of that designation and giving notice to the Securities Commission.  CMVM refuses the registration of the system or imposes modifications whenever it considers it insufficient or contrary to legal or regulatory provisions.	

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		N	<b>Act2</b>	A: 13 P: 1	Whenever the systemic risk degree justifies it, the Bank of Portugal designates by Notice the payment systems comprised by this Act.	The Portuguese law defines the payment systems that will be comprised by the Directive. The competence for that designation has been given to Bank of Portugal, who has designated by Notice, three payment systems. (Cf. supra Single Article of Act4).  The Bank of Portugal was entitled by Portuguese law to appoint by Notice the payment systems regarding the Directive. These systems will benefit from the irrevocability of the transfer orders and the liability of the guarantees granted to a participant or to a bank that integrates the European System of Central Banks.
				A: 13 P: 2	The Bank of Portugal informs the European Commission about the designation mentioned in the precedent number.	
			<b>Act4</b>	Single Article	The following systems are included by the dispositions of Act2 relative to the Finality Directive in Payment systems:  a) SPGT- Real Time Gross Settlement System b) SICOI – Interbank Clearing System c) SLDO – Settlement Systems of other depositors.	

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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	<b>Act1</b>	A: 266 P: 1	The securities settlement systems are created by a written arrangement which sets forth the common rules and standardised arrangements for the execution of transfer orders between the participants, of securities or rights arising from these.	Both Acts do not define the financial instruments. Act1 just defines securities. However, this provision also stipulates that the CMVM can recognise as securities other financial instruments. According to Sec. 2 (5) of Act1, the references in the CVM (Act1) to securities shall be understood to include other financial instruments. As such and according to Sec. 1 (2) of the Act1, this Act could be applicable to other financial instruments.
			<b>Act1</b>	A: 1 P: 1	In addition to others qualified as such by the Law, Securities are: a) Shares; b) Obligations;	

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			<b>Act1</b>	A: 1 P: 2	c) Equity Security; d) Units in collective investment undertakings; e) Rights to subscription, acquisition or disposal of securities referred to in the previous numbers that have been issued autonomously. f) Rights detached from the securities referred to in the previous numbers a) to d) provided that the same applies to all the issue or series or is foreseen upon issue.  Other instruments representing homogeneous legal situations used, directly or indirectly, in the financing of public or private entities and that are issued for public distribution and in circumstances that assure the interests of the potential purchasers, can be recognised as securities by regulation of the Securities Market Commission, referred to hereinafter as CMVM, or, in case of monetary instruments, by notice of the Bank of Portugal.	

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			<b>Act2</b>	A: 13	Cf. supra Section 13 of the Act, page 14.	Act2 enables the bank of Portugal to recognise any system independently of the object of the system. Act2 is applicable when the payment relates to securities or other financial instruments transfer orders.
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	<b>Act1</b>  <b>Act2</b>		Not transposed  Not transposed	Act1 and Act2 stipulate that three or more participants, excluding the special participants shall subscribe the arrangement (article 266 (2) CMVM), which means that the systems without at least three participants are not recognised by the Portuguese law. So, the Portuguese law did not adopt this disposition.

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			<b>Act2</b>	A: 2 N: c	<p>“Investment Firm” shall mean a firm as defined in no 3 of article 199º-A of Legal Framework of credit Institutions and financial Companies, approved by the Decree-Law no. 298/92 from 31 December, with the alterations introduced by the Decree-Law no. 232/96 from 5 December.</p> <p>Cf. end note no. 15</p>	

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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	<b>Act1</b>	A: 268 P: 1 N: b	“Central counterparties”: that act as exclusive counterparties of the participants of the system, regarding transfer orders, placed by these.	Transposition identical to Directive.
			<b>Act2</b>	A: 2 N: e	“Central counterparties”: an intermediary entity between the institutions of a system acting as exclusive counterparty of the referred institutions with regard to the transfer orders.	Transposition identical to 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	<b>Act1</b>	A: 268 N: c	“Settlement agents”: that guarantee the participants and to the central counterparty or only to the latter, settlement accounts through which transfer orders are given within the system, and granting credit for settlement purposes.  Cf. end note no. 17	Transposition identical to Directive.
			<b>Act2</b>	A: 2 N: f	“Settlement agent” shall mean an entity in which are opened the settlement obligations accounts within the systems.	

