

Committee of the European Securities Supervisors (CESR)

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EAPB on the CESR Technical Advice to the European Commission in the Context of the MiFID Review – Investor Protection and Intermediaries

I. General remarks

The European Association of Public Banks (EAPB) is thankful for the possibility to comment on the consultation paper on “CESR’s Technical Advice to the European Commission in the Context of the MiFID Review – Investor Protection and Intermediaries (CESR/10-417)”. Due to the prevailing interests of our members, we have decided to hand in remarks only to part 1 and 2 of the consultation paper.

Our members deem the obligation to record the telephone conversations with all clients, including retail clients, highly problematic. Such an obligation which is associated with high costs discriminates especially markets that guarantee the supply of the population with the necessary banking and investment services through a variety of small and medium-sized institutes. Apart from that, it seems that the citizens of a number of European States are sceptical towards a general telephone recording.

II. Answers to the questions on Part 1: Requirements relating to the recording of telephone conversations and electronic communications

Q 1. The European Public Banks reject mandatory voice recordings throughout the EEA. The discretionary right embedded in MiFID has proven its worth. It is neither possible to discern any added value in, nor any necessity of, imposing the requirements proposed by CESR on the EEA as a whole. The costs of purchasing the recording equipment and the operational costs would be significant. Mandatory requirements would let smaller and locally operating banks no longer be able to offer investment counselling services and telephone order placements to clients across the area in which they operate. This does not lead to better client protection and limits clients’ options to communicate with their banks.

An obligation to record telephone conversations between traders seems reasonable. The speed at which professional trading is carried out means a mechanism needs to be in place to clear up misunderstandings without delay. It has also become standard practice to record telephone conversations handled by call centres, benefitting both the banks and the clients. A general recording requirement would be disproportional regarding the associated implementation and maintenance costs. Written records are an adequate but milder method of achieving the same regulatory objective of documenting orders received at high street bank branches. In the event of disputes the bank has to demonstrate that the order was executed in the manner requested by the client.

Recordings would help to detect and deter market abuse when it comes to conversations with a trader or between traders. But no significant instances of market abuse would be identified among orders placed at high street branches.

Alternative mechanisms for protecting client interests, such as documenting conversations in writing and giving the client a copy of this documentation, have already been introduced in certain Member States and double regulatory burden should be avoided.

Q 2. --

Q 3. It would be appropriate to differentiate between conversations with or between traders on the one hand and conversations between clients and high street branches on the other.

Q 4. Please see Q 1.

Q 5. It would be acceptable to restrict the recording requirement to conversations made on equipment provided by the firm. However, whether a restriction of this kind would be sufficient to solve data protection and privacy issues remains to be answered.

Q 6. If a portfolio manager as professional client communicates with the trading desk directly, recordings of the conversation can help to swiftly clarify the situation in the event of a dispute. However, recordings of trading desk conversation appear to be sufficient. A further recording at the portfolio manager's end makes no sense.

Q 7. It cannot dispel fundamental concerns about the requirement as such to permit certain exemptions from a requirement.

Q 8. Given the amount of recorded material involved, a retention period of this length would prove highly onerous. Disputes concerning miscommunication and investigations into market abuse do not normally begin after a time lag of several years. The retention period should therefore be much shorter, for example requiring records to be kept for a period of 12 months.

Q 9. A recording requirement and national rules and regulations should not be compatible at the moment. Establishing compatibility will be difficult since data protection issues are very sensitive issues.

Q 10. The supposed benefits of a recording requirement throughout the EEA are hard to imagine. The associated costs would be out of proportion to the benefits CESR assumes such a requirement would deliver.

Q 11. --

Q 12. The length of the retention period would have an impact on the need for storage space, on administrative costs and on the cost of securing the data.

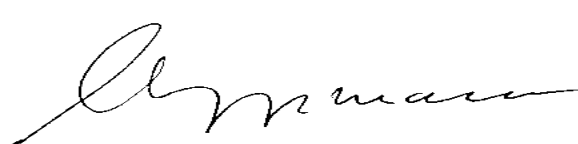
III. General remarks on part II: Execution quality data

We would like to point out that according to our members' experiences the clients so far have not shown a great interest in receiving information about the best execution. Therefore, we do not deem such standards necessary and do not think that standardisation standards for the information of clients about the best execution policy would make sense.

In the case of retail clients, Art. 44 (3) of the Implementing Directive to MiFID bases the assessment of the best execution on the price of the financial instrument and the costs of the execution. It would be important to add the likelihood of execution and settlement as factor. It is of significance for retail clients, if the transaction actually is executed. In addition as far as professional clients are concerned, we propose to discuss which importance should be accorded to the factor of liquidity .

Should you have any questions, please do not hesitate to contact us.

Kind regards,

A handwritten signature in black ink, appearing to read 'Schoppmann', written over a light blue horizontal line.

Henning Schoppmann
EAPB

A handwritten signature in black ink, appearing to read 'Bartels', written over a light blue horizontal line.

Boris Bartels
EAPB

The European Association of Public Banks (EAPB) represents the interests of 35 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.