Ref. CESR/09-092

C08-FIS-07-03a

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

Questions D.4 to D.6 – record-keeping
Questions E.11, E.18 and E.19 – transparency
Questions D.7 to D.10 – exchange of information

Feedback Statement: Evaluation of Comments

February 2009

Background

1. On 21 December 2007, the European Commission (Commission) issued a joint mandate to CESR and ERGEG asking for technical advice pursuant to Articles 22f and 24f and Recitals 20 and 22 respectively in the two proposals for Directives amending Directive 2003/54/EC and Directive 2003/55/EC (the Third Energy Package).

2. The mandate requested joint advice from CESR and ERGEG on issues concerning record-keeping (questions D.4 to D.6), transparency of transactions in electricity and gas supply contracts and derivatives (questions E.11, E.18 and E.19) as well as exchange of information between energy regulators and securities regulators (questions D.7 to D.10). Advice was also sought on a possible clarification of the scope of the Market Abuse Directive in relation to trading in energy and energy derivatives (question F.20). The advice regarding the latter mandate and the respective Feedback Statement: Evaluation of Comments to the previous consultation with market participants was published on 1 October 2008 (final advice on market abuse CESR/08-739, E08-FIS-07-04; Feedback Statement: Evaluation of Comments CESR/08-754, E08-FIS-07-04a[1]).

3. While CESR and ERGEG drafted the advice regarding the remaining questions of the mandate, they took into account the advice already given separately by CESR and CEBS (Committee of European Banking Supervisors) with regard to commodities and related derivatives markets.

4. CESR and ERGEG launched a public consultation on 23 October 2008 to seek comments on the findings, the possible policy options and, where already indicated, the draft advice to be provided to the Commission. 27 responses were received from various associations and other interested parties to the consultation which ended on 24 November 2008. When drafting the final advice, the views expressed in the consultation were duly taken into account. A full list of the 27 respondents and the responses they provided have been published on the CESR and ERGEG websites. The list of the respondents is also included in the Annex of this Feedback Statement: Evaluation of Comments.

5. Preliminary views on these issues were expressed by industry experts (Consultative Working Group – CWG) in a meeting of the CWG on 2 June 2008. The preliminary findings, options and views expressed in the consultation paper were also discussed with the CWG on 15 September 2008. The policy conclusions of the final advice were discussed with the members of the CWG on 3 December 2008. The CWG consists of technical experts from the markets and firms affected.

[1] http://www.cesr.eu/index.php?page=document_details&id=5270&from_id=53, http://www.cesr.eu/index.php?page=document_details&id=5271&from_id=53 and http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/CROSS_SECTORAL/Financial%20Services/Market%20abuse%20framework/CD.

6. The purpose of this Feedback Statement: Evaluation of Comments is to provide a synthesis of the main comments received by CESR and ERGEG along with an explanation of CESR and ERGEG's preferred approach on the most significant issues raised.

Questions D.4 to D.6 of the mandate – Record-keeping

7. The questions D.4 to D.6 of the Commission mandate which refer to the record-keeping part are formulated as follows:

D.4: *Do regulators believe that there should be a difference between the proposed record-keeping obligations under the proposed amendments to the Electricity Directive and Gas Directive and the existing record-keeping obligations with respect to transactions in electricity and gas derivatives to which investment firms are subject by reason of MiFID (Article 25 and 13(6))?*

D.5: *Pending the outcome of the legislative process in respect of the proposed Directives amending Directives 2003/54/EC and 2003/55/EC (the Third Energy Package), what methods and arrangements for record-keeping do CESR and ERGEG consider the Commission should specify as guidelines under the legislation for:*
a) transactions in electricity and gas supply (spot) contracts? (To the fullest extent possible this should be a harmonised specification.) If there are any deviations from the obligations relating to commodity derivatives already applicable to investment firms, these should be justified;
b) transactions in electricity and gas derivatives contracts? (To the fullest extent possible this should be a harmonised specification.) If there are any deviations from the recommendations in a), these should be justified.

