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FACILITATING CROSS-BORDER CORPORATE FINANCIAL SERVICES

FINDINGS

Table of Contents

Introduction and executive summary 3

HARMONISING ACCOUNT OPENING FOR CORPORATES IN THE EC 7
CASH POOLING IN THE EU 10
ELECTRONIC SIGNATURES 15
CROSS BORDER INSOLVENCY 16
REMOVING REGULATORY INCONSISTENCIES 19

Annexes
I European Commission issues paper for Forum Group VI 21
II Forum Group VI Participants 22
III Disparities in Withholding Tax Requirements in the EU 23
IV Stamp Duties in the EU (as of June 2001) 24
V Central bank reporting requirements 25
VI Characteristics of the most important tax havens 26

Introduction and executive summary

The European Commission's Financial Services Action Plan[1] announced the establishment of 'Forum Groups' comprised of market experts to help the Commission in assessing the implications of technical solutions to achieving an integrated financial services sector in Europe. With the advent of euro notes and coins, financial sector representatives advocated the need to establish a Forum Group to examine current obstacles and inefficiencies in cross-border financial services for *corporate* clients (although the FSAP sets out a series of measures designed to address the obstacles encountered by *retail* clients, the latter face a number of specific issues that require a separate consideration). This paper reports on the findings of the Group (see Annex II for the participants), which represents the collective view of the industry participants. This paper does not, of course, necessarily represent the Commission nor does it bind it in any way, as is the case for other "Forum Groups". The Group focused its discussions on two specific day-to-day issues facing corporate clients engaged in cross-border business in the EU:

- opening a current (corporate) account in more than one Member State, and
- operating that account as efficiently and economically as possible through 'cash pooling'.

The Group reached three main conclusions:

- In practice many obstacles persist to the successful implementation of what at first sight may appear to be a relatively straightforward service such as cross-border account opening and cash pooling. These impediments arise mainly from the diverse historic nature of the Member States resulting in a plethora of different legal/jurisdictional environments, technical standards, customs and practice. It follows that they will continue even after introduction of euro notes and coin. They raise real inefficiencies and add costs for european business, affecting its competitiveness. Economic operators will not understand that, despite a single currency, standard but important financial services at a national level such as account opening and cash pooling cannot be provided on a cross-border basis, particularly within the EMU zone where the same currency exists.

- The actions which banks and other financial institutions can take to overcome such issues is limited by the legal, tax and regulatory environment within which they operate.

- To overcome the problems identified, action by the financial sector requires a more cross border friendly infrastructural framework which can only be achieved at governmental level.

In addition to these two specific issues the Group considered certain more general impediments for an efficient internal market for financial services for corporate clients: the use of electronic signatures, discrepancies in bankruptcy laws, central bank reporting requirements, prudential regulatory inconsistencies and taxation. These issues are considered and described in a more general manner in this overview without specific proposals for action.

Cross-border cash management: current account opening

A company that wishes to open a current account in another Member State must comply with the regulatory framework of that Member State. The rules will differ from those in the company's 'home' country. The range of documents required by companies to open a current account differs from Member State to Member State, partly due to legal/regulatory requirements and partly due to longstanding

[1] *Financial Services: Implementing the Framework for Action for Financial Markets – Action Plan COM(1999) 232, 11-5-1999*

practice in the local banking community. These differing requirements have not kept up with the growing internationalisation of companies whose rapid expansion implies an increasing need for domestic banking services throughout the EMU-zone. Local procedures to open (non-residential) accounts and the requested supporting documents in the EMU-zone countries constitute a real impediment to a harmonised financial services environment. There is a significant financial and administrative burden on both the corporate entity and the financial institutions involved. The costs incurred by all economic operators are significant, arguably unnecessary and constitute a drag on the competitiveness of industry.

Creating a harmonised legal environment for opening accounts in the EC would involve major legislative changes. Although the creation of a single level playing field throughout the EC for the opening of an account would be the ideal goal, the Group considers this to be unachievable in the short term. The Group therefore explored a more pragmatic approach which would at the same time fully satisfy existing legal requirements.

This pragmatic approach is based on a number of assumptions. If a corporate entity complies with all the regulatory requirements in its country of incorporation ('home country') to open a current account with a bank it would be assumed to comply with the applicable EU legislation, including money laundering laws. Consequently, a corporate entity can be assumed to have met all the minimum requirements to open a current account in any other EU Member State. This should imply that a corporate entity that is incorporated in one EU Member State should, from a financial services perspective, also be considered to be an EU resident company in each Member State where it trades or operates. (This approach can also be applied to non-EC incorporated entities: if it has opened a current account in one EU Member State in compliance with all prevailing regulatory, legislative and banking requirements it can be assumed to have met the requirements to open a current account in any other EU Member State).

The Group recommends as a first and pragmatic step to reach agreement on a list of required documents to open a corporate account in each EC Member State. The common set of documents (in their original language with translation where necessary) should enable the opening of a corporate account without requiring the physical presence of a representative of the company ('remote account opening'). The list of common account opening documents would comprise the following:

- ✓ Letter of introduction from the referring bank in the EU home country
- ✓ Form for account opening (specific for each bank)
- ✓ Signature Card (Power of Attorney/Representation)
- ✓ Identity card (or passport) photocopy of each authorised signatory
- ✓ Articles of Association
- ✓ Trade register or certificate of incorporation extract

The receiving bank would still be able to refuse to open a current account for prudential reasons, but not on the basis of the completed submitted documents provided these are in order).

Proposed actions:

- ☛ ***European representative organisations for the banking sector should urgently establish a list of core documents in each Member State to open cross-border corporate accounts***
- ☛ ***Agreement should be sought in the commercial banking community on accepting those documents***
- ☛ ***European representative organisations for the banking sector should establish whether and where legal obstacles exist in the national laws of Member States which would require modification in***

order to implement this approach and seek any necessary amendments within those Member States.

Cross-border cash management: cash pooling

If a company has current accounts with the same commercial bank or banking group in different Member States it may wish to use those accounts on a unified basis. This is done through 'cash pooling' – a common and key service provided at national level. Significant differences between Member States present obstacles to implementing this product on a cross-border pan-European basis. Different regulatory regimes apply to banks operating in the same pan-European market for pooling services.

Cash pooling is generally offered as:

- *zero balancing* (cash concentration) involving the physical booking of funds to a single master account, located in the same country or cross-border, or
- *interest compensation* (notional pooling) entailing only a notional pooling of funds in a single location. The funds remain on each participating account, located in the same country or cross-border.

The obstacles which arise when implementing a cash pooling structure on a pan-European basis are broadly tax, legal and regulatory impediments.

Tax legislation and tax rulings differ across the single market of the EU. Such differences are costly and time-consuming, leading to a substantial non-productive investment in measures to minimize their impact.

