

**EUROGAS RESPONSE TO THE CONSULTATION  
ON MEASURES TO ENSURE TRANSPARENCY AND INTEGRITY OF WHOLESALE  
MARKETS IN ELECTRICITY AND GAS**

**Introductory comments**

Eurogas supports the objectives of transparency and integrity in the wholesale markets and welcomes the opportunity offered by this consultation paper to participate in designing a framework to strengthen public confidence in the market.

Our reply to the consultation should be read in the light of the following considerations:

- Any regulatory framework must be proportional, i.e. targeted and related to the risk involved, while not imposing an unnecessary burden on market participants.
- Any regulatory framework must be balanced with regard to the specificities of the electricity and gas markets. The approach to gas should not necessarily be the same as for electricity.
- A transfer or extension of financial market rules to energy markets is generally inappropriate as financial markets are quite different from energy markets. Wholesale energy trading does not give rise to issues of investor protection and financial stability. Furthermore, energy trading and energy traders do not give rise to systemic risk, unlike failures in the financial markets. This view is supported by the advice of the Committee of European Banking Supervisors (CEBS) of 10<sup>th</sup> October 2007 to the EU Commission (CEBS-Advice).
- Eurogas stresses the need for consistency between a tailor-made energy regime for market integrity in the energy sector and other Commission initiatives such as the revision of the consultation on the MAD (Market Abuse Directive) Directive in order to reduce the burden on companies operating in both markets (pure financial trading and energy trading) and thus to assist speedy implementation.
- The tailor-made energy regime for market integrity must not be detrimental to the development of integrated and cost efficient European markets by unduly increasing the financial and administrative burdens and mechanisms, involving excessive costs which would act as a disincentive to energy trading, thereby decreasing market liquidity.
- Reporting obligations have to respect confidentiality.

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

In the view of Eurogas, major developments are covered, but there should be more recognition of and emphasis on the specific requirements of the energy sector, which are different from the financial market, including physical commodity trading, specific hedging measures, and market misconduct.

The approach should take into account that the gas business is an international, increasingly global, business. A balanced approach must be taken to ensure that European energy companies are not subject to disproportionate transparency relative to other global players, thereby damaging their competitive position and commercial interests.

The positive impact of the increased transparency requirements, set out in the Third package should also be taken into account.

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

Eurogas agrees that the current regulatory framework should be reviewed, to see what clarifications and improvements are needed but measures must be proportionate and targeted. Furthermore, coordination between DG Market and DG Energy is fundamentally important to ensure consistency between the different legislative proposals (i.e. MAD, OTC derivatives) and any tailor-made energy legislation. Any extension to the "Third Package" measures on reporting requirements must be subject to a prior impact assessment.

Eurogas considers that MiFID/MAD legislation is not appropriate for energy trading. MiFID and MAD are specifically designed for financial markets, products and market participants, and thus do not take into account the specific features and needs of wholesale energy trading markets.

Eurogas considers therefore that a coordinated EU energy tailored regime would avoid shortcomings and major differences between national regulatory requirements that could raise barriers to market entry. EU-wide coordinated and clear rules are necessary to create true market transparency and market integrity for the benefit of the further development of the wholesale energy trading market, and to improve the trust participants have in the market and its price building mechanisms.

Therefore, any future rules must ensure the quality of the power/gas trading market in terms of fairness, efficiency, transparency and liquidity of the energy wholesale markets as well as regulatory oversight and avoidance of insider dealing and market manipulation/abuse.

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

Eurogas affirms that coordination is necessary among the various commission initiatives. Legislative initiatives should not lead to overlapping or conflicting approaches.

The cross-border aspect is very important, and Eurogas agrees on the importance of coordinated, comprehensive, and coherent regimes in commodity markets, avoiding undue burdens on market participants. Eurogas does not support an integrated oversight between financial and commodity markets as these markets have very different characteristics.

Eurogas therefore does not support extending the financial regime to cover commodity markets. An EU-wide convergent energy tailored regime with clear binding rules to ensure coordinated oversight of the commodity markets and deliver integrity and transparency is essential. It is necessary to consider more fully what kind of body should be given the task of overseeing the markets.

**Q.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?**

Eurogas agrees that, in so far as regulatory gaps may be shown, there may exist a suboptimal oversight of energy wholesale markets. Identified problems, however, should be more fully explored before formulating measures to improve oversight. Any regime should then target these with a tailor-made approach, after a thorough impact assessment.

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

The objective should be to achieve a common understanding across the EU of the concept of energy market misconduct, as distinct from financial market misconduct. If the need for a sector-specific approach to energy markets is accepted, it is important that this be formulated independently from financial regulation.

