



THE LAW SOCIETY OF ENGLAND AND WALES
THE LAW SOCIETY OF SCOTLAND
THE LAW SOCIETY OF NORTHERN IRELAND

The Law Societies

JOINT BRUSSELS OFFICE

The Brussels Office Law Reform Update Series:

Company Law and Financial Services

May 2010

The Law Societies' Joint Brussels Office
85 Avenue des Nerviens, B-1040 Brussels, Belgium
Tel: (+32) 2 743 85 85 Email: andrew.laidlaw@lawsociety.org.uk

*If you receive this Update from a source other than the Law Societies or their Brussels' office, please subscribe directly by emailing brussels@lawsociety.org.uk
Reproduction is authorised, provided the Law Societies' Joint Brussels Office is acknowledged.*

Contents	Page
I. WHAT'S NEW	3
COMPANY LAW	7
II. PROPOSALS IN THE PIPELINE	7
1. Company Law Action Plan (CLAP).....	7
2. Corporate governance.....	7
3. Remuneration of directors and executives	8
4. Interconnection of business registers	9
5. European Foundation Statute.....	10
6. Transfer of registered seat – 14 th Directive	10
III. LEGISLATIVE PROPOSALS IN PROGRESS.....	11
1. European Private Company	11
2. Simplification of company law	11
IV. LEGISLATION IN FORCE.....	13
1. European Company ("Societas Europaea" or SE).....	13
2. Revision of the Accounting Directives – 4th and 7th Directives	14
3. International Accounting Standards (IAS).....	15
4. Statutory Audits – 8 th Directive.....	17
5. Transparency Directive	18
6. Shareholders' rights	19
7. Capital Maintenance and alteration – 2nd Company Law Directive.....	19
8. Cross-Border Mergers – 10 th Directive	20
9. Simplification of 3 rd and 6 th Directives	20
V. OTHER INITIATIVES.....	20
1. European Corporate Governance Forum and corporate governance	20
2. Corporate Social Responsibility.....	21
FINANCIAL SERVICES	22
VI. PROPOSALS IN THE PIPELINE	22
1. Cross-border crisis management in banking.....	22
2. Derivatives markets	23
3. Clearing and Settlement.....	25
4. Mortgage credit in the EU	26
5. Packaged retail investment products	27
6. Sovereign Wealth Funds (SWFs).....	27
7. European Parliament Special Committee on financial and economic crisis	27
VII. LEGISLATIVE PROPOSALS IN PROGRESS.....	28
1. European system of financial regulation.....	28
2. "Omnibus" Directive.....	31
3. Capital Requirements Directive III.....	31
4. Capital Requirements Directive IV	33
5. Alternative investment funds.....	34
VIII. IN FORCE.....	35
1. Regulation of UCITS	35
2. Capital Requirements Directive II.....	36
3. Credit rating agencies	37
4. Deposit-guarantee schemes	37
5. Markets in Financial Instruments Directive (MiFID).....	38
6. Prospectus Directive	39
7. Market Abuse Directive	41

I. WHAT'S NEW

- ***On 10 May Professor Mario Monti presented his report on a new strategy for the single market.¹ Within the report he underlines the importance of the single market for the European economy and competitiveness. Key recommendations include: greater integration in the retail banking sector; accelerating implementation of the Small Business Act; adoption of the Statute for a European Private Company; creating a structure of financial supervision which does not lead to fragmentation of the single market; and exploring the possibility of E-bonds.***
- ***On 10 May the European Parliament's Economic and Monetary Affairs Committee (ECON) voted on the draft reports on the new EU financial supervisory architecture and the proposed Omnibus Directive. The reports go further than the Commission's proposal and confer binding powers on the new supervisory bodies. Negotiations are now expected to begin between MEPs and the Council with the intention for the reports to be voted on in the plenary in June.***
- ***The draft report on alternative investment fund managers was voted in ECON on 17 May. The following day Member States agreed a general approach in Council, noting concerns from countries such as the UK on the issue of non-EU funds and fund managers. Parliament and Council will now seek to agree a text for adoption.***
- ***The European Parliament adopted a resolution on deontological questions related to companies' management on 18 May. This calls for binding measures on remuneration for directors of banks and credit institutions and for effective implementation of the Shareholders' Rights Directive.***
- ***On 13 April the Committee of European Securities Regulators (CESR) launched three consultations which will form the basis of the advice CESR will give to the Commission regarding a review of the Markets in Financial Instruments Directive. It launched further consultations related to credit rating agencies on 17 May.***
- ***On 12 April the Commission published a summary of the responses to its consultation on the interconnection of business registers. It found that the majority of respondents were in favour of an improvement of the interconnection of business registers in the EU and, subject to a cost-benefit analysis, would be in favour of legal requirements for the participation of all Member States. An exchange of views was held on the subject in JURI on 29 April.***
- ***The International Monetary Fund presented a report to the G-20 meeting on 22 April entitled "a Fair and Substantial Contribution by the Financial Sector". It supports the setting up of two levies on the financial services sector: one on financial institutions and one on financial activities.***
- ***On 27 April Commissioner Barnier stated his intent to publish a Green Paper on the role of auditors in autumn 2010. He aims to launch a debate on the governance of auditors and the supervision of audit firms at an EU level. He has also come out in support of a European credit rating agency, which he considers will ensure responsibility and transparency across the EU.***

**** Please note that changes made to the text since the last edition are in bold italics.***

¹ http://ec.europa.eu/bepa/expertises/visitor-programs/mario_monti/index_en.htm

Proposal	Summary	State of Play/Next Steps	Law Society action & priority
Company Law			
1. Company Law Action Plan (CLAP).	Adopted by Commission in May 2003, revised in 2006, setting out proposals for policy initiatives in the field of company law.	The Commission Work Programme, presented on 31 March 2010, indicates a number of possible measures in the field of company law in the coming years.	LSEW Company Law Committee responded in 2003 and 2006. Lobbied MEPs on future priorities.
2. Corporate governance.	Initiatives relating to strengthening corporate governance, particularly in financial sector in light of the economic crisis.	Report on corporate governance codes ("comply or explain") 18 November 2009. Parliament vote on 18 May 2010. Commission Communication expected May 2010 with 3-month consultation.	
3. Remuneration of directors and executives.	Recommendations in 2004 and 2009 on remuneration of directors and of executives in the financial services sector.	Recommendations published in OJ 15 May 2009. European Council conclusions June and September 2009 as well as G-20 conclusions. ECON draft report considered 26 April 2010.	Brussels Office at Commission conference 23 March 2009 – note available.
4. Interconnection of business registers.	Initiative to improve accessibility of information between company registers.	Green Paper published 4 November 2009. Consultation results 12 April 2010. Parliament Committee exchange of views 29 April 2010.	LSEW consultation response endorsed views submitted by UK.
5. European Foundation Statute	Possible Forthcoming European Foundation Statute.	Commission consultation on feasibility of European Foundation Statute launched 16 February 2009 and summary of responses November 2009.	
6. Transfer of registered seat	To facilitate the transfer of a company's registered office between Member States	Parliament resolution on 10 March 2009 calling for Commission proposal. Currently no intention for Commission to make proposal.	LSEW responses to previous consultations on this issue.
7. European Private Company	Possible EU statute / legal form for a European Private Company	Proposal 25 June 2008. Parliament resolution 10 March 2009. Revised Council text 11 December 2009. Stalled in Council.	LSEW online survey. LSEW responded to consultation. Position paper sent to MEPs.
8. Simplification of company law	To simplify current EU company law to remove unnecessary administrative burdens	- Proposal of April 2008 on 1 st and 11 th Directives. Parliament vote 19 November 2008. Council discussion 10 March 2009. - Proposal exempting micro-entities from accounting rules February 2009. Council discussion December 2009. Parliament vote 10 March 2010. - Adoption of codification of 3 rd Directive pending.	LSEW responded to 2007 Commission consultation
9. European Company	A European legal form for public limited liability companies.	In force since 2004. Report and consultation published 23 March 2010. Commission conference 26 May 2010.	
10. Revision of 4 th and 7 th Accounting Directives	Work to overhaul current accounting regime in 4 th and 7 th Directives.	Summary of responses to consultation on revision of Directives October 2009. Infringement proceedings 20 November 2009. IFRS for SMEs consultation results 10 May 2010. Recast proposals expected in 2010.	LSEW Accounting working party responded to consultation on revision April 2009.
11. International Accounting Standards	From 1 January 2005 all EU listed companies required to prepare consolidated accounts according to IAS	Consolidating Regulation adopted 21 January 2009. Accounting Regulatory Committee vote 4 March 2010 on IAS 24, IFRIC 14, IFRIC 1 and IFRIC 19. Regulation 244/2010 (OJ L 77/42) and Regulation 243/2010 (OJ L 77/33) published 24 March 2010.	Letters sent to Commission on fair value and distribution of profits.
12. 8 th Directive Statutory Audits	To tighten current provisions on statutory audits e.g. ethics and independence.	Published in Official Journal 9 June 2006 (OJ L 157/87). Commission decision on equivalence 5 February 2010. Commission conference 8 February 2010. Consultation results on ISAs 11 March 2010. Green Paper expected in autumn 2010.	LSEW lobbying on adoption of 8 th Directive.

Proposal	Summary	State of Play/Next Steps	Law Society action & priority
13. Transparency Directive	Harmonisation of information from issuers with securities traded on regulated markets.	Proposal to amend 23 September 2009 (see Prospectus Directive). External report on application of Directive December 2009. CESR consultation on major shareholding notifications closed 31 March 2010. Commission conference planned 11 June 2010.	LSEW response to CESR consultation submitted on 30 March
14. Directive on shareholders' rights	Improve the exercise of shareholders' rights and facilitate their exercise cross-border	Directive 2007/36 published in Official Journal on 14 July 2007 (OJ L184/17). Companies (Shareholders' Rights) Regulations 2009 entered into force 3 August 2009. Follow-up Recommendation no longer likely.	LSEW amendments tabled to legislative proposal. LSEW responded to Recommendation consultation July 2007.
15. 2 nd Directive – Capital maintenance etc.	Introduce more flexibility for formation and alteration of companies' capital	Amending Directive 2006/68 published OJ L 264/32 of 25 September 2006. No action by Commission to overhaul 1 February 2008.	LSEW comments to Commission, MEPs & UK.
16. 10 th Directive. Cross-Border Mergers	Cross-border merging of PLCs and companies with share capital.	Published in Official Journal on 25 November 2005 (OJ L310/1).	LSEW CLC position paper circulated to Commission, UKRep and MEPs.
17. Simplification of 3 rd and 6 th Directives	Proposal to remove requirements for expert reports in company mergers and divisions.	Published in Official Journal on 17 November 2007 (OJ L 300/47).	
18. European Corporate Governance Forum	Expert stakeholders advising Commission on high-level corporate governance policy.	Statements on empty voting and transparency agreed at last meeting 19 February 2010.	
19. Corporate Social Responsibility	EU level action to promote Corporate Social Responsibility	Commission Communication published 22 March 2006. Presidency conference 10/11 November 2009.	
Financial Services			
20. Cross-border crisis management in banking	Forthcoming initiatives to manage cross-border failures of banks within the EU.	Communication published October 2009. Commission conference 19 March 2010. Commission document on innovative financing 6 April 2010. ECON draft report considered 12 April 2010. IMF report 22 April 2010.	
21. Derivatives Markets	Communication on ensuring efficient, safe and sound derivatives markets.	Communications 3 July and 20 October 2009. CESR consultation on OTC transaction reporting closed 14 April 2010. Draft ECON report considered 8 March 2010. UK House of Lords report 31 March 2010. IMF report April 2010. Commission consultation expected spring 2010. Legislative proposals June / July 2010.	
22. Clearing and Settlement	Commission actions to improve clearing and settlement in the EU	Industry Code of Conduct 7 November 2006. Initial consultation April 2009. ECOFIN conclusions 2 December 2009. Consultation on Securities Law expected second quarter 2010.	
23. Mortgage Credit	Green Paper to investigate case for action to address segmented EU market (2005).	White paper 18 December 2007. Council conclusions 22 January 2008. Consultation responses published 30 November 2009. Paper on best practices expected second quarter 2010.	
24. Packaged retail investment products	Communication on packaged retail investment products	Communication and Impact Assessment published 29 April 2009. Council conclusions 9 June 2009. Commission progress report December 2009.	
25. Sovereign Wealth Funds	Communication on the adoption of a common EU approach on SWFs	Communication adopted on 27 February 2008. Council's conclusions 13 and 14 March 2008.	

Proposal	Summary	State of Play/Next Steps	Law Society action & priority
26. European Parliament Special Committee on the crisis	Temporary Committee established to examine the causes of the crisis and make recommendations for future reform.	Established 8 October 2009. Notes on impact of crisis January - February 2010. Public hearings 23 February 2010 and 25 March 2010. Working documents published April 2010. Exchange of views 6 May 2010.	
27. EU financial regulation and supervision proposals	Proposals to create European Supervisory Authorities and Systemic Risk Board	Supervision Proposals 23 September 2009. Council general agreement on supervision December 2009. ECON vote 10 May 2010.	LSEW response to consultation submitted July 2009. Contact with MEPs on legal aspects February and March 2010.
28. Omnibus Directive	Consequential amendments to financial services legislation in light of the supervision proposals.	Proposal made 23 September 2009. Revised Presidency compromise on Omnibus Directive 25 February 2010. Omnibus II Directive exchange of views 23 February 2010. ECON vote 10 May 2010.	LSEW comments submitted to MEPs.
29. Capital Requirements Directive III	Risk management, capital for positions on trading books, remuneration policies.	Proposals made 13 July 2009. Council general approach November 2009. ECON consider draft report 26 April 2010. CEBS consultation on capital adequacy of cross-border groups 7 April 2010.	
30. Capital Requirements Directive IV	Issues including liquidity standards, definition of capital, leverage ratio, counterparty credit risk, single rule book.	Public consultation closed 16 April 2010. ECON draft report considered 26 April 2010. Legislative proposals by end of 2010.	
31. Alternative investment funds	Proposal to regulate managers of alternative investment funds.	Proposal made 29 April 2009. Presidency Compromise 11 March 2010. G20 meeting 23 April 2010. ECON vote 17 May 2010. Council general approach 18 May 2010.	LSEW comments made to MEPs in response to queries.
32. Review: Regulation of UCITS	Recent reform of the EU framework for investment firms.	Recast Directive (2009/65) published OJ L 302/32 of 17 November 2009. CESR review of guidelines on notification procedures 29 January 2010.	LSEW response to Green Paper submitted.
33. Capital Requirements Directive II	Amendments on funds, large exposures, supervision and qualitative standards for liquidity risk management.	Directive 2009/111 published OJ L 302/97 of 17 November 2009. Implementation by Member States by 31 December 2010.	
34. Credit Rating Agencies	Commission attempts to ensure suitable regulation of credit rating agencies	Communication 23 December 2005. Regulation OJ L 302/1, 17 November 2009. Corrigendum OJ L 250/59, 29 December 2009. CESR Q and A document 8 March 2010. Barnier supports creation of European credit rating agency 4 May 2010. CESR consultations 17 May 2010.	
35. Deposit guarantee schemes	Directive harmonising amounts of deposit to be protected in failing banks.	Directive 2009/14 published OJ L 68/3, 13 March 2009. Comments by Commission 23 February 2010. ECON discussion 23 February 2010. Legislative proposals expected by July 2010.	LSEW response to FSA June 2009 and to Commission consultation July 2009.
36. Markets in Financial Investments Directive	Directive that provides "passport" to investment firms to operate throughout EU.	CESR feedback statement on "appropriateness requirements" 3 November 2009. CESR consultation launched 13 April 2010. Commission public hearing expected summer 2010 and public consultation before end of 2010. Legislative proposal likely in 2011.	
37. Prospectus Directive	Directive requiring a prospectus document to accompany issue of shares or bonds	Revision proposed 23 September 2009. Revised general approach 4 February 2010. Parliament Committee vote on report 23 March 2010.	Comments on level 2 implementation June 2003.
38. Market Abuse Directive	Harmonising EU rules on insider dealing and market manipulation	Commission call for evidence April 2009. Reasoned opinion to UK January 2010. CESR review 6 April 2010. Public hearing summer 2010.	LSEW and City of London Law Society response spring 2009.

