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Working document ESC/7/2005 – rev4

**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  
COOPERATION AND ENFORCEMENT**

*Important note: This document is a working document of the Commission services for discussion.*

*It does not purport to represent or pre-judge the formal proposals of the Commission*

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### *Proposed recitals*

**1. For the purposes of Articles 25(3), 28, 30 and 45 of the Directive, the following should not be considered to be transactions where done in good faith and not for the purpose of avoiding the obligations arising under those Articles:**

- stock lending or lending of other financial instruments;**
- repurchase and reverse repurchase transactions;**
- buy-sell back and sell-buy back transactions;**
- the exercise of options; or**
- primary market transactions such as issuance [and allocations].**

**2. In fulfilling its role established in paragraph 7(3), the Committee of European Securities regulators shall have regard to the following considerations:**

- the need of competent authorities to effectively 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 European market;**
- the need for decisions to be based on thorough cost-benefit analysis;**
- the need to ensure that transaction information is used only for the proper discharge of the functions of competent authorities;**
- the need to have effective and accountable governance arrangements for any common system.**

### *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 and procedures relating to the exchange of information contained in such transaction reports between competent authorities, in accordance with Articles 25, 56 and 58 of Directive 2004/39/EC;
- the criteria for determining the most relevant market of a financial instrument in terms of liquidity.

2. 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 it applies 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) **“transaction” for the purposes of Article 25(3) , 28, 30 and 45 of the Directive means only the sale of a financial instrument** ~~For the purposes of Article 25 (3) of the Directive only the purchase and sale of financial instruments shall be considered as transactions~~
- (5) “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 an execution venue, multiplied by the single price of each unit total.

## 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 or other equivalent transferable securities included under article 4 (1).18.a) of the Directive or of a unit in a collective investment undertaking, the Member State where the share or the unit was first admitted to trading on a regulated market;
- (b) in the case of a bond or other equivalent transferable securities included under article 4 (1).18.b) of the Directive or a money market instrument, the Member State where the registered office of the issuer is situated;
- (c) in the case of a bond or other equivalent transferable securities included under article 4 (1).18.b) of the Directive or a money market instrument which, in either case, is issued by an issuer incorporated in a third country, the Member State where that security was first admitted to trading on a regulated market;
- (d) in the case of a bond or other equivalent transferable securities included under article 4 (1).18.b) of the Directive or a money market instrument which, in either case, is issued by a either a community issuer or an issuer incorporated in a third country which, in either case, is a subsidiary, as defined in Directive 83/349/EEC of an entity which has its registered office in a Member State, the Member State where the registered office of the parent entity is situated;

(e) in the case of a derivative or a financial contract for differences or a transferable security included under article 4 (1).18.c) of the Directive:

– where the underlying security is a share or other equivalent transferable securities included under article 4 (1).18.a) of the Directive 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 equivalent transferable securities included under article 4 (1).18.b) of the Directive 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 or a transferable security included under article 4 (1).18.c) of the Directive 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 equivalent transferable securities included under article 4 (1).18.c) of the Directive or a security covered by paragraph 1(f) or, in the case of a derivative included under paragraph 1(e), 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), (c), (e) or (f) 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 turnover for that instrument in their respective market for year 2006 provided that the instrument was admitted to trading at the beginning of that year.

The most relevant market in terms of liquidity for that instrument shall be that market where the calculation made in accordance with this paragraph indicates that the turnover of that instrument is highest.

b) In a case where the turnover for the relevant financial instrument cannot be calculated in accordance with (a) by reason of insufficient or non existent data and the issuer has its registered office in a Member State, the most relevant market in terms of liquidity shall be the market of the Member State where the registered office of the issuer is situated.

c) In a case where the turnover for the relevant financial instrument cannot be calculated in accordance with (a) by reason of insufficient or non existent data and the issuer does not have its registered office in a Member State, 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 turnover for the instruments of the same class (meaning shares, bonds or other forms of securities debt, or derivatives) in their respective markets for the preceding calendar year. The most relevant market in terms of liquidity for that instrument shall be that market where these calculations indicate that the turnover of the relevant instrument class is the highest.

### *Article 3 a)*

#### *Alternative determination of most liquid market by reference to turnover*

1. Once a year, a competent authority may contest the determination, made in accordance with Article 3, of the most relevant market in terms of liquidity for a particular financial instrument in the following way:

a) In January, it shall notify the competent authority of the Member State which is deemed to be the most relevant market in terms of liquidity for that instrument in accordance with Article 3 that it intends to contest the determination; and

b) within four weeks after the notification is made both authorities shall calculate the turnover for that instrument in the respective markets over the period of the previous calendar year.

If the results of that calculation indicate that the turnover is higher in the market of the contesting competent authority, that market shall be the most relevant market in terms of liquidity for that financial instrument.

2. Without prejudice to article 226 of the Treaty a competent authority whose request is not acted upon within a reasonable time or who does not agree with the calculation made by the other authority may bring that matter to the attention of the Committee of European Securities Regulators, where discussion will take place in order to reach a rapid and effective solution in accordance with the preceding paragraph.

### *Article 4*

#### *List of Financial Instruments*

The competent authority of a market which is treated as the most relevant market in terms of liquidity for one or more financial instruments, in accordance with the provisions of Article 3, shall establish and maintain an updated list of those financial instruments. This list shall be made available to the competent authorities designated as contact points in accordance with article 56 the Directive.

