Financial regulation: 2001 Q2

1. INTRODUCTION

As in the previous quarter, relatively few provisions of a financial nature were issued in 2001 Q2.

First, the rules on the Central Credit Register (CIR) have been updated to adapt the unit of account used to express the amounts reported to euro, with some minor changes to the reporting thresholds.

Second, the Regulation on foreign investments has been implemented, regulating certain aspects of their declaration and settlement, as well as the procedures for presentation of annual reports relating to their development. Also, some clarifications of the legal system for cross-border transfers between EU Member States have been made at the same time.

In relation to the securities market, the rules on prospectuses, quarterly reports and the information obligations of collective investment undertakings have been amended, in order to ease their use by investors and to speed up their verification and registration.

Finally, in the context of EU law, three provisions have been issued. The first regulates the reorganisation and winding up of credit institutions, in order to harmonise a set of reorganisation measures aiming to preserve or restore the financial situation of such institutions. The second is a Resolution of the Council of the European Union which, on one hand, supports the report of the Committee of Wise Men on the regulation of European securities markets and, on the other, recognises the need for greater convergence of the supervisory practices and regulatory standards of these markets. Finally, the third, relating to combating fraud and counterfeiting of non-cash means of payment, proposes a common policy in the European Union to cover both preventive and repressive aspects of the problem, contemplating, in particular, offences relating to corporeal payment instruments and computers, as well as to specifically adapted devices.

2. MODIFICATION OF THE RULES ON THE CENTRAL CREDIT REGISTER

Article 17 of Legislative Decree 18/1962 of 7 June 1962 provides for the creation of a Central Credit Register (CIR) in Spain, whose operation was regulated by the order of 13 February 1963. In the years since a number of reforms have been introduced to give the CIR its present form. Specifically, the amendments introduced by Banco de España Circular (CBE)

7/1989 of 24 February 1989 (since repealed) and CBE 3/1995 of 25 September 1995 (1), basically widened the range of reporting institutions and of borrowers and credits reported, adapting the CIR to the changes in the financial system. Subsequently, CBE 6/1998 of 29 May 1998 (2) amended the 1995 CBE to redefine some concepts and introduce certain reforms, in order to improve the information supplied by the CIR. The latest amendment was introduced by CBE 8/1999 of 27 July 1999 (3). It specifies the means or vehicle to be used by the reporting institutions to request information from the CIR.

CBE 1/2001 of 30 March 2001 (Official State Gazette (BOE) of 18 April 2001) has recently been published. Its purpose is to adapt the unit of account used to express the amounts reported to the CIR to euro, with some minor changes to the reporting threshholds. In addition, some minor changes were introduced into CBE 3/1995 of 25 September 1995 to clarify certain aspects that were not sufficiently explicit.

Previously, reportable credits were expressed in millions of pesetas, having been rounded up to the nearest million. Credits of less than ESP 1 million were not rounded up and were not reportable. Now, credits are to be expressed in thousands of euro, having been rounded up to the nearest thousand, except for those for less than EUR 6,000, which shall not be reportable.

Further, all the amounts expressed in pesetas are replaced by a similar amount in euro. Direct credits to resident borrowers were previously reported when their amount in respect of all business in Spain was greater than or equal to ESP 1 million, or to ESP 10 million, in the case of that in any other country. These amounts are now replaced by EUR 6,000 and EUR 60,000 respectively. Likewise, as regards direct and indirect credit to non-resident borrowers, the threshold for compulsory reporting of ESP 50 million is now replaced by EUR 300,000.

Finally, this Circular will come into force on 30 September 2001, and shall be applicable for the first time to the reports made by institutions in the month of October on the credit positions as at that date.

(1) See "Regulación financiera: cuarto trimestre de 1995", in Boletín Económico, Banco de España, January 1996, p. 82.

(2) See "Financial regulation: second quarter of 1998", in Economic Bulletin, Banco de España, July 1998, p. 84.

(3) See "Financial regulation: third quarter of 1999", in Economic Bulletin, Banco de España, October 1999, p. 74.

