

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

Finland – final report

Directive 98/26/EC			Finland's Legislation			
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Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
SCOPE AND DEFINITIONS						

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Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:1 P:1 S:1 P:2	<p>This Act shall apply to the netting and other settlement of payments in a settlement system as well as to netting and other settlement of delivery obligations relating to:</p> <p>1) the trading of investment instruments referred to in section 2 of the Act on Investment Firms (579/1996) as well as to other trading in securities and derivatives contracts comparable thereto; or to</p> <p>2) the trading of currency or currency units legal in Finland or in another country.</p> <p>This Act shall also apply to the netting of obligations to pay and to deliver relating to trading in securities, derivatives and currency referred to in paragraph 1 and not carried out in a settlement system</p>	<p>The concepts of settlement system, netting and other settlement are defined in S.2, P.1 and 2, and S.8, respectively.</p> <p>As the Act is also applied to the netting not carried out in a settlement system (i.e. to the arrangements between two parties) in accordance with P.2, the Finnish legislation goes beyond what is stipulated in the Directive (see S.2 P.2). It should be noted that the concept of a system is broader than the one in the Directive (see S.2 P.1).</p>

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Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
A: 1 N: b	(b) any participant in such a system;	N				A party to the settlement system is defined in S.2, P.2. The Act is applied to such parties to the settlement system.
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	Act	S:1 P:3	This Act shall also apply to collateral deposited with a contracting party or a party to a settlement system for operations referred to in this section or with a central bank in its function as a central bank.	According to GP (99/1999), S.1, P.3 is to be interpreted as the art. 1(c) of the Directive.

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Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
A: 2	For the purpose of this directive:					
A: 2 N: a S: 1	'system' shall mean a formal arrangement:	N	Act	S:2 P:1	In this Act, a <i>settlement system</i> shall mean a system, based on rules ---	As the system shall be "based on rules", it can be deemed to be a formal arrangement referred to in the Directive.

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Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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				In the Act, the arrangements between two parties are <i>per definitionem</i> included in the scope of application and not subject to case-by-case designation procedure. Thus, the Act goes beyond what is stipulated in the Directive.

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Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
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				<p>This sentence of the Directive has not been explicitly implemented. However, it should be noted that S.12 includes provisions about the applicable law.</p> <p>However, the GP (99/1999) refers to the Directive, and states that the participants may choose the law of a Member State by which the system is to be governed. The participants may, however, only choose the law of such Member State in which at least one of them has its head office.</p>

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Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:2 P:1	<p>In this Act, a <i>settlement system</i> shall mean a system, based on rules:</p> <p>1) which is maintained by a central bank, a credit institution referred to in section 2 of the Act on Credit Institutions (1607/1993), a clearing house referred to in chapter 1, section 4, paragraph 2 of the Securities Markets Act (495/1989)¹, an option corporation referred to in chapter 1, section 3 of the Act on Trade in Standardized Options and Futures (772/1988)² or a corresponding foreign organization either alone or jointly with other organizations referred to in this subparagraph; or</p> <p>2) which determines and executes monetary obligations and transfers the covers of payment systems through an account with a central bank; or</p> <p>3) which has, upon the application of the organization, been approved by the Ministry of Finance as a system included within the scope of Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems or as a corresponding system.</p> <p>The Ministry of Finance shall specify the settlement systems that are to be included in</p>	<p>The systems referred to in the subparagraphs 1 and 2 do not have to be “designated” to be settlement systems. However, the systems referred to in subparagraph 3 have to be approved by the Ministry of Finance upon the application of the organization.</p> <p>In accordance with the GP (99/1999), if the system meets the criteria of the Directive, the Ministry of Finance may approve the system. Among other things, a systematic risk relating to the system has to exist.</p> <p>Even if the system does not meet all the conditions referred to in the art. 2(a) of the</p>

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Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
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				<p>The Act is applicable irrespective of the scope of application of the Directive if the system meets the criteria set in S.2, P.1, subparagraphs 1 or 2.</p> <p>If that is not the case, however, the approval by the Ministry of Finance is required for the Act's applicability in accordance with subparagraph 3.</p>

¹ Pursuant to chapter 1, S.4, P.2, a *clearing organization* shall mean a limited company which professionally and on a regular basis carries out clearing operations on behalf of organizations authorized to lodge securities transactions and other transfers for clearing by the clearing organization (clearing parties).

² An option corporation shall mean an association carrying out option exchange operations or option trade clearing or both.

