

CE – Registre des représentants d'intérêts – Numéro AMAFI :
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ERGEG
**Draft advice on the regulatory oversight
of energy exchanges**
AMAFI's contribution

The Association française des marchés financiers (AMAFI) has more than 120 members employing over 10,000 people which operate in equity and debt securities markets, equity and debt derivatives markets and commodity derivatives markets. They act on behalf of clients or on their own account, and deliver the investment and ancillary services provided for under MiFID. Some members also operate market infrastructure, such as the regulated market and MTFs, as well as clearing and settlement systems.

In this context, AMAFI is interested in the consultation by the European Regulators Group for Electricity and Gas - ERGEG - on the organization of the supervision of energy markets on the basis of a consultation paper published on April 5, for which the contributions of stakeholders are expected by July 15. AMAFI moreover regularly contributed to various European reflections conducted on both MiFID and MAD cited in the consultation document. AMAFI also contributed to the discussions held in France on the CO₂ market in the work of the Commission Prada. The findings of the report transmitted to the European Commission have fueled the ongoing work to develop a regulation of this market.

First of all, before responding to the eight questions presented in the consultation document, AMAFI wishes to express its strong support for the initiative taken today by ERGEG as it fully considers the harmonization of the organization and of the supervision of markets for electricity and gas as a key issue.

 **Harmonization at the European level is absolutely necessary given the challenges posed for the most efficient performance of energy markets**

AMAFI fully supports the approach of ERGEG to harmonize the organization of energy markets. Thanks to the increasing development of the interaction of market platforms on the one hand, the coupling of the national physical networks on the other hand, the availability of energy resources at the best prices are already substantially improved it for the benefit of all. While these efforts must continue to expand this space to new geographical areas, it is increasingly important that this integration is carried out based on common standards defined at European level.

Developments recalled in the consultation document in the part "History of the energy markets" highlight the benefits of a harmonized approach to conditions in which the energy markets should be set up. Development around heterogeneous models, whether private or public, with various supervisory structures when they are not absent, is a factor of concern for players that AMAFI represents.

In this context, the harmonization approach initiated must take special care to maintain spaces for negotiation secured, transparent and efficient. From this point of view, AMAFI wishes to draw attention of the Commission on the importance attached by the establishment of access conditions in terms of stakeholders in energy markets. If access should remain open enough, especially to allow healthy

competition, we must nevertheless ensure that it allows sufficient control to exclude unregulated players unable to demonstrate a real need to access these markets.

The experience developed in France for several years now shows the importance of rules of access to markets for electricity and gas based on an authorization issued by the Ministry of Industry. Far from being an inappropriate red tape, this authorization is to ensure that players authorized to operate on French territory meet certain minimum requirements. It also builds the authority sector of these markets (CRE - Commission for Energy Regulation) with some supervisory powers.

QUESTIONS

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?

The current environment where exchanges are operating under various status (regulated market – RM, multiple trading facilities – MTF or non regulated exchange), is very complicated. A market participant looking at accessing different platform to operate has to consider specificities of each exchange. Furthermore, some exchanges can offer additional services classified as financial instruments and are as such covered by the MiFID regulation.

As duties between a RM, a MTF and a non regulated exchange differ widely, with a lack of obligations in terms of control, transparency and reporting for the latter, AMAFI is strongly in favor of at least definition of common European standards applicable to all exchanges regardless of their status. Those standards should focus particularly on two major principles which are market transparency and reporting.

Existing MiFID rules have the advantage of clarifying the minimum standards conditions on which all exchanges falling into those criteria are obliged to organize their activities. There are no questions about issues such as applicable regulation, market infrastructure status and attached supervision / regulation. While AMAFI is in favor of encouraging a sound competition in the European energy sector, it will necessitate for international actors to benefit of a harmonized rules and common transparency standards to facilitate the business.

As mentioned above, the growing number of markets which are coupled result in a tight interconnection of the physical capacities. Thus there is an equivalent growing demand for common standards at the European level both for market practices as well as for the supervision regime even though all or part of this supervision is delegated at the national level.

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?

The role of national regulators in the supervision of energy markets could be adapted from the financial markets organization. European Securities Markets Authority (ESMA) stands as the global supervisor, coordinating the national regulators, arbitrating when necessary in case there would be a divergence of interpretation in the local transposition. ESMA defines the global standards governing the financial markets. As such, ERGEG-ACER should have the same role with the same enforcement powers over the national energy regulators or local authorities acting as energy regulator in case where such a specific regulator has not been yet created. ERGEG-ACER should set up the global standards and supervise if necessary with its arbitration power and capacity to act as the final decision maker over national regulators.

Furthermore, ERGEG-ACER have to be able to get a complete picture of the energy markets by covering both the physical markets as well as the financial segment of those energy markets. This is a necessary obligation if they want to get the full technical capacity and competences to overview the markets, being able to analyze abnormal price movements or market manipulations.

AMAFI would strongly support the replication of the ESMA responsibilities both in terms of competence and powers over national regulators to the ERGEG-ACER role. This last one should be the "alike ESMA" European Energy regulator.

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?

