



STATUTORY INSTRUMENTS.

**S.I. No. 318 of 2011**

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EUROPEAN COMMUNITIES (FINANCIAL COLLATERAL  
ARRANGEMENTS)(AMENDMENT) (No.2) REGULATIONS 2011

**(Prn. A11/1135)**

EUROPEAN COMMUNITIES (FINANCIAL COLLATERAL  
ARRANGEMENTS)(AMENDMENT) (No.2) 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 2002/47/EC of the European Parliament and of the Council of 6 June 2002<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 (Financial Collateral Arrangements) (Amendment) (No. 2) Regulations 2011.
2. These Regulations come into operation on 30 June 2011.
3. The European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010) are amended as set out in the Schedule.

<sup>1</sup>OJ No. L168, 27.6.2002, p. 43

<sup>2</sup>OJ 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 (FINANCIAL COLLATERAL  
ARRANGEMENTS) REGULATIONS 2010

(S.I. No. 626 of 2010)

Item (1)	Provision amended (2)	Amendment (3)
1	Regulation 2	<p>(a) Substitute the following for the definition of “close-out netting provision”:</p> <p>“ ‘close-out netting provision’ means—</p> <p>(a) a provision of a financial collateral arrangement, or an arrangement of which a financial collateral arrangement forms part, or</p> <p>(b) an enactment or a rule of law,</p> <p>as a result of which, on the occurrence of an enforcement event, either or both of the following apply (whether through the operation of netting or set-off or otherwise):</p> <p>(i) the obligations of the parties—</p> <p>(I) are accelerated so as to be immediately due and are expressed as an obligation to pay an amount representing the estimated current value of the obligations, or</p> <p>(II) are terminated and replaced by an obligation to pay such an amount;</p> <p>(ii) an account is taken of what is due from each party to the other in respect of those obligations and the party from which the larger amount is due is required to pay to the other party a net amount equal to the balance of the account;”.</p> <p>(b) In the definition of “financial instruments” substitute the following for subparagraph (h):</p> <p>“(h) claims relating to, or rights in or in respect of, shares, securities, bonds, and instruments of a kind referred to in subparagraphs (a) to (g);”.</p> <p>(c) Insert the following definitions:</p> <p>“ ‘enactment’ has the meaning given to it by section 2 of the Interpretation Act 2005 (No. 23 of 2005);</p> <p>‘supervised financial institution’ means a financial institution that is subject to prudential supervision by a regulatory authority established by or under a law of a state, and includes (but is not limited to) the following:</p> <p>(a) a credit institution (as defined in Article 4(1) of the Recast Credit Institutions Directive, but including the institutions listed in Article 2 of that Directive);</p>

Item (1)	Provision amended (2)	Amendment (3)
		<p>(b) an investment firm (as defined in Article 4.1(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004<sup>3</sup>);</p> <p>(c) a financial institution (as defined in Article 4(5) of the Recast Credit Institutions Directive);</p> <p>(d) an insurance undertaking (as defined in Article 1(a) of Council Directive 92/49/EEC of 18 June 1992<sup>4</sup>);</p> <p>(e) an assurance undertaking (as defined in Article 1(1)(a) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002<sup>5</sup>);</p> <p>(f) a management company (as defined in Article 1a(2) of Council Directive 85/611/EEC of 20 December 1985<sup>6</sup>);</p> <p>(g) an undertaking for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Council Directive 85/611/EEC of 20 December 1985;”.</p>
2	Regulation 3(2)	<p>Substitute the following for paragraphs (2) and (3):</p> <p>“(2) The collateral taker and the collateral provider who are the parties to the financial collateral arrangement must each be one of the following:</p> <p>(a) a public authority (excluding a publicly guaranteed undertaking unless it is covered by one or more of subparagraphs (b) to (f));</p> <p>(b) a central bank, the European Central Bank, the Bank for International Settlements, a multilateral development bank, the International Monetary Fund or the European Investment Bank;</p> <p>(c) a supervised financial institution;</p> <p>(d) a central counterparty, settlement agent or clearing house, or any similar entity that is operating in the futures, options or derivatives markets in a way not covered by the Settlement Finality Directive, provided the entity is regulated under the law of the State or of another country;</p> <p>(e) a person (other than a natural person) who acts as a trustee, or in a representative capacity, on behalf of—</p> <p>(i) any one or more persons of whom at least one is a bondholder or the holder of any other form of securitised debt, or</p>

