

EU Financial Services BRIEFING



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1. Consultation on the Deposit Guarantee Schemes Directive

On 14 July 2005, the Commission published a consultation to explore the obstacles to the integration of the EU banking market that might originate from the current Deposit Guarantee Schemes Directive. The consultation concentrates on two issues:

- whether there should be further harmonisation; and
- the extent to which certain features of the schemes should be simplified.

Timeline: The deadline for responses to the Commission's consultation was 14 October 2005.

2. Consultations on MiFID implementing Measures

On 18 July 2005, the Commission published two consultations regarding implementing measures for MiFID. The first of these relates to investment research and, the second, to:

- conduct of business rules;
- best execution;
- client order handling rules;
- eligible counterparties; and
- clarification of the definition of investment advice and financial instruments.

It has also revised various of its other working documents in accordance with responses received in earlier consultations.

Timeline: The deadline for replying to the consultations expired on 15 September 2005.

3. Adoption of Cross-border Mergers Directive

On 20 September 2005, the Council adopted the Directive on 'cross-border mergers of companies with share capital'. The Directive will remove some of the obstacles to cross-border mergers of limited liability companies. It includes:

- provisions requiring Member States to take into account the cross-border nature of the merger when applying their legislation;
- provisions for the protection of minority shareholders who oppose the merger;
- minimum content for the companies' common draft terms of the agreement to merge;
- the requirement that common draft terms are approved by the general meeting of shareholders of the companies;
- conferring of jurisdiction, before completion of the merger, on the authorities responsible for each company and, after completion, on the authority responsible for the merged company; and
- employee participation rights to be, in general, governed by the law of the merged company.

Timeline: The Directive will come into force two years after its publication in the Official Journal expected towards the end of the year.

4. Council approves Money Laundering Directive

The Council formally approved the Directive 'on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing' on 20 September 2005.

For more information on the content of the Directive please see our separate briefings.

Timeline: The Directive will be implemented in the Member States within two years of its publication in the Official Journal expected at the end of 2005.

5. Consultation on Money Laundering implementing Measures

On 12 September 2005, the Commission published a working document to consult on measures implementing the new Money Laundering Directive relating to:

- simplified customer due diligence in situations representing a low risk of money laundering;
- provisions for persons who engage in a financial activity on an occasional or very limited basis, where there is little risk of money laundering or terrorist financing occurring; and
- technical aspects of the definition of Politically Exposed Persons under Article 3(8).

It also requests information:

- on third countries' anti-money laundering measures; and
- on the possible use of enhanced customer due diligence for corresponding banking relations with third countries' central banks and monetary authorities.

The consultation was published before the formal adoption of the Directive and, therefore, takes the form of an informal working document. It does not have the status of an official draft for implementing measures.

Timeline: Replies to the consultation must be received by the Commission by 21 October 2005.

6. Consultation on the E-money Directive

On 14 July 2005, the Commission published a consultation in relation to Directive 2000/46/EC on 'the taking up, pursuit of and prudential supervision of the business of electronic money institutions'. The consultation concentrates on questions regarding the Directive's continuing relevance, effectiveness and impact on financial and related markets, credit institutions and consumers.

Timeline: The deadline for responses to the Commission's consultation was 14 October 2005.

7. Revision of Solvency II Roadmap

On 20 July 2005, the Commission published a 'Note to the Members of the European Insurance and Occupational Pensions Committee (EIOPC)'. The note is a revised version of an earlier document, its roadmap for the adoption of the Solvency II proposal. The new roadmap sets July 2007 as the adoption date, over a year after the original date.

The note attaches a spreadsheet outlining the different streams of work, active parties and indicative timing. The Commission has invited comments on this updated version of the roadmap from EIOPC and other stakeholders.

Timeline: There is no official deadline set for responses to this document.

8. Adoption of Cash Control Regulation

On 12 July 2005, the Council adopted the Regulation on 'controls of cash entering or leaving the Community'. The Regulation introduces harmonised rules requiring natural persons entering or leaving the European Union to declare to customs authorities cash movements above €10,000.

The definition of cash includes currency and cheques. The Regulation allows customs authorities to undertake controls on people and their baggage and detain cash that has not been declared.

Timeline: The Regulation enters into force twenty days after its publication in the Official Journal which is expected towards the end of the year.

9. Approval of the Capital Requirements Directive

On 11 October 2005, the ECOFIN Council approved the Parliament's first reading amendments to the Directives recasting Directives 2000/12/EC on credit institutions and 93/6/EEC on capital adequacy. The proposed Directive is intended to implement the Basel II

capital adequacy framework into EU legislation. In particular it provides for:

- three different approaches to assessing operational risk (simple, intermediate and advanced);
- supervisory review and internal assessment of capital requirements;
- lower capital requirements for lending to SMEs; and
- the disclosure of certain information to improve transparency including an obligation for banks to explain their rating decision to SMEs.

Timeline: The Directive will be adopted without discussion at a forthcoming Council meeting. Its implementation date is 1 January 2007.

10. Market Abuse Directive Infringement Proceedings

On 3 August 2005, the European Commission announced that it would issue infringement proceedings in the form of 'reasoned opinions' under Article 226, EC Treaty against 16 Member States for non-implementation of the Market Abuse Directive (2003/6/EC) and three technical implementing Directives (2003/124/EC, 2003/125/EC and 2004/72/EC). The Member States in default are Belgium, Czech Republic, Greece, Spain, France, Ireland, Cyprus, Latvia, Luxemburg, Hungary, Netherlands, Poland, Portugal, Finland, Sweden and the UK.

