



Record Keeping

CESR / EREGG – Policy advice on record keeping

Norman Gany – CRE – Commission de Régulation de l'Energie
Workshop on Trading transparency
Brussels, 15th May 2009.

- Context of the mandate
- Clarifications on specific issues related to record keeping
- Scope of regulation regarding record keeping
- Purposes of record keeping
- Minimum contents
- Format of data
- Annexes

- The Commission asked CESR / ERGEG for advice on issues related to record keeping, transparency and exchange of information
- In its working process, CESR / ERGEG involved as much as possible the industry through calls for evidence and consultative working group.
- Articles 22f (electricity) and 24f (gas) of the propositions for amending the 3rd Energy Package provide all information available on record keeping 
- The record keeping section of the mandate contained three questions addressed so as to identify : 
 - a possible difference of record keeping between MiFID and the 3rd Energy Package;
 - methods, arrangements and minimum contents to be kept;
 - how the record would be kept the most efficiently for Spot trades and non-investment firms

Clarifications on specific issues

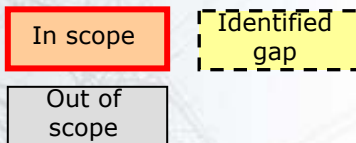
- Some issues identified in the mandate led CESR / ERGEG to clarify the scope of record keeping provisions
- Record keeping vs. transaction reporting
- Definition of supply undertakings : « *all persons active in the sale or resale of electricity/gas including investment firms and all other firms which physically supply electricity/gas to wholesale or final customers* » (vs. cash-settled transactions).

Scope of regulation regarding record keeping

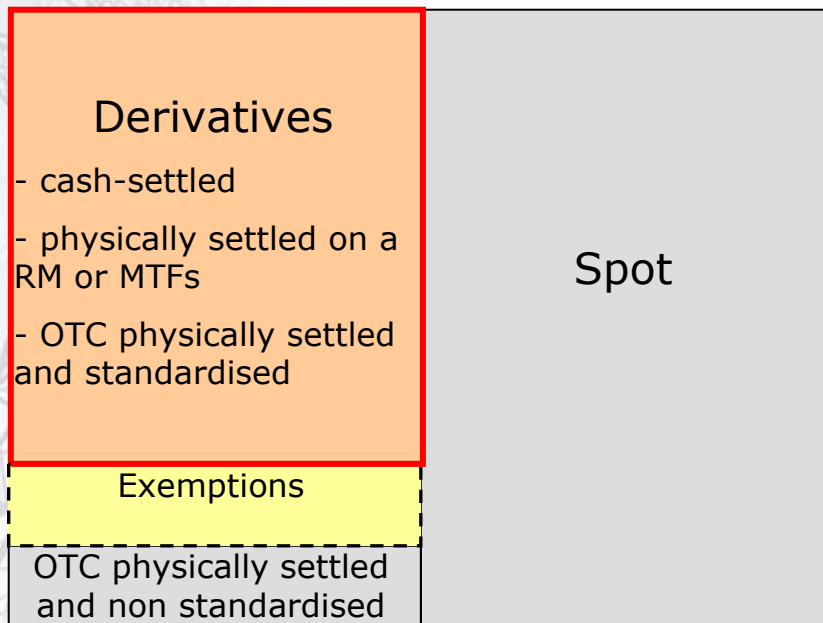
- CESR / ERGEG analysed the scope of each directive



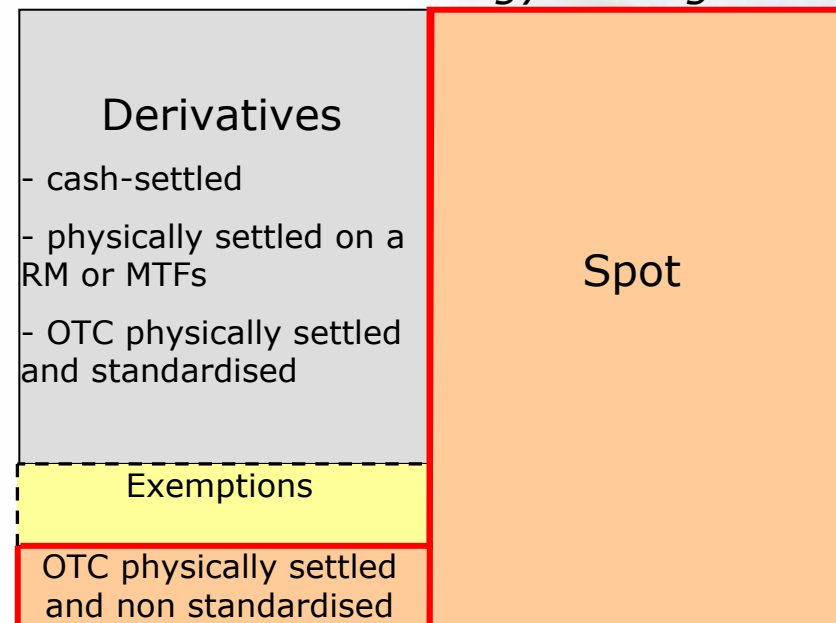
Legend



Under MiFID



Under the 3rd Energy Package



Purposes of record keeping

- Compliance with legal requirements:

- Trading rules,
- Market abuse rules,
- Competition rules,

**IN CASE OF
INVESTIGATION THROUGH
AD HOC REQUESTS**


- Possible disclosure of aggregated data:

- Resulting from a transparency initiative of the regulator (see article 22f, §3)



Article 22f

Minimum contents

- A principle based approach rather than a rigid list of elements
 - To a limited extent a slight difference in contents between spot and derivatives
 - CESR / ERGEG listed minimum contents to be kept by supply undertakings under the 3rd Energy Package...
- 
- ... And underlined that, regarding MiFID-style contracts, there may not be a major regulatory gap. However CESR / ERGEG will closely monitor the practical implication of the discrepancy especially for non-standardised contracts.

- **Data storage:**
 - Supply undertakings should be allowed to choose methods of retaining their records,
 - Provided that the minimum contents are kept.
- **Potential data transmission (ad hoc basis):**
 - Supply undertakings must be able to extract the relevant information in order to send it **electronically**;
 - Considering the costs and benefits, a minimum would be to provide such data in an **Excel sheet**;
 - **Flexibility** should exist for complex data transmission.
- **Confidentiality:**
 - Regulators should provide methods and arrangements to secure data transmission (e.g. encryption key...)

Thank you for your attention!

www.energy-regulators.eu



Mark your diary for the World Forum on Energy Regulation IV

October 18-21, 2009

Athens, Greece

www.worldforumiv.info





3rd Energy Package – Electricity directive – Record keeping, article 22f

1. Member States shall require supply undertakings to keep at the disposal of the national regulatory authority, the national competition authority and the Commission, for at least five years, the relevant data relating to all transactions in electricity supply contracts and electricity derivatives with wholesale customers and transmission system operators.
2. The data shall include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled electricity supply contracts and electricity derivatives.
3. The regulatory authority may decide to make available to market participants elements of this information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information about financial instruments which fall within the scope of Directive 2004/39/EC.



3rd Energy Package – Electricity directive – Record keeping, article 22f



4. To ensure the uniform application of this Article, the Commission may adopt guidelines which define the methods and arrangements for record-keeping as well as the form and content of the data that shall be kept. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27b(3).
5. With respect to transactions in electricity derivatives of supply undertakings with wholesale customers and transmission system operators, this Article shall only apply once the Commission has adopted the guidelines referred to in paragraph 4.
6. The provisions of this Article shall not create additional obligations vis-à-vis the authorities mentioned in paragraph 1 for entities falling within the scope of Directive 2004/39/EC.
7. In case the authorities mentioned in paragraph 1 need access to data kept by entities falling within the scope of Directive 2004/39/EC, the authorities responsible under that Directive shall provide the authorities mentioned in paragraph 1 with the required data.



Questions raised in the record keeping's section of the mandate (D4 to D6)



- In the mandate addressed by the Commission, CESR and ERGEG were asked the three questions included in the record keeping section.

D4. Do regulators believe that there should be a difference between the proposed record keeping obligations in MiFID and those in the 3rd Energy Package (EP)?

D5. What methods and arrangements for record keeping do CESR and ERGEG consider the Commission should specify for:

- a) transactions in electricity and gas supply (spot) contracts?
- b) transactions in electricity and gas derivatives contracts?

Specify a single transaction record format based on the content and data to be provided as per Table 1 of Annex I of MiFID.

D6. How would this information be most efficiently kept at the disposal of authorities in the case of spot transactions and non-investment firms?



Exemptions under MiFID (Directive 2004/39/EC)



Advice from CESR / ERGEG (§46) : “... There are some exemptions from the scope of MiFID which are relevant for commodity derivatives firms. These exemptions include mainly Article 2(1)(b) for the exclusive provision of services within a group, Article 2(1)(d) for the exclusive trading on own account other than by market making, Article 2(1)(i) for dealing on own account or provision of investment services to clients of the main business (e.g. energy production) and Article 2(1)(k) for persons whose main business consists in dealing on own account in commodities and/or commodity derivatives.”



List of minimum contents to be kept



- CESR and ERGEG consider it necessary that supply undertakings keep records which include the following minimum information or contract specifications where the relevant minimum information to understand the contract can be easily derived from:

- Trading day
- Trading time
- Buy/Sell indicator
- Commodity type
- Counterparty identification
- Price elements
- Quantity
- Daily or hourly quantity
- Load type
- Delivery point
- Delivery Start-Date and Time
- Delivery End-Date and Time
- Option indicator
- Swap indicator
- Indexation formula
- Venue identification