



EUROPEAN COMMISSION  
Internal Market and Services DG

## **MANDATE FOR THE EU CLEARING AND SETTLEMENT-FISCAL COMPLIANCE EXPERTS’ WORKING GROUP**

On 28 April 2004 the Commission adopted a Communication entitled “Clearing and Settlement in the European Union – The way forward” (ref: COM(2004) 312 final). This paper sets out broad policy guidelines for further Community action in the field of securities clearing and settlement and elaborates on the necessary means to achieve an integrated, efficient and safe clearing and settlement environment in the European Union.

The integration of existing structures in the EU will require, among other actions, coordination between private and public sector bodies in bringing down a great diversity of barriers to cross-border securities clearing and settlement. This will be a complex and difficult process requiring not only technical expertise but also the wide support of the business community and of political leaders. The Commission considered in its Communication that the best way to ensure both technical expertise and political support would be to create three working groups made up of external experts, each the Commission chairing. These are a more general and political “Clearing and Settlement Advisory and Monitoring Group” and two more specialised and focused groups which are to address the legal and tax barriers to cross-border clearing and settlement.

The relevance of barriers to efficient cross-border Settlement was also one issue contained in the subsequent consultation to the first Commission Communication on Clearing and Settlement. Indeed, some respondents considered that, while substantive tax harmonisation is not currently necessary, harmonisation of the different procedures involved in tax processing should be pursued, while at the same time ensuring equal treatment for domestic and foreign investors.

The Giovannini Reports identified and invited public authorities to tackle a number of practical problems that arise from the procedures whereby only certain intermediaries are permitted to apply a reduction of the normal rate of withholding tax. In particular, some Member States only permit institutions established within their territory to operate withholding tax procedures. Other Member States allow foreign intermediaries to apply reduced rates of withholding tax but only on condition that they appoint a local fiscal representative. The Giovannini Reports suggest that such a situation effectively prevents the possibility for an intermediary to operate on a cross-border basis or to use the Intermediary services of a Securities Settlement System, thus greatly limiting competition in the provision of cross-border Settlement services. Therefore, market participants are prevented from choosing the most efficient way to operate cross-border, which in turn increases the inefficiency of the whole process.

Moreover, differences exist in the procedures used in the various Member States to collect, or grant relief from, withholding tax. Even if total or partial relief is granted, eligible investors may be required first to suffer the tax and subsequently reclaim it. Procedures applicable to repayment of withholding tax can be very complex and may also differ considerably across Member States. Such complexities and differences significantly increase the cost of cross-border Settlement.

The Giovannini group also suggested that the integration of the system for collection of transaction taxes, within the functionality of existing Securities Settlement Systems in the EU, constituted a further tax barrier. In such circumstances, the Reports suggested that using a different Securities Settlement System could mean paying higher transaction taxes. Should that prove to be the case, other Securities Settlement Systems may be *de facto* prevented from offering Intermediary services in cross-border Settlement, thus reducing the efficiency of the system. The Giovannini group of experts invited public authorities to consider this barrier and to propose appropriate solutions.

The Commission notes that there is an increasing tendency to move away from withholding taxes towards a greater reliance on information exchange. This enables tax authorities to have the proper information available to them in order to charge the right amount of tax on the right person. Information exchange on as wide a basis as possible underpins Council Directive 2003/48/EC dealing with taxation of income in the form of interest received across national frontiers<sup>1</sup>. Moreover, there is now a Directive for Mutual Assistance on Recovery<sup>2</sup>, under which the competent authorities of one Member State can assist those of another with the collection of both direct and indirect taxes due in the first-mentioned state from a debtor located in the second. In addition, the original Directive on Mutual Assistance<sup>3</sup> is currently undergoing modernisation with a view to strengthening it. Therefore, Member States will have better possibilities for controlling taxpayers who are located outside their territorial jurisdiction.

Given this new context, it is an opportune moment to explore the additional possibilities that are now available to see whether changes in some of the existing rules might be introduced in order to simplify matters for business, while still safeguarding the rights of Member States in relation to tax collection.

Consequently, the Commission has proposed the creation of a Fiscal Compliance Experts' group. The Commission is aiming to ensure the participation of high level representatives of various (possibly private legal and tax and public/academic sector) bodies involved and knowledgeable in the cross-border taxation issues related to the process of clearing and settlement of securities (e.g. withholding tax, transaction taxes, tax on capital gains).

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<sup>1</sup> Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, OJ 2003 L175/38

<sup>2</sup> Council Directive 2001/44/EC of 15 June 2001 amending Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties and in respect of value added tax and certain excise duties, OJ 2001 L175/17

<sup>3</sup> Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, OJ 1977 L336/15

Members of the Experts' Working Group should preferably also be able to easily retrieve information about more than one Member State of the EU.

The Experts' Working Group will be chaired by the Commission and conduct its work as openly as possible (e.g. by establishing transparency through its website). Overall, the Group shall endeavour to proceed in conformity with the themes of the Commission's work relating to EU clearing and settlement, ensuring wide dissemination to the public of all necessary information, explanations and reports on the state of progress, building awareness of the relevance of the project for the success of the EU's financial markets and for the attainment of the objectives incorporated in the Lisbon agenda. The work may last for about two years.

**The tasks of the group are:**

- (1) To examine the fiscal compliance issues identified by the Giovannini group and by respondents to the first Commission Communication on Clearing and Settlement as constituting barriers to efficient cross-border Settlement. The expert group should further consider and analyse such issues, with a view to reporting on their relevance and on whether alternative ways might be found for Member States to secure their tax receipts, while still permitting all financial institutions across the European Union to compete on an equal footing.
- (2) The remit of the expert group would also include the undertaking of a Study of the different fiscal compliance procedures in place across Member States, with a view to seeing whether these might be capable of being more closely aligned, so that the existence of a multiplicity of rules, which, among other things, raise the cost of cross-border Settlement, could be eliminated or substantially reduced.
- (3) To identify other fiscal compliance related issues.
- (4) Liaise with the other groups mentioned in the Communication on Clearing and Settlement, being CESAME and the Legal Certainty Group (which are reciprocal relationships).

The Commission will consider the findings of the expert group and will use them as a basis for discussion with the Member States and in accordance with the established policy of prior consultation on tax issues. If subsequent action at a Community level is considered appropriate, the Commission will endeavour to bring forward appropriate proposals.