

VII-XI/2008

Latest Developments in EU legislation on Financial Services

- Extended Version -

16th Edition

**Brussels, Belgium
4 December 2008**

Brief Guidance on Using This Document

This is a technical (support) document that goes along with the Associates + ExCo Brief sent out ahead of the meeting and the respective PowerPoint presentation made at the meeting.

The date of each listed item is a hyperlink to the page where it was extracted from. When using the MS Word version of this file, you can activate the link by pressing CTRL key while clicking the link with the cursor of the mouse.

The text of each item is non-exhaustive, but is a summarised version.

The items are grouped by area (Financial Services, Financial Markets, Accounting & Tax, Corporate Governance, etc) and by a more specific theme (Payments, Securities, financial instruments, etc) for the sake of preserving continuity of the themes within the covered period. Chronology of the listed events is therefore somewhat distorted.

Abbreviations used in the text:

EU = European Union; EC = European Commission; EP = European Parliament; ECB = European Central Bank; EPC = European Payments Council; MS = Member States; SEPA = Single Euro Payments Area; PSD = Payment Services Directive; CRD = Capital Requirements Directive; DG MARKT = Directorate General Internal Market and Services of the European Commission; Q&A = Questions and Answers, IA = Impact Assessment; GAAP = General Agreement on Accounting Principles

[16-Jun-08](#)

EC encourages applications for new Expert Group on Credit Histories

EC is to create an Expert Group on Credit Histories (EGCH) to be composed of max 20 experts (public and private stakeholders) competent in the area of credit data. It will aim to identify solutions that maximize the circulation of credit data within the EU, and will present its recommendations in the form of a report to be completed by 1 May 2009.

The creation of the EGCH is one of the EC initiatives announced in its Communication on 'A Single Market for 21st century Europe' published in November 2007 ([IP/07/1728](#)). The mandate of the experts will start with the first meeting of the group, in September 2008, and end with the completion of their report. The group will meet in Brussels and will be chaired by DG MARKT.

More detailed information is at: http://ec.europa.eu/internal_market/finservices-retail/credit/history_en.htm

[4-Sept-08](#)

Commission nominates members of Expert Group on Credit Histories

The EC appointed the members of its Expert Group on Credit Histories (EGCH). The group is composed of experts in the field of credit data. The group's objective is to identify solutions that will maximise the circulation of credit data within the EU. The experts will present their report with recommendations by 1st May 2009.

The selection of the experts has taken into account the need to achieve a balanced representation of the interest of all relevant stakeholders (consumer associations, financial industry and national authorities).

The first expert group meeting was on 26th September. The mandate of the experts will end with the completion of their report by 1st May 2009. The group meets in Brussels and will be chaired by DG MARKT of the EC. More information: http://ec.europa.eu/internal_market/finservices-retail/credit/history_en.htm

[16-Jul-08](#)

EC proposes improved EU framework for investment funds

The EC has proposed an important revision of the EU framework for investment funds, which provides consumers with access to professionally managed investments on affordable terms. These funds, known as 'UCITS' (Undertakings for Collective Investment in Transferable Securities) at the end of last year accounted for over €6.4 trillion of assets in total which is equivalent to half of the Union's GDP and represents 11.5% of European household financial assets.

The new provisions will increase the efficiency of the current legislative framework in a number of key areas. **First**, it will allow UCITS managers to develop their cross-border activities and generate savings consolidation and economies of scale. Currently EU funds are on average 5 times smaller than US funds and the cost of managing them are twice as high as in the US. **Second**, investors will benefit from a greater choice of

investment funds operating at lower costs. **Third**, the proposal also seeks to improve investor protection by making sure that retail investors receive clear, easily understandable and relevant information when investing in UCITS.

These improvements will help reinforcing the competitiveness of UCITS on global markets. Currently 40% of UCITS originating in the EU are sold in third countries, mainly Asia, the Gulf region and Latin America. As part of the EC's Better Regulation Strategy and its firm commitment to simplify the regulatory environment, the new Directive will replace 10 existing directives with a single text. The proposal now passes to the European Parliament and Council for consideration.

The proposed changes to the UCITS Directive will:

- Remove administrative barriers to the cross-border distribution of UCITS funds.
- Create a framework for mergers between UCITS funds and allow the use of master-feeder structures.
- Replace the Simplified Prospectus by a new concept of Key Investor Information (KII).
- Improve cooperation mechanisms between national supervisors.

More information: http://ec.europa.eu/internal_market/investment/legal_texts/index_en.htm

If the proposal is adopted by the Council of Ministers and the EP in Q2 2009, its provisions will come into force mid-2011.

[17-Jul-08](#)

EC publishes a preliminary impact assessment report on Private Placement – revealing need for further preparatory work

EC undertook extensive consultation and impact assessment work over the last year and a half to analyse whether there are significant barriers to cross-border private placement and the options for overcoming them. EC published its findings in the form of a preliminary impact assessment report.

This report concludes that further work is needed to measure the overall costs and benefits of introducing EU level arrangements and to determine the appropriate scope of such potential arrangements. However, in order to be transparent and following better regulation principles, it has been decided to publish this preliminary report at this stage.

The impact assessment suggests that there is a prima facie case for action at EU level. Private placement regimes are an established feature of securities framework in developed financial systems around the world, and at national level in some MS. In other MS, no effective or complete private placement arrangements exist. There are barriers and impediments to cross-border placement in many EU MS arising from the patchwork of national rules and arrangements. These add transactional costs, generate significant legal uncertainty and may in some cases prevent transactions from taking place. The impact assessment work reveals that EU legislative action would be required to establish an effective and comprehensive EU level private placement regime. This could entail adjustments to recently adopted financial services Directives.

[21-Aug-08](#)

EC and ECB welcome clarifications on a SEPA-wide payment cards market

EC and the ECB welcomed a document published by the EPC, the association of banks and banking associations which is setting up the Single Euro Payments Area (SEPA). Through this document, which takes the form of Q&A, the EPC clarifies key aspects of compliance with the SEPA Cards Framework (SCF) for payment card schemes and banks, as well as the conditions for geographical coverage of card schemes within the SEPA. This should facilitate the transition from the existing fragmented and monopolistic national payments markets towards a competitive, SEPA-wide, payment cards market where economies of scale and increased competition can drive efficiency and innovation to the benefit of European consumers and companies.