COMPANY LAW

II. PROPOSALS IN THE PIPELINE

1. Company Law Action Plan (CLAP)

Proposal: Future of the Company Law Action Plan

Current Status: Parliament adoption of non-legislative resolution 4 July 2006.²
Commission information on implementation of company law directives 21 January 2008.³ Commission 2010 Work Programme 31 March 2010.⁴

Background

The Commission launched a consultation on the future directions of the CLAP in December 2005. (For more detail see March 2006 update).

Progress

On 31 March 2010 the Commission presented its Work Programme (CWP). The focus of the CWP is on bringing Europe out of the economic crisis and a large number of the major proposals are in the financial sector. In the field of company law the CWP includes a possible proposal in 2012 on setting up a European Company and transferring its seat. It indicates a proposal to overhaul the 4th and 7th accounting Directives in 2011 to take into account the specific interests of SMEs and possible further simplification and modernisation of reporting obligations in the coming years. Finally it indicates an intention to publish a Communication on Corporate Social Responsibility focusing on rebuilding trust in business for European citizens.

2. Corporate governance

Proposal: Communication on corporate governance in the financial sector awaited.

Current Status: Commission seminar on corporate governance in financial institutions 12 October 2009.⁵ Study on "comply or explain" 18 November 2009.⁶ European Parliament shareholder voting rights study December 2009.⁷

Related: ***Parliament resolution on deontological questions related to companies' management, 18 May 2010.***⁸

Background

The Commission has been examining corporate governance for a number of years in order to determine best practice in Member States and identify barriers in company law and corporate governance to the creation of the internal market. The Shareholders' Rights Directive (see below) is one such example of trying to facilitate shareholders in exercising their rights. More recently the financial crisis has put into sharp contrast the failings of corporate governance in some companies and in particular in financial institutions.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:303E:0114:0119:EN:PDF>

³ http://ec.europa.eu/internal_market/company/docs/official/080121ttcl_en.pdf

⁴ http://ec.europa.eu/commission_2010-2014/president/news/documents/2010/03/20100331_1_en.htm

⁵ http://ec.europa.eu/internal_market/company/ecgforum/index_en.htm#seminar

⁶ http://ec.europa.eu/internal_market/company/docs/ecgforum/studies/comply-or-explain-090923_en.pdf

⁷ <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=28811>

⁸ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0165+0+DOC+XML+V0//EN&language=EN>

Progress

The European Parliament adopted a resolution on deontological questions related to companies' management on 18 May 2010. The resolution endorses the Recommendations adopted by the Commission in 2009 on the issue of remuneration and the principles therein but states that the soft law approach has not been satisfactory. In relation to banks and credit institutions it calls for binding measures on remuneration for directors. It goes on to call for broader legislative proposals in relation to corporate governance and remuneration in relation to all types of companies. It calls for effective implementation of the Shareholders' Rights Directive and for the establishment of uniform and comprehensive guidance concerning risk management.

A related report on remuneration of directors of listed companies and remuneration policies in the financial services sector is being considered in Parliament's ECON Committee (see below).

Next steps

A Commission report on corporate governance in financial institutions is expected on 2 June 2010, which may lead to further legislative proposals. It is likely to form part of a package which will include elements regarding the recent recommendations on remuneration. A three-month public consultation is likely. Towards the end of 2010 the Commission is also planning a conference to follow-up on the study on "comply or explain" and its future work on company law.

3. Remuneration of directors and executives

Legislation: Commission Recommendation of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies.⁹ Commission Recommendation complementing Recommendations 2004/913 and 2005/162 as regards the regime for the remuneration of directors of listed companies, OJ L 120/28, 15 May 2009.¹⁰ Commission Recommendation on remuneration policies in the financial services sector, OJ L 120/22, 15 May 2009.¹¹

Current Status: Commission Communication 29 April 2009.¹² Impact assessment 29 April 2009¹³ and accompanying summary.¹⁴ European Council conclusions 18 and 19 June 2009.¹⁵ Informal European Council 17 September 2009 and agreed language.¹⁶ G-20 Summit 24-25 September 2009 and Leaders' Statement.¹⁷ Commissioner-designate Barnier's written replies to Parliamentary questions December 2009.¹⁸ **ECON draft report considered 26 April 2010.**¹⁹ **Employment Committee draft opinion considered 28 April 2010.**²⁰

Background

On 29 April 2009 the Commission adopted a Recommendation complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration

⁹ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_385/l_38520041229en00550059.pdf

¹⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:120:0028:0031:EN:PDF>

¹¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:120:0022:0027:EN:PDF>

¹² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0211:FIN:EN:PDF>

¹³ http://ec.europa.eu/internal_market/company/docs/directors-remun/impact_assessment_en.pdf

¹⁴ <http://register.consilium.europa.eu/pdf/en/09/st09/st09589-ad02.en09.pdf>

¹⁵ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/108622.pdf

¹⁶ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/110166.pdf

¹⁷ <http://www.pittsburghsummit.gov/mediacenter/129639.htm>

¹⁸ http://www.europarl.europa.eu/hearings/static/commissioners/answers/barnier_replies_fr.pdf

¹⁹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-439.438+01+DOC+PDF+V0//EN&language=EN>

²⁰ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-439.929+01+DOC+PDF+V0//EN&language=EN>

of directors of listed companies and a Recommendation on remuneration policies in the financial services sector. The latter Recommendation aims to ensure that remuneration policy for "risk-taking" staff is consistent with risk management and does not result in excessive risk. The Recommendations were accompanied by a Communication and an impact assessment. For further details please see the December 2009 update. Member States were asked to take necessary measures to promote the application of the Recommendation by 31 December 2009. Other legislative initiatives including elements of remuneration include those on the Capital Requirements Directive and the Alternative Investment Fund Managers Directive (see below).

Progress

At his Parliamentary hearing, Commissioner-designate Barnier stated that the remuneration and bonus culture in the financial services sector encouraged excessive risk-taking and that he would be working to introduce measures based on ethics in this area. He stated that it is vital that G-20 and Financial Stability Board recommendations are properly implemented and that he would work to ensure proper transposition of the third Capital Requirements Directive, which contains rules on remuneration based on the G-20 recommendations. He also said that he would not be surprised to see the EU going further and looked at making shareholders accountable. A detailed note of the hearing is available from the Brussels office on request.

The European Parliament's ECON Committee's draft report was considered on 26 April 2010. Committee Members stressed the importance of bonuses being linked to long-term performance and that stakeholders should have an increased role in determining remuneration. A draft opinion was considered in the Parliament's Employment and Social Affairs Committee on 28 April 2010. This suggests a system of clawing back bonuses if the financial situation of a company deteriorates and that remuneration is set by independent internal bodies to prevent companies supporting unnecessary risk-taking.

Next steps

On 1 June 2010 the draft report and the draft opinion will be considered in their respective Committees. The vote on the draft opinion is due to take place on 2 June 2010 and on the draft report on 22 June 2010. The plenary vote on the report is due in July 2010.

A Commission report on corporate governance in financial institutions is expected in May 2010, which is likely to consider the implementation of the Recommendations on remuneration.

4. Interconnection of business registers

Proposal: Green Paper on interconnection of business registers

Current Status: Green Paper²¹ and working document²² 4 November 2009. ***Responses to consultation 12 April 2010.***²³ ***Exchange of views in Parliament's Legal Affairs Committee 29 April 2010. Draft opinions considered in ECON 3 May 2010***²⁴ ***and Internal Market Committee 10 May 2010.***²⁵ ***Draft Council conclusions 11 May 2010.***²⁶

²¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0614:FIN:EN:PDF>

²² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:1492:FIN:EN:PDF>

²³ http://ec.europa.eu/internal_market/company/docs/business_registers/2010_consultation_final_report_en.pdf

²⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-440.162+01+DOC+PDF+V0//EN&language=EN>

²⁵ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-441.244+01+DOC+PDF+V0//EN&language=EN>

²⁶ <http://register.consilium.europa.eu/pdf/en/10/st09/st09678.en10.pdf>

Progress

On 4 November 2009 the Commission published a Green Paper on the interconnection of business registers. Please refer to the January 2010 update for further details. The Law Society of England and Wales responded to the accompanying consultation in support of the position submitted by the UK. ***The Commission published a summary of the responses to its consultation on 12 April 2010. Nearly all respondents supported an improvement of the interconnection of business registers in the EU. Subject to a cost-benefit analysis many respondents could envisage a legal requirement for the participation of all Member States. Regarding the disclosure of foreign branches, many respondents supported the creation of a firm legal basis for the data exchange. A number of respondents stressed the need for standards to be set at an EU level for data quality in business registers.***

On 29 April 2010 the European Parliament's Legal Affairs Committee held an exchange of views. The rapporteur Kurt Lechner (Germany, EPP) stated that an interconnection of business registers is important for the single market and will provide transparency and legal security. The draft report is expected by the end of May 2010. Draft opinions were considered in the ECON on 3 May 2010 and in the Internal Market and Consumer Protection Committee on 10 May 2010.

Draft Council conclusions were published on 11 May 2010. These stress that any future legislative proposals should be based on national registration, include rules on data protection, avoid any increase in the administrative burdens on businesses, and be accompanied by a cost-benefit analysis. The UK retains a scrutiny reservation.

5. European Foundation Statute

Proposal: Possible Forthcoming European Foundation Statute

Current Status: Commission consultation on feasibility of European Foundation Statute closed 15 May 2009.²⁷ Summary of responses November 2009.²⁸

Background

On 16 February 2009 the Commission launched a public consultation concerning the difficulties foundations face when operating cross-border. Responses will be taken into account in assessing the need for and the impact of a potential Statute. In November 2009 the Commission published a summary of the responses received to the consultation.

6. Transfer of registered seat – 14th Directive

Proposal: Possible proposal on the transfer of a company's registered office from one Member State to another.

Current Status: Announcement 3 October 2007 that proposal would not be made. Parliament resolution 10 March 2009.²⁹

Background

Following a number of years of discussion within the Commission, Commissioner McCreevy announced on 3 October 2007 that he no longer intended to bring forward a proposal to facilitate the transfer of a company's registered seat between Member States. On 10 March 2009 the Parliament adopted a non-legislative resolution calling on the Commission to bring forward a proposal by 31 March 2009. See the May 2009 update for further information. This

²⁷ http://ec.europa.eu/internal_market/consultations/2009/foundation_en.htm

²⁸ http://ec.europa.eu/internal_market/consultations/docs/2009/foundation/summary_report_en.pdf

²⁹ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2009-0086>

matter may be re-considered by the new Commission.

III. LEGISLATIVE PROPOSALS IN PROGRESS

1. European Private Company

Proposal: Statute for a European Private Company ("SPE")

Current Status: Feasibility study of a European Statute for SMEs.³⁰ Proposal for a Regulation for a SPE 25 June 2008.³¹ Parliament resolution 10 March 2009.³² Presidency note³³ and proposed compromise text³⁴ 27 November 2009. Competitiveness Council 4 December 2009.³⁵ UK House of Commons report 3 February 2010.³⁶

Background

On 25 June 2008 the Commission published a proposal for a Regulation on the Statute for the SPE, which would allow a business to operate under a single legal form throughout the EU. Details of the substance of the proposal are available in the November 2008 Update.

Progress

On 10 March 2009 the Parliament's plenary session adopted a legislative resolution including a number of amendments on the proposal. For details please refer to October 2009 update. In the Council, the Presidency proposed a compromise text on 27 November 2009 in an attempt to deal with the controversial issues of the seat of an SPE and employee participation in an SPE's management. The Competitiveness Council of 3 and 4 December 2009 held a public debate as to the seat of the SPE and agreed that further work needs to be done on the proposal.

On 3 February 2010 the UK House of Commons European Scrutiny Committee published its 10th report, which examined the Small Business Act (SBA) and found no cause for concern but it nevertheless provides a useful overview of the implementation of the SBA.

Next steps

Work will continue in Council. The priorities of the presidencies (Spain, which replaced Sweden on 1 January 2010, followed by Belgium and Hungary) state that all efforts will be made to reach agreement. It is unlikely much will be achieved during the Spanish Presidency but the Belgian Presidency is hopeful to achieve some progress. ***Professor Monti's report on the single market recommends greater progress to be made on adoption of the Statute.***

2. Simplification of company law

Proposal: Communication on the simplification of company law

Current Status: Communication "A strategy for the simplification of the regulatory environment" 25 October 2005.³⁷ Communication on simplification 10 July 2007.³⁸ Parliament resolution 21 May 2008.³⁹ Communication on

³⁰ http://ec.europa.eu/enterprise/entrepreneurship/craft/craft-priorities/doc/en_resume_rapport_final.pdf

³¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0396:FIN:EN:PDF>

³² <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0094&language=EN&ring=A6-2009-0044>

³³ <http://register.consilium.europa.eu/pdf/en/09/st16/st16115.en09.pdf>

³⁴ <http://register.consilium.europa.eu/pdf/en/09/st16/st16115-ad01.en09.pdf>

³⁵ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/111732.pdf

³⁶ <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmeuleg/5-ix/504.htm>

³⁷ http://ec.europa.eu/enterprise/regulation/better_regulation/docs/simplification/com_05_0535_en.pdf

³⁸ http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0394en01.pdf

2008 fast-track actions.⁴⁰ Impact assessment.⁴¹ Communication on administrative burdens and sectoral reduction targets 28 January 2009.⁴²

Background

The Commission launched an exercise to simplify Community legislation in 2003, publishing an updated simplification strategy in October 2005. The aim is to cut by 25% the administrative burden that EU law places on companies. Company law was identified at that time as one of the priority areas for simplification. On 10 July 2007 the Commission published its Communication on a simplified business environment for companies in the areas of company law, accounting and auditing. Please refer to the January 2010 update for further details.

Progress

A number of simplification proposals have been made by the Commission and are in the process of being adopted. Furthermore the Commission is in the process of bringing forward consolidation proposals for existing legislation, detailed below. A full list of the various aspects of the company law directives prioritised for simplification can be found on the Commission's website.⁴³ The Commission published an updated rolling programme on 28 January 2009.

Simplifications: Directive 2009/49 amending Directives 78/660 (4th Directive) and 83/349 (7th Directive) as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts published in OJ L 164/42, 26 June 2009.⁴⁴

Directive 2009/109 amending Council Directives 77/91, 78/855 and 82/891, and Directive 2005/56 as regards reporting and documentation requirements in the case of mergers and divisions published OJ L 259/14, 2 October 2009.⁴⁵

Proposal to amend 1st and 11th Directives, 17 April 2008.⁴⁶ Parliament first reading 19 November 2008.⁴⁷ Council discussion 10 March 2009.

