

**CEPS**

Centre d'Étude et de Prospective Stratégique

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Public Consultation by the Directorate General for Energy

on measures to ensure transparency and integrity of wholesale markets in electricity and gas

CEPS strongly believe that the energy markets (Power, gas & carbon) deserves an ad-hoc tailor-made set of measures to ensure transparency and integrity.

Such set of measures should allow the energy markets to efficiently fulfill its role:

- setting a commodity price competitive and trustworthy both for the end user as for the investor,
- providing a liquid market environment also in order to contribute to the security of supply,
- being consistent with market fundamental in order to trigger necessary investment decision.

In our view, the main particularities of the energy markets justifying this special regime (as well as most answers given below to this questionnaire) are:

- This market is not primarily focussed on private investor (thus "public trust and integrity of markets" is more relevant than "financial stability and investor protection")
- This market is very dependant on the specificities of its physical underlying market (possible significant change in price due to real time impact of network congestion, unexpected unavailability of generation, real time cross border physical deliveries, derivative intrinsic aspect of the carbon market...)
- It is accepted (and even wanted) that among the actors on these market significant ones are linked to "asset based" players (EDF trading, Gaselys, E.ON Energy Trading...). Thus definition on "insider trading" must be clearly defined in relation to the obligation to disclose information on physical asset (Powerplants) with relevant and mandatory threshold and delay.
- Increasingly a large part of the physical power flows are outside the market (Renewable energy, long term contract...)

These specificities should not be used as an excuse for setting administrative measures to control energy price such as price caps and position limits as such measures, besides being detrimental to competition, could endanger the fragile balance necessary for the market to efficiently contribute to the real time security of supply.

1. Are there particular developments in relation to oversight of energy markets at a national, European or global level that we have not properly considered?

Besides the introduction above, CEPS wishes to emphasize the structural difference between the electricity and gas wholesale markets in Europe and its consequences on the capacity of the EU regulatory authorities to monitor and ensure the effectiveness, transparency and integrity of such markets.

While, in the case of electricity, the whole chain from production to final markets is encompassed within the European space, the gas chain on the contrary is heavily dependent on imports from non-

EU Countries, for a share of the supplies which will reach 70% by the end of the present decade. Thus, in the case of gas, monitoring the transparency and integrity of the EU marketplaces will not guarantee fair market conditions to the consumers, unless specific conditions are fulfilled upstream to ensure, at all times, that these marketplaces have access to the world natural gas and LNG supplies, without restrictions which may result from:

- an insufficient number of suppliers having access to long term gas supply contracts;
- a lack of adequate geographical diversification of the gas sources;
- difficulties to accommodate alternative supply scenarios to take advantage of world natural gas and LNG markets, due to insufficient infrastructure capacities at the EU borders (long distance pipelines and LNG terminals) and/or between the EU main pipeline grids.

CEPS therefore considers that the above mentioned issues have to be addressed with an absolute priority over the duty of monitoring the day to day running of the gas marketplaces. It is, in particular, advisable that the whole process of “supply licensing”, presently dealt with at a national level, should be reframed at the EU level, with a view to ensuring that across the EU:

- a right balance is reached between the different stakeholders: producers, utilities, traders, large industries and power plants;
- the development of infrastructures (long distance pipelines, LNG terminals, interconnections between EU networks) is incentivized by the obligation made to the largest stakeholders to invest in such infrastructure or to take long term capacity reservation commitments in new infrastructure projects, in accordance to the market share that they claim under the supply license requests;
- the overall balance between long, medium and short term supplies is adequate to ensure not only the security of supply but also a sufficiently liquid EU gas market.

2. Do you agree that the current Regulatory Framework should be updated to include clear rules governing energy market oversight? Please justify your reply.

Yes, we agree.

The current regulatory framework still suffers a large number of specific gaps especially in relation to trade made outside organized exchange places. Rules for data disclosure must be clearly set and market misconduct should clearly be defined in relation with these rules.

The ad-hoc regulation regime that we advocate should have at its heart Public Trust and Integrity of Markets

CEPS is in favour of transferring the market oversight at EU's level, through an “ex-post” power of enquiry on each of the wholesale marketplaces, to be guaranteed by the conservation of electronic data on transactions.

3. Do you agree that this update should ensure integrated/coordinated oversight between financial and commodity markets and across borders.

Yes, we agree.

If it was only for the contribution of real-time cross border transaction to the security of supply, would a coordinated and integrated oversight approach justified. On the efficiency level this would result in avoiding overlap and doubling efforts in collecting data. Sometime specific national transaction reporting requirement (in local languages) can lead even “asset based” actor deciding not being active in certain markets.

The same “ex-post” approach should be followed on the financial side with the conservation of electronic data of clearing houses active on the energy markets.

4. Do you agree that the overlap of physical, and financial (derivative) markets, and the cross border nature of the market currently leads to sub-optimal oversight of energy markets?

Yes, we agree : the market oversight will be optimal at EU’s level.

Maybe at the risk of repeating ourselves current system is sub-optimal as:

- It creates overlaps (duplicate and different data reporting for the same transaction),
- It create supplementary unnecessary compliance costs,
- It leaves clear gap (especially regarding market transparency),
- It doesn’t provide clear understanding on the concept regarding integrity (e.g: insider trading / information disclosure information).

