



EUROPEAN CENTRAL BANK

European Financial Market Lawyers Group

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Ninth Meeting of the European Financial Market Lawyers Group

28 May 2002

Aide-Memoire

1. Approval of the Agenda and of the Aide-Memoire of the last meeting.

The Members of the Group approved both documents. The Chairman welcomed Mr. Matthew Durkin and Mr. Cornelis Blokbergen who attended on behalf of Mr. Richard Firth and Mr. Jan van Besouw respectively.

2. Short-term securities

Mr. Stenström presented the work conducted by the sub-group and explained the outline of the new version of the Report. The Group took note of the new draft, in particular on the strengthened focus on commercial paper.

Mr. Häuser, who attended as observer on behalf of the ACI, presented the activities of the ACI Working Group in respect of the White Paper, which is supposed to include recommendations and is aimed at being finalised in the second half of June 2002.

Members of the EFMLG took note of the overview on EU legislation, in particular the ongoing review of the ISD. It was questioned what the best place to deal with the definition of short-term securities within the context of EU legislation might be. Another issue that was raised was the (non-)relevance of secondary markets for the short-term securities markets. Various Members of the EFMLG noted that whilst necessity was seen for the emergence of a harmonised EU Market, also certain national markets might continue to be relevant to cater for local needs.

The Members of the Group were asked to provide corrections or remarks on the proposed draft of the Report. In particular, in Chapter 3, additional data on national CP markets are requested. Moreover, in Chapter 4, further details on the French situation will be added. In respect of Chapter 5, Mr. Ulrich Parche presented documentation issues, whilst noting that the core elements of existing documentation does to a large extent co-exist. In respect of the concluding remarks in Chapter 6, the Group discussed the necessity of Regulation as opposed to standardised documentation for the wholesale markets for short-term securities. The Group considered a set of minimum requirements to be most adequate for these types of wholesale markets.

Follow-up

Members of the Group are invited to send written comments. On the basis of those comments, the sub-group will aim at redrafting the Report with a special focus on the conclusions, especially the form issue (Market-based solution versus Regulation).

3. European Securitisation Forum

Mr. Scott Rankin, Mr. Richard Parolai, and Mr. Jörg Wülfken attended the meeting on this subject on behalf of the European Securitisation Forum (ESF).

The guests presented the aims and composition of the ESF as a representative group of the securitisation markets in Europe. The activities of the ESF's Legal and Regulatory Sub-committee in respect of the Basel Capital Accord and IAS issues were shortly indicated. Furthermore, documentation issues, especially in respect of synthetic securitisation were highlighted.

The aim of the Forum is to foster the competitiveness of European securitisation markets in view of the globalised financial markets. The ESF representatives presented the main findings of a draft white paper, which identified a lack of harmonisation, due to different historic backgrounds, as a main obstacle to the growth of the European securitisation markets.

Finally, Mr. Scott Rankin invited the Members to attend a conference to be held on 6 June 2002 in Brussels.

Follow-up

No immediate follow-up required.

4. Repurchase Transactions

Mr. Fiset introduced the draft EFMLG statement, prepared with the assistance of Ms. Radia Krouri.

The Group discussed its content, in particular the effects of the draft Collateral Directive on the obstacles identified by the draft statement. One major issue identified by the Members is the tax and accounting neutrality of repurchase transactions. The Group furthermore discussed whether to include securities lending, whilst seeing no immediate advantage of doing so.

Follow-up

Members are asked to provide written comments until 15 July 2002 to Mr. Fiset and Mr. Löber. On the basis of those written remarks, the draft EFMLG statement will be finalised.

5. Investment Services Directive

Mr. Fabio Recine presented the second open consultation by the European Commission on the revision of the ISD.

The Chairman noted the implications of the two-level legislation, based on Directives, requiring additional national implementation, thus causing diversities on a national level. The Group discussed the merits of a regulatory approach in respect of the first level legislation, concluding that they would not favour such approach.

The Group furthermore discussed the issue of automatic trading systems (ATS), noting that the new draft of the Commission better reflects the industry concerns in respect of the services provided by ATS.

The EFMLG also took note of the new pre-trade transparency requirements, which are limited to the equity markets and the fragmentation risks stemming from the execution obligations.

Follow-up

The EFMLG will consider an EFMLG response to the Commission's Consultation on the basis of a draft to be provided by the ECB. Comments on the draft would be welcome until 15 July 2002.

6. Dematerialisation

Mr. Hubert de Vauplane gave an overview on the intended finalisation of the EFMLG work on the dematerialisation issue.

He outlined a proposal for a draft Directive, focusing mainly on practical and legal issues whilst providing a simple solution. The draft Directive should focus on the principle of full dematerialisation while containing simple rules for investor protection. In this context, Article 8 UCC might be a source of inspiration. In addition, an optional possibility to issue securities in physical form was contemplated.

Follow-up

Members are asked to express their interest in joining the sub-group dedicated to the finalisation of the dematerialisation issue by 15 July 2002. Sub-groups so far consist of Mr. de Vauplane, Ms. Viitala, Mr. Nizard, Mr. Tsibanoulis and Mr. Löber. The Sub-group wants to establish a will to prepare an EFMLG proposal for a draft Directive for further consideration by the full group.

7. Other issues

Mr. Lenihan shortly reported on the work currently undertaken by the FMLG of the Federal Reserve Bank in New York, in particular the preparation of a give-up agreement and the assessment of the ENRON fallout.

In addition, Mr. Löber informed on the state of preparation of the EFMLG website.

The next meeting of the EFMLG will be held on **Wednesday, 2 October 2002**.