

**DRAFT SUMMARY RECORD OF THE 60TH MEETING OF THE EUROPEAN SECURITIES
COMMITTEE (ALTERNATES)
10 JULY 2008**

Working document ESC-12-2008

The meeting was chaired by Ms Maria Velentza, Head of the Securities Markets Unit.

1. ADOPTION OF THE DRAFT AGENDA

The agenda was adopted.

**2. ADOPTION OF THE SUMMARY RECORD OF THE MEETING OF 21 MAY 2008
(Working Document ESC-7-2008)**

One delegation asked to add one sentence in item 7 of the summary record. The CESR observer asked to further articulate a sentence in the same item. Both changes will be inserted, and a new version of the summary record will be circulated for adoption.

I. Comitology Issues

3. DETERMINATION OF EQUIVALENCE OF ACCOUNTING STANDARDS

On 6 June, the Commission services transmitted to the European Parliament and ESC delegations 2 draft level 2 implementing measures: one level 2 regulation on the basis of the Transparency Directive and a Regulation amending the level 2 Prospectus Regulation. The ECON Committee of the European Parliament will discuss these drafts in September, and it is expected to vote on them in October. The European Parliament plenary will vote as soon as possible after that. Consequently, the vote in the ESC is scheduled in November. The measures should be adopted by the Commission and published in the Official Journal of the EU, as planned, before the end of 2008.

In full consistency with CESR's advice, they suggest to accept within the EU as from 2009 the use of IFRS as issued by the IASB, the US GAAP, and the GAAP of Japan. Furthermore, the Commission proposes to accept for a transitory period, ending no later than 31 December 2011, the GAAP of China, the GAAP of South Korea and the GAAP of Canada. It is also possible that, during the coming months, the GAAP of

India, the GAAP of Taiwan and the GAAP of Mexico might be considered for inclusion in the drafts; CESR has been requested to provide a technical advice on these GAAPs. In the coming years the Commission services will continue to monitor the situation and assess ongoing efforts by third countries in moving to IFRS.

Furthermore, the Commission services explained recent developments in the following related areas: acceptance of IFRS in the US, the ongoing process for improving the IASB governance and the reinforcement of the role of EFRAG in order to provide useful input into the international standard setting process.

One delegation called for a new EU strategy as with respect to IFRS. It was concerned that IASB is not properly responding to the needs of the EU. According to this delegation, the recently proposed changes to the IASB governance and reinforcement of the role of EFRAG are not sufficient. The US Securities and Exchange Commissions (SEC), who are expected to ensure the uniform application of the accounting standards in the US, needs a European counterweight. Furthermore, this delegation called for an assessment of the audit regimes of the third countries in addition to the monitoring of the development of their GAAPs.

Another delegation explained that it basically agrees with the Commission proposals. It was however disappointed by the fact that the US does not fully accept the IFRS as adopted in the EU. It also called for a solution for the IAS 39 carve-out.

One delegation expressed its disagreement with the Commission proposal as regards lack of reciprocity. In its view, a reciprocity requirement would imply for the third countries to accept IFRS as adopted by the EU as such.

Three delegations expressed support to the Commission services' proposals. Another delegation made it clear that there is no realistic alternative for the acceptance of the third country GAAPs as proposed by the Commission services.

The CESR observer presented CESR ongoing work with respect to the assessment of the GAAPs of India, Taiwan and Mexico. For the time being there is not sufficient information to draw even preliminary conclusions. Furthermore, the CESR observer explained that it had formally requested to be represented in the Monitoring Body for the IASB.

The Commission services summarised the discussion and:

- emphasised the significance of the IASB governance reform, in particular, the role of the Monitoring body;
- explained that towards the end of the transitory period the developments in the third countries need to be assessed for the final decision on their GAAPs;
- emphasised that there is a clear commitment from the EU to remain within the international framework for accounting standards (full IFRS instead of EU variations). The improvements to IASB governance and due process are important safeguards for future acceptability of the IFRS standards;

- emphasised the significance of the US decision to accept IFRS for third country issuers (taken in November 2007).