5. Do you agree that definitions of market misconduct for gas and electricity markets should be consistent across EU? If not, why not?

Yes, we agree.

As part of an ad-hoc tailor-made set of measures for the Energy Markets these concept must be defined across EU.

6. Do you agree that market misconduct should follow the MAD definitions? If not, why not?

We agree that the MAD definition should be followed as possible but taking into account the energy market specificity and OTC transactions.

This means that in the frame of our recommended ad-hoc tailor-made set of measures market misconduct must be clearly new defined in the light of the market specificities, especially e. g. almost real time deliveries for cross-border transaction and the transparency required on the availabilities of generation.

7. Do you agree that specific account of the specificities of the physical energy markets should be taken of energy markets through guidance rather than in legislation? If not, why not?

We recommend a clear regulation on the main rules and definition, and a guidance process for physical energy markets.

For the sake of clarity, enhancing public trust and integrity, we would recommend to have our recommended tailor-made set of measures being explicitly fixed through legislation. Naturally some part can be left as guidance given by the oversight body.

Clear and transparent framework is the key to efficient market monitoring.

8. Do you agree that regular market monitoring is an essential function to detect market misconduct?

Yes, we agree.

This is an important measure to grant trust in the system. This market monitoring should be performed by defining what market data are to be made available to the oversight body.

CEPS considers that “online” market monitoring is not adapted to detect market misconduct and is in favour of “ex-post” control with power of sanctions for the EU regulatory authorities.

Naturally a party suspected of misbehaviour on the basis of such data should be granted the right to explain himself.

9. If yes, given the characteristics of wholesale energy markets, do you agree that market monitoring is best organised on EU level?

Yes, we agree.

This is the only way to improve efficiency, to avoid double reporting and also potentially information gaps.

Furthermore a unified reporting system will foster consistency and symmetry across markets in Europe

10. If yes, do you believe that ACER should be given the role of an EU level monitoring body for wholesale energy markets?

Yes, we agree.

Now that ACER has been created it is the occasion to boost its role and its authority. For market participants where the local energy regulator have market monitoring responsibility (e.g. France) it is quite natural to hope for ACER the role somehow of a Energy regulator at EU level

11. Do you agree that the EU level monitoring body for energy markets should have a coordinating role to ensure effective application of EU level rules for energy markets? If not, why not?

Yes, we agree.

If the ACER is the monitoring body, it would be easy to officialise also its coordinating role. As said earlier setting a unified reporting system will foster consistency thus coordination throughout the various national markets

12. In your view, would enforcement of market misconduct rules be best organised on national level or EU level?

a. If on national level, would national energy regulators or national financial regulators be better placed to enforce compliance?

We recommend a pragmatic approach, but CEPS is in favour of the EU level approach.

b. If on European level, which institution would be best placed to enforce compliance?

We suspect that in the future enforcement should be at the same level as where the monitoring is performed i.e. EU level. **Then the natural place to enforce compliance would be European Competition institution.**

13. Do you agree that the market monitoring body for energy markets should also be able to monitor EUA transaction?

Yes, we agree.

As say earlier, all throughout this document, our understanding of Energy markets was: Power, Gas & Carbon, both physical and financial and both for spot and forward

14. Would monitoring of traded carbon markets be best organised on national or on EU level?
Market monitoring for traded carbon markets would be best organised at EU level.

Our position is that **Energy markets should be monitored at EU level**. We consider carbon to be part of the Energy markets therefore our consistent opinion is to have carbon monitored on EU level.

15. If on EU level, do you believe that ACER could be an appropriate monitoring body?
Yes, we agree

We recommended ACER to be the monitoring body for energy markets. We consider carbon to be part of the Energy market therefore our consistent opinion is to have also ACER as the appropriate body for carbon market monitoring.

16. Do you agree that it is not appropriate, at least at present, to consider coal, oil and other commodities along with wholesale gas and electricity markets? If not, why not?

Yes, we agree.

These markets clearly have a dimension much wider than Europe and furthermore they are not linked to a regulated European network infrastructure.

It would be counterproductive to include, at least at present stage, these markets in our recommended ad-hoc set of measures. (Even if we agree to the fact that European energy markets are strongly correlated to the coal and oil markets)

17. Do you agree that it is appropriate to apply exemptions and de minimis levels? If not, why not?

Yes, we agree.

We agree in principle as we shouldn't set extraordinary entry barriers to small players. Nevertheless exemption should apply to certain rules and procedures (like some reporting obligation). Misconduct behaviours should remain off-limit to all market participants.

18. Do you agree that market data relating energy market transactions should be reported centrally? If not, why not?

Yes, we agree.

This should apply to all transaction both on regulated market place (Power exchanges) as well as Over The Counter transactions.

This should be part of the market monitoring

19. Do you agree the body with an oversight role requires full access to fundamental data relating to carbon?

Yes, we agree.

And we understand as fundamental data, data on physical emissions. This information should be available to the market participant on a regular basis

The rules on transparency obligation should cover these informations on physical emissions

Contact :

Pierre-Yves BING

01.53.63.13.68

py.bing@ceps-oing.org