

POSITION PAPER



ESBG response to the ESMA Consultation Paper on the draft guidelines on the Market Abuse Regulation

ESBG (European Savings and Retail Banking Group)

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The European Savings and Retail Banking Group (ESBG) welcomes the opportunity to provide comments to the Draft Guidelines on the Market Abuse Regulation (hereinafter the “Guidelines”). Please find below our response to the Consultation Paper.

Q1: Do you agree with this proposal regarding MSR’s assessment as to whether they are in possession of inside information as a result of the market sounding and as to when they cease to be in possession of inside information?

Q2: Do you agree with this proposal regarding discrepancies of opinion between DMP and MSR?

Q3: Do you agree with this proposal regarding internal procedures and staff training? Should the Guidelines be more detailed and specific about the internal procedures to prevent the circulation of inside information?

ESBG supports that the internal procedures should lead to a better control of the information flows, as well as to establish the grounds for the assessment of the information. However ESBG would like to indicate that some institutions could prefer to have more detailed guidance in that respect, without imposing them to the institutions that prefer to find their own format.

Q4: Do you agree with this proposal regarding a list of MSR’s staff that are in possession of the information communicated in the course of the market sounding?

ESBG strongly believes that there should not be the systematic production of a separate list for each market sounding in addition to the register of the insider list. To avoid the costs that involves keeping a variety of registers with the same or a similar aims, the guidelines should allow to put in place systems that make possible the production of a list for a previous market sounding based on the insider list when it appears necessary.

Q5: Do you agree with the revised approach regarding the recording of telephone calls?

ESBG does.

Q6: Do you agree with the proposal regarding MSR’s obligation to draw up their own version of the written minutes or notes in case of disagreement with the content of those drafted by the DMP?

ESBG disagrees. ESBG considers that the minutes or notes does not have to be signed in all the cases when there is an agreement as it could be inappropriate in some situations. ESBG supports the following drafting for the guideline 8: “the MSRs should: a. sign *or register the agreement on* these minutes or notes where they agree upon their content”.



However and in the case of disagreement, it should be annotated in the minute drawn up by the DMP. Otherwise, the procedure becomes too burdensome without a clear justification of what it is aiming to.

Q7: Can you provide possible elements of compliance cost with reference to the regime proposed in the guidelines for MSRs?

As examples, ESBG identifies the:

- (i) recording systems for telephone calls;
- (ii) IT developments regarding information record keeping and its tracking; and
- (iii) search engines for the recorded data (including the telephone calls).

As a matter of fact, the cost estimated for our Spanish member for the telephone call recording is of 1,2MM€ for the first year, considering only the software for fixed telephones regarding employees who could be able to deal with market soundings and without taking into account the additional search engines that will be needed.

Guidelines on legitimate interests of issuers to delay inside information and situations in which the delay of disclosure is likely to mislead the public

Q8: Do you agree with the proposal regarding legitimate interests of the issuer for delaying disclosure of inside information?

As a general comment, it should be highlighted that the use of the delay will be reduced insofar the Guidelines do not detail the situations that are legitimate interests, only providing a non-exhaustive list of circumstances that “could” be included. In this sense, detailing the circumstances referred in the Guidelines would be welcomed.

ESBG believes other situations should be included in the legitimate interests of the issuer and not considered as misleading the public: for example covenant breach, restructuring before an issue... of the issuer’s debt (this is to prevent from compromising potential negotiations with banking partners). ESBG also believes that business plans are to be considered as potentially inside information with legitimate reasons to be kept confidential unless the information which need to be refreshed are profit forecasts.

Q9: Do you agree with the proposal regarding situations where the delayed disclosure is likely to mislead the public?

The proposal regarding market’s expectations is interesting but needs to be further considered: ESBG believes that comments from the issuer should be limited to information directly deducted from information provided by the issuer. Indeed, market’s expectation may result from market player interpretation which could force the issuer to disclose complementary strategic and confidential information for responses.

Q10: Do you see other elements to be considered for assessing market’s expectations?



ESBG would like to emphasize that expressing strict prohibitions can be too rigid as it may not cover all cases and circumstances which would create a legitimate interest to delay the disclosure of the information. The wording should keep appropriate flexibility.

It is important that in the end the regulator appreciates whether main regulatory principles are met, instead of having a not necessarily appropriate 'tick-the-box' solution. An example is the death of a CEO: it is likely that for events with high media visibility (like a plane crash) the corporate needs to react very quickly and to avoid the press to take the lead and create panic on the market. But for more private situations, there is less damage for the corporate to organize its communication than to communicate at once and create an unnecessary panic.

ESBG believes that it should generally be up to the corporate to assess the best way to handle the situation.



About ESBG (European Savings and Retail Banking Group)

ESBG brings together savings and retail banks of the European Union and European Economic Area that believe in a common identity for European policies. ESBG members support the development of a single market for Europe that adheres to the principle of subsidiarity, whereby the European Union only acts when individual Member States cannot sufficiently do so. They believe that pluralism and diversity in the European banking sector safeguard the market against shocks that arise from time to time, whether caused by internal or external forces. Members seek to defend the European social and economic model that combines economic growth with high living standards and good working conditions. To these ends, ESBG members come together to agree on and promote common positions on relevant matters of a regulatory or supervisory nature.

ESBG members represent one of the largest European retail banking networks, comprising of approximately one-third of the retail banking market in Europe, with total assets of **€6,702 billion**, non-bank deposits of **€3,485 billion** and non-bank loans of **€3,719 billion** (31 December 2014).



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