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Contact person: Mr. K. Löber  
Tel.: +49 69 1344 7225  
E-mail: [secretariat@efmlg.org](mailto:secretariat@efmlg.org)

**AIDE-MÉMOIRE OF THE  
19TH MEETING OF THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP,  
HELD ON THURSDAY, 6 APRIL 2006**

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

The aide-mémoire of the 18<sup>th</sup> meeting and the draft agenda were approved by the group.

**2. Status of the EFMLG project on legal obstacles to cross-border on securitisations**

The Group was informed by Stéphane Kerjean about the status of the securitisation project. Substantial work had been undertaken by the Group and the working group since the Madrid meeting of the EFMLG. The working group met in London in December 2005. This meeting was also the occasion to discuss the project with some lawyers from Standard and Poor's. In addition, a teleconference was held in March 2006.

As of today, there is a full set of replies to the questionnaire from all 15 old Member States. The working group prepared a tentative first draft of the EFMLG report, the general structure of which was discussed during the meeting. The EFMLG examined in particular in detail the part of the draft report devoted to the review of the relevant pieces of Community legislation having an impact on securitisation (Part Two). In addition, the working group prepared a draft preliminary assessment of the replies to the questionnaire which was not discussed during the meeting due to a lack of time (Annex IV of the draft report). Stéphane Kerjean also informed the EFMLG that the Commission had set up an expert group on mortgage funding and that some of the EFMLG findings and recommendations on securitisation might be of use for this expert group.

The objective of the EFMLG is to produce a report on the legal obstacles to cross-border securitisations which is scheduled to be completed in the second half of 2006. Before completing this report, the EFMLG would like to share its preliminary recommendations with a wider audience and discuss them in a public hearing with lawyers who have a developed practitioners' expertise in the field of securitisation. This includes inter alia some legal experts from the European Securitisation Forum, ISDA, European credit sector

associations and from rating agencies. The input received during and following the hearing will be incorporated into the EFMLG report. The hearing on the preliminary findings of the project is planned to be held on **Monday, 12 June 2006, in Paris**, to be hosted by BNP Paribas. The EFMLG agreed that a Commission representative could be invited as an observer to the hearing in view of the above on-going activities of the expert group on mortgage funding and securitisation.

Follow-up:

The EFMLG members are asked to provide comments on the draft report and the draft Annex IV (preliminary assessment of the replies to the questionnaire) or any other comments on the project that they might have by cob **Friday, 28 April 2006** to Stéphane Kerjean. Members of the EFMLG who are not members of the working group on securitisation are invited to express their interest in participating to the hearing by the same date.

**3. Rules on conflict of interests under MiFID**

Emilio De Lillo presented the revised draft response to the Commission, prepared by the sub-group on conflicts of interests under the MiFID.

The new draft reflects the recently published level 2 measures for the MiFID, in particular Articles 21 to 23 of the draft implementing directive. The group discussed whether a clarification of the criteria for identification of conflicts of interests was desirable, to avoid uncertainties and diverging national implementation measures.

The group agreed that an EFMLG response should focus exclusively on legal issues of relevance to the EU financial markets and that this should be clearly distinguished from general lobbying activities.

Follow-up:

The EFMLG members may provide further comments to Emilio de Lillo and Klaus Löber by **Monday, 24 April 2006**. The sub-group will then prepare a new version of the response, taking into comments received and the general guidance given by the group. The revised response letter will then be circulated to the full group for final comments in a written procedure.

**4. EFMLG-sub-group on signing authorities and the enforceability of master agreements**

Helen Moran presented to the EFMLG the newly revised best practice document and template power of attorney, as prepared by the sub-group on signing authorities. The new versions reflect earlier comments by the EFMLG members as well as containing a reference to Basel II. It was highlighted that as a result of legal differences in Member States, the template power of attorney contains a number of optional clauses. Furthermore, the list of relevant market agreements will be subject to regular updates.

The group agreed with the proposed documents. However, some members mentioned that technical developments might call for a review of the approach taken in the medium term.

Follow-up:

The documents, subject to a last editing check, will be placed on the EFMLG website. However, those EFMLG members who still have to provide a short description of their national legal situation regarding the source of powers of attorney will do so by **Friday, 12 May 2006** to Klaus Löber.

**5. Better Regulation - follow-up to the meeting with the Commission of 24 March 2006**

The EFMLG chairman reported on the meeting on better regulation that was held with financial market groups in Brussels on 24 March 2006 at the invitation of the Commission's DG Internal Market. In addition to the chairman, three EFMLG members participated to the meeting, which was dedicated to issues such as quality of EU legislation, the role of market consultations, the need for drafting in more than one language, consistency of definitions in Community legal acts and the duration of EU court proceedings.

