

## CESAME Group

### Operational Conclusions (following the meeting held on 24 October 2005)

#### 1. AIM

These updated Operational Conclusions shall set out a roadmap for the agreed work to be undertaken in view of the next meeting of the CESAME group on 20 February 2006 and beyond.

#### 2. TABLE

The Operational Conclusions are presented in the form of a summary table indicating for each barrier

- a) the necessary **action**,
- b) **entities** responsible for that action; and
- c) **time target**

for removing the barriers to an integrated EU clearing and settlement environment. The structure of the table follows the 15 so-called Giovannini barriers. At the end of the table, various supplementary issues are enumerated.

#### 3. INDICATORS OF SUCCESS

Whenever an issue is fully settled, i.e. a barrier is entirely dismantled or a given task carried out *in toto*, the pertaining text in the respective columns and rows **is highlighted**.

- So far, only barrier 8 (issuance of ISINs) has been fully dismantled.
- On barrier 14 (legal treatment of netting), the Financial Collateral Directive has now been implemented.
- The implementation of the solution for barrier 2 (restrictions on location to C&S systems), i.e. Article 34 of the MiFID is still pending (implementation date 30 April 2006 is supposed to be prolonged to 30 October 2006).

| <b>CESAME group: Operational Conclusions – following 24 October 2005 meeting</b> |  |   |   |
|--|--|---|---|
|  | <b>Necessary Action</b>  | <b>Responsible</b>  | <b>Time Target*</b>   |
| <b>Giov.<br/>Barrier<br/>1</b>   | <b>Diversity of IT platforms/interfaces: National differences in the information technology and interfaces used by clearing and settlement providers should be eliminated via an EU-wide protocol.</b>   | <b>Protocol should be defined by SWIFT and, once defined, should be immediately adopted by the Eurosystem in respect of its operations.</b>   | <b>within 2 years [October 2006*]</b>   |
|  | a) consultation paper “The proposal for the removal of Barrier 1 of the Giovannini Report” – draft initial common protocol   | SWIFT   | January 2005  |
|  | b) analysis of comments, refining the initial protocol model   | SWIFT + user group ("independent advisory group")   | September 2005  |
|  | c) presentation of initial protocol model for a 2 <sup>nd</sup> round consultation, establishment of a “converter”   | SWIFT   | 25 October 2005 [but not for "converter"]   |
|  | d) gap analysis to identify and insert missing functionalities   | SWIFT   | ongoing   |
|  | e) publication of the final standard protocol (incl. statement of compliance from major market players)  | SWIFT   | March 2006  |
|  | f) implementation of the standard protocol   | all (European) industry participants, e.g. banks, (I)CSDs, CCPs, central banks, intermediaries etc.; probably with monitoring by ISSA   | to be coordinated starting 3/06 – 3/08 by all EU market infrastructures; 3-/06 – 3/11 for all cross-border participants |
|  |  |   |   |
|  | <u>possible follow-up:</u> Commission and ECB to consult on ways to accelerate adoption and use of the global protocol within the industry   | <i>N.B.</i> SWIFT standards (not SWIFT network) have been approved as the global repository for the securities industry globally by ISO. Thus, SWIFT has become the service provider for standards business models for the XML-protocol which is key to the whole industry. |   |
|  | Link to SWIFT: <a href="http://www.swift.com/index.cfm?item_id=43429">http://www.swift.com/index.cfm?item_id=43429</a><br>Link to ISO financial standard: <a href="http://www.iso20022.org">http://www.iso20022.org</a><br>Link to FIX protocol: <a href="http://www.fixprotocol.org">http://www.fixprotocol.org</a> |   |   |

