

CEER Final Advice on the Introduction of a Europe-wide Energy Wholesale Trading Passport

A CEER Conclusions Paper

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INFORMATION PAGE

Abstract

On 19 April 2011, CEER launched a public consultation on the “CEER Draft Advice on the introduction of a Europe-wide energy wholesale trading passport” (C11-WMS-15-04).

The current document (C11-WMS-15-04b) sets out CEER’s final Advice on the introduction of a Europe-wide energy wholesale trading passport. It outlines a framework for dealing with the existing shortcomings regarding regulatory access to trading on electricity and gas wholesale markets and aims to support policy makers at EU and national level to make informed decisions on next steps.

This document is accompanied by the evaluation of responses of the public consultation (C11-WMS-15-04c).

Target Audience

Energy suppliers, traders, gas/electricity customers, gas/electricity industry, consumer representative groups, network operators, Member States, academics and other interested parties.

If you have any queries relating to this paper please contact:

Ms Natalie McCoy

Tel. +32 (0)2 788 73 30

Email: Natalie.mccoy@ceer.eu

Related Documents

CEER documents

- “ERGEG and CESR advice to the European Commission in the context of the Third Energy Package - Record-keeping, transparency and exchange of information”, December 2008, Ref. C08-FIS-07-03, http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Cross-Sectoral/2008/C08-FIS-07-03_Recordkeeping_2008-12-17.pdf
- “Wholesale energy trading licenses in the EU”, Brattle Group/ Skadden, Arps, Slate, Meagher, & Flom UK LLP, 21 October 2010, http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Cross-Sectoral/2010/Brattle-Skadden%20Study%20Licensing%2021%20Oct%202010.pdf

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EXECUTIVE SUMMARY

Background and objective

Complementary to its advice on the development of a tailor made oversight regime for the wholesale electricity market¹, the Council of European Energy Regulators (CEER) – at the request of the European Commission – has been engaged since 2009 in analysing the regulatory access to wholesale energy trading as another key element on the way to create an Internal European Energy Market and to ensure the integrity of energy trading in Europe.

CEER commissioned an external study in 2009 which was finalised in autumn 2010². The objective was to determine whether existing licensing requirements serve important policy goals, or harm competition by serving as unnecessary barriers to market entry. Results were discussed at the Madrid and Florence Fora as well as in separate meetings with selected stakeholders.

The study, as well as the analysis by energy regulators, confirmed that there are currently a variety of rules and regimes regarding the access for trading companies to energy wholesale markets. This poses serious administrative burdens and barriers for more competition in the wholesale energy markets. Several of the current licensing requirements in European countries are perceived as serious market entry barriers especially for trading companies that want to be active in several Member States. Furthermore, as there are Member States with no access requirements at all, it must be noted that in those markets minimum checks on trading companies can not be guaranteed. A consistent overview on who is actually acting on the market is missing.

In April 2011, CEER launched a public consultation on the introduction of a Europe-wide energy wholesale trading passport (C11-WMS-15-04). The consultation document described existing shortcomings regarding regulatory access to trading on electricity and gas wholesale markets and set out a framework for dealing with those shortcomings. It provided recommendations on whether harmonisation of wholesale market trading access conditions was needed and if yes, what would be the best instruments to achieve it. CEER received encouraging reaction to the public consultation. CEER also hosted a workshop in May 2011 with more than 60 stakeholders and received 39 formal responses to the consultation.

This present document addresses the responses received to the consultation, presents the regulators' developed thinking and takes a final position on the relevant issues. Furthermore, this document also takes into account recent developments such as the adaption of the Regulation for Wholesale Market Integrity and Transparency (REMIT) which foresees a registration regime for market participants. The recommendations in CEER's final advice are

¹ "ERGEG and CESR advice to the European Commission in the context of the Third Energy Package - Record-keeping, transparency and exchange of information", December 2008, Ref. C08-FIS-07-03, http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Cross-Sectoral/2008/C08-FIS-07-03_Recordkeeping_2008-12-17.pdf

² Wholesale energy trading licenses in the EU, Brattle Group/Skadden, Arps, Slate, Meagher, & Flom UK LLP, 21 October 2010, http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Cross-Sectoral/2010/Brattle-Skadden%20Study%20Final%2021_Oct_2010.pdf

intended to support policy makers at EU and national level to make informed decisions on next steps.

Conclusions and key messages

Scope of a regulatory access regime to wholesale energy trading

Based on the outcome of the public consultation CEER concludes that there are objective reasons for regulating the access to trading on electricity and gas wholesale markets. Its focus shall be to ensure that certain requirements for the companies participating in wholesale energy trading are in place in order to contribute to keeping fraudsters at bay and to ensure that all market participants are known to the regulators. Furthermore, it should be clarified that the advice focuses on regulatory issues, and additional requirements for network access or starting trading activities related to TSOs or trading venues (such as energy exchanges) are not in the scope of this document.

Requirements, non-requirements and administrative standards

CEER proposes the following requirements and administrative standards for a wholesale energy market access regime:

- All trading companies active in the market should be known, including some basic information, such as the name of the company and field of activity;
- Persons effectively running the trading company should be obliged to provide certain information, for example their criminal record;
- If there is a fee for obtaining a trading license, this should be cost-based;
- The application procedure and its maximum duration should be Europe-wide standardised;
- Trading companies should demonstrate their technical, financial and organisational capacity to fulfil all energy regulatory guidelines.

The following shall not to be required: any provisions related to security of supply; specifying or requesting collateral; checking the potential economic success of applicants; or requiring the existence of a branch office in host countries outside the state which has issued the trading passport.

Implementation options

This advice discusses possible options regarding the appropriate organisational framework which ensure the proper implementation of the requirements and standards listed above. The six options discussed are:

- to continue with the status quo;
- to extend the existing MiFID (Markets in Financial Instruments Directive) passport to electricity and gas trading;

- to set certain minimum and maximum requirements for national licensing regimes;
- to introduce a registration and no national licenses;
- to prohibit wholesale energy trading licensing regimes in the EU;
- to introduce a Europe-wide Energy Wholesale Trading Passport instead of having different national licenses.

The options were evaluated against the background that a future regime should ensure a level playing field for market participants, provide an appropriate level of checks, identify all market participants and avoid unnecessary bureaucracy.

Summary of the evaluation of the implementation options for a regulatory access regime to wholesale energy trading

	Continue with status quo	MiFID extension	Max/Min requirements	Registration and no national licenses ³	No licensing regime	Europe-wide Energy Wholesale Trading Passport
Level playing field	☹	☺	☹	☹/☺	☺	☺
Appropriate level of checks	☹	☹	☹	☹	☹	☺
Identify all market participants	☹/☺ ⁴	☺	☺	☺	☹	☺
Avoid unnecessary bureaucracy	☹	☹	☹	☹/☺	☺	☺

Source: CEER evaluation

Based on these criteria, CEER concludes that a Europe-wide Energy Wholesale Trading Passport would be the best policy option to fulfil all goals. All other options have deficits in one or the other dimension. The big benefit of the Europe-wide energy wholesale trading passport is that each trading company would need to apply for such a passport only once in one EU Member State and could then use this passport in all European wholesale energy markets.

