

## CESAME Group

### Operational Conclusions (following the meeting held on 22 October 2007)

#### 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 18 February 2008 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 post-trading environment. The structure of the table follows the 15 so-called Giovannini barriers. At the end of the table, various supplementary issues are listed, and **on the CESAME website, there is a [document](#) containing all relevant documents in pdf-version in one table which corresponds to the operational conclusions.**

#### 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 respective text **is highlighted.**

- So far, only barrier 8 (issuance of ISINs) and barrier 14 (legal treatment of netting) have been fully dismantled.
- Following discussions in the relevant EFC-Sub-Committee and the CESAME group, it has been agreed that barrier 10 should be considered as a specific case of barrier 2.
- Industry Barriers 4 and 7 as well as fiscal Barriers 11 and 12 are so closely linked that they are not dealt with separately but jointly.

#### 4. USEFUL INFORMATION

As much as possible, this overview displays links to the various associations and documents. However, sometimes difficulties have been experienced with the links. Therefore, there is a **[separate document](#)**, the "**pdf-table**", **with all relevant documents in pdf-format on the CESAME group webpage**. There is also a **[list of abbreviations](#)** at the CESAME webpage.

**Overview Giovannini Barriers (as of 15 January 2008) – public barriers in *light italics*, industry barriers **bold and underlined****

<b>Giovannini Barrier</b>	<b>Progress</b>	<b>Forecast</b>
1. <b><u>Diversity of IT platforms/interfaces</u></b>	SWIFT Common Protocol&high level message gap analysis ready; details under consultation	Support for implementation started; full implementation anticipated only by 2011; potential major impact from TARGET2-Securities ('T2S') to be assessed
2. <i>Restriction on location of C&amp;S &amp; 10. Primary dealer restrictions<sup>1</sup></i>	MiFID rules on choice of settlement location adopted; Code of conduct ('Code') signed	MiFID rules not sufficient but step forward; T2S expected to have positive impact on settlement level; implementation of the Code will provide additional possibilities on settlement/CCP clearing level; attitude of nat. supervisors/regulators important
9. <i>Restrictions on location of securities</i>	Under consideration by the Legal Certainty Group ('LCG')	Legal Certainty Group to propose solutions by November 2008
3. <b><u>Different rules governing corporate actions</u></b>	Market Standards for corporate actions/general meetings are in different (discussed/adopted/implementation) stages; work to combine them in one set of standards is under way	Mandatory Distributions standards in implementation phase; Market Standards on Mandatory Distributions with options, Reorganisations, transaction management and on three operational processes for general meetings under development; related legal and fiscal issues to be examined
4. <b><u>Absence of intra-day settlement finality &amp; 7. Different operating hours/settlement deadlines</u></b>	ECSDA standards adopted and largely implemented by CSDs	Practical impediments for CSDs participants remain and are under consideration (with EPDA and ERC); major T2S impact expected
5. <i>Impediments to remote access</i>	Non-discrimination rule on remote access in MiFID; remote access to central bank credit for T2cash participants	Positive effect of Code; no solution for non-T2cash Member States as regards remote access to central bank credit
6. <b><u>Differences in standard settlement periods</u></b>	No progress so far; harmonisation of (T+x)standard is not considered a priority	Dismantling (through shortening the current T+x period) may become easier with more Straight-Through-Processing and increased same day confirmation/matching
8. <b><u>Differences in sec. issuances</u></b>	Dismantled	
11. <i>Restrictions on withholding agents &amp; 12. Restrictions on tax collection</i>	FISCO 1 <sup>st</sup> Fact Finding Report finished; Solutions suggested and promoted by 2 <sup>nd</sup> FISCO Solutions Report, Oct. 2007	Member States and Commission to decide on follow-up
13. <i>Absence of EU-wide framework of laws</i>	Existing Law reviewed by LCG; follow up work in progress	Legal Certainty Group to propose solutions by November 2008
14. <i>Legal treatment of netting</i>	Dismantled	
15. <i>Conflict of laws</i>	FCD/SFD provide PRIMA rule for EU; diff. rule under	Discussion on the Hague Convention blocked in Council; Commission services

