



Response to the consultation on CESR's advice on possible implementing measures of the Directive 2004/39/EC on Markets in Financial Instruments

1. General

TLX S.p.A. is the management company of an Italian Regulated Market called TLX. TLX S.p.A. also runs an MTF called EuroTLX. Both markets are *retail investor oriented* and would like to offer a broad range of financial instruments together with the widest satisfaction of their specific needs in terms of liquidity, transparency, information and trading protection. Please refer to the corporate website (www.eurotlx.com) for more info.

TLX S.p.A. welcomes this consultation and, because of its scope, is confident that CESR will submit a technical advice able to deeply strengthen investor protection. TLX S.p.A. believes that the enforcement of high-level investor protection is definitely consistent with the strengthening of competition throughout an European Single Market. This is only possible through a degree of harmonisation as wide as possible. Such a goal is achievable only having a set of level 2 implementing measures able to avoid any chance of regulatory arbitrage at level 3.

An European Single Market is really viable only granting the same level of protection for all non professional investors. At least with regard to non professional investors the legal framework should be completely defined at Level 2. Further additional requirements at Level 3 should be avoided, as well as Level 2 measures too wide and general, that would require integration at Level 3 .

Moreover TLX S.p.A. definitely believes that a deeper degree of investor protection can be further achieved introducing at level 2 appropriate measures for stimulating market competition on investor protection itself. In such a scenario, best execution rules can be of paramount importance.

Considering the focus of TLX S.p.A. markets on retail activity, the analysis has been concentrated on best execution and other items related to non professional investor protection.

TLX S.p.A ends this general introduction clarifying to be against transitional provisions at level 2, especially whenever they could maintain or create regulatory arbitrages among UE Members and/or with reference to non professional investors.

2. Specific issues

2.1. Best execution

In its *Consultation Paper*, CESR pointed out that:

- a) The requirements concerning best execution are more specific requirements under the general principle that investment firms must act honestly, fairly and

- professionally in accordance with the best interests of their clients (Article 19(1));
- b) The scope of the best execution obligation is very wide and the connection between Article 21 and Article 19(1) is so strict that investment firms should comply with the requirements of Article 21, irrespective of whether these requirements are imposed on investment firms under Article 21 or under Article 19(1);
 - c) The requirements concerning best execution also refer to investment services such as the reception and transmission of orders and portfolio management;
 - d) CESR expects that Article 21 will contribute to enhancing competition among trading venues and will, therefore, have an interaction with the other provisions of the Directive concerning market transparency.
 - e) CESR is especially concerned to ensure that the requirements work well across all relevant investment services.

TLX S.p.A. definitely shares and supports CESR view. More in detail, TLX S.p.A. believes that CESR clarifications mentioned above are especially important with regard to:

- 1) The interpretation of Article 21, because they highlight that:
 - a) Article 19(1) is the main interpretation criterion for requirements under Article 21;
 - b) There is a strict connection between the concepts of *best execution* and *acting in accordance with best interests of clients* arising from Article 19(1). TLX S.p.A. definitely believes that, consistently with the general principles stated at level 1 and the goal of strengthening the investor protection, at least in relation to non professional clients, *best execution* and *acting in accordance with best interests of clients* have to be valued either in terms of "*performance to achieve*" or in terms of "*protection measures of their interests*";
 - c) There is a strict connection among best execution, market transparency and, more broadly, all the requirements that specify the general obligation under Article 19(1);
- 2) The requirements concerning best execution are extremely important for the achievement of FSAP goals, because:
 - a) if fully and effectively applied, these requirements are really able to create effective competition among investment firms and trading venues;
 - b) if fully understood in their strict connection with Article 19(1), these requirements are really able to create effective competition not only on performance, but also on investor protection (especially with regard to non professional clients).

General proposals

In case CESR shares TLX S.p.A. view and considers them a simple and consistent specification of its thought, CESR could assess the following general proposals:

- a) To make as clear as possible that the general principle under Article 19(1) is the main criterion for the interpretation of Article 21 and for the identification of further factors other than those specifically indicated in Article 21(1);
- b) To give explicit standards/criteria to be followed by investment firms when they identify further factors other than those specifically indicated in Article

21(1). At least with regard to non professional clients, it could be useful to add in CESR's Advice a specific mention of other 2 possible factors (definitely consistent with the nature of non professional clients category):

- i) protection measures for their trading activity;
- ii) conditions of market transparency.

