Developing corporate bond markets: a European legal perspective

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Introduction

This contribution addresses the development of corporate bond markets from a European legal perspective. While the introduction of the euro itself has given a major boost to the development of corporate bond markets, the legal underpinnings of such development seem equally important. This applies in particular to legislation adopted at the European Union (EU) level to foster further integration of EU financial markets. This contribution concludes that much has been achieved in this area, also to the benefit of corporate bond markets. At the same time, much remains to be done, particularly with regard to: the institutional framework for the adoption of EU legislation; the quality, consistent implementation and application and strengthened enforcement of such legislation at a national level; and the strengthening of cooperation between regulatory and supervisory authorities. In summary, this contribution highlights three topics:

– the general institutional framework through which the EU tries to achieve, and the European Central Bank (ECB) contributes to, further integration of the EU financial markets, including corporate bond markets; this part also contains a short exposé on the euro and its institutional framework in order to clarify certain notions which are used throughout this contribution;

– the patchwork of legislative and other initiatives in the EU (and sometimes beyond, but with an impact on the EU) that are particularly relevant to the securities sector in the EU and therefore also to corporate bond markets; and

– the likely course of events with regard to the main issues addressed in this contribution.

1. The euro and its institutional framework

On 1 June 1998, the ECB and the European System of Central Banks (ESCB) were established. The ESCB is composed of the ECB and the National Central Banks (NCBs) of the 25 EU Member States. These Member States are at present: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. In addition, Bulgaria, Croatia, Romania and Turkey are on the waiting list to become EU Member States.

On 1 January 1999, the euro was introduced in Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain, and, exactly two years later, in Greece, i.e. in 12 EU Member States in total. Denmark and the United Kingdom have, until further notice, officially opted out of the introduction of the euro, while Sweden, because of the results of public referenda, has decided, at least for the time being, not to pursue the introduction of the euro. (Note that Sweden did not make a reservation to this effect in the Treaty on its accession to the EU.) The EU's ten new Member States, which joined the EU in May 2004 (Cyprus, the Czech Republic, Estonia, Latvia,

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Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia), do not have such an opt-out possibility, and will therefore have to introduce the euro once they qualify under the so-called Maastricht convergence criteria. Such criteria set out parameters for the introduction of the euro with regard to price stability, public finance discipline, interest rate convergence and exchange rate stability.

The ECB is located in Frankfurt am Main, Germany, away from the EU's political bodies in Brussels (Belgium), Luxembourg (Grand Duchy of Luxembourg), and Strasbourg (France), which underscores its independence as a central bank. It has three decision-making bodies:

– the Governing Council, which is composed of the NCB Governors of the 12 EU Member States that have introduced the euro, plus the six members of the ECB's Executive Board;

– the Executive Board, which is composed of the ECB's President, Vice-President and four members, who are all appointed for a non-renewable eight-year term; and

– the General Council, which is composed of all 25 NCB Governors, as well the ECB's President and Vice-President.

To illustrate the distinction between these decision-making bodies with one example: the Governing Council formulates the ECB's monetary policy, the Executive Board implements it and the NCBs execute it. The General Council contributes in specific, non-core fields to the tasks of the ECB. The Governing Council meets on a fortnightly basis, while the Executive Board is in charge of the ECB's day-to-day management. Delegations from the NCBs and ECB meet regularly at a technical level in a variety of committees, while the General Council meets on a quarterly basis.

The ECB distinguishes between the ESCB (see above) and the Eurosystem, which is composed of the ECB and only the 12 NCBs of the EU Member States that have introduced the euro (also known as the euro area NCBs). The euro area NCBs execute the Eurosystem's tasks in a decentralised fashion, each in its own jurisdiction, with legal instruments that are tailored to that jurisdiction.

2. The euro and the development of corporate bond markets

The focus of this contribution is mainly on legal issues. However, to shed some light on market developments in the EU, the euro-denominated corporate bond market has grown considerably since the introduction of the euro. Although there is no doubt that a number of different factors have contributed to this growth, it is widely recognised that the introduction of the euro has acted as a catalyst for the development of the corporate bond market in the euro area since the introduction of the euro. In fact, the corporate bond market grew from around €200 billion in 1999, the year the euro was introduced, to some €900 billion in 2005, an increase of some five times. Annex I shows this growth in more detail.

Thanks to the introduction of the euro, which eliminates currency risk in the euro area, the market has benefited from a virtuous circle of lower issuance costs (resulting from improved liquidity) and the expansion of the investor base. As far as the legal underpinnings of this development are concerned, ongoing EU efforts to further integrate its financial markets in order to create a truly single market, through legislation and other legal initiatives, have also supported the development of corporate bond markets. Note that the focus of this report is therefore on financial market integration in the EU, and explicit references to corporate bond markets will only be made where relevant.