<sup>1</sup> "collapsed" into barrier 2 by EFC Sub-Committee on EU Government Bonds

<b>CESAME group: Operational Conclusions – following the meeting on 22 October 2007</b>			
	<b>Necessary Action</b>	<b>Responsible</b>	<b>Time Target*</b>
	Hague Convention debated in Council	exploring way forward	

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**CESAME group: Operational Conclusions – following the meeting on 22 October 2007**

	Necessary Action	Responsible	Time Target*
Giov. Barrier 1	<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 – 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
	d) publication of the <a href="#">final standard protocol</a>	SWIFT (+compliance statement from major players)	March 2006
	e) gap analysis to identify and insert missing functionalities - draft for consultation	SWIFT	December 2006
	<del>f) high level cost benefit and implementation roadmap framework; defining an implementation monitoring methodology superseded by points h) and i)</del>	SWIFT+infrastructures to develop monitoring methodology with ISSA (G30 recommendation implementation process)	4 <sup>th</sup> quarter of 2007
	g) implementation of the standard protocol	all (European) industry participants, e.g. banks, (I)CSDs, CCPs, central banks, intermediaries etc.	3/06–3/08 for EU market infrastructures; –3/11 for cross-border participants
	h) Survey to baseline access/interoperability requirements and current capabilities	SWIFT/ISSA	Issued Q4 2007
	i) Summary requirements from survey distributed to EU CCPs+CSDs	SWIFT; Commitments from CCPs and CSDs for action, ISSA monitoring	Distributed Q1 2008
<u>possible follow-up:</u> Commission and ECB to consult on ways to accelerate adoption and use of the global protocol within the industry		COM, ECB	
<p><b>N.B.</b> <i>The ISO 20022 <a href="#">Registration Authority</a> (RA) is the guardian of the UNIFI Financial Repository. The RA's mission is to ensure compliance of developed Repository items with the approved technical specifications and to publish the Financial Repository on <a href="http://www.iso20022.org">www.iso20022.org</a>, on behalf of ISO. <a href="#">Registration Requests</a> to update the Financial Repository are sent to the RA. The RA services are provided by SWIFT sc.</i></p> <p>SWIFT: <a href="http://www.swift.com/index.cfm?item_id=43429">http://www.swift.com/index.cfm?item_id=43429</a>, ISO fin.standard: <a href="http://www.iso20022.org">http://www.iso20022.org</a>, FIX protocol: <a href="http://www.fixprotocol.org">http://www.fixprotocol.org</a></p>			

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	Necessary Action	Responsible	Time Target*
Giov. Barrier 2 & 10	<b>2. Restriction on location of C&amp;S:</b> National restrictions on the location of clearing and settlement should be removed, as an essential pre-condition for a market-led integration of the EU clearing and settlement environment.	<i>Nat. governments should adopt the relevant elements on the location of clearing and settlement in the new ISD [now MiFID]. Nat. Gov. should then co-ordinate to remove restrictions on location of securities.</i>	within 3 years [October 2007*]
	<b>10. Primary dealer restrictions:</b> Restrictions on the activity of primary dealers and market makers should be removed.	<i>National governments should co-ordinate their actions via the relevant EU Council.</i>	within 3 years [October 2007*]
public Sector	<i>Art. 34 and Art. 46 MiFID grant certain rights (a) remote access for investment firms to foreign CCPs/CSDs; b) market participants to designate settlement location for trades (but not CCP) provided links are in place, c) regulated markets to choose a particular CCP/CSD to clear and settle transactions. MiFID does not provide market participants with the right to choose the CCP and does not cover relations among post-trading infrastructure. Thus, MiFID post-trading provisions contained in MiFID are not by themselves sufficient to eliminate fully this barrier. However, they represent an important step forward.</i>		<b>MiFID adopted and implemented</b>
	Code of Conduct on clearing and settlement is (potentially) able to substantially impact on this barrier. The Code participants agreed to the MiFID principles (on a voluntary basis) on access to remote access by post-trading infrastructures. The latter include "access" to trading infrastructures and post-trading infrastructures as well.	FESE, EACH and ECSDA (signatories to the Code) <i>Commission to monitor implementation of the Code.</i>	<b>Code of Conduct signed (7.11.06); Access+interoperab. guidelines (28.6.07); service unbundling+ accounting separation by 1.1.08.</b>
	1. issuers/national debt offices asked to report to which extent restrictions (still) exist (incl. justification) and have an impact on primary dealer's settlement activities	<i>Letter to chairman of the EFC Sub-Committee signed by CESAME group Chairman and COM member of the <a href="#">EFC Sub-Committee of national debt managers</a></i>	<b>Letter of 11/4/05 report by EFC mid 2006</b>
	2. MS report to be reviewed by <a href="#">EPDA</a>	<i>a) EPDA</i>	
3. joint review of the two positions in the CESAME group	<i>COM to co-ordinate response (public and private sector) through CESAME group</i>	<b>EPDA prelim. report, CESAME 12/6/06</b>	
<b>N.B. This barrier is linked to barrier 9 and 10; barrier 10 has been 'collapsed' into this barrier 2.</b>			
<b>N.B.</b> Letter requested 1. review of primary dealership arrangements, 2. existence of restriction, 3. reasons for restrictions, 4. implications for primary dealers/nat. gov. as issuers if restrictions were to be removed. EFC Report concludes that restrictions relate to issues not unique for gov. bond markets, but reflect more generalised restrictions on location of C&S (=barrier 2). Thus, <u>barrier 10</u> should be a specific case of <u>barrier 2</u> .			