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Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
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				<p>The Act is applied to the netting of obligations to pay and deliver (relating to trading in securities, derivatives and currency) of two opposing parties. Thus, the arrangements between two participants need not be designated as a system.</p> <p>However, in accordance with S.2, P.1, subparagraph 3, the arrangement of two participants can be classified as a system subject to an approval by the Ministry of Finance.</p>

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Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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				<p>The term 'institution' is not defined in the Act. The Act is applied to the 'participants to the system'. Thus, it is irrelevant if those parties to the system are institutions referred to in the Directive.</p> <p>Thus, the so-called Czech problem is not an issue. Also, a system a participant of which is an Electronic Money Institution is a system within the meaning of the Act.</p>

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Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
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 term 'institution' is not defined in the Act. The Act is applied to the 'participants to the system'. Thus, it is irrelevant if those parties to the system are institutions referred to in the Directive.

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Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
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				<p>The concept of 'central counterparty' was not adopted into the Act.</p> <p>However, the definition of a 'party to the settlement system' can be deemed to include a 'central counterparty'.</p>

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Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
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				<p>The concept of ‘settlement agent’ was not adopted into the Act.</p> <p>However, the definition of a ‘party to the settlement system’ can be deemed to include settlement agents.</p>
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				<p>The term ‘clearing house’ is not defined in the Act.</p> <p>However, the definition of a party to the settlement system can be deemed to include clearing houses.</p>

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Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:2 P:4	<i>A party to a settlement system</i> shall mean a party maintaining a settlement system and an organization participating in the operation of a settlement system.	The definition is to be interpreted in concordance with the definition in the Directive (GP 99/1999). However, as the Act does not necessitate a party to be an institution as referred to in the Directive, the scope of the Act's applicability is not limited to institutions.
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 term 'indirect participant' was not adopted into the Act.

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Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
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				The term 'indirect participant' is not defined in the Act.

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Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
A: 2 N: h	`securities´ shall mean all instruments referred to in section B of the Annex to Directive 93/22/EEC;	N	Act	S:1 P:1	<p>This Act shall apply to</p> <p>1) the trading of investment instruments referred to in section 2 of the Act on Investment Firms (579/1996)³ as well as to other trading in securities and derivatives contracts comparable thereto; or to</p> <p>2) the trading of currency or currency units legal in Finland or in another country.</p>	<p>The securities within the meaning of the Act are defined by referring to investment instruments described in the Act on Investment Firms (and not to the Section B of the Annex to Directive 93/22/EEC, as required by the Finality Directive). However, pursuant to the Act, with securities it is also meant other securities that are comparable to the ones in the Act on Investment Firms. Thus, the definition should include all the securities referred to in Section B of the Annex to Directive 93/22/EEC, as required by the Finality Directive.</p>

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³ The target of the investment service (*the investment target*) may be a security referred to in chapter 1, section 2, paragraph 1 of the Securities Markets Act (495/1989) (*a security*) as well as a standardized derivatives contract or another derivatives contract referred to in the Act on Trade in Standardized Options and Futures (772/1988) whose underlying is a security, a currency, an interest, a derivatives contract or an index describing the price development of the underlying (*a derivatives contract*).

Pursuant to the chapter 1, S. 2, P. 1 of the Securities Market Act, security refers to a certificate that is issued representing

- 1) a share or other participation in a company or the right to a dividend, interest or subscription connected thereto;
- 2) a unit in a bond or other corresponding obligation of the debtor that is meant to be issued to the public together with several other similar obligations or the right to interest or proceeds connected thereto;
- 3) a combination of the rights referred to in subparagraphs 1 and 2; and for
- 4) a unit in a fund or a unit in an undertaking for collective investment in transferable securities corresponding thereto.

Pursuant to the Act on Trade in Standardized Options and Futures:

1) *an option contract* shall mean an agreement by which one party (*holder of the option*) shall receive from the other party (*writer of the option*) against consideration (*premium*) a right in the future against an agreed exercise price to purchase (*call option*) or sell (*put option*) a certain amount of securities or commodities or other assets (*underlying asset*) or a right to receive a cash settlement calculated on the basis of the change in the index describing the development of the price of the underlying asset (*index option*);

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2) *a futures contract* shall mean a trade agreement relating to an underlying asset, in which the price and a fixed date on which delivery or compensation replacing the delivery shall at the latest be demanded or on which the delivery or compensation is to be performed without a separate demand, or a corresponding agreement mutually entitling to a cash settlement calculated on the basis of the development of the price of the underlying asset (*index futures*);

