

# ZENTRALER KREDITAUSSCHUSS

MITGLIEDER: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAIFFEISENBANKEN E.V. BERLIN • BUNDESVERBAND DEUTSCHER BANKEN E.V. BERLIN  
BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E.V. BERLIN • DEUTSCHER SPARKASSEN- UND GIROVERBAND E.V. BERLIN-BONN  
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## **Comments of the Zentraler Kreditausschusses<sup>1</sup> on CESR's Call for Evidence "Consolidation of Market Transparency"**

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<sup>1</sup> The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR) for the cooperative banks, the Bundesverband deutscher Banken (BdB) for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB) for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV) for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 2,300 banks.

## I. General

We appreciate the opportunity to comment on the Call for Evidence tabled by the Committee of European Securities Regulators (CESR) concerning consolidation in the field of market transparency data. Notwithstanding the foregoing, we should like to point out that we do have certain concerns over the approach adopted by CESR in the framework of the fast-track regulatory procedure. As we all know, the European Securities Committee (ESC) and the European Parliament are currently deliberating on the official drafts of the European Commission concerning the future shape of Level 2. These consultations will probably last at least until June 2006. Since this is still an ongoing process which has not yet been finalised, we presently feel that – at this specific juncture – the only realistic option shall and must exclusively consist in a stock-taking exercise together with a review of topical issues raised by market participants on the basis of the published Commission Proposals. We hence explicitly reserve the right to provide an update of our views and opinions expressed below in the light of potentially forthcoming amendments of the Level 2 measures and we should like to point out that such views and opinions are of a strictly preliminary nature.

Whilst not being limited to, our reservations also and especially relate to the new regulatory provision contained in Art. 31 (b) of the Draft Regulation which is at the heart of the present Call for Evidence. We feel that the consolidation requirement stipulated thereunder is not covered by the legal mandate conveyed by the MiFID. We should like to caution against any premature interpretations that could potentially prejudice supervisory legislation; what is more, warranting such premature interpretations by referring to the ambitious implementation deadline ("*time is of the essence*") is equally unjustified. Should said provision be upheld in the regulatory process, its implementation will indeed require further interpretation; however, we see no need for CESR to take action in this area because we feel that market competition will automatically lead to an organic and independent evolution of efficient mechanisms.

As regards the issue of data consolidation: we do not share the view that Art. 31 (b) of the draft Regulation would restrict or even render impossible the option explicitly granted by Art. 28 of MiFID, i.e. compliance with the post-trade transparency obligation by means of publication on a website. However, it needs to be ensured that the requirements resulting from Art. 31(b) do not lead to an overregulation to the effect that they will de facto rule out the option of publication by means of a proprietary homepage.

This option should remain open because, in terms of speed, affordability as well as convenience due to customary information channels (e.g. for online customers of an

investment firm), we see clear advantages also for investors interested in information if there is a publication on the investment firm's website.

## **II. Detailed comments**

### 1. Publication of data

#### a) Cost-benefit ratio

At present, the question concerning the costs of firms publishing their transparency information in a uniform format cannot be answered yet. This is due to the fact that the forthcoming framework conditions still remain unclear. At present, from the point of view of banks needing to publish the transparency information, there are no immediately obvious benefits. European law explicitly allows pricing the provision of information ("at a reasonable cost"). *De facto*, however, it would appear more likely than not that the information disclosure to vendors not only fails to deliver any income but, on the contrary, may incur costs.

#### b) Formats/ Standards

At any rate, the choice of the format for publication absolutely needs to be left to the discretion of the party which has to fulfill the transparency obligations. There is no need for CESR to issue any provisions on this matter.

As to the details of the forthcoming provisions, when it comes to the requisite technical specification of the technical requirements for issuing notices by means of a respective system, the banking industry is still in the middle of an ongoing discussion process. From a merely technical point of view, a clear specification of the constituent elements of a notice, i.e. the data field names as well as the data field contents would be required. This, for instance, includes the specification of the maximum number of characters a data field may carry, the presentation style (digits and/or letters) and the type (mandatory or optional data field). Yet, only the outcome of the ongoing discussions mentioned above will reveal the extent to which a standardisation of the requirements with regard to the publications throughout Europe will be necessary.