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**CESAME group: Operational Conclusions – following the meeting on 22 October 2007**

	Necessary Action	Responsible	Time Target*
Giov. Barrier 3	<b>Different rules governing corporate actions: National rules relating to corporate actions, beneficial ownership and custody should be harmonised.</b>	Local agent banks, via ECSAs, 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 [January 2007*]
C	<b>N.B.: a) Associations (incl. EACH, EALIC, ECSAs, ECSDA, ESF and FESE – as more precisely indicated hereinafter) are working on integrating the standards and developing one single set of <u>Market Standards</u> applicable to all entities concerned.</b>		
E	b) Market implementation groups (MIGs), to include all relevant stakeholders, are being tasked with the implementation of agreed standards in the respective markets (national level).		
S	c) Work overlaps with the work of the Legal Certainty Group, FISCO group and the work of COM on company law; <b>full implementation of standards depends on removal of other barriers, i.e. fiscal and legal barriers</b> ; associations agreed to follow at the same time a top down (i.e. general standards to tackle the barriers) and a bottom up approach (i.e. implementation checked in each country with feedback on specific legal/fiscal procedure barriers).		
A	<b><u>A. Distributions</u></b>		
M	1. <a href="#">Market Standards for distributions</a> (14/01/08) a) development and endorsement b) implementation structure c) implementation plan (including implementation timeline) d) implementation	a), ECSAs, ECSDA, ESF and EALIC b) market implementation groups (MIGs) c) MIGs d) MIGs	1. standards finalised; a) endorsed, 14/01/2008 b) agreed c) end 2006 d) 1 <sup>st</sup> quarter 2009
E	2. Market Standards for Distributions with options a) standard setting and endorsement b) implementation	EACH, EALIC, ECSAs, ECSDA, ESF and FESE in the: a) Corporate Actions Joint Working Group ( <b>CAJWG</b> ) b) MIGs	a) April 2008 b) to be determined
	<b><u>B. Reorganisations</u></b> (mandatory, voluntary)		
	3. Market Standards for (i) mandatory reorganisations with options, (ii) mandatory reorganisations without options and (iii) voluntary reorganisations a) standard setting and endorsement b) implementation	a) CAJWG b) MIGs	a) June 2008 b) to be determined