In answering this question, CESR and energy regulators are asked to consider specifying a single transaction record format based on the content and data to be provided as per Table 1 of Annex I of Regulation EC 1287/2006.

***D.6**: How would this information be most efficiently kept at the disposal of authorities as mentioned under paragraph 1 of Articles 22f/24f in the case of spot transactions and non-investment firms?*

Feedback on comments regarding the purposes of record-keeping

8. In the consultation paper, CESR and ERGEG considered that records of transactions generally have the purpose to enable a competent authority to check a firm's compliance with legal requirements. The organisational arrangements of a firm to ensure compliance always include record-keeping requirements. Otherwise, compliance cannot be checked by any competent authority in charge of supervision. This is reflected by the inclusion of record-keeping provisions on transactions in energy supply contracts and derivatives within the part describing the competences and powers of national regulatory authorities within the Third Energy Package.

9. A large number of respondents explicitly agreed on the fact that keeping record of transactions would surely serve the purposes of compliance and/or possible enquiries. Most of them found it reasonable to transmit information to national regulatory authorities in case of investigations.

10. Nevertheless, some market players specifically argued for "ad hoc" requests against periodic transaction reporting. Among them, a recurrent statement was that record-keeping needs to be differentiated from transaction reporting.

11. Regarding transaction reporting or other forms of transmission of information, the Third Energy Package does not include any requirements. Thus, CESR and ERGEG have not yet analysed the costs and benefits of frequent, periodic transaction reporting. CESR and ERGEG recognise that deciding on an adequate system for transaction reporting would demand an in-depth analysis including proper cost-benefit considerations, and if implemented, detailed planning and an appropriate implementation phase both for supply undertakings and for regulatory authorities. However, a frequent, periodic reporting of transactions and/or positions may be a useful tool for monitoring the integrity of the market. In this respect, CESR and ERGEG see value in reconsidering this issue at a later stage, possibly in connection with a potential EU regime for market abuse as proposed by CESR and ERGEG in their previous advice to the Commission.

Feedback on comments regarding the minimum contents to be kept

12. CESR and ERGEG recommended in the consultation paper a list of minimum contents to be kept in accordance with Articles 22f(2)/24f(2) of the Third Energy Package. Such minimum contents were considered by CESR and ERGEG to be necessary for a clear understanding of electricity and gas markets.

13. A number of respondents specifically agreed on the list proposed by CESR and ERGEG. Some of them considered the proposed minimum contents as sufficient while others claimed that they could also be maximum contents. A few respondents asked for additional contents.

14. On the other hand, a number of respondents considered that some elements in the list proposed by CESR and ERGEG were unnecessary (e.g. indexation formula, load type, quantity notation). Few of the respondents were also of the view that price information, as described by CESR and ERGEG, was more useful for standardised contracts.

15. Having reconsidered the disputed elements of the list of minimum contents, CESR and ERGEG came to the following conclusions:

- It is important to keep the indexation formula of complex contracts. Since delivery of this information to regulators may be difficult, CESR and ERGEG however note that regulators should at least have access to this information on a case-by-case basis for the purpose of investigations, i.e. the information does not have to be provided in an electronic format as requested for less complex data on transactions. The retention of this information does not seem to be too burdensome since it must be available to the supply undertaking for price calculation anyway.

- The specification of the load type cannot be omitted. The fact that the hours included in the "peak load" or the "base load" may differ from one Member State to another does not seem to create practical problems which could not be overcome because national regulators will mostly be interested in contracts which were

traded and/or physically delivered within their territory and the majority of standardised contracts include the load type in their contract specifications.

- For some contracts (e.g. standardised futures contracts), the unit price and the quantity notation (number of underlying assets) may be necessary and valuable information. It should therefore be kept where it is relevant for the proper understanding of the contract.
- On the other hand, CESR and ERGEG acknowledged that, unlike in MiFID, information about the person executing the transaction is not of cardinal importance in the context of supply undertakings at the present stage.
- Finally, CESR and ERGEG clarified that keeping records of the precise name of the counterparty is considered to be sufficient but necessary for an accurate identification of the counterparty. A unique European identification code does not seem to be feasible and necessary at present.