³ Besides the provisions of REMIT, the evaluation of the registration option is also dependent on its design once it is established. For example, whether such an approach would avoid unnecessary bureaucracy and lead to level playing field for wholesale energy traders cannot be ex ante assured but it depends on its implementation design.

⁴ After the introduction of a registration obligation for trading companies as foreseen by REMIT all market participants will be known.

1. Introduction

1.1. Purpose of this paper

The 3rd Energy Package calls for the creation of an Internal European Market. The Regional Initiatives⁵ have the objective of harmonising national electricity and gas markets and paving the way to an Internal European Energy Market. The European Council (at its meeting on 4 February 2011) reiterated this objective and called for full integration of energy markets by 2014⁶.

First and foremost this can be achieved for wholesale energy markets as these elements of the electricity and gas market value chain, which have made most progress in the degree of liberalisation and market integration over the last years. As prices established on wholesale markets serve as a benchmark for end-consumer retail prices, only a properly functioning and competitive wholesale market may ensure that end-consumers also benefit from it.

In addition aspects related to network access (physical supply, shipping, or the oversight regime for wholesale electricity and gas markets), the regulation of access to wholesale electricity and gas trading has been perceived by many market participants as a hampering factor for the creation of an internal European wholesale electricity and gas market. The regulatory framework is currently mainly based on national laws. The parallel existence of high access requirements in some Member States and no requirements at all in others is said to result in an unlevel playing field and (unjustified) barriers to market entry. Though the 3rd Package did not address this topic.

Therefore, in complement to its advice on the development of a tailor made oversight regime for the wholesale electricity market⁷, the Council of European Energy Regulators (CEER) – at the request of the European Commission – have been engaged since 2009 in analysing regulatory access regimes to wholesale energy trading as another key element on the way to create an Internal European Energy Market and to ensure the integrity of energy trading in Europe.

1.2. Background

Since 2009 CEER has focused on the issue of wholesale market trading access⁸ and different forms of licensing. An external study was commissioned in 2009 and finalised in autumn 2010. When tendering the study, an exchange of views with market participants took place on the potential scope. The study was conducted by Brattle and Skadden Arps (the

⁵ For more information: http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_INITIATIVES

⁶ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/119141.pdf

⁷ “ERGEG and CESR advice to the European Commission in the context of the Third Energy Package - Record-keeping, transparency and exchange of information”, December 2008, Ref. C08-FIS-07-03, http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Cross-Sectoral/2008/C08-FIS-07-03_Recordkeeping_2008-12-17.pdf

⁸ Note that the scope of this work and the subsequent conclusions are limited to trading activities in wholesale energy markets. Any measures to improve wholesale market trading access would not change or replace any domestic licensing requirements (specifically e.g. access to networks, physical supply and shipping, or balancing), but would facilitate energy trading across the internal market. These more organisational and technical issues related to physical energy generation, transport and supply shall be addressed via forthcoming framework guidelines and network codes for creating a level playing field.

Consultants) and provides advice on whether a single and EU-wide binding passport for wholesale trading in electricity and gas is useful to define appropriate and justified requirements for market participants to comply with and to reduce barriers for trading⁹.

The study explored the status quo in Germany, the Czech Republic, Hungary, UK, Spain (previous and new regime), Norway and the United States¹⁰. This overview resulted in a distinction explaining whether existing licensing requirements actually relate to a potential market failure and thus justified or whether they do not seem to be related to any shortcomings and thus considered unjustified. Based on this analysis, the consultants derived proposals for a future energy trading licensing regime.

In the course of the study, a further meeting with representatives of the European Federation of Energy Traders (EFET) was held, and preliminary results were presented. EFET members commented on the status of the study and provided valuable insight in practical licensing and trading issues.

Another survey on the existence of licensing regimes involving 22 CEER member national regulatory authorities (NRAs) showed that the need to obtain a license depends on the intended business activities (electricity or gas, physical or financial trade, wholesale market or supply of end-consumers). For electricity trading, several of the EU Member States surveyed require a “classical” license, however in the other countries a similar processes may exist. Fewer countries require such procedures for gas. As there are countries with no regulatory access requirements at all, it should be noted that in those markets a consistent overview on who is actually acting on the market is missing. Accordingly, there are no measures to limit market access to “fit and proper” trading participants.

The results of the study from Brattle and Skadden Arps, as well as the results of the CEER survey, underline the diversity of the national procedures, causing high costs for trading companies active in different national markets and could pose a barrier to market entry.

Besides the national licensing regimes, there are also the Markets in Financial Instruments Directive (MiFID)¹¹. This Directive foresees a single European passport mechanism which however only applies to some companies active in energy wholesale trading.

Companies falling within the scope of MiFID are usually undertakings active in investment services on a professional basis (e.g. performance of investment services or activities through trading financial instruments – also related to energy). There are a number of MiFID exemptions which are not discussed in detail in this document. Nevertheless, it should be noted that the characteristics of wholesale energy products have resulted in a situation where in the last years some energy trading companies decided to obtain licenses under MiFID to benefit from its EU passport function. However, as there is no clear (legally defined) interface between financial and energy trading, there remains room for interpretation and uncertainty. This is partly caused by the fact that MiFID covers a number of energy

⁹ “Wholesale energy trading licenses in the EU”, Brattle Group/ Skadden, Arps, Slate, Meagher, & Flom UK LLP, 21 October 2010, http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Cross-Sectoral/2010/Brattle-Skadden%20Study%20Final%2021_Oct_2010.pdf

¹⁰ See footnote 9.

¹¹ Markets in Financial Instruments Directive 2004/39/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0039:EN:HTML>

wholesale products whereas it provides for exemptions from the licensing requirements benefiting particularly energy companies.

This draft advice also analysed the question which of the experiences gained with the MiFID license for a European licensing regime – such as the role of host and home regulators – could be used for the wholesale energy trading sector.

A potential preliminary design of the trading licence was presented at the last Florence Forum (December 2010), which welcomed these initial ideas.

This final advice addresses the responses received to the consultation, presents the regulators' developed thinking and takes a final position on the relevant issues. The recommendations in this final advice are intended to support policy makers at EU and national level to make informed decisions on next steps.

