

**SUMMARY RECORD OF THE 41ST MEETING OF THE EUROPEAN SECURITIES
COMMITTEE/ALTERNATES
26-27 APRIL 2006**

Working document ESC/28/2006

The meeting was chaired by David Wright, Director of Financial Markets.

1. ADOPTION OF THE DRAFT AGENDA

The agenda was adopted. Agenda item 8 (Market Infrastructure) was expanded to include a report back from the Legal Certainty Group and the negotiations on the UNIDROIT Convention, as well as an update on recent developments in the area of clearing and settlement.

2. ADOPTION OF THE SUMMARY RECORD OF THE MEETING OF 29-30 MARCH 2006

Adoption of the summary record was postponed. The Chairman explained that it would be sent to delegations after the meeting for written approval.

3. MiFID – IMPLEMENTING LEGISLATION

The Commission services started by providing a short debrief on the state of play in the European Parliament and the indicative schedule for future work (ESC will have two meetings on 8-9 and 26-27 June; in the Parliament, the ECON Committee vote is likely to be held 29-30 May with a vote in the Plenary 15-16 June). While many of the amendments tabled in the Parliament can be accommodated, a few do present some concerns. One delegation requested that the Commission services present the ESC with an assessment of the Parliament's proposed amendments before the vote. The Chair agreed and reminded delegations that it was incumbent on the Commission to take the "utmost account of the position of the European Parliament", in the words of the Prodi declaration on the Lamfalussy process.

Once Parliament has voted, the Commission services will 'fold in' as many of the amendments as possible into the version to be voted on by ESC.

The Chairman then asked delegations to raise their important points on the possible compromise text of the implementing Directive circulated by the Commission services, expressing firstly their overall assessment.

Most delegations who spoke expressed general or total support for the possible compromise text.

The following remarks were made on the draft **Directive (ESC/8/2006-rev2)**:

- One delegation wanted clarification on how the implementing Directive is to interact with CRD. The Commission services said that comments on the draft declaration on this aspect, circulated at the ESC meeting on 22 and 23 February, would be very welcome. This declaration would be included in the minutes of the vote in the ESC.
- Recital 8: one delegation said that this Recital could mention examples of risks related to the stability of the financial system.
- Recital 39a: one delegation said that this Recital may exclude retrocessions paid by a firm, but that these should be disclosed to the client. The Commission services said they would further analyse this issue.
- Deleted Recital 40: four delegations asked that this Recital be reinstated. The Commission services responded that this would be considered.
- Recital 43a: one delegation asked that the words ‘specific type’ be inserted in this Recital. One delegation asked that the last sentence concerning product-specific information should be deleted.
- Recital 47: one delegation asked that it be made clear that the Article 4 restrictions should apply to any rules building on this Recital. The Commission services said deletion of the Article would be considered.
- Recital 57a: one delegation asked that the Recital should be deleted. Another delegation asked for the deletion of the 2nd sentence only. The Commission services responded that this latter suggestion would be considered.
- Recital 62: two delegations (with one expressing a contrary view) asked for deletion of the new 3rd sentence in the first paragraph of the Recital. The Commission services said there was no intention to amend existing systems in the Member States. One delegation and one observer requested deletion of the last sentence of the 2nd paragraph of Recital 62.
- Article 4: Three delegations expressed strong support for the revised version of Article 4 as tabled by the Commission services. Two delegations said the Article should be as strict as possible and one of these delegations queried what the redraft achieves. The Commission services explained that by inserting ‘those’ before ‘exceptional circumstances’ it was made clear that exceptionality was not a further condition to be met. One delegation said the word ‘exceptional’ should be taken out altogether. One delegation said the Article was too far-reaching in imposing harmonisation and said even the redraft, though better, went too far. One delegation said it would need to consider the draft further in light of EFC discussions.

