

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			
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Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
	SCOPE AND DEFINITIONS				PURPOSE AND SCOPE OF THE LAW	
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		A: 2 N: a	This Law shall be applicable to: (a) Payment systems and clearance and settlement systems for securities or derivative instruments (hereinafter, systems).	
A: 1 N: b	(b) any participant in such a system;	N		A: 2 N: c	(c) The participants of a system and transaction stakeholders referred to under letter b).	
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		A: 2 N: d	(d) The collateral securities constituted within the framework of a system and the transactions mentioned in letter b).	Art.2, b) states: “Monetary policy transactions, or those related to settlements within a system, carried out by the Bank of Spain, the European Central Bank and other Central Banks in the European Union.”

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Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
A: 2	For the purpose of this directive:			A: 3	For the purposes of this Law, Spanish systems may consist of procedures or agreements subject to Spanish law that meet the following requirements:	
A: 2 N: a S: 1	'system' shall mean a formal arrangement:	N		A: 3 P: 1 S: 1		
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		A: 3 P: 1 N: b	(a) They serve the purpose of executing and, if appropriate, clearing orders regarding the transfer of funds or securities. The fact that a system may also execute transfers of other assets or financial instruments shall not impede its recognition under the terms established by the present Law. (b) They have at least three participants that are credit institutions or investment service companies as defined, respectively, by Directive 77/780/CEE and Directive 93/22/CEE, are of Spanish nationality or have authorisation to operate in Spain, provided that at least one is headquartered in Spain. (c) They have general membership and operating rules approved by the Bank of Spain, the National Stock Market Commission or the competent authority in a Regional Government, in cases of clearinghouse services and securities settlements created in official regional secondary markets or in markets or trading systems at that level that are not official, provided that the latter are supported by a report issued by the Bank of Spain or the National Stock Market Commission. These rules shall establish that no transfer order may be accepted from a member involved in insolvency procedures, once any such procedures are known by the	

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					<p>system and they must determine, in particular, the moment at which transfer orders issued to the system are deemed to be accepted and the methods available to the system to control and cover settlement risks deriving from orders it accepts, which may include the authority of its manager or agent to verify that the orders issued to the system comply with its rules and allow the transaction to be settled.</p> <p>For the purposes of this Law, these rules shall take effect once published in the "Official State Gazette" ("<i>Boletín Oficial del Estado</i>") and, if appropriate, the Official Gazette of the Regional Government concerned.</p> <p>(d) They settle fund transfer orders in a cash account opened at the Bank of Spain.</p> <p>(e) They are managed by the Bank of Spain or an institution subject to its supervision or the supervision of the National Stock Market Commission or the competent authority in Regional Governments for clearinghouse and securities settlement services created in official regional secondary markets or trading markets or systems at that level that are not official.</p>	

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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				Spanish legal framework, regulates those Spanish Systems subject to Spanish Law.
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		A: 6 P: 1,2	<p>Notifications. The Bank of Spain and the National Stock Market Commission shall notify the European Commission of systems recognised by virtue of this Law that are under their management or that of institutions under their supervision, and they shall be the organisations entitled to receive or send the reports referred to by Article 6.2 and 6.3 of Directive 98/26/CE.</p> <p>The regulators of regional clearinghouse and securities settlement systems shall receive or send reports via the National Stock Market Commission.</p>	
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		A: 3 P: 1 N: a	<p>For the purposes of this Law, Spanish systems may consist of procedures or agreements subject to Spanish law that meet the following requirements:</p> <p>a) They serve the purpose of executing and, if appropriate, clearing orders regarding the transfer of funds or securities. The fact that a system may also execute transfers of other assets or financial instruments shall not impede its recognition under the terms established by the present Law.</p>	

