Pilot Project for an

Energy Trade Data Reporting Scheme

Final Report

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INFORMATION PAGE

Abstract

This document C11-WMF-11-03a is a CEER document on CEER Guidelines of Good Practice on transaction reporting and detecting market misconduct.

This document seeks to support discussions on CEER's input to the draft Regulation on Energy Market Integrity and Transparency (REMIT). It is intended to serve as a background paper in drafting the input to the REMIT discussion and as a scoping exercise on CEER Guidelines of Good Practice on transaction reporting and detecting market misconduct.

Target Audience

Energy suppliers, traders, electricity and gas customers, electricity and gas industry, consumer representative groups, network operators, Member States, academics and other interested parties.

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Related Documents

External documents

- Proposal for a Regulation of the European Parliament and of the Council on energy market integrity and transparency (COM(2010)0726 – C7-0407/2010 – 2010/0363(COD)).

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Executive Summary

This energy trade data reporting pilot project, which was carried out over a period of six months from July 2010 to January 2011, coincides with the debate on the European Commission's proposal for a Regulation on Energy Market Integrity and Transparency (REMIT) and the review of several pieces of EU financial market legislation (Markets in Financial Instruments Directive - MiFID[1], Market Abuse Directive – MAD[2] and European Market Infrastructure Regulation – EMIR[3]).

In the context of differing national energy wholesale market reporting and monitoring schemes in Europe and an insufficient legal framework at EU level, the pilot project set out to achieve the following objectives:

1. Demonstration of the feasibility of an efficient, cost effective, comprehensive and standardised collection, storage and monitoring scheme for energy trade data;
2. Concept development providing representative examples of statistical analysis of trade data;
3. Concept development providing trade data analysis in order to identify potential market abuse;
4. Recommendations for a future European trade data reporting and monitoring scheme.

In order to strike a balance between providing reasonable and relevant results and sticking to the tight time schedule, the geographical scope of the project was limited to the region of Central Western Europe (including Austria). With respect to trading venues and products, (historical) trading data was retrieved from a representative sample of brokers, traders and energy exchanges.

[1] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 200/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L 145, 30.4.2004, p. 1, as corrected by Corrigendum, OJ L 045 , 16.2.2005, p. 18, and as amended by Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006, OJ L 114, 27.4.2006, p. 60

[2] Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJ L 96, 12.4.2003, p. 16, as amended by Directive 2008/26/EC of the European Parliament and of the Council of 11 March 2008, OJ L 81, 20.3.2008, p. 42.

[3] Regulation (EC) ---/--- of the European Parliament and of the Council on OTC Derivatives, central counterparties and trade repositories [European Market Infrastructure Regulation – 2010/0250(COD)]

The project was set up under the overall framework of the European Energy Regulators' Financial Services Working Group (FIS WG) in close cooperation with EFET, the European Federation of Energy Traders, and FORMAET Services as an external consultancy.

Great importance was given to the involvement of all relevant authorities and market participants. A Steering Committee was set up, comprising of representatives from the European Commission (DG Energy and DG Market), ERGEG (European Regulators' Group for Electricity and Gas), the energy traders organisation EFET and its subsidiary EFETnet, the Dutch Stichting FORMAET and representatives from exchanges, traders and brokers.

This report, alongside information on the project scope, objectives and final results´, also gives a brief summary of the status quo of the current legal framework in the EU with respect to wholesale energy market monitoring. Finally the report provides recommendations on the following main aspects of a future European Energy Reporting and Monitoring Scheme:

- Data reporting
- Data Access
- Monitoring
- IT-Architecture
- Governance

1 Motivation and Project Objectives

The beginning of European energy markets liberalisation at the end of the 1990s and the beginning of this century swiftly prepared the ground for the development of electricity and gas wholesale markets. Over the last decade these markets became more mature and more integrated across the EU Member States.

However, after this phase of rapid development, it is even more crucial to strengthen the trust in the integrity of electricity and gas wholesale markets, particularly due to the fact that wholesale prices became the most relevant reference for end consumer pricing on the retail level.