Two delegations queried the timing in Article 4(3)(a) and said that the date for notification – the date of coming into force of this Directive – is too early. The Commission services responded that this would need to be considered. It also

mentioned that it was intended that notifications would be published by the Commission services.

One delegation asked what is the sanction for those Member States that don't notify? The Commission services responded that the normal Level 4 process would apply. Another delegation said that there should be provision for an impact assessment before removal of any existing regulation by the national authorities.

- Article 14: one delegation expressed support for the changes made to this Article.
- Article 15: one delegation and one observer said the second sub-paragraph should be deleted, or if kept, it should be worded more precisely (with a specific deadline for the decision to be taken by the competent authority). Another delegation said the Article as drafted was quite unacceptable as it imports into a jurisdiction the policies of another competent authority on outsourcing to third countries. Another delegation supported that position, but said the Article was not a 'dealbreaker' for them. A further delegation asked that it be clarified that 'those conditions' does not refer to Article 14. On delegation expressed support for the current text, though its first preference would be for no restraints at all on outsourcing to third countries.
- Article 18: two delegations said that the client should opt into money market funds not opt out; one observer preferred deletion of paragraph 2. The Commission said it believed this would be unduly burdensome on both firms and clients.
- Article 19(1): One delegation said it was not convinced this was sufficient to safeguard client interests and asked what the Commission's analysis was.
- Article 25(2)(e): one delegation asked that "or for any other purpose" should be deleted, as currently drafted the provision is too strict and would not allow review by compliance and legal officers and the like.
- Article 28: one delegation said this should only apply to new clients. The Commission services responded that application in cases of reclassification was also normal.
- Article 29(8): one delegation (with another delegation against) argued for reinstatement of this provision. Elimination involves a considerable lessening of client protection. The Commission services responded that there was much opposition from Member States to this clause. Removing it does not, of course, impair application of the level 1.
- Article 32(1): one observer asked for the word "retail" to be deleted.
- Article 34: one delegation was concerned that deletion might result in additional requirements being imposed at national level.

- Deleted Article 35: One delegation asked that this Article should be reinstated. Reinstatement would minimise the administrative burden on firms. Another delegation expressed concern that additional requirements may be imposed as a result of deletion.
- Article 37(1): one delegation asked that the words ‘specific type’ be inserted. The Commission services said the issue would be considered but the services were quite happy with the existing wording.
- Article 38(3): three delegations asked that the term ‘manifestly’ be reinstated. One of those delegations said delete of ‘or ought to be aware’ would be an alternative.
- Article 39(a): one delegation (with one delegation to the contrary) asked for deletion of this paragraph, thus allowing for derivatives to be considered as non-complex instruments if they also satisfied conditions (b) – (d). The Commission services said that this would be unacceptable to a great many Member States.
- Article 39A: two delegations (one strongly contrary) queried the reference to a ‘framework’ agreement here and one of them pointed out that there is no reference to this concept in Article 19(7) of the Level 1. The Commission services agreed to reconsider but noted that a third delegation strongly supported the existing wording. Another queried the ‘written’ agreement and the Commission services said that they would consider broadening this to include provision on a durable medium. One delegation said this Article interferes with contract law. Another said that Commission should clarify consequences of a breach of this provision. The Commission services responded that this would be subject to the usual Level 4 processes.
- Article 40(1): One delegation asked that certain national mortgage loans should be exempted and stated that it would provide written wording.
- Article 44(3): three delegations expressed opposition to the inclusion of new wording excluding a firm’s own commissions from consideration for the purpose of determining the best possible result for best execution purposes. The Commission services said they would reanalyse the issue in view of the need to ensure that competition is increased as a result of MiFID.
- Article 50(1): one observer asked for the second sub-paragraph to be deleted.
- Article 51(4): one delegation expressed support for its own previously proposed 5-year exemption from the tape-recording obligation.
- Article 52: one delegation expressed approval of the current wording.