Company law and insolvency legislation and jurisprudence differ across the EU. These differences lead to inordinate amounts of time and money spent on obtaining legal opinions, and the drafting and negotiation of legal documentation. Even then, a significant residual uncertainty remains, impeding efficient cross-border business.

Differences in banking regulatory regimes across the EU harm the level playing field for cross-border financial services. Commercial banks are treated differently in respect of the offering of notional pooling services.

Proposals:

- ☛ ***Make urgent and rapid progress on harmonising withholding tax rules at EU-level. Where specific national considerations apply to activities in specialist markets, these should be addressed separately and not allowed to hinder progress in relation to standard current accounts.***
- ☛ ***Remove or co-ordinate national tax practices on thin capitalisation. Action by the EU banking community to have this issue raised in the EU Tax Policy Group***
- ☛ ***Differences in stamp duties should be removed or harmonized***
- ☛ ***Formulation of proposals by the banking industry for authorities with the objective of introducing consistent approaches towards the treatment of corporate benefit, corporate power, constructive dividend, and inter-company lending legislation across EU member states.***
- ☛ ***Further harmonise EU insolvency laws to facilitate cross-border business in financial services.***
- ☛ ***Formulation of proposals by the banking industry for European banking regulators to coordinate approaches towards notional pooling.***
- ☛ ***Harmonise, simplify and eventually abolished currency reporting requirements entirely in the euro zone.***

General financial services impediments for corporate clients

The Forum Group also considered a number of wider ranging obstacles to efficient financial services for corporate clients in the single

market. Although the Group did not develop detailed proposals in this respect, it wishes to draw attention to the need make progress at the appropriate political level on the following issues.

Electronic signatures
Prompt and uniform implementation of the EU Directive on Electronic Signatures is key to ensuring a secure legal environment for commercial transactions in the EU. Furthermore, progress on the implementation of the (Uncitral) Model Law on Electronic Commerce is important for the necessary legal security for commercial transactions at the wider international level.

Harmonisation of insolvency laws
The practical importance of this subject cannot be overestimated. Differences in national insolvency law can have a material effect on the robustness of commercial arrangements and the financial services underpinning them. In today's internal market, differences in insolvency law can apply whenever a transaction, series of transactions or organisational structure crosses jurisdictional boundaries. Following the valuable groundwork by Forum Group III, rapid adoption and implementation by EU institutions and Member States on the proposal for a Directive on Collateral is important. . This Directive will bring the much needed legal certainty to corporate financial services.

Regulatory inconsistencies
Removing bank regulatory inconsistencies within new bank capital adequacy rules depends on two factors:

- a greater involvement of the financial industry in the development and application of the new capital adequacy process;
- further co-operation to ensure a convergence of their supervisory practices.

Inconsistent application by national authorities of EU rules has led to legal uncertainty and unnecessary inefficiencies for financial services providers. The resulting costs are borne by clients.

HARMONISING ACCOUNT OPENING FOR CORPORATES IN THE EC

Opening a current account in another Member State by companies is a time-consuming, complicated and lengthy process. Obtaining original documents or having them officially and legally approved by public notaries or their equivalents is costly and imposes a heavy administrative burden on both the companies and on the banks that must verify the authenticity of these documents.

The range of documents required by companies to open a current account differs from Member State to Member State, partly due to legal requirements and partly due to longstanding local banking practice. The public and private bodies involved in delivering the aforementioned documents all have their own rules, delays in producing documents and other common practices, increasing the complexity of opening current accounts throughout the EMU-zone. The prevailing national procedures to open (non-residential) accounts and the requested supporting documents in the various countries of the EMU-zone increasingly constitute an impediment to a harmonised financial services environment in the EMU-zone through significant financial and administrative burdens on both the corporate entity and the financial institutions involved.

Account opening requirements and obstacles

❒ *Certificate of Incorporation*

❒ *Articles of Association and the related certification*

❒ *Trade Registry certificate*

❒ *VAT registration rules*

❒ *Regulatory framework for establishing and modifying the Power of Attorney or Power of representation*

❒ *lack of a common registry or corporate identity card*

❒ *compliance with anti money laundering regulations (e.g. legal opinion)*

❒ *requirement to present oneself physically at the counters of the Bank*

❒ *different requirement for resident accounts vs. non-resident accounts*

A number of Member States also require:

❒ *translations of captioned documents*

❒ *original (official) documents*

❒ *copies or translations being legalised or signed by a notary public*

❒ *board resolution*

The legislation of each Member State has not kept up the pace of the growing international focus of companies. Their rapid expansion brings an increasing need for greatly improving and streamlining banking services throughout the EMU-zone.

A practical alternative to harmonisation

The usual way to create a single market without internal barriers to financial services is to harmonise legal and regulatory environment for financial transactions and/or the right of establishment in another Member State. The Forum Group is of the opinion that the legislative and political efforts and the large number of official bodies involved in each Member State required for achieving this objective make it highly unlikely that this can be accomplished in the short term.

The Group considers that there is a more viable, pragmatic alternative available which would meet the same objectives while avoiding the disadvantages of the traditional approach of harmonisation.

This pragmatic approach would be based on the following assumptions. In order to open a current account a corporate entity already fully complies with the regulatory, legislative and

banking requirements in its home country (i.e. country of incorporation). A corporate entity which meets the account opening requirements in its home Member State, also meets the requirements of applicable EU legislation (including the Money Laundering Directive). The operational conclusion should therefore be that a corporate entity also be assumed to have met the requirements to open a current account in any other Member State. The consequence of these assumptions is that for the specific reason of opening a current account any corporate entity incorporated in one Member State should be considered to be an EU resident company in each Member State in which it trades or operates.

This assumption also can be extended to non-EU incorporated entities. A corporate entity which complies with the regulatory, legislative and banking requirements to open a current account in one EC Member State, should also be assumed to have met the requirements to open a current account in any other Member State. This approach is fully in line with, for instance, that of the internal market directives in banking, insurance and securities.

The Common Core Documents to open a corporate account.....

As a first practical step, a list of core documents should be established by the banking community that would establish the single set of documents required to open a corporate account in each Member State. The list could distinguish between documents required for resident and for non-resident account holders. For account opening purposes, any company incorporated in the EC should be treated as being a 'resident' by any bank in any other EC Member State. This common set of documents should enable the opening of a corporate account without requiring the physical presence of a representative of the company (remote account opening). The Group has examined existing banking practices and legal requirements. It suggests that the following limited list of core documents should be required which would meet the common requirements in all Member States.

