

DRAFT

28 April 2010

Contact person: Mr. Otto Heinz
Tel.: +49 69 1344 6085
E-mail: otto.heinz@ecb.europa.eu

Contact person: Mr. Inigo Arruga Oleaga
Tel.: +49 69 13448654
E-mail: inigo.arruga@ecb.europa.eu

35TH MEETING OF THE EUROPEAN FINANCIAL MARKETS LAWYERS GROUP AGENDA

FRIDAY, 7 MAY 2010 (9.00 a.m. - 4.30 p.m.)

VENUE: Granada, CAJAGRANADA
Avenida Fernando de los Rios, 6. (18006 Granada)

Meeting room: tbc

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

2. Cross-border banking resolution issues (*for discussion*)

Issue: The BIS published a report on cross-border bank resolution in March 2010. Recommendation 8 of the report provides: "Additional risk reduction benefits can be achieved by encouraging greater standardisation of derivatives contracts". Striking the balance between regulatory measures and termination and close-out is, however, still in the focus, as the report provides (see page 24): "Clarity and predictability for the treatment of financial market contracts by preserving appropriate termination, netting, and collateral rights. As noted in more detail in Recommendation 9, a vital component of a resolution process that can maintain continuity for critical financial or market functions is the power for resolution authorities, subject to appropriate controls, to transfer contracts to other market participants or a bridge financial institution." The EFMLG is invited to discuss expected regulatory landscape for systemically important banks on the basis of the BIS report, with particular attention to its focus on derivatives contracts.

Documents:

- BIS Report and Recommendation of September 2009 by the Cross-Border Bank Resolution Group (Consultative Document).
- BIS Report of March 2010 by the Cross-Border Bank Resolution Group.

Rapporteur: The Chairman

3. Report on central counterparties: report to the European Commission (*for discussion*)

Issue: The Task Force will inform the EFMLG on the status of its work. While the Task Force remains in place, it has abandoned, at least for the time being, the idea of a draft EFMLG report. Instead, the Task Force is now considering submitting an EFMLG reaction directly to the Commission on the draft Commission proposal on EMIL (European Financial Infrastructure), at the time of its publication, to the benefit of the subsequent EU legislative procedure. In view of the envisaged EMIL calendar, that reaction (a letter, most likely) will be prepared by the Task Force and submitted to the EFMLG by means of a written procedure. Elements of the draft report will be used for that reaction. In addition, a recent discussion paper of the Commission on legislation on market infrastructures can also be considered.

Documents:

- The latest draft EFMLG report presented in the EFMLG meeting of 2 March 2010 is attached for ease of reference.
- Discussion paper for the 3rd meeting of the derivatives and market infrastructures Member States working group of 16 April 2010. Legislation on market infrastructures Clearing obligation and corporate end-users

Rapporteur: Ms. Chandraleka Bhargavan

4. The work programme for the Commission for 2010 (*for discussion*)

Issue: The European Commission has published its work programme for 2010. The programme includes the following strategic initiatives for addressing the financial crisis:

- a legislative proposal to enhance transparency and stability in derivatives markets – due in Q2 of 2010;
- a legislative initiative on short selling/credit default swaps – due in Q3 of 2010;
- revision of the Directive on Deposit Guarantee Schemes – due in Q2 of 2010;
- review of the Market Abuse Directive – due in Q4 of 2010;
- a Communication on effective and efficient crisis management frameworks – due in Q4 of 2010;
- revision of the Capital Requirements Directive (CRD IV) – due in Q4 of 2010; and
- a Communication on options for bank resolution funds – due in Q2 of 2010.

The work programme also lists a number of major proposals under consideration during 2010 and beyond and a list of simplification proposals. The views of EFMLG will be sought on items in the work programme where the EFMLG could formulate and communicate its views.

Documents: The European Commission's 2010 work programme

Rapporteur: Mr. Otto Heinz

5. Securities Law Directive (SLD) (*for discussion*)

Issue:

A Working Group with Member States experts is helping the Commission to finalise the draft SLD. The ECB Legal Services and DG Payments participate in the Working Group. The Working Group has met twice (February and March 2010), with the next meetings being scheduled for end of May and end of June 2010.

The draft SLD prepared by the Commission contemplates the holding and dispositions of securities held through securities accounts including conflict of laws and the processing of the rights flowing from such securities. Basically, what the draft SLD is doing is providing for a legal position of the account holder acquiring such securities which comprises a minimum content of legal attributes: the right to exercise the rights flowing from them; the right to dispose of them including pledging them and, finally, the right to change from account provider.

