

Draft Commission Document on the methods and arrangements for reporting transactions in financial instruments, the contents of such reports, the exchange of information between competent authorities, and the determination of the most relevant market of a financial instrument in terms of liquidity

OPTION B

COOPERATION AND ENFORCEMENT

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Article 1

Subject Matter and Scope

1. This Regulation lays down:

- the information to be included in reports of transactions in financial instruments provided in accordance with paragraphs (3) and (5) of Article 25 of Directive 2004/39/EC;
- requirements relating to arrangements for transmitting such reports to the competent authority;
- requirements relating to the exchange of information contained in such transaction reports between competent authorities, in accordance with paragraphs (3) and (6) of Article 25 of Directive 2004/39/EC;
- procedures relating to the exchange of information between competent authorities in accordance with Articles 56 and 58 of Directive 2004/39/EC;
- the criteria for determining the most relevant market of a financial instrument in terms of liquidity.

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2. Articles 4 and 5 of this Regulation shall apply to credit institutions authorised under Directive 2000/12/EC, when providing one or more investment services or performing investment activities as defined by Article 4(1)(2) of Directive 2004/39/EC, in the same way as they apply to investment firms.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply in addition to those provided in Directive 2004/39/EC:

- (1) “community issuer” means an issuer which has its registered office in a Member State;
- (2) “the Directive” means Directive 2004/39/EC on markets in financial instruments;
- (3) “issuer” means an entity which issues transferable securities;
- (4) “third country issuer” means an issuer which has its registered office in a third country;
- (5) “trade” means the process by which ownership of or rights in a financial instrument are transferred from a seller to a buyer;

- (6) “trading venue” means the venue where a transaction takes place, and will be a regulated market, a multilateral trading facility, or an investment firm trading on its own account or on behalf of a client;
- (7) “transaction” means an agreement establishing the terms of a trade;
- (8) “turnover”, in relation to a financial instrument, means the number of units of that instrument exchanged between buyers and sellers, in a defined period of time, pursuant to a transaction taking place on a trading venue, multiplied by the total value of each transaction.

Article 3

Determination of the Most Relevant Market in terms of Liquidity

1. For the purposes of article 25(3) of the Directive, the most relevant market for a financial instrument in terms of liquidity shall be deemed to be the market of the Member State determined as follows:
 - a) in the case of a share, the Member State where the share was first admitted to trading on a regulated market;
 - b) in the case of a bond or other form of securitised debt issued by a Community issuer, the Member State where the registered office of the issuer is situated;
 - c) in the case of a bond or other form of securitised debt issued by a third country issuer which is a subsidiary of a Community issuer, the Member State where the registered office of that Community issuer is situated;
 - d) in the case of a bond or other form of securitised debt issued by a third country issuer which is not a subsidiary of a Community issuer, the Member State where that security was first admitted to trading on a regulated market;
 - e) in the case of a derivative:
 - where the underlying security is a share admitted to trading on a regulated market, the Member State which is deemed to be the most relevant market in terms of liquidity for the underlying share, in accordance with (a);
 - where the underlying security is a bond or other form of securitised debt admitted to trading on a regulated market, the Member State which is deemed to be the most relevant market in terms of liquidity for that underlying debt security, in accordance with (b), (c) or (d);
 - where the underlying is an index composed of shares all of which are traded on a particular regulated market, the Member State where that regulated market is situated;
 - f) in the case of a derivative not covered by (e) above, the Member State where the regulated market that has admitted to trading the derivative is located.

2. Where a share, or bond or other form of securitised debt or, in the case of a derivative, the underlying share, or bond or other form of securitised debt, was first admitted to trading on more than one regulated market simultaneously (with the result that paragraph (1)(a) or (d) would deem more than one market to be the most relevant market in terms of liquidity) the single most relevant market in terms of liquidity for that financial instrument shall be determined as follows:
- a) the competent authorities of each market which would be deemed to be the most relevant market in terms of liquidity for that instrument, in accordance with paragraph (1), shall calculate the actual turnover for that instrument in their respective markets for the last calendar year; and
 - b) the most relevant market in terms of liquidity for that instrument shall be that market where the calculation made in accordance with (a) above indicates that the turnover of that instrument is highest.