CORE DOCUMENTS FOR OPENING COMPANY BANK ACCOUNTS

✓ **Account opening form (bank specific)**

☞ *Signed by authorised signatories of account holder*

☞ *Specifying the VAT number in the (EC) country of incorporation*

☞ *Including explicit confirmation of having received and acceptance of the local general banking rules and regulations (C/A agreement). This eliminates the need to return signed general conditions or C/A regulations*

✓ **Signature Card (Power of Attorney/ Representation)**

☞ *Signed by authorised signatories of account holder*

✓ **Copy of the identity card/passport of each authorised signatory**

✓ **Articles of Association (*)**

☞ *Explicitly specifying authorised signatories (legal representation)*

☞ *Photocopy from Official Journal or photocopy of the deposited (and stamped) Articles of Association at the local registry (in a single financial market, explicit board authorisation to open accounts in another EC Member State is irrelevant)*

✓ **Extract from trade register or certificate of incorporation (*)**

☞ *Photocopy issued by Chamber of Commerce or Register of Companies or Official Journal of Member State*

...and a letter of introduction from the referring bank for an account in another member State.

To open a corporate account in another Member State it should suffice for a company incorporated in an EU Member State to submit the documents marked by (*) in (one of) the official language(s) of their home Member State, without translation or a legalised/notarised certification, and with a letter of introduction from the referring bank[2] certifying that :

- the company has opened a current account with the referring bank in full compliance to the legal requirements to open a C/A in the country of incorporation
- No adverse information with regard to compliance with Money Laundering Regulations is held

The letter of introduction by the referring bank would replace any existing requirement to provide a legalised/notarised certification of the documents indicated by (*) and a legal opinion regarding compliance with EC anti money laundering regulations. The letter should not imply or incur any legal liability for the referring bank outside of its home country. The receiving bank can still refuse to open a current account for the referred customer on the basis of common prudential practice but of the completed submitted documents.

Companies that are not incorporated in a Member State should be eligible for the same approach once they have fulfilled all national legal and regulatory requirements to open a current account in any EU Member State.

Pending the establishment and acceptance of the set of core documents, a practical approach could consist in the early adoption of the letter of introduction by the referring bank. The referred customer will still need to comply with the complete set of documents required by the receiving bank for opening a local corporate current account. However, the company will no longer have to provide originals, legalised or notarised copies or translations of the common supporting documents already deposited with the referring bank upon the opening of a current account with them.

The advantage of this approach is that establishing a list of core documents does not require regulatory efforts at EU-level. The European banking community, through its relevant organs and authority is in a position to make significant headway through market agreements. If legislation is required at a later stage in order to remove any specific obstacles to the suggested approach, careful consideration should be given to the nature of those obstacles. Where obstacles lie in the particularities of certain national laws and regulations they should be addressed at that level rather than at EU-level.

Proposed actions:

- ☛ ***European representative organisations for the banking sector should urgently establish a list of core documents to open cross-border corporate accounts***
- ☛ ***Agreement should be sought in the commercial banking community on accepting those documents***
- ☛ ***European representative organisations for the banking sector should establish whether and where legal obstacles exist in the national laws of Member States which would require modification in order to implement this approach and seek any necessary amendments within those Member States.***

[2] The referring bank is the bank in the Member State in which the corporate entity is legally incorporated.

CASH POOLING IN THE EU

Once a company has opened current accounts with the same commercial bank or banking group in different Member States for obvious economic reasons it will wish to apply them on a unified ('pooled') basis as much as possible. Cash pooling is difficult to offer and implement on a cross-border pan-European basis because of significant regulatory differences applicable to commercial banks between the Member States.

Cash pooling is generally offered in the banking community in two variations: zero balancing or interest compensation.

> **Broad Principles of Common Cash Pooling Techniques**
>
> ***Zero Balancing (cash concentration)***
> *Zero Balancing involves the physical booking of funds to a single master account, located in the same country or cross-border. This technique leads to the creation of intercompany loans between the participating entities and the central treasury holding the concentration account. If the product is offered on a pan-European basis, most of the zero balancing sweeps will be cross-border, affecting multiple jurisdictions. These two features lie at the heart of the obstacles which arise when implementing such a structure on a pan-European basis: tax, legal and regulatory impediments. The obstacles to cross-border cash-pooling using zero-balancing are threefold: tax, legal and regulatory.*
>
> ***Interest compensation (notional pooling)***
> *Interest compensation entails only a notional pooling of funds in a single location for interest calculation purposes. The funds remain on each participating account, located in the same country or cross-border. Interest compensation does not lead to the creation of intercompany loans between the participating entities. As the balances stay on the participating accounts, there is no creation of cross-border sweeps between multiple jurisdictions. However, given that the pool accounts will be located in several European countries and the accounts may be held by companies incorporated in various European jurisdictions, the product offering is significantly affected by the differences between the various legal, tax and regulatory regimes in Europe.*

The cross-border obstacles to both variations of are broadly similar and are considered together, although the impediments may be more onerous or specific to zero balancing or interest compensation. The Forum Group identified three broad types of impediment: tax, legal and regulatory obstacles.

Tax obstacles for cash pooling

Three types of tax concern arise (although each structure may give rise to tax issues specific to a corporate client): withholding tax, stamp duties, and inter-company loan taxation.

i) Withholding Tax (WHT)

Withholding tax is levied on bank interest or intercompany interest, depending on the location of the pooling accounts (bank interest) and the jurisdiction of incorporation of the participating entities (intercompany interest). The paying bank or entity is subject to rules of withholding tax. The treaties on double taxation must be consulted to determine the rate applicable to each loan. Some Member States offer exemption.

WHT legislation differs substantially between jurisdictions, even within the single market of the European Union. Austria, Belgium, France, Germany, Ireland, Italy, Portugal, Spain, Switzerland and the UK levy a withholding tax on interest (bank interest or intercompany interest from resident entities to other resident or non-resident entities). The Scandinavian countries, the Netherlands and Luxembourg do not levy any interest withholding tax. Annex III gives an overview of the present disparities.

Domestic withholding taxes may generally be deducted from (credited against) the domestic corporate income tax liability of the recipient. A credit is a 100% tax relief and does not lead to a higher overall tax burden. Withholding tax can alternatively be set off against the recipient's taxable income as a deductible expense, which is less advantageous than a tax credit since a deduction is not a 100% relief but rather a relief at the domestic tax rate. Tax treaties usually allow for a tax credit in cross-border situations.

There are nonetheless situations where the recipient may not be able to fully utilise a credit for foreign withholding taxes on interest. In these cases withholding taxes may represent an actual cost to the company.

- The recipient of the income (i.e. interest payment) may be in a tax loss position and will not have a domestic tax liability against which to deduct or credit the withholding tax.
- If a recipient's domestic tax rate amounts to for instance 10%, it may not be possible under domestic tax law to credit foreign taxes that are levied at a higher tax rate (e.g. 15% withholding tax) since this would effectively result in a refund of withholding tax levied in another country by the country of residence.
- There may be a timing mismatch resulting in a cash flow cost. Withholding taxes are levied upon the settlement of interest, whereas the corporate income tax is normally levied (and the credit or refund for withholding taxes claimed) after the end of the financial year.

