I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 7 August 2008

on a proposal for a directive amending Directive 98/26/EC and Directive 2002/47/EC

(CON/2008/37)

(2008/C 216/01)

Introduction and legal basis

On 22 May 2008 the European Central Bank (ECB) received a request from the Council of the European Union for an opinion on a proposal for a Directive of the European Parliament and of the Council 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 [1] (hereinafter the 'proposed directive').

The ECB's competence to deliver an opinion is based on the first indent of Article 105(4) of the Treaty establishing the European Community. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

Amendments to Directive 98/26/EC

1. Night-time settlement

The ECB supports extending the protection of Article 3(1) of Directive 98/26/EC [2] to night-time settlement services, which is essential given that the night-time settlement procedure is used more and more frequently by systems to facilitate the settlement of bulk and retail transfers.

2. Protection of collateral from the effects of insolvency

2.1. The ECB proposes further amending Article 9(1) of Directive 98/26/EC for the following reasons. Under Article 9(1), the rights of the ECB and the Member State central banks to collateral security provided to them are not affected by insolvency proceedings brought against the participant or counterparty that has provided the collateral security. Such collateral security may be realised for the satisfaction of these claims. Some ambiguity would arise if Article 9(1) were to be interpreted as meaning that the collateral security provided in connection with central bank operations, including emergency

[1] COM(2008) 213 final.
[2] 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, p. 45).

transactions, is only insulated from the effects of insolvency proceedings brought against a central bank's participant or counterparty which has provided the central bank with the collateral security. When assessing the protection of collateral provided to central banks for central bank credit operations under Directive 98/26/EC, uncertainty arises as to whether the protection accorded to central banks covers the provision of collateral security originating from a third party which is not a participant in a central bank operated system or a central bank counterparty.

2.2. Currently, it seems that some Member States have transposed Article 9(1) of Directive 98/26/EC in a manner which does not protect collateral provided to central banks by a third party which is not one of the central bank's participants or counterparties, while most Member States have transposed Article 9(1) so as to explicitly protect collateral security provided to central banks by such third parties. In addition, some Member States have transposed the wording of the provision in question literally, and in these jurisdictions, the question of whether collateral provided to central banks by such third parties is protected is subject to interpretation.

2.3. In view of the above, clarifying the wording of Article 9(1) of Directive 98/26/EC would ensure the harmonised insulation of collateral security provided to central banks by any third party including, but not limited to, affiliates of the participants in a central bank operated system or central bank counterparties. This would ensure legal certainty with respect to collateralised credit provided by central banks and, more specifically, protect modern liquidity pooling services, for example in TARGET2, against the insolvency of any third party providing collateral security on behalf of a participant in a central bank system. This reform could be of particular relevance to central bank liquidity operations during times of financial difficulty, where it can be expected that liquidity extended to a counterparty might be collateralised by a third party on behalf of the counterparty.

3. Participation in a system

3.1. Article 2(f) of Directive 98/26/EC allows Member States to treat an 'indirect participant' as a 'participant', if warranted due to systemic risk and on condition that the indirect participant is known to the system. Being 'known to the system' is a useful requirement, as the system would not otherwise be able to identify which indirect participants fall within the scope of protection accorded to the system. A proviso should therefore be introduced into the definition of 'indirect participant' requiring that indirect participants should be known to the system operator. This will also facilitate the system operator's obligation, under the second paragraph of Article 10, to disclose to the Member State whose law is applicable the participants in the relevant system, including any possible indirect participants, as well as any change in them.

3.2. For the avoidance of doubt, the definitions of both participant and indirect participant should be amended to clarify that these definitions are exhaustive and include only the specific kinds of entities enumerated by the defined terms. Any differences in application could put at risk the protection afforded by Directive 98/26/EC to systems that operate cross border.

3.3. Also, the term 'system' in the definitions of participant and indirect participant should be replaced, where appropriate, by the newly defined term 'system operator', since systems usually lack legal personality and it is the system operator that acts as a participant in another system thus ensuring cross-participation between systems.

