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IFIEC response to ERGEG Public Consultation on the Draft advice on the regulatory oversight of energy exchanges

Introduction

IFIEC welcomes the opportunity to give an opinion on the advice on the regulatory oversight of energy exchanges (PXs). It is essential for European industrial consumers that Europe creates a level playing field where consumers can purchase electricity against competitive, non-discriminatory prices. Competitive commodity prices can only be achieved by competition in a well organized, transparent and liquid market. Energy exchanges play a crucial role to achieve a fair and orderly market.

While the creation of surveillance authorities and regulatory oversight of energy exchanges is one essential step, providing necessary information to market participants is another. Against the background of the ongoing liberalisation and integration of the European Energy Markets, national and international market information will make it easier for both active and new stakeholders to evaluate their costs and risks. However, while surveillance authorities should be able to access all data, this is not the case regarding transparency of data. There needs to be regard for information being commercially sensitive.

Industrial energy consumers need low entry barriers to the market. PXs should therefore provide fee structures that allow consumers with only a few trades to be able to access the market at the same average cost as a large supplier. In case this is not possible, it should provide a live view without time delay, to the bids at the spot market. Furthermore, sufficient detailed ex-post reporting on volumes and prices should be made available. By publishing relevant market data on electricity generation, (including CO₂-factors), consumption, transmission and interconnection, as well as national and international balancing, confidence in the market will be improved and a level playing field achieved.

IFIEC is concerned about the central role of PXs with regard to Day Ahead market coupling. PXs became unregulated monopolistic players in the market, as they executed a certain amount of public tasks, whilst being commercial enterprises. Our concern is how the PX will be regulated with regard to barriers to entry, product structure, membership, trading fees and terms of delivery. The guideline on governance should make sure that PXs are regulated with regard to their market coupling function.

IFIEC is also concerned about gaming between timeframes. This should be effectively surveyed by monitoring the day-ahead market to make sure all available generation is offered. The intraday market should only offer capacity that was not withheld on the day-ahead market, or capacity that was not available at the moment of day-ahead bidding, but became available (for a justifiable reason) in the mean time.

Improved transparency and oversight is a prerequisite for helping regulators or other authorities to conduct effective monitoring of markets, pricing and bidding behaviour at PXs. Effective monitoring, fully independent and tight regulatory oversight over gas and electricity markets (exchanges as well as OTC) are essential. The level of liberalization and regulation of energy markets is very different in member states across Europe. Furthermore, special national rules may hinder competition. European

standards and rules regarding definitions of market abuse and regarding market surveillance must be defined.

Industrial energy consumers participate in the electricity and gas markets to meet and secure their physical demand. Therefore, electricity and gas markets are more than purely financial markets. For this reason, not every approach that is suitable for the regulation of financial markets is equally suitable for energy markets, and thus these specific characteristics need to be taken into account. A consequence from REMIT will be that PXs will be regulated with regard to financial transactions and with regard to the commodities traded. This makes it important that a common framework is implemented throughout Europe. European Energy Market integration should be preceded by harmonisation of the regulatory framework within Europe. IFIEC believes that PXs should be regulated under the same regime(s) within every market area.

IFIEC would like to stress the importance of a coordinated procedure to implement new rules on governance, transparency, integrity and regulatory oversight upon energy markets. Without an overarching structure different procedures may hinder the development of an integrated European energy market. New and different rules may interfere with each other and could create uncertainty on energy markets.

Questions for Public Consultation

Question 1. In your view, is there a need to create EU level requirements for the organisation, functioning and regulatory oversight of energy exchanges not falling within the scope of MiFID? If yes, what should be the main goals and objectives to be fulfilled?