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Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
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			<i>NOT IDENTIFIED ANY TRANSPOSITION PROVISION IN Law 41/1999.</i>	Law 41/99, does not contain any specific provision in order to designate as a system a formal arrangement between two participants (minimum 3 participants should be involved).
				A: 4 P: 1,2	<p>Recognition. For the purposes of this Law, the recognition of a system must be declared by a Government Resolution, at the request of the participants of the system or by application to the Bank of Spain, the National Stock Market Commission or Regional Regulatory Body.</p> <p>The Government Resolution, which shall be adopted at the proposal of the Ministry of Finance and shall be backed, in any event, by a report issued by the Bank of Spain, the National Stock Market Commission and, if appropriate, the Regional regulatory body, shall indicate the reasons, in accordance with the advisability of reinforcing the stability of the financial and payments system, for recognition and the application of the provisions of this Law, particularly in the event that the Resolution was not adopted at the request of system participants. The Resolution adopted by the Government</p>	Article 4, paragraphs 1 and 2 should be understood in connection with the concept of “system” contemplated in Law 41/1999. Therefore, said article should be considered together with article 3 of Law 41/99, that determines the requirements applicable to any procedure or agreement that consist of a “system”.

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					shall be published in the Official State Gazette.	
A: 2 N: b S: 1	<p>‘institution’ shall mean:</p> <ul style="list-style-type: none"> -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, <p>which participates in a system and which is responsible for discharging the financial obligations arising from transfer orders within that system.</p>	N		A: 2 P: 1 N: c S: 2	For these purposes, participants shall be understood to be credit institutions and investment service companies, either of Spanish nationality or authorised to operate in Spain, the Treasury and equivalent bodies in Regional Governments and institutions pertaining to the public sectors listed under Article 3 of Regulation (CE) 3603/93 of 13 December, whereby definitions are established for the application of the prohibitions stipulated under Article 104 and Section 1 of Article 104 B of the Treaty, which are accepted as participants of the system in accordance with its regulations and they assume the responsibility of fulfilling financial obligations deriving from their operations.	Spanish regulation only defines those entities which are considered such as “participants”. This concept involves both, participants and institutions.

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Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
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				<i>NOT IDENTIFIED ANY SIMILAR PROVISION</i>
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		A: 2 P: 1 N: c S: 4 Item: 3	- A central counterparty, which is defined as an intermediary between participants of a system to be the exclusive counterpart for these participants with respect to their transfer orders.	
A: 2 N: d	`settlement agent` shall mean an entity providing to institutions and/or a central counterparty participating in systems, settlement accounts through which transfer orders within such systems are settled and, as the case may be, extending credit to those institutions and/or central counterparties for settlement purposes.	N		A: 2 P: 1 N: c S: 4 Item: 2	- The settlement agent for other systems. Said agent shall be a Central Bank or other Body or entity that provides system participants with accounts in which transfer orders accepted by said system are settled or used by the system to deposit funds or securities.	

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Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	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		A: 2 P: 1 N: c S: 4 Item: 4	- a clearing house which is defined as an organisation responsible for calculating net positions held by system participants.	
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		A: 2 P: 1 N: c S: 2,3,4	<p>For these purposes, “participants” shall be understood to be credit institutions and investment service companies, either of Spanish nationality or authorised to operate in Spain, the Public Treasury and equivalent bodies in Autonomous Regions and institutions pertaining to the public sectors listed under Article 3 of Regulation (CE) 3603/93 of 13 December, whereby definitions are established for the application of the prohibitions stipulated under Article 104 and Section 1 of Article 104 B of the Treaty, which are accepted as participants of the system, in accordance with its regulations and they assume the responsibility of fulfilling financial obligations deriving from their operations.</p> <p>The European Central Bank, the Bank of Spain and other Central Banks in European Union countries may also be participants, as well as international financial organisations of which Spain is a member.</p> <p>The following may also be members, provided that they are accepted by the system in accordance with its regulations:</p> <ul style="list-style-type: none"> - Managers of other systems. 	

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Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
					<ul style="list-style-type: none"> - The settlement agent for other systems. Said agent shall be a Central Bank or other body or entity that provides system participants with accounts in which transfer orders accepted by said system are settled or used by the system to deposit funds or securities. - A central counterpart, which is defined as an intermediary between participants of a system to be the exclusive counterpart for these participants with respect to their transfer orders, and - a clearinghouse which is defined as an organisation responsible for calculating net positions held by system participants. 	
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			<p><i>NOT IDENTIFIED ANY TRANSPOSITION PROVISION IN Law 41/1999.</i></p>	<p>Please see comment inserted in red within the box(“Content”) below related to A: 2, N: g</p>

