Resolution on the implications of signing the Hague Securities Convention

2006/2670(RSP) - 14/12/2006 - Text adopted by Parliament, topical subjects

The European Parliament adopted a resolution on the implications of signing the Hague Securities Convention. The latter is intended to establish a rule to determine the law applicable to certain issues in respect of the holding, transfer and collateralisation of securities credited to a securities account held with an intermediary in an international context. The heart of the Convention’s regime is laid down in Article 4 (1), according to which the law applicable to the issues covered by the Convention is the law in force in the State that the relevant intermediary and the account holder have expressly agreed as governing their account agreement. There is currently a proposal for a Council decision concerning the signature of the Hague Securities Convention, and the Commission has made a legal assessment of certain aspects of the Hague Securities Convention.

Parliament pointed out in this resolution that the Hague Securities Convention is incompatible with Directives 2002/47/EC, 98/26/EC and 2001/24/EC. Under current EC law, the law which determines rights in securities is that of the Member State (or, in some cases, third country) in which the securities account that records the existence of those rights is located The Commission is therefore proposing to revise these three Directives, which were adopted by Parliament by means of the co-decision procedure. 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. Parliament's assent is required for the ratification of the Hague Securities Convention.

The European Parliament reiterated the need for democratic checks on the negotiations carried on in the context of the Hague Conference on Private International Law, and stressed the need for upstream consultation of Parliament prior to ratification, particularly on draft mandates for negotiation and the need for disconnection clauses. It was committed 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.

Parliament felt that it was 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 and 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. It expressed 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, in particular, to determining the priority of the security.

The property aspects of all securities credited to the accounts of participants in the clearing and settlements system should be governed by **a single legal system**, and, similarly, a single legal system should govern the contractual aspects of the relationship between the clearing and settlement system and each of its participants, in order to protect the finality of transactions and the security and transparency of the clearing and settlement system. Parliament considered that ensuring the security of intra-European transactions must take precedence over the facilitation of transactions between the EU and the rest of the world.

It regretted the highly inadequate nature of the reality test (Article 4(1) of the Hague Securities Convention) and the exemptions with regard to public policy rules (Article 11(3) of the Hague Securities Convention), which risk encouraging the choice of the least restrictive law and creating distortions in the internal market in financial services.

The Commission is asked to submit to Parliament a comprehensive impact study on the implications of accession to the Hague Securities Convention for the law and economy of the European Union. This study should specify 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 on the funding of terrorism, the effectiveness of clearing and settlement systems and the identification of risks of the insolvency of credit institutions. This impact study should be adopted by the College of Commissioners before the Hague Securities Convention is signed on behalf of the Community.