II. Other Issues

4. CREDIT RATING AGENCIES

The Commission Services gave an overview on the latest developments in this field after the last ESC meeting and debriefed delegations on the process ahead. Taking into account the time constraints (the Parliament's mandate expires by mid next year), the Commission Services foresee a public consultation on the legislative proposal on Credit Rating Agencies (CRAs) in August. The adoption of the proposal by the Commission and submission to the European Parliament should take place by the end of October, which is an imperative deadline for the European Parliament to assess new Commission proposals. The Chairperson requested the collaboration and input of Member States.

The Chairperson presented briefly the Commission services ideas on the way forward along the lines highlighted by Commissioner Mc. Creevy in his speech of 16 June 2008. In particular, she broadly described the legislative proposal on CRAs. The proposal will lay down the substantive requirements and the supervisory framework for the rating agencies that operate in the EU. The substantive requirements for CRAs can be grouped in the following manner:

- 1) CRAs shall avoid and manage conflicts of interest;
- 2) CRAs shall remain vigilant on the quality of their methodologies and ratings, and;
- 3) CRAs shall be more transparent on their activities and performance.

The aim of the Commission services is to keep these requirements consistent with the IOSCO Code for CRAs and with the recent legislative events in the international fora (for instance the SEC's proposals to amend the US Act on CRAs). In relation to the supervisory framework and enforcement mechanism, the proposal will require CRAs to be authorised and supervised. The authorization mechanism will be build upon the idea of one single entry point for CRAs in the EU in order to avoid 27 national authorizations for each CRA.

One delegation, while acknowledging the time constraints, considered that August is not the most suitable month for a public consultation. Concerning the supervision of CRAs, it opposed the creation of a new agency, committee or body to carry out this task and invited the Commission services to take into account the current work on the 3L3 Committees in this regard. Consideration should also be given on whether CESR could serve as the registration point. Four delegations welcomed the Commission legislative initiative and suggested that the registration of CRAs should be carried out at EU level, and not at national level. Two delegations asked the Commission services to take into account the need for close cooperation with the US. Another delegation considered that the proposal should also aim to boost competition within the rating

business. Another delegation invited the Commission services to take into account the issue of reliability and responsibility of national supervisors when designing the supervisory architecture for CRAs in the EU.

Two delegations asked about the changes to be made in the Capital Requirements Directive and whether the Commission services foresee any change in the Market Abuse Directive and MiFID. One delegation was concerned about the impact of the legislative proposal on ratings and warned the Commission services against regulating the substance of ratings or the methodology and models used by the agencies, as this approach could imply an unintended "public stamp of approval" for models and methodologies. The Chairperson summarised the discussion and noted that a majority of delegations supported the idea of a single EU registration point rather than allocating this task to the national authorities. She explained the Commission Services' views on the question of reliability and responsibility among national supervisors. In relation to the possible impact of the proposal in the quality of ratings, it was clarified that the proposal will not enter to regulate concrete models and methodologies; it will rather focus on the internal due diligence that the agencies have to carry out in order to ensure the ongoing quality of the methodologies and models they apply when issuing a rating. Finally, she said that it was too early to debrief about the concrete changes to be made in the Capital Requirements Directive or other pieces of legislation.

5. EXTERNAL RELATIONS IN THE AREA OF FINANCIAL SERVICES

The Chairperson gave an update on the EU-US mutual recognition in securities initiative. The Commission services are working with the SEC in order to finalise a process framework within the coming weeks and start with the definition of assessment criteria and the comparability assessment of the EU and US securities regime at a later stage. The framework would be based on the discussions held at the ESC, thus equal treatment of the Member States, same assessment criteria to apply to all jurisdictions and no fragmentation of the internal market would be ensured.

The Chairperson also welcomed the SEC's initiative to revise Rule 15a6 which would facilitate market access for foreign broker/dealers. To the Commission services view, this unilateral move complements the mutual recognition process but does not substitute it.

The Commission Services presented the main outcomes of the Financial Markets Regulatory Dialogue (FMRD) meeting which took place on 5 June with a focus on financial turmoil, reinsurance collateral and insurance supervision, auditing, mutual recognition in the field of securities and commodity prices. The next FMRD meeting should take place in October-November. In addition, information was given on the EU-US videoconference of 6 June on China which took place in the margins of the FMRD was also mentioned.