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Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
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			<p><i>NOT IDENTIFIED ANY TRANSPOSITION PROVISION IN Law 41/1999.</i></p> <p><i>Although, Law 41/1999 does not contain any specific provision in order to define the concept of "indirect participant" as a Spanish system participant, it is necessary to point out that the regulations applicable to the Spanish Interbank Payment System ("SPI") and the Settlement Service of the Bank of Spain ("SLBE") contemplate in their internal regulations either the status of direct and indirect participant.</i></p> <p><i>Additionally, the concept of "indirect participant" in terms of the SFD may be acceptable under the current terms used by the transposing Law in article 2.1 letter c) sentence 1 that provides the concept of "contracting parties of (...) those transactions related to settlements under a system, (...)"</i></p>	
A: 2 N: h	`securities' shall mean all instruments referred to in section B of the Annex to Directive 93/22/EEC;	N			<p>NOT IDENTIFIED, but contemplated under Spanish legislation.</p> <p>Law 41/1999 contemplates a concept of "securities" already defined in a similar manner, in the Spanish Securities Market Act (Law 24/1988, as amended by Law 37/1998).</p> <p>In Law 37/1998 is contemplated a concept of "negotiable securities" within the framework of the Spanish Securities Market regulation, but not exactly the concept of "securities"; however, in our opinion the reference of "securities" should be understood as to "negotiable securities", as an already existing institution of the</p>	<p>Law 41/1999 does not contain any specific definition of "securities". The scope of the Law is referred to Payment, clearance and settlement systems of "securities" and "financial derivative instruments"; both concepts fall under</p>

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					securities Market regulation. Regarding the “financial derivative instruments”, we draw your attention on the fact that Spanish regulation only contemplates the legal concept of “financial instruments”, which also involves the financial derivative instruments. However, there is no specific legal definition of financial derivative instruments in said regulations although said financial derivative instruments may be clearly identified within the framework of financial instruments.	the scope of the concept of “instrument” indicated in EU Directive 93/22/EEC.
A: 2 N: i	`transfer order´ shall mean: -any instruction by a participant to place at the disposal of a recipient an amount of money by means of a book entry on the accounts of a credit institution, a central bank or a settlement agent, or 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;	N		A: 10 P: 1 N: a, b	Fund and securities transfer orders. For the purposes of this Law, fund and securities transfer orders shall be understood to consist of the instructions issued by a participant for the purpose of: a) Making a certain cash amount available to a final payee, or assuming or cancelling a debt claim as defined by the system's rules, provided that the instructions are issued for immediate execution by making an entry in a participant's, Central Bank's or credit institution's accounts. b) Transfer the ownership or any other right to one or more securities or derivatives by making an entry into a register or by any other means that provides evidence of the transfer.	

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Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	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		A: 12	Insolvency procedures. For the purposes of this Law, insolvency proceedings are deemed to consist of bankruptcy or suspension of payment procedures, as well as any other universal measures provided for by Spanish or foreign legislation regarding the liquidation or restructuring of a company which intends to suspend transfer orders or payments that the participant may or must make, or the imposing of any limitations on such 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		A: 9	Netting For the purposes of this Law, netting is understood to be the substitution, in accordance with a system's operating rules, of the rights and obligations deriving from transfer orders accepted by the system by a single credit or single obligation, such that only the resulting net credit or obligation is payable.	
A: 2 N: l	`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			NOT IDENTIFIED any provision which defines "settlement account", but Law 41/1999 refers to its existence in article 10.a): a) Making a certain cash amount available to a final payee, or assuming or cancelling a debt claim as defined by the system's rules, provided that the instructions <u>are issued for immediate execution by making an entry in a member's, Central Bank's or credit institution's accounts.</u>	

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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		A: 2 P: 1 N: d S: 2	For these purposes, a “collateral security” shall be understood to be all realisable assets, including money, provided under a deposit, pledge, a repurchase agreement, subject to withholding or any other legal transaction, for the purpose of securing rights and obligations deriving from the system’s operations, or from monetary policy transactions, or in connection with a system’s settlements, carried out with the Bank of Spain, the European Central Bank or other Central Banks in European Union countries. <i>With particular regards to techniques under national law used to provide collateral to central banks, the new Additional Disposition VI of Law 13/1994 of 1 June, on the Bank of Spain’s Autonomy, introduced by the Law 44/2002, of 23 november, collateral provided in favour of central banks shall be considered “any deposit, pledge, sell-buyback, repurchase agreement, special preferential rights (“afección”), right of withholding or otherwise which may subject to any realisable assets, including cash, for the purposes of securing rights and obligations arising from any present or future transaction executed with the Bank of Spain, the European Central Bank or any Central Bank of the EU Member States.”</i>	
NETTING AND TRANSFER ORDERS						