Commissioners Neelie Kroes for Competition and Charlie McCreevy for Internal Market, together with Mrs Tumpel-Gugerell, member of the Executive Board of the ECB, have however been concerned that some of the provisions in the SEPA Cards framework may not been understood in a way that would help to fully reach the SEPA goals of more effective competition and greater efficiency.

One of the most pressing issues concerned the rules for migration of cards to SEPA. Unlike the comprehensive rule books for credit transfers and direct debits, the SEPA Cards Framework does not develop any detailed rules and standards, but rather describes three options for attaining SEPA compliance. Market participants seemed to interpret these three options in a way that a card scheme is only 'SCF compliant' if it covers all 31 states of the SEPA territory.

The EC and the ECB are satisfied by EPC's confirmation that – in the context of geographical coverage - the concept of compliance to the SEPA Cards Framework only requires that cards be *technically* and *commercially* capable of being accepted everywhere in the SEPA territory. Therefore, any scheme, even an efficient national scheme, will be able to become SCF compliant, provided that – among other requirements - it is technically and commercially capable of admitting banks from other SEPA countries.

SEPA will thus allow many - possibly national and regional - schemes to develop into 'SCF compliant' schemes, introducing and increasing competition between schemes to the benefit of consumers and merchants.

It is important that confusion on the exact interpretation of this concept of "SCF compliance" is ruled out. Relying on this, work is still needed by the EPC to develop a full set of technical standards allowing any card to be used, for payments in euro, potentially anywhere in the SEPA area. This is a precondition for the expansion of existing domestic debit card schemes across the SEPA countries, for the emergence of (a) new European card scheme(s), for pan-European processing and certification, and for market consolidation.

EPC's Q&A: <http://www.europeanpaymentscouncil.eu/documents/EPC075-SCF%20QAs%20Version10%20Final.pdf>

[4-Sept-08](#)

EC and ECB support launch of pan-European SEPA Direct Debit; provide guidance to industry

EC and ECB encouraged the EPC to move ahead with the launch of the SEPA Direct Debit scheme. Under this scheme, bank customers would be able to arrange direct debits to pay companies with bank accounts in any of the 31 European countries participating in SEPA. The EC and ECB recognise the potential advantages of the SEPA Direct Debit scheme, in terms of economies of scale and increased competition liable to drive efficiency and innovation in the area of payments to the benefit of European consumers and companies. The EC and the ECB have indicated to the EPC that they would be prepared to support the idea of a 'multilateral interchange fee' for cross border direct debits within the framework of the SEPA scheme on condition that such fees were objectively justified and transitional (applicable only for a limited period).

In order for SEPA Direct Debit to take off, the right incentives should be in place. In particular, banking communities where an interchange fee for national transactions exists could be allowed to apply this fee as currently exists at national level also for SEPA Direct Debit transactions, but only during a limited and well defined transitional phase. At the end of the transitional phase there would no longer be any transaction-based multilateral interchange fee, neither at the national level, nor at the cross border level, neither for SEPA Direct Debits, nor for national 'legacy' direct debits.

Direct debit schemes allow bank customers to give companies or organisations authorisation to take money directly from their bank accounts to pay their bills (e.g. gas, electricity, telephone). Currently there are separate national direct debit schemes and it is not possible to establish direct debit arrangements across frontiers in Europe.

For further details on SEPA: http://ec.europa.eu/internal_market/payments/sepa/index_en.htm; <http://www.ecb.int>; <http://www.sepa.eu>

[13-Oct-08](#)

EC proposes clear legal framework for innovative payment solutions (see [MEMO/08/616](#))

EC has put forward a proposal revising the current rules governing the conditions for issuing electronic money in the EU. The proposal follows extensive consultation (see [IP/05/930](#)) which showed that the current rules, dating from 2000, have hindered the take-up of the electronic money market, hampering technological innovation. The revised rules will facilitate market entrance for new providers and contribute to develop an industry whose expected volume could reach up to EUR 10 billion by 2012.

Proposed new rules for issuing e-money

The proposal provides for a modern and coherent legal framework for issuing electronic money, with the aim of promoting the emergence of a true single market for electronic money services in the European Union. The main innovations proposed are as follows:

- a technologically neutral and simpler definition of "electronic money", covering all situations where the payment service provider (an e-money institution or a credit institution) issues a prepaid stored value in exchange of funds. Electronic money is therefore defined as monetary value stored electronically on receipt of funds and which is used for making payment transactions. This definition covers e-money held on payment devices in the holder's possession (pre-paid cards or electronic purse) or stored remotely at a server (network or software money).
- a new prudential regime, ensuring greater consistency between prudential requirements of electronic money institutions and payment institutions under the Payment Services Directive 2007/64/CE ([IP/07/1914](#)). The new prudential requirements include an initial capital of EUR 125.000 enabling market entrance for smaller players and a new formula to determine ongoing capital. The waiver regime, according to which small entities can obtain derogation for some of the authorisation requirements, is aligned with that of payment institutions under the Payments Services Directive, and anti-money laundering requirements are updated.
- a clarification of the application of redemption requirements, with special reference to their application to mobile telecommunications. Consumers would have the right to claim back their electronic money at any moment, under conditions laid down by the new rules.

The proposal is available at: http://ec.europa.eu/internal_market/payments/emoney/index_en.htm

EC proposes extension of rules on cross-border euro payments to direct debits (see [MEMO/08/621](#))

The EC put forward a proposal modifying the provisions and extending the scope of the 2001 Regulation on cross-border euro payments, under which cross-border bank transfers in euro within the EU cost the same as domestic transfers. The proposal comes in response to the rapid evolution of the EU payments market. It aims at extending the principle of equality of charges to direct debit payments. It also contains some provisions enhancing the protection of consumer interests and rights and alleviating the statistical reporting burden.

The proposal is the final result of the review process of Regulation 2560/2001, carried out by the EC since 2005 and finalised with the publication of a Report in February 2008 (see [IP/08/305](#)). The Report had concluded, in particular, that Regulation 2560/2001 should be modified to take account of the emergence of the Single Euro Payments Area, to address some weaknesses identified during the review process and to align it with the Payment Services Directive (2007/64/EC) in order to create a fully consistent legal framework for payments in Europe.

