EACB position paper on the technical advice of the Committee of European Securities Regulators (CESR) to the European Commission on equity markets in the context of the review of the Markets in Financial Instruments Directive (MiFID)

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The **European Association of Co-operative Banks** (EACB) is the voice of the co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 member institutions and of co-operative banks in general. Co-operative banks form decentralised networks which are subject to banking as well as co-operative legislation. Democracy, transparency and proximity are the three key characteristics of the co-operative banks' business model. With 4.200 locally operating banks and 63.000 outlets co-operative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 160 million customers, mainly consumers, retailers and communities. The co-operative banks in Europe represent 50 million members and 750.000 employees and have a total average market share of about 20%.

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Introduction

The European Association of Co-operative Banks (EACB) would like to thank the Committee of European Securities Regulators (CESR) for the opportunity to share its views on the important consultation on equity markets in the context of the review of the Markets in Financial Instruments Directive (MiFID).

In the following outlines EACB would like to point out responses to selected questions raised by CESR in its consultation document.

Transparency

Pre-trade transparency

Question 1: Do you support the generic approach described above?
Question 2: Do you have any other general comments on the MiFID pre-trade transparency regime?

We would like to point out that we agree with the generic approach described by CESR in order to maintain the current rule set of pre-trade transparency applied to regulated markets and multilateral trading facilities. It is appropriate to allow exceptions to pre-trade transparency in certain circumstances. These exceptions provide for a reasonable balance between the need for transparency and greater efficiency of the markets.

We have no knowledge about problems in terms of transparency and pricing in the markets arising from the regime of exceptions in place. As highlighted by CESR the volume of order executed using those exceptions is increasing but still on a low level in comparison to the total trading volumes in the European Economic Area.

In case of any changes to the pre-trade transparency regime those should be limited to recalibrations of thresholds which should be carried out only after a proper analysis of the current market conditions that have significantly changed after the implementation of the MiFID and its pre-trade transparency regime.

Large in scale waiver

Question 3: Do you consider that the current calibration for large in scale orders is appropriate (Option 1)? Please provide reasoning for your view.
Question 4: Do you consider that the current calibration for large in scale orders should be changed? If so, please provide a specific proposal in terms of reduction of minimum order sizes and articulate the rationale for your proposal?

The size of a market order should not be the only relevant criterion to determine if an order is Large In Scale or not. The calibration should be theoretically determined, taking into account the arbitrage between market impact and volatility risk. Even though the terms of this arbitrage have deteriorated, as large orders are generating a higher market impact than prior to MiFID, we consider that the current thresholds were already set at a very low level and we believe there is no need for a review of these thresholds.

Question 5: Which scope of the large in scale waiver do you believe is more appropriate considering the overall rationale for its application (i.e. Option 1 or 2)? Please provide reasoning for your views.

We have no comment.

Reference price waiver

Question 6: Should the waiver be amended to include minimum thresholds for orders submitted to reference price systems? Please provide your rationale and, if appropriate, suggestions for minimum order thresholds.

We do not believe that the waiver should be amended to include minimum thresholds for orders submitted to reference price systems.

A threshold would prevent clients who are sending small orders of the benefits of venues or crossing engines using this waiver. Then these clients would no longer benefit from the low execution cost such venues or crossing engines allowed. It would go against the MiFID objective to enhance competition in order to lower the execution costs.

Furthermore, pre-trade information for passive price taking orders does not add value to the price formation process of the market and may encourage activity by other users of the market that is detrimental.

Question 7: Do you have other specific comments on the reference price waiver, or the clarifications suggested in Annex I?

We would like to stress that the mid point is not the only reference that should be allowed to benefit this waiver. Any price within the spread enhances the price for both parties (seller and buyer) and is consequently cost effective both in terms of price and cost of execution. Any price inside the "European BBO" or the "Reference BBO" should be allowed as it improves the price for both of the counterparts.

Every market participant should establish its own EBBO. As she/he will be liable for it to justify her/his best execution policy, she/he should also be allowed to use it as its reference price for her/his crossing activities. This is the only reference price on which she/he could assure that the latency concerns are treated in a systematic way and that the prices are on a consistent reference base.

Negotiated trade waiver

Question 8: Do you have any specific comments on the waiver for negotiated trades?

We would encourage regulators to look in depth at the true nature of the negotiated trades. The very small size of a large portion of negotiated trades may hide a use of this waiver that does not match with the initial aim.

Order management facility waiver

Question 9: Do you have any specific comments on the waiver for order management facilities, or the clarifications provided in Annex I?

No we have no specific comments.

