

THE CROATIAN PARLIAMENT

1456

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION

**PROMULGATING THE ACT ON SETTLEMENT FINALITY IN PAYMENT AND
FINANCIAL INSTRUMENTS SETTLEMENT SYSTEMS**

I hereby promulgate the Act on Settlement Finality in Payment and Financial Instruments Settlement Systems, passed by the Croatian Parliament at its session on 18 May 2012.

Class: 011-01/12-01/64

Reg. No: 71-05-03/1-12-2

Zagreb, 22 May 2012

President
of the Republic of Croatia

Ivo Josipović, m.p.

ACT
ON SETTLEMENT FINALITY IN PAYMENT AND FINANCIAL
INSTRUMENTS SETTLEMENT SYSTEMS

I GENERAL PROVISIONS

Subject matter and scope of the Act

Article 1

(1) This Act regulates settlement finality in the transfer order settlement systems and the effects of insolvency proceedings against a participant in a system on the rights and obligations arising from, or in connection with the participation of a participant in a system, as well as the rights of the holders of collateral security in the event of insolvency proceedings against the provider of collateral security.

(2) This Act shall apply to all systems that meet the criteria set forth in Article 3, item 1 of this Act and to all participants and all indirect participants referred to in Article 3, item 2, subitems 1, 2, 3 and 8 in these systems, as well as to any collateral security provided in connection with the participation in those systems or with the operation of the Croatian National Bank in its function as a central bank.

(3) This Act shall also apply to any collateral security provided in connection with the operations of the European Central Bank or the central banks of the Member States in their functions as central banks.

(4) For the purpose of this Act, Member State shall be a state signatory to the Agreement on the European Economic Area.

Article 2

This Act contains provisions that are consistent with the following legislative acts of the European Union:

- Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998);
and

- Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims (OJ 146, 10.6.2009).

Definitions

Article 3

For the purpose of this Act, individual terms shall have the following meaning:

1) "*system*" means any system complying with the following criteria:

1. it consists of at least three participants, without counting an operator of that system, a settlement agent, a central counterparty, a clearing house or an indirect participant,

2. it applies common rules and standardised arrangements for clearing, regardless of whether clearing is carried out through a central counterparty or without its participation, or for the execution of transfer orders,

3. the rules of the system define the moment of entry and the moment of irrevocability of a transfer order,

4. it has been established by law or by a regulation enacted pursuant to a law, or it operates on the basis of the authorisation issued by a competent authority pursuant to a special law and in accordance with a written agreement between the participants of which at least one has its head office in the Republic of Croatia, and

5. it operates in financial instruments or in kuna, or, unless otherwise provided for by a special law, in euro or any other currency, or in various currencies which the system converts one against the other;

2) "*institution*" means the following entity which participates in a system and which is responsible for discharging the financial obligations arising from transfer orders within that system:

1. credit institution with a head office in the Republic of Croatia as provided for by the law regulating credit institutions,

2. credit institution of a Member State or a third country as provided for by the law regulating credit institutions,

3. branch of a foreign credit institution with a head office in the Republic of Croatia,

4. investment firm with a head office in the Republic of Croatia as provided for by the law regulating the capital market,

5. investment firm with a head office outside the Republic of Croatia as provided for by the law regulating the capital market,

6. public authorities of the Republic of Croatia and legal persons whose liabilities are guaranteed by the Republic of Croatia pursuant to law; for the purpose of this Act, public authorities shall be government bodies, bodies of the units of local and regional self-

government, legal persons with public authority and other persons entrusted with public authority,

7. public authorities of a Member State and entities whose liabilities are guaranteed by the Member State, and

8. institutions referred to in Article 2 of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions;

3) "*central counterparty*" means an entity interposed between the institutions in the system and acting as the exclusive counterparty of these institutions with regard to their transfer orders;

4) "*settlement agent*" means an entity opening settlement accounts for institutions and/or central counterparties participating in the system, through which transfer orders within the system are settled and as the case may be, extending credit to those participants for settlement purposes;

5) "*clearing house*" means an entity responsible for the calculation of the net positions of institutions, a central counterparty and/or a settlement agent, if they participate in the system;

