

LS/05/180

- CHAIRMAN -

To the Members of the EFMLG

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Dear Colleagues,

Implementation of the Collateral Directive by Member States - Item 8(c) of the agenda of next meeting (8 March 2005)

The deadline for the implementation of the Collateral Directive (Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements) expired on 27 December 2003. Currently, not all Member States have implemented the Directive¹, which consequently disturbs the harmonised system of simplified financial collateral arrangements at which the Directive is aimed.

Since then, ECB has been actively monitoring the progress of implementation of the Collateral Directive in each Member State of the European Union. As of today, we are aware that implementation has taken place in most of the Member States. Nevertheless, there are still Member States where the implementation did not occur².

¹ Czech Republic, Luxembourg, Slovakia, Spain, Sweden, and The Netherlands.

² Last year Commission has decided to refer Greece, France and Luxembourg to the European Court of Justice for non-transposition into national law of Directive 2002/47, after sending them reasoned opinions in July 2004 (see IP/04/891). It has also decided to issue a reasoned opinion against the Netherlands, Sweden and Belgium have also not yet implemented at that certain time the Directive, but have provided a detailed timetable for when the relevant national laws will enter into force. The Commission was not therefore at past referring them to the Court, but closely monitored implementation to ensure that they meet their commitments. Italy, which also received a reasoned opinion in July 2004, notified the Commission that it had transposed the Directive into national law, as is currently in case of Belgium, Greece and France.

The attached overview represents an analysis of the current status of implementation of the Collateral Directive within the EU on the basis of publicly available information. We have tried to reflect whether legislation has been passed or is still in the drafting process and if so, when it is expected to be finalised. In addition, as you are aware, the Directive contains a number of options for Member States when implementing the Directive:

- Member States may, under Article 1(3), exclude from the scope of application of the Directive financial collateral arrangements where neither of the parties is a governmental entity or regulated financial institution. However, Member States might also give a broader implementation to the Directive than stipulated (e.g. by allowing the reforms to include collateral arrangements with individuals).
- Member States may, under Article 1(4)(b), exclude from the material scope of the Directive financial collateral consisting of the collateral provider's own shares, shares in affiliated undertakings within the meaning of seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts, and shares in undertakings whose exclusive purpose is to own means of production that are essential for the collateral provider's business or to own real property.
- Furthermore, in accordance with Article 4 (3), Member States which do not allow realisation by way of appropriation on 27 June 2002 are not obliged to recognise it.

Finally, Article 9 states that questions relating to book entry securities collateral shall be governed by the law of the country in which the relevant account is maintained. The Commission proposed that, pending a decision on the signing of the Hague Convention, Member States should implement Article 9 in its current form.

As regards the above mentioned issues, the table provides an overview as to what extent, if at all, Member States apply or intend to apply these options.

You are kindly invited to submit any additional information or report on recent developments that you consider of interest to EFMLG in connection with the implementation process of the Collateral Directive.

In addition, it would be helpful to obtain further information about the status of implementation of the Collateral Directive from the Member States which have not implemented it yet. So far, we have obtained limited information on draft legislation being prepared in the Czech Republic, Luxembourg, Slovakia, Spain, Sweden, and The Netherlands. This issue could be discussed during the next meeting of the EFMLG.

With best regards,

[signed]

Erwin Nierop
on behalf of Antonio Sáinz de Vicuña