

ANNEXE to Working document ESC/8/2005:

Major technical differences between Commission's working document ESC/7/2005 the CESR's advice on the first set of mandates

OPTION A

N.B: Working document ESC/7/2005 (on the implementation of Article 25 (2), Article 56 (2) and Article 58 of the Markets in Financial Instruments Directive) provides for two options, A and B. Options A and B take the same approach; the only difference is Article 6. The changes highlighted in the following tables refer to both options. A detailed explanation of Option B and its differences compared to Option A is provided in this working document under point 2. 2. 1 .

<i>Number</i>	<i>Issue</i>	<i>Commission's working document</i>	<i>CESR's Advice</i>	<u><i>Comments</i></u>
1.	Definition of transaction/trade	Article 2 provides definitions of 'trade', 'transaction', 'turnover', 'issuer'	No definitions included	These definitions are necessary for the effective application of the legal text.

<i>Number</i>	<i>Issue</i>	<i>Commission's working document</i>	<i>CESR's Advice (shortened)</i>	<i>Comments</i>
2.	Definition of the Most relevant market in terms of liquidity	Article 3 changes CESR's advice (Box 13, paras 7-13 but 11 excluded) The article determines the most relevant market in terms of liquidity once and for all only by using the proxy approach, excluding alternative 'turnover' and	CESR advice allows for competent authorities to question the results of the proxy approach by computing volume or turnover for a given instrument. The most relevant market in terms of liquidity would then become the market with the highest turnover or volume in a given instrument.	<p>*The most important element of CESR's advice - the proxy approach – has been taken on board. In the vast majority of cases only proxies should be used for the purposes of determining the most relevant market in terms of liquidity (the use of volume or turnover to determine liquidity with the exception of simultaneous admission and simultaneous IPOs has been left out - see issue no. 3).</p> <p>* Further practical adjustments have been introduced. These consist in fixing the most relevant market in terms of liquidity and excluding the possibility for authorities to question the results of the proxy approach. Both steps are justified on the following basis:</p> <p>1. The questioning of the proxy by competent authorities and the changes in the most relevant market in terms of liquidity could disrupt the functioning of the exchange of information between</p>

		'volume' measures suggested by CESR		<p>competent authorities.</p> <p>2. The questioning procedure suggested by CESR doesn't provide a sufficient framework for determining outcomes in cases of disputes between competent authorities as to what factor (volume, turnover) should be considered as an indicator of liquidity.</p> <p>3. We want to avoid introducing complex procedures necessary in instances of changes of the most relevant market in terms of liquidity for a particular instrument</p>
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<i>Number</i>	<i>Issue</i>	<i>Commission's working document</i>	<i>CESR's Advice</i>	<i>Comments</i>
3.	Determination of the most relevant market in terms of liquidity in case of simultaneous admission of the financial instrument to more than one market as well as in cases of simultaneous initial public offerings.	Article 3.2 provides for the use of 'turnover' as a deciding factor in determining the most relevant market in terms of liquidity in case of simultaneous admission of the financial instrument to more than one market	CESR delivered no advice on these points	A procedure is needed for deciding which competent authority is the authority of the most relevant market in terms of liquidity in case of simultaneous admission of instruments to two or more regulated markets in different Member States. This is because in some cases the proxy approach identifies the most relevant market in terms of liquidity for a particular share on the basis of where that instrument was admitted to trading for the first time. Using this rule in cases of simultaneous admissions would not yield a single most relevant market in terms of liquidity.

<i>Number</i>	<i>Issue</i>	<i>Commission's working document</i>	<i>CESR's Advice</i>	<i>CESR's view</i>
4.	Reporting channels	Article 3.d: the method of	Box 12 Para 1.d:	The essence of the CESR advice in respect was taken on board.

		making the report shall incorporate mechanisms for identifying and correcting errors in a transaction report;	1d) reliability/quality control mechanisms/existence of validation tools and correcting mechanisms in order to modify an erroneous transaction report;	
		The draft text leaves out advice under Box 12 Paras 2 and 3		Paras 2 and 3 are deleted because they mainly repeat Level 1 obligations .

<i>Number</i>	<i>Issue</i>	<i>Commission's working document</i>	<i>CESR's Advice</i>	<i>Comments</i>
5.	Exchange of information	We leave out para 5	Box 15	Most relevant elements of the CESR advice under Box 15 have been included in the text under Articles 5, 7 and 8. The exclusion para 5 is due to the fact that the advice goes beyond Level 1.

ANNEX A

CESR ADVICE		COMMISSION WORKING DOCUMENT		
Field Name	Field Description	Field Identifier	Description	Comments
Reporting Firm Identification	A code to identify the reporting firm which effected the transaction. The code should be unique for the reporting firm and could be a regulatory code, an exchange code or a BIC. Reports made by agents on behalf of an investment firm should identify the investment firm using the appropriate code.	Reporting Firm Identification	A unique code to identify the firm which executed the transaction.	The determination of what can be the unique code is left to the competent authorities.
Trading Time	The time at which the transaction took place. This should be the local time of the competent authority to which the transaction will be reported.	Trading Time	The time, reported in GMT, at which the transaction was executed.	Reporting in GMT is easier for comparison of transactions executed in different time-zones
Time Identifier*	This field describes the relevant time zone of the transaction and this should be expressed as GMT +/- hours.			Merged with Trading Time
Trading Capacity	This field should identify the capacity in which the investment firm acted when executing the transaction. At a minimum it should explain whether the investment firm dealt as principal (i.e whether the instrument/contract was on the firm's balance sheet) or in an agency capacity on behalf of a customer or client. However,	Trading Capacity	Identifies whether the firm executed the transaction on its own account or on behalf of a client.	More in line with MiFID terminology

