

Settlement Finality Directive 98/26/EC

Presentation
State of Play

Settlement Finality Directive (SFD)

Main Objectives

- 1. Transfer orders of securities and cash shall be legally enforceable in the event of insolvency if entered into a « system » as defined by the Directive. (Art.3 p.1)

How it works

- Directive provides legal definitions of System, Participant (in a system), transfer order, insolvency proceedings etc.(Art.2)
- When a transfer order has been entered into a system, it is « protected » from third parties in the event of bankruptcy of one or more participants in the system. (Art.3p.2)

How it works II

- The protective effect of the Directive occurs only if a transfer order is entered into the system before opening of insolvency proceedings, or, on the same day as such proceedings are opened if the concerned parties can show that they were not aware or should not have been aware of those proceedings. (Art.3 p.1)

How it works III

- Protective Effect = NO law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings shall lead to the UNWINDING of a netting (Art.3 p.2)
- Moment of entry is defined by the rules of the system in question (Art.3 p.3)

How it works IV

- A transfer order may not be revoked by a participant in a system or a third party from the moment defined by the rules of the system (Art.5)
- No retroactive effect of insolvency proceedings (Art.7)
- Decision to open insolvency proceedings – immediately communicated to central authority in each MS – then to all MS (Art.6)

How it works V

- Applicable law – for systems covered by the directive; any national law of a MS (Art.1 (a))
- Applicable law – for securities provided as collateral security – the law of the MS where the register they are recorded on is located (Art.9 p.2)
- MS notifies appointed systems and authorities to the Commission, which keeps an official register (on the Web) (Art. 6, 10)

Big Issues

- Big issues that will influence the SFD: The Hague Securities Convention, The Clearing and Settlement Initiative, the new directive on Electronic Money Institutions
- Member States and the ECB very happy with the SFD – but - Technical developments and increased cross-border operations have created a need for some improvements, clarifications

State of Play

- December 2005 – Evaluation Report adopted by the Commission; 10 points identified where amendments may come into question
- From January 2006 – Consultation in the European Securities Committee of Member States and the ECB
- Amendments of the Directive could/should take the developments in other fields (the Clearing and Settlement area, the Electronic Money Institutions and the Hague Securities Convention) into account – careful coordination required!