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| CESAME group: Operational Conclusions – following 24 October 2005 meeting |   |  |   |
|---|---|--|---|
|   | Necessary Action  | Responsible  | Time Target*  |
| Giov.<br>Barrier<br>2   | <b>Restriction on location of C&amp;S:</b> National restrictions on the location of clearing and settlement should be removed, as an essential precondition for a market-led integration of the EU clearing and settlement environment.   | <i>National governments should adopt the relevant elements on the location of clearing and settlement in the new Investment Services Directive [now MiFID] as proposed by the Commission.<br/>National Governments should then co-ordinate to remove restrictions on location of securities.</i> | <b>within 3 years</b><br>[October 2007*]  |
| <i>public<br/>Sector</i>  | <i>Background: barrier 2 is referring to connections between exchanges and settlement systems, thus being rather a market structure or business issue. [more info see Synthesis Report of 24.10.2005]</i>   |  | <b>MiFID adopted;</b><br><i>initially to be implemented by 30 April 2006 – this implementation date will probably be prolonged to 30 October 2006</i> |
|   | <i>MiFID covers certain aspects of access of investment firms to other Member States' CSDs. The remaining legal framework (links between the CSDs and access by other entities) will be tackled by the actions as identified in the Clearing and Settlement regulatory impact assessment.</i> | <i>to be defined by Impact Assessment (1<sup>st</sup> half of 2006)</i>  |   |
|   | <b>N.B. This barrier is linked to barrier 9.</b>  |  |   |

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**CESAME group: Operational Conclusions – following 24 October 2005 meeting**

|  | Necessary Action   | Responsible   | Time Target*  |
|--|--|---|---|
| <b>Giov. Barrier 3</b>   | <b>Different rules governing corporate actions: National rules relating to corporate actions, beneficial ownership and custody should be harmonised.</b> | Local agent banks, via ECSA, and CSDs, via ECSDA should co-ordinate private-sector proposals. <i>National governments should coordinate their response via the relevant EU Council.</i> | within 2 years and 3 months from the start of project<br>[January 2007*]  |
| N.B. implementation dates are to be refined and <a href="#">hyperlinks</a> to be added for the next meeting in February 2006 |  |   |   |
| <b>A. Distributions</b> (mandatory and optional – according to ISO terminology)  |  |   |   |
| <b>C</b>   | 1. ECSDA Standards for all distributions (cash and stock); proposed implementation timeline  | ECSDA   | Public; consultation closed; gap analysis completed; implementation discussed with assoc.; update report May 2006 |
| <b>E</b>   |  |   |   |
| <b>S</b>   | 2. 1 <sup>st</sup> set of ECSAs Recommendations on Cash Dividends  | ECSAs (European Credit Sector Associations, i.e. EBF/FBE, ESBG, EACB)   | public, implemented by [...]  |
| <b>A</b>   | 3. 2 <sup>nd</sup> set of ECSAs Recommendations on Interest Payments and Redemption at Maturity  | ECSAs (European Credit Sector Associations, i.e. EBF/FBE, ESBG, EACB)   | public, implemented by [...]  |
| <b>M</b>   | 4. 3 <sup>rd</sup> set of ECSAs Recommendations on Stock Distributions   | ECSAs (European Credit Sector Associations, i.e. EBF/FBE, ESBG, EACB)   | finalised by end 2005, implemented by [...]   |
| <b>E</b>   | 5. ECSDA Standards for Optional Distributions  | ECSDA   | Started   |
| <b>B. Reorganisations</b> (mandatory, optional and voluntary – according to ISO terminology)                                 |  |   |   |
|  | 6. ESF Proposals to Harmonise and Standardise Default Rules Related to Mandatory and Voluntary corporate actions events                                  | ESF   | under discussion with other associations  |
|  | 7. Joint work on Voluntary Corporate Actions   | EALIC, ECSDA, ECSAs, ESF  | preparatory stage   |
|  | 8. 5 <sup>th</sup> set of ECSAs Recommendations on Reorganisation Events   | ECSAs (European Credit Sector Associations, i.e. EBF/FBE, ESBG, EACB)   | start end 2005, implemented by [...]  |
|  | 9. ECSDA standards on reorganisations  | ECSDA   | Start beginning 2006  |
| <b>C. Shareholders' rights</b>   |  |   |   |
|  | 10.4 <sup>th</sup> set of ECSAs Recommendations on Proxy Issues  | ECSAs (European Credit Sector Associations, i.e. EBF/FBE, ESBG, EACB)   | start in 2006, implemented by [...]   |