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Portugal - 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: 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	<b>Act1</b>	A: 268 N: a	“clearing house”: which function is the calculation of the net positions of participants in the system.	Transposition identical to Directive.
			<b>Act2</b>	A: 2 N: g	“clearing house”: an entity which calculates the net positions resulting from the clearing of creditor and debtor positions of institutions, counterparties and settlement agents.	
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	<b>Act1</b>	A: 267  A: 268	Cf. supra Section 267 of the Act, page 3.  Cf. supra Section 268 of the Act, pages 22 and 23.	This article enumerates participants  This article defines enumerates participants
			<b>Act2</b>	A: 2 N: h	“Participant” shall mean an institution, an indirect participant (Cf. infra Section 2, I of the Act), a central counterparty, a settlement agent or a clearinghouse, as defined article 2 of the Act (Cf. supra section 2 (e; f; g) of the Act, pages 22 and 23).	An indirect participant is considered by this provision as a participant.

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## Portugal - 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: 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	<b>Act1</b>		Not transposed (please refer to our remark in next page)	
			<b>Act2</b>	A: 2 N: h	C.f. supra (Section 2, (h) of the Act, page 23)	The concept of participant includes the indirect participant.
			<b>Act2</b>	A: 2 N: i	C.f. infra (Section 2, (i) of the Act, page 25)	

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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
A: 2 N: h	`securities` shall mean all instruments referred to in section B of the Annex to Directive 93/22/EEC;	N	<b>Act1</b>	A: 1	Cf. supra Section 1 of the Act, page 16.	CMVM discretionarily can recognise as securities other financial instruments, under the terms defined in no. 2 of art. 1° of Act1. Cf. supra Section 1(2) of the Act
			<b>Act2</b>	A: 2 N: j	For the purposes of the previous number, references in this code to securities shall be understood to include other financial instruments.  “Securities” shall mean the financial instruments qualified as such by art. 1° of the CVM, approved by the Decree-Law no. 486/99 from 13 November, monetary market instruments, financial futures, including equivalent cash-settled instrument, forward interest-rate agreements, interest-rate swaps, currency, equity swaps, options to acquire or dispose of any instruments above referred, including equivalent settled-cash instruments, namely options on currency or on interest-rates.	In our opinion the scope of the Directive is broader in the enumeration explicitly made although in practice, CMVM may recognize as securities other financial instruments besides the ones referred in Section 1 (1) of Act 1 and thus this article is equally broad.

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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
A: 2 N: j	`insolvency proceedings' shall mean any collective measure provided for in the law of a Member State, or a third country, either to wind up the participant or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments;	N	<b>Act1</b>	A: 283	Cf. infra Section 283 of the Act, pages 33 and 34.  Cf. endnote no. 16	Act1 as a Code (set of norms) makes reference to bankruptcy proceedings (c.f. Section 283) but does not define it.  The national law, specifically the bankruptcy legislation ("Código de Processos Especiais de Recuperação da Empresa e De Falência - <b>CPEREF</b> "), regulates the concept of bankruptcy proceedings.
			<b>Act2</b>	A: 2 N: m	"bankruptcy or equivalent proceedings": any collective measure to wind up, reorganise or recuperate a participant, from which results the suspension or termination of execution of a payment obligation as defined by the rules of the system.	Transposition identical Act2 gives us a definition of bankruptcy proceedings in its art. 2º (m).

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

Portugal - 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: 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	<b>Act1</b>          <b>Act2</b>		Not transposed          Not transposed	Act1 as a Code (set of norms) regulates “netting” in section 276, but does not define it. Cf. supra Preliminary Note.  Act2 does not define “netting”, however that definition can be extracted from the clearinghouse concept (C.f. Section 2 (g) of the Act).  However we also can extract this concept from Section 847 of the Portuguese Civil Code, as when the SFD became binding on Portugal the national legislation already complied with the netting definition in Section 847 and following of the Portuguese Civil Code.