In general terms, those delegations that spoke expressed broad support for the draft implementing Regulation (ESC/9/2006-rev2). The following remarks were made:

- Recital 15: one delegation said the whole Recital should be deleted. Normally the hidden part of the iceberg order has the same time priority as the visible part. The Commission services said they would reanalyse, but asked the delegation to provide more examples.
- Recital 16a: two delegations said this Recital should be broadened beyond simply non-trading for 'reasons relating to company law'. The Commission services said they would consider, but asked the delegations to provide examples of other situations that should be considered.
- Article 10: one delegation said it needs to be clarified that the 'reference data' referred to here is not the same as the data firms must provide under Article 25 of the Level 1. Commission services said they would consider the need for a drafting change to clarify this. Another delegation suggested that this should refer to the 'relevant competent authority' of the share concerned not the 'home competent authority' of the regulated market. One delegation asked for the deletion of the new wording on the basis that there was no legal basis for it; Article 25 paragraph 3 MiFID referred only to investment firms.
- Article 13(4) and (5): one observer asked for an express reference to the role of CESR in co-ordinating competent authorities in discharging their responsibilities under this article.
- Article 20, 21: one delegation reiterated its earlier comments on these Articles (on Article 20, this delegation wants inclusion of quantitative criteria; on Article 21, the delegation wants all main indices for each stock exchange to be deemed liquid shares).
- Article 25: one delegation reiterated its position that retail size should be €15,000.
- Article 28(5): one delegation said this should merely refer to the most relevant market in terms of liquidity because the current wording would lead to unclarity in the application of the law. The Commission services responded that in its opinion the draft text is adequate.
- Article 41(2): two delegations said if early commencement of some provisions is not possible, there should be a Recital exhorting competent authorities to carry out necessary calculations well in advance of the date of application of this text.
- Annex I, Table 1: one delegation queried the references to ISO 10962. The Commission services responded that the changes were made to ensure uniform application of the annex. Two delegations (including the one referred to by Commission services) said that requiring transaction reports to conform to this standard would avoid regulators having to convert the information to that standard in order to exchange it between themselves. They said that the Table should merely refer to international accepted standards, with a Recital referring to the standard number.

- Annex II, Table 4: one delegation (with two delegations to the contrary) said there should be provision for deferral for 5 days for large trades in illiquid shares.

4. EQUIVALENCE OF US, JAPANESE AND CANADIAN GAAPs WITH IFRS

A number of delegations expressed concerns as regards the draft measures circulated by the Commission services:

- two delegations felt that the texts as they stand did not put enough pressure on the US to accept IFRS by 2009.
- two delegations felt that the draft measures should set a clear deadline for US acceptance of IFRS equivalence and make clear what the consequences would be if the US (or any other jurisdiction) did not accept it.
- One delegation pointed out that there were no guarantees that the FASB would advance sufficiently on convergence by 2009.
- one delegation pointed out that the EU had no protection against the SEC making interpretations of IFRS which might conflict with our own.
- one delegation said that under the Transparency Directive, the decision to defer the equivalence decision should be based on an evaluation of whether a particular GAAP is equivalent with IFRS or not – the draft Decision does not properly address this issue. Another delegation said that acceptance of equivalence should be based on CESR's advice (remedies).
- one delegation highlighted the risk that the convergence programme with the US would not solve all of the fundamental differences identified by CESR by 2009.

Four delegations expressed broad support for the Commission's approach (deferral) but they also wanted to make the text stronger and maintain the pressure on the US during the interim period. One of these delegations said that it was particularly important that the Decision did not say that US GAAP (and other GAAPs) were equivalent to IFRS because this would undermine the EU's position as to the final decision.

Three delegations were not satisfied with the proposed treatment of the other third country GAAPs, especially those which are very close to full IFRS (Australian, South African and Singapore).

