



CONSULTATION CONTRIBUTION

30 July 2004

Comments from the European Securities Forum on the Communication of the EU Commission on Clearing and Settlement in the European Union

In response to the invitation for comments on the Communication from the Commission to the Council and the European Parliament on Clearing and Settlement in the European Union – The way forward, we set out our comments as follows:

The European Securities Forum representing major users of European securities markets highly welcomes the Commission's Communication outlining its objectives and the actions required to achieve an efficient, integrated and safe system of securities clearing and settlement in Europe.

ESF largely **concurs** with the Communication, particularly with

- the **objectives** of (i) the liberalisation and integration of existing clearing and settlement systems , (ii) the application of competition policy to address restrictive market practices and (iii) the adoption of a common regulatory and supervisory framework;
- the Commission's support of the analysis and the recommendations contained in the reports of the **Giovannini Group**;
- the Commission's position that the further **consolidation** process and the **market structure** need to be **market led**;
- the Commission's intention to take a **leadership role** and to prioritise the harmonisation of the legal framework and of tax procedures;
- the Commission's advocacy of a close **cooperation** between the public and the private sector in the complex process of achieving the objective of a harmonised and integrated clearing and settlement system.

8 Grafton Street London W1S 4EL	Telephone: +44 (0)20 7758 2872 Facsimile: +44 (0)20 7758 2873 Email: secretariat@eurosf.com Website: www.eurosf.com	Registered Office 30 St. James's Street London SW1A 1HB	European Securities Forum is a limited liability company registered in England and Wales under no. 4011370
------------------------------------	--	---	---

However, ESF expresses the following **reservations**:

- We strongly recommend that the objective of specific **governance arrangements** for Securities Settlement Systems, Central Counterparties and Intermediaries and the respective part of the Communication be **deleted entirely** as
 - there is no convincing rationale for governance arrangements specifically applying to clearing and settlement services as opposed to other financial services;
 - they are rather in potential conflict with competition policy and effective regulation and supervision as well as the approach of a market-driven market structure and rules of privacy than complementary to them;
 - they are either partly simply too generic, e.g. account segregation, unbundling, audit committees or are without grounds, e.g. ownership and group structure, composition of board of directors, reporting lines;
 - duplication and unnecessary complication should be avoided in the case of the potential application of governance arrangements to Intermediaries who are already the subject of meaningful governance arrangements;
 - they thus tend to dilute the importance of the other parts of the Communication and, because of their controversial nature and potentially significant implications, they run the risk of diverting attention of market participants from the required efforts to remove the barriers identified by the Giovannini Group.

This reservation should be in no way be construed as an argument against the recommendations on governance of The Group of Thirty which ESF fully endorses.

- It is therefore our view and position that the envisaged **framework directive** should on the one hand be **limited** to (i) addressing comprehensive rights of access and choice and (ii) a common regulatory framework.

Moreover, we take the view that the text regarding rights of access and choice requires clarification to the effect that the scope of the access rights will be limited to removing legal and regulatory barriers which now prevent access to certain systems (but not including the obligation for service providers to connect to all systems).

As we outlined in our comments on the ESCB-CESR Standards, the principles of risk-based regulation and the separation of regulatory activities from the realm of competition authorities are important to us.

On the other hand – even if dealt with by way of separate legislation – we deem it important to at least have the harmonisation of the legal framework and of tax procedures mentioned in the framework directive. Without this, the sphere of barriers to be removed through legislation under the leadership of the Commission – as opposed to the barriers caused by fragmented market practices – would be incomplete.

- ESF fully endorses the setting up of the proposed **Clearing and Settlement Advisory and Monitoring Group**. However, we reiterate our recommendation – in order to be able to make rapid progress – of the formation of a small, highly effective and efficient Steering Group to initiate

8 Grafton Street London W1S 4EL	Telephone: +44 (0)20 7758 2872 Facsimile: +44 (0)20 7758 2873 Email: secretariat@eurosf.com Website: www.eurosf.com	Registered Office 30 St. James's Street London SW1A 1HB	European Securities Forum is a limited liability company registered in England and Wales under no. 4011370
------------------------------------	--	---	---

and coordinate the process.

- While we concur with your assessment of the need to **address legal and tax discrepancies**, we deem this part of the Communication too vague. We therefore recommend defining clear priorities and respective timelines in both areas.

In our view the highest priority in the area of legal harmonisation should be determined to be the EU-wide legal harmonisation of **transfer on ownership** in dematerialised securities by way of book entry – building thereby on the work performed by EFMLG, FMLC and the Giovannini Group. ESF's Legal Committee strongly recommends (i) that this topic be covered by a regulation and (ii) a close coordination with the work in progress at Unidroit.

- With respect to removing tax barriers we propose that highest priority be given to the **harmonisation of tax reclaim procedures** and promotion of exclusive use of the efficient and simple **taxation at source process**.

The European Securities Forum through its members is adamant in significantly contributing to our common objectives of reducing cost and risk being achieved through an integrated clearing and settlement system in Europe.

We shall do so by

- vigorously pursuing our current and future Action Plans aimed at harmonising and integrating key aspects of clearing and settlement all based on the findings and recommendations of the Giovannini Group;
- playing a very active role in the Advisory and Monitoring Group;
- supporting the Group to be tasked with the Legal Certainty Project;
- providing expert practitioners' support in other areas where required.

Joan Beck
Chairman

Werner Frey
CEO

8 Grafton Street London W1S 4EL	Telephone: +44 (0)20 7758 2872 Facsimile: +44 (0)20 7758 2873 Email: secretariat@eurosf.com Website: www.eurosf.com	Registered Office 30 St. James's Street London SW1A 1HB	European Securities Forum is a limited liability company registered in England and Wales under no. 4011370
------------------------------------	--	---	---