

Market integrity framework and transparency – CEER reports

Complementary measures to REMIT

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Complementary measures to REMIT

- § Mitigation of VAT fraud
- § Oversight of Energy Exchanges
- § Europe-wide Wholesale Trading Passport

Mitigation of VAT fraud

VAT fraud – another case of Market Abuse

- § Trading of **"invisible"** resp. **"virtual"** products like **CO₂ allowances, electricity** and **gas** offers large opportunity for VAT fraud.
- § This constitutes a serious threat to the functioning of Europe's CO₂, electricity and gas markets.
- § Encouraged by the European Commission and the Florence Forum of December 2010, CEER and important stakeholders identified possible elements to prevent/mitigate VAT fraud.

Mitigating VAT fraud

Results of the expert group:

§ Joint declaration of:

- European energy regulators (CEER),
- Clearing houses (EACH) and energy exchanges (EuroPEX),
- Energy trading firms (EFET),
- Electricity and gas transmission system operators (ENTSO-E and ENTSG),
- electricity and gas industry (Eurelectric and Eurogas), and
- energy brokers (LEBA).

§ Main outcome of the work: Catalogue of measures to fight VAT fraud – which will be **shared** among the **organisations** and with **relevant authorities**.

Joint declaration on mitigating VAT fraud

In the joint declaration the signing parties

Confirm their commitment:

- to **take action** within their respective competences and legal frameworks; and
- To **cooperate with other stakeholders at European and national level**.
- And stress that the **ultimate responsibility** for tackling VAT fraud lies with the **tax investigation authorities**.



Joint declaration on mitigating VAT fraud

The following priorities were identified (I):

- § Raising **awareness** of the potential threat of VAT fraud.
- § Providing **specific information** to law-enforcement agencies, tax authorities and financial intelligence units on the **functioning** of **electricity** and **gas markets**.

Fraudsters exploit complicated elements of the trading process (e.g. by infiltrating balancing mechanisms).



Joint declaration on mitigating VAT fraud

The following priorities were identified (II):

- § Identifying and/or creating the legal environment at national level to **inform** competent authorities of suspicious behaviour’.
- Ensuring that “**Know your Customer**” (KyC) **procedures** can deal appropriately with this new type of risk.

Reliable identity checks of “customers” are crucial because fraudsters can disappear after a few months (**before** tax administration has detected the fraud).

Joint declaration on mitigating VAT fraud

The following priorities were identified (III):

- Making full use of the **registration scheme** in the Regulation on **Wholesale Energy Market Integrity and Transparency** (REMIT) to help **improve transparency** on who is active in the market and to facilitate the detection of fraudsters (e.g. by requiring the **VATIN code** within the **EIC coding scheme**).
- Reinforcing **control mechanisms** at all levels of the trading chain to **detect abnormal trading behaviour** and **report** it to the relevant authorities.

Joint declaration on mitigating VAT fraud

- The proposed measures and other industry surveillance initiatives can serve as **supporting instruments** to tackling VAT fraud in general.
- Additionally, **call upon national tax administrations and also the European Commission (DG TAXUD)** to examine **potential long-term fiscal measures** that could permanently remove the risk of VAT fraud from electricity and gas markets. Regarding **CO₂ allowances** the **reverse charge** procedure has been introduced.

Oversight of Energy Exchanges

Exchange Oversight

Why do we need it?

- Trading through exchanges becomes increasingly important
 - Exchanges play a crucial role when coupling markets
 - Prices at exchanges are important à basis for indices/reference prices, public acceptance, etc.
- **MiFID** provides a harmonised supervisory framework for **derivative** exchanges (esp. regulated markets)
 - à But who supervises energy **spot** exchanges?

