

Public Consultation by the Directorate General for Energy
on measures to ensure transparency and integrity of
wholesale markets in electricity and gas

A EURELECTRIC response paper



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Response to Public Consultation by the Directorate General for Energy on measures to ensure transparency and integrity of wholesale markets in electricity and gas

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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?

In relation to energy markets we want to give specific mention to national frameworks. In some countries Energy Regulators play a role in monitoring and oversight national energy markets through burdensome transaction reporting requirements that are increasing throughout European countries. Therefore we urge the Commission a prompt intervention recommending a replacement of national requirements through a standard at EU level. National reporting requirements are usually only in national language, with different contents and formats and they are not automatable.

Moreover, National Competition Authorities also carry on regular investigations. This also adds to the patchwork of oversight requirements.

Finally, the design and implementation of such market regime should duly take into account the planned reforms of derivatives markets at EU level. The possible extension to non financial undertakings with positions above a certain threshold would be a disproportionate measure to ensure safety in energy markets. It would increase market player costs for hedging assets against commodity price volatility Furthermore this would have a negative impact on electricity and gas markets, hampering the development of integrated and efficient European markets by reducing liquidity and number of competitors with the inevitable effect of increasing prices.

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

We agree on the need of an updated regulatory framework for energy markets. In particular, it is important to reduce the level of fragmentation in the market oversight: market operators need to be subject to a clear set of rules in terms of transparency, insider dealing and market manipulation, which should cover both physical and financial energy markets across Europe; in any case, at least strong coordination and cooperation scheme between energy and financial regulators is necessary; as well as with other competent authorities.

To achieve an efficient and integrated energy market at European level, harmonized requirements with the same level playing field in Europe are needed. However, this new legislative initiative should not lead to an overly burdensome regime, in particular regarding the systematic reporting of wholesale standardised transactions, where we believe that trading platforms (PXs, MTFs and brokers) should be responsible for.

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

Yes, given the interdependencies between physical and financial energy markets at least a coordinated oversight is necessary. We should avoid inconsistent or overlapping requirements and reporting obligations from different energy or financial regulators or competition authorities. A comprehensive regime with a “one-stop-shop” compliance would avoid the risk of overlaps and duplication with other regulations.

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 fact of having an overlap between physical and financial markets should not lead per se to a suboptimal oversight. The same can be said in relation to the cross border nature of the markets. However, the increasing complexity of the interactions between energy markets makes current regulatory framework insufficient: we think that the sub-optimal outcome is mainly related to a lack of regulatory coordination and consistency across EU. Precisely for those reasons and the wide scope of activities, EU needs a tailor made regulatory framework for energy markets which helps regulators to develop an adequate monitoring of the markets. In a market with cross border trading and activities, it is difficult to assess the behaviour of a market participant exclusively considering a national perspective. For a proper monitoring activity the whole portfolio of stakeholders (physical and financial) across EU markets needs to be considered. This requires an effective coordination of national regulators supported by a consistent monitoring model for all EU energy markets. However, such monitoring model should not translate in an excessive burden on market players. Finally, regulators should not take monitoring actions in another domain (neighbouring market, financial transactions) without notifying this to the involved company.

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

Yes, definitions of market misconduct should be consistent across the EU to avoid regulatory arbitrage and ensure a level playing field.

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

MAD was defined and established for financial markets and although the general principles should be the same, the definitions and provisions should reflect the specific reality of EU Energy markets: a simple extension of the existing definitions and provision of the MAD would not be appropriate. On the contrary, we believe that a tailor made approach for the energy markets would be the more appropriate approach.

In fact, specificities such as the non storability of electricity and the impact of transmission and generation capacity availability on price formation demand careful and balanced definitions of market manipulation and insider dealing tailor made for the current reality of the EU energy sector.

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

If "guidance" means binding guidelines, yes. Otherwise, there will be scope for regulatory arbitrage. Experiences such as the Congestion Management Guidelines demonstrate that unclear or vague provisions lead to differences in implementation and enforcement across EU which are detrimental to market integration and competition. Harmonized, binding and mandatory provisions across Europe should be set up in each Member State without leaving room for interpretation.

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

Regular monitoring is an important tool to detect market misconduct and to maintain stakeholders' confidence.

