

# **Deutsche Börse Group**

**Response**

**to**

**CESR/ERGEG**

**Call for Evidence**

**on record keeping, transparency, supply contracts  
and derivatives for electricity and gas**

## **A. Introduction**

Deutsche Börse Group welcomes the opportunity to provide comments to CESR/ERGEG Call for evidence on record keeping, transparency, supply contracts and derivatives in electricity and gas.

Deutsche Börse AG is a listed company which operates one of the leading exchange and settlement organisations worldwide. Our service-range covers the entire value chain from trading to central counterparty services, clearing, settlement, custody and notary functions. Deutsche Börse Group with its subsidiaries, e.g. Eurex Zürich AG and Eurex Frankfurt AG as operator of Eurex Deutschland (Eurex), is committed to improving the efficiency of markets.

Deutsche Börse AG's subsidiary Eurex is one of the world's leading derivatives exchanges and is jointly operated by Deutsche Börse AG and SWX Swiss Exchange. Eurex Zürich AG has a significant shareholder stake in the European Energy Exchange (EEX), the German energy derivatives and spot market exchange, and has started a successful cooperation with EEX in trading of emission allowances. Eurex Frankfurt AG is also currently setting up a South East European power exchange with the Slovenian energy exchange.

The longtime experience of Deutsche Börse Group in cash and derivative financial markets as well as the increasing activities in the energy sector are the main drivers to participate in this consultation.

## **B. Comments on the Call for Evidence**

### **General principles to be targeted**

Overall, from the Deutsche Börse Group perspective two main principles should guide the rules for an efficient energy market:

#### *1. Market Transparency*

Energy markets must be transparent such that all interested parties have access to all price relevant information in order to increase investor confidence and to improve overall market participation. This transparency should be introduced independent of the nature of the market participant (financial, energy) and the product (derivative, spot).

#### *2. Level Playing Field*

A level playing field must be ensured in key areas in terms of:

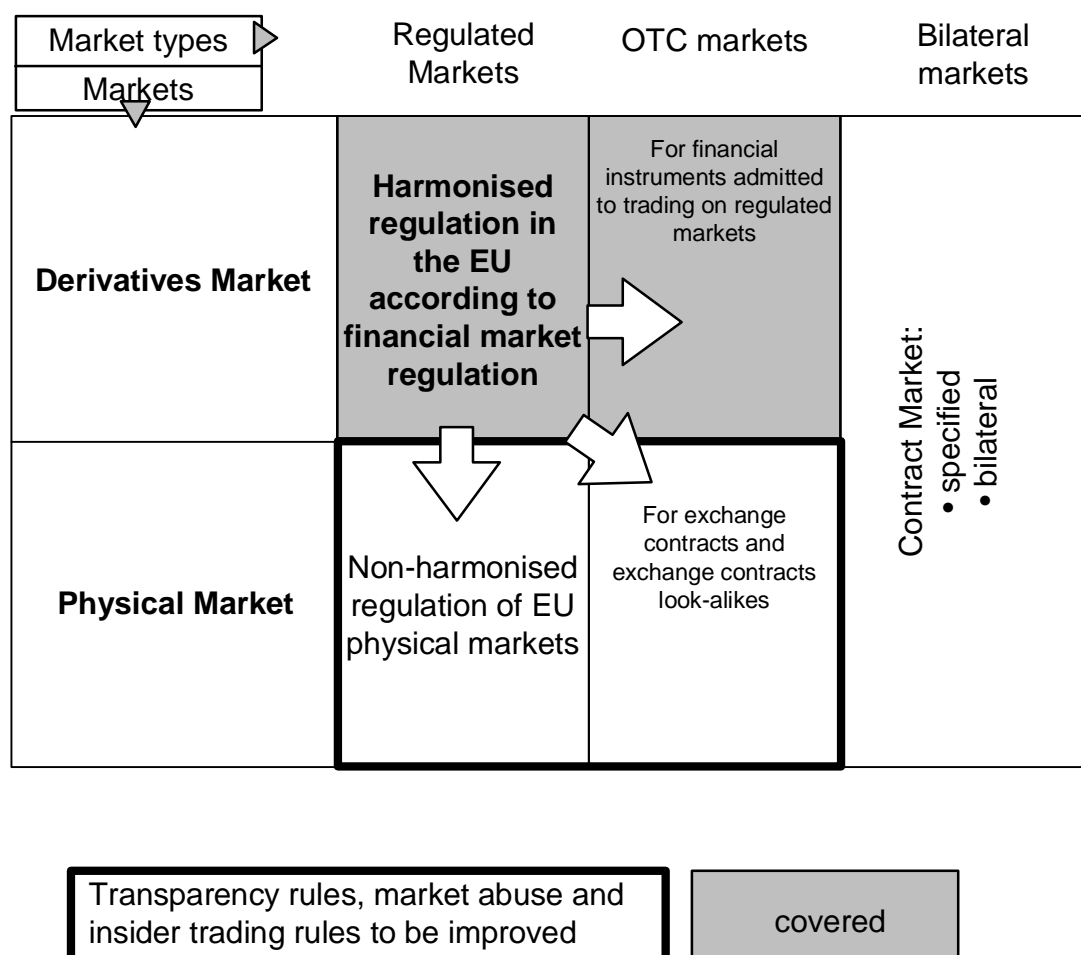
##### a) Regulation:

- Standardised, adequate regulation within the underlying markets (e.g. market access criteria, reporting requirements, level of supervision). There should be only one EU wide harmonised set of rules to avoid regulatory arbitrage.

- Comparable standards for regulated markets and the OTC market for “standardised” products.
  - Market regulation shall be comparable as far as possible to regulatory standards of other non-EU energy markets (e.g. Switzerland, US) in order to ensure competitiveness with those markets.
- b) Market Access:
- Access for players from several sectors (industry vs. financial, domestic vs. foreign).

## Market categorisation

The following overview summarises our view on the current status quo:



As indicated above, derivatives trading on regulated markets is subject to harmonised, EU-wide applicable regulation according to the proven financial markets standards. This regulation provides for those derivatives that are admitted to trading on regulated markets to be subject to same rules, either in terms of general obligations, investor protection rules

or market transparency and market integrity rules. Transparency and level playing field among market participants active in derivatives trading seem to be adequate from our perspective.

In order to allow existing initiatives on enhancing transparency on markets for financial instruments to become fully effective, the underlying spot markets need to fulfil an EU-wide harmonised set of rules for transparency, market abuse and insider dealing. Currently, transparency on certain “basic” data needs improvement in order to avoid information asymmetries between involved industry players and non-production related market participants. Additionally, the physical market for energy is currently not uniformly regulated throughout the EU, neither for trading on regulated markets nor for OTC-trading.

In order to enhance investor confidence and increase the attractiveness of these markets we suggest:

- To provide for uniform, EU-wide applicable rules for physical energy markets
- Ensure level playing field between
  - industry players and non-production related market participants (mostly financial)
  - players that generally trade fungible, standardised products for which regulated markets and OTC are alternative execution venues according to the principle “same business, same rules”.

We emphasize that the bilateral contract market should be outside of the scope of such harmonised EU-wide rule set.

The following chapter gives examples of “basic” data which we consider price-relevant for physical markets.

### **Transparency on “basic” data**

Besides the pre- and post-trade transparency rules for financial markets, there is a specific transparency relevant for physical markets on “basic” data. We define “basic” data as information associated with the production and transport of the physical underlying. Basic data are price-relevant and timely availability to all market participants is key for investor confidence and attractiveness of those markets leveraging liquidity and development of market structure.

We would like to recommend improvement of transparency on basic data associated with the supply side, in particular<sup>1</sup>:

- Information on system load capacity: provision of estimates on day-ahead,

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<sup>1</sup> NERA Economic Consulting, „Gutachten: Verbesserung der Transparenz auf dem Stromgroßhandelsmarkt aus ökonomischer sowie energie- und kapitalmarktrechtlicher Sicht“, January 2007.

week-ahead and year-ahead data on system load by transmission system operators (TSOs);

- Information in relation to production: net production data of power plants by all TSOs EU-wide.
- Information on transmission grids: information on transmission grid extension plans.
- Information in relation to market coupling points: information related to capacities of coupling spots.
- Information on relevant transportation or production issues (e.g. disruption of a pipeline, any major changes in the transportation chain, shut-down of power plants).

Ad hoc disclosure of data will be relevant to avoid insider trading and, thus, assure investor confidence in functioning markets and fair price mechanism.

The data should be disclosed in a timely manner (ad hoc / real time), be harmonised, comparable and easily accessible. In order to avoid negative impact that transparency may have on producers and safeguard their commercial position, data should be aggregated where appropriate.

Disclosure of certain information towards the supervisory authority is necessary in parallel to the disclosure requirements towards the market. The regulator will then be able to effectively monitor potential market abuse in physical markets.

We appreciate very much the opportunity to present our views and hope that those will be taken into consideration in the elaboration of the advice to the European Commission. We believe that more transparency in relation to the data described above would add to a higher level of quality of the European energy trading and would be a driver for market development. We remain at disposal for any further discussion.