



16 February 2006

## **ESF Position Paper** **Possible legislation on Clearing and Settlement by the European Union**

*Purpose of the  
Position Paper*

This position paper is meant to provide condensed information and the agreed position of ESF members on a possible EU directive on clearing and settlement to top-level representatives of its members invited to a meeting with Commissioner Charlie McCreevy on 21 February 2006.

*Concurring  
objectives*

Since its foundation in 1999 ESF has worked towards its overriding objective of an integrated and efficient clearing and settlement system in Europe, reducing thus cost and risk for all market users significantly - an objective that is entirely concurring with the position of the EU Commission as expressed in its Communication on Clearing and Settlement in 2004.

*Commitment of  
private sector*

The members of ESF have made available considerable financial and expert resources to remove those barriers defined in the Giovannini Reports for which the private sector is accountable; legislative action in this area is considered unnecessary as major market users will vigorously continue in their effort to turn objectives into reality.

*Call on the  
public sector*

While private sector initiatives to harmonise and standardise market practices have started bearing fruit, limited action has been taken by national governments to remove the legal, regulatory and fiscal barriers within their responsibility. Targeted actions by EU authorities, supported by private sector institutions, should be analysed and considered as they might prove to be more effective and swifter than legislation. Nevertheless, very carefully tailored legislation at EU level, focusing exclusively on the removal of Giovannini barriers, may also be required to achieve the respective objectives fully and in due time.

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*Market led consolidation and evolution of market structure*

ESF actively promotes the further consolidation of securities infrastructure organisations, particularly of CCPs, which will promote the integration of clearing settlement and custody systems and processes. ESF is in favour of a market led approach for further consolidation steps and the evolution of a future market structure and opposes legislative action and considers ex ante competition regulation unnecessary and counterproductive.

*Conclusions*

In essence, ESF and its members

- will vigorously pursue its route to meaningfully contribute to harmonising, standardising and integrating key aspects of clearing and settlement in Europe, such as standardised corporate action processes or a common IT protocol;
- call for the public sector to take effective and early steps to remove the legal, regulatory and fiscal barriers, such as the registration process for equities or withholding tax issues;
- consider legislative action as a means of last resort to facilitate the removal of remaining Giovannini barriers where no progress has been evidenced;
- advocate the resolute application of existing competition laws and deem additional ex ante competition regulation counterproductive;
- favour a close cooperation between the public and the private sector towards the common goal of an efficient and integrated clearing and settlement in Europe.

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