3. Challenges in EU financial market integration

The EU has made much progress in financial market integration and, therefore, also in corporate bond market development. However, there is much to be done on both fronts. Indeed, there is one internal market without borders between EU Member States, but currently 25 different jurisdictions. Moreover, while there is now a single currency in 12 EU Member States, there is still fragmentation of financial markets across the euro area. Furthermore, there is a single monetary authority for the euro area, the ECB, but still numerous regulators and supervisory authorities at the national levels. The road to further financial market integration in the EU is not an easy one. First of all, for any legislative action to be taken at the EU level, there must be legal *competence* to do so. Second, if such competence exists, any legislative action is subject to the EU principles of:

– *subsidiarity* (meaning that legislation may be adopted only if this is necessary to meet the EU's objectives and cannot be met through the adoption of legislation at a national level);

– *proportionality* (meaning that the type and substance of legislative action must be in proportion to its stated objectives);

and the ESCB principle of:

– *decentralisation* (meaning that, to the extent possible and appropriate, the ECB has to involve the NCBs in the execution of its tasks at a national level).

The paragraphs below show that these principles have contributed to the establishment of different layers of legislative and other initiatives that do not always seem to be transparent and efficient.

4. The ECB's focus on financial market integration

The ECB is committed to the integration of financial markets. In its Mission Statement, the ECB has formulated several strategic intents of the Eurosystem. Of course, primarily, it shall act as the monetary authority in the euro area and as a leading financial authority, fully recognised inside and outside Europe, but it shall also aim to safeguard financial stability and promote European financial integration. Consequently, the ECB is focused on the following:

– Eurosystem operations (monetary policy, payment systems, collateral policy, foreign reserves and its own fund management);

– financial stability (through the formulation and implementation of policies relating to the prudential supervision of credit institutions);

– financial market integration (to which the ECB contributes through a variety of means such as the harmonisation of its operations, its advisory role vis-à-vis the EU and national legislators with regard to draft legislation in the ECB's field of competence and recommendations addressed to market participants).

In view of the above, if the ECB or NCBs were asked to play an active role in the development of corporate bond markets, there would be grounds for them to do so. However, the ESCB is also required to act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources. In the case where there are other (market) parties with development responsibility, the ECB and NCBs should perhaps refrain from involvement or make any involvement temporary. This is, in fact, what happened when the ECB was asked by the ACI[2] – Financial Markets Association – to support the development of a market in short-term paper, the so-called STEP project. The ECB has agreed to provide certain statistics to enable the ACI to grant a STEP label to short-term paper fulfilling certain criteria, but, for the time being, this arrangement is for a two-year period only.

5. Legal acts to pursue financial integration

In order to pursue their objectives, the EU and the ECB have a large variety of legal powers at their disposal. Because of the principles mentioned in Section 3 above (competence, subsidiarity, proportionality and decentralisation), the legal acts applied in relation to financial integration are mainly EU Directives and ECB Guidelines. Directives are binding upon each Member State to which they are addressed, but they leave to the national legislative authorities the choice of form and method of implementation. ECB Guidelines are addressed to euro area NCBs, and are binding upon such NCBs,

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[2] Originally the abbreviation for Association Cambiste Internationale.

usually requiring implementation in national legal acts (which may be of a statutory or contractual nature). Since both Directives and Guidelines require implementation at a national level, there may potentially be differences in implementation across the EU and euro area. Both the EU Commission (as the guardian of EU legislation) and the ECB regularly verify the proper implementation of their respective legal acts, but this cannot prevent such differences from existing.

Having said that, the ECB has always endeavoured to achieve and maintain economically a level playing field across the euro area, and, in particular, avoid distortions in the treatment of Eurosystem counterparties in different euro area jurisdictions. Indeed, in its seven years of operation, the ECB has never heard a complaint on this score. However, it is valid to ask - especially in view of the future enlargement of the euro area - whether financial market integration does not warrant the adoption of EU and ECB Regulations, at least in certain areas where standardisation is appropriate. Such Regulations are generally applicable and binding and could thus, better than EU Directives and ECB Guidelines, support financial market integration, including the development of corporate bond markets.

6. The Financial Services Action Plan (FSAP)

In the mid-1990s, an increasing need was felt in EU financial markets to reap the benefits of the internal market, and move towards a single currency. This led to the adoption of the Financial Services Action Plan (FSAP), which had five main goals:

– devising a legislative apparatus capable of dealing with new legislative challenges;

– eliminating the remaining fragmentation in capital markets;

– exploiting the commercial opportunities offered by a single financial market;

– encouraging closer cooperation between supervisory authorities; and

– developing an integrated EU infrastructure to underpin retail and wholesale financial transactions.

