



EUROPEAN COMMISSION  
Impact Assessment Board

Brussels,  
D(2010)

10 SEP 2010

## Opinion

### Title

**Impact Assessment on a Commission initiative for the integrity of the wholesale energy markets**

**(draft version of 2 August 2010)**

### **(A) Context**

The 3<sup>rd</sup> Energy Market Liberalisation Package sets out the requirements with regard to transaction record keeping, and to monitoring the level of competition on retail and wholesale levels. It does not however, define specific conduct rules for wholesale energy trading. This initiative focuses on the institutional architecture for market monitoring and aims at defining some overarching general principles. It should be seen in the context of the Market Abuse Directive 2003/6/EC, which covers part of the transactions taking place on the energy markets, and which is currently under review by DG Internal Market. Additionally, art 12 of the Emission Trading Directive 2003/87/EC requires the Commission to analyse whether the market for emissions allowances is sufficiently protected from insider dealing or market manipulation and, if appropriate, bring forward proposals to ensure such protection.

### **(B) Overall assessment**

**While the IA report presents the possible reasons for an EU action in this area, there are two key issues that require improvement. First, the report needs to clarify that the scope of this initiative is aimed at defining the overall institutional architecture for market monitoring, while the detailed 'rulebook' will be established only at a later stage. It should nevertheless provide greater clarity on key aspects of the rulebook such as the definition of 'market abuse'. Given that it is these details which will determine the overall impact of the initiative, the Board is of the view that any proposal for the rulebook should be underpinned by a separate impact assessment. Second, the IA report should provide more solid evidence to strengthen the argument for EU action in this domain, for instance by establishing the necessary conditions for the occurrence of abusive behaviour on the relevant markets. Additionally, the IA needs to strengthen the analysis of possible social impacts, in particular on the most vulnerable groups, and the expected costs of monitoring, and present more clearly stakeholders' views.**

### **(C) Main recommendations for improvements**

**(1) The impact assessment should clarify the scope of the initiative.** The IA should clarify what key elements will be decided at this stage, and what will be left for implementing measure(s). In particular, the IA should state clearly whether the definitions of the key concepts such as 'market abuse', 'acceptable market practice' and 'insider information' will be those used in the Market Abuse Directive (MAD) or other financial market legislation, or whether they will be determined in implementing measures.

**(2) The IA should include a more solid evidence base for the need for intervention.** The argument for intervention should be strengthened further by including a more thorough analysis of the degree to which gas and electricity market are currently liquid and integrated, and how this is likely to evolve in future. This would help to establish more clearly that the conditions for the occurrence of problematic market behaviour are present and that the expected effects can be appreciable. As discussed with DG Energy during the meeting, this analysis could contain: i) an analysis of correlations of spot prices across the regions in the EU, between spot and forward prices, and between the price of gas and the price of electricity, ii) comparison of those correlations to those in the US; iii) examples of 'bizarre' price behaviour that could indicate market abuse; iv) possible examples, in appropriately anonymous form, from recent competition enforcement cases.

This should be complemented by an overview of current MS practices to prevent and deal with abuse and an assessment of the extent to which proliferation of these practices could lead in future to fragmentation of the EU energy market.

**(3) The IA report should provide more analysis of potential effects of market abuse on the costs of living for households.** The IA report should include a qualitative analysis of the mechanism by which abusive practices on the energy markets can impact on costs for households and in that way contribute to social exclusion of the most vulnerable groups.

**(4) The costs of monitoring need to be discussed in more depth.** While the detailed monitoring requirements will be determined only at a later stage, and it is these that will determine most of the costs, this report should provide greater clarity on the nature of the possible costs for companies, based on a broad description of the kind of reporting obligations envisaged. It should distinguish one-off and recurrent costs, new reporting obligations from those which already exist, as well as the potential impact on smaller operators in the relevant markets. The report should also clarify how monitoring under this initiative will relate to monitoring carried out under financial market legislation.

### **(D) Procedure and presentation**

Stakeholders' views should be presented in greater detail when discussing policy options. The IA report should be as clear as possible with regard to future IA work, both in terms of scope and timing.

| <b>(E) IAB scrutiny process</b> |                  |
|---------------------------------|------------------|
| Reference number                | 2010/ENER/017    |
| External expertise used         | No               |
| Date of IAB meeting             | 8 September 2010 |