

Banks: settlement finality in payment and securities settlement systems

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Experience in recent years has shown that banks are not immune to bankruptcy and that, when a bank becomes insolvent, inter-bank payment systems may be jeopardised. The Committee voted on the report by Klaus LEHNE (EPP, D) on the proposal for a directive on settlement finality in payment and securities settlement systems. The aim of the directive is to reduce the dangers of bank insolvency. Under the directive, balances which result from the clearing of payments ("netting") within such systems would be removed from the grasp of a liquidator; in other words, they would be made "insolvency-proof". Mr LEHNE said that, at the present stage of development of the single market and with monetary union just around the corner, the rules governing this matter needed to be harmonised throughout the EU. On the whole, he welcomed the Commission's proposal. One of the few remaining points of contention following the adoption of the common position by the Council concerns the moment at which transfer orders and netting cease to be legally enforceable and binding on third parties. The Council allows two possibilities: either the transfer orders (and the netting) were entered into a system before the insolvency proceedings were opened or they were carried out on the day the proceedings were opened. The Committee has adopted an amendment seeking to eliminate the second possibility. The rapporteur believes that in this way the risk of manipulation is removed and the proposal for a directive is made compatible with existing bankruptcy legislation (i.e. the moment at which the bankruptcy proceedings are opened counts as the cut-off point for determining the validity of transfer orders). The committee also proposes deleting a new Article 11 which would allow Member States to protect their national systems by imposing more stringent conditions. Boosted by a unanimous vote in favour of his report, Mr LEHNE said he would certainly stand up for the position set out in it and, if necessary, open the conciliation procedure.