

INTRODUCTION

I - TRANSPOSITION : most relevant chronological events

Some French legal provisions related to payment systems and securities settlement systems already existed before the publication of the Directive 98/26 EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (the “**Directive**”).

- As far as the payment systems are concerned, Article 93-1 of the French Banking Act¹ (now codified under Article L. 330-1 of the French Monetary and Financial Code, the “**Code**”) defined a system for inter-bank settlements as being a national and international procedure between at least two participants and described the regime applicable in case one of the participant is under an insolvency proceedings;

Since the implementation of Article 93-1 of the French Banking Act, netting arrangements for payment systems have been legally binding in the event of failure by a participant and the finality of payments in real-time gross settlement systems (“**RTGS**”) cannot be legally challenged, provided the payment systems comply with the legal definition.

- As far as securities settlement systems are concerned, the French systems were regulated on the one hand by the professional operating rules governing those systems (i.e. rules of Sicovam SA duly adapted on the basis of the Act n°83-1 of 3 January 1983 and the Decree n°83-359 of 2 May 1983) and on the other hand by certain provisions of French Law² related to insolvency proceedings.

A little while after the publication of the Directive (Official Journal, L 166, June 11, 1998), the Act n°98-546 of July 2, 1998:

- (i) (i) extended the applicability of Article 93-1 of the French Banking Act to systems for the settlement and delivery of financial instruments so that those systems were legally defined;
- (ii) entrusted the *Conseil des Marchés Financiers* (Financial Markets Council) with the power to set forth the general organisational and operational principles of the securities settlement systems and to approve their operating rules;
- (iii) inserted a new Article 93-2 in the French Banking Act³ (now codified in the article L. 330-2 of the Code) stating the legal basis for collateral arrangements in payment and securities settlement systems.

¹ This Article 93-1 was inserted in the French Banking Act n°84-46 of January 24, 1984 by the Act n°93-1444 of December 31, 1993.

² For example Article 47 ter of the Act n°83-1 of 3 January 1983 as modified by the Act n°93-1444 of December 31, 1993.

³ This Article 93-2 was inserted in French Banking Act n°84-46 of January 24, 1984 by the Act n°98-546 of July 2, 1998.

Article 30 of the Act n°2001-420 of May 15, 2001 ensured the transposition of the Directive by:

- (i) adapting the conflict of laws rules (*cf. infra*, transposition table, comments on Articles 8 and 9.2 of the Directive),
- (ii) ensuring the enforceability of the collateral securities as regards to national central banks and European Central Bank (*cf. infra*, transposition table, comments on Article 9.1 of the Directive),
- (iii) establishing the notification procedure of the systems (*cf. infra*, transposition table, comments on Article 10.1 to 10.3 of the Directive).

The Act n°2001-1168 of December 11, 2001 amended Article L. 141-4 of the Code to further clarify the oversight competence of the *Banque de France* as regards securities clearing and settlement systems, within the framework of the European System of Central Banks.

A supplemental Decree is currently in draft and shall be submitted to the Ministry of Economy, Finance and Industry (the “**Draft Decree**”). This Draft Decree shall:

- modify the Decree n°84-708 of 24 July 1984 (Article 12-1 shall be amended, new Articles 12-1-1 and 12-2-1 shall be added) (*cf. infra*, transposition table, comments on Article 6.2 of the Directive),
- ensure the final step of the transposition process of the Directive, i.e. transposition of Articles 6.3 and 10.4 of the Directive (*cf. infra*, transposition table, comments on both Articles).

Ultimately, several secondary Acts may also be taken into consideration in the framework of the transposition of the Directive, being:

- the General Regulations of the Financial Markets Council (in French, *Conseil des Marchés Financiers*) (the “**CMF Regulations**”),
- the rules of Clearnet S.A. (the “**Clearnet Rules**”)⁴,
- the rules of Euroclear France (the “**Euroclear Rules**”), and
- the operating rules of payments systems (PNS, TBF)⁵.

⁴ Clearnet S.A. is a limited purpose credit institution pursuant to the French Banking Act. Accordingly it is supervised by the Banking Commission (in French, the *Commission Bancaire*) which is the French banking supervisor.

⁵ Cf. *infra*, for more information about the payment systems.

II - SYSTEMS NOTIFIED TO THE COMMISSION

The French systems which have been notified to the European Commission in accordance with Article 10 of the Directive are listed below and briefly described.

2.1. Payment systems

TBF (“*Transferts Banque de France*”) is the French component of TARGET and is managed and operated by the Banque de France. TBF is a real-time gross settlement system. The use of TBF is mandatory for the settlement of monetary policy transactions. The payments are processed one by one on a continuous basis and are settled with immediate finality in central bank money. As a principle, payments cannot be cancelled once transmitted to the system.

PNS (“Paris Net Settlement”) is the large-value payment system and is managed and operated by the *Centrale des Règlements Interbancaires* (the “CRI”), an inter-bank body owned by ten banks and the Central Bank. PNS is a hybrid settlement system as it offers netting mechanisms while transactions are settled in real time. The payments are processed one by one on a continuous basis and are settled immediately.

Please note that the SIT (“*Système Interbancaire de Télécompensation*”) is currently in the process of being notified. SIT is the French automated clearing house for retail payment instruments operating in France and is managed and operated by the GSIT, a group of 17 participants (including the *Banque de France*).

2.2. Securities settlement systems

Clearing 21 is an integrated system operating in real time and is operated by Clearnet S.A. which acts as clearing house and central counterparty for financial instruments.

Relit, Relit + and RGV are managed and operated by Euroclear France. RGV (High Speed Relit - “*Relit Grande Vitesse*”) is a real time clearing/settlement system offering immediate irrevocability in central bank money. The close link between RGV and TBF permits the interconnection with TARGET, the European gross settlement system. Settlement procedures for inter-member trades and for trades between member firms and intermediaries, which were before handled by Relit, have been switched-over to Relit + which is the system dedicated to revocable closings in central bank money of the securities accepted in RGV.

The new RGV2 operating rules (“*Relit Grande Vitesse 2*”) have been approved by the Financial Markets Council on December 19, 2001. Those rules cancel and replace the previous ones and complete the rules concerning the central securities depository already approved on January 12, 2000.

These rules were set up after the clearing and settlement systems for financial instruments, Relit + (now called “revocable channel” with an end-of-day finality) and RGV (now called “irrevocable channel” with an instantaneous finality) were integrated to become a single system called RGV2.

III - MONACO

According to Article 11.2 of the Monetary Convention, December 26, 2001, Monaco shall apply the provisions enacted by France and ensuring the transposition of European acts which are mentioned in Appendix A. Since the Directive pertains to the list of Appendix A, the French legal provisions ensuring the transposition of the Directive shall be applied by Monaco.

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