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**CESAME group: Operational Conclusions – following 24 October 2005 meeting**

|                                | <b>Necessary Action</b>   | <b>Responsible</b>  | <b>Time Target*</b>   |
|--------------------------------|---|---|---|
| <b>Giov.<br/>Barrier<br/>3</b> | 11. Analysis on Admissions to the General Meeting and Shareholders' Identification  | EALIC; ESF, EBF/FBE, ECSDA, FESE  | Established September 2005  |
|                                | 12. ECSDA standards on shareholders' rights   | ECSDA   | To be started H2 2006   |
|                                |   |   |   |
|                                | <b><u>D. Transaction management</u></b> (corporate actions related more to trading than to issuers)   |   |   |
| <b>C</b>                       | 13.ESFs core Proposals to harmonise and standardise key dates related to voluntary corporate actions processes  | ESF   | under discussion with other associations                          |
| <b>E</b>                       | 14. <a href="#">ESF</a> Standards for Buyer Protection Rules  | ESF   | developed end 2005  |
| <b>S</b>                       | 15.ECSDA Standards for market claims  | ECSDA   | <b>Finalised;</b>   |
| <b>A</b>                       | 16.ECSDA Market Claims Report: implementation timeline proposal   | ECSDA   | to be created   |
| <b>M</b>                       | 17. ECSDA report on automatic transformations and buyer protection  | ECSDA   | Start H2 2006 – together with reorganisations                     |
|                                |   |   |   |
|                                | <b><u>Ensuring consistency and implementation of all standards</u></b>  |   |   |
| <b>E</b>                       | 18.ECSDA Gap Analysis (on level of adherence to proposed standards)   | ECSDA   | <b>Completed; published</b>                                       |
|                                | 19.ECSAs Gap-analysis for each market acc. To a standardised matrix and compliance table (allows periodical progress monitoring and potential corrective action)  | ECSAs   | <b>October 2005 first time</b> , than every six months thereafter |
|                                | 20.Common Summary Gap Analysis and Joint Monitoring "Dashboard"   | ECSDA, ECSAs  | 1 <sup>st</sup> publication early 2006                            |
|                                | 21.Joint Spreadsheet of Standards (overview on all the associations' standards – to ensure consistency)   | ECSDA, ESF, EALIC, ECSAs  | 1 <sup>st</sup> version finished, + ongoing updates               |
|                                | 22.COM Consultation on Shareholder Rights<br>COM proposal for a Directive on Shareholder Rights   | <i>COM</i>  | <b>29 Sept. 2005</b><br><i>Beginning 2006</i>                     |
|                                | <b><u>N.B.</u></b><br><ul style="list-style-type: none"> <li>Standards are addressed to associations' members – they cannot be enforced</li> <li>overlaps with the work of the Legal Certainty Group, FISCO group and the work of COM on company law</li> </ul> | <i>The Legal Certainty Group has been mandated to assess the legal barriers to corporate actions processing which cannot be resolved by the private sector.</i> |   |

