



*European Association of Co-operative Banks  
Groupement Européen des Banques Coopératives  
Europäische Vereinigung der Genossenschaftsbanken*

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## **EACB Answer to the CESR Call for Evidence on MiFID transaction reporting obligation**

**05 December 2008**

The **European Association of Co-operative Banks** (EACB) is the voice of co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 members and co-operative banks in general. With 60,000 outlets and 4,500 banks, co-operative banks – which are privately owned entities – are widely represented throughout the enlarged European Union and play a major role in the financial and economic system. In Europe, one out of two banks is a co-operative. Co-operative banks have a long tradition in serving 140 million customers, mainly consumers, retailers and SMEs. Quantitatively, co-operative banks in Europe represent 47 millions members, 730,000 employees with a total average market share of about 20%.

For further details, please visit [www.eurocoopbanks.coop](http://www.eurocoopbanks.coop)

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### **AN ASSOCIATION ON THE MOVE**

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## General remarks

The Call for Evidence of the CESR on MiFID transaction reporting obligations focuses on the definition of the term "transaction". It affects first and foremost the exchange of information between competent authorities but has also direct implications on the reporting obligations for the members of the EACB.

For the EACB it is therefore very important to contribute to practicable and realizable solutions on this matter by answering the questions pointed out by the CESR.

### **1. Have differences in the scope of the transaction reporting obligation between CESR Members caused problems for you? Please provide practical examples of any difficulties encountered.**

Our members do not have information on problems on this matter.

### **2. Please provide information on your practical experiences in reporting transactions that fall under each of the item (a) – (c) above? Is the difference between these three categories sufficiently clear? Do the competent authorities interpret the scope of these categories in the same way? If not, where in particular have you encountered problems?**

From our perspective there are uncertainties remaining in relation to the outlined definitions in (a) and (b). These definitions do overlap and should therefore be separated more accurately. Item (a) concerns "transactions conducted by the investment firms transacting directly with an execution venue". In our opinion this includes transactions where the investment firm is undertaking the transaction on its own accounts as well as transactions on a commission basis. In the course of transactions on a commission basis also chains of commissions are possible, in which one or more intermediate commissioners are involved. Also in this case, only the transactions directly conducted with an execution venue is to be reported (see item (a)).

Item (b) concerns "transactions, not covered by (a) but where the investment firm is undertaking the transaction on its own accounts". From our perspective those can only be transactions that are not closed at an execution venue – like a regulated market, a MTF or a systematic internaliser – but bilaterally between two parties. Otherwise they would already be covered by (a). The addition "*regardless whether the transaction is executed on RM or MTF or outside of them*" is therefore unclear for us.

### **3. In your opinion what are the advantages and disadvantages of competent authorities systematically receiving transaction reports covering the information referred to in item c) above versus acquiring that information on an ad-hoc basis by other means?**

An obligation to systematically report to the competent authorities the identity of the ultimate client and of the investment firm which is dealing with the ultimate client as defined in item (c) is certainly linked to significant technical efforts. Also the authorities would be overload with information. For this reason we are strongly against an obligation to systematically report to the authorities the above mentioned information. When trades are deemed to be suspicious, additional information should be acquired by authorities on an ad-hoc basis and can take place ex-post.



We consider this point as important given the structure of most of our members: Co-operative banks and investment firms of our member's groups often do not execute the orders on behalf of clients but receive and transmit them to the group's entities that execute these orders.

**4. On the basis of their pros and cons, what would be the preferred solution in relation to the possible convergence of the scope of the transaction reporting obligation (regarding what constitutes 'execution of a transaction')? Please provide justification for your choice. When analysing the pros and cons, please consider also whether there is a danger of regulatory arbitrage if the scope of the transaction reporting obligation is not harmonised between Member States, as well as the implications for transparency calculations on shares considering that in the future these calculations will be conducted on the basis of the transaction reporting data?**

In principle we consider the hitherto existing definition of the "execution of a transaction" as appropriate and adequate. As stated in the definition only the transactions directly conducted with an execution venue should be decisive for an exchange of information. Only in this case the exchanged information might be appropriate to the envisaged transparency calculation on shares.

We furthermore consider the danger of regulatory arbitrage in relation to the reporting system as negligible. A bank is unlikely to link a possible deal with the requirements raised by the reporting system. Nevertheless we strongly recommend not to introduce unnecessary bureaucratic obstacles which would lead to increasing transaction costs. After all, the clients would have to shoulder those.

In case the CESR should consider basic changes in the existing definition of the "execution of a transaction" we encourage it to involve the market participants in order to elaborate together an appropriate solution on the matter.

**Contact:**

The EACB trusts that its comments will be taken into account. For further information or questions on this paper, please contact:

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