



Milano, 15th September
Prot. 112/06/MCO/mco

European Commission
Directorate General -
Internal Market and Services
B - 1049 Bruxelles
Belgium

Re: Pre- and post-trade transparency provisions of the Markets in Financial Instruments Directive (MiFID) in relation to transactions in classes of financial instruments other than shares. Call for evidence

Introduction

ASSOSIM¹ welcomes the opportunity to express its views on the subject of pre- and post-trade transparency provisions of MiFID in relation to transactions in classes of financial instruments other than shares.

We welcome in particular the European Commission's project to publicly consult twice on this issue, firstly by way of this call for evidence and secondly by way of a public consultation on a draft Report that will be addressed to the European Parliament and Council.

We believe that this topic needs to be largely debated since its significance and the only context in which it can be adequately considered is at least at European level.

In fact the integration of financial markets at global level requires an even broader international approach to the above issue, in that this is the only one which could guarantee a level playing field. We are particularly concerned that a national (or regional) approach might distort competition and trigger a flow of capitals towards less regulated jurisdictions. Given that, we urge the European Commission to propose in its Report to cancel recital 46 of the Directive 2004/39/EC which gives discretion to Member States as to decide whether or not to apply the pre- and post-trade transparency requirements laid down in MiFID to financial instruments other than shares.

In the light of competition and integration of financial markets, a different regulation on transparency in Member States would hinder the progress we expect to have with the implementation of MiFID.

¹ ASSOSIM (*Associazione Italiana Intermediari Mobiliari*) is the Italian Association of Financial Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. ASSOSIM has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the Investment Services Industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the total trading volume.

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As for the methodology, we very much appreciate the commitment to “better regulation” expressed by the European Commission in the call for evidence. Therefore we expect the Commission to suggest a regulatory action only in case there is evidence of market failure and the benefits of such an action would outweigh the regulatory burden.

Question 1: Do you have any comment on the proposed scope of the Report?

We agree with the approach taken by the Commission in determining the scope of the Report. In particular, we agree that the options being worth considering are not limited to applying the MiFID transparency provisions to all classes of non-equities instruments or to none. The results of the Commission’s analysis could be that only a class or some classes of non-equities instruments need a legislative intervention as far as transparency is concerned.

The same consideration is valid when considering the options between a full MiFID-style transparency and none. The Commission correctly takes into consideration the possibility that a different transparency regime from the one provided for by MiFID be adequate with regard to the characteristics of the specific instrument.

Question 2: Do you consider this classification scheme to be sufficient for the purposes of the review?

Question 4: Do you agree with our proposals for prioritisation of the review?

We reckon the classification scheme sufficiently comprehensive for the purposes of the analysis and we agree with the prioritisation suggested.

Question 3: Do you consider there are possible policy rationales for mandatory transparency we have not listed?

Out of the list of policy rationales given by the European Commission (investor protection, market efficiency and technological development) we ask the Commission not to consider the technological development as a policy rationale to be assessed in its Report.

As a matter of fact, the existence of technological means which could facilitate the introduction of mandatory transparency at relatively low costs is not a reason to regulate unless there is evidence of benefits from such intervention.

On the contrary Assosim regards investor protection and market efficiency as proper policy rationales which could justify a legislative intervention. Moreover this is consistent with the approach of the legislator at the first level legislation who considers investor protection and market efficiency as well as competition the major regulatory objectives of MiFID.

Given the commitment of the Commission to the better regulation principle, the above policy rationales should be assessed in the light of a market failure.

Market efficiency

It is commonly agreed that equity markets differ substantially from other markets in terms of pre and post-trade transparency needs.

As for the efficiency of the price formation process, we believe that while some sort of transparency might play a role with regard to the efficiency and liquidity of the equity market, its impact on the price discovery of other financial instruments is less significant since there are

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several additional factors which provide a more important contribution to the efficiency of the related markets in terms of price formation.

With regard to effects of transparency on liquidity, a difference should be made in relation to the level of liquidity financial instruments have at present.

Assosim is totally negative regarding the possibility of mandatory transparency for illiquid financial instruments, since transparency obligations would reduce even further their liquidity.

As far as more liquid non equity financial instruments are concerned a mandatory transparency is not necessary in that these instruments naturally tend to be treated on systems characterised by a sufficient degree of transparency.

