



CESAME Group

Issues to be addressed by the Legal Group

15 September 2004

At the meeting of the CESAME Group held on 16 July the members of this group were asked to provide a list of issues to be addressed by the Legal Group to be set up by the European Commission in autumn of this year.

ESF has repeatedly emphasised the importance of legal harmonisation to achieve the objective of an efficient, safe and integrated clearing and settlement system in Europe. Based on the discussions of ESF's Legal Committee, we are therefore pleased to set out our views as follows:

- We concur with the Commission's position that the issues of transfer of ownership and related issues as outlined in the Communication on Clearing and Settlement on page 26 / 27 are key aspects of legal harmonisation to be addressed by the Legal Group.
- In order to avoid duplication of efforts the EU Legal Group should build on the work performed / in progress on the part of Unidroit and (i) engage in and contribute to the work of Unidroit and (ii) determine to what extent this is not satisfactory or not exhaustive to meet the needs of Europe.
- Moreover, the EU Legal Group moreover focus on further reaching legal harmonisation (as provided for e.g. by the Collateral Directive) and on developing legal solutions required to allow practical (operational) problems to be effectively solved (e.g. harmonisation of corporate actions).

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ESF's Legal Committee will support the work of the Legal Group, primarily by

- defining detailed areas where, from a securities markets practice view point, legal solutions are required to achieve harmonisation, standardisation and integration of clearing and settlement processes (e.g. issue of lack of collective or omnibus accounts in certain markets);
- assessing recommended ways of implementing legal change.

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