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Legislative resolution embodying Parliament's opinion on the proposal for a European Parliament and Council Directive on settlement finality and collateral security (COM(96)0193 C4-0306/96 96/0126(COD))

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A4-0097/97

Proposal for a European Parliament and Council Directive on settlement finality and collateral security (COM(96)0193 - C4-0306/96 - 96/0126(COD))

The proposal was approved with the following amendments:

(Amendment 1)

Title

>Original text>

Proposal for a European Parliament and Council Directive on settlement finality and collateral security

>Text following EP vote>

Proposal for a European Parliament and Council Directive on the treatment of payment systems and securities settlement systems in the context of insolvency proceedings concerning credit or securities institutions

(Amendment 2)

Recital -1 (new)

>Text following EP vote>

Whereas laws on the bankruptcy of credit and securities institutions have not yet been harmonized; whereas a proposal dating back to 1985 on the reorganization and winding-up of credit institutions⁽¹⁾ amended on 8 February 1988 is still pending before the Council; whereas the agreement of 23 November 1995 of the Member States meeting within the Council concerning insolvency proceedings explicitly excludes insurance undertakings, credit institutions and investment companies;

(1) OJ C 356, 31.12.1985, p. 55.

(Amendment 3)

Recital 7a (new)

>Text following EP vote>

Whereas the 'Report of the committee on interbank netting schemes of the central banks of the Group of Ten countries' by the Bank for International Settlements in Basle of November 1990 makes the following recommendations, inter alia: 'Netting schemes should have a well-founded legal basis under all relevant jurisdictions and netting scheme participants should have a clear understanding of the impact of the particular scheme on each of the financial risks affected by the netting process';

(Amendment 4)

Article 1(1)

>Original text>

1. any Community payment system operating in any currency and the ECU and to collateral security provided in connection with participation in such a system.

>Text following EP vote>

1. any Community payment system or securities settlement system operating in any currency, the ECU, the Euro or in various currencies which the system converts one against another and to collateral security provided in connection with participation in such a system.

(Amendment 5)

Article 1(2)

>Original text>

2. any Community institution which participates directly in a third- country payment system and to collateral security provided in connection with participation in such a system.

>Text following EP vote>

2. any Community institution which participates directly in a third- country payment system or securities settlement system and to collateral security provided in connection with participation in such a system.

(Amendment 6)

Article 1a (new)

>Text following EP vote>

Article 1a

Tasks of the Member States

1. The Member States shall amend their insolvency laws in accordance with this Directive so as to ensure that the functioning of payment systems and securities settlement systems is not disrupted by insolvency proceedings concerning credit institutions or securities institutions.

>Text following EP vote>

2. Agreements on payment systems and securities settlement systems shall enjoy legal consideration in such insolvency proceedings, in accordance with this Directive, provided that they do not conflict with binding provisions of this Directive, are drawn up in writing and have been deposited with the authority responsible for supervising the institutions which participate in the system. These requirements shall apply, mutatis mutandis, to any changes to such agreements.

>Text following EP vote>

3. The responsible authority shall publish a notice, in the manner laid down for official notices, that an agreement has been deposited and that it is open for inspection, and indicating the participating institutions.

(Amendment 7)

Article 2(a)

>Original text>

(a) 'institution' means any undertaking as defined in Article 1 of Council Directive 77/780/EEC including the institutions set out in the list in Article 2(2) thereof, which participates directly in a payment system, and any other undertaking which participates directly in a payment system;

>Text following EP vote>

(a) 'institution' means any undertaking as defined in Article 1 of Council Directive 77/780/EEC including the institutions set out in the list in Article 2(2) thereof, which participates directly in a payment system or a securities settlement system, and any other undertaking which participates directly in a payment system;

(Amendment 8)

Article 2(b)

>Original text>

(b) 'direct' participation means participation in a payment system entailing responsibility for settlement;

>Text following EP vote>

(b) 'direct' participation means participation in a payment system or a securities settlement system entailing responsibility for settlement;

(Amendment 9)

Article 2(e)

>Original text>

(e) 'payment order' means any instruction to place at the disposal of a final recipient an amount of money by means of a book entry on the accounts of a credit institution or a central bank;

>Text following EP vote>

(e) 'payment order' means any instruction to place at the disposal of a final recipient an amount of money by means of a book entry on the accounts of a credit institution or a central bank, and in the case of securities settlement systems, an instruction to an institution to transfer the claim to one or more securities by means of a book entry in a register or in another form;

(Amendment 10)

Article 2(h)

>Original text>

(h) 'payment system' means any written agreement between two or more institutions for executing

payment orders;

>Text following EP vote>

(h) 'payment system' means any written agreement between institutions with rules for executing payment orders and clearing balances in connection with settlement;

(Amendment 11)

Article 2(i)

>Original text>

(i) 'Community payment system' means a payment system located in a Member State. A payment system shall be deemed to be located in the Member State the law of which has been chosen by the institutions which participate directly in that payment system. In the absence of choice, the payment system shall be deemed to be located in the Member State where the settlement takes place;

>Text following EP vote>

(i) 'Community system' means a payment or securities settlement system located in a Member State. A Community system shall be deemed to be located in the Member State where the settlement or book entry takes place;

(Amendment 12)

Article 2(j)

>Original text>

(j) 'third-country payment system' means any payment system which is not a Community payment system;

>Text following EP vote>

(j) 'third-country system' means any payment system which is not a Community payment system;

(Amendment 13)

Article 2(k)

