

POSITION PAPER



**ESBG comments regarding the MiFID consultations
on**

- **equity markets**
- **transaction reporting**
- **investor protection and intermediaries**

European Savings Banks Group Register ID 8765978796-80

May 2010



The European Savings Banks Group (ESBG) recognises the importance of CESR's work in view of the upcoming MiFID review. ESBG therefore welcomes the opportunity to comment on the following CESR consultations: equity markets, transaction reporting, investor protection and intermediaries.

A. equity markets

CESR proposes to improve the **timeliness of post-trade transparency information** by reducing the 3 minutes deadline to 1 minute (paragraph 74). ESBG expects that such a step would cause operational problems and therefore expresses its preference for keeping the initial deadline. ESBG adds that it does not expect real advantages created through the time reduction.

CESR presents its proposal to **align the MiFID requirements between RM and MTFs** (paragraph 101, 102). ESBG fully supports this proposal as it ensures a level-playing field between the different trading venues.

In its paper, CESR also addresses the issue of **crossing systems/processes** under the headline of regulatory boundaries and requirements (chapter 5.2). ESBG expresses its concerns regarding possible impacts of crossing systems/networks on the level-playing field between trading venues as well as a potential weakening of the price formation processes. ESBG recommends CESR and the European Commission to closely evaluate further the size and impact of these broker-dealer networks.

B. transaction reporting

Commenting on CESR's decision to abstain from a harmonized identifier for transactions conducted under a liquidity provision/ **market making arrangements** (paragraph 35), ESBG expresses its support for this approach and shares the view that there is no need to propose further harmonization at this stage.

With respect to the introduction of a **Client-ID** (chapter 3), ESBG understands the reasoning behind the CESR proposal, which foresees a certain degree of harmonization of standards for the collection of such identifiers. ESBG considers that a full harmonization would have enormous practical impacts and create costs as a result of the adaptation of national regimes. It therefore seems reasonable to keep the voluntary national regimes: Each competent authority should, if applicable, provide clear rules for populating the client ID field.

As a side-note ESBG would like to refer to its request for the establishment of a list including all European investment firms subject to transaction reporting (see ESBG responses to CESR of November 2007 and January 2008).



C. investor protection and intermediaries

CESR foresees (in chapter 2) a minimum harmonization regarding **telephone recording**. ESBG does not agree to this proposal and expresses its support for maintaining the existing national discretion. ESBG strongly supports the current optional regime in MiFID, as it reflects well diverging national traditions and structures. An important number of countries do not opt in. In these countries clients are not interested in having telephone recordings and, more importantly, are not even willing to accept telephone recordings. Forcing those countries currently opting out of telephone recordings to introduce such practices, would thus be diametrically opposed to clients' interests and, in addition, to national data protection rules. Moreover, an obligation of recording of all telephone conversations with clients would be very burdensome- especially for smaller and medium-sized, regionally focused banks. Such players have played a stabilizing role within the financial crisis and no excessive burden should be put on them. The tremendous costs related to such an obligation could easily lead to a suspension of services like investment services in smaller entities. This would not be in the interest of the clients, because of the loss of the personal relationship between clients and advisors. Finally, ESBG highlights that MiFID already ensures a high level of documentation about services provided and that it should be left to the Member States to decide whether they require additional information.

Regarding **execution quality data**, CESR proposes that execution venues should produce regular information on their performance against definitions of various aspects of execution quality in relation to shares (see policy proposals in point 118 following). As an introductory comment on this issue, ESBG stresses that its members have so far not identified a market failure regarding data leading to a need to review their best execution policies. ESBG therefore sees no strong need for further enhancements in the quality of data. ESBG however does as a matter of principle not oppose to an enhanced quality and comparability of post-trade reporting. This could be achieved by a CESR guidance regarding shares and would in ESBG's view not necessarily require changes to the MiFID Directive. Attention should be paid to the fact that the enhanced requirements do not result in higher prices for investment service providers and in return potentially for the clients.

CESR proposes (in chapter 4) amendments to the issue of **complex/non-complex instruments**, aiming at improved legal certainty, clarity and transparency with regarding the categorization of MiFID financial instruments for the purposes of the appropriateness test. ESBG does not believe that the concrete proposals achieve this aim. ESBG Members are concerned as to the vagueness of the proposals and therefore recommends abstaining from changes in this area. For example, the broad condition "the service is not provided with ancillary service" (point 167 c) in the consultation paper) is inappropriate, in particular as this also means a simple credit or loan (see Annex I, section B, point 2 in Directive 2004/39/EC). Credits and loans belong to the core business of savings and retail banks and constitute simple and comprehensible services for the clients. Regarding UCITS CESR abstains in its paper from making any definitive proposal. Reacting on this, ESBG insists that UCITS should be per se regarded as non-complex.



With respect to supervision of **tied agents** (chapter 6) ESBG shares CESR's opinion that the MiFID regime has worked well. ESBG agrees to the proposed amendments of Articles 23, 31 and 32 and supports the rationale behind these proposals, notably the concept that all tied agents operate on the same basis.

In chapter 7 CESR analyses the existing 41 **options and discretions** with a view to reducing them and achieving enhanced European supervisory convergence. ESBG supports CESR's proposals for the possible deletion of discretions as well as for the possible transformation of discretions into a rule, with exception of paragraph 201 (regarding telephone recording, see also above).



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.



European Savings Banks Group - aisbl
Rue Marie-Thérèse, 11 B-1000 Brussels Tel: +32 2 211 11 11 Fax : +32 2 211 11 99

Info@savings-banks.eu www.esbg.eu

Published by ESBG. May 2010