In the light of this need, the European Commission gave a mandate to CESR (Committee of European Securities Regulators) and ERGEG in 2008 in order to evaluate specific market integrity and market surveillance issues. One of the core points of the mandate was market abuse. In October 2008, CESR and ERGEG provided their joint advice on the market abuse issue to the European Commission[4]. It was concluded that while it is a reason for concern, the necessary level of information for a comprehensive assessment is not available. Regarding the legal basis CESR and ERGEG recommended a sector specific regime for electricity and gas wholesale markets, also recognising the need to have the necessary information for the relevant authorities available in short time.

However, from a market participant perspective it is important not to face several different reporting obligations, standards and formats (e.g. in different jurisdictions) but rather to have one single and standardised reporting channel. The EFET pilot project on eXRP[5] defining and testing communication standards in the market was a very good opportunity for being used in the pilot project for an energy trade data reporting scheme. Complementary to the efficient reporting, regulators consider the completeness of information and the possibilities for analysis as key objectives.

[4] Market abuse – ERGEG and CESR advice to the European Commission in the context of the Third Energy Package, Ref. E08-FIS-07-04, 1 October 2008, http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Cross-Sectoral/2008/E08-FIS-07-04_%20MAD%20Advice.pdf

[5] eXRP - electronic eXchange Related Processes is a EFET project managed by EFETnet aiming to standardise and automate various processes related to brokered, cleared and clearable energy trades.

As the European Commission is currently following up the CESR/ERGEG recommendations by elaborating a legal proposal for market integrity and particularly market abuse, the issue of data collection and analysis has gained importance compared to 2008. In the light of these developments, ERGEG and EFET decided to join forces and started the pilot project for an Energy Trade Data Reporting Scheme.

When initiating the pilot project, it was not foreseeable that it would coincide with the Commission proposal on a Regulation for Energy Market Integrity and Transparency (REMIT) of 8 December 2010[6]. Thus, the results deriving from the pilot project gain even more relevance. Throughout the document reference is made to the draft REMIT wherever considered necessary.

The project objectives have been defined as follows:

1. Demonstration of the feasibility of an efficient and cost effective, comprehensive, standardised energy trade data collection, storage and monitoring scheme;
2. Development of a concept and providing representative examples for statistical analysis of trade data;
3. Development of a concept and providing examples for trade data analysis in order to identify potential market abuse;
4. Recommendations for a future European trade data reporting and monitoring scheme.

The pilot project was set up under the overall framework of the CEER Financial Services Working Group (FIS WG) to contribute to the European Energy Regulator's 2011 work programme's deliverable on "CEER Guidelines of Good Practice on transaction reporting and detecting market misconduct" and in addition it is intended to contribute to the "CEER Advice on the legal framework for sector-specific oversight regime – competences and cooperation of regulators".

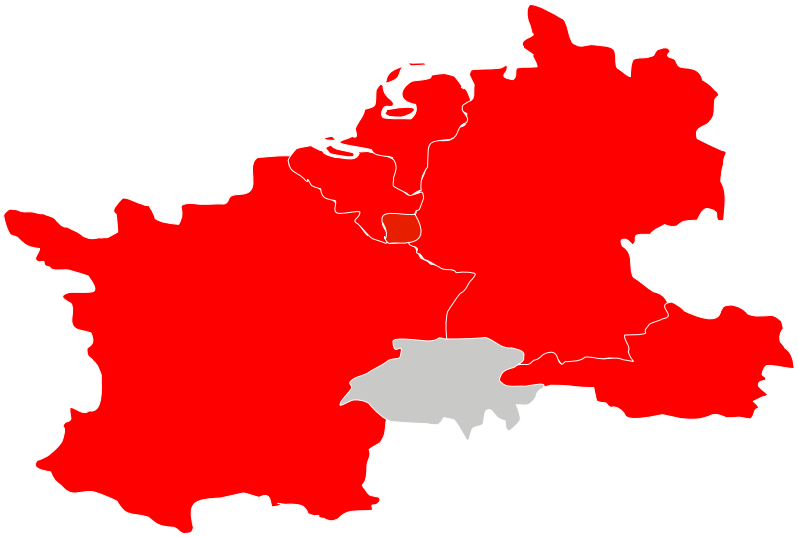
[6] Commission proposal for a Regulation of Energy Market Integrity and Transparency (REMIT – COM(2010 726/3) from 8 December 2010.

