

**SUMMARY RECORD OF THE 65TH MEETING OF THE EUROPEAN SECURITIES COMMITTEE
(ALTERNATES)
15 JULY 2009**

Working document ESC-9-2009

The meeting of the European Securities Committee was chaired by Mr. Emil Paulis, Director of Financial Markets, DG Internal Market and Services. The Chairperson welcomed the members and expressed his wish to have a good meeting and take full advantage of this cooperation opportunity.

1. ADOPTION OF THE DRAFT AGENDA

The agenda was adopted.

2. DERIVATIVES MARKETS

The Commission services presented the communication on ensuring efficient, safe and sound derivatives markets, which was adopted on 3 July. The communication concludes that derivatives have played a central role during the financial crisis. It outlines four complementary tools of ensuring efficient, safe and sound derivatives markets: (i) to increase standardisation of derivatives that are traded off-exchange, or over-the-counter (OTC), (ii) to use central data repositories, (iii) to ensure the broadest possible use of Central Counterparties (CCPs), (iv) to consider moving derivatives trading onto organised trading venues, such as regulated markets or multilateral trading facilities. The options outlined are subject to stakeholder consultation. The Commission services invited comments by the end of August. The consultation will feed into an impact assessment. The Commission services will then draw operational conclusions before the end of the year.

On the basis of this, Member States provided the following remarks: Member States welcomed the communication and the four complementary tools put forward. Some Member States argued that any transparency requirements need to be carefully calibrated so as not to unduly hamper liquidity. Some Member States further argued that the push for standardisation should not hamper firms' ability to hedge full range of risks. Accordingly, there will be a continued demand for bespoke products. As regards timeframe, some Member States urged the Commission to come forward quickly with ambitious proposals in line with G20 ambitions. Other Member States on the other hand stressed the complex nature of derivatives markets and the importance of due process and analysis. Member States supported the use of CCPs. While some did not necessarily see the need for a CCP in Europe, others argued strongly in favour of CCPs in Europe, with some also stressing that CCPs should be located in the Euro area.

On a separate point, one Member State expressed its doubts about the equal treatment between MTFs and Regulated Markets (RMs) and its worries that the increasing number of

waivers benefiting MTFs was putting into danger the transparency in these venues. It also commented the disparity in the respective cost structures of the MTF and RMs.

3. MARKET ABUSE DIRECTIVE (MAD)

The Commission services provided an update on the process of reviewing the MAD. They presented a comprehensive overview of the responses to the recent Call for evidence, which focused on the main elements of market abuse framework. The presentation outlined the views of stakeholders and available policy options on the scope of the MAD (in particular the issue of the extension of the MAD to transactions on MTFs); on areas where simplification of the regulatory framework could take place (e.g. insider's lists); on market manipulation and on insider' dealing prohibitions. Then, one observer was invited to make a short presentation of its answer to the Call for evidence.

Several delegations of the Member States took the floor to offer their views on the issues arising in the context of the MAD review. Delegations were generally supportive of the initiative of the Commission. A few delegations stressed the need for consistency across the various directives when reforming the rules applicable to MTFs markets. Two delegations, while supportive of extending the MAD's scope to MTFs markets, underlined the need to measure the impacts of such changes. One delegation supported extending market manipulation to OTC transactions which have impact on regulated markets and MTFs markets. The same delegation also favoured increasing the threshold of disclosure of managers' transactions. It also said that the obligation made to issuers to disclose inside information has to be reviewed. Another delegation supported the extension of the scope of the MAD to MTFs at the same time making a distinction between the main markets and other MTFs. Concerning commodity derivatives, it stressed that an extension must not concern spot markets. Another delegation supported that last remark and more generally took the view that there was no need to be too innovative while reviewing the MAD. The last of the delegation to take the floor indicated that the future ECJ ruling on the concept of using inside information is of high importance. It also called for more coherence and severity on sanctions, which was supported by some other participants. Finally, it also insisted that competent administrative authorities should be expected to publish sanctions systematically, even if the decisions imposing them were still subject to judicial review.