CESR also had some concerns with the drafts. They pointed out that none of the significant differences identified by their technical advice had been resolved (convergence is a very slow process). The drafts would not maintain the status quo because 2007 will bring an automatic "passport" allowing issuers to enter all EU markets. CESR was critical of the fact that the drafts do not include any benchmarks to check whether the objectives on convergence have been achieved. As a possible way forward, CESR proposed postponement for just one year.

The Commission services stressed that they were simply suggesting a postponement of the decision on equivalence until 2009. At that point, another positive decision would be needed for equivalence to be established. This would ensure that pressure was maintained on third countries. Focusing only on reciprocity would not be in accordance with the Transparency Directive and the Prospectus Directive where this concept was clearly rejected in favour of that of equivalence. The draft decision clearly reflects the fact that there is currently no full equivalence between IFRS and third country GAAPs. Other third country GAAPs would need to be carefully analysed before they could be considered equivalent to IFRS. Moreover, accepting them at this stage would not help in promoting IFRS acceptance worldwide and especially in the US.

It was agreed that delegations would submit their comments by 5 May; there would then be another discussion during the ESC meeting at the beginning of June, with the vote foreseen for the meeting on 26/27 June.

Other Issues

5. TRANSPARENCY DIRECTIVE – IMPLEMENTING LEGISLATION

Reactions from most delegations to the Commission's working document were largely positive. Several delegations expressed explicit support for the new drafting of Articles 7 and 9, as well as for the separation of the directive and the recommendation.

Only a few issues were raised:

- on the notification by market makers (draft article 7), three delegations said they preferred the former version (e.g. notification to the competent authority of the issuer, instead of to the market marker's competent authority) and also requested that clarification be provided as to the "verifiable means" other than separate accounts for holding the shares subject to market making activities.

- two delegations considered that draft Article 4(1)(c) on the minimum content of the half yearly report was now too vague and preferred the former detailed drafting; one of these delegations also preferred the former version of Article 4(2) on this issue.

- another delegation mentioned a technical problem (created by the main Directive) in relation to the obligation to notify holdings of call options without taking into consideration the selling positions.

- two other delegations called for an extension of the transposition deadline of the implementing measures beyond January 2007.

CESR said that it would provide written observations on a number of issues (including draft articles 7 and 9). Several Member States will also be submitting written comments by 5 May.

The Commission services informed the ESC that it would try to present the formal draft by mid-May – provided that all the technical issues could be solved by then.

6. UCITS

6.1 Eligible Assets Implementing Legislation

Article 2 on money market instruments

Delegations particularly commented on the proposed clarification on money market instruments not admitted to trading and on asset backed commercial papers. In advance of the meeting, the Commission services had circulated an issue paper on these issues setting out possible solutions aimed at reconciling the various views of the different delegations.

One delegation and one observer took the view that there should be no distinction between the criteria for money market instruments issued by banks and those for money market instruments issued by corporate entities. The delegation considered also that "regular up-date of the information" by the issuer of the money market instrument could give rise to divergent interpretations among Member States and would lack clarity. In their view, an annual up-date of the information would be preferable. Both participants, however, agreed that there would be no need for an independent body to control the information issued by corporate issuers.

Another delegation considered that a common set of criteria for money market instruments issued by banks and corporate entities would mean additional regulatory burden for instruments issued by bank which would not be objectively justified by improvements of market information. Discussion focussed on the type of statistics produced by credit institutions as issuers of money market instruments. One delegation highlighted that for certificates of deposits only statistics on the issuer are available. Another delegation and one observer took the view that also for these instruments statistics should be available with respect of the issue. They expressed their concerns on the criterion "reliable statistics on the issuer" suggested for money market instruments issued by banks. The precise contents and purpose of such data was not clear to them. The Commission services will further examine the issues raised in the discussion, particularly as regards the availability of statistics on the different money market instruments. Delegations were also invited to provide further in-put on these issues.