Proposed Directive on exempting micro-entities from accounting rules 26 February 2009.⁴⁸ Competitiveness Council 24 and 25 September 2009⁴⁹ and 4 December 2009.⁵⁰ Parliament vote 10 March 2010.⁵¹ Proposal on review of accounting rules postponed.

In the context of its "better regulation" agenda, on 17 April 2008 the Commission approved four Fast Track Actions, aimed at the simplification of the business environment for SMEs. These measures form part of the Commission's programme to cut administrative burdens. Two Directives have been adopted. The first of the remaining proposals aims to amend:

³⁹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0220+0+DOC+XML+V0//EN&language=EN>

⁴⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0141:FIN:EN:PDF>

⁴¹ http://ec.europa.eu/internal_market/company/docs/simplification/20080925exsum-imass_en.pdf

⁴² <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/30&format=PDF&aged=0&language=EN&guiLanguage=en>

⁴³ http://ec.europa.eu/enterprise/admin-burdens-reduction/priority_annual_en.htm

⁴⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:164:0042:0044:EN:PDF>

⁴⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:259:0014:0021:EN:PDF>

⁴⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0194:FIN:EN:PDF>

⁴⁷ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P6-TA-2008-0547>

⁴⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0083:FIN:EN:PDF>

⁴⁹ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/110310.pdf

⁵⁰ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/111732.pdf

⁵¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0052+0+DOC+XML+V0//EN&language=EN>

- the 1st Directive (publication of data), so that SMEs would no longer be required to publish business data in the national gazettes; and
 - the 11th Directive so that companies deciding to set up new branches abroad can re-use translations of their official paperwork that have already been certified in one Member State.
- The proposals were adopted by Parliament on 19 November 2008. Council adoption pending.

On 26 February 2009, the Commission put forward a proposal to allow Member States to abolish financial reporting obligations for micro-entities. This proved controversial for a number of Member States that wish to maintain a certain minimum level of regulation at the EU level. See the January 2010 update for details. On 10 March 2010 Parliament voted on the proposal. Under the Parliament's amended text micro-entities must keep records showing the company's business transactions and financial situation. This is a minimum standard and Member States may add further obligations. It is unclear whether the Council will progress work on this.

Codifications: Proposal to codify 3rd Directive (78/855) 29 January 2008.⁵² Parliament approval 19 June 2008.⁵³ Council adoption 23 March 2009.⁵⁴

Directive 2009/101 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (codification of 1st Directive) published OJ L 258/11, 1 October 2009.⁵⁵

Directive 2009/102 on the area of company law on single-member private limited liability companies (codification of 12th Directive) published OJ L 258/20, 1 October 2009.⁵⁶

In general, codification proposals are adopted without amendment. The only amendments to the substance of existing rules are those that are required by virtue of the codification process itself. The codified 1st and 12th Directives were published in the Official Journal on 1 October 2009. Formal adoption of the proposal to codify the 3rd Directive should take place soon.

IV. LEGISLATION IN FORCE

1. European Company ("Societas Europaea" or SE)

Legislation: Regulation 2157/2001 on the Statute for a European Company.⁵⁷

Current Status: Oral question in European Parliament 7 October 2009.⁵⁸ Commission report on Small Business Act 15 December 2009.⁵⁹ Implementation study published 23 March 2010.⁶⁰ **Consultation on report closes 23 May 2010.**⁶¹ **Commission conference 26 May 2010.**⁶²

⁵² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0026:FIN:EN:PDF>

⁵³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:286E:0060:0060:EN:PDF>

⁵⁴ <http://register.consilium.europa.eu/pdf/en/08/st03/st03730.en08.pdf>

⁵⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:258:0011:0019:EN:PDF>

⁵⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:258:0020:0025:EN:PDF>

⁵⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:294:0001:0021:EN:PDF>

⁵⁸ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20091007+ITEM-023+DOC+XML+V0//EN&language=EN>

⁵⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0680:FIN:EN:PDF>

⁶⁰ http://ec.europa.eu/internal_market/consultations/docs/2010/se/study_SE_9122009_en.pdf

⁶¹ http://ec.europa.eu/internal_market/consultations/2010/se_en.htm

⁶² http://ec.europa.eu/internal_market/company/docs/se/20100526_conference_programme_en.pdf

Background

Member States agreed in 2001 to create a European legal form of company as a "28th regime" i.e. separate to Member State legal systems. The European Companies (SEs) can operate in any Member State without having to create a branch, subsidiary or other legal entity there.

Progress

On 23 March 2010 the Commission published a study on the operation and impact of the SE, conducted by external consultants. On the basis of this and the recommendations contained in it for amendments to the Regulation, the Commission launched a consultation which closes on 23 May 2010. The recommendations cover various elements of the Regulation including provisions on the formation of the SE, minimum capital requirements and the registered seat.

Next steps

The Commission will host a conference on the SE on 26 May 2010. The Commission Work Programme 2010 includes an intention to propose in 2012 a simplification of the rules for setting up an SE and transferring its seat. It also indicates a possible review of the implementation of the Small Business Act and new actions may be proposed in the light of economic and social developments and future challenges. **Professor Monti's report on the single market highlights the need to accelerate the implementation of the Small Business Act.**

2. Revision of the Accounting Directives – 4th and 7th Directives

Legislation: Directive 2006/46 of 14 June 2006 amending Directives 78/660 on the annual accounts of certain types of companies, 83/349 on consolidated accounts, 86/635 on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674 on the annual accounts and consolidated accounts of insurance undertakings.

Current Status: Published OJ L 224/1 on 16 August 2006.⁶³ UK implementation.⁶⁴

Related issues: Report on the impact of raised thresholds for defining SMEs.⁶⁵ For simplification measures see above. Law Society of England and Wales response to consultation 30 April 2009.⁶⁶ Commission summary of responses to consultation October 2009.⁶⁷ Infringement proceedings against five Member States 20 November 2009.⁶⁸ **Summary of responses to consultation on IFRS for SMEs 10 May 2010.**⁶⁹ **Stakeholder meeting 25 May 2010.**

Progress

Directive 2006/46 was published in the Official Journal on 16 August 2006 and was due to be implemented by Member States by 5 September 2008.

Related issues

On 26 February 2009, the Commission put forward a new proposal which would allow Member States to exempt micro-entities from accounting requirements (detailed previously). In October 2009 the Commission published a summary of responses to its consultation on the 4th and 7th Company Law Directives. For further details please refer to the December 2009 update. **On 10**

⁶³ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_224/l_22420060816en00010007.pdf

⁶⁴ <http://www.berr.gov.uk/whatwedo/businesslaw/eu-company-law/directives/page49111.html>

⁶⁵ http://ec.europa.eu/internal_market/accounting/docs/studies/sme_thresholds_en.pdf

⁶⁶ <http://international.lawsociety.org.uk/files/2009%204th%20and%207th%20Directives%20Simplification%20-%20Law%20Society%20EW%20response%20-%2030%20April%202009.pdf>

⁶⁷ http://ec.europa.eu/internal_market/accounting/docs/200910_accounting_review_consultation_report_en.pdf

⁶⁸ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1760&format=HTML&aged=0&language=EN&guiLanguage=en>

⁶⁹ http://ec.europa.eu/internal_market/accounting/docs/consultations/2009_ifrs_sme/100510_draft_summary_en.pdf

May 2010 the Commission published the responses to its consultation on IFRS for SMEs. Opinions differed on the potential application of IFRS for SMEs as in some Member States the IFRS would mean a duplication of reporting requirements. Using IFRS for consolidated accounts was seen as a possible compromise in this situation. A stakeholder meeting on this will be held on 25 May 2010.

Next steps

The Commission Work Programme identifies an intention to overhaul the 4th and 7th Directives in 2011 to take into account the specific interests of SMEs. It also identifies possible further simplification and modernisation of reporting obligations in future.

3. International Accounting Standards (IAS)

Legislation: Regulation 1606/2002 on the application of International Accounting Standards.⁷⁰

Current Status: Previous IAS/IFRS, SIC and IFRIC standards adopted by the Commission are listed on the web-site.⁷¹ European Parliament resolution on accounting reform 24 April 2008.⁷² Consolidated IFRS Regulation 5 November 2008.⁷³ IAS Regulation 21 January 2009.⁷⁴ Regulation 254/2009 25 March 2009.⁷⁵ Commission report on application of IFRS in 2006 30 April 2009.⁷⁶ ECOFIN conclusions 9 June⁷⁷ and 7 July 2009.⁷⁸ CEIOPS letter of comments to IASB 14 September 2009.⁷⁹ CEBS comments to IASB 28 September 2009.⁸⁰ Postponement of decision to incorporate IFRS 9, 11 November 2009.⁸¹ **Summary of responses to consultation on IFRS for SMEs 10 May 2010.** **Stakeholder meeting 25 May 2010.**

Related issues: For details of Commission regulations and decisions relating to IAS / IFRS / IFRIC up to 1 December 2009, see December 2009 update. ARC vote for amendments to IFRS 1 Additional Exemptions for First-time Adopters 14 December 2009.⁸³ Regulation 1293/2009 amending Regulation 1126/2008 adopting certain IAS in accordance with Regulation 1606/2002 as regards IAS 32 published OJ L 347/23 24 December 2009.⁸⁴ CEBS Guidelines for the implementation of consolidated financial reporting (FINREP) 15 December 2009.⁸⁵

⁷⁰ http://eur-lex.europa.eu/pri/en/oj/dat/2002/l_243/l_24320020911en00010004.pdf

⁷¹ http://ec.europa.eu/internal_market/accounting/ias_en.htm#status-adoption

⁷² <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0183&language=EN&ring=A6-2008-0032>

⁷³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:275:0037:0041:EN:PDF>

⁷⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:017:0023:0036:EN:PDF>

⁷⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:080:0005:0013:EN:PDF>

⁷⁶ http://ec.europa.eu/internal_market/accounting/docs/studies/2009-report_en.pdf

⁷⁷ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/108392.pdf

⁷⁸ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/109064.pdf

⁷⁹ <http://www.ceiops.eu/media/files/publications/lettersofcomments/CEIOPS-letter-to-IASB-on-IAS-39-Exposure-Draft-20090914.pdf>

⁸⁰ [http://www.c-eps.org/getdoc/c517e4f6-385f-4545-9b30-05913e818e2f/2009-09-28-\(CEBS-CL-ED-Fair-Value-Measurement\).aspx](http://www.c-eps.org/getdoc/c517e4f6-385f-4545-9b30-05913e818e2f/2009-09-28-(CEBS-CL-ED-Fair-Value-Measurement).aspx)

⁸¹ http://ec.europa.eu/internal_market/accounting/docs/arc/2009-11-11_ARC_IFRS9_en.pdf

⁸² http://ec.europa.eu/internal_market/accounting/docs/consultations/2009_ifrs_sme/100510_draft_summary_en.pdf

⁸³ http://ec.europa.eu/internal_market/accounting/docs/arc/2009-12-14-vote_en.pdf

⁸⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:347:0023:0025:EN:PDF>

⁸⁵ <http://www.c-eps.org/documents/Publications/Standards---Guidelines/2009/FINREPrev2/FINREPrev2-instructions.aspx>

Commission conference 8 February 2010.⁸⁶ ARC vote on IAS 24, IFRIC 14, IFRIC 1 and IFRIC 19 on 4 March 2010.⁸⁷

Regulation 244/2010 as regards IFRS 2 (OJ L 77/42)⁸⁸ and Regulation 243/2010 as regards Improvements to IFRS (OJ L 77/33) 24 March 2010.⁸⁹ Council consent to Commission adoption of a regulation amending Regulation 1126/2008 adopting certain IAS in accordance with regulation 1606/2002 as regards IFRS 1 and 7, 26 April 2010.⁹⁰

Background

The International Accounting Standards (IAS) Regulation is an essential measure in the Financial Services Action Plan. From 2005 listed companies in the EU, including insurance companies and banks, have had to prepare consolidated accounts in accordance with ISAs.

Progress

The Commission adopted a Regulation containing the consolidated text of all International Financial Reporting Standards (IFRS) in force in the EU as at 17 October 2008. This enabled stakeholders to refer to one legal document.

Regulation 1569/2007 allows companies to use the Generally Accepted Accounting Principles of third countries until the end of 2011 if that country has made a public commitment to adopt IFRS or to converge its own standards with IFRS by the end of 2011.

On 19 and 20 March 2009 the European Council called for a review of IAS. On 2 April the G-20 called for the accounting standard setters to improve standards for the valuation of financial instruments based on their liquidity and investors' holding horizons, while reaffirming the framework of fair value accounting.

On 11 November 2009 the Commission's Accounting Regulatory Committee (ARC) decided to postpone adoption of IFRS 9. While Member States agreed generally on the mixed measurement using fair value and amortised cost, some had concerns as to key aspects of IFRS 9 and the uncertainty linked to future work on financial instruments. The delay meant EU companies could not apply the new rules to 2009 accounts. In December 2009 ARC supported the Commission's amendments to IFRS 1: "Additional Exemptions for First-time Adopters".

On 4 March 2010 ARC voted in favour of the Commission's Amendments to IAS 24: Related Party Disclosures, IFRIC 14: Prepayments of a Minimum Funding Requirement, IFRS 1 (Limited Exemption from Comparative IFRS 7 Disclosures for First-time Adopters) and the Interpretation of IFRIC 19: Extinguishing Financial Liabilities with Equity Instruments. On 26 April 2010 the Council consented to amendments of IFRS 1 and 7.

On 23 March 2010 the Commission adopted Regulation 233/2010, amending IFRS 2 as regards share-based payments and withdrawing IFRIC 8 and 11, and Regulation 243/2010 amending IFRS 2,5 and 8; IAS 1,7,17,36,38 and 39; and IFRIC 9 and 10 endorsing the "improvements to IFRS" by the International Accounting Standards Board in April 2009.

⁸⁶ http://ec.europa.eu/internal_market/accounting/conference_20100208_en.htm

⁸⁷ http://ec.europa.eu/internal_market/accounting/docs/arc/2010-03-04-summary-record_en.pdf

⁸⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:077:0042:0049:EN:PDF>

⁸⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:077:0033:0041:EN:PDF>

⁹⁰ <http://register.consilium.europa.eu/pdf/en/10/st08/st08967.en10.pdf>

4. Statutory Audits – 8th Directive

- Legislation:** Directive 2006/43 of 15 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660 and 83/349 and repealing Council Directive 84/253.⁹¹
- Current Status:** Published 9 June 2006, OJ L 157/87. UK implementation.⁹² Implementation scoreboard 1 February 2010.⁹³
- Related issues:** Recommendation on statutory audits 6 May 2008.⁹⁴ Recommendation on limitation of auditors' liability 5 June 2008.⁹⁵ Commission measures to strengthen supervisory committees and standard-setting bodies 26 January 2009.⁹⁶ Commission consultation on audit control structure closed 28 February 2009.⁹⁷ Commission decision on third country audit firms 4 August 2008.⁹⁸ Commission decision on equivalence 5 February 2010.⁹⁹ EGAOB guidance paper on competent authority cooperation 8 December 2009.¹⁰⁰ University of Duisburg-Essen report 22 June 2009.¹⁰¹ Study on ISA and US standards 19 August 2009.¹⁰² CESR response to consultation 20 October 2009.¹⁰³ Commission conference 8 February 2010.¹⁰⁴ Consultation on adoption of ISAs results 11 March 2010.¹⁰⁵ **Green Paper expected in autumn 2010.**¹⁰⁶

Background

Directive 2006/43 was published in the Official Journal and the deadline for implementation was 29 June 2008. The Directive responds to the need to clarify the duties of statutory auditors and their independence and ethics. It broadens the scope of current EU legislation in this field by introducing new requirements concerning the manner in which an audit should be carried out and the structure needed within companies to ensure quality and trust of the audit function.

