

CESAME Group

Synthesis Report of the meeting held on 16 June 2008

1. INTRODUCTORY ADDRESS - POLITICAL DEVELOPMENTS

The Chairman¹ welcomed the group members to the final CESAME Group meeting² and recalled the first CESAME meeting almost four years ago on 16 July 2004. He expressly thanked all members for the outstanding work they have delivered and highlighted the major achievements stressing that important steps have been taken to initiate the removal of most of the private sector Giovannini barriers, even if only one was fully dismantled. He invited members to continue contributing the necessary resources to fully dismantle all barriers, to fully implement the standards and to actively identify and address any further obstacles in the way of a true internal market for post-trading.

1.1. Political developments: ECOFIN Conclusions

The Chairman informed members of the new [ECOFIN conclusions of 3 June 2008](#) which were based on the Commission report to the informal ECOFIN meeting of April. In these new Conclusions, the Council has encouragingly welcomed the timeframe for the removal of the Giovannini Barriers as proposed by the Commission, welcomes the achievements of the industry on the Giovannini Barriers and the future establishment of the CESAME2 Group. The Council also pronounced its position on the Code of Conduct and the ESCB/CESR recommendations. The French Presidency has also put a strong emphasis on the topic of post-trading in their work program.

The Chairman then stated that the proposal amending the Settlement Finality and the Financial Collateral Directive was adopted by the Commission and is now under active discussion in the European Parliament (ECON Committee, Rapporteur Ms Kauppi) and the Council. He invited the industry to take part in the discussions and to underline the need for new forms of collateral, such as credit claims. Finally, he highlighted the success of the [joint ECB/Commission Conference on the Safety and Efficiency of post-trading arrangements in Europe](#) held on 21-22 April 2008 in Frankfurt.

1.2. Continuing work on the Giovannini Barriers and monitoring progress – the "CESAME2"³ project

The Chairman reported that, in view of the overwhelming support expressed by participants and the Council, the CESAME project was to be continued. A "call for

¹ Mario Nava, Head of Unit G2 Financial Markets Infrastructure

² As usual, meeting documents will be made available on the website after the meeting.

³ The official title of the Group is now CESAME2 (with an Arabic number "2" directly attached)

expressions of interest" was published on the website and 48 applications were received. The selection process to determine the new membership was planned to be completed before summer – most likely some changes in membership should be expected.

2. MONITORING AND MARKET ISSUES

2.1. *Draft CESAME Report*

Presentation: The Chairman briefly introduced the preliminary draft of the CESAME Report distributed before the CESAME meeting (for finalisation in October) which was based on the previous discussion and suggestions of members. The aim of the Report should be to give a short background and then report – critically and in detail - on the four-year work of the CESAME Group and how it would continue. In this regard it was pointed out that while the industry's concerns were now on public barriers, the main work to be reflected and undertaken by the CESAME Group has been the private sector barriers. The planned timing was: written contributions by end of June, second version by end of July, further comments by beginning September and last version by end of September with some days for final comments (final text to be ready by 20 October). The associations were invited to co-ordinate their comments.

Discussion: Members generally supported the draft text as a basis for discussion and made many suggestions: a) a chapter on CESAME2; b) changes to the wording of Barrier 5, in particular its relation to Target2Securities; c) executive summary: frank text on the remaining (also public) obstacles, connected to an outlook on the work of CESAME2; d) as much practical examples to show progress as well as barriers; e) background: should highlight connections (e.g. removal of barriers as a prerequisite for other initiatives, e.g. the Code of Conduct, to function); f) explore possible link to a glossary; g) short overview/table on outstanding work (including "Barrier(s) 16"). Some members also pointed out the relevance of good translations and offered help in this regard.

2.2. *Introduction to LinkUp Markets*

Presentation: **Tomas Kindler**, Managing Director of LinkUp Markets, focused on slides 5 to 8 of his [presentation](#) to indicate the main features of this initiative which was to be launched in the first half of 2009 (with participation of seven CSDs, open to other CSDs on a global basis). It was not planned to be another CSD or settlement engine, but to remove the need to establish many links by just linking to this common communication infrastructure. The heart of the project was to be a converter in the form of a mapping engine containing a central reference data repository, enriched data, a storage engine for messages and a proxy voting portal (with corporate action information).

