

Official Gazette 136/2024 (27 November 2024), Act on Amendments to the Act on Settlement Finality in Payment and Financial Instruments Settlement Systems

THE CROATIAN PARLIAMENT

2245

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

DECISION

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

I hereby promulgate the Act on Amendments to the Act on Settlement Finality in Payment and Financial Instruments Settlement Systems passed by the Croatian Parliament at its session on 15 November 2024.

Class: 011-02/24-02/64
No.: 71-10-01/1-24-2
Zagreb, 22 November 2024

The President of the
Republic of Croatia
Zoran Milanović, m.p.

ACT

ON AMENDMENTS TO THE ACT ON SETTLEMENT FINALITY IN PAYMENT AND FINANCIAL INSTRUMENTS SETTLEMENT SYSTEMS

Article 1

In the Act on Settlement Finality in Payment and Financial Instruments Settlement Systems (Official Gazette 59/2012, 44/2016 and 118/2020), in Article 1, paragraph (1) is amended to read:

"(1) This Act regulates:

– settlement finality in the transfer order settlement systems and the effects of insolvency proceedings against a participant on the rights and obligations arising from, or in connection with the participation of a participant in a payment system or financial instruments settlement system subject to the application of Croatian law;

– the law applicable to the rights and obligations arising from, or in connection with the participation in the system subject to the application of the law of another Member State, of the participant against which insolvency proceedings are conducted under Croatian law; and

– the rights of the holders of collateral security in the event of insolvency proceedings against the provider of collateral security in connection with the participation in a payment system or financial instruments settlement system subject to the application of Croatian law or with the

operation of the Croatian National Bank, the central bank of another Member State or the European Central Bank in its function as a central bank."

Paragraphs (2) and (3) are deleted.

The former paragraph (4) becomes paragraph (2).

Article 2

In Article 2, paragraph (2), subparagraph (1), the conjunction "and" at the end of the sentence is deleted.

After subparagraph (2), the full stop is deleted and a semi-colon and conjunction "and" are added and subparagraph (3) is inserted which reads:

"– Regulation (EU) 2024/886 of the European Parliament and of the Council of 13 March 2024 amending Regulations (EU) No 260/2012 and (EU) 2021/1230 and Directives 98/26/EC and (EU) 2015/2366 as regards instant credit transfers in euro (Text with EEA relevance) (OJ L, 2024/886, 19.3.2024)."

Article 3

In Article 3, items (1) and (2) are amended to read:

"1) *"system"* means any formal agreement 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 between participants,

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

4. the system is subject to the application of Croatian law, and at least one of the participants has its head office in the Republic of Croatia,

5. it operates in financial instruments or in euro, or any other currency, or in various currencies which the system converts one against the other,

6. the competent authority has taken a decision on it referred to in Article 5 of this Act, and

7. it has been notified to ESMA in accordance with Article 14 of this Act;

2) *"institution"* means:

a) 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. a credit institution with a head office in the Republic of Croatia and a credit institution of a Member State (including Member State institutions referred to in Article 2, paragraph (5), items (3) to (24) of the applicable Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (Text with EEA relevance),

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

3. a public authority of the Republic of Croatia or another Member State and an entity whose liabilities are guaranteed by the Republic of Croatia or another Member State,

4. the Croatian National Bank and the central bank of another Member State,

5. any entity with a head office outside the European Union whose functions correspond to the functions of credit institutions or investment firms referred to in sub-subitems (1) and (2) of this subitem, or

b) the following entity which participates in a system whose operation consists of executing transfer orders, as defined in item (9), subitem (1) of this Article and which is responsible for discharging financial obligations arising from transfer orders within that system:

1. a payment institution provided for by the law regulating payment operations, excluding the entity subject to the application of the exemption referred to in Article 32 or 33 of the applicable Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance),

2. an electronic money institution provided for by the law regulating electronic money, excluding the entity subject to the exemption referred to in Article 9 of the applicable Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (Text with EEA relevance);".

Items (6) and (7) are amended to read:

"6)"*participant*" means an institution, a central counterparty, a settlement agent, a clearing house, an operator of a system or a clearing member of a central counterparty authorised pursuant to Article 17 of Regulation (EU) No 648/2012; according to the rules of the system, a participant may act as a central counterparty, a settlement agent or a clearing house or may carry out all or part of these tasks; the institution referred to in item (2), subitem (a), sub-subitems (1), (2) and (5) and subitem (b) of this Article shall also be considered a participant in the payment system for the purpose of this Act when it participates in that payment system as an indirect participant, without limitation of liability of the participant through which that indirect participant passes transfer orders to the payment 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;".

Item (10) is amended to read:

"10)"*insolvency proceedings against a participant*" means a compulsory winding up of a credit institution, temporary restrictions regulated by the law regulating compulsory winding up of credit institutions, 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 another 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;".

Item (15) is amended to read:

"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, regardless of the law of which Member State applies to that interoperable system; the agreement concluded between the interoperable systems shall not constitute a system for the purpose of this Act;"

Article 4

In Article 6, paragraph (3), the second sentence is amended to read:

"The rules of all other mutually interoperable systems 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 mutually interoperable systems."

Article 5

Article 10 is amended to read:

"In the event of opening of insolvency proceedings against a participant against which insolvency proceedings are conducted under Croatian law, which participates in the system subject to the application of the law of another Member State, 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."

FINAL PROVISION

This Act shall enter into force on the eighth day after the day of its publication in the Official Gazette.

Class: 022-02/24-01/102
Zagreb, 15 November 2024

THE CROATIAN PARLIAMENT

The President
of the Croatian Parliament
Gordan Jandroković, m.p.