The proposal extends the principle of equality of charges to direct debit payments, which will become available on a cross-border basis as from November 2009 (see [IP/07/1914](#)). As is already the case with credit transfers, ATM cash withdrawals and card payments, the cost of a cross-border direct debit in euro will become the same as the cost of a national direct debit. The proposal also provides for the setting-up of out-of-court redress bodies responsible for solving disputes related to cross-border payments, thereby enhancing the protection of consumer rights in this field. The proposal also aims at phasing out certain statistical reporting obligations relating to balance of payments, thus alleviating administrative and financial burdens and facilitating the implementation of the Single Euro Payments Area.

The new Regulation, if agreed upon by the European Parliament and the Council, would replace the existing text as from 1 November 2009.

The proposal is available at: http://ec.europa.eu/internal_market/payments/crossborder/index_en.htm

EC sets out proposal to increase minimum protection for bank deposits to €100,000 (see [MEMO/08/622](#))

The EC put forward a revision of EU rules on deposit guarantee schemes that puts into action the commitments made by EU Finance Ministers on 7 October. The new rules are designed to improve depositor protection and to maintain the confidence of depositors in the financial safety net. Under the new rules, the minimum level of coverage for deposits will be increased within one year from €20,000 to €100,000, and initially to €50,000 in the intervening period. Individual MS can choose to add to these minimum levels. In addition, the payout period in the event of bank failure will be reduced from three months to three days. The proposal now passes to the EP and the Council of Ministers for consideration.

Proposed amendments to the Directive on Deposit Guarantee Schemes

The purpose of the Directive on Deposit Guarantee Schemes (1994/19/EC) is to protect a portion of depositors' savings and to ensure confidence into the banking sector, in order to avoid bank runs leading to severe economic consequences. It has remained unchanged since 1994 but is now being updated in order to respond to the ongoing financial crisis.

The main changes proposed are as follows:

- Level of coverage for deposits: Member States are required to increase the coverage level to at least €50,000 and within a further year to at least €100,000. The current Deposit Guarantee Schemes Directive covers savings up to at least €20,000, although individual Member States can choose to increase this level. According to estimates, about 65% of eligible deposits are covered under the current regime. The new levels would cover an estimated 80% (with coverage of €50,000) and 90% (with coverage of €100,000) of deposits.
- Co-insurance (i.e. where the depositor bears part of the losses) is abandoned: Member States must ensure that the deposit is reimbursed up to the coverage level. Under the current Directive, Member States have the option to decide that deposit guarantee only covers 90% of savings.
- Reduction of the payout period: The time allowed for the deposit guarantee scheme to pay depositors in the event that a bank fails will be reduced to three days. Currently the period is three months, and can even be extended to nine months.

Background

EU Finance Ministers agreed on 7 October 2008 that it is a priority to restore confidence and proper functioning of the financial sector. All Member States committed to raise the level of deposit guarantees to €50,000, and many of them even to €100 000.

Ministers agreed to take all necessary measures to protect the deposits of individual savers and welcomed the intention of the EC to bring forward urgently an appropriate proposal to promote convergence of deposit guarantee schemes.

The proposal is available at: http://ec.europa.eu/internal_market/bank/guarantee/index_en.htm

[15-Jul-08](#)

Open Hearing on Retail Investment Products - Brussels, 15th July, 2008

The EC organised an Open Hearing on Retail Investment Products, in Brussels on 15th July. The hearing brought together senior policy makers, industry experts and consumer representatives to discuss a topic that has attracted increasing political attention in recent months, namely the evolving market for retail investment products and whether the current fragmented regulatory framework provides a sound basis for ensuring that investors receive the information and the quality of service they need to make appropriate investment decisions.

The Hearing was opened by Commissioner for DG MARKT, Charlie McCreevy; and addressed by Othmar Karas MEP, rapporteur for the EP report on the Green Paper on Retail Financial Services; Theodor Kockelkoren. Member of the Executive Board, Netherlands Authority for the Financial Markets; and Thierry Franq of the French Treasury, who provided perspectives from the incoming French Presidency of the EU Council.

Full report: http://ec.europa.eu/internal_market/finances/docs/cross-sector/hearing-record_en.pdf

[4-Jun-08](#)

EC Publishes a report on CRA and a Position on Article 10 of the Prospectus Directive in relation to the Transparency Directive

Report on CRA: http://ec.europa.eu/internal_market/securities/docs/esme/report_040608_en.pdf

Report on Article 10:

http://ec.europa.eu/internal_market/securities/docs/esme/position_prospectus_directive_en.pdf

[31-Jul-08](#)

Consultation by the EC services on Credit Rating Agencies (CRAs)

The EC published two consultation documents on CRAs seeking views from all interested parties by 5th September. The first document relates to the conditions for the authorisation, operation and supervision of credit rating agencies. The second proposes policy options in order to tackle what is felt to be an excessive reliance on ratings in EU legislation.

It is generally accepted that CRAs underestimated the credit risk of structured credit products and failed to reflect early enough in their ratings the worsening of market conditions thereby sharing a large responsibility for the current market turmoil. The current crisis has shown that the existing framework for the operation of CRAs in the EU (mostly based on the IOSCO Code of Conduct for CRAs) needs to be significantly reinforced. The move to legislate in this area was recently welcomed by the Ecofin Council at its meeting in July. The documents published today aim at ensuring the highest professional standards for rating activities. They do

not intend to interfere with rating methodologies or rating decisions which will remain the sole competence and responsibility of CRAs. The envisaged proposals also take account of existing standards and developments at international level. The US has had rules on CRAs since the mid-seventies and is at present also considering changes to its rules.

The consultation paper suggests the adoption of a set of rules introducing a number of substantive requirements that CRAs will need to respect for the authorisation and exercise of their rating activity in the EU. The main objective of the EC proposal is to ensure that ratings are reliable and accurate pieces of information for investors. CRAs will be obliged to deal with conflicts of interest, have sound rating methodologies and increase the transparency of their rating activities.

The consultation document also proposes two options for an efficient EU oversight of CRAs: The first option is based on a reinforced co-ordination role for the Committee of European Securities Regulators (CESR) and strong regulatory co-operation between national regulators. The second option would combine the establishment of a European Agency (either CESR or a new agency) for the EU-wide registration of CRAs and the reliance on national regulators for the supervision of CRA activities.