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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
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	<b>Act1</b>  <b>Act2</b>	A: 2 N: n	Not transposed  "settlement account": an account at a central bank, a settlement agent or a central counterparty used to hold money and to settle transactions between participants in a system.	The CVM (Act1) does not define "settlement account". However, the Decree-Law no. 486/99 has taken into account the existence of those accounts when it regulates this matter. Cf. supra Preliminary Note Cf. supra previous remark.  Transposition almost identical except as regards securities (Cf. Our preliminary note)

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

Portugal - 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: 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	<b>Act1</b>  <b>Act2</b>	A: 2 N: o	Not transposed  “collateral security”: all realisable assets, including money and securities, object to a legal relationship, namely of pledge or repurchase, for the purpose of securing the legal position of the participants in a system and the central banks of the member States.	The CVM (Act1) does not define “collateral securities” but determines their field of action in Section 284 (2;3) which content is materially equivalent to a definition and its scope complies with the definition provided by the SFD.Cf. supra Preliminary Note.  This provision is similar to the provision of the Directive. In what concerns to the European Central Bank, <u>no reference was needed taking into account the scope of application of the Decree-Law (Article 1(2)(c)), which covers the collateral provided in connection with the operations of the European Central Bank.</u>

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

Portugal - 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
	<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 opening of such insolvency proceedings as defined in Article 6(1).	N	<b>Act1</b>	A: 274 P: 1	Transfer orders are introduced into the system by the participants, or by delegation, by the market managing entity where the securities were exchanged.	The irrevocability moment is the moment when the transfer orders have been introduced in the system. This moment is defined by the rules of the respective system [Section 274 (2; 3) <b>Act1</b> ].
				A: 274 P: 2	Transfer orders are irrevocable, producing effects between the participants and are valid before third parties from the moment in which they are introduced into the system.	
				A: 274 P: 3	The moment and method of the introduction orders in the system is determined in accordance to the rules of the system.	
				A: 276	Netting made by the settlement system is definitive and is made by the system itself or by the participant's clearinghouse.	
			<b>Act3</b>	A: 11	Settlement is made by the execution of the securities or cash transfer orders through registration in the accounts of the involved 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>Act1</b>	A: 283 P:1	The opening of bankruptcy proceedings or recuperation of companies' proceedings does not have retroactive effects on the rights and obligations resulting from its participation in the system or associated to it.	
				A: 283 P:2 S: a	The opening of the proceedings referred to above does not affect the irrevocability of the transfer orders nor their enforceability in face of third parties nor the definitive character of netting, provided that the orders have been introduced into the system: a) Before the moment of opening such bankruptcy and recuperation of the company proceedings; or	
			<b>Act2</b>	A: 3 P: 1	The transfer orders as well as multilateral or bilateral clearings according to the rules of the system are legally enforceable, and bind third parties even in case of bankruptcy or	The irrevocability moment of the transfer orders is defined by the respective system [ <b>Act2</b> , Section 4

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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
					equivalent proceedings, provided that transfer orders have entered into a system before the moment of opening of such proceedings as defined in Article 8 (1).	(1)], but cannot be subsequent to the financial settlement.
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	<b>Act1</b>	A: 283 P: 2 S: b	The opening of the proceedings referred to above does not affect the irrevocability of the transfer orders nor their enforceability in face of third parties nor the definitive character of netting, provided that the orders have been introduced into the system: b) Following the opening of the proceedings, if the orders have been executed in the day that they were introduced and if clearing houses, the settlement agent or the central counterparty prove that they not have knowledge of the opening of the proceedings.	Transposition identical
			<b>Act2</b>	A: 3 P: 2	After the moment of opening of insolvency proceedings or similar procedures and until the end of the respective day the transfer orders shall be legally enforceable and	Transposition identical

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## Portugal - 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
					binding on third parties 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.	
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	<b>Act1</b>	A: 277	The invalidity or inefficiency of legal acts underlying transfer orders and cleared obligations does not affect the irrevocability of the orders or the definitive character of the netting.	This Act does not refer to the moment of conclusion of underlying contracts and transactions.
			<b>Act2</b>	A: 3 P: 3	No rule, no matter which source, relative to invalidity of the legal transactions concluded before the opening of the bankruptcy proceedings or equivalent measure can be annul, modify or by other means affect a clearing operation executed within the system.	Transposition identical. However, please refer to Act2 Sec8 P:1 page 40, regarding the moment of the opening of bankruptcy.