Discussion: A vivid discussion followed which was centred around the history/previous approaches, coverage (focus on cross-border processing), incentives for harmonisation by CSDs (not eliminated due to competition), fee/cost models (local plus small topping), communication overlay (adaptation of LinkUp Market participants, decentralised asset servicing), possibly single interface to TARGET2Securities (but presently premature issue), tri-party issues and connection to ICSDs (none, LinkUp Markets was aimed at CSDs, participation of

ICSDs was not planned but they could connect as customers of CSDs), cost savings (stated 80% were a possibility, but would not materialise immediately).

Mr Kindler confirmed his willingness to contribute/participate in CESAME2 if the initiative encountered further practical problems and details.

2.3. The Code of Conduct on Clearing and Settlement; update on the meeting of the Monitoring Group of 9 April 2008

In view of time constraints, this point was not discussed (detailed report on the meeting of the Monitoring Group (MOG) held on [9 April 2008](#) is available on the web).

2.4. Update on the Price-Monitoring Study

Presentation: **Reinder Van Dijk** (Oxera) gave a short overview on the ongoing application of the methodology to monitor the evolution over time of trading and post-trading prices, costs and volumes. He explained that questionnaires were sent out to infrastructures and intermediaries in March and April 2008, including a handbook explaining how to fill in the questionnaire. Infrastructures were invited to answer by 30 June 2008, intermediaries by 15 July 2008. All relevant documents could be found on [Oxera's website](#), together with [FAQs](#); in addition a support team was ready to answer further questions. The Chairman underlined the importance of returning in time the properly filled-in questionnaires.

Discussion: Oxera confirmed that generally speaking firms were in a position to gather the relevant data and to render satisfying answers to the questions posed. Some members asked about details on the sample size (which varies depending on the sector, but all infrastructures are included). On previously raised confidentiality issues, Oxera was on its way to sort them out soon.

2.5. Work on the Giovannini Indicators

Presentation: **Fabrizio Planta** presented the first [draft examples](#) applying the methodology for indicators to monitor progress on dismantling the Giovannini Barriers, developed in cooperation with DG JRC. These first calculations were based on input from CESAME members working on the respective issues (barriers 3, 4 and 7) and the market implementation groups (MIGs) in Member States. As indicated previously, the application was based on a hybrid approach that uses both qualitative (*i.e.* traffic light colours) and quantitative (*i.e.* numerical values) methods to assess the progress on dismantling the Barriers. The importance of input from the industry (e.g. on planned milestones for work, work of market implementation groups incl. relevant constituencies and their size, etc.) was stressed again.

Discussion: Members were very keen on making sure that individual markets are represented and feeding in with appropriate weights (this was ensured by taking into account GDP and market size). Discussion then focused on details of barriers 4 and 7. One observer insisted on ensuring that the tables – in particular on barriers 4 and 7 - do not give the impression that a barrier is solved when only domestic business was without problems (e.g. because local intermediaries were used). A member added that this issue was already identified as being another barrier (intermediaries' cut-off times) and would be subject to a mapping exercise in order to identify any need for additional standards. Another stressed the importance in

competitive markets where clients ask intermediaries for cut-off times which are almost the same as with CSDs. Reference was also made to the experience with CCBM which showed that also an approach of "best practices" could be used (instead of standards).

3. ACTION FROM PRIVATE MARKET PARTICIPANTS – INDUSTRY PROGRESS: NOT QUITE THERE YET, BUT MUCH ACHIEVED

3.1. Barrier 1 (differences in information technology and interfaces):

a) update and progress on the implementation of the Common Protocol Recommendation

Presentation: **Richard Young** of SWIFT⁴ [presented](#) a status update on the solution to Barrier 1, the [Communication Protocol](#)⁵. The announced Standards Gap Analysis was completed in March 2008; subsequent work on filling gaps had started. SWIFT also produced tables (which fed into the standard setting part of the "Giovannini indicators") assessing the Protocol and Standards' availability. While there were still some shortcomings, the overall coverage was already good. Since the implementation checking was not within the direct ambit of SWIFT, they teamed up with the industry, namely ISSA and produced a survey on Giovannini compliance requirements of CSD/CCP customers. The survey produced mixed results, but did illustrate that the majority of the market infrastructures have further work to do in order to meet the needs of their clients for Giovannini compliant communication. Therefore, SWIFT will continue to work with infrastructures and associations to push for protocol implementation and evaluate compliance for each market.

b) brief update on ISO 20022 standard

Then **Jean-Marie Eloy** of SWIFT [presented](#) a general introduction on standardisation for the financial industry (asked for in the last CESAME meeting) - especially on messaging/[UNIFI](#) as well as on ISO 20022 in particular (the goal was not to offer a new set of messages but a standard "recipe" to develop all financial messages). In the payment area, the message suite of 20022 is already well developed and banks are integrating it into their system (a move considered by the FED, too).