The consultation document on reliance on ratings identifies the references made to ratings in existing EU legislation and looks at possible approaches to the issue of excessive reliance on ratings.

The documents are open for consultation until 5th September. This short consultation period is justified by the need to issue a proposal in the autumn to allow the Council of Ministers and the Parliament to agree before the next European Parliament elections in June 2009.

More information: http://ec.europa.eu/internal_market/securities/agencies/index_en.htm

[12-Nov-08](#)

EC adopts proposal to regulate Credit Rating Agencies (see [MEMO/08/691](#))

The EC put forward a proposal for a Regulation on credit rating agencies. This proposal is part of a package of proposals to deal with the financial crisis and adds to EC's proposals on Solvency II, Capital Requirements Directive, Deposit Guarantee Schemes and accounting. The new rules are designed to ensure high quality credit ratings which are not tainted by the conflicts of interest which are inherent to the ratings business.

The proposal lays down conditions for the issuance of credit ratings which are needed to restore market confidence and increase investor protection. It introduces a registration procedure for credit rating agencies to enable European supervisors to control the activities of rating agencies whose ratings are used by credit institutions, investment firms, insurance, assurance and reinsurance undertakings, collective investment schemes and pension funds within the Community.

Credit rating agencies will have to comply with rigorous rules to make sure (i) that ratings are not affected by conflicts of interest, (ii) that credit rating agencies remain vigilant on the quality of the rating methodology and the ratings and (iii) that credit rating agencies act in a transparent manner. The proposal also includes an effective surveillance regime whereby European regulators will supervise credit rating agencies.

New rules include the following:

- Credit rating agencies may not provide advisory services.
- They will not be allowed to rate financial instruments if they do not have sufficient quality information to base their ratings on
- They must disclose the models, methodologies and key assumptions on which they base their ratings

- They will be obliged to publish an annual transparency report
- They will have to create an internal function to review the quality of their ratings
- They should have at least three independent directors on their boards whose remuneration cannot depend on the business performance of the rating agency. They will be appointed for a single term of office which can be no longer than five years. They can only be dismissed in case of professional misconduct. At least one of them should be an expert in securitization and structured finance.

Some of the proposed rules are based on the standards set in the International Organisation of Securities Commissions (IOSCO) code. The proposal gives those rules a legally binding character. Also, in those cases where the IOSCO standards are not sufficient to restore market confidence and ensure investor protection the EC has proposed stricter rules.

The EC started work to propose legislation in this area in the summer of 2007 when there were first indications of malpractice in the ratings business. This proposal is the outcome a thorough and comprehensive impact assessment as well as extensive consultations. Important input has been given by the Committee of European Securities Regulators and the European Securities Markets Expert Group, Member States, the ECB, major credit rating agencies and other stakeholders (industry associations from the insurance, securities and banking sectors, information providers, etc.).

Background

In October 2007 EU Finance Ministers agreed to a set of conclusions on the crisis (the 'Ecofin Roadmap') which included a proposal to assess the role played by credit rating agencies and to address any relevant deficiencies. The EU Council of 20 June and 16 October 2008 called for a legislative proposal to strengthen the rules on credit rating agencies and their supervision at EU level, considering it a priority to restore confidence and proper functioning of the financial sector.

The proposal is available at: http://ec.europa.eu/internal_market/securities/agencies/index_en.htm

[08-Jul-08](#)

EC services publish the report from the European Securities Markets Expert Group (ESME) on Commodity Derivatives and Related Business

Report: http://ec.europa.eu/internal_market/securities/docs/esme/commodity_derivatives_en.pdf

[05-Aug-08](#)

Open Hearing on Commodity Derivatives

The EC DG MARKT is organising an Open Hearing on Commodity Derivatives, to be held in Brussels on 25 September, 2008. The hearing will bring together senior policy makers, regulators and industry experts to discuss the future of market and prudential regulation in commodity derivatives trading. A session will also be devoted to ongoing initiatives in the field of energy market liberalisation with an impact on the trading of financial instruments.

The hearing will be opened by David Wright, Deputy-Director General of DG MARKT followed by presentations of three strands of technical advice requested by the EC from securities, banking and energy regulators and experts. Three industry panels will then debate the different topics: appropriate levels of prudential regulation for commodities firms, relevant exemptions from market and conduct of business rules

laid out in the Markets in Financial Instruments Directive (MiFID), and proposals to introduce more transparency in EU energy markets.

[5-Nov-08](#)

First meeting of the working party on derivatives

Commissioner McCreevy welcomes the outcome of the first meeting of the working group he has set up to find a solution to the clearing of credit default swaps (CDS). The group is composed of representatives from the industry and the regulators and chaired by the EC.

At today's meeting participants agreed that technical work would proceed in subgroups to deal with issues such as which CDS-types would be cleared by when, which standards should apply to central clearing counterparties to ensure their robustness, how to ensure coherence with work taking place in the United States, how to deal with price reporting, how to ensure adequate information and supervision by regulators.

Following technical preparation involving all actors the Group would meet again early in December.

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 this year. All participants today confirmed that this was a reasonable timing.

List of organisations representing the industry and regulators, chaired by the EC:

- AIMA - Alternative Investment Management Association
- CEA - Comité Européen des Assurances (European Insurance and Reinsurance Federation)
- CEBS - Committee of European Banking Supervision
- CEIOPS - Committee of European Insurance and Occupational Pensions Supervisors
- CESR - Committee of European Securities Regulators
- DTCC - Depository Trust and Clearing Corporation
- EACH - European Association of Central Counterparty Clearing Houses
- EBF - European Banking Federation
- ECB - European Central Bank
- EFAMA - European Fund and Asset Management Association
- FESE - Federation European Securities Exchange
- FOA - Futures & Options Association
- ISDA - International Swaps and Derivatives Association
- LIBA - London Investment Banking Association
- SIFMA - Securities Industry & Financial Markets Association
- WBMA - Wholesale Markets Brokers' Association

[02-Jul-08](#)

Public consultation for potential refinements to the Capital Requirements Directive

The EC staff request feedback on possible changes to the trading book capital requirements for 'incremental' risks. Comments are welcome until 15 October 2008.