A company can minimize the amount of WHT payable through a combination of tax treaties and the use of tax credits and deductible expenses. However, this process represents a substantial non-productive investment in time and financial resources, to satisfy the requirements of individual jurisdictions within the single market for financial services of the European Union.

ii) Inter-company loans and 'Thin Capitalisation' rules

Centralised cash management at European level means cash transfers from one company to another company belonging to the same group. These transfers result in loans between companies. Such loans are treated differently in different Member States.

- Some Member States (e.g. France) will base requirements on the legal structure of the companies involved.
- The terms of inter-company loans will be required to be at arm's length.

Thin capitalisation rules specify a maximum ratio of inter-company debt to equity in order to prevent the distribution of profits (disguised in the form of inter-company interest payments) from a high tax jurisdiction to a low tax jurisdiction. If thin capitalisation rules have been breached, tax authorities may reclassify the excess part of inter-company debt as equity. This generally has two consequences. Firstly, the relevant part of inter-company interest expenses will no longer be tax-deductible. Secondly, a dividend withholding tax may apply to reclassified interest payments.

Thin capitalisation rules differ significantly per jurisdiction, even within the single market of the European Union[3]. Differences in thin capitalisation legislation unnecessarily complicate the set-up of a cross-border pool for multinational companies

iii) Stamp Duties

Stamp duties are a fixed amount or apply as a percentage of the nominal value of a (credit) agreement. Stamp duties are only still levied in Austria, Denmark and Portugal (see Annex IV for further details). They may be due if, with zero balancing, inter-company loans are granted by a foreign treasury company to a company resident in the country where stamp duty is levied. Stamp duties are a clear example of national taxes which impede the efficient set-up of cross-border European liquidity management pools.

They involve an extra cost in two different areas: the granting of loans and the payment of interest. This duty is a further burden on centralised structures involving companies from the countries where it applies.

In addition to the three specific tax obstacles considered above, Forum Group considered

[3] In Spain, for instance, if the creditor is non resident, interest payments in excess of the debt/equity ratio (3:1) are not deductible. In Italy the ratio to be considered is 4 to 1. Germany stipulates a maximum debt-to-equity ratio of 3-1 and France of 1.5-1. Austria applies a debt/equity ratio of 8%. On the other hand, Finland, Ireland, Luxembourg, the Netherlands and Sweden do not have thin capitalisation rules.

that the different treatment by national tax authorities of the settlement of pool interest and pool benefit between central treasury and the participating sub-account holders represents a clear obstacle in relation to the offering of interest compensation specifically. In some jurisdictions, for instance in the Netherlands, this is treated as a distribution of bank interest. In other jurisdictions, for instance in Belgium, Italy and France, the settlement will be treated as a distribution of inter-company interest on which withholding tax may be due. Differences in tax treatment and uncertainty thereabout are unnecessary and costly.

The same general conclusion applies to the existence of "treasury vehicles" within the EU. Some Member States have in place legislation which permits supra-national cash management structures to take place under particularly tax advantageous conditions if they adopt the required legal structure. Examples are the Belgian Co-ordination Centres, Dutch finance companies, Irish Financial Services Centres and the Dutch/Swiss sandwich structure (see Annex VI). This national legislation is a clear competitive distortion within the EU. Although the discussion of this phenomenon is tangential to the work of the Forum Group, it notes the apparent progress made under the auspices of the European Commission in the Tax Policy Group to remove these distortions.

Legal obstacles for cash pooling

The multiplicity of different company law, banking and insolvency laws across Europe complicate the offering of pan-European cash pooling structures to global companies with subsidiaries incorporated in, and holding bank accounts in, the various EU countries.

'Corporate Benefit'

The participation of a company in a zero balancing (or interest compensation) pool leading to the establishment of (cross-, up- or downstream) guarantees, bank account pledges or inter-company lending will need to be subject to a close scrutiny as to the expected financial benefits the entity will receive from its participation in the pool. Some practical examples may illustrate the consequences of these divergent approaches. France, Luxembourg, Austria and the Netherlands have strict rules relating to corporate benefit. In France and Luxembourg, if the company's assets are abused during and as a result of the operation of the pool, the bank may be held liable as an accomplice to such abuse. For Austrian companies entering into inter-company lending, it is imperative that each entity has full recourse on the borrower (usually central treasury) and is receiving inter-company interest rates set at market conditions. If these conditions are not fulfilled, disadvantaged creditors could, in case of an insolvency, successfully demand the reversal of cross-border sweeps during a period of 6-8 months prior to the insolvency. In the Netherlands, the granting of guarantees (e.g. cross-guarantee or a pledge) may be successfully overturned in insolvency proceedings by disadvantaged creditors if they can establish that such guarantees did not generate an equal benefit to that company. Consequently, the participating companies must be strictly related, be under a common control and be free of conflicts of interest between common directors.

Inter-company lending

In certain EU member states it is not clearly stated whether the foreign companies of the group are subject to group lending rules or not. This cause uncertainty. In Sweden the lending to a foreign parent company is subject to tax authorities approval, and in Finland it is unclear whether the Finnish subsidiary which is owned by a foreign parent company can lend funds to its foreign sister company.

Corporate power and authority'

The power and corporate authority of companies to enter into the arrangements and deliver their obligations in respect of the required security is often difficult to ascertain in a European cross-border context involving many different

jurisdictions. Statutory requirements and the need to approve the validity of the arrangements by resolutions from board, shareholders or independent legal counsel differ per country and are often difficult to pinpoint exactly.

'Constructive Dividend'
Constructive dividend arises where a company derives a taxable benefit from its subsidiary but the benefit has not been designated as a dividend. Constructive dividend laws are prevalent throughout Europe but are especially strong in Germany and Austria where the Bank can be held liable if it has not acted in good faith.

'Fraudulent conveyance'
Fraudulent conveyance arises where one creditor, or group of creditors, is preferred over another creditor, or group of creditors, in case of an insolvency of a participant to the pool. Fraudulent conveyance may arise even where a corporate benefit has been established for the issuance of security rights to the 'privileged' creditors, if the debtor was insolvent at the time of issuance or went insolvent as a result (wholly or in part) of such issuance. Security rights may become void as a result. The 'suspect' period prior to insolvency could range from a period of three months to two years (or longer, depending on the individual circumstances of the case and the jurisdiction involved).

Fraudulent conveyance is part of a broader range of issues relating to insolvency laws and proceedings which impact on efficient cross-border financial services for corporate customers (see below for a general consideration of the divergence in approach between EU Member States on this important issue). For instance, in Spain, the enforcement of creditor rights are highly unpredictable given the jurisdiction's broad insolvency avoidance provisions. In Portugal, Ireland and Finland, rights of set-off or security are either not allowed upon insolvency or vulnerable to attachment or assignment. In general the viability of rights of set-off and security vary substantially between the European jurisdictions.