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|---|---|--|--|
|   | Necessary Action  | Responsible  | Time Target*   |
| Giov.<br>Barrier<br>4   | <b>Absence of intra-day settlement finality:</b> Intra-day settlement finality in all links between settlement systems within the EU should be guaranteed.  | ECSDA should co-ordinate necessary measures. These measures should be drawn up in close consultation with ESCB-CESR. | within 2 years and 3 months<br>[January 2007*]                             |
|   | a) recommendations on specific standards  | ECSDA  | April 2004   |
| C   | b) 1 <sup>st</sup> annual status <a href="#">report</a>   | ECSDA  | April 2005   |
|   | c) market consultation/establishment of market liaison groups (to look at potential consequences of harmonisation of rules)   | ECSDA members  | End 2004   |
| E   | d) implementation of the recommended standards, <i>i.e.</i> ECSDA members to adapt their systems in parallel to comply with the standards   | CSDs   | mid 2007   |
|   | e) report on missing parts and gap analysis   | ECSDA  | CESAME meeting 24 October 2005   |
| M   | f) further updated status report  |  | June 2006  |
|   | g) establishment of implementation monitoring systems: <ul style="list-style-type: none"> <li>development of a set of criteria and information to monitor and assess the development of the implementation process</li> <li>if significant delays of implementation are still reported, then appropriate measures may be envisaged</li> </ul> | ECSDA<br><br>peer pressure or supervisory means or eventually Commission intervention                                | Continuously carried out, but results reported publicly on an annual basis |
| A   | N.B. the 10 ECSDA standards concern <i>e.g.</i> the range of eligible instruments, opening days and hours, processing periods   |  |  |
|   | N.B. <b>this barrier is linked to barrier 7</b>   |  |  |

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|---|---|--|-----------------------------------|
|   | Necessary Action  | Responsible  | Time Target*                      |
| Giov.<br>Barrier<br>5   | <b>Impediments to remote access:</b> Practical impediments to remote access to national clearing and settlement systems should be removed in order to ensure a level playing field.   | <i>National governments should draw up a set of conditions upon which remote access can be guaranteed across the EU. These conditions should be drawn up in conformity with the requirements of ESCB/CESR.</i> | within 3 years<br>[October 2007*] |
| <i>public<br/>Sector</i>  | Article 34 MiFID addresses the issue for investment firms; TARGET 2 will provide solutions (access to central bank money) within the Euro-area.<br>Remaining problems for participants outside the Euro-area.   | Discussion within CESAME group   | 24 October 2005                   |
|   | <i>MiFID covers certain aspects of access of investment firms to other Member States' CSDs. The remaining legal framework (links between the CSDs and access by other entities) will be tackled by the actions as identified in the Clearing and Settlement regulatory impact assessment.</i> | <i>to be defined by Impact Assessment (1<sup>st</sup> half of 2006)</i>  |                                   |

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|---|---|---|--|
|   | Necessary Action  | Responsible   | Time Target*   |
| Giov.<br>Barrier<br>6   | <b>Differences in standard settlement periods: Settlement periods for all systems within the EU should be harmonised.</b>   | <b>More study required on the costs of harmonisation versus the alternative of managing additional costs of this barrier.</b>   | <b>within 2 years and 3 months<br/>[January 2007*]</b> |
|   | There are issues raised by the existence of different settlement periods in the EU and it is questioned whether it is advisable to push for a generalised alignment on a same settlement period or a reduction of settlement periods. Major banks can already do settlement in T+0, but non-harmonised settlement cycles create difficulties from the point of view of both the front- and back-offices. As to the trading activity, arbitrage between similar products in different countries is more difficult (e.g., back to back transactions are not always possible). Moreover, one of the consequences of different settlement periods is that operational risks are introduced because you change the standard settlement period to a non-standard one. This issue will be interesting to consider in the context of Basel II rules. In such cases manual intervention is required which always presents risks. This increases complexity and the incidence of un-matched trades, which can cause dysfunctions in the liquidity function of the banks. Borrowing programs may prove to be a solution in tackling the T+2 - T+3 differences. Collateral management could be a problem. | <p>CESAME group discussed the issue (on 25 October 2004, 2<sup>nd</sup> meeting) and revert to it in due course</p> <p><i>Barrier 6</i> is not a barrier that the group will actively pursue but it will assess its effects in the light of developments occurring in other areas in due course.</p> <p>The group agreed that this barrier should not be tackled, at least for the time being. However the issue should further be discussed and developments monitored (without actively seeking reform within given timeframes) since a future important increase of cross-system trades resulting from the integration of markets and the lifting of the other barriers might raise the importance of settlement periods. In other words, the momentum for the removal of that barrier could build up as the work on the removal of the other barriers progresses.</p> | Beginning 2006   |