Progress

On 5 February 2010 the Commission adopted a Decision recognising the adequacy of the auditor oversight systems in Canada, Japan and Switzerland. This will enable the exchange of audit working papers between the EU Member States' oversight authorities and their Canadian, Japanese and Swiss counterparts. On 8 February 2010 the Commission held a conference on international developments in accounting and auditing. Discussions included the legal, regulatory and practical challenges involved in moving towards global standards on auditing.

On 11 March 2010 the Commission published the results of its consultation on the possible adoption of International Standards on Auditing (ISAs). The overwhelming majority of respondents were said to be in favour of adoption of the ISAs at EU level. Concerns were raised in relation to the cost and administrative implications which an adoption of the ISAs may

⁹¹ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_157/l_15720060609en00870107.pdf

⁹² <http://www.berr.gov.uk/whatwedo/businesslaw/financial-reporting/directive/page25922.html>

⁹³ http://ec.europa.eu/internal_market/auditing/docs/dir/01_02_10_scoreboard_en.pdf

⁹⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:120:0020:0024:EN:PDF>

⁹⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:162:0039:0040:EN:PDF>

⁹⁶ http://ec.europa.eu/internal_market/finances/docs/committees/financing-decision_en.pdf

⁹⁷ http://ec.europa.eu/internal_market/consultations/2008/audit_firms_en.htm

⁹⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:202:0070:0073:EN:PDF>

⁹⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:035:0015:0017:EN:PDF>

¹⁰⁰ http://ec.europa.eu/internal_market/auditing/docs/relations/08122009_egaob_report_en.pdf

¹⁰¹ http://ec.europa.eu/internal_market/auditing/docs/ias/study2009/report_en.pdf

¹⁰² http://ec.europa.eu/internal_market/auditing/docs/ias/evalstudy2009/report_en.pdf

¹⁰³ <http://www.cesr.eu/popup2.php?id=6145>

¹⁰⁴ http://ec.europa.eu/internal_market/accounting/conference_20100208_en.htm

¹⁰⁵ http://ec.europa.eu/internal_market/consultations/2009/isa_en.htm

¹⁰⁶ http://ec.europa.eu/commission_2010-2014/barnier/headlines/news/2010/04/20100427_en.htm

have for SMEs. The responses regarding the timing of a possible adoption were quite varied although it is widely acknowledged that SMEs may need more time to prepare for ISA adoption.

Next steps

On 27 April 2010 Commissioner Barnier stated his intent to publish a Green Paper on the role of auditors in autumn 2010. He aims to launch a debate on the governance of auditors and the supervision of audit firms at an EU level. The Green Paper will also cover the implications of the audit market on financial stability and ISAs.

5. Transparency Directive

Legislation: Directive 2004/109 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34.¹⁰⁷ Implementation by 20 January 2007.

Current Status: Proposal for Directive amending Prospectus and Transparency Directives 23 September 2009¹⁰⁸ (see Prospectus Directive section for details). Commission working paper on stricter national measures 10 December 2008.¹⁰⁹ External report on application of Directive December 2009.¹¹⁰

Level 2: Commission Directive 2007/14 laying down detailed rules for the implementation of certain provisions of Directive 2004/109 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market published in Official Journal 9 March 2007.¹¹¹

Level 3: Feedback statement on CESR level 3 consultation 21 February 2008.¹¹² ESME report on "acting in concert" 17 November 2008.¹¹³ CESR advice on the storage and filing of regulated information 6 July 2006.¹¹⁴ CESR review of supervision and sanctions 1 July 2009.¹¹⁵ CESR consultation on major shareholding notifications closed 31 March 2010.¹¹⁶ European Corporate Governance Forum statement on Empty Voting and Transparency of Shareholder Positions 20 February 2010.¹¹⁷ **Commission conference 11 June 2010.**¹¹⁸

Background

The Directive aims to improve the information available to investors, allowing them to invest "more efficiently". All securities issuers will have to provide annual financial reports within the four months of the end of the financial year, half-yearly financial reports and interim management statements. For further details please refer to the November 2009 update.

¹⁰⁷ http://eur-lex.europa.eu/lex/LexUriServ/site/en/oj/2004/l_390/l_39020041231en00380057.pdf

¹⁰⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0491:FIN:EN:PDF>

¹⁰⁹ http://ec.europa.eu/internal_market/securities/docs/transparency/report_measures_122008_en.pdf

¹¹⁰ http://ec.europa.eu/internal_market/securities/transparency/index_en.htm#application

¹¹¹ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_069/l_06920070309en00270036.pdf

¹¹² http://www.cesr-eu.org/data/document/08_066.pdf

¹¹³ http://ec.europa.eu/internal_market/securities/docs/esme/acting_in_concert_20081117_en.pdf

¹¹⁴ http://www.cesr-eu.org/data/document/06_292.pdf

¹¹⁵ <http://www.cesr.eu/popup2.php?id=5783>

¹¹⁶ <http://www.cesr.eu/popup2.php?id=6481>

¹¹⁷ http://ec.europa.eu/internal_market/company/docs/ecgforum/ecgf_empty_voting_en.pdf

¹¹⁸ http://ec.europa.eu/internal_market/securities/docs/transparency/conference20100611/programme_en.pdf

Progress

On 23 September 2009 the Commission published a proposal for a Directive amending the Prospectus Directive and Transparency Directive (see Prospectus Directive section for details).

The report into the application of the Directive, which had been carried out for the Commission by external consultants, suggests a number of possible improvements to the text including: moving to a maximum harmonisation approach; introducing a specific regime for SMEs; extending the deadline for the publication of half-yearly reports; and enforcing the home state principle more rigorously. In relation to major holdings specifically, there are recommendations such as: lowering the initial threshold; using maximum harmonisation in relation to notification thresholds; increasing the transparency of the lending of voting rights; limiting empty voting practices; and requiring the disclosure of cash-settled equity swaps or similar products. A CESR consultation on a proposal to extend major shareholding notifications to instruments of similar economic effect to holding shares and entitlements to acquire shares closed on 31 March 2010. On 20 February 2010 the European Corporate Governance Forum published a statement on Empty Voting and Transparency of Shareholder Positions (see below).

Next steps

A Commission report is expected in 2010 which could lead to proposals to amend the Directive. On 11 June 2010 the Commission is hosting a conference on the operation of the Directive.

6. Shareholders' rights

- Legislation:** Directive 2007/36 on the exercise of certain rights of shareholders in listed companies.
- Current Status:** Published on 14 July 2007 OJ L184/17.¹¹⁹ Companies (Shareholders' Rights) Regulations 2009 entered into force 3 August 2009.¹²⁰ Transposition status update for Directive 4 January 2010.¹²¹
- Related:** Results of consultation on possible Recommendation on shareholders' voting rights published September 2007.¹²² European Parliament study on the use of shareholder voting rights December 2009.¹²³

Background

Details of the content of the Directive are available in the September 2007 update and a detailed note is available from the Brussels office. On 3 August 2009, the Companies (Shareholders' Rights) Regulations 2009, which implement the Directive in the UK, entered into force. On 4 January 2010 the Commission published a table showing the implementation status of several directives. It is uncertain whether the Commission will proceed with the adoption of a recommendation on shareholders' voting rights to supplement the Directive. On 20 January 2010 Parliament's ECON Committee published a study on the use of shareholder voting rights during the general assembly of company shareholders. For details see February 2010 Update.

7. Capital Maintenance and alteration – 2nd Company Law Directive

- Legislation:** Directive 2006/68 amending Directive 77/91 as regards the formation of public limited liability companies and the maintenance and alteration of their capital.

¹¹⁹ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_184/l_18420070714en00170024.pdf

¹²⁰ http://www.opsi.gov.uk/si/si2009/ukxi_20091632_en_1

¹²¹ http://ec.europa.eu/internal_market/company/docs/official/1001041trans-play_en.pdf

¹²² http://ec.europa.eu/internal_market/company/docs/shareholders/consultation3_report_en.pdf

¹²³ <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=28811>

Current Status: Published in Official Journal on 25 September 2006, OJ L 264/32.¹²⁴
Deadline for implementation 15 April 2008. UK implementation.¹²⁵

Related issues: KPMG study on alternative capital regime completed October 2007.¹²⁶
Commission feasibility study 1 February 2008.¹²⁷

Background

Following a report from KPMG on alternatives to the capital maintenance regime under the 2nd Company Law Directive, the Commission concluded that legislative changes were not needed.

8. Cross-Border Mergers – 10th Directive

Legislation: Directive 2005/56 on cross-border mergers of companies with share capital.¹²⁸

Current Status: Published on 25 November 2005, OJ L 310/1. Implementation deadline 15 December 2007. UK Cross-border Mergers Regulations 2007.¹²⁹

Details of the content of the Directive are available in the November 2005 Update. Infringement proceedings were brought against eleven Member States in June 2008.

9. Simplification of 3rd and 6th Directives

Legislation: Directive 2007/63 amending Directives 78/855 and 82/891 as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies.

Current Status: Published on 17 November 2007, OJ L 300/47.¹³⁰ Implementation deadline 31 December 2008.

Details of the content of the Directive are available in the May 2009 Update

V. OTHER INITIATIVES

1. European Corporate Governance Forum and corporate governance

Current work: Recommendation on shareholders' rights proposal¹³¹ and Statement on internal control¹³² 24 July 2006. Statement on proportionality (one share one vote) 17 September 2007.¹³³ Work Programme 2008-2011 published 10 October 2008.¹³⁴ Statements on cross-border issues of corporate governance codes¹³⁵ and best practices in directors' remuneration 23

¹²⁴ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_264/l_26420060925en00320036.pdf

¹²⁵ <http://www.berr.gov.uk/whatwedo/businesslaw/eu-company-law/directives/page49087.html>

¹²⁶ http://ted.europa.eu/Exec?DataFlow=ShowPage&Template=TED/N_one_result_detail_curr.htm&docnumber=51751%25202006&docId=51751-2006&StatLang=EN

¹²⁷ http://ec.europa.eu/internal_market/company/docs/capital/feasibility/study_en.pdf

¹²⁸ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_310/l_31020051125en00010009.pdf

¹²⁹ <http://www.berr.gov.uk/whatwedo/businesslaw/eu-company-law/directives/page49112.html>

¹³⁰ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_300/l_30020071117en00470048.pdf

¹³¹ http://ec.europa.eu/internal_market/company/docs/ecgforum/recomm_en.pdf

¹³² http://ec.europa.eu/internal_market/company/docs/ecgforum/statement_internal_control_en.pdf

¹³³ http://ec.europa.eu/internal_market/company/docs/ecgforum/statement_proportionality_en.pdf

¹³⁴ http://ec.europa.eu/internal_market/company/docs/ecgforum/workprog2008-2011.pdf

¹³⁵ http://ec.europa.eu/internal_market/company/docs/ecgforum/ecgf-crossborder_en.pdf

March 2009.¹³⁶ Meeting 19 February 2010.¹³⁷ Statement on empty voting and transparency 20 February 2010.¹³⁸

Background

The European Corporate Governance Forum (ECGF), made up of 15 experts representing a range of stakeholders, was launched on 18 October 2004. It aims to improve corporate governance by fostering convergence of national codes, exchanging information and best practice.

Progress

The ECGF Work Programme 2008 - 2011 was published on 10 October 2008. On 19 February 2010 it discussed corporate governance in financial institutions and held an exchange of views on executive and financial sector remuneration. It also received updates on the Commission's work on: the proposal for a Statute of a European Private Company; an EU framework for cross-border crisis management in the banking sector; a study on the application of the Statute for a European Company; and a Green Paper on the cooperation between business registers.

On 20 February the ECGF adopted a statement on empty voting and transparency of shareholder positions. It notes that this is only a first step in examining the issue but calls nonetheless for clarification of the Transparency Directive and the introduction of a presumption that shareholders attending a general meeting own the economic interest in the shares they vote. It questions whether those shares voted by those not owning the economic interest should be declared null and void. Further it states that companies lending their own shares should stipulate in the contract with the borrower that they will not vote the shares.

2. Corporate Social Responsibility

Initiative: Follow up to work of Multi-Stakeholder Forum (MSF) looking into initiatives to promote Corporate Social Responsibility (CSR).

Current Status: Commission Communication 22 March 2006.¹³⁹ Parliament resolution 13 March 2007.¹⁴⁰ European Multi-Stakeholder Forum on CSR meeting held 10 February 2009.¹⁴¹ Presidency conference 10-11 November 2009.¹⁴²

Background

A Green Paper was published by the Commission in 2001 but it was decided not to proceed with legislative measures and instead to maintain the voluntary approach to CSR and to take forward a range of initiatives aimed at promoting CSR at EU level, including the establishment of a Multi-Stakeholder Forum (MSF).

Progress

On 22 March 2006, the Commission published its Communication entitled "Implementing the Partnership for Growth and Jobs: Making Europe a pole of excellence on CSR". On 13 March 2007, the Parliament adopted a resolution on CSR entitled "CSR: a new partnership". Details can be found in the April 2007 Update. On 10 February 2009 the Commission hosted a plenary

¹³⁶ http://ec.europa.eu/internal_market/company/docs/ecgforum/ecgf-remuneration_en.pdf

¹³⁷ http://ec.europa.eu/internal_market/company/ecgforum/index_en.htm

¹³⁸ http://ec.europa.eu/internal_market/company/docs/ecgforum/ecgf_empty_voting_en.pdf

¹³⁹ http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0136en01.pdf

¹⁴⁰ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0062+0+DOC+XML+V0//EN&language=EN>

¹⁴¹ http://ec.europa.eu/enterprise/csr/forum_2009_index.htm

¹⁴² http://www.se2009.eu/polopoly_fs/1.22910!menu/standard/file/091110%20Inledningstal%20CSR.pdf

http://www.se2009.eu/polopoly_fs/1.22911!menu/standard/file/Ruggie%2C%20speech.pdf

http://www.se2009.eu/polopoly_fs/1.22912!menu/standard/file/Robinson%2C%20speech.pdf

http://www.se2009.eu/polopoly_fs/1.22913!menu/standard/file/Koc%2C%20speech.pdf

http://www.se2009.eu/polopoly_fs/1.22914!menu/standard/file/de%20Geus%2C%20speech.pdf

meeting of the European MSF on CSR. On 10 and 11 November 2009 the Swedish Presidency hosted a conference on CSR. Further details can be found in the December 2009 update.

Next steps

The Commission Work Programme indicates an intention to publish a Communication on CSR focusing on rebuilding trust in business on the part of European citizens. It would address the disclosure of environmental, social and governance information and on the relationship between business and human rights. It would also support international CSR instruments such as the UN Global Compact, the OECD Guidelines for Multinational Enterprises and the draft ISO standard on social responsibility.

FINANCIAL SERVICES

VI. PROPOSALS IN THE PIPELINE

1. Cross-border crisis management in banking

Proposal: Communication on cross-border crisis management in the banking sector.