Discussion: One member pointed out that Europe led the way regarding payments (SEPA) and asked SWIFT if the securities industry was up to similar speed. At SWIFT, there was an impression of the securities industry being gradually more inclined towards a migration from ISO 15022 to ISO 20022, not least because it would relieve new industry entrants of further cost but also because the initial set of ISO 20022 messages for clearing and settlement would be kept aligned with the equivalent ISO 15022 messages (using the built-in "reverse engineering" approach

⁴ **N.B.** The ISO 20022 **Registration Authority** (RA) is the guardian of the UNIFI Financial Repository. The RA mission is to ensure compliance of developed Repository items with the approved technical specifications and to publish the Financial Repository on www.iso20022.org, on behalf of ISO. [Registration Requests](#) to update the Financial Repository are sent to the RA. The RA services are provided by SWIFT sc.

⁵ "Elimination of Giovannini Barrier One, Final Protocol recommendation", March 2006

of ISO 20022). Regulatory requirements were supported by the introduction of regulatory reporting of MiFID.

3.2. Barrier 3 (corporate actions)

Presentation: Eric Derobert and Alexander Merriman (ECSAs), Dorien Fransens (EuropeanIssuers) and Werner Frey (ESSF) gave a joint [presentation](#) on the work undertaken by ECSDA, ECSAs⁶, ESSF, EuropeanIssuers, EACH and FESE on dismantling Barrier 3 (corporate actions)⁷. The first part centred on the incoming implementation reports regarding the Market Standards on Mandatory Distributions by the Market Implementation Groups (MIGs) and a workshop held in this regard. Often, legal issues as well as standardised messaging were mentioned as areas of difficulty. In view of this feedback, the Market Standards would be reviewed and updated where necessary. Secondly, associations claimed that the standard setting process on distributions with options, reorganisations and transaction management was largely concluded taking into account ISO and SWIFT work on messaging (no copy provided). When all standards were gathered in one document, the market consultation would start, followed by a gap analysis and implementation planning. The third part focused on general meeting standards. Standard setting was reported to be finalised by 30 April 2008 and being now in consultation with the aim of endorsement in autumn, followed by the start of a gap analysis as well as the start of implementation by end 2008. The contentious issues still to be discussed were the scope and nature of the standards and cost related aspects, or, more precisely a) whether the communication of information to the end shareholder should be done by intermediaries by default and b) whether this should be covered by basic custody services.

Discussion: The discussion centred on general meeting standards, namely passing of information through to the shareholder at the end of the chain of intermediaries. The member involved pointed out that if the information did not reach this final shareholder, the whole exercise would be quite futile. This discussion was therefore fundamental. The Chairman underlined that – having all relevant players at the CESAME table – there should be a possibility to resolve the contentious issues mentioned above, especially considering that communication with the shareholders is a central aspect of cross-border shareholding and it would be perceived by many as part of basic custody services. Members reported on their experience, i.e. difficulties related to being a cross-border shareholder, difficulties to get investors and issuers involved, or to get issuers and their intermediaries to accept and to use new, more efficient, electronic procedures (e.g. offered by ICSDs) for their rights issues and to integrate them into their processes. Apparently, it was necessary to convince some lead issuers and their intermediaries to change their approach in order to get others to follow. Other members stated that also intermediaries are interested in more efficient, less costly processes, aiming at information being passed to the shareholder (to the extent he/she is known). For intermediaries, it was difficult to estimate how much time they have for processing if they did not know about the (length of the) chain. The member involved informed intermediaries that the standards actually prescribe timelines and that another not yet raised question was why the chain of intermediaries had to be so long. Another member suggested adding another option, i.e. an ultimate right for

⁶ European Credit Sector Associations, i.e. EBF, ESBG, EACB

⁷ For a basic overview on the issues and processes on Barrier 3, please refer to the Synthesis report of 7 March 2005.

the shareholder to ask for information provided by whomever he/she decides (linking the cost aspect to each option, too). Members clarified that the discussion was indeed on how information was passed (not if) and whether e.g. institutional clients should also be covered by the standards or should be able to negotiate their service offerings. Finally, it was underlined that because of the legal implications and links of general meetings issues, the Legal Certainty Group is actively looking into some of the issues (but could not e.g. agree on a common definition of shareholder) taking into account relevant global initiatives, such as UNIDROIT work.

