

51998AP0005

Decision on the common position adopted by the Council with a view to adopting a European Parliament and Council Directive on settlement finality in payment and securities settlement systems (C4-0534/97 96/0126(COD))

Official Journal C 056 , 23/02/1998 P. 0027

A4-0005/98

Decision on the common position adopted by the Council with a view to adopting a European Parliament and Council Directive on settlement finality in payment and securities settlement systems (C4-0534/97 - 96/0126(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the common position of the Council, C4-0534/97 - 96/0126(COD) ((OJ C 375, 10.12.1997, p. 34.)),
- having regard to its opinion at first reading ((OJ C 132, 28.4.1997, p. 74.)) on the Commission proposal to the European Parliament and the Council COM(96)0193 ((OJ C 207, 18.7.1996, p. 13.)),
- having regard to the amended Commission proposal, COM(97)0345 ((OJ C 259, 26.8.1997, p. 6.)),
- having regard to Article 189b(2) of the EC Treaty,
- having regard to Rule 72 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on Legal Affairs and Citizens' Rights (A4-0005/98),

1. Amends the common position as follows;
2. Calls on the Commission to support Parliament's amendments in the opinion it is required to deliver pursuant to Article 189b(2)(d) of the EC Treaty;
3. Calls on the Council to approve all Parliament's amendments, amend its common position accordingly and definitively adopt the act;
4. Instructs its President to forward this decision to the Council and Commission.

(Amendment 5)

Article 3(1)

>Original text>

1. Transfer orders and netting shall be legally enforceable and, even in the event of insolvency proceedings against a participant, shall be binding on third parties, provided that transfers orders were entered into a system before the moment of opening of such insolvency proceedings as defined in Article 6(1) or if they were carried out on the day of opening of the insolvency proceedings unless the system was aware or should have been aware of the opening of such proceedings.

>Text following EP vote>

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

Where, in exceptional cases, transfer orders enter into a system after the moment of opening of insolvency proceedings and were settled on the day of such opening, they shall only be legally enforceable and binding on third parties if the settlement agent, the central counterparty or the clearing house can prove, after the moment of settlement, that they were unaware and should not have been aware of the opening of the insolvency proceedings.

(Amendment 6)

Article 10, second paragraph a and b (new)

>Text following EP vote>

In addition to the notification provided for in the second paragraph above, Member States may impose

supervision or approval on systems which fall under their jurisdiction.

Whoever has a legitimate interest may require from an institution to be informed about the systems in which it participates and about the main rules governing the functioning of such systems.

(Amendment 4)

Article 11

>Original text>

Article 11

In order to protect systems, each Member State may impose more stringent conditions on systems than those laid down by this Directive.

>Text following EP vote>

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