

Parliament of Romania

Law No. 253/2004

on settlement finality in payment and securities settlement systems

In force as of 1 July 2004

The consolidation of 23 June 2015 is based on the publication in the Official Journal of Romania, Part I No. 566 of 28 June 2004 and includes the amendments made by the following acts: GEO 13/2011;

Last amendment was made on 1 September 2011.

The Parliament of Romania hereby adopts this law.

CHAPTER I

General Provisions

Art. 1. - The provisions of this law shall apply to:

a) any system as defined in Point 1 of Art. 2(1), operating in any currency or in various currencies which the system converts one against another;

b) any participant in such a system as referred to in Letter a);

c) security provided in connection with participation in a system, or operations of the National Bank of Romania, of the central banks of the Member States of the European Economic Area and of the European Central Bank, in their functions as central banks.

Art. 2. - (1) For the purpose of this law, the terms and expressions below shall have the following meanings:

1. system – means a formal arrangement in writing cumulatively meeting the following requirements:

a) is concluded between three or more participants, without counting the system operator of that system, a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, with common rules and standardised arrangements for netting, carried out through a central counterparty or another entity, and/or for the execution of transfer orders between the participants;

b) is governed by the law chosen by the participants, which may be the law of a Member State of the European Economic Area, if at least one of them has its registered office located in that Member State;

c) is designated by the National Bank of Romania as a system covered by this law, or is designated by another Member State of the European Economic Area whose law is applicable, being notified as such to the European Commission.

Any arrangement concluded between the operators of interoperable systems shall not constitute a system.

2. institution – means any of the following entities, which participates in a system and which is responsible for discharging the financial obligations arising from transfer orders within that system:

a) a credit institution as defined in Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, and any undertaking whose registered office is in a Member State of the European Economic Area, authorised to raise deposits or other repayable funds from the public and grant credits for their own account, or any undertaking, other than a credit institution, with its registered office in a Member State of the European Economic Area, authorised to issue means of payment in the form of electronic money;

b) an investment firm as defined in Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, or any legal person with its registered office in a Member State of the European Economic Area, authorised to provide one or more investment services to third parties and/or carry out one or more investment activities on the basis of professional titles;

c) public authorities and publicly guaranteed undertakings;

d) any undertaking whose registered office is outside Romania or Member States of the European Economic Area and whose functions correspond to those of credit institutions, electronic money institutions or legal persons authorised to provide financial investment services;

3. central counterparty – means an entity which is legally interposed between the institutions in a system and which acts as the exclusive co-contractor of each institution and takes the obligations of those institutions in connection with their transfer orders;

4. settlement agent – means an entity providing to institutions and/or a central counterparty participating in systems, settlement accounts through which transfer orders within such systems are settled and extending credit to those institutions and/or central counterparties for settlement purposes;

5. clearing house – means an entity responsible for the calculation of the net positions of each institution, a possible central counterparty and/or a possible settlement agent;

6. participant – means an institution, a central counterparty, a settlement agent, a clearing house or a system operator; according to the rules of the system, the same participant may act in all or some of these capacities;

7. indirect participant – means an institution, a central counterparty, a settlement agent, a clearing house or a system operator which has a contractual relationship with participant in a system executing transfer orders and which enables the indirect participant to pass transfer orders through that system, provided that the indirect participant is known by the system operator. For the prevention of the systemic risk, the indirect participant may be deemed participant, without this limiting the participant's liability through which the indirect participant passes transfer orders through that system;

8. securities – means those instruments as referred to in Point 141 of Art. 7 (1) of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented;

9. transfer order means:

a) 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, central counterparty or a settlement agent, or any instruction which results in the assumption or discharge of a payment obligation as defined by the rules of the system; or

b) any instruction by a participant to transfer the title to, or interest in, a security or securities by means of a book entry on a register, or otherwise;

10. insolvency proceedings – means any collective measure provided for in the Romanian or foreign law, either to wind up the participant or to reorganise it, where such measure involves the suspending of, or imposing limitations on, transfers or payments;

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 claim can be demanded or a net obligation be owed;

12. settlement account – means an account at a central bank, a settlement agent or a central counterparty used to hold funds or securities and to settle transactions between participants in a system;

13. security – means all realisable assets, including money, securities and private claims, subject to any form of guarantee, repurchase agreement or similar agreement for the purpose of securing rights and obligations potentially arising in connection with a system, or provided to the National Bank of Romania or central banks of the Member States of the European Economic Area or European Central Bank;

14. system of payments of systemic importance – means any system where, if not sufficiently protected against specific risks, any failure may cause or transmit failures affecting the participants' activity or even failures in other systems of the financial sector;

15. system of payments of particular importance – means any system with an important role in processing and settling various types of payments and which, in the case of impossibility of operation, may cause major economic effects and may undermine the public trust in the payment systems and currency, in general.

