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**AIDE-MÉMOIRE OF THE
29TH MEETING OF THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP,
HELD ON TUESDAY 11 NOVEMBER 2008, FRANKFURT AM MAIN**

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

The members approved the aide-mémoire of the last meeting and the agenda.

2. Legal issues related to the current stress on the financial markets

The Chairman thanked Mrs Kirsty Devonport, Legal Counsel, ISDA for participating to the EFMLG meeting. Mrs Davenport reported, in the context of the financial turmoil, on the ISDA's experience with regard to a number of legal market documentation issues. As regards the close-out process and in the context of the Lehman bankruptcy or the freezing orders of the Icelandic and UK Governments, Mrs Davenport discussed some legal aspects related to notice delivery in the derivatives documentation, set-off enforceability of cross-affiliates under the ISDA Master Agreements or related to the valuation of close out amounts. Mrs Davenport also evoked issues relating to counterparties affected by market events in the area of credit derivatives and the ISDA's role to facilitate settlement of credit derivative trades (for instance, for Icelandic parties). In relation to equity derivatives, Mrs Davenport reported that issues have arisen as to the nature of the information on which it is possible to rely or not (press reports, web announcements), the interpretation of technical notions (such as nationalisation, the consequences of a suspension of shares of trading and delisting) or the consequences of changes of domestic laws (for instance, with regard to short selling). The EFMLG discussed legal issues relating to the impact of the Icelandic crisis, the differences between master agreements and even successive versions of master agreements such as, for instance, the 1992 ISDA Master agreement and the ISDA 2002 Master Agreement with regard to close-out, the need for harmonisation of legal definitions in relation to cross-border insolvencies between the different sponsors of market documentation or

the possible impact of the joint ISDA-EFMLG initiative on close-out netting in this context (see also 5. and 6.2).

3. On-going EU and national legislative developments relating to the financial turmoil

Mr Kerjean up-dated the group on the main on-going EU and national legislative developments relating to the financial turmoil. Reference was made in particular to the various national rescue plans, the amendments currently discussed to the Capital Requirements directive or the directive on deposit insurance schemes or the recent Commission's proposal for a regulation on credit rating agencies. EFMLG members discussed the risks of segmentation and distortion of competition in the market created by the application of the national rescue schemes, i.e. for instance, capital injections and State guarantees, the need for a level playing field and for proportionality. The Group also discussed whether the reference to Euribor and Libor in standard market documentation was appropriate in the context of a non-functioning inter-bank market with increasingly diverging spreads.

4. Review of the Financial Collateral Directive (FCD) –Settlement Finality Directive (SFD)/UNIDROIT Diplomatic Conference/ Legal Certainty Group: recent developments

The EFMLG was debriefed on the state of play of the above various initiatives. Mr Tsibanoulis and Mr Löber informed the group on the state of play of the examination of the amendments to FCD/SFD proposal. As regards the SFD, Mr Löber pointed out a few improvements to the original proposal regarding the notion of interoperable system, protection of night-time settlement and the expansion of the protection under Article 9(1) of the SFD to third party collateral. As regards the FCD, the proposal, as discussed under the French Presidency, does not only cover credit claims eligible for central bank operations but also those eligible for interbank operations with an opt-out provision for credit claims where the debtor is a consumer or a SME. The proposal also abolishes some formalities in relation to pledges and the creation or mobilisation of credit claims. The amendments to the FCD/SFD are expected to be adopted in a single reading in the EP with an implementation in 2010-2011. Mr Löber also reported on the Diplomatic Conference on the Draft UNIDROIT Convention on substantive rules regarding intermediated securities which took place in Geneva in the first half of September with 52 delegations (including the European Community) and the ECB as observer. Two main decisions were taken, namely the postponement of the conclusion of the negotiations no later than September 2009 and the preparation of an explanatory report well before the Diplomatic session. Mr Löber noted that this outcome was a major success in order to ensure, as recommended by the EFMLG, that the convention will be compatible with the *acquis communautaire*, especially should the LCG advice be converted into a Community legal act. He

also mentioned that the negotiations have been driven with a strong coordination on the EU side and that the Second LCG Advice has had a major impact on the negotiation.

Mr Ferreira Malaquias debriefed the Group on the follow-up to the Second Advice of the Legal Certainty Group adopted in August 2008. The Commission welcomes the LCG second advice, and indicated that it will take a decision regarding the way forward and the timetable in early 2009. It was also pointed out that no solution had yet been found with regard to the Hague Convention.