- Proposed changes to Trading Book Capital Requirements 

The Commission further consulted the public from 30 June 2008 to 18 July 2008 on an adjusted proposal for securitisations and other risk transfer products.

- Consultation document [\[en\]](#)
- Summary of the responses [\[en\]](#)
- [Responses received](#)

The EC services had requested comments on proposed changes to the Capital requirements Directive (2006/48/EC and 2006/49/EC). This Consultation ended on 16 June 2008.

- Consultation document [\[en\]](#)
- Feedback document [\[en\]](#)
- [Responses received](#)

[1-Oct-08](#)

EC proposes revision of bank capital requirements rules to reinforce financial stability (see [MEMO/08/599](#))

The EC put forward a revision of EU rules on capital requirements for banks that is designed to reinforce the stability of the financial system, reduce risk exposure and improve supervision of banks that operate in more than one EU country. Under the new rules, banks will be restricted in lending beyond a certain limit to any one party, while national supervisory authorities will have a better overview of the activities of cross-border banking groups. The proposal, which amends the existing Capital Requirements Directives, reflects extensive consultation with international partners, MS and industry. It now passes to the EP and the Council of Ministers for consideration.

Proposed amendments to the Capital Requirements Directives

The purpose of the Capital Requirements Directives (2006/48/EC and 2006/49/EC) is to ensure the financial soundness of banks and investment firms. Together they stipulate how much of their own financial resources banks and investment firms must have in order to cover their risks and protect their depositors. This legal framework needs to be regularly updated and refined to respond to the needs of the financial system as a whole. The main changes proposed are as follows:

- Improving the management of large exposures: banks will be restricted in lending beyond a certain limit to any one party. As a result, in the inter-bank market, banks will not be able to lend or place money with other banks beyond a certain amount, while borrowing banks will effectively be restricted in how much and from whom they can borrow.
- Improving supervision of cross-border banking groups: 'colleges of supervisors' will be established for banking groups that operate in multiple EU countries. The rights and responsibilities of the respective national supervisory authorities will be made clearer and their cooperation will become more effective.
- Improving the quality of banks' capital: there will be clear EU-wide criteria for assessing whether 'hybrid' capital, i.e. including both equity and debt, is eligible to be counted as part of a bank's overall capital – the amount of which determines how much the bank can lend.
- Improving liquidity risk management: for banking groups that operate in multiple EU countries, their liquidity risk management – i.e. how they fund their operations on a day-to-day basis – will also be discussed and coordinated within 'colleges of supervisors'. These provisions reflect the on-going work at the Basel Committee on Banking Supervision and the Committee of European Banking Supervisors.
- Improving risk management for securitised products: rules on securitised debt – the repayment of which depends on the performance of a dedicated pool of loans – will be tightened. Firms (known as 'originators') that re-package loans into tradable securities will be required to retain some risk

exposure to these securities, while firms that invest in the securities will be allowed to make their decisions only after conducting comprehensive due diligence. If they fail to do so, they will be subject to heavy capital penalties.

Background

The proposed amendments are, in the main, a direct follow-up to the Roadmap for the current financial turmoil agreed by EU Finance Ministers. In part, they are also a response to the recent recommendations of the G-7 Financial Stability Forum. The European Council has expressed a strong sense of urgency emphasising that the measures should be adopted by April 2009.

The proposal is available at: http://ec.europa.eu/internal_market/bank/regcapital/index_en.htm

[23-Jul-08](#)

EU Presidency and EC welcome launch of TARGET2 – Securities "T2S" project

On 17 July, the ECB announced its decision to formally launch the TARGET2 -Securities ("T2S") project. European Commissioner for DG MARKT, Charlie McCREEVY and Christine LAGARDE, Minister of Finance of France and President of the Council of EU Finance Ministers, have welcomed the formal ECB decision to invest in the T2S project.

"T2S is of major economic significance and has the potential to make a very significant strategic and economic contribution to strengthening and integrating European securities markets and to economic growth for the benefits of European citizens;

One of the EU's main objectives in financial services is to promote integration, transparency and competition in clearing and settlement. T2S can contribute to achieving this objective;

We will continue to work closely with the ECB and market participants to ensure that T2S continues to contribute to the development of a more efficient and integrated post-trading environment in the EU."

TARGET2-Securities is a single IT platform which will centralise the settlement of euro-denominated securities (the system will also be open to other currencies) between participating entities. T2S will thus contribute to the elimination of the distinction between domestic and cross-border settlement between those entities. The platform would be offered as a service to Central Securities Depositories (CSDs) and would be managed by the Eurosystem (the ECB and the national central banks of the Member States that have the euro as their currency). T2S is an important example of integration in the post-trading area, taking place alongside other initiatives, notably on the private sector side. It will bring substantial benefits to the European economy by lowering the costs of securities settlement, by removing a number of barriers and by exploiting economies of scale amongst the participating entities.

[22-Aug-08](#)

EC expert group calls for harmonised solution to dismantle legal barriers in cross-border securities transactions

The EC's Legal Certainty Group (LCG) has put forward solutions to legal barriers related to the cross-border holding and settlement of securities. The solutions proposed in its report, entitled 'Second Advice', are expected to lead to an improved and harmonised legal framework for holding and settlement of securities

through intermediaries and for the processing of corporate actions. Furthermore, the report proposes to give issuers free choice between European Central Securities Depositories.

Main conclusions of the Legal Certainty Group's Second Advice

Recommendations 1-11 present possible solutions to the so-called Giovannini Barrier^[1] 13 (which deals with the fact of absence of an EU-wide framework of laws regarding book-entry securities). The Recommendations address comprehensively the legal effects of book-entries made to securities accounts. However, they circumvent the necessity to make fundamental changes to Member States' laws that currently govern securities holding and settlement. The Recommendations deliver a whole set of rules that covers many important legal aspects, such as the different methods for creating security interest, priorities, or the protection of the integrity of the issue.

Recommendations 12-14 relate to the legal aspects contained in Giovannini Barrier 3 (which deals with the differing rules governing corporate actions' processing). They propose the removal of insufficiencies in corporate actions processing by introducing on the one hand a rule on cross-border interconnectivity between conflicting models of securities holding. On the other hand they propose a rule on the specific duties of intermediaries regarding the information flow between investor and issuer as well as on the exercise of certain investors' rights through the holding chain.

