

EuroPEX Response to the
*“European Commission Draft Discussion Paper by
DG ENERGY on transparency and integrity of
traded wholesale markets in electricity and gas”*

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Methodology

EuroPEX response to the European Commission (EC) consultation of the “*Draft Discussion Paper by DG TREN on transparency and integrity of traded wholesale markets in electricity and gas*” is divided in three parts including the introduction, market integrity and transparency. This document does cover only the points of the proposed *Discussion Paper* which are more relevant to EuroPEX.

I. Introduction

1. Power/Energy Exchanges' (PXs) have shown in the past their ability to design, implement and operate markets in a highly professional manner according to the needs of the market participants. EuroPEX is therefore keen on playing a vital role in the discussion on transparency and market integrity.
2. EuroPEX members are committed to the objective of creating more transparent, efficient and integrated European energy markets. Through the development of market-based, anonymous and financially secured trading solutions, PXs deliver essential tools for the management of physical and financial risks, while enhancing the transparency and the security of the energy markets.
3. EuroPEX welcomes the initiative by the EU Commission to strengthen the energy markets integrity and transparency. The proposals given by the Third Energy Package is an important prerequisite for further work towards more integrated and efficient European energy markets. However, Commission's DG Market is also going to propose measures to enhance the integrity of the OTC derivatives markets which should be included in the scope. Given the fact of complexity and, moreover, the parallel development and review of legislation EuroPEX wants to plead for a road map including an overview of interdependencies, both on content and processes.
4. On behalf of its members, EuroPEX herewith comments the Draft Discussion Paper on transparency and integrity of traded wholesale markets in electricity and gas served by the Commission.

II. Market Integrity

5. The European statutory framework only provides for standardized supervision by financial supervisory authorities for derivatives markets. Hence, there is no harmonized supervision system for derivatives and spot trading in power, gas and emission rights either. Instead, a large number of supervisory authorities and regulators are in charge of different market segments or markets.
6. EuroPEX clearly perceives the need for uniform legal framework for the rules and regulations of energy markets by the legislature throughout Europe. Furthermore, there is a need for supervision of all market platforms and participants which takes the individual requirements of the energy market into account. As a result, this also entails an adjustment of the principles of financial markets supervision. It would not meet the significance of the energy markets to be considered as a mere annex to banking and securities supervision.
7. Adequate supervision and control have to be standardized across borders in a binding manner.
8. EuroPEX proposes that the set of rules for energy markets should cover all instruments on all markets for energy and energy related products:
 - a. Electricity, gas and emissions trading;
 - b. Physical and financial products;
 - c. On PXs, MTF's as well as OTC.
9. EuroPEX argues to follow a functional approach more than an institutional approach taking into account both the complex nature of energy markets and the needs for competition and further development of energy markets. Such a functional perspective should be an integrated concept including existing voluntary and market-based 'exchange rules', which are approved and accepted as a best-practice standard.
10. Furthermore, a harmonised set of rules should:
 - a. state clear and for the energy markets appropriate definitions, e.g. of market manipulation, insider information and insider trading;

- b. introduce appropriate responsibilities infringement sanctions so that a consistent level of compliance is achieved across the Internal Energy Market;
 - c. support the ability of further market development, e.g. the offering of new products on energy sources or combinations beyond power, gas and emission rights.
- 11. The content of a tailor-made market abuse framework should be coordinated with the content of the EU Market Abuse Directive (MAD). Such framework should be similar especially because:
 - a. tradable physical contracts may be substitutes to tradable financial contracts;
 - b. tradable physical contracts may be underlying contracts to tradable financial contracts.
- 12. PXs play a pivotal role in preserving and further enhancing the market integrity by deploying both a complementary multi-level market control and supervision as well as a continuing development function (e.g. voluntary exchange rules).
- 13. The relationship between regulators and PXs is collaborative and principle-based in nature where PXs satisfy recognition requirements and operate and control markets while upholding the regulator's statutory objectives. PXs have continuing obligations to effectively meet regulatory requirements relating to the fair and orderly running of their markets and the quality of those markets; the setting and enforcement of market rules; admission and access to the markets; and disciplinary action on fraud and market abuse.
- 14. In this respect, market monitoring and surveillance should be executed not just by authorities, but by the market surveillance bodies of PXs:
 - a. Authorities in respect of their overall market responsibility, completeness in possession of information and role to propose changes in regulations;
 - b. PXs in respect of their competence of the individual markets and the ability to act effectively on misconduct of the trading rules at the exchange.
- 15. Preconditions for effective market monitoring and surveillance should include cooperation between the two groups, possibilities to request data in connection with investigations and power to issue sanctions for breach of market conduct rules.
- 16. In conclusion, instead of doubling rules, the Regulation should aim at filling in the gaps by establishing a clear and harmonized framework for energy markets both spot and derivatives.