16. operating day – means the period of time when settlements take place during the day and/or night, including all processes of the operating cycle of the system;

17. interoperable systems – means two or more systems whose system operators concluded agreements based on which the execution of transfer orders from one system to another is possible;

18. system operator – means the legally responsible undertaking or undertakings for the operation of a system. A system operator may act including as settlement agent, central counterparty or clearing house;

19. ESMA – means the European Supervisory Authority (European Securities and Markets Authority), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC;

20. CERS – means the European Systemic Risk Board, established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

(2) To prevent systemic risk, by way of derogation of the provisions of Point 1 of Para (1), the National Bank of Romania may designate, as system covered by this law, an arrangement in writing, meeting the requirements referred to in Point 1 of Para (1), concluded for the execution of transfer orders defined in Point 9 Letter b) of Para (1) and which, to a limited extent, executes also orders referring to other securities.

(3) To prevent systemic risk, by way of exception from the provisions of Point 1 of Para (1), the National Bank of Romania may, as appropriate, designate as system covered by this law an

agreement in writing concluded between 2 participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house, a possible system operator or a possible indirect participant.

(4) By way of exception from the provisions of Point 2 of Para (1), if a system is supervised under the Romanian law or the law of a Member State of the European Economic Area and it only executes the transfer orders referred to in Point 9 Letter b) of Para (1), and the payment resulting from such those orders, the National Bank of Romania may decide that the entities participating in such system and having the obligation to discharge the financial obligations arising from transfer orders issued in that system be deemed institutions withering the meaning of this law, provided that at least 3 participants in the system are part of the categories referred to in Point 2 of Para (1) and such decision is justified in terms of systemic risk prevention.

(5) 'repealed' To prevent systemic risk, the National Bank of Romania may also deem an indirect participant within the meaning of Point 7 of Para (1) a participant, within the meaning of this law, provided that it is known to the system.

CHAPTER II

Netting and Transfer Orders

Art. 3. - (1) Transfer orders and netting shall be valid, legally enforceable and binding on third parties even in the event of insolvency proceedings against a participant (in that system or in an interoperable system), provided that transfer orders were entered into the system before the moment of opening of such insolvency proceedings as defined in Art. 6(1).

(1¹) The provisions of Para (1) shall also apply even in the event of insolvency proceedings against an interoperable system operator which is not a participant.

(2) Where transfer orders are entered into a system after the moment of opening of insolvency proceedings and are carried out on the operating day, as such is defined in the system rules, of opening such proceedings, the transfer orders and netting shall be legally enforceable and binding on third parties, only if the system operator can prove that when the transfer orders became irrevocable he was not aware, nor should have been aware, of the opening of such proceedings.

(3) No law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings, as defined in Article 6(1) shall lead to the unwinding of a netting made in accordance with Paras (1) and (2).

(4) The moment of entry of a transfer order into a system shall be clearly defined by the rules of that system.

(5) In the case of interoperable systems, each system shall establish, in its own system rules, the moment of entry into a system of the transfer order, so as to ensure, to the extent possible, coordination in this respect of the rules of all interoperable systems concerned. Unless expressly provided for by the rules of the systems concerned, system rules on the moment of entry into a system of transfer orders shall not be affected by any rules of the other systems with which it is interoperable.

Art. 4. Given the contractual terms applicable, funds or securities available on the settlement account of that participant and the credit facility (including the loan of certain securities) granted to that participant on the settlement day, based on the collateral provided for that purpose, may be used even if insolvency proceedings were opened against that participant or interoperable system operator to fulfil that participant's obligations in the system concerned or of the interoperable system of the operating day of the opening of the insolvency proceedings, mainly to fulfil any

obligations resulting from netting, making possible the final settlement for the system concerned or for the interoperable system.

Art. 5. - (1) 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 (moment of irrevocability).

(2) In the case of interoperable systems, each system shall establish, by its own system rules, the moment of irrevocability of transfer orders, so as to ensure, to the extent possible, coordination in this respect of the rules of all interoperable systems concerned. Unless expressly provided for by the rules of all interoperable systems, system rules on the moment of irrevocability of transfer orders shall not be affected by any rules of the other systems with which it is interoperable.

CHAPTER III

Provisions concerning Insolvency Proceedings

Art. 6. - (1) For the purpose of this law, the moment of opening of insolvency proceedings shall be the moment when the relevant authority handed down its decision.

(2) When a decision of opening the insolvency proceedings has been taken by the relevant authority under the Romanian law against a participant in the system, such authority shall immediately notify that decision to the National Bank of Romania and National Securities Commission. The relevant authority's obligation to notify shall be deemed fulfilled provided that it received from the authority concerned the acknowledgment of receipt of that decision.