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A: 2 N: i	<p>`transfer order´ shall mean:</p> <ul style="list-style-type: none"> -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				<p>The term ‘transfer order’ is not defined in the Act.</p> <p>However, pursuant to S.8, P.2, an obligation being settled in the settlement system shall be deemed to have arisen when a party to the settlement system has, under the rules of the settlement system, not had a unilateral right to revoke an order relating to the obligation.</p>

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Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S: 2 P: 7	<i>The opening of insolvency proceedings</i> shall refer to the opening of bankruptcy proceedings, company restructuring or the restructuring of the debts of a private person or a decision on the interruption of the operations, liquidation, closing or withdrawal of an authorization of a credit institution as well as another decision of an authority on the commencement of executory proceedings.	According to the GP (99/1999), the definition is to be interpreted similarly to the Directive. However, unlike the Act's scope of applicability, the Directive's scope does not include the commencement of executory proceedings.

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Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:2 P:2	<p><i>Netting</i> shall, in this Act, mean that, in accordance with a contract term that is to be deemed ordinary:</p> <p>1) the opposite obligations of two contracting parties to pay and to deliver are, according to the due date, combined to one obligation to pay or to one obligation to deliver of an investment instrument of the same class;</p> <p>2) the obligations of several parties to a settlement system are combined in the manner referred to in subparagraph 1 in the settlement system; or that</p> <p>3) all the obligations to pay or to deliver between the parties mature or may be made to mature and be combined in a manner agreed upon if insolvency proceedings are opened against one contracting party.</p>	The concept of `netting` is broader in the Act than in the Directive.

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Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:2 P:6	A <i>settlement account</i> shall mean a commission account referred to in section 16 of the Act on Book-Entry Accounts (827/1991) ⁴ maintained by a party to a settlement system on behalf of an organization participating in the operations of the settlement system and a monetary account referred to in chapter 4 a, section 9, paragraph 2 of the Securities Markets Act.	According to GP 99/1999, the definition is to be equivalent to the Directive.

⁴ Pursuant to S. 16 of the act on book-entry accounts, in order to arrange the operations of a clearing organization referred to in chapter 4 a of the Securities Markets Act (495/1989), the book entries of the Central Securities Depository, a central bank, an account operator, a clearing organization and a clearing party as well as of their customers may be registered in a special book-entry account (commission account) in the manner separately provided for in the Rules of the Central Securities Depository. The Central Securities Depository may approve as a commission account holder also a foreign institution referred to in section 16 of the Act on the Book-Entry System or another foreign organization which is subject to sufficient public supervision and whose economic operating conditions and administration fulfil the requirements set on the reliable attendance to the duty.

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

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

³ S = section, P = paragraph, Se = sentence

⁴ GP = Government's Proposal

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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				As the term `collateral security` is not defined in the Act, the general concept in the Finnish law is applied. It can be deemed to include items referred to in art. 2m of the Directive.
	NETTING AND TRANSFER ORDERS					

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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			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:3 P:1 S:4 P:1	<p>Netting in bankruptcy</p> <p>Obligations arisen before bankruptcy may be netted notwithstanding the bankruptcy and the netting shall be binding in the bankruptcy of a contracting party and a party to the settlement system.</p> <p>The effects of netting on recovery</p> <p>Netting shall not be unwinded under section 10 of the Act on Recovery into a Bankruptcy Estate (758/1991) even if the performance is made with unusual means of payment, prematurely or in an amount that can be deemed considerable in view of the assets of the estate.</p> <p>Netting in company restructuring</p> <p>An obligation may be netted notwithstanding the enjoining of payments referred to in section 17, the prohibition to collect referred to in section 19, paragraph 1, subparagraphs 2 and 3 as well as the temporary prohibition imposed under section 22 of the Act on</p>	<p>According to the GP (99/1999), the S.3, P.1 is intended to be interpreted in concordance with the art. 3, P.1, sentence 1 of the Directive. Correspondingly, S.5, P.1 and S.6, P.1 are based thereon.</p> <p>The S.7 on the effect of netting on execution goes beyond what is stipulated in the Directive.</p>