It should be noted that the increasing liquidity and the diverse participations in European energy wholesale markets already shows also rising confidence in the integrity of wholesale market. The more liquid markets are, the more market based transactions are, because all participants will trade at the market price and no one will accept bids/offers that are above/below the market price. For these reasons, together with regular market monitoring, increasing liquidity and integration of EU energy markets should remain a top priority for regulators and policymakers.

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

In principle yes. In energy wholesale markets cross-border activities are very common and need to be taken into account to get the complete picture. This requires a very close cooperation of the relevant authorities (energy and financial markets, national and cross-border) coordinated at EU level to ensure consistency and minimise the burden on the market participants. Multiplied requirements and overlaps across Europe should be avoided by streamlining market monitoring at EU level.

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

We see a role of ACER in coordinating monitoring of wholesale markets as well as ensuring that rules are transposed in national legislation, implemented and enforced by national regulators on a level playing field.

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, as long as national regulators remain in charge of the enforcement. If they do not comply with enforcement duties, the Commission could start infringement procedure against the concerned Member States.

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?

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

The coordination of the enforcement of market misconduct rules should be ensured at European level, avoiding asymmetric situations between different countries. The enforcement of such market misconduct rules should be done by the national competent authority ("home regulator approach"), preferably the energy regulator, in close coordination with the financial regulator and other competent authorities where appropriate.

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

In principle yes. We think that the scope of the new regulatory framework should ideally include electricity, gas and CO₂. Considering recent policy development (ETS Auctioning Regulation) it should at the very least envisage a strong cooperation between EU regulators. Again, it should be a responsibility of the trading platforms to provide the EUA transactions to the relevant authority.

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

As traded carbon markets are even more European than electricity and gas markets (and partly global) monitoring should be organised on EU level.

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

As stated in our response to question 10, we think that ACER should have mainly a coordinating role. For market participants it is important to have a one-stop-shop contact; preferably the national regulator.

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. Due to the global nature of Oil and Coal markets (and the consequent lack of EU “jurisdiction”) we believe that it would not be appropriate to include them in an EU framework.

At the same time we would like to point out that, while as a general principle power and gas should be treated the same way, it is still important not to forget specific differences between the 2 sectors: in particular, flows and storage facilities are crucial for gas markets dynamics and this should be duly considered.

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

Generally, we could very limited and temporary exemptions in markets that are still in an emerging phase. It is important to avoid introducing administrative barriers to new market entrants.

However, the impact of the exemptions should be limited in scope and time to avoid unequal treatment. With regard to *de minimis* rules, we do not think that these should be connected to the size or ownership of a company, but rather e.g. in respect of the installed generation capacity (i.e. power plants > 100MW being covered).

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

Yes, we agree. The most important issue is that we should avoid the actual situation in which each regulator demands data with its own format, deadlines, and reports. Also, any double reporting must be avoided.

The use of existing regional/national reporting systems (provided a consistent EU harmonisation of standards and formats is ensured) should be possible. As previously stated, transactional data covering standardised products should be reported by exchanges, MTFs and brokers (while fundamental data should be reported by the companies operating the concerned assets). Transactions in standard products concluded on a purely bilateral basis could be combined with a reporting obligation to be performed regularly (i.e. monthly/quarterly/yearly). However the solution has to be a proportionate and cost effective measure. In any case, it should be reminded that relevant data is already available to regulators via the record-keeping obligations in the 3rd energy package.

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

In principle yes. Fundamental data for electricity and gas markets we think that the proposal should be strengthened in order to achieve a consistent approach. The third energy package contains rules to allow for the adoption of legally binding guidelines in

relation to data on physical production, transmission and consumption. In the electricity sector ERGEG has been appointed to develop draft guidelines on this issue.

Fundamental data have impact on the price formation process for electricity, gas and carbon markets, such as information on generation flows, grid and production facilities availability, transmission, storage, consumption and CO2 emissions therefore we think it is necessary that such guidelines have to be considered part of the market integrity regime.

One of the expected outcomes of a tailor-made regime is the closer reflection between market results and fundamentals. Thus a basic need of this regime shall be the definition of which fundamental data should be disclosed to the public and which represent insider information before public release.



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