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|--|---|---|--|
|  | Necessary Action  | Responsible   | Time Target*   |
| Giov.<br>Barrier<br>7<br><br>C<br>E<br>S<br>A<br>M<br>E  | <b>Different operating hours/settlement deadlines: Operating hours and settlement deadlines should be harmonised.</b>   | ECSDA should take the lead in this initiative, in close cooperation with ESCB-CESR.   | within 2 years<br>[October 2006*]  |
|  | a) recommendations on specific standards  | ECSDA   | April 2004   |
|  | b) progress reports   | ECSDA   | At CESAME meetings   |
|  | c) 1st annual status <a href="#">report</a>   |   | April 2005   |
|  | d) market consultation/establishment of liaison groups (to look at potential consequences of harmonisation of rules)  | ECSDA members   |  |
|  | e) further updated status report  |   | June 2006  |
|  | f) implementation of the recommended standards ( <i>i.e.</i> to ECSDA members adapt their systems in parallel to comply with the standards)   | national CSDs   | mid 2007   |
|  | g) establishment of implementation monitoring systems: <ul style="list-style-type: none"> <li>development of a set of criteria and information to monitor and assess the development of the implementation process</li> <li>if significant delays of implementation are still reported, then appropriate measures may be envisaged</li> </ul> | ECSDA<br><br>peer pressure or supervisory means or eventually Commission intervention | Continuously carried out, but results reported publicly on an annual basis |
| <u>N.B.</u> the 10 ECSDA standards concern <i>e.g.</i> the range of eligible instruments, opening days and hours, processing periods |   |   |  |
| <u>N.B.</u> <b>This barrier is linked to barrier 4.</b>  |   |   |  |

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|---|--|--|------------------------------------|
|   | <b>Necessary Action</b>  | <b>Responsible</b>   | <b>Time Target*</b>                |
| <b>Giov.<br/>Barrier<br/>8</b>  | <b>Differences in securities issuances: National differences in securities issuance practice should be eliminated.</b> | <b>IPMA and ANNA should draw up proposals to this end.</b>                             | <b>within 2 years and 3 months</b> |
|   | All ANNA members in the EU are now issuing, on request, ISIN numbers on the same day.                                  | Barrier 8 no longer considered an obstacle.  | <b>barrier dismantled</b>          |
| <b>C<br/>E<br/>S<br/>A<br/>M<br/>E</b>  | <b>For monitoring</b>  |  |                                    |
|   | Problem with charging of fees for use of U.S. ISINs  | a) CESAME group members and guests (ICMA) to provide written information and documents | a) until 21.2.2006                 |
|   |  | b) CESAME group to continue monitoring events and progress on the issue.               | b) within 2006                     |
| <b>N.B.</b> While barrier 8 is not perceived as a barrier any more, problems were identified with the U.S. numbering agency (S&P) charging fees for the use of U.S. ISINs. This is seen as being counter productive to the aim of global use of ISINs. CESAME members and guests (ICMA) are requested to provide – preferably written - information to the meeting. |  |  |                                    |

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|---|--|--|---|
|   | Necessary Action   | Responsible  | Time Target*                                |
| Giov.<br>Barrier<br>9<br><br><i>public<br/>Sector</i>                     | <b>Restrictions on location of securities:</b> National restrictions on the location of securities should be removed, as an essential precondition for a market-led integration of the EU clearing and settlement environment. | <i>National governments should adopt the relevant elements on the location of clearing and settlement in the new Investment Services Directive [now MiFID] as proposed by the Commission. National Governments should then co-ordinate to remove restrictions on location of securities.</i> | <b>within 3 years</b><br>[October 2007*]    |
|   | ► restrictions based on market rules   | <i>to be defined by Impact Assessment (1<sup>st</sup> half of 2006)</i>  |   |
|   | ► restrictions based on national law (for domestic securities in the respective country; regulation for foreign securities to enter a country are not within the scope of the exercise of the Legal Certainty Group)           | <i>The Legal Certainty Group has been asked to address the issue.<br/>N.B. Apparently, 16 out of 25 Member States apply restrictive regimes, subject to various differentiations (e.g. equity/debt, materialised/dematerialised.)</i>  | <i>Preliminary advice by beginning 2006</i> |
|   | N.B. <b>This barrier is linked to barrier 2.</b>   |  |   |

