

EUROPEAN PARLIAMENT

2004



2009

Session document

6.12.2006

B6-0632/2006

MOTION FOR A RESOLUTION

further to Question for Oral Answer B6-0120/2006

pursuant to Rule 108(5) of the Rules of Procedure

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on the implications of signing the Hague Securities Convention

B6-0632/2006

European Parliament resolution on the implications of signing the Hague Securities Convention

The European Parliament,

- having regard to the Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary,
 - having regard to the proposal for a Council decision concerning the signature of the Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary,
 - having regard to the Commission study on certain legal aspects of the Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary,
 - having regard to Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, and in particular Article 9 thereof,
 - having regard to 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, and in particular Article 9(2) thereof,
 - having regard to 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, and in particular Article 24 and Article 31, third indent, thereof,
 - having regard to the opinions of the European Central Bank,
 - having regard to its resolution of 7 September 2006 on the participation of the European Parliament in the work of the Hague Conference following the accession of the Community,
 - having regard to its resolution on the communication from the Commission to the Council and the European Parliament entitled ‘Clearing and settlement in the European Union: main policy issues and future challenges’,
 - having regard to Article 300(2), first sub-paragraph, and (3), second sub-paragraph, of the EC Treaty,
 - having regard to Rule 108(5) of its Rules of Procedure,
- A. whereas the Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary is incompatible with the three directives on collateral, settlement finality and the winding-up of credit institutions,
- B. whereas the Commission is therefore proposing to revise these three directives, which

were adopted in co-decision with Parliament,

- C. whereas these directives laid down a principle known as PRIMA (Place of the Relevant Intermediary Approach) seeking to guarantee the legal certainty of payments and effective supervision of financial intermediaries,
- D. whereas, in the absence of harmonisation of material rights on property matters, voting rights and the rights and obligations of central depositaries in respect of account holders, particularly the distinction between the assets held on their own account and those held on behalf of a client, it is necessary, before abandoning the PRIMA principle, for effective consultation of the European Parliament to take place on the basis of a prior in-depth examination by all the committees concerned,
- E. whereas the assent of the European Parliament is required for the ratification of the Hague Convention,
 - 1. Reiterates the need for democratic checks on the negotiations carried on in the context of the Hague Conference on Private International Law,
 - 2. Stresses the need for upstream consultation of Parliament prior to ratification, particularly on draft mandates for negotiation and the need for disconnection clauses;
 - 3. Reiterates Parliament's commitment to the PRIMA principle, to defining a common framework for clearing and settlement activities, to effectively combating money laundering and to respect for shareholders' voting intentions;
 - 4. Considers it crucial to guarantee ex-ante legal certainty as regards the law applicable to certain matters relating to the holding, perfection and disposition of securities credited to an account held with intermediaries and the collateralisation of such securities, in an international context, and to reduce the systemic risks which might result from uncertainties in this respect;
 - 5. Expresses its extreme concern at the reservations repeatedly expressed by the European Central Bank regarding systemic risk and the risk of an exponential growth in litigation on the enforcement of securities, in which courts will have to apply a foreign law with a view inter alia, to determining the priority of the security;
 - 6. Considers that the property aspects of all securities credited to the accounts of participants in the system should be governed by a single legal system, and, similarly, that a single legal system should govern the contractual aspects of the relationship between the system and each of its participants, in order to protect the finality, security and transparency of the system;
 - 7. Considers that ensuring the security of intra-European transactions must take precedence over the facilitation of transactions between the European Union and the rest of the world;
 - 8. Regrets the highly inadequate nature of the reality test (Article 4(1) of the Convention) and the exemptions with regard to public policy legislation (Article 11(3) of the Convention), which risk encouraging the choice of the least restrictive legislation and

creating distortions in the internal market in financial services;

9. Calls on the Commission to submit to Parliament a comprehensive impact study on the implications of accession for the law and economy of the European Union, specifying in particular the fiscal consequences of acceding to the Convention, the implications of the transfer of risks between entities (central depositaries, banks, depositors) resulting from the abandonment of the PRIMA principle, the implications for the exercise of voting rights attached to securities, the effects on the remuneration of the ultimate owner of securities, on combating market abuses, on combating money-laundering and the funding of terrorism, on the effectiveness of the clearing and settlement system and on the identification of risks of insolvency of credit institutions;
10. Calls for this impact study to be adopted by the College of Commissioners before any commitment is made to sign on behalf of the EU;
11. Instructs its President to forward this resolution to the Council and Commission.