Current Status: Communication published 20 October 2009,¹⁴³ accompanied by impact assessment,¹⁴⁴ staff working document¹⁴⁵ and consultation which closed 20 January 2010.¹⁴⁶ CEBS response to consultation 19 January 2010.¹⁴⁷ Commission conference 19 March 2010.¹⁴⁸ Commission working document on innovative financing 6 April 2010.¹⁴⁹ ***ECON draft report considered 12 April 2010.***¹⁵⁰ ***IMF report published 16 April 2010.***¹⁵¹ ***Council conclusions on crisis management 18 May 2010.***¹⁵²

Background

On 20 October 2009 the Commission published a Communication "An EU Framework for Cross-Border Crisis Management in the Banking Sector". This Communication has two purposes. The first is to provide regulators with adequate tools to identify problems within financial institutions at an early stage. The second is to look at ways of establishing a European framework in which a cross-border bank can fail without systemic disruption spreading through the broader financial system. A public consultation on this closed on 20 January 2010.

Progress

On 19 January 2010 the Committee of European Banking Supervisors (CEBS) responded to the Commission's consultation. On 19 March 2010 the Commission held a conference on a new crisis management framework. For more details of both of these see the April 2010 Update.

On 7 April 2010 the ECON Committee published a draft report. It recommends the establishment of an EU crisis management framework for systemic banks. It focuses on preserving the "public good" dimension of financial services rather than rescuing all individual

¹⁴³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0561:FIN:EN:PDF>

¹⁴⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:1389:FIN:EN:PDF>

¹⁴⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:1407:FIN:EN:PDF>

¹⁴⁶ http://ec.europa.eu/internal_market/consultations/2009/banking_crisis_management_en.htm

¹⁴⁷ <http://www.c-eps.org/documents/Publications/Other-Publications/Comment-letters-by-CEBS/Other-Areas/CEBSresponseCOMoncrisismanagement.aspx>

¹⁴⁸ http://ec.europa.eu/internal_market/bank/docs/crisis-management/conference20100319/programme_en.pdf

¹⁴⁹ http://ec.europa.eu/economy_finance/articles/international/documents/innovative_financing_global_level_sec2010_409en.pdf

¹⁵⁰ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-440.108+02+DOC+PDF+V0//EN&language=EN>

¹⁵¹ http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/2010_04_20_imf_g20_interim_report.pdf

¹⁵² http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/114504.pdf

financial institutions. The report supports the establishment of a Stability Fund which is privately funded and publicly managed rather than a bank levy. It states that the availability of funds is necessary for efficiency in intervention and a pan-European measure is the only way to overcome nationalistic behaviour when a crisis occurs. The report suggests a European Bank Corporate Law for all systemic banks to harmonise insolvency and bankruptcy rules. This should be lead by a resolution unit established within the European Banking Authority.

The draft report was considered in ECON on 12 April 2010. Some members expressed concern of the focus on systemic banks only and Peter Skinner (UK, S&D) noted that systemic banks should not just be cross-border banks as big banks within Member States, such as Northern Rock, can also cause major problems. The rapporteur herself admitted that the two-tier approach (systemic and non-systemic) may prove problematic but that it was a first step towards effective regulation. Kay Swinburne (UK, ECR) noted that in practice harmonising insolvency law would be difficult and that it would also be difficult for the EU to have a body big enough to supervise large banks.

On 6 April 2010 the Commission published a working document on "innovative financing", looking at the financial services sector and public finances. It included an examination of the possible taxation of financial institutions. It suggested that a "double dividend" could be gained in terms of both raising revenues and improving market efficiency and stability, notably by putting a price on risk-taking in the financial sector. It noted the importance of global coordination in this field but that consideration should be given to actions at the EU level.

The International Monetary Fund (IMF) presented a study to the G-20 meeting on 22 April 2010 entitled "a Fair and Substantial Contribution by the Financial Sector". The report proposes two distinct contributions from the financial sector. First it proposes a "Financial Stability Contribution" which would be a levy on all financial institutions at a flat rate but which would be refined over time to reflect risk. If further contributions were desired then a "Financial Activities Tax" could be levied on the profits and remunerations of financial institutions. The report was met with criticism from the banking sector which considers that the proposals would be unfairly punishing the sector without improving it.

The ECOFIN Council meeting on 18 May 2010 adopted conclusions on crisis prevention, management and resolution. This emphasises the importance of a comprehensive reform of the EU framework to address crisis prevention, management and resolution, which should allow Member States to coordinate action in relation to cross-border crises better in future. It goes on to set out some of the based elements of such an EU framework. It calls for a clear delineation of responsibilities between the various authorities that might be concerned. The Council goes on to welcome the Commission's communication in autumn 2010 and legislative proposals by spring 2011, noting that such a framework should be comprehensive.

Next steps

ECON is due to consider the draft report on 1 June 2010. Votes are scheduled in Committee on 22 June 2010 and in the plenary in September 2010. The Commission intends to publish a Communication on options for bank resolution funds as a crisis management tool in May 2010 and a Communication on crisis management in the autumn of 2010. It also indicates a possible legislative initiative on a framework for crisis management in 2011.

2. Derivatives markets

Proposal: Communication on ensuring efficient, safe and sound derivatives markets.

Current Status: Published 3 July 2009¹⁵³ with Staff Working Paper.¹⁵⁴ CESR response to consultation 14 September 2009.¹⁵⁵ Further Communication published 20 October 2009.¹⁵⁶ ESME views on cash settled derivatives November 2009.¹⁵⁷ ECOFIN Council Conclusions 2 December 2009.¹⁵⁸ European Council conclusions 11 December 2009.¹⁵⁹ Oral evidence given to UK House of Lords' Economic and Financial Affairs EU sub-committee by Lord Myners 2 February 2010¹⁶⁰ and International Swaps and Derivatives Association 9 February 2010.¹⁶¹ UK House of Lords report 31 March 2010.¹⁶² **IMF report April 2010.**¹⁶³ **ECON vote on draft report 4 May 2010.**¹⁶⁴ **ECON exchange of views on "dark pools" 26 April 2010.**

Related issues: Please refer to past updates for details of past CESR consultations. CESR consultation on guidance for OTC transaction reporting 29 January to 14 April 2010.¹⁶⁵

Background

On 3 July 2009, the Commission published its Communication on ensuring efficient, safe and sound derivatives markets. This looks at the role played by derivatives in the financial crisis and assesses how risks can be reduced. On 20 October 2009 the Commission published a further Communication entitled "Ensuring efficient, safe and sound derivatives markets: Future policy actions". The Commission's general approach is that market-based self regulation is no longer appropriate for the derivative markets. In particular, the Commission wants to steer the market away from the use of over-the-counter (OTC) trades towards a more centralised system of clearing and trading including the introduction of a central counterparty (CCP).

Progress

At its meeting of 2 December 2009 the ECOFIN Council invited the Commission to conduct a thorough impact assessment before proposing legislation. On 31 March 2010 the UK House of Lords' Economic and Financial Affairs EU sub-committee published its report "The future regulation of derivatives markets: is the EU on the right track?"

On 27 January 2010 the European Parliament's ECON Committee held a first exchange of views led by rapporteur Werner Langen (Germany, EPP). A detailed note of the meeting is available from the Brussels office. The draft report backs the call to standardise as many derivative products as possible and for the compulsory introduction of independent clearing between financial institutions for all standardised derivatives. It also backs the Commission's plan to assign certain regulatory functions regarding derivatives to ESMA and calls for credit default swaps (CDS) to be made subject to independent central clearing and, if necessary, restricted or prohibited. **The draft report was voted on in Committee on 4 May 2010 (document not yet available) and the vote in plenary is scheduled for 15 June 2010.**

¹⁵³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0332:FIN:EN:PDF>

¹⁵⁴ http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/report_en.pdf

¹⁵⁵ <http://www.cesr.eu/popup2.php?id=6053>

¹⁵⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0563:FIN:EN:PDF>

¹⁵⁷ http://ec.europa.eu/internal_market/securities/docs/esme/tdcash_en.pdf

¹⁵⁸ http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/111697.pdf

¹⁵⁹ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111877.pdf

¹⁶⁰ <http://www.publications.parliament.uk/pa/ld200910/ldselect/ldcom/999/correua020210ev1.pdf>

¹⁶¹ <http://www.publications.parliament.uk/pa/ld200910/ldselect/ldcom/999/correua090210ev2.pdf>

¹⁶² <http://www.publications.parliament.uk/pa/ld200910/ldselect/ldcom/93/93.pdf>

¹⁶³ <http://www.imf.org/external/pubs/ft/gfsr/2010/01/pdf/text.pdf>

¹⁶⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.493+01+DOC+PDF+V0//EN&language=EN>

¹⁶⁵ <http://www.cesr.eu/popup2.php?id=6479>

<http://www.cesr.eu/popup2.php?id=6478>

<http://www.cesr.eu/popup2.php?id=6480>

On 9 March 2010 Commission President Barroso stated that he would consider banning "naked" CDS selling, where investors do not own the underlying instruments of their investment. Commissioner Barnier has subsequently confirmed that he intends to bring forward a separate proposal on speculative trading in the autumn, focusing on CDS. Some MEPs voiced concern that there is little evidence that CDS have caused or aggravated the debt crisis in Greece. While the Commission is said to be in a fact-finding stage, leaders of a number of EU countries have written asking the Commission to consider minimum holding periods for CDS trading, banning both speculative trading and the acquisition of CDS that are not for hedging purposes.

The April 2010 Global Financial Stability Report of the International Monetary Fund states that banning "naked" CDS would be counterproductive and any new proposals should avoid interfering with efficient market functioning and good risk management practices. It states that policymakers should focus on improving already-existing CDS and bilateral OTC derivative contracts should move to central counterparties (CCPs). This could reduce volatility in the sovereign CDS market and also promote global financial stability.

On 26 April 2010 ECON held an exchange of views on "Regulation of trading in financial instruments – 'dark pools' etc". In line with the review of the Markets in Financial Instruments Directive (MiFID) next year, the draft report focuses on infrastructure, pre and post-trading rules and the assessment of whether MiFID provides adequate investor protection. The rapporteur stated that CESR is currently conducting a data capture exercise to see the volume of "dark" transactions (in other words without pre-trade transparency) and is collating data in this area which will soon be available to review.

At an Extraordinary meeting of the ECOFIN Council on 9 May 2010, Ministers emphasised the need for rapid progress on the issues of derivative markets.

Next steps

The Commission is expected to carry out a stakeholder consultation in spring 2010 with a view to preparing "markets infrastructure" legislation. This will look at technical aspects of future legislation, which should include: the obligation to clear through authorised CCPs CCP-eligible contracts; reporting requirements for non-CCP-eligible contracts; organisational, prudential and conduct of business requirements for CCPs; and requirements for trade repositories to ensure proper organisation and access to relevant information. Legislative proposals regarding CCP requirements and pre-trade transparency are expected by July 2010. Measures extending the Market Abuse Directive to cover OTC derivatives are expected by the end of 2010 and a public hearing on amending the Directive is to be organised in the summer. A subsequent public hearing on commodity derivatives and emission allowances derivatives markets will be held in the autumn of 2010 in order to assist in the development on regulation.

3. Clearing and Settlement

Proposal: Communication on Clearing and Settlement.¹⁶⁶

Current Status: Published April 2004. For past non-legislative actions and reports, please refer to previous updates. Council Conclusions 2 December 2009.¹⁶⁷
Consultation on Securities Law expected May - June 2010.

Background

The Communication on clearing and settlement was published in April 2004, and sets down a plan of actions necessary to create "an integrated, safe and efficient clearing and settlement environment for securities trading in the EU". A detailed analysis of the responses to the

¹⁶⁶ http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0312en01.pdf

¹⁶⁷ http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/111697.pdf

Communication has been published. A Legal Certainty Group was established to advise the Commission on issues of legal certainty relating to the EU's clearing and settlement system.

Further to a Commission consultation in the spring of 2009, the ECOFIN Council adopted conclusions on 2 December 2009 calling on the new Commission to continue work in this area and bring forward legislative proposals as soon as possible. The Commission is expected to hold a public consultation in May - June 2010 in preparation for drafting a "Securities Law Directive." This will be aimed at dealing with three different areas of legal uncertainty in the context of cross-border securities transactions: the methods of acquisition and disposition; the mechanisms to ensure correct processing of investors' rights through the holding chain; and the freedom for issuers to issue their securities into any central securities depository in the EU. The consultation will be on the basis of a text that is more detailed than that in the 2009 consultation.

4. Mortgage credit in the EU

Proposal: Green Paper on mortgage credit in the EU.

Current Status: White Paper¹⁶⁸ and impact assessment¹⁶⁹ 18 December 2007. Council conclusions on retail financial services 22 January 2008.¹⁷⁰ Report on equity release schemes 18 March 2009.¹⁷¹ Study and feedback on non-credit institutions in the mortgage market 30 March 2009.¹⁷²

Related issues: Expert Group on Credit Histories report 15 June 2009¹⁷³ and consultation which closed 31 August 2009.¹⁷⁴ Summary of responses to consultation on responsible lending and borrowing 30 November 2009.¹⁷⁵ Commission paper on best practices expected second quarter 2010.

Background

The White Paper studies methods of increasing market transparency and ensuring consumers have a greater level of certainty as regards the recovery value of their mortgage investment.

Responsible lending and borrowing

The Commission held a public hearing on 3 September 2009 – information on this is available from the Brussels office. On 30 November 2009 the Commission published a summary of the responses to its consultation on responsible lending and borrowing. It shows that consumer groups, the financial services sector and national authorities remain divided on the need to introduce revised rules on mortgage lending in the EU to protect consumers.

Credit histories

On 15 June 2009, the Commission published the report of an Expert Group on Credit Histories. For details of the report, please refer to the October 2009 update.

Next steps

The Commission's working paper on best practices aimed at avoiding foreclosure procedures for mortgages is expected in the second quarter of 2010. The Commission Work Programme indicates a non-legislative proposal on responsible lending and borrowing. **Professor Monti's report on the single market recommends greater integration in the retail banking sector.**

¹⁶⁸ http://ec.europa.eu/internal_market/finservices-retail/docs/home-loans/com_2007_807_en.pdf

¹⁶⁹ http://ec.europa.eu/internal_market/finservices-retail/docs/home-loans/sec_2007_1683_en.pdf

¹⁷⁰ http://www.consilium.europa.eu/cms3_applications/Applications/newsRoom/LoadDocument.asp?directory=en/ecofin/&filename=98276.pdf

¹⁷¹ http://ec.europa.eu/internal_market/finservices-retail/credit/mortgage_en.htm#studies

¹⁷² http://ec.europa.eu/internal_market/finservices-retail/credit/mortgage_en.htm#studies

¹⁷³ http://ec.europa.eu/internal_market/consultations/docs/2009/credit_histories/egch_report_en.pdf

¹⁷⁴ http://ec.europa.eu/internal_market/consultations/2009/credit_histories_en.htm

¹⁷⁵ http://ec.europa.eu/internal_market/finservices-retail/docs/credit/resp_lending/feedback_summary_en.pdf

5. Packaged retail investment products

Proposal: Communication on packaged retail investment products.

