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Internal Market and Services DG

FINANCIAL SERVICES POLICY AND FINANCIAL MARKETS
Financial markets infrastructure

Brussels, 26 April 2007
PP/GM D(2007)

**Subject: EU Clearing and Settlement
Legal Certainty Group
6th meeting: 26 and 27 February 2007
Minutes**

1. WELCOME AND ADOPTION OF THE AGENDA

Pierre Delsaux welcomed the members of the LCG and introduced four new members to the group: Mr. Philippe Langlet (FR), Mr. Angel Kaladjiev (BU), Mr. Martin Thomas (UK), Mr. Federico de Tomasi (IT) and Ms. Karin Wallin-Norman (SE).

2. UPDATE ON PROGRESS OF CESAME AND FISCO SINCE LAST LCG MEETING

The Commission gave a short update on the current work of CESAME and FISCO and the current status on the removal of the industry and fiscal barriers. Furthermore the members of the group were updated on the Industry Code of Conduct and the work of the Monitoring Group.

3. DEFINITION OF THE AIMS OF THE LCG AND OUTLOOK ON FUTURE WORK

The group discussed the structure of the future Advice as well as its relationship to the Advice 2006. Furthermore the organisation and structure of the work flow was debated.

It was agreed that the future working methods of the LCG and its subgroups are not restricted: conference calls, mails, meetings, etc. are possible. All members of the LCG as well as the sub-group members will receive all documents from the LCG sub-groups and may comment on all areas discussed.

Agreement was also made that a first interim report is foreseen for the end of 2007 and the final report should be delivered by end 2008. The basis for these reports is the Advice 2006.

4. SUBJECT NO. 3 (LOCATION OF SECURITIES)

Sub-working group no. 3 (Mr. Gomez-Sancha) gave a presentation on their current and future work on location of securities (presentation is enclosed).

It was agreed that the number of volunteers for this sub-working group should be increased.

Mr. Gomez-Sancha pointed out that the applicable law is not part of the work (mandate) of this group.

5. SUBJECT NO. 1 (LEGAL EFFECTS OF BOOK ENTRIES TO SECURITIES ACCOUNTS)

The Secretariat introduced its paper on Subject no. 1 – book entry (Doc. LCG-2). A short discussion was held whether the LCG should start to draft a new legislation now and whether and to which extent the Advice 2006 needed to be modified. Different views on the purpose and form of the future Advice came up. In the end it was agreed that no drafting of future legislation (legal provisions) will be prepared until the end of this year and that the Advice 2006 will form the basis of the 2007/8 Advice, subject to adjustments if and where necessary.

Then the question was discussed whether the new legislation should go beyond minimum standards. Participants proposed to elaborate in more detail on the necessity for more detailed or additional provisions for rules ensuring the integrity and stability of holding systems, enhanced investor protection and duties of the intermediary.

The Secretariat presented its paper on the monitoring of the draft Unidroit Convention (Doc. LCG-3). The LCG agreed to the approach how to monitor the draft as laid down in Point 2 of this document.

Participants discussed the references to the non-convention domestic law which are contained in the Unidroit draft Convention (see Doc. LCG-5). It was agreed to put the following topics on the work agenda of the LCG and eventually develop rules on these subjects for the new advice:

- receiving dividends and exercising voting rights by intermediaries, cf. Unidroit Article 5 Para 1(a)(ii), 2006 Advice 5.2.1.3 and LCG Subject 2;
- a definition of the nature of securities which goes beyond its characteristics regarding transfer and holding by book-entries, cf. Unidroit Article 5 para 1(d);
- interests in book-entry securities which are created under a regime which does not require a book-entry, and their relationship to book-entry interests, cf. Unidroit Article 9;

- evidential requirements for the acquisition and disposition of book-entry securities, *cf.* Unidroit Article 10;
- effectiveness against third parties, validity, conditionality and reversal of book-entries, *cf.* 2006 Advice 5.6 and Unidroit Article 11 and 2006 Advice 5.7;
- details on the means by which and the time within an account provider is hold to eliminate an imbalance in its accounts, *cf.* Unidroit Article 19 para 2 and 2006 Advice 5.8/5.9.6;
- allocation/segregation of securities, *cf.* Unidroit Article 21 para 3, 2006 Advice 5.2.9.5 and MiFID;
- loss sharing in case of shortfall, *cf.* Unidroit Article 22 para 1.

In order to ensure seamless interconnection with other EU measures the LCG Secretariat invited Commission experts responsible for MiFID to give a short overview of the latest developments and the possible interaction with the work of the LCG. It was agreed to pay particular attention to compatibility and integration of the future Advice with other EU measures.

It was agreed that the sub-working group on Subject no. 1 will produce a report on interconnection with other EU measures by the end of this year.

Due to the time constraints the members of the LCG did not discuss the secretariat paper Doc. LCG-4 on the draft principles. The discussion was postponed.

Referring to the past research done by the LCG, participants discussed whether an update of the Compendium would be useful and desirable. It was agreed that due to the work load an update will only be made for those topics and questions of the compendium which are really needed.

6. SUBJECT NO. 2 (CORPORATE ACTIONS)

The coordinator of sub-working group no. 2 (Agata Waclawik) gave a presentation on the key issues of their work and their tasks (presentation is enclosed) and made clear that the group can not and will not deliver proposals on substantive company law issues.

The Commission informed about the triparty-meeting between LCG, CESAME and FISCO which took place on 5 December 2006. Furthermore the Commission made a presentation on the status quo of the Shareholders Voting Rights Directive (presentation is enclosed).

7. ANY OTHER BUSINESS

Please note that there is a **change of date** for the next LCG meeting which is now scheduled for the **7 May 2007** (10.00-17.30) in Brussels.

8. ANNEX:

Update on the composition of membership of the three sub-working groups:

Subject no. 1 (legal effects of book entries):

Afrell Lars
Bang-Pedersen Ulrik
Benjamin Joanna
Christmann Olaf
Drummond France
Dupont Philippe
Ganado Max
Gomez-Sancha Ignacio
Kalaidjiev Angel
Löber Klaus
Maffei Antoine
Mora Miguel
Morton Guy
Thomas Martin
Van Der Haegen Marc
(coordinator to be nominated)

Subject no. 2 (corporate actions):

Cochard Sebastien
Langlet Philippe
Lener Raffaele
Plavsak Nina
Sandel Marianne
Svoboda Marek
Than Jürgen
Waclawik Agata (coordinator)
Wallin-Norman Karin

Subject no. 3 (location of securities):

Gomez-Sancha Ignacio
Mora Miguel

Svoboda Marek
Tsibanoulis Dimitris
Ziehms Linda (coordinator)

LCG-Secretariat

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