

POSITION PAPER



**ESBG draft comments to ESMA's call for evidence:
Request for technical advice on possible delegated acts
concerning the Prospectus Directive**

European Savings Banks Group Register ID 8765978796-80

February 2011



DOC 0225/11
UKO

The European Savings Banks Group (ESBG) herewith provides its comments to ESMA's call for evidence entitled "Request for technical advice on possible delegated acts concerning the Prospectus Directive (2003/71/EC) as amended by the Directive 2010/73/EC.

ESBG regrets that the timeframe for responses is extremely short and asks ESMA to give sufficient time to respond to its future concrete proposals in form of a consultation paper.

Format of the final terms to the base prospectus

The recent revision of the Prospectus Directive has not tackled the rules on base prospectus. This also implies that the provisions included in the Implementing Directive 2003/71/EC remain valid; in particular Article 26 provides for a flexible format of the final terms. Therefore the format should remain flexible. Current practice allows for grouping of different products under a base prospectus and does not harm product innovation.

Format of the summary of the prospectus and detailed content and specific form of the key information to be included in the summary

As highlighted in the process of the revision of the Prospectus Directive, ESBG insists that ideally the prospectus summary and the Key Investor Information Disclosure Document should be matched in one single document, as both instruments have the same purpose of providing short, understandable and not-misleading information to the investor, which will help him/her to take an investment decision. At least, a high level of alignment is strongly desirable.

The key information must incorporate the characteristics of each product. As different products have different characteristics, this rules out detailed requirements for the content of the key information. The comparability of products can be ensured primarily by means of uniform format requirements.

Proportionate disclosure regime

A proportionate disclosure regime should manifest in giving the relevant information to investors, while abstaining from putting an unnecessary burden on the SMEs, issues with reduced market capitalization and smaller credit institutions (the latter as referred to in Art. 1(2)j). Against this background ESBG judges that the following aspects of Annexes IX and V could be omitted in Implementing Regulation 804/2004:

- Annex IX, points 3. on key information, 4.10, 4.11, 4.14 in section information concerning the securities to be offered/admitted to trading, 5.1.4, 5.2.5, 5.1.6, 5.2, 5.4 in section terms and conditions of the offer, 7.1, 7.4 in section additional information
- Annex XI, points 2. on statutory auditors, 6. on organisational structures, 7. on trend information, 8. on profit forecasts, 9. on administrative, management and supervisory body, 10.

on major shareholders, 11.1, 11.5 in section financial information, 13. on third party information, statement by experts and declaration of any interest.

The consent to use a prospectus in a retail cascade

The review of the Prospectus Directive includes clarifications about the functioning and application of the retail cascade. In ESBG's view these clarifications are sufficiently detailed and do not require further additions on Level 2. Furthermore a publication of the consent to use a prospectus should not be envisaged, as the consent is based on a bilateral contract between the issuer and the intermediary, while supervisors can obtain information directly from the concerned parties.

Review of the provisions of the Prospectus Regulation

ESBG supports the envisaged possible technical adjustments and clarifications in relation to information on taxes on income from securities withheld at source, information to an underlying index, profit forecasts or estimates and audited historical financial information.



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. February 2011