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<b>Giov.</b>	<b><u>C. Transaction management</u></b>		
<b>Barrier 3</b>	4. Market Standards for Transaction Management a) standard setting and endorsement b) implementation	a) CAJWG b) MIGs	a) June 2008 b) to be determined
	<b><u>D. General meetings</u></b> (linked to Directive 2007/36/EC on the exercise of certain right of shareholders in listed companies)		
<b>C E S A M E</b>	5. Market Standards to harmonise General Meeting related operational processes  <b>a) Process 1: Notice to convene the general meeting</b> aa) standard setting ab) consultation ac) endorsement ad) implementation  <b>b) Process 2: Entitlement/shareholder qualification/record date</b> ba) standard setting bb) consultation bc) endorsement bd) implementation  <b>c) Process 3: Notification of attendance to the general meeting</b> ca) standard setting cb) consultation cc) endorsement cd) implementation	EALIC, ECSAs, ECSDA, ESF and FESE in the: Joint Working Group on General Meetings ( <b>JWGGM</b> )  aa) JWGGM ab) JWGGM ac) JWGGM ad) MIGs  ba) JWGGM bb) JWGGM bc) JWGGM bd) MIGs  ca) JWGGM cb) JWGGM cc) JWGGM cd) MIGs	aa) November 2007 ab) February 2008 ac) March 2008 ad) to be determined  ba) January 2008 bb) March 2008 bc) April 2008 bd) to be determined  ca) February 2008 cb) April 2008 cc) May 2008 cd) to be determined

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	Necessary Action	Responsible	Time Target*
<b>Giov. Barrier 3</b>	<b><u>E. Ensuring consistency and implementation of all standards</u></b>		
	6. Compiled single set of market standards for Corporate Actions	All Associations	August 2008
	7. Joint Monitoring "Dashboard"	ECSDA, ECSAs, ESF and EALIC in the: Corporate Actions Steering Group (CASG)	ongoing process
<b>CESAME ASME</b>	8. Implementation progress report	All associations	on CESAME meetings
	9. List of legal and fiscal procedure issues encountered	All Associations (in particular ECSDA]	
	10. Ad-hoc informal working group on corporate actions (information and clarification on the links between corporate actions and legal and fiscal procedure implications): input to be taken into account by FISCO and LCG	COM, participants of FISCO, LCG, associations dealing with barrier 3, ECB	<i>1<sup>st</sup> meeting on 5.12.06</i> <i>2<sup>nd</sup> meeting on 9.3.07</i>
	11. Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies	COM, implementation by Member States	<i>Directive adopted, 11 July 2007</i>
	12. LCG mandated to assess the legal barriers to corporate actions processing (outside the ambit of the private sector). LCG's <i>Initial Advice</i> was to take into account the (now adopted) Shareholder's Rights Directive and to discuss specific legal issues first in the CESAME group. - Second LCG Report	<i>Legal Certainty Group (LCG): is asked to advise what further measures will be necessary to resolve differences in national law affecting corporate action processing. LCG established a sub-group to examine the issue (to be dealt with in a separate chapter of the Second LCG Report)</i>	<i>End 2008</i>

**Overview: Current Situation regarding work on barrier 3**

Distributions (of cash and/or securities)		Reorganisations			General Meetings		
Mandatory	Mandatory with options	Mandatory with options	Mandatory without options	Voluntary			
<a href="#">Market Standards on mandatory distributions</a>	[Market Standards on mandatory distributions with options]	[Market Standards for reorganisations with options]	[Market Standards for reorganisations without options]	[Market Standards for voluntary reorganisations]	[Market Standards on a) Process 1: Notice to convene the general meeting]	[Market Standards on b) Process 2: Entitlement/ shareholder qualification/ record date]	[Market Standards on c) Process 3: Notification of attendance to the general meeting]
<b>TRANSACTION MANAGEMENT</b>							
[Market Standards for Transaction Management]							

