



17 December 2004

**CESR'S DRAFT TECHNICAL ADVICE ON POSSIBLE IMPLEMENTING MEASURES OF THE
DIRECTIVE 2004/39/EC ON MARKETS IN FINANCIAL INSTRUMENTS**

**REPLY OF EURONEXT
TO THE SECOND CONSULTATION PAPER ON
1ST SET OF MANDATES DATED NOVEMBER 2004 (CESR/04-603B)**

Euronext welcomes CESR's initiative to consult stakeholders on more finalised proposals with respect to the first mandate given by the Commission as concerns implementing measures for the MiFiD. The reply of Euronext will focus on the three following issues, which are important to maintain sound and competitive financial markets in Europe:

- the methods and arrangements for reporting financial transactions;
- the criteria for assessing liquidity in order to determine the most relevant market in terms of liquidity for financial instruments;
- the minimum content and common standard or format of the reports to facilitate its exchange between competent authorities.

1/. The methods and arrangements for reporting financial transactions:

Transaction reporting by exchanges on behalf of remote members

CESR has taken note and understood the concern expressed in our response to its first consultation, regarding the obligation to directly report transactions carried out by remote members on a regulated market to the competent authority of the home country of the remote member and the necessity to establish specific arrangements in that respect.

It is indeed essential that, in such a case, the transaction report can be sent by the regulated market on which the transaction has been done, on behalf of the remote member, to the competent authority of this market which would then forward the information to the remote member's home competent authority.

Such arrangement would be highly beneficial in terms of supervision of market activity. The competent authority of the regulated market where the transaction has taken place would indeed be able to get a complete information about all transactions done on its national market, with the same format/level of information for all transactions, then allowing for compilation of data. Relying on cooperation as for exchanging information between regulators and avoiding any double reporting would also be cost-efficient.

We therefore believe that it would be important that CESR establishes this principle clearly and expressly in its advice at level 2, in order to avoid any ambiguous implementation by national authorities at level 3.

Approval and monitoring of reporting channels

We consider acceptable the minimum conditions defined by CESR to be imposed on reporting channels.

Nevertheless, we are doubtful that the level 3 measures envisaged by CESR will be sufficient to ensure that competent authorities in Member States follow the same approach when approving and monitoring different reporting channels, as these measures will not be binding for Member States. Indeed, if a reporting channel wants to offer a reporting service in different Member States, its reporting system will need to comply with national requirements in different Member States as regards, for example, the content and format of transaction reports.

We consider it important to harmonise at least the technical aspects to ease as much as possible the task of investment firms and reporting channels offering services on a cross-border basis.

Service-level agreement

We have noted that CESR envisages to work at “level 3” on the responsibility issues regarding the effectiveness and/or correctness of the transaction reports to be contained in the service-level agreement. We believe that this is unnecessary and inappropriate.

If we agree that CESR should determine what data the competent authorities want to receive, it is not the role of CESR to decide on the content of the agreements to be concluded between investment firms and reporting channels. The content of such agreements, which are commercial contracts agreed between professionals, should be left to the parties concerned, including issues relating to responsibility.

2/. The criteria for assessing liquidity in order to determine the most relevant market in terms of liquidity for financial instruments:

Criteria for assessing liquidity in order to determine the most relevant market in terms of liquidity for financial instruments as presented by CESR seem broadly acceptable. We endorse CESR’s approach as concerns the use of proxies to determine such a market.

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

Minimum content of the a transaction report

We have noted that CESR considers that client identification numbers do not seem feasible for the time being, following the responses it received from the first consultation on this mandate.

We agree with this position. Moreover, we confirm that we indeed do not currently receive such data from intermediaries, nor any data relative to their clients.

Regarding possible difficulties in the implementation of the proposed advice, we refer to the concern expressed above regarding the uncertainty of how transaction reports of remote members will have to be made. If this issue is not clarified, regulated markets may need to build specific systems to report transactions of remote members to the home competent authority of the latter. This will require both time and investment which will make execution of such transactions more difficult and costly for the investor.

We understand that a further and specific consultation will provide a revised advice regarding the admission of financial instruments to trading, which we are very much looking forward to considering. It would have also been interesting to get more detailed views on CESR's position on pre- and post-trade transparency of regulated markets, following the results of the first consultation.
