EACB position paper on the technical advice of the Committee of European Securities Regulators (CESR) to the European Commission on transaction reporting 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 transaction reporting in the context of the review of the Markets in Financial Instruments Directive (MiFID). The matter is very much related to cross-border issues. It is therefore important that the European competent authorities agree on a common understanding of central aspects involved in European transaction reporting obligations.

EACB fully understands that the supervisors and regulators need to have comprehensive access to data allowing them to effectively perform their supervisory duties. Transaction reporting systems are fully automated IT systems. Due to a large number of interfaces to subsequent computer systems, every change leads to significant costs. Therefore changes to existing systems should be only introduced if there are convincing reasons for them and if those cannot be achieved in a satisfactory way on the basis of the current systems or through alternative approaches.

In general we have no information about difficulties in the reporting of transactions in Europe. We would like highlight that the respective requirements in place in the single jurisdictions show differences in some aspects. Those variations are caused by specificities in each country that are sometimes also reflected in the reporting regimes. In the end not all types of transactions are uniform in the EU member states. A major historical reason for this matter of fact is certainly the different ways the reporting regimes and the respective systems were implemented in Europe in the course of time. It is anyway crucial that all reporting systems work perfectly in order to provide the competent authorities with all necessary information to properly monitor relevant market developments. In our view a further European harmonisation should as far as possible be achieved by the way of data exchange between the competent authorities.

With respect to the discussed introduction of client identifiers we would like to underline that the matter is very sensitive. Generally, many things may be technically possible, but every proposal should be judged by examining whether the proposed measure would be suitable, necessary and adequate especially regarding the protection of personal data.

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

Key terminology on transaction reporting

Trading capacity

Question 1: Do you agree with the above analysis on trading capacity and the proposal to introduce a third trading capacity (riskless principal) into transaction reports?

From our point of view the list of fields for reporting purposes as outlined in table 1 of annex 1 in the MiFID implementing regulation (1287/2006) offers a sufficient number of combination options to display all transaction versions in question. The current form is appropriate and we assume that there will be no adjustments be necessary for the reporting entities. In case of additional information required in the form of a third trading capacity (riskless principal) we would like to highlight that those should be generated from the present data reported for data exchange purposes.

We very much welcome the CESR approach outlined in the paragraphs 33 and 35 of the consultation paper in which CESR rejects the introduction of separate identifiers for transactions conducted under market making arrangements.

Client and counterparties

Question 2: Do you have any comments on the distinction between client and counterparties?

No comments.

Collection of the client identifier / meaningful counterparty identifiers

Benefits of collecting client / counterparty identifier

Question 3: Do you agree with the above technical analysis?
Question 4: Do you see any additional advantages in collecting client ID?

We would like to point out that supervisors already have the power to require the transmission of data from all subjects (agents and/or customers) involved in a transaction or a chain of transactions.

The mandatory introduction of client identifiers would lead to significant costs and is by no means in a reasonable proportion to the actual benefit for the supervisors. It is crucial that the envisaged solutions are designed in an efficient manner.

Disadvantages of collecting client identifiers

Question 5: Do you agree with the above technical analysis?
Question 6: Do you see any additional disadvantages in collecting client ID?

We doubt that the desired measures are proportionate. Besides the cost aspect outlined in our answer to the questions 3 and 4 there are also security issues, e.g. a hypothetical abuse of the client IDs that were stolen by criminals after hacker attacks.

Question 7: Do you agree with this proposal?

As outlined already in our answer to questions 3 and 4 an appropriate, efficient system design will be crucial in order to avoid heavy burdens for the industry.

Question 8: Are there any additional arguments that should be considered by CESR?

We have no further comment to this question.

Standards for client and counterparty identifiers

Question 9: Do you agree that all counterparties should be identified with a BIC irrespective of whether they are an EEA investment firm or not?

The use of a BIC as an identifier for all counterparties can be problematic. Firstly an investment firm often has multiple BICs which makes an identification more difficult. In addition BICs are assigned by the Belgium-based co-operative Society for Worldwide

Interbank Financial Telecommunication (SWIFT) and there is no general right for an investment firm to claim and actually obtain a BIC. We would welcome also other ways to identify counterparties. The BIC should not be the only solution.

Article 5 (3) of the MiFID level 1 directive (2004/39/EC) outlines that the EU member states shall establish a register of all investment firms trading in securities in the EU. It could be a possibility to use the same concept and create an EU wide register which would contain machine-readable identification numbers and be accessible for all reporting entities. With such a register the type of counterparty identifier would not be relevant any more.

Question 10: Do you agree to adapt coding rules to the ones available in each country or do you think CESR should pursue a more ambitious (homogeneous) coding rule?

The introduction of an ambitious, homogeneous coding rule throughout the European Union does not seem feasible. Without creating substantial benefits such an introduction would certainly lead to costly adaptations in the current systems.

Question 11: Is there any other available existing code that should be considered?

Please see our answer to question 9 and 10.

Question 12: When a BIC code has not been assigned to an entity, what do you think is the appropriate level for identification (unique securities account, investment firm, national or Pan-European)?

Please see our answer to question 9 and 10.

Question 13: What kind of problems may be faced at each of these levels?

The main problem is the current absence of a central register.

Client ID collection when orders are transmitted for execution

Question 14: What are your opinions on the options presented in this section?

We feel that the current system is already working well and there are many more efficient ways to fight market abuse than these proposals. We would also like to highlight that CESR's proposals lead to duplicated efforts in reporting, raise serious data protection issues and in the end cause extremely high implementation costs.

Transaction reporting by market members not authorised as investment firms

Question 15: Do you agree with CESR's proposal on the extension of reporting obligations? If so, which of the two alternatives would you prefer?

We consider arrangement that impose reporting obligations to firms which are domiciled outside the EU but admitted to trading in the EU as harmless.

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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