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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		A: 11 P: 1	Validity and strength of transfer orders. 1. Transfer orders issued to a system by participants shall be irrevocable by the order issuer once received and accepted by the system, in accordance with its rules.	
				A: 13 P: 1 N: a	In addition to the provisions of Article 11 above, the commencement of any insolvency procedures affecting a system member shall not affect the obligations of that member: a) Those deriving from transfer orders received and accepted by the system prior to the moment the insolvency procedures are reported to the system or (...).	
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		A: 13 P: 1, 2 N: a,b,c	Effects on transfer orders and settlements. In addition to the provisions of Article 11 above, the commencement of any insolvency procedures affecting a system member shall not affect the obligations of that member: a) Those deriving from transfer orders received and accepted by the system prior to the moment the insolvency procedures are reported to the system or, on an exceptional basis, processed after the insolvency procedures commenced and settled on the same day, provided that the system managers can prove that they did not know of and should not have known of the	

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					<p>commencement of said procedures.</p> <p>b) That result from settlements that may be carried out with respect to said orders the same day on which the report of insolvency was received.</p> <p>c) That are for the purpose of settling on that day any other commitments deriving from the system to ensure the successful completion of transfer orders accepted or settlements performed.</p> <p>These obligations shall be settled in accordance with the system's rules and charged against guarantees and any other assets and commitments established in this respect by the system.</p>	
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		A: 11 P: 1, 2	<p>1. Transfer orders issued to a system by members shall be irrevocable by the order issuer once received and accepted by the system, in accordance with its rules.</p> <p>The orders referred to in the preceding paragraph and any settlement that takes place between them, the obligations deriving from said settlement and any issued for the purpose of settling any other commitments established by the system to ensure the successful fulfilment of the accepted transfer orders or settlements carried out shall be final, binding and legally payable by the member obligated to comply and defensible against third parties and may not be cancelled by virtue of Article 878 of the Code of Commerce or challenged or annulled in any other manner.</p>	

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Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
					<p>2. The above provisions are:</p> <p>a) Understood to exist notwithstanding any action that any insolvency proceedings or creditor may take to demand, if appropriate, any pertinent indemnities or assumption of responsibilities due to any unlawful or other action from any persons liable for said action or those that unduly benefited from the transactions carried out.</p> <p>b) This does not give rise to any obligation whatsoever for the settlement manager or agent to guarantee or remedy any member's lack of cash or securities for the purposes of completing an order or settlement or the obligation to employ methods other than those established by the system's operating rules for said purposes.</p>	
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		A: 11 P: 1 S: 1	<p>Validity and strength of transfer orders.</p> <p>1. Transfer orders issued to a system by participants shall be irrevocable by the order issuer once received and accepted by the system, in accordance with its rules.</p>	Spanish Law does not specify the "moment of entry". National law precises the moment in which the transfer order shall be irrevocable: when the transfer order has been transferred, received and accepted by the system.

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
A: 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		A: 13 P: 1 N: b, c	In addition to the provisions of Article 11 above, the commencement of any insolvency procedures affecting a system member shall not affect the obligations of that member: (...) b) That result from settlements that may be carried out with respect to said orders the same day on which the report of insolvency was received. c) That are for the purpose of settling on that day any other commitments deriving from the system to ensure the successful completion of transfer orders accepted or settlements performed.	
A: 4 S: 2	Furthermore, Member States may also provide that such a participant's credit facility connected to the system be used against available, existing collateral security to fulfil that participant's obligations in the system.	D		A: 13 P: 2	These obligations shall be settled in accordance with the system's rules and charged against guarantees and any other assets and commitments established in this respect by the system.	

