



European Commission
Internal Market and Services DG
markt-g3@ec.europa.eu

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EAPB position on the European Commission's Call for Evidence

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

1. Introduction

The European Association of Public Banks (EAPB) represents the interests of 25 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.

The EAPB would like to thank the European Commission for the opportunity to comment on the Call for Evidence with regard to the MiFID pre- and post-trade transparency provisions to transactions in financial instruments other than shares.

The EAPB would like to address some general remarks with regard to the envisaged extension of the scope of application of the MiFID provisions. We would very much appreciate the European Commission considering these comments and taking them into account.

2. General Remarks

- ***Regulation in limited cases only***

First, we would like to stress that every regulatory market intervention results in market distortion. In order to be justified, some basic requirements have to be met:

- an existing market failure is to be proved;
- the market in question is unable to establish an optimum degree of transparency;
- evidence has to be established that such market failure can be eliminated by means of regulatory interventions;
- the planned action is backed by an existing, positive cost–benefit analysis.

The above applies to all markets. However, the said concerns in particular markets which have undergone rapid and successful developments, such as the European bond markets. Top–down market interventions deprive these markets of the flexibility necessary for an optimum response to the needs of its market players.

In this regard we would also like to underline that market failure has to be investigated individually on the basis of each securities class and on the basis of each market per se. Subsequently, the question whether such circumstances would then have to be addressed by means of self–regulation or through legislation would equally merit a case–by–case decision. Every market has its own rules concerning pricing and the determination of such prices.

- ***Transparency not as end in itself***

Art 44 of the MiFID states the following:

“With the two–fold aim of protecting investors and ensuring the smooth operation of securities markets, it is necessary to ensure that transparency of transactions is achieved...”

From this it follows that transparency must be seen as an interim goal in achieving the adequate framework conditions for efficient, fair, stable and liquid markets featuring healthy competition. Any increase of market transparency should therefore only be considered if it is proved to contribute to these goals.

- ***Optimum transparency is key***

Enhancing transparency always entails costs. Therefore, the objective should not be to strive for maximum transparency, but achieve an optimum level of transparency. From a certain point onward, the additional costs of enhanced transparency will outweigh its additional benefits. What is more, from a certain degree onwards, even an isolated review of transparency would compromise the benefits thereof, since this has an adverse effect on market liquidity.

- ***No 1:1 transfer of current transparency provisions***

We very much welcome the Commission recognising that the current transparency regime might have to be adapted to the characteristics of other instrument markets. Given the fundamental differences which exist between the markets in the various securities classes, a general 1:1 transfer of MiFID's transparency provisions to transactions in other financial instruments would lack any basis.

- ***Proposal to adjust the timetable***

With regard to the afore-mentioned comments, the EAPB feels that the timetable for consultation should be reconsidered.

Although transparency provisions for listed shares provided for in the MiFID can not be taken over 1:1 for other classes of securities, we think that experience should be gained from the practical implementation of these provisions before considering any extension. The impact on stock markets need to materialise and has to be analysed subsequently. In particular, the envisaged positive effects on equity trading brought about by transparency still have to be confirmed. The findings from the implementation of the current transparency rules might provide pointers as regards a potential extension to include other areas.

In view of the foregoing, we feel it would be premature to decide upon an extension of the scope of such provisions before having even tackled the first stage.

Henning Schoppmann

Walburga Hemetsberger

Secretary-General
EAPB

Advisor
EAPB