16. Consequently to remarks in the consultation, CESR and ERGEG also clarified that, as a principle, supply undertakings should be able to extract all necessary information to understand the contract from the records to be kept. The minimum list was maintained in the form originally proposed because it is considered of particular relevance for non-standardised contracts and spot transactions. Nevertheless, if specific contents included in the minimum list can already be derived from the contract specifications (e.g. the name of a standardised contract), the principles based approach means that it is not compulsory to separately keep the contents that can be derived. Furthermore, CESR and ERGEG note that the specific items of information (e.g. indexation formula) naturally only have to be kept where they are relevant for the specific contract.

17. The proposal of CESR and ERGEG that supply undertakings should be obliged to keep additional minimum contents on transactions in supply contracts and derivatives in their records may lead to different contents of the records on MiFID financial instruments kept by investment firms and of those records regarding the same instruments kept by supply undertakings subject to the Third Energy Package. CESR and ERGEG also acknowledge that securities regulators may not be able to provide energy regulators under paragraph 7 of Articles 22f/24f of the Third Energy Package with the information that investment firms (which are not supply undertakings) are not legally required to keep. Since the additional information requested is quite generic and includes very common elements of derivatives contracts, it is however presumed that - at least for standardised contracts - the records of investment firms often include the additional information anyway. Respondents in the consultation did not specifically elaborate on practical problems involved with this discrepancy.

18. CESR and ERGEG pointed out that firms which trade exclusively cash-settled financial instruments related to electricity and/or gas as underlying may be exempted from MiFID and will also not be treated as supply undertakings under the Third Energy Package. Thus, information about transactions undertaken by those firms would not be available to any competent authority on the basis of record-keeping obligations. Although theoretically existent, CESR and ERGEG have no information about the relevance of this gap at present. Some respondents to the consultation did not see regulatory problems in this respect.

19. Conversely, a number of respondents warned against regulatory gaps which could trigger incentives for regulatory arbitrage. The same respondents claimed that all firms should be subjected to the same requirements. Additionally, from a regulatory perspective, these gaps would prevent the national regulatory authorities from conducting efficient market monitoring and would represent clear limitations in case of investigations.

20. Even though in practice the current market share of these firms and their transactions in terms of amount and volume may be marginal, on the background of these comments CESR and ERGEG recommended assessing the dimension and impact of this regulatory gap in each jurisdiction taking into account a potential future amendment of the MiFID exemptions as proposed by CESR and CEBS[2]. Since this potential gap cannot be tackled within the given legal framework and keeping in mind that the behaviour of market participants can change, it was also proposed that the Commission should take appropriate action to explore the possibility to amend the Electricity and Gas Directives to close this gap in case of a significant market share of these transactions or an identifiable trend of market participants using this regulatory gap to avoid regulation.

Feedback on comments regarding methods and arrangements for record-keeping

21. Respondents to the consultation embraced the proposal that the Commission's guidelines should include general arrangements regarding the retention of records similar to those included under Article 51(2) of the MiFID Implementing Directive. The final advice therefore specified the respective requirements and further clarified that access to the records or the provision of compiled and complete records should be possible within an appropriate timeframe (e.g. 10 working days).

22. Comments on the proposed alternatives regarding the format of records were not unanimous but covered the full range of opinions. Some respondents favoured a prescribed electronic format at least for transmission of data to the regulators. Others opted for an electronic format without details on the format. A third group of respondents rather preferred to leave the format for the retention of records to each supply undertaking, particularly if small firms are concerned.