3.3. Informal stocktaking, exchange of views and introduction of the new Director of Directorate G, Mr Emil Paulis

During the lunch break, Mr Emil Paulis, the recently appointed Director of Directorate G, coming from DG Competition, took the opportunity to introduce himself to CESAME members and to inform them about his priorities and approach regarding post-trading – which was a competitive one. He thanked CESAME members for their successful and dedicated work which already produced visible results. However, he also urged them to finish remaining parts, ensure implementation of the developed standards and solutions and to continue to inform the Commission about the details and obstacles of their business.

3.4. Barrier 4 (intra-day settlement) and Barrier 7 (settlement deadlines and operating hours/days)

a) update on the state of implementation of the ECSDA standards

Joël Mérére (ESDA) briefly referred to a set of [slides](#) which had been the basis for the drawing up of the Giovannini indicators. The issues were actually discussed within point 2.5. of the Giovannini indicators for barriers 4 and 7 (see point 2.5). The slides highlighted again that while many standards are fully implemented, some problem areas remain (see below).

b) Methodology to remove impediments for CSD participants related to barriers 4 and 7 in respect to links between CSDs

Presentation: **Joël Mérére** (ESDA) introduced the ongoing work of ESDA, together with EPDA and the ECB, on discrepancies between deadlines of the issuers' CSDs – to which ESDA standards apply - and those of the investors. Then, **Daniela Russo** (ECB) introduced a [methodology](#) for fully removing barrier 7 on the side of investors, starting with a mapping exercise. She explained that two mapping exercises had already been conducted: one by the market (i.e. SIFMA/EPDA which was already presented in previous CESAME meetings) and another one by Central Banks. The new mapping exercise by ESDA proposed in the methodology was designed to produce an overview of the cut-off times for settlement of cross-border transactions of at least issuer and investor CSD and, where appropriate, also those of agent banks. It would start focussing on CSDs with important cross-border business and links and then expand later to agents and custodians. On the basis of such an overview, an action plan for harmonising cut-off times and operating hours to facilitate cross-system settlement could be established which might consist of a set of further ESDA recommendations. Asked by **Mark Austen** (EPDA), it was confirmed that ESDA agreed to the methodology and the timeline proposed.

3.5. Barrier 6 (differences in standard settlement periods) – update of the ECSDA matching standards

Presentation: **Joël Mèrère** (ESDA) recalled that matching standards, as developed on the initiative of ESSF, do not come precisely under the issue of barrier 6. He then gave a status report on the implementation of harmonised matching processes and highlighted that the [matching standards](#) have in the meantime been taken into account within the TARGET2Securities project. The surveyed (largest) 11 CSDs have reported a large degree of compliance with certain non-problematic standards. However, there were still "difficult" standards (e.g. standard 9: hold/release mechanisms which were not present in all countries) with lower implementation levels. Now that the industry has 18 months of practical experience, ESDA was reviewing the standards vis-à-vis completeness (add new standard on cancellation) and comprehensibility and intended to produce a new status report at the end of 2008.

Discussion: One member pointed out that implementation of matching standards was to be complemented by market practice and thus required market discipline (e.g. not to "hold" securities until the last possible minute), also in the context of TARGET2Securities. Another member underlined that for workable practices, every system should be open on the same days.

3.6. Numbering issues: update on issues surrounding IPR claims on security numbers; ISO/ANNA developments regarding the ISO standard for ISINs

Presentation: **Dan Kuhnel**, Chairman of [ANNA](#) (Association of National Numbering Agencies), highlighted that the ISIN standard – [ISO 6166](#) (for which ANNA acts as the appointed [registration authority](#)); was one of the most successful ISO financial standards in use today. He summarised six years of market driven discussions and tried to shed some light into the complexities of the licensing policy related to CUSIP⁸-based ISINs, being applied by [Standard & Poor's CUSIP Service Bureau](#) (CSB). The CSB acted on behalf of the American Bankers Association ([ABA](#)). Mr Kuhnel stressed to the CESAME group members that his purpose was to table the facts and historical background on the matter rather than present a position.