1.3. Recap of the CEER public consultation

On 19 April 2011 CEER launched a public consultation (ending on 17 June 2011) on its draft advice on the introduction of a Europe-wide energy wholesale trading passport (C11-WMS-15-04). The consultation document described existing shortcomings regarding regulatory access to trading on electricity and gas wholesale markets and set out a framework for dealing with those shortcomings. It provided recommendations on whether harmonisation of wholesale market trading access conditions was needed and if yes, what would be the best instruments to achieve it. CEER had an encouraging reaction to the public consultation. CEER also hosted a workshop in May 2011 with more than 60 stakeholders and received 39 formal responses to the consultation.

In its consultation document, CEER concluded that there are objective reasons for regulating the access to trading on electricity and gas wholesale markets. The focus of this regime should be to ensure that certain requirements for the companies participating in wholesale energy trading were in place in order to contribute to keep fraudsters at bay and that all market participants were known to the regulators. Trading companies should demonstrate their technical, financial and organisational capacity to fulfil all energy regulatory requirements. On the other hand, CEER did not recommend that the regulatory access regime attempt to check the companies' potential economic success. Finally, it should be clarified that the scope of the CEER advice is on regulatory issues and not on additional requirements for network access or starting trading activities related to TSOs or trading venues (such as energy exchanges).

In the draft advice, CEER discussed possible options regarding the appropriate organisational framework which ensures the proper implementation of the requirements and standards listed above. The four options discussed in the draft advice were:

- to continue with the status quo and not introduce any changes;
- to extend the existing MiFID (Markets in Financial Instruments Directive) passport to electricity and gas trading;
- to set certain minimum and maximum requirements for national licensing regimes;

- to introduce a Europe-wide Energy Wholesale Trading Passport.

The options were evaluated against the background that a future regime should ensure a level playing field for market participants, provide an appropriate level of checks, identify all market participants and avoid unnecessary bureaucracy.

Based on those criteria, CEER concluded that a Europe-wide Energy Wholesale Trading Passport would be the best policy option to fulfil all goals. All other options have deficits in one or the other dimension. The big benefit of the Europe-wide Energy Wholesale Trading Passport would be that each trading company would need to apply for such a passport only once in one EU Member State and could then use this passport in all European wholesale energy markets. It was recommended that the national regulatory authorities be the entities issuing the passport and monitoring legal compliance by the passport holders. The Agency for the Cooperation of Energy Regulators (ACER) could compile a comprehensive database with all trading companies active at European level. The national regulatory authorities would deliver the respective information to ACER. In order to ensure a level playing field, application and supervision procedures should be standardised Europe-wide. Furthermore, effective collaboration procedures between the home regulatory authorities of the passport holder and national regulatory authorities in the Member States where passport holders were also active should be installed – especially for prosecution and enforcement in case of breaches.

In addition to inviting stakeholders and market participants to provide general comments to the consultation and participate in the discussions on the document, CEER asked the respondents a number of specific questions related to the scope and applicability of the draft advice.

The consultation questions, list of respondents (with the exemption of the confidential responses) and detailed evaluation of the received responses are available in the Evaluation of Responses document, accompanying this final advice (Ref: C11-WMS-15-04c). The non-confidential responses are published on the CEER website¹².

1.4. Responses received to the Public Consultation

In general, most respondents welcomed CEER's approach to substitute the multitude of European trading licenses by a Europe-wide energy wholesale trading passport.

Of the responses received, the key messages from a significant number of respondents are that:

- The current situation with many national trading license requirements creates high cost and barriers to trade across Europe. Any new approach should aim at the reduction of bureaucratic barriers for energy traders.
- The introduction of a Europe-wide Energy Wholesale Trading Passport would be a very good option and an important step forward in the process of creating the internal energy market.

¹² http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CROSS_SECTORAL/Europe-wide%20trading%20passport/Results

- Nevertheless, the expected benefits strongly depend on the final design of such a regime.
- Furthermore, additional options should be taken into account. In particular the abolishment of any energy wholesale trading licenses in all states of the European Economic Area and the introduction of a mere registration process were named in this context.

However, some respondents also criticised that:

- The introduction of a Europe-wide trading passport would increase bureaucracy in those countries that currently do not have a trading licence. This would be especially true for those trading companies that are only active in one of these countries.
- The listed requirements and administrative standards for obtaining a trading passport are not specific enough. Several respondents asked for a more concrete and detailed list of requirements.

1.5. Recent developments

In September and October 2011 the European Parliament and the European Council adopted the “Regulation on Wholesale Energy Market Integrity and Transparency” (REMIT). The Regulation foresees a registration for wholesale energy market participants. In accordance with REMIT, all market participants in the European Union will have to register once with the national regulatory authority (NRA) of the Member State where they are established, before they can enter into wholesale trading activities in the European Union. In order to register, market participants will be obliged to provide certain information to the NRA. This will include details relating to value added tax number, place of establishment, person responsible for operational and trading decisions, ultimate controller or beneficiary of market participant’s trading activities. NRAs will transmit this information to the Agency for the Cooperation of Energy Regulators (ACER), who will establish a European register of market participants. Thereby, one of the goals advocated by CEER, the identification and transparency of all market actors in European wholesale electricity and gas trading, will be ensured.

At the same time, the REMIT provisions do not touch the existing national licensing regimes. As a consequence, market participants active in various countries will still need to get a trading license in every country that requires it. However, the Regulation foresees that *“one year after the establishment of the register the Commission should assess in cooperation with the Agency [...] and the national regulatory authorities the functioning and the usefulness of the European register of market participants. If deemed appropriate based on this assessment, the Commission will consider presenting further instruments to enhance the overall transparency and integrity of wholesale energy markets and to ensure an EU-wide level playing field for market participants.”* (Recital 21 of REMIT).

As national energy regulators will be part of this assessment, CEER perceives this advice as an input to the exercise.

1.6. Review of the advice in view of responses received and of recent developments

The advice has been reviewed and partly restructured in view of the recent developments and the responses received. The adoption of REMIT and the foreseen registration of all trading companies by national regulatory authorities were taken into account. In particular, the analysis of the implementation options in Chapter 3 as well as the conclusions in Chapter 4 were adapted in the light of these developments.

The second major area of changes concerns stakeholders' input on the analysis of the potential options listed in Chapter 3. As suggested by several respondents, two additional options were added. Firstly, the option of introducing registration as foreseen under REMIT and – at the same time – the abolishment of all existing trading licenses and secondly, the option of no registration and no licensing (neither at national or at European level) are now also addressed in Chapter 3. Furthermore, it was clarified that from CEER's perspective the introduction of a Europe-wide wholesale energy trading passport will also include the abolishment of all national energy wholesale trading licensing regimes.

2. Scoping, requirements and administrative standards of a wholesale energy market access regime

In the patchwork of individual national licensing regimes, access requirements to wholesale energy markets differ. MiFID requests another set of obligations to be fulfilled focused on private investor protection and the control of financial system risks. Several of the current trading licensing requirements in European countries are perceived as serious market entry barriers especially for trading companies that want to be active in several countries. Question that has been posed by stakeholders are: Why do we need any regulatory access regimes to wholesale electricity and gas trading in the European Union? Why are wholesale trading licensing regimes not completely abolished in the European Union? From their point of view, this would significantly reduce costs for trading companies.