Systematic internaliser regime

Question 10: Do you consider the SI definition could be made clearer by:

i) removing the reference to non-discretionary rules and procedures in Article 21(1)(a) of the MiFID Implementing Regulation?
ii) providing quantitative thresholds of significance of the business for the market to determine what constitutes a 'material commercial role' for the firm under Article 21(1)(a) of the MiFID Implementing Regulation.

EACB agrees in principle with the CESR proposal to clarify the concept of "material commercial role", if necessary by setting quantitative thresholds.

Question 11: Do you agree with the proposal that SIs should be required to maintain quotes in a size that better reflects the size of business they are prepared to undertake?
Question 12: Do you agree with the proposed minimum quote size? If you have a different suggestion, please set out your reasoning.
Question 13: Do you consider that removing the SI price improvement restrictions for orders up to retail size would be beneficial/not beneficial? Please provide reasons for your views.
Question 14: Do you agree with the proposal to require SIs to identify themselves where they publish post-trade information? Should they only identify themselves when dealing in shares for which they are acting as SIs up to standard market size (where they are subject to quoting obligations) or should all trades of SIs be identified?
Question 15: Have you experienced difficulties with the application of 'Standard Market Size' as defined in Table 3 of Annex II of the MiFID Implementing Regulation? If yes, please specify.
Question 16: Do you have any comments on other aspects of the SI regime?

We have no comments.

Post-Trade transparency regime

EACB considers the current post-trade transparency regime as adequately valid. The quality of post-trade transparency could be further improved by standardizing the information and ensuring its availability especially with respect to OTC transactions.

Quality of post-trade information

Question 17: Do you agree with this multi-pronged approach?

Yes, we agree with this approach. It is really important as the pre-trade transparency is blurred by high frequency orders. The main source of information for the market participants is the trades that really occurred in the market.

Timing of publication of post-trade information

Question 18: Do you agree with CESR's proposals outlined above to address concerns about real-time publication of post-trade transparency information? If not, please specify your reasons and include examples of situations where you may face difficulties fulfilling this proposed requirement.

We strongly disagree with any changes in the current regime concerning the timeliness of post-trade transparency information. In fact any eventual shortening of delaying publication time does not increase the efficiency of public information – in normal

conditions brokers publish their information in real time – but it would in exceptional cases make it more difficult to reach the standard performance.

It should also be taken into consideration that in case of certain transactions – like OTC transactions by phone – it is more difficult to publish information in real time because such transactions cannot be fully automated and require a certain degree of manual activity.

Question 19: In your view, would a 1-minute deadline lead to additional costs (e.g. in terms of systems and restructuring of processes within firms)? If so, please provide quantitative estimates of one-off and ongoing costs. What would be the impact on smaller firms?

The current 3-minute maximum delay should be maintained because it would not force smaller intermediaries into disproportionate investments in relation to their operations.

Question 20: Do you support CESR proposal to maintain the existing deferred publication framework whereby delays for large trades are set out on the basis of the liquidity of the share and the size of the transaction?

Yes, we support the CESR proposal in this respect.

Question 21: Do you agree with the proposal to shorten delays for publication of trades that are large in scale? If not, please clarify whether you support certain proposed changes but not others, and explain why.

We have no comment.

Question 22: Should CESR consider other changes to the deferred publication thresholds so as to bring greater consistency between transaction thresholds across categories of shares? If so, what changes should be considered and for what reasons?

No, from our perspective other changes are not necessary.

Question 23: In your view, would i) a reduction of the deferred publication delays and ii) an increase in the intraday transaction size thresholds lead to additional costs (e.g. in ability to unwind large positions and systems costs)? If so, please provide quantitative estimates of one-off and ongoing costs.

We have no comment.

Application of transparency obligations for equity-like instruments

Question 24: Do you agree with the CESR proposal to apply transparency requirements to each of the following (as defined above):

- DRs (whether or not the underlying financial instrument is an EEA share);
- ETFs (whether or not the underlying is an EEA share);
- ETFs where the underlying is a fixed income instrument;
- ETCs; and
- Certificates

If you do not agree with this proposal for all or some of the instruments listed above, please articulate reasons.

ETFs should be dealt with in the parallel consultation on non-equity funds because ETFs cover the whole range of investment fund products and are not at all comparable to equities.

The term "certificates" leads to misunderstanding and should be rephrased as preferred shares or so to be separated from the often so called certificates which are in fact bonds with derivative elements to be treated under the parallel consulation on non-equity instruments.

Question 25: If transparency requirements were applied, would it be appropriate to use the same MiFID equity transparency regime for each of the 'equity-like' financial instruments (e.g. pre- and post-trade, timing of publication, information to be published, etc.). If not, what specific aspect(s) of the MiFID equity transparency regime would need to be modified and for what reasons?

See our answer above.

