

# POSITIONS



## CESR and ERGEG advice to the Commission in the context of the Third Energy Package

- Record keeping
- Transparency
- Exchange of Information

## Remarks on the Consultation Paper

### Introduction

8KU is the political platform of eight communal utilities in Germany:

- HEAG Südthessische Energie AG, Darmstadt
- Mainova AG, Frankfurt
- MVV Energie AG, Mannheim
- N-ERGIE Aktiengesellschaft, Nürnberg
- RheinEnergieAG, Köln
- Stadtwerke Hannover AG, Hannover
- Stadtwerke München GmbH, München
- Stadtwerke Leipzig GmbH, Leipzig

With an annual turnover of about € 17 bn and 27.000 employees altogether, the eight companies are of considerable importance for the competitive environment in Germany's energy sector.

Given the fact of the importance of energy trade for our business, we would like to comment on several of the questions asked in this consultation.

In general we would like to call attention to a few crucial elements of regulation that are addressed in the 3<sup>rd</sup> Energy Package:

The ultimate goal of the 3<sup>rd</sup> energy package is the achievement of a single European gas and electricity market. Energy shall flow as freely in the single market as it flows in the member states.

Therefore, the requirements as to record-keeping and transparency should be focused on the encouragement of com-

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petition and liquidity prerequisite to a proper market development.

As to the whole of the relevant provisions the 3<sup>rd</sup> Energy Package deals with, a high level of security of any data has to be granted.

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### **Questions to market participants:**

**1. Do you agree with the above mentioned analysis of the purpose of record-keeping obligations for supply undertakings in the Third Energy Package?**

It is reasonable to provide competent authorities with instruments to check a companies' compliance with legal requirements. Any supervision of this kind is based on sufficient information. The information shall be gathered in a calculable way for the supervising authorities and without unnecessary complexity for the companies supervised.

However, for any purpose outlined in the 3<sup>rd</sup> Package an "ex-post" control by the authorities is sufficient. For this reason record-keeping obligations have to be adjusted to this principle. There is no need to implement any further data-management systems with the proposed steadily-access to the relevant information for the authorities.

Since the provisions of the 3<sup>rd</sup> Package aim at the prevention of market abuse and the enforcement of trust in the market, its liquidity and the number of market participants, it is also reasonable to link the record keeping obligations to authorities monitoring competition in the energy markets and to distinguish the information from the MiFiD reporting style. It shall be noticed that the purpose of record keeping is NOT a general transaction reporting obligation and shall not be implemented in such way.

**2. Taking into account the potential purposes of record-keeping requirements under the Third Energy Package, do you agree with the above mentioned minimum contents for records to be kept by supply undertakings?**

Minimum contents shall enable authorities to check compliance with legal requirements. If possible, data collection for-

mats should be in line with MiFiD requirements to avoid double data collection.

**3. If not, please specify the items not necessary or additional items necessary with respective reasons.**

Regarding prices we would propose standard prices related to standard contracts, but not for non-standard and individual contracts.

**4. Do you see practical difficulties if investment firms not covered by the scope of the Third Energy Package are not obliged to keep the additional contents of transactions in financial instruments in their records?**

No since we assume that the information is provided by other instruments.

**5. Which option do you think is most efficient for the purposes of the Third Energy Package?**

ERGEG and CESR describe two alternatives; either to let the supply undertakings determine the format of its records or to request an electronic format.

No electronic format is required by MiFiD on the one hand. The aim of regulation is to prevent market abuse and to encourage competition on the other. Hence, no electronic format is needed. Rather, an approach based on principles specifying minimum information would be more suitable.

**6. If an electronic format will be required, is it sufficient to leave the design of the specific kind of “database” used to retain the minimum content of the records to each supply undertaking?**

**7. If possible, please provide indications of the specific costs involved with different electronic formats conceivable (e.g. from Excel sheet to more sophisticated software).**

As pointed out above it seems to be more reasonable to define minimum information to foster competition than to pre-

scribe an electronic format. One also has to consider that estimated six-figure expenses for introduction would be an obstacle to small and medium sized companies male part of the market.

