Resolution on draft implementing measures of financial instruments markets Directive 2004 /39/EC MiFID

2006/2582(RSP) - 15/06/2006 - Text adopted by Parliament, topical subjects

The European Parliament adopted a resolution and approved of the MiFID draft implementing measures, taking the view that, as they currently stand, the implementing measures comprise the best achievable outcome for all parties concerned. To recall, the Commission has produced adraft directive and draft regulation, implementing Directive 2004/39/EC. Parliament pointed out that Article 47 of the EC Treaty, which is the legal basis of Directive 2004/39/EC, makes no express provision for implementing measures. It asked the Commission to take the utmost account of the limits on its powers conferred by Directive 2004 /39/EC, in accordance with the applicable provisions of the EC Treaty, in order to ensure legal certainty for financial market players.

Parliament pointed out that the draft implementing measures constitute a workable solution for achieving the objectives of improved operating conditions for investment firms and other trading bodies as well as of efficient, transparent and secure financial markets in the EU. It stressed that the work undertaken by Parliament since the publication of the implementing measures has been stimulated by the need to respect those legislative provisions aimed at achieving a balanced outcome between competition and transparency for financial markets, stakeholders (shareholders, issuers and users), regulatory authorities, and democratically elected representatives.

Parliament noted that the procedure regarding the adoption of implementing measures is almost unprecedented and detracts from the usual development of EC legislation. Accordingly, it pointed to the need to achieve a mutually satisfactory outcome for all institutions concerned in order to develop the inter-institutional relationship positively. Despite the generally cooperative approach amongst EU institutions, there are structural deficiencies in the way in which the delegation of legislative powers to the Commission occurs, which are capable of jeopardising the outcome of important regulation such as the implementing measures.

Parliament went on to signal its willingness to continue to improve the functioning of the inter-institutional relationship across the whole range of policy areas, and especially within the Lamfalussy process, with a view to reaching a lasting and mutually satisfactory solution, which puts Parliament on an equal footing with the Council when calling back the delegation of legislative powers. The adoption of Directive 2004/39/EC by co-decision confers on Parliament an integral role in determining the substance of the implementing measures. Parliament felt that Council Decision 1999/468/EC grants Parliament not only the authority to reject proposed implementing measures if they are ultra vires but also to modify them in line with the underlying co-decision powers and the spirit of the inter-institutional relationship, which needs to be respected.

Parliament noted the importance of consolidating the role of the Committee of European Securities Regulators (CESR) in coordinating the activities of national regulators and with a view to promoting regulatory convergence. It remarked that coordinated activity between the competent national authorities should therefore be generally subject to discussion within the CESR. At the current stage, the CESR lacks the operational means to fulfil its role effectively, and Parliament called on Member States to provide the CESR with the means necessary to put into effect Directive 2004/39/EC and its implementing measures, and to strengthen the democratic accountability of the CESR, in particular towards the Parliament.