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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
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	<b>Act1</b>	A: 274 P: 2	The transfer orders are irrevocable, legally enforceable and bind third parties from the moment that they have been introduced into the system.	
			<b>Act2</b>	A: 4 P: 1; 2	The moment and method of the introduction of orders into the system is determined in accordance with the rules of the system.  Cf. infra Section 4 (1; 2) of the Act, page 39.	

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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
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	<b>Act1</b>          <b>Act2</b>	A: 5 S: 1 N: a	To fulfil the obligations of a participant that has been subject to bankruptcy or equivalent proceeding and until the end of the day of the opening of the such proceedings the following may be used: a) funds available on the respective settlement account	The CVM (Act1) does not stipulate what will be used by the systems to fulfil the obligations of a participant that has been subject to bankruptcy or similar proceedings.

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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
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	<b>Act1</b>  <b>Act2</b>	A: 5 S:1 N: b	Not transposed  To fulfil the obligations of a participant that has been subject to bankruptcy or equivalent proceeding and until the end of the day of the opening of the such proceedings the following be used: b) a credit facility connected to the system by means of a collateral security constitution.	

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## Portugal - 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: 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	<b>Act1</b>	A: 274 P: 2	The transfer orders are irrevocable, legally enforceable and bind third parties from the moment that they have been introduced in the system.	The transfer orders are introduced in the system by the participants or by their delegation or by the operating entity of the market where the securities were exchanged. The systems regulate themselves so they also define the moment and the method of introduction of the orders in the system.
			<b>Act1</b>	A: 274 P: 3	The moment and method of the introduction of orders in the system is determined in accordance with the rules of the system	
			<b>Act2</b>	A: 4 P: 1	A transfer order may not be revoked by the participants or third parties as of the moment defined by the system.	
				A: 4 P: 2	The moment that the transfer orders become irrevocable cannot be posterior to the financial settlement.	

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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>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 or administrative authority handed down its decision.	N	<b>Act1</b>	A: 283 P: 3	The moment of the opening of the insolvency proceedings referred is that in which the relevant authority issues the decision of declaration of bankruptcy, pursuit of the action of recuperation of the company or an equivalent decision.	More detailed than the Directive as regards the nature of the decision
			<b>Act2</b>	A: 8 P: 1	For the effects of this Act, the moment of the opening of the bankruptcy proceedings or equivalent is the moment when the relevant authority issues any decision that limits, delays or ceases the fulfilment of the obligations or collateral securities associated to them.	More detailed than the Directive as regards the nature of the decision  So, the Portuguese provisions regarding the concept of bankruptcy proceedings are broad as they do not refer exclusively to bankrupt proceedings but also to the action of recovery of the company or an equivalent decision.

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## Portugal - 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: 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	<b>Act1</b>	A: 286 P: 1	The decision of the opening of the bankruptcy proceedings, company recovery or exclusion of any participant is immediately notified to the CMVM and to the Bank of Portugal by the Court or by the administrative authority that issued it.	
				A: 286 P: 3	The CMVM is the relevant authority to receive the notification of the decision referred to in n° 1, when an administrative or judicial authority of another Member State of the European Community adopts those decisions.	
				A: 286 P: 4	CMVM and the Bank of Portugal immediately notify the managing entities of the settlement systems registered with them, of the decision to which no. 1 refers and of any notice received from a foreign State relating to the bankruptcy of a participant.	
			<b>Act2</b>	A: 9 P: 1	Without prejudice of the notifications mentioned in the art. 286° of the CVM when	

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## Portugal - 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
					the decision referred to in 8 (1) has as object any Institution the relevant authorities must immediately notify that decision to the Bank of Portugal.	
A: 6 P: 3	The Member State referred to in paragraph 2 shall immediately notify other Member States.	N	<b>Act1</b>	A: 286 P: 2	CMVM or the Bank of Portugal immediately notify the remaining member States of the EC of the decision to which n°1 refers, pertaining to systems managed by them.	
			<b>Act2</b>	A: 9 P: 2	The Bank of Portugal shall immediately notify the entities determined by other Member States.	
				A: 9 P: 3	If the Bank of Portugal receives any notification concerning an Institution's bankruptcy from abroad it shall immediately notify the entities that manage the systems.	

