

POSITION PAPER



ESBG response to CEBS on proposed adjustments to its guidelines on consultation practices

6 June 2007



EUROPEAN SAVINGS BANKS GROUP



The European Savings Banks Group (ESBG) welcomes this opportunity to comment on the CEBS proposal to amend its consultation guidelines. As an overall comment, we welcome CEBS' initiative that aims to increase the efficiency and transparency of its consultation procedure. In our view, the proposed draft contains a number of positive proposals. In particular, we support the increased use of ex-ante impact assessments, although, as a general remark, we believe that such assessments should look at the costs related to new regulation, as opposed to analyzing the costs related to old regulation.

Moreover, we would like to comment on some specific issues raised in the Annex of the CEBS' document, most notably regarding the procedures for amendments of guidelines, standards and recommendations.

Drafting Amendments

In our view, CEBS's approach concerning typos or doublings seems appropriate.

As regards the omissions, we believe that a different approach would be more suitable. We would like to point out that the filling of a gap can assign a different meaning to the original context. We therefore consider that market participants should be informed about proposed additions to complete omissions and if – in their understanding - these additions lead to a different meaning, a standard consultation procedure should be conducted.

Furthermore, the necessity to draft amendments should be reconsidered. In case the proposed amendment is obvious, we believe it is not necessary to clarify the spirit and purpose of the regulation. However, in cases where a clarification is necessary, CEBS should focus on interpretation rather than on a simple drafting amendment, which should in turn require a standard consultation.

Limited Amendments

Based on the proposed amendments, we would like to make several general observations on the process:

- It would be useful to define the terms “technical changes” and “precising or completing the existing guidelines”.
- Differentiating between the terms “precising or completing” and “material change” is often difficult: differentiation is a controversial issue which often tackles topics with a high political impact.
- We believe that CEBS and the Consultative Panel should not group amendments into limited/ standard amendments and consequently stipulate the consultation process. Moreover, it is questionable whether the members of the Consultative Panel would always be in a position to evaluate all complex and technical changes.
- We would like to warn against the shortened impact assessment (Annex, 5 a). Notably, shorter consultation period comprises less possibility to foresee the impacts and therefore, conducting an impact assessment is even more important.



- Several terms in Annex 5 could give rise to some legal uncertainty. Notably, the following issues are not defined:
 - Who determines the “experts” (5 c);
 - A definition of “critical matter” (5 d);
 - What the further action will be (5 d); and
 - What comprises a “further revision” (5 e)

- We consider that further model of consultation process is not mandatory. Significantly, either precising is obligatory and therefore needs standard consultation, or amendment is not obligatory (e.g. can be substituted by interpretation), which makes a rapid amendment not necessary.

General suggestions concerning the Consultative Panel

It was noted that there are some issues that have to be resolved concerning the Consultative Panel. On the one hand, there is general agreement that the importance and influence of the Panel is increasing, while on the other hand there is a lack of transparency (especially regarding informal expert meetings).

Finally, we believe that CEBS should use this opportunity to determine the procedure for the nomination of experts interested to participate in expert meetings. For example, we suggest completing paragraph 7 of the Annex as follows:

e) “The Committee will give the Consultative Panel sufficient notice in the run-up to forming (expert-) groups and give all members the opportunity to nominate qualified experts. The Committee and Consultative Panel will make sure that there is a broad involvement of all prospectively concerned economic circles in those groups.”



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 €5215 billion (1 January 2006). 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 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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