### *Article 5*

#### *Reporting Channels*

1. In order to comply with the obligation in Article 25(5) of the Directive, the reports of transactions in financial instruments and the methods by which they are made shall satisfy the following conditions:

a) reports shall be made in an electronic form except under exceptional circumstances, when they may be made in another 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 incorporate mechanisms for authenticating the source of the transaction report;
  - f) the method of making the report shall include appropriate precautionary measures to enable the timely resumption of reporting in the case of system failure;
  - g) the method of making the report shall be capable of reporting the information required under Article 6 of this Regulation in the format required by the competent authority and in the form and within the timeframe required by (a) and (c) above.
2. A trade-matching or reporting system shall 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, the conditions set out in paragraph (1) above; and
  - b) the arrangements are subject to monitoring by a competent authority in respect of continuing compliance with the conditions set out in paragraph (1).

## *Article 6*

### *Content of the Transaction Report*

1. Reports of transactions made in accordance with Article 25(3) and (5) of the Directive shall contain the information specified in Part A of the Annex which is relevant to the type of financial instrument in question and which the competent authority declares is not already in its possession or is not available to it by other means.
2. For the purposes of the identification of a Counterparty, as specified in the Annex, each competent authority shall make available 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. Member States may require reports made, in accordance with Article 25(3) and (5) of the Directive to contain information, related to the transactions in question, which is additional to that specified in Part A of the Annex provided that:
  - 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 execution 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), Member States 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 has executed that transaction.**

## *Article 7*

### ***Exchange of transaction information***

1. For the purposes of Articles 25 and 58 of the Directive Competent authorities shall establish arrangements designed to ensure that the information received in accordance with the first subparagraph of article 25(3) is made available in a harmonised format as specified in Part A and adapted by Part B of the Annex to (where relevant):

- a) the competent authority of the most relevant market in terms of liquidity;
- b) the home competent authority of the investment firm in case of branches;
- c) any other competent authority that requests the information for the proper discharge of its supervisory duties under article 25 (1) of the Directive.

2. The information referred to in the previous paragraph has to be made available as soon as possible and no later than the close of the working day following the day on which the competent authority has received the information or the request.

3. The Committee of European Securities Regulators shall

- a) coordinate the design and the establishment of ~~a system [or systems]~~ **the arrangements** for the exchange of transaction information between competent authorities that shall be operational by 30 April 2007;
- b) coordinate any future upgrading of ~~system~~ the **arrangements** with the view of achieving best the ~~requirements objectives~~ mentioned in this article.

**4. Before (\*) The Committee of European Securities Regulators shall report to the Commission and the European Securities Committee on the design of the arrangements established in accordance with paragraph 1 above.**

## *Article 8*

### *Request for cooperation and exchange of information*

In cases not covered by article 7 when, on the basis of an obligation established under Article 56 or 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 internally available to the competent authority which received the request, the contact point of that authority must transmit the requested information without delay to the contact point of the competent authority which made the request.

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.]

## *Article 9*

### *Criteria for determining substantial importance of a regulated market's operations in a host Member State*

**For the purposes of article 56 (2) of the Directive, the operations of a regulated market in a host Member State are to be considered as of substantial importance for the functioning of the securities markets and the protection of investors in that host State where:**

- a) that host State has formerly been the home State of the regulated market in question;**
- or**
- b) the regulated market in question has acquired through merger, takeover, or any other form of transfer the business of a regulated market which has its registered office or head office in the host State.**

**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 at which the transaction was executed, reported in the local time of the competent authority to which the transaction will be reported and the time zone in which the transaction was executed expressed as GMT +/- hours.
Buy/Sell Indicator	Defines whether the transaction was a buy or sell from the perspective of the reporting investment firm.
Trading Capacity	Identifies whether the firm executed the transaction on its own account (either on a principal basis or acting as an agent on behalf of a client) or for the account and on behalf of a client.
Instrument Identification	This should consist in:  - a unique code, to be decided 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.
Instrument Security Code Type	The code type used to report the security code of the instrument
Underlying Instrument Identification	Instrument identification applicable to the security that is the underlying asset in a derivative contract as well as the transferable security included under article article 4, (1), 18.c) of the Directive.
Underlying Instrument Identification Code type	The code type used to report the underlying security code of the instrument
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:  Shares

	<p>Bonds or other forms of securitized debt</p> <p>Money Market Instruments</p> <p>Units in collective investment undertakings</p> <p>Derivatives which underlying is a share</p> <p>Derivatives which underlying is a bond or other forms of securitized debt</p> <p>Derivatives which underlying is a commodity</p> <p>Derivatives which underlying is an index</p> <p>Derivatives which underlying is an interest rate</p> <p>Others</p>
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.
Quantity Notation	An indication whether the quantity is the number of units of financial instruments, the nominal value of bonds or the number of derivative contracts.
Counterparty	<p>Identification of the counterparty to the transaction. That identification shall consist in:</p> <p>- where the counterparty is an investment firm, a unique code for that firm, to be determined by the competent authority to</p>

	<p>which the report is made;</p> <ul style="list-style-type: none"> <li>- 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 6(2) of this Regulation.</li> <li>- 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.</li> </ul>
[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"> <li>- where the trading venue is a regulated market or MTF, its unique harmonized identification code;</li> </ul> <p>Otherwise, this field shall contain an indication that the transaction was executed “OTC”.</p>
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.
FR Counterparty	Where the counterparty is an investment firm, <del>instead of</del> <b>in addition to</b> the information specified in Part A, the full name of the investment firm shall be included.

DK "Trading Capacity" DK supports the comment made by UK and IRL.	
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