

- The Chairman -

19 May 2008

## **REFLECTIONS ON THE FUTURE OF THE EFMLG SUMMARY OF THE MAIN FINDINGS**

### **1. Mission statement**

The original purpose of the establishment of the EFMLG was to identify and promote initiatives which would lead to an enhanced legal harmonisation of the law and practices of financial market activity in the EU, particularly in the aftermath of the introduction of the euro. In this respect, although important progress has been made over the last years with regard to the legal integration of European financial markets both from a regulatory and market practices viewpoint, these markets continue to be hampered by the absence of a truly single legal framework and the heterogeneity of documentation practices. Therefore, also taking into account constant financial innovations and new risks, the EFMLG initiatives aiming to foster harmonisation of rules and market practices and increase legal certainty are nowadays still more than necessary. With the increasing globalisation and sophistication of financial markets, the EFMLG has closely observed and/or supported certain on-going legal initiatives taken on an international scale. Also, processes of convergence of market practices initiated between the EU and other countries in the financial sector, for instance with the USA or Japan, would require increased attention.

The EFMLG has operated without a defined mandate, since the original idea was to emphasise the informal and market-based nature of the group. However, already for a long time, the EFMLG has a mission statement on its website which outlines the reasoning behind its establishment, its scope of activities and co-operation with other relevant groupings and which is published on the EFMLG website. At its Athens meeting on 31 March 2008, the EFMLG considered that, in substance, this mandate should not be modified but agreed to enhance the EFMLG organisation with the adoption of (i) simple (non-public) internal rules of procedure and (ii) of a concise Charter which will be displayed on the EFMLG's website.

Finally, in relation to the purpose and scope of the group's work, it was considered that the present mix between technical and strategic issues dealt with in the work of the group is to be welcome, and that the group should not become a purely technical one.

Next steps: The EFMLG secretariat will revert with a tentative draft proposal for (i) internal rules of procedures and for (ii) a draft Charter. A tentative first proposal might be discussed at the EFMLG meeting on 11 June in New York ahead of the Quadrilateral meeting.

## **2. Membership criteria**

EFMLG members are senior legal experts drawn from participants in the financial markets and are selected, on the basis of their personal experience and their dedication to contribute to the activities of the group, amongst lawyers of –or appointed by- the banks represented in the Euribor and Eonia panels. The composition of the EFMLG is unique in that it is the only known pan-European grouping of financial market lawyers whose composition allows it to express opinions on financial legal matters arising under EU and national law. As such, this gives the EFMLG considerable authority and standing. The members are chosen by their institution on the basis of their personal expertise and their availability to pro-actively contribute to the activities of the group. At the same time, they are supported by the institution to which they belong and they bring their institution's experience into the work of the EFMLG.

Concerning membership, the EFMLG considered that it would not be desirable for the group, in particular for reasons of efficiency, to have a total number of members beyond 30. The EFMLG agreed therefore in Athens to keep, on the one hand, the current membership criteria (i.e. for the bank, being a member of the Euribor-Eonia panels), which ensure an objective representation of major European banks within the EFMLG and the credibility of the group and, on the other hand, to invite as members on an ad personam basis some lawyers from the most important banks in some of the new EU Member States (i.e. Member States since May 2004).

The group expressed the wish to maintain the current flexibility of the EFMLG in terms of adequate level of seniority of the EFMLG members. In this respect, although the EFMLG members considered that the criterion of seniority may depend on the internal structure of the Legal departments within the respective banks and therefore might not be always very telling, they agreed on the need to ensure a regular briefing to their respective banks' general counsels, when they are not directly participating in the group. The EFMLG members confirmed that they consider it an important part of their function as members to ensure the link between the group and the top management of the legal service of their respective institutions, by exercising a regular reporting internally. In particular, it is important to seek from the General Counsel, as the case may be, guidance on topics of

relevance for the EFMLG work. To enhance the awareness of the group among the general counsels of the banks, it was agreed to invite them all for a meeting to be organised in the occasion of the 10 years' anniversary of the group (for more details on this initiative, see below 6.).

Concerning the possibility for EFMLG members to appoint alternates, it was agreed to maintain this flexibility if necessary, although this practice should remain exceptional. EFMLG members may delegate alternates to EFMLG plenary meetings only on an ad hoc basis.

Next steps: The proposal for EFMLG internal rules of procedures will reflect the aspects related to the membership criteria and missions of EFMLG members.

### **3. Structure of the EFMLG**

Presently, the Group is chaired by the Director General of the ECB Legal Services; the Secretariat of the group is ensured by the ECB. The issue was discussed whether this structure is to be continued or whether other solutions should be envisaged (including appointment of a non-ECB Chairman, new function of vice-chairman and possibility for secretariat to be assured by one of the members).

As regards the Chairmanship of the EFMLG, while the members reminded the importance for the EFMLG of being externally perceived as a market-driven group and not as an emanation of the ECB, they also considered that it was important that the ECB chairs the group in order to ensure complete neutrality and independence and that the secretariat of the group be ensured by the ECB. It was agreed that the Chairman would have a renewable 5-year mandate.

