

POSITION PAPER



ESBG response to CESR on the record keeping requirements arising from the MiFID

27 November 2006



EUROPEAN SAVINGS BANKS GROUP



The European Savings Banks Group (ESBG) welcomes this opportunity to provide its views on CESR's consultation on the list of minimum records in Article 51(3) of the MiFID implementing Directive. In general we support CESR's intention to issue a recommendation to its members on this issue, provided that CESR respects the limitations to the powers it has been granted. Notably, we believe that CESR should not try to harmonise the content of the list in different Member States and that CESR should clearly emphasise the right of national competent authorities to put other obligations on the list.

Question 1: Do you agree that a common list of minimum records in all CESR members will benefit investors and industry?

First of all, we would like to point out that CESR's main role on 'level 3' is to provide guidelines and common standards which can facilitate the implementation of 'level 1' and 'level 2' legislation. Along these lines, we consider that the current initiative is positive as it aims to ensure a uniform implementation and application of the MiFID and its implementing measures.

We however consider that CESR should emphasise the fact that the national competent authorities are the only bodies entitled to draw up and maintain the list of minimum records that investment firms are required to keep. In this sense, we firmly agree with CESR when it states that the intention of this initiative should not be to harmonise the list of records or the content of each record on the list.

Question 2: Do you agree with the content of the list elaborated by CESR? If not, which records should be added or deleted and for which reasons?

We agree with the content of the list proposed by CESR, but we consider that the following issues should be kept in mind:

- (i) In its final document, CESR should make it clear that drawing up of the list is a consequence of article 51(3) of Directive 2006/73/EC. The list to be drawn up by each national competent authority may therefore include other specific records not mentioned in CESR's proposal. In addition, CESR's final document should also specify that the list to be drawn up by each national competent authority should contain the minimum records, but that the list does not exempt firms from complying also with other record keeping obligations under other relevant national laws.
- (ii) As stated in Article 51(2) of Directive 2006/73/EC, the obligation of investment firms should consist of recording the specific information and having the tools to provide a fast access to such information. CESR should therefore specify that it is not mandatory to create separate formal records for each of the listed categories, as long as all the relevant information is properly recorded and kept for its consultation. This would enable affected parties to comply with the objectives of the Directive without facing significant additional costs.
- (iii) It is not clear what would be the benefits (if any) of the mandatory keeping of the following records:



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- Periodic statements to clients. The maintenance of such records may cause high costs for investment firms, especially if the statements should be kept on paper and also in electronic format.
- Marketing communications. This record will be costly if investment firms are obliged to keep copies of all the marketing communications, indicating to whom they have been sent.
- The firm's business and internal organisation. It is not clear what the content of this record would be. In our view, it refers to a general requirement that should be complied through other specific records. We therefore consider that this general record is not necessary.
- Compliance policies and procedures. We consider that compliance policies and procedures should be recorded and kept, but that a formal requirement in this sense is not necessary.

Question 3: Do you consider that a specific requirement for keeping records of the provision of investments advice should be introduced?

We do not consider that there is a need for keeping records of the provision of investments advice due to the following reasons:

- (i) It will be extremely difficult for entities to organise and keep records of this type, as the information to be included in such records may be provided through different channels which will be difficult to compile.
- (ii) As investment advice will be considered as a type of investment service, most entities are expected to restructure their practices in this area. It is therefore too early to prejudge what the content of such record would be.
- (iii) If the relationship is ruled by an agreement, this agreement will be recorded in the clients agreements' record, and therefore it will not be necessary to keep this additional record.

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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 €4,716 billion (1 January 2005). It represents the interests 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 organised in decentralised 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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Published by ESBG. November 2006

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