2 Scope

In order to fulfil the project objectives within the limited time available (six months) a representative number of countries and stakeholders had to be involved and a representative sample of energy trade data had to be provided.

The pilot project covers in principle the energy wholesale market, i.e. electricity and gas wholesale products. For the purpose of the pilot project, solely data from the electricity market was taken into consideration. The reason for this approach was the higher liquidity of electricity markets and the faster availability of data. However the general conclusions apply also to gas markets and reference to the gas wholesale market is made wherever considered appropriate.

The geographical scope of the pilot project covered the "CWE+" area[7].



Graph 1 - CWE+ area covered by the pilot project

The electricity data submitted and taken into account in the course of the pilot project covered the following trading venues, products and markets:

[7] The Central Western Europe (CWE) area comprises the following countries: France, Germany, the Netherlands, Belgium and Luxemburg. The CWE+ area comprises of the CWE countries plus Austria.

- Trading venues
  - OTC (over the counter)
  - Brokers
  - Exchanges

- Products and markets:
  - OTC and exchange trading
  - Physical and financial energy markets
  - Spot and derivatives

Furthermore, fundamental data (generation outages) from public and non-public sources was provided.

For the pilot project historical data was collected for the time period from November 2009 to January 2010.

3 Current Legal and Regulatory Framework

3.1 European Level

At European level, both EU financial market regulation and EU energy market legislation set the legal framework for the energy wholesale market.

In the **EU financial market regulation**, the EU Market Abuse Directive[8] (MAD) and the EU Markets in Financial Instruments Directive[9] (MiFID) currently define the legal framework for reporting obligations and market abuse rules for trading of financial instruments including derivatives on energy wholesale products.

[8] Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJ L 96, 12.4.2003, p. 16, as amended by Directive 2008/26/EC of the European Parliament and of the Council of 11 March 2008, OJ L 81, 20.3.2008, p. 42.

[9] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 200/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L 145, 30.4.2004, p. 1, as corrected by Corrigendum, OJ L 045 , 16.2.2005, p. 18, and as amended by Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006, OJ L 114, 27.4.2006, p. 60

MAD defines rules for insider dealing and market manipulation in financial instruments. Energy and financial regulators noticed in their advice to the Commission in 2008[10] that MAD only covers parts of the energy market as it is designed for the financial markets only. It applies almost exclusively to financial instruments admitted to trading on regulated markets (e.g. exchanges). Physical products (e.g. spot market products) are not covered at all and derivatives market products are covered only if they are admitted for trading on regulated markets. Thus, energy and financial regulators recommended in their advice a sector specific regime for electricity and gas trading.

Transaction reporting under the **MiFID** regime enables financial market authorities to monitor the activities of investment firms, to ensure compliance with MiFID, and to monitor potential abuses under the Market Abuse Directive (MAD). Under the MiFID regime, licensed MiFID investment firms (admitted to trading on regulated markets) are required to report all their transactions in financial instruments at the latest within 24 hours following the execution of the transaction to the competent national financial market authority.[11]

However, the majority of energy wholesale firms benefit from MiFID exemptions for commodity firms and are currently not considered as MiFID investment firms. They therefore do not have to report their trades under MiFID. In addition, a significant share of transactions in energy wholesale markets consists of spot transactions and transactions in financial instruments not admitted for trading at regulated markets (e.g. OTC transactions). Thus financial market authorities lack a comprehensive overview of the financial energy wholesale market so far.