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## Portugal - 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: 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	<b>Act1</b>	A: 283 P: 1	The opening of bankruptcy proceedings or recuperation of companies proceedings relating to any participants does not have retroactive effects on the rights and obligations resulting from its participation in the system or associated to it.	Transposition identical
			<b>Act2</b>	A: 8 P: 2	Bankruptcy or equivalent proceedings shall not be enforceable upon the rights and obligations of a participant arising from its participation in a system or connected with it, that have been constituted before the moment of the respective opening.	Transposition identical

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

Portugal - 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: 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	<b>Act1</b>	A: 285	With the opening of bankruptcy's proceedings, recuperation of a company or reparation of a participant, the rights and the obligations of this participation or associated to it are governed by the law applicable to the system.	Transposition identical
			<b>Act2</b>	A: 12 P: 3	Without prejudice of special rules about the applicable law to the rights of holders of collateral securities constituted by securities or rights on securities, the Portuguese law, when applicable, regulates all the rights and obligations arising from the participation in a system, even in case of the opening of a bankruptcy or similar proceedings.	Transposition more detailed than the Directive, <a href="#">as it safeguarded the special rules relative to the applicable law to the rights of holders of collateral securities constituted by securities or rights in securities.</a>  <a href="#">However, as far as we are aware of, there are no specific problems resulting from this contingency.</a>

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

Portugal - 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
	<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	<b>Act1</b>	A: 284 P: 1	The collateral of obligations arising from the functioning of a settlement system are not affected by the opening of bankruptcy proceedings, of recuperation of a company or of recuperation of the guarantor entity, only reverting to the bankrupt estate or to the company in recuperation or reparation, the balance that eventually remains after the performance of the collateral obligations.	Transposition more detailed than the Directive
			<b>Act1</b>	A: 284 P: 2	The previous number is applicable to collateral securities provided to Central Banks of the member States of the EC and to the European Central Bank, acting in that quality.	

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<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

Portugal - 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
			<b>Act1</b>	A: 284 P: 3	For purposes of the present article pledges and the rights arising from repurchase and other similar contracts are considered as collateral securities.	
			<b>Act2</b>	A: 6	The collateral securities provided in connection with a system to a participant or to a Bank included in the European Central Banks System are not affected by the opening of the bankruptcy process and can be executed by the respective holders, reverting only to bankrupt estate the remaining balance.	Transposition more detailed than the Directive
			<b>Act2</b>	A: 7	The balance of the settlement accounts can only be pledged or subject to a preventive measure if in the equity of the account holder institution other suitable assets for the same purpose do not exist.	More protective than the Directive

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

Portugal - 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: 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	<b>Act1</b>	A: 284 P: 4	If the securities provided as collateral securities according to the terms of the present article <b>are registered or deposited in a centralized system</b> located or operating in a Member State of the EC, the determination of the rights of the beneficiaries of collateral securities is governed by the legislation of that Member State provided that the collateral securities have been registered in the same Centralized Systems.	Section 284 is restrictive than art.9 (2) of the Directive, as it has more specific requirements that are not referred in the Directive. It is only applicable if the collateral securities have been registered or deposited in a centralized system, while the Directive intended to extend it's scope to the collateral securities that are recorded on a register, account or centralised deposit system. This means that the present article of the CVM (Act1) is not applicable to collateral securities deposited or recorded on a register out of a centralized system. However, according to the opinion of the CMVM,

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Portugal - 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
						<p>subparagraph b) of art. 41 of the aforementioned Decree-Law is applicable if a security is recorded on a register out of a centralized system.</p> <p>This article sets out the law applicable to securities not integrated in a centralized system, establishing in these cases a connection to the law of the Member State in which the intermediary where the securities are registered or deposited is located. So, the protective regime is also applicable to securities not integrated in a centralized system. However, we understand that it would be more accurate to insert in art. 284 a provision regarding the securities not integrated in a</p>

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## Portugal - 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
			<b>Act2</b>	A: 12 P. 3	Without prejudice of special rules about the applicable law to the rights of holders of collateral securities constituted by securities or rights on securities, the Portuguese law when applicable regulates all the rights and obligations arising from the participation in a system, even in case of the opening of a bankruptcy process or similar proceedings.	<p>non-centralized system, as such would prevent future discussions regarding the applicability of no 1 of art. 284 to the collateral securities provided out of a centralized system.</p> <p>The Bank of Portugal has informed us that this provision, in what concerns the special rules related to the rights of the holders of collateral securities, does not correspond to the final version proposed by the Bank of Portugal and it is not clear to them what is meant by special laws. In our opinion, when this article refers to special rules it makes a remission to CVM where collateral</p>