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|---|--|---|--|
|   | Necessary Action   | Responsible   | Time Target*   |
| Giov.<br>Barrier<br>10  | <b>Primary dealer restrictions: Restrictions on the activity of primary dealers and market makers should be removed.</b>   | <i>National governments should co-ordinate their actions via the relevant EU Council.</i>   | <b>within 3 years [October 2007*]</b>  |
|   | Letter to the national debt offices recalling context for barrier 10 and asking for a response on the existence and explanation of any restrictions linked specifically to primary dealer's settlement activities.   | <i>Letter to the chairman of the EFC Sub-Committee on EU Government Bonds and Bills Markets signed by CESAME group Chairman and COM member of the EFC Sub-Committee of national debt managers</i>   | <b>Letter sent on 11 April 2005</b><br><b>Report on 24 Oct.05</b>                                    |
| public<br>Sector  | 1. issuers/national governments asked to report and auto-assess to which extend restrictions (still) exist and have an impact on primary dealers   | <i>Member States / <u>Economic and Financial Committee (EFC) Sub-Committee of national debt managers</u><br/>- sub-committee met on 4 October 2005<br/>- aim is to finalise the report for the next sub-committee meeting in second quarter of 2006</i> | <b>50% issuers replies</b><br>( <i>&lt; 50% of issuance volumes</i> ), few large issuers outstanding |
|   | 2. MS report to be reviewed by a) <u>EPDA</u> (European Primary Dealers Association), b) <u>ICMA</u> (International Capital Market Association - a merger of the International Securities Market Association (ISMA) and the International Primary Market Association (IPMA) in July 2005) and c) <u>AMTE</u> (Association Marchés Taux Euro)   | <i>a) EPDA<br/>b) ICMA<br/>c) AMTE</i>  |  |
|   | 3. joint review of the two positions in the CESAME group   | <i>COM to co-ordinate overall response (both public and private sectors) through CESAME group</i>   | <i>EPDA preliminary report at CESAME of 20 Feb.2006</i>  |
|   | <p><b>N.B.</b> letter requests information in four areas: 1. a review of the relevant primary dealership arrangements, 2. the existence of any restriction, 3. the reasons for the restrictions, and 4. implications for primary dealers and national governments as issuers if restrictions were to be removed.</p> <p><b>N.B.</b> Sub-Committee agreed not to divulge individual responses until all replies are received; replies vary across issuers: problem does not seem to be very wide-spread; some issuers do not impose any restrictions, other have issued recommendations which they argue should not be classified as restrictions and only a few have so far indicated restrictions – these being justified mainly by public good considerations.</p> |   |  |

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|---|--|---|---|
|   | Necessary Action   | Responsible   | Time Target*  |
| <b>Giov. Barrier 11</b>   | <b><u>Restrictions on withholding agents:</u> All financial intermediaries established within the EU should be allowed to offer withholding agent services in all of the Member States so as to ensure a level playing field between local and foreign intermediaries.</b> | <i>National governments should co-ordinate their actions via the relevant EU Council.</i> | <b>within 2 years and 3 months</b><br>[January 2007*]         |
| <i>public Sector</i>  | a) establish FISCO group   | <i>Commission</i>   | <b>Done since 2005</b>  |
|   | b) overview on present situation in Member States  | <i>FISCO group</i>  | <i>February 2006</i>  |
|   | c) presentation of alternative, more efficient procedures  | <i>FISCO group</i>  | <i>end 2006</i>   |
|   | d) discussion in Commission Working Group No. 4 – Direct Taxation with the Member States   | <i>Commission and national Governments</i>  | <i>Ongoing information, final report by beginning of 2007</i> |
|   | e) implementation of adopted solutions   | <i>national Governments</i>   | <i>starting mid 2007</i>                                      |

