

FORUM GROUP n° 6: FACILITATING CROSS-BORDER CORPORATE FINANCIAL SERVICES

Issues Paper

Providers (large financial institutions that are highly active across the majority of Member States) and corporate users of cross-border financial services, ranging from SMEs heavily involved in cross-border business to large multinationals, face an array of obstacles and problems in their business due to a range of legal, administrative and tax reasons.

The Commission's Framework for Action COM(1998)625 of 28.10.1998 (see the DG MARKET website) already focuses attention on cross-border cash management techniques. For instance, customers active in a number of Member States would draw benefit from the possibility of pooling their euro cash balances across the EU. This would allow the account holder's credit and debit balances denominated in euro and/or national currencies to be notionally offset for the purposes of maximising interest income. "Sweeping" funds into a single account would also give the account holder more flexibility in handling cash flows. These possibilities are currently excluded by a range of factors including the absence of any provision for offsetting loans or deposits in one jurisdiction against those in another. There are also complications relating to different national rules on handling of payment claims, investor/creditor protection in the event of bankruptcy, provision of collateral, and issues relating to liability of parent companies in event of default by subsidiary. There are a host of administrative issues relating to revocation of orders, conditions for calculating and payment of stamp duty. Finally, the movement of funds from accounts in one Member State to those in another has implications for tax revenues. This combination of factors will continue to impede the operation of a single bank account after the introduction of the euro.

It is clear that the necessary degree of convergence in core areas of national law is unlikely in the short term, nevertheless there is a need to commence work on mapping out and making an inventory of these obstacle and possible ways of alleviating the inefficiencies they give rise to.

In particular the following issues require consideration.

- The possibility of increased co-ordination between central banks allowing the offset of any notionally pooled amounts in different Member States against a bank's consolidated balance sheet.
- National rules relating to the ability to create joint and several liability or cross-stream guarantees (i.e. guarantees of other group companies' liabilities) and collateral security held within a group should be harmonised, if necessary, by EU regulation.
- The rules relating to the revocation of transfer orders, and any formal steps that might exist to prevent revocation, differ from country to country. Moreover, there are different rules relating to the payment of stamp duties in connection with these arrangements. These rules govern the circumstances, calculation, liabilities and consequences of non-payment of duty. These rules need to be examined with a view to achieving standardisation.

- The laws relating to the operation of bank accounts differ between the Member States. In some cases the laws of the host jurisdiction govern the operation of bank accounts. In addition, in some Member States the payment of interest is prohibited on certain types of current account.
- The national disparities in taxation treatment of financial services impede the provision of standard service conditions. Though fraught with difficulties this is an area that cannot be ignored.

Other corporate financial services issues, such as those relating to insurance, pension management, asset management and the provision of services in the area of securities, also might need to be addressed.