6) "*participant*" means an institution, a settlement agent, a central counterparty, a clearing house or an operator of a system; the same participant may act within a system as a central counterparty, a settlement agent or a clearing house or may carry out part or all of these tasks, according to the rules of the system;

7) "*indirect participant*" means an institution, a central counterparty, a settlement agent, a clearing house or an operator of a system having a contractual relationship with a participant in the system executing transfer orders, which enables an indirect participant to pass transfer orders through the system, provided that such an indirect participant is known to the operator of the system; the indirect participant, referred to in item 2, subitems 1, 2, 3 and 8 of this Article, shall be considered a participant in the payment system for the purpose of this Act, without limitation of liability of the participant through which that indirect participant passes transfer orders to the payment system;

8) "*financial instrument*" means a financial instrument as defined by the law regulating the capital market;

9) "*transfer order*" means:

1. 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, a central counterparty or a settlement agent, or any instruction resulting in the assumption or discharge of a payment obligation as defined by the rules of the system,

2. any instruction by a participant to transfer a financial instrument or a title to a financial instrument by means of a book entry on a register, or in another appropriate way;

10) "*insolvency proceedings against a participant*" means a bankruptcy, a measure to ensure the prohibition of payments from accounts and the prohibition of disposing of financial instruments determined pursuant to the law regulating bankruptcy proceedings and any other collective measure provided for by the law of the Republic of Croatia, of a Member State or a third country, either to wind up the participant or to reorganise it, where such measure involves temporary or permanent suspending of or imposing limitations on payments or transfers of financial instruments;

11) "*netting*" means 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 amount can be claimed or owed;

12) "*settlement account*" means an account with a central bank, a settlement agent or a central counterparty used to hold funds or financial instruments and to settle transactions between participants in the system;

13) "*collateral security*" means a collateral security as provided for by the law regulating financial collateral arrangements;

14) "*business day*" means a period determined by the rules of the system, encompassing all the events in the course of the system's single business cycle, including settlements during the day and night;

15) "*interoperable system*" means a system whose operator has concluded an agreement with the operator or operators of one or more systems, which includes execution of transfer orders between these systems; the agreement concluded between the interoperable systems shall not constitute a system for the purpose of this Act;

16) "*operator of a system*" means an entity responsible for the functioning of the system. The operator of the system may also act as a settlement agent, a central counterparty or a clearing house.

Systems for executing transfer orders

Article 4

(1) The systems through which the transfer orders referred to in Article 3, item 9, subitem 1 of this Act are executed shall be payment systems.

(2) The systems through which the transfer orders referred to in Article 3, item 9, subitem 2 of this Act are executed shall be financial instruments settlement systems. The financial instruments settlement systems may also be used for the execution of the transfer orders referred to in Article 3, item 9, subitem 1 of this Act.

Competence

Article 5

(1) The Croatian National Bank shall, ex officio, take the decision on the compliance of the system, referred to in Article 4 paragraph 1 of this Act, with the criteria referred to in Article 3, item 1 of this Act and shall publish it in the Official Gazette.

(2) The Croatian Financial Services Supervisory Agency shall take the decision on the compliance of the system, referred to in Article 4, paragraph 2 of this Act, with the criteria referred to in Article 3, item 1 of this Act, in accordance with the law regulating the capital market, and shall publish it in the Official Gazette.

(3) The operator of a system shall provide to the competent authority, referred to in paragraph 1 or paragraph 2 of this Article, data on the participants and indirect participants and shall notify it of any change in participants and indirect participants in the system.

(4) The institution shall, upon a request of any person with a legitimate interest, provide information about the systems in which it participates and about the main rules governing the functioning of those systems.

Entry and irrevocability of transfer orders

Article 6

(1) The rules of each system shall define the moment of entry into the system of a transfer order, issued by either a participant in the system or by a third party.

(2) The moment of irrevocability of a transfer order shall mean a moment defined by the rules of the system, from which neither a participant in the system nor a third party may revoke a transfer order.