To achieve the first goal (devising a legislative apparatus), a Committee of Wise Men was established, chaired by Baron Alexandre Lamfalussy, former General Manager of the Bank for International Settlements and President of the ECB’s predecessor, the European Monetary Institute (EMI), to advise on new structures for the adoption of capital markets legislation. The result was the so-called Lamfalussy procedures, or framework, which distinguish between four levels of action:

- level 1: framework principles established through the usual EU legislative procedures (i.e. a proposal by the EU Commission to the EU Council of Ministers and the European Parliament for co-decision);
- level 2: the establishment of two new committees: an EU Securities Committee (ESC) and a Committee of European Securities Regulators (CESR) to assist the EU Commission in the preparation of measures implementing level 1 legal acts;
- level 3: enhanced cooperation and networking among EU securities regulators to ensure consistent and equivalent transposition of level 1 and 2 legislation (through the adoption of common implementing standards); and
- level 4: strengthened enforcement of EU legislation by the EU Commission.

Soon afterwards, similar structures were also created for the banking, insurance and occupational pensions, and financial conglomerates sectors. The Lamfalussy framework looks rather complicated, but is at present the most realistic way forward towards full market integration. However, the sheer number of different actors in this framework shows that the EU is still a long way away from any sort of unified regulatory and supervisory framework for the financial sector. Indeed, it is probably premature to expect that the EU will be able to develop (as is sometimes advocated in financial circles) a Rulebook for the financial sector anytime soon, although such a Rulebook may well become a long-term goal. In any case, in considering the programme for further financial market integration over the course of 2005-2010, the EU Commission will also review the efficiency and effectiveness of the Lamfalussy procedures and, where appropriate, propose amendments.

7. FSAP and other measures to foster financial market integration in the securities sector

In the FSAP, 42 (mostly legislative) measures were adopted, mainly in the field of banking and capital markets. These were completed at the EU level in 2005 and, since most measures are EU Directives, many still require implementation at a national level. The cornerstones of the EU's legislation for the securities sector are, in chronological order of adoption: Directives on 1) UCITS (Undertakings for Collective Investment in Transferable Securities); 2) Market Abuse; 3) Prospectuses; 4) Markets in Financial Instruments; and 5) Transparency, all of which are listed and summarised in Annex II. Of course, as far as the corporate bond market is concerned, and since a corporate bond is not in itself a defined notion but generally regarded as a debt security, an assessment on a case-by-case basis is required as to which provisions of the above Directives are particularly relevant to a corporate bond. For example, corporate bonds with a nominal value of more than €50,000 do not need to meet certain requirements of the Prospectus and Transparency Directives since they are generally expected to be traded in the wholesale, rather than retail, market, with the consequence that considerations of consumer/investor protection become less relevant.

While the above Directives pertain to issuance and trading, there are also Directives that relate to clearing and settlement, in particular the Settlement Finality Directive (SFD) and the Financial Collateral Directive (FCD) (see Annex II). The SFD is designed to avoid systemic risk in designated funds transfer systems, while the FCD is meant to facilitate the mobilisation and realisation of collateral in the financial sector, particularly in a cross-border context.

In addition, the EU has started to address the so-called 15 Giovannini barriers to the integration of securities clearing and settlement systems (named after the chairman of the group that identified them). These barriers include three purely legal ones: 1) national differences in the legal treatment of securities; 2) national differences in the legal treatment of bilateral netting; and 3) an uneven application of conflict of law rules. To address these legal barriers, a working group of the ESCB and CESR has developed common standards for entities providing clearing and settlement services in the EU, based on an adaptation of the CPSS/IOSCO Recommendations in the European context. These Recommendations contain 19 standards for securities settlement systems. Standard 1 concerns the legal framework and reads as follows: "Securities clearing and settlement systems and links between them should have a well-founded, clear and transparent legal basis in the relevant jurisdictions". In addition, the Clearing and Settlement Advisory and Monitoring Group (CESAME) has been set up, composed of high-level representatives of various private and public bodies involved in this project, including the ESCB and CESR. The EU Commission has also launched a Legal Certainty Project for the creation of a harmonised EU-wide framework for the treatment of book-entry security holdings. Finally, the Commission has recently published a proposal for a framework Directive for efficient and safe pan-European clearing and settlement that addresses the following issues: rights for infrastructure providers and users (access, choice, etc.); a common regulatory framework; and appropriate governance arrangements. All these initiatives are listed and summarised in Annex II.

Uncertainties with regard to the law applicable to securities transfers in a cross-border context are also addressed in a number of international initiatives such as the Hague and Unidroit Conventions (see Annex II).

The question arises whether the above Directives and initiatives are relevant for those states that do not participate in the EU or the Hague and Unidroit Conventions. Of course, the answer to this question depends on the laws applicable in each particular jurisdiction. However, although the above Directives and initiatives often reflect compromises between all parties involved, they also set standards that may be useful to third parties.