The Commission services explained their considerations on asset backed commercial papers not traded on a regulated market. They referred, inter alia to the fact that a clarification which makes exclusive reference to asset backed commercial papers built on a two-tier structure would have considerable impact on existing UCITS. A significant number of UCITS invest in asset backed commercial papers others than those on a two-tier structure. One delegation commented on this issue by asking the Commission services to examine further the issue of consistency of the proposed clarifications and the Level 1 Directive.

Closed end funds

ESC delegations gave their views on the criterion for closed end funds according to which the closed end fund should be subject to corporate governance mechanisms applied to companies. Four delegations took the view that this criterion should only apply to closed end funds which are not admitted to trading on a regulated market. One of these delegations was concerned that explicit reference to corporate

governance mechanisms for closed end funds admitted to trading on a regulated market could be discriminatory with respect to other companies having their shares admitted to trading. Another delegation suggested a more flexible approach by making some reference to other safeguards which are equivalent to corporate governance mechanisms in the text. One delegation explained that e.g. REITS might have problems to comply with the criterion according to which managers of closed end funds which are not self-managed should be subject to national regulation. This delegation will provide further information on this point.

Derivatives

On derivatives on financial indices: Two delegations thought that the compromise found by CESR, namely that derivatives on commodities and property might be eligible if they fulfil certain criteria whereas currently derivatives on hedge fund indices would be excluded pending review by CESR should be better reflected in the text. Three other delegations, however, emphasised that the door for a potential eligibility of this type of instrument should be left open. Commission services agreed to find ways to better reflect CESR compromise in the text (e.g. in a Recital), taking however into account that on derivatives on hedge fund indices there is no definitive position of CESR yet.

One delegation requested for clarification regarding Article 1 para. 2 point c and the respective explanations in the background document. They referred to transferable securities which are linked to an underlying which is for itself not eligible for a UCITS. They also asked for more certainty as to which instruments would contain an embedded derivative element Commission services explained that such examples would be given under level 3. They also clarified that Article 2 para. 2 aims at reflecting point 24 of CESR advice which is understood by the Commission services in the following way: If an instrument contains an embedded derivative element according to Article 4 of the draft implementing measure, the relevant rules of the Directive on derivatives would apply which would affect also the eligibility of the complete instrument. If there is no such element, the instrument is treated as transferable security without the need to look at the underlying asset.

Transitional periods

As regards the possible need for a transitional period: Four delegations explained that their industry might need some time to adapt UCITS portfolios to the clarifications given by the draft implementing measure. One of these delegation e.g. explained that in their national law certain instruments (e.g. warrants) are considered transferable securities and that this might have to change now with respect to the clarification of transferable securities embedding derivatives. One observer and also Commission services recalled that the whole work on eligible assets was undertaken by CESR and the Commission under the premise to achieve more legal certainty as quickly as possible. Uncertainties on eligible assets currently often overshadow the passporting procedures and improvements in this respect are urgently and speedily needed.

Article 53a

The last point on the agenda was the discussion of the interpretation of Art. 53a of the UCITS-Directive and its limits, as raised by one delegation. Commission services informed ESC members about the Commission services firm view that clarifying of definitions may be exercised in respect of all provisions of the Directive which

contain "definitions" and not only in respect of the definitions provided in Article 1 and 1a. Also the methodological concerns of this delegation were debated, namely as to whether the clarification of definitions has to be objective and context independent. As examples for their concerns the delegation quoted the reference to portfolio liquidity and risk-management in the clarification of the definition of transferable securities or the 397 day maturity for money market instrument. Commission services replied that in their view it is legitimate to put the definitions of the Directive into the context with other provisions of the Directive. Any definition can only be seen in the light of the other provisions of the Directive of which they form a component and not as absolute concepts. In addition, apart from methodological aspects it should be considered to what extent the proposed approach would have problematic consequences on the UCITS-framework. The representatives of this delegation did not object to the potential benefits of the proposed clarifications, however, they stressed that legal-methodological questions should not be left completely apart. The delegation will provide additional concrete input on their concerns which the Commission services will carefully examine.