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	Necessary Action	Responsible	Time Target*
Giov. Barriers	<b>4. 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 [January 2007*]
	<b>7. Different operating hours/settlement deadlines:</b> Operating hours and settlement deadlines should be harmonised.	ECSDA should take the lead in this initiative, in close cooperation with ESCB-CESR.	within 2 years [October 2006*]
4 & 7	a) ECSDA <a href="#">recommendations on specific standards</a> (4/2004)	ECSDA	Finalised
	b) market consultation/establishment of market liaison groups (to look at potential consequences of harmonisation of rules)	ECSDA members	Finalised End 2004
	c) 1 <sup>st</sup> annual status <a href="#">report</a> (29/4/05)	ECSDA	finalised
	d) report on missing parts and gap analysis	ECSDA	CESAME 24/10/05
	e) 2 <sup>nd</sup> annual status report (6/06)	ECSDA	May 2006
C E S A M E	f) 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> <li>gap analysis to include all new ECSDA members</li> </ul>	ECSDA  peer pressure or supervisory means or eventually Commission intervention	Continuously, results reported annually – last report published July 2006, next implementation status report December 2007
	g) Joint work on specific issues involving intermediaries relating to 2 of the 10 agreed standards (i.e. standard 5/closing time and standard 9/real-time settlement); possibly adaptation of CSD participants' practices to these CSD standards <ul style="list-style-type: none"> <li>- identify prioritised list of settlement deadline inconsistencies</li> <li>- make proposals how inconsistencies might be addressed</li> <li>- ensure that standards also work for intermediating agent banks</li> </ul>	ECSDA, EPDA, ICMA  ECSDA pilot study ECSDA+EPDA on expanding pilot study ECSDA+EPDA	g) ongoing  - November 2007 - December 2007 - end February 2008
	h) implementation of the standards	CSDs	mid 2008**
<p><b>N.B.</b> the 10 ECSDA standards concern <i>e.g.</i> the range of eligible instruments, opening days and hours, processing periods</p> <p><b>N.B.</b> this barrier is linked to barrier 7, therefore ECSDA dealt with both barriers in a single set of documents</p> <p><b>** this time target applies to the ECSDA members previous to the merger with CEECSDA</b> (i.e. without CSDs in the new Member States)</p>			

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	Necessary Action	Responsible	Time Target*
Giov. Barrier 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 [October 2007*]
<i>public Sector</i>	<i>Article 34 MiFID addresses the issue for investment firms; TARGET 2 cash will provide solutions (access to central bank money) within the Euro-area. Remaining problems for participants outside the Euro-area except those non-Euro-Member States which will join TARGET 2 cash).</i>	Discussion within CESAME group	24 October 2005
<p><b>N.B.</b> MiFID covers remote access of investment firms to other Member States' CCPs and CSDs (see barrier 2 for more details). The Code of Conduct on Clearing and Settlement extends these remote access rights to post-trading infrastructures (see barrier 2 for more details).            ECB-Website: <a href="http://www.ecb.int/paym/pol/secover/escbcesr/html/index.en.html">http://www.ecb.int/paym/pol/secover/escbcesr/html/index.en.html</a>;            CESR-Website: <a href="http://www.cesr-eu.org/contenu_groups.php?id=36">http://www.cesr-eu.org/contenu_groups.php?id=36</a></p>			

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	<b>Necessary Action</b>	<b>Responsible</b>	<b>Time Target*</b>
<b>Giov. Barrier 6</b>	<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 [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 the standard settlement period is transferred into a non-standard one. This issue may also need to be considered 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.	CESAME group discussed the issue (on 25 October 2004, 2 <sup>nd</sup> meeting) and will revert to it in due course and in the light of developments occurring in other areas  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 in competition among trading venues might raise the importance of settlement periods.	Beginning 2007  - discussion currently on hold in CESAME group
<b>C E S A M E</b>	<b>N.B.</b> Dismantling of this barrier impacts on the dismantling of barrier 3.		
	<b>N.B.</b> ESF-ECSDA matching standards of Oct 06 could facilitate the dismantling of this barrier.		

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	<b>Necessary Action</b>	<b>Responsible</b>	<b>Time Target*</b>
<b>Giov. Barrier 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 E S A M E</b>	<b>For monitoring</b>		
	Problem with charging of fees for use of U.S. ISINs	a) CESAME group members and guests (ICMA, BVI) to provide written information and documents b) CESAME group to continue monitoring events and progress on the issue.	a) until 21.2.2006 b) 2006 and beyond
<p><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&amp;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, BVI) are requested to provide – preferably written - information to the meeting.</p> <p>ISO has agreed to review the ISIN standard (6166) including the question of charging of license fees. An ISO working group is expected to make recommendations to the ISO bodies by mid 2007.</p>			

