

**EUROGAS RESPONSE TO
CESR AND ERGEG ADVICE TO THE EUROPEAN COMMISSION
IN THE CONTEXT OF THE THIRD PACKAGE
DRAFT RESPONSE TO
QUESTION D.4 TO D.6 – RECORD-KEEPING
QUESTIONS E.11, E.18 AND E.19 – TRANSPARENCY
QUESTIONS D.7 TO D.10 -
CONSULTATION PAPER**

Eurogas has taken notice of the joint CESR/ERGEG draft response on the question of record-keeping, transparency and exchange of information. This again addresses important issues which are essential for the correct functioning of market mechanisms.

1) Record Keeping

Any rationale of the record keeping obligation should be to give confidence to the authorities that when launching an investigation under energy or competition law, it may be sure of receiving information of a consistent quality from whomever is being investigated. On the basis of these principles Eurogas has the following comments:

In the interest of cost, Eurogas considers that any concrete record-keeping arrangements must be proportionate in such a way that no unnecessary or unjustified administrative burden is placed on market players. For example, we would propose that undertakings should be able to decide themselves on the appropriate format in which the required data is stored.

A record keeping obligation was proposed by the Commission as part of the third energy package. In view of the fact that this is yet to be finalised, Eurogas thinks that some of the statements made by ERGEG and CESR are premature. One example is in relation to the Commission's guidelines. At this stage of the co-decision procedure it is not clear whether the Commission will finally have the right to set guidelines; indeed the European Parliament has proposed the removal of the reference to guidelines via comitology procedure. It is therefore perhaps inappropriate for ERGEG and CESR to be commenting on the detailed content of the Commission's guidelines at this stage of the legislative process. Whether or not the Commission will have the right to set guidelines, we consider that some minimum harmonisation is necessary across all Member States. This will help build trust in the market that the record keeping obligation will be consistently applied across the EU and reduce costs for supplier and traders who have activities in different Member States and more efficient cross-border transactions.

With regard to the preference CESR and ERGEG have for an electronic format of the records (see page 4 of the consultation document, sub D.6) we welcome that CESR and ERGEG are conscious about the costs involved and that they would like to inquire more about these costs. Any final approach should enable undertakings to have flexible solutions and be based on their own cost analysis. Due to the short time given to this consultation, it has not been possible to assess the costs across our industry members.

2) Transparency

Eurogas is supportive of the work undertaken by ERGEG and CESR to improve the level of transparency in the energy markets and to reach also here some minimum harmonisation across all Member States in order to have a level playing field and to reduce costs and to facilitate cross-border transactions. Obligations already exist or are expected to be introduced via the third energy package requiring infrastructure system operators to publish certain key information with the aim of improving the efficient use of the infrastructure by system users.

Data relating to wholesale commodity markets is already available, at least in the most liquid markets, via hubs, exchanges, brokers and publications such as Platts, Reuters, Bloomberg and so forth. We do not believe that requiring individual traders to report all commodity transaction data to the authorities would add value to market participants or the authorities. Indeed the administrative costs of such an obligation could prove dissuasive for those considering market entry and slow the development of less advanced or liquid markets.

Any rationale of the record keeping obligation should be primarily to enable the relevant authorities to be confident that when carrying out investigations that they will be able to source information of a consistent quality, whomever is the focus of the investigation. Therefore we are concerned to see a tendency in the consultation paper that undertakings should keep records as a basis for transaction reporting to regulators on a general and periodic basis.

There therefore appears to be some confusion between regulators overseeing the market via monitoring of publicly available data and investigating suspicious conduct. We do not support regular and automatic transaction reporting of all transaction data. Instead of requiring companies to publish or report transaction information, we would encourage the authorities in the first instance to make use of existing, publicly available information from a range of sources (including hubs, exchange, brokers, etc.). If the results of this monitoring gives cause for concern, they may then make specific requests for more detailed company specific data from the relevant market participants, rather than demanding that all participants regularly report on trades.

Thus we do not believe that it would be appropriate to impose additional burdens of transaction reporting on market participants. Much of the information sought is likely to be available through publicly available sources. For instance, with regard to the publication of gas price indices this information should be obtained from gas hubs in a liberalised market. The publication of artificial price indices by regulatory authorities could interfere with future hub development and could give the wrong signal to the market.

3) Exchange of information

We question the need for automatic or regular exchange of information between authorities. The exchange of data between securities regulators and energy regulators should be carried out on a case by case basis only as required by investigations. We agree that as the number of such events is likely to be limited that it would not be appropriate to have a Transaction Reporting Exchange Mechanism.

Also in the context of exchange of information it is of utmost importance that the confidentiality of commercially sensitive information submitted to the authorities is protected.