

# EU Financial Services BRIEFING



## Contents

1. Commission sets up Expert Group on Consumer Mobility in relation to Bank Accounts.....page 1
2. Consultation on possible Revision of the Settlement Finality Directive.....page 1
3. Public Hearing on Current Accounts and Related Services.....page 2
4. Infringement Proceedings.....page 2
  - 4.1 French savings accounts
5. Developments in Lamfalussy Committees .....page 2
6. Other recent Developments.....page 3
  - 6.1 ECOFIN Council
  - 6.2 Commission Consultation on non-equity Market Transparency
  - 6.3 Solvency II: Public Hearing
7. European Court of Justice.....page 4
  - 7.1 Judgements
  - 7.2 Opinions
8. Calendar of Events.....page 5

### 1. Commission sets up Expert Group on Consumer Mobility in relation to Bank Accounts

On 16 May, the Commission decided to set up an expert group on consumer mobility in relation to bank accounts.

The group will identify any legal, administrative or other obstacles that customers encounter

when opening a bank account cross-border or switching banks both at domestic and cross-border level, such as the cost of opening, maintaining and closing a bank account, direct switching and other costs. It will advise the Commission on how to address the obstacles identified.

The Commission has decided to proceed because of the growing trend towards switching bank accounts, and in preparation for the first Single Euro Payments Area (SEPA) products which are scheduled to be introduced in January 2008. SEPA will make cross-border payments as easy, cheap and secure as payments at domestic level.

***Timeline:** The report presenting the expert group's findings and recommendations should be available in the first half of 2007.*

### 2. Consultation on possible Revision of the Settlement Finality Directive

On 16 May, the Commission launched a consultation inviting industry and other stakeholders to comment on its evaluation report of 15 December 2005 on the Settlement Finality Directive (Directive 98/26/EC).

On the basis of this consultation, the Commission will assess whether the Directive requires revision.

The 2005 report identified 10 areas where difficulties have arisen in transposition or application of the Directive, including: choice of law; whether electronic money institutions are institutions under the Directive; uncertainty over the scope of the definition of participant and indirect participant; the definition of insolvency proceedings; national definitions of collateral security, when planned changes to eligibility of

collateral are adopted; potential conflict of insolvency laws.

**Timeline:** *The consultation period runs until 30 June.*

### 3. Public Hearing on Current Accounts and related Services

On 6 June, the Commissioner for Competition Policy, Neelie Kroes, announced that the Commission will publish next month its preliminary report on current accounts and related services, for consultation.

Alongside payment cards, the Commission is looking at the wider market for current accounts and related services, such as savings accounts and loans. The Commission will in particular:

- analyse, from the consumer perspective, whether there is sufficient choice and innovation in the market, and, ask whether it is easy enough to compare and switch between providers;
- review, from a market perspective, existing regulatory or non-regulatory barriers to entry in the banking market; and
- identify ways to enhance the efficiency of the European banking sector.

**Timeline:** *On 17 July, the Commission will hold a public hearing in Brussels on its findings on current accounts and related services and on payment cards.*

## 4. Infringement Proceedings

### 4.1 French savings accounts

On 7 June, the Commission decided to open infringement proceedings, under EC Treaty rules governing the management of services of general economic interest against France. The proceedings relate to the special distribution rights for two French savings products, the *livret A* and the *livret bleu* and for which a distribution fee is paid by the *Caisse des Dépôts et Consignations*. The Commission takes the view that the special rights given to *La Poste*, the *Caisses d'Épargne* and *Crédit Mutuel* may be contrary to the rules in the EC Treaty which guarantee the freedom of establishment and freedom to provide services, on the following grounds:

- they make it less attractive to set up a business in France offering savings products to private individuals; and
- they prevent credit institutions from other Member States from offering this service to their customers and receiving fees from the *Caisse des Dépôts et Consignations* in return.