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

Portugal - 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
						securities have been regulated.
	<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	<b>Act1</b>	A: 271 P: 2	The CMVM is the relevant authority to notify the European commission of the systems recognized by the Commission, which will in turn notify the Bank of Portugal.	CMVM only recognizes the system managed by INTERBOLSA. However, according to the information provided by CMVM such recognition was not officially formalized.
				A: 271 P: 3	The Bank of Portugal by Notice appoints the securities settlement systems managed by it, notifying the European commission of that designation and giving notice to the Securities Commission.	You may care to note that presently the Bank of Portugal does not manage any securities settlement system.
			<b>Act2</b>	A: 13	Cf. supra Section 13 of the Act, page 14.	

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## Portugal - 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: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	<b>Act1</b>  <b>Act2</b>	A: 272 P: 2 N: b  A: 11	The following up-dated information is required upon registration: - The identification of the participants in the system.  The payment systems governed by Portuguese law will communicate to Bank of Portugal, as soon as possible the legal, technical, operational systems rules and the respective modifications as well as the participant's list, including indirect participants and all the modifications occurred.	

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## Portugal - 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: 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	<b>Act1</b>	A: 271 P: 1	The securities settlement system, except for those managed by the Bank of Portugal are recognized through the registration at the CMVM.	CMVM is the supervisory entity of the securities settlement system. Presently, there is not any securities settlement system managed by Bank of Portugal. C.f. supra Preliminary Note.
			<b>Act1</b>	A: 271 P: 2; 3	Cf. supra Section 271 (2 and 3) of the Act, page 13.	
				A: 269 P:3	CMVM refuses the registration of the system or imposes modifications whenever it considers it insufficient or contrary to legal or regulatory provisions.	
			<b>Act2</b>	A: 13	Cf. supra Section 13 of the Act, page 14.	

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## Portugal - 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: 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	<b>Act1</b>	A: 270	Any person with legitimate interest can request each one of the participants referred to in article 267 (C.f. supra Section 267 of the Act1, page 3) information about the settlement systems in which they participate and about its functioning rules.	Transposition identical
			<b>Act2</b>	A: 10	Whoever demonstrates a legitimate interest, namely a creditor of an Institution (C.f. supra Section 2 (d) of the Act), may require before that institution information about the respective participation in one or several systems comprised by the present law as well as the essential rules of functioning of the referred systems.	Transposition identical. But more detailed than the Directive

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## Portugal - 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: 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	<b>Act9</b>	A:6 P:2  A:6 P:3	<p>Chapters I (General provisions) and III (Participants bankruptcy) of the title V (Settlement Systems) of Act1 enter into force in 11 December 1999.</p> <p>Second Chapter (stock exchange settlement operations) of Title V enter into force after the approval of the operational regulations of settlement systems that should be registered with CMVM until six months after the CVM has entered into force.</p>	<p>Only CVM (Act1) transposed the Directive before 11 December 1999. After that date the Directive was also transposed by the Decree Law no. 221/2000 (Act2).</p> <p>CMVM has informed us that the Commission has been informed of the transposition of the Directive.</p>
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	<b>Act1</b>  <b>Act2</b>  <b>Act4</b>		<ul style="list-style-type: none"> <li>- Preambulary Decree which has approved the current CVM (Act1)</li> <li>- The preamble of the law</li> <li>- Notice of the bank of Portugal</li> </ul>	All these acts contain a reference to the Directive.

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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
A: 11 P: 2	Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive. In this Communication, Member States shall provide a table of correspondence showing the national provisions which exist or are introduced in respect of each Article of this Directive.	N				
A: 12	No later than three years after the date mentioned in Article 11(1), the Commission shall present a report to the European Parliament and the Council on the application of this Directive, accompanied where appropriate by proposals for its revision.	n. a.				
A. 13	This Directive shall enter into force on the day of its publication in the <i>Official Journal of the European Communities</i> .	n. a.				

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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
A: 14	This Directive is addressed to the Member States.	n. a.				

