

## CONSULTATION PAPER

### Measures to ensure transparency and integrity of wholesale markets in electricity and gas

#### Comments by AMAFI

1. Association française des marchés financiers (AMAFI) has more than 120 members representing over 10,000 professionals who operate in the cash and derivatives markets for equities, fixed-income products and commodities. Nearly one-third of the members are subsidiaries or branches of non-French institutions. AMAFI's members are active in all the products traded on commodity markets, including grains, metals, energy (oil, gas and electricity) and carbon emissions.

2. The Directorate General for Energy of the European Commission issued a consultation document on measures to ensure transparency and integrity of wholesale markets in electricity and gas. Following a meticulous reading, AMAFI wishes to comment on the quality and detail of the consultation document, which makes a thorough analysis of the issues on which the European Commission has requested advice.

## RESPONSES TO THE QUESTIONS

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### 1. Are there particular developments in relation to oversight of energy markets at a national, European or global level that we have not properly considered ?

In AMAFI's views, the oversight of the energy markets for the objectives announced have been properly identified.

### 2. Do you agree that the current Regulatory Framework should be updated to include clear rules governing energy market oversight?

Yes. AMAFI has always be favourable to measures that would encourage a fair and transparent organisation of the markets. Initiatives that would tend to reduce information asymmetries would be warmly supported.

For energy markets, alike for all commodity markets in general, specificities in their organisation and functioning with non regulated industry participants have to be adapted in the regulatory framework. Financial regulated participants get used to deal with such a regulatory environment.

**3. Do you agree that this update should ensure integrated/coordinated oversight between financial and commodity markets and across borders.**

As reported in the above question, any measures that would lead to an integrated or at least coordinated oversight of the energy markets will be supported by amafi. With the implementation of the MiFID in 2007, some derivatives on commodities have been considered as financial instruments.

While such a classification of financial instrument cannot apply to all type of derivatives contracts based on a commodity and neither on the underlying spot commodity, the proposed update should elaborate on a closer oversight between financial and commodity markets. Developing a reporting mechanism for transactions (transactions realized on an organised markets and to a certain extent OTC trades on spot and derivatives markets) as well as a closer monitoring of such markets will contribute to more efficient markets.

This evolution should lead to a greater confidence in the markets by both industrial as well as financial participants. This should result in more liquid markets.

**4. Do you agree that the overlap of physical, and financial (derivative) markets, and the cross border nature of the market currently leads to sub-optimal oversight of energy markets ?**

While progress have been done in that respect for energy markets, thanks to the 3<sup>rd</sup> Energy package directive and European Commission and ERGEG works, further improvements are still possible.

**5. Do you agree that definitions of market misconduct for gas and electricity markets should be consistent across EU ? If not, why not ?**

AMAFI agrees with the necessity to organize gas and electricity markets with a harmonized level playing field for all types of market participants regardless of the country in which they trade.

As such, definitions of market misconduct should be consistent across Europe. To that extent, definition must be set up at EU level to ensure a comprehensive understanding regardless the location of the markets and/or the participants.

**6. Do you agree that market misconduct should follow the MAD definitions? If not, why not ?**

MAD definitions have been set up primarily in the context of the stocks markets. As such, an application to the Energy products and particularly for misconduct definition needs to be adapted to the specificity of the gas and electricity segment (markets and participants).

An adjustment of the “financial” designed MAD should be elaborated with energy professionals (industry and financial). As it is the case for the “financial” MAD, this “energy” MAD would have the merit to provide a common definition and understanding to all participants, regardless of the origin of the markets and/or the participants.

**7. Do you agree that specific account of the specificities of the physical energy markets should be taken of energy markets through guidance rather than in legislation ? If not, why not ?**

AMAFI support the idea that specific account of the specificities of the physical energy markets should be made through guidance rather than legislation. To that effect, experience from the equity market has been a good example of difficulties encountered by market professionals when they traded with a unique European legislation. The MiFID Directive has been translated into national legislation. This has resulted in different understanding or interpretation from one country to an other.

A guidance (or a regulation) would be more efficient in that respect than a legislative measure.

**8. Do you agree that regular market monitoring is an essential function to detect market misconduct?**

AMAFI shares the view that a regular monitoring of a market is a key element to detect market misconduct. But it should be noted that it is only one among others dispositions to track any unfair practise.

From the experience developed on the stocks markets, a highly liquid traded stock would need additional attention and dispositions to detect market misconduct than an illiquid stock.

With the anticipated developments of liquidity in gas and energy markets, a similar position can be anticipated. Thus while market monitoring remains a key element for misconduct, additional measures should be considered.

**9. If yes, given the characteristics of wholesale energy markets, do you agree that market monitoring is best organised on EU level?**

Energy markets are still fragmented within Europe. This has contributed to the development of national initiatives and monitoring rules. Since the 3<sup>rd</sup> Energy package is on its way, greater coordination and harmonisation are now effective.

Physical energy markets regulation has been organised at a national level. This differs from the financial markets regulation which is set up since MiFID at the European level.

To improve such a cultural gap and provide a harmonised monitoring of the energy markets, AMAFI would be in favour of a European level organisation.

**10. If yes, do you believe that ACER should be given the role of an EU level monitoring body for wholesale energy markets?**

ACER should be given the role of defining the necessary rules for monitoring the wholesale energy markets. Meanwhile AMAFI would be in favour, on a daily basis, of a delegation by ACER of its monitoring obligations to the national bodies.

ACER should be given the capacity to control when necessary the national bodies to ensure a fair and harmonized monitoring of the markets all over Europe.

**11. Do you agree that the EU level monitoring body for energy markets should have a coordinating role to ensure effective application of EU level rules for energy markets? If not, why not?**

Yes. As commented in the previous question (Q. 10), ACER, acting as a monitoring body for Europe should have a coordinating role among local bodies to ensure an effective application of rules set up at a European level for energy markets.