4. The definition of a system

4.1. The definition of a system under Article 2(a) of Directive 98/26/EC should be amended. The term 'system' should adequately reflect the full range of existing arrangements, so that the protection afforded by Directive 98/26/EC will apply to the widest possible range of systems, thereby minimising systemic risk. In particular, the current definition in the first and second indents of Article 2(a) does not accurately reflect the way in which a majority of systems are established. In most systems, the arrangement establishing the system is not simply a contract between participants, but a set of rules

and regulations for the system's operation as adopted by the system operator or through legal acts. The participants are expected to adhere to these rules. Systems based on a multilateral contractual arrangement are the exception, not the norm, as assumed under the current wording of Article 2(a). A system operator, such as a central securities depository, stock exchange or central bank, generally sets up a system unilaterally. In this context, Article 2(a) should be drafted so that a formal arrangement can be established either by contract, by standard business conditions or by legislation, i.e. statute or implementing regulation. Therefore, the definition of a system should refer to a formal arrangement 'comprising', instead of 'between', three or more participants and this change necessitates a consequential amendment to the second indent of Article 2(a).

4.2. Under the current definition of a system it is unclear whether clearing systems such as central counterparties or clearing houses are protected against systemic risk under Directive 98/26/EC. Although, in order to avoid uncertainty, a number of Member States have notified clearing systems to the Commission as provided for under the third indent of Article 2(a), the words 'clearing or' should be added before 'execution of transfer orders' in the first indent of Article 2(a), so that these types of entities can also be clearly considered as systems in their own right.

4.3. Furthermore, the term system should be defined flexibly in order to cover any future developments in the organisation of systems. In particular, it should be sufficiently widely defined as to cover any future system that may be developed by the Eurosystem or designated by the ECB when established by an ECB legal instrument which is binding on participants by virtue of an arrangement entered into with the ECB and governed by the law of a Member State. In any event, a system established by an ECB legal instrument should also fall within the definition of the term system in Article 2(a) of Directive 98/26/EC.

5. Moment of entry, irrevocability and interoperable systems

5.1. The ECB considers that the concept of the 'moment of entry' into a system for the purposes of Article 3(3) of Directive 98/26/EC requires clarification. More specifically, Article 3(3) states that the moment of entry of a transfer order into a system is defined by the rules of that system. The moment of entry itself is not defined and therefore varies between systems both in relation to its definition and the actual moment of entry. Where national law governing the system defines the moment of entry, the system's rules must be in line with such definitions. However, national law should allow sufficient flexibility for system rules on the moment of entry to be adjustable to take account of the specific nature of a particular system's operations and to protect sophisticated settlement/optimisation procedures. Furthermore, it is important that between interoperable systems, the rules of all the systems that are involved should be allowed to define the moment of entry with sufficient flexibility in order to protect cross-system settlement and hence ensure interoperability. The ECB recommends clarifying Article 3(4) accordingly to remove any ambiguity surrounding the fact that systems do have a certain degree of discretion in specifying the appropriate moment of entry, without being constrained in this respect by national law, which may be rigid and difficult to change. Similar considerations apply to the concept of irrevocability for the purposes of Article 5 of Directive 98/26/EC.

5.2. The ECB supports the amendments relating to interoperable systems, given that the number and importance of such systems has increased significantly since the adoption of Directive 98/26/EC. In particular, systems have established links and even relayed links between each other and they access other systems as participants or through other interfaces. However, the ECB suggests replacing the term 'system' in the definition of 'interoperable system' with 'arrangements' between two or more systems to cater for all possible types of connections while at the same time avoiding giving the impression that a new category of systems is created. To give a practical example, the TARGET2 payment infrastructure [1] of the Eurosystem consists of a multiplicity of legally separate payment systems that are interconnected by a single technical platform based on an ECB guideline. Further, more than 60 other systems, including those of non-euro area countries, are connected to TARGET2 either by way of participation or through bilateral arrangements through the ancillary system interface.

[1] Guideline ECB/2007/2 of 26 April 2007 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (OJ L 237, 8.9.2007, p. 1).