3. PROCEDURES FOR DECLARING FOREIGN INVESTMENTS AND THEIR SETTLEMENT

The Treaty on European Union (Maastricht Treaty), signed by Spain on 7 February 1992, established full freedom of capital movements, authorising the Member States to establish or maintain administrative formalities for liberalised transactions. This had two basic purposes: first, the establishment of a mechanism for declaring investments so that information on such transactions is available for administrative and statistical purposes; and second, the possibility of adopting measures warranted on grounds of public order and safety and, in exceptional cases, of even suspending the liberalised regime.

Royal Decree 664/1999 of 23 April 1999 (4) on foreign investment was enacted in order to adjust Spanish law to the provisions of the Treaty. Basically, it liberalised both foreign investment in Spain and Spanish investment abroad, as well as payments between Member States and between the latter and third countries. The main feature of this Royal Decree was the establishment of an administrative procedure for the general ex-post declaration of investment, for administrative, economic and statistical purposes, with the prior verification and authorisation procedures being abolished. However, in certain cases of inward and outward investment from or to territories or countries classified in Spanish law as tax havens, a prior declaration was required in addition to the aforementioned ex-post one, and the possibility was envisaged of exceptional measures being adopted that might even enable the liberalisation regime to be suspended. Finally, the Royal Decree empowered the Minister of the Economy to implement the procedures applicable to the processing and registration of transactions covered by this rule.

Pursuant to these powers, the Ministerial Order of 28 May 2001 (BOE of 5 June 2001) establishing the applicable procedures for declaring foreign investments and their settlement, as well as the procedures for the presentation of annual reports on the development of foreign investments was issued.

At the same time, taking into account that, when foreign investments are in the form of marketable securities, different declaration procedures are required owing to their specific

(4) See "Financial regulation: second quarter of 1999", in Economic Bulletin, Banco de España, July 1999, pp. 70-72.

characteristics, and that the person obliged to declare such investments is generally the financial intermediary that acquires these securities for the account of the investor, it has been considered appropriate for this kind of investment to be the subject of a separate provision. For this reason, a *Resolution of 31 May 2001 of the Directorate General for Trade and Investment (Dirección General de Comercio e Inversiones)* (BOE of 13 June 2001) has been published. This issues instructions for the submission by financial intermediaries of declarations of foreign investment in marketable securities listed on Spanish markets and of Spanish investments in marketable securities listed on foreign markets.

Finally, it should be noted that the Order of May 2001 also amends the Ministerial Order of 16 November 2000 implementing Law 9/1999 of 12 April 1999 (5), which regulates the legal rules for *transfers* between Member States of the European Union, as well as other provisions relating to the management of transfers in general.

The most important aspects of the Order and the Decision are summarised below.

3.1. Scope of application

The Order defines who can hold foreign investments in Spain and Spanish investments abroad, in accordance with the provisions of RD 664/1999, and the means of evidencing the status of non-residency or, where applicable, residency in Spain. Also, the cases of change of registered office and change of residency are contemplated, since, if they involve a change in residency or non-residency status in Spain, they will entail a change in the classification of an investment as a Spanish investment abroad or a foreign investment in Spain, and will therefore involve an obligation to submit the relevant declarations to the Investment Registry (Registro de Inversiones) of the Ministry of Economy

3.2. Foreign investment: tax havens

This section covers both inward foreign investment in Spain from tax havens (6), and Spanish investment in such territories.

As regards *inward foreign investment from tax havens,* in accordance with RD 664/1999, the proposed investment must be declared to the Investment Registry, prior to its execution. However, the following two cases are excluded from the obligation for prior declaration: *a)* investment in marketable securities, whether on official or unofficial primary or secondary markets, as well as in shares in mutual funds registered with the National Securities Market Commission (CNMV); and *b)* when the foreign holding does not exceed 50 % of the capital of the target Spanish company, either before or as a consequence of the proposed investment.

As for *Spanish investment in tax havens,* prior declaration is also required. However, the following two cases are excluded from the obligation for prior declaration: investment in marketable securities (on the same conditions as set out above) and shares in mutual funds, and *b)* investment that does not give the investor an effective influence over the management or control of the foreign company in question. Such an influence is presumed to exist when the direct or indirect holding of the investor is greater than or equal to 10 % of the capital of the company or when the investor is entitled to be represented, directly or indirectly, on the board of directors.

