



The Chairman

Ref.: CESR/08-1030

Commissioner Charlie McCreevy
European Commission
Rue de la Loi 200
B-1049 Brussels
BELGIUM

Paris, 19 December 2008

Subject: Joint CESR/EREG advice in the context of the Third Energy Package

Dear Mr McCreevy,

I have the pleasure to transmit to you the third and final set of the CESR and ERGEG's advice to the European Commission in the context of the Third Energy Package. The advice is given on the basis of the joint mandate issued by the Commission to CESR and ERGEG on 21 December 2007 (as amended in May 2008).

This advice covers the responses to questions D.4. to D.6 on record-keeping, questions E.11, E.18 and E.19 on transparency and questions D.7 to D.10 on exchange of information included in the mandate of the Commission. The main conclusions of CESR and ERGEG are:

- The contents of records to be kept under MiFID are not sufficient for electricity and gas supply contracts and derivatives. Therefore, the minimum information that supply undertakings would need to be required to keep records of contains some additional elements compared to the MiFID requirements. The supply undertakings could be allowed to choose the most suitable methods for retaining their records, but they should be able to send relevant extracts from that information to the requesting authorities.
- A publication of aggregate market data by energy regulators is not considered feasible, because it would require a frequent, periodic transaction reporting by market participants. Therefore, at this stage, it is recommended that platforms publish aggregate data.
- CESR and ERGEG consider that all EU platforms should make public on a trade-by-trade basis harmonised post-trade information on standardised electricity and gas supply contracts and derivatives traded on or cleared through these platforms.
- CESR and ERGEG propose to start exchange of information between securities and energy regulators by request, on a case-by-case basis for fulfilling the legal tasks of energy regulators. This exchange of information should be backed by a sound legal basis in European legislation. At this stage multilateral and bilateral memoranda of understanding are seen as a pragmatic option for exchanging information on a cross-border and local basis between energy and securities regulators.

The advice was supported by a large majority of CESR Members and all ERGEG Members. However, two CESR Members have expressed specific reservations in relation to some of the responses.

- Question E.19: The UK FSA and the Dutch AFM have noted that they do not believe that a case has been made for trade-by-trade transparency in these markets. Furthermore, even if a case had been made, they do not consider that enough work has been done for CESR to be in a position to put forward any recommendations relating to the specifics of a trade



transparency regime, in particular, the 15 minutes maximum delay for a trade report to be published.

- Question E.19: The UK FSA considers a market-led solution is the only appropriate way forward. A market or industry-led solution would have the advantage of building on how the current market works, would be less costly and quicker to implement.
- Question E.11: In addition, the UK FSA has considered the proposals for aggregate/summary data and notes that some of the information proposed is describing the structure of the market and is not relevant for price discovery purposes. So, it is not of particular interest to the UK FSA as a securities regulator and it is not within the FSA's remit to implement.

ERGEG has submitted the same advice today to Mr Matthias Ruete, Director General of Energy and Transport DG.

Should you need any clarifications on the advice, please do not hesitate to contact myself or Mr Carlo Comporti, Secretary General of CESR and the Co-chair of the joint CESR/ERGEG group preparing the advice.

Yours sincerely,

Eddy Wymeersch

Enclosure: CESR and ERGEG advice to the European Commission in the context of the Third Energy Package