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<b>Giov. Barrier 9</b>	<b><u>Restrictions on location of securities:</u> National restrictions on the location of securities should be removed, as an essential pre-condition for a market-led integration of the EU clearing and settlement environment.</b>	<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 [October 2007*]</b>
	► restrictions based on market rules		
<b>public Sector</b>	<p>► <i>restrictions based on national law preventing domestic securities from being issued abroad</i></p> <p><i>The Legal Certainty Group (LCG) has been asked to address the issue. The LCG stated in its <a href="#">initial advice</a> that restrictions do indeed exist and that new legislation would be needed to overcome them. It was however acknowledged that the matter requires further study as it involves Member States company law.</i></p> <p><i>In September 2006, the Commission requested the LCG to elaborate further details of its advice and to study what is necessary to abolish restrictions on the issuer's ability to choose the location of its securities (if necessary with a further study of this matter).</i></p>	<p><i>MiFID does not cover the location of securities issue.</i></p> <p><i>Legal Certainty Group</i></p> <p><i>In the meantime, a sub-group of the LCG has been established to deal with this issue.</i></p>	<p><i>LCG initial advice: July 2006</i></p> <p><i>Further advice in 2008</i></p>
	<b>N.B. This barrier is linked to barrier 2.</b>		
	<b>N.B. Apparently, certain Member States apply restrictive regimes, subject to various differentiations (e.g.equity/debt,materialised/dematerialised.)</b>		

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28.1.2008

CESAME group: Operational Conclusions – following the meeting on 22 October 2007			
	Necessary Action	Responsible	Time Target*
Giov. Barriers 11 & 12	<b>11. Restrictions on withholding agents:</b> 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.	<i>National governments should co-ordinate their actions via the relevant EU Council.</i>	within 2 years and 3 months [January 2007*]
	<b>12. Restrictions on tax collection:</b> 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.	<i>National governments should co-ordinate their actions via the relevant EU Council.</i>	within 2 years and 3 months [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 ( <a href="#">First FISCO Report</a> )	<i>FISCO group</i>	<b>April 2006</b>
	c) presentation of alternative, more efficient procedures ( <a href="#">Second Report on Solutions</a> ; FISCO Conference)	<i>FISCO group</i>	<b>October 2007</b>
	d) discussion in Commission Working Group No. 4 – Direct Taxation with the Member States	<i>Commission and national Governments</i>	<i>Ongoing information, COM indication in 2008</i>
	e) implementation of adopted solutions	<i>national Governments</i>	<i>Could start end 2007</i>

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CESAME group: Operational Conclusions – following the meeting on 22 October 2007			
	Necessary Action	Responsible	Time Target*
Giov. Barrier 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 [October 2007*]
	a) establish the Legal Certainty Group	<i>European Commission</i>	Established April 2005
public Sector	b) review in detail existing laws of the EU Member States and outline the basic features of future legislation. <i>Such legislation should also include rules on priorities, bona fide purchase, prohibition of upper tier attachment, account provider's insolvency, validity of credit entries, an option to prohibit conditional settlement and the duties of the account provider, including as regards shortfalls. In the LCG's view, the issues of moment of transfer (of the security) and transfer requirements do not require to be addressed in EU legislation and could be safely left to market practice, settlement systems rules etc.</i>	<i>Legal Certainty Group (LCG) advised the Commission in its <a href="#">initial report</a> that legislation is needed on the legal effects of book entries made on securities accounts.</i>	July 2006
	c) COM asked further advice on models for future legislation	<i>Legal Certainty Group (LCG)</i>	November 2008
	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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**CESAME group: Operational Conclusions – following the meeting on 22 October 2007**