The settlement of foreign investments, whether investments in Spain held by residents of tax havens, or else Spanish investments in such territories, shall not require any prior declaration to be made.

3.3. Investment in unlisted companies, branches and other types of investment

As regards *foreign investment in Spain,* the procedures are regulated for declaration and settlement of the following investments:

a) Holdings in unlisted Spanish companies. This covers the incorporation of companies, subscription for and acquisition of all or some of their shares or the taking-up of equity and the acquisition of securities such as warrants, convertible bonds and the like.

b) The establishment of and increases in branch endowments.

c) The establishment, execution or participation in joint-ventures, foundations, economic interest groupings, co-operatives and jointly-held property, when the total value corresponding to the holding of foreign investors exceeds ESP 500 million (approximately EUR 3 million), or when, irrespec-

(5) See “Financial regulation: second quarter of 1999”, in Economic Bulletin, Banco de España, July 1999, pp. 63-64.

(6) These are the countries or territories deemed to be such by Royal Decree 1080/1991 of 5 July 1991.

tive of the amount, the investor is resident in a tax haven.

In the case of *Spanish investment abroad,* the procedures for declaration and settlement of such investments are similar to those envisaged in the previous case for the following operations:

a) Holdings in unlisted foreign companies.

b) The establishment of and increases in branch endowments.

c) The establishment, execution or participation in joint-ventures, foundations, economic interest groupings, co-operatives and jointly-held property, when the total value corresponding to the holding of the resident investors either in itself or combined with previously existing holdings exceeds ESP 250 million (approximately EUR 1.5 million), or when, irrespective of its amount, the investment is in a tax haven.

Whether or not the foregoing operations are subject to the obligation of prior declaration (if the investor is resident in a tax haven), the investor must declare the same in the Investments Registry within one month from the date the investment is made.

3.4. Investment in marketable securities

With regard to *foreign investment in Spain in marketable securities,* the procedures are regulated for declaration and settlement of the following investments:

1) Investments in the shares of Spanish companies whose capital is wholly or partially listed on Spanish or foreign securities markets, as well as warrants and similar rights which, due to their nature, entitle the holder to a stake in the capital of the aforesaid companies, wheresoever issued or acquired.

2) Investments in marketable securities (7) representing loans issued by residents, such as bonds, whether or not convertible into shares, commercial paper and other similar instruments, wheresoever issued or acquired.

3) Investments in mutual funds duly established under Spanish law, by residents, and entered in the CNMV records.

4) Subscription for shares and securities, comparable to shares in unlisted Spanish companies in those cases in which the listing of such shares and securities is planned, with the relevant issue prospectus duly verified and registered with the CNMV.

Non-residents who subscribe for or acquire marketable shares on the Spanish market, for their own account or for the account of third parties, must keep their securities accounts or deposits with one of the member institutions of the Securities Clearing and Settlement Service (SCLV) or of the securities clearing and settlement agency of the market in which they are registered.

Spanish or foreign institutions authorised in Spain or in any other EU Member State that propose to operate in Spain as custodians or administrators of book-entry securities, acquired by non-residents on the Spanish markets, shall notify the Directorate General for Trade and Investment before commencing their activity, in the form established by the aforementioned Decision of 31 May 2001. Those institutions specified in article 37 of Law 24/1988 of 28 July 1988 on the Securities Market are entitled to operate as custodians or administrators of book-entry securities (8).

The declarations at the Investment Registry, in accordance with the instructions laid down in the aforementioned Decision, shall be made by:

a) Custodians or administrators of book-entry securities and, where applicable, the management company of the market concerned.

b) Those entities which, without acting as custodians for foreign investments, settle transactions to buy and sell such securities on the orders of by non-residents.

The procedures for declaring investments and their settlement are also regulated in the case of *Spanish investments in foreign mar -*

(7) The concept of marketable securities is characterised by their marketability on an organised secondary market and their grouping into issues.