**Timeline:** *The Commission has sent the French authorities a letter of formal notice requiring them to provide information within two months. The distribution networks will also be asked for their observations. Following review of the replies, the Commission may ask the French government to terminate the special rights.*

## 5. Developments in Lamfalussy Committees

CESR

- On 15 May, the joint task force of regulators from the Committee of European Securities Regulators (CESR) and the U.S. Commodity Futures Trading commission (CFTC) published 'online guides' for conducting derivatives businesses in the U.S. and the EU. These guides include country specific information regarding regulation and supervision in the U.S. and Europe aiming at enhancing transparency and clarity of regulatory developments and recognition procedures. They also provide useful contact details for specialists within the authorities and links to detailed information (including rules) applicable in the U.S. and in each EU Member State, and general information on regulators, exchanges, clearing organisations and investment services, and on how to find information about the end-users in each jurisdiction.
- On 22 May, CESR published its assessment of the implementation of the 'UCITS guidelines' by its members. The guidelines encourage convergence among the different national administrative practices arising from ambiguities contained in the UCITS III legislative texts. The Review Panel of CESR notes the need to exercise caution in drawing conclusions from this assessment as many members have not implemented the guidelines by issuing any specific regulatory measures. Implementation has taken place through daily supervisory practices, the effectiveness of which is not verifiable. The Review Panel has recommended more

effective, practical implementation by the Member State authorities.

#### CEBS

- On 9 June CEBS published a consultation paper (CP12) on technical guidance on stress testing, CEBS emphasises that institutions' earnings can be affected by exceptional but plausible events; a common, risk-based approach to stress testing methodology is essential.
- On 16 June CEBS published a report summarising its 5<sup>th</sup> Quantitative Impact Study, on the amount of regulatory minimum capital. It shows that minimum capital would decrease, on average, relative to the current regime, and indicates an incentive for a move by institutions to more sophisticated risk measurement and management techniques.
- On 23 June CEBS published its survey on implementation of own funds requirements in the Member States. It finds that variations in own funds results from flexibility in the Capital Requirements Directive or local market specificities or prudential rules, or different tax or company laws. The report does not address differences in treatment of hybrid capital similar to core own funds.

#### CEIOPS

- On 8 May, CEIOPS published its advice to the Commission on potential changes to the prudential treatment of 'deeply subordinated debt' under 'Solvency I'. After consultation, CEIOPS advised as follows:
  - CEIOPS acknowledges the strong views expressed by the industry in favour of using the comitology procedure to give further recognition for subordinated debt instruments under Solvency I.
  - It recognises arguments for a broad definition of subordinated debt instruments, with principles for eligibility modelled closely on Basel requirements. CEIOPS also notes strong support for a more restricted concept if this would facilitate earlier implementation.
  - Any changes made to the definition of eligible capital elements under Solvency I should not prejudice their treatment under Solvency II.

- CEIOPS supports cross-sectoral consistency on the definition of capital and is working closely with CEBS on this.

- On 2 June, the Commission provided CEIOPS with an amended Framework for Consultation regarding the development of Solvency II, replacing the framework of 14 July 2004.

The amended Framework provides more precise guidance to CEIOPS on the approach to Solvency II.

The Commission, in its covering letter, stresses that the standard formula to calculate the solvency capital requirement (SCR) should be CEIOPS's priority.

## 6. Other recent Developments

### 6.1 ECOFIN Council

On 7 June, the ECOFIN Council adopted two Directives aimed at introducing new capital adequacy requirements for banks and investment firms.

The new requirements are based on international guidelines established in June 2004 ('Basel II' agreement) by the Basel committee on banking supervision, which formulates supervisory standards and recommends best practice for banking supervisory authorities.

The new rules set more precise own funds requirements (i.e. the amount of 'internal' capital which banks and investment institutions must hold in order to cover their risks and protect their depositors). The rules provide for preferential treatment for some types of risk capital.

