



STATUTORY INSTRUMENTS.

**S.I. No. 319 of 2011**

---

EUROPEAN COMMUNITIES (SETTLEMENT  
FINALITY)(AMENDMENT) REGULATIONS 2011

**(Prn. A11/1140)**

S.I. No. 319 of 2011

EUROPEAN COMMUNITIES (SETTLEMENT  
FINALITY)(AMENDMENT) REGULATIONS 2011

I, MICHAEL NOONAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998<sup>1</sup> (as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009<sup>2</sup>), hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Settlement Finality) (Amendment) Regulations 2011.
2. These Regulations come into operation on 30 June 2011.
3. The European Communities (Settlement Finality) Regulations 2010 (S.I. No. 624 of 2010) are amended as set out in the Schedule.

<sup>1</sup>O J No. L166, 11.6.1998, p. 45

<sup>2</sup>O J No. L146, 10.6.2009, p. 37

*Notice of the making of this Statutory Instrument was published in  
"Iris Oifigiúil" of 1st July, 2011.*

## SCHEDULE

AMENDMENTS TO EUROPEAN COMMUNITIES (SETTLEMENT  
FINALITY) REGULATIONS 2010

(S.I. No. 624 of 2010)

Item (1)	Provision amended (2)	Amendment (3)
1	Regulation 1	Delete paragraph (3).
2	Regulation 2(1)	<p>(a) In the definition of “default arrangement” substitute “system operator” for “operator of a designated system”.</p> <p>(b) Substitute the following for the definition of “designated system”:</p> <p>“ ‘designated system’ means a system that has been designated by the Minister, and in respect of which the required notifications have been made, under Regulation 4, and includes a system referred to in Regulation 16, but does not include a formal arrangement entered into between interoperable systems;”.</p> <p>(c) Substitute the following for the definition of “insolvency proceedings”:</p> <p>“ ‘insolvency proceedings’ means any collective measure provided for in the law of the State, another Member State or a third country, to wind up or to reorganise a person, where such measure involves the suspending of, or imposing limitations on, transfers or payments and includes (but is not limited to)—</p> <p>(a) if under the law of the State and in relation to body corporate—</p> <p>(i) proceedings for the appointment of an examiner in respect of the body,</p> <p>(ii) proceedings for the compulsory winding up of the body,</p> <p>(iii) a voluntary winding up (either creditors’ or members’) of the body, and</p> <p>(iv) proceedings for the appointment of an administrator in respect of the body,</p> <p>and</p> <p>(b) if under the law of the State and in relation to a natural person—</p> <p>(i) proceedings under which the person is or may be adjudicated bankrupt,</p> <p>(ii) if the person has died insolvent, proceedings for the administration in bankruptcy of the person’s estate, and</p> <p>(iii) proceedings with the objective of the protection by a court of the person and the person’s property from any action or other process;”.</p> <p>(d) Substitute the following for the definition of “system”:</p>

Item (1)	Provision amended (2)	Amendment (3)
		<p>“ ‘system’ means a formal arrangement—</p> <ul style="list-style-type: none"> <li>(a) between 3 or more participants (other than the system operator, any settlement agent, any central counterparty, any clearing house or any indirect participant),</li> <li>(b) with common rules and standardised arrangements for the clearing (whether or not through a central counterparty) or execution of transfer orders between the participants,</li> <li>(c) governed by the law of a Member State chosen by the participants (being a Member State in which at least one of those participants has its head office),</li> </ul> <p>and includes a system that has been designated in, and in respect of which the required notifications have been made to the European Securities and Markets Authority by, the State or another Member State for the purposes of the Settlement Finality Directive;”.</p> <p>(e) Insert the following definitions:</p> <p>“ ‘European Securities and Markets Authority’ means the body established pursuant to Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010<sup>3</sup> establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC;</p> <p>‘European Systemic Risk Board’ means the body established pursuant to Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010<sup>4</sup> on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;”.</p>
3	Regulation 3	<p>Substitute the following for Regulation 3:</p> <p><i>“References to commencement of insolvency proceedings</i></p> <p>3. For the purposes of these Regulations references to the commencement of insolvency proceedings under the law of a Member State or a third country in respect of any person means the opening (within the meaning given by Article 6 of the Settlement Finality Directive) of insolvency proceedings against that person and includes (but is not limited to)–</p> <ul style="list-style-type: none"> <li>(a) in the case of insolvency proceedings under the law of the State in relation to a body corporate — <ul style="list-style-type: none"> <li>(i) the making by the Court of an order for the appointment of an examiner in respect of the body,</li> <li>(ii) the making by the Court of an order for the winding up of the body, and</li> <li>(iii) the passing by the members of the body of a resolution for the voluntary winding up (whether creditors’ or members’) of the body,</li> </ul> </li> </ul> <p>and</p>