He stated that the ABA through the CSB claim intellectual property rights (IPRs, in this case, a copyright) on the CUSIP number (and thus CUSIP-based ISINs) and as such required that anyone databasing the CUSIP or CUSIP-based ISINs needed to have a license with CSB in place in order to have that security identification number in its database. The "trading and administration of securities transactions" were excluded from the scope of licensing requirements. Licensing of CUSIPs and proprietary commercial databases containing CUSIPs was common practice in the U.S. As the CUSIP was the root of the U.S. ISIN, by default, anybody who databased a U.S. ISIN was *de facto* databasing a CUSIP number. Market discussions arose when the licensing policy pursued by the CSB was extended into the European marketplace. This started to be visible in 2001 and market feedback indicates it was being enforced more rigorously.

⁸ CUSIP stands for "Committee on Uniform Security Identification Procedures"

He explained that one requirement of ISO was that the standard (here ISINs) must be made available, but without explicitly stating the method of availability or quantity of ISINs that must be available per enquiry. The ISO standard did not state that ISINs must be made available on a bulk database/download capacity nor did it stipulate a number for a download of files. It simply inferred that ISINs should be made available. CSB have addressed this as they offer an "ISIN-look-up service" which was free but required the user to acknowledge claimed IPRs. Users must agree to the usage agreement on CSBs website which entailed that the user acknowledged their claimed copyright on the number and restrictions on its usage. However, this service was only available on a one-by-one (number) basis which some cited, did not meet users' requirements (i.e. an ability to download ISINs in bulk).

ANNA, in their capacity as registration authority for the ISIN Standard, was asked by ISO to try to solve the licensing issue. ANNA looked extensively into the issue and also employed external legal council to assist in their understanding. Investigations determined the following:

- a) ANNA's Articles of Incorporation (dated 1992) clearly recognised and do not deprive any claimed intellectual property rights by a member,
- b) amending those Articles was not an option, specifically since ANNA is established as a Belgian cooperative, and
- c) even if only one NNA out of 78 NNAs was claiming these IPRs, it was not possible for 77 NNAs to impose the removal of a claimed right from that member.

As a result of the ANNA Task Force conclusions and recommendations, ISO requested SC4 (the Sub-Committee for financial instruments) to assess the ANNA findings plus consider the associated commercial issues. This led to the formation of the SC4 Working Group 1 (of which Rudolf Siebel was Chair at the time). Some members of WG1 thought a distinction was needed between commercial issues and technical aspects. The ISO 6166 standard was a technical document dedicated to clarifying the assignment of a security identification number according to a standard formula and corresponding rules. These were to be adopted and to be followed by all of the ANNA members (currently 98 NNAs countries) to ensure that clear, harmonised rules exist thus avoiding the creation of further barriers in the market place. During the SC4 WG1 exercise, ISO provided the WG members with the following clarifications:

- a) commercial and contractual issues should not be part of an ISO standard,
- b) licensing of ISINs were permissible on reasonable and non-discriminatory terms but should not be part of the standard,
- c) claimed IPRs on ISO standards were recognised, and finally
- d) stated that ISO would not check on the validity of or require any proof of the existence of any claimed IPRs.

Mr. Kuhnel also addressed the previously discussed concerns of double-dipping (i.e. CSB approaching the end user and requesting a license fee whereas these end users received their data through a third party data vendor or, in fact, through multiple data vendors). He explained that according to the CSB, there were different levels of fees related to distribution of CUSIP-based ISINs:

- a) fees charged to a distributor for internal use i.e. to maintain their internal database(s),
- b) royalty fees charged for CUSIP display terminals – typically view only, but with *ad hoc* downloading to the desktop – fee was charged to the distributor, not the end user,
- c) bulk data feed delivery by a distributor – no fee is charged to the distributor – fees levied on end user – depending on their usage.

