

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

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Sweden - final report

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					
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	Lag (1999: 1309) om system för avveck- ling av förpli- ktelse r på finans- markn- aden	A:1	This scope of the Act covers notification and approval of systems for settlement of obligations to pay or to deliver financial instruments (Settlement Systems) at the financial market.	The provisions of the Directive have been implemented mainly by the Act on systems for settlement of obligations on the financial market (Lag om system för avveckling av förpliktelser på finansmarknaden, SFS 1999:1309. The Act applies to all systems defined as Settlement Systems. The definition correspond to the reference to Article 2(a)

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

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Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
A: 1 N: b	(b) any participant in such a system;	N		A:8 S:1	Participant in a Settlement System can be;	
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				The existing Swedish legislation on collateral securities is applicable also to collateral securities provided in connection with participation in a Settlement System. Existing legislation on collateral securities is in compliance with the provisions of the Directive and has been amended as to fully allow compliance with the Directive.

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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: 2 N: a S: 1	'system' shall mean a formal arrangement:	N		A:1	This Act is applicable to notification and approval of systems for settlement of obligations to pay or to deliver financial instruments (Settlement Systems) at the financial market.	Only Settlement Systems are recognised as formal arrangements.

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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: 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:5	A Settlement System shall have three or more participants, without counting the Administrator. It shall have suitable common rules and standardised arrangements for the execution of transfer orders and rules that states that Swedish law is applicable with regard to the system.	A Settlement System shall have at least three participants besides the Administrator. Participants in a Settlement System may only be such entities specified in Article 8 of the Act. These entities are considered participants even if acting as, for example, a clearing house. The Administrator of the system may act as a central counterparty or as a clearing house.

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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: 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		A:5 S:2 ½ A:4	and rules that states that Swedish law is applicable with regard to the system. A Settlement System has to have an Administrator. Administrator in a Settlement System can be: <ol style="list-style-type: none"> 1. a clearing organisation 2. a central securities depository 3. a company with permission under 1 Chapter 2 the Banking Business Act 4. and companies with permission under 1 Chapter 3 § 1, 2 or 4 The Securities Operations Act (SFS 1991:981) 	In addition to the Article 5 of the Act the requirement that the law governing the system has to be the law of a Member State in which one of the participants has its head office have been implemented by the requirement that a Settlement System has to have an Administrator which has to have its office in Sweden.

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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: 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 A:4 A:9 A:7 P:1	<p>A Settlement System that complies with the criteria in 5 and 8 §§ is administrated by a Clearing Organisation or a Central Security Depository shall be approved.</p> <p>- Se above</p> <p>The Financial Supervisory Authorities shall notify approved Settlement Systems, and upon the request by the Swedish Central Bank such Settlement Systems that are being operated by the Swedish Central Bank, to the European Commission.</p> <p>A Settlement System that meet the criteria in 5 and 8 §§ and is administrated by a company holding a permission under 1 Chapter 2 § the Banking Business Act or under 1 Chapter 3 § 1 Para 1, 2 or 4 the Securities Operations Act (SFS 1991:981) shall only be approved if there are particular reasons and the system complies with the security requirements that are connected to the operation and is organised in such manner that the participants economic position in the system could be controlled. When deciding if such extraordinary reasons are at hand consideration shall be given to the systems influence importance on the stability of the financial market.</p>	<p>Only systems with an Administrator can be approved as Settlement Systems and thus be covered by the provisions of the Directive. The Swedish implementation lays down more stringent conditions by adding this and other requirements. The definition under Swedish law on what is seen as to be satisfying with regard to the rules of the system is defined under existing law. The participant has to appoint relevant law if an insolvency proceeding is opened on one of the participants.</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: 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 system in which the participants execute transfer orders as defined in the second indent of (i) but relating to other financial instruments may according to Swedish law be considered as a Settlement Systems. Systems dealing with the settlement of derivatives are covered by the Act as stated in the preparatory work to the Act (prop. 1199/2000:18,

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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		-		Not implemented.

