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**Public Consultation by the Directorate General for Energy on measures to ensure transparency and integrity of wholesale markets in electricity and gas, 31 May 2010  
Comments by Oesterreichs Energie**

Dear Madam,  
Dear Sir,

Oesterreichs Energie, the Association of Austrian Electricity Companies, welcomes 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. Oesterreichs Energie represents more than 130 energy companies active in generation, trading, transmission, distribution and sales which in total cover more than 90 per cent of the Austrian electricity generation and the entire distribution.

We strongly support the aim of having in place clear, proportionate and harmonised EU trade transparency and market integrity arrangements which will allow liquid European wholesale markets for electricity and gas. Any efficient market monitoring regime has to ensure that equal rules are applied across the EU. In order to avoid additional burden and cost factors existing transparency information provided e.g. by power exchanges has to be respected and used. Only a homogenous system of reporting obligations on national and European level will prevent multiple declarations and over-regulation in order to achieve cost-effectiveness for market participants and to facilitate regulatory harmonisation and adequate market oversight within the EU.

**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.

As far as possible developments are concerned, we see the pending danger of competing regulations

and overlapping regulative approaches. We would like to urge the European Commission to face the limits and drawbacks of a patchwork regulation which is currently in place and should not be the basis of further developments.

We would like to underline the importance of harmonised reporting requirements. Different contents and formats should rapidly be replaced by European standards.

Finally, the design and implementation of an energy market regime should duly take into account the planned reforms of derivatives markets and the MiFID at EU level. Bearing in mind the recent financial crisis we recognize the European Commission's intention to avoid systemic risks and to strengthen investor protection, but energy markets are based on physical and real underlying assets and market participants in the energy sector already have rigorous risk analysis and controlling procedures in place. Even within the actual legal framework processes and controls have worked well – especially during the financial crisis. Hence the exemptions formulated in Article 2 (i) and (k) of MiFID have proved to be appropriate and should be confirmed permanently.

Respectively, an extension of financial market regulation to non financial energy trading firms would not ensure safety and integrity in energy markets. In contrary, market participants would be forced to increasingly run unhedged positions as the future commodity price risk would only be replaced by an ongoing liquidity risk because of higher even too high hedging costs. Disproportionate regulation of electricity and gas markets will only result in reduced liquidity and fewer competitors.

## **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 share the opinion that the current regulatory framework requires adaptation. In particular, we highly appreciate the European Commission's intention to promote harmonisation of the fragmented European market oversight and regulation. We consider a harmonised framework to be a precondition for the further development of a single European market for electricity and gas.

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, 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. Multiplied requirements and reporting obligations from different energy or financial regulators or competition authorities have to be avoided. A comprehensive regime with a "one-stop-shop" compliance would minimise the risk of overlaps and duplications.

**4. Do you agree that the overlap of physical, and financial (derivative) markets, and the cross border nature of the market currently lead to sub-optimal oversight of energy markets?**

We feel that energy traders' oversight is rather adequate, but improvable through harmonisation. In our view a sub-optimal oversight by regulatory authorities is mainly related to a lack of regulatory co-ordination. Actually that's why we need a tailor-made regulatory framework enabling an appropriate EU monitoring model and effective coordination of national regulators.

**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.

**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 provisions of the MAD would not be appropriate.

**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?**

Energy traders need a one-stop approach which covers physically and financially settled products and which has to be EU-wide and harmonised. In our view even a Regulation would be preferable to a Directive in legislation to ensure a level-playing field throughout the EU. Given that "guidance" means actually binding guidelines, we could agree, but we prefer clear and unambiguous rules without leaving room for interpretation.

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

In principle, yes – but high liquidity, equal conditions for all market participants and many market participants are the best guarantee for market integrity.

**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.

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

The role of an EU level monitoring body for wholesale energy markets should be given to who is able to ensure a level-playing field in implementation and monitoring of the new framework throughout all member states. As far as enforcement is concerned, it seems recommendable that the national competent authorities should be in charge according to their particular expertise.

**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, we do agree.

**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 enforcement of market misconduct rules should be preferably done by a competent national authority. The coordination of the enforcement of market misconduct rules should be ensured on EU level.

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

We think that for transparency reasons EUA transactions should generally be included in the new framework, but the data necessary should be provided by the relevant trading platforms and emissions trading registries.

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

If monitoring is considered to be necessary, it would be best organised on EU level, as traded carbon markets are even more European than electricity and gas markets.

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

As stated in our response to question 10, the monitoring body on EU level has to ensure a level-playing field.

**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 an ideal world all commodities should be treated equally. Presently it does not seem realistic that European models will be globally implemented in due time.

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

Generally it is important to avoid unnecessary burdens as excessive administrative costs could result in competitive disadvantages especially for small companies. The tailor-made regime should be designed so that there is no need for a de minimis rule. All market participants should fall under this regime – but not every activity needs to fall under the regime, e.g. smaller generation units.

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

The most important issue is that different contents, formats, deadlines of reporting obligations etc. will be abandoned by the new framework. Also, any double reporting must be avoided. We highly recommend the use of existing regional/national reporting systems (provided a consistent EU harmonisation of standards and formats is ensured) to keep additional costs down. Transactional data covering standardised products should be reported by exchanges, MTFs and brokers. Any solution has to be a proportionate and cost-effective measure. As some data or indicators are highly sensitive and of particular value for suppliers as well as for generators in the competitive environment authorities should have to prove any need for these data and ensure that individual information is kept in confidence.

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

We are not entirely sure what would entail fundamental data for carbon.

Thank you for taking our comments into consideration. If you have any further questions, please do not hesitate to contact us.

Yours sincerely,

DI Wolfgang Anzengruber  
President

Dr. Barbara Schmidt  
Secretary General