6. Notification of system operators and oversight

The ECB welcomes the definition of system operator in the new Article 2(o) although it considers that this definition should be slightly amended to ensure that it also covers systems that consist of several participants without any single system operator. For the same reason, the second subparagraph of Article 3(1) of the Directive should also be slightly amended to ensure that the burden of proof regarding knowledge of insolvency is laid on the relevant system operator. Moreover, the ECB also agrees to the proposal to amend Article 10 of Directive 98/26/EC so that Member States, in addition to notifying systems to the Commission, will also indicate the operator of the system. However, in line with the ECB's suggestion in paragraph 4.3 above, proposing that the definition of system should include systems established by an ECB legal instrument, paragraph 1 of Article 10 should be amended to allow Member States or the ECB, as appropriate, to notify systems and system operators to the Commission. The ECB considers that Article 10(3) and (4), which are omitted from the Commission proposal, should be reinstated. In addition, Article 10(3), which recognises the powers of competent national authorities to authorise and supervise systems, should state that the oversight competence of central banks, based on their financial stability tasks, should be respected.

7. E-money institutions as participants of systems

The definition of 'credit institution' in amended Article 2(b) of Directive 98/26/EC, which cross-refers to the definition contained in 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 (recast) ([1]), has the effect of enabling e-money institutions to become participants in systems designated in accordance with Directive 98/26/EC, provided the e-money institutions are regulated as credit institutions. The ECB regards this as a positive legislative amendment that will enhance the stability of systems. A change in the status of e-money institutions as credit institutions would require a further review of Directive 98/26/EC.

8. Conflict of laws

A clear and simple conflict of laws rule for all aspects of book entry securities is important for the efficient and secure cross-border holding and transfer of financial instruments. The ECB shares the Commission's view that the current conflict of laws rules contained in Directive 98/26/EC, Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions ([2]) and Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements ([3]) have increased legal certainty with regard to determining the applicable law. The ECB also notes the observations made by the Commission in its paper 'Conflict of laws: modernisation of the PRIMA-rule for intermediated securities' that the practical application of a single conflict of laws regime for cross-border securities clearing and settlement in the Community continues to reveal differences between Member States on the interpretation of 'location of an account'. Thus, the Community regime still does not deliver the highest possible degree of predictability and certainty as to which laws apply.

Accordingly, the ECB is following with great interest the Commission's initiative to improve the clarity of the existing Community regime. Given the complexity of this matter, the ECB considers that such a general review should not take place in the context of the proposed directive.

Amendments to Directive 2002/47/EC

9. Credit claims

9.1. The ECB strongly welcomes the proposed amendments to Directive 2002/47/EC, where they are aimed at facilitating the use of credit claims as collateral by central banks. These changes make the legal position of central banks in the European Union more secure when taking credit claims as collateral, given the otherwise non-harmonised sets of rules on credit claims in the different EU jurisdictions. The

([1]) OJ L 177, 30.6.2006, p. 1.
([2]) OJ L 125, 5.5.2001, p. 15.
([3]) OJ L 168, 27.6.2002, p. 43.

possibility of using credit claims as collateral in central bank operations is of great significance to credit institutions in the euro area, which have large amounts of credit claims on their balance sheets. It would be of great importance for the Eurosystem to be able to use credit claims as collateral under the regime established by Directive 2002/47/EC, thereby facilitating an informal and efficient operational handling of that kind of asset, in particular through electronic means and including in cross-border constellations. Therefore, in this respect, the ECB advocates the adoption of the text as proposed by the Commission without granting the Member States any options for implementation, which would undermine the validity and legal certainty of such collateral taking.