(8) These institutions are: *a)* securities dealer-companies and securities agencies; *b)* Spanish credit institutions; *c)* Spanish investment services companies (ISCs) and credit institutions authorised in any other EU Member State, provided that, besides fulfilling the requirements laid down in this Law to operate in Spain, the home-country authorisation permits them to provide certain investment services (the execution of orders for the account of third parties and trading for their own account), and *d)* Spanish ISCs and credit institutions authorised in a State that is not a member of the EU, provided that, besides fulfilling the requirements laid down in this Law to operate in Spain, the home-country authorisation permits them to provide the investment services envisaged in Law 24/1988.

ketable securities, in relation to the following transactions:

1) Investments in the shares of foreign companies whose capital is wholly or partially listed on Spanish or foreign securities markets, as well as warrants and similar rights which, due to their nature, entitle the holder to a stake in the capital of the aforesaid companies, wheresoever issued or acquired.

2) Investments in marketable securities representing loans issued by residents, such as bonds, whether or not convertible into shares, commercial paper and other similar instruments, wheresoever issued or acquired.

3) Investments in foreign mutual funds duly established under the laws of the country concerned, whose prices are regularly published in the general news media.

4) Acquisitions by residents of securities issued by residents and acquired in foreign secondary markets.

The declarations at the Investments Registry shall be made by:

a) The holders of the investments when the securities account or deposit is held with an entity domiciled abroad, or when the securities are in the possession of the holder of the investment.

b) Resident ISCs, credit institutions or other entities which carry on any of the specific activities of the former and which operate for the account and risk of the investor, holding securities on behalf thereof, both with respect to securities accounts or deposits and with respect to the transactions for their own account. Entities proposing to carry on such activities must notify the Directorate General for Trade and Investments before commencing operations, in accordance with the form laid down in Decision 31 of May 2001.

3.5. Property investment transactions

In this case, the procedures are regulated for declaration and settlement of investments, when they arise from the acquisition of property situated in Spain (in the case of foreign investment) or the acquisition of property situated abroad (in the case of Spanish investments abroad), whose total amounts exceed ESP 500 million (approximately EUR 3 million) and ESP 250 million (around EUR 1.5 million), respectively, or when, irrespective of the amount, the investor in property is resident in a tax haven or the property acquired is situated in a tax haven.

3.6. Suspension of the liberalised regime

The Order provides for a procedure to suspend the liberalised regime when a ministerial department is aware of foreign investment that, owing to its nature, form or conditions of execution, affects or may affect activities related (even if only occasionally) to the exercise of public power, order, safety or health.

3.7. Annual reports on the development of investments

In relation to *foreign investments in Spain,* Spanish firms whose shares are held by non-residents must submit to the Directorate General of Trade and Investment an annual report in the following cases:

a) The branches in Spain of non-resident firms, whatever the amount of their capital or own funds.

b) Spanish companies that control a group of businesses, when the holding of non-residents in their share capital is greater than or equal to 50 %, or when the holding of a single non-resident investor is greater than or equal to 10 %.

c) Spanish corporations whose capital or own funds exceed ESP 500 million (approximately EUR 3 million), when the holding of non-residents in their share capital is greater than or equal to 50 %, or when the holding of a single non-resident investor is greater than or equal to 10 %.

In the case of listed Spanish firms, when calculating the holdings of non-residents in order to ascertain whether they reach 50 % of the share capital, only the holdings of non-resident investors that individually exceed 5 % of share capital shall be counted.

Likewise, as regards *Spanish investments abroad,* the resident holders of these investments shall submit to the Directorate General of Trade and Investment an annual report in the following cases:

a) In the case of investments in branches, whatever the amount of the investment.

b) When the shareholders' equity of the foreign investee company exceeds ESP 250

million (EUR 1.5 million) and the holding of the investor in the capital is greater than or equal to 10 %.

c) In the case of investments in companies whose activity is to hold direct or indirect stakes in the capital of other companies, whatever the amount of the investment.

3.8. Modification of the rules on cross-border transfers

The Ministerial Order of 16 November 2000 established, inter alia, that credit institutions which make transfers between EU Member States must publish a number of general conditions applicable to such transfers, and include them in a tariff brochure. The Ministerial Order of 28 May 2001 now specifies some of these conditions. Thus, in the case of making a transfer, the latest time for the funds to be credited to the account of the beneficiary, which was not previously specified in the provisions, must be that previously agreed with the originator, or otherwise the end of the fifth day following the date of acceptance of the transfer order.

