



ENI GAS & POWER'S RESPONSE TO DG ENER CONSULTATION ON INTEGRITY OF TRADED ENERGY MARKETS

INTRODUCTION

Eni Gas & Power recognizes the importance of developing an effective and coherent oversight regime, in order to prevent market misconducts and to guarantee the integrity of European wholesale energy markets. Sub-optimality in market transparency could endanger market functioning and create informative barriers which would entail a decrease of stakeholders' confidence in the price formation process.

Third Energy Package provisions already establish record keeping obligations for supply undertakings and a broad range of disclosure obligations on fundamental data (including trading data). Implementation of these obligations is currently undergoing. Therefore, before updating the current regulatory framework on transparency, competent authorities should make sure that implementation procedures of existing provisions take place under timely and uniform conditions in all Member States.

The adoption of new rules on transparency should follow the implementation of the existing ones and should be preceded and justified by a rigorous impact assessment. In any case, issues such as how to avoid discriminatory treatment between European and non European undertakings acting under different rules and how to avoid unnecessary administrative burden on operators should be carefully analysed.

Achieving a uniform level of transparency regulation at EU level would greatly contribute to prevent market abuse behaviours. In order to ensure the highest level of coordination between authorities responsible for regulating financial and physical markets:

- Regulatory responsibility for financial markets should be for the financial regulatory authorities, without involvement of sector (gas and electricity) authorities;
- Regulatory responsibility for physical markets should be for sector authorities. Implementing MAD rules related to physical markets could create complications and potential duplications and could lead to an unclear framework;
- This distinction affects only the relations among operators and authorities. It is necessary to provide a legal framework in order to coordinate the relations between the regulatory bodies.

Considering the very onerous impacts on operators of general regulatory provisions not tailored on energy sectors, it is absolutely necessary that clarity on regulatory responsibility couples with specific natural gas and electricity sector tailored regulations. Regulatory principles deriving from other financial and/or industrial sectors should not apply to energy sectors.

REPLIES TO QUESTIONS ADDRESSED BY THE CONSULTATION DOCUMENT

Question Q1:

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

Main developments have already been considered in the past. A balanced approach has to be undertaken to ensure that European energy companies are not subject to disproportionate transparency obligations compared to obligations to which global players have to comply with. European energy companies' competitive position and commercial interests should not be damaged as a consequence of the entry into force of new obligations.

Question Q2:

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

The current oversight of energy markets seems to be appropriate. Any proposal on extension of the third package measures on record keeping beyond comitology procedure should be subject to an impact assessment. However, any new measure will have to be proportionate and not discriminatory.

Before updating the current regulatory framework with new rules, existing requirements should be correctly transposed and implemented. The implementation procedures of existing requirements should take place under timely and uniform conditions in all Member States.

Question Q3:

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

A tailor-made comprehensive energy regime is to be promoted. Overlap of competences between financial and market regulatory authorities must be avoided.

Question Q4:

- 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 agree with the fact that a sub-optimal oversight of energy markets related to a lack of coordination between financial and commodity markets currently exists especially in cross border zones. The

adoption of any new provision should follow a process of rationalization of existing provisions. Overlap of transparency obligations at national and EU level should be overcome.

Question Q5:

- Do you agree that the definition of market misconduct for gas and electricity markets should be consistent across EU? If not, why not?

The priority objective should be to achieve a common understanding of the concept of energy market misconduct. This concept is different from the one of market misconduct in financial markets.

Question Q6:

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

Extending the scope of MAD to commodity derivatives traded on MTFs could result in a *tailor-made approach for electricity and gas products outside MAD* to become an initiative merely limited to non-derivative products. At the very least, there would be a risk of inappropriate application of general financial legislation, like MAD, to gas and electricity markets and of resulting complications in commodity markets.

With respect to the question about the extension of the definition of inside information for commodity derivatives: whereas this definition should cover data or information that may have an effect on the price formation process, this does not mean that the current specific definition of insider information for commodity derivatives which focuses on *information which users of commodity derivative markets would expect to receive in accordance with accepted market practices on those markets*, is not satisfactory. In fact, this definition allows to take into account the specificities of electricity and gas markets whilst meeting the aim to encompass data and information that may have an effect on the price formation process. The priority objective should be to achieve a common understanding of the concept of energy market misconduct, distinct from financial market misconduct, as a basis to create homogeneous energy market conditions.

The proposals to change the definition of inside information and extension of MAD to MTF and OTC markets in relation to energy commodity derivatives might have significant unintended consequences – including in the physically traded energy markets – that would undermine asset based trading and portfolio optimisation. This would lead to inefficiency, higher prices to consumers and would also undermine the incentives to invest in further infrastructure.