9.2. The changes proposed to Article 1(4)(a) of Directive 2002/47/EC restrict its applicability to credit claims eligible for the collateralisation of central bank credit operations. For the purposes of the ECB and the Eurosystem this is sufficient. However, the proposed amendment goes beyond the use of credit claims solely for central bank operations, proposing to make the rules of Directive 2002/47/EC apply to any credit claim that could be eligible for the collateralisation of central bank credit operations in the EU. An issue of transparency arises about the extent to which the proposed change would also allow non-central bank collateral takers to use such central bank eligible credit claims for collateral purposes. In particular, not all EU central banks may have easily accessible eligibility criteria for accepting credit claims as collateral, which would make it difficult for a non-central bank collateral taker to determine efficiently whether the credit claim it intends to collateralise is in fact eligible. Furthermore, the eligibility criteria used by the Eurosystem and the central banks located outside the euro area could differ and such criteria could also be amended over time. Accordingly, to ensure legal certainty and a level playing field across the EU, the ECB recommends that a simple and uniform definition for credit claims covered by Directive 2002/47/EC should be established, which does not link such credit claims to eligibility criteria used by the central banks. Such a definition of credit claims for the purposes of defining the scope of Directive 2002/47/EC should be broad enough to include credit claims made eligible by the Eurosystem. If no such uniform definition can be adopted, it is at least important to ensure that credit claims actually mobilised as collateral to the Eurosystem fall under the new definition in Directive 2002/47/EC.

9.3. The proposed amendments do not include a clarification of the conflict of laws rules applying to the cross-border use of credit claims as collateral. The current text of Article 9 of Directive 2002/47/EC on conflict of laws rules only relates to book entry securities and clearly does not apply to credit claims. For the cross-border mobilisation of credit claims as collateral it is extremely important to harmonise the applicable conflict of laws rules. Credit claims used as collateral may involve several jurisdictions, e.g. that of the debtor, the creditor, the agreement, etc., and for legal certainty the parties need to know exactly which law applies for the purposes of validity and priority of mobilising credit claims as collateral. Presently, the conflict of laws rules on the third party effects of assignments of claims in the EU are not harmonised; uncertainty exists as to the applicable laws and the parties may need to comply with the requirements of more than one jurisdiction in order to achieve some certainty about the legal soundness of their collateral taking. This is a significant obstacle and it would greatly facilitate the cross-border EU-wide use of credit claims as collateral if there were a uniform set of conflict of laws rules agreed for such third party effects. As there was no such change in the Rome I Regulation ([1]), it is particularly important to include such rules in Directive 2002/47/EC. To have such common rules would bring significant benefits.

9.4. The ECB also makes the following technical suggestions to ensure consistency within the proposed directive as regards the inclusion of credit claims under Directive 2002/47/EC. To ensure that not only the assignment of credit claims but also the pledge of credit claims is covered by the scope of application of Directive 2002/47/EC, Article 2(1)(c) should be amended to refer to full entitlement to financial collateral in order to clarify that the pledge or charging of credit claims is also covered by the term 'security financial collateral arrangement'. Furthermore, a reference to credit claims in Article 2(1)(e) should be added to the definition of financial instruments. Finally, Article 3 should be amended in

([1]) COM(2005) 650 final.

order to refer to 'transfer of possession' in addition to registration and notification in connection with the condition of validity of a financial collateral arrangement.

10. Netting

The proposed directive does not include any amendment of the provisions on insolvency netting in either Directive 2002/47/EC or Directive 98/26/EC. It remains true, however, that the ability to close out on a counterparty's insolvency is of critical importance in the financial markets. The issue of the enforceability of close-out netting is therefore not restricted to individual financial collateral arrangements, but is relevant to all kinds of arrangements aimed at reducing credit risk and exposure. There is a need for further progress on the treatment of netting, not just in Directive 2002/47/EC, but also generally across the EU financial acquis. It would be beneficial, for instance, if greater consistency could be achieved between the various definitions of netting and set-off across different EU legal acts. At the same time, in view of the systemic significance of the exercise of automatic close-out rights against systemically significant credit and financial institutions operating in international financial markets, there needs to be a wider discussion at EU level on the application of close-out netting provisions to financial institutions in the over-the-counter derivatives market, and not only in the context of financial collateral arrangements.

11. Drafting proposals

Where the above advice would lead to changes in the proposed directive, drafting proposals are set out in the Annex.