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
A: 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		A: 11 P: 1 S: 1,2	<p>Validity and strength of transfer orders.</p> <p>1. Transfer orders issued to a system by members shall be irrevocable by the order issuer once received and accepted by the system, in accordance with its rules.</p> <p>The orders referred to in the preceding paragraph and any settlement that takes place between them, the obligations deriving from said settlement and any issued for the purpose of settling any other commitments established by the system to ensure the successful fulfilment of the accepted transfer orders or settlements carried out shall be final, binding and legally payable by the member obligated to comply and defensible against third parties and may not be cancelled by virtue of Article 878 of the Code of Commerce or challenged or annulled in any other manner.</p>	
	PROVISIONS CONCERNING INSOLVENCY PROCEEDINGS					

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
A: 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		A: 16 P: 1 N: a, b	Establishment and notification of the moment insolvency proceedings commence. 1. For the purposes of the provisions of the present Law, insolvency proceedings against a system participant shall be deemed to commence when: a) In accordance with Spanish legislation, bankruptcy is declared or an application for the suspension of payments is admitted for processing, or b) a court or administrative authority adopts universal measures provided for by Spanish or foreign legislation to liquidate or reorganise an entity and which is intended to have the effect of suspending transfer or payment orders that the participant may or must make, or the imposing of any limits on such transfers or payments.	
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		A: 16 P: 2, & P: 3 S: 1	2. Any court that receives an application to commence insolvency proceedings involving a credit institution or an investment services company must immediately, and in any event by the end of the following working day after the filing of the application, issue a report to the Bank of Spain and the National Stock Market Commission, and requesting in that report the list of the systems to which the entity concerned pertains and the name and address of its managers. These organisations must send the requested information by the following working day indicating to the court the necessary information to ensure that the successive reports to be sent by the court, in accordance with the provisions of	

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Directive 98/26/EC			Member State's Legislation			
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Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
					<p>the following section, are received by the supervisors and managers of the systems as quickly as possible.</p> <p>3. Any court or tribunal that commences insolvency proceedings against a credit institution or an investment service company that are participants of a system must simultaneously report the content of the proceedings to the supervisors and managers of the systems to which the entity concerned pertains. The manager shall immediately report this situation to system participants.</p>	
A: 6 P: 3	The Member State referred to in paragraph 2 shall immediately notify other Member States.	N		A: 16 P: 3 S: 2,3,4	<p>This report will be immediately sent by the Bank of Spain or National Stock Market Commission, as appropriate, to all other European Union countries.</p> <p>Similarly, the Bank of Spain and the National Stock Market Commission shall inform the managers of the respective Spanish systems of any similar notifications received from another European Union or other country.</p> <p>The regulators of autonomous regional clearinghouse and securities settlement systems shall receive or send the above-mentioned notifications via the National Stock Market Commission.</p>	

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
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		A: 11 P: 1	<p>1. Transfer orders issued to a system by members shall be irrevocable by the order issuer once received and accepted by the system, in accordance with its rules.</p> <p>The orders referred to in the preceding paragraph and any settlement that takes place between them, the obligations deriving from said settlement and any issued for the purpose of settling any other commitments established by the system to ensure the successful fulfilment of the accepted transfer orders or settlements carried out shall be final, binding and legally payable by the member obligated to comply and defensible against third parties and may not be cancelled by virtue of Article 878 of the Code of Commerce or challenged or annulled in any other manner.</p>	
				A: 14 P: 4	4. In particular, neither the constitution or acceptance of the collateral securities referred to in the preceding paragraphs, nor the account or register balances in which they are materialised may be challenged in the event of retroactive measures arising from insolvency proceedings. Collateral securities shall neither be subject to any claim in the terms set out under Article 324 of the Code of Commerce regarding pledged securities.	
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	N		A: 15 P: 1	1. In the event of insolvency proceedings involving a Spanish entity that is a member of a system recognised in another European Union country in accordance with Directive 98/26/CE, the rights and obligations deriving from said membership shall be determined by the	