Article 4

Reporting Channels

3. In order to comply with the obligation in Article 25(5) of the Directive, the method by which reports of transactions in financial instruments are made shall satisfy the following conditions:
- a) reports shall be made in an electronic form;
 - b) the method of making the report shall ensure the safety and confidentiality of the data reported;
 - c) the report shall be made to the competent authority within the timeframe established in Article 25(3) of the Directive;
 - d) the method of making the report shall incorporate mechanisms for identifying and correcting errors in a transaction report;
 - e) the method of making the report shall include appropriate precautionary measures to enable the timely resumption of reporting in the case of system failure;
 - f) the method of making the report shall be capable of reporting the information required under Article 5 of this Regulation in the format required by the competent authority.
4. A trade-matching or reporting system shall only be approved by the competent authority for the purposes of Article 25(5) of the Directive if:
- a) the arrangements for reporting transactions established by that system satisfy, as a minimum, the conditions set out in paragraph (1) above; and

- b) the arrangements are operated by an entity which is subject to monitoring by the competent authority in respect of continuing compliance with the conditions set out in paragraph (1).

Article 5

Content of the Transaction Report

1. Reports of transactions made to competent authorities in accordance with Article 25(3) and (5) of the Directive shall contain ~~the information specified in Part A of the Annex.~~

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2. For the purposes of the identification of a Counterparty, as specified in the Annex, each competent authority shall publish a list of identification codes of the regulated markets, multilateral trading facilities, and entities which act as their central counterparties for which (in each case) it is the home Member State competent authority, and those codes shall be used to identify a counterparty to the transaction which is a regulated market, multilateral trading facility or other central counterparty.

3. ~~By way of derogation to paragraph 1, a~~ competent authority may require a report made, in accordance with Article 25(3) and (5) of the Directive to contain additional information to that specified in Part A of the Annex provided that:

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- the financial instrument which is the subject of the report has characteristics which are specific to an instrument of that kind and which are not covered by the information items specified in Part A of the Annex ; or
- trading methods which are specific to the trading venue where the transaction took place involve features which are not covered by the information items specified in Part I of the Annex; and (in either case)
- that additional information is necessary to enable the competent authority to carry out its functions to monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market, as required by Article 25(1) of the Directive.

In addition to the power to require additional information in paragraph (3), a competent authority may also require a report of a transaction made in accordance with Article 25(3) and (5) of the Directive to identify the clients on whose behalf the investment firm or credit institution has executed that transaction.

Article 6

Automatic Exchange of Information in respect of Transaction Reports

1. In order to discharge its duties under Articles 25 and 58 of the Directive, a competent authority shall transmit

- (1) all the information received under article 25 (3) as specified in Part A of the Annex, as adapted by Part B; and
 - (2) an identification of the competent authority providing the information,
to a Common Central Database established by the Committee of European Securities Regulators.¹
2. Competent authorities shall transmit the information specified in paragraph 1 as soon as practicable after receiving a report of a transaction made in accordance with Article 25(3) and (5) of the Directive.
 3. Each competent authority shall have access to all the information transmitted to the Central Common Database in accordance with paragraph 1.

Article 7

Request for cooperation and exchange of information

When, on the basis of the obligations established under article 56 and 58 of the Directive, a competent authority is requested by another competent authority to supply or exchange information the following conditions shall be satisfied:

- a) a request shall be made in writing. In a case of urgency, a request may be transmitted orally provided that it is confirmed in writing;
- b) the request shall contain sufficient detail to enable the competent authority which received the request to provide the information requested;
- c) the contact point of the competent authority which received the request shall acknowledge the receipt of the request as soon as practicable;
- d) where the information requested is in the possession or under the control of the competent authority which received the request, the contact point of that authority must transmit the requested information in writing without delay to the contact point of the competent authority which made the request. However, where the request was made orally, the information may be communicated orally, by the contact point of the competent authority which received the request to the contact point of the competent authority which made the request, provided that the oral communication is confirmed in writing.