Done at Frankfurt am Main, 7 August 2008.

The President of the ECB

Jean-Claude TRICHET

ANNEX

DRAFTING PROPOSALS ([1])

Text proposed by the Commission ([1])	**Amendments proposed by the ECB** ([2])
Amendment 1 Article 1 of the proposed directive Amendment to Directive 98/26/EC, Article 2(a)	
Article 2	*Article 2*
For the purpose of this Directive:	For the purpose of this Directive:
(a) 'system' shall mean a formal arrangement:	(a) 'system' shall mean a formal arrangement:
— between three or more participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, with common rules and standardised arrangements for the execution of transfer orders between the participants,	— ~~between~~ **comprising** three or more participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, with common rules and standardised arrangements for the **clearing or** execution of transfer orders between the participants,
— governed by the law of a Member State chosen by the participants; the participants may, however, only choose the law of a Member State in which at least one of them has its head office, and	— governed by the law of a Member State ~~chosen by the participants; the participants may, however, only choose the law of a Member State in which at least one of them has its head office~~ **or established by an ECB legal act, which is binding on participants by virtue of an arrangement entered into with the ECB and governed by the law of a Member State,** and
— designated, without prejudice to other more stringent conditions of general application laid down by national law, as a system and notified to the Commission by the Member State whose law is applicable, after that Member State is satisfied as to the adequacy of the rules of the system.	— designated~~, without prejudice to other more stringent conditions of general application laid down by national law~~ as a system and notified to the Commission, **either (i)** by the Member State whose law is applicable, after that Member State is satisfied as to the adequacy of the rules of the system **and without prejudice to other more stringent conditions of general application laid down by national law, or (ii) by the ECB as a system established by an ECB legal act.**
Justification — *See paragraph 4 of the opinion*	
Amendment 2 Article 1 of the proposed directive Amendment to Directive 98/26/EC, Article 2(f) and (g)	
Article 2	*Article 2*
(f) 'participant' shall mean an institution, a central counterparty, a settlement agent, a clearing house or a system. […]	(f) 'participant' shall mean **only** an institution, a central counterparty, a settlement agent, a clearing house or a system **operator.** […]

([1]) The drafting proposals in the Annex are based on the text of the proposed directive and on the text of Directive 98/26/EC and Directive 2002/47/EC which, in ECB's view, also require amendment. The drafting proposals are limited to amendments made to reflect the ECB's proposals in this opinion. The proposals should apply *mutatis mutandis* and where relevant, to the other Community directives amended by the proposed directive.

Text proposed by the Commission [1]	Amendments proposed by the ECB [2]
(g) 'indirect participant' shall mean an institution, a central counterparty, a settlement agent, a clearing house or a system with a contractual relationship with an institution participating in a system executing transfer orders which enables the indirect participant to pass transfer orders through the system;	(g) 'indirect participant' shall mean **only** an institution, a central counterparty, a settlement agent, a clearing house or a system **operator** with a contractual relationship with an institution participating in a system executing transfer orders which enables the indirect participant to pass transfer orders through the system, **provided, however, that the indirect participant shall be known to the system operator**;

Justification — *See paragraph 3 of the opinion*

Amendment 3

Article 1 of the proposed directive

Amendment to Directive 98/26/EC, Article 2(n)

Article 2	*Article 2*
(n) 'interoperable system' shall mean a system that enters into an agreement with one or more systems that entail the establishment of mutual solutions and not simply connecting to existing standard service offerings;	(n) 'interoperable **arrangements**~~system~~' shall mean ~~a system that enters into an agreement with one or more systems~~ **any** arrangements **entered between** two or more system~~s~~ **operators** that entail**s** the establishment of mutual solutions and not simply connecting to existing standard service offerings;

Justification — *See paragraph 5.2 of the opinion*

Amendment 4

Article 1(2)(f) of the proposed directive

Amendment to Directive 98/26/EC, Article 2(o)

(o) 'system operator' shall mean the entity in charge of the day to day operation of a system. A system operator may also act as a settlement agent, central counterparty or clearing house.	(o) 'system operator' shall mean the entity **or, where relevant, entities** in charge of the day-to-day operation of a system. A system operator may also act as a settlement agent, central counterparty or clearing house.