Attached are the two discussion papers presented by the Commission to the Working Group. The first discussion paper, discussed at the February 2010 meeting, includes an explanation on the general scope of the SLD and of the work ahead at the Working Group on each of the 16/17 rules which could be at the basis of the SLD. The second discussion paper, discussed at the March 2010 meeting, includes a discussion on each of the rules. We would like to underline that these documents are being distributed by the EFMLG Secretariat to the EFMLG exclusively for the benefit of the EFMLG discussion. EFMLG members are requested not to circulate them further.

Documents:

- Legislation on legal certainty of securities holding and dispositions - Discussion paper presented by the Commission to the Member States Working Group on 1 February 2010
- Legislation on legal certainty of securities holding and dispositions – Second discussion paper presented by the Commission to the Member States Working Group on 3 March 2010

Rapporteur:

The Chairman

6. MiFID revision: Benchmarking exercise; 3 CESR Consultations – (*for discussion*)

Issue:

After having introduced the MiFID revision at the EFMLG May meeting, Moise Ba will present a summary of the current French situation regarding MiFID. This presentation will be the basis for a short report summarising the MiFID revision situation in several EU Member States to be elaborated at a later stage with the benefit of EFMLG members reactions and contributions.

Moise Ba will also present the most recent three consultation papers that the Committee of European Securities Regulators (CESR) has published on its technical advice to the EU Commission in the context of reviewing the MiFID, which cover: investor protection and intermediaries; equity markets; and transaction reporting. CESR has invited interested parties to comment on the three consultation papers by 31 May 2010.

- Documents:**
- Summary of the reactions of the French market regarding the envisaged MiFID update.
 - 3 CESR Consultations dated 13 April 2010 on CESR's advice in the context of the MiFID review: Transaction Reporting; Investor Protection and Intermediaries; Secondary Markets.

Rapporteur: Mr. Moise Ba

7. Preparation for the upcoming Quadrilateral meeting (*for discussion*)

Issue: The draft Quadrilateral agenda has been received for comments. First input has already been sent from the EFMLG Secretariat. The EFMLG will be invited to suggest any other topic and to identify the EFMLG representatives to cover the different agenda points. It will be also considered to have a preparatory meeting among EFMLG attendees and also one meeting with market associations on the EFMLG Report on Market Standard Documentation in the morning of 30 June ahead of the Quadrilateral Meeting whose programme starts on 30 June in the afternoon.

Documents: Draft Quadrilateral agenda for the London meeting on 30 June and 1 July

Rapporteur: The Chairman

8. Publication of the EFMLG Report on Market Standard Documentation (*for discussion*)

Issue: The EFMLG will be updated on the steps taken in connection with the publication of the final EFMLG Report on Market Standard Documentation. The EFMLG policy on communication of EFMLG reports in general could also be discussed.

- Documents:**
- The final EFMLG Report on Market Standard Documentation
 - Response letter from ICMA, dated 22 April 2010

Rapporteur: Mr. Otto Heinz

9. Financial Integration Reports (*for information*)

Issue: The ECB's Financial Integration Reports has been recently published, and its key findings will be briefly presented to EFMLG members.

- Documents:**
- The ECB's Financial Integration Report (12 April 2010). Communiqué and Report.
 - The Commission's Financial Integration Report

Rapporteur: Ms. Chiara Zilioli

10. G20/IMF plans for a financial services tax on the banking sector (*for discussion*)

Issue: The IMF was tasked by G20 leaders to prepare a report looking at “the range of options countries have adopted or are considering as to how the financial sector could make a fair and substantial contribution toward paying for any burden associated with government interventions to repair the banking system”. The IMF’s report put forward two proposals that will be briefly introduced to the EFMLG.

Documents: Discussion paper prepared by Mr. Tom Bartos

Rapporteur: Mr. Tom Bartos

11. Follow-up on the Eurosystem’s ABS loan level data project (*for information*)

Issue: Following the public consultation on the envisaged requirement in the Eurosystem collateral framework to provide ABS loan-level information, the main findings of such consultation were published by the ECB. EFMLG members will be briefed on this.

Documents: Publication of the ECB on the ‘Results of the public consultation on the provision of ABS loan-level information in the Eurosystem collateral framework’.

Rapporteur: Mr. Otto Heinz

12. Legal consequences of an EU sovereign debt default (*for discussion*)

Issue: A short exchange of views is envisaged regarding the legal aspects in case of an EU sovereign debt default

Documents: n/a

Rapporteur: Mr. Tom Bartos

Other issues – Next meetings (*information/discussion*)