



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

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DOC 0637/04 (vers 1.2)

Brussels, 30 July 2004
JEA / CPE

European Savings Banks Group (ESBG)

**Response to CESR's Call for Evidence on its Mandate
for Technical Advice on possible Implementing
Measures concerning the Transparency Directive**

Ref.: CESR / 04-284

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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 4,355 billion, non-bank deposits were standing at over EUR 2,080 billion and non-bank loans at just under EUR 2,195 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.



The European Savings Banks Group (ESBG) welcomes the opportunity granted by CESR to comment on its mandate for possible implementing measures concerning the Transparency Directive. We would like to take the opportunity of this consultation to comment on some issues of importance to European retail and savings banks.

Section 3.1.1 – item (1): “usual short settlement cycle”

Regarding regulated markets the ESBG would welcome applying a principle e.g. “T+3 principle”. Outside regulated markets there are no “usual short settlement cycles”, the settlement period being usually freely negotiable between contracting parties. From a practical point of view, there is a need to agree on a longer settlement period than under the “T+3 principle”.

Section 3.1.1 – item (2): control mechanism by competent authorities as regards market makers

The ESBG does not believe that a specific provision under the Transparency Directive is necessary in this respect. Control mechanism and questions on conduct of business rules should be determined by the Directive on Markets in Financial Instruments (MiFID).

Section 3.1.2 – item (1): standard form to be used by the investor throughout the Community when notifying the required information

The ESBG proposes that the standard form should contain the following information:

- notifiable shareholder (name/company/residence or seat/country)
- details on the owner of the direct major holding (name/company/residence or seat/country)
- as the case may be, details on the natural persons or legal entities mentioned in Article 10 of the Directive (name/company/residence or seat/country)

Information on major holdings should describe the following:

- shareholdings: previous size, development (acquisitions/sales), current size



- voting rights (in case they deviate from the shareholding): previous quantity, development and current quantity (in percentages)

Section 3.1.2 – item (2): calendar of “trading days”

We welcome the fact that the European Commission “*does not consider necessary to define a uniform calendar of trading days throughout the EU*”. We are of the opinion that a more appropriate solution would consist in setting up different calendars for different Member States, taking account of the trading customs and other particularities in the national markets.

Section 3.1.2 – item (4): circumstances under which the shareholder should have learnt of the acquisition

This section “circumstances under which the shareholder ... should have learnt of the acquisition” clarifies the way in which the shareholder failed to learn about the acquisition. Would the shareholder have been diligent enough, he would have necessarily known about the acquisition. This section deals with negligent behaviour and entails consequences in the area of unharmonised civil law provisions, as negligence is a central notion of civil law. When elaborating relevant provisions, this interaction with civil law should be addressed and sufficient scope for further development should be allowed. This being said, the following main points may be stated:

- a) In case the shareholder is a legal person, the criteria of information and negligible ignorance will be applicable to the members of the management committee. If the management committee has more than one member, it is sufficient that one of the members did know or should have been able to know about the acquisition.
- b) The knowledge or negligible ignorance does not apply to the members of a supervisory board or staff members of the shareholder since they are not representing the shareholder as opposed to the management committee.
- c) An appropriate benchmark for due diligence could be the average market participant with a substantial shareholding.
- d) The appropriate diligence should specially mean the obligation to establish and maintain an internal organisational structure ensuring a transmission of information.



Section 3.3.2 – item (1): clarification of the nature of the auditors' review of the half-yearly report

EBSG Members believe that the clarification of the nature of the auditors' review should be made in accordance with the proposal for a Directive on auditing in the EU¹. This proposal states that auditing should be performed in accordance with pronouncements issued by the International Auditing and Assurance Standards Board (IAASB). Accordingly, the ISRE 2400 should apply to an auditor's review.

Section 3.3.2 – item (2): minimum content of the half-yearly reports

For those half-yearly reports that do not have to be prepared in accordance with IAS 34, the minimum content of the half-yearly reports as laid down in Article 5 should have the same content as the provisions described in the Articles 73 et seq. of Directive 2001/34/EC. The ESBG would like to highlight that the requirements for half-yearly reports may not be more burdensome than those for the annual financial statements. Correspondingly the half-yearly reports may contain condensed balance sheets and income statements as well as selected explanatory notes. The basis for the aggregation of balance sheet items should be the structure of the annual financial statements according to national GAAPs in compliance with the Fourth Council Directive 78/660/EEC. As long as there are no national provisions on interim financial reporting, the materiality criteria under IAS 34.23 could apply. Valuations for half-yearly reports should mainly be based on estimations. The selected notes should as well be based on the requirements for notes of the annual financial reporting according to national GAAPs in compliance with the Fourth Council Directive 78/660/EEC.

Section 3.4 – Third countries

The ESBG is of the opinion that particular care should be paid in this area to ensure consistency with CESR's Call for evidence regarding the European Commission's mandates on equivalence between certain third countries' application of GAAP and IAS/IFRS (ref. CESR 04-305).

¹ Proposal for a Directive of the European Parliament and of the Council on statutory audit of annual accounts and consolidated accounts and amending Council Directives 78/660/EEC and 83/349/EEC, see further Article 26