(3) The National Bank of Romania and National Securities Commission shall immediately notify all national systems of the decision of opening the insolvency proceedings received from the relevant authority, in accordance with Para (2), or from the Member States of the European Economic Area.

(4) The National Bank of Romania shall immediately notify the National Securities Commission of the decision of opening the insolvency proceedings communicated by the Member States of the European Economic Area.

Art. 7. - (1) 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 earlier than the moment of opening of such proceedings as defined in Art. 6 (1).

(2) The provisions of Para (1) shall also apply to the rights and obligations of a participant in an interoperable system or of the interoperable system operator that is not a participant.

Art. 8. - The rights and obligations of a participant arising from, or in connection with, its participation in a system against whom insolvency proceedings were opened shall be determined by the law governing that system.

CHAPTER IV

Insulation of the Rights of Holders of Security and Priority Creditors from the Effects of the Insolvency of the Participant who Provided the Security

Art. 9. - (1) The rights of a system operator or of a participant in connection with the security provided to it and/or held by it in connection with the system or any interoperable system, and the

rights of the National Bank of Romania, central banks of other Member States of the European Economic Area and European Central Bank in connection with the securities held or provided to them shall not be affected by insolvency proceedings against the:

- a) participant in that system or interoperable system;
- b) interoperable system operator that is not a participant;
- c) counterparty to the National Bank of Romania, central bank of a Member State of the European Economic Area or European Central Bank;
- d) any third party that provided the security.

(2) Such securities referred to in Para (1) may be realised for the satisfaction of these secured rights.

Art. 10. – Where securities or rights in securities are provided as security to participants, system operators and/or National Bank of Romania, central banks of Member States of the European Economic Area or European Central Bank, and their right or that of any nominee, agent or third party acting on their behalf with respect to the securities is legally recorded on a register, account or centralised deposit system located in Romania or in a Member State of the European Economic Area, the determination of the enforceability, content, extent and effects of their rights over those securities shall be governed by the law of the State where the rights were validly registered.

CHAPTER V

Provisions Applicable after Joining the European Union

Art. 11. – The National Bank of Romania must notify the decision provided for in Art. 6(2), as soon as it was notified to it, to other Member States of the European Economic Area, CERS and ESMA.

Art. 12. - (1) The National Bank of Romania shall notify ESMA, systems and system operators falling under this law. ESMA shall publish such information on its Internet page.

(2) The Ministry of Public Finance shall notify ESMA that the National Bank of Romania is the competent national authority that must inform and be informed of the opening of insolvency proceedings against a participant in a system.

CHAPTER VI

Final Provisions

Art. 13. - Application.

(1) The National Bank of Romania shall designate the systems, as the same are defined in Point 1 of Art. 2(1), covered by this law.

(2) Designation of systems that, according to law, are not authorised by the National Securities Commission shall be made by the National Bank of Romania based on its own criteria.

(3) All systems that, according to law, are authorised by the National Securities Commission and intended for the settlement of securities operations shall fall under this law. The National Securities Commission shall notify the National Bank of Romania of all securities settlement systems authorised by it, and the National Bank of Romania shall automatically designate those systems as falling under this law.

(4) The National Bank of Romania shall monitor on an ongoing basis the payment systems and securities settlement systems settling through payment systems of systemic or particular importance.

Art. 14. – Each system operator designated by the National Bank of Romania in accordance with Art. 13 must inform it of the system participants, including indirect participants and interoperable system operators that are not participants, and any change in connection therewith.

Art. 15. - Any institution shall offer free of charge, upon request, any person who can demonstrate a legitimate interest, information concerning the systems in which such institution participates and the main operating rules of those systems, within maximum 5 days as of the receipt of such request.

Art. 16. – The National Bank of Romania and National Securities Commission shall supervise compliance with the provisions of this law in the systems covered by the same.

Art. 16¹. - (1) The National Bank of Romania shall cooperate with ESMA for the application of the provisions of this law, in accordance with Regulation (EU) No 1.095/2010 of the European Parliament and of the Council.

(2) The National Bank of Romania shall forthwith provide ESMA with all information required for the fulfilment of its duties, in accordance with Article 35 of Regulation (EU) No 1.095/2010 of the European Parliament and of the Council.

Art. 17. – This law transposes 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, published in the Official Journal of the European Community (OJ)C No L166 of 11 June 1998.

This law was adopted by the Parliament of Romania, in compliance with the provisions of Arts. 75 and 76 (2) of the Constitution of Romania, republished.

PRESIDENT OF THE CHAMBER OF DEPUTIES PRESIDENT OF THE SENATE

VALER DORNEANU NICOLAE VĂCĂROIU

Bucharest, 16 June 2004.

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