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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: 1	<p>‘institution’ shall mean:</p> <p>-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</p> <p>-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</p> <p>-public authorities and publicly guaranteed undertakings, or</p> <p>-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> <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:8	<p>Participant in a Settlement System can be:</p> <ol style="list-style-type: none"> 1. The Swedish Central Bank and other central banks 2. The Swedish National Debts Office and foreign public institutions that in their respective country operates similar businesses as the Office. 3. clearing organisations 4. central securities depository 5. companies with permission under 1 Chapter 2 § the Banking Business Act 6. companies with permission under 1 Chap.3 § 1 Para. The Securities Operations Act (SFS 1991:981) 7. foreign companies that in their countries carries out business operations as mentioned under 1-6, and 8. other legal entities that for its own account settles obligations to deliver financial instruments in the system. <p>Foreign companies referred to under 1 para 7 shall in their countries be adequately supervised by a public authority or other competent organ.</p>	<p>The listed entities such as Clearing Members or Account Operators under the Swedish Securities Exchange and Clearing Operations Act as well as some other entities that are listed as possible participants in a Settlement System under Article 8 of the Act corresponds with the definitions of institutions under Article 2 b of the Directive. The listed entities under Article 8 of the Act does not cover electronic money institutions.</p>

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A: 2 N: b S: 2	If a system is supervised in accordance with national legislation and only executes transfer orders as defined in the second indent of (i), as well as payments resulting from such orders, a Member State may decide that undertakings which participate in such a system and which have responsibility for discharging the financial obligations arising from transfer orders within this system, can be considered institutions, provided that at least three participants of this system are covered by the categories referred to in the first subparagraph and that such a decision is warranted on grounds of systemic risk;	D				The Article has been interpreted as meaning that only systems in which the participants executes transfer orders as defined in the second indent of (i) may have other participants than described under Article 2 b) – 2 e) under the Directive. It has not been considered necessary to change the existing definition of which undertakings can be approved Clearing Organisations or Central Security Depositories under, Swedish law. The above-mentioned limitation has however been implemented under Article 8 of the Act.

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Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
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 S:1 A:4 A:8	By this Act, <i>Administrator</i> is understood as a company that is responsible for the operation of a Settlement System; the company is seen as a system participant. A Settlement System has to have an Administrator. Administrator in a settlement system can be: 5. a clearing organisation 6. a central securities depository 7. a company with permission under 1 Chapter 2 the Banking Business Act and companies with permission under 1 Chapter 3 § 1, 2 or 4 The Securities Operations Act (SFS 1991:981) Se further under Article 8.	The definition of a central counterparty has not been given a literal implementation. However it is possible for an Administrator or a participant as defined in the Act to be a CCP. By defining the Administrator of a Settlement System as an entity that is either a clearing organisation, a central securities depository or a company with permission under the Securities Operations Act as well as defining those entities that may become participants in a Settlement System under the Act (Article 8), the operation of a central counterparty may be carried out by on of the above-mentioned entities.

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Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	Content	Remarks
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 S:1 A:4 A:8	By this Act, <i>Administrator</i> is understood as a company that is responsible for the operation of a Settlement System; the company is seen as a system participant. A Settlement System has to have an Administrator. Administrator in a settlement system can be: 8. a clearing organisation 9. a central securities depository 10. a company with permission under 1 Chapter 2 the Banking Business Act and companies with permission under 1 Chapter 3 § 1, 2 or 4 The Securities Operations Act (SFS 1991:981) Se further under Article 8.	The definition of a settlement agent has not been given a literal implementation. However it is possible for an Administrator or a participant as defined in the Act to be a settlement agent. By defining the Administrator of a Settlement System as an entity that is either a clearing organisation, a central securities depository or a company with permission under the Securities Operations Act as well as defining those entities that may become participants in a Settlement System under the Act (Article 8), the operation of a central counterparty may be carried out by one of the above-mentioned entities.

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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 S:1 N:4	Clearing organisation is understood as a company that is entitled to conduct clearing business operations under the Securities Exchange and Clearing Operations Act.	

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Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
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:5 S:1 A.8	<p>A Settlement System shall have three or more participants, without counting the Administrator.</p> <p>Participant in a Settlement System can be:</p> <ol style="list-style-type: none"> 1. The Swedish Central Bank and other central banks 2. Swedish National Debts Office and foreign public institutions that in their respective country operates similar businesses as the Office. 3. clearing organisations 4. central security depository 5. companies with permission under 1 Chapter 2 § (Banking Business Act) 6. companies with permission under 1 Chapter 3 § 1 Para the Security Operations Act 7. foreign companies that in their countries carries out business operations as mentioned under 1-6, and 8. other legal entities that for its own account settles obligations to deliver financial instruments in the system. <p>Foreign companies referred to under 1 para 7 shall in their countries be adequately supervised by a public authority or other (behörigt) organ.</p>	The definition of a participant in a Settlement System under the Act has been made by listing entities, such as clearing organisations etc, that are operating under a permission and which operations are regulated by law. These undertakings can for example act both as settlement agent and clearing house. Possible participants of a Settlement System are not defined by their role in the Settlement System but by the participants business operations.

