

## Common understanding on implementing the EU commitment regarding the use of Collective Action Clauses (CACs)

The speech by the ECOFIN President to the IMFC in April 2003 announced that *“the EU will use contractual provisions based on the framework developed by the G10, and where necessary in accordance with applicable law and adjusted to local legal practice, in their central government bonds issued under a foreign jurisdiction and/or governed by a foreign law by the end of this year. Thereafter, EU Member States will no longer issue such bonds without any CACs.”* The following table summarises the set of ‘core’ clauses which Member States and the Community are expected to use in implementing the EU commitment. They closely follow the prescription of the G-10 CACs designed for use under New York law, but would also be applicable to other jurisdictions (e.g. as in the recent UK issuance with CACs under English law). It is recognised that flexibility to allow for different legal practices in different countries is necessary. However, wherever possible and increasingly over time these clauses should guide Member States’ and the Community’s practices in this field.

Clause/feature	Activation	Role/purpose
<b>1. Collective representation provisions</b>		
<b>Permanent representative</b> (e.g. trustee, masse)	Embedded in the original terms and conditions of the bonds	- Represents bondholders for purposes other than actual negotiation - Responsible for litigation
<b>Negotiating representative(s)</b>	Elected by bondholders (presumption being soon after default)	- Represents bondholders in negotiations
<b>Meeting of bondholders</b>	At any time, upon request of issuer; permanent representative; or bondholders holding at least 10% of the outstanding amount	- Enables creditors’ co-ordination - Useful to elect the special representative
<b>2. Majority restructuring provisions</b>		
<b>Reserve matters</b>	Upon a vote representing 75% of bondholders, based on outstanding principal amount, or equivalent based on	- Allows for change in reserve matters either through amendment or an exchange offer

	<p>quorum. May be conducted through a written procedure or in a meeting. A quorum requirement could be bondholders representing 75% of principal outstanding, with 50% at an adjourned meeting.</p>	<ul style="list-style-type: none"> <li>- Any changes are binding on all bondholders</li> <li>- Reserve matters should, as a minimum, include key payment terms, including any change in payment dates, reduction in principal or interest, or change in currency; and any instruction to the representative to exchange or convert the bonds</li> </ul>
<b>Non reserve matters</b>	<p>Upon a vote representing two-thirds of bondholders, based on outstanding principal amount, or equivalent based on quorum at a bondholders meeting. May be conducted through a written procedure or in a meeting. A quorum requirement could be bondholders representing 50% of principal outstanding, with 25% at an adjourned meeting.</p>	<ul style="list-style-type: none"> <li>- Allows for change in non reserve matters, e.g. any matters other than reserve matters, although non-material amendments may be agreed by the permanent representative without the bondholders' consent</li> <li>- Any changes are binding on all bondholders</li> </ul>
<b>3. Majority enforcement provisions</b>		
<b>Acceleration/rescission</b>	<p>Acceleration:</p> <ul style="list-style-type: none"> <li>- in event of default</li> <li>- upon decision of the permanent representative or holders representing not less than 25% of bondholders (based on outstanding principal amount, or equivalent based on quorum at a bondholders meeting)</li> </ul> <p>Rescission of the acceleration:</p> <ul style="list-style-type: none"> <li>- provided the event of default is cured, waived or remedied</li> <li>- upon decision of holders representing not less than 66 2/3% of bonds</li> </ul>	<ul style="list-style-type: none"> <li>- Makes acceleration, which is possible only in a continuing event of default, a collective decision</li> <li>- A supermajority can then decide to "de-accelerate", as long as all events of default are cured, waived or remedied (other than those solely due to the acceleration itself).</li> </ul>
<b>Litigation</b>	<p>Litigation to be instituted solely by the permanent representative</p> <ul style="list-style-type: none"> <li>- at its own discretion</li> <li>- or upon instruction of at least 25% of bondholders</li> </ul>	<ul style="list-style-type: none"> <li>- Prohibits individual action, unless the permanent representative fails to honour the appropriate instructions of the bondholders, and replaces</li> </ul>

	<ul style="list-style-type: none"> <li>- and provided that the representative has been offered reasonable indemnification</li> <li>- unless it fails to do so within 90 days (after which individual holders would be able to litigate)</li> </ul> <p>Continuation and outcome of the litigation:</p> <ul style="list-style-type: none"> <li>- majority (i.e., over 50%) of outstanding bondholders may direct conduct of legal proceedings</li> <li>- recovery proceeds are distributed pro rata to all holders</li> </ul>	<p>individual legal initiatives with the collective decision of a minimum percentage of bondholders</p> <ul style="list-style-type: none"> <li>- Provides (through the trustee or trustee-like structure) for a pro-rata distribution of the proceeds, thus limiting the appetite for disruptive litigation</li> </ul>
<b>4. Disenfranchisement provision</b>		
<b>Disenfranchisement</b>	<p>Bonds that are to be excluded from the 'outstanding amount' used as a reference for voting provisions are those:</p> <ul style="list-style-type: none"> <li>- owned or controlled directly or indirectly by the issuer or its public instrumentalities</li> </ul>	- Aims at limiting the ability of the issuer to control the vote