Recommendations I

Supervision and governance:

- **Minimum standards** for a supervisory framework should be set at European level
- Each energy spot exchange should be subject to appropriate and effective exchange supervision

Transparency:

- **Pre- and post-trade transparency** requirements should be defined
- Publication of additional **fundamental data** information by energy spot exchanges should be encouraged, e.g. publication of insider information acc. to REMIT

Recommendations II

Market Surveillance:

- There should be a clear framework for market surveillance, compliance and enforcement activities at each exchange
- There should be oversight by an exchange supervisory authority

Market monitoring by the surveillance departments of the exchanges:

- Learn from **best-practice** examples
- **Energy exchanges** and **NRAs** should closely **cooperate**
- Exchanges (and other persons professionally arranging transactions) have to inform NRAs about suspicious cases (Art. 15, REMIT)

Cooperation of the relevant authorities:

- Competent exchange supervisory authorities, regulatory authorities and other relevant authorities
- Very important: **Cross-border** cooperation in case of an exchange covering **several** market areas (e.g. EPEX, Nord Pool Spot)



Prerequisite for an effective Europe-wide market coupling

Market Coupling

- Requires the participation of **liquid** exchanges
 - Will strengthen the position of the participating exchanges
à creates a **de-facto monopoly**
 - Important to ensure low transaction costs and low barriers for market entry
- à Underlines the need for a coordinated institutional and legal framework for the regulatory oversight of exchanges!

Where to address?

- In an appropriate legal framework (preferably separate or e.g. within the governance guidelines)



Europe-wide Energy Wholesale Trading Passport

Why do energy regulators continue to favour this concept?

Regulators' proposal: Passport approach

Introduction of a "Europe-wide Energy Wholesale Trading Passport" is the best approach

- § To cover **electricity and gas wholesale trading** (not supply!).
- § To be valid to trade in **all EEA countries replacing existing national licensing regimes.**
- § Allocation of the passport and supervision to be executed by the energy regulatory authority in **its home country.**
- § Not to replace or change any PX or TSO access arrangements.



Regulators' proposal: Passport approach

Benefits of the passport approach

- Significant reduction of bureaucracy à Setting up a level playing field.
- "One-stop-shop" for traders: surveillance of compliance with license only by home country authority.
- Improved oversight in the EU:
 - all traders in all EEA countries are checked before entering the market;
 - collateral benefits e.g. in the fight **against VAT fraud.**



Passport: Requirements and administrative standards

Passport should ensure a minimum “safety net” with a definitive set of requirements to ensure that background and character of all trading companies is known:

- **Registration:** Company contact details, board of directors, fields and countries of activity, ultimate ownership;
- **Check** of the criminal record of management, verify existence of the legal entity;
- **Compliance** declaration;
- **Proof** of the **technical, financial** and **organisational** capacity to fulfil all energy **regulatory guidelines**.



Implementation of regulators' proposals?

§ **REMIT provided a window of opportunity to implement a trading passport**

à Passport was proposed by the Rapporteur of the European Parliament, but not agreeable to Council

§ **REMIT will introduce a national registration of market participants**



European Registration Scheme

Registration of trading companies with the National Regulatory Authorities (I)



- Every market participant has to register only once
- ACER will determine a registration format within the next six months
- NRAs are working on a coordinated approach with regard to the content



European Registration Scheme

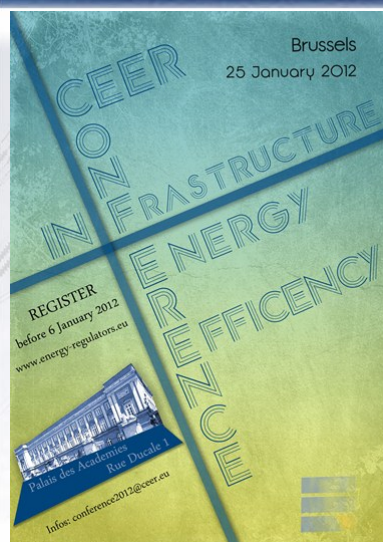
Registration of trading companies with the National Regulatory Authorities (II)

- The result is that national access regimes will continue and **additionally**, there will be the registration scheme.
- **NRAs believe:** Introduction of a **Europe-wide Energy Wholesale Trading Passport** would be the best policy option to fulfil all market integrity and transparency goals.

Registration of trading companies with the National Regulatory Authorities (III)

- After one year, the EC will assess functioning and usefulness of the register
- EC could then present further instruments to enhance transparency and integrity

à **The introduction of a Europe-wide Energy Wholesale Trading Passport should then be considered (again)**



Thank you for your attention!

Join us at the CEER Annual Conference:
Wednesday 25 January 2012

Register by 6 January 2012

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