Question 26: In your view, should the MiFID transparency requirements be applied to other 'equity-like' financial instruments or to hybrid instruments (e.g. Spanish *participaciones preferentes*)? If so, please specify which instruments and provide a rationale for your view.

We would support the extension of transparency obligations to the above-mentioned products. However, any change in scope needs to be well communicated to the banks, be consistently defined and interpreted by all Member States, and be implemented on a timescale which gives market participants sufficient time for the respective IT system changes. It might be also necessary to thoroughly analyse pre-existing national legislation for the mentioned products in order to avoid any duplications or contradiction.

Consolidation of transparency information

Question 27: Do you support the proposed requirements/guidance (described in this section and in Annex IV) for Approved Publication Arrangements (APA) ? If not, what changes would you make to the proposed approach?

The regulators must ensure that post-transparency quality is faultless. APA status is one of the possible ways to meet this purpose.

Question 28: In your view, should the MiFID obligation to make transparency information public in a way that facilitates the consolidation with data from other sources be amended? If so, what changes would you make to the requirement?

We have no comment on this question.

Question 29: In your view, would the approach described above contribute significantly to the development of a European consolidated tape?

We have no comment on this question.

Question 30: In your view, what would be the benefits of multiple approved publication arrangements compared to the current situation post-MiFID and compared to an EU mandated consolidated tape (as described under 4.1.2 below)?

We have no comment on this question.

Question 31: Do you believe that MiFID provisions regarding cost of market data need to be amended?
Question 32: In your view, should publication arrangements be required to make pre- and post-trade information available separately (and not make the purchase of one conditional upon the purchase of the other)? Please provide reasons for your response.

We agree that the cost for European data is too high and should be reduced. We support the proposals to make pre- and post-trade information data available separately and to provide more than 15 minutes old post-trade data free of charge.

Question 33: In your view, should publication arrangements be required to make post-trade transparency information available free of charge after a delay of 15 minutes? Please provide reasons for your response.

We have no comment on this question.

Question 34: Do you support the proposed approach to a European mandatory consolidated tape?
Question 35: If not, what changes would you suggest to the proposed approach?
Question 36: In your view, what would be the benefits of a consolidated tape compared to the current situation post-MiFID and compared to multiple approved publication arrangements?
Question 37: In your view, would providing trade reports to a MCT lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

EACB does not support the option of introducing a generalized European Mandatory Consolidated Tape (MCT) that would require investment firms to make available and publish all trades on a single MCT. We consider the proposal as being too invasive leading to significant additional burdens for intermediaries and in the end to higher costs for single transactions and loss of competition. As highlighted by CESR such an introduction would lead to a costly and substantial implementation project and we question that the huge efforts required for such a project are in a reasonable proportion to its expected benefits.

We could however consider a partial consolidation system based on the volume of exchanges covering only standardized and traceable information on listed and liquid equities. From our perspective this would be a more efficient solution.

Regulatory boundaries and requirements

Regulated markets vs. MTFs

Question 38: Do you agree with this proposal? If not, please explain.

Question 39: Do you consider that it would help addressing potential unlevel playing field across RMs and MTFs? Please elaborate.
Question 40: In your view, what would be the benefits of the proposals with respect to organisational requirements for investment firms and market operators operating an MTF?
Question 41: In your view, do the proposals lead to additional costs for investment firms and market operators operating an MTF? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

We would like to highlight that the MiFID level 1 directive (2004/39/EC) already outlines in articles 13, 14 and 18 the requirements for investment firms and market operators. We do not see the need for further details in this respect.

Investment firms operating internal crossing systems/processes

Question 42: Do you agree to introduce the definition of broker internal crossing process used for the fact finding into MiFID in order to attach additional requirements to crossing processes? If not what should be captured, and how should that be defined?

Yes, we agree with such an introduction.

Question 43: Do you agree with the proposed bespoke requirements? If not, what alternative requirements or methods would you suggest?

Yes, we agree with such bespoke requirements.

Question 44: Do you agree with setting a limit on the amount of client business that can be executed by investment firms' crossing systems/processes before requiring investment firms to establish an MTF for the execution of client orders ('crossing systems/processes becoming an MTF)?

a) What should be the basis for determining the threshold above which an investment firm's crossing system/process would be required to become an MTF? For example, should the threshold be expressed as a percentage of total European trading or other measures? Please articulate rationale for your response.

b) In your view, should linkages with other investment firms' broker crossing systems/processes be taken into account in determining whether an investment firm has reached the threshold above which the crossing system/process would need to become an MTF? If so, please provide a rationale, also on linking methods which should be taken into account.

If the regulators want to implement such a threshold we consider that it would be inappropriate to put them any lower than 0.5 % of the total average daily turn over of a stock.