<sup>1</sup> **Act1** – Decree-Law no. 486/99 of 13 November 1999, transposed the Directive 98/26/ EC of May 1998 regarding the Securities Settlement Systems. This Act approved the new CVM (Act1). This Act was amended by the Decree law no. 61/2002 of 20 March 2002.

<sup>2</sup> **Act2** - Decree-Law no. 221/2000 of 9 September 2000, transposed the Directive 98/26/EC of May 1998 regarding the Payment Systems.

<sup>3</sup> **Act3** - Regulation no. 15/2000 of CMVM which complements the provisions of the CVM (Act1) establishing rules relative to securities settlement systems and executes these rules. Though this regulation does not make any reference to the Directive it is subsequent to it and establishes complementary rules to CVM on securities settlement systems.

<sup>4</sup> **Act4** - Notice no. 8/2000 of the Bank of Portugal of 31 October 2000, which identifies the payment systems comprised by the Decree-Law no. 221/2000.

<sup>5</sup> **Act5** - Instruction no. 115/96 of 15 July of 1996 of the Bank of Portugal – SPGT Regulation. This Instruction was amended by the following Instructions of the Bank of Portugal:

- Instruction no. 35/2000 of 15 December 2000;
- Instruction no. 34/2001 of 15 January 2002.

<sup>6</sup> **Act6** - Instruction no. 125/96 of Bank of Portugal – SICOI Regulation.

This Instruction was amended by the following Instructions of the Bank of Portugal:

- Instruction no. 44/1998 of 15 January 1998;

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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

- Instruction no. 11/1998 of 15 June 1998;
- Instruction no. 20/1998 of 15 October 1998;
- Instruction no. 23/1998 of 16 November 1998;
- Instruction no. 41/1998 of 15 December 1998;
- Instruction no. 30/1999 of 15 December 1999
- Instruction no. 37/2000 of 15 January 2000;
- Instruction no. 14/2000 of 17 April 2000
- Instruction no. 19/2000 of 17 July 2000;
- Instruction no. 23/2000 of 15 September 2000
- Instruction no. 19/2000 of 15 September 2000;
- Instruction no. 7/2001 of 16 April 2001;
- Instruction no. 31/2001 of 17 December 2001.

<sup>7</sup> **Act7** - Instruction no. 114/96 of Bank of Portugal – SLDO Regulation.

This Instruction was amended by the following Instructions of the Bank of Portugal:

- Instruction no. 12/1998 of 15 June 1998;
- Instruction no 25/1998 of 16 November 1998;
- Instruction no. 42 /1998 of 15 December 1998;
- Instruction no. 12/2000 of 17 April 2000;
- Instruction no 33/2001 of 15 January 2002.

**Act8** –Regulation of INTERBOLSA no. 5/2001, please see our endnote 18

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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

**Act9** - Preambulary Decree, which has approved the CVM (Act1)

<sup>8</sup>The settlement of the operations processed on the regulated market takes place necessarily within three working days from the completion or maturity of the operation (Section 12 (1) of the Act3).

The settlement of the operations realised out of regulated market takes place: in the moment agreed between the participants, within 30 days from the register of the transfer order or in case there is not an agreement within the period of time established by the systems rules. (Section 12 (2) of the Act3). Systems rules establish the terms and the period when the moment to settle the operations realised outside the regulated market, agreed between the participants, can be revealed (Section 12 (3) of the Act3).

However, this provision is not applicable to repurchase or borrowings operations outside the regulated market when it has as object the securities registered with the market, as these matters are regulated by the Regulation no. 8/2000 of CMVM that regulates borrowings and repurchase operations.

<sup>9</sup> Regulation no 25/2000 of CMVM regulates the buying and selling operations realised outside the regulated market. This regulation refers also to the out of regulated market operations.

<sup>10</sup>The systems comprised in Act3 are the systems referred to in article 61, b) and article 99 (1; 2) of the CVM (Act1).

According to article 61, b) of the CVM, Act3 is applicable to the systems that have an account opened with a financial intermediary indicated by the issuer.

According to article 99 (1; 2) of the CVM (Act1), Act3 is applicable to the systems in which the deposit of certificated securities is made: with an authorised financial intermediary on the initiative of the holder; with a centralised system, in the cases required by law or at the issuer's initiative.