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
	governing that system.				national legislation applicable to the system concerned.	
	INSULATION OF THE RIGHTS OF HOLDERS OF COLLATERAL SECURITY FROM THE EFFECTS OF THE INSOLVENCY OF THE PROVIDER					
A: 9 P: 1	The rights of: - a participant to collateral security provided to it in connection with a system, and - central banks of the Member States or the European central bank to collateral security provided to them, shall not be affected by insolvency proceedings against the participant or counterparty to central banks of the Member States or the European central bank which provided the collateral security. Such collateral security may be realised for the satisfaction of these rights.	N		A: 14 P: 1,2,3	Effects on the guarantees. 1. In the event insolvency procedures commence involving a system participant, its manager or settlement agent and, if appropriate, the other participants of the system shall have the absolute right of separation with respect to the collateral securities provided by the participant or a third party to the system. 2. The Bank of Spain shall also be entitled to this right of separation with respect to the collateral securities provided to it by any entity that is a counterpart or guarantor in monetary policy transactions or associated with system settlements. 3. The rights of separation mentioned in the preceding paragraphs shall also benefit the European Central Bank and any other Central Bank in a European Union country and the managers and settlement agents of systems existing in the European Union with respect to collateral securities provided to them in Spain within the framework of the transactions carried out by them, and provided the collateral securities have been reported to them in accordance with the provisions of Article 6 above and Article 10 of Directive 98/26/CE.	
A: 9	Where securities (including rights in securities)	N		A. 15	2. Spanish legislation shall be applicable, as regards	Please note that,

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
P: 2	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.			P: 2, 3	<p>actual legal effects, to the guarantees legally entered into a register located in Spain in the favour of a Spanish or foreign system, its participants or the Bank of Spain, the European Central Bank or other Central Banks in European Union countries and linked to their monetary policy transactions or those associated with the settlements involving those systems.</p> <p>Guarantees that are lawfully formed and entered into a register located in another European Union country in favour of a Spanish system, its participants or the Bank of Spain and linked to monetary policy transactions or associated with the settlements involving those systems shall be governed by the legislation in force in the European Union country concerned, as regards actual legal effects.</p> <p>3. The provisions of the preceding sections shall also govern guarantees formed by securities issued in accordance with Spanish legislation, provided that both are lawfully entered into a register located in another European Union country, although in this case if securities represented by accounting entries are involved, at the request of the managers of the Spanish systems the Ministry of Finance shall establish adequate links and reconciliations to ensure the coherence of the entries made into the foreign register and those relating to the Spanish register for the securities concerned and the legal efficiency of the guarantees formed in this respect.</p>	paragraph 3 of article 15 extends the scope of the basic scheme laid down by the EU Directive 98/26.

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
	FINAL PROVISIONS					
A: 10 S: 1	Member States shall specify the systems which are to be included in the scope of this Directive and shall notify them to the Commission and inform the Commission of the authorities they have chosen in accordance with Article 6(2).	N		A: 8	<p>Spanish systems recognised by this Law. For the purposes of the provisions of this Law and notwithstanding the fact that new systems may be recognised in the future in accordance with Article 4, the following are considered to be and recognised as Spanish payment, clearinghouse and settlement systems of securities and derivatives:</p> <p>a) The Bank of Spain Settlement Service, including links with other systems in other countries forming part of the interconnection and payment settlement system managed by the European System of Central Banks.</p> <p>b) The Spanish Interbank Payment Service, currently managed by the Madrid Bank Clearinghouse which aim is to facilitate the exchange, clearance and settling payment orders denominated in euros and other currencies as established by its operating rules that are issued between the credit institutions that are members of said clearinghouse and have been admitted into the service.</p> <p>c) The Clearing and Settlement Systems of securities traded in the Stock Exchanges and managed by the “Systems Corporation” in compliance with Article 44 bis of Law 24/1988 of 28 July which regulation is contemplated by said Law and in its enabling regulations</p> <p>d) The Barcelona Stock Exchange Clearing and Settlement Service managed by “Sociedad Rectora de la Bolsa de Valores de Barcelona, Sociedad Anónima” and</p>	Paragraphs c) and g) of Article 8 of transposition Law 41/1999 have been amended by Law 44/2002, of 22 November.