The ECB has an advisory role vis-à-vis the EU and national legislators with regard to draft legislation in its field of competence and has delivered opinions on most of the legal acts listed in Annex II. The ECB takes advantage of this advisory role to express its concerns about the complexity of the legislative process as well as its support for standardisation through EU Regulations. Recently, the EU Commission has itself become more critical of the quality of past legislation and has expressed the need for improved legislation in future. At present, the focus is more on: less but better legislation; consistent implementation and application at a national level and strengthened enforcement of such legislation; and intensified cooperation between regulatory and supervisory authorities.

8. Investor protection in case of insolvency

It is obviously essential for the development of a corporate bond market that investors can trust that, in the case of insolvency of a financial intermediary, their assets do not disappear in the bankrupt estate. Insolvencies are primarily governed by the rules of the jurisdiction where they occur, with such rules usually reflecting societal values and thus showing differences across jurisdictions. It is important that such rules provide for segregation of securities belonging to investors on the one hand and assets belonging to the financial intermediary on the other. This may be achieved through trust constructions or through legislation explicitly providing for such segregation (which may, in the case of book-entry securities, be a fictional segregation).

It has taken the EU considerable time to adopt rules harmonising at least certain parts of insolvency proceedings. Particularly relevant for the financial sector are the aforementioned SFD and FCD (see Annex II). The SFD contains, amongst other things, provisions for a case of insolvency of a participant in a designated funds transfer system. Transfers of corporate bonds through such designated systems obviously benefit from SFD protection (as implemented in national legislation.) The FCD contains provisions concerning the mobilisation of financial instruments as collateral and the realisation of such collateral in case of a counterparty insolvency. This Directive also supports corporate bond markets to the extent that bonds are used as collateral. There is also an Investor Compensation Schemes Directive (see Annex II) that benefits the development of corporate bond markets. Moreover, depending on the nature of the issuer (credit institution or private company), there are other rules that may be of relevance to the development of corporate bond markets, particularly in the Winding-Up Directive and the Insolvency Regulation (see Annex II).

Finally, there are initiatives at an international level that are supposed to create legal certainty with regard to the laws applicable to funds transfers (as outlined in Section 7 above). These are also relevant here since they determine the law applicable to securities transfers and collateralisation, which are directly relevant to insolvency situations.

Again, as in the case of (other) FSAP measures, the above shows a patchwork of legislation and initiatives where the impact on the corporate bond market has to be assessed on a case-by-case basis. At the same time, it is clear that the corporate bond market is one of the beneficiaries of such legislation and initiatives.

9. The Eurosystem's collateral policy

The Eurosystem's interest in the corporate bond market is based in part on the possibilities for using corporate bonds as collateral for Eurosystem credit operations (i.e. refinancing and overnight credit). In accordance with Eurosystem rules, such credit transactions can only take place if there is adequate collateral lodged. Assets that meet this requirement are specified in the so-called Tier One and Tier Two lists of eligible collateral. The Tier One list contains marketable assets that fulfil uniform euro area-wide eligibility criteria, as specified by the ECB. The Tier Two list contains additional assets that NCBs consider particularly important for their national markets and banking systems. The eligibility criteria are described in Annex III to this contribution. Obviously, the inclusion of corporate bonds in the above lists of eligible collateral enhances their marketability and thus supports the development of corporate bond markets.

For reasons of efficiency and transparency, the ECB has embarked on a project to merge the Tier One and Tier Two lists into one single list. In terms of collateralisation techniques, collateral is being accepted through repurchase and pledge transactions or similar techniques. While there are legal differences between these techniques (for example, repurchase agreements provide for the transfer of ownership, while pledges provide for a priority right), legally speaking such differences may be less important than they seem on the surface. Indeed, with the SFD and the FCD (see Annex II) the ECB and NCBs are well protected as holders of collateral provided by their counterparties.

As far as the ECB is concerned, it supports the use of the European Master Agreement (EMA) for collaterised transactions. The EMA has been developed by the European Banking Federation (EBF) over the past few years, and is a multi-product, multi-jurisdictional and multi-lingual umbrella agreement with product annexes covering securities loans, repurchase operations and derivatives transactions (foreign exchange, options and interest-rate). At this point, the ECB has entered into approximately 85 EMAs with its counterparties in the EU and Switzerland (incidentally, all in the course of its foreign reserves operations and own funds management).

10. Concluding remarks

The introduction of the euro gave a major boost to the development of the euro-denominated corporate bond markets, and further growth seems likely. In terms of the legal underpinnings of such development, much has been achieved, particularly through the adoption of EU legislation and other legal initiatives that foster EU financial market integration. More remains to be done, though. Indeed, despite the creation of a single market, a single currency and a single monetary authority (the ECB), financial markets in the EU are still fragmented.

Legislative initiatives to foster financial market integration will have to meet the test of the competence, subsidiarity, proportionality and, for the Eurosystem, decentralisation principles. This may lead to a continued use of EU Directives (and ECB Guidelines), whereas Regulations, at least in certain domains, could possibly be a better tool to achieve such integration because of their generally applicable and binding nature.