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Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	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				The Article has not been implemented. Bilateral netting between a participant in a Settlement System and an indirect participant is protected under Swedish law, Chapter 5, Para 1 of the Financial Instruments Trading Act (SFS 1991:980) as well as according to general law on set off. According to the preparatory work (prop 199/2000:18) an implementation in the future is possible, if also foreign institutes will be indirect participants in Swedish systems.

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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	Lag (1991: 980) om hande l med finans iella instru ment	C:5 A:1	A contract between two parties concerning trade of financial instruments, other similar rights and obligations or currency, regarding the settlement of the obligations between the parties if one of the parties is placed in bankruptcy, is binding on third parties. The same shall apply to a settlement of obligations between two or more participant in a Settlement System, if the settlement has been made according to the rules of the system.	The term “indirect participant in a Settlement System” has not been defined. Netting between a participant in a Settlement System and an indirect participant is protected by the mentioned provision and according to general provisions on set off under Swedish law.

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Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	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	Lag (1991: 980) om hande l med finans iella instru ment	C:1 A:1	<p>“Financial instruments” means traded securities and other rights or obligations intended for trading on a securities market;</p> <p>“Traded securities” means shares and bonds, as well as other equity or debt instruments which are intended for public trading, units in securities funds, and the rights of shareholders against persons with whom share certificates in foreign companies are deposited on behalf of such persons (depository receipts).</p> <p>“EEA” means the European Economic Area. (<i>SFS 1992:1713</i>).</p> <p>“Notified Settlement Systems” means such systems as defined in Para 2 under the Act on systems for the settlement of obligations on the financial market.</p>	Definition given under the Financial Instruments Trading Act. No implementation made following the directive since existing legislation in compliance with the Directive.

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Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	Content	Remarks
A: 2 N: i	<p>`transfer order´ shall mean:</p> <p>-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</p> <p>-an instruction by a participant to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise;</p>	N	A:5 S.2		It shall have suitable common rules and standardised arrangements for the execution of <i>transfer orders</i> and rules that states that Swedish law is applicable with regard to the system.	Definition of transfer orders under Swedish law has been made in the preparatory work to the Act. It is not clear from the Act itself that transfer orders does not include transfer orders regarding actual or physical transfer of financial instruments or money. Also Settlement Systems that settles derivatives are covered by the Act. Thus, transfer orders also includes corresponding instructions for the settlement of derivative transactions.

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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:2 S:6	Collective insolvency proceeding is understood as, bankruptcy, reconstruction or other comparable proceedings.	

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Article ¹	Text	Appli-cability ²	Refe-rence	Article (A; P; S; N) ¹	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	Lag (1991: 980) om handel med finans iella instru ment	Chap. 5 A:1 S:2	A contract between two parties concerning trade of financial instruments, other similar rights and obligations or currency, regarding the settlement of the obligations between the parties if one of the parties is placed in bankruptcy, is binding on third parties. The same shall apply to a settlement of obligations between two or more participant in a Settlement System, if the settlement has been made according to the rules of the system.	The implementation of the term netting goes further under Swedish law than stipulated by the Directive by also covering so called close-out netting in a Settlement System, i.e. settlement of non-mature obligation. The tem netting is also defined under already existing rules on set-off under Swedish law.

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Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	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				The term Settlement Account is defined in the acts that regulate the operations of the participants of a Settlement System. A Central Security Depository shall for example according to the The Financial Instruments Accounts Act hold settlement accounts.

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Article ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	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	Konk urslag en	C: 8 A:10 P:3	Financial instruments that are noted at a Swedish or foreign stock market, authorised marketplace or other regulated market and currency can be sold immediately for a price corresponding to market price or the current price at the stock market by the person who holds the property as security	Collateral securities in connection with Settlement Systems has been seen as such property that should be able to realise immediately. Collateral securities has therefore been defined in the preparatory work as assets provided under a pledge mainly financial instruments and currency. The described section in the Swedish bankruptcy Act has therefore been amended as to allow immediate release of financial instruments kept as securities.