Concerning mutual recognition in securities, one delegation stressed the importance of transparency on equivalence criteria and the need to avoid any form of extraterritorial application of US laws. In addition, any arrangement should cover both broker dealer and market infrastructure. Finally, it pointed out that it might be

unrealistic to expect an arrangement covering 27 Member States at the same time since the beginning of the mutual recognition process.

Another delegation expressed the wish to receive an update on the next steps in relation to EU-US equivalence discussions in the field of auditing.

6. MiFID (Working Document ESC-9-2008 and ESC-10-2008)

The Chairperson presented two questionnaires, one for a targeted industry consultation and another for Member States, distributed to ESC delegations for the purposes of facilitating the MiFID transposition quality check by the Commission services.

One delegation asked whether the questionnaire was addressed to securities regulators or ESC delegations. The Commission services clarified that the questionnaire was covering issues related to the transposition and the application of the legislation, thus each Member State should decide on how to present the answers to the questionnaire.

Another delegation raised concerns about the obligation for investment firms seeking a MiFID authorisation to participate in an investor compensation scheme, as sometimes those schemes do not cover investment advice services. The Commission services explained that the questionnaire was related to the application of MiFID, therefore any issue related to transposition and/or application of MiFID should be mentioned.

The CESR observer expressed criticism about the fact that the transposition quality check by the Commission services was going beyond transposition issues and entering into application aspects. He mentioned that CESR had already undertaken an examination on the supervisory practices in Member States. The Chairperson highlighted that the Commission services were going to perform a risk-based assessment of the transposition and application of MiFID, focussing on core issues that could impede the legislation to produce its intended effects, and that the outcome of the work stream started by CESR would be very important. She also emphasised that the Commission's role as a guardian of the Treaty goes beyond mere transposition check but also covers uniform application by national authorities.

7. RAISING FOOD AND OIL PRICES

The Commission services presented their ongoing work looking into the role of speculation in high food and oil prices. It was explained that this was a follow-up to two Commission Communications on food and oil prices, and the conclusions of the European Council on the subject on 20 June 2008. As a result of an initiative by the French presidency, an interim report will be presented to the informal ECOFIN in mid-September, with the final report due in December. It was clarified that relevant Commission services are currently carrying out fact-finding, and possible policy implications will be discussed later.

One delegation stressed the need to carry out a fact-based analysis and to avoid pre-determining the outcome by wishes to proscribe access to commodity markets for

certain types of participants. They recalled the vast amount of data and analysis covering past events and trends in commodity markets including the failure of past attempts to curb speculation of one kind or another. They also invited the Commission to study possible linkages with the market abuse directive and its applicability in the present scenario as well as look into transparency questions in OTC markets.

A second delegation supported the Commission services approach. Looking at the connection between forward and spot prices is necessary as it is thus far too little understood. A third delegation recalled the strong political interest in oil and food prices, saying that supply and demand factors do not explain them entirely. There is a need to study dynamic trends in these markets, and whether greater speculative investment has created new path dependencies in the relationship between prices and incentives of market participants.

The Commission services concluded the debate by reassuring delegations that the analysis will be fact-based and comprehensive, including looking at relevant linkages with existing EU legislative instruments. It was agreed that the present scenario throws up some new challenges for studying the incentives of actors in strained market conditions, especially in a non-renewable commodity such as oil, and it was said that it will cover these and other possible gaps as part of its work.

8. MARKET INFRASTRUCTURE

8.1 Update Code of Conduct on Clearing and Settlement

The Commission services informed delegations on the seventh meeting of the Monitoring Group of the Code of Conduct (MOG) held on 9 July. The purpose of the meeting was to reassess Code implementation and take stock of recent developments in the Code's three areas: price transparency, access and interoperability and service unbundling and accounting separation. It took place within the context of recent ECOFIN Conclusions illustrating the importance Member States attach to the market infrastructure matters and a Council presidency with a particular interest in the post-trade area. The main conclusions are as follows:

- ***Price transparency:*** price comparability is the key outstanding issue as regards price transparency. The MOG considers that full comparability would require a significant simplification and harmonisation of the way infrastructures present their services in their fee schedules. This is difficult to achieve in view of the fundamental differences in infrastructures' business model. It is accordingly a long-term objective. In the short run, infrastructures in the settlement segment (CSDs) are working on the Conversion Table. The MOG welcomes the steps taken by CSDs to amend the Conversion Tables in view of first experiences. The MOG believes that any resulting convergence of terminology should feed into infrastructures' fee schedules. Furthermore, the MOG takes note of user views that comparability issues are of a similar magnitude in the trading and clearing segments.
- ***Access and interoperability:*** The MOG discussed a number of themes related to access and interoperability. As regards regulatory arrangements, the MOG

welcomes the work carried out by CESR's Post-Trade Expert Group (PTEG). The Commission will soon release an additional mandate to CESR, requesting PTEG to provide advice on how potential differences between markets that have faced link requests can be bridged. On progress, the MOG took note of the general update report on link negotiations. In view of the high number of link requests, the MOG considers it imperative to develop a tool for prioritising requests. The MOG welcomes the clear and detailed presentation of the Frankfurter Wertpapierbörse (FWB) on the progress on the requests it has received and the related issue of the content and state of the minimum requirements being developed by the FWB's Exchange Council.¹ The MOG encourages other infrastructures to be equally transparent about their level of progress and the requirements they demand. The MOG particularly regrets that the London Stock Exchange (LSE) did not attend the meeting in order to provide further clarity about the objectives and timeframe of its ongoing review of its post-trade strategy, and notably its impact on LSE's obligations under the Code of Conduct. The MOG welcomes that EACH has adopted inter-CCP risk management standards.

- ***Service unbundling and accounting separation:*** the Terms of Reference governing the procedure for auditing compliance with service unbundling and accounting separation has now been finalised.

Overall, the MOG will take stock of progress at its next meeting on 29 October. That meeting is particularly timely, as it occurs just ahead of the Commission's next report to the Council under the French presidency evaluating the Code of Conduct, which is due in November.

8.2 CESAME Report and Creation of the CESAME-II

The Commission services reminded that after four years of hard work, the mandate of the CESAME group has expired with its final meeting on 16 June 2008. Next to the usual work on industry-related Giovannini barriers (where further progress on standard setting and implementation was reported) the two important topics were the draft CESAME Report and the creation of a CESAME 2 Group.

The CESAME Report shall be a testimony of CESAME work and will on the one hand take stock of achievements and on the other hand highlight still unresolved issues and unfinished items. A first preliminary draft has been distributed before the meeting and was discussed intensely. The report shall be finalised in October.

In line with the views expressed at previous CESAME meetings, the Commission services are in the process of setting up a follow-up group called CESAME 2 which shall meet for the first time in October this year. A call for expression of interest was issued and 48 applications for membership were received. Presently, the selection process is under way and may be finalised before the summer break.

¹ For detailed comments, see MOG meeting summary on http://ec.europa.eu/internal_market/financial-markets/clearing/mog_en.htm

8.3 Proposal to amend the Settlement Finality and the financial Collateral Directives

The Commission services indicated that a lot of progress was made during the Slovenian Presidency concerning the proposals to amend the Settlement Finality and the financial Collateral Directives. Four meetings were held on this purpose and all elements are now on the table. The compromise text prepared by the French Presidency may enable the Council to reach an agreement at the technical level already as quickly as the next meeting of 14 July 2008. If there are further comments, Member States should therefore not miss the opportunity offered in that meeting.

8.4 Legal Certainty Group

The Commission presented to the Committee the latest developments as regards the work of the Legal Certainty Group (LCG) and the preparations of the Community and the Member States in advance of the negotiations for the Diplomatic Conference for the adoption of the UNIDROIT Convention.

The LCG had its last meeting on 1 and 2 of July. It is expected that the final report of the Group will be made public during this summer. The Commission services are organising a public conference on the LCG work to take place in Brussels in October 2008. The exact date and venue is to be confirmed at a latter date. Tentatively, the conference will take place on the 23rd of October.

Preparatory work on the UNIDROIT Convention continues. The Commission services and the EU Member States are currently having coordination meetings to prepare their respective negotiation positions.

9. A.O.B

No other additional points were raised during the meeting and the Chairperson declared the meeting closed, reminding delegations that the next ESC is scheduled on 17 September 2008.