CSB argued that double-dipping would in fact occur if the data vendors would apply the charges on CSB's behalf, in this case the end user would incur a multiple charge (e.g. paying fees for data feeds via Reuters, Bloomberg, Telekurs etc). Many financial institutions took multiple data feeds from a variety of data vendors.

Mr Kuhnel mentioned an ANNA resolution on this issue: the vast majority (i.e. everyone other than those that adopted the CUSIP-based ISIN) agreed that they did not support the licensing of ISINs. While the 6166 standard was a technical standard, the current issues surrounding ISIN licensing were commercial and IPR related. In this respect, CSB had correctly cited U.S. anti-trust legislation in terms of trying to apply a standard commercial fee across all numbering agencies when distribution of value added data was concerned (regarding principles of availability: see above). ANNA judged, as the licensing issue was a commercial issue; it could be a competition issue; it could also be a barrier, but it was not within ANNA or ISO's capacity to solve because neither were able to dictate post-assignment usage prices or enforce pre-determined pricing on its members. Furthermore, the ANNA member, the CSB, has complied fully as to the technical ISIN requirements and associated availability aspects (via their website). Against this background, complaints against ANNA to ISO have not been helpful. He expressed his interest in CESAME members' opinions on the question if such commercial issues should not be dealt with bilaterally between the concerned parties or if this was a broader issue of existence of the claimed IPR on an ISO Standard and whether or not the licensing associated to this number could be enforced on a global basis.

Discussion: A member asked if, for instance, a market participant taking U.S. securities as collateral from counterparties would be required to pay or if this was use of a common good. Mr Kuhnel replied that it was not up to him to defend licensing practices; however, according to his understanding it was the interpretation of CSB that any user having more than 500 U.S. ISINs in his database would be required to sign a license fee agreement – which would, concluded this member, effectively result in every market participant in Europe having to pay (depending on usage parameters). Answering a question on amounts and distribution of fees collected, Mr Kuhnel confirmed a lack of precise or available data, but noted that the ABA was rumoured to be financed considerably through these license fees. The [fee schedule](#), which started at 500 numbers, was available on the CSB website but without prices for larger institutional use. Members asked to put the matter on the EU-US regulatory dialogue (although the SEC might claim not to be in charge) before continuation of these policies would make the ISIN system collapse. Members voiced the opinion that a solution through ISO or ANNA has apparently not been successful; therefore the issue was now a political and policy one. Upon being asked by the Chairman, who regretted the situation, members reported that there seemed to be more pressure on European fund managers than on banks and that CSB's pursued policy was one of asking for

signature and fees and in case of non-acceptance, to make data vendors cut their data feed of U.S. ISINs without which market participants could not function. A guest offered that SIFMA could take the question up with their American members.

4. PUBLIC-AUTHORITY ACTION AND PUBLIC-SECTOR BARRIERS

4.1. *Update on TARGET2 Securities*

Daniela Russo (ECB) stated that no new developments had occurred since the last Advisory Group Meeting. All information could be found on the dedicated website of [TARGET2-Securities](#) (T2S).

4.2. *Update on the CCBM2 harmonisation plan for action*

a) Presentation

Daniela Russo (ECB) shared some preliminary views about harmonisation work stressing that these were not official views of the ECB. This was against the background of an agreement during the last *ad hoc* COGESI meeting on CCBM" issues that the ECB should take the opportunity of CCBM2 implementation to deliver some harmonisation in that respect. She explained that the ECB had already prepared three lists: one published in the [COGESI minutes](#) on aspects which will be harmonised by the User Requirements of CCBM2 (which pushed harmonisation in areas directly controlled by NCBs); another list of issues which did not relate to CCBM2 but to the environment necessary for the good functioning of the project in a broad sense, e.g. custodian banks' best practices for mobilisation of collateral within the CCBM2 framework or well-functioning CSDs' links; and finally, a list of issues that will generally be beneficial to cross-border mobilisation of assets, including mobilisation via CCBM2. This part had links to the current SFD/FCD amendments, that giving protection to credit claims will help not only CCBM2 but also the creation of a secondary market for credit claims (often required by the industry). The growing industry's harmonisation demands addressed to the Eurosystem via T2S and CCBM2 left no doubt on the need, but should benefit from the CESAME experience. However, to be successful, all players first needed to have a clear view on what will be harmonised by the different initiatives (i.e. [T2S](#), CCBM2, CESAME2, experience with the Code of Conduct, PTEG, and all relevant market initiatives, e.g. Euroclear work). This overview could be achieved through a mapping exercise establishing an inventory. Overlapping areas should be indicated in order to clearly designate responsibilities (e.g. bank loans were discussed in CCBM2, but equity issues were discussed in MOG, CESAME etc.) and priorities should be assigned. This work would need follow-up by meaningful monitoring, i.e. progress reports clearly indicating the status, planned as well as not achieved action. If one player could not deliver, work would have to be shifted to another group or more stringent Commission work could be required. She explained that the T2S Advisory Group did some work and some proposals for further work, but this was also a core CESAME issue because harmonisation was one of the ways to remove some of the Giovannini barriers.