Follow-up:

The Commission is expected to circulate an aide-memoire of the meeting, which will be passed on to the EFMLG members.

**6. White labelling**

The issue was only briefly discussed. It was mentioned that white labelling may be an issue under the MiFID, in particular Article 19(3), which might impact on the marketing of structured products. It was mentioned that the CRIMPS II report may provide some guidance as to best practice.

Follow-up:

The topic was postponed until the October meeting..

**7. EFMLG members from the ten new Member States**

The group noted that suitable candidates had been identified for the Czech republic and Slovenia. In order to have a balanced representation, it was decided to postpone the enlargement until at least two more jurisdictions could be represented on the group.

Follow-up:

The members are asked to identify further candidates from the new EU Member States and communicate these to Klaus Löber by **Friday, 12 May 2006..**

**8. Other issues of relevance to the EU financial markets**

#### **8(a) Update on the draft Unidroit Convention**

Klaus Löber debriefed the EFMLG on the state of affairs as regards the Unidroit meeting of governmental experts in Rome in March 2006 and the revised draft Convention resulting thereof..

##### Follow-up:

The EFMLG agreed to continue its monitoring of the project and intervene, if deemed necessary in view of further developments.

#### **8(b) Commission consultation on the implementation of the Collateral Directive**

The group discussed the draft response that was prepared by the Collateral sub-group. The group approved the general content of the letter and made some drafting suggestions. It was noted that the Commission was willing to receive the response by mid April.

##### Follow-up:

Based on the comments from the members, a revised letter will be prepared and sent to the Commission.

#### **8(c) Launch of STEP**

Stéphane Kerjean reported on the latest developments, in particular the status of the STEP Market Convention. Information on the STEP market is already available at [www.stepmarket.org](http://www.stepmarket.org). The ECB Governing Council was expected to confirm on 6 April the ESCB's involvement regarding the production of STEP statistics and the provision of technical assistance in relation to the management of the STEP label. Euribor FBE and Euribor ACI will revise their statutes by mid-April in order to take on STEP-related functions. The official launch of STEP is expected by end of April 2006, with the signing of the STEP Market Convention. According to the two associations, a number of issuers have already expressed their intention of adopting the STEP standards and applying for the STEP label.

#### **8(d) History of FX Control Measures (support to the FMLG)**

David Bloom reported on a recently launched project by the FMLC and the FX Committee of the Federal Reserve Bank of New York. The FMLC is currently compiling a survey over past sovereign events in the FX markets since 1981. Based on the survey, it is intended to assess the events and see whether lessons may be learned from this. The FMLC asked the EFMLG members to provide information of events.

##### Follow-up:

The EFMLG agreed to provide support to the FMLC project. A draft list of events, set up by the FMLC will be circulated to the EFMLG to this extent.

#### **8(e) Documentation for investment funds in derivatives or securities financing transactions**

Chandra Bhargavan presented the issue of a lack of appropriate documentation under standard market documentation when trading with investment funds in the EU, in particular UCITS. This leads to legal uncertainties as regards mandatory rights of termination, the legal capacity of fund managers and of sub-funds. This necessitates additional legal opinions.

Members of the group mentioned that also other market associations have been approached to look into this issue. It was also mentioned that similar issues exist for pension funds and insurance companies.

The group agreed that this might be a topic to pursue further and mandated a sub-group to look further into the matter.

##### Follow-up:

A sub-group, composed of members from France, Germany, Luxembourg, Finland, Ireland and Italy, will prepare a questionnaire to analyse the current legal situation. Based on the responses, the sub-group will decide whether to pursue the topic further, and if so, whether to establish contact with other relevant market associations.

#### **8(f) Other issues**

The chairman gave an overview on recent initiatives regarding the EU-US regulatory dialogue.

### **9. All other business**

#### **9(a) Trilateral meeting of FMLG, FMLC and EFMLG in Paris, 12/13 June 2006**

Klaus Löber reported on the state of preparations for the trilateral meeting of FMLG, FMLC and EFMLG, which is now confirmed to be held in Paris on **Tuesday, 13 June 2006**, at the premises of Banque de France. At the meeting, for the first time, the secretariat of the Financial law Board of Tokyo will present its group and its activities.

On the evening of **Monday, 13 June 2006**, the Governor of Banque de France, Christian Noyer, has kindly invited to an evening reception.

##### Follow-up:

In order to prepare the agenda, the members are asked to suggest agenda items of interest to the three groups by **Tuesday, 18 April 2006**. A invitation and the draft agenda will be circulated in due course.

#### **9(b) Date and place of the next regular EFMLG meeting**

The next regular EFMLG meeting will be held in early October 2006, at the ECB in Frankfurt.