Investor Protection

We believe that the present structure of the bond market is characterised by an adequate degree of transparency, which in turn means an adequate level of retail investor protection. Through traditional means of information (press, web sites, intermediaries) customers have currently access to information sufficient for an adequate assessment of their investment decisions.

In addition to that the investor protection can be better guaranteed by stringent best execution and suitability requirements which are much more effective when dealing with retail clients than an enhanced transparency – the latter being more appropriate for professional customers which are better placed to look after their interests on their own.

This also seems to be the approach chosen by the legislator with MiFID, which imposes on the intermediary the best execution obligation and gives the client the right to require the proof that the obligation has been complied with.

Question 5.: To what extent do you consider there to be:

a. observable or demonstrable problems with respect to the possible policy rationales for mandatory transparency identified above in relation to one or more of the instrument markets under review?

b. evidence that mandatory pre- or post-trade transparency would solve any of those problems?

In the light of the above we can say that to date we have not found evidence of any significant market failure in relation to investor protection and market efficiency.

Another aspect worth considering is the important role market driven solutions will play in this field.

The competition favoured by the new legislative framework will make the trading venues willing to give the widest possible dissemination to their prices in order to be inserted in the execution policies the intermediaries are to develop to comply with best execution obligations.

Even though we have not found problems (market failures) that could be solved by mandatory transparency, we tried to speculate on the possibility that a higher level of transparency could provide useful information to market participants in evaluating assets in their portfolios.

However even from this point of view we found out that it would be of no help having information on financial instruments which trade occasionally (illiquid instruments) or on tailor made financial instruments.

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Similar remarks are valid in relation to negotiations for uneven amounts – for instance it would not be appropriate to evaluate small amounts of securities held in the portfolio on the basis of the price of transactions carried out on the block market of viceversa.

Question 6: To what extent could recent and upcoming technological and market developments in relation to the instrument markets under review:

a. contribute to a relatively inexpensive extension of mandatory transparency?

b. render mandatory transparency unnecessary?

See above the answer to question n. 3.

Question 7.: To what extent are non-equity financial instruments different from equities so that lower levels of mandatory transparency in those markets may be justified?

As already described above, transparency in non-equity financial instruments markets is less significant, since there are several additional factors which provide a more important contribution to the efficiency of price formation process such as the performance of government bonds and the evaluation of rating agencies which stand for typical benchmarks for corporate bonds.

Question 8.: What data sources do you consider relevant to the issues you have raised (if appropriate, cross-refer to your answers below)? Would you or your organisation be prepared to provide any relevant data if necessary?

We do not have any specific comment.

Question 9.: Are there academic or institutional papers or ongoing work that should be considered in preparing the Report not included in our bibliography?

We do not have any specific comment.

Question 10.: What conclusions do you draw from the existing academic debate and the work being conducted by other interested parties?

We do not have any specific comment.

Question 11.: In your view, how applicable is the academic or institutional literature concerning transparency in the cash equities markets to the present discussion?

We do not have any specific comment.

Question 12.: What similarities, and what differences, are there between US and EU markets that should be borne in mind when seeking to draw inferences from the TRACE experience in the US?

We do not have any specific comment.

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Question 13.: To the extent that you have identified problems or believe that others might do so, do you agree that only EU-level action would be appropriate in the present case?

See above the introduction.

Question 14.: If you have identified problems or believe that others might do so, to what extent do you consider those problems would disappear as a natural product of market evolution in the short-to-medium term?

See above question number for in relation to market driven solutions.

Question 15.: In respect of both pre- and post-trade transparency, are the four options the right ones to consider, and in particular should other options be considered?

We do not have any specific comment.

Question 16.: Would you, in light of your answers to the other questions, favour any of the four options in relation to pre- and post-trade transparency (or another option you might propose for consideration) in respect of transactions in any of:

cash government bonds;

cash investment-grade corporate bonds;

cash high-yield corporate bonds;

asset-backed securities;

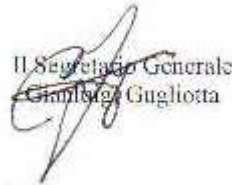
credit default swaps, interest rate swaps and bond futures; or

any other financial instrument you consider relevant?

We do not have any specific comment.

We remain at your disposal for any other clarifications.

Your sincerely.


Il Segretario Generale
Gramigna Gugliotta

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