The Commission highlights the issue of better investor protection as a driver for the change in the definition of inside information and extension of MAD to MTF and OTC. We do not believe this is a relevant consideration for the energy sector because counterparties to energy trading transactions are generally professional traders and energy companies and not private customers.

It is very important to be consistent in applying the principle that, where appropriate, any policy proposal will duly take into account the specificities of asset classes and contracts involved, as well as the specificities of the market participants, also striking the right balance between financial and non-financial institutions. Moreover, the Commission should take into account the specificities of certain

commodity markets, e.g. gas and electricity markets, which are particular in their underlying physical market structure.

Question Q7:

- 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?

Market misconduct could be defined in coherence with MAD but the specific characteristics of the physical energy markets should be properly taken into account through separate provisions. Energy markets and trading should keep to be exempted from these MiFID and MAD.

Question Q8:

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

Regular market monitoring could help detection of market misconducts. Costs and administrative burdens related to data gathering should be proportioned and balanced with the benefits that the oversight would create in terms of market liquidity.

Burdens related to frequent data collection and notification are particularly heavy for market operators.

Moreover, data relating the same phenomena are often required with different calculation methodologies, and the analysis is carried out without an effective coordination among authorities receiving the data.

Coherently with the principles of the consultation document, it is necessary to operate a clear distinction between bilateral (physical and financial) contracts and transactions on organized markets (i.e. stock exchanges, broker platforms, hubs). In particular:

- For physical markets:
 - Regarding bilateral contracts (i.e. OTC markets) should remain out of the scope of the present consultation. These markets are already subject to monitoring provisions at different levels: i.e. average quarterly prices, yearly inquiries of sector authorities about volumes, prices. The legal European framework fully recognizes for the customers active in bilateral contracts the eligibility and consequently do not provide for price protection. For residential customers the legal framework admit specific protections both on tariff and on contractual clauses: so there is no room for any specific regulation;
 - Regarding transactions on organized markets as said above the regulatory power should be:
 - **best case scenario:** record keeping provisions descending by third package in addition to regulatory provisions for access to information

under request are the most appropriate ways to match the need of transparency with acceptable burdens on operators;

- **second best scenario:** collection of data should be performed by the central counterpart that operates organized markets (energy stock exchange, broker platforms...).
- For financial markets: the impacts on operators should be minimized in application of proportionality principles. In particular:
- the European regulatory full harmonization is needed in financial transaction where the national borders are completely irrelevant;
 - the data collecting/record keeping:
 - **best case scenario:** the record keeping obligations (should be extended to financial operators) in addition to regulatory provisions for access to information under request is the more appropriate way to balance transparency issues and proportionate burdens on operators;
 - **second best scenario:** both bilateral, and centralized exchanges should be in charge of the central counterpart that operates organized markets (stock exchange, broker platforms...). This is necessary to guarantee homogeneity, consistency and completeness.

Question Q9:

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

Yes, in view of the growing European internal market and in the interests of regulatory efficiency.

Question Q10:

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

See answer 12

Question Q11:

- 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?

See answer 12

Question Q12:

- 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?

Considering the increasing interdependence of markets (under a geographical, and sector perspective) maximum level of regulatory harmonization among MSs should be the main driver. In particular:

- o Monitoring tools functional to transparency and identification of market abuses should be established at European level without possibility of national discretionary implementations. Different disclosure obligations would constitute a useless and disproportionate burden put on supply undertaking, considering that they operate in a context of full liberalization of sale activities, and would be not consistent with competences of NRAs whose intervention powers should be oriented to guarantee a non discriminatory access to infrastructure systems. Moreover, this would greatly help to avoid regulatory arbitrage.
- o ACER (on physical markets) and CESR (on financial markets) should be given power to:
 - establish binding provisions at regulatory levels and provide for their enforcement;
 - establish binding detailed and harmonized instructions for mere surveillance powers at national levels; the surveillance in this context should be granted by NRA.
- o The relations among national authorities and ACER/CESR should be defined assuming the model of the present relations among ECB and national central banks.

Question Q16:

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

We do not agree that it is appropriate to consider coal, oil and other commodities along with wholesale gas and electricity markets since there is not yet an international consensus on a EU regime to cover this markets.

Question Q17:

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

We agree with the introduction of exemptions and *de-minimis* levels that should apply to purely bilateral transactions to avoid un-proportional burden on market operators. In this view, costs incurred to be compliant with these new regulatory provisions should be explicitly covered for the operators. In

particular, in application of cost reflectivity, being these provisions in favour of final customers, a specific tariff component applied to transportation tariff should be introduced in order to create a fund to be redistributed to the affected operators.

Question Q18:

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

Yes, see answer number 8.