


POSITION PAPER



ESBG response to the public consultation on a revision of the Market Abuse Directive (MAD)

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The European Savings Banks Group (ESBG) appreciates the opportunity to comment on the public consultation on a revision of the Market Abuse Directive (MAD). However, it regrets the short consultation period allowed.

General comments

As introductory comment, ESBG notes that the MAD is overall functioning well. The review should therefore be targeted and follow the key objectives, as defined by the Commission in the consultation paper, in particular:

1. increase of market integrity and investor protection,
2. strengthening of effective enforcement,
3. increase of cost-effectiveness of legislation,
4. increase of coordination among national regulators.

ESBG underlines that priority should be given to effective enforcement and elimination of gaps in regulation instead of introducing changes to correct rules which were not properly applied or enforced.

Specific comments to the questions contained in the consultation paper

A. Extension of the scope of the Directive

In response to question 2, ESBG expresses its doubts as to the proposal to cover attempts of market manipulation. ESBG refers to the potential difficulty of drawing the line between normal market behavior and attempts of market manipulation and how to capture market manipulation intentions which are not realized and have no effect on the market. It would be therefore of high importance a) to analyse further the transpositions of the Directive in the Member States regarding this aspect, and, on this basis, b) to consider the introduction of harmonized detailed definitions (i.e. more detailed than proposed on page 5 of the consultation paper).

In relation to commodity derivatives (question 3), ESBG considers that no legal changes are required, as market manipulation already covers manipulation actions committed through derivatives; Art. 1(2) of MAD does not refer to specific financial instruments.

Referring to question 4, ESBG in principle agrees to an extension of the scope to multilateral trading facilities (MTFs). It is, however, necessary to further reflect on the question of whether all rules included in MAD should apply to MTFs. In particular, it would be difficult to apply the rules on insider dealing to MTFs, as in some cases the issuer does not know whether his/her instruments are dealt on MTFs and therefore necessarily neglect its ad-hoc reporting obligations. Therefore an adapted and appropriate regime would need to be created.

With reference to question 6, ESBG notes that the Commission aims for an adapted regime for SMEs which maintains a high level of investor protection, striking a balance between the protection and the needs of SMEs. In ESBG's view the aim of a high level of investor protection must be the priority, and therefore asks for caution as regards the creation of an adapted regime. Furthermore it should be taken into account that market integrity must be preserved, which can be best achieved by equal disclosure regimes for all players. Should the Commission pursue the idea of creating an adapted regime for SMEs, it would need to limit such a regime to extremely cost intensive requirements those adaptations does not harm investor protection and market integrity.

B. Enforcement powers and sanctions

Commenting on question 7, ESBG opposes an extension of the scope of suspicious transaction reporting to OTC transactions. On the contrary, ESBG sees a case for analyzing suspicious transaction reporting in general terms. ESBG refers to extremely low figures of reporting cases and even lower figures of opened juridical procedures on the one hand and high costs for the entities on the other hand. Further guidance on what constitutes a well-founded suspect could be helpful.

Regarding sanctions (question 8), ESBG acknowledges that the situation differs considerably from Member State to Member State. Better enforcement in some countries should be a part of the answer to this problem. Against this background, ESBG understands that further work by the Commission is underway (Communication announced for this autumn) and hopes for appropriate guidance. The view of the Commission that competent authorities should disclose to the public every measure or sanction that will be imposed for infringements is not shared by ESBG. ESBG warns that such a disclosure could disproportionately affect trust in capital markets and give misleading signals. Furthermore, in some countries such a disclosure would interfere with national data protection rules.

In response to question 9, ESBG recognizes the importance of cooperation between competent authorities and agrees that ESMA should play a key role in facilitating and ensuring a strong coordination.

C. Single rulebook

The obligation to disclose insider information (addressed in question 11) is linked in MAD with an exemption that issuers, under their own responsibility, are under certain conditions allowed to delay the public disclosure of inside information. These conditions describe an emergency situation and therefore it is vital to keep this exemption. In particular, a regime where the responsibility for the decision not to disclose the information is given to the regulator would be harmful for the issuer, who needs to act quickly and freely.

Greater coordination between regulators on accepted market practices is in ESBG's view in principle desirable (answer to question 12).

With reference to question 13, ESBG welcomes the proposal to raise the reporting threshold for transactions by managers of issuers, while it expresses its doubts that the proposed change is sufficiently substantial.

Finally, ESBG agrees that a clarification of the obligations of market operators to better prevent and detect market abuse (proposed in relation to question 15) could be helpful. ESBG considers that market operators have easier access to relevant information as compared to intermediaries. Further consideration should be given to the exact details of this obligation and in all cases the situation whereby the responsibilities of regulators are delegated to market operators, should be avoided.



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.



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