The Commission's public consultation on the MiFID review[12] from 8 December 2010 noted the following on the current transaction reporting scheme:

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[10] Ref: C08-FIS-07-03 and CESR/08-998.

[11] See Article 25(3) 1st subparagraph of MiFID: "Member States shall require investment firms which execute transactions in financial instruments admitted to trading on a regulated market to report details of such transactions to the competent authority *as quickly as possible, and no later than the close of the following working day*. This obligation shall apply whether or not such transactions were carried out on a regulated market."

[12] See http://ec.europa.eu/internal_market/consultations/docs/2010/mifid/consultation_paper_en.pdf, p. 46 *et seq*.

– As regards *content of reporting*, the Commission services noted various differences in national implementation and interpretation regarding transaction reporting that has led to diverging reporting requirements, e.g. concerning which trades to report, which data to report and the inclusion of the so-called "trader ID". In order to minimise differing requirements, reduce costs and improve efficiency in the exchange of transaction information between regulators, the Commission services consider specific changes as necessary.

– Concerning *reporting channels*, the Commission services noted inter alia that reporting to different competent national authorities who subsequently need to exchange information, may create inefficiencies. Currently investment firms need to report to different competent authorities depending on where they execute a transaction and competent authorities therefore need to develop and maintain IT infrastructure to exchange the transaction reports. In addition, the Commission services noted that the Commission proposal on OTC derivatives, central counterparties and trade repositories (European Market Infrastructure Regulation - EMIR)[13] captures trading in derivatives which is or may become reportable under MiFID. This would lead to double reporting requirements on investment firms.

The lack of information on energy wholesale market transactions and the aforementioned remarks from the Commission services in the context of the MiFID review point to the shortcomings of the current transaction reporting scheme under MiFID.

In **EU energy market legislation** currently neither sector-specific rules on reporting obligations for energy wholesale market participants nor sector-specific rules on market abuse in energy wholesale markets exist. The 3rd Energy Package[14] solely defined an

[13] Regulation (EC) ---/--- of the European Parliament and of the Council on OTC Derivatives, central counterparties and trade repositories [European Market Infrastructure Regulation – 2010/0250(COD)].

[14] Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators , OJ L 211, 14.8.2009, p. 1; Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 , l.c., p. 15; Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 , l.c., p. 36; Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC , l.c., p. 45; Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC , l.c., p. 96.

obligatory record keeping[15] of trades in energy wholesale products that can normally be monitored by competent national regulatory authorities in suspicious cases. At national level, however, different monitoring schemes for energy wholesale markets exist.

3.2 Country Examples

The current monitoring activities and scope of national energy regulators with respect to monitoring varies from one country to another. Focussing on the CWE+ area, Germany and Austria for example undertake an overall monitoring of the energy wholesale markets**.**

In Germany, Bundesnetzagentur conducts monitoring in exercising its regulatory tasks in the area of electricity and gas, in particular to establish market transparency. On the basis of its monitoring tasks, Bundesnetzagentur regularly monitors the structure of the wholesale markets (including the request of data from the five broker platforms GFI, ICAP, Spectron, TFS / Tradition and Tullet Prebon), the regulation of the commercialisation of renewable energy via exchanges under the German Renewable Energy Act (EEG – Erneuerbare-Energien-Gesetz), the development of wholesale energy prices and the transparency of wholesale energy markets. As regards transparency of wholesale electricity markets, Bundesnetzagentur is intensively engaged in the setting-up of a transparency platform of the European Energy Exchange, Leipzig, (www.transparency.eex.com), and the four German transmission system operators 50Hertz Transmission GmbH, Amprion GmbH, EnBW Transportnetze AG and TenneT TSO GmbH, where the crucial information on fundamental data (e.g. installed capacity, capacity outages) has been centrally published since October 2009. Bundesnetzagentur publishes an annual monitoring report on the development of electricity and gas markets. The European Energy Exchange in Leipzig is supervised by the Saxon State Ministry of Economic Affairs, Labour and Transport (SMWA) as exchange supervisory authority under the German Exchange Act.