Recommendation 15 presents potential solutions for dismantling Giovannini Barrier 9 (which deals with restrictions on the location of securities) and ties in with the Code of Conduct for Clearing and Settlement. It advocates that issuers should have a free choice in choosing their Central Securities Depository. Such a freedom of choice would considerably enhance competition and the possibility to consolidate amongst post-trading infrastructures.

The way forward

The EC will now analyse the proposals of the *Second Advice*, which is calling for harmonised legislation in this area of law, in view of taking a decision on the appropriate way forward before the end of 2008.

About post-trading

Post-trading takes place after two parties have agreed a securities transaction, in order to organise for the acquisition of the securities on one side and their disposal on the other. Systems in the EU have developed nationally, as cross-border activity has been limited until recently. Much to the detriment of the EU's financial markets, cross-border post-trading in the EU is still more expensive and complex than post-trading in a single Member State or in the United States.

About the Legal Certainty Group

The Legal Certainty Group is an advisory group made up of 36 eminent legal experts from the post-trading industry, academia, legal practice and competent authorities. It is chaired by the Commission which also provides the Secretariat. The Members are drawn from 23 EU Member States and participate in their personal capacity. The Legal Certainty Group was created in 2005 and delivered its First Advice together with a fact finding study in summer 2006. Its sister groups are CESAME (on industry related matters) and FISCO (on fiscal compliance procedures).

The Second Advice of the Legal Certainty Group is available at: http://ec.europa.eu/internal_market/financial-markets/clearing/certainty_en.htm

14-Nov-08

European Securities Committee votes to grant "equivalence" in relation to third country GAAPs

DG MARKT Commissioner Charlie McCreevy has warmly welcomed the positive opinion of Member States in support of Commission proposals for granting equivalence to the Generally Accepted Accounting Principles (GAAPs) of certain third countries as from next year. The vote, by the European Securities Committee today, follows a favourable resolution of the EP. The proposals will now pass to EP and Council for formal opinions and then to the Commission for adoption.

The EU has the objective of arriving at a common set of worldwide accounting standards for listed companies. For the interim, a key part of this strategy is to eliminate existing costly and burdensome reconciliation requirements between the EU and its key trading partners.

The proposals which are made under the Prospectus Directive and Transparency Directive determine that the GAAPs of US, Japan, China, Canada, South Korea and India are found to be equivalent to International Financial Reporting Standards (IFRS) as adopted by the EU. The EC will review the situation of some of these (China, Canada, South Korea, India) by 2011 at the latest.

6-Jun-08

EC issues Recommendation on limiting audit firms' liability

The EC has issued a Recommendation concerning the limitation of auditors' civil liability. Its main purpose is to encourage the growth of alternative audit firms in a competitive market. The Recommendation responds to the increasing trend of litigation and lack of sufficient insurance cover in this sector. It aims to protect European capital markets by ensuring that audit firms remain available to carry out audits on companies listed in the EU. The Recommendation leaves it to MSs to decide on the appropriate method for limiting liability, and introduces a set of key principles to ensure that any limitation is fair for auditors, the audited companies, investors and other stakeholders. This initiative arises from a mandate in the 2006 Directive on Statutory Audit to examine the issue of limitation of financial liability and to present recommendations to MSs where appropriate.

The Recommendation proposes three examples as possible methods but any other equivalent method might be used. The selected method should best suit the Member State's legal environment.

The Recommendation also introduces key principles to be followed by MSs when they select a limitation method:

- The limitation of liability should not apply in the case of intentional misconduct on the part of the auditor;
- A limitation would be inefficient if it does not also cover third parties;
- Damaged parties have the right to be fairly compensated.

The Recommendation is available at: http://ec.europa.eu/internal_market/auditing/liability/index_en.htm

EC decision cuts red tape for audit firms from third countries

The EC adopted today a decision granting a transitional period for the registration requirements for audit firms from 30 non-EU countries. The decision clarifies how the competent authorities in MSs should deal with third country audit firms under the Statutory Audit Directive. In the context of its work on monitoring the implementation of the Statutory Audit Directive, the EC published a scoreboard on where the 27 MSs stand with their implementation of the Statutory Audit Directive, which had to be transposed into national law on June 29, 2008.

The EC has adopted a Decision concerning a transitional period for audit activities of certain non-EU auditors and audit entities. The decision ensures the proper implementation of Article 46 of the Statutory Audit Directive, which allows Member States to modify or not to apply the registration requirements for third country auditors set out in Article 45 of the Directive only if such auditors fulfil certain conditions.

The Decision allows 30 third country audit firms to continue their audit activities regarding third country companies listed on European markets by granting the audit firms concerned a transitional period in respect to registration requirements until 1 July 2010. However, transition will only be granted if third country audit firms comply with the minimum information requirements necessary for investors in Europe. Audit firms from third countries that do not fall under the transitional regime will be subject to full registration and oversight by the competent EU Member State. On the practical application of the regime for all third countries, the audit regulators in the European Group of Auditors' Oversight Bodies worked out arrangements for a common approach on common application forms for the registration of third country auditors and audit firms.

In another document, the EC offers a first overview on the extent of implementation of the Statutory Audit Directive in all 27 Member States. The Commission drew up a scoreboard based on the information provided by Member States. The scoreboard shows that twelve Member States completed the entire implementation of the Directive to date. Most of the other Member States have transposed major parts of the Directive but are still missing some important provisions. This scoreboard will be regularly updated in order to inform the European Parliament and the markets on where Member States stand on the implementation.

The EC decision and the common application forms:

http://ec.europa.eu/internal_market/auditing/relations/index_en.htm

More information on the Statutory Audit Directive Scoreboard:

http://ec.europa.eu/internal_market/auditing/directives/index_en.htm

[18-Nov-08](#)

EC consults on ways to help create more market players

The EC launched a public consultation on control structures in audit firms and on the possible ways forward. This follows an independent study on the ownership rules of audit firms and their consequences for audit market concentration ([IP/07/1570](#)). The purpose of the consultation is to examine possible ways for finding catalysts to stimulate the emergence of new players in the international audit market. This may include deregulation of the capitalisation of audit firms (unbundling) and other catalysts related to human capital of audit firms. The EC invites stakeholders to give their views on the issues involved by 28 February 2009.