CEER has thoroughly discussed the necessity of different requirements and the scope of a wholesale energy market access regime. The CEER evaluation presented in this chapter was guided by the following questions: Are there valuable reasons for derogating from the principle of free movement of goods and services and is the resulting requirement proportionate in relation to the purpose of the measure? Possible regulation of access must be based on objective, non-discriminatory criteria so that it is not used arbitrarily. The procedure should not be such that it deters the companies concerned from pursuing their business. Following the European legal principles the proportionality and efficiency of the measures have to be set in contrast to the effects. The measure shall keep the bureaucratic burdens as low as possible and check the efficiency of the options against the alternatives. Next we address the following issues:

- Law enforcement challenge;
- Necessity and degree of checks for potential market participants;
- Administrative standards.

2.1. Challenges in law enforcement

One function for a regulatory access regime to trading on electricity and gas wholesale markets – often advocated – relates to the challenge of minimising the ability of companies to evade law enforcement. At the most basic level, regulators must know all market participants in order to execute their supervisory function efficiently and effectively towards the supervised entities. This includes basic details of each trading company participating in wholesale electricity and gas trading, information on the field of activity of the company (electricity trading, gas trading or both), if the company is only active in energy trading or also in energy supply and whether the energy sector is their exclusive field of activity or whether they are also active on other markets (e.g. financial, other commodities). In addition, it would also be of value to know whether a trading company is also active in other countries. If a trading company intends to be active in various countries, it would need to specify its fields of activity for each of these countries. Currently, such an overview of supervised entities with the above-mentioned features does not exist. In several countries a registration is not requested and the MiFID passport captures only a small share of energy trading companies. A revised regulatory access to trading on electricity and gas wholesale energy markets should establish such a record.

A second requirement often based on the argument of law enforcement concerns is to open a branch office in the country of activity. This is the case in several European countries. Regulators argue that trading companies might attempt to avoid the jurisdiction of the host country by establishing their headquarters outside of it. By keeping assets outside of the country or choosing a home jurisdiction whose laws prevent the disclosure of information, the trading companies could seek to escape liability for fines or adverse judgments. The argument might be applicable where no cooperation agreement between host and home countries exists. However, CEER has strong concerns regarding the necessity and legality of this requirement within the EEA, as detailed legal and administrative rules for cooperation exist or can be defined. The requirement for a branch office rather seems to pose a major impediment to entering a new market as it entails both one-off set-up and ongoing costs associated with reporting, accounting and transfer pricing.

CEER concludes that a regulatory access regime to electricity and gas wholesale markets should require registration of companies to ensure that the regulator knows all market participants. Requiring a presence in at least one EEA Member State is sufficient to minimise law enforcement challenges as well as to ensure that rules for legal and administrative cooperation exist. This obviates the need for a second jurisdiction to impose any additional presence requirements. CEER recommends that future legislation should foresee a prohibition for Member States to require additional branch offices.

2.2. Necessity and degree of checks for potential market participants

Wholesale electricity and gas markets are relatively young. Trust in the market and its reliability is highly important to ensure the integrity of the markets. A function of regulatory access to electricity and gas wholesale markets could be to provide a standard for checking market participants who become active in the market. At the same time, checks must not overburden supervising authorities. The focus shall be on providing safeguards against criminals and fraudsters entering the market. The European greenhouse gas emission trading market has shown that fraudsters and criminal subjects can cause tremendous damages. Different requirements are set in MiFID and in national licensing regimes. Therefore the question is arising, what degree of screening is recommended?

2.2.1. Basic capability and liability check

Firstly, before allowing companies to participate in the market, a requirement might be that trading companies show that their technical and organisational capacity is sufficient and that they fulfil all energy regulatory guidelines. This includes e.g. that trading companies should be aware of their reporting requirements and should be technically and organisationally able to fulfil them. Secondly, regulatory access to electricity and gas wholesale markets supplemented by an oversight regime should provide for the possibility that irresponsible or criminal traders can be identified and thus prevented from entering or re-entering the market. The degree of detail of the checks remains to be determined. Some lessons can be drawn from the UK financial regulator's "fit and proper person" test, presented in the Brattle/Skadden study¹³. The "fit and proper person" test is a standard which combines both objective and subjective elements to provide a regulator with the flexibility to determine

¹³ See pages 48-49 of the Brattle/Skadden study on "Wholesale energy trading licenses in the EU", Brattle Group/Skadden, Arps, Slate, Meagher, & Flom UK LLP, 21 October 2010, http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Cross-Sectoral/2010/Brattle-Skadden%20Study%20Licensing%2021%20Oct%202010.pdf

whether a particular (legal) person should be allowed to participate in particular markets under the relevant circumstances. For regulatory access to trading on electricity and gas wholesale energy markets, the checks should be organised in a practicable way, especially for smaller regulatory authorities.

CEER recommends focusing checks on the persons effectively directing the company and to require the applicants to include statements that the personnel involved in trading has not been convicted of criminal offences, offences of dishonesty, fraud or financial crimes or any other adverse findings that disqualifies them from participating in wholesale energy trading. The licensee shall also continuously be obliged to submit updates to the competent regulatory authority in case any relevant changes occur. Missing and false statements would have consequences; in the last stage the access permission could be revoked.

2.2.2. Economic success check

Some regulatory regimes foresee detailed requirements in the sense of ensuring that not only the trading companies but also the traders will be successful in the market. This includes quality checks such as trading exams, a presentation of a business plan, proof of the success of the trader's activity or any other requirements related to the competence of the applicant's staff. CEER perceives such requirements as problematic not only because they might be ineffective but in addition they might impose an administrative burden on the applicant that could dissuade market entry. CEER believes that companies have an own interest in avoiding incompetent managers because they will suffer if the managers fail. Energy trading companies themselves are already highly incentivised to trade successfully, since they will lose their investment in the company if they fail. At the same time, it is highly doubtful that any requirement at the time of the license application would be successful in screening out candidates that are likely to fail in the market at some point in the near future. Furthermore, there are other private institutions (such as energy exchanges) closer to the business that could organise relevant exams. CEER is of the opinion that regulatory access to trading on electricity and gas wholesale energy markets should neither double those know-your-customer-checks nor substitute them.

2.2.3. Collaterals – Systemic risk minimisation

A topic that is currently debated in the reforms of the financial market framework is the concern that an under-collateralised energy trader might become "too big to fail" and its rescue might require public funds. The regulatory access regime to trading on electricity and gas wholesale energy markets could potentially act as a tool to specify collateral amounts.