23. On the basis of these comments, CESR and ERGEG recommended that supply undertakings should be allowed to choose the methods of retaining their records that are most suitable for their business organisation, i.e. in an electronic format or otherwise, provided that they comply with the minimum requirements for the methods and arrangements specified in the Commission's guidelines for data retention. However, on request of the authorities mentioned in paragraph 1 of Articles 22f/24f of the Third Energy Package they should be able to extract the relevant information for the purpose of the inquiry from these records and to send this information from the records in an electronic format to the requesting authorities. Considering the costs and benefits, supply undertakings should be able, as a minimum, to provide this data at request in an Excel format.

[2] See http://www.cesr.eu/index.php?page=document_details&id=5306&from_id=53.

24. In response to a comment in the consultation, CESR and ERGEG also clarified that confidentiality of the information has to be ensured during the entire process of transmission and further utilisation of confidential data. This requires authorities requesting information to establish and maintain adequate methods and arrangements to secure this.

Questions E.11, E.18 and E.19 – Transparency

25. The questions E.11, E.18 and E.19 of the Commission mandate which refer to the transparency part are formulated as follows:

E.11: *What guidelines and arrangements do energy regulators propose for the making available of aggregate market data by them under paragraph 3 of Article 22f/24f?*

E.17/E.18: *Is access to information on traded volumes and prices equal for all parties active in [the electricity and gas wholesale] market? If not, is unequal access to or general lack of information on trading causing distortion of competition?*

E.19: *In light of the findings in the Commission Sector Inquiry on energy and the subsequent study of the electricity wholesale markets, please consider:*

a) whether, pending the outcome of the legislative process in respect of the proposed Directives amending Directives 2003/54/EC and 2003/55/EC, greater EU-wide pre- and/or post-trade transparency rules for electricity and gas supply contracts (physical and spot trading) and electricity and gas derivatives would contribute to a more efficient wholesale price formation process and efficient and secure energy markets;

b) whether such transparency arrangements could be expected to effectively mitigate the concerns identified in the Sector Inquiry above;

c) whether uniform EU-wide pre- and post-trade transparency could have other benefits;

d) whether additional transparency in trading could have negative effects on these markets, for example could liquidity in these markets be expected to decrease? Is there a risk that trading could shift to third countries to escape regulation?

e) If you believe that there are risks arising from additional pre- and post-trade transparency requirements, how do you believe that these risks can be mitigated (e.g. aggregation, delay in publication, anonymity)?

Feedback on comments regarding transparency of aggregate data

26. CESR and ERGEG proposed in the consultation paper that energy regulators would publish aggregate data on the whole market (irrespective of the maturity of the product, of whether they are covered by MiFID or not, and of the way of trading), in order to increase and harmonise the level of transparency of aggregate market data.

27. Half of the respondents were in favour of a new scheme for more transparency on aggregate market data. Some explicitly favoured the mandatory publication of aggregate data. The majority of them were in favour of the publication by platforms, and not by energy regulators.

28. In the consultation paper different options regarding the scope of the publication were presented: publication of aggregate data on the whole market i.e. on all instruments including those covered by MiFID or only on instruments not covered by MiFID. This differentiation was made as the legal provisions of Articles 22f/24f of the Third Energy Package exclude the publication of information on financial instruments covered by MiFID.

29. Most respondents stressed that it was meaningless to separate MiFID and non-MiFID products. Only one raised the question of the overlap between MiFID and the Third Energy Package. Furthermore, most respondents answered that direct bilateral trades should not be covered, and that only standardised products, traded via RMs, MTFs, spot exchanges or broker platforms should be covered.

30. Concerning the information to be published, respondents to the consultation were in favour of the publication of price and volume information, number of trades and market structure indices. Most respondents were against the publication of detailed market shares, as it could lead to the dissemination of commercially sensible data. Respondents were in favour of the publication of aggregate market shares and number of market participants.

31. Respondents were in favour of publishing this information both :

- at an aggregate level (only one figure for every product covered by the publication)
- split between standardised maturities (one figure per product covered by the publication)

32. Concerning the frequency of publication, opinions were split between daily and monthly/quarterly publication. In any case, respondents recognised that the frequency to tend towards was daily, but at the beginning of the process, a monthly or quarterly publication could be sufficient. Respondents insisted that the day of publication must not be too delayed compared to the end of the period concerned by the publication.