Furthermore, ACER in its mandate of being the “prime” responsible body for the monitoring of energy markets should have the capacity and necessary powers to check the effectiveness of the monitoring by the local bodies.

**12. In your view, would enforcement of market misconduct rules be best organised on national level or EU level?**

Based on a [European definition](#) of MAD, adapted to the specificity of the energy sector including misconduct rules, AMAFI would argue in favour of a national enforcement. Monitoring of the local market and market participants should be delegated to the national body.

If a case of market misconduct is detected, sanction should be under the responsibility of the national body if it affects only the national market/participants. Should the case reveal a crossborder misconduct, then each national body implicated would be given the right to sanction the defaulting party.

Ultimately, this could lead to a cumulative sanction of several national bodies. This process would be revamped when a European organisation will be set up and operational to assume the monitoring functions as well as to benefit from sanction capacities.

This position would require that in each European jurisdiction the national body :

1. - has the necessary capacity and powers to monitor but also to sanction any misconduct ;
2. – has the obligation to cooperate closely with other national bodies (financial and/or energy).

**13. Do you agree that the market monitoring body for energy markets should also be able to monitor EUA transaction?**

For the EUA, AMAFI considers that a European monitoring should be the principal objective. While this will require time to implement, national body should be in charge of the monitoring. Depending of the organisation of each European country, some have yet energy regulators, some have financial regulators and some have both of them.

AMAFI would be in favour of having only one national body in charge of the monitoring for an efficient and pragmatic approach with the market participants. When possible, financial body would be the prevailing body due to the already long experience in market monitoring as well as in tracking any misconduct on the financial markets.

But where an energy body exists, it should fully cooperate and coordinate with the “prime” regulator to consolidate the monitoring of both spot and derivatives segments of the energy markets.

**14. Would monitoring of traded carbon markets be best organised on national or on EU level ?**

As mentioned in the above question (Q.13), the perfect situation would be to organize the monitoring of the traded carbon markets at a European level. This would contribute to get a common, efficient and simultaneous supervision.

To reach this objective which would require quite a long regulatory process to elaborate, AMAFI considers that the monitoring should be treated at the national level as a necessary first step.

This would necessitate a close coordination amongst the national Bodies in charge of the monitoring within Europe.

While energy products such as electricity or gas have a local implication (production, transportation capacity, storage facility, ...) which could argue in favour of a European regulation and a national monitoring, carbon markets are different in nature to justify a European regulation and enforcement.

**15. If on EU level, do you believe that ACER could be an appropriate monitoring Body ?**

As developed in the Q. 14, AMAFI do consider that monitoring has to be set up as a first step on a national level before being upgraded at a European level.

Even with the perspective of moving supervision from national to European level, AMAFI considers that a specific Body should be set up to cover the traded carbon markets. This position is based on the specificities of the carbon markets which fundamentally differ from Energy markets (gas and electricity). This has been highlighted in particular in the report “*The regulation of CO<sub>2</sub> markets*” issued on April 2010 (France – Commission Prada).

Today, electricity and gas market participants have a significant share of the carbon markets.

This should not last for long due to the entrance of new sectors in the emission reduction process (airlines, ...). Furthermore, the financial actors are developing activities directly or through investment vehicles.

Finally, the correlation between the carbon prices and the electricity or gas prices does not appear significant enough to justify the monitoring of carbon markets by ACER.

It should be remembered that in the current situation, part of the carbon derivative trading falls under MIF and MAD application.

**16. Do you agree that it is not appropriate, at least at present, to consider coal, oil and other commodities along with wholesale gas and electricity markets? If not, why not ?**

Coal, oil and other such commodities are used on some factories to produce energy. The impact of those underlying markets to the price discovery mechanism of electricity and gas would argue in favour of concentrating the European efforts to promote transparency and integrity of the markets in nowadays only to electricity and gas as an initial step.

Oil could be the next segment to focus on for the monitoring of the markets. But thanks to its large international implications, any attempt to take measures on this specific segment must be decided and supported by the main developed economies/countries (i.e Asia, Europe, Middle East and Americas). Europe acting alone could lead to detrimental evolution in terms of competition and location of markets as well as participants.

**17. Do you agree that it is appropriate to apply exemptions and de minimis levels? If not, why not ?**

Some participants to the energy markets as well as to the carbon markets, particularly for the industrial sector are of a limited scale. To avoid any extra costs for them which would be counterproductive for their market hedging, it is appropriate to apply exemptions and/or de minimis levels.

It must be clearly define the context in which such participants would be granted an exemption or de minimis levels. Only those acting for their own account (excluding any third party business) should benefit from an exemption.

**18. Do you agree that market data relating energy market transactions should be reported centrally ? If not, why not ?**

Yes. AMAFI support the collection market data relating energy market transactions to a central depository. This would have the benefit of having the same reporting scheme adopted regardless of the country in which the trade occurs and/or the trade participant.

To minimize the costs associated with such a system, market data could be reported via the national body monitoring the markets. This would enforce the advantage of a local presence for local market participants while providing a global view of the markets.

Each national body should have the capacity to consult the database as an effective tool to perform their monitoring duties.

**19. Do you agree the body with an oversight role requires full access to fundamental data relating to carbon ?**

AMAFI support the capacity for the body which monitor the carbon makets (European body when set up and national bodies in the interim period) to have full access to fundamental data.

This should be acceptable by the market participants (particularly for industrial which are very sensitive on this issue) if the bodies have an obligation of confidence and that figures if they have to be reported will be aggregated in such a way that identification or competitiveness aspect of an industrial company can be traced.

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