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|--|---|---|--|
|  | <b>Necessary Action</b>   | <b>Responsible</b>  | <b>Time Target*</b>                                    |
| <b>Giov.<br/>Barrier<br/>12</b>  | <b><u>Restrictions on tax collection:</u> Any provisions requiring that taxes on securities transactions be collected via local systems should be removed to ensure a level playing field between domestic and foreign investors.</b> | <i>National governments should co-ordinate their actions via the relevant EU Council.</i> | <b>within 2 years and 3 months<br/>[January 2007*]</b> |
| <i>public<br/>Sector</i>   | a) establish FISCO (Fiscal Compliance Experts') group   | <i>European Commission</i>  | <b>Done since 2005</b>                                 |
|  | b) overview on present situation in Member States   | <i>FISCO group</i>  | <i>February 2006</i>                                   |
|  | c) presentation of alternative, more efficient procedures   | <i>FISCO group</i>  | <i>end 2006</i>  |
|  | f) discussion in Commission Working Group No. 4 – Direct Taxation with the Member States  | <i>Commission and national Governments</i>  | <i>beginning of 2007</i>                               |
|  | d) implementation of adopted solutions  | <i>national Governments</i>   | <i>starting mid 2007</i>                               |

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|---|---|---|-----------------------------------|
|   | Necessary Action  | Responsible   | Time Target*                      |
| Giov.<br>Barrier<br>13  | <b>Absence of EU-wide framework of laws:</b> Absence of EU-wide framework of laws/national differences in the legal treatment of securities | <i>An EU Securities Account Certainty project should be agreed upon by national governments. The objective of this Project should be to draft the target reform and adequate resources should be made available to meet this objective.</i> | within 3 years<br>[October 2007*] |
| <i>public<br/>Sector</i>  | a) establish the Legal Certainty Group  | <i>European Commission</i>  | Established April 2005            |
|   | b) review in detail existing laws of the EU Member States   | <i>Legal Certainty Group</i>  | Mid 2006                          |
|   | c) advise on how to best overcome barrier 13  | <i>Legal Certainty Group</i>  | End 2006                          |
|   | d) taking into account the findings of the Legal Certainty Group, the Commission will formulate its policy                                  | <i>European Commission</i>  | Depends on advice received        |

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|---|--|--|--|
|   | Necessary Action   | Responsible  | Time Target*   |
| Giov.<br>Barrier<br>14  | <b>Legal treatment of netting:</b> National differences in the legal treatment of bilateral netting<br><i>The EU Collateral Directive (Implementation date 27.12.2003) removes much of the legal uncertainty relating to netting and the uneven application of conflict of laws. While this should be enough to allow the lifting of the restrictions on holdings of securities and securities settlement, there remains a need for a legal framework across the EU under which, whenever securities are held using an intermediary, it is the accounts of that intermediary that establish ownership of those securities.</i> | <i>An EU Securities Account Certainty project should be agreed upon by national governments. The objective of this Project should be to draft the target reform and adequate resources should be made available to meet this objective.</i>  | within 3 years<br>[October 2007*]  |
| public<br>Sector  | a) adopt and implement the Financial Collateral Directive<br><br>b) retain a watching brief for netting issues   | <i>Council and EP, EU Member States</i><br><br><i>- This barrier is no longer considered to be of major importance as most – although not all – problems related to bilateral netting have been resolved by the implementation of the Financial Collateral Directive.</i><br><br><i>EU Commission: Although some legal issues may remain, there is no pan-EU problem that calls for immediate action. Therefore, COM has not, at least for the time being, mandated the Legal Certainty Group (LCG) to look at netting issues. It is recognised that a review of netting issues by LCG would indeed be useful, and could come in the future. Given current priorities and resources, however the focus of LCG on barrier 13 (and associated issues) continues to be the best course of action. In the meantime, interested parties are of course welcome and invited to inform COM of any matters falling within this barrier. It should also be noted that a specific (but highly technical) issue has been flagged in COM's recent questionnaire addressed to Member States and industry on the application of the Financial Collateral Directive.</i> | <b>Financial Collateral directive adopted and implemented by all Member States</b> |
|   | c) evaluation of the Financial Collateral Directive  | <i>Commission (after consultation)</i>   | 27.12.2006   |