**8. Do you see a need for a harmonised publication of aggregate market data on an EU/EEA level? Please provide your arguments for/against such publication.**

The aim of providing transparency was and still is to supply the market with sufficient information, especially as to: technical availability of interconnectors, technical availability of the transmission grids, generation availability, balancing and reserve power, load, generation production, to increase the efficiency of the energy markets.

It has to be highlighted that the demand for transparency e.g. in the Sector Inquiry did not refer to the wholesale and derivatives markets as a factor influencing wholesale or derivatives energy prices.

Since there is already an initiative for transparency under way in Germany, a harmonization could only be reasonable in the long run.

Any Publication of (purely trade-related) market date would not have a considerable benefit to the market participants. Moreover it could interfere with the aim of the enforcement of trust in the markets.

**9. Do you consider that this publication should cover all instruments, including those covered by MiFID?**

**10. Among the information proposed to be published, which ones are the most useful and why?**

**11. Are the two levels of aggregation on products proposed appropriate and useful?**

**12. Among the options proposed for the level of aggregation during the period covered, which ones are the most useful and why? Which one should be chosen?**

- 13. Among the options proposed for the frequency of publication, which ones are the most useful and why? Which one should be chosen?**

As pointed out above, the publication of market data should mainly focus on technical information prerequisite to any trade. The structure of the data and the level of aggregation should be determined precariously and shall reflect a normal market view.

- 14. Do you consider that, in practice, as far as transactions in energy related products are concerned, distortion of competition may result from unequal access to or lack of transaction information? Please provide evidence for your agreement or disagreement.**

In line with the results of the sector inquiry we see no indication of market distortion caused by a lack of information on transactions. Rather, there is need for more information about technical availability of interconnections and technical availability of transmission grids to increase the efficiency and security in electricity and gas markets. Market participants need to be able to predict the movement of supply and demand fundamentals and - at the same time - the capacity and efficiency of the applying transmission infrastructure.

- 15. Do you agree with the results of the fact finding exercises and their analysis for the electricity and gas markets as described above? If not, please provide reasons for your disagreement.**

See our answer to question 8.

- 16. Is there any part of the electricity and gas markets (either spot or energy derivatives trading) where there is lack of pre- and post-trade information which affects the efficiency of those markets or a part of them? In any case, please provide examples and your reasoning.**

There is no intrinsic need for pre- and post trade information.

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**18. Do you favour the status quo? Please provide reasons for your opinion?**

There is already sufficient data available on transactions. Therefore we favour keeping the status quo. No additional burden would emerge for incumbent and new market participants.

**19. Do you favour a key principles approach? If so, what characteristics should it have?**

**20. Do you favour a more comprehensive regime/initiative? If so, what would be its characteristics?**

As we pointed out no need is given for additional initiatives for key principals in trade transparency. However, if the publication of more data is inevitable, we would suggest an option that reduces costs and burdens for the market participants, hence a key principles approach.

**21. Do you agree with the preliminary analysis included in paragraphs (a) to (e)?**

**22. What other views do you have on the matters covered in this section on trade transparency?**

It is most crucial for the completion of the energy market to encourage trade. Parts of the lack of transparency are beyond the focus of this consultation. The shortcomings identified in the sector inquiry do not result from a lack of transparency of transaction. Moreover it is necessary to not discourage market participants, especially new entrant, who may fear that their trading strategies become visible.

**23. Do you agree with the exchange of information between securities and energy regulators only on a case-by-case basis instead of a periodical and automatic exchange of information?**

Yes – and companies should only have to provide to ONE Regulator.

- 24. Do you agree with the proposal of the establishment of multilateral and bilateral agreements between energy and securities regulators for exchanging information on cross-border and local basis respectively?**

Yes – if confidentiality is provided.

- 25. Which securities regulator would you prefer to be responsible for providing the information required by the energy regulators regarding the transactions of a branch of an investment firm: the host Member State securities regulator of the branch or the home Member State securities regulator of the investment firm?**

We would prefer home member state regulator.