Justification — *See paragraph 6 of the opinion*

Amendment 5

Article 1(3) of the proposed directive

Amendment to Directive 98/26/EC, subparagraph 2 of Article 3(1)

Where, exceptionally, transfer orders are entered into a system after the moment of opening of insolvency proceedings and are carried out within the business day, as defined by the rules of the system, during which the opening of such proceedings occur, they shall be legally enforceable and binding on third parties only if, after the time of settlement, the system operator can prove that it was not aware, nor should have been aware, of the opening of such proceedings.	Where, exceptionally, transfer orders are entered into a system after the moment of opening of insolvency proceedings and are carried out within the business day, as defined by the rules of the system, during which the opening of such proceedings occur, they shall be legally enforceable and binding on third parties only if, after the time of settlement, the **relevant** system operator can prove that it was not aware, nor should have been aware, of the opening of such proceedings.

Justification — *See paragraph 6 of the opinion*

Text proposed by the Commission (1)	Amendments proposed by the ECB (2)
Amendment 6	
Article 1 of the proposed directive	
Amendment to Directive 98/26/EC, new Article 3(4)	
Article 3	*Article 3*
4. In case of interoperable systems, each system determines its own rules on the moment of entry in its system. One system's rules on moment of entry shall not be affected by any rules of the other systems with which it is interoperable.	4. In **the** case of interoperable **arrangements**, each system determines **in** its own rules the moment of entry in its system. ~~One system's rules on moment of revocation shall not be affected by any rules of the other systems with which it is interoperable~~, **so as to ensure, to the extent possible, that the rules of all systems that are party to the interoperable arrangement are coordinated in this regard**. **Unless expressly provided for by the rules of the systems concerned**, **o**ne system's rules on **the** moment of entry shall not be affected by any rules of the other systems with which it is interoperable.
Justification — *See paragraph 5.1 of the opinion*	
Amendment 7	
Article 1 of the proposed directive	
Amendment to Directive 98/26/EC, Article 5	
Article 5	*Article 5*
A transfer order may not be revoked by a participant in a system, nor by a third party, from the moment defined by the rules of that system. In case of interoperable systems, each system determines its own rules on the moment of revocation in its system. One system's rules on moment of revocation shall not be affected by any rules of the other systems with which it is interoperable.	A transfer order may not be revoked by a participant in a system, nor by a third party, from the moment defined by the rules of that system. In **the** case of interoperable **arrangements**, each system determines **in** its own rules the moment of ~~revocation in its system~~. ~~One system's rules on moment of revocation shall not be affected by any rules of the other systems with which it is interoperable.~~**irrevocability, so as to ensure, to the extent possible, that the rules of all systems that are party to the interoperable arrangement are coordinated in this regard.** **Unless expressly provided for by the rules of the systems concerned, o**ne system's rules on **the** moment of **irrevocability** shall not be affected by any rules of the other systems with which it is interoperable.
Justification — *See paragraph 5.1 of the opinion*	
Amendment 8	
Article 1 of the proposed directive	
Amendment to Directive 98/26/EC, Article 9(1)	
Article 9	*Article 9*
1. The rights of a system or of a participant to collateral security provided to it in connection with a system, and the rights of central banks of the Member States or the European Central Bank to collateral security provided to them, shall not be affected by insolvency proceedings against the participant or counterparty to central banks of the Member States or the European Central Bank, which provided the collateral security. Such collateral security may be realised for the satisfaction of these rights.	1. The rights of a system **operator** or of a participant to collateral security provided to it in connection with a system, and the rights of central banks of the Member States or the European Central Bank to collateral security provided to them, shall not be affected by insolvency proceedings against the participant or counterparty to central banks of the Member States or the European Central Bank **or against any third party, including but not limited to affiliates of such participant or counterparty,** which provided the collateral security. Such collateral security may be realised for the satisfaction of these rights.
Justification — *See paragraph 2 of the opinion*	