The ECB and NCBs have a keen interest in further integration of EU financial markets, including corporate bond markets. The Eurosystem is therefore likely to support such integration through: 1) the harmonisation of its operations; 2) its advisory role vis-à-vis the EU and national legislators with regard to draft legislation in its field of competence; and 3) recommendations directed at market participants. Important undertakings in this regard are the creation of a single list of eligible collateral assets for Eurosystem credit operations and the promotion of the European Master Agreement (EMA) for transactions covered by this agreement.

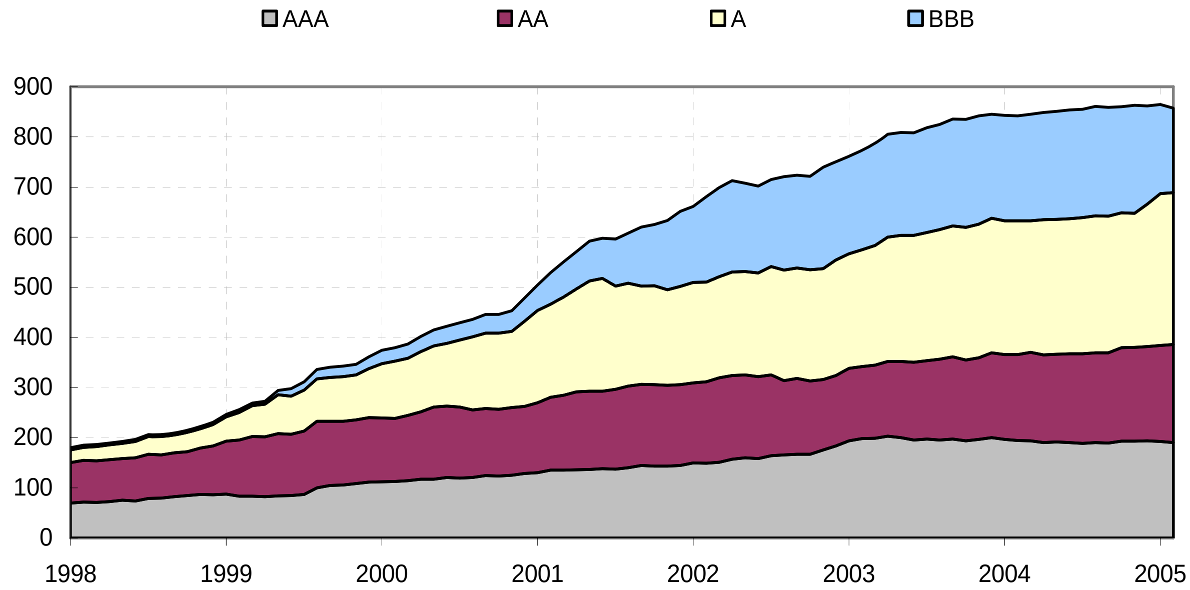
The institutional framework for the adoption of legislation fostering EU financial market integration (the so-called Lamfalussy framework) looks complicated, but is at present the most realistic way forward. It will be interesting to see whether a review of the Lamfalussy procedures in 2007 will result in any changes that will enhance the effectiveness of legislative procedures. However, the different political interests at stake make it unlikely that a unified regulatory and supervisory framework will be achieved in the foreseeable future, although this may well be the long-term target.

Legislation adopted at the EU level often reflects political compromises and requires, for EU Directives and ECB Guidelines, implementation at a national level which may potentially lead to distortions across the EU. It will be interesting to see whether the enlargement of the euro area with the adoption of the euro by the EU's ten new Member States, and the generally accepted need to further integrate the EU financial markets, will increase the willingness of policymakers to adopt generally applicable and binding Regulations. Such Regulations do not require national implementation, and, for this reason, could be considered as a better tool for achieving integration, at least in certain areas. However, the development of a Rulebook for the financial industry in the EU still seems a long way off, since the topics to be covered in such a Rulebook are quite diverse, both in form and substance.

All in all, financial market integration and the further development of a corporate bond market in the EU are a step-by-step process. The focus of this process is at present on: less but better legislation; consistent implementation and application at a national level and strengthened enforcement of such legislation; and intensified cooperation between regulatory and supervisory authorities. All of this will have benefits for both financial market integration and corporate bond market development. While legislation in this area at the EU level is often the result of political compromises, it certainly reflects the careful consideration of all parties involved and may therefore establish standards for markets outside the EU.