Insolvency laws
Banks will only offer cash pooling (and particularly interest compensation) if they can net debit balances with credit balances on their balance sheet. The overriding issue in relation to interest compensation is therefore the need for the bank to create a right of set-off between debit and credit balances within the pool that will hold also on an insolvency of any of the participating account holders. Complex legal issues arise in this situation. The exercise of the bank's rights of set-off will take place under the banking laws of the country where the pool accounts are located. In case of an insolvency of any of the participating companies, mandatory insolvency provisions may exercise their power not only in the jurisdiction where the insolvent company is incorporated, but also in the country where its assets are located (in this case: the location of the pooling accounts).

Banks have carried out large-scale legal investigations to determine in which jurisdictions a viable right of set-off can be created. Set-off is specifically either not allowed upon insolvency (for example in Portugal and Spain) or is vulnerable to attachment or assignment (all European jurisdictions save England, Netherlands and Sweden) in many jurisdictions. (The vulnerability of set-off may be overcome by the creation of a security right, but these could still be vulnerable to claims from preferential creditors or be affected by an assignment). It is in practice highly uncertain how and to what extent such mandatory insolvency provisions will be enforced by the courts outside the home jurisdiction.

Regulatory issues for cash pooling

The Forum Group has identified two particular obstacles to the efficient operation of cash pooling for corporate clients in the EU:

restrictions on inter-company lending and central bank reporting obligations.

Restrictions on inter-company lending; payment of credit interest on current accounts
Certain EU member states impose restrictions relating to inter-company lending. In Greece, it is forbidden for a subsidiary to lend funds to its parent, severely restricting the applicability of the zero balancing product.

Some countries restrict the payment of credit interest on current accounts. In France, it is forbidden for banks to pay credit interest on current accounts held by residents. The regulation implies that cash pools containing resident accounts are prevented from receiving credit interest, even if the master account is held by a non-French non-resident company.

Central Bank Reporting
Commercial banks' balance sheet reporting still takes place vis-à-vis the various national central banks. The trouble with this situation is that the legal investigations carried out by various commercial banks have undoubtedly led to different results and different interpretation of these results by the banks and their regulators. This represents a source of disparate treatment by the national regulators. For instance, French banks, reporting to Banque de France, may be working with a list of permitted jurisdictions which is substantially different from the jurisdictions allowed by the Dutch Central Bank or the German Bundesbank.

Currency reporting requirements to EU central banks are onerous. They also vary substantially between countries. Finland, Ireland and the United Kingdom do not impose reporting requirements. In most cases, the reporting requirements apply to transactions between residents and non-residents in local or foreign currency (although some Member States may require reporting on transactions even between residents if these take place in foreign currency or between two non-residents regardless of the currency). The accounting and administration involved to satisfy these requirements for cross-border cash pooling (or any other service involving large-scale cross-border payments) is costly and non-productive for the banks and for their corporate clients.

Currency reports are used by all central banks, except the UK, Ireland and Finland to generate balance of payments statistics. In Germany the onus lies on the clients, not the banks. Banks must report all incoming or outgoing cross border transactions above a threshold to their central bank. These reports include the amount of the transactions, its purpose and the industries to which the payer and payee belong. Annex V provides an overview of present currency reporting requirements. The impediments to efficient cash pooling systems are caused by a number of factors, as shown in the following box.

Central Bank Currency Reporting

- ***not required by all Member States***
- ***different reporting thresholds***
- ***some require bank reporting, others require client reporting***
- ***different codes applied***
- ***different formats for reports***
- ***different modalities (hard copy or computerised)***

The EU Banking Community has long sought to abolish currency reporting, in particular as its rationale is disappearing with Economic and Monetary Union. First, there is as little economic sense in Balance of Payments statistics for an individual Member State. Second, there are alternative ways to generate the data needed for economic policy making, as shown in Ireland, Finland and the UK.

Over the past year improvement has been made by central banks and the ECB. Work is underway to agree on a common reporting threshold (of euro 12.500,-) and to agree on common reporting standards. This will indeed reduce the burden put upon the banks.

Nevertheless, as the stated aim of the European Central Bank is "to create a common European payments area, without a distinction between domestic and cross border payments" currency reporting should be abolished entirely. As they do not exist for domestic payments there is no justification for their continued existence in EMU for cross border European payments.

Proposals:

- ☛ ***Make urgent and rapid progress on harmonising withholding tax rules at EU-level***
- ☛ ***Remove or co-ordinate national tax practices on thin capitalisation. Action by the EU banking community to have this issue raised in the EU Tax Policy Group***
- ☛ ***Differences in stamp duties should be removed or harmonized***
- ☛ ***Formulation of proposals by the banking industry for authorities with the objective of introducing consistent approaches towards the treatment of corporate benefit, corporate power, constructive dividend, and inter-company lending-legislation across EU member states.***
- ☛ ***Further harmonise EU insolvency laws to facilitate cross-border business in financial services.***
- ☛ ***Formulation of proposals by the banking industry for European banking regulators to coordinate approaches towards notional pooling.***
- ☛ ***Harmonise, simplify and eventually abolished currency reporting requirements entirely in the euro zone.***

Electronic signatures

The use of digital signatures for electronic purposes faces a number of legal impediments that derive from both Civil[4] and Common Law[5] treatment of form requirements for many types of commercial transactions. Both legal traditions impose specific requirements relating to written, signed, certified and/or original form which do not contemplate the use of electronic messages.

Many efforts to address these issues have already taken place, particularly in the USA but also in many other countries including such EU States as Denmark, France, Germany, Italy, Sweden and the UK. The recent European Parliament and Council Directive on a Community Framework for Electronic Signatures (December 1999) is an important step forward. The purpose of the Directive is to facilitate the use of electronic signatures and to contribute to their legal recognition. It also establishes a legal framework for electronic signatures and certain certification services in order to ensure the proper functioning of the internal market. The Directive facilitates differences between National Laws within the European Union. In some countries it removes all or almost all existing requirements for hand written signatures and written documents, while other countries, such as the UK, require supplemental legislation to make the necessary changes on a case by case basis. <u>However, it does not cover aspects related to the conclusion and validity of contracts or other legal obligations where there are requirements as regards form prescribed by National or Community Law nor does it affect rules and limits contained in National or Community Law governing the use of documents</u>.