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
					regulated by Law 24/1988 of 28 July on the Stock Market and by the relevant national and regional enabling regulations. e) The Bilbao Stock Exchange Clearing and Settlement Service managed by “ <i>Sociedad Rectora de la Bolsa de Valores de Bilbao, Sociedad Anónima</i> ” and regulated by Law 24/1988 of 28 July on the Stock Market and by the relevant national and regional enabling regulations. f) The Valencia Stock Exchange Clearing and Settlement Service managed by “ <i>Sociedad Rectora de la Bolsa de Valores de Valencia, Sociedad Anónima</i> ” and regulated by Law 24/1988 of 28 July on the Stock Market and by the relevant national and regional enabling regulations. g) The Clearing and Settlement System for transactions executed in the Spanish Public Debt Book-entry Market managed by the Systems Corporations referred to in article 44 bis paragraph 1 of Law 24/1988 of 28 July on the Stock Market. h) The clearinghouse and settlement systems for derivative contracts traded on markets “ <i>MEFF, Sociedad Rectora de Productos Financieros Derivados de Renta Variable, Sociedad Anónima</i> ”, and “ <i>MEFF, Sociedad Rectora de Productos Financieros Derivados de Renta Fija, Sociedad Anónima</i> ”, managed by these governing bodies and authorised by the Ministry of Finance, as well as in the market “ <i>FC&M, Sociedad Rectora del Mercado de Futuros y Opciones sobre Cítricos, Sociedad Anónima</i> ”, in accordance with the provisions of Law	

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
					24/1988 of 28 July. i) The clearinghouse and settlement system " <i>AIAF Mercado de Renta Fija, Sociedad Anónima</i> ", which was authorised by the Ministry of Finance in accordance with the provisions of Article 77 of Law 24/1988 of 28 July.	
A:10 S: 2	The system shall indicate to the Member State whose law is applicable the participants in the system, including any possible indirect participants, as well as any change in them.	N		A: 7 P: 2	The Bank of Spain, the National Stock Market Commission or regional regulatory bodies, as appropriate, shall publish the list of members of Spanish systems, as well as any additions or removals from the list, in the Official State Gazette, as well as the relevant regional Official Gazette, if appropriate.	I

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
A: 10 S: 3	In addition to the indication provided for in the second subparagraph, Member States may impose supervision or authorisation requirements on systems which fall under their jurisdiction.	D		A: 5	Disciplinary system. Systems recognised in accordance with Article 4 shall be subject to the supervisory authority of either the Bank of Spain or the National Stock Market Commission, the intervention and penalty system established by Law 26/1988 of 28 July on Discipline and Intervention of Credit Institutions or, the provisions of Law 24/1988 of 28 July on the Stock Market, notwithstanding the supervision, inspection and penalties that may be applied by Autonomous Regional Governments with respect to clearinghouse and securities settlement systems created in official regional secondary markets or trading markets or systems at the same level that are not official in nature.	
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		A: 7 P: 3	Participants shall be required to report the Spanish and foreign systems in which they participate and the principal rules under which they operate to any person with a legitimate interest in said information.	
A: 11 P: 1 S: 1,2	Member States shall bring into force the laws regulations and administrative provisions necessary to comply with this Directive before 11 December 1999. They shall forthwith inform the Commission thereof.	N			LAW 41/1999 OF 12 NOVEMBER ON PAYMENT AND SECURITIES SETTLEMENT SYSTEMS (PUBLISHED IN THE OFFICIAL STATE GAZETTE (BOE) ON 13 NOVEMBER 1999). The Law entered into force the day after its publication in the Official State Gazette.	

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Directive 98/26/EC			Member State's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
A: 11 P: 1 S: 3,4	When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.	N		A: 1 P: 1	Purpose. The purpose of this Law is to incorporate the provision of Directive 98/26/CE, enacted by the European Parliament and Council on 19 May regarding the “strength of settlements in payment and security settlement systems” into internal Spanish legislation and regulate the validity and efficiency of clearance and settlement transactions carried out within these systems, as well as the collateral securities provided by system participants and collateral securities for the transactions carried out by the Central Banks of European Union countries and the European Central Bank and the effects of insolvency procedures on these transactions and collateral securities.	
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				Law 41/1999 does not contain any provision on this regard. We assume that Spain has provided the information required through the official procedures contemplated.

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1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
A: 12	No later than three years after the date mentioned in Article 11(1), the Commission shall present a report to the European Parliament and the Council on the application of this Directive, accompanied where appropriate by proposals for its revision.	n. a.				
A: 13	This Directive shall enter into force on the day of its publication in the <i>Official Journal of the European Communities</i> .	n. a.				
A: 14	This Directive is addressed to the Member States.	n. a.				

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