

10 March 2005

Contact person: Mr. K. Löber; Ext.: 7225

E-mail: klaus.loeber@ecb.int

**AIDE-MÉMOIRE OF THE
16TH MEETING OF THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP,
HELD ON TUESDAY, 8 MARCH 2005**

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

The aide-mémoire of the 15th meeting and the draft agenda were approved by the group. The chairman welcomed Mrs Béatrice Heriaud-Chalant from Crédit Agricole as new alternate to Mr Daunizeau and informed the members that Mr Wim Mijs from ABN Amro has also joined the group, replacing Mrs Eva Simon-Thomas. Mr Martin Thomas has resigned from the EFMLG, and was attending the meeting as an Observer for the European Commission.

2. Activities of the Financial Markets Law Committee

Mrs Joanna Perkins, who has succeeded Martin Thomas as Secretary to the Financial Markets Law Committee (FMLC), introduced herself and gave an overview on the current activities of the FMLC. She stated that the FMLC is currently under review by the Bank of England. Of the many legal issues in which the FMLC is currently active, she identified in particular mortgage credit activities, pari passu clauses, the impact of the EU Insolvency Regulation, the implementation of the Prospectus Directive and trust issues. The group expressed an interest to receive a full written briefing on the range of issues the FMLC is currently considering.

Follow-up:

Given the high degree of matters of common interest, the group suggested to maintain a regular exchange of information on the activities of the FMLC, e.g. by inviting from time to time the FMLC secretary to attend the meetings of the EFMLG.

3. Securitisation

The group was briefed on the outcome of the first two meetings of the sub-group on securitisation held in Frankfurt on 13 December 2004 and in Paris on 21 February 2005. The scope of the proposed activities was discussed on the basis of the draft mandate prepared by the sub-group. It was agreed that the focus of the report to be prepared on the legal obstacles to cross-border securitisations in the EU will be first and foremost on traditional (true sale) securitisation structures (and might be extended at a later stage to synthetic securitisations). Furthermore, the proposed structure and content of a draft questionnaire was presented, which aims at ascertaining the current legal framework for traditional securitisation in the EU taking also account of the recent EU regulatory developments and new domestic legal frameworks on securitisation in the Member States.

The group discussed the scope and potential overlaps with work that was already conducted by the European Securitisation Forum (ESF), and concluded that the planned work would be complementary to previous activities. Reference was also made to the specific recommendations on securitisation contained in the recent report of the Commission's Forum Group on mortgage credit. The Chairman suggested that the EFMLG should consider how to involve the ESF once the work of the sub-group is more advanced.

The work of the sub-group will be focused on the 15 old Member States. However, information provided by EFMLG members on the existing (or draft frameworks) in the new Member States is also welcome.

Follow-up:

The EFMLG members may comment on the draft questionnaire by **Thursday, 24 March 2005**. A (revised if necessary) questionnaire will then be sent to the group to be completed by the members by **Friday, 13 May 2005**. Answers should be sent to secretariat@efmlg.org and to Stéphane Kerjean (stephane.kerjean@ecb.int) jointly.

4. The implementation of refinance registers in Germany

Mr Ralf Hesdahl from the law firm 'Mayer, Brown, Rowe & Maw LLP' informed the group on recent legislative developments in Germany regarding the proposed implementation of refinance registers in Germany. The proposed structure might facilitate certain ABS structures, in particular those involving mortgages. The members discussed the potential practical implications of the current draft, in particular in cross-border constellations.

5. Signing authorities and the enforceability of master agreements

Mrs Helen Moran informed the EFMLG on the outcome of the second meeting of the sub-group on signing authorities which was held in Dublin in February 2005. It was explained that at a first stage, the sub-group focused only on master agreements as such and not individual confirmations. The work comprised the completion of a comprehensive overview of the national requirements in the EU and the preparation of a draft template power of attorney. The latter tries to reflect practical deficiencies (defective or unclear powers of attorney issued by market participants) that have been identified by the subgroup.

The group discussed the level of legal risk that might result from the current situation. It was partly seen to be a relationship management issue. Overall, members found it beneficial to facilitate the checking process for signing capacities by providing a best practice recommendation along the lines proposed by the subgroup. Specific attention should, however, be placed on tracking past authorities.

Follow-up:

The EFMLG members are requested to provide comments and suggestions regarding the draft power of attorney and the content of the overview table by **15 April 2005**. Answers should be sent to secretariat@efmlg.org and to Helen Moran (Helen.M.Moran@aib.ie) jointly.

6. The Commission's legal certainty project

Mr Martin Thomas reported on the state of affairs as regards the Commission's legal certainty project, in particular on the recently formed Legal Certainty Group and its relationship to the parallel work being undertaken by UNIDROIT. The group welcomed these activities, which are in line with the recommendations given in the EFMLG report on book-entry securities and agreed to provide further support to the Legal Certainty Group, if deemed relevant. It was also noted that four of the members of the EFMLG have accepted invitations to serve as members to this group.

Follow-up:

The subgroup that prepared the EFMLG report on book-entries will prepare for the consideration of the EFMLG a letter expressing the EFMLG's interest and support to its activities.

7. Legal risk

Mrs Katja Würtz informed the group about the outcome of the collection of definitions of legal risk as applied by the member's institutions. The members had a brief exchange of views. It was

generally felt that it might be premature to already now advance on the subject. Rather the further activities and parallel work conducted e.g. by the IBA subcommittee E8 should be monitored.

Follow-up:

The EFMLG agreed that it would reconsider the issue at a later stage.

8. Other issues of relevance to the EU financial markets

- **White labelling**

Mr Cornelis Blokbergen introduced the issue of “white labelling” which has become relevant in the context of marketing aspects and reputational risks for issuing banks. It concerns 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 discussed the issue and agreed that, subject to more information, this issue might be taken up at a future meeting.

Follow-up:

Mr Blokbergen agreed to prepare an issues note on the topic.

- **Update on the STEP initiative**

Stéphane Kerjean debriefed the group on the events that took place since the last meeting. The STEP initiative is now being discussed within the FBE, which is considering whether to become formally involved. In addition, some on-going EU regulatory developments such as the work of the CESR in the context of the UCITS Directive on the rules applicable to UCITS for their investments in money market instruments are closely monitored by the ACI STEP Task Force. The EFMLG agreed to offer its legal support to the ACI STEP Task Force, where appropriate.

- **Status of implementation of the Collateral Directive**

Mrs Ewa Klima informed on the status of the implementation of the Collateral Directive.

- **Update on current Commission activities**

Mr Martin Thomas reported on the current activities of the Commission’s DG Markt in the post-FSAP context, with a particular emphasis on “better regulation”.

- **Fidium Finanz - ECJ Preliminary reference**

Mrs Kristine Drevina informed the members about a request to the ECJ for a preliminary ruling which could have a bearing on the application of the principles of free movement of capital and the establishment of financial institutions.

- **ENRON vs TXU Electricity**

Mr David Bloom informed about the developments on the court case of Enron Australia vs TXU, relating to the use of the close-out netting possibility under the ISDA master agreement in case of a counterparties insolvency.

Date and place of the next meeting

The FMLG has kindly suggested to host a trilateral meeting with the EFMLG and the FMLC in New York. Subject to confirmation, the date of 8/9 June 2005 has been tentatively suggested. The members welcomed the suggestion. The exact date will be communicated to the members in due course.

Follow-up:

Members are asked to suggest issues of “transatlantic interest“ to the secretariat (secretariat@efmlg.org)