



*European Association of Co-operative Banks
Groupement Européen des Banques Coopératives
Europäische Vereinigung der Genossenschaftsbanken*

EACB Comments on the Draft Work Plan of the CESR MiFID Level 3 Expert Group for Q4/2007-2008

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The **European Association of Co-operative Banks** (EACB) is the voice of co-operative banks in Europe. It represents, promotes and defends the common interests of its 28 members and co-operative banks in general. With 60,000 outlets and 4,500 banks, co-operative banks – which are privately owned entities- are widely represented throughout the enlarged European Union and play a major role in the financial and economic system. In Europe, one out of two banks is a co-operative. Co-operative banks have a long tradition in serving 130 million customers, mainly consumers, retailers and SMEs. Quantitatively, co-operative banks in Europe represent 45 millions members, 700,000 employees with a total average market share of about 20%.

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Introduction

The EACB welcomes the opportunity to comment on the draft work plan of the CESR MiFID Level 3 Expert Group for the year to come.

As a way of introduction, co-operative banks would like to insist that CESR should avoid making any adjustments to existing Level 3 provisions unless these are absolutely necessary. This principle should especially apply in relation to the "Mandates from the Commission" and "Thematic Work" sections of the Consultation Paper.

Indeed, European investment firms have made huge organisational and financial efforts in order to implement the Markets in Financial Instruments Directive (MiFID) on time. CESR should therefore take into account the potential costs associated with any adjustment as well as the time required to implement it.

The following remarks include more detailed comments on the draft work plan and follow the structure of the CESR consultation paper.

1) Mandates from the Commission

The EACB agrees that the advisory role of CESR to the Commission constitutes a high priority and insists that CESR should continue to consult market participants before issuing any advice in relation to the MiFID.

Among the issues listed by CESR, guidance on telephone recording is seen as an important issue. For cooperative banks, any recommendation on the need to systematically record calls with customers must take into account the respective costs and benefits.

2) Establishment of a CESR MiFID Q&A

Regarding the establishment by CESR of a central Q&A mechanism for the MiFID, the EACB thinks that a number of conditions must be met in order for this mechanism to be truly useful for market players.

- First of all, the EACB welcomes the fact that CESR **asks market participants for their views before elaborating a Q&A document**. This should be a systematic approach.
- Secondly, CESR needs to clarify the status of these "Q&A". There is already a Q&A document for Best Execution, which is classified on the CESR website together with the other Level 3 Standards, Recommendations & Guidelines. On the other hand, the Frequently Asked Questions in relation to the Prospectus Directive¹ are classified with "Other documents" and are presented as a practical illustration of the existing CESR Level 3 guidelines.
In order to avoid confusion, **the EACB recommends that CESR clearly states that the future MiFID Q&A cannot be assimilated to Level 3 guidelines** and merely aim at providing participants with responses in a quick and efficient manner to 'everyday' questions which are commonly posed to the CESR Members.

¹ <http://www.cesr.eu/index.php?docid=4325>

- Thirdly, **the CESR mechanism must not duplicate with the existing Commission website on MiFID Questions²**. Indeed, we do not understand why both the Commission and CESR would want to publish a Q&A on the same subject. Market participants should be able to access a single website/document in order to find an answer to all their questions on the MiFID and its practical implementation. Therefore, the EACB urges the Commission and CESR to agree on a common Q&A or alternatively, to agree that only one of them will be competent to publish Q&As.
- Fourthly, although the Prospectus FAQ is indisputably a useful tool, a more user-friendly format could be adopted in the future. In particular, the PDF format is not convenient for finding relevant information. The experiment of the European Commission "MiFID questions website" shows that it is hard to search for a specific answer in a 93-page document. Although **the classification per article should be kept** (the current Prospectus FAQ do not offer such a clear structure), **it should be possible to search online for specific articles or keywords** and to get all relevant results on one page. For example, if you search the word "inducements", you should get all relevant articles in one view instead of having to scroll from page 42 to page 62...
- Finally, **the MiFID Q&A should be dated and updated regularly**, with each addition dated so as to track the evolution of the document.

3) Thematic Work

Although it is unclear which specific aspects CESR is targeting with the topics listed in the possible areas for thematic work, the EACB would tend to give a higher priority to the two following topics:

- Complex vs. non-complex instruments
- Information for retail clients

Furthermore, the EACB would like CESR to consider one potential area of further work. In relation to article 5(3) of the MiFID, securities regulators should ensure that they fulfil their obligation to establish and regularly update the register of all authorised investment firms. Not all countries have made their registers publicly available in an appropriate way and it is essential for cooperative banks that all EU regulators adopt a consistent approach with regards to their national register in order for market participants to be able to fulfil their own reporting obligations (e.g. art.28 trade reporting obligations). In fact, the EACB believes that a European list of authorised investment firms compiled by CESR based on the national registers would be the optimal outcome.

Finally, if CESR carries out an assessment of the practical experience gained after one quarter of operation of the MiFID, the EACB believes that, should any specific issues arise in the day-to-day implementation of the MiFID, they should be dealt with by providing some clarifications via the proposed Q&A and not by modifying the existing guidelines.

² http://ec.europa.eu/internal_market/securities/isd/questions/index_en.htm



4) Supervisory Work

The EACB welcomes the work already undertaken by CESR in relation to passporting issues, including the CESR statement on late transposition.

As far as the future supervisory work is concerned, the EACB fully agrees with the two priorities set by CESR (monitoring usage of the protocols and organising sessions on ongoing operational issues).

5) Ongoing Technical Work in relation to the Level Regulation

No comments.

6) Cooperation with other Committees of Regulators

The EACB is generally in favour of increasing the resources devoted to better coordination between committees of supervisors and believes that a coherent supervisory approach is needed in relation to financial institutions simultaneously active in banking, securities and insurance.

Contact:

The EACB trusts that its comments will be taken into account by the CESR MiFID Level 3 Expert Group when finalising its work programme.

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