In Austria, E-Control conducts monitoring in exercising its regulatory tasks in the area of electricity and gas, in particular to establish market transparency. E-Control regularly monitors and evaluates the daily and weekly price developments at wholesale energy

[15] See Article 40 of Directive 2009/72/EC and Article 44 of Directive 2009/73/EC.

markets through the use of energy market data providers, the developments at energy trading venues, in particular EXAA and EPEX Spot as electricity spot trading venues, EEX as electricity derivatives trading venue and the Central European Gas Hub as gas trading venue, also in comparison with other European trading venues, the role of exchanges versus OTC trading, energy price trends, the volume of electricity and gas traded, market concentration and market structure. In 2010, E-Control supported the transparency initiative by the Association of Austrian Electricity Companies pursuant to which the Austrian transmission system operator Austrian Power Grid (APG), also acting on behalf of the second Austrian transmission system operator (VKW Netz AG), is joining the EEX transparency platform (www.transparency.eex.com) and will, thus, become the sixth equal co-operation partner in addition to the platform's operator EEX and the four German transmission system operators 50Hertz Transmission GmbH, Amprion GmbH, EnBW Transportnetze AG and TenneT TSO GmbH. As a result of this, fundamental data regarding the Austrian market will also be published on this platform from mid-2011 in the framework of the mandatory publications. E-Control publishes an annual market report on the annual key regulatory and market developments. The energy trading venues Energy Exchange Austria (EXAA) and Central European Gas Hub (CEGH) are supervised by the Austrian Financial Market Authority (financial market) and by the Austrian Federal Ministry for Economic Affairs (spot market) under the Austrian Exchange Act.

In the Netherlands, the Dutch Electricity and Gas Acts authorise the appointment of an electricity and gas exchange by the Minister of Economic Affairs, Agriculture and Innovation of the Netherlands. APX BV (currently APX-Endex BV) was appointed as an electricity exchange operator for the day-ahead market in 2006. In the appointment process the Minister has assessed and approved the request of APX BV and its Rules and Regulations on the basis of the criteria of independency, impartiality, security of supply, financial solidity, confidentiality and feasibility. This was a once and for all appointment, but not of an exclusive character. Other exchanges may also be appointed. The Electricity Act at that time contained no provisions which would enable the Netherlands Competition Authority (NMa), which comprises the Dutch Office for Energy Regulation, to supervise whether APX-Endex behaves according to the provisions of the Ministerial Rule that forms the basis for the appointment as an electricity exchange or regulate directly the activities of the APX while in operation. After completion of the approval procedure the Electricity Act has been amended, so possibilities have been created to add conditions in the form of regulations and restrictions in the approval procedure. These will enable NMa to supervise and regulate the activities of

newly appointed power exchanges if necessary. Nevertheless, NMa at the moment supervises a substantial part of APX-Endex activities on the day-ahead electricity market indirectly since it has approved the power grid code. This code defines among others the obligations for APX-Endex with regard to the order matching functions it has to perform in the process of market coupling within the Central-West European region (which consist of the coupled markets of the Netherlands, France, Belgium, Germany and Luxemburg), which has been launched in November 2010.

A very interesting example for current monitoring activities of national energy regulators is France. In France, the Commission de Régulation de l'Énergie (CRE) has been entrusted with the task of monitoring the French wholesale electricity and natural gas markets since 7 December 2006. The law allows CRE to effectively fulfil its monitoring duty by granting wide-ranging rights of access to information and sanctions in the event of a refusal of access, and for referral to the Competition Council if anti-competitive practice is detected.

1. CRE market monitoring mission

Article 28 of the law of 10 February 2000 provides that in respect of the powers granted to it, the French Energy Regulation Commission (CRE) sets out to ensure the proper functioning of electricity and natural gas markets for the benefit of end consumers.

CRE monitors electricity and natural gas transactions between suppliers, traders and producers, transactions carried out on organised markets and cross-border trades. CRE makes sure that proposals made by suppliers, traders and producers are compliant with economical and technical constraints.

