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EFET letter on reporting requirements in the Spanish gas and electricity market

Dear Miss Baquedano Martín,

Dear Mr Hernández,

Dear Mr Miras,

The European Federation of Energy Traders (EFET)¹ follows closely national regulatory developments and commits to provide its expertise and support to further developing liquid and efficient energy markets.

We advocate an effective regulatory framework, which is essential for the development of liquid and non-discriminatory markets that encourage a level playing field whilst minimising operational costs. This is particularly the case for national reporting and other related compliance obligations.

¹ The European Federation of Energy Traders (EFET) promotes competition, transparency and open access in the European energy sector. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and a competitive economy. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org.



EFET believes that in certain national markets these objectives could be achieved in a more efficient manner. In this sense, EFET notes that the reporting obligations in the Spanish gas and electricity markets represent a real burden for EFET member companies.

EFET has identified some inefficiencies in the Spanish market summarised as it follows:

- Double data reporting within the same or different authorities
- A lack of data-sharing between authorities
- Legacy reporting
- Need for a user-friendly provision of information, processes to register in electronic platforms, and reporting methods
- A lack of distinction between types of energy activities.

Please, find in the Annex below a more detailed assessment of the challenges faced by market participants, followed by some suggestions on how these could be tackled together by authorities. Some of these solutions can be implemented promptly, while others may be part of a larger and longer-term review.

Finally, we encourage Spanish authorities to consult, if necessary, other EU markets and regulators on how market monitoring should be better addressed considering, at the same time, an optimal solution for all the involved parties; without creating an additional burden for market participants.

In view of the importance of the matter and the need for urgent action to address unnecessary overlaps, we would appreciate an opportunity to discuss our comments further in a bilateral meeting at your convenience.

Yours sincerely,

Javier Florez

Antonio Canoyra



Annex – Regulatory reporting in Spanish markets

EFET believes there is scope for significant synergies and cuts to the regulatory barriers on market participants. Ultimately, the aim of this letter is to express our desire to encourage Spanish authorities (CORES, CNMC and MINETAD) to work together and tackle the following challenges:

1. Coordination and information sharing to eliminate duplication: we believe that there is a need for a better coordination and information sharing between authorities in order to avoid barriers that result in costly duplication and discourage market entry.
2. Reviewing the purpose of current obligations and their processes: Certain current regulatory obligations should be reviewed to account for the needs of today's markets and overarching European regulations. We also believe that the reporting process to authorities could be more efficient (currently it is slow, out-of-date and unnecessarily complicated)
3. Improving provision on reporting and simplifying the setting-up process: Perhaps due to division of market monitoring responsibilities between three different authorities, we have found that the information on which reporting obligations companies must meet and how they should be fulfilled, are out-of-date or unclear. The setting-up process (getting registered in various electronic platforms in order to report the required information) could itself be simplified with equal results.

A. REMIT double-reporting and using REMIT data to avoid reporting in other areasConcerns:

- Circular 4/2008
- ITC/3283/05
- Real Decreto 1716/2004
- Resolución 15 de diciembre 2008

Comment:

Since the go-live of REMIT on April 7 of this year, a lot of the information requested by Spanish authorities is already being directly reported to ACER through REMIT. CNMC has the right to access this information, which is provided automatically, accurately and in a timely manner (often near-time).

Moreover, because REMIT data includes information from LNG, Transmission System and Storage Operators, and Organised Market Places, much of the available data can be used to triangulate (calculate) accurate and up-to-date information on other areas of the gas market. These areas are covered by ITC/3283/05, Real Decreto 1716/2004 and Resolution of 15 December 2008 and include: imports from or exports to certain countries; deliveries to specific end-users; gas entering storage, in storage and exiting storage; LNG terminals used; commodity prices; transportation costs; and so forth.

We are aware that REMIT states: "the collection of data by the Agency is without prejudice to the right of national authorities to collect additional data for national purposes". However, we would like to point out that "additional" does not mean the "same" information. Authorities do have the right to demand the reporting of the "same" information in different formats, if they desire, but we fail to understand for which purposes is this needed.