Member States were invited to send their comments before 5 May 2006.

6.2 Notification Procedure

CESR representatives gave an up-date on their work on notification procedures. There will be a 2nd consultation paper. This will be submitted to CESR chairmen for approval on 04/05/06. The Commission services welcomed CESR's work. They recalled that this work had to stay within the limits of the current system. There might be the need to go further and to rethink the provisions of the Directive. The forthcoming White Paper will therefore contain some conclusions on this point. However, considering that there is an urgent need for improvements now, such future work should not prevent CESR from simplifying the procedure as much as possible on the basis of the current legislation. They also called upon ESC members to take CESR's work seriously and to undertake all the necessary steps to breathe life into CESR's work, including changes of national legislation, if necessary. ESC members were urged to inform other ministries of CESR's work, if necessary, so that they could also support it. CESR representatives also informed ESC members about the changes between the 1st and the 2nd consultation document.

7. PROSPECTUS DIRECTIVE – AMENDMENT TO THE IMPLEMENTING REGULATION TO TAKE ACCOUNT OF COMPLEX FINANCIAL HISTORIES

The Commission services introduced the new version of working document ESC/16/2006rev1 by presenting the main changes made following comments by the Member States:

- The basic idea that competent authorities have a duty and not a power to ask for additional information in case a complex financial history is present has been maintained (new par. 3 to be inserted in art. 4 of the Prospectus Regulation); nevertheless the new text provides some flexibility in the wording; it also clarifies who is responsible for providing this additional information – in order to respond to the concern expressed by one delegation that too much responsibility is put upon the competent authorities. This delegation said that, despite these additions, it still has

difficulties with the approach taken, since they consider that asking for additional information in the case of a complex financial history should only be a power. One delegation suggested that that, in Article 4 paragraph 3 of the Prospectus Regulation, the word "shall" should be replaced by "should be able to."

The Commission services insisted that the interpretation of Art. 5 of the level 1 Directive and Art. 3 of the level 2 Regulation do not allow for any discretion on whether to ask for the information or not in case a complex financial history is present. If the conditions set in the amendment are present the competent authority should always seek to obtain the relevant information. Nevertheless a certain degree of flexibility in the wording as well additional explanation has been included in the text to make clear that competent authorities have some discretion in considering what financial information, if any should be included in a prospectus (see recitals 6, 8 and 17).

- Further main technical changes:

- * some clarification has been inserted in Recital 14 on the circumstances under which a competent authority may decide that a subsidiary is still significant;

- * in recital 17 further clarification of CESR's role was inserted with respect to providing guidance at Level 3 (clarify the concrete circumstances in which extra financial information may be needed);

- * in new paragraph 4 there was an agreement among Member States that the wording needed to be broadened;

- * in new paragraph 5 clarification was provided in the wording since reference to "firm commitment" had been considered by Member States as confusing;

- * in new par 6 and 7 a series of adaptations were included: The outcome of discussions with Member States showed that these paragraphs needed more flexibility; pro forma financial information requirements do not follow the same practice in all Member States - the new text allows for certain diversification.

Some further fine tuning/draft clarifications have been inserted in some parts of the text.

The changes seemed to be broadly accepted. On recital 14 the percentage of 50 seems to create some concerns to certain delegations. In their opinion, there are no data available justifying the assumption that the aggregate impact of individually insignificant subsidiaries or businesses is likely to be significant if, taken together, they represent more than 50% of the issuer's entire business undertaking. The Commission services said that they will reflect on this point.

8. MARKET INFRASTRUCTURE

The morning of the second day of the meeting was almost entirely devoted to the latest developments relating to the infrastructure of financial markets:

FISCO

The Commission services reported that the FISCO Experts' Group had finalised its Fact Finding Study. The study is now available on DG MARKT's website. The FISCO Group had found that withholding tax collection and relief procedures vary considerably among Member States. Moreover, the complexity and administrative

costs resulting from these differences may be leading investors to forego the relief to which they are entitled and may be discouraging cross-border investment for the same reason. Another key issue is that of transaction taxes and procedures; the Group feels that this is also a matter to be considered at EU level. The Group will now focus on possible solutions, which will be the subject of a second report which should be ready towards the end of the year or at the beginning of 2007.