The two Directives recast Directive 2000/12/EC on the business of credit institutions and Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions, whilst transposing the Basel II agreement into Community law.

**Timeline:** Member States must apply the Directives from the start of 2007; use of internal rating will be available from 2008.

### 6.2 Commission Consultation on non-equity Market Transparency

On 12 June the Commission announced a call for evidence on transparency in the bond and other non-equity markets.

The purpose is to review the need for pre and post trade transparency at an EU level for these financial instruments, as required by the Markets in Financial Instruments Directive. The Commission will prioritise cash bond markets and related derivative markets, and those for asset backed securities.

**Timeline:** *The Commission must report to Parliament and the Council by October 2007; the present consultation ends on 15 September 2006.*

### 6.3 Solvency II: Public Hearing

On 21 June, DG Internal Market held a public hearing on Solvency II.

The aim was to ensure that all stakeholders will have an opportunity to comment directly on the Solvency II project.

Key messages included:

- insurers should ensure, via the Qualitative Impact Studies, that information is given to CEIOPS to assist in calibration;
- there must be compatibility between Solvency II and the capital regime for banks and investment firms: this does not mean that they must be identical;
- the Commission will consider very closely CEIOPS's advice; ultimately, it is not obliged to follow it;
- the Commission expects Member States' supervisors to make greater efforts towards convergence of supervisory methods and eliminating their defence of national "turf and habits".

**Timeline:** *The results will be fed into the impact assessment work and drafting of the Solvency II Directive.*

## 7. European Court of Justice

### 7.1 Judgements

**Case C-411/03** (Freedom of establishment – Articles 43 EC and 48 EC – Cross-border mergers – Refusal of registration in the national commercial register – Compatibility)

On 13 December 2005, the Court delivered its judgement in the reference for a preliminary

ruling by the *Landgericht Koblenz* (Germany) in *SEVIC Systems AG*.

The reference was made in the context of an action brought by SEVIC Systems AG, a German company, against a decision of the local companies registry rejecting its application for registration in the national commercial register of the merger between SEVIC and Security Vision Concept SA, a Luxembourg company, on the ground that German law only permits mergers between companies established in Germany.

The Court held that:

- The existence of Community harmonisation rules cannot be made a precondition for the implementation of the freedom of establishment laid down by Articles 43 and 48, EC Treaty.
- Imperative reasons in the public interest such as protection of the interests of creditors, minority shareholders and employees, the preservation of the effectiveness of fiscal supervision and the fairness of commercial transactions, may, in certain circumstances and under certain conditions, justify a measure restricting the freedom of establishment. But such a restrictive measure would also have to be proportionate for ensuring the attainment of the objectives pursued and not go beyond what is necessary to attain them.
- To refuse generally to register in the commercial register a merger between a company established in that State and one established in another Member State, goes beyond what is necessary to protect those interests.
- Articles 43 and 48, EC Treaty prevent a Member State from refusing registration in the national commercial register of the merger by dissolution without liquidation of one company and transfer of the whole of its assets to another company, where one of the two companies is established in another Member State, whereas such registration is possible, on compliance with certain conditions, where the two companies participating in the merger are both established in the territory of the first Member State.

**Timeline:** *The case will be referred back to the German court which will apply the Court's judgement.*

## 7.2 Opinions

**Case C-150/04** (Failure of a Member State to fulfil obligations - Articles 39, 43, 49, 56 EC - Income tax - Justification of the coherence of the tax system - Double-taxation conventions)

On 1 June, Advocate General Stix-Hackl delivered her opinion in the action against the Kingdom of Denmark brought before the Court of Justice of the European Communities on 23 March 2004 by the Commission.

The Commission claims that, by providing a system for life insurance and pensions under which tax deductions and tax exemptions for payments (sections 18 and 19 of the Danish law on pension tax) are granted for payments under contracts entered into with pension institutions established in Denmark, and not for contracts with pension institutions established in other Member States, the Kingdom of Denmark has failed to fulfil its obligations under Articles 39, 43 and 49 of the Treaty relating to the freedom of movement of workers, freedom of establishment and freedom of provision of services.