>Original text>

(k) 'monetary policy operation' means an outright (spot and forward) buying and selling operation in the financial markets or such an operation under a repurchase agreement, or lending or borrowing of claims and marketable instruments, whether in Community or in non-Community currencies or in precious metals, by a Member State central bank or by the future European Central Bank; it also means the conduct of credit operations, by a Member State central bank or by the future European Central Bank, with credit institutions or other market participants, with lending being based on adequate collateral;

>Text following EP vote>

(k) 'monetary policy operation' means an outright (spot and forward) buying and selling operation in the financial markets or such an operation under a repurchase agreement, or lending or borrowing of claims and marketable instruments, or derivatives from such claims or instruments whether in Community or in non-Community currencies or in precious metals, by a Member State central bank or by the future European Central Bank; it also means the conduct of credit operations, by a Member State central bank or by the future European Central Bank, with credit institutions or other market participants, with lending being based on adequate collateral;

(Amendment 14)

Article 2(1)

>Original text>

(1) 'collateral security' means all assets, provided for the purpose of securing rights and obligations potentially arising in a payment system or provided to Member State central banks or to the future European Central Bank in connection with monetary policy operations.

>Text following EP vote>

(1) 'collateral security' means all assets, provided for the purpose of securing rights and obligations potentially arising in a payment system or a securities settlement system or provided to Member State central banks or to the future European Central Bank in connection with monetary policy operations.

(Amendment 15)

Article 2(la) (new)

>Text following EP vote>

(la) 'securities settlement system' means a written agreement between securities institutions with rules for the transmission and execution of securities transactions between participants.

(Amendments 16 and 21)

Article 3

>Original text>

1. Payment netting is legally enforceable and shall, even in the event of insolvency proceedings against any institution which participates directly in a payment system, be binding on third parties, provided that the payment order was entered into the payment system before the opening of insolvency proceedings. The moment of entrance shall be defined by the rules of that payment system.

>Text following EP vote>

1. Payment netting is legally enforceable and shall, even in the event of insolvency proceedings against any EC institution which participates directly in a payments system, be binding on third parties, provided that the payment order was entered into the payment system before the opening of insolvency proceedings.

>Original text>

2. Any rule on the setting aside of contracts and transactions entered into before the opening of insolvency proceedings, shall not lead to the unwinding of the netting.

>Text following EP vote>

2. Any rule on the setting aside of contracts and transactions entered in the Community system before the opening of insolvency proceedings, shall not lead to the unwinding of the settlement or securities transactions.

>Text following EP vote>

2a. For the purposes of this Directive the moment of opening insolvency proceedings against an institution participating in a Community system shall be deemed to be the moment when the competent authority formally notifies the national supervising authority of the opening of insolvency proceedings.

>Text following EP vote>

The national supervising authority shall formally notify the other participants in the system of the opening of insolvency proceedings.

(Amendment 17)

Article 4(1)

>Original text>

1. A payment order may not be revoked either by an institution which participates directly in a payment system or a third party as against the other direct participants in that payment system after the moment defined by the rules of that payment system. This rule applies notwithstanding the opening of insolvency proceedings.

>Text following EP vote>

1. A payment order or an order for a securities transaction may no longer be revoked by an institution which participates directly in a payment system or securities settlement system as against the other direct participants in that system after the moment when insolvency proceedings are opened.

(Amendment 18)

Article 5

>Original text>

Insolvency proceedings shall not have retroactive effects on the rights and obligations of an institution in connection with direct participation in a Community payment system. Any other rule or practice which has a retroactive effect shall be superseded.

>Text following EP vote>

Insolvency proceedings shall not have retroactive effects on the rights and obligations of an institution in connection with direct participation in a Community system before such proceedings are opened. Rules which have a retroactive effect shall not apply to institutions involved in insolvency proceedings.

(Amendment 19)

Article 6

>Original text>

Applicable insolvency law

In the event of insolvency proceedings against an institution which participates directly in a payment system, the rights and obligations arising from or in connection with direct participation in that payment system, shall be determined by the insolvency law of the country where the payment system is located.

>Text following EP vote>

Deleted

(Amendment 20)

Article 7

>Original text>

1. The rights of a pledgee in connection with liabilities of one participant to one or more other participants in a payment system or the rights of monetary authorities to whom collateral security has been pledged in connection with monetary policy operations, shall not be affected by the opening of insolvency proceedings against the pledger. The collateral security shall be realised for the satisfaction of rights in connection with participation in a payment system or with monetary policy operations with priority over all other creditors.

2. Where a third-country institution constitutes collateral security in a Member State in connection with participation in a Community payment system or in connection with monetary policy operations, the rights of the pledgee shall not be affected by the opening of insolvency proceedings against that third-country institution.

>Text following EP vote>

The rights of:

- an institution or of a settlement agent to collateral security provided to it in connection with a system and

- EC monetary authorities to collateral security provided to them in connection with monetary policy operations,

shall not be affected by the opening of insolvency proceedings against the institution which provided the collateral security. Such collateral security may be realised for the satisfaction of these rights.

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(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council, COM(96)0193 - 96/0126(COD) ((OJ C 207, 18.7.1996, p. 13.)),

- having regard to Article 189b(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C4-0306/96),

- having regard to Rule 58 of its Rules of Procedure,

- having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy (A4-0097/97),

1. Approves the Commission proposal, subject to Parliament's amendments;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;

3. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 189b(2) of the EC Treaty;

4. Instructs its President to forward this opinion to the Council and Commission.