2. Access to information

Article 33 of the law of 10 February 2000 provides that for the purpose of carrying out the tasks entrusted to it, CRE may collect all necessary information from the economy and energy ministries, as well as from public electricity transmission and distribution grid operators, natural gas transmission and distribution network operators and operators of natural liquefied gas installations as well as from other operators in the electricity or natural gas market. CRE may hear any person that it considers likely to contribute to its information.

The operations which are monitored by CRE's market monitoring are those that take place on the French market in which a producer, trader or energy supplier is involved regardless of the nationality of the counterparts. CRE is entitled to monitor completed transactions by producers, traders or suppliers, the bids and offers made by them, and the technical and economic constraints affecting these players.

CRE's remit applies to all transactions carried out on the French market regardless of the mode of negotiation – whether they are bilateral transactions with or without an intermediary, or transactions on organised markets. The remit applies to trades for physical delivery as well as trades with only financial settlement if one of the two parties involved in the transaction (purchase or sale) makes a physical delivery on the French market or a financial settlement in connection with the French wholesale price. Cross-border transactions, with one party acting on the French market, are also monitored by CRE.

In order to limit the burden on market participants, CRE designed a process of transaction data collection where the brokers and the exchanges are in charge of transaction reporting. Monthly, they deliver data on spot and derivatives electricity and gas matched transactions. TSO's are also asked to give monthly information on nominated cross-border flows. In addition, the main generators are obliged to reveal detailed generation data to the energy regulator.

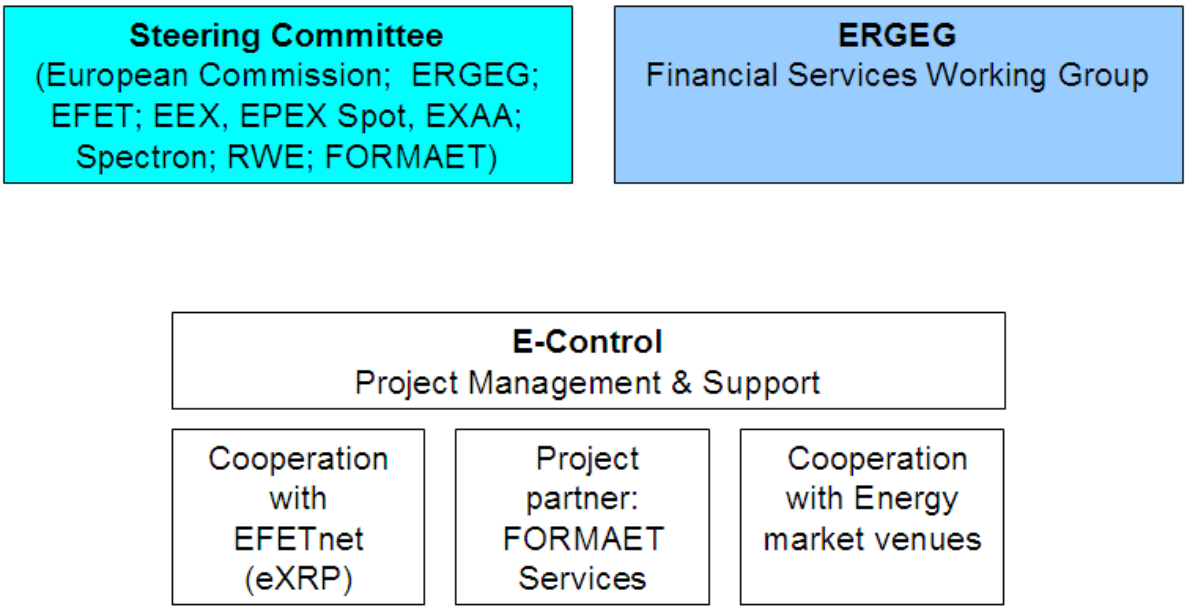
However, although different monitoring schemes exist at national level, there is currently no obligation at European level for transaction reporting in energy wholesale products similar to the EU financial market legislation.