Although insolvency is recognised as a threat, CEER hesitates recommending that the regulatory access regime specify the collateral amounts. Firstly, it is perceived to be more effective to place responsibility for checking collateral requirements on a party who has a direct interest in the quality of the checking procedure. A counterparty has a direct interest in a trader having sufficient collateral to cover a trade, because it is the counterparty that would suffer if the trader went bankrupt. Organised exchanges and in particular clearing houses have sophisticated rules regarding the posting of collateral and credit. In contrast, a regulator or Ministry has a less direct interest in these issues, and therefore has a weaker incentive to carry out effective checks, or even to know which are the most appropriate checks to perform. Secondly, different parties have different collateral requirements. Whereas a counterparty will generally be interested in collateral that covers the margin on outstanding trading position, TSOs are concerned that network users behave responsibly and have sufficient collateral to cover any imbalance costs in the event of bankruptcy. Putting collateral requirements in a trading license would also impose standards on non-standard products

traded over the counter (OTC). European regulators fear that it will be difficult to define adequate requirements in an access regime which would be static and hardly related to the reality of a trading world where collateral requirements are highly dynamic.

CEER is of the opinion that the collateral requirements and the concept of consumer protection as designed for the financial sector in MiFID could have detrimental effects on energy trading. Energy companies, especially small and medium-sized companies, rely on the possibility to conduct hedging activities with physical underlying to cover prospective delivery commitments, the latter not being taken into consideration as collaterals. This view is shared by the respondents to the public consultation. Should MiFID impose obligations on such utilities to attain a banking license, tied to obligations for underlying capital plus requirements for a widespread liquidity management, the respondents feared that local utilities might have to give up their business within the energy wholesale market. In effect, such a measure might – in contrast to its intention – introduce a systemic risk to the sector as the market share and thus the role of a few large companies and financial institutions could increase while energy suppliers might be forced to exit the wholesale market due to overly burdensome requirements.

In summary, CEER agrees that existing institutions and trading arrangements are a better mechanism for setting collateral requirements than regulatory access to trading on electricity and gas wholesale energy markets.

2.2.4. Coverage of supply security aspects

Another possible question concerning the scope of a regulatory access regime to trading on electricity and gas wholesale energy markets is whether it should also cover supply aspects. In several countries, wholesale and supply licenses are combined. System security could be threatened by unexpected imbalances – for example a trader failing to deliver a large volume of electricity or gas which could make it difficult for the TSO to balance the system. We might want to block those ‘irresponsible’ parties from the market and protect consumers by laying down minimum behaviour standards. Requirements might be set e.g. to source gas from several sources or to sign the grid code.

CEER agrees that these requirements might be relevant for supply purposes but they do not apply to all firms active in wholesale energy trading. For example, companies involved in pure financial trading and trading in derivatives will not threaten security of supply, since these trades are settled far in advance of delivery or do not involve physical settlement at all. Signing grid codes only makes sense if there is an intention to physically deliver electricity or gas. Given that trading companies will in any case sign up to the grid code, it should not be required as a condition for obtaining a wholesale energy trading license. Doing so could unnecessarily lengthen the time required to obtain a license.

CEER recommends a clear separation between wholesale energy trading and supply licenses. The security of supply aspects should be handled in network agreements or supply licenses if the company is involved in physical delivery.

2.3. Administrative standards

Another source of potential discrimination and exaggerated market entry barrier might result from missing or disadvantageous administrative standards. The administrative standards will strongly depend on the way a new regulatory access to trading on electricity and gas

wholesale energy markets regime is implemented (discussed in Chapter 3) but some basic lessons can be drawn based on the current regimes.

2.3.1. Fees

The Consultants have identified in the wholesale energy trading licenses study two types of charging philosophies for licenses – “cost-based” vs. “turn-over or revenue-based” approaches¹⁴. Cost-based licenses are designed to cover either the cost of issuing the license or the cost of the energy regulator. Revenue-based license regimes apply a fee according to a trader’s turnover and act similar to a tax. Experiences in some European countries show that exaggerated fees might act as a serious market entry barrier for trading companies. Even though it is generally understandable that trading companies should bear the cost they provoke, fees should not exceed these costs. Therefore, CEER reasons that a fee for obtaining a trading license should be cost-based.

2.3.2. Application processing standards

The study showed that application processing for a trading passport has a high potential to act as market entry barrier and to discriminate between applicants¹⁵. Extensive checks by the responsible regulatory authority should be committed to processing applications within an adequate period of time. A duplication of application and assessment processes should be avoided.

The application procedure and its maximum duration should therefore be Europe-wide standardised. This would also allow the trading passport to be valid in all EEA countries once issued, which would significantly reduce bureaucratic cost (see option on a Europe-wide energy wholesale trading passport in Chapter 3.6).

2.3.3. Fines, infringement and collaboration between authorities

In the case of infringement of the requirements and obligations, regulatory authorities should have the ability to impose sanctions. The revocation of a trading passport could only be seen as a last resort in cases of severe breaches. It should be possible to appeal a revocation or fine through a dedicated court. Procedures shall be harmonised to avoid non-harmonised behaviour of the supervising authorities. In case of a passport style regime, which would allow market participants to trade outside of their home country, effective collaboration procedures between the home and the host regulator should be in place. The provisions of the MiFID licensing regime might constitute good practice examples. Clear standards are provided in MiFID on the timing and the procedures of collaboration between home and host regulators¹⁶.

2.3.4. Language

The study has shown that the communication between the licensee and the licensing authority often has to be conducted in the local language¹⁷. This is no problem for the

¹⁴ See in “Wholesale energy trading licenses in the EU”, Brattle Group/ Skadden, Arps, Slate, Meagher, & Flom UK LLP, 21 October 2010, http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Cross-Sectoral/2010/Brattle-Skadden%20Study%20Licensing%2021%20Oct%202010.pdf

¹⁵ See footnote 9.

¹⁶ See MiFID Directive 2004/39/EC, Articles 61 and 62 and Annex 4.

¹⁷ See page 15 of the study on “Wholesale energy trading licenses in the EU”, Brattle Group/ Skadden, Arps, Slate, Meagher, & Flom UK LLP, 21 October 2010, http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Cross-Sectoral/2010/Brattle-Skadden%20Study%20Licensing%2021%20Oct%202010.pdf

companies in their home countries but for foreign companies it is referred to as a barrier to market entry and could generate high costs especially if a trading company is active in several countries. Therefore, energy regulators consider it useful that a new regulatory access to electricity and gas wholesale markets regime takes this aspect into consideration.

2.4. CEER recommendations concerning scoping, requirements and administrative standards of a wholesale energy market trading access regime

CEER concludes that in general, there are objective reasons for a regulatory access regime to trading on electricity and gas wholesale markets. The focus of the regime should be to ensure that all market participants are known to the regulators and minimum quality requirements for the companies participating in wholesale energy trading are in place in order to promote market confidence and contribute to keep fraudsters at bay. It should not attempt to check the companies' potential economic success. In the interest of keeping the energy market well-functioning (see REMIT), the regulatory authority has the duty to oversee the energy sector (electricity and natural gas) and for this reason it needs relevant information on who is acting and what the actors are doing on its market.

