

BME SPANISH EXCHANGES COMMENTS ON THE CESR CONSULTATIVE CONCEPT PAPER “TRANSACTION REPORTING, COOPERATION AND EXCHANGE OF INFORMATION BETWEEN COMPETENT AUTHORITIES” (MARCH 2004)

These are the comments of the BME Spanish Exchanges to the consultative concept paper on transaction reporting, cooperation and exchange of information.

It begins with a general comment regarding the regulatory progress after the release of the Concept Paper and its consequences and continues with detailed comments to the topics arisen.

1. Regulatory progress and its consequences

After the publication of the Concept Paper, a consensus has been reached regarding the ISD2 and the Parliament has approved last 30th March certain amendments to the Common Position which may affect some of the points tackled in the Concept Paper.

Specifically, amendment to article 27.1, pre-trade transparency, refers to the most relevant market in terms of liquidity as defined in article 25, and states that competent authority of that most relevant market shall determine the standard market size of each group of shares up to which it is applicable the pre-trade transparency obligations of that article.

Then, the concept of "most relevant market in terms of liquidity" of article 25 is being used not only for transaction reporting but also for such a different purpose as determining the pre-trade transparency obligations applicable to the internalisation regime.

It would then be convenient the participation in the works regarding the concept of "most relevant market in terms of liquidity" not only of the CESR Expert Group on Cooperation and Enforcement but as well of the CESR Expert Group of Markets.

2. Methods and arrangements for reporting financial transactions

It seems that under article 25.5 of ISD2, each Member State has the competence to determine the entity who has to report while the waiver competence belongs to the respective supervisory authority and it would not be a general waive but applicable case by case. Then, it seems that the waiver should take into account different factors than the ones considered by the Member State to authorise the report by entities different than the investment firm.

There has to be considered the audit suitability of the transaction report. We consider that the transaction reports should be, in any case, auditable, in order to let the competent authority verify the authenticity and integrity of the content of all the transactions reported.

Such audit should be made on a periodical basis and it should remain as simple as possible, based on comparison with third parties information of the transaction, such as

trading reports by regulated markets or settlement reports which may confirm the transfer of securities and cash.

3. Criteria for assessing liquidity in order to define a relevant market in terms of liquidity for financial instruments

As it has already been pointed out, after the Parliament amendments to the Council Common Position, determining the most relevant market has more implications than before, so the participation of other CESR working groups in this regard would be very convenient.

Given that, since its very beginnings, the ISD2 brought the "most relevant market" issue as a mean to serve the transparency and integrity of the whole market, it seems that such market should be identified amongst the regulated markets as they are the general trading regimes foreseen by the ISD2.

The same conclusion is reached coming from the express reference to market as well as noting the most relevant market issue is linked to the reporting of transactions made on financial instruments admitted to trading on a regulated market.

Moreover, it could probably refer to the Member State that may comprise different regulated markets.

4. Minimum content and common standard or format of the response to facilitate its exchange between competent authorities

We agree with the approach proposed by CESR. We would insist on the need to the contents of the transaction reports to be identical irrespective of the entity reporting the transaction.

5. Obligation to cooperate

Some relevant criteria to be taken into account in order to assess the substantial importance of the operations of a regulated market in a host Member State could be:

- Number and diversity of potential final clients affected
- Publicity and marketing practices carried out in the host state

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