Considering the regulatory works that has been accomplished through the preparation of the Regulation on Energy Market Integrity and Transparency (REMIT) draft, AMAFI would favor the integration of the regulation of energy spot exchanges within that framework which is closed to be enacted rather than setting up a separate vehicle. REMIT should become for the energy markets the equivalent of what represents the MiFID for the financial markets.

By using the REMIT vehicle, regulation for spot exchanges will be integrated into the same global regulatory text that will cover other aspects of the energy markets. As such, it should be more efficient. Exchanges, regulators and market participants will rely on a single text, more comprehensive as concentrated into one single, easy to understand reference. Complementary, it should facilitate the evolution of energy spot exchanges' regulation as part of the global picture of the energy regulation when REMIT will have to be regularly adapted.

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?

AMAFI is in favor of promoting competition between exchanges as long as there are a minimum set up of standard rules to guarantee a fair and orderly market environment for market participants. This should be developed through the definition of a minimum set of core rules governing legal and operational frameworks that should be harmonized among energy exchanges.

This harmonization should be defined at the European regulator's level. In particular, questions on market access conditions, definition of market exchange minimum responsibilities, and all fundamental common issues are necessary to facilitate the cooperation of energy exchanges. Such common minimum standard rules to operate should contribute to develop interconnection facilities among the exchanges. Thus the liquidity and the fluidity of the energy markets would improve.

A close interaction between market infrastructures and main stakeholders, already in place and effective with some energy exchanges should provide a major contribution to the definition of the minimum harmonized rules.

Alike for ESMA, ERGEG-ACER, as a European energy regulator should integrate the experience and views of market professionals through the setting up of a stakeholders' advisory group.

In the same way, a common rule for energy exchanges should specify that for any major rule implementation or modification, members have to be consulted/informed. This is already the case with some exchanges, either through informal process or through the intervention of "exchange councils". Both systems have their advantages. As a result, the specifics of such consultation should lie with the concerned Exchanges.

Question 5

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

Market makers (MM) should act within a light but defined regulated framework. Their contribution to maintain or develop the overall liquidity of a market is an important tool for exchanges. As such, they often benefit of particular market conditions (pricing, access and contribution).

Nonetheless, minimum rules and organizational standards should be acted and harmonized among exchanges. The requirements set up for this specific category of market participants should also be part of the REMIT regulatory text.

As a minimum requirement, market makers, regardless they are regulated or unregulated market participants, should comply with the so call "Chinese wall" constraint within their institution between the "proprietary trading activities" and the "commercial or intermediary activities". Notwithstanding that market makers are submitted to the same constraints and duties with regard to market manipulations and insider trading obligations.

Question 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?

AMAFI fully supports the efforts of ERGEG in its willingness to improve transparency on price sensitive information. We understand that major progress have been realized recently in the collection of market information, price data, volumes through dedicated platform for gas and electricity.

ERGEG–ACER, as European regulator and through the implication of national energy regulators should monitor the management and publication of sensitive information. To that extent, a list of unexpected situations and/or volume thresholds disequilibrium should be defined to help market participants fulfill their obligations on a harmonized basis. This should not exclude market members and national regulators to report unexpected events or situations that would not have been included in that list.

With the trend toward a global European energy markets through the development of interconnections / coupling agreements, the necessity to communicate quickly, reliable price sensitive information is crucial. That is the reason why the necessity to set up common definition and harmonized reporting obligation is needed to maintain the efficiency of the markets.

Question 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?

AMAFI considers that cooperation between market surveillance department of energy exchanges and national energy regulators should be part of the agreement that ERGEG–ACER should deliver to any energy exchange looking to operate within Europe.

As a first step, this agreement should concentrate on the definition of harmonized standards that would define precisely the terms of what should be the cooperation between a regulator and an exchange. Furthermore, information to be reported by an exchange to a regulator and how its transmission should be processed must be fixed. This will contribute to a closer relationship between regulators and the accepted exchange. This in particular will improve the knowledge and supervision of the primary basic functions and goals developed by the exchange. Furthermore, it should allow ERGEG – ACER and the national regulators to access when they deem appropriate to specific market information, whether they are prices or volumes concerns or activity from a particular market participant or any other interests.

Question 8

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

AMAFI approve the principle of having minimum harmonized standards to help prevent market surveillance department of energy exchanges from misbehaviours.

We consider as reported in the above questions that such initiative should be again part of the REMIT text. REMIT should be the “bible” for the energy regulation. As such, all rules should be defined in this document. Those minimum standards should provide common definition applicable regardless of the location of the market participants, the exchange or the regulator within the European zone.

Not limited to but definitions should cover market manipulation, front running, insider dealing. To help European energy markets to enhance their global liquidity and transparency, it is crucial that those definition and minimum standards are set up not at the exchange level but at the European level. This will eliminate potential difference of interpretation from one exchange to another on a same problem or situation.

In the current situation, with the absence of a European text on this issue, there is a major concern for market participants that each exchange set up its own definition, based on national rules and regulation. This would exacerbate potential difficulties and trading risks for market participants when acting for own account or for third parties on several exchanges.

