



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 November 2008

16212/08

**EF 121
ECOFIN 550**

NOTE

from: General Secretariat
to: Coreper/Council
Subject: Clearing and Settlement
- draft Council conclusions

Please find enclosed draft Council conclusions on Clearing and settlement, as prepared by the FSC via the EFC, with a view to submission to the Council (ECOFIN) on 2 December 2008.

Draft Council conclusions on**Clearing and settlement**

The Council RECALLS its conclusions of 9 October 2007 and 3 June 2008, whereby it noted that "the reality of a single European securities market is not compatible with a fragmented European post-trading sector. Achieving competitive, efficient and safe pan-European post trading arrangements is becoming more and more critical".

In that respect, the Council NOTES the ongoing changes to Europe's securities post-trade landscape that to a large extent are driven by MiFID, the Code of Conduct and TARGET2-Securities (T2S).

The Council FINDS that the on-going financial crisis confirms the importance of ensuring safe and sound post-trade infrastructures. Building a safer, more stable and efficient global financial system therefore requires to step up the EU ambitions for post-trade infrastructures with emphasis on safety and soundness. These efforts should also foster further coordination with relevant similar endeavours in third countries as appropriate. The EU has to play a leading role in the reshaping of the post-trading foundations of the global financial system.

In respect of the prudential safety and soundness of the post-trading infrastructure, the Council:

- EMPHASISES the need to strengthen the safety and soundness of both Central Counterparty (CCP) clearing and securities settlement systems. Supervisory authorities should make sure that effective, timely and robust supervisory solutions are put in place so that systems can operate without affecting systemic risk and prudential safety is ensured. Appropriate initiatives should also be taken at the European level;

- HIGHLIGHTS the relevance of the current efforts to ensure that Central Securities Depositories (CSD) concentrate only operational risks and minimise liquidity and credit risks; STRESSES the importance of promoting the use by CSDs of central bank money for the settlement of transactions, in line with the ESCB–CESR recommendations;
- WELCOMES the progress made by the ESCB and CESR in line with the agreed timelines, noting that they published on 23 October 2008 their draft Recommendations for a three-month public consultation, in view of an application as early as possible;
- INVITES ESCB and CESR to adapt the existing draft Recommendations on CCP so as to explicitly address also risks of OTC derivatives and coordinate with CPSS-IOSCO Recommendations in order to ensure global consistency as soon as possible, without affecting neither the ongoing supervision/oversight by competent authorities for CCPs which extend their current services in this area nor the scope of the current exercise and the agreed deadlines.

Regarding more specifically the critical need for the foundation of an efficient, safe and sound European clearing system, the Council:

- SUPPORTS the declaration made by the European Commission on the financial stability challenge posed by the growing scale of OTC derivatives exposure and in particular credit derivatives and the need to support appropriate initiatives to reduce those risks, notably by developing, as a first step and as a matter of urgency, the creation of one or more European CCP clearing capacities in OTC derivatives markets, and ENCOURAGES coherence with parallel initiatives at global level;
- NOTES the uttermost need for efficient, safe and sound post-trade clearing systems in the European Union where supervision, rules and the level of risk management applying still differ critically;

- REQUESTS the Commission, with the help of the ESCB and CESR, industry and users, to review the post-trade policy strategy in view of the financial crisis and two years of experience with the Code of Conduct, given the objectives of efficiency and prudential soundness.

In respect of TARGET 2-Securities (T2S), the Council:

- Fully SUPPORTS T2S in particular insofar as it contributes to the systemic safety of the post-trading environment through generalisation of delivery-versus-payment settlement;
- WELCOMES the commitment of the Eurosystem to continue using T2S as a catalyst to foster further harmonisation and be in close consultation in this process with other European initiatives including the CESAME2 work;
- WELCOMES that T2S is open to other currencies beyond the euro and NOTES that the markets of these currencies are currently in the process of deciding their participation in T2S;
- WELCOMES the decision in principle of CSDs in the euro area (and in a non-member country) to use T2S once in operation, and NOTES the commitment of both the Eurosystem and CSDs to conclude a contractual arrangement by March 2009.

With regard to the implementation of the Code of conduct, the Council:

- WELCOMES the improvement in price transparency and the decrease in fees charged resulting i.a. from enhanced competition; ACKNOWLEDGES ongoing efforts to improve price comparability despite differences in infrastructures' business models and ENCOURAGES further progress towards these objectives;

- STRESSES also the need for further progress on access and interoperability requests, bearing in mind the aforementioned financial stability concerns that these arrangements should be compatible with the safety and soundness of the post-trading infrastructure;
- WELCOMES the first instance of creating competitive CCP clearing links as envisaged by the Code;
- EMPHASISES in particular that links between CCPs should comply with high prudential standards in respect of credit, liquidity and operational risks;
- TAKES NOTE of the potential increased user power resulting from service unbundling of trading, clearing and a number of settlement related services, but also EMPHASISES the need for a consistent application of the accounting separation parts of the Code, taking into account the Terms of Reference published by relevant industry associations last summer; STRESSES the importance of a sound and consistent methodology for allocating revenues and costs.

Concerning the solutions to the Giovannini barriers, the Council

- WELCOMES the establishment of the CESAME2 group chaired by the Commission and LOOKS FORWARD to its contribution to completing the updated agenda presented by the Commission in its fourth Progress report;
- RECALLS its invitation to the Commission to present by early 2009 a way forward for those barriers where it finds current actions are insufficient;
- NOTES the importance of addressing conflicts of law issues as a matter of urgency to provide necessary clarity about which national regimes are to be applied;

- WELCOMES the advice published by the Legal Certainty Group in August 2008, noting the number of references therein to the need for further legislation. The Council AGREES with the Legal Certainty Group assessment that EU legislation is needed in this area providing for a more harmonised legal framework for intermediated securities and a better protection of investors' rights enshrined in their securities;
- INVITES the Commission to present its response to the Legal Certainty Group (LCG) advice as a matter of urgency including an outline of proposed legislative measures, accompanied by precise timelines for their effective submission to the European legislator, bearing in mind the benefits of maintaining global compatibility with other jurisdictions;
- HIGHLIGHTS that the LCG's advice and the provisions of the draft UNIDROIT Convention on Intermediated Securities will also have to be closely scrutinised and evaluated in the light of the potential issues revealed by the recent developments of the financial crisis, recognising the need to avoid delays.