Certificated securities are necessarily deposited: with a centralised system, when they are admitted to trade in a regulated market; with a financial intermediary or centralised system, when the entire issue or series is represented by a single certificate security.

<sup>11</sup>The article 287 (1) of the CVM (Act1) refers that the settlement systems regarding to the stock exchange operations only can be managed by a company that fulfils the requirements stipulated in a special law (Decree-law no. 394/99 of 13 October 1999).

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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

According to article 287 (2) of CVM (Act1) the remaining settlement systems, except those managed by the Bank of Portugal, can also be managed by the participants collectively.

<sup>12</sup>According to article 2 of the RGIC, a “credit institution” means: “undertaking whose business is to receive deposits or other repayable funds from the public in order to invest them on its own account, by granting credit”.

<sup>13</sup>The article 3 of the RGIC enumerates some types of credit institutions as follows: Banks; Caixa Geral de depósitos, Crédito e Previdência (national saving bank); Caixas Económicas (saving banks); Caixa Central de Crédito Agrícola Mútuo (central mutual agricultural credit bank); Caixas de Crédito Agrícola Mútuo (mutual agricultural credit banks); Investment Companies; Financial Leasing Companies; Credit-Purchase Financing Companies; other undertakings which, in meeting the definition in the preceding Article, are classified as such according to the law.

<sup>14</sup>According to article 199-A (3) of the Act of 31 December 1992, “investment firms” means: “firms whose regular activity includes the provision of investment services for third parties and which are subject to own funds requirements provided for in Council Directive 93/6/EEC of 15 March 1993, except for the credit institutions and the undertakings mentioned in Article 2 (2) of Council directive 93/22/EEC of 10 May 1993 (Investment Services Directive).

<sup>15</sup>According to article 1 (1) of the CPEREF approved by the Decree-Law no. 315/98 of 20 October 1998, “Every Company in financial distress or insolvency, may be subject to a measure or to one or more recuperation proceedings or to be declared in bankruptcy state. According to article 3 (1) of CPEREF “It is considered to be in bankruptcy state the corporation that isn’t able to fulfil its obligations in virtue of the insufficiency of its available assets to satisfy the current liabilities.

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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks

<sup>16</sup>Article 3 (2) of the CPEREF states that “ A corporation is in financial distress when, not fulfilling the insolvency requirements, show signs of economical and financial distress, namely failing to comply with its obligations.”

<sup>17</sup> Article 268 (4) of the Act1 identify the entities, which can fulfil the functions of settlement agent, as follows: Credit Institutions authorised to carry out this activity in Portugal; Securities centralised systems.

According to this provision the Bank of Portugal is able to perform these functions. Actually, this is what happens in reality, as it is the Bank of Portugal the financial settlement agent.

The Bank of Portugal is the only entity that performs this function.

<sup>18</sup>Regulation no. 5/2001 of INTERBOLSA, published in the BVLP Daily Market Report supplement on 20 August of 2001.

This Regulation determines the functioning and management general rules of the securities settlement systems managed by INTERBOLSA.

INTERBOLSA is the entity entitled to promote the organization and management of securities settlement systems in order to ensure the realization of money transfers associated with securities transfers or rights arising from these and the realization of the collateral securities.

In what the financial settlement systems is concerned the determined amounts of the securities settlement operations provided are cleared in only one balance, creditor or debtor, by a financial intermediary and are processed by Bank of Portugal (article 12 (3) Reg. no. 5/2001).

Settlement systems operate according with the information communicated by Euronext Lisboa (former BVLP), which is necessary to settle the operations carried out and registered in Euronext Lisboa (article 9 Reg. no. 5/2001).

<sup>19</sup> Please note that in Portugal there is a special market for public debt instruments which is denominated *Special Market for Public Debt* (Mercado Especial de Dívida Pública **MEDIP**)

Notwithstanding the fact that INTERBOLSA has created a settlement system applicable to MEDIP, which is the SLP, in fact MEDIP is managed by MTS SGMR, SA and settled by EUROCLEAR / Clear Stream Banking on a cross delivery versus payment basis.

Kindly care to note, that the contracts at term (derivatives) are settled in INTERBOLSA and managed by Euronext Lisboa.

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Article <sup>1</sup>	Text	Applicability <sup>2</sup>	Reference	Article (A; P; S; N) <sup>1</sup>	Content	Remarks

<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