33. Question E.11 addresses the publication of data by energy regulators themselves. ERGEG members see benefits in a publication by energy regulators as it would provide a unique and centralised source of data. However, many respondents to the consultation had a preference for data provided by platforms. Furthermore, a publication by energy regulators would require a frequent, periodic transaction reporting by market participants. This was considered burdensome by the respondents to the consultation. Therefore, ERGEG recommends in the final advice to the Commission a publication of aggregate data by platforms, i.e. regulated markets, MTFs, spot exchanges and broker platforms. Furthermore, ERGEG recommends a daily publication of information on standardised contracts. This should include derivatives irrespective of whether they are financial instruments according to MiFID or not and spot contracts. ERGEG recommends that all data published should be harmonised between the different platforms active in the Member States, i.e. the format and content of publication should be the same. It should be noted that platform operators can also be located outside Member States and offer services for delivery of electricity or gas in Member States. This might result in a gap which cannot be sufficiently addressed with this proposal and may need further considerations in case it becomes relevant.

34. Besides relevant volume and price information the publication should include the number of trades, and the aggregate market shares of the five biggest buyers and sellers. The data should be split by standard maturities and products. The information should also be available to all interested parties on a non-discriminatory and reasonable commercial basis.

Feedback on comments regarding possible distortion of competition due to unequal access to or general lack of information on trading

35. Most of the respondents to the consultation stated that they do not have any evidence of competition being affected by unequal access to trading data or lack of such information. Two respondents to the consultation noted that trading between generation/trading arms and retail arms within vertically integrated companies might cause distortion of competition. One respondent noted that the incompleteness of transaction information is probably a factor that slows the market opening process.

36. In light of the comments given, CESR and ERGEG did not see a need to amend their evaluation presented in the consultation paper, according to which there seems to be equal access to trading information in many electricity and gas wholesale markets with the exception of bilateral trading. In relation to that, there is no significant evidence of markets being distorted. However, because CESR and ERGEG have not carried out a comprehensive competition enquiry, they are not in a position to prove that markets are not distorted. Further analysis might therefore be necessary.

Feedback on the pros and cons and the content of possible EU-wide pre- and/or post-trade transparency rules for electricity and gas supply contracts and derivatives

37. CESR and ERGEG used the results of various fact-finding exercises conducted by them as a basis for their advice on pre- and post-trade transparency. The respondents to the consultation were broadly in agreement with the results of the fact-finding of CESR and ERGEG, which highlighted, among others, differences in the existing national transparency requirements between spot trading and futures/forward trading as well as between trading on platforms and OTC.

38. In their consultation paper, CESR and ERGEG proposed three options for the possible EU-wide pre- and/or post-trade transparency rules. The first option entailed the maintenance of the status quo while the two other options proposed further harmonisation of the trade transparency requirements based on either broad key principles or a more comprehensive regime/initiative. Both of these latter options included various possibilities for tailoring the scope of a possible initiative regarding the trading methods to be covered (platforms vs. OTC) and the content and delay of the information to be published.

39. On the basis of the responses to the consultation, the availability of post-trade information from platforms was considered to be important, whereas few requests were made for the availability of pre- trade transparency data. The respondents did not express a specific need for receiving information on trading conducted outside those platforms. Many of them were of the opinion that in the case of platforms, sufficient level of post-trade transparency seems to already exist in many Member States, but they also expressed a need for harmonisation of the information.

40. On the basis of the comments received, CESR and ERGEG came to the conclusion that there is no need to take action in relation to purely bilateral trading which is often so bespoke that transparency information would not add materially to the price discovery

process. CESR and ERGEG noted that they are conscious of the fact that, although in many cases post-trade transparency information is already available from platforms, the level of this information is not necessarily uniform throughout the EU. Thus they consider that all EU regulated markets, MTFs, spot exchanges and broker platforms should make public harmonised post-trade information on standardised electricity and gas supply contracts and derivatives traded on or cleared through these platforms. However, reflecting the comments of many respondents to the consultation, CESR and ERGEG do not recommend any further measures to be taken, if this data is already available and compliant with the standards to be defined.

