

## ROADMAP

Title of the initiative: **Legislative proposal on transparency and integrity of traded energy markets**

Type of initiative (CWP/Catalogue/Comitology): CWP

Lead DG/contact person/details: DG ENER/B2

Expected date of adoption of the initiative (month/year): December 2010

Date of modification:

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### Initial IA screening & planning of further work

#### A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

(i) à Electricity and gas prices paid by customer are closely following wholesale electricity and gas prices. Therefore, there is a clear regulatory interest in ensuring that the EU's wholesale marketplaces can be trusted and prices are not distorted by unfair market practices

(ii) à The fundament for this work was to a certain extent laid by the 3<sup>rd</sup> internal energy market package. Building on that, and recognising the regulatory gap left by financial regulation (MiFID and MAD) this sector specific initiative aims at closing this gap 1) by introducing applicable market conduct rules, 2) establishing an EU-level central market monitoring function and 3) define an appropriate regulatory enforcement framework.

What are the main problems identified? à The vast majority of standard wholesale and gas transactions are not subject to applicable market conduct rules and, as a result, are not regularly monitored. In consequence insider trading and market manipulation on large parts of traded energy markets remain unnoticed and unpunished

Who is affected? à Wholesale market participants and final customers who may end up paying the price for missing rules/enforcement in form of potentially higher risk premium resulting from lower liquidity of markets.

(i) Is EU action justified on grounds of subsidiarity? Action can be justified because energy markets are cross border in nature, and transactions may be executed in different places than where energy is delivered. This means that it is necessary to take a higher level view than possible just at the Member State level.

(ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? à Wholesale trading in electricity and gas takes different forms (exchanges, OTC) and trading platforms are located all over the EU. In addition, electricity and gas market are interlinked. Taken together, this means that if MS would want to establish market conduct rules and monitor misconduct themselves, they would inevitably only be able to 'see' a slice of the traded market and not be able to capture any market abuse or manipulation occurring cross-platform and cross-commodity. In addition, MS rules may be divergent which would create legal uncertainty for traders acting on a pan-European scale and operating from a single location.

(iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)? à yes. EU rules would ensure a single set of rules giving legal certainty to market participants acting on a pan-European scale. EU-level monitoring of markets would ensure that market misconduct occurring cross-commodity and cross-platform is reliably detected.

## **B. Objectives of EU initiative**

What are the main policy objectives? → the main objective is to ensure the credibility and integrity of traded electricity and gas markets

Do the objectives imply developing EU policy in new areas or in areas of strategic importance? → the present initiative neatly fits into the overall objectives of the internal energy market legislation

## **C. Options**

(i) What are the policy options?

The options could potentially include:

- a) no action at all
- b) collaborative market oversight at MS level
- c) central and integrated oversight at European level with creation of a new EU regulatory body
- d) central and integrated oversight at European level with extension of the competences of an existing EU level body

(ii) What legislative or 'soft law' instruments could be considered?

'Soft law' instruments are not considered

(iii) Would any legislative initiatives go beyond routine up-date of existing legislation?

Yes. We would need a sector specific dedicated legislative act

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?

Yes. DG Markt is in the process of reviewing applicable financial regulation, i.e MiFID and MAD

Explain how the options respect the proportionality principle

The various forms of intervention available to the Union are all designed to provide effective oversight and a coherent framework for market participants. There is no intention to reduce the ability of member states to monitor and enforce appropriate rules in their jurisdiction. Improvement of data availability would enhance the effectiveness of MS actions. Similarly, by supporting effective markets each approach would increase the practical ability of consumers to participate in the internal market.

## **D. Initial assessment of impacts**

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

→ While we have not yet carried out the full Impact Assessment, there will be compliance costs on market participants associated with providing information relating to market transactions. These will vary in accordance with the level, timing and modalities of making data available, including on smaller market participants.

Market integrity and transparency is also likely to particularly benefit smaller market players who rely on access to markets to balance their production portfolio – as they do not have to scale to self hedge.

Consumers should benefit from lower prices, both directly as risk premia on markets should fall, and indirectly as improved transparency and effective oversight encourages greater competition.

There are unlikely to be any direct social or environmental impacts. .

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

à Any initiative is unlikely to involve a direct impact on the EU budget of over €5 million, however, the IA will quantify any financial impact

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

Creating a coherent market integrity framework for Europe should reduce the risk of overlapping national initiatives. This is likely to reduce the administrative burden for market participants. It will also clarify the interrelationship between financial market legislation and sectoral oversight.

It will be necessary to make provision for the inclusion of Third Countries which effectively form part of the EU energy market within any monitoring and oversight framework developed.

## **E. Planning of further impact assessment work**

When will the impact assessment work start? à End of March 2010

(i) What information and data are already available?

à We have been carrying out an analysis of the status quo of regulatory rules and practices in MS and developing market misconduct scenarios.

(ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out?

Not decided yet

(iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

à we are just starting work with the help of external consultants on quantification of misconduct scenarios and on cost impact of possible regulatory action

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

Which stakeholders & experts have been/will be consulted, how and at what stage?

We put out a Commission Communication on our initiative on the last Florence Forum and asked stakeholders to comment. We have been receiving stakeholders' reactions.