The United Nations Commission on International Trade Law (Uncitral) Model Law on Electronic Commerce is arguably the most comprehensive international legal treatment of form requirements as they relate to electronic commercial transactions in existence today and a number of countries are taking guidance from this in drafting their own laws. Uncitral is also drafting its Uniform Rules on Electronic Signatures which are expected to be presented for formal adoption by Summer 2001. In general the Model Law treats electronic signatures in a manner which seeks to overcome problems arising from the form requirements in existing commercial laws of the major legal systems. Specifically, the Model Law provides that form requirements relating to signatures may be met in relation to data messages where a method is used that identifies the person and indicates that person's approval of the contents of the data message and where the reliability of the method of signing is appropriate under the circumstances. Recognising that signature requirements derive from fundamental commercial law and public policy issues relating to the intent of contracting parties, the Model Law does not specify what method of signing a data message might be appropriate under what circumstances although some guidance is given. The Model Law further treats signature requirements in the context of the evidential weight of data messages based upon the reliability of the manner in which the data message was generated, stored, communicated and maintained in general. of the message content.

The Forum Group is of the view that progress on the implementation of the (Uncitral) Model Law

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[4] *This is especially true in the Civil Law, where form requirements for transactions involving notarial intervention impose a rigidly defined legal regime for authenticating commercial messages.*

[5] *A particular problem in Common Law jurisdictions derives from uncertainty as to whether or not electronic transmissions satisfy the writing and signature requirements to be found in the Statute of Frauds embodied in the United States Uniform Commercial Code (UCC) and in English Property Law. Because there is virtually no case law regarding these issues involving the use of electronic means for transacting commercially, general thinking on the question of electronic messages as signed writings has focussed on Common Law commercial theory and judicial precedent involving other forms of non-traditional writing used in commerce, such as teletype and facsimile evidence. For example, the UCC defines 'signature' as 'Any symbol executed or adopted by a party with present intention to authenticate a writing'.*

on Electronic Commerce is key to introducing a widespread and secure legal environment for commercial transactions at the international level.

CROSS BORDER INSOLVENCY

The significant differences between insolvency law in Member States can lead to complex 'conflict of laws' situations arising in the case of a liquidation involving control and/or assets in more than one State. The precise circumstances will depend on the laws of the two or more States concerned, possibly complicated by the inclusion of non-EU States.

The importance of this subject at a practical level cannot be overestimated. Differences in national insolvency law can have a material effect on the robustness of such arrangements. Other areas of concern range from complex groups with a multi-jurisdictional presence to some cross border trading arrangements. Indeed, differences in insolvency law can apply whenever a transaction, series of transactions or organisational structure crosses jurisdictional boundaries. In today's rapidly shrinking world, particularly within single markets and monetary areas, it is difficult to justify what is effectively an artificial restraint on the efficient conduct of commerce with its implications for overall prosperity.

General EU/international agreements

A number of bilateral insolvency treaties exist between EU Member States, some dating back to the last century. Additionally, two European Conventions were drafted which were intended to replace some of these treaties but neither Convention received sufficient ratification to come into force. These are:

- European Convention (Council of Europe) relating to some international aspects of bankruptcy (February 19/23 1990)
- EC Convention on Insolvency Proceedings between European Union Member countries (November 23, 1995).

Neither of these conventions applies to credit institutions. Both will, however, be effectively superseded by Council Regulation 1346/2000 of May, 2000 on insolvency proceedings which enters into force on 31st May, 2002. This is based on a number of important principles for the proper efficient functioning of the Internal Market as the activities of undertakings have more and more cross border effects and are therefore increasingly being regulated by Community law. While the insolvency of such undertakings also affects the proper functioning of the internal market, there is a need for a Community act requiring co-ordination of the measures to be taken regarding an insolvent debtor's assets. From this perspective it is necessary for the proper functioning of the internal market to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position (forum shopping or regulatory arbitrage).

Whilst, when it comes into force, this Regulation will bring a welcome increase in co-operation between Member States in relation to insolvency proceedings, it is important to note that <u>it does not provide a harmonised universal set of insolvency rules within the EU and local insolvency law will continue to apply</u>. Furthermore, the Regulation will not apply to Denmark, which has chosen not to opt in, nor to any insolvency proceedings outside the EU. For these jurisdictions help might be had in future from the Uncitral Model Law on Cross-Border Insolvency (see above) if it is incorporated into the national law of a sufficient number of countries. Unlike the EU Regulation, it contains rules for recognising and co-operating with foreign insolvency proceedings and officeholders.

Payment and securities settlement systems

There is a matter of particular concern to the banking community where progress is also being made at the EU-level i.e. the risk arising from insolvency to participants in payment and securities settlement systems. This issue is becoming increasingly important with the spread not only of Euro systems crossing state borders but also remote access to national systems (Forum Group III has already had the opportunity

to provide the Commission with specific advice on this subject).

An important first step was made with the adoption of the Directive on Settlement Finality in Payment and Securities Settlement Systems. Member States were required to implement the Directive's provisions into national law by 11th December 1999. The Directive has two main objectives i.e. to reduce systemic risk in payment and securities settlement systems and to minimise the disruption caused by insolvency proceedings against a participant in a payment or securities settlement system. The second objective is relevant to the considerations of Forum Group VI.

The Directive provides that transfer orders and netting are legally enforceable and binding on third parties, even in the event of insolvency proceedings against a participant in a payment or securities settlement system provided that transfer orders were entered into a system before the moment of opening of such insolvency proceedings. It specifies that collateral security provided by a participant in connection with its participation in such a system will not be affected by insolvency proceedings against the participant. The Directive also covers collateral security provided in connection with operations of the central banks of the Member States and the European Central Bank in their functions as central banks.

Under normal circumstances, the market would be aware of a decision opening insolvency proceedings against a participant, in a designated system, through electronic media or otherwise, shortly after it has been handed down. To seek to ensure immediate notification of such a decision, the Directive obliges each member state to choose an authority to be notified by the judicial or administrative authority that took the decision. Furthermore, the Directive requires the Member State in which the insolvency proceedings have been opened to notify all other member states.

To avoid a situation in which the amounts due from a failed institution would be claims in subsequent insolvency proceedings and may not be met, the Directive provides that insolvency proceedings must not have retroactive effect on the rights and obligations of a participant in a system earlier than the moment of opening of the proceedings.

The Directive also avoids conflict of law situations by requiring that the governing law determining the rights and obligations will be the law governing that system, chosen by the participants. This reinforces the main aim of the Directive to avoid systemic risk.

