



EUROPEAN SAVINGS BANKS GROUP
GROUPEMENT EUROPEEN DES CAISSES D'EPARGNE
EUROPÄISCHE SPARKASSENVEREINIGUNG

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**Response of the European Savings Banks Group
to the**

**Call for Contributions
on the**

**Joint Work of the European System of Central Banks and the Committee
of European Securities Regulators in the field of Clearing and Settlement.**

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1. Introduction

The European Savings Banks Group, ESBG welcomes the opportunity to contribute its views on the Joint Work of the European System of Central Banks and the Committee of European Securities Regulators in the field of Clearing and Settlement and the fact that a Call for Contributions has been launched at an early stage of this joint work.

As a general statement, the ESBG would however like to underline the following. The whole area of clearing and settlement is one that is currently receiving a considerable amount of attention both in the European Union as well as within specialised bodies of the International Financial Institutions. At present no single body seems to have the power to impose a regulatory solution to eliminate the current obstacles to cross-border trading within this market. There is also recognition of the fact that such a draconian solution would not be appropriate, as interoperable business conditions should emerge from the market, unless there are clear signs of market failure.

At present, the largest volumes of securities clearing and settlement transactions are generated in two markets, Germany and the US. Consequently, whereas, the ESBG believes that it is important to create a single European market in this area, the importance of the overall ramifications of the international dimension to this problem should not be underestimated. That being said, any progress toward creating European standards that improve the execution of securities clearing and settlement transactions within Europe can only be welcomed as a benchmark and also as a counterweight in negotiations on international standards.

In terms of the definition and implementation of standards for securities and settlement, the ESBG would propose the following approach. It firmly believes that standards should emerge from the market and that the overall framework for such standards must be defined on the basis of business drivers that have been identified by a high-level group of experts with a strategic vision, who represent the main players in the securities clearing and settlement market. Once this strategic framework had been established, the definition and implementation phases could proceed in the following stages:

- Agreement on the quality of the standards and the deadlines
- How to implement them (messaging system, etc.)
- Decision on which body is to develop the standard
- Delivery to and implementation of standards by market practitioners
- Policing of compliance with standards by a body empowered to impose sanctions/penalties and, if appropriate to exclude participants from the market.

As mentioned above, this should take place at least within a European and, if possible, within an international framework. Within a European framework, the nucleus of such a high level strategic group could be some emanation of the current Giovannini Group. The monitoring and policing of the standards could be carried out by a body emanating from the Committee of European Securities Regulators (CESR) and the European System of Central Banks (ESCB).



2. Specific Comments

The position of the ESBG on the various issues for further consideration that are listed in the Call for Contributions can be summarised as follows:

2.1. Nature of the Recommendations

The ESBG believes that the joint work of the ESCB and of the CESR should be aimed at standards rather than recommendations, in view of the excellent work already produced by the CPSS/ IOSCO in this area. However, as mentioned above, the standardisation framework for securities clearing and settlement transactions should be decided by the market and concerted with European and International Authorities, before being defined by the appropriate bodies.

A standard should not be a legal instrument, but one that is adopted by the industry rather than being imposed by law. The monitoring and policing of the implementation of such standards should however be carried out by a body empowered to impose penalties or sanctions. This should be done, at least, by a European and, if possible, an international body.

In the light of the above, there is no need for a European legal instrument on standards. However, European legal agreements, such as the planned EU Collateral Directive, that provide a certain degree of legal certainty to the market are essential. These laws should then be transposed at a national level. Any national initiatives in this vein will only serve to fragment even more an already fragmented European market.

2.2. Addressee

The standards should be addressed to all market participants.

The appropriate incentives for the implementation and compliance of standards are penalties and/or sanctions, such as market exclusion.

2.3. Scope

The ESBG agrees that the scope of the group's work includes any entity providing clearing and settlement services or associated aspects and is not limited to any particular type of service provider.

The ESBG believes that standards should not be applied on a differentiated basis to the various market participants. This is particularly the case, if all of the market players agree a framework for standards that defines the roles of the various participants as well as the content of cross-border services.

It is difficult to respond to the question as to whether particular considerations should be applied where custody and safe-keeping services are provided by credit institutions or investment service firms, without information arising from a detailed market survey.

As regards security coverage, the scope of the work should include all of the securities listed and standards should be defined for each product.



2.4. Objectives

The objectives listed in the Call for Contributions are considered a very good starting point for work in this area.

2.5. Access Conditions

The Giovannini Report states that discriminatory access conditions exist, in particular practical impediments to remote access to national clearing and settlement systems and national restrictions on the activity of primary dealers and market makers.

There are also some operational features in addition to the access criteria, such as increased counterparty risk and lack of STP, as noted in the Giovannini Report.

2.6. Risks and Weaknesses

Different legal approaches to the clearing and settlement of securities transactions do create problems as recognised in both the Giovannini Report and the CPSS/ IOSCO Recommendations. These risks are magnified in the case of cross-border transactions in the light of the larger number of intermediaries, the duplication of orders, more participants in the value chain, etc.

The segregation of assets and the reconciliation of positions are the most crucial issues to be addressed for custody activities. An increase in STP is however also important in this context.

The ESBG agrees with the statement concerning settlement risk

As regards operational risk, the main factor to be considered is an increase in STP.

2.7. Settlement Cycles

The ESBG believes that there is a need for harmonised settlement cycles and that this should be achieved relatively easily. It should however be noted that such harmonisation does not necessarily mean that settlement cycles should be shortened in the current market environment. A push towards shorter settlement cycles could increase counterparty and liquidity risks, without necessarily contributing substantial advantage.

There should not be any differentiation between the different classes of securities. Settlement cycles should be harmonised for all classes of securities.

2.8. Structural Issues

The ESBG does not believe that there is any argument in favour of a public policy intervention relating to centralised or decentralised structures for infrastructure and service providers. Although the creation of a European public utility CCP would be welcomed, it is possibly difficult to achieve under the present market circumstances. Furthermore such a CCP would have the disadvantage that it would rule out all competition and there would be no back-up systems in the event of failure. Furthermore, the importance of the trading leg and the links with stock exchanges should not be underestimated in this context.