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ÖSTERREICHS

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Ihr Zeichen	Ihre Nachricht vom	Name	DW	Datum
		Dipl.-Volksw. Alexandra Neumann/Ha	211	24.11.2008

**Re: Consultation Paper: CESR and ERGEG advice to the EC in the context of the Third Energy Package, October 2008
Comments by VEÖ, Austria**

Dear Madam,
Dear Sir,

the Association of Austrian Electricity Companies (VEÖ) appreciates the opportunity to comment on the recent consultation paper: CESR and ERGEG advice to the EC in the context of the Third Energy Package regarding questions on record-keeping, transparency and exchange of information, October 2008. VEÖ represents more than 130 energy companies active in generation, trading, transmission, distribution and retail which in total cover more than 90 per cent of the Austrian electricity generation.

VEÖ supports the aim of establishing clear and equal rules for all market participants active in the EU electricity market. Therefore any rules and guidelines should harmonise and thoroughly define regulators' powers and competences, assure confidentiality of data provided, minimise administrative burden and costs placed on market players and be clear in purpose and equal in implementation.

Record Keeping

In no. 41 it is alleged that: "..., it can be argued that the definition of "energy derivatives" again only includes the derivatives in Section C (5) to (7) of Annex I of MiFID and, thus, the instruments with physical delivery falling outside MiFID are not derivatives but transactions in supply contracts."

And, as a consequence, in no. 43 it is said that: "CESR and ERGEG are therefore of the view that these non-MiFID "OTC derivatives with physical settlement" are included in the scope of the Third Energy Package."

VEÖ kindly asks for a detailed specification of the term non-MiFID “OTC derivatives with physical settlement” (no. 43) as MiFID applies on financial instruments which are fungible and defined not to be a spot contract (see Art.s 2 and 38 in Regulation 1287/2006 of 10 August 2006). Whereas the MiFID definition is complete and clear, we think that the statement “non MiFID OTC derivatives with physical settlement” is both unclear and sweeping. Furthermore the differentiation according to the Article 2 No. 8 of the Electricity Directive between “wholesale costumers” and “final costumers” may not be sufficient as companies are not able to assess definitely for what purpose the counterparts conclude a contract or transaction.

We are of the opinion that trading decisions which mean the decisions whether to buy or to sell energy in a certain point of time are a function of expectation and that the decision whether to produce in own power plants or to buy the energy is a function of variable costs and considerations about maintenance in comparison with market prices detached from all concluded and “record-kept” contracts. So we have to disagree with the analysis of the purpose of record-keeping obligations for supply undertakings in the Third Energy Package (Question 1) especially no. 67. We consider article 22(f) as a guarantee of installing a level playing field across the EU Member States in record-keeping of supply and derivative contracts data by giving “both” regulators a legal basis to investigate on a case-by-case basis the contracts concluded. As far as we understand this article, no more or other powers are covered or even given to the regulators.

VEÖ would like to underline that record-keeping obligations must be implemented in a harmonised way throughout the EU with equal contents. The objective of these record-keeping obligations should concentrate on economical needs and limit additional administrative burden and costs placed on companies. Regulators’ concerns should not focus on competition assessment.

In order to answer your question 4 on page 28: Yes, we do see practical difficulties. In spite of extensive descriptions it has still to be clearly defined who has to keep records on what for which purpose. It is not clarified why suppliers and only investment firms should fulfil different record-keeping obligations although they use the same sort of contracts.

Concerning format of records VEÖ welcomes the use of an electronic data format.

Transparency

VEÖ strongly believes that regulators’ powers and competences must be defined on EU level in an electricity internal market, especially in assessing if transparency is sufficient. Aggregated data and information should first and foremost be collected where they are already provided, e.g. exchanges and broker platforms. Most important concern has to be the confidentiality of data provided.

Exchange of Information

VEÖ does not see any need for periodical and automatic exchange of information between different types of regulators as their competences are separated. Cooperation should, if necessary, be organised on a case-by-case basis.

We hope these brief comments are helpful for your work on this important issue.

Yours sincerely,



Barbara Schmidt
Secretary General
Association of Austrian Electricity Companies