Annex I

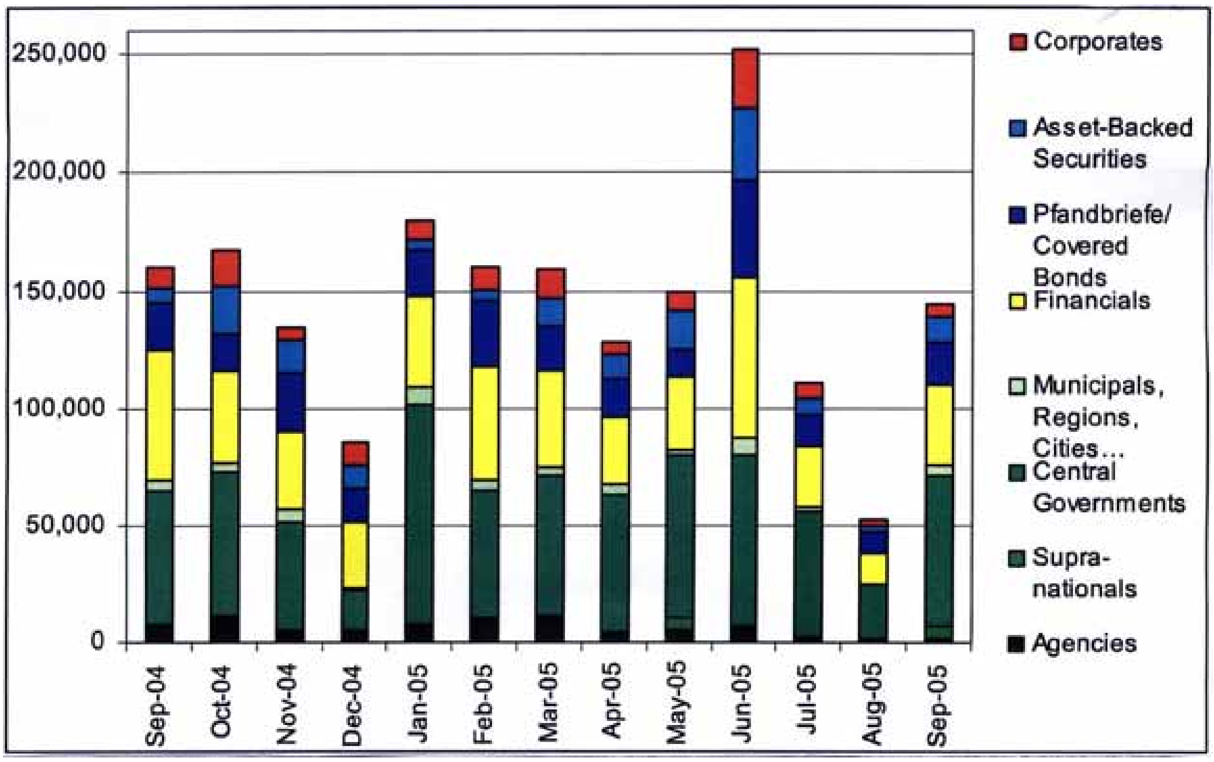
Developments in the euro area corporate bond market
Outstanding values per rating category (EUR billions)



Note: The sample is composed of 1,990 individual bonds in the Merrill Lynch EMU Corporate Bonds Index, which tracks euro-denominated investment-grade bonds with a minimum issue size of €100 million. Sub-investment-grade bonds and asset-backed securities are excluded from the analysis. In addition, bonds with less than one year to maturity, and bonds that were traded less than once a week in a given four-week time period are excluded. All euro-denominated bonds not issued in a euro area country are eliminated, as is data for countries that do not have at least ten corporate bonds at every time interval. Therefore, the analysis is based on a sample of bonds issued in seven EU countries: Austria, France, Germany, Ireland, Italy, the Netherlands and Spain.

Sources: ECB; Bloomberg.

Issuing activity (EUR millions)



Note: All figures quoted are from the DG ECFIN database unless stated otherwise. In this database, all euro-denominated issues of €50 million or more are recorded on the basis of information from various sources (notably Bloomberg and the Thomson International Financing Review). It should be noted that the database includes all issues of a maturity of one year or more (including, in particular, Italian and French discounted paper of usually significant issue amounts). Throughout this report, payment dates - as opposed to announcement dates - for new issues have been taken into account unless stated otherwise. Data are subject to revision.

Source: EU Commission, Directorate General for Economic and Financial Affairs (DG ECFIN)

Sectoral breakdown of debt securities issued by euro area residents

(EUR billions; end-of-period outstanding amounts)

	Total economy	Monetary financial institutions	Non-monetary financial corporations	Non-financial corporations
1998	6,053	2,247	190	301
1999	6,654	2,558	287	358
2000	7,128	2,777	369	435
2001	7,768	2,991	479	533
2002	8,169	3,123	559	547
2003	8,751	3,353	665	591
2004	9,415	3,714	735	595
2005[1]	10,160	4,087	852	627

[1] October 2005 figures.

Source: ECB.

