

**IMPLEMENTING MEASURES  
FOR THE FINANCIAL MARKETS INSTRUMENTS DIRECTIVE**

***Consultative Concept Paper (CESR / 04-073b)***

**RESPONSE BY THE FRENCH ASSOCIATION OF INVESTMENT FIRMS  
(AFEI)**

1. The French Association of Investment Firms (*Association Française des Entreprises d'Investissement* – AFEI) comprises nearly 130 investment service providers, mainly investment firms, but also credit institutions authorised to provide investment services. The majority of AFEI members operate in the fields of equities and derivatives. Approximately one-third are subsidiaries or branches of foreign institutions. We have been paying close attention to work on the Financial Markets Instruments Directive because it is a key piece of legislation that will have a significant impact on the way our members conduct their businesses.

We have carefully examined the Consultative Concept Paper published on 1 March 2004 by the Committee of European Securities Regulators (CESR) under the title "Transaction reporting, cooperation and exchange of information between competent authorities".

2. AFEI firstly wishes to thank CESR for publishing the paper, which is significant for two reasons. First, at an early stage in the proceedings, it allows interested parties to submit their comments on the broad guidelines underpinning the detailed measures that will subsequently be submitted for consultation. Second, it gives valuable insights into the issues that shaped CESR's thinking.

In AFEI's view, this type of approach can substantially improve the quality of the CESR consultation process. We therefore ask CESR to try and follow this approach systematically and as early as possible in that process.

3. It should be remembered that the answers below constitute a response to a Consultative Concept Paper. They should be seen as initial comments that will be re-assessed once CESR has submitted more precise proposals for industry consultation.

➤ **Transaction reporting**

4. On the whole, AFEI has not yet identified any major shortcomings in CESR's proposed approach to transaction reporting. Obviously, we will expand on our initial answers, particularly from the technical perspective, during subsequent consultations.

***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 waiver? If you do not agree, what other approach would be more appropriate in your view?***

5. AFEI notes with interest that CESR intends to "take into account the potential overlaps between the information required by Article 25 and the information required under the post-trade transparency requirements of the Directive. Whilst such information is used for different purposes, CESR is keen to explore ways in which commonalities between the two can be exploited so as to avoid unnecessary duplication and costs for both regulators and the industry".

In our view, this is a vitally important issue. It is inconceivable that there should be two types of information-transmission procedure – one to satisfy post-trade transparency requirements, another for regulatory reporting purposes – for the same category of information. This position has had a defining influence in terms of the types of system to be used, the kind of information to be gathered and the timing of transaction reports.

6. AFEI believes fundamentally that all processes should be as simple as possible. Accordingly, we obviously welcome the proposal to rely on external systems, especially those used in connection with post-trade transparency, that will allow for the automated collection of mandatory data.

Note that in France, the SCAN RDT data collection system uses similar processes with great success. It was put in place by the market regulator and encompasses regulated markets, multilateral trading facilities (MTFs) and settlement systems.

AFEI also thinks that service providers should be encouraged to introduce measures to facilitate the reporting of over-the-counter transactions.

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

7. In AFEI's view, CESR should strive for the greatest possible degree of harmonisation between different reporting systems, in terms of both data and communication processes.

But to achieve that harmonisation, it may be necessary to re-engineer existing systems, which could prove expensive. It is therefore vital to adopt realistic timelines and cost schedules for the re-engineering process.

8. On this point, AFEI stresses the need to pay particular attention to the time at which transactions reports must be submitted. The problem is certainly more acute from the standpoint of post-trade transparency. That said, interactions do exist provided that post-trade transparency and regulatory reporting procedures are linked (see point 5), in line with AFEI's wishes.

***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"?***

9. We have no comments to make on this point.

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

10. This is a complex issue which, in any case, can never be dealt with entirely satisfactorily. AFEI recommends adopting a criterion that is simple and easy to check, namely the trading volume in a particular security.

11. It is important to establish a stable conceptual framework for liquidity without creating a rigid definition. To achieve this, liquidity should be measured over a period that is long enough to eliminate sudden peaks or troughs but short enough to capture movements of a structural nature.

In the first analysis, AFEI considers that the optimum period is between one and three months.

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

12. In view of our response to Question 4, we have no comments to make on this point.

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

13. If trading volume is accepted as the main criterion for measuring the liquidity of a system, then the assessment could be based on the information delivered by each interested party (see Point 16).

***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?***

14. We have no further comments to make on this issue.

***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?***

15. AFEI strongly endorses CESR's proposed approach for establishing minimum common standards for transaction reports. However, although harmonisation is desirable, any such process must take into account the systems that are already in place (see Point 7).

***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?***

16. In AFEI's view, the information referred to in Article 25, par. 4 is already sufficiently detailed for reporting purposes. One possible enhancement would be to identify the regulated market or MTF on which trades are dealt.

Whatever the circumstances, all this information must tally with the data published for post-trade transparency purposes (see Point 5).

***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?***

17. In principle, AFEI sees no reason for making any differences between entities in terms of reporting.

## ➤ Cooperation

***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?***

18. AFEI does not see how another approach could be "more appropriate" insofar as the directive refers only to the criterion of "substantial importance" (Article 56, par. 5).

In general, it is hard to imagine using implementing measures as a "backstop" to solve problems identified at Level 1, when the directive leaves almost no margin for discretion. If this were the case, it might undermine the legal framework and result in the perpetual re-opening of discussions that are supposed to have been wrapped up at Level 1.

***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?***

19. AFEI believes that, in view of the sought-after objective, the most pertinent criterion is the number of investors residing in a Member State and dealing on a regulated market in another Member State. However, this would be almost totally unworkable since there can be no question of systematically reporting the nationality of the investor for whom a transaction has been executed.

Consequently, the most appropriate criterion would be to consider where the issuer is incorporated and to decide that any regulated market generating a significant volume of trading in the issuer's securities is of "substantial importance". In this respect, "significant trading volume" should be at least 20 per cent of the total volume dealt in those securities.

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

20. In AFEI's view, the decision on the kind of cooperation procedure to be put place should reside with the authorities, which are better able to identify the most appropriate methods of communication.

Provided that the procedures eventually put in place impose no additional constraints on the interested parties, AFEI has no further comments to make at this stage.

***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)?***

21. AFEI notes simply that this question can be viewed in two ways depending on whether the authority is already in possession of the requested information or whether it has to look for it. In the first case, there seems to be no need for different categories, and the information must be passed on as soon as possible. In the second case, the degree of urgency must be taken into consideration.

***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?***

22. We have no comments to make on this issue.