With reference to market transparency, we also highlight that CESR's standards of April 2004 (in particular, standard n. 102) expressly included it within factors to be considered in order clients' execution. TLX S.p.A. believes suitable to maintain this indication at level 2 and give it the same relevance that it had in CESR's standards. This goal could be achieved through the explicitation of criteria that investment firms would have to follow when they identify further factors other than those specifically indicated in Article 21(1).

Answers to questions for consultations

The following answers are a simple specification of what TLX S.p.A. has highlighted above.

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Q1: Are the criteria described above relevant in determining the relative importance of the factors in Article 21(1)? How do you think the advice should determine the relative importance of the factors included under Article 21(1)?

Q2: Are there other criteria that firms might wish to consider in determining the relative importance of the factors? Do you think that the explanatory text clearly explains the meaning of all the different factors in respect of the different financial instruments?

Q3: How might appropriate criteria for determining the relative importance of the factors in Article 21(1) differ depending on the services, clients, instruments and markets in question? Please provide specific examples.

Q.4: Please provide specific examples of how firms apply the factors in Article 21(1) to determine the best possible result for their clients.

TLX S.p.A. believes that a joint answer could be useful. First, TLX S.p.A. highlights that all the questions focus on the criteria to be considered in determining the relative importance of the factors in Article 21(1), while no consideration or indication has been spent for the (possible) identification of further factors other than those specified in Article 21(1).

Explicit indications at level 2 on how determining further factors under the ending clause of Article 21(1) could be very useful in case of a best execution policy related to non professional investors. Among such indications, TLX S.p.A. considers suitable a reference to investor protection measures.

Such a specification at level 2 would lead to strengthen the competition on investor protection too, and could facilitate the achievement of high degrees of investor protection.

With regard to best execution policies for non professional investors:

1) it is also important to ensure that the assessment of trading venues take into account their investor protection measures.



2) for the assessment of trading venues, costs for direct availability, access to pre and post trade information, the existence of protection measures for the trading activity and the quality of the available information on specific characteristics and risks of financial instruments could be specified in CESR's Advice and at level 2 in the list of the relevant venue characteristics/factors.

As examples, TLX S.p.A. can provide its experience as management company of a *retail investor oriented* Trading venue.

With regard to the access to pre trade and post trade information, TLX S.p.A. make them freely and real time available on its internet website; the same thing, with reference to the disclosure of characteristics and risks of financial instruments, by the publication of a specific summary note for every financial instrument. Many Italian retail investors visit TLX website and use these information.

With reference to protection measures for the trading activity, TLX S.p.A. has adopted rules and developed an electronic system able to assess whether order prices are consistent with market trends and to refuse orders with not aligned prices. TLX S.p.A. can confirm the relevance and utility of measures like these for the investor protection.

As the article 21 states that an order execution policy "shall at least include those venues that enable the investment firm to obtain on a consistent basis the best possible result for the execution of client orders" and therefore refers to more than one trading venue, it could be also useful that Level 2 specifies a minimum number of trading venues to include in a best execution policy or, better, the criteria to determine this number. Such a specification could be very useful in order to fulfil the harmonisation goal and avoid different practices among UE Members. A specification of the relevant criteria would be also more consistent with the Level 1 rules on best execution than a minimum number of trading venues to consider.

2.2. Fair, clear and not misleading information – Information to clients – Non complex instruments (Article 19(2), 10(3), 19(6))

TLX S.p.A. shares and agrees with CESR approach concerning information to non professional clients and aims at emphasising the relevance of the following principles:

- a) Investment firms instruments only have to inform clients about the main characteristics and risks of financial; the complete disclosure of all characteristics is up to the prospectuses for public offers and admission in regulated markets. It is important that investment firms provide clients with a selection of the main and relevant information, helping non professional investor to focus their attention on what is really essential for their investment decisions. This activity has to be consistent with general principles under 19(1) and 19(2) (fair, clear and not misleading information).
- b) All the information given to clients have to be always consistent with the principle under 19(1), either if provided through marketing communication or other means used during the relationship with clients.