5. Netting law reform initiatives

Mr Hartenfels debriefed the EFMLG on the state of play of the joint EFMLG-ISDA initiative. He indicated that the first exchanges of views with DG MARKT indicate that the Commission is open to the idea of a directive on close-out netting, although no decision is taken yet and that a feasibility paper would need to be prepared. Mr Hartenfels also confirmed that the netting convention was in the list of projects of UNIDROIT for the next three years. The European Banking Federation (EBF) has started its own thinking in the context of an ad hoc EBF working group and examines in particular some proposals made by KBC in a position paper of July 2008. It was agreed with the EBF to pursue the cooperation on this topic.

Follow-up: The EFMLG and ISDA will jointly provide comments on the KBC position paper and pursue the dialogue with the EBF in order to develop a consistent and coherent approach vis-à-vis the Commission on this dossier.

6. Other issues of relevance to the EU financial markets

6.1. Draft Common Frame of Reference and follow-up to the French Presidency Conference on European Contract Law

Mr Bâ reported on the conference organised by the French Presidency on European contract law. As regards the DCFR, it was noted that some important pieces such as the Books on proprietary security or loan contracts were still missing and that the final version of the academic DCFR is expected to be submitted to the Commission by the end of December 2008. The Commission has launched an internal selection process with the aim of identifying which parts of the DFCR will be integrated in the forthcoming Commission's White Paper on a Common Frame of Reference (CFR) (the White Paper is now expected for 2010). The European Parliament called on the Commission to consider assigning the project to DG Justice, Freedom and Security with the full involvement of all other Directorate Generals since the CFR goes well beyond consumer contract law. In April 2008, the Council has pointed out that the CFR should be a tool for better lawmaking, forming a set of non-binding guidelines to be used by lawmakers at Community level.

Follow-up: The Task Force will continue its work regarding the preparation of an EFMLG contribution on the DCFR. A meeting of the Task Force will be convened early 2009.

6.2. Follow-up to the EFMLG Report on Judicial Efficiency

The EFMLG adopted in July 2008 a report entitled "Towards improved judicial efficiency for financial services claims" in the context of the request by the ECOFIN to monitor and assess the relevant institutional features that hinder the efficient functioning of the financial system

Follow-up: EFMLG members were invited to circulate widely the EFMLG report in their respective jurisdictions and to liaise in particular with their Ministries of Justice. The EFMLG report was also distributed by the EFMLG to interested stakeholders and the ECB communicated the report to the EFC.

6.3. Commission's initiative on credit derivatives

Mr Hartenfels informed the EFMLG of a Commission recent initiative with regard to derivatives. In October 2008, Commissioner McCreevy had indicated its willingness to have a systematic look at derivatives markets in the aftermath of the lessons learned from the current turmoil. In this context, a working group was set up composed from the industry and regulators (including the ECB) chaired by the Commission. The first meeting of the working group took place on 5 November. In the short-term, the Commission's objective is to set up a clear roadmap on how to ensure that CDS are cleared through a central clearing counterparty by the end of 2008. Among the long-term issues, the Commission has identified inter alia the need to assess the appropriate level of regulation for improving the safety of OTC derivatives and to examine the requirements to have effective netting via a EU legal instrument on netting.

Follow-up: The EFMLG agreed to monitor these developments and to examine on an on-going basis whether the EFMLG might provide useful legal input, where appropriate.

7. Other issues - Next meetings

7.1. Internal matters.

The EFMLG approved the final version of the EFMLG Charter and the internal rules of procedure.

Follow-up: The Charter will be displayed on the website and the rules of procedure will be available on the intranet.

7.2. Secondment programme

The EFMLG secretary informed the Group of the preliminary outcome of the secondment programme and positive contacts developed with law firms established in Frankfurt am Main. One important Law Firm, closely involved in financial markets, has offered a six-months secondment to the EFMLG's Secretariat.

7.3. Preparations of the Quadrilateral meeting and of the event with General Counsels for the 10th anniversary of the EFMLG

The 30th EFMLG meeting should take place on Wednesday 4 March 2009 in Amsterdam on the invitation on ING. The subsequent EFMLG meeting and Quadrilateral meeting (June 2009 - date to be confirmed) will be hosted by Intesa SanPaolo in Milan. The event with General Counsels to celebrate the 10th anniversary of the EFMLG will take place in Frankfurt in the Autumn 2009 (date to be confirmed). As regards the publication of a EFMLG book on legal issues related to financial integration, it was agreed that, due to the current context and new priorities, the project would be dropped in the absence of new proposed contributions from EFMLG members.