

## **Divergent German path threatens success of EU approach to transparency and integrity of energy markets**

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A draft law recently approved by the German government and sent to the German parliament overlooks EU legislation addressing potential market abuse and market transparency in the power and gas sectors and calls into question the implementation of EU-wide market abuse and transparency standards. Additionally, the initiative would cause disproportionate and burdensome costs for affected companies.

*"EFET<sup>1</sup> has played a key role in advocating enhanced transparency in wholesale energy markets. We have been the original proponents of publication of detailed data about the use and availability of physical infrastructure in the power sector. More recently we supported the European Commission as it developed its Regulation on Energy Market Integrity and Transparency (REMIT<sup>2</sup>)"* says Peter Styles, Chairman of the EFET Electricity Committee and a member of the Board of EFET Deutschland.

REMIT notably sets out obligations for energy market participants to make available to regulators details of their standard transactions and to disclose inside information (fundamental data) about use and availability of their assets. Furthermore, EU transparency guidelines under the 3<sup>rd</sup> Energy Package specific to the electricity and gas sectors are already intended to set precise parameters for publication of asset related data. *"The draft law recently approved by the German government, supposedly to deliver a national 'implementation' of EU legislation, actually undermines a key objective of REMIT: to put an end to multiple national reporting obligations by ensuring uniform criteria and a single EU reporting standard"* Peter Styles concludes.

The German law would require the establishment of a Market Transparency Agency. The new agency, to be organised as a department of the Federal Cartel Office, would be empowered to conduct a "continuous monitoring" of wholesale gas and electricity trading.

**EFET perceives no practical or legal excuse for the German government to establish a separate German institution to specify and handle transaction-related and asset-related data<sup>3</sup>.**

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<sup>1</sup> The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information: [www.efet.org](http://www.efet.org)

<sup>2</sup> The European Union Regulation 1227/2011 on Wholesale Energy Market Integrity and Transparency – REMIT - became legally binding in all EU Member States on December 28, 2011, just over a year after the first Commission Proposal. REMIT introduces a new EU regulatory framework aimed at preventing abusive practices in the wholesale energy markets through increased transparency and enforcement at both EU and national levels. While some provisions (such as the rules on market manipulation and insider trading) are already in place, legal certainty relating to transaction data reporting is anticipated after the EU Commission issues implementing acts to this effect. Further implementing measures are foreseen, in relation to registration of trading firms, national penalties systems, possible adaptations of the concepts of insider information and market abuse through EC delegated acts. Moreover, the European Agency for the Cooperation of Energy Regulators (ACER) intends to periodically update a set of Guidance to national regulators on the REMIT definitions.

<sup>3</sup> A number of specific criticisms can be levelled at the German legislative proposal. See annex.

## **ANNEX**

### **1. National monitoring will not result in decreasing national prices**

The German government justification for creation of the new agency supposes that preventive measures to deter market abuse would lead to lower energy prices.

In fact, no price increase deriving from market abuse has ever been proven in Europe so far. Domestic and foreign suppliers and buyers of power and gas experience the efficiency and transparency of the German wholesale power and gas markets on a daily basis.

Indeed, market based energy pricing and an absence of abuse have been verified in a recent special sector report<sup>4</sup> undertaken by the Federal Cartel Office itself.

### **2. Why a divergent German path instead of a European solution?**

Implementation of the proposed German legislation would in the view of EFET violate the recently enacted REMIT. The European Regulation is meant to be the sole legal basis for the submission of transaction and fundamental data (inside information) throughout the EU. Alternative or parallel national submission obligations are not in order, nor is a separate national implementation of REMIT foreseen as necessary.

Besides deviating from European provisions, intended to pave the way for greater transparency and clearer regulatory oversight, the German approach would duplicate the effort and cost of compliance incurred by all affected parties.

### **3. A European regulatory mechanism for data reporting is still being brought into force and is meant to have direct effect in all Member States**

In order for the German legislation to be compliant with superior EU legislation, it is necessary to await detailed implementing acts to be issued by the European Commission under REMIT.

The official justification for the proposed German law suggests that the implementation costs would then be limited to minor compliance expenditure: EFET member companies doubt this would prove the case as this German law aims at additional, new reporting obligations in duplication of REMIT's reporting requirements.

Indeed, at a later stage, the content and process of data submission would need to be adjusted to take account of EU implementing acts on transaction reporting. Any necessary national measures should therefore follow the REMIT schedule, rather than anticipate it.

#### **For further information, please contact:**

Ilaria Conti, EFET Communications Director, [Ilaria.Conti@efet.org](mailto:Ilaria.Conti@efet.org) Tel: +32 485 613 773

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<sup>4</sup> Available at Bundeskartellamt (2011) - Sektoruntersuchung Stromerzeugung Stromgroßhandel. Retrieved on 3rd May 2012 from:

[http://www.bundeskartellamt.de/wDeutsch/download/pdf/Stellungnahmen/110113\\_Bericht\\_SU\\_Strom\\_\\_2\\_.pdf](http://www.bundeskartellamt.de/wDeutsch/download/pdf/Stellungnahmen/110113_Bericht_SU_Strom__2_.pdf).