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:3 P:2	<p>Netting in bankruptcy</p> <p>If the obligations have, under the rules of the settlement system, been declared for settlement after the opening of the bankruptcy of a party to the settlement system, the netting of the obligations on the day of the opening of the bankruptcy proceedings shall be binding in the bankruptcy of the party if the party maintaining the settlement system can prove that it neither knew or should have known of the opening of the bankruptcy proceedings when the obligations were netted.</p> <p>Netting in company restructuring</p> <p>An obligation may be netted notwithstanding the enjoining of payments referred to in section 17, the prohibition to collect referred to in section 19, paragraph 1, subparagraphs 2 and 3 as well as the temporary prohibition imposed under section 22 of the Act on Company Restructuring (47/1993).</p>	According to the GP 99/1999, the party maintaining the settlement system is deemed to become aware of (as referred to in the Act: “know”) the opening of insolvency proceedings, as it receives the notification about the opening of such proceedings.
				S:5 P:2	<p>Netting in the insolvency proceedings of a credit institution</p> <p>If the obligations have, under the rules of the settlement system, been declared for</p>	

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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				As a <i>lex specialis</i> , this Act shall override conflicting acts. In the hierarchy of the sources of law, an act overrides any conflicting regulations, rules and practises.

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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			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
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				If the rules of the system were not in accordance with the conditions laid down in the national law, the Act would override the rules.

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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			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:11 P:2 S:11 P:3	<p>The assets and securities of a party to a settlement system in the settlement account of the settlement system may be used despite the insolvency proceedings for the performance of the obligations of a party to the settlement system in the settlement system. If the obligation has, under the rules of the settlement system, been declared for settlement after the opening of insolvency proceedings against the party, the assets and securities in the settlement account may, however, be used for the performance of the obligation in question only on the day of the opening of the insolvency proceedings.</p> <p>Rights of pledge relating to book-entries recorded in the commission accounts referred to in section 16 of the Act on Book-Entry Accounts are governed by the provisions of chapter 4 a, section 11 of the Securities Markets Act.⁵</p>	<p>On the basis of the section's first sentence, the assets and securities in the settlement account may be used for an unlimited time period, if the obligation has been cleared for settlement <i>before the opening of insolvency proceedings</i>.</p> <p>If the obligation has been cleared for settlement after the opening of insolvency proceedings but before the maintainer of the system was <i>bona fides</i>, the assets and securities may be used only <i>on the day of the opening of the insolvency proceedings</i>.</p> <p>Thus, the Act goes beyond what is stipulated in the</p>

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴

⁵ Pursuant to section 16 of the Act on Book-Entry Accounts:

In order to arrange the operations of a clearing organization referred to in chapter 4 a of the Securities Markets Act (495/1989), the book entries of the Central Securities Depository, a central bank, an account operator, a clearing organization and a clearing party as well as of their customers may be registered in a special book-entry account (commission account) in the manner separately provided for in the Rules of the Central Securities Depository. The Central Securities Depository may approve as a commission account holder also a foreign institution referred to in section 16 of the Act on the Book-Entry System or another foreign organization which is subject to sufficient public supervision and whose economic operating conditions and administration fulfil the requirements set on the reliable attendance to the duty.

Book-entries owned by the account holder and its customer may not be registered in the same commission account.

Rights of pledge pertaining to book-entries registered in the commission accounts referred to in this section shall be governed by the provisions of chapter 4 a, section 11 of the Securities Markets Act.

Pursuant to chapter 4a, section 11 of the Securities Market Act:

The clearing organization shall, as collateral for the fulfillment of obligations confirmed in accordance with the Rules of the clearing organization and relating to a securities transaction lodged for clearing by a clearing party, have the right of pledge to a book-entry registered as a result of a transaction in the commission account referred to in section 16 of the Act on Book-Entry Accounts and kept on behalf of the clearing organization, a clearing party or a securities intermediary. A clearing organization shall have the right of pledge if the clearing organization has made a payment relating to the book entries or assumed liability therefor.

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴

A clearing party shall have the right of pledge to a book entry of a client registered in a commission account kept on behalf of the party itself or on behalf of a securities intermediary representing the party as collateral for the fulfillment of the obligations arising from an order relating to the book entry in question if the clearing party has made a payment relating to the book entries.

If a right of pledge referred to in paragraphs 1 and 2 and a right in accordance with section 7, paragraph 2 of the Act on Book-Entry Accounts pertain to the same book entries simultaneously, the holder of the right in accordance with paragraph 1 shall receive performance of his claim before the holder of a right in accordance with paragraph 2 or section 7, paragraph 2 of the Act on Book-Entry Accounts. A clearing party with a right of pledge in accordance with paragraph 2 shall receive performance of his claim before the holder of a right in accordance with section 7, paragraph 2 of the Act on Book-Entry Accounts.