b) Comments on common identification for credit claims and collateral provisioning

Against the background of the use of credit claims as collateral, **Godfried de Vidts** (ICAP) commented on work in this area. He explained that the European Repo

Council (ERC) has been trying for some time to set up the necessary harmonisation prerequisites to establish a liquid secondary market for credit claims. On the other hand, in view of the difficult market situation, financial market associations wanted to start as fast as possible because they wanted to be able to get those loans as collateral to the Eurosystem. The result of this rush was that each central bank has now its own system without harmonisation which was a nightmare for banks operating cross-border. He also mentioned that a revision of the Financial Collateral Arrangements Directive (FCD) was needed, in particular changes for pre-netting notifications. Therefore, he had written, in his capacity as ERC Chairman, a letter (supported by SIFMA/ESSF, ISDA and LIBA) to make the parties negotiating the SFD/FCD proposal aware of the fact that it was not clear if credit claims could also be used for collateralisation between banks. Also national central banks would benefit from a liquid secondary market for credit claims in case they would have to liquidate such collateral. Additionally, ERC contacted those markets which have already identifiers for credit claims in order to build up compatible databases and harmonise identifiers. Furthermore, the legal transfer of ownership had to be secured; and it was important to revise the Banking Directive (CRD) in regard to credit claims. He mentioned that there was also interest by non-Eurosystem central banks as well as by investment banks (possible creation of a new asset class). The Chairman added that the clearly stated intention of the SFD/FCD proposal was not to limit the use of credit claims to central banks but to allow broader use of those credit claims which were in general eligible for central bank operations.

Discussion: CESAME members welcomed such a harmonisation initiative as it would avoid coming to different solutions and would employ scarce resources of the industry in an efficient way. One member asked where and how to deal with remote access to central banks, i.e. that access is permitted only through national CSDs. Ms Russo replied that this request for remote access to CSDs (known as repatriation of assets) was a general issue, not one specific to CCBM2; however it would be looked at within the context of possible harmonisation of CCBM2 with a positive attitude to eliminate the requirements. However, this would have to be distinguished from the question of access to central bank money/remote access to credit which was one of monetary policy and would be part of the list. Also, the Chairman of the TARGET2 group was studying harmonisation between payment and securities systems. Another member insisted that access to settlement on an equal footing required access to credit in practical terms. Ms Russo explained that the subject was not limited to the Eurosystem, but arose in other global cross-border contexts as well.

4.3. Update on CESR's work and ESCB/CESR recommendations

István Farkas (CESR) informed the Group that after the ECOFIN meeting of 3 June, CESR (i.e. its Post-Trading Expert Group (PTEG), which before mainly dealt with the Code of Conduct), had been invited, together with the ESCB, to resume work on the former draft Standards for Securities Settlement Systems which have to be converted into non-binding recommendations solely addressed to public authorities. ECOFIN has also set a tough timeframe (finalise a draft in autumn and a three months' public consultation was expected to take place towards the end of the year). For its other streams of work, PTEG work focussed on legal issues, risk issues, supervisory cooperation and certain issues of the Code (in this regard, a mandate of the Commission was pending). It would also consider its contribution to the draft CESAME report.

