

Subject: CESR technical advice on implementing measures of the proposed financial instruments markets directive (ISD 2); transaction reporting, cooperation and exchange of information between competent authorities consultative concept paper
Comments from Luxembourg

Dear Alexander Karpf,

We have submitted the above-captioned consultative paper for comment to the “Comité Marché Valeurs Mobilières” (hereafter Comité MVM), a consultative committee of the CSSF dealing with securities issues and the members of which are representatives of the professional intermediaries, including bankers, brokers and lawyers.

1) General remarks on the implementing measures

The members of the Comité MVM suggest that CESR should first take into consideration the different reporting systems existing in the respective countries, compare them and then work out best common standards on reporting requirements.

2) Responses from the members of the Comité MVM to the 15 questions in the above-mentioned consultative concept paper

Methods and arrangements for reporting financial transactions

Questions:

Q 1: *Do you agree with the approach suggested above to determine the methods and arrangements for reporting financial transactions in one set of criteria applicable to, both, the conditions for a trade matching and reporting system to be considered valid to report transactions to competent authorities, and the criteria allowing for a waiver? If you do not agree, what other approach would be more appropriate in your view?*

Q 2: *What requirements should such an inventory contain?*

Q 3: *What other issues, if any, should CESR take into account when responding to the Mandate concerning the “methods and arrangements for reporting financial transactions”?*

Q1: The members of the Comité MVM agree with the approach suggested by CESR.

Q2: The inventory should be based on existing requirements imposed on reporting methods and arrangements.

Q3: The Comité MVM did not suggest other issues to be taken into account.

The criteria for assessing liquidity in order to define a relevant market in terms of liquidity for financial instruments

Questions:

Q 4: *What would general criteria for measuring liquidity be?*

Q 5: *What specific criteria could be useful in measuring liquidity? Should they be prioritised?*

Q 6: *What could be an appropriate mechanism for assessing liquidity in a simple way for the purposes of this provision?*

Q 7: *What other considerations should guide CESR in its work regarding the assessment of liquidity in order to define a relevant market in terms of liquidity?*

Q4 – Q7: The members of the Comité MVM are of the opinion that the suggested criteria are not entirely appropriate for the Luxembourg market. They suggest that CESR should also take into consideration the following criterion: the possibility to find easily a counterpart for a concerned order because the chances to success in completing a trade on a specific market represent a significant liquidity factor. For a specific market trading platform, this could for example be assessed by comparing the number of orders introduced in the related system to the number of orders executed in the related system. They stress that this is more representative for liquidity than volume or turnover are, especially for small markets, markets where there is a certain splitting or markets where there is a certain amount of off exchange trading. In addition, they are of the opinion that the period taken into consideration for reasons of measuring liquidity should be long enough in order to avoid too frequent changes of the relevant market. In fact, this represents a cost issue, taking also into consideration that the term of the most relevant market, in addition to the article on reporting requirements, appears in the context of the article related to systematic internalisers.

The minimum content and the common standard or format of the reports to facilitate its exchange between competent authorities

Questions:

Q 8: *Do you agree with the approach proposed by CESR for determining the minimum content and common standard/format for transaction reports? Are there other approaches that could usefully be considered?*

Q 9: *Apart from the types of information set out in Art. 25 par. 4 and the Mandate, what other information might be usefully included in transaction reports?*

Q8 – 9: In this context, the members of the Comité MVM suggest to precise that the information relating to trading time should only be filled in for transactions executed on certain markets as this information is not always immediately available if the transaction has been executed for example on or off markets in third countries. In addition, the members strongly oppose to any indication of a client id code into transaction reports for reasons of data and investors interest protection. They stress that introducing such a requirement will result in additional costs for investment firms which will then have to be reported on clients without adding any benefit to the scope of transaction reporting.

Question:

Q 10: *Do you agree that the content of transaction reports has to be equal irrespective of the entity reporting the transaction? What considerations could justify a different treatment of reporting parties?*

Q10: The members of the Comité MVM agree that the content of the reports has to be equal irrespective of the entity reporting the transaction.

Obligation to cooperate – Art. 56 par. 5

Questions:

Q 11: *Do you agree that this preliminary assessment on the scope of the implementing measures is appropriate, and with the approach suggested above to determine the criteria under which the operations of a regulated market in a host Member State can be considered as of substantial importance, or would you consider another approach more appropriate?*

Q 12: *What relevant criteria should be taken into account in order to assess the substantial importance of the operations of a regulated market in a host*

Member State?

Q11 – 12: The members of the Comité MVM agree with the preliminary assessment and have no special comments related to these questions.

2.2. Exchange of information – Art. 58

Questions:

Q 13: *What other indicative elements should CESR take into account when drafting its technical advice in this field?*

Q 14: *To what extent should CESR take into account the nature of the information to be exchanged in order to set up different categories of information and corresponding procedures of exchange of information (i.e. routine, case specific)?*

Q13 – 14: The members of the Comité MVM note that real urgency cases occur very rarely. So, one must be careful in order to avoid that not always urgency will be put forward for every request. They stress that even in urgent cases, authorities should take care to describe in a written form the case subject to the concerned matter and the purpose of the request so as to enable the requested authority to communicate valuable and precise information. In order to permit a prompt cooperation, the written communication may be done on an electronic basis (by e-mail).

Question:

Q 15: *To what extent do you agree with the approach outlined above? In particular, are there any issues which you believe would be more appropriately dealt with at Level 3? What other considerations should guide CESR?*

Q 15: For the sake of stability, the members of the Comité MVM prefer to deal with most of the rules at Level 2.

Please note that the above-mentioned comments have been made by the members of the Comité MVM during a meeting organized to examine the consultative concept paper.

Yours sincerely,

COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER

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