III. Transparency

General principles

17. Transparency is vital for energy markets by creating and strengthening trust to the market and the public as well as supporting the market supervision and regulatory authorities. Overall, transparency makes energy trading understandable and comprehensible.
18. EuroPEX calls for the general principle that certain market information should be made available to all market participants and the public in general in a timely, simultaneous and non-discriminatory manner.
19. Greater information availability improves participant's understanding of markets and their ability to predict future developments, thus reducing the uncertainty involved in market participation. It also reduces the information advantages that incumbents typically enjoy. Particularly, greater information availability and market transparency facilitate the monitoring of market developments not just by regulatory entities, but by a wider range of stakeholders.
20. To prevent collusive behaviour the disclosure of information and transparency for the trading participants and the public and the monitoring by supervisory authorities should supplement each other. Transparency in terms of 'everybody knows everything about everybody' involves the risk of parallel bidding behaviour by trading participants as a result of co-ordinated arrangements and cause damage for the market in this way. Moreover, transparency based on sound judgement ensures that business secrets of market participants are kept in a non-discriminatory manner. Wherever the anonymity of those trading on the markets needs to be preserved, responsible authorities or PXs market surveillance should take over monitoring and ensure proper trading.
21. The main purposes of market transparency should be:
 - a. To ensure that market prices reflect the true market value;
 - b. To reduce possibilities that market participants possess information that might influence in the price formation, and thus reduce possibilities for any misuse of such information (to create an even level playing field).In this respect market transparency would be an effective tool for preventing possible market abuse.

22. EuroPEX believes that transparency information should be provided according to consistent minimum standards across all Member States with respect to:
- a. coverage – the minimum set of information which is made available in a Member State or control area should not depend on the structure of its electricity sector. Individual Member States should then be allowed to require additional information being made available, taking into account the specific factors which may affect market developments in each jurisdiction;
 - b. level of detail – the information should be made available according to the same minimum standard of detail in all Member States, again irrespective of the structure of the electricity sector;
 - c. definition – the information should be published according to common definitions in all Member States so as to facilitate its use by market participants and other interested parties across the EU;
 - d. time resolution and updating frequency – similar information related to different Member States or control areas should be provided according to the same minimum standards of time resolution and updating frequency;
 - e. format – the information should be made available in a format which makes it readily usable by IT systems.
23. Given the importance of information availability and transparency, as illustrated in the previous points, EuroPEX believes that it is essential that when information is to be disclosed, it should be published, rather than being made available on request, unless a strong case can be made in favor of disclosure on demand.

Transparency on fundamental data

24. EuroPEX supports the objective to provide transparency on fundamentals that have a noticeable impact on prices' in order to create a more level playing field and thus enhance market trust by reducing the risk of insider trading and abuse of dominant positions.
25. Initially, existing specifications, such as the transparency requirements of the Congestion Management Guidelines (CMG) and the Reports on Transparency for the Energy Regional Initiatives (ERI) should be implemented and assessed first taking into consideration already realized solutions. Otherwise there is the risk that the market participants in the expectation of new regulation slow down in their efforts to comply with the already existing rules.
26. But it is before all crucial that integrity of the market transparency fundamental data is ensured by legally-binding measures on the direct issuers of these data, in order to secure the quality of their consolidation and publication processes.

27. Bodies independent from the stakeholders where such information is derived, are qualified to coordinate, support and publish transparency fundamental data.
28. Depending on the regional legislation such bodies include power exchanges, which have the natural interest and competence to facilitate the accessibility of such information. PXs, being independent from market participants and having no direct commercial interest in the markets they operate cannot gain advantage from withholding information. In addition, their activities are internally supervised and typically subject to oversight by sectoral or financial regulatory entities. Even in those cases where PXs are owned collectively by market participants, governance and regulatory provisions are in place to ensure that PXs operate in a way which does not favour individual participants.

Post-trade transparency

29. Post-trade transparency is already safeguarded by PXs today. In order to perceive the whole picture brokers and other trading platforms should be subject to similar obligations.