41. Since CESR and ERGEG's consultation paper focused on the broad outlines for a possible transparency initiative, not all respondents to the consultation commented on some of the specific elements of a possible transparency initiative. One of these elements is whether post-trade information would need to be available on a trade-by-trade or on an aggregate basis. Some respondents expressed a preference for the publication of aggregate rather than trade-by-trade information. On the other hand, one respondent specifically called for the publication of trade-by-trade information. In further discussions with market participants, additional support for trade-by-trade publication was expressed to CESR and ERGEG.

42. In the opinion of CESR and ERGEG, publication of aggregate post-trade information would not be sufficient for contributing to a more efficient wholesale price formation process and efficient and secure energy markets. This is also related to the fact that aggregation would also imply a delay in the publication (see the following paragraph). On this basis, CESR and ERGEG recommend publication of information on individual trades rather than only aggregate data.

43. In the responses to the consultation, most respondents did not comment on the length of a suitable delay for the publication of transparency information. If they did, their comments were linked to the support expressed for the publication of transparency information only on an aggregate basis. If a specific preference for the length of the delay was expressed, it mostly supported delaying the publication until at least the end of the trading day. The respondent that supported the publication of trade-by-trade data also stressed the importance of publishing trade information with the smallest possible time lag. This view was shared in further discussions with some market participants. CESR and ERGEG recommend this approach, because a relatively short delay in the publication of trade information is, similarly to the recommendation to publish trade-by-trade data, more suitable for contributing to the price formation process. On this basis CESR and ERGEG concluded that the aim should be that all platforms publish post-trade information as close to real-time as possible, but with a maximum delay of 15 minutes.

44. However, reflecting some of the concerns expressed during the finalisation of the advice, CESR and ERGEG note that before deciding on the application of the suggested delay of 15 minutes, further analysis would need to be conducted on whether there would be a need to provide longer delays for certain types of trades, in particular large trades made for own account. This would be comparable with the delays provided by the MiFID post-trade transparency regime.

45. CESR and ERGEG also recommend that the post-trade data should be available to all interested parties on a non-discriminatory and reasonable commercial basis. This

approach was supported by those respondents to the consultation that raised this issue in their responses.

46. Only one respondent commented on the content of the post-trade information to be published. Its proposal was in line with CESR and ERGEG's recommendation to publish the trading day and time, relevant price and quantity information as well as information that would facilitate the identification of the supply contract or derivative. Information to be published should be appropriately adjusted for the particular needs of each product.

47. The respondents to the consultation agreed with CESR and ERGEG's analysis that no trade transparency initiative alone could be expected to effectively mitigate the concerns identified in the Sector Inquiry.

48. The respondents did not have any specific comments on the other possible benefits of uniform EU-wide pre- and post-trade transparency identified by CESR and ERGEG, i.e. increase in competition, new entrants and market participation, and general engendering of market confidence.

49. Some respondents to the consultation expressed concerns about the possible negative effects of additional transparency to liquidity, volatility, compliance costs and revelation of the trading positions and strategies of market participants. However, these concerns were not uniformly shared by all respondents. Although few respondents remarked on the possible risk of trading shifting to third countries to escape regulation, overall no major concerns were expressed in this regard. CESR and ERGEG have taken these possible negative effects into account when deciding on the coverage of their proposed framework. They are of the opinion that the possible negative effects of the proposed framework are outweighed by the positive effects of contributing to a more efficient price formation process and efficient and secure energy markets. Furthermore, they note that the realisation of the negative effects can also be avoided by a careful design of the framework.