(3) The rules of the system that is interoperable with other systems shall be compliant, regarding the moment of entry into the system and moment of irrevocability, to the largest extent possible, with the rules of all other interoperable systems. The rules of all other interoperable systems involved shall have no effect on the moment of entry into the system and moment of irrevocability which are regulated by the rules of that system, unless this is explicitly prescribed by the rules of all the systems participating in interoperable systems.

II EFFECTS OF THE OPENING OF INSOLVENCY PROCEEDINGS AGAINST A PARTICIPANT ON THE RIGHTS AND OBLIGATIONS WITH RESPECT TO PARTICIPATION IN A SYSTEM

Insolvency proceedings and the moment of opening insolvency proceedings against a participant

Article 7

- (1) The moment of opening of insolvency proceedings against a participant shall be the moment (day, hour and minute) of the adoption of a relevant decision by a court or another competent authority of the Republic of Croatia, of a Member State or a third country.
- (2) The opening of insolvency proceedings against a participant shall neither 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 insolvency proceedings, nor on the rights and obligations of a participant in the interoperable system or of the operator of an interoperable system which is not a participant.

Transfer orders and netting in the event of opening of insolvency proceedings against a participant

Article 8

- (1) In the event of opening of insolvency proceedings against a participant in a system or in another interoperable system or against the operator of an interoperable system which is not a participant, transfer orders and netting shall be legally enforceable and binding on third parties, provided that the transfer orders entered the system before the moment of opening of insolvency proceedings, pursuant to the rules of the system.
- (2) Notwithstanding paragraph 1 of this Article, transfer orders that are entered into the system after the moment of opening of insolvency proceedings against a participant and are carried out in the course of the business day, determined by the rules of the system, during which such proceedings were opened, shall be legally enforceable and binding on third parties only if the operator of a system can prove that, at the time when these transfer orders became irrevocable, it was not aware, nor should have been aware, of the opening of such proceedings.
- (3) The nullity or voidance of transactions and contracts concluded prior to the moment of opening of insolvency proceedings shall not lead to the unwinding of netting.
- (4) In the event of opening of insolvency proceedings against a participant or operator of another interoperable system, funds or financial instruments available on the settlement account of that participant may be used to fulfil that participant's obligations in the system or another interoperable system on the business day of opening of such proceedings.
- (5) In the event of opening of insolvency proceedings against a participant, it shall be

permitted to extend a credit to a participant within the system on the business day of opening of the proceedings, on the basis of the collateral security available for fulfilling of the obligations of that participant in the system or in the interoperable system.

Notification of the opening of insolvency proceedings

Article 9

(1) A court or another competent authority shall without delay notify the Croatian National Bank and the Croatian Financial Services Supervisory Agency of the moment of opening of insolvency proceedings against a participant.

(2) The Croatian National Bank and the Croatian Financial Services Supervisory Agency shall, without delay and within their respective fields of competence, forward the notification referred to in paragraph 1 of this Article to the operator of the system whose participant the notification concerns.

(3) The Croatian National Bank and the Croatian Financial Services Supervisory Agency shall, without delay and within their respective fields of competence, send the notification referred to in paragraph 1 of this Article to the competent authorities of other Member States.

(4) The Croatian National Bank and the Croatian Financial Services Supervisory Agency shall without delay forward the notification of the opening of insolvency proceedings against a participant, received from the competent authority of another Member State, to the operator of the system whose participant the notification concerns.

Applicable law

Article 10

In the event of opening of insolvency proceedings against a participant in a system, the rights and obligations arising from, or in connection with, the participation of that participant in the system shall be determined by the national law governing that system.

III RIGHTS OF HOLDERS OF COLLATERAL SECURITY

Rights of holders of collateral security in the event of insolvency proceedings against the provider of collateral security

Article 11

(1) Insolvency proceedings against the following entities shall have no effect on the rights of the operator of the system or a participant to collateral security obtained in connection with the functioning of a system or another interoperable system, and on the rights of the Croatian National Bank to the obtained collateral security:

- a) against the participant (in a system or another interoperable system),
- b) against the operator of an interoperable system who is not a participant,
- c) against the counterparty of the Croatian National Bank, or

d) against any other third party that has provided the collateral security.