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

Sweden - final report

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
	NETTING AND TRANSFER ORDERS					

¹ C = chapter; A = article; P = paragraph; S = sentence; N = number ;

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

Sweden - final report

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: 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	Lag (1991: 980) om hande l med finans iella instru ment	A:13 S:1 C:5 A:1	<p>Even if a collective insolvency proceeding has been initiated against a participant in a notified settlement system any transfer orders are binding on third parties, if the transfer order were entered into the system before the decision on insolvency proceedings was taken</p> <p>A contract between two parties concerning trade of financial instruments, other similar rights and obligations or currency, regarding the settlement of the obligations between the parties is binding on third parties if one of the parties is placed in bankruptcy. The same shall apply to a settlement of obligations between two or more participant in a Settlement System, if the settlement has been made according to the rules of the system.</p>	Under existing the Swedish bankruptcy Act, Chapter 3 Article 2, the winding up estate is not in general entitled to reclaim or rewind measures taken between the insolvent party and others that has been taken at the latest one day after the decision of insolvency has been officially published in the relevant paper. Therefore transfer orders and netting under existing Swedish law are legally enforceable and legally binding on third parties in accordance with the Directive.

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Sweden - final report

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: 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	Lag (1998: 1479) om kontoföring av finansiella instrument	C: 6 A:2 C:6 A:4	<p>Where a notice of transfer of a financial instrument is registered, the instrument may not thereafter be attacked by the transferor's creditors in respect of rights other than such rights that were registered at the time the notice was registered.</p> <p>Where, in cases other than those referred to in section 3, a financial instrument is transferred by a person who was not the owner, the transfer shall be valid where the transferor, at the time of the transfer, was registered on a Swedish CSD book-entry account as the owner of the instrument and notice of the transfer was registered and the acquirer neither knew nor should have known at such time that the transferor did not own the financial instrument. The above-stated provision shall also apply in conjunction with transfers from the party who owned the financial instrument but who was not entitled to dispose of the instrument through transfer.</p>	According to the Swedish Bankruptcy Act transfer orders and settlement is legally enforceable and binding on third parties if entered into the system on opening day of the insolvency proceeding but carried out later than this day. A settlement of a transfer order of financial instruments is made three days after registration. The article in the Directive is thus interpreted as a minimum requirement and interpreted as covering netting as well as transfer orders.

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Sweden - final report

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: 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				Implemented partly by the wording in Article 13 in the Act. Swedish law complies with the provision and therefore no implementation has been made. Interpreted as despite the wording allowing the participants in a Settlement System to agree on unwinding.

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Sweden - final report

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: 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				According to general principles of Swedish contact law, the participants are free to agree on the moment of entry. No specific implementation made.
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				The Article has not been implemented.

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Sweden - final report

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: 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				The Article has not been implemented.
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:13 S:2	A transfer order may not be revoked by a participant in a notified Settlement System, or by a third party, after the moment defined by the rules of that system.	
	PROVISIONS CONCERNING INSOLVENCY PROCEEDINGS					

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Sweden - final report

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	Konk urslag en	C:3 A:1	After a decision on bankruptcy has been handled down, the bankrupt entity may not dispose of the property of the bankruptcy estate. It is neither entitled to undertake any obligations that can be claimed in the bankruptcy.	The opening of insolvency proceedings are under the Bankruptcy Act considered to be completed when the Court has handled down its decision on placing an entity in bankruptcy. The rule laid down in the provision corresponds to existing Swedish legislation

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Sweden - final report

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: 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:11 S:1 before comma	When the Financial Supervisory Authority has been notified of a declared bankruptcy or a decision on reconstruction regarding one of the participants in a notified Settlement System,	After the decision on bankruptcy or reconstruction has been taken the relevant Court issues an announcement in the Swedish Official Gazette, and notifies the Swedish Financial Authorities.

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Sweden - final report

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: 3	The Member State referred to in paragraph 2 shall immediately notify other Member States.	N		A:11 S:1 after comma	, the Financial Supervisory Authority shall immediately notify that or those authorities that each member state within EEA has notified as appropriate receivers of such notification, to the Commission or the supervisory authority of Efta.	The obligation to notify is not limited to participant in approved Settlement Systems but covers any participant in a <i>notified</i> Settlement System. The article thus implements Article 6:3 compared with Article 6:2 and Article 10 in the Directive.