Yes, IFIEC thinks there is a need to create EU-level requirements for the organisation, functioning and regulatory oversight of energy exchanges. The main goals of this should be:

- Standardisation of traded products; this could highly contribute to a further market integration on the EU level;
- Monitor market behaviour of actors, especially in the electricity spot market where storage is virtually impossible and the time dimension of electricity as a product is highly important. For IFIEC Europe, a correct pricing mechanism on the spot market (i.e. a mechanism where all available capacity is offset at marginal cost against demand) is a prerequisite of an efficiently working electricity market;
- Providing necessary information to all market participants on a non-discriminatory basis;
- Harmonisation of membership-criteria, trading and membership fees and terms of delivery;
- Make sure there is no cross-subsidisation between day-ahead market coupling activities and other types of exchange trading. With the introduction of market coupling the PXs have become unregulated monopolies that perform public tasks. Therefore, there must not be any cross-subsiding between this activity and commercial activities.

Question 2. In your view, what are the remits of national energy regulators in supervising energy exchanges and how could a beneficial cooperation between them be organised, in particular for exchanges active under multiple national jurisdictions?

National regulatory authorities should have the competencies and the resources to supervise efficiently energy exchanges, especially after the implementation of the 3rd energy package. The national energy regulator is best suited because the organization is close to the involved market, knows exactly what circumstances were influential at a certain period of time and is informed about national primary and secondary legislation. They are therefore the designated authority to supervise exchanges.

For exchanges active on the multiple national jurisdictions, IFIEC pleads in favour of bilateral or multilateral cooperation between the involved NRA's; alternatively, ACER could play the supervising regulatory role in these cases.

Definition of common standards (most notably a clear definition of insider trading, market abuse and capacity hoarding) should be established at European level. The process of overseeing the PXs should be delegated to the national authorities, who in turn should report their observations to a European authority. This is especially important with regard to transactions and market behaviour which has an impact on cross-border issues, because with purely national oversight it is not always clear which member state's authority is responsible for observing behaviour and taking action. Cooperation can be achieved through the establishment of a minimum framework upon which supervising should take place. Monitoring will therefore be compatible and can be easily used to survey larger market areas.

Question 3. Should the regulation of energy spot exchanges in future be covered by the energy market integrity regulation or by a separate future legal proposal by the European Commission?

IFIEC is of the opinion that the future regulation on energy market integrity and transparency could be the best suitable regulation for energy exchanges. Separate legislation should be prevented as it could slow down the market integration process and lead to unwanted disturbances.

Question 4. How could in your view a harmonisation of legal and operational frameworks stimulate the cooperation of the European energy exchanges and what is the best way to involve the market/exchange participants?

ACER should be the driving force behind a harmonisation process of legal and operational frameworks of the European energy exchanges. Harmonisation can be initialised through the development of Framework Guidelines. The consultation process that is being used by ERGEG, CEER and ACER with regard to Framework guidelines and European network codes could be appropriate in order to involve market participants.

5. Which criteria should a European framework for market makers include to avoid potential conflicts of interests

...no answer

6. How could national energy regulators better work towards publishing of price sensitive information as e.g. foreseen in the ERGEG advice on Guidelines on Fundamental Electricity Data Transparency to increase the level of transparency?

For IFIEC Europe, transparency is of key importance for the further development of EU-wide energy markets. The starting point should be:

- All relevant information should be made public; exceptions should be accepted with care and only if individual commercial or strategic interests are severely threatened;
- Information that is available for one market actor, should be available at the same time for all market actors.

National energy regulators can cooperate efficiently if they apply the same definitions and use the same standards and rules for publication. Another way to cooperate is to use the same platform where price sensitive information is published for each market area.

7. Which measures could in your view lead to a sufficient cooperation of market surveillance departments of the energy exchanges and the national energy regulators?

Internal market surveillance departments and national energy regulators should have common standards and definitions that they can use to effectively monitor the market. Mandatory cooperation could also be one of the elements within the legal and cooperation framework.

8. What are in your view minimum standards for a harmonised approach to protect energy exchanges from misbehaviours like market abuse

Especially electricity is very sensitive to market abuse. Appropriate regulatory supervision and an EU-wide harmonised set of rules and regulations for the supervision of energy exchanges are particularly appropriate. Minimum standards for harmonised approach must be:

- a common set of rules and definitions;
- the possibility to supervise over different timeframes;
- the possibility to supervise different market areas;