In the case of receipt of a transfer, the latest time for the funds to be credited to the account of the customer beneficiary shall be that previously agreed with the beneficiary or, if none, the end of the day following that on which the funds have been credited to the account of the beneficiary institution (previously it was the period agreed with the originator, or otherwise five bank business days).

4. PROSPECTUSES, QUARTERLY REPORTS AND INFORMATION OBLIGATIONS OF COLLECTIVE INVESTMENT UNDERTAKINGS

The basic regulation of CIUs is contained in Law 46/1984 of 26 December 1994 (9), and in its implementing provisions in Royal Decree 1393/1990 of 2 November 1990 (10). Notable among the amendments made to that Law were those of Law 37/1998 of 16 November 1998 (11) on reform of the securities market, in which, inter alia, certain new kinds of institution were regulated, such as funds of funds and master and feeder funds, which are distinguished by their having the majority of their investments in other CIUs. Subsequently, Royal Decree 91/2001 of 2 February 2001 partially amended Royal Decree 1393/1990, in order to incorporate and implement the new features that had been introduced into Law 46/1984 by Law 37/1998.

The Ministerial Order of 12 July 1993 established the standard forms for the prospectuses that the CIUs are required to submit for prior verification and registration at the CNMV for securities issuance and public offerings, admission to stock-market listing and the marketing of these institutions. Subsequently, the Ministerial Order of 1 October 1998 updated such prospectuses, so as to give entities marketing CIUs a flexible instrument to ease their distribution through increasingly diverse and sophisticated channels. As a result, securities funds (FIM) and money-market funds (FIAMM) were permitted to use abbreviated prospectuses and quarterly reports, in order to transmit a clear and precise commercial message to investors, and to provide the minimum standardised information necessary for knowledge of the product. At the same time, it was sought to facilitate the distribution of the prospectuses through electronic media.

Recently, the *Ministerial Order of 18 April 2001* (BOE of 26 April 2001) on the prospectuses, quarterly reports and information obligations of CIUs has extended this *simplification and standardisation of documents,* to make them easier for investors to use and to speed up their verification and registration.

First, it provides for drafting, supervised by the CNMV, of prospectuses with a format more in concordance with the real needs of investors. On one hand, the conception of the abbreviated prospectus is modified, and such prospectuses are now called simplified prospectuses (12). These prospectuses shall form an integral and removable part of the complete prospectus and shall contain the key elements of the latter which enable investors to understand sufficiently and precisely the product being offered. On the other, the use of simplified prospectuses, hitherto only authorised for mutual funds, is extended to investment companies.

Second, use of the CIFRADOC/CNMV (13) coding and electronic signature system has

(9) See "Regulación financiera: cuarto trimestre de 1984", in Boletín Económico, Banco de España, January 1984, pp.. 41-43.

(10) See "Regulación financiera: cuarto trimestre de 1990", in Boletín Económico, Banco de España, January 1991, pp. 30 and 31.

(11) See "Financial regulation: fourth quarter of 1998", in Economic Bulletin, Banco de España, January 1999, pp. 90-98.

(12) In line with the terminology used to refer to this type of document in most European countries.

(13) This system, already operational for the transmission of information relating to other CNMV procedures, was approved by a Resolution of its Council on 11 March 1998, and is intended to speed up and improve the efficiency of the CNMV's administrative actions in relation to supervised institutions.

been established for sending information for the purposes of verification and updating of the prospectuses of CIUs. This system consists in the transmission of information between the supervised institutions and the CNMV by telematic means with coding and electronic signature, which ensures the confidentiality and security of the communication. Prospectuses may only be submitted through some other channel when the CNMV so authorises, following a reasoned application. Also, the CNMV shall determine the technical requirements and the procedure for CIUs, management companies and custodians to have access to the system, and the manner and time at which the annual accounts, audit reports, the fund rules, the companies' articles of association and other information and documents that form part of or supplement the standard format for prospectuses must be sent through this channel or by means of other telematic systems.

Prospectuses shall be updated when changes arise in their key elements. New instances of such changes have been added to those already laid down in the Ministerial Order of 1 October 1998: the execution or modification of guarantees of profitability in favour of the fund; a change of master fund, in the case of feeder funds, as well as the events envisaged in this section that affect such master fund; changes in the objects entailing changes to the tax regime; and the replacement of the appraisal company, in the case of property funds.

