

**Response of VERBUND-Austrian Power Trading AG
to the public consultation by DG Energy on
measures to ensure transparency and integrity
of wholesale markets in electricity and gas**

Verbund is the largest producer and transporter of electricity in Austria and one of the leading hydropower producers in Europe. With approximately 2,800 employees the company generates annual sales of more than 3,5 billion Euro. Verbund is active along the entire electrical value chain. VERBUND-Austrian Power Trading AG (APT) is Verbund's international energy trading company and forms the interface between generation, the wholesale and the retail market. In 2009 APT traded electricity in the amount of 110 TWh on the European wholesale markets.

In this context APT appreciates the opportunity to comment on the European Commission's public consultation on "measures to ensure transparency and integrity of wholesale markets in electricity and gas", as the future regulatory framework will have a significant influence on the development of energy wholesale markets and its stakeholders.

Question 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 our view the consultation's analysis of the current legal situation draws a comprehensive picture of the most relevant legal instruments regarding business rules an energy trading company has to consider in its daily work.

Question 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 do agree that the current regulatory framework should be updated to include clear rules governing energy market oversight and we highly appreciate the European Commission's intention to harmonise the currently fragmented European regulation of energy market.

As outlined in the consultation's "description of the problem" energy trading companies are active in different countries, on different marketplaces (exchanges, OTC) with different products (financial, physical) and since the beginning of market liberalisation complexity and traded volumes have increased considerably, especially in western Europe. However, at present the energy trading business is considered only partially in several legal instruments which are mainly designed for financial markets (e.g. MiFID or MAD). These directives – by nature of this legal instrument – have been implemented differently in the single member states. Therefore internationally active companies have to assess for every country they want to trade in, how these directives (and their exemptions) have been implemented in the respective national legal frameworks. And moreover, because of the different pace energy markets have evolved across Europe – with essential discrepancies especially between western/northern and

eastern/southern Europe – more liberalised markets with a wider range of products and marketplaces tend to be subject to more stringent regulations than less liberalised, illiquid markets which therefore don't have incentives to foster liberalisation.

These inconsistencies in the current legal framework for energy trading across Europe make it difficult for all stakeholders – trading companies and regulatory authorities alike – to gain appropriate market overview and therefore APT welcomes DG ENERGY's intention to design a tailor-made legal framework for the energy sector which would create equal preconditions for all market participants in all member states.

Question 3

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

Yes, we do agree that the planned oversight rules should cover financial and physical energy markets and should apply uniformly in all EU member states. Only a consistent legal framework can facilitate the realisation of a pan-European energy market.

Question 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?

We share DG Energy's opinion that currently the possibilities to monitor energy markets are limited to a certain extent. But in our opinion this sub-optimal situation is not caused by the overlap of physical and financial (derivative) markets and their cross border nature, but the lack of appropriate consideration in EU regulation. This is why the energy sector calls for a tailor-made regulatory framework.

Question 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 do agree that the definitions should be consistent across the EU.

Question 6

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

The MAD is designed for financial markets and although the general principles of market misconduct should be the same also for energy markets, the definitions and provisions should reflect their specific reality. As set out in the consultation, *"traded energy markets have a number of dimensions (spot vs. forward, financial vs. physical, OTC vs. exchanges, standardised vs. nonstandardised, brokered vs. non-brokered)"* which is a reason why they are not comparable to financial markets. Our understanding was that the planned tailor-made regulatory framework for transparency and integrity of energy markets would be a harmonised, comprehensive legal instrument covering all "dimensions" of energy trading. We therefore advocate that in the future all issues concerning energy trading should be dealt with exclusively in the new regime and exempt from the MAD.

Question 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, we do agree that guidance from an oversight body would be appropriate for taking account of the specificities of physical energy markets, but it has to be ensured that the same rules apply to all member states equally.

Question 8

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

Of course regular market monitoring is essential to detect market abuse.

Question 9

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

Yes, we do agree that market monitoring is best organised on EU level to ensure that equal conditions and rules are put in place for all member states. Also in regard to the ultimate aim of a European internal market for electricity and gas it is evident that an essential function as monitoring lies within the responsibility of an EU entity.

Question 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 do agree that ACER could assume this EU level monitoring role, being responsible for the (central) collection of market data and the analysis of this information. But it has to be ensured that this responsibility is clearly embedded in the respective EU Regulation 713/2009 – which in our view is currently not the case – to ensure a level-playing field in monitoring throughout all member states.

Question 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?

We agree that the EU level monitoring body for energy markets should have a coordinating role, ensuring a harmonised cooperation between national regulators.

Question 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?**

In our opinion enforcement of market misconduct should be organised on EU level, to ensure that the same rules apply uniformly in all member states and ACER could assume this responsibility. However the competencies of national authorities should not be ignored.

Question 13

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

Yes, we do agree that also transactions with CO₂ emission rights should be monitored by the responsible body, as CO₂ certificates and their prices have become an integral part of European energy markets and should not be considered separately.

Question 14

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

As stated above, the European carbon market should not be treated differently than the markets for electricity and gas, therefore its monitoring should be organised on the same level.

Question 15

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

As stated above, the European carbon market should not be treated differently than the markets for electricity and gas, therefore its monitoring should be assumed to the same entity as for electricity and gas markets.

Question 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?

Because electricity and gas are grid-bound commodities these markets can be defined and organised on a European level. Also the CO₂ emission market is, at least for now, organised on a European level through the European Emission Trading Scheme and should therefore also be considered. As coal and oil, on the contrary, are globally traded commodities, it would be inappropriate to include these markets into a European regulatory regime as it does not seem realistic that European models will be globally implemented.

Question 17

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

Generally we do agree that it is important to avoid unnecessary burdens as excessive administrative costs could result in competitive disadvantages especially for small companies. But if applying exemptions and/or *de minimis* levels, in our view problems with the consistency of the collected data could arise. Clear reporting rules have to be put in place for cases when a small company trades with a big company. It must be assured that either both companies or none are obliged to report the respective data.

Question 18

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

Yes, we do agree that data should be reported centrally, because this would reduce the administrative effort for stakeholders. Administrative efforts resulting from reporting obligations have to be proportionate and cost-effective. It is essential that reporting contents, formats, deadlines etc. will be harmonised and any double reporting will be avoided. The use of existing

regional/national reporting systems could help reduce additional costs. Transactional data covering standardised products should be reported by exchanges, MTFs and brokers. Furthermore, in this competitive environment certain data are highly sensitive and of particular value for the respective stakeholder, therefore it must be ensured that individual information is kept in confidence and authorities gain access to these data only in case of reasonable suspicion.

Question 19

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

Yes, we do agree that also fundamental data relating to carbon should be reported to enable the monitoring body to get a comprehensive picture of the European energy markets. But it has to be clearly defined what is meant by “fundamental data”.

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Thank you for taking our comments into consideration.

If you have any further questions, please do not hesitate to contact us.

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