The EFMLG agreed to have a Vice-Chairman appointed by the EFMLG Chairman among the non-ECB members of the EFMLG for a non-renewable mandate of three years. The Vice-Chairman must contribute to the external visibility of the EFMLG as a market group and should therefore belong to a credit institution represented in the group. In addition to replace the Chairman, if and when necessary, the Vice-Chairman should assist the Chairman for certain EFMLG-related tasks, in particular, the elaboration of agendas and of aide-mémoires. The criteria for the appointment of the Vice-Chairman should be essentially (i) the length of EFMLG membership; (ii) level of seniority of the member in his/her home institution and (iii) a proven participation to EFMLG and its sub-groups.

The Secretariat of the EFMLG will continue to be ensured by ECB staff.

Presently some legal experts from some NCBs may attend the meetings of the group as observers. The EFMLG will continue to invite some few observers: first, guests from national central banks and, secondly, depending on the agenda of the meeting, other guests as the

case may be (from the European Commission, market associations, etc) who may participate, as appropriate, to whole or part of the meeting.

Next steps: These aspects related to the structure of the EFMLG will be covered in the internal rules of procedure.

#### **4. Functioning of the EFMLG**

The Group usually meets in plenary composition three (or four) times a year (generally twice in Frankfurt am Main, one in another EU Member State. One or two of the EFMLG meetings are generally hosted by the ECB in Frankfurt am Main. The other plenary meetings may be hosted by one non-ECB EFMLG member, either in Frankfurt am Main or in another venue in the EU. Furthermore, a “Quadrilateral meeting” where the members of the EFMLG meet the Financial Markets Lawyers Group (FMLG), the Financial Markets Law Committee (FMLC) and the Financial Law Board (FLB) is already a yearly tradition. These meetings are organised according to a rotation scheme in New York, London or in the EU<sup>1</sup>.

The EFMLG considers that the number of meetings is satisfactory and agreed that every year at least one of the three plenary meetings should be hosted by EFMLG members (i.e. not at the ECB premises). It was decided to suggest a new approach, less informative and more focused on the discussion of issues of common interest, for the next quadrilateral meeting.

Ad hoc sub-groups meet where necessary and without formal arrangements to elaborate on a given topic. They are chaired by an EFMLG member and composed of a smaller number of EFMLG members on a voluntary basis. Over the last years, a number of sub-groups were set up on various issues of interest to the group (netting, collateral, securitisation, retail structured products, MiFID/Forward foreign exchange agreements). It is important to ensure a balanced participation of all members to the work of sub-groups. Depending on the topic, the EFMLG member may also appoint a representative of the institution to which he belongs and who has a particular expertise in the area covered by the sub-group. Reference will be made to this good practice of sub-groups in the internal EFMLG rules of procedure.

Lastly, the secretariat of the EFMLG also organises on a regular basis (twice or three times a year) videoconferences with the secretariats of FMLC/Bank of England, FMLG/Federal Bank of New York, FLB/Bank of Japan but also the Hong Kong Monetary Authority, the Monetary Authority of Singapore and the Swiss National Bank, to share information on

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<sup>1</sup> The Quadrilateral meeting took place for the first time in 2004 in London, followed by a meeting in New York (2005), Paris (2006; hosted by the Banque de France) and London (2007). The next Quadrilateral meeting will take place on 12 June 2008 in New York. The meetings hosted in London and New York are respectively hosted at the premises of the Federal Reserve of New York and of Bank of England.

topics discussed and to be informed of the initiatives developed by and activities of each of them. The minutes of the videoconferences are circulated to EFMLG members.

Next steps: The EFMLG should ensure that Quadrilateral meetings be increasingly devoted to issues of common interest and for which joint actions might be considered.

## **5. EFMLG website**

The EFMLG is satisfied with the current EFMLG website (including the intranet which is only accessible to EFMLG members). The EFMLG agreed to add links on the EFMLG website with the following market contact groups, i.e. the ECB Money Market Contact Group, the ECB Foreign Exchange Contact Group and the Operations Managers Groups<sup>2</sup>, with whom the EFMLG has close contacts.

Next steps: Links with the above groupings will be inserted on the EFMLG website.

## **6. Preparations of the 10<sup>th</sup> anniversary of the EFMLG**

The EFMLG supported the proposal to publish an EFMLG book, in English, which would be devoted to "Legal issues related to the integration of European financial markets" in 2009 in the occasion of the 10th anniversary of the EFMLG. An Editorial Board was set up to coordinate the contributions from the members, which might address either issues related to the projects already initiated by the EFMLG or other topics related to the legal integration of European financial markets. The financing will be shared among the member's institutions.

The EFMLG decided also to organise a meeting with general counsels of the member's institutions for the 10 years' anniversary of the group. A proposal to this effect will be presented by the Editorial Board.

Next steps: The Editorial Board will inform the members about the follow-up of the procedure.

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<sup>2</sup> <http://www.ecb.int/paym/html/index.en.html>.