As for the quarterly reports of CIUs, as provided in Ministerial Order of 1 October 1998, now repealed, the management companies of mutual funds of a financial nature can draft simplified quarterly reports along with the complete version. These documents shall be sent by telematic means, subject to such technical requirements as may be specified by the CNMV. As in the case of prospectuses, they may only be submitted by some other means when the CNMV so authorises, upon a reasoned application.

The simplified quarterly report shall refer to the existence of a complete quarterly report and shall indicate, in the terms laid down by the CNMV, whether the audit report on the last financial year was favourable or not and, when the report contains a qualified opinion, whether or not quantified, or the opinion of the auditors was adverse or when, as the case may be, such qualifications have been corrected, this shall be indicated in the quarterly report.

Finally, the obligations to provide information to shareholders and members are maintained. Thus, management companies must deliver to investors, before they first subscribe, at least the simplified prospectus, the simplified quarterly report of the mutual funds and the latest annual report. Also, shareholders shall be entitled to obtain the complete version of the prospectus and the quarterly report free of charge.

5. EUROPEAN DIRECTIVE ON THE REORGANISATION AND WINDING UP OF CREDIT INSTITUTIONS

The Treaty on European Union, while promoting the harmonious development of the activities of credit institutions throughout the EU, through the freedom of establishment and the freedom to provide services, identifies the need to strengthen the stability of the banking system and to ensure the protection of savers.

In this respect, Directive 94/19/EC of 30 May 1994 (14) on deposit-guarantee schemes established the principle of compulsory membership by credit institutions of a guarantee scheme in their home Member State, establishing a harmonised minimum level of guarantee, irrespective of the EU country in which they are located. However, the situation which might arise if a credit institution with branches in other Member States runs into difficulties, shows the need for mutual recognition of reorganisation measures and, where applicable, of winding up proceedings for credit institutions.

This is the legislative background to *Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001* (OJ of 5 May 2001) on the reorganisation and winding up of credit institutions. In particular, it establishes the harmonisation of a set of reorganisation measures aiming to preserve or restore the financial situation of a credit institution while maintaining third parties' pre-existing rights. The most significant aspects of this Directive are described below.

First, employment contracts and relationships shall be governed solely by the law of the Member State applicable to the employment contract, and at the same time, contracts conferring the right to make use of or acquire immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated.

As regards third parties' rights in re, the adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the rights in re of creditors or third parties in

(14) See "Regulación financiera: segundo trimestre de 1994", in Boletín Económico, Banco de España, July-August 1994, pp. 97 and 98.

respect of tangible or intangible assets belonging to the credit institution which are situated within the territory of another Member State at the time of the adoption of such measures or the opening of such proceedings.

The administrative or judicial authorities of the home Member State shall have sole power to decide upon and implement certain reorganisation measures in relation to a credit institution, including its branches set up in other Member States. Such authorities shall without delay inform the competent authorities of the host Member State of their decision to adopt any reorganisation measure. If, as a result, the administrative or judicial authorities of the host Member State deem it necessary to implement within their territory one or more reorganisation measures, they shall inform the competent authorities of the home Member State accordingly. Both sets of authorities shall endeavour to coordinate their actions.

A credit institution shall be wound up in accordance with the laws, regulations and procedures applicable in its home Member State, which shall determine, inter alia: the goods subject to administration; the respective powers of the credit institution and the liquidator; the conditions under which set-offs may be invoked; the effects of winding-up proceedings on current contracts to which the credit institution is party; the claims which are to be lodged against the credit institution and the treatment of claims arising after the opening of winding-up proceedings; the rules governing the distribution of the proceeds of the realisation of assets; the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right in re or through a set-off.

Where the opening of winding-up proceedings is decided on in respect of a credit institution in the absence, or following the failure, of reorganisation measures, the authorisation of the institution shall be withdrawn. This fact shall, where applicable, be notified to the competent authorities of the host Member State, who shall take appropriate measures to prevent the institution concerned from initiating further transactions within its territory and to safeguard the interests of depositors.

When winding-up proceedings are opened, the administrative or judicial authority of the home Member State or the liquidator shall without delay individually inform known creditors who have their domiciles in other Member States. Such creditors shall have the right to lodge claims or to submit written observations relating to claims.