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|---|---|---|---|
|   | Necessary Action  | Responsible   | Time Target*  |
| Giov.<br>Barrier<br>15  | <b>Conflict of laws:</b> Uneven application of conflict of law rules<br><i>The EU Collateral Directive (Implementation date 27.12.2003) removes much of the legal uncertainty relating to netting and the uneven application of conflict of laws. While this should be enough to allow the lifting of the restrictions on holdings of securities and securities settlement, there remains a need for a legal framework across the EU under which, whenever securities are held using an intermediary, it is the accounts of that intermediary that establish ownership of those securities.</i> | <i>An EU Securities Account Certainty project should be agreed upon by national governments. The objective of this Project should be to draft the target reform and adequate resources should be made available to meet this objective.</i>   | within 3 years<br>[October 2007*]   |
| <i>public<br/>Sector</i>  | The Settlement Finality Directive and the Financial Collateral Directive contain conflict of law rules within their respective scope of application. This is reducing the extent of diversity of existing rules as evoked by this barrier. However, there is no generally applicable conflict of law rule for securities held with an intermediary established at the EU level beyond these directives. The text of the Hague Convention has been finalised with the intention to provide a general rule, but no decision to sign or ratify has been taken yet within the EU.                   | <i>Implementation of SFD and Financial Collateral Directive: EU Member States</i><br><br><i>The Commission proposed in 2003 to the Council that they should sign the Hague Convention. At the request of the Council, the Commission is currently conducting an assessment of legal issues raised in respect of the Hague Convention.</i> | <b>SFD adopted and implemented.</b><br><b>Financial Collateral Directive adopted and implemented by all Member States.</b><br><i>Signature and Ratification of Hague Convention under review (in 2005 and 2006)</i> |
|   | a) Evaluation report<br>b) discussion with Member States on possible amendment  | a) <i>Commission</i><br>b) <i>Commission and Member States in European Securities Committee (ESC)</i>   | a) <i>March 2006</i><br>b) <i>mid-end 2006</i>  |

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|--|---|--|---|
|  | <b>Necessary Action</b>   | <b>Responsible</b>   | <b>Time Target*</b>   |
| <b>suppl.</b>  | a) Establish common technical and functional <u>definitions</u><br><br>b) possible follow-up  | <u>CESAME sub-group on definitions</u> (BNP, Deutsche Börse Group, Citigroup, Euroclear, ECB, ECSDA, LCH, DB, FBE and, from the second meeting, EALIC) | a) <b>CESAME meeting of 24 October 2005</b><br><br>b) by April 2006                                 |
| <b>suppl.</b>  | <u>(Data) requests:</u><br>a) available information on the degree of internal settlement by major banks is contradictory; therefore, CESAME group agreed to initiate a two-step data collection process: first step, COM sent a data format to ECSDA/CEECSDA to be circulated to their members. | Certain CESAME group members   | <b>COM letter send on 7 April 2005;</b> reply date extended (from 29 April 2005) until 30 June 2005 |
|  | b) second step: further data request will be made in order to try to evaluate the level of internalisation at the level of custodian banks  | certain CESAME group members (custodian banks)   | request not yet sent  |
|  | c) Feedback and statistical info for the impact assessment  | all CESAME group members   | ongoing   |
| <b>suppl.</b>  | <u>Regular Reports and updates</u>  |  |   |
|  | a) CESR work  | Eddy Wymeersch   | At every CESAME group meeting if appropriate  |
|  | b) G30 work   | Stephan Schuster   |   |
|  | c) ECB work   | Daniela Russo  |   |
|  | d) EP/ECON, Council and ECOSOC work   | Chairman/COM   |   |
|  | e) Competition reports and issues   | COM/DG Competition   |   |
|  | f) Regulatory Impact Assessment   | COM/DG Markt   |   |

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