

EC FINANCIAL COLLATERAL DIRECTIVE 2002/47/EC

Explanatory Meeting with
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Tomas Thorsén
DG MARKT

FINANCIAL INFRASTRUCTURE / UNIT G2

EC FINANCIAL COLLATERAL DIRECTIVE

Council Directive
of 6 June 2002 on Financial
Collateral Arrangements
2002/47/EC

THE AIMS OF THE FINANCIAL COLLATERAL DIRECTIVE

- Create a clear, uniform and efficient EU legal framework for financial collateral arrangements
- Reduce the formal administrative burdens, formal acts and cumbersome procedures to create and enforce collateral
- Harmonize and clarify the Collateral process at minimum level

THE COLLATERAL DIRECTIVE CONTRIBUTES TO:

- Integration and cost efficiency of the financial markets;
- Stability of the financial system;
- Lower credit losses;
- Cross-Border Business and competitiveness.

The Directive is hence an important part of the Lisbon Strategy!

FORMER RULES

- Former –national- rules were non-transparent and impractical resulting in uncertainty as to the effectiveness of Collateral as protection in cross-border transactions.

DEFINITION OF COLLATERAL

The provision of assets to secure the performance of an obligation, whereby the assets can be provided:

- *Either* by transfer of full ownership from a collateral provider to a collateral taker
- *Or* by the transfer of possession from a collateral provider to a collateral taker under a security right where the full ownership of the assets remains with the collateral provider

Further relevant Definitions –See Art. 2 of the FCD.

Art. 1. FCD SCOPE: MUCH BROADER THAN SFD

The Collateral taker and the Collateral Provider must each belong to one of the following categories:

- A public authority (excluding publicly-guaranteed undertakings).
- A Central Bank, ECB, BIS, a Multilateral Development Bank, IMF, EIB.
- A Financial Institution subject to prudential supervision including: Credit Institutions, Investment Firms, Financial Institutions, Insurance Undertakings, UCITS, Management Companies.
- A Central Counterparty, Settlement Agent or Clearing House.

Art 1:3

OPTION (1) TO INCLUDE

- A Person Other than a Natural Person, including Unincorporated Firms and Partnerships.
- MS have consequently the option to extend the scope of the Directive.
- MS shall inform the Commission if they make use of this option!

Art 1:4

THE FINANCIAL COLLATERAL PROVIDED:

- Must Consist of Cash or Financial Instruments.

Art.2. CASH

- Refers only to money which is represented by a credit to an account, or similar claims on repayment of money (such as money market deposits).

Art. 2.

FINANCIAL INSTRUMENTS

- Refers only to shares and bonds and other forms of debt instruments that are negotiable on the capital market.

Art 1:4

OPTION (2) FOR MS TO EXCLUDE

Financial Collateral consisting of the Collateral Provider's:

- Own Shares;
- Shares in affiliated undertakings;
- Shares in undertakings whose exclusive purpose is to own means of production that are essential for the collateral provider's business or to real property.

Art.4:3

OPTION (3) EXPROPRIATION

Option to allow Expropriation (The Collateral could be given to the Collateral Taker).

Appropriation is possible only if :

- this has been agreed by the parties in the security financial Collateral arrangement;
- The parties have agreed on the valuation of the financial instruments.
- MS that not allowed appropriation 27 June 2002 are not obliged to recognise it.

Art. 5

RIGHT OF USE

- The Collateral Taker is entitled to exercise a right of use in relation to financial collateral.
- This does not, however, give the Collateral Taker the right to reduce the value of the Collateral.

PRINCIPLE

- The Lex Rei Sitae rule: The Applicable Law is the Law of the MS where the Financial Collateral is located.
- Consequently, it is necessary to settle where the Financial Collateral is located

FURTHER PRINCIPLES

- The Collateral must be in the possession of or under the control of the Collateral taker.
- The Directive only protects financial collateral arrangements which can be evidenced
- Clear evidence in writing, or in a any other legally enforceable manner, must exist, ensuring thereby the traceability of the Collateral.

Art.9.

CONFLICT OF LAWS

- The reference to the law of a country is a reference to its domestic law.



COMMISSION REPORT

- Not later than 27 December 2006, the Commission shall present a Report to the European Parliament and the Council on the application of this Directive, in particular on the application of:
 - Option 1, Article 1(3), “Scope”;
 - Option 2, Article 4(3) ”Expropriation” and
 - Article 5 ”Right of use”;
 - Accompanied, where appropriate, by proposals for its revision.