Annex II

Table A

EU legal acts to foster financial market integration in the securities sector

Legal act[1]	Official Journal number	Summary of content
Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (85/611/EEC) (UCITS Directive)	OJ[2] L 375, 31/12/1985, P. 0003	Harmonisation of competition between UCITS at EU level; also aims to achieve more effective and uniform protection for participants. UCITS are undertakings whose sole object is the collective investment in transferable securities of capital raised from the public and the units of which are, at the request of the holders, repurchased or redeemed out of the undertakings' assets.
Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (ISD)	OJ L 141, 11/06/1993, P. 0027-0046	Liberalisation of access to stock exchange membership and financial markets in host MSs[3] for investment firms authorised to provide the services concerned in their home MS. "Single passport" for investment firms in EU and "home state" supervision.
Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (ICSD)	OJ L 084, 26/03/1997, P. 0022-0031	Requirement for MSs to set up one or more investor compensation schemes; cover for claims arising from inability to repay money or return assets held on investors' behalf; a harmonised minimum level of compensation of EUR 20,000 per investor; all investment firms supplying investment services must belong to a scheme unless exempted; possibility to exclude certain investors; obligatory segregation of own and investors' assets.
Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (SFD)	OJ L 166, 11/06/1998 P. 0045-0050	Applicable to designated funds transfer systems and their participants; irrevocability of transfer orders; validity and enforceability of bilateral and multilateral netting arrangements; no retroactive effect of insolvency proceedings against a participant (no zero hour rule); the law governing the system determines the rights and obligations of an insolvent participant; insulation of collateral provided in the framework of participation from insolvency proceedings against a participant.
Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, (Insolvency Regulation)	OJ L 160, 30/06/2000 P.0001-0013	Recognition of insolvency proceedings across MSs, but does not apply to the financial services sector.
Directive 2001/24 of the European Parliament and the Council of 4 April 2001, on the reorganisation and winding-up of credit institutions (WUD)	OJ L 125, 05/05/2001	Contains rules of procedure and substance relating to the winding-up of credit institutions in case of their insolvency.

Table A (continued)

EU legal acts to foster financial market integration in the securities sector

Legal act[1]	Official Journal number	Summary of content
Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (FCD)	OJ L 168, 27/06/2002 P. 0043-0050	Application of effective, simple regimes for the creation of collateral under title transfer (repo) or pledge structures ('twin track'); abolition of formalities and procedures to create and enforce financial collateral (financial instruments, cash); recognition of the right to re-use pledged collateral; protection of collateral from certain insolvency effects (through recognition of substitution, top-up collateral and close-out netting); creation of legal certainty on applicable law regarding book-entry securities by extending the principle of Article 9(2) of the SFD.
Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (Market Abuse Directive)	OJ L 096, 12/04/2003 P. 0016-0025	Harmonisation of rules on market abuse (insider dealing and market manipulation); common definition of abuse; same penalty in each MS for wrongful conduct; convergence of methods to combat market abuse; close cooperation of supervisory authorities (particularly cross-border).
Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (Prospectus Directive)	OJ L 345, 31/12/2003 P. 0064-0089	Purpose is to harmonise requirements for the drafting, approval and distribution of the prospectus to be published when securities are offered to the public and/or admitted to trading on a regulated market in MSs. The Directive introduces new rules making it easier and cheaper for companies to raise capital throughout the EU on the basis of approval from a regulatory authority in one MS. It reinforces protection for investors by guaranteeing that all prospectuses, wherever they are issued in the EU, provide them with the clear and comprehensive information they need to make investment decisions.
Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (MIFID)	OJ L 145, 30/04/2004 P. 0001-0044	The main objective is to strengthen the EU legislative framework for investment services and regulated markets with a view to fostering two major regulatory aims: (1) to protect investors and safeguard market integrity by establishing harmonised requirements governing the activities of authorised intermediaries and (2) to promote fair, transparent, efficient and integrated financial markets.
Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 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/EC (Transparency Directive)	OJ L 390, 31/12/2004 P. 0038-0057	Disclosure of information on the issuer: periodic (annual financial and half-yearly report, interim management statements); ongoing (events changing the breakdown of major holdings that affect the allocation of voting rights - acquisition or disposal).

[1] Legal acts listed in chronological order.

[2] OJ = the Official Journal of the European Union.

[3] MS = EU Member State.