Finally, the Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 5 May 2004.

6. REGULATION OF EUROPEAN UNION SECURITIES MARKETS

The European Council, meeting in Stockholm in March, issued the *Resolution of 23 March 2001 on more effective securities market regulation in the European Union,* incorporating the report of the Committee of Wise Men on the regulation of European securities markets, and recognising the need for further convergence of supervisory practices and regulatory standards, in order to achieve an integrated securities market by the end of 2003.

The approach of the report of the Committee of Wise Men is based on four levels: framework principles (level 1), implementing measures (level 2), cooperation (level 3) and enforcement (level 4), to make the regulatory process for European Union securities legislation more effective and transparent.

This report proposes the establishment of a *Securities Committee* of high-level officials from Member States, chaired by the European Commission ("the Commission"). This Committee would act, on one hand, in an advisory capacity in relation to policy issues, in particular, the kind of measures the Commission might propose at level 1. On the other, it would also function as a regulatory committee, assisting the Commission when it takes implementing measures in respect of securities markets pursuant to the EC Treaty.

The establishment of an independent *Regulators' Committee* is also proposed, which should be chaired by a representative of a national supervisory authority. Each Member State will designate a senior representative from the competent authorities in the securities field to participate in the meetings of the Regulators Committee. This committee will act as an advisory group to assist the Commission in its preparation of draft implementing measures (level 2).

National regulators and the Regulators Committee should also play an important role in the transposition process (level 3) by securing more effective cooperation between supervisory authorities, carrying out peer reviews and promoting best practice, so as to ensure more consistent and timely implementation of Community legislation in the Member States.

Finally, it is proposed in level 4 that the Commission and the Member States should strengthen the enforcement of Community law.

The new regulatory structure should be operational from the beginning of 2002 and there will be a full and open review in 2004.

7. COMBATING FRAUD AND COUNTERFEITING OF NON-CASH MEANS OF PAYMENT

Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment (OJ of 2 June 2001) proposes a common European Union policy covering both preventive and repressive aspects of the problem. Specifically, the Framework Decision contemplates offences related to corporeal payment instruments, to computers and, finally, specifically adapted devices.

In this respect, it is established that each Member State shall adopt the measures necessary to ensure that certain conduct is a criminal offence, when committed intentionally, in the following cases:

a) *Relating to payment instruments* (15): theft or other unlawful appropriation; counterfeiting or falsification of a payment instrument in order for it to be used fraudulently; receiving, obtaining, transporting, sale or transfer to another person of a counterfeited or falsified payment instrument in order for it to be used fraudulently;

b) *Related to computers:* performing or causing a transfer of money and thereby causing an unauthorised loss of property for another person by, without right, introducing, altering, deleting or suppressing computer data, or, without right, interfering with the functioning of a computer programme or system.

c) *Related to specifically adapted devices:* the fraudulent making, receiving, obtaining, sale or transfer to another person or possession of instruments, articles, computer programmes and any other means for counterfeiting or falsifying payment instruments for fraudulent use.

Moreover, measures shall be taken to ensure that the conduct referred to above is punishable by effective, proportionate and dissuasive criminal penalties, including, at least in serious cases, penalties involving deprivation of liberty which can give rise to extradition.

As for legal persons, they shall be responsible for the above-mentioned criminal conduct committed by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person based on a power of representation of the legal person, or an authority to take decisions on behalf of the legal person, or an authority to exercise control within the legal person. The sanctions imposed on legal persons shall include criminal and non-criminal fines, and may include other sanctions, such as exclusion from entitlement to public benefits or aids, temporary or permanent disqualification from the practice of commercial activities, placing under judicial supervision, or a judicial winding-up order.

As regards cooperation and exchange of information, Member States shall afford each other the widest measure of mutual assistance in respect of proceedings relating to the offences provided for in this Framework Decision, and shall designate operational contact points or may use existing operational structures for the exchange of information and for other contacts between Member States.

Finally, Member States shall bring into force the measures necessary to comply with this Framework Decision by 2 June 2003.

5.7.2001.

(15) The Framework Decision contemplates the most common payment instruments, such as credit cards, eurocheque cards, other cards issued by financial institutions, travellers' cheques, eurocheques, other cheques and bills of exchange.