

STATEMENT

provided by the German Association of Local Utilities
(VKU in the following) on the

PUBLIC CONSULTATION ON MEASURES TO ENSURE transparency and integrity of wholesale markets in electricity and gas

Berlin, 23rd July 2010

The VKU represents 1,370 local utilities in the areas of energy, water and waste disposal. In the end-user segment they have a share of 54% in electricity, of 51,4% in natural gas, of 53,6% in provision of heating and of 77,5% in the provision of drinking water. The wide range of services provided by local utility companies is reliable, environmentally compatible and affordable for the consumer. They make a significant contribution to regional economic development. With over 240,000 employees the individual segments together generated revenue in excess of 90 billion euro in 2008. Investments amounted to 8 million euro. The majority of these investments took the form of contracts placed with companies located in the region.

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?

The VKU recognises the necessity of efficiently regulating the energy trading markets (incl. the emissions market) – on the one hand in order to do justice to the objectives defined in the Preamble and on the other hand to ensure the continued development of European and global energy markets while guaranteeing their efficiency and competitiveness.

Detailed rules should take into account the special attributes and characteristics of the energy trading markets.

On the issue of division of competencies between authorities/regulators, the VKU believes that there must be a clear separation between the authority that monitors the market situation at an integrated level and the authority that has access to commercial data of individual market participants.

The VKU therefore believes that supervision of individual market participants in the energy trading markets should be the responsibility of an authority independent from the European energy regulator, i.e. a European market supervisory authority.

A separation of this type is necessary to ensure that market participants trust the energy trading markets and their price formation mechanisms and to make sure that this trust will continue to grow. If the authority with the best overview of the fundamental situation in the energy trading markets (i.e. the European energy regulator) and the power to influence this fundamental situation – through its regulation of network operators – is given access to data of a commercially sensible nature regarding individual market participants, this coincidence of tasks would mean that any action by the European energy regulator via network operators could distort the market situation in favour or to the disadvantage of specific market participants. This must be avoided at all costs, because it would shatter the confidence of market participants in the efficiency and competitiveness of the energy trading markets.

Consequently, the VKU believes that the supervision of individual market participants should be in the hands of an authority **independent** from the European energy regulator.

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

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

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?

The VKU believes that this is the case. For this reason, the VKU believes that the effective supervision defined in the answer to question 1 must be achieved. It must also be considered that one of the main objectives of effective supervision is to ensure that market participants trust the price formation process in the energy trading markets.

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

The VKU believes that efficient integrated European energy trading markets need consistent definitions within the EU.

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

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?

Yes, cf. answer to question 1.

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

The VKU believes that regular market monitoring can be an important instrument to uncover market malfunctions, providing that it is correctly regulated and done by experts.

Imposing more rules and/or more frequent controls alone does not de facto create more security, as markets tend to be highly innovative in how they counter additional regulation and/or controls.

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

Yes, cf. answer to question 1

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

If monitoring means observing the market situation at an integrated level, yes (cf. answer to question 1).

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?

The VKU believes that the monitoring authority at EU level should have not only a coordinating role but also far-reaching operational competencies so as to be able to enforce European interests vis-à-vis national interests (cf. answer to question 1).

12. In your view, would enforcement of market misconduct rules be best organized 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?**
- b. If on European level, which institution would be best placed to enforce compliance?**

The VKU believes that this should be organised at EU level (cf. answer to question 1).

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

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

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

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?

In the case of coal and oil, these are global markets. They can therefore not simply be compared to the European gas and electricity markets and subjected to the same rules, unless these rules are international bodies of rules. However, the possibility to cover these markets in the future should be considered.

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

Yes, the VKU believes that the special attributes and characteristics of the energy trading markets, which are physically quite different from the financial markets, should be covered by derogations and *de minimis* levels.

Effective supervision assumes consistent access to market data. At the moment, however, the 3rd Internal Market Package allows regulators to collect acquisition transaction data. This is not sufficient for an effective supervision of the energy markets, as it does not cover MiFID companies, which are neither supply undertakings nor wholesale electricity or gas customers. What is needed in this case is uniform European regulation that on the one hand covers procurement activities and on the other does not favour MiFID companies.

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

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