

POSITION PAPER



ESBG response to the CESR consultation on MiFID/ client categorisation

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The European Savings Banks Group (ESBG) appreciates the opportunity to comment on CESR's draft technical advice to the European Commission in the context of the MiFID review, dealing with client categorisation.

General comments

MiFID, being applied since November 2007, changed considerably the conduct of business rules and directly affected the relation between the bank adviser and his clients, notably through the instrument of client categorisation. The concept of client categorisation is a part of the investor protection concept, which also includes the suitability and appropriateness tests. In order to implement the changes introduced by MiFID, Europe's credit institutions undertook considerable organisational, logistical and financial efforts, notably to ensure that the client categorisation rules are properly applied.

The systems are now in place and are functioning well, offering a high level of investor protection as well as an appropriate level of flexibility in order to take into account the different client profiles and service situations. Against this background, ESBG wishes to express its general doubts regarding proposals aiming at a revision of the provisions regarding client categorisation. Some of the proposals could even harm the clarity of the different categories, although these categories are core provision of the MiFID concept. Detailed comments can be found below.

Part I. Technical criteria

- 1. Do you agree that the opening sentence of Annex II.I (1) sets the scope of this provision and that points (a) to (i) are just examples of "Entities which are required to be authorised or regulated to operate in financial markets."?**

ESBG agrees with this interpretation.

- 2. Do you think there is a case for narrowing the range of entities covered by points (c), (h) and (i) of Annex II.I (1)? Please give reasons for your response.**
- 3. If you believe there is a case for narrowing the range of entities covered by points (c), (h) and (i) of Annex II.I (1) what criteria do you think should be used to distinguish between those entities that are covered and those that are not?**

ESBG sees no case for narrowing the range of entities described in Annex II.I (1) as professional clients. ESBG considers that these entities are rightly classified, as they have the necessary experience and knowledge. ESBG, however, admits that guidance relating in particular to which entity falls under "locals", point (h), would be helpful.

- 4. Do you believe there is a need to clarify the language in points (c), (h) and (i) of Annex II.I (1) and, if you do, how do you think the language should be clarified?**

As outlined above, the cases are sufficiently clear, except for the definition of “locals”, point (h). The proposed clarification regarding point (c) is logic, but does not bring added value, whereas the proposal regarding point (i) would leave too much room for interpretation.

Part II. Public debt bodies

- 5. Do you think that Annex II.I(3) should be clarified to make clear that public bodies that manage public debt do not include local authorities?**

ESBG agrees that Annex II.I (3) regarding public bodies that manage public debt should be clarified, but is (contrary to the proposal by CESR) in favor of including local authorities.

Part III. Other client categorization issues

- 6. Do you believe it is appropriate that investment firms should be required to assess the knowledge and experience of at least some entities who currently are considered to be per se professionals under MiFID?**
- 7. Should a knowledge and experience test be applied to large undertakings before they can be considered to be per se professionals or to other categories of clients who are currently considered to be professionals?**

ESBG does not consider that it would be appropriate to require from investment firms that they assess the knowledge and experience of some entities currently categorised as professional clients. This would put in question the client categorisation concept with its different protection levels, which has proved its first merits since its introduction. Also, such a change is not necessary, as clients have the option to upgrade to a higher protection level. In this context ESBG confirms that a high protection level exists for all retail clients.

- 8. Do you believe that the client categorisation rules need to be changed in relation to OTC derivatives and other complex products?**

- 9. If you believe the rules should be changed:**

- for what products should they be changed; and**
- which of the approaches to change set out in the paper would you favour?**

ESBG does not conclude that the client categorisation rules need to be changed in relation to complex products. The categories of professional clients and eligible counterparties, representing fundamental principles of MiFID, refer to clients with a high level of knowledge and experience regarding all kinds of financial products. Already now professional clients and eligible counterparties have the possibility to ask for a higher protection level, if they so wish: For professional clients this option is in particular expressed in Annex II.I (4) and according to Art. 24 eligible counterparties can request, either on a general form or on a trade-by-trade basis, to be treated as clients subject to Articles 19 (and in particular 19(1): act honestly, fairly and professionally, 19(4) suitability test, 19 (5) appropriateness test), 21 and 22. These possibilities are in ESBG's view entirely sufficient. Furthermore, ESBG stresses that a KYC is not applicable to professional clients and eligible counterparties; questions referring investment goals, experience and knowledge as well as financial situation are not workable for such kind of clients. Finally, a KYC check would damage the operation of the market, which relies in particular for these categories on speedy processes and transactions.

10. Do you believe it is necessary to clarify the standards that apply when an investment firm undertakes a transaction with an ECP?

11. If you believe a clarification of these standards is necessary, do you agree with the suggestions made in the paper?

ESBG does not believe that it would be necessary or appropriate to adapt the standards for ECPs. In particular, ESBG is opposed to the proposals included in paragraph 35. These proposals would lead to a situation in which even banks which work on a daily basis with highly complex products or even issue them could not be regarded as ECPs. Furthermore, it needs to be taken into consideration that provisions regarding ECPs are already strict and should not become subject to uncertain provisions related to the introduction of the unclear term of “highly complex products”. ESBG thus considers that no changes should be undertaken and ECPs, being informed of their status, should continue to be held responsible for the consequences of their investment decisions.



About ESBG (European Savings Banks Group)

ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising about one third of the retail banking market in Europe, with total assets of € 5967 billion (1 January 2008). It represents the interest of its Members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

ESBG Members are typically savings and retail banks or associations thereof. They are often organized in decentralized networks and offer their services throughout their region. ESBG Member banks have reinvested responsibly in their region for many decades and are one distinct benchmark for corporate social responsibility activities throughout Europe and the world.



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