	Necessary Action	Responsible	Time Target*
Giov. Barrier 14	<b>Legal treatment of netting:</b> National differences in the legal treatment of bilateral netting <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,... [N.B. this part pertains to barriers 13 and 15: ... 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 [October 2007*]
<i>public Sector</i>	Industry agreed at CESAME meeting of 22 October 2007 to the conclusions that with the successful implementation of SFD and FCD the barrier 14 on legal treatment of netting as described in the two Giovannini reports is dismantled.		Barrier dismantled
	a) adopt and implement the Financial Collateral Directive  b) retain a watching brief for netting issues <i>EU Commission:</i> Although some legal issues may remain, there is no pan-EU problem that calls for immediate action. Therefore, COM has <u>not</u> , 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.	Council and EP, EU Member States  <i>- This barrier is no longer considered to be of major importance as the major problems related to bilateral netting have been resolved by the implementation of the Financial Collateral Directive.</i>	Financial Collateral Arrangements Directive (FCD) 2002/47/EC adopted and implemented by all Member States
	c) evaluation of the <a href="#">Financial Collateral Directive</a> (FCD) The Commission adopted its <a href="#">evaluation report on the FCD</a> (COM 2006/833) which also covers the netting provision in the FCD.	Commission (after consultation); <a href="#">Report</a> was presented to the Council and the European Parliament.	c) 20.12.2006

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**CESAME group: Operational Conclusions – following the meeting on 22 October 2007**

	Necessary Action	Responsible	Time Target*
Giov. Barrier 15	<b>Conflict of laws:</b> Uneven application of conflict of law rules <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>	<b>within 3 years</b> [October 2007*]
<i>public Sector</i>	The <a href="#">Settlement Finality Directive</a> (SFD) and the <a href="#">Financial Collateral Directive</a> (FCD) contain in their respective Article 9 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 Hague Convention aims at providing a general and globally acceptable rule, but the Council has not yet decided to sign the Convention.	<i>a) Implementation of SFD and FCD: EU Member States b) The Commission <a href="#">proposed</a> in 2003 to the Council that the Community should sign the Hague Convention (see <a href="#">Commission's services legal assessment</a>); U.S.A. signed 3 July 2006, Switzerland on 5 July 2006. c) The Council (Civil Law Committee) debates on the issue and the likely approach to be adopted by the EU. d) The European Parliament adopted a cautious resolution asking the Commission to carry out a comprehensive impact assessment before its final decision in this matter. e) Alternative solutions also being considered.</i>	<i>a) Implementation done b) Signature of The Hague Convention proposed c) Council debate ongoing d) 14 December 2006</i>
	a) <a href="#">SFD Evaluation report</a> b) <a href="#">FCD Evaluation report</a> c) discussion with Member States on the Signature of the Hague Convention d) if The Hague Convention is ratified: possible SFD/FCD/ <a href="#">Winding-up of credit inst. Dir.</a> Amendments	<i>a) Commission b) Commission c) Council (Civil Law Committee) d) Commission, Member States and European Parliament</i>	<i>a) 15 December 2005 b) 20 Dec. 2006 c) pending d) ongoing</i>

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<b>CESAME group: Operational Conclusions – following the meeting on 22 October 2007</b>			
	<b>Necessary Action</b>	<b>Responsible</b>	<b>Time Target*</b>
<b>suppl.</b>	a) Establish common technical and functional <u>definitions</u>  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>  b) in 2006
<b>suppl.</b>	<u>Data requests: exercise aborted due to lack of responses</u>		
	<del>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.</del>	<del>Certain CESAME group members</del>	<del>COM letter send on 7 April 2005; reply date extended (from 29 April 2005) until 30 June 2005</del>
	<del>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</del>	<del>certain CESAME group members (custodian banks)</del>	<del>request not yet sent</del>
	<del>c) Feedback and statistical info for the impact assessment</del>	<del>all CESAME group members</del>	<del>ongoing</del>
<b>suppl.</b>	establish Diagnostic European Numbers for International Securities Accounts (DENISA)	Market participants (facilitated by EBF/FBE)	Cf. CESAME minutes of 20/2/06 and 12/6/06
<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 (incl. TARGET2 Securities)	Gertrude Tumpel-Gugerell/Daniela Russo	
	d) EP/ECON, Council and ECOSOC work	Chairman/COM	
	e) Competition reports and issues	COM/DG Competition	
	<del>f) Regulatory Impact Assessment</del>	<del>COM/DG Markt</del>	
	g) Code of Conduct on clearing and settlement	signatories of the Code for implementation; COM/DG Markt for monitoring	

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