Concerning the identification of the traded securities, for the time being, we should like to point out that a confinement to ISIN will probably not be feasible in every single case. Here, it

may be necessary to provide for alternative instrument identifiers, too. If possible, there should be a renunciation to use instrument identifiers of an exclusively local nature.

c) Length of time for publication

The MiFID merely requires investment firms to make certain transactions transparent. The MiFID does not stipulate that the publications have to be made accessible to interested market participants over a certain period of time. Also in this respect, we should like to highlight once more that – should there be a market interest in historical data – there will also be an emergence of relevant market solutions to this.

d) Data reliability

The adoption of suitable steps in order to ensure accuracy and reliability of the published data will be incumbent upon each investment firm covered by the scope of the transparency obligations. The way in which this goal is achieved, however, is not regulated. Instead, it is solely left to the discretion of the individual investment firms themselves. However, in order to allow subsequent corrections of data, it will be necessary to use a cancellation field. Hence, a corresponding addition of the data set pursuant to Art. 26 paragraph 1(a) of the draft Implementing Regulation to include item 23 contained in Table 1 of Annex I, will be required.

2. Consolidation of the data

a) Requirements with regard to the transparency information

On principle, we should like to point out that companies covered by the transparency obligations do not additionally have to meet the consolidation requirement. Should there be any market need for data consolidation, then there will also be an evolution of corresponding market driven solutions. Hence, the only issue at stake here relates to the question as to which requirements need to be met by publications in order to be consolidatable.

Concerning the market demand for data consolidation we – in line with the majority of participants at the Paris hearing – take it that apparently only a fraction of the transparency information publications actually contain market relevant information. Hence, as far as transparency information is concerned, we feel that it should be left to the parties to decide in which way and for which trades the consolidation requirements will be met. As has already been pointed out in our earlier remarks, we feel that competition will lead to an independent evolution of efficient mechanisms in the market for compliance with the publication obligations. In our view, at present there is no single indication of any instance of market failure which would require an interventionist interference on the part of the supervisory authority

b) Obstacles for data consolidation

Instances where data cannot be exported will probably constitute an insurmountable obstacle for the consolidation capacity of published data. In all other cases, consolidation would, however, be technically feasible. In the event of data which can be exported, those providers offering the market a prospective consolidation will merely be faced with the specification of certain technicalities. Furthermore, we feel CESR is perfectly right in pointing out that the market may see the emergence of several competing "consolidation centres" which may potentially also differentiate between certain financial instruments. Since monopolistic solutions are already objectionable on regulatory grounds, this competition driven approach should absolutely be maintained. As far as the details for data provision are concerned, more likely than not, a "data consolidator" will sign contracts with firms that have to publish transparency data.

c) Costs of the consolidation

There will be costs both for consolidators and for companies that have to publish transparency information. The MiFID explicitly allows companies that fall under the transparency regime to make their transparency data available at a cost. Yet, at the present point in time, any assessment as to whether this option will eventually be used or not would be premature. Also in this context, provided that market driven solutions will be found for the dissemination of consolidated data, it will be more likely than not that any costs incurred will be passed through to users in the form of fees. At present, any forecast as to the likely amount of such costs would be premature. Furthermore, we do not feel that this issue needs action on the part of CESR.

### 3. Role of CESR

In its Call for Evidence, CESR points out quite rightly that several issues associated with market transparency may lie outside of the regulatory scope of the supervisory authority. We therefore feel that CESR would be well advised to assume an observer role in the initial stages of this process. At any rate, we should like to caution against any recommendations as to matters such as the applicable data formats. Already due to regulatory concerns, any top-down regulation of one single data format would be unacceptable.

In the final analysis, their fitness for purpose will fundamentally hinge on whether the data are published in a manner that is consistent with the provisions set forth by the MiFID. The means and ways of implementing this, however, need to be defined by investment firms themselves. Banks in Germany are currently conducting an analysis of the eligible procedures for implementation of MiFID's provisions. CESR should not preempt the outcome of these processes.