Current Status: Published 29 April 2009.¹⁷⁶ Impact assessment 29 April 2009.¹⁷⁷ Council conclusions 9 June 2009.¹⁷⁸ Workshop on packaged retail investment products 22 October 2009.¹⁷⁹ Issues paper for workshop 22 October 2009.¹⁸⁰ Commission progress report 16 December 2009.¹⁸¹

Progress

The Commission published a document on 16 December 2009 providing an update on its work on this issue. The paper sets out a few preliminary conclusions as to scope, pre-contractual disclosure and selling practices based on its consultation. It stated, however, that it is still completing its analysis of the responses to the consultation. A horizontal legislative measure is being drafted and a consultation on the draft is expected in the coming months. The Commission noted the need to coordinate with the ongoing reviews of other EU legislation, including the Prospectus Directive. The Commission Work Programme indicates an intention to publish a Communication on Retail Market Monitoring to identify market malfunctioning of the retail sector and ensure effective and co-ordinated multi-faceted policy responses.

6. Sovereign Wealth Funds (SWFs)

Proposal: Communication on the adoption of a common EU approach on SWFs.

Current Status: Published 27 February 2008.¹⁸² Council conclusions 13 March 2008.¹⁸³

Background

For details, please refer to the January 2010 update.

7. European Parliament Special Committee on financial and economic crisis

CRIS: Established 7 - 8 October 2009. Meetings 4 and 10 November, and 1 December 2009 (notes from Brussels office).¹⁸⁴ Work Programme December 2009.¹⁸⁵ Meetings on social impact of the crisis 28 January 2010¹⁸⁶ and impact of the crisis on SMEs 1 February 2010.¹⁸⁷ Working documents on the social impact of the crisis¹⁸⁸ and financial regulation and supervision.¹⁸⁹ Public hearings on financial regulation and

¹⁷⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0204:FIN:EN:PDF>

¹⁷⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:0556:FIN:EN:PDF>

¹⁷⁸ <http://register.consilium.europa.eu/pdf/en/09/st10/st10496.en09.pdf>

¹⁷⁹ http://ec.europa.eu/internal_market/finservices-retail/investment_products_en.htm#wkshop

¹⁸⁰ http://ec.europa.eu/internal_market/finservices-retail/docs/investment_products/2009-10-22_prips_en.pdf

¹⁸¹ http://ec.europa.eu/internal_market/finservices-retail/docs/investment_products/20091215_prips_en.pdf

¹⁸² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0115:FIN:EN:PDF>; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0122:FIN:EN:PDF>

¹⁸³ http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/99410.pdf

¹⁸⁴ <http://www.europarl.europa.eu/activities/committees/homeCom.do?sessionId=910AE13ECA5C027B9982C0ABBF193F29.node1?language=EN&body=CRIS>

¹⁸⁵ <http://www.europarl.europa.eu/document/activities/cont/200912/20091216ATT66595/20091216ATT66595EN.pdf>

¹⁸⁶ <http://www.europarl.europa.eu/document/activities/cont/201001/20100129ATT68220/20100129ATT68220EN.pdf>

¹⁸⁷ <http://www.europarl.europa.eu/document/activities/cont/201002/20100201ATT68329/20100201ATT68329EN.pdf>

¹⁸⁸ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.384+02+DOC+PDF+V0//EN&language=EN>

¹⁸⁹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-439.350+01+DOC+PDF+V0//EN&language=EN>

supervision 23 February 2010¹⁹⁰ and global governance 25 March 2010.¹⁹¹ **Further working documents published.**¹⁹²

The European Parliament established a special committee on the financial and economic crisis (CRIS) on 8 October 2009. Notes of some previous CRIS meetings are available from the Brussels office. 23 February 2010 CRIS held a public hearing on financial regulation and supervision. Panel discussions included to what extent financial regulation and supervision failed in preventing the crisis and what the future model for Europe should be. Mr Klinz, as chairman of the Committee, noted that there seemed to be a cross-party consensus, both in CRIS and ECON, that supranational supervision was required in the EU despite the reservations of Member States on this issue. Experts present at the hearing expressed doubts about both the viability and the value of drawing up a list of systemically important institutions.

On 25 March 2010 CRIS held a public hearing on global governance. The hearing focused on "global imbalances" and the impact of the crisis on developing countries and trade. The rapporteur is expected to present her draft report to the Committee on 20 May 2010. The report is scheduled to be voted on in Committee on 13 July 2010 and in plenary in September 2010.

In April 2010 CRIS published a number of working documents on various aspects of the financial crisis. On 6 May 2010 there was an exchange of views on the latest working document on economic exit strategies: financial and monetary aspects, SMEs, innovation and new opportunities for sustainable growth.

VII. LEGISLATIVE PROPOSALS IN PROGRESS

1. European system of financial regulation

Proposal: Proposals for Regulations establishing a system of European financial supervisors.

Current Status: De Larosière Report on EU financial supervision published 25 February 2009.¹⁹³ LSEW Response to Communication July 2009.¹⁹⁴

Commission proposals for Regulations establishing a European Systemic Risk Board (ESRB),¹⁹⁵ a European Banking Authority (EBA),¹⁹⁶ a European Insurance and Occupational Pensions Authority (EIOPA)¹⁹⁷ and a European Securities and Markets Authority (ESMA).¹⁹⁸ Proposal for Decision entrusting the ECB with specific tasks concerning ESRB,¹⁹⁹ accompanied by impact assessment²⁰⁰ and summary.²⁰¹

¹⁹⁰ http://www.europarl.europa.eu/meetdocs/2009_2014/documents/cris/dv/public_hearing_25_2_2010/public_hearing_25_2_2010en.pdf

¹⁹¹ <http://www.europarl.europa.eu/document/activities/cont/201003/20100319ATT71041/20100319ATT71041EN.doc>

¹⁹² <http://www.europarl.europa.eu/activities/committees/workingDocsCom.do?language=EN&body=CRIS>

¹⁹³ http://ec.europa.eu/internal_market/finances/docs/de_Larosiere_report_en.pdf

¹⁹⁴ [http://international.lawsociety.org.uk/files/Law%20Society%20\(E&W\)%20Response%20-%20Financial%20Services%20Architecture%20-%20July%202009.pdf](http://international.lawsociety.org.uk/files/Law%20Society%20(E&W)%20Response%20-%20Financial%20Services%20Architecture%20-%20July%202009.pdf)

¹⁹⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0499:FIN:EN:PDF>

¹⁹⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0501:FIN:EN:PDF>

¹⁹⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0502:FIN:EN:PDF>

¹⁹⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0503:FIN:EN:PDF>

¹⁹⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0500:FIN:EN:PDF>

²⁰⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:1234:FIN:EN:PDF>

²⁰¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:1235:FIN:EN:PDF>

Presidency compromise regarding ESRB²⁰² and entrusting certain tasks to ECB²⁰³ agreed at ECOFIN Council 20 October 2009.²⁰⁴ European Council conclusions 29-30 October 2009.²⁰⁵ Presidency compromise texts on EBA,²⁰⁶ EIOPA²⁰⁷ and ESMA²⁰⁸ 2 December 2009.²⁰⁹ Letter from President of ECOFIN Council to European Council 9 December 2009.²¹⁰ European Council conclusions 11 December 2009.²¹¹ Minor corrigenda to ESMA and EIOPA Presidency compromise texts 16 December 2009.²¹² Proposal to entrust certain tasks regarding ESRB to ECB modified 21 January 2010.²¹³ ESRB proposal modified 21 January 2010.²¹⁴

UK House of Commons Treasury Committee's reports 11²¹⁵ and 24²¹⁶ November 2009 debated 1 December 2009.²¹⁷ UK House of Lords letter to Lord Myners 25 November 2009.²¹⁸

Legal Affairs Committee adopted opinions on 28 April 2010 on EBA,²¹⁹ EIOPA,²²⁰ ESMA²²¹ and ESRB.²²² Reports of ECON on Council Regulation entrusting tasks to ECB,²²³ ESRB,²²⁴ EIOPA,²²⁵ ESMA,²²⁶ and EBA²²⁷ voted on 10 May 2010.²²⁸

Related issue: CESR call for evidence on cross-sectoral governance issues 18 December 2009 to 9 April 2010.²²⁹ ECB Opinion on ESA proposals 8

²⁰² <http://register.consilium.europa.eu/pdf/en/09/st14/st14038-re01.en09.pdf>
²⁰³ <http://register.consilium.europa.eu/pdf/en/09/st14/st14493-co01.en09.pdf>
²⁰⁴ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/110622.pdf
²⁰⁵ http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/110889.pdf
²⁰⁶ <http://register.consilium.europa.eu/pdf/en/09/st16/st16748-re01.en09.pdf>
Corrigendum: <http://register.consilium.europa.eu/pdf/en/09/st16/st16748-re01co01.en09.pdf>
²⁰⁷ <http://register.consilium.europa.eu/pdf/en/09/st16/st16749-re01.en09.pdf>
²⁰⁸ <http://register.consilium.europa.eu/pdf/en/09/st16/st16751-re01.en09.pdf>
²⁰⁹ http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/111668.pdf
²¹⁰ <http://register.consilium.europa.eu/pdf/en/09/st17/st17398.en09.pdf>
²¹¹ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111877.pdf
²¹² ESMA: <http://register.consilium.europa.eu/pdf/en/09/st16/st16751-re01co01.en09.pdf>
EIOPA: <http://register.consilium.europa.eu/pdf/en/09/st16/st16749-re01co01.en09.pdf>
²¹³ <http://register.consilium.europa.eu/pdf/en/10/st05/st05551.en10.pdf>
²¹⁴ <http://register.consilium.europa.eu/pdf/en/10/st05/st05554.en10.pdf>
²¹⁵ <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/1088/1088.pdf>
²¹⁶ <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmtreasy/37/37.pdf>
²¹⁷ <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091201/debtext/91201-0006.htm#09120144000001>
²¹⁸ <http://www.parliament.uk/documents/upload/20091125Myners1.pdf>
²¹⁹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.267+02+DOC+PDF+V0//EN&language=EN>
²²⁰ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.266+03+DOC+PDF+V0//EN&language=EN>
²²¹ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-430.969+02+DOC+PDF+V0//EN&language=EN>
²²² <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.153+02+DOC+PDF+V0//EN&language=EN>
²²³ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.515+01+DOC+PDF+V0//EN&language=EN>
²²⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.496+01+DOC+PDF+V0//EN&language=EN>
²²⁵ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.410+01+DOC+PDF+V0//EN&language=EN>
²²⁶ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.409+01+DOC+PDF+V0//EN&language=EN>
²²⁷ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.408+01+DOC+PDF+V0//EN&language=EN>
²²⁸ http://www.europarl.europa.eu/meetdocs/2009_2014/organes/econ/econ_20100510_1500.htm
²²⁹ http://www.cesr.eu/index.php?page=consultation_details&id=155

January 2010.²³⁰ CESR new working structures 19 January 2010.²³¹
Speech of CEBS Chairman 26 January 2010.²³² (See February 2010
update for more details).

Background

On 23 September 2009 the Commission proposed "Supervision Proposals" for a Regulation establishing a European Systemic Risk Board (ESRB) (and a Decision entrusting certain tasks regarding the functioning of the ESRB to the ECB) and three further Regulations establishing a European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and European Securities and Markets Authority (ESMA). The EBA, ESMA and EIOPA will together be referred to as the "ESAs". For a brief overview of the proposed ESRB and ESAs, please refer to November 2009 update.

Progress

On 20 October 2009 the Economic and Financial Affairs Council (ECOFIN) reached broad agreement on the proposal for the creation of the ESRB and the draft Decision (now reformulated as a Council Regulation following the entry into force of the Treaty of Lisbon) regarding the ECB's support role. On 2 December 2009 ECOFIN reached general agreement on the supervisory authorities. For further details see the February 2010 update.

The European Parliament's ECON Committee held a public hearing on the Supervision Proposals on 27 January 2010. Jacques de Larosière (Chairman of the De Larosière Group) spoke at the hearing. Further details can be found in the February 2010 update and a detailed note is available from the Brussels office on request. ***On 28 April 2010 the European Parliament's Legal Affairs Committee adopted opinions in relation to proposals for the three ESAs and the ESRB.***

On 10 May 2010 ECON voted on the draft reports on the ECB; the ESRB and the three ESAs. The reports go further than the Commission proposals and set up an integrated system of financial supervision with the supervisory bodies all based in Frankfurt. The aim is to create a single rule book for the insurance, banking and investment sectors. With the texts as adopted (not yet available) the ESAs would have the power to draw up draft regulatory financial standards which would be endorsed by the Commission and issue legally binding decisions to national supervisory authorities that do not conform with EU law. The ESAs and ESRB would be empowered to carry out "stress tests" on financial institutions and evaluate the availability and cost of credit to SMEs.

The ESAs would be able to supervise directly systemically-important cross-border financial institutions and national supervisors would act as agents of the EU authorities. The institutions would have binding mediation powers to solve conflicts between national supervisors and ESMA would have the power to ban certain financial products on a temporary basis if it considers they pose too much risk. Two funds would be set up: a European deposit guarantee fund and a European stability fund. Institutions supervised at an EU level will be obliged to contribute to such funds.

Professor Monti's report on the single market cautions the Council against giving in to pressure from Member States to protect national supervisory competences as this would result in a more fragmented and vulnerable single market.

²³⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:013:0001:0009:EN:PDF>

²³¹ <http://www.cesr.eu/popup2.php?id=6474>

²³² <http://www.c-eps.org/documents/News---Communications/speeches/2010/ECONpublichearing.aspx>

Next steps

Negotiation will now begin between MEPs and the Council. The plenary vote in Parliament is scheduled for June 2010 so that the bodies can be established in 2011.

2. "Omnibus" Directive

Proposal: Proposal to amend existing legislation in light of Supervision Proposals

Current Status: Commission working document on changes to financial services legislation, 23 September 2009.²³³ Proposal to amend existing legislation 26 October 2009.²³⁴ **Revised Presidency compromise²³⁵ and invitation for general approach²³⁶ 9 April 2010. UK Statement 13 April 2010.²³⁷ Legal Affairs Committee opinion adopted 28 April 2010.²³⁸ ECON vote on draft report 10 May 2010.²³⁹**

Related issues: Omnibus II Directive exchange of views 23 February 2010.

Background

On 26 October 2009 the Commission published a proposal for amendments to be made to a number of existing Directives on securities law in light of the Supervision Proposals (the so-called "Omnibus Directive").

Progress

The Council Working Party on Financial Services met to discuss the Omnibus Directive proposal on 10 February 2010. **On 9 April 2010 the Spanish Presidency published a revised compromise text. The amendments largely relate to technical standards and include the power of the ESAs to issue guidelines and recommendations addressed to competent authorities or financial institutions. On the same date the Committee of Permanent Representatives invited the Council to adopt a general approach. On 13 April 2010 a UK statement was published which states that more control should be retained by Member States, the European Parliament and the Council.**

On 28 April 2010 the Legal Affairs Committee adopted an opinion and on 10 May 2010 the ECON Committee voted on the draft report (document not yet available). The ECON report is due to be voted on in the plenary in June 2010.

Related

Two further omnibus directives are also in the pipeline - one relating to banking and UCITS and one relating to insurance and MiFID. Burkhard Balz (Germany, EPP) has been nominated as rapporteur. On 23 November 2009 and 23 February 2010 the ECON Committee held initial exchanges of views on this so-called "Omnibus II Directive".

3. Capital Requirements Directive III

Proposal: Proposal for a Directive to amend the Capital Requirements Directive.