Text proposed by the Commission [1]	Amendments proposed by the ECB [2]
Amendment 9	
Article 1 of the proposed directive	
Amendment to Directive 98/26/EC, Article 10	
Article 10	*Article 10*
Member States shall specify the systems, and the respective system operators, which are to be included in the scope of this Directive and shall notify them to the Commission and inform the Commission of the authorities they have chosen in accordance with Article 6(2).	Member States **or the ECB, where a system is established by an ECB legal act,** shall specify the systems, and the respective system operators, which are to be included in the scope of this Directive and shall notify them to the Commission and inform the Commission of the authorities they have chosen in accordance with Article 6(2).
The system operator shall indicate to the Member State whose law is applicable the participants in the system, including any possible indirect participants, as well as any change in them.	The system operator shall indicate to the Member State whose law is applicable the participants in the system, including any possible indirect participants, as well as any change in them. **In addition to the indication provided for in the second subparagraph, Member States may impose supervision or authorisation requirements on system operators, which fall under their jurisdiction. It should be also ensured that the oversight competences of the European Central Bank and of the national central banks are respected.** **Anyone with a legitimate interest may require an institution to inform him of the systems in which it participates and to provide information about the main rules governing the functioning of those systems.**
Justification — *See paragraph 6 of the opinion*	
Amendment 10	
Amendment to Directive 2002/47/EC, Article 2(1)(c)	
Article 2(1)(c)	Article 2(1)(c)
(c) 'security financial collateral arrangement' means an arrangement under which a collateral provider provides financial collateral by way of security in favour of, or to, a collateral taker, and where the full ownership of the financial collateral remains with the collateral provider when the security right is established;	(c) 'security financial collateral arrangement' means an arrangement under which a collateral provider provides financial collateral by way of security in favour of, or to, as collateral taker, and where the full ownership of, **or full entitlement to,** the financial collateral remains with the collateral provider when the security right is established;
Justification — *See paragraph 9 of the opinion*	
Amendment 11	
Amendment to Directive 2002/47/EC, Article 2(1)(e)	
Article 2(1)(e)	Article 2(1)(e)
(e) 'financial instruments' means shares in companies and other securities equivalent to shares in companies and bonds and other forms of debt instruments if these are negotiable on the capital market, and any other securities which are normally dealt in and which give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange or which give rise to a cash settlement (excluding instruments of payment), including units in collective investment undertakings, money market instruments and claims relating to or rights in or in respect of any of the foregoing;	(e) 'financial instruments' means shares in companies and other securities equivalent to shares in companies and bonds and other forms of debt instruments if these are negotiable on the capital market, and any other securities which are normally dealt in and which give the right to acquire any such shares, bonds or other securities by subscription, purchase or exchange or which give rise to a cash settlement (excluding instruments of payment), including units in collective investment undertakings, money market instruments and claims relating to or rights in or in respect of any of the foregoing, **as well as credit claims to the extent provided for by this Directive;**
Justification — *See paragraph 9 of the opinion*	

Text proposed by the Commission [1]	Amendments proposed by the ECB [2]
Amendment 12	
Article 2(3) of the proposed directive	
Amendment to Directive 2002/47/EC, Article 3	
Article 3	*Article 3*
New subparagraph	New subparagraph
When credit claims are provided as financial collateral, Member States shall not require that the creation, validity or admissibility in evidence of their provision as financial collateral under a financial collateral arrangement be dependent on the performance of any formal act such as the registration or the notification of the debtor of the credit claim provided as collateral	When credit claims are provided as financial collateral, Member States shall not require that the creation, validity or admissibility in evidence of their provision as financial collateral under a financial collateral arrangement be dependent on the performance of any formal act such as the registration, **transfer of possession** or the notification of the debtor of the credit claim provided as collateral
Justification — See paragraph 9 of the opinion	

[1] Strikethrough in the body of the text indicates where the ECB proposes deleting text.
[2] Bold in the body of the text indicates where the ECB proposes inserting new text.