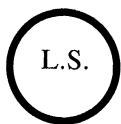
<sup>3</sup>OJ L 145, 30.4.2004, p. 1

<sup>4</sup>OJ L 228, 11.8.1992, p. 1

<sup>5</sup>OJ L 345, 19.12.2002, p. 1

<sup>6</sup>OJ L 375, 31.12.1985, p. 3

Item (1)	Provision amended (2)	Amendment (3)
		<p>(ii) an authority, bank, institution or other entity referred to in any of subparagraphs (a) to (d);</p> <p>(f) any other person or group (other than a natural person), but only if the other party to the arrangement is an authority, bank, institution or other entity of a kind specified in any of subparagraphs (a) to (e).</p> <p>(3) In paragraph (2)(d) “central counterparty”, “clearing house” and “settlement agent” have the respective meanings given by Article 2 of the Settlement Finality Directive.”.</p>
3	Regulation 4(5)	<p>Substitute the following for paragraph (5):</p> <p>“(5) Paragraph (4) is without prejudice to Council Directive 93/13/EEC of 5 April 1993<sup>7</sup> or any other law of the State concerning unfair contract terms.”.</p>
4	Regulation 13(b)	<p>Substitute the following for paragraph (b):</p> <p>“(b) reorganisation measures commence on the day on which an intervention by an administrative authority or a judicial authority, referred to in the definition of “reorganisation measure” in Regulation 2(1), commences.”.</p>
5	New Regulation	<p>Insert the following after Regulation 18:</p> <p><i>“Relationship between these Regulations and Credit Institutions (Stabilisation) Act 2010</i></p> <p>18A. (1) For the avoidance of doubt, nothing in Regulation 6, 7, 10, 11 or 12 shall affect the operation or effect of section 61 of the Credit Institutions (Stabilisation) Act 2010 (No. 36 of 2010) (in this Regulation referred to as the ‘Act of 2010’).</p> <p>(2) Without prejudice to paragraph (1) and for the avoidance of doubt, no order or requirement made under the Act of 2010 and no act, omission or consequence referred to in section 61(3) of that Act shall constitute an enforcement event for the purposes of these Regulations.</p> <p>(3) Without prejudice to paragraph (1) and for the avoidance of doubt, no order or requirement made under the Act of 2010 and no act, omission or consequence referred to in section 61(3) of that Act shall constitute an enforcement event related to a financial collateral arrangement.”.</p>



GIVEN under my Official Seal,  
27 June 2011.

MICHAEL NOONAN,  
Minister for Finance.

<sup>7</sup>OJ L 95, 21.4.1993, p. 29

## 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 (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010), transposing Directive 2002/47/EC of 6 June 2002 which deals with financial collateral arrangements and the provision of financial collateral 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 aim of the Directive is to create a Community-wide regime for the provision of financial instruments (mainly securities) and cash (not banknotes, but rather money credited to an account) as collateral and where possession or control of the collateral passes to the collateral taker. The regime applies to both title transfer financial collateral arrangements (including repurchase agreements or “repos”) and security financial collateral arrangements. It does not apply to non-financial forms of collateral, such as real estate, plant and machinery, etc.

These arrangements should allow financial collateral to be used more freely and effectively across the Union and contribute to the cost efficiency of the financial market and to the stability of the financial system. To achieve these objectives, the Directive requires Member States to ensure that certain provisions of insolvency law do not apply to the types of financial collateral arrangement that are covered by the Directive; in particular, those that would inhibit the effective realisation of financial collateral or cast doubt on the validity of current techniques, such as bilateral close-out netting, the provision of additional collateral in the form of top-up collateral and the substitution of collateral.

The purpose of these amending Regulations is to amend certain provisions so as to ensure that S.I. No. 626 of 2010 applies as comprehensively and as clearly as possible to orders and requirements made under the Credit Institutions (Stabilisation) Act 2010; and make certain consequential amendments so that, inter alia, S.I. No. 626 of 2010 more accurately reflects the text of the Financial Collateral Directive.

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