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

Energy commodity markets are quite different from financial markets, and definitions should not be required to follow the MAD/MiFID approaches.

When there is a common understanding of what constitutes energy market misconduct which takes into account the specific needs and characteristics of wholesale energy trading markets as well as the differences between the wholesale trading markets and the traditional financial markets, an appropriate EU regime should be developed. This can be achieved by setting up a tailor-made regime under energy sector legislation. Therefore, a tailor-made market integrity regime should specifically define what constitutes "market manipulation" and "insider dealing" in wholesale energy trading markets. Eurogas considers that it is not appropriate to extend the MAD Directive to wholesale energy trading markets, to the spot market or to OTC forward physical market.

**Q.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?**

In general, we could agree to a specific legislative regime for energy markets, which should, in certain aspects, also respect the specificities of gas. Guidance on the interpretation of that legislation may add value.

We do not agree that guidance should be linked to the MiFID or MAD Directive from which energy markets and trading should be exempt.

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

Eurogas considers that transparency is necessary to detect market misconduct. The requirements for record-keeping in the Third Package are very extensive and will give relevant national authorities access to significant data that should already facilitate detection of any market misconduct.

If “regular market monitoring” would include open-ended transactions reporting obligations, this is not essential to meeting objectives to avoid market misconduct. Also Eurogas wishes to emphasize that transactions reporting obligations have to respect confidentiality and not involve undue compliance costs.

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

In the responses to Q.9 and 10, we understand “market monitoring” to mean the general market oversight exercised by a regulatory body, based on defined transparency requirements and access powers, and reporting of transactions limited to standard products under a coordinated framework.

In view of the growing internal European market and in the interests of regulatory efficiency, we agree that market monitoring is best organized on EU level. We stress the importance of monitoring based on appropriate levels of transparency.

There is a large number of regulatory authorities in Member States and across the EU with regulatory powers for oversight of energy wholesale trading markets. The regulatory regimes of these authorities often differ between Member States. This large number of regulatory bodies is likely to lead to overlapping and difficulties in overseeing the markets. DG Competition and ACER (under the Third Package for record keeping, for example) already have some competencies in this area while the European Securities and Markets Authority (ESMA) will get new competencies in the near future (under the forthcoming financial market regulation). Overlapping, poorly coordinated, regulatory oversight will cause legal uncertainty and burdensome compliance costs for market actors and potential costs would constitute market entry barriers and might cause the exit of existing market participants.

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

In view of our support for a tailor-made energy regime, it makes sense to envisage a body focused on monitoring energy markets. Under existing legislation, however, it is not clear that ACER has the necessary competence, and further analysis would be necessary to determine how to proceed appropriately.

**Q.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?**

ACER already has a clear role with regard to areas of responsibility for development and effective implementation of market rules. ACER’s main function is to design the framework guidelines and network codes and ensure their implementation.

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

Eurogas recognizes the value of a common EU-level approach, and Member States should share a common EU understanding of what constitutes market misconduct in the energy market. Who will perform that role at MS-level will need to be determined nationally.

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

However it is organized, the key thing is that the responsible body should have the necessary expertise to manage the energy-specific regime and that national responsibilities should be transparent.

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

See answer to Q.10

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

There are already significant transparency requirements for traded carbon markets. Additional monitoring should be clearly justified and compatible and because of the linkage between the energy sector and the carbon market, it would seem appropriate to include carbon in an oversight regime for the energy sector.

**Q.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 organized on EU level, as carbon markets are EU-wide by definition.

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

Emission trading markets present specific characteristics that have to be taken into account by any monitoring body. With regard to ACER's role, please see answer to Q.10.

**Q.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?**

Coal, oil, and other commodities influence the price formation process in energy markets and if there are deficiencies in their markets, then it is necessary to work towards remedying these. As, however, these markets also present different characteristics from electricity and gas markets, longer time for further investigation would be needed, and their consideration should not affect the timescale for meeting progress on the electricity and gas issues.

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

To be coherent and consistent, all actors should in principle be covered in a non-discriminatory approach. We understand the logic of having exemptions/de minimis rules, but it is more important to focus on the market risks posed by a company than its size and to emphasize qualitative rather than quantitative criteria, for example to differentiate traded products according to their intended use.

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

The concept of central reporting can be supported, provided that a cost benefit analysis is followed in determining which transactions should be subject to reporting requirements. The scope of the proposal needs to be more precisely defined and limited to standard transactions.

Any reporting requirements should be designed in close consultation with market participants, so that the procedures do not lead to an excessive financial and administrative burden, ultimately hampering market liquidity.

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

While Eurogas accepts that oversight of carbon markets by the appropriate body should be considered, the extent of any obligation needs further study, perhaps as part of the impact assessment.