If an obligation pertaining to assets forming the object of a pledge and referred to in paragraph 1 or 2 is neglected, the pledge holder may, in order to realize the clearing, convert the pledged assets into cash. If the pledge consists of a security subject to public trade, the security may be converted into cash in public trade. Legislative provisions restricting the rights of a pledge holder may also otherwise be deviated from in the conversion into cash if the deviation does not unreasonably endanger the interests of the pledge holder, the debtor or other creditors. The clearing party shall have the right to convert the pledge into cash also if a securities intermediary who does not act as a clearing party neglects to fulfill its obligations arising from the transaction to be cleared.

The provisions of this section on a book entry registered in a commission account shall correspondingly apply to a sold or purchased security lodged in the custody of a clearing organization or a clearing party for the clearing of a securities transaction.

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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			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:11 P:1	The credit facility of a party to a settlement system in connection with the settlement system may be used despite the insolvency proceedings of the party to the settlement system against the collateral available in the system for the performance of the obligations of the party in the settlement system.	It is noted in the GP (99/1999) that a settlement party is not <i>obligated</i> to extend a credit (GP (99/1999)).
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	Act	S:8 P:2 S:13	In the application of this Act, an obligation being settled in the settlement system shall be deemed to have arisen when a party to the settlement system has, under the rules of the settlement system, not had a unilateral right to revoke an order relating to the obligation. A settlement system shall have written rules indicating the time after which a party to the settlement system may not unilaterally withdraw an order relating to an obligation declared for settlement	The term 'transfer order' is not defined in the Act. As the S.13 requires the rules of the system to cover the issue, the absence of the definition in the Act should not be relevant

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
	PROVISIONS CONCERNING INSOLVENCY PROCEEDINGS					

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:2 P:7	<i>The opening of insolvency proceedings</i> shall refer to the opening of bankruptcy proceedings, company restructuring or the restructuring of the debts of a private person or a decision on the interruption of the operations, liquidation, closing or withdrawal of an authorization of a credit institution as well as another decision of an authority on the commencement of executory proceedings.	<p>The exact moment of the opening is not explicitly stated. Thus, one has to examine the other legislation if the said insolvency proceedings are deemed to “open” at the moment when the relevant judicial or administrative authority hands down its decision.</p> <p>Pursuant to the S.9 of the Act on Bankruptcy and the S.3, P.1 of the Act on Company Restructuring, the said insolvency proceedings are deemed to open as the court hands down its decision. Pursuant to the S.3 of the Act on Temporary Suspension of Commercial Bank Activities, the insolvency</p>

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:9 Se:1	The court or other authority that has decided on the opening of insolvency proceedings against a party to a settlement shall immediately notify the Ministry of Finance of its decision.	
A: 6 P: 3	The Member State referred to in paragraph 2 shall immediately notify other Member States.	N	Act	S:9 Se:2	The Ministry shall immediately notify the party maintaining the settlement system in question and the competent authorities notified to the Commission by the other Member States of the European Economic Area of the decision (referred to in sentence 1).	

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:4 S:10	<p>Netting shall not be unwinded under section 10 of the Act on Recovery into a Bankruptcy Estate (758/1991) even if the performance is made with unusual means of payment, prematurely or in an amount that can be deemed considerable in view of the assets of the estate. The collateral shall not be withdrawn under section 14 of the Act on Recovery into a Bankruptcy Estate.</p> <p>The rights pertaining to collateral deposited with central banks in connection with their functions as central banks may be realized despite the opening of insolvency proceedings or other corresponding proceedings against the depositor of the collateral.</p>	The Act on Recovery into a Bankruptcy Estate is the only instrument available to the other creditors to unwind the netting performed prior to the beginning of a bankruptcy. As the use of this instrument is denied, insolvency proceedings do not have any retroactive effects on the rights and obligations of a participant.