The definition of insolvency proceedings is flexible, covering any measure either to wind up or reorganise a participant in the system, where the measures involve the suspension of, or limitations on, transfer of securities or payments. The moment the insolvency proceedings begin is defined as the moment when the judicial or administrative authority handed down its decision. The rules of a system will define the moment of entry of a transfer order into that system. In exceptional cases transactions made in good faith, either by the defaulting institution or another participant, after the opening of insolvency proceedings, are considered valid. In these cases, the burden of proof is reversed; transfer orders entered into the system after the opening of insolvency proceedings are legally enforceable and binding on third parties only if, after the time of settlement, the system can prove it was not aware, nor should have been aware, of the opening of the proceedings. The system for these purposes comprises the settlement agent, the central counterparty and the clearing house, if applicable. The Directive leaves it to national law to determine how the system will be informed of the opening of the proceedings. It makes clear that the unwinding of netting will not be tolerated on the basis of national rules or

practice which provide for the setting aside of contracts and transactions concluded before the moment of opening of insolvency proceedings.

Securities collateralisation

The increase in the attention devoted by capital markets and derivatives lawyers to the legal risks associated with the taking of securities held through multiple tiers of intermediaries as collateral is not without reason. The last decade has seen a significant increase in the number of collateralised arrangements within the financial services industry, particularly in those involving a cross border element. The exposures involved are extremely large. Collateral providers are able to reduce their borrowing costs if collateral users are willing to accept their securities as collateral. Collateral takers, however, need to be certain that they have valid and enforceable legal rights to the securities, posted as collateral, not only against collateral providers but also as against third parties. In cross border situations, a key question is "which laws need to be satisfied to have a valid legal entitlement to the collateral that is good against third parties?"

One approach is to look to the law of the location of the underlying securities (the "place of the underlying securities approach") to answer this question. However, there are enormous practical problems potentially arising from the application of this rule. Where, as is often the case, a pool of securities originating from issuers located in many different jurisdictions is provided as collateral, the collateral taker would have to satisfy the laws of the jurisdiction of each of the issuers of the securities. Further complications arise if the portfolio is frequently changed.

I. The Settlement and Finality Directive addresses this issue in connection with securities held in a custody account or settlement or depository system within the European union. In effect, this applies an approach based on the place of the relevant intermediary ('PRIMA'[6]) to determine whether the collateral taker has a valid legal entitlement to the collateral which is good against third parties. However, there are discussions with regard to the scope of the Directive. Under one view, the "narrow view" the Directive would only eliminate legal risk for certain collateral takers (central banks and the ECB, and those participants that provide liquidity to a European Union payment or securities settlement system to which the Directive applies). Under an alternative view, "the broad view" the Directive would eliminate legal risks for all participants in a European Union settlement system.

Progress on the recently proposed EU Directive on Financial Collateral is key in this respect. Valuable work has been carried out in this respect in Forum Group III on collateral, which has provided input into the European Commission in the preparation of the proposal. Rapid adoption and implementation of this proposal for Directive will provide greater certainty for collateral givers and takers in the EU. Progress in this area will bring the much needed legal certainty to corporate financial services.

[6] *Where interests in securities are credited to an account on the books of an intermediary and such interests are provided as collateral to another customer of that intermediary or to that intermediary itself, the collateral taker would look to the law of the location of that intermediary to determine the validity and priority of the collateral taker's legal entitlement as against third parties ("" or "PRIMA"). Under PRIMA one need only satisfy the requirements of one law for validity and priority, even if the securities provided as collateral are held through a multi tiered system and originate in many different jurisdictions.*

Removing regulatory inconsistencies

The Forum Group considered a wide range of regulatory differences and inconsistencies which give rise to inefficiencies in the present internal market and additional costs which are carried by (corporate) clients. The Group noted the numerous reasons for this deriving from a variety of reasons including history, tradition, economic policy and culture. These differences impact on many aspects, such as their approach to regulation and supervision, the structure of the financial services industry and differences between legal systems and business cultures.

EU efforts to introduce minimum harmonisation of prudential standards since 1990 have contributed to a certain degree of commonality in the regulatory approach of Member States authorities. One very important factor underpinning harmonisation is the level of capital banks are required to hold since this can have a direct effect on both their risk profile and profitability, the two of course being to a degree interdependent. The Basel Committee on Banking Supervision 1988 Capital Accord and the EU Solvency Ratio Directive provided a good basis.

Over the past decade the businesses of banking, risk management practices, supervisory approaches and financial markets have each undergone significant transformation, hence in June 1999 the Basel Committee released a proposal to replace the 1988 Accord with a more risk sensitive framework. The Committee has now presented a more concrete proposal to meet the shortcomings of the present requirements. The industry's main criticism, which is increasingly accepted by bank regulators and supervisors is threefold:

- *The current broad brush risk-weighting framework does not reflect the differentiation in obligor quality* (examples: banks must apply a one-size-fits-all risk weight of 100% to all commercial credits, irrespective of whether a loan has been given to a blue chip company or to a firm near bankruptcy. Banks also need five times more capital to lend to, say, a reputable blue chip company than to other European banks, and a significant amount less to trade in exotic options.). This might give an incentive to banks to lend to riskier borrowers because such loans command higher interest rates but do not force banks to tie-up more of their shareholders' capital through the solvency ratio.
- *The current approach does not recognise the risk-reducing effects of portfolio diversification*, nor does it penalise banks for portfolios that are concentrated in one sector or region (example: one loan of £100.000 attracts the same capital charge as ten loans of £10.000, even though the risk of losing ten smaller loans is 1/10 of losing the larger loan). The quality of risk management within a bank, which influences its risk profile and the amount of regulatory capital needed, is not factored into the present capital framework.
- *The capital framework has not kept pace with developments in the market* and does not recognise the risk reducing effects of new sophisticated instruments such as credit derivatives and developments in the use of collateral. Techniques such as securitisation allow banks to lower their regulatory capital requirement substantially without reducing their credit risk exposure. The present risk-based capital standards are therefore becoming less meaningful.

To sum-up, the present capital framework is increasingly perceived to be a disincentive to good risk management within a bank, mis-prices credits, and some banks are forced to hold more capital than they need while others are encouraged to hold less. The need to modify the Basle Accord (and therefore also the Solvency Ratio Directive) has therefore become increasingly clear.

In summary, the new Accord comprises three main pillars i.e.
First pillar – minimum capital requirements
Second pillar – supervisory review process.
Third pillar – market discipline/disclosure.

These three pillars are intended to be mutually reinforcing and together contribute to safety and soundness in the financial system. To summarise, the Committee's goal remains neither to raise nor lower the aggregate regulatory capital, inclusive of operational risk but to distribute it more effectively.

In conclusion, the wide divergence between the risk profiles of banks/financial institutions and national infrastructure/culture means that removing regulatory inconsistencies and creating a level playing field is likely to be very difficult but very necessary. In some specific areas prescription is likely to be desirable e.g. ISDA (the International Swap Dealers Association) have developed some standards but the sheer diversity and fast moving nature of the industry and markets mitigates against a bureaucratic framework surviving any length of time. The new Accord is, therefore, an attempt to create a level of harmonisation within a flexible but controlled structure.