Evaluation of Financial Collateral Directive

The Commission services indicated that, so far, there has been a positive and high-quality response from industry and Member States to its questionnaire, some 40 contributions had already been received – just a few more were expected. The aim is to publish an evaluation report on the Directive by the end of the year.

Hague Securities Convention

The Commission services explained that its draft Legal Assessment is now in inter-service consultation and outlined the key questions. The draft analyses the four legal issues requested by the Council. Out of these four issues, the Commission services are mostly concerned with the possible impact of diversity of laws on settlement systems and prudential regimes. The Commission's future draft will set out the various options available for the Community and it will give a recommendation about the most appropriate way forward. The draft further elaborates on the idea of developing diagnostic numbers for securities accounts as a tool to attribute the location of an account. The Commission services confirmed that adoption of the Convention would indeed necessitate the amendment of the relevant provisions in three Directives (SFD, FCD and Winding-up of credit institutions). The Commission services hope to present the paper early June.

Report on the Settlement Finality Directive

The Commission services took stock of the discussion in the three preceding meetings on Commission's evaluation report on the SFD of December 15th, 2005 and observed that most Member States are in favour of some technical adaptations. The Commission will launch a further consultation of industry and other interested parties to have the widest possible views. Meanwhile, it will set out for the next meeting some of the issues that may require further action (leaving aside the possible revision of location of the account test of Article 9 (2) SFD) and invites the Member States to reflect further on the areas covered by this Directive.

Legal Certainty Group/Unidroit

The Legal Certainty Group is an advisory group to the Commission made up of legal experts. They had met on 25-26 April to discuss a first draft report. There was agreement among them that EU legislation was needed to harmonise the legal effects of book-entries made on intermediated securities-accounts. It was not considered necessary to develop a harmonised set of rules to create a new asset, similar to the US-style 'securities entitlement'. A representative of the Unidroit secretariat also attended the meeting. The Group is going to continue its work on the draft report on 29-30 June.

Clearing and Settlement

The Chairman said that, once MiFID was out of the way, clearing and settlement would be the big issue on the securities side. At the Ecofin meeting on 5 May,

Ministers were expected to identify it as a key area where financial integration needs to be enhanced. They would almost certainly call for progress to be made by autumn 2006. At the same time, the Commission had committed itself to making a decision on its policy (or policies) by June. So there was parallel timing between Ministers and the Commission.

The Commission would soon have the elements on which to base its decision – ie. the work of the CESAME (which had made some progress on removing existing barriers, but perhaps not enough), DG Markt's regulatory impact assessment and the results of DG Comp's inquiry. The policy would be determined by jointly by DG Internal Market and DG Competition. The Chairman stressed that he could not say at this stage what the decision will be. There are a range of policy tools which could be used - CESAME, standards (although there are EP sensitivities here), competition policy or legislation. Another factor was the possible stock exchange mergers which would have an important effect in this area.

The Commissioner has said (particularly when he met recently with financial industry leaders representing the major users of cross-border securities services and the major stock exchanges) that he is in favour of industry developing new and more efficient structures. But he has also said that, if substantial progress is not achieved on the ground, he will not hesitate to come forward with his choice of policy tools to address the outstanding issues.

The Commission services then outlined the economic work which has so far been carried out. Their presentation looked at both the macro and the micro dimensions. At a macro level, the conclusion was that, based on the (fairly conservative) assumption that the costs of cross-border clearing and settlement could be reduced by 10%, EU GDP could be boosted by 0.3%. This might well be an under-estimate – it might not capture all of the dynamic effects of further integration.