2.4.1. Requirements

Based on the above reasoning, CEER concludes that a wholesale energy market access regime shall require:

- Companies that want to participate in trading on electricity and gas wholesale markets in the European Union to have a legal presence in at least one EEA Member State or in a country that has agreed to the necessary rules for legal and administrative cooperation in order to minimise the ability of companies to evade law enforcement.
- To establish a record of who is active in the market. This shall include basic details on the company, a list of persons who effectively direct the business, fields of activity, as well as information in which countries the trader will be active.
- Applicants to prove that the people effectively directing the firm and the firm are able to carry out their compliance duties, to guard against fraudulent behaviour. Thus applicants should be obliged:
 - to prove that the people effectively directing the company have not been convicted of criminal offences, offences of dishonesty, fraud or financial crimes or any other adverse findings that disqualifies them from participating in the wholesale energy trading. They should also provide a statement that none of the personnel directly involved in trading is subject to any of the above mentioned cases;
 - to have adequate systems and controls to undertake such transactions as an ongoing business;

- to show they are organised so that they may adequately fulfil the regulatory requirements mandated by the relevant authority and any other relevant statutory or regulatory obligations;
- to agree that they will not engage in, or aid or abet, any conduct which may have the effect of disrupting, manipulating the supply, price or transactions in electricity or gas; or which may have the effect of creating a misleading impression as to the present or future demand for or price of wholesale electricity or gas (“good behaviour clause”) as required by REMIT.

2.4.2. Non-Requirements

CEER recommends that a regulatory access regime to trading on electricity and gas wholesale energy markets shall not require:

- To fulfil requirements related to supply security. It is clearly requested to separate wholesale energy trading from supply licenses.
- To provide inappropriate proof of the quality of the company, especially like:
 - To demonstrate that the employees of the firm are skilled at trading (trading exams);
 - To decide whether to issue trading licenses based on the expected profitability of the applicant, e.g. requirement to present a business plan;
 - To demonstrate a minimum level of capitalisation or post any collateral requirements.
- To establish a branch office in the country – such a requirement is, in any case, contrary to European law.

2.4.3. Administrative standards

CEER reasons that the responsible regulatory authorities should obey certain administrative standards for the assignment of a trading passport and the supervision of the licensee in order to minimise bureaucratic cost and potential discrimination. These administrative standards should include:

- Passport fees should be cost-based;
- Sanctions should be foreseen in case of infringement of passport requirements; the revocation of a trading passport should be seen as a last resort only. Appeals to a revocation should be possible e.g. at a dedicated court or other institution;
- In case of a passport style regime, effective collaboration procedures between the home and the host regulator should be in place. The respective provisions of the MiFID licensing regime should be the basis for this purpose;

- The application procedure and its maximum duration should be Europe-wide standardised.

3. Evaluation of options

In the chapters above, the basic cornerstones of a regulatory access to trading on electricity and gas wholesale energy markets were developed. As described above, such a regime should ensure a level playing field for market participants, provide an appropriate level of checks, identify all market participants and avoid unnecessary bureaucracy.

In the following, different possible options are analysed in order to identify the appropriate organisational framework which ensures the proper implementation of these cornerstones.

3.1. Continue with the status quo

Currently, there is no European level harmonisation of the requirements for participating in the wholesale energy market. While there are some Member States with no access restriction at all, there are others with considerable burdens for market access. This inconsistency is one of the major obstacles to a level playing field for all market participants – especially as a convergence of the different national regimes has not been observed in the past. As trading licenses are generally only valid in one country, the status quo leads to high bureaucratic burdens especially for trading companies active in several Member States. Furthermore, as there are Member States with no licensing regime at all, up to now not all market participants can be identified and an appropriate level of checks cannot be guaranteed. REMIT foresees the introduction of a registration regime for market participants nine months after entry into force. In the future, therefore REMIT will at least ensure that all trading companies will have to register with one national regulatory authority before they can enter into transactions. By then, the identification of all market participants will be given. Nevertheless, the introduction of a registration regime would either secure the appropriate level of checks as described above or help to reduce the bureaucratic burdens.

Against the background of these findings, we see a need for action. To maintain the current system is not a valid option to reach the above mentioned goals.

3.2. Extension of MiFID passport to electricity and gas trading

Under the Markets in Financial Instruments Directive (MiFID)¹⁸, a single passport mechanism has already been established through the MiFID licensing regime. At the moment due to MiFID exemptions for commodity trading, only a few energy companies in Europe hold a MiFID passport. In order to have a Europe-wide standardised approach, one option could be to extend the coverage of the MiFID passport to all companies trading on the wholesale electricity and gas markets while in return abolishing all national licensing regimes. This would have the benefit that companies that want to participate in wholesale electricity and gas trading in the European Union would only have to apply once for a MiFID license. However, requiring a MiFID license for all companies has also some serious disadvantages for the respective companies in the energy markets as the requirements are designed for investment services and for consumer protection in investment services¹⁹. As also briefly

¹⁸ Markets in Financial Instruments Directive 2004/39/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0039:EN:HTML>

¹⁹ European Energy Regulators' response to the European Commission's consultation on the MiFID review, Ref. C11-FIS-23-04, 2 February 2011, <http://www.energy->

described in Chapter 2.2.3, it would imply additional requirements (such as proof of experience or inadequate capital requirements that do not take into account physical underlyings), causing unnecessary additional costs and bureaucratic burdens for the respective trading companies – especially for small and medium-sized energy companies that do not constitute a systemic risk either to the energy or to the financial sector. In effect, such a measure might – in contrast to its intention – introduce a systemic risk to the sector. Instead of energy suppliers more banks and financial institutions would carry out transactions on European wholesale electricity and gas markets. This would in addition have negative effects on competition.

Against this background, CEER is of the opinion that the extension of the MiFID licensing regime would not be appropriate for the energy wholesale markets.

3.3. National licensing regimes with a set of minimum and maximum requirements

An option to help achieve a certain level of harmonisation between Member States would be a continuation of national licenses constrained by a set of minimum and maximum requirements. Such an approach would be an improvement compared to the current situation. Exaggerated burdens for entering the market could be avoided, while at the same time a certain level of appropriate checks could be ensured and at least a more level playing field for the energy wholesale market could be reached. Situations where market participants are unknown to the national regulatory authorities could be avoided by setting the adequate requirements.

