

ZENTRALER KREDITAUSSCHUSS

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**Comments by
Zentraler Kreditausschuss¹
on CESR's consultation paper
“CESR Technical Advice to the European Commission
in the Context of the MiFID Review - Transaction Reporting“**

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¹ The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (VdP), for the mortgage banks. Collectively, they represent more than 2300 banks.

A. General remarks

The Zentraler Kreditausschuss (ZKA) welcomes the opportunity to comment on CESR's proposals for amending the transaction reporting regime pursuant to Article 25 MiFID. Hardly any other subject addressed by MiFID relates so much to cross-boundary issues as Transaction Reporting. For this reason we feel that it is essential for regulators to have a common understanding of central questions concerning transaction reporting. We wish to point out that the standard addressees need a reliable basis to depart from. This is especially true against the background that the reporting systems are fully automated IT systems with a large number of interfaces. This is why it ought to be avoided making changes again if there are no convincing reasons for this.

B. Notes concerning individual paragraphs and answers to individual questions

We have no evidence to suggest that there are general difficulties in reporting transactions correctly. It should be noted, however, that the requirements imposed in the EU member states vary on some points. This is, in our view, caused by the fact that the types of transactions are not uniform in the various Member States. There are particularities in every Member State and some of them are reflected in the reporting regime, too. Moreover, the requirements imposed by the regulators on the data sets themselves show differences. We believe that this is, among other things, attributable to the differences in the way in which the reporting system came into being in the individual Member States. In Germany, for example, a well-differentiated reporting regime has been in place since 1995, a regime that has been tried and tested and adapted to new needs over the years; most recently extensive system adjustments were carried out within the framework of the MiFID implementation. In our opinion, it is crucial to ensure that the systems function reliably and enable the regulators to monitor the market. We appeal to the CESR members to seek to achieve, to the extent possible, the necessary European harmonisation by way of data exchange.

2 Key Terminology on Transaction Reporting

Most recently CESR dealt in more detail with the definition of the term "transaction" in its Call for Evidence "On the Review of the Scope of the MiFID Transaction Reporting Obligation" (CESR/08-873). In the comments then submitted by us we noted that the definition, as proposed by CESR in the consultation and introduced by the Level 3 Guidelines, was not sufficiently clear-cut, given that there was some overlapping. We therefore consider it logical for CESR to address this topic again.

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?

In Germany there have hitherto been no problems in clearly reporting the executed transactions within the data set based on Annex 1 to the Commission Regulation (1287/2006/EC). For this purpose the data set offers a sufficient number of combination options to depict all possible transaction versions. In certain business cases it may also be necessary to make two reports because two transactions have been executed. We regard the present form as appropriate and proceed from the assumption that the reporting investment firms will not be required to make any adjustments in this respect. Should additional information in the form of a “third trading capacity” (riskless principal) be required we assume that such additional information may be generated from the present data reported for data exchange purposes.

We explicitly agree with CESR’s view that no separate identifier should be introduced for transactions executed under market making arrangements, as expressed in paragraphs 33 and 35.

2.2 Client and Counterparties

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

No comments.

3 Collection of the client identifier/Meaningful counterparty identifiers
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Discussions about the purpose and meaning as well as the costs and benefits of a client identifier ought to be conducted with great care, given that encroachments upon client rights are basically involved here. Generally, many things may be feasible in technical terms, but every proposal should be judged by examining whether the proposed measure would be suitable, necessary and adequate. After all, the Charter of Fundamental Rights of the European Union (2010/C 80/02) states in Article 8 that everyone has the right to the protection of personal data concerning him or her (paragraph 1). Paragraph 2 provides that such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. In addition, everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3.3.1 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?

Basically we agree with the analysis, pursuant to which the transmission of a client identifier as part of a transaction report may be advantageous both for market surveillance and for the reporting investment firms. However, it should be noted that the reporting firms do not only incur one-off implementation costs but also recurrent costs on servicing the systems and interfaces. We assume that the individual banks receive roughly 20 to 50 requests a month. For this reason it should always be weighed up whether or not the expenses caused by a client ID exceed expenditures on ad hoc requests. This is why it is crucial to ensure that client identifiers are designed in an efficient manner.