²³³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:1233:FIN:EN:PDF>

²³⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0576:FIN:EN:PDF>

²³⁵ <http://register.consilium.europa.eu/pdf/en/10/st08/st08382.en10.pdf>

²³⁶ <http://register.consilium.europa.eu/pdf/en/10/st08/st08384.en10.pdf>

²³⁷ <http://register.consilium.europa.eu/pdf/en/10/st08/st08384-ad01.en10.pdf>

²³⁸ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.379+02+DOC+PDF+V0//EN&language=EN>

²³⁹ http://www.europarl.europa.eu/meetdocs/2009_2014/documents/econ/pr/806/806661/806661en.pdf

Current Status: Proposal published 13 July 2009.²⁴⁰ Presidency compromise 28 October 2009.²⁴¹ ECOFIN general approach 10 November 2009.²⁴² ECB opinion 12 November 2009.²⁴³ **Opinions adopted in Parliament's Legal Affairs Committee 23 March 2010²⁴⁴ and Employment Committee 17 March 2010.²⁴⁵ ECON Committee draft report considered 26 April 2010.²⁴⁶**

Related issues: **CEBS consultation on capital instruments under the CRD closed 31 March 2010.** Public hearings on consultation 23 February 2010,²⁴⁷ the Operational Functioning of Colleges 11 March 2010²⁴⁸ and on high-level principles for risk management 16 February 2010.²⁴⁹ **Consultation on capital adequacy of cross-border groups launched 7 April 2010.²⁵⁰**

Background

The Commission published a proposal to amend the Capital Requirements Directive (CRD) on 13 July 2009. The aim is to ensure adequate risk management and capital requirements for positions held by banks on their trading books as well as ensuring adequate diligence, information and transparency requirements in relation to securitisation. The proposal also touches on remuneration policies. For further details please see the November 2009 update.

Progress

The general approach was confirmed by the ECOFIN Council on 10 November 2009. A Common Position cannot be adopted while Parliament's report is still pending. A corrigendum to the general approach notes that the UK maintained its Parliamentary scrutiny reservation.

Opinions in the Parliament's Employment and Social Affairs Committee and Legal Affairs Committee were adopted on 17 and 23 March 2010 respectively. The ECON Committee held an exchange of views on 26 January 2010. For more details please see the February 2010 Update. **The draft report was considered in the ECON Committee on 26 April 2010. The rapporteur Arlene McCarthy (S&D) stated that banks have lobbied for a delay in implementation and noted that on 9 April 2010 the Basel Committee favoured a phasing-in of CRD III. The Committee Members debated the merits of postponing implementation but Vicky Ford (UK, ECR) stated that UK financial institutions still favoured implementation by 1 January 2011. The rapporteur stated her intention to continue to aim for a vote in Committee in June 2010 and in the plenary in July 2010. She stated that the banks had not provided reasons why they could not implement the rules in time.**

Next steps

The Presidency will commence negotiations with the Parliament once the draft report is adopted in ECON. The Commission Work Programme indicates the Commission should publish a report on the review of securitisation retention following concerns raised under the CRD review.

²⁴⁰ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0362:FIN:EN:PDF>

²⁴¹ <http://register.consilium.europa.eu/pdf/en/09/st14/st14732.en09.pdf>

²⁴² http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/111006.pdf

Corrigendum: <http://register.consilium.europa.eu/pdf/en/09/st15/st15126-re01co01re01.en09.pdf>

²⁴³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:291:0001:0006:EN:PDF>

²⁴⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.167+02+DOC+PDF+V0//EN&language=EN>

²⁴⁵ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-430.995+02+DOC+PDF+V0//EN&language=EN>

²⁴⁶ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-439.301+03+DOC+PDF+V0//EN&language=EN>

²⁴⁷ <http://www.c-eps.org/documents/About-us/Key-dates/2010/20100226--hearing-on-art57a---note-of-meeting-fina.aspx>

²⁴⁸ <http://www.c-eps.org/documents/Publications/Consultation-papers/2009/CP34/Summary-of-public-hearing-CP34.aspx>

²⁴⁹ <http://www.c-eps.org/documents/Publications/Consultation-papers/2009/CP35/SummaryofPHonCP35.aspx>

²⁵⁰ <http://www.c-eps.org/documents/Publications/Consultation-papers/2010/CP39/CP39.aspx>

Related

On 16 February 2010 the Committee of European Banking Supervisors (CEBS) published its high-level principles for risk management. These are intended to provide enhancements in the risk management procedures of financial institutions and seek to make decisions dependant on qualitative assessments rather than merely quantitative analyses. CEBS expects this to be applied to the approval process of new products and calls on its members to implement the principles by 31 December 2010. On 23 February 2010 CEBS held a public hearing on the consultation and on 11 March 2010 held a public hearing on the guidelines for the Operational Functioning of Colleges. On 9 March 2010 CEBS held a public hearing on guidelines on risk management in market related activities. ***A consultation by CEBS on draft implementation guidelines on capital instruments under the CRD closed on 31 March 2010.***

On 7 April 2010 CEBS launched a consultation on draft guidelines on joint assessment and joint decision regarding the capital adequacy of cross-border groups. This aims to facilitate a common understanding within colleges of the results of risk assessments and a compliance with various minimum requirements of the CRD. The consultation is open until 9 July 2010 and there will be a public hearing on 3 June 2010.

4. Capital Requirements Directive IV

Proposal: Proposal for a Directive to amend the Capital Requirements Directive.

Related issues: Commission consultation on further amendments to Capital Requirements Directive closed 16 April 2010.²⁵¹ Public hearing 26 April 2010.²⁵² ***ECON exchange of views 26 April 2010. Michel Barnier speech 26 April 2010.***²⁵³

Background

The Commission consultation on further possible changes to the Capital Requirements Directive closed on 16 April 2010. It will form the basis of a proposal for a CRD IV. It refers to possible changes to liquidity standards, definition of capital, leverage ratio, counterparty credit risk, counter-cyclical measures including through-the-cycle provisioning for expected credit losses, systematically important financial institutions and single rule book in banking.

On 26 April 2010 the Commission held a public hearing on CRD IV open to all stakeholders who responded to the consultation. On the same date at the Annual Financial Services Conference, Commissioner Barnier stated that he had received nearly 150 replies to the consultation. He stated his intent to make the necessary proposals by the end of 2010 on bank capital requirements. He said he was taking into account "the latest thinking at international level" and working with the Basel Committee on issues such as liquidity management, leverage ratios and pro-cyclicality.

On 26 April 2010 the European Parliament's ECON Committee held an exchange of views on CRD IV. The rapporteur noted that there were a number of discussions happening in parallel in the EU and on the global stage. He felt that a thorough impact assessment was required. Other Members debated the need to define capital and the need for harmonised accounting standards. A public hearing was held in ECON on 3 May 2010.

²⁵¹ http://ec.europa.eu/internal_market/consultations/2010/crd4_en.htm

²⁵² http://ec.europa.eu/internal_market/bank/docs/regcapital/CRD4_hearing_26042010/agenda_en.pdf

²⁵³ <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/178&format=HTML&aged=0&language=EN&guiLanguage=en>

Next Steps

The Commission Work Programme sets out its intention to amend CRD IV in the fourth quarter of 2010 with the aim to update the legislative framework in response to the crisis and to promote financial stability in the EU. ***The ECON draft report is due to be presented in May 2010 with a view to be considered in June 2010, voted on in Committee in September 2010 and in the plenary in October 2010.***

5. Alternative investment funds

Proposal: Proposal for a Directive on alternative investment fund managers (AIFM).

Current Status: Commission proposal 29 April 2009.²⁵⁴ ECON hearing 10 November 2009. House of Lords letter to Lord Myners 10 December 2009.²⁵⁵ Parliament impact assessments November²⁵⁶ and December 2009.²⁵⁷ ECB opinion OJ C 272/1 11 November 2009.²⁵⁸ European Council conclusions 11 December 2009.²⁵⁹ Corrected oral evidence to UK House of Lords Committee 8 January 2010.²⁶⁰ Report of UK House of Lords European Scrutiny Committee 10 February 2010.²⁶¹ ECON consideration of amendments 23 February and 17 March 2010.²⁶² ***G20 meeting 23 April 2010.***²⁶³ ***Legal Affairs Committee opinion adopted 28 April 2010.***²⁶⁴ ***ECON vote 17 May 2010 (text not available).***²⁶⁵ ***Council general approach 18 May 2010.***²⁶⁶

Background

On 29 April 2009, the Commission published a proposal for a Directive on alternative investment fund managers (AIFM). AIFM include hedge fund and private equity managers. For details of the initial proposal see the April 2010 Update.

Progress

The Legal Affairs Committee adopted an opinion on 28 April 2010. It notes that by seeking to regulate fund managers and not funds themselves the Commission proposal leaves open a number of loopholes. It states that it is impossible to determine whether a firm is systemically important and notes that thresholds in this regard could lead to loopholes with firms dividing into smaller units. It calls for an increased requirement for transparency and oversight and stricter rules on leveraging, including for SMEs.

A report was subsequently adopted in Parliament's ECON Committee on 17 May 2010. This changes the Commission's proposal to increase disclosure and reporting requirements. However, it allows a lesser degree of regulation for private equity and other non-systemically important AIFs and a system of proportionality. Other new rules

²⁵⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0207:FIN:EN:PDF>

²⁵⁵ <http://www.parliament.uk/documents/upload/20091210Mynersnosignaifmd.pdf>

²⁵⁶ <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=28268#search=%20Alternative%20investment%20fund%20managers%20>

²⁵⁷ <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=28451#search=%20Alternative%20investment%20fund%20managers%20>

²⁵⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:272:0001:0007:EN:PDF>

²⁵⁹ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111877.pdf

²⁶⁰ <http://www.publications.parliament.uk/pa/ld200910/ldselect/ldcom/999/eua241109ev10.pdf>

²⁶¹ <http://www.publications.parliament.uk/pa/ld200910/ldselect/ldcom/48/48i.pdf>

²⁶² http://www.europarl.europa.eu/meetdocs/2009_2014/documents/econ/pr/796/796533/796533en.pdf

²⁶³ http://www.g20.org/Documents/201004_communique_WashingtonDC.pdf

²⁶⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-438.149+03+DOC+PDF+V0//EN&language=EN>

²⁶⁵ http://www.europarl.europa.eu/news/expert/infopress_page/042-74646-137-05-21-907-20100517IPR74645-17-05-2010-2010-false/default_en.htm

²⁶⁶ <http://register.consilium.europa.eu/pdf/en/10/st06/st06795-re03.en10.pdf>

include provisions on remuneration, a ban on naked short-selling and restrictions on marketing to retail investors. Third-country fund managers would be able to volunteer to subject themselves to the EU regime and it is said supervisors in the relevant third country would have to act on behalf of EU supervisors in supervising that AIFM. Funds from third countries can be marketed in the EU if they meet certain standards in relation to anti-money laundering and terrorist financing legislation, reciprocal treatment of EU funds and exchange of information arrangements in relation to taxation.

Other provisions suggested by the Committee relate to: notification requirements on private equity firms that reach specified thresholds in relation to their percentage of voting rights in non-listed companies; allowing AIFM to decide their own leverage limits; the delegation of tasks by depositaries and their liability; and the introduction of a new €10 million cap on certain extra capital requirements.

The following day, the Council of Ministers agreed a general approach in relation to the proposal. This agreed position will allow it to enter into negotiations with the Parliament with a view to the two institutions agreeing a text at first reading. There are a number of differences between the two positions. In particular an EU-based AIFM could market third-country funds if they comply with only certain provisions of the Directive and the Member State concerned allows this. A non-EU AIFM could do so based on the adequacy of information given to investors and competent authorities and the existence of cooperation arrangements between the EU and third-country authorities concerned with a view to monitoring systemic risk. Non-EU AIFM would not be entitled to passport around EU Member States, but would instead have to register in each one where they did business. The UK's ongoing concerns about third-country related rules were noted in the conclusions adopted.

Next steps

Discussions between representatives from the Parliament and Council are due to start their discussions on this matter on 31 May 2010. Their intention will be to reach a joint text of the legislation, which can then be approved by both institutions at the first reading stage.

VIII. IN FORCE

1. Regulation of UCITS

Legislation: Directive 2009/65 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) published OJ L 302/32 of 17 November 2009.²⁶⁷

Current status: White Paper published 16 November 2006, including impact assessment and external studies.²⁶⁸ Communication on UCITS marketing 19 March 2007.²⁶⁹ Commission Directive 2007/16 implementing Directive 85/611 on the coordination of laws, regulations and administrative provisions relating to UCITS as regards the clarification of certain definitions ("eligible assets") published OJ L 79/11 20 March 2007.²⁷⁰

²⁶⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0032:0096:EN:PDF>

²⁶⁸ http://ec.europa.eu/internal_market/securities/ucits/index_en.htm#061116

²⁶⁹ http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0112en01.pdf

²⁷⁰ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_079/l_07920070320en00110019.pdf

Related issues: Details of past CESR guidelines and advice, as well as non-legislative action by the Commission can be found in the January 2010 update. Report on open hearing on non-harmonised funds 8 April 2008.²⁷¹ Commission impact assessment report on private placement 17 July 2008.²⁷² Commission consultation on depositary functions closed 15 September 2009.²⁷³ Commission summary of responses to consultation November 2009.²⁷⁴ CESR responses to consultation on common definition of money market funds 6 January 2010.²⁷⁵ CESR review of guidelines on notification procedures 29 January 2010.²⁷⁶

Background

The White Paper on asset management was published by the Commission on 16 November 2006. The key initiatives set out in the White Paper are detailed in the January 2007 update.

Progress

Directive 2009/65 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) was published in the Official Journal on 17 November 2009 and is due to be implemented by Member States by 1 July 2011.

Related issues

The Commission published a summary of responses to its consultation on the UCITS depository function in November 2009. For details please refer to the December 2009 update. On 6 January 2010 CESR published the responses to its consultation on a common definition of European money market funds. On 29 January 2010 CESR published a report on the results of its peer review on the application of its guidelines to simplify the notification procedures of UCITS. The Commission Work Programme sets out its intention to review the Directive to increase investor protection and create a level playing field for UCITS investors across Europe.

2. Capital Requirements Directive II

Legislation: Directive 2009/111 amending Directives 2006/48, 2006/49 and 2007/64 as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management published OJ L 302/97 of 17 November 2009.²⁷⁷

Background

The first of the Capital Requirements Directives to be adopted during the financial crisis, CRD II is to be implemented by Member States by 31 December 2010. Amending existing Directives 2006/48, 2006/49 and 2007/64, it amends provisions on own funds, large exposures, supervisory arrangements, qualitative standards for liquidity risk management and securitisation. Two further proposals to amend the CRD are being considered (see above).

²⁷¹ http://ec.europa.eu/internal_market/investment/docs/consultations/080408flash-report_en.pdf

²⁷² http://ec.europa.eu/internal_market/investment/docs/legal_texts/ia_private-placement_en.pdf

²⁷³ http://ec.europa.eu/internal_market/consultations/docs/2009/ucits/consultation_paper_en.pdf

²⁷⁴ http://ec.europa.eu/internal_market/consultations/docs/2009/ucits/feedback_statement_en.pdf

²⁷⁵ <http://www.cesr.eu/index.php?page=responses&id=151>

²⁷⁶ <http://www.cesr.eu/popup2.php?id=6476>

²⁷⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0097:0119:EN:PDF>

3. Credit rating agencies

Legislation: Regulation 1060/2009 on credit ratings agencies published OJ L 302/1 of 17 November 2009.²⁷⁸ Corrigendum published OJ L 250/59 on 29 December 2009.²⁷⁹

Related issues: Responses to CESR call for evidence 20 August 2009.²⁸⁰ Responses to CESR consultations on a central repository 12 August 2009²⁸¹ and registration and supervisions of CRAs January 2010.²⁸² CESR hearing 23 November 2009. CESR Q and A document 8 March 2010.²⁸³ **CESR consultations on guidance 17 May 2010.**²⁸⁴

Regulation 1060/2009 on credit ratings agencies (CRAs) was published in the Official Journal on 17 November 2009 and most of its provisions entered into force on 7 December 2009. However Articles 4(1) and much of Article 4(3), which deal with the use of credit ratings, apply from 7 December 2010 and 7 June 2011 respectively. For details see December 2009 update.