<sup>3</sup>OJ No. L331, 15.12.2010, p.84

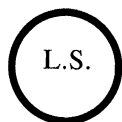
<sup>4</sup>OJ No. L221, 15.12.2010, p.1

Item (1)	Provision amended (2)	Amendment (3)
		<p>(b) in the case of insolvency proceedings under the law of the State in relation to a natural person—</p> <ul style="list-style-type: none"> <li>(i) the making of an order of the Court adjudicating the person bankrupt, or</li> <li>(ii) if the person dies insolvent, the making by the Court of an order for the administration in bankruptcy of the person's estate, and</li> <li>(iii) the making by the Court of an order providing for the protection of the person and the person's property under an arrangement controlled by the Court.”. </li></ul>
4	Regulation 4	<p>Substitute the following for Regulation 4:</p> <p><i>“Designation of designated systems, etc.</i></p> <p>4. (1) The Minister may designate a system as a designated system if—</p> <ul style="list-style-type: none"> <li>(a) he or she is satisfied that the rules of the system comply with Regulation 7, and</li> <li>(b) the system is governed by the law of the State.</li> </ul> <p>(2) If the Minister designates a system he or she—</p> <ul style="list-style-type: none"> <li>(a) shall so notify the European Securities and Markets Authority, and</li> <li>(b) shall notify the European Securities and Markets Authority of the system operator.”. </li></ul>
5	Regulation 5	<p>(a) In paragraph (3), substitute “the system operator” for “the operator of the system”.</p> <p>(b) Substitute the following for paragraph (4):</p> <p>“(4) The Bank may decide, in respect of any designated system, that-</p> <ul style="list-style-type: none"> <li>(a) a person that is an indirect participant in that designated system is to be treated as a participant, or</li> <li>(b) persons belonging to a class of persons that are indirect participants in that designated system are to be treated as participants in that designated system,</li> </ul> <p>but only if the Bank considers that such treatment is justified on the grounds of systemic risk.”.</p> <p>(c) Insert the following after paragraph (5):</p> <p>“(6) If the Bank decides to treat a person that is an indirect participant in that designated system as a participant, or to treat persons belonging to a class of persons that are indirect participants in that designated system as participants, in accordance with paragraph (4), it shall give written notice of its decision to the system operator.”.</p>
6	Regulation 6(4)	Delete “(as defined by the rules of the designated system)”.

Item (1)	Provision amended (2)	Amendment (3)
7	Regulation 8	<p>Substitute the following for Regulation 8:</p> <p><i>“Certain matters to be notified to Bank</i></p> <p>8. (1) The Bank is the appropriate authority in the State for the purposes of Article 6.2 of the Settlement Finality Directive.</p> <p>(2) The Court shall notify the Bank immediately after making any order that has the effect of commencing insolvency proceedings under the law of the State.</p> <p>(3) Any person, other than a Court, that takes any action that has the effect of commencing insolvency proceedings under the law of the State shall notify the Bank immediately after taking such action.</p> <p>(4) Immediately after receiving a notification under paragraph (2) or (3), as the case may be, the Bank shall notify the appropriate authorities in the other Member States, the European Systemic Risk Board, and the European Securities and Markets Authority of the making of the order referred to in paragraph (2) or the taking of the action referred to in paragraph (3).</p> <p>(5) The Bank shall:</p> <ul style="list-style-type: none"> <li>(a) cooperate with the European Securities and Markets Authority for the purposes of these Regulations, in accordance with Regulation (EU) No 1095/2010, and</li> <li>(b) provide, without delay, all information necessary for the European Securities and Markets Authority to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.”. </li></ul>
8	Regulation 9	<p>Substitute the following for Regulation 9:</p> <p><i>“State law relating to insolvency or insolvency proceedings not to affect certain rights and obligations</i></p> <p>9. (1) No law of the State relating to insolvency and no insolvency proceeding invalidates or otherwise affects—</p> <ul style="list-style-type: none"> <li>(a) the rights and obligations of a participant arising from participation in a designated system before the commencement of insolvency proceedings against a participant (in the designated system concerned or in a system with which it constitutes an interoperable system) or the system operator of an interoperable system which is not a participant,</li> <li>(b) a transfer order or a disposition of property made under such an order,</li> <li>(c) the default arrangements of a designated system, or an action taken under those arrangements,</li> <li>(d) the rules of a designated system as to the settlement of transfer orders not dealt with under the system’s default arrangements,</li> <li>(e) the provision of collateral security,</li> </ul>