3.3.2 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 share the view that the legal framework for the introduction of mandatory client identification ought to be closely analysed. In this respect it will be of particular importance whether the desired measures appear to be proportionate. At the same time it should be considered that client identifiers used in other contexts too – such as the taxpayer's ID number – may be prone to abuse, for example in the form of hacker attacks. For this reason, too, one should work with more specific identification data.

“Proposal: 71. CESR is considering requesting the European Commission to amend MiFID and its Implementing Regulation in order to make the collection of client ID and (thus) meaningful identifiers for all counterparties by competent authorities mandatory within the framework of the upcoming review of MiFID.”

Question 7: Do you agree with this proposal?

From our point of view there are no irrefutable arguments speaking against the EU-wide introduction of a mandatory client identification system. However, an appropriate system design will be crucial.

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

Cf. our initial remarks concerning Chapter 3.

4 Standards for client and counterparty identifiers
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“88. The standards selected by CESR are the following ones:

a. Unique identifier at pan-European level, should that code exist at some point in the future, based possibly on any of the following codes:

- personal identity number;
- tax payer number (for natural and legal persons);
- business enterprise organisation number (companies register number);
- social security number

b. Unique identifier at national level, such as any of the following codes:

- personal identity number;
- tax payer number (for natural and legal persons);
- business enterprise organisation number (companies register number);
- social security number;
- name of the client (as a complement, not substitute, of the above codes)

c. Unique identifier at investment firm level, such as any of the following codes:

- internal number assigned by the firm;
- bank/securities account number (provided there is one account per client)

d. Unique identifier at securities account level, such as any of the following codes:

- securities account number;
- bank account number. “

We regard options c. and d. of Article 88 as the only practicable solutions. For the reasons mentioned above we believe that the approaches described in a. and b. are neither adequate nor practicable.

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?

We do not regard the Bank Identifier Code (BIC) as a suitable type of identifier for all counterparties. It is true that the BIC is widely used, frequently also as an identifier, but it involves major practical difficulties at the same time. Above all, it is problematic that one firm may have numerous BICs, so that there is no unique link. What is more, the BIC is assigned by SWIFT, which is why there is no automatic claim to being given a BIC.

In this context, however, it is primarily the question of the availability of identification numbers that matters. Article 5, paragraph 3 MiFID provides for the establishment of a register of all investment firms in the EU. Following up on this concept, we suggest that an EU wide register should be introduced which would contain machine-readable identification numbers and be accessible for all reporting entities. In this way it would be possible to solve problems existing in this sphere. If there was such a register, the type of counterparty identifier would be irrelevant. Even national distinctions might be described in this case.

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?

From a practical point of view we consider it unrealistic to introduce a homogeneous coding rule throughout the EU. Such introduction would certainly create a substantial need for adaptation in the systems in place now, without generating equivalent benefits. As indicated before in our answer to question 9, the key to the solution of the problem rather lies in establishing a machine readable register.

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

See answers to questions 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)?

See answers to questions 9 and 10. We are of the opinion that if a register existed, it would be possible to give preference to requirements at the national level. From our point of view the commercial register number might be considered.

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

In practice difficulties primarily result from the fact that there is no central register. Cf. our answers to questions 9 and 10.

5 Client ID collection when orders are transmitted for execution

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

No comments.

6 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?

In Germany the reporting obligation is even imposed on firms which are domiciled in a state that is no member of the EU or the EEA but admitted to trading on a German stock exchange, such obligation extending to the transactions effected at such stock exchange. We construe CESR's deliberations to mean that a similar arrangement is desired at EU level. We would regard this as harmless. Should additional facts be involved, however, we would consider it necessary for CESR to describe the proposal in greater and more specific detail to enable us to arrive at a conclusive assessment.