Possible ways forward

In October 2007, the EC published a study prepared by Oxera. On the basis of this study, the EC invites stakeholders to give their views on two possible options for opening up the international audit market:

- particular focus on deregulation of the capitalisation of audit firms (unbundling) as the catalyst for opening up the audit market. Deregulating the capital structure implies modification of Article 3 (4) of the 2006 Directive on Statutory Audit, which requires that auditors hold a majority of the voting rights in an audit firm and that a majority of auditors control the management board. This should however not be to the detriment of robust independence rules.
- wider focus on a range of catalysts. Oxera identified other barriers than access to capital which also play an important role in affecting the entry and could also be discussed: reputation; quality and expertise of staff; low switching rates (reasons for companies not to change their auditor); differences among firms in their international outreach; and differences in independence rules.

More information is available at: http://ec.europa.eu/internal_market/auditing/market/index_en.htm

[18-Jun-08](#)

Authorities responsible for regulation of public companies announce next steps regarding the creation of a group to interact with the international accounting standards committee foundation

The world's securities authorities – represented by IOSCO, as well as the EC, the Japan Financial Services Agency and the US Securities and Exchange Commission, the securities authorities in the world's three largest capital markets - welcome the upcoming Roundtable organized by the IASCF regarding the creation of an IASCF Monitoring Group. The IASCF is the private foundation that provides public interest oversight to the International Accounting Standards Board (IASB), which promulgates IFRS.

Securities authorities have been consulting with the IASCF Trustees regarding the IASCF's Constitution review and revision. As part of the contemplated change, the IASCF Monitoring Group would participate in the selection and approval of IASCF Trustees and the IASCF Trustees would regularly report to the IASCF Monitoring Group on their oversight of the IASB. The IASCF Monitoring Group's role will be expressly designed to ensure the independence of the IASB, while reinforcing the public interest oversight provided by the IASCF Trustees. The securities authorities also look forward to further engagement with the IASCF's on governance matters, as the Constitution review progresses towards improving its public accountability.

On June 19, representatives of IOSCO, the U.S. Securities and Exchange Commission, Japan Financial Services Agency, and EC will participate in the IASCF Roundtable regarding the IASCF Constitution Review and look forward to hearing views expressed.

[29-Sept-08](#)

McCreevy announces major initiatives on accounting rules for small businesses

Charlie McCreevy, Commissioner for the Internal Market and Services has announced today, a MS option to exempt micro entities and a review of the Accounting Directives for small businesses. Mr. McCreevy said:

- "This is a difficult period. All the talk in the press is about the banks, the big financial institutions, the mortgage lenders. We are all affected by what is happening. What we must not forget is that for small businesses, life goes on. They remain the backbone of the European economy. Over the past few months, I have thought long and hard about what more we can do to ease the burden for SMEs.
- The EC and MSs are committed to reducing the administrative burden on SME's by 25%. This is no easy task and translating it into action has not been easy. There are no quick fix solutions and it is not just about figures.

- In the area of company law, for which I am responsible, we have already adopted measures aimed at reducing the administrative burden on SMEs. These measures were fast tracked in 2007 and April 2008. Each of these measures, in one way or another, eases the reporting requirements on SMEs. The EC adopted a further package which would reduce the reporting requirements of companies in the case of mergers and divisions. The total savings potential of the measures proposed, so far, in the area of company law is now 1 billion €/year. All of the measures that have so far been adopted were first floated in the 2007 EC Communication on a simplified business environment for companies.
- Another proposal put forward in the 2007 Communication was the idea to allow MSs to exempt very small companies or so called "micro entities" from the EU's Accounting Directives. When we consulted on this proposal, 59% of replies were in favour. These were mainly companies and public authorities. Those against included parts of the accountancy profession, and some Member States.
- In July 2008, the High Level Group of Independent Stakeholders on Administrative Burdens, headed by Edmund Stoiber, delivered its final opinion on burden reduction for companies. The Group had before it a Report prepared by outside consultants. That Report found that there could be an immediate saving of €5.7billion, if micro entities were exempted from the accounting framework and no longer had to prepare annual accounts.

However, the Stoiber Group was not united on this issue. Discussions that had taken place in May of this year showed up sharp divisions within the Group on the question of whether to exempt micro entities from the Accounting Directives. After long deliberation, a "compromise" proposal of allowing Member States to decide for themselves whether to exempt micro entities emerged. It was decided that this should be put to the vote as no consensus could be reached. In July, the Stoiber Group voted in favour of this compromise proposal. There were 9 in favour of this compromise, 3 were against and there were 3 abstentions. The Group called on the Ec to bring forward a proposal to allow MSs to exempt micro entities from the accounting Directives

- I have since had the opportunity to meet Edmund Stoiber and discuss the findings of the Report with him. I listened to him carefully as he put his case as to why it would be a good thing for micro entities, if we were to follow the opinion of the majority of his Group. Herr Stoiber firmly believes that now is the right time to do this for European business.
- I should add that on 21 May of this year, in a report adopted by the European Parliament on a simplified business environment for companies, German MEP Klaus-Heiner Lehne also welcomed an exemption for micro entities from the accounting framework.
- The Accounting Directives have been around for 25-30 years and to date there has been no real attempt to update them. The Accounting Directives were designed as general rules with all businesses in mind –large or small. Furthermore, they already allow MSs to exempt certain types of companies from the requirements. With the move to IFRS for listed companies, the Accounting Directives have become less relevant. Many companies are now outside their scope altogether.
- As the deliberations of the Stoiber Group have shown, there are many sides to this debate and there is no easy solution to this. I am told that on average, micro entities would save as much as €1200 per year. In the current climate, that is no mean saving.

Therefore, I have decided to propose to the Commission, the following:

- I consider that, on balance, there is merit in the Stoiber Group's proposal that MSs should be allowed the option to exempt micro entities from the accounting requirements.
- I believe the time has now come to overhaul the Accounting Directives –indeed to modernise them. Of course, we can continue to make piecemeal changes- simplify the requirements for publication, disclosures and even the layout of the balance sheet. But there is no point in simply tinkering with the legislation. In this review, we will be guided by the "think small first" principle."

