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Press release

ERGEG and CESR publish their proposals on how to promote transparency and market integrity in electricity and gas trading

The European Regulators' Group for Electricity and Gas (ERGEG¹) and the Committee of European Securities Regulators (CESR²) publish today the third part of their advice to the European Commission on how to foster fair electricity and gas trading. The proposals (on record-keeping, transparency and exchange of information) seek to promote transparency and market integrity in energy trading. Setting up a common European framework for electricity and gas trading will support creating a European-wide level playing field and thereby be beneficial to market participants and final energy customers. ERGEG and CESR's proposals address these issues with appropriate care and recommend only the necessary provisions without being overly burdensome.

Regulators recommend an EU-wide harmonised post-trade transparency scheme

The European Commission asked ERGEG and CESR to develop proposals for regulating trading in the electricity and gas markets³. This includes establishing the levels of transparency that market participants need before and after trading, and information which should be available to the regulators to allow an effective oversight of the market.

In the second part of their advice to the European Commission (published 1 October 2008) ERGEG and CESR called for a harmonised transparency regime for so-called "fundamental data" and sector-specific legislation to prevent and detect market abuse in the electricity and gas market. Furthermore, ERGEG and CESR noted that the integrity of related markets like emission allowances, oil and coal also play an important role for the functioning and price formation of the electricity and gas market. The Commission is encouraged to take this into account when making further decisions.

Following a public consultation (October – November 2008), ERGEG and CESR are advising the Commission how best to improve transparency of trading in the electricity and gas markets. They recommend that all EU trading platforms publish harmonised post-trade information, on a trade-by-trade basis and close to real-time for standardised electricity and gas supply contracts and derivatives traded on or cleared through these platforms⁴. This information would provide market participants with timely and important price signals. Furthermore, energy regulators also recommend that aggregate data be published on a daily basis by the platforms. This information would also help market participants to estimate trends and developments for the following trading days.

Practical approach to the Third Energy Package's record-keeping obligations⁵

The European Commission's Third Energy Package proposals contain new obligations for supply undertakings to keep records related to their transactions. To allow an effective oversight of electricity and gas trading, ERGEG and CESR propose that supply undertakings⁶ should be able, as a minimum, to provide data derived from their records, upon request from a regulator, in an electronic format. On the exchange of information between regulators, ERGEG and CESR recommend that this should be possible on a case-by-case basis so as to ensure a proper oversight of the market. This requires a sound legal basis which should be provided by European legislation. Although the Third Energy

Package does not include any requirements on transaction reporting, ERGEG and CESR see value in considering the pros and cons of such a scheme at a later stage⁷.

ERGEG Chair, Lord Mogg said: *“Trading of electricity and gas will become an important pillar of the emerging single European market. Thus, trading mechanisms need to be enhanced and supported. To ensure confidence in the integrity of the market, trading transparency should be increased and effective market oversight be put in place. As recent experience in the US market shows, this can only be ensured if regulators are given the right tools under law to detect market abuse.”*

CESR Chair, Eddy Wymeersch stated: *“Creating a regime to ensure transparency in energy markets requires a careful balance between the role of regulators and the trading platforms themselves. We believe there is room here for both to play an effective role and therefore think that the ERGEG and CESR proposal for the trading platforms to publish price information is a valuable step forward in harnessing their expertise and knowledge, whilst delivering transparency to the market, which is regulators’ key concern. This added transparency should deliver benefits for users of these markets.”*

(see notes for editors on next page)



Notes for Editors:

1. The European Regulators' Group for Electricity and Gas (ERGEG) is made up of the national energy regulatory authorities of the EU's Member States. It was established by the European Commission in 2003 as an advisory group of the Commission on Internal Energy Market issues (Decision 2003/796/EC, 11 November 2003).
2. CESR is an independent Committee of European Securities Regulators, established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC). CESR's role is to:
 - Improve co-ordination among securities regulators;
 - Act as an advisory group to assist the European Commission, in particular in its preparation of implementing measures in the field of securities;
 - Work to ensure more consistent and timely day to day implementation of community legislation in the Member States.
3. On 21 December 2007, the European Commission issued a joint mandate to ERGEG and CESR in the context of the Third Energy Package proposals and the Commission's review of the Market Abuse Directive (MAD), which is to be completed in early 2009. The mandate requested joint advice from ERGEG and CESR on whether the existing securities regulation sufficiently addresses market integrity in the electricity and gas markets. ERGEG and CESR already submitted facts to the Commission (July 2008) on pre- and post-trade transparency and advised the Commission in September 2008 (Ref. E08-FIS-07-04, CESR/08-739) that the current securities regulations (MAD and MiFID) are not sufficient to properly address market integrity in the energy markets. In concluding that neither safeguards nor sanctions against market abuse exist, ERGEG and CESR advocated for the Commission to develop a tailor-made market abuse framework in energy sector legislation and also called for legally-binding disclosure obligations, including sanction mechanisms. The advice published today (Ref. C08-FIS-07-03, CESR/08-998) was delivered to the European Commission on 19 December 2008 and completes the other elements of the mandate – record-keeping, transparency and exchange of information. A Feedback Statement – Evaluation of Comments on the responses to the consultation will be published within the next few weeks. The results of the public consultations, fact-finding exercises and the ERGEG and CESR advice are available on the ERGEG (www.energy-regulator.eu) and CESR (www.cesr.eu) websites.
4. ERGEG and CESR's recommendation for a European-wide harmonised post-trade transparency scheme:
 - Anonymous, trade-by-trade publication;
 - Timeframe: close to real-time within max. 15 minutes;
 - Scope: standardised electricity and gas supply contracts and derivatives;
 - Publication by platforms (i.e. regulated markets, MTFs, spot exchanges, broker platforms);
 - Access on a non-discriminatory and reasonable commercial basis.



5. *Record-keeping obligations* refer to the obligations on market participants to keep records of the characteristics of the transactions they make. One purpose of record-keeping obligations is to assist regulators in checking compliance of firms on a case-by-case basis. *Transaction reporting* is a step further. It refers to the transmission (on a frequent, periodic basis by market participants to regulators) of the details of the transactions they make.
6. ERGEG and CESR are of the view that “supply undertaking”, which denotes the persons subject to record-keeping obligations under the Third Energy Package, includes all persons active in the sale or resale of electricity/gas including investment firms and all other firms which physically supply electricity/gas to wholesale or final customers. This covers all persons which conclude spot contracts and derivate transactions with physical settlement. Persons trading exclusively cash-settled financial instruments related to electricity or gas are not treated as supply undertakings under the Third Energy Package. If they are eligible for an exemption under MiFID, they are not legally required to keep any records (neither under MiFID nor the Third Energy Package). ERGEG and CESR recommend assessing the dimension and impact of this regulatory gap.
7. ERGEG and CESR consider that regularly reporting about transactions might be a helpful tool to monitor the integrity of the market. However, ERGEG and CESR have not assessed the potential benefits or costs of such transaction reporting yet as it was not required by the mandate. However, they note that it may be sensible to reconsider this at a later stage, possibly in connection with a potential EU regime for market abuse.
8. Relevant EU legislation in this area includes:
 - Directive 2003/54/EC concerning the internal market in electricity
 - Directive 2003/55/EC concerning the internal market in natural gas
 - Directive 2004/39/EC Markets in Financial Instruments Directive (MiFID)
 - Directive 2003/6/EC Market Abuse Directive (MAD)
9. The advice was prepared by a Joint Group of securities and energy regulators which was co-chaired by Mr Carlo Comporti, Secretary General of CESR, and Mr Johannes Kindler, Vice President of ERGEG.

Further information:

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