Nevertheless, energy trading companies active in several Member States would still need to apply for a license in each market. Even though bureaucratic burdens in some Member State might decrease, the fact that trading companies need to apply for several licenses would still imply significant bureaucratic costs. Furthermore, it has to be taken into account that this option would lead to the introduction of licenses also in those Member States that have no licensing regimes so far. Overall, this would lead to a huge increase in bureaucracy and costs for trading companies.

There would be a need for a Europe-wide legal basis to implement such minimum and maximum level of requirements. As a second step, there would be a need to implement the European requirements in national law.

3.4. Registration and no national licenses

Some respondents to the consultation believed that registration for market participants as foreseen by REMIT might already be sufficient to meet regulators' need to have an overview of companies active on the market. In accordance with REMIT, all market participants will have to register with one national regulatory authority before they can enter into transactions. Every market participant is required to register only once. In order to register, trading companies will be obliged to provide certain information to the national energy regulatory authority. National regulatory authorities will transmit this information to the Agency for the

Cooperation of Energy Regulators (ACER), who will establish a European register of market participants.

Pursuant to REMIT, the foreseen registration does not substitute however the existing licensing regimes. The introduction of this registration obligation and an abolishment of all national licensing regimes at the same time would lead to a situation where all traders throughout Europe are known to regulators. Whether such an approach would avoid unnecessary bureaucracy and would lead to a level playing field for wholesale energy traders cannot be ex ante assured. REMIT foresees the registration of all wholesale energy trading companies by national regulatory authorities. Article 9 of REMIT lists several items of information that have to be part of such a registration. Nevertheless, if national regulatory authorities ask for information beyond the listed ones, the registration procedure might lead to different bureaucratic burdens in different Member States and consequently to an unlevel playing field.

Furthermore, this registration would not lead to an appropriate level of checks. A mere registration would not ensure that the necessary minimum quality requirements for the companies participating in wholesale energy trading are in place. Whereas a licensing regime represents a tool to identify irresponsible or criminal traders and exclude them from the market, a mere registration does not cover this possibility.

3.5. Prohibition of wholesale energy trading licensing regimes in the EU

The prohibition of all wholesale trading licenses regimes in Europe and at the same time the absence of a registration obligation is a hypothetical solution as REMIT will enter into force at the end of 2011.

Nevertheless, this would constitute a situation with a level playing field for all market participants as there would be no limitations to market entry at all. Furthermore, trading companies would not need to undertake any action before entering the wholesale market. Accordingly, unnecessary bureaucratic barriers would be avoided. However, at the same time this option would lead to a situation where no checks at all could be undertaken and market players would not be known to regulatory authorities.

3.6. Europe-wide Energy Wholesale Trading Passport and a prohibition of national licenses

Regulatory access to trading on wholesale energy markets could also be granted by a Europe-wide Energy Wholesale Trading Passport. Such a trading passport would be issued at Member State level by the national regulatory authorities. Each trading company would need to apply for such a passport only once and could then use this passport on all European wholesale energy markets. In parallel, all national regulatory access regimes to wholesale energy trading would be abolished. When issuing the passport, all national regulatory authorities would be limited to the general requirements developed in Chapter 3 (with a more detailed specification and approach in order to ensure a level playing field). In order to get a comprehensive overview of all market participants, national regulatory authorities would inform ACER of all applications for a trading passport. This way, ACER could provide an overview of all trading companies active in Europe. Furthermore, ACER could also provide a list with trading companies whose application was rejected. This way it

could be avoided that companies try several times to get a passport from different authorities.

With a single passport valid in all EU Member States, burdens for entering the energy trading market would be significantly reduced. Trading firms would not need to apply several times for access permission. This would ensure a level playing field for market participants and lower bureaucratic costs at the same time. Also, those Member States who have no access requirements to trading on wholesale energy markets to date would need to introduce the Europe-wide Energy Wholesale Trading Passport. Nevertheless, this does not lead to additional bureaucracy for trading companies active in more than one Member State (for these companies it will mean less bureaucracy).

3.7. Conclusion on the implementation options

The analysis of different possibilities shows that most options for the implementation of a wholesale energy market access regime do not meet the necessary basic objectives. The following table provides an overview of the different options and the necessary objectives which are to be met:

	3.1 Continue with status quo	3.2 MiFID extension	3.3 Max/Min requirements	3.4 Registration and no national licenses ²⁰	3.5 No licensing regime	3.6 Europe- wide Energy Wholesale Trading Passport
Level playing field	☹	☺	☹	☹/☺	☺	☺
Appropriate level of checks	☹	☹	☹	☹	☹	☺
Identify all market participants	☹/☺ ²¹	☺	☺	☺	☹	☺
Avoid unnecessary bureaucracy	☹	☹	☹	☹/☺	☺	☺

Source: CEER evaluation

²⁰ Besides the provisions of REMIT, the evaluation of the registration option is also dependent on its design once it is established. For example, whether such an approach would avoid unnecessary bureaucracy and lead to level playing field for wholesale energy traders cannot be ex ante assured, but it depends on its implementation design.

²¹ After the introduction of a registration obligation for trading companies as foreseen by REMIT, all market participants will be known.

Not changing anything is clearly not an option, as the current system does not meet any of these objectives. The extension of the existing MiFID trading license would hardly cover companies trading physical products and the MiFID requirements seem too restrictive for energy wholesale trading. The implementation of minimum and maximum requirements would ensure the integrity of the market and could provide an overview of the markets and the participants but would lead to additional restrictions in market access. The introduction of registration and the abolishment of all trading licenses would help to identify all market participants but an appropriate level of checks would not be given. The abolishment of all licensing and registration regimes at the same time would create a level playing field and reduce bureaucracy but the integrity of the market and an overview of the participants would not be guaranteed.

The introduction of a Europe-wide Energy Wholesale Trading Passport appears to be the most proper solution. Such an approach would ensure transparency and integrity and would lower the market entry barriers at the same time. As there are several trading companies already holding a license under MiFID there should not be an obligation to apply additionally for a trading passport. In order to keep bureaucracy low, each trader should be covered either by MiFID or by the trading passport. National regulators and ACER should have access to a list of all trading companies licensed under MiFID.

4. Conclusions and taking the work forward

Today, there are very different forms of wholesale market access throughout Europe. The supervision of the wholesale energy market currently consists of a patchwork of individual national licensing regimes. CEER recognises that this poses administrative burdens and barriers for competition in wholesale energy markets. Several of the current licensing requirements in European countries are perceived as serious market entry barriers, especially for trading companies that want to be active in several countries. Furthermore, as there are countries with no access requirements, it should be noted that in those markets a consistent overview on who is actually acting on the market is missing.

Based on these findings, CEER recommends certain requirements and administrative standards for a wholesale energy market access regime:

- All trading companies active on the market should be known, including some basic information such as the name of the company, field of activity and the ultimate ownership,;
- Persons effectively running the trading company (management) should be obliged to provide certain information, for example their criminal record;
- If there is a fee for obtaining a trading license this should be cost-based;
- The application procedure and its maximum duration should be Europe-wide standardised;
- Trading companies should demonstrate their technical, financial and organisational capacity to fulfil all energy regulatory guidelines;
- A branch office, collateral amounts, an economic success check or any provisions relating to security of supply should not be required.