50. Reflecting the concerns of some of the respondents to the consultation regarding risks related to the disclosure of counterparty information, the framework proposed by CESR and ERGEG is based on making public only anonymous post-trade information. Because the general delay for the publication of the information proposed by CESR and ERGEG is relatively short, they propose to further analyse the need for additional delays for certain types of trades to accommodate the concerns expressed. However, based on the grounds described above, CESR and ERGEG did not consider aggregation of trade data to be an appropriate solution for the publication of trade data.

Questions D.7 to D.10 – Exchange of information

51. The questions D.7 to D.10 of the Commission mandate which refer to the exchange of information part are formulated as follows:

D.7: *How would securities regulators most efficiently provide information to energy regulators pursuant to paragraph 7 of Article 22f/24f?*

D.8: *Which securities regulator would most efficiently be responsible for such provision in the case of investment firms with more than one branch?*

D.9: *Would it be feasible and efficient to employ the Transaction Reporting Exchange Mechanism (TREM) or a similar electronic system to exchange this data?*

D.10: *Is there a case for data to be forwarded from energy regulators to securities regulators on an automatic basis? If so, what data?*

Feedback on comments regarding exchange of information

52. CESR and ERGEG proposed in the consultation paper to start information exchange by request, on a case-by-case basis for fulfilling the legal tasks of energy regulators. Additionally, in the view of CESR and ERGEG, the said exchange of information between energy and securities regulators should be backed by a sound legal basis, by European legislation. Moreover, the opinion of CESR and ERGEG presented in the consultation paper is that a pragmatic option at this stage would be the establishment of multilateral and bilateral agreements among energy and securities regulators for exchanging information on cross-border and local basis respectively.

53. Respondents to the consultation broadly welcomed provisions on exchange of information as this enables efficient supervision and contributes to enhancing confidence in the markets. At the same time, the issue of confidentiality of commercially sensitive information reported to regulators and exchanged among them was emphasised as an important aspect. Some respondents also stated the importance of a consistent set of rules across the EU and that costs for participants should be minimised.

54. More than half of the respondents indicated a preference regarding the exchange of information between securities and energy regulators only on a case-by-case basis instead of a periodical and automatic exchange of information. Some argued that due to the likely limited number of investigations an exchange of information on a case-by-case basis would be sufficient. Others concluded that a case-by-case approach should only be a first step and that a periodic and possibly automatic exchange of information would better contribute to increasing confidence in market supervision.

55. Respondents to the consultation widely agreed to the proposal of the establishment of multilateral and bilateral agreements between energy and securities regulators. Some

mentioned that such agreements must have a sound legal basis and that confidentiality should be ensured. At the same time some participants concluded that a certain degree of harmonisation should be ensured. On that basis, CESR and ERGEG considered it sensible to stick to their initial proposal in the consultation paper.

56. A large number of respondents to the consultation favoured the home Member State principle for information exchange among energy and securities regulators. A reason provided for this was that a single point of contact to the resgulators would be preferred by market participants. CESR and ERGEG consider it appropriate to allow for both alternatives, i.e. home or host Member State principle. This would mean that the energy regulator may ask the home and the host Member State securities regulators of the branch of the investment firm to provide the necessary data. For market participants this will not increase administrative burdens given that according to MiFID already now both the home Member State and the local securities regulators may ask for the records of the branch.

Annex

Responses to the Consultation Paper (Ref. CESR/08-753; C08-FIS-07-03)

1. 8KU
2. Altergaz
3. AMAFI
4. Association of Austrian Electricity Companies (VEÖ)
5. German Association of Energy and Water Industries (BDEW)
6. Commodity Derivative Working Group (CDWG) composed of ISDA, EFET and FOA
7. ČEZ a.s.
8. ECT-Group
9. Edison
10. EnBW
11. Eni
12. Eurelectric
13. Eurogas
14. Gas Natural
15. GEODE
16. GlobalCoal
17. IFIEC
18. LEBA
19. Nasdaq OMX
20. NordPool Spot
21. NordPool ASA
22. Powernext
23. Shell
24. StatoilHydro
25. SWM
26. Tullett Prebon
27. VIK