Suggestions:

1. CNMC Sub-Directorate for Natural Gas Circular, responsible for the collection and monitoring of the data obtained by Circular 4/2008, should be given access to REMIT data collected by CNMC Sub-Directorate for Derivates Markets.
2. Minetad, Cores and CNMC should cooperate with the aim of minimising the reporting inefficiencies for market participants from laws such as the Resolución 15 de Diciembre 2008. CNMC should share the relevant REMIT data with MINETAD and CORES insofar in order to reduce this burden.
3. Cores, Minetad and CNMC should assure they use REMIT data to obtain the information required by some of the reporting obligations imposed. For example: imports and exports per company per country can be calculated by looking at nominations at various points on the network, transportation costs can be obtained from the TSO data (or even directly from the TSO), volumes supplied to electricity plants with the ability to use alternative fuels can also be obtained by looking at nominations per point.
4. From a legal perspective, we understand there may be legal requirements for reporting this information (in spite of REMIT); however, Spanish authorities can verify whether Market Participants are already meeting these obligations through their reporting of REMIT data.

B. Reporting of financial accounts

Concerns:

- Circular 5/2009

Comment:

Every quarter and every year, market participants in both electricity and gas markets in Spain have to report a detailed accounting information on their Transmission, Supply, Distribution and Storage activities taking place in both Spain and abroad. This is also required for companies established in other EU Member States.

We find the information required to be provided inflexible and highly protected (please see Point D below); in addition, it seems that the origin of these obligations is to “*evitar discriminaciones y subvenciones cruzadas*” (Orden ITC/1548/2009²). Orden ITC/1548/2009 itself originates from Art.60.2 of Ley 34/1998³, which says the following:

Sin perjuicio de la aplicación de las normas generales de contabilidad, a las empresas que realicen actividades a que se refiere el artículo 58 de la presente Ley o a las sociedades que ejerzan control sobre las mismas, el Gobierno podrá establecer para las mismas las especialidades contables y de publicación de cuentas que se consideren adecuadas, del tal forma que se reflejen con nitidez los ingresos y gastos de las actividades gasistas y las transacciones realizadas entre sociedades de un mismo grupo, con objeto de evitar discriminaciones, subvenciones entre actividades distintas y distorsiones de la competencia.

The concerns raised by Ley 34/1998, cross-subsidisation leading to discriminatory and anti-competitive behaviour, relate to a time when suppliers were also the owners and operators of transmission networks. However, EFET encourages the Spanish authorities to review those reporting obligations given that:

² <https://www.boe.es/boe/dias/2009/06/13/pdfs/BOE-A-2009-9839.pdf>

³ <https://www.boe.es/buscar/pdf/1998/BOE-A-1998-23284-consolidado.pdf>

1. Both Enagás and REE are fully unbundled companies, no longer owned by a supplier company
2. Emergent market participants in Spain have no other activities other than trading and therefore do not engage in internal cross-subsidies
3. Any anti-competitive behaviour in terms of volumes and prices is already covered by REMIT
4. Circular 5/2009 may provoke that some companies consider leaving the Spanish market - which contradicts CNMC aims to promote a more liquid and competitive gas or power market.

EFET would like to highlight from Resolution 17 November 2009 “*uno de los principios de la Orden ITC/1548/2009, de 4 de junio, es la reducción de las cargas administrativas que deben soportar las empresas del sector*”.

In this sense, we will be grateful, if you consider our suggestions hereunder:

Suggestions

1. The CNMC and the Spanish government should review the current obligations and provide justification regarding whether Circular 5/2009 is fit for purpose in today's post unbundling world, where REMIT data provides an excellent tool to identify market abuse. In this sense, a legal review would be welcomed. If the justification to maintain Circular 5/2009 is to ensure no cross-subsidisation between energy activities, we would appreciate if Spanish authorities considered the next suggestion hereunder (suggestion 2).
2. CNMC should aim to minimise the regulatory burden imposed on companies (as per Resolution 17 November 2009) by questioning whether it is right to impose on single-activity companies reporting obligations designed to monitor multiple-activity companies (as per Article 58 of Ley 34/1998). In short, a market participant needs to be active in more than one activity for there to be any cross-subsidisation.

3. Circular 5/2009 also asks for financial information on activities abroad. Given that the Third Energy Package applies to the whole of the EU, it is already virtually impossible for cross-subsidisation to exist in electricity or natural gas since the same unbundling rules between transmission and supply applied in Spain are also applied equally in every country connected to the Internal Energy Market. In this sense, Spain should recognise the legal rigour of its fellow Member States and abandon this requirement.
4. Finally, the CNMC could consider looking into whether since 2009 it has found that Circular 5/2009 has been useful to help it identifying non-discriminatory behaviour and whether there are today better tools at its disposal. It could for example conduct a cost-benefit analysis that weighs the benefit of having had this information against the costs imposed on market participants and consumers. This suggestion could complement the first suggestion.