[15-Oct-08](#)

EC adopts amendments to mitigate consequences of financial turmoil

The EC has today adopted amendments to accounting standards, with the unanimous support of Member States. The changes to the accounting standards are intended to mitigate the consequences of the recent turbulence in financial markets. These amendments ensure that EU companies have the same flexibility as their American competitors to reclassify assets held-for-trading into the held-to-maturity category. The current financial crisis justifies the use of reclassification by companies. In these circumstances, financial institutions in the EU would no longer have to reflect market fluctuation in their financial statements for these kinds of assets. These changes will apply as from the third quarter of 2008.

Responding to the ECOFIN request

On 7 October, the ECOFIN Council adopted the following conclusions related to accounting standards:

"We underline the necessity of avoiding any distortion of treatment between US and European banks due to differences in accounting rules. We take note of the flexibility in the application of mark to market valuation under IFRS as outlined in recent guidance from the IASB. Ecofin strongly recommends that supervisors and auditors in the EU apply this new guidance immediately. We also consider that the issue of asset reclassification must be resolved quickly. To this end, we urge the IASB and the FASB to work together on this issue and welcome the readiness of the Commission to bring forward appropriate measures as soon as possible. We expect this issue to be solved by the end of the month, with the objective to implement as of the third quarter, in accordance with the relevant procedures."

These conclusions echoed the statement issued by the Summit of European G-8 Members meeting in Paris on 4 October and were reiterated by the Summit of Euro-area countries meeting in Paris on 12 October.

Next steps

In the context of the vote held in the Accounting Regulatory Committee on 15 October, the Commission stated that given the turbulence in financial markets, it will continue to closely monitor all accounting issues that could impact on the stability of financial institutions and financial markets and will keep under constant review the implementation of IAS 39 and IFRS 7. The Commission declaration in the Accounting Regulatory Committee can be found at http://ec.europa.eu/internal_market/accounting/committees_en.htm#arc

Background: amendments to IAS 39 and IFRS 7

On 13 October, the IASB adopted amendments of IAS 39 *Financial Instruments: Recognition and Measurement* and of IFRS 7 *Financial Instruments: Disclosures*.^[1]

The amendments to IAS 39 introduce the possibility of reclassifications for companies applying International Financial Reporting Standards (IFRS), which were already permitted under US Generally Accepted Accounting Principles (GAAP) in rare circumstances. The amendments to IFRS 7 introduce additional disclosure requirements linked to these reclassifications in order to ensure full transparency for users of financial statements.

The IASB's approach fully achieves the objectives set out by the ECOFIN Council of 7 October, i.e. to place EU companies at the same position as its competitors as far as reporting rules are concerned. The amendment would also be applicable as of the third quarter of this year (periods starting after 1 July 2008) as requested by ECOFIN.

The European Financial Reporting Advisory Group (EFRAG) issued a favourable technical endorsement advice to the Commission on 14 October,^[2] while the Standards Advisory Group (SARG) today formally confirmed that this technical endorsement advice is objective and well-balanced.^[3]

The EC Regulation will be published at: http://ec.europa.eu/internal_market/accounting/ias_en.htm

Adapted regulation: http://ec.europa.eu/internal_market/accounting/ias_en.htm#adopted-commission

Statement by the EC: http://ec.europa.eu/internal_market/accounting/committees_en.htm#meetings

[5-Nov-08](#)

EC welcomes IASB guidance on the application of fair value measurement when markets become inactive

The EC welcomes the guidance on the application of fair value measurement when markets become inactive published by the International Accounting Standards Board (IASB) on 31 October 2008. The EC considers that the IASB's position is fully consistent with the joint statement issued by the 3 European committees of supervisors and with similar guidance recently issued by the relevant US bodies.

Further action to mitigate the consequences of the financial turmoil

As a follow-up to the recent adoption of amendments to IAS 39 and IFRS 7 (see [IP/08/1513](#)), on 21 October the European Commission organised a meeting with European stakeholders to identify other possible issues arising under IAS 39 and IFRS 7. During this meeting, an urgent need for further guidance on the application of fair value in inactive markets was expressed.

On 31 October, the IASB published a document setting out guidance on important measurement issues affecting the valuation of financial instruments when an active market does not exist. The IASB's guidance makes clear *inter alia* that transaction prices and broker or pricing service quotes might be inputs when measuring fair value, but may not be determinate if an active market does not exist. This provides the clarifications needed by European companies to apply internal models to calculate the value of financial instrument for which an active market no longer exists. The staff summary takes into consideration the recent clarifications issued by the staff of the US Financial Accounting Standards Board (FASB) and of the US Securities and Exchange Commission (SEC) Office of the Chief Accountant. It is also fully consistent with the joint statement issued by the 3 European committees of supervisors on 21 October.

The EC will continue to closely monitor developments in this area and urges accounting standards-setters to address remaining issues arising from the credit crisis. In particular, the IASB should urgently provide solutions to the issues raised in the Commission's letter of 27 October. Moreover, the FASB-IASB joint advisory group should rapidly become operational and initiate work towards addressing other issues arising from the credit crisis.

More information: http://ec.europa.eu/internal_market/accounting/news/index_en.htm

[5-Nov-08](#)

EC adopts consolidated text of IFRS applicable in the EU

The EC adopted on Monday 3 November the consolidated text of all International Financial Reporting Standards (IFRS) in force in the European Union (EU). The consolidated version puts together all IFRS endorsed to date, including the latest amendments endorsed on 15.10.2008. It will enable stakeholders to refer to only one single legal document. This is an important element of the EC simplification programme aimed at reducing the administrative burden on EU businesses.

The consolidated text, which is available in all official EU languages, replaces 18 earlier Regulations. All IFRS endorsed from 29 September 2003 to 15 October 2008 are now published in this single document. Furthermore, all cross-references have been updated. At the same time the Commission has carried out a complete overhaul of all linguistic versions which ensures their high quality and consistency both with existing EU legislation and with the official texts of the International Accounting Standards Board (IASB).

The new Regulation repeals and replaces Regulation No. 1725/2003 of 29 September 2003 and all subsequent modifications up to 15 October 2008. Member States unanimously supported its adoption.

The consolidated text: http://ec.europa.eu/internal_market/accounting/ias_en.htm

* *

*