Item (1)	Provision amended (2)	Amendment (3)
		<p>(f) a contract, scheme or arrangement that provides for realising, or any action taken to realise, collateral security in connection with—</p> <p>(i) participation in a designated system otherwise than under its default arrangements, or</p> <p>(ii) the operations of a central bank,</p> <p>or</p> <p>(g) any disposition of property as a result of a contract, scheme or arrangement, or an action, referred to in subparagraph (f).</p> <p>(2) The powers of a liquidator, provisional liquidator or examiner, the Official Assignee, or a trustee in bankruptcy or other insolvency official appointed under a law of the State, and the powers of a court under a law of the State relating to insolvency or insolvency proceedings, may not be exercised so as to prevent or interfere with—</p> <p>(a) the settlement, in accordance with the rules of a designated system, of a transfer order not dealt with under the system’s default arrangements,</p> <p>(b) action taken under a designated system’s default arrangements, or</p> <p>(c) action taken to realise collateral security in connection with—</p> <p>(i) participation in a designated system otherwise than under the system’s default arrangements, or</p> <p>(ii) the operations of a central bank.</p> <p>(3) 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 before the moment of opening of such proceedings.</p> <p>(4) Paragraph (3) also applies as regards the rights and obligations of a participant in an interoperable system, or of a system operator of an interoperable system which is not a participant.”.</p>
9	Regulation 10(4)	<p>Substitute the following for the definition of “equivalent overseas security”:</p> <p>“ ‘equivalent overseas security’ means any realisable asset of any kind (including, without limitation, financial collateral referred to in Article 1(4)(a) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002) provided under a pledge (including money provided under a pledge), repurchase or similar agreement, or otherwise, for the purpose of securing rights and obligations that may arise in connection with a system through which equivalent overseas orders are made.”.</p>

Item (1)	Provision amended (2)	Amendment (3)
10	Regulation 11(4)	<p>Substitute the following for paragraph (4):</p> <p>“(4) Without prejudice to the generality of paragraphs (1) to (3) and for the avoidance of doubt, a claim of a participant, a system operator or a central bank to collateral security referred to in this Regulation has, and shall be taken always to have had, priority over any claim of any other person to that collateral security including, without limitation, in an insolvency proceeding and including, without limitation, any claim—</p> <ul style="list-style-type: none"> <li>(a) for costs, charges and expenses referred to in sections 244 and 281 of the Companies Act 1963 (No. 33 of 1963),</li> <li>(b) for remuneration, costs, expenses and liabilities referred to in section 29 of the Companies (Amendment) Act 1990 (No. 27 of 1990),</li> <li>(c) for debts referred to in section 285(2) of the Companies Act 1963, and</li> <li>(d) of the Revenue Commissioners pursuant to section 571, 1001 or 1002 of the Taxes Consolidation Act 1997 (No. 39 of 1997),</li> </ul> <p>unless, in respect of any such claim of another person, the terms on which the collateral security was provided expressly provide that that claim is to have priority to the claim of the participant, the system operator or the central bank, as the case may be.”.</p>
11	Regulation 12	Substitute “ system operator” for “operator of a designated system.”



GIVEN under my Official Seal,  
27 June 2011.

MICHAEL NOONAN,  
Minister for Finance.



## EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

This Statutory Instrument amends the European Communities (Settlement Finality) Regulations 2010 (S.I. No. 624 of 2010), transposing the mandatory provisions of 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 and the necessary revisions required by 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, specifically in relation to the treatment of night-time settlement and the development of links between settlement systems.

The purpose of these amending Regulations is to make certain consequential amendments so that, inter alia, S.I. No. 624 of 2010 more accurately reflects the text of the Settlement Finality Directive; and to transpose into Irish law relevant Articles in the “Omnibus” Directive (Directive 2010/78/EU) of 24 November 2010 in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) as it relates to the Settlement Finality Directive.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,  
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,  
nó tríd an bpost ó  
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,  
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,  
CONTAE MHAIGH EO,  
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)  
nó trí aon díoltóir leabhar.

---

DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased directly from the  
GOVERNMENT PUBLICATIONS SALE OFFICE  
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2,  
or by mail order from  
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,  
UNIT 20 LAKESIDE RETAIL PARK, CLAREMORRIS, CO. MAYO,  
(Tel: 01 - 6476834 or 1890 213434; Fax: 094 - 9378964 or 01 - 6476843)  
or through any bookseller.

---

€3.05