There are generally different options for how to implement the above-mentioned requirements. A future regime should ensure a level playing field for market participants, provide an appropriate level of checks, identify all market participants, avoid unnecessary bureaucracy and ensure effective enforcement capability.

CEER believes that a Europe-wide Energy Wholesale Trading Passport and the abolishment of all national regulatory access regimes to wholesale energy trading is the most appropriate way to implement the necessary requirements and administrative standards. Such a passport should be issued at Member State level by the national regulatory authority where the applying trading company is established. Each energy wholesale trading company would need to apply for such a passport only once and could then use this passport on all European wholesale energy markets. ACER could compile a comprehensive database with all trading companies active in the European wholesale energy markets. National regulatory authorities would deliver the respective and regularly updated information to ACER. At the same time, all regulators agree that the objective of achieving an effective collaboration procedure regarding the host regulator should be met – especially concerning prosecution and enforcement in case of breaches. The relevant provisions of the MiFID licensing regime should be taken into consideration.

With a single passport valid in all EU Member States, burdens for entering the energy trading market would be significantly reduced. Trading firms would not need to apply several times for access permission. This would ensure a level playing field for market participants and lower bureaucratic costs at the same time. Nevertheless, such a trading passport should only be introduced after ACER is fully ready to fulfil its tasks regarding market monitoring as described in REMIT.

REMIT foresees the introduction of a registration for all trading companies and the establishment of a European register. CEER believes that the introduction of this registration obligation does not lessen the need for a Europe-wide energy wholesale trading passport. The foreseen registration does not substitute the different licensing obligations in Europe and will not lead to a reduction of the bureaucratic burdens for trading companies. Nevertheless, REMIT also foresees a possibility for a review of the registration regime. Recital 21 of REMIT states that *“one year after the establishment of that register, the Commission should assess in cooperation with the Agency, [...] and with the national regulatory authorities, the functioning and the usefulness of the European register of market participants. If deemed appropriate based on that assessment, the Commission should consider presenting further instruments to enhance the overall transparency and integrity of wholesale energy markets and to ensure a Union-wide level playing field for market participants.”* CEER believes that this assessment should consider the approach of a Europe-wide energy wholesale trading passport.

Annex 1 – CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national regulators of electricity and gas at EU and international level. Through CEER, a not-for-profit association, the national regulators cooperate and exchange best practice. A key objective of CEER is to facilitate the creation of a single, competitive, efficient and sustainable EU internal energy market that works in the public interest.

CEER works closely with (and supports) the [Agency for the Cooperation of Energy Regulators \(ACER\)](#).

ACER, which has its seat in Ljubljana, is an EU Agency with its own staff and resources. CEER, based in Brussels, deals with many complementary (and not overlapping) issues to ACER's work such as international, smart grids, sustainability and customer issues.

The work of CEER is structured according to a number of working groups and task forces, composed of staff members of the national energy regulatory authorities, and supported by the CEER Secretariat.

This report was prepared by the Wholesale Market Supervision Task Force of CEER's Financial Services Working Group.

Annex 2 – List of abbreviations

Term	Definition
ACER	Agency for the Cooperation of Energy Regulators
CAD	Capital Adequacy Directive (Directive 2006/49/EC)
CEER	Council of European Energy Regulators
CESR	Council of European Securities Regulators
EC	European Commission
EEA	European Economic Area
EFET	European Federation of Energy Traders
ERGEG	European Regulators' Group for Electricity and Gas
EU	European Union
MiFID	Markets in Financial Services Directive (Directive 2004/39/EC)
OTC	Over the counter
REMIT	Regulation on Wholesale Energy Market Integrity and Transparency
TSO	Transmission System Operator

Annex 3 – Evaluation of Responses

Responses received

CEER received 39 responses, including four confidential ones. Non-confidential responses were received from the following organisations:

	Organisation	Abbreviated name
1	A2A TRADING SRL	A2A
2	Alpiq Trading AG	Alpiq
3	Anigas	Anigas
4	Bundesverband der Deutschen Energiewirtschaft	BDEW
5	BP Gas Marketing Ltd	BP Gas
6	CEDEC	CEDEC
7	Centrica	Centrica
8	CEZ Trade	CEZ
9	Danish Energy Association	Danish Energy
10	Energy Agency of the Republic of Serbia	AERS
11	ECT-Group	ECT
12	EDF	EDF
13	Edison SpA	Edison
14	European Federation of Energy Traders	EFET
15	Federal Electricity Commission ECom	ELCom
16	Electricity Efficiency	Electricity Efficiency
17	ENAGAS	ENAGAS
18	EnBW Trading	EnBW
19	Endesa Ireland	Endesa
20	ENI	ENI
21	E.ON AG	E.ON
22	EURELECTRIC	EURELECTRIC
23	Eurogas	Eurogas
24	EuroPEX	EuroPEX
25	Österreichs E-Wirtschaft	E-Wirtschaft
26	ExxonMobil	Exxon
27	Futures and Options Association	FOA
28	European Group of Energy Distribution Companies and Organizations	GEODE
29	International swaps and derivatives association	ISDA
30	OMV Gas&Power GmbH	OMV

31	RWE Supply & Trading GmbH	RWE
32	Shell Energy Europe Ltd	Shell
33	Sorgenia Trading	Sorgenia
34	Svensk Energi - Swedenergy - AB	Svensk Energi
35	Verbund Kommunalen Unternehmen (Deutschland)	VKU

Annex 4 – Regulation of the power of host state’s competent authorities for the energy wholesale trading based on the example of MiFID (Directive 2004/39/EC, Articles 61 and 62)

In the event of suspecting any infringement (e.g. market abuse as market manipulation, insider trading) the host state’s competent authority shall notify the competent supervisory authority of the home EEA Member State asking for taking the necessary measures in order to discover and eliminate the suspected infringement within 90 days from the request of the host state’s competent authority.

If the host state’s competent authority finds that, following the notification the wholesale energy trading firm affected remains engaged violating the relevant provision and contrary to the measures adopted by the competent supervisory authority of the home EEA Member State, or in case the home state’s competent authority doesn’t react to the request of the host state’s competent authority in the mentioned time frame, the host state’s competent authority – upon notifying immediately the competent supervisory authority of the home EEA Member State and ACER – shall take all necessary measures – including sanctions – in order to protect its wholesale energy market and the consumers.

The host state’s competent authority shall forthwith notify the wholesale energy trading firm affected, the competent supervisory authority of the home EEA Member State, ACER and the European Commission, concerning the measures the host state’s competent authority has taken, as well as concerning its justification.