POSITION PAPER

ESBG's comments on CEBS' consultation paper on its guidelines regarding revised Article 3 of Directive 2006/48/EC (CP 41)

ESBG (European Savings Banks Group)
Rue Marie-Thérèse, 11 - B-1000 Brussels
ESBG Register ID 8765978796-80

27 August 2010

ESBG

The European Savings Banks Group (ESBG) herewith provides its comments on the Committee of European Banking Supervisors (CEBS)' consultation on its proposed guidelines regarding Article 3 of Directive 2006/48/EC (The Capital Requirements Directive), (CP 41):

As an introductory remark, ESBG welcomes the work of CEBS in providing a proposal for guidelines regarding the application of the revised Article 3 of Directive 2006/48/EC, in order to ensure convergence of supervisory practices in this area, as well as creating more transparency for market participants.

In addition, ESBG would like to take this opportunity to draw attention to the recent changes brought into Spanish legislation, and how the revised Article 3 will be applicable in Spain in light of these changes, particularly in relation to Institutional Protection Schemes. For more detailed information please refer directly to the response submitted to the consultation by the Confederation of Spanish Savings Banks (CECA).

Lastly as a general comment, ESBG would like to stress the importance of any guidelines that are adopted being clear and easily understandable, particularly in order to accommodate for groups of entities who may wish to become affiliated credit institutions to a central body in the future, and thus requiring clear guidelines on how the specific criteria can be met.

More specifically, in relation to the points raised in the consultation, ESBG provides the following remarks:

A) <u>Concept of 'permanently affiliated to a central body'</u>

In ESBG's view the definition of the term 'permanently affiliated' requires further development and clarification in relation to the following aspects:

- Whether a contractual agreement can specify a minimum number of years during which no entity is allowed to leave the group and yet still be considered as 'permanent' (taking into account the fact that after that date the possibility of leaving the group is an option). Furthermore if an entity chooses to leave the group, whether a penalty will be invoked as a result.

- What specifically is meant by the terms *'use of integrated liquidity management'* and *'use of centralised treasury functions'* under point 13. of part A), which CEBS identifies as being two areas which might make the exit of individual affiliated institutions from the group more difficult and costly. In order to avoid this, ESBG would consider it positive if an agreement were put in place that regardless of their permanent affiliation to a central body, entities manage their liquidity independently in normal times, and any liquidity arrangements linking the individual affiliated institutions and the group only be established to operate in cases of emergency. Irrespective of entities managing their liquidity independently in normal times, liquidity management should be subject to continuous monitoring as a whole, as is stipulated under Article 3 (1) (b).

Finally, as a more general comment in relation to part A), in ESBG's view a 'Group' has the purpose of conducting joint operations targeted at building a positive environment to support its business and legal frameworks. ESBG suggests that CEBS considers including this under part A.

B) Guarantee

ESBG is of the view that the required level of commitment and/or guarantees in order to comply with Article 3 is not clear and particular clarification is needed in relation to the following:

- Whether guarantees need to compromise 100% of the capital and/or profits in each affiliate institution, or whether they can be limited to a certain percentage (and in this instance what minimum percentage will be considered as being adequate);

- If there is a limit placed on the mutual commitment, whether it would be adequate if the percentage committed comprises 100% of the excess above the solvency or liquidity ratios.

C) Relation of the requirements and exemptions in Article 3 (1) and (2)

ESBG agrees with the interpretation of CEBS, that compliance with Article 3 (1) is a pre-requisite to be able to comply with Article 3 (2).

D) Consolidated financial statements vs. consolidated prudential reporting

ESBG agrees with CEBS that the requirement for the monitoring of solvency and liquidity on the basis of consolidated accounts should be viewed from a prudential supervisory perspective.

However, ESBG questions whether it will be sufficient for calculations regarding consolidated accounts to be made separately, or whether there be a demand for audit-trail accounting from top to bottom of the group structure.

E) Type of 'instructions' that can be issued by the management of the central body

ESBG would like to point out that the minimum list suggested by CEBS as to what instructions management of the central body can issue (under point 28 of the paper), is quite exhaustive. ESBG has concerns that this may cause supervisors to argue that fulfilment of all of these qualitative conditions may not be necessary, and is of the view that perhaps a more concise list would be more effective.

In ESBG's view, an important aspect to cover would be to ensure that there is a central risk-management body to determine whether or not an entity has fulfilled substantial risk management requirements – for example, whether or not it is sufficient for an entity to commit itself to risk limit that are above the minimum level set by the central risk governing body in a group.

F) Use of the EU Passport

ESBG considers that the current drafting of paragraph 29 is misleading where CEBS provides that *'affiliated institutions cannot make use of the EU passport on an individual basis'*, and proposes the following alternative wording:

'CEBS clarifies that it is its understanding that affiliated institutions, ***which are exempted under Article 3 (2) of Directive 2006/48/EC****, cannot make use of the EU passport on an individual basis.'*

ESBG's rationale behind this alternative wording is to ensure that those affiliates **which are not exempted** under Article 3 (2) of Directive 2006/48/EC and which meet all the prudential requirements **on a solo basis** should be able to make use of the EU passport to provide services or establish a branch or a subsidiary, without other restrictions than those already imposed by the aforementioned Directive.

About ESBG (European Savings Banks Group)

ESBG – The European Voice of Savings and Retail Banking

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 over € 6.000 billion, non-bank deposits of € 3.100 billion and non-bank loans of € 3.300 billion (all figures on 1 January 2009). 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 a distinct benchmark for corporate social responsibility activities throughout Europe and the world.

ESBG - Association internationale sans but lucratif/Internationale vereniging zonder winstoogmerk/ International not-for-profit association

Rue Marie-Thérèse, 11 ■ B-1000 Brussels ■ Tel: +32 2 211 11 11 ■ Fax: +32 2 211 11 99

info@savings-banks.eu ■ www.savings-banks.eu

Published by the ESBG, August 2010