On 17 May 2010 CESR published two guidance documents that are open for comment until 18 June 2010. One relates to common standards for assessment of compliance of credit rating methodologies with the requirements set out in Article 8(3) of the Regulation. The second concerns enforcement practices and activities to be conducted under Article 21(3)(a) of the Regulation.

On 4 May 2010 Commissioner Barnier and some leading European politicians including Angela Merkel (Germany) came out in favour of setting up a European credit rating agency. Mr Barnier stated that an objective, pan-EU body was necessary and said he would be looking into whether this should be government owned and if so to what extent. He has also been reported as noting that EU legislation was necessary to put in place a more exact methodology in relation to the rating of sovereign risk. The need for rapid progress in relation to the role of rating agencies was also noted in the conclusions to an extraordinary meeting of the ECOFIN Council on 9 May 2010.

Related

CESR published the responses to its consultation on implementing and coordinating measures in January 2010. A frequently asked questions document agreed between CESR Members was published on 8 March 2010. The Commission Work Programme indicates a possible further legislative proposal on CRAs to increase supervision and investor confidence.

4. Deposit-guarantee schemes

Legislation: Directive 2009/14 amending Directive 94/19 on deposit-guarantee schemes as regards the coverage level and the payout delay.

Current Status: Published OJ L 68/3, 13 March 2009.²⁸⁵ Financial Services Authority consultation on temporary high deposit balances 31 March 2009.²⁸⁶ Law Society of England and Wales response to Commission consultation July

²⁷⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0001:0031:EN:PDF>

²⁷⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:350:0059:0059:EN:PDF>

²⁸⁰ <http://www.cesr.eu/index.php?page=responses&id=141>

²⁸¹ <http://www.cesr.eu/index.php?page=responses&id=145>

²⁸² <http://www.cesr.eu/index.php?page=responses&id=152>

²⁸³ <http://www.cesr.eu/popup2.php?id=6490>

²⁸⁴ <http://www.cesr.eu/popup2.php?id=6634> and <http://www.cesr.eu/popup2.php?id=6635>

²⁸⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:068:0003:0007:EN:PDF>

²⁸⁶ http://www.fsa.gov.uk/pages/Library/Policy/CP/2009/09_11.shtml

2009.²⁸⁷ Summary of Commission consultation 27 August 2009.²⁸⁸
Commission Communication on cross-border crisis management in the
banking sector 20 October 2009.²⁸⁹

Background

In light of the financial crisis the EU moved quickly in 2008 to propose and then adopt rules to increase the protection of deposits in failing banks. This requires the minimum amount of deposit to be guaranteed in the EU to be €50,000 from 30 June 2009. By 31 December 2010, the amount increases to €100,000. This would no longer be a minimum amount, however, but a fixed amount. This would remove the ability of Member States to set higher amounts.

Progress

On 29 May 2009 the Commission launched a consultation on the review of the Directive on deposit guarantee schemes. In July 2009, the Law Society of England and Wales responded to the Commission's consultation. For details of the Law Society's response please refer to the November 2009 update. On 27 August 2009 the Commission published a summary of the consultation, which showed that the vast majority of respondents were in favour of the Directive being reviewed. 50% of the respondents favoured setting the guarantee level at €100,000.

On 20 October 2009 the Commission presented a Communication on "An EU framework for cross-border crisis management in the banking sector" (on which see above). Therein the Commission raised the possibility that deposit guarantee schemes funded by financial institutions may be one way to ensure private sector funds are available in the event of a crisis.

The draft report establishing a European Banking Authority adopted in ECON on 10 May 2010 (detailed further above) includes the proposal that a European Financial Protection Fund is established to protect depositors.

Next steps

The Commission is due to present a review of the Directive with legislative proposals in July 2010. The proposal should further harmonise legislation in this area and reduce intervention times in case of default.

5. Markets in Financial Instruments Directive (MiFID)

Legislation: Directive 2004/39 on market in financial instruments amending Directives 85/611, 93/6 2000/12 and repealing Directive 93/22.²⁹⁰

Current Status: Directive 2006/31 amending Directive 2004/39 on markets in financial instruments as regards certain deadlines published on 27 April 2006.²⁹¹ Update on state of play of implementation.²⁹² Public hearing expected summer 2010 and public consultation expected end of 2010.

Commission Directive 2006/73 implementing Directive 2004/39 as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ L 241/26,²⁹³ and Regulation 1287/2006 implementing Directive 2004/39

²⁸⁷ <http://www.lawsociety.org.uk/secure/file/180764/e:/teamsite-deployed/documents/templatedata/Internet%20Documents/Non-government%20proposals/Documents/LS-response-review-DGS-july09.pdf>

²⁸⁸ http://ec.europa.eu/internal_market/consultations/docs/2009/deposit_guarantee_schemes/summary_en.pdf

²⁸⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0561:FIN:EN:PDF>

²⁹⁰ http://eur-lex.europa.eu/pri/en/oj/dat/2004/l_145/l_14520040430en00010044.pdf

²⁹¹ http://eur-lex.europa.eu/lex/LexUriServ/site/en/oj/2006/l_114/l_11420060427en00600063.pdf

²⁹² http://ec.europa.eu/internal_market/securities/isd/mifid_implementation_en.htm

²⁹³ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_241/l_24120060902en00260058.pdf

as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.²⁹⁴

Related issues: For details of CESR measures adopted prior to 1 October 2009, refer to December 2009 update.
CESR consultations on definition of advice under MiFID 14 October 2009²⁹⁵ and good practices regarding inducements 22 October 2009.²⁹⁶
CESR results of pan-European short-selling consultation October 2009.²⁹⁷
CESR update assessment of proposals for MiFID pre-trade transparency waivers 6 January 2010.²⁹⁸ **CESR consultations for review of MiFID launched 13 April 2010.**²⁹⁹ **CESR update Q&A on MiFID 6 May 2010.**³⁰⁰
CESR list of Members' measures on short-selling 19 May 2010.³⁰¹

Background

On 1 November 2007 MiFID came into force. MiFID replaces the ISD and provides investment firms with an effective single passport allowing them to operate throughout the EU, having been given authorisation by the home Member State. The "single passport" system for multilateral trading facilities and investment firms is now in operation.

Progress

In preparation for the Commission's review on MiFID due in 2010, CESR launched three consultation papers on 13 April 2010 on transaction reporting, investor protection and intermediaries and secondary markets. CESR will use the results of the consultations to suggest areas of improvement and policy options to the Commission. The consultation closes on 31 May 2010. On 6 May 2010 CESR also updated the questions and answers on MiFID with the common positions agreed by CESR members. The updates are divided into two areas: investor protection and intermediaries, and secondary markets.

As detailed above, on 26 April 2010 an exchange of views took place on an own-initiative draft report entitled "Regulation of trading in financial instruments – 'dark pools' etc" in the ECON Committee. In line with the upcoming review of MiFID, one of the aims of the report is to determine whether MiFID provides adequate investor protection.

Next steps

The Commission is expected to organise a public hearing on MiFID in the summer of 2010, which will be an opportunity to consult with stakeholders on possible revisions to the Directive. The Commission is also planning to hold a public consultation on possible amendments to MiFID towards the end of 2010. Legislative proposals may be made by the end of 2010.

6. Prospectus Directive

Legislation: Directive 2003/71 on the prospectus to be published when securities are offered to the public or admitted to trading.³⁰²

Current Status: For details of Commission Regulations 809/2004,³⁰³ 1787/2006³⁰⁴ and 211/2007³⁰⁵ as well as CESR measures, please see December 2009 update. Study on impact of prospectus regime 25 August 2008.³⁰⁶

²⁹⁴ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_241/l_24120060902en00010025.pdf

²⁹⁵ <http://www.cesr.eu/popup2.php?id=6137>

²⁹⁶ <http://www.cesr.eu/popup2.php?id=6141>

²⁹⁷ <http://www.cesr.eu/index.php?page=responses&id=142>

²⁹⁸ <http://www.cesr.eu/popup2.php?id=5754>

²⁹⁹ <http://www.cesr.eu/index.php?page=consultation&mac=0&id=>

³⁰⁰ http://www.cesr.eu/index.php?page=home_details&id=473

³⁰¹ <http://www.cesr.eu/popup2.php?id=5238>

³⁰² http://eur-lex.europa.eu/pri/en/oj/dat/2003/l_345/l_34520031231en00640089.pdf

Proposal for Directive amending Prospectus and Transparency Directives 23 September 2009.³⁰⁷ Impact assessment³⁰⁸ and summary³⁰⁹ 23 September 2009. Presidency compromise 11 December 2009.³¹⁰ Presidency notes on compromise.³¹¹ COREPER general approach 17 December 2009.³¹² Modified general approach 4 February 2010.³¹³ Parliament ECON Committee adopted report 23 March 2010.³¹⁴

Related issues: CESR updated list of FAQs regarding prospectuses 15 January 2010.³¹⁵

Background

Details of the background to the Directive are available in the February 2009 update. On 23 September 2009 the Commission published a proposal for a Directive amending the Prospectus Directive and making minor consequential changes to the Transparency Directive. The proposal was accompanied by an impact assessment and a summary thereof. For details of the proposal please refer to the February 2010 update.

Progress

On 17 December 2009 COREPER (Member States) agreed a general approach. An amended version was published on 4 February 2010 following meetings of the Council Working Party on Financial Services and takes account of the amendments required by the entry into force of the Treaty on the Functioning of the EU. For further details see the April 2010 Update.

The European Parliament's ECON Committee voted to adopt the report on 23 March 2010. A number of amendments to the proposal approved try to align the text with definitions and other provisions of MiFID. It also includes a list of information to be included in a proposed key information document, which is a summary of information in the prospectus, and amends the protections against civil liability for these documents. The Committee also voted against extending the current 12 month validity period of the prospectus. Exemptions were also amended to exclude any securities in offers where the total consideration is less than €5 million, instead of 2.5, and non-equity securities where the total consideration is less than €100 million, instead of 50.

The Council Working Party met again on 10 May 2010 to discuss the progress of negotiations with the Parliament on the proposal. Parliament is not set to vote on the proposal before June 2010 but this could be delayed depending on the state of negotiations.

Next Steps

The Commission has indicated that it will hold targeted discussions with market participants in the fourth quarter of 2010 with a view to amending the Prospectus Regulation once the changes to the Prospectus Directive have been agreed.

³⁰³ http://ec.europa.eu/internal_market/securities/docs/prospectus/reg-2004-809/reg-2004-809_en.pdf

³⁰⁴ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_337/l_33720061205en00170020.pdf

³⁰⁵ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_061/l_06120070228en00240027.pdf

³⁰⁶ http://ec.europa.eu/internal_market/securities/docs/prospectus/cses_report_en.pdf

³⁰⁷ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0491:FIN:EN:PDF>

³⁰⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:1222:FIN:EN:PDF>

³⁰⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:1223:FIN:EN:PDF>

³¹⁰ <http://register.consilium.europa.eu/pdf/en/09/st17/st17451.en09.pdf>

³¹¹ <http://register.consilium.europa.eu/pdf/en/09/st17/st17453.en09.pdf>

³¹² <http://register.consilium.europa.eu/pdf/en/09/st17/st17451.en09.pdf>

³¹³ <http://register.consilium.europa.eu/pdf/en/09/st17/st17451-re01.en09.pdf>

³¹⁴ [http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2010-](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2010-0102+0+DOC+PDF+V0//EN&language=EN)

³¹⁵ <http://www.cesr.eu/popup2.php?id=6472>

7. Market Abuse Directive

Legislation: Directive 2003/6 adopted 28 January 2003 on insider dealing and market manipulation ("market abuse").³¹⁶

Current Status: Directive 2003/124 concerning the definition and public disclosure of inside information and the definition of market manipulation, OJ L 339, 24/12/2003.³¹⁷ Directive 2003/125 concerning the fair presentation of investment recommendations and the disclosure of conflicts of interest, OJ L 339, 24/12/2003.³¹⁸ Regulation 2273/2003, OJ L 336, 23/12/2003.³¹⁹ CESR Post trading infrastructure.³²⁰ CESR guidance³²¹ and feedback statement 15 May 2009.³²² Commission conference 12 November 2008.³²³ Commission call for evidence 20 April 2009.³²⁴ Law Society of England and Wales and City of London Law Society joint response submitted. Commission reasoned opinion to UK 28 January 2010.³²⁵ CESR review of options and discretions.³²⁶

Background

The Directive identifies two main categories of market abuse, namely insider dealing and market manipulation. The main provisions of the Directive's implementing measures were outlined in the September 2008 update. On 15 May 2009, CESR published its third set of guidance and information on the common operation of the Market Abuse Directive.

Progress

On 28 January 2010 the Commission sent a reasoned opinion to the UK regarding the alleged improper implementation of Articles 12 and 14 of the Market Abuse Directive in Gibraltar. The Commission may now refer the matter to the Court of Justice.

On 6 April 2010 CESR published a review of how securities' regulators across the EU use the options and discretions available under the Directive. It found divergence in the application of the Directive and recommends extending the application to Multilateral Trading Facilities and encouraging Suspicious Transaction Reports on over-the-counter Derivatives. The report will be presented to the Commission to serve as input into its ongoing review of the Directive.

Next steps

The Commission's Work Programme states its intention to revise the Directive in the fourth quarter of 2010. The proposal intends to increase market integrity by defining cases of market abuse, to protect investors and to enable competent administrative authorities to investigate and sanction market abuse. The Commission is working on an impact assessment and may begin stakeholder consultation in 2010. The Commission is expected to hold a public hearing on possible amendments to the Directive in the summer of 2010.

³¹⁶ http://eur-lex.europa.eu/pri/en/oj/dat/2003/l_096/l_09620030412en00160025.pdf

³¹⁷ http://eur-lex.europa.eu/pri/en/oj/dat/2003/l_339/l_33920031224en00700072.pdf

³¹⁸ http://eur-lex.europa.eu/pri/en/oj/dat/2003/l_339/l_33920031224en00730077.pdf

³¹⁹ http://eur-lex.europa.eu/pri/en/oj/dat/2003/l_336/l_33620031223en00330038.pdf

³²⁰ http://ec.europa.eu/internal_market/financial-markets/docs/clearing/2008_07_28_cesr_mandate.pdf

³²¹ <http://www.cesr.eu/popup2.php?id=5727>

³²² <http://www.cesr.eu/popup2.php?id=5728>

³²³ http://ec.europa.eu/internal_market/securities/abuse/12112008_conference_en.htm

³²⁴ http://ec.europa.eu/internal_market/consultations/2009/market_abuse_en.htm

³²⁵ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/81&type=HTML&aged=0&language=EN&guiLanguage=en>

³²⁶ <http://www.cesr.eu/popup2.php?id=6536>