4 Pilot Project Description

4.1 Organisation of the Project

The pilot project was set up under the overall framework of the CEER Financial Services Working Group (FIS WG). In order to ensure involvement of regulators and all other relevant market stakeholders, a Steering Committee was set up supplemental to the coordination by the FIS Working Group (see also graph below). The Steering Committee involved the European Commission (DG Energy and DG Market), ERGEG, the energy traders' organisation EFET and its subsidiary EFETnet, Stichting FORMAET and representatives from exchanges, traders and brokers.

Atworking level E-Control (as provider of project management and support) was working closely with EFETnet and FORMAET Services as an external consultant. EFETnet together with its IT provider PONTON provided a data interface between EFET's eXRP process and the database of the pilot project. This enabled the process of automated trade data reporting to be tested within the scope of the pilot project. FORMAET Services as project partner, specialising in wholesale traded energy markets, provided expertise in the fields of general market functioning, market and position monitoring, statistical analysis and transparency of market information.



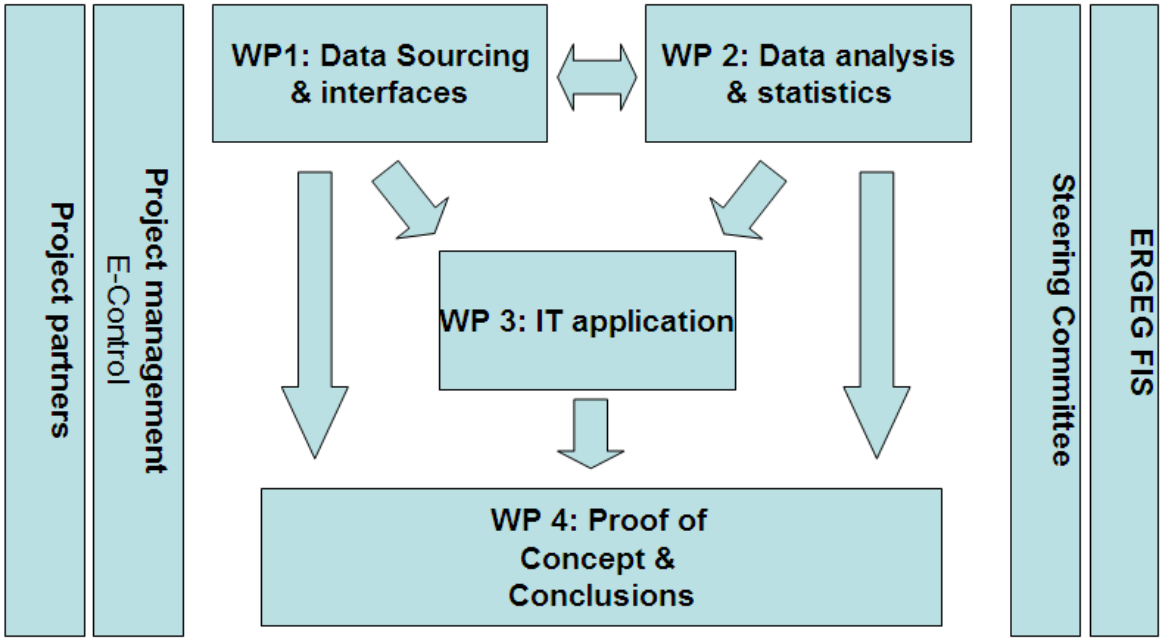
Graph 2 - Organisational chart of the pilot project

During the course of the project several workshops with regulators, market surveillance teams of exchanges and other stakeholders were organised.

While the project has been managed and carried out by an E-Control project group in close cooperation with EFETnet and FORMAET Services, the status of the pilot project was regularly reported to and discussed within the FIS Working Group. Additionally, three Steering Committee meetings were held during the project.

Project Components

The pilot project was organised in four work packages (project components