The Advocate General's conclusions may be summarised as follows:

- The EC Treaty prevents a Member State's legislation from refusing the deductibility for income tax purposes of contributions paid to pension providers in other Member States while allowing such contributions to be deducted when they are paid to institutions in the first-mentioned Member State, if that legislation does not at the same time preclude taxation of the pensions paid by those pension providers.
- Therefore, a system for life insurance and pensions under which tax deductions and tax exemptions for payments are granted only for payments under contracts entered into

with pension institutions established in Denmark, whereas no such tax relief is granted for payments pursuant to contracts entered into with pension institutions established in other Member States, amounts to a failure to fulfil obligations under Articles 39, 43 and 49.

**Timeline:** *No date has yet been set for the Court's judgement.*

## 8. Calendar of Events

### 28 June 2006

European Commission meeting (Brussels)

### 29 June 2006

Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) meeting (Frankfurt)

### 1 July 2006

Finland assumes EU Council presidency

### 3-6 July 2006

European Parliament Plenary Session (Strasbourg)

### 4 July 2006

European Commission meeting (Strasbourg)

### 10 July 2006

Eurogroup meeting

### 11 July 2006

Ecofin Council meeting

### 11-12 July 2006

EP Economic and Monetary Affairs Committee meeting

### 12 July 2006

European Commission meeting (Brussels)

### 14 July 2006

Ecofin Council meeting (EU budget)

### 12 July 2006

European Commission meeting (Brussels)

### 14 July 2006

Ecofin Council meeting (EU budget)

### 19 July 2006

European Commission meeting (Brussels)

If you have any questions concerning this briefing, please contact Philip Woolfson on +32 2 626 05 19 ([pwoolfson@step toe.com](mailto:pwoolfson@step toe.com)), Guy Soussan on +32 2 626 05 35 ([gsoussan@step toe.com](mailto:gsoussan@step toe.com)), Simon Arnot on +32 2 626 05 43 ([sarnot@step toe.com](mailto:sarnot@step toe.com)), Zoi Sazaklidou on +32 2 626 05 02 ([zsazaklidou@step toe.com](mailto:zsazaklidou@step toe.com)) or Ilinca Filipescu Chalançon on +32 2 626 05 26 ([ifilipescu-chalancon@step toe.com](mailto:ifilipescu-chalancon@step toe.com)).

To subscribe to the EU Financial Services Briefing send a message to [ccasciello@step toe.com](mailto:ccasciello@step toe.com).

To unsubscribe, send the message "Unsubscribe EU Financial Services Briefing" to [ccasciello@step toe.com](mailto:ccasciello@step toe.com).

*© Copyright 2006 Steptoe & Johnson LLP. All Rights Reserved. No distribution or reproduction of this issue or any portion thereof is allowed without our written permission except by the recipient for internal use only within the recipient's own organisation.*

*The opinions expressed in this Briefing are for the purpose of fostering productive discussions of legal issues and do not constitute the rendering of legal advice or other professional services. No attorney-client relationship is created, nor is there any offer to provide legal services, by the publication and distribution of this Briefing.*

*Neither this Briefing, nor the information it contains, constitutes legal, counselling, accounting or other professional services. If legal advice or other professional assistance is sought, the services of a competent professional person in the relevant field should be obtained.*

STEPTOE&JOHNSON LLP

Box 5, 240 Avenue Louise  
1050 Brussels  
Tel: +32 (2) 626 05 00  
Fax: +32 (2) 626 05 10

When Experience Matters®

London Brussels Washington New York Phoenix Los Angeles

STEPTOE&JOHNSON

visit us on the web at [www.step toe.com](http://www.step toe.com)

2197516