The Forum Group, is of the opinion that adopting a 'top-down' approach by seeking to remove regulatory inconsistencies within an internationally agreed flexible framework is likely to stand more chance of success than numerous bilateral or multilateral discussions on specific issues. Also, increasing globalisation and interdependency between financial markets is likely to create a climate where removal of regulatory inconsistencies is in the general interest. The Forum Group believes that the successful development of the new bank capital adequacy rules depends on two factors:

- a much greater and continuous involvement of the financial industry in the development and application of the new capital adequacy process is vital to ensure that the past inconsistencies in its application at national level are avoided;
- banking regulators and supervisors should seek even further co-operation to ensure a convergence of their supervisory practices..

Annex I: European Commission issues paper for Forum Group VI

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 of end 1998 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 obstacles 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 harmonized, 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 standardization.
- ➢ 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 impedes 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.

Annex II:
Forum Group VI Participants

Mr. Santiago Abeijon Giráldez	Caja de Madrid
Mr. Philippe Bonte	EURESA-LIFE
Mr. Jesús María Cadenato Matia	Banco Bilbao Vizcaya Argentaria
Mr. Rui Manuel Correia Pedras	AEGFP
Mr. Brandon Davies	Barclays Bank
Mr. Echevarría	Banco Bilbao Vizcaya Argentaria
Mr. Klaus Hanraths	Westdeutsche Landesbank
Mr. Stefan Janssen	Commerzbank AG
Mr. Roger Jones	Lloyds TSB Bank Plc
Ms. Lucille Knapp	Northern Trust
Mr. Philippe Lambrecht	KBC Bank
Mr. Pentti Mansukoski	Nordea Cash Management
Mr. Richard Martin	ABN AMRO Bank N.V.
Ms. Colleen McDermott	Merrill Lynch Mercury Asset Management
Mr. Robert Meijer	Shell Pensioenfonds Beheer
Mr. Patrick Pearson	EC Markt.C.03
Mr. Heijmert Rijken	Rabobank Cash Management
Mr. Markus Straußfeld	Westdeutsche Landesbank
Mr. Huib van der Burg	Rabobank Nederland
Mr. Kurt Vander Eecken	EC Markt.C.03
Ms. Leena Villman–Hurri	Nordea Legal Service

Annex III:
Disparities in Withholding Tax Requirements in the EU

Legislation differs from country to country in regard to whether companies based abroad are subject to withholding tax, and if so at what rate. This can result in different financial impacts depending on where the centralising company is located and what companies take part in the system. In some countries, this tax is excluded by law on a general basis. In others the double taxation treaties signed between different countries must be consulted to determine what rate should be applied. The table below gives the rates applicable.

Subsidiary in	DE	AUS	BE	UK	F	IT	LUX	NL	ES
DE	X	0	15	0	0	10	0	0	0
AUS	5-15	X	15	5-15	15	15	5-15	5-15	10-15
BE	--	--	X	--	--	--	--	--	--
UK	0	0	15	X	0	10	0	0	12
F	0	0	15	0	X	10	10	0	0
IT	10	10	15	10	10	X	10	10	12
LUX	--	--	--				X		
NL	--	--	--					X	
ES	--	--	--						X

This withholding tax can even result in double taxation, with tax being levied first on the interest paid by the financial institution to the centralising company and secondly on the interest on transactions between companies participating in the cash management system.

Annex IV:
Stamp Duties in the EU (as of June 2001)

Stamp duties involve an extra cost and burden on centralised structures. Stamp duties are levied in three Member States: Denmark, Portugal and Austria. They are levied in two areas: granting loans (including committed and uncommitted overdraft facilities) and interest payments. In some instances a fixed rate is levied on the principal amount of the loan or overdraft facility, in other case it is levied on the average balance over a specified period.

Member State	*Overdraft Facilities*	*Interest*
Denmark	0.3%	--
Portugal	0.004% month < 1 year 0.5% 1-5 years 0.6% > 5 years	4%
Austria	0.8%< 5 years 1.5%> 5 years	--

Annex V:
Central bank reporting requirements

Reporting Requirements in ECBS Member Countries

Exemption Threshold		Simplified Reporting Threshold (in €)							Remarks
		Individual	Global	By Whom[2]	No.of codes	By whom	No. of codes	Format of codes	
AUS	No		2500	RFI	[1]	BFI&RFI	>50	[3]n	
BE	No	9000		RFI	[1]	BFI&RFI	>50	n[4]	[5]
DAN	No	7500		RFI		BFI	>50		
SF	No systematic reporting-sample-based surveys only								
F	No		15000 (n[6])	RFI	[1]	BFI&RFI	~50	n	[5]
DE	12500					B	30	n	[9]
GR									
IRL	No systematic reporting-sample-based surveys only								
IT	1200 (n[7])	8000	--	B,RFI	--		>50	n	
LUX	No	9000		RFI	[1]	BFI	>50	n	
NL	No	11900		BFI	[1]	BFI	>50	n	
NO	No	7430		RFI&BFI		BFI or RFI	30	n	[8]
PO	No	5000		BFI		BFI	>50		
ES	No	-	3200	RFI	--	BFI&RFI	>50	n	
SWE	8500					BFI&RFI			
CH	No systematic reporting-sample-based surveys only								
UK	No systematic reporting-sample-based surveys only								

Footnotes
1 In other countries simplified reporting applies uniformly.
2 Reporting entities: B Beneficiary, BFI: Beneficiary Financial Institution, RFI: Receiving Financial Institution (entry point)
3 N = National
   I = International
4 Although the codes are domestic, they are compatible with the international IMF codification
5 Direct reporting by large companies may also be required
6 Applies only to commercial payments
7 Exemption threshold for companies only, no exemption for banks
8 Reporting by BFI for non-resident customers
9 Reporting entity can also be the sender of the payment, depending on who is resident in Germany.

Annex VI:
Characteristics of the most important tax havens

	Belgium Co-ordination Centres	Netherlands Finance companies	Ireland Financial Services Centres	Dutch/Swiss 'Sandwich'
Taxes	No withholding tax on dividends. No withholding tax on interest paid. Basic corporate tax 39-43% calculated on a cost-plus basis	25% withholding tax on dividends. No withholding tax on interest paid to non-residents. Basic corporate tax 35-40%	No withholding tax on dividends. No withholding tax on interest paid. Basic corporate tax 10%.	In Switzerland low profits tax 10-35% on cost-plus basis. In Netherlands No tax paid on profits from a branch.
Employm.	Must employ 10 local staff after two years	No specific regulations	Must employ three to eight people	No specific employment regulations
Legal status	Belgian registered company or a branch of a foreign corporation	Dutch-registered company, either BV or NV	Irish subsidiary or branch of a foreign company or agency operation on behalf of a foreign company	In Switz. AG or a Gesellschaft. In the Netherlands, either BV or NV.