



MANDATE

The Commission Communication on Clearing and Settlement, adopted in April 2004, proposed the setting up of group of legal experts, as a specific exercise intended to address problems of legal uncertainty identified in the context of considering the way forward for clearing and settlement in the European Union.

The suggestion made in the Communication was for a group composed of experts from academia, public authorities and practicing lawyers. A core secretariat would provide necessary impetus for the project; and the project was not expected to be short-term, given the complexity of the subject and its intricate connexion with national property and company law.

Identifying the detail of the work, and in particular the articulation in legal terminology of the specific issues to be addressed, will be a matter for the group itself. The overall tasks of the group are:

1. UNDERTAKING IN-DEPTH LEGAL ANALYSIS OF THE ISSUES RAISED IN THE COMMUNICATION.

The issues in particular are:

- 1.1. the absence of an EU-wide framework for the treatment of interests in securities held with an intermediary;
- 1.2. differences in national legal provisions affecting corporate action processing, such as discrepancies in Member States' laws as to the determination of the exact moment when a purchaser is considered to be the owner of a security, e.g., for the payment of dividends;
- 1.3. restrictions relating to the issuer's ability to choose the location of its securities.

Reference should also be made to

- 1.4. the legal issues exposed in the Giovannini reports (as referred to in the Communication); and
 - 1.5. specific issues, if judged relevant and material, as suggested by members of CESAME.
- 2. PROPOSING SOLUTIONS TO SUCH PROBLEMS OF LEGAL UNCERTAINTY AS HAVE BEEN CONFIRMED BY THE ANALYSIS**
 - 3. INFORMAL ASSISTANCE THROUGH THE PROVISION, ON REQUEST, OF ADVICE TO THE COMMISSION ON SPECIFIC TECHNICAL ISSUES**

Throughout the work, the group is to

- conduct its work as openly as possible
- liaise with the other groups first suggested in the Communication on April 2004, being CESAME and a group looking at issues of tax procedures (which will be reciprocal relationships)
- liaise with others that have undertaken any similar work at the wider global level and where to do so would assist in ensuring the consistency of initiatives in the EU with those developed at international level
- overall, endeavour to proceed in conformity with the themes of the Commission's work relating to EU clearing and settlement, including support that project, ensuring wide dissemination to the public of all necessary information, explanations and reports on the state of reform, building awareness of the relevance of the project for the success of the EU's financial markets and for the attainment of the objectives incorporated in the Lisbon agenda.

The driving force in the composition of the group is to be the desire to capture expertise, rather than representation. The success of the group's work depends on it not allowing itself to attempt to answer policy questions. Where questions arise that are not legal issues, the group will seek guidance on those matters from others.

As the work of the group may extend beyond the short-term, and as different types of expertise may be needed for preliminary work, which is primarily analytical, than for any later work relating to the development of specific proposed solutions, which is primarily advisory, it is intended that the composition of the group, and its methods of working, may alter over time.

It is intended that the work of the group will benefit throughout from the views of both specialists and non-specialists in industry, public sector and academia, and that it will draw inspiration from: the full range of legal systems found within the EU; the full range of holding and settlement arrangements, including both those direct and indirect; and the full range of perspectives on the law relating to the settlement of securities, including of those engaged in the settlement and custody industry; in securities transactions more widely, in banking, funds and investment; and in considering issues related to investor protection and financial stability.

The group will be chaired by the Commission; and it will also provide the Secretariat function. The Secretariat will be responsible for explaining and promoting the project, consulting with industry, the public sector and academia. It will ensure the openness and accessibility of the group's work.

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