



EUROPEAN CENTRAL BANK

EUROPEAN FINANCIAL MARKETS LAWYER GROUP

- CHAIRMAN -

Members of EFMLG

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Dear colleagues,

Money market report – Legal aspects of euro area short-term securities

In preparation of our up-coming meeting on 27 February, please find attached a first draft version of a report on the legal aspects of short-term securities, which the EFMLG has been asked to prepare with contributions from the ECB and the Working Group of Financial Law Experts (FLEX).¹ The idea behind this project is to consider the legal situation in relation to three specific types of negotiable debt instruments under the legal regimes in the euro area Member States with a view to identify means to promote the further integration of the short-term securities markets. The three types of securities considered are certificates of deposit (CDs), commercial paper (CPs) and medium-term notes (MTNs).

First draft version of a report on legal aspects of short-term securities

The attached first draft version for a report has been prepared by the lawyers of the ECB's Legal Services in order to initiate the project for discussion in the February meetings of FLEX and EFMLG. The current draft consists of a narrative part and three annexes, although we may of course also discuss the appropriate scope and structure for the envisaged report when we meet. The narrative main body of the draft report is intended to explain the background of the project (chapter 1), the legislative situation at the EU level (chapter 2) and the legal situation in the euro area Member States (chapter 3). On the basis of the legal analysis undertaken by the EFMLG, a final chapter is intended to identify the main legal obstacles to integration of the short-term securities markets and possible ways forward

¹ FLEX is composed of lawyers from the national central banks of the Eurosystem/ESCB with special expertise in financial law matters. FLEX operates under the auspices of the ECB Legal Committee (LEGCO) and is chaired by the Head of the Financial Law Division of the ECB, Mr. Erwin Nierop.

towards market integration (chapter 4). Each of the three annexes describe the legal rules governing the issuance, trading and settlement of transactions relative to CDs (annex I), CPs (annex II) and MTNs (annex III) in each of the 12 euro area Member States (even if not yet in a fully complete manner for all countries). Each annex covers ten areas and the national legal provisions in each of the Member States relative to each of these areas for CDs, CPs and MTNs, respectively. The ten areas covered are (1) legal basis; (2) legal definitions; (3) issuance; (4) rating; (5) investors and prospectuses; (6) trading; (7) the nature of rights; (8) procedures for clearing and settlement; (9) taxation and stamp duty; and (10) supervisory and regulatory aspects.

The overall project

The background to the project is that the ECB Money Market Contact Group has considered the insufficient level of development and integration of the euro area short-term securities market and why this market still has a national character. The reasons for this situation were identified as the differences of legal systems across the euro area, the lack of a single settlement system, the lack of homogeneity of the features and the terms and conditions for these securities and a limited investor demand, still segmented on a national basis. The Money Market Contact Group has shared its findings with the Financial Markets Association, ACI, and a task force of market participants (the Short Term Paper Task Force) has been established under the auspices of the ACI with a view to address the matter and develop concrete proposals. The proposals of the Task Force will be set out in a white paper to be presented to the ECB Money Market Contact Group during the course of 2002. For the legal part of the ACI white paper, the Task Force will rely on the contributions and support that it can receive from the EFMLG.

The EFMLG and FLEX

In order to provide such input to the work of the Short Term Paper Task Force, the EFMLG will investigate the current legal situation with regard to short-term debt securities (CDs, CPs and MTNs) under each of the various national laws in the Member States of the euro area. FLEX will be closely associated with the preparation of the legal report and invited to contribute to different versions of the report as the project proceeds. FLEX will meet to discuss this topic on Monday, 25 February, and we will pass on and incorporate any contributions from the FLEX meeting. In this manner, the general discussion of FLEX can be taken on board by the EFMLG in the preparation of the report.

In preparation of our meeting, EFMLG members are kindly requested to consider (i) the country specific sections on the legal situation in the respective euro area Member States; and (ii) the analysis relative to legal obstacles against integration and possible ways to promote integration from a legal perspective. In this connection, please also note the attached list of material that we have found during our initial research and which you might find helpful. Moreover, since the project is intended to result

in proposals from market participants, we would very much appreciate if we can establish a small EFMLG sub-group that can take an active part in the elaboration of the legal report. Accordingly, you are each invited to consider whether you would be available to participate in such a sub-group.

I am looking forward to meeting all of you again in a few weeks time and to your contributions to this important project.

With kind regards,

[signed]

Antonio Sáinz de Vicuña

Encl.