



EUROPEAN SAVINGS BANKS GROUP
GROUPEMENT EUROPEEN DES CAISSES D'EPARGNE
EUROPÄISCHE SPARKASSENVEREINIGUNG

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European Savings Banks Group (ESBG)

**Response to CESR's Consultation Paper on the first set
of Advice on Possible Implementing Measures of the
Transparency Directive**

Ref.: CESR / 04-511

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Profile European Savings Banks Group

The European Savings Banks Group (ESBG) represents 24 members from 24 European countries representing 968 individual savings banks with around 65 000 branches and nearly 757,000 employees. At the start of 2003, total assets reached almost EUR 4355 billion, non-bank deposits were standing at over EUR 2080 billion and non-bank loans at just under EUR 2195 billion. Its members are retail banks that generally have a significant share in their national domestic banking markets and enjoy a common customer oriented savings banks tradition, acting in a socially responsible manner. Their market focus includes amongst others individuals, households, SMEs and local authorities.

Founded in 1963, the ESBG has established a reputation as the advocate of savings banks interests and an active promoter of business cooperation in Europe. Since 1994, the ESBG operates together with the World Savings Banks Institute (WSBI, with 109 member banks from 92 countries) under a common structure in Brussels.



1. GENERAL REMARKS

Scope of the obligation to disseminate and store information

In Part C, paragraph 214 of its proposed advice, CESR suggests to “*expand the type of information that is to be disseminated and stored under the entirety of Article 17 (now Article 21) to include information required under the Prospectus Directive*”. ESBG Members are of the opinion that this proposed advice lacks any basis, either in the Transparency Directive or in the Prospectus Directive. In contrast, the Council and the European Parliament indicated clearly that only regulated information should be disseminated and stored. This was also the point of view expressed by the European Commission in its proposals (for a Transparency Directive and for a Prospectus Directive). The ESBG therefore believes that these decisions should not be overruled by a provision agreed upon under level 2 of the Lamfalussy process or by way of setting up guidelines under Article 22 (ex Article 18).

This being said, and as explained in a further section, ESBG Members share the view that the most appropriate way to fulfil the requirements under Article 21.2 (ex Article 17.1a) is for the competent authority of each Member State to run the officially appointed mechanism for the central storage of regulated information. Should this solution be adopted, then the objective of expanding the scope of Article 21 (ex Article 17) to also disclose information under the Prospectus Directive could be met, as the information required under the Prospectus Directive has to be filed to the competent authority. This advantage is developed in more detail by CESR (Part C, paragraph 132).

Secure transmission of data

ESBG Members expressly welcome the provision which states that in the case of an electronic filing with the competent authority, the transmission of data has to be performed with an appropriate level of security (Part C, paragraph 301 and following). Unfortunately, the proposed standards for the transmission of data from the issuer to the operator and from the operator to the media lack such a security requirement. The ESBG believes that it is especially of the utmost importance to make sure that information transferred to an operator and to the media cannot be intercepted by third parties, who could use this information before it is published by media.

There should be only one storage mechanism per Member State and it should be run by the competent authority of that Member State

In Part C, paragraph 43 and following, CESR wonders whether there should be one storage mechanism or more than one.

ESBG Members are opposed to a solution where there would be several central storage mechanisms per Member State, to all of which the issuers would have to send their regulated information. Such a solution would actually mean having to pay for all of these central storage mechanisms, thereby increasing the costs without additional benefits for the market participants, especially the investors. In its Part C, paragraph 51, CESR argues that introducing competition would keep the overall costs low, precisely because of the competitive pressure. The ESBG does not believe that this argument is accurate, as since the issuers would have to file all regulated information with all the national storage mechanisms,



there would be no competitive pressure on prices in relation to issuers. In addition, ESBG Members do not share CESR's views in Part C, paragraph 59(c), that in the solution of a single central mechanism, investors would have to be provided access for free; it would actually not be unusual for a competent authority to charge for a service provided to the investors.

Against this background, we would strongly support the solution of a single central storage mechanism per Member State, run by the competent authority. Furthermore, as an issuer has to file the regulated information with the competent authority anyway, it would be appropriate for this authority to also process this information and make it available to the investors, as suggested in Part C, paragraph 132. This would allow a more efficient data processing by the issuers.

2 SPECIFIC COMMENTS

2.1 Part B: Consultation Paper on Dissemination of Regulated Information by Issuers and on Conditions for Keeping Periodic Financial Reports Available

Question 3: should an issuer be able to satisfy all of this Directive's requirements to disclose regulated information by sending this information only to an operator?

Yes, issuers should be able to satisfy all the requirements of the Directive by sending information only to an operator. This would make the information processing by the issuer much easier, whereas it would not add much work for an operator to send that information also to the competent authority.

Question 6: what are your views on the proposed minimum standards to be satisfied by operators? Are there any other standards that CESR should consider?

The transmission of data from the issuer to the operator and from the operator to the media should be secured in a way that interception of the information by third parties would not be possible.

Question 7: should issuers be required to use the services of an operator for the dissemination of regulated information?

No.

Question 12: Do you agree with this draft Level 2 advice?

In relation to CESR's draft advice on the dissemination of regulated information by issuers, the ESBG expressly welcomes CESR's proposal for a differentiated treatment between price sensitive and non price sensitive information. Specifically, the ESBG supports CESR's view that in the case of non price sensitive information (e.g. an annual financial report), the dissemination obligation under Article 17 (ex Article 21) can be fulfilled by disseminating "an announcement (...) stating that the information has been published and where it is available".

Question 13: do you agree with CESR's advice in relation to this mandate?

Yes.



2.2 Part C: Progress Report on the Role of the Officially Appointed Mechanism (Article 17 1a) and the Setting up of a European Electronic Network of Information about Issuers (Article 18) and Electronic Filing (Article 15 4a)

Question 13: when should an issuer's responsibilities to send information to a central storage mechanism be considered fulfilled?

ESBG Members are of the opinion that the second option proposed is the only sensible one: an issuer's responsibilities should be considered fulfilled only at the point when he receives a confirmation that the regulated information has been received by the central storage mechanism.

We would in particular oppose option 3, which states that the issuer's responsibility is fulfilled at the point at which regulated information is accessible by an investor directly. On the one hand, such a provision is not required by the Transparency Directive. On the other hand, such a requirement is beyond the issuer's control, and is therefore not appropriate.

Question 19: which of the above do you consider to be the best option? Please give reasons for your answer.

The ESBG is of the opinion that the competent authority should run the central storage mechanism, for the reason set out in paragraph 132.

Question 42: do you agree with CESR's proposal to extend Article 17 to include information disclosable under the Prospectus Directive? Please give reasons.

No, for the reasons detailed in the first general remark.

Question 52: do you agree that the balance between competent authorities' needs and filers' needs is best achieved through the use of electronic sending methods, rather than non-electronic means, such as mailing of paper documents? Please give reasons.

ESBG Members are in favour of transmission by electronic filing with the competent authority provided it is stable, quick and secure.