Any such collateral security may be used to exercise these rights.

(2) Paragraph 1 of this Article shall apply accordingly to the rights of the central banks of the Member States or of the European Central Bank to the obtained collateral security.

Applicable law

Article 12

(1) Where financial instruments or rights in financial instruments are provided as collateral security to participants, operators of the systems and/or the Croatian National Bank, and their rights or the rights of any other person acting on their behalf with respect to the financial instruments are legally recorded in a register, an account or a centralised deposit system, the rights of such entities shall be governed by the law of the state in which the register, account or centralised deposit system is located.

(2) Where financial instruments or rights in financial instruments are provided as collateral security to the central bank of a Member State or the European Central Bank and their rights or the rights of any other person acting on their behalf with respect to the financial instruments are legally recorded in a register, an account or a centralised deposit system of the Member State, their rights shall be governed by the law of the Member State in which the register, account or centralised deposit system is located.

IV OBLIGATIONS OF THE COMPETENT AUTHORITIES

Records of the systems

Article 13

(1) The competent authorities referred to in Article 5, paragraphs 1 and 2 of this Act shall, within their respective fields of competence, maintain the records of the systems which are included in the scope of this Act, and shall publish them at their websites.

(2) The records of the systems shall contain at least the following information:

- 1) the name of the system,
- 2) the firm and head office of the operator of the system, and
- 3) a list of participants and indirect participants in the system.

(3) The competent authorities referred to in paragraph 1 of this Article may, within their respective fields of competence, regulate the scope and content of the records of the systems.

(4) The competent authorities referred to in paragraph 1 of this Article shall, within their respective fields of competence, notify the Ministry of Finance of the records of the systems referred to in paragraph 1 of this Article and of any change therein within eight days from the date of entering the change in the records.

Notification of the European Commission

Article 14

(1) The Croatian National Bank shall notify the European Commission of its field of competence referred to in Article 5, paragraph 1 of this Act, of the payment systems which are included in the scope of this Act and of the operators of those systems.

(2) The Croatian Financial Services Supervisory Agency shall notify the European Commission of its field of competence referred to in Article 5, paragraph 2 of this Act, of the financial instruments settlement systems which are included in the scope of this Act and of the operators of those systems.

V TRANSITIONAL AND FINAL PROVISIONS

Cessation of effect of the Act on Settlement Finality in Payment and Financial Instruments Settlement Systems

Article 15

(1) On the date of entry into force of this Act, the Act on Settlement Finality in Payment and Financial Instruments Settlement System (Official Gazette 117/2008) shall cease to have effect.

(2) Payment systems for which the Croatian National Bank has, before the entry into force of this Act, established in its decision that they comply with the conditions set forth in the Act on Settlement Finality in Payment and Financial Instruments Settlement Systems (Official Gazette 117/2008) shall be the systems within the meaning of Article 3, item 1 of this Act.

(3) The financial instruments settlement system for which the Croatian Financial Services Supervisory Agency has, before the entry into force of this Act, established in its decision that it complies with the conditions set forth in the Act on Settlement Finality in Payment and Financial Instruments Settlement Systems (Official Gazette 117/2008) shall be the system within the meaning of Article 3, item 1 of this Act.

(4) A transfer order which is entered into the system before the entry into force of this Act, but is executed after its entry into force, shall be considered the transfer order within the meaning of this Act.

Article 16

As of the date of accession of the Republic of Croatia to the European Union, the provision of Article 3, item 2, subitem 3 of this Act shall cease to have effect.

Entry into force

Article 17

This Act shall enter into force on the eighth day following the date of its publication in the Official Gazette, with the exception of Article 1, paragraph 3, Article 3, item 2, subitems 2, 7 and 8, Article 9, paragraphs 3 and 4, Article 11, paragraph 2, Article 11, paragraph 2, Article 12, paragraph 2 and Article 14 of this Act, which shall enter into force on the date of accession of the Republic of Croatia to the European Union.

Class: 450-01/12-01/01

Zagreb, 18 May 2012

CROATIAN PARLIAMENT

Speaker of Parliament

Boris Šprem, m.p.