



Association française  
des marchés financiers

LES PROFESSIONNELS DE LA BOURSE ET DE LA FINANCE

Carlo Comporti  
Secretary General  
CESR  
11-13, avenue de Friedland  
75008 Paris

DD/08-0522

Paris, 24 November 2008

Re: CESR and ERGEG advice to the European Commission  
Third Energy Package  
Draft response

Dear Secretary General,

*Association française des marchés financiers* (AMAFI) has more than 120 members representing over 10,000 professionals who operate in the cash and derivatives markets for equities, fixed-income products and commodities. Nearly one-third of the members are subsidiaries or branches of non-French institutions. AMAFI's members are active in all the products traded on commodity markets, including gas and electricity derivatives

AMAFI wishes to thank CESR and ERGEG for giving it the opportunity to express its views in the consultation on the draft response to the European Commission on its questions related to record keeping, transparency and exchange of information in the context of the Third Energy Package. AMAFI is presenting again its response in a simplified format due to the short notice to consult its members.

While supporting the recommendations put forward by CESR and ERGEG, AMAFI would like to make the following observations

**1. – Record keeping** (Questions D.4 to D.6)

1a - While the record keeping obligations would apply to a large part of the actors/persons which classify as "supply undertakings", there would remain persons who will be exempted from such obligations (i.e. exempted under MiFID criteria). If, as pointed in your draft response, the shares of these firms are marginal, it will be important to organize with an adequate legal framework the appropriateness of this "marginal" part.

1b - Furthermore, it should be clearly stated that record keeping rules should apply similarly for both listed transactions as well as If set up on a case-by-case basis, OTC transactions.

**2. – Transparency** (Questions E.11 and E.18 & 19)

2.a - **Q. E.11:** AMAFI would be strongly in favour of ensuring the necessary harmonisation of the transparency rules. This would be more efficient if rules are defined at the European level rather than be subject to the assessments by the local energy regulator of the appropriateness of the level of transparency on its own Member State.



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2.b - Option 2 presented by ERGEG is supported by AMAFI as being the most complete one to provide market participants with a relevant and useful information.

2.c – The quality of the information collected and delivered should be the priority before the frequency of the disclosure. To that extent, AMAFI would recommend to adopt a quarterly basis as a first step while developing the capacity to adapt or correct information released. Daily reporting should be the final step when information gathered is considered relevant and useful for market participants.

2.d – **Q. E.17-18:** As stated in our comments on your previous consultation, transparency on physical markets should remain a very high priority for CESR-ERGEG. To avoid distortion of competition that could be argued between financial actors and producers, fundamental information should be defined with professionals. Those rules would be enforced by additional sector directives that would complete some of the MAD obligations which are not applicable to the Energy sector (i.e. “front running issues”).

2.e – **Q. E.19:** AMAFI would have hoped receiving stronger recommendations from CESR-ERGEG on these issues, particularly on actions to be taken to improve the definition of fundamental information.

2.d - It is crucial that harmonised rules are set up for Europe while acknowledging that international coordination and definition of common standards would be needed. AMAFI support the analysis of the report which concludes in its (e) paragraph that “*Uniform application of any new trade transparency requirement or initiative would reduce the scope of regulatory arbitrage*”.

2.e – AMAFI insists on the necessity to establish the same transparency rules (at least for post-trade) for both regulated markets as well as MTFs or OTC trades. It should be précised that by definition and when applicable, the regulated exchange or the MTF or the Commodity broker assumes the reporting requirements on behalf of the clients.

2.f – As stated in the document, OTC trades represent a large part of the volumes. What proportion of those transactions would be excluded from any reporting for unregulated actors or located outside Europe which do not have to comply with the reporting mechanism even though they are trading with European industrials who by definition have no reporting obligation.

### 3. – Exchange of Information (Questions D.7 to D.10)

3.1 – **Q. D.7:** Again a European approach would be preferred to maintain an harmonization of the processes. Securities and Energy regulators within Europe have their specific attribution and overview capacity which can be different from one to another. Exchange of information must be set up as an automatic process rather than as a request on a case-by-case basis. The CESR-ERGEG suggestion can be only the very first step of a more proactive organisation to share information among Securities and Energy regulators.

3.2 – **Q. D.8:** The major issue is the efficiency of the process to spread information among the various securities regulators. MiFID as contributed to the implementation of such a mechanism for the securities sector. Its extension to the Energy segment should be adapted consequently. As such, home member state regulator should have the responsibility for investments firms with more than one branch.

3.3 – Confidentiality of information treated in this context must be reiterated and clearly specified in the process that will be retained.



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3.4 – **Q. D.9** : AMAFI cannot comment on the TREM system.

3.5 – **Q. D.10** : Our previous comment expressed on 3.1 would apply to this question. If set up on a case-by-case basis, an exchange of information between Energy regulator and Securities regulator would tend to limit this process to the monitoring of a specific transaction for the purpose of control or disciplinary needs. So AMAFI would support the implementation of an automatic system. This will contribute to the achievement of the proposed objective i.e. to share information. What would be the value of the proposed recommendation for the diffusion of information if among regulators the process to collect those information remains fragmented?

We will be happy to provide CESR and ERGEG with any clarification that they may require.

Yours truly,

A handwritten signature in black ink, appearing to be "D. Depras", written in a cursive style.

Dominique Depras  
Director – Market Infrastructures

C.C.: Johannes Kindler, Vice President, ERGEG