

18 February 2005

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16th meeting of the European Financial Markets Lawyers Group

Tuesday, 8 March 2005

Room CII, 36th floor, at the ECB in Frankfurt

Agenda

Welcome to Mr. Wim Mijs from ABN AMRO replacing Ms. Simon-Thomas as member of the EFMLG.

1. 10.00 – 10.15 Approval of the agenda and of the aide-mémoire of the last meeting

The aide-mémoire of the 15th meeting was sent to the members in October 2004.

Documents: Aide-mémoire of 7 October 2004, as attached.

2. 10.15 - 10.30 Activities of the Financial Markets Law Committee

Ms Joanna Perkins, replacing Martin Thomas as Secretary to the Financial Markets Law Committee, will introduce herself and give an overview on the current activities of the FMLC.

3. 10.30 – 12.15 EFMLG sub-group on securitisation

The group will be debriefed on the outcome of the first two meetings of the sub-group on securitisation held in Frankfurt on 13 December 2004 and in Paris in February 2005.

Background documents: Draft mandate of the sub-group and draft questionnaire to the EFMLG members on legal issues relating to cross-border “traditional” securitisations.

4. 12.15- 13.00 Assignment and transferability of bank loans in Germany

Presentation by Ralf Hesdahl, from the law firm 'Mayer, Brown, Rowe & Maw LLP', on recent legislative and operational developments in Germany regarding the assignment and transferability of bank loans (draft legislative proposals, Deutsche Kreditbörse, etc.).

[13.00 – 14.00 Buffet luncheon]

5. 14.00 – 14.45 EFMLG-sub-group on signing authorities and the enforceability of master agreements

Members of the sub-group will debrief the EFMLG on the outcome of the second meeting of the sub-group on signing authorities held in Dublin in February 2005.

6. 14.45 – 15.15 The Commission's legal certainty project

The members will be debriefed on the state of affairs as regards the Commission's the EU legal certainty project and a possible support by the EFMLG.

Background documents: Communication from the Commission to the Council and the European Parliament on clearing and settlement in the European Union – the way forward, dated 28 April 2004.

[Coffee break 15.15 – 15.30]

7. 15.30 – 15.45 Legal risk

During the October 2004 meeting, members discussed the Commission's draft proposal for a revision of the Consolidated Banking Directive and the Capital Adequacy Directive implementing Basel II with an emphasis on how the institutions of the EFMLG members intend to implement the requirements on legal risk. On the basis of internal definitions of legal risk of these institutions received subsequent to the last meeting of the group, a short note on such definitions has been established for information purposes.

Background document: Legal risk and the Commission's draft proposal for a revision of the consolidated banking directive and the capital adequacy directive implementing Basel II.

8. 15.45 – 17.00 Other issues of relevance to the EU financial markets

8(a): White labelling

Cornelis Blokbergen presents the issue of "white labelling" which concerns in particular the issuance of debt products by a bank, for the customers of smaller (private) banks or securities institutions (in which case the name of these products often refers to the name of purchaser). The EFMLF members will be asked to discuss the legal risks of such constructions together with the marketing aspects and reputational risks for issuing banks.

8(b): Update on the STEP initiative

The group will be informed on the developments of the STEP initiative.

8(c): Status of implementation of the Collateral Directive

The group will be informed on the status of the implementation of the Collateral Directive. Members are asked to provide information on their experiences with the new regime.

Background document: Draft table on overview of implementation of the Directive by Member States.

8(d): MiFID

Presentation by Charles Ross-Stuart on impact of the MiFID. Members are requested to raise any issues they may have as regards the said Directive.

Members may also raise any other items which are of interest to the European financial markets.

8(e): ECJ: Preliminary reference C-452/04, Fidium Finanz (referring court: Verwaltungsgericht Frankfurt am Main – Germany)

The request for a preliminary ruling on free movement of capital & establishment of banks is attached for information. Members may wish to comment.

Background documents: Summary of the order by Verwaltungsgericht Frankfurt am Main dated 11 October 2004 together with the notice in the Official Journal of the European Union.

8(f): ENRON vs TXU Electricity

The group will be updated on developments.

Background documents: Judgement by New South Wales Supreme Court dated 24 December 2003 (NSWSC 1169); Decision by New South Wales Court of Appeal dated 11 February 2005 (NSWCA 12); "The European Insolvency Regulation: Law and Practise" by M Virgós and F. Garcimartín, Kluwer Law International; and "Good Law – serious Implications: Enron Australia v TXU Electricity" by G. Walker and G. Usher, [2004] J.I.B.L.R., Issue 10, Sweet & Maxwell Limited.

8(g) For information: ECB opinions

Background documents: ECB opinion of 4 February 2005 at the request of the Council of the European Union on a proposal for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering, including terrorist financing

(CON/2005/2); ECB opinion of 17 February 2005 at the request of the Council of the European Union on a proposal for directives of the European Parliament and of the Council re-casting Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions and Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions (CON/2005/4).

9. 17.00 – 17.15 All other business

9(a): Trilateral meeting between the FMLG, FMLC and the EFMLG in New York in June 2005

9(b): Date and place of the next meeting