In accordance with these considerations, TLX S.p.A. suggests to include in CESR's advice the following changes:

- a) With regard to retail marketing communication, it would be better to clarify that the exception at page 51, BOX 7, paragraph 9 (that allows to avoid the

description of the main characteristics and risks of financial instruments) can only apply to communication concerning financial services provided by the investment firm or to generic description of financial instruments categories provided by the investment firm. The exception of paragraph 9 also include “a short generic description or statement about the financial instruments” (point g), and “the price and yields of financial instruments and the charges” (point h). In case the exception at paragraph 9 can also apply to description of a single financial instrument – as points g) and h) are likely to allow – investment firms could improperly use such an exception, being induced to use it a lot in communications requiring compliance with *information-to-clients obligations* and risk disclosure. TLX S.p.A. definitely believes that maintaining points g) and h) is not consistent with the goal of promoting a fair, clear and not misleading information to non professional investors. As an example, TLX S.p.A. highlights that communications concerning a complex financial instrument (such as structured bonds), addressed to non professional investors and only containing information about price and yield of the instrument, fee to pay but not including any information about characteristics and risks of the instrument, would be compliance with the exception under paragraph 9 (BOX 7), even if not consistent with the aim of Article 19(1);

- b) The risk of improper use of “*standardised formats*” (Article 19(3)) should be reduced as much as possible in order to keep consistency with the general principle under 19(1). It would be useful to clearly specify that the use of standardised format is possible when consistent with Article 19(1) only. The risk of too generic description should be avoided. Some risk descriptions don't fit for all the instruments of the same category. For example, the same description of the interest rate risk can't fit for all bonds; interest rate effects definitely vary if related to fixed interest rate bonds or reverse floaters or floating rate notes. A common risk description shouldn't be consistent with Article 19(1).
- c) The reference to “*non complex instruments*” at Article 19(6) needs a specification at Level 2. The definition of “*non complex instruments*” should be strictly correlated to the different categories of investors. Because of the relevance of such a definition for the investor protection, it would be useful the maintenance, by CESR, of a list of non complex instruments for non professional investors.

2.3. Pre trade transparency requirements for Regulated markets and Multilateral Trading Facilities (Articles 44, 29)

TLX S.p.A. shares and agrees with CESR approach concerning Market transparency and with the adopted degree of detail.

Underlying the huge relevance of market transparency for investor protection, TLX S.p.A. submits its answers to the following questions:

Question 12.2. Is the content of the pre-trade transparency information appropriate?



TLX S.p.A. believes the content is appropriate for granting investor protection and market integrity. TLX S.p.A. suggests to add information about the *status* of the instrument in order to disclose information concerning trading suspensions or halts.

Question 12.3. Do consultees agree on the proposal regarding the depth of trading interest and access to pre-trade information?

TLX S.p.A. agrees with CESR proposal even if it considers this measure less relevant for the investor protection than easy access to information and information consolidation.

2.4. Post trade transparency requirements for Regulated markets, Multilateral Trading Facilities and for Investment firms (Articles 45, 30, 28)

Q13.1: Do consultees support the method of post-trade transparency (trade by trade information), should some other method be chosen (which)?

Trade by trade information are important for investment decisions. Their relevance could be improved if associated with general information concerning the trading session under way (e.g.: total traded volume, maximum and minimum price during the trading session).

Q13.2: Do consultees support the inclusion of "aggregated information" in paragraph 22 or should it be left for market forces to provide on the basis of the information disclosed under paragraph 21. If it is included what should the content be?

Confirming what highlighted for question 13.1, TLX S.p.A. believes that the approach of paragraph 22 is right.

Q13.4: Should some minor trades be excluded from publication (and if so, what should be the determining factor)?

TLX S.p.A. believes that the publication of each single transaction is more consistent with market transparency than the exclusion of minor trades.

Q13.7: Should the identifier of a security be harmonised and if so to what extent? What should be the applicable standard (ISIN code, other)?

A standard is very welcome and consistent with market transparency. Isin code is recognized as the best standard in UE.

2.5. Admission of financial instruments to trading (article 40)

Q14.1: Do consultees agree on the requirements for admission to trading? Should more (qualitative and/or quantitative) criteria for admission to regulated markets be specified in the level 2 measures? If yes, which?



TLX S.p.A. shares and agree with CESR proposals and, at the same time, would welcome an extension of requirements set for derivatives (mainly, point 3 - BOX 3) to transferable securities with similar characteristics and functions (e.g. covered warrants, compound products). For example, the requirements stated at point 2 - BOX 2, are not enough in case of a reverse convertible with a considerable outstanding and an illiquid equity as underlying; an admission based only on these requirements could raise a risk of market manipulation on the underlying equity. Moreover, in case the underlying equity is admitted on another regulated market managed by a different company, the latter only would bear such negative effects.

Q14.2: Do consultees agree on the role proposed for RMs in order to ensure that the issuers fulfil their disclosure requirements?

TLX S.p.A. shares and agree with CESR approach. A good harmonization among the relevant Directives will be strongly welcome.