

CESR/ERGEG Call for Evidence on Record keeping, Transparency, Supply Contracts and Derivatives for Electricity and Gas: Contribution from Powernext

18 March 2008

Dear Madam, Dear Sir,

You will find below Powernext's contribution to your Call for Evidence.

As requested by CESR and ERGEG, we have only answered those questions for which we feel we are best placed to comment on.

Our contribution is organised as follow: selected Annex I questions sent by the Commission to the CESR-ERGEG have been copied (respecting their order and classification), each one followed by its respective answer (in bold).

We would like to thank you to keep us involved in this consultation process, and we hope our inputs will be helpful for your work.

Yours trustfully,

The Powernext team

Fact-Findings

3. What (regulatory) authority oversees trading activities in energy markets in EU Member States?

In the French market, the AMF (national financial regulator) oversees the derivative energy market and the CRE (national energy regulator) oversees both the spot and the derivative trading activities. Both authorities are competent on the relevant markets in terms of liquidity to oversee trading activities in energy markets.

Record-Keeping

4. Do regulators believe that there should be a difference between the proposed record-keeping obligations under the proposed amendments to the electricity Directive and gas Directive and the existing record-keeping obligations with respect to transactions in electricity and gas derivatives to which investment firms are subject by reason of MiFID (Article 25 and 13(6))?

We think there should not be any difference between the proposed record-keeping obligations under the proposed amendments to the electricity and gas Directives and the existing MiFID obligations, providing of course that the specificities of the functioning of auction-based spot markets are taken into account. In particular, counterparties of purchasing/selling transactions made on auction-based spot markets cannot refer to a specific wholesale supplier/customer, but only to the central counterparty operating in the market.

Furthermore, MiFID currently waives the reporting obligations of investment firms to the competent authority, provided that the concerned transactions have been reported directly by a regulated market, an MTF or a trading system approved by the competent authority [*MiFID Art. 25-5*]. An equivalent clause should also be introduced in the proposed amendments to the electricity and gas Directives for the participants to energy regulated markets, MTFs or authorised trading systems.

Finally, paragraph 3 of Article 22f/24f of the proposed amendments to the electricity and gas Directives does not seem to have an equivalent in the current MiFID Directive. If the legislator chooses to keep this article in the electricity and gas directive, an issue in the coherence of the regulation between supply and derivatives contracts might thus arise.

5. Pending the outcome of the legislative process in respect of the proposed Directives amending Directives 2003/5/EC and 2003/55/EC (the Third Energy Package), what methods and arrangements for record keeping do CESR and ERGEG consider the Commission should specify as guidelines under legislation for:

- a. Transaction in electricity in gas supply (spot) contracts (To the fullest extent possible this should be a harmonised specification.) If there are any deviations from the obligations relating to commodity derivatives already applicable to investment firms, these should be justified;
- b. Transactions in electricity and gas derivatives contracts? (To the fullest extent possible this should be a harmonised specification.) If there are any deviations from the recommendations in a), these should be justified.

The Commission should specify guidelines for the making available of aggregate market data by energy regulators under paragraph 3 of Article 22f/24f [see answer to question 11].

6. How would this information be most efficiently kept at the disposal of the authorities as mentioned under paragraph 1 of Article 22f/24f in the case of spot transaction and non-investment firms?

The most efficient way to keep at the disposal of the authorities this information is to use a FTP server. This tool:

- is simple of utilisation for users;
- has a standard formatting;
- allows an automatic and daily sending of the information;
- is secured.

Transparency

11. What guidelines and arrangements do energy regulators propose for the making available of aggregate market data by them under paragraph 3 of Article 22f/24f?

When making available to market participants elements of market data subject to the record keeping obligations, the regulatory authority should overall ensure that the anonymity of the information released is guaranteed, and that the level of data aggregation is sufficient to avoid the identification of individual market players.

In any case, such a release of information should not be done on a systematic basis, but rather to meet occasional needs such as those required by public inquiries.

14. Is there a difference in transparency requirements for spot trading compared to future and forward trading? If so, why?

There is no difference in transparency requirements for spot trading compared to future trading, except those differences due to the operational specificities of auction-based markets compared to continuous-trading markets.

15. Is there a difference in transparency requirements for exchange trading compared to OTC trading? If so, why?

Transactions are not made on Exchanges for the same reason they are made on the OTC markets. Exchanges provide standardized services and products, whereas transactions made on the OTC markets meet more specific (“fine-tuned”) needs; furthermore, market players need to diversify the level of security and anonymity of their transactions, and often intervene in both kinds of markets accordingly.

This explains why the level of transparency requirements for Exchanges is higher compared to OTC trading: Exchanges need to guarantee a fully non-discriminatory access to their market data to ensure that market players benefit from the same level of information when they intervene on the regulated markets. These transparency requirements are also coherent with the specific role of Exchanges to provide prices references to the market.

16. What information, other than requirement by law or regulation, is made public by energy traders, brokers, information services or exchanges?

Other than requirement by law or regulation, Pownernext provides, *inter alia*, information on the resiliency of its spot market and on the import/export schedules on the French-Belgium interconnection (day-ahead market coupling).

RTE, the French Transmission System Operator, provides also daily information on the aggregated generation, load assets and consumption of electricity, by fuel type. This non-binding information is crucial for energy market players and for the transparency of the market in general. It should be subject to more binding requirements in terms of monitoring by the national regulatory authorities, reliability and accuracy; in particular, supply undertaking should be made responsible for the accuracy and the timely sending of those data to the relevant publisher.

19. In light of the findings in the Commission Sector inquiry on energy and the subsequent study of the electricity wholesale markets, please consider:

- a. Whether, pending the outcome of the legislative process in respect of the proposed Directives amending Directives 2003/54/EC and 2003/55/EC, greater EU-wide pre- and /or post-trade transparency rules for electricity and gas supply contracts (physical spot trading) and electricity and gas derivatives would contribute to a more efficient wholesale price formation process and efficient and secure energy markets;
- b. Whether such transparency arrangements could be expected to effectively mitigate the concerns identified in the Sector inquiry above;
- c. Whether uniform EU-wide pre- and post-trade transparency could have other benefits;

- d. Whether additional transparency in trading could have negative effects on these markets, for example could liquidity in these markets be expected to decrease? Is there a risk that trading could shift to third countries to escape regulation?
- e. If you believe that there are risks arising from additional pre- and post- trade transparency requirements, how do you believe that these risks can be mitigated (e.g. aggregation, delay in publication, anonymity)?

It is debatable whether greater EU-wide pre- and /or post-trade transparency rules for electricity and gas supply contracts would help solving the problems identified by the Commission in its Sector inquiry. Furthermore, there is real risk that tighter requirements in this matter will encourage participants to engage in regulatory arbitrage, affecting the level of liquidity in the concerned markets.

Rather, the efficiency and the confidence in the energy markets will greatly be improved if more stringent requirements were put on the matter of the daily publication and monitoring of generation, load assets and consumption data *[see answer to question 16]*.