Table B

Other EU and international initiatives to foster financial market integration in the securities sector

Initiatives[1]	**Summary of content**
The Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary, agreed on 13 December 2002[2]	International Convention; 53 members; adopted in December 2002 in the Hague, the Netherlands; not yet entered into force; determining which countries' laws apply with regard to book-entry securities.
ESCB-CESR Standards for Securities Clearing and Settlement Systems in the EU[3] (October 2004)	Implementation of the CPSS-IOSCO Standards; no formal legal effect yet (currently impact assessment). Nineteen standards; Standard 1: Legal Framework - "Securities clearing and settlement systems and links between them should have a well-founded, clear and transparent legal basis in the relevant jurisdictions."
Clearing and Settlement Advisory and Monetary Group (CESAME)	Composed of high-level representatives of various private and public bodies involved in the project, including the ESCB and CESR. Chaired by the EU Commission. It is envisaged that the group will, together with the EU Commission, inter alia advise the EU Commission; interface between private and public sector bodies involved in the process; liaise with groups of experts that will tackle the legal and tax barriers to integration; and liaise with the group of 30 and other international bodies to ensure the consistency of initiatives in the EU with those developed at an international level.
EU Commission Legal Certainty project[4]	EU Commission initiative for the creation of a harmonised EU-wide framework for the treatment of book-entry securities interests. Addresses issues such as: nature of investors' rights in relation to securities held in an account with an intermediary; transfer of these rights; finality of book-entry transfers; treatment of upper-tier attachment; investor protection against insolvency of the intermediary; acquisition of rights in good faith by third parties.
Proposal for an EU Directive on Clearing and Settlement[5]	Rights for infrastructure providers and users (access, choice etc.); Prudential and investor protection rules; Governance aspects (e.g. separate accounting).
Unidroit Project on Harmonised Substantive Rules regarding Indirectly Held Securities[6]	International initiative (Australia, Canada, EU, Japan, US, etc.) to adopt an International Convention regarding substantive aspects with regard to book-entry securities.

[1] Again, listed in chronological order.

[2] http://europa.eu.int/comm/internal_market/financial-markets/hague/index_en.htm

[3] http://www.ecb.int/pub/pdf/other/escb-cesr-standardssecurities2004en.pdf

[4] http://europa.eu.int/comm/internal_market/financial-markets/docs/certainty/bnp-paribassubmission_en.pdf

[5] http://europa.eu.int/comm/economy_finance/giovannini/clearing_settlement_en.htm

[6] http://www.unidroit.org/english/publications/proceedings/2003/study/78/s-78-08-e.pdf

Annex III

Eligible assets for Eurosystem monetary policy operations

Criteria	Tier One	Tier Two
Type of asset	ECB debt certificates Other marketable debt instruments[1, 2]	Marketable debt instruments[1] Non-marketable debt instruments[1]
Settlement procedures	Instruments must be centrally deposited in book-entry form with NCBs of a securities settlement system (SSS) fulfilling the ECB's minimum standards	Assets must be easily accessible to the NCB which has included them in its Tier Two list
Type of issuer	Central Banks Public sector Private sector[3] International and supranational institutions	Public sector Private sector[4]
Credit standard	The asset must be deemed of high credit quality by the ECB (which could include an eligible guarantee of an EEA guarantor which is deemed financially sound by the ECB)	The asset must be deemed of high credit quality by the NCB which has included it in its Tier Two list (which could include an eligible guarantee of a euro area guarantor deemed financially sound by the NCB which has included the asset in its Tier Two list)
Place of establishment of the issuer	EEA and non-EEA G10 countries[5]	Euro area
Place of establishment of the guarantor	EEA	Euro area
Location of asset	Place of issue: EEA Place of settlement: euro area[6]	Euro area[6]
Currency	Euro[7]	Euro[7]
Cross-border use	Yes	Yes

[1] They must have both: (a) a fixed, unconditional principal amount; and (b) a coupon that cannot result in a negative cash flow. In addition, the coupon should be one of the following: (i) a zero coupon; (ii) a fixed rate coupon; or (iii) a floating rate coupon linked to an interest rate reference. The coupon may be linked to a change in the rating of the issuer itself. Furthermore, inflation-indexed bonds are eligible. These features must be maintained until the redemption of the obligation.

[2] Debt instruments affording rights to the principal and/or the interest that are subordinated to the rights of holders of other debt instruments of the same issuer (or, within a structured issue, subordinated to other tranches of the same issue) are excluded from Tier One.

[3] Debt instruments issued by credit institutions which comply strictly with the criteria set out in Article 22 (4) of Council Directive 85/611/EEC, as amended, are eligible in Tier One. Debt instruments issued by credit institutions which do not comply strictly with such criteria may be accepted in Tier One only if they are listed or quoted on a regulated market as defined in Directive 2004/39/EC.

[4] Debt instruments issued by credit institutions which do not comply strictly with the criteria set out in Article 22 (4) of Council Directive 85/611/EEC, as amended, are normally not eligible for inclusion in Tier Two lists. However, the ECB may authorise NCBs to include such assets in their Tier Two lists subject to certain conditions and restrictions.

[5] The requirement that the issuing entity be established in the EEA or in non-EEA G10 countries does not apply to international and supranational institutions.

[6] So that perfection and realisation are subject to the law of a Member State of the euro area.

[7] Expressed as such or in the national denominations of the euro.