If the competent authority which received the request does not possess or control the information which has been requested, it must immediately take the necessary steps to obtain that information and to comply fully with the request. The contact point of the competent authority which received the request must also inform the contact point of the competent authority which made the request about the reasons for not sending immediately the information requested.

¹ Established by Commission Decision of 6 June 2001 establishing the Committee of European Securities Regulators (2002/527/EC), as amended by Commission Decision of 5 November 2003 (7/2004/EC).

Article 8

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from 30th April 2007.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

PART A

Field Identifier	Description
Reporting Firm Identification	A unique code to identify the firm which executed the transaction.
Trading Day	The day on which the transaction was executed.
Trading Time	The time, reported in GMT, at which the transaction was executed.
Buy/Sell Indicator	Defines whether the transaction was a buy or sell.
Trading Capacity	Identifies whether the firm executed the transaction on its own account or on behalf of a client.
Instrument Identification	This should consist in: - a unique code, to be determined by the competent authority to which the report is made identifying the financial instrument which is the subject of the transaction; - if the financial instrument in question does not have a unique identification code, the report must include the name of the instrument or, in the case of a derivative contract, the characteristics of the contract.
Underlying Instrument Identification	Instrument identification applicable to the security that is the underlying asset in a derivative contract.
Instrument Type	The classification of the financial instrument that is the subject of the transaction. The description must at least indicate whether the instrument belongs to one of the following categories: Transferable securities; Money-market instruments; Units in collective investment undertakings; Derivatives.
Maturity Date	The maturity date of a bond or other form of securitized debt, or the exercise date / maturity date of a derivative contract.
Derivative Type	Specification whether a derivative is an option, future, swap, forward rate agreement or any other derivative contract.

Put/Call	Specification whether an option or any other financial instrument is a put or a call.
Strike Price	The strike price of an option or other financial instrument.
Price Multiplier	The number of units of the financial instrument in question which are contained in a trading lot; for example, the number of derivatives or securities represented by one contract.
Price	The price per security or derivative contract excluding commission and accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.
Price notation	The currency in which the price is expressed. If, in the case of a bond or other form of securitized debt, the price is expressed as a percentage, that percentage shall be included.
Quantity	The number of units of the financial instruments, the nominal value of bonds, or the number of derivative contracts included in the transaction.
Counterparty	<p>Identification of the counterparty to the transaction. That identification shall consist in:</p> <ul style="list-style-type: none"> - where the counterparty is an investment firm, a unique code for that firm, to be determined by the competent authority to which the report is made; - where the counterparty is a regulated market or MTF or an entity acting as its central counterparty, the unique harmonized identification code for that market, MTF or entity acting as central counterparty, as specified in the list published by the competent authority of the home Member State of that entity in accordance with Article 5(2) of this Regulation. - where the counterparty is not an investment firm, a regulated market, an MTF or an entity acting as central counterparty, it should be identified as “customer/client” of the investment firm which executed the transaction.
Trading Venue	<p>Identification of the trading venue where the transaction was executed. That identification shall consist in:</p> <ul style="list-style-type: none"> - where the trading venue is a regulated market or MTF, its unique harmonized identification code; - where the transaction was executed by an investment firm, or credit institution, acting as a “systematic internaliser”, a unique code, to be determined by the competent authority to which the report is made, identifying the systematic internaliser. <p>Where the transaction was not executed in any of the trading</p>

	venues described above, this field shall contain an indication that the transaction was executed “OTC”.
Transaction Reference Number	A unique identification number for the transaction provided by the investment firm or a third party reporting on its behalf.
Cancellation Flag	An indication as to whether the transaction was cancelled.

PART B

Field Identifier	Description
Reporting Firm Identification	In addition to the information specified in Part A, the full name of the reporting firm.
Instrument Identification	The unique code, agreed between all the competent authorities, applicable to the financial instrument in question shall be used.
Counterparty	Where the counterparty is an investment firm, instead of the information specified in Part A, the full name of the investment firm shall be included.
Trading Venue	Where the trading venue is a systematic internaliser, instead of the information specified in Part A, the full name of that systematic internaliser shall be included.