EUROPEAN SAVINGS BANKS GROUP
GROUPEMENT EUROPEEN DES CAISSES D'EPARGNE
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European Savings Banks Group (ESBG)

Response to CESR Consultative Concept Paper on Transaction Reporting, Cooperation and Exchange of Information between Competent Authorities

Consultative Concept Paper of March 2004
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Profile European Savings Banks Group

The European Savings Banks Group (ESBG) represents 25 members from 25 countries (EU countries, Norway, Iceland, Bulgaria, Czech Republic, Hungary, Latvia, Malta, Poland, Romania, Slovak Republic) representing over 1000 individual savings banks with around 66,500 branches and nearly 770,000 employees. At the start of 2002, total assets reached almost EUR 4160 billion, non-bank deposits were standing at over EUR 2012 billion and non-bank loans at just under EUR 2095 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.

A. Introduction

The European Savings Banks Group (ESBG) appreciates the initiative by CESR to perform a preliminary consultation on the issues of Transaction Reporting and Cooperation between Competent Authorities, where CESR considers that it has to start its work from scratch.

The Members of the ESBG have a particular interest in the advice which CESR will deliver to the Commission on the question of the reporting of transactions, because of the consequences which requirements in this field can have on their daily operations. The reporting of transactions is a particularly costly operation, because of the important IT resources involved. It is therefore of fundamental importance for CESR and the Commission to integrate carefully a number of general principles: the solutions proposed should always be **proportionate** to the objectives pursued and a **cost-benefit analysis** of any proposed solution should always be performed.

Against this background, the ESBG has some concerns regarding the far-reaching approach proposed by CESR in its section "2.1 Objectives". CESR presents the view that transactions reporting could be used as a tool to reach the following objectives:

- To detect, investigate and enforce market abuse;
- To detect potential breaches by investment firms of conduct of business rules, or to assess whether trading venues are functioning in an orderly manner;
- To detect money laundering, to identify market trends or to pursue other ancillary objectives.

In particular, the ESBG believes that Article 25 (7) of the Directive requires the Commission to adopt implementing measures only to ensure the protection of market integrity. As such, the additional objectives mentioned by CESR in its Consultative Paper do not form part of the Mandate given to the Commission. The ESBG is therefore of the opinion that CESR should concentrate its work on the objectives contained in the Directive. A different approach could result in implementing costly reporting systems, which would fail to meet the objectives mentioned in the Directive.

B. Responses to CESR's questions

Q 1: Do you agree with the approach suggested above to determine the methods and arrangements for reporting financial transactions in one set of criteria applicable to, both, the conditions for a trade matching and reporting system to be considered valid to report

transactions to competent authorities, and the criteria allowing for a waiver? If you do not agree, what other approach would be more appropriate in your view?

Q 2: What requirements should such an inventory contain?

Q 3: What other issues, if any, should CESR take into account when responding to the Mandate concerning the "methods and arrangements for reporting financial transactions"?

The ESBG is of the opinion that two general principles should be taken into account at the moment of determining the appropriate methods and arrangements for reporting financial transactions:

- Establishing and modifying reporting systems is a costly exercise, which involves important IT resources;
- Following the adoption of the first Investment Services Directive in 1993, separate reporting systems have been developed in the different Member States, which vary significantly in terms of their levels of complexity and of automation.

Against this background, the ESBG welcomes CESR's approach and especially its intention to "consider the existing arrangements for transaction as a working basis" and to "refrain from imposing unwarranted new requirements, which would involve radical changes to the existing arrangements and would bring about excessive additional costs for the entities concerned". Furthermore, having regard to the important differences in complexity between the different reporting systems in place, the ESBG believes that the most sophisticated reporting systems should serve as a benchmark representing the maximum threshold for regulatory provisions at level 2.

The ESBG welcomes in principle the initiative by CESR to take into account the potential overlaps between the information required by Article 25 and the information required under the post-trade requirements of the Directive (Articles 28, 30 and 45). Nevertheless, the significant difference in deadline might in practice remove the possibility for overlaps: under Articles 28, 30 and 45, the reporting shall take place "as close to real-time as possible", whereas under Article 25 the deadline will be much longer "no later than the close of the following working day". The ESBG sees at this stage one particular case where the requirements under Articles 25 and 28 could be used interchangeably: it relates to the case of investment firms which internalize orders on an incidental basis, without affecting the price formation process, and which therefore do not fall under the definition of systematic internalisation. These firms nevertheless fall under the scope of Article 28. The ESBG believes that in this case, the transparency requirements pursuant to Article 28 could be fulfilled by way of reports drafted in line with Article 25.

Furthermore, the ESBG supports the initiative by CESR to develop an "inventory of minimum conditions". Nevertheless, the ESBG also believes that this inventory should be prepared only for the trade matching and reporting systems approved by the competent authorities. Accordingly, whenever the reports are being prepared by the investment firm or by one of its agents, no regulatory provisions with a view to data integrity and system resilience should be stipulated. There should in this respect be no change concerning the general organizational requirements that have been stipulated with regard to investment firms under Article 13.

Q 4: What would general criteria for measuring liquidity be?

Q 5: What specific criteria could be useful in measuring liquidity? Should they be prioritised?

Q 6: What could be an appropriate mechanism for assessing liquidity in a simple way for the purposes of this provision?

Q 7: What other considerations should guide CESR in its work regarding the assessment of liquidity in order to define a relevant market in terms of liquidity?

The ESBG believes that CESR is right in highlighting the difficulties linked to assessing the liquidity of a market and to comparing the liquidity of different markets. Furthermore, the definition of *liquidity* under Article 25 will have consequences, since Article 27 of the Directive (*Obligation for investment firms to make public firm quotes*) refers to Article 25 to define the competent authority which should calculate the class of shares to which a share belongs. The ESBG therefore suggests postponing any further work on an appropriate definition of liquidity until the Commission sends its mandate on Article 27.

Q 8: Do you agree with the approach proposed by CESR for determining the minimum content and common standard/format for transaction reports? Are there other approaches that could usefully be considered?

The ESBG supports the two-step approach submitted by CESR. Nevertheless, we would like to stress the importance of granting sufficient flexibility to the reporting parties concerning the way they fulfil their reporting requirements. While an efficient exchange of information between regulators and the comparability of the reports are important objectives, they should not lead to a standardisation of the transactions reports, which would imply in-depth revisions of the existing reporting systems. The ESBG would consequently urge CESR to give due

consideration to the existing systems before submitting advice on the implementation of Article 25(4).

Q 9: Apart from the types of information set out in Art. 25 par. 4 and the Mandate, what other information might be usefully included in transaction reports?

The ESBG believes that the transaction reports could contain the following additional items of information:

- An indication of whether a transaction took place on a regulated market or off-exchange;
- An indication of whether the party making the reporting carried out the transaction on own account or on account of a client;

Furthermore, the ESBG believes that a regime should be set up for handling erroneous reports as soon as the party making the reporting realizes that a report is erroneous.

Q 10: Do you agree that the content of transaction reports has to be equal irrespective of the entity reporting the transaction? What considerations could justify a different treatment of reporting parties?

Yes, the content should be equal irrespective of the reporting party.

Q 11 to Q 15:

No particular comments.