The proceedings against Member States come under the Commission's better regulation agenda and its commitment to better implementation, timely transposition into national legal systems and effective enforcement.

The deadline for transposition of the Directives was 12 October 2004 but the Commission has detected 57 cases of defective implementation.

Timeline: If a Member State does not reply satisfactorily before the deadline set in the Commission's letter (usually two months), the Commission may decide to initiate proceedings in the European Court of Justice.

11. Commission Proposal for a Consumer Credit Directive

On 7 October 2005, the European Commission adopted a second revised proposal for a Consumer Credit Directive covering consumer credit contracts of up to €50,000. The revised proposal:

- specifies pre-contractual and contractual information for credit contracts of up to €300;
- provides for limited mutual recognition between Member States;
- harmonises the calculation of the cost of credit; and
- provides for the borrower's right to withdrawal within 14 days, early repayment, and cancellation if the related purchase fails.

Timeline: *The Council of Ministers is expected to discuss the proposal in 2006.*

12. Political Agreement on the 8th Company Law Directive

On 11 October 2005, the ECOFIN Council agreed on a Directive updating rules on the audit of company accounts. The Directive establishes minimum requirements for statutory audit of annual accounts and consolidated accounts in order to improve the quality of audits in the EU. In particular, it provides for:

- the duties of statutory auditors;
- the manner in which audits must be carried out;
- the procedures for appointment and dismissal of auditors;
- registration of statutory auditors or audit firms;
- the independence of statutory auditors or firms;
- a system of quality assurance independent from the reviewed auditors, and public oversight; and
- the designation of Member State supervisory authorities.

Timeline: *The Directive must be implemented into national law within two years of its entry into force i.e. after its publication in the Official Journal (expected towards the end of the year).*

13. Mortgage Credit Green Paper published

On 19 July 2005, the Commission published a Green Paper on Mortgage Credit in the EU. The Paper examines whether and how EU level action could develop the internal market in mortgages and provide specific benefits for consumers.

The Paper discusses the following:

- consumer protection including advice provision and credit intermediation, early repayment, annual percentage rate, usury rules and interest rate variation, credit contract and enforcement and redress;
- legal issues such as applicable law, client credit-worthiness, property valuation, forced sales procedures and tax;
- mortgage collateral including land registers and a euromortgage; and
- mortgage credit funding.

On 13 September 2005, the Commission also published a study, prepared by a UK economic consultancy firm, on the costs and benefits of further integration of the EU mortgage credit market.

Timeline: *The deadline for responses to the Commission's consultation is 30 November 2005.*

14. Internal Market Legislation Infringement Proceedings

On 3 August 2005, the European Commission announced that it would issue infringement procedures in the form of 'reasoned opinions' for non transposition of the:

- Supplementary Supervision of Financial Conglomerates Directive (2002/87/EC), against Belgium, Greece, Luxembourg, the Netherlands, Portugal, Sweden, Czech Republic and Latvia;
- Reorganisation and Winding Up of Credit Institutions Directive (2001/24/EC), against

- Greece, Portugal, Sweden and the Czech Republic;
- E-money Directive (2000/46/EC), against Estonia;
- Accounting Rules Directive (2003/51/EC), against Greece, Belgium, Spain, Italy, the Netherlands, the UK and Luxembourg;
- Directive on the Reorganisation and Winding-up of Insurance Undertakings, against the Czech Republic; and
- Recast Life Assurance Directive, against the UK.

Timeline: *If a Member State does not reply satisfactorily before the expiry of the two months' deadline, the Commission may decide to initiate proceedings in the European Court of Justice.*

15. European Court of Justice

15.1 Preliminary Ruling Reference

Case C-238/05 (competition law - agreement between undertakings - exemption)

Referring Court: Tribunal Supremo (Spain)

Parties: *Asnef-Equifax Servicios de Información sobre Solvencia y Crédito, S.L., Administración del Estado, Asociación de Usuarios de Servicios Bancarios*

The question referred to the European Court of Justice relates to Article 81(1), which prohibits anti-competitive agreements between undertakings, and Article 81(3), which exempts such agreements under certain circumstances.

The Spanish court has asked:

- whether exchange of information agreements between financial institutions in relation to the solvency of their customers and lateness of payments by them infringe EC competition law and in particular Article 81(1) of the EC Treaty; and
- whether Article 81(3) allows the authorisation of agreements between

financial institutions for the exchange of customer information via a Credit Information Register, in so far as the creation of the register produces benefits for consumers and users of financial services.

Timeline: *The reference was published in the Official Journal on 20 August 2005.*

16. Calendar of Events

20 October 2005

European Commission meeting (Brussels)
(possible adoption of draft Directive on 'portability' of pension rights)

24-27 October 2005

European Parliament plenary session (Strasbourg)

25 October 2005

European Commission meeting (Strasbourg)
(possible adoption of Commission 2006 work programme)

25 October 2005

Committee of European Banking Supervisors (London)

27 October 2005

Informal EU Summit (UK)

7 November 2005

Eurogroup meeting

8 November 2005

Ecofin Council meeting

9 November 2005

European Commission meeting (Brussels)
(possible adoption of draft Directive on payment services in the EU)

14-17 November 2005

European Parliament plenary session (Strasbourg)

15 November 2005

European Commission meeting (Strasbourg)

21-22 November 2005

EP Committee on Economic & Monetary Affairs

23 November 2005

European Commission meeting (Brussels)

24 November 2005

Ecofin Council (EU Budget)

28-29 November 2005

EP Committee on Economic & Monetary Affairs

30 November-1 December 2005

European Parliament plenary session (Brussels)

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