At the micro level, the Commission had looked at the characteristics which this market needs to have if competition is to kick in. Among other things, there must be free market access for all providers on a cross-border basis. This implies full interoperability of systems. And there must be far greater price transparency – both before and after the service is rendered. This would be facilitated by the unbundling of services allowing people to clearly see what they are being asked to pay for or what they have in fact paid for.

One delegation asked which geographical areas would benefit most from further integration in clearing and settlement. The Commission services replied that, broadly speaking, those regions where productive sectors were more dependent on banks for their financing, and less on the markets, stood to gain the most, since more extra investment demand could be generated in those regions. It was difficult to be too categorical about this, however, because it depended on the character of the economy of the particular region and this could alter over time.

Another delegation said that it was essential to take action to remove the micro-economic obstacles in the area of clearing and settlement, given the size of the benefits to be had in terms of economic growth. This delegation mentioned the prudential aspects of the issue. It also said that, while it supported the Commissioner

in his appeal to the market, this was unlikely to be sufficient and some kind of intervention would probably be necessary.

A third delegation stressed the need for full consultation on the regulatory impact assessment. This delegation saw no need for any kind of legislative initiative; the status quo was quite acceptable. This delegation also asked what the Commission's view was on the standards being developed by CESR-ESCB.

Another delegation expressed a preference for a non-legislative solution. It welcomed the appeal which the Commissioner had made to the industry. It was looking forward to seeing the conclusions reached by DG Competition and it asked whether the regulatory impact assessment would be made available for the industry to comment on.

A fifth delegation said that it could see the macro benefits and it understood the pressing need to introduce decent competition into this sector. It understood that no policy decision had been taken yet. It thought that legislative measures might be called for.

There were also questions as to when the impact assessment would be ready. The Commission services felt that it was important to keep this in perspective. Most of the economic work had already been carried out and the results were already available on the Commission website. They added that the study had been appraised by fifteen econometricians and that industry had been involved. However, the Commission would do its best to release part of this work in the next few weeks.

CESR then explained the situation as regards the CESR-ESCB standards. Work had started on them four years ago before this had become a sensitive political issue. The aim had simply been to develop standards which were designed to deal with current models. However, the move had been badly received by some in the European Parliament who were concerned that it might pre-empt the work being done by the Commission. CESR had therefore written to Commissioner McCreevy asking for his advice as to how to proceed. They were anxious to know what the Commission intended to do. One possible option might be to go ahead with the standards not connected to the Commission's policy.

CESR also mentioned the role of the Committee of European Banking Supervisors (CEBS); some standards related to prudential supervision (intra-day risks) and therefore fall within CEBS' remit.

The ECB confirmed that work on the standards had begun some time ago with the aim of implementing international standards. There had been no intention to prejudice any work being done by the Commission. Their general view was that, given that MiFID was a comprehensive intervention on the trading side, regulatory intervention on the post-trading side would also be useful.

9. LEVEL 4 OF THE LAMFALUSSY PROCESS - Transposition by Member States

The Commission services gave an update on the state of play. Several Member States had fulfilled their promises and had notified (partially) the transposition of the

Prospectus Directive and the Market Abuse Directive. However, the Commission was still waiting for notifications from four Member States.

The Commission services stressed the importance of timely and complete notification and invited delegations of those Member States which had not fully notified to clarify where they exactly stood in the transposition exercise.

A number of delegations announced that implementation was advanced and that notification could be expected in June. A few delegations said that their national implementing measures were still in the legislative process.

10. A.O.B.

The Chairman informed delegations that the 2006 budget for comitology committee meetings had been partly kept in reserve by the European Parliament's Budget Committee. As a result, the Commission was only able to finance committee meetings taking place up to 1 June. Unfortunately, it could not guarantee that it would be able to reimburse travel expenses for meetings after that date. This meant that delegations might have to cover their own expenses for these meetings.