C. Reporting on retail data and licensing

Concerns:

- Circular 5/2008
- Orden ITC/606/2011
- Ley 18/2014 de 15 de octubre

Comment:

Circular 5/2008 applies to all gas market participants in Article 58 of the Law 34/1998. However, this Circular relates exclusively to the retail market. EFET believes that imposing the reporting obligations inscribed in the Circular to market participants that do not have any retail activities in Spain is inefficient and unnecessary. The same logic applies to Orden ITC/606/2011 of 16 March, reported to MINETAD and which refers to retail electricity prices.

Finally, Law 18/2014 of 15 October requires market participants to inform MINETAD on energy sales to end-users.

Suggestions:

1. EFET believes that Spain could benefit, in terms of licensing, from a separation of retail and trading activities in both gas and electricity. This separation of licences could lead to a better and more efficient targeting of Spanish retail and wholesale laws and regulation in such a way – including reporting obligations.
2. It should not be necessary for market participants, exclusively focused on trading activities, to report this information.

D. Guidance provided by authorities on reporting obligations

Comment:

Our members are not satisfied with the current set-up surrounding reporting and information provision, which makes their obligations confusing and difficult to comply with and hence leading to unnecessary increasing compliance risk. In terms of market guidance market participants find it confusing that information is fragmented across three different authorities. Sometimes, the guidance provided is old, out of date and some of the links are not available since they belong to a previous domain.

Suggestions:

1. CNMC could provide a one-stop shop for market participants who want to enter the Spanish market and are looking for information on what their obligations are. It could do this for Minetad and CORES and provide market participants with the necessary links.
2. MINETAD, CORES and CNMC could update the information provided in order to ensure it is not obsolete.

E. Efficiency of information provision

1. Electronic platforms: there is one electronic platform per institution; CORES, MINETAD and CNMC. It may be beneficial for Spanish consumers and market participants to report to a single platform since, in addition some have different registration procedures
2. Registration: employees of companies not domiciled in Spain need to obtain a Spanish foreign ID, as well as obtain a digital certificate in order to access the authorities' electronic platforms. The digital certificate is linked to a particular person and can only be used from the computer that it is installed on, which creates a potential unnecessary risk of non-compliance in case the person in charge of reporting is absent, or there are IT problems with the computer. Furthermore, in some cases, a Power of Attorney in Spanish is required stating that the person submitting the data has the mandate to do so. In practical terms, this involves difficulties whenever there are employee turnovers.
3. Format: We have found that some of the excel spreadsheets are protected - this introduces extra difficulties for non-Spanish speakers. Moreover, the impossibility of copy-pasting cells is time-consuming and inefficient since the risk of typing mistakes increases. (we would like to remind CNMC that the Resolution 17 November 2009, mentions that "*uno de los principios de la Orden ITC/1548/2009, de 4 de junio, es la reducción de las cargas administrativas que deben soportar las empresas del sector*").

Suggestions:

1. Information sharing between authorities would be most welcomed and has the potential for significant synergies. CNMC could act as the main gateway for energy market information in Spain to which all market reporting is done, and as the first reference institution for other Spanish authorities seeking market information.

If this is implemented, regulatory barriers in Spain will be greatly reduced, since authorities will first revert to CNMC for specific data, thereby avoiding overlapping reporting obligations. This solution would also remove the need for multiple platform registrations by companies and employees and make entering and being active in the Spanish market simpler and more cost-efficient.

2. Spanish authorities could reduce red-tape by accepting EU ID Cards or Passports, instead of requiring a Spanish specific ID, since the NIE is itself applied with and ultimately linked to the applicant's ID or Passport number.
3. CNMC, MINETAD and CORES should review the applied formats under the current reporting obligations to foster a higher level of data and process standardisation aligned to current IT market practices, including the possibility for automated reporting (e.g. via standard XML schemas and documents). This alignment exercise should benefit at maximum of the available data content already provided by European regulatory reporting requirements like – but not limited to - REMIT