Discussion: It was confirmed that CCP recommendations would be included in the exercise. One member asked if PTEG's mapping exercise on barriers would be published, which was not yet decided but which was considered useful by Mr Farkas. Upon being asked about the cooperation with CEBS (mentioned in the ECOFIN conclusions), Ms Russo explained that a) CEBS would continue to be an observer in the ESCB/CESR working group, and b) ESCB has already approached their banking supervision committee to work together to ensure consistency among the requirements for banks and infrastructures (i.e. the European side of the G10 level where CPPS has approached the Basel Committee to ensure that, after the report on settlement risk was published, similar risks were addressed in similar ways regardless where settlement takes place). She reported that the Basel Committee has already revised its best practice for intraday liquidity management and a revised proposal was prepared. This subject has also been taken into account for the ongoing revision of the CRD. This coordinated approach should prevent regulatory arbitrage. Finally, CESR was asked to take into account users' views when prioritising their work.

4.4. Barrier 13 (absence of EU-wide framework of law)

a) Update on the work of the Legal Certainty Group (LCG) including legal aspects of Barrier 3

Philipp Paech informed the Group that a draft report was in progress and that the LCG was confident to finish its final advice by summer 2008. Time was also of the essence to keep closely in touch with work on the UNIDROIT draft convention. The LCG was also further advancing on trying to draw a line between on one hand legal issues and on the other hand operational inconsistencies relating to corporate actions (Barrier 3).

b) Update on UNIDROIT

Konstantinos Tomaras informed the group of the planned diplomatic conference on 1-13 September 2008. The Conference would have to address a number of important issues which were left unresolved in the previous session of negotiations. To facilitate the discussions, three inter-sessional working groups had been set up before: one on insolvency issues, one on good faith acquisitions and one on securities settlement systems. No group came to a concrete proposal and occasionally, opposite options were suggested. Therefore, the negotiations during the forthcoming conference would still need to deal with important issues and achieving a common reading and agreeing on a new text would not be easy. Against this background, the Commission was coordinating its position with the Member States. In that respect the work of the LCG was very helpful. Mr Tomaras also alluded to the fact that follow-up work might be necessary in the sense that the negotiating States might not be able to conclude the negotiations during this two week period; he insisted that a thorough good result would be preferable to a quick fix. In other words, a good solution acceptable to everybody could only be based on a clear common understanding which could not be rushed.

4.5. Barrier 9 (restriction on location of securities) – update on the work of the Legal Certainty Group on aspects of Barrier 9

Philipp Paech reconfirmed the work on this subject. There was no discussion on whether restrictions on the location of securities should be removed, as this result

was already included in the mandate. LCG was rather working on the question of how this could be properly done.

4.6. *Barriers 2/10 (restriction on location of C&S and on primary dealers) – update on the work of the EFC Sub-Committee on Government Bonds*

The Chairman noted that the MiFID implementation check will be presented in October.

4.7. *Barrier 11 (restrictions on withholding agents) and Barrier 12 (restrictions on tax collection) – Follow-up work to the FISCO report*

a) relations with OECD and possible recommendations

Marc Vereecken briefly reported on the decision to work on Recommendations regarding Barrier 11 (in view of the limited legislative options in the field of taxation). Secondly, he summarised work of the joint informal OECD-Commission working party composed of government and industry representatives which had held a further meeting on 26 - 27 May in Brussels (next meeting on 25-26 September). The main issues were the exchange of information between fiscal authorities of source and residence countries and the reporting aspect where the Commission favours a light approach.

b) the economic case

Tomas Thorsén summarised ongoing work with Member States and the industry in order to measure the impact of different policy options in terms of costs and benefits for investors, intermediaries and tax authorities. This work was coordinated with DG TAXUD and its Working Group IV on direct taxation where all Member States are represented. Topics included present cost (threshold for tax refund, cost for advice and assistance, savings from harmonisation, e.g. standard electronic forms, intermediaries' labour and office cost, savings for tax administration and increase of attractiveness). The Chairman repeated his invitation to all CESAME members to come forward with any information on fiscal-compliance costs.

Discussion: The Chairman underlined that the economic case was not formally necessary for the writing of the Commission's Recommendations, but would indeed enhance their political acceptability. He contemplated setting up a Member States' working group for following-up these recommendations to avoid mere filing of them. Finally, one member insisted that addressing the fiscal risk for the investor, intermediaries and the tax authorities must be clearly demonstrated.

4.8. *Barrier 15 (conflict of laws)*

The Chairman stated that the issue is still blocked.

4.9. *Barrier 5 (impediments to remote access)*

This Point was not discussed separately but within other subjects.

5. OTHER ISSUES

5.1. First CESAME2 meeting: Monday, 20 October 2008