	competent authorities may require further details of the trading capacity of the firm.			
Instrument Identification	<p>A unique code applicable to the security or derivative contract. Applicable codes could include ISIN numbers, exchange codes or other suitable product codes. Competent authorities will determine which codes they will accept.</p> <p>Firms may also need to specify which code they are using but this will be subject to national discretion</p> <p>All financial instruments that are subject to the transaction reporting rules should have a unique product code (or a series code in the case of derivative contracts). However, in the event that they do not then investment firms will need to report the name of the instrument and/or the characteristics of the contract.</p>	Instrument Identification	<p>This should consist in:</p> <ul style="list-style-type: none"> - 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. 	<p>The determination of what can be the unique code is left to the competent authorities. Further changes made here are mainly presentational changes.</p>
Instrument Type*	<p>The classification of the instrument that has been traded. Competent authorities can define the granularity of the descriptions but they must include whether the instrument is one of the following:</p> <ol style="list-style-type: none"> 1. Equity 2. Bond 	Instrument Type	<p>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;</p>	<p>Classification put in line with MiFID categories.</p>

	<p>3. Equity derivative</p> <p>4. Bond derivative</p> <p>5. Commodity derivative</p> <p>6. Interest rate derivative</p> <p>7. Index derivative</p> <p>8. Others</p>		Units in collective investment undertakings; Derivatives.	
Derivative Type*	Whether the derivative is an option, future, warrant or other.	Derivative Type	Specification whether a derivative is an option, future, swap, forward rate agreement or any other derivative contract.	Classification in line with MiFID.
Put/Call*	Whether the option or warrant is a put or call.	Put/Call	Specification whether an option or any other financial instrument is a put or a call.	There are financial instruments other than options or warrants that are put or call.
Strike Price*	The strike price of the option or warrant contract.	Strike Price	The strike price of an option or other financial instrument.	Same as above.
Counterparty	This field identifies the counterparty to the transaction where the counterparty is an investment firm, regulated market, central counterparty or MTF covered by the Directive. It could either be the name of the counterparty or a code that identifies the counterparty. Appropriate codes would include regulatory or exchange codes or BIC where available, otherwise investment firms could use their own internal code for their counterparty. Competent authorities will determine which	Counterparty	Identification of the counterparty to the transaction. That identification shall consist in: <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 	Here the text provides more detail as to what is meant by a counterparty and how the counterparty should identify itself. Article 6.2 obliges competent authorities to publish a list of ID codes of RMs, MTFs and the entities acting as their central counterparties. A harmonized code should be used for regulated markets, MTFs or the

	<p>codes they will accept.</p> <p>For transaction reporting purposes, any counterparties to the trade who are not investment firms, regulated markets, central counterparties or MTFs should be treated as a customer/client.</p>		<p>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.</p> <p>- 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.</p>	<p>entities acting as their central counterparties in order to easily identify those counterparties.</p>
Customer/Client Identification	<p>This field contains the identification of the client or customer on whose behalf the reporting firm was acting. This is likely to be the reporting firm's own internal code for its client/customer.</p> <p>Investment firms need only report this information if it is required to do so by the national law of the competent authority to whom it is reporting.</p>			<p>Left out because Article 6.3 enables the Competent Authority to request this information from investment firms.</p>
Trading Venue	<p>An identification of the regulated market or trading venue on which the transaction took place. Appropriate codes could include a Market Identifier Code for the</p>	Trading Venue	<p>Identification of the trading venue where the transaction was executed. That identification shall consist in:</p>	<p>Similar to ‘Counterparty’</p>

	exchange, a BIC or regulatory code for the MTF or off-exchange (OFF) for other transactions not executed on a regulated market or MTF.		<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 venues described above, this field shall contain an indication that the transaction was executed “OTC”.</p>	
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ANNEX B

CESR ADVICE		COMMISSION WORKING DOCUMENT		
Field Name	Field Description	Field Identifier	Description	Comments
Instrument Identification	<p>The unique harmonized code applicable to the security or derivative contract.</p> <p>If the security code used by the investment firm is not a harmonised code then competent authorities will need to provide the name of the security. Similarly if the security does not have a unique product code then competent authorities will need to exchange</p>	Instrument Identification	<p>The unique code, agreed between all the competent authorities, applicable to the financial instrument in question shall be used.</p>	<p>Competent authorities are obliged, for the purpose of exchange of information, to standardize the identification of financial instruments.</p>

	the security name provided by the investment firm.			
Instrument Security Code Type	The code type used by the investment firm to report the security code of the asset.			Not necessary for the purposes of exchange of information.
Underlying Instrument Security Code Type	The code type used by the investment firm to report the underlying asset in the derivative contract.			Not necessary for the purposes of exchange of information.
Quantity Notation	Confirmation of whether the quantity is the number of pieces of financial instruments, the nominal value of bonds or the number of derivative contracts.			