


# POSITION PAPER



**ESBG response to CESR's consultation paper on  
'Transaction Reporting on OTC Derivatives and  
Extension of the Scope of Transaction Reporting  
Obligations'**

European Savings Banks Group Register ID 8765978796-80

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## **General comments**

ESBG welcomes the opportunity to comment on CESR's consultation paper on transaction reporting. This being said, ESBG finds it regrettable that the consultation period was less than one month, during the summer period. Unfortunately, such a short consultation period does not make it possible to provide CESR with a fully developed contribution on the important questions raised in its consultation paper.

CESR's consultation paper takes a high level perspective on the topics under consideration. ESBG would like to point out that as a result, some of the comments made in this response may have to be reconsidered, depending on the concrete option orientations taken by CESR

## **Specific comments to the questions raised in the consultation paper**

### **Section I. Possible ways to organize transaction and position reporting on OTC derivatives**

#### **Question 1**

**Do you agree with the solution proposed by CESR for the organisation of transaction and position reporting on OTC derivatives?**

#### **Question 2**

**Do you have any other views on the possible ways to organise transaction and position reporting on OTC derivatives?**

As an introductory remark, ESBG highlights the importance of organizing transaction and position reporting through clear rules and harmonized standards, avoiding double reporting as much as is possible. In addition, bearing in mind the complexity of the structure of OTC products, a quick implementation of new reporting systems may have a negative impact on the quality of the data, providers' cost structure, as well as the fact that it may not guarantee compatibility with existing systems, and should therefore be avoided.

ESBG is supportive of the general principles put forward by CESR, but is of the opinion that some of the concrete arrangements require significant reconsideration. Furthermore ESBG would like to elaborate on CESR's recognition of the fact that certain Member States already have requirements for transaction reporting in OTC derivatives in place, which in turn has placed market participants under specific obligations to invest in reporting systems for these products. In light of this, the proposals envisaged at the European level should not place those market participants subject to reporting systems already in place at a competitive disadvantage. These market participants should be allowed an appropriate transition period in order to adapt to any new system.

Regardless of the above, in relation to the solutions envisaged by CESR, ESBG supports the proposal to use trade repositories (TR) for the production of transaction reports, as this could potentially lead to better quality of data, enhanced consistency and a better cost-benefit ratio on the side of reporting entities. In addition, ESBG generally supports the proposal to grant firms the option to report transactions in OTC derivatives to their respective competent authority either through a TR or through another suitable reporting system already in place. However, ESBG is opposed to CESR's practical arrangements in option 2, as these would in practice undermine the option left to firms to report either through a TR or through a system already in place.



ESBG is particularly concerned that if the reporting entities were forced to make use of the traditional reporting systems in the first phase, these systems would have to be expanded and connected to the suitable interfaces; this would imply substantial costs and would eliminate potential synergies. A subsequent switch to another reporting channel (i.e. a TR) would not make sense, given the amounts already invested by market participants to adapt the existing channels. In short, the practical arrangements proposed by CESR in option 2 would firstly make the use of the TR less attractive and secondly impose considerable additional costs to the market participants opting for reporting through a TR at a later stage.

Against this background, ESBG is in favour of a harmonised approach at EU level, based on guidance developed for the implementation of the European Market Infrastructure Legislation (EMIL) as regards the introduction of mandatory reporting.

ESBG would also like to comment on CESR's approach in relation to "position reporting". In ESBG's view, as this is a new topic, which has thus far not been subject to any consultation at the European level, CESR's deliberation can only be considered as an initial step. ESBG urges CESR to conduct a specific consultation on the topic, specifically bearing in mind the potential far-reaching consequences of this for Europe's banks.

## **Section II. Extension of the scope of transaction reporting obligations**

### **Question 3**

**Do you agree with the extension of the scope of transaction reporting obligations to the identified instruments?**

ESBG supports the extension of the scope of transaction reporting obligations to financial instruments that are admitted to trading only on MTFs.

ESBG is also generally supportive of an extension of this to OTC derivatives. However, a more specific response to this question depends on a precise identification of the instruments which would fall under the transactions reporting regime of Art. 25 MiFID. Unfortunately, CESR's consultation paper (and in particular paragraph 40 thereof) does not provide a sufficient basis to identify the types of OTC derivatives which would fall under MiFID's reporting regime. As such, ESBG cannot provide a final assessment of this question at this stage, but urges that a clear definition of OTC derivatives subject to mandatory transaction reporting be included at Level 1.

Finally, it is important to determine the instruments which should fall under the transaction reporting regime of Article 25 of MiFID as early as possible, as this decision will have an important impact on the timing of implementation and the costs involved.



## **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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