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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			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:12 P:1 S:12 P:2	<p>If an organization not governed by the laws of Finland is party to a settlement system governed by the laws of Finland, rights and obligations arising out of, or in connection with, the participation of the organization in the settlement system after the opening of insolvency proceedings against the party shall be governed by the laws of Finland.</p> <p>If an organization governed by the laws of Finland is party to a settlement system included within the scope of the Directive on the settlement finality in payment and securities settlement systems or to a corresponding settlement system of a country outside the European Economic Area which is not governed by the laws of Finland, rights and obligations arising out of, or in connection with, the participation of the organization in that settlement system after the opening of insolvency proceedings against the organization shall be governed by the laws of the country that are applied to the settlement system in question.</p>	

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli- cability ²	Refe- rence	S, P, Se ³	Content	Remarks ⁴
	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			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:1 P:3 S:4 P:2 S:5 P:2 S:6 P:3 S:10	<p>This Act shall also apply to collateral deposited with a contracting party or a party to a settlement system for operations referred to in this section or with a central bank in its function as a central bank.⁶</p> <p>The collateral deposited in accordance with a collateralized settlement agreement shall not be unwinded under section 14 of the Act on Recovery into a Bankruptcy Estate.</p> <p>Rights based on collateral deposited in accordance with a collateralized settlement agreement may be realized notwithstanding the prohibition referred to in section 19, paragraph 1, subparagraphs 1 and 2 as well as a temporary prohibition imposed under section 22 of the Act on Company Restructuring.</p> <p>The rights based on collateral deposited in accordance with a collateralized settlement agreement may be realized notwithstanding the legislative provisions referred to in paragraph 1 even if the insolvency proceedings have been opened against the credit institution that has deposited the collateral.</p> <p>The rights pertaining to collateral deposited with central banks in connection with their</p>	

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:12 P:3	If no certificate has been issued for a security or if it has been deposited with a deposit system, a pledge or other right on the security shall be governed by the laws of the country in which the security has been entered in a register or in an account. The law applicable to a right to a book-entry is governed by the provisions of section 5 a, paragraph 4 of the Act on Book-Entry Accounts. ⁷	

⁶ Pursuant to S.2, P.5 of the Act, a central bank shall mean the Bank of Finland, the European Central Bank and the central banks of other countries.

⁷ Pursuant to S. 5a of Act on Book-Entry Accounts, if the holder of a custodial nominee account or a client of the holder keeps a register or an account of the rights pertaining to book-entries in another state, the law of that state shall be applicable to the rights of a right holder, unless the registrations pertaining to the account state otherwise.

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Directive 98/26/EC			Finland's Legislation			
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Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
	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	Act	S:14 P:3	The Ministry of Finance shall notify the Commission of the Finnish authority to which a country belonging to the European Economic Area shall submit a notification of the opening of the insolvency proceedings against a party to a settlement system included in the scope of the Directive referred to in paragraph 1 and notified by it to the Commission.	It should be noted that not all the settlement systems referred to in S.2, P.1 are systems referred to in the Directive (e.g. on the basis of non-existing systematic risk). According to GP (99/1999), these systems will not be notified.
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	Act	S:15 P:1	The organization maintaining a settlement system shall notify the Ministry of Finance of the parties to the settlement system and any changes therein.	

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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	Act	S:13 P: 2	The organization maintaining the settlement system shall notify the Ministry of Finance of the rules of the settlement system before its start of operations and of their amendments before their entry into force. The duty to notify shall, however, not apply to a central bank, a clearing house or an option corporation.	
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	Act	S:15 P:2	Upon request, a party to a settlement system shall notify the settlement system(s) that it is party to and submit information on essential contents of their rules.	According to GP (99/1999), the duty to notify is to anyone requesting it. As 'legitimate interest' is not a condition for the notification, the Act goes beyond what is stipulated in the Directive.

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

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

³ S = section, P = paragraph, Se = sentence

⁴ GP = Government's Proposal

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

Finland – final report

Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
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				The Act entered into force on December 11, 1999.
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				GP (99/1999) refers to the Directive.

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Directive 98/26/EC			Finland's Legislation			
1	2	3	4	5	6	7
Article ¹	Text	Appli-cability ²	Refe-rence	S, P, Se ³	Content	Remarks ⁴
A: 11 P: 2	Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive. In this Communication, Member States shall provide a table of correspondence showing the national provisions which exist or are introduced in respect of each Article of this Directive.	N				
A: 12	No later than three years after the date mentioned in Article 11(1), the Commission shall present a report to the European Parliament and the Council on the application of this Directive, accompanied where appropriate by proposals for its revision.	n. a.				
A. 13	This Directive shall enter into force on the day of its publication in the <i>Official Journal of the European Communities</i> .	n. a.				
A: 14	This Directive is addressed to the Member States.	n. a.				

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