Question 45: In your view, do the proposed requirements for investment firms operating crossing systems/processes lead to additional costs? If so, please specify and where possible please provide quantitative estimates of one-off and ongoing costs.

Investments firms will need to review their execution policies and will have to implement declutching system to their crossing engine.

MiFID options and discretions

Waiver of pre-trade transparency obligations

Question 46: Do you think that replacing the waivers with legal exemptions (automatically applicable across Europe) would provide benefits or drawbacks? Please elaborate.

Yes, we are in favour common rules across Europe.

Determination of liquid shares

Questions 47: Which reasons may necessitate the application of both criteria?
Questions 48: Is a unique definition of liquid share for the purposes of Article 27 necessary?
Questions 49: If CESR were to propose a unique definition of 'liquid share' which of the options do you prefer?
a) apply condition a) and b) of the existing Article 22(1), or
b) apply only condition a), or
c) apply only condition b) of Article 22(1)?
Please elaborate.

Any definition based on the average daily number of transactions is very much depending on the evolution of frictional costs with the consequence that putting a threshold based on current market conditions may shortly not be relevant any more. The same applies to a definition based on the average daily turnover that is closely related to the proportion of high frequency traders who are themselves depending on the frictional costs.

Immediate publication of a client limit order

Questions 50: Is this discretion (for Member States to decide that investment firms comply with this obligation by transmitting the client limit order to a regulated market and/or an MTF) of any practical relevance? Do you experience difficulties with cross-border business due to a divergent use of this discretion in various Member States?

We have no comment on this question.

Question 51: Should the discretion granted to Member States in Article 22(2) to establish that the obligation to facilitate the earliest possible execution of an unexecuted limit order could be fulfilled by a transmission of the order to a RM and/or MTF be replaced with a rule?

We have no comment on this question.

Requirements for admission of units in a collective investment undertaking to trading on a RM

Question 52: Should the option granted to Member States in Article 36(2) of the MiFID Implementing Regulation be deleted or retained? Please provide reasoning for your view.

We have no comment on this question.

ANNEX II – PROPOSED STANDARDS FOR POST-TRADE TRANSPARENCY

Question 1: Do you agree to use ISO standard formats to identify the instrument, price notation and venue? If not, please specify reasons.

Yes. We would also be in favour of standard formats to identify the listing place of an equity.

Question 2: Do you agree that the unit price should be provided in the major currency (e.g. Euros) rather than the minor currency (e.g. Euro cents)? If not, please specify reasons.

Yes, we agree that the unit price should be provided in the major currency rather than in the minor currency.

Exchange of shares determined by factors other than the current market valuation of the share and non addressable liquidity

Question 3: Do you agree that each of the above types of transactions would need to be identified in a harmonised way in line with table 10? If not, please specify reasons.

We have no comment on this question.

Question 4: Are there other types of non addressable liquidity that should be identified? If so, please provide a description and specify reasons for each type of transaction.

We have no comment on this question.

Identification of dark trading

Question 5: Would it be useful to have a mechanism to identify transactions which are not pre-trade transparent?

Yes. For a venue with multiple pools of liquidity (MTF lit + dark, etc.), it is important that these different pools can be identified by regulators. The market may need to know in which kind of venue the transaction took place. But the MTF dark and crossing networks should be given the freedom to disclose their specific identities via their MIC codes.

Question 6: If you agree, should this information be made public trade-by-trade in real-time in an additional field or on a monthly aggregated basis? Please specify reasons for your position.

This information should be made public trade-by-trade in real-time in an additional field. A publication on a monthly aggregated basis would not have any added value.

Question 7: What would be the best way to address the situation where a transaction is the result of a non-pre-trade transparent order executed against a pre-trade transparent order?

We do not believe that dark books should interact with lit books in any situation. The other situation would be misleading for clients who have asked for an execution in a dark venue.

Unique transaction identifier

Question 8: Do you agree each transaction published should be assigned a unique transaction identifier? If so, do you agree a unique transaction identifier should consist of a unique transaction identifier provided by the party with the publication obligation, a unique transaction identifier provided by the publication arrangement and a code to identify the publication arrangement uniquely? If not, please specify reasons.

We do not have a comment to this question.

Cancellations

Question 9: Do you agree with CESR's proposal? If not please specify reasons.

Yes, the information should be sent to the market as soon as the need of cancellation is identified. We do not believe the set up of a specific delay of 90 seconds would be useful. The principle that it should be done as soon as possible is strong enough.

Amendments

Question 10: Do you agree with CESR's proposal? If not please specify reasons.

Yes, we agree with CESR's proposal.

Negotiated trades

Question 11: Do you agree with CESR's proposal? If not please specify reasons.

Yes, we agree with CESR's proposal.

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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