4. INVESTOR COMPENSATION SCHEME DIRECTIVE (ICSD)

The Commission services informed the Member States on the ongoing work on the review of the ICSD. In line with the Commission Communication "Driving European Recovery" of 4th March 2009, the representative of the Commission services explained that the work would be co-ordinated with the work streams on the Deposit Guarantee Scheme Directive and on the possible protection of insurance policy holders. During previous ESC meetings, Commission services have presented the issues that will be considered in the review of the Directive. A call for evidence, launched in February, has also been presented. The presentation focused mainly on the issues being examined in order to: (i) improve the practical functioning of the Directive where its practical application has revealed some limits and differences at national level, in particular the issue of funding of the schemes (ii) update the Directive in areas where it has become inadequate due to changes in the EU regulatory framework and in the financial services industry since the Directive entered into application, and (iii) maintain some alignment between the ICSD and the Deposit Guarantee Schemes Directive, namely on the minimum level of compensation. Many delegations of the Member States took the floor.

Some expressed their concerns on the possible alignment with the Deposit Guarantee Scheme Directive given the different nature of the subjects covered by the two Directives. They stressed the need for a full cost/benefit analysis of such possibility taking into account the costs for the industry. Several Member States pointed out the need to cover only the cases of disappearance of securities whereas cases of bad financial advice should not be covered; although two representatives of the Member States agreed with such a proposal. One Member State added its concern that the actual ICSD framework might either lack of enforcement or be incomplete. The representative of the Commission Services stated that any proposal will be preceded by a robust Impact Assessment and that the College intended to adopt proposals at the same time for the insurance, investment and deposit sectors in order to ensure cross-sectoral coherence.

5. TRANSPARENCY DIRECTIVE

The Commission services updated the delegations of the Member States on the ongoing work on transparency of holdings of cash-settled derivative instruments and on the review of the operation of the Transparency Directive in order to prepare a report on the application of the Directive in 2010. An external study on the application of selected provisions of the Directive and the final report of the study should in principle be ready by the end October 2009. For the purposes of its report, one of the issues which the Commission services have already identified as presenting a concern with regard to the transparency is the increased use by the market of cash-settled equity derivatives. Moreover, the Commission services have asked ESME to provide an opinion on this issue. ESME has created a sub-group for this purpose which should present its draft opinion for approval by ESME in September. The representative of the Commission services recalled that during the last ESC meeting Commission services have presented a discussion paper on cash-settled derivatives and asked the members of ESC to provide their views on the subject. It was agreed that members would provide written comments to Commission services before 15 March 2009. However, to date, only two written comments from Member States have been received by the Commission services. In order to have as complete view as possible on the subject, the Commission services urged Member States to send their written comments as soon as practicable before end of September.

6. FINANCIAL SUPERVISION

The Chairman took the floor in order to present the ongoing work of the Commission services on financial supervision. He welcomed the conclusions of the European Council of 19 June to move forward quickly with proposals for a new supervisory architecture for financial services in Europe, in line with the Commission's Communication of 27 May, building on the de Larosière report. By the end of September proposals for Council and Parliament Regulations for the creation of a European Systemic Risk Board (ESRB) and a European System of Financial Supervisors (ESFS) with three new European Supervisory Authorities, for banking, securities and insurance and pensions should be adopted. In line with the European Council conclusions, the proposals would ensure that the Authorities in the ESFS would not impinge on the fiscal responsibilities of Member States. The decision-making powers of the Authorities would ensure the adoption of binding technical standard, a consistent application of the Community law through binding mediation, and the supervision of CRAs. The precise scope of the decision-making powers would be laid down in draft amendments to sectoral Directives, to be tabled later this year by the Commission for decision by Council and Parliament under co-decision. However, Commission endorsement would be legally required for the adoption of binding technical standards. The Commission services

aim for adoption of the supervision package in Council and European Parliament as soon as possible, so that the new bodies can become operational in 2010.

Many delegations took the floor. The majority of the intervening Member States supported the ongoing work on financial supervision, with some urging the adoption also of the proposals for sectoral Directives in October. Several Member States pointed out the need to modify the Regulation on CRAs before its entry into force in order to avoid in the future amending national legislation. Some Member States asked more details on ESRB and on the impact of the proposals on the Lamfalussy process, in particular on the Level 2 measures, and the envisaged procedures relating to the binding mediation powers.

On the ESRB, a representative of the Commission services explained that it would not have legal personality. It would monitor and assess risks to the stability of the financial system as a whole and it would provide early warning of systemic risks that may be building up and, where necessary, recommendations for action to deal with these risks. However, it would not have a coordination role in case of crisis.

7. A.O.B

Upon request of a Member State, the Commission services updated the delegations on the timetable for the adoption of the proposal for the review of the Prospectus Directive.