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Sweden - final report

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				No rules on retroactive effects like zero-hour-rule, exists under Swedish law. Swedish law complies with the provision and therefore no implementation has been made.
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		A:12	In the event of insolvency proceedings being opened against a participant in a notified Settlement System, the rights and obligations of that participant in the system shall be determined by the law that according to the rules of the system shall be applied.	

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Sweden - final report

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
	INSULATION OF THE RIGHTS OF HOLDERS OF COLLATERAL SECURITY FORM THE EFFECTS OF THE INSOLVENCY OF THE PROVIDER					

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

Sweden - final report

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: 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	Konk urslag en	C: 8 A:10 P:3	Financial instruments that are noted at a Swedish or foreign stock market, authorised marketplace or other regulated market and currency can be sold immediately for a price corresponding to market price or the current price at the stock market by the person who holds the property as security.	Accordign to Swedish law a transaction with a part that is placed in bankruptcy has normally to be carried out and is binding on third parties. The Article has been implemented by stating a possibility to provide collateral security that can be realised instantly in connection with Settlement Systems. The Article has however not been interpreted as meaning that all securities under Swedish law shall comply with the Article. It has been noted in the preparatory work that the Swedish version of Article 9 Para 1 of the Directive does not cover collateral securities provided by third parties.

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Sweden - final report

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: 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	Lag (1991: 980) om hande l med finans eilla instru ment	C:5 A:3	Upon transfer, pledge or other handling of financial instruments for which share certificates, promissory notes or equivalent written document has not been issued, or where such document has been issued, the document through deposit or equal has been secured not to be placed in circulation, shall when the purchaser right to the financial instruments has been registered according to the law of the country where the register is kept, that law applies with effect also towards third parties.	
FINAL PROVISIONS						

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

Sweden - final report

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: 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				Systems included in the scope of the Directive under Swedish law are specified in Lag (1999:1309) om system för avveckling av förpliktelser på finansmarknaden as Settlement Systems. Yet only three systems has been notified; BGC, OM-Stockholmsbörsen and VPC's system. These are the national payment systems for the banks, the Stockholm stock market's system and the Central for Securities System.

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Sweden - final report

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: 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:14 S:3	The Administrator of an approved Settlement System shall notify to the Financial Supervisory Authority, the participants of the system, the Administrator shall immediately notify the Authority of any changes in the participants of the system as well as other changes of importance for the functioning of the system.	The Swedish implementation goes further in adding an obligation for the administrator to notify any material changes. The provision is silent with regard to indirect participants, but according to the Financial Supervisory Authorities indirect participant are notified to the authority..

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Sweden - final report

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 system which fall under their jurisdiction.	D		A:14 S:1 S:4	<p>The Swedish Financial Supervisory Authority supervises the observance of this Act. The supervision shall be carried out in accordance with what is provided under those acts regulating the operations of the institutes, unless otherwise provided for under this Act.</p> <p>Further regulation may be issued by the Government or by the Swedish Financial Supervisory Authority after authorisation by the Government, on the following issues;</p> <ol style="list-style-type: none"> 1.the contents of an application for approval of a Settlement System and 2. the obligations for the Administrator to give necessary information about the operation of the system. 	Further supervision and authorisation requirements have not yet been issued by the Swedish Financial Supervisory Authority.

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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 ¹	Text	Appli- cability ²	Refe- rence	Article (A; P; S; N) ¹	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		A:10	Any participant in a notified Settlement System is obliged to inform each person with a legitimate businesslike interest of those systems in which it participates and about the main rules governing the functioning of those systems.	The interest should not only be legitimate but also businesslike according to the implementation under Swedish law.
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	Övergångsbestämmelser till lag (1999:1309)	A:2	This Act enters into force the 1 January 2000	

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Sweden - final report

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				Reference made in SFS 1999:1309
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				

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Sweden - final report

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: 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.				

Additional remarks:

A:17 Possibility to appeal decisions from the relevant authority. In compliance with other EC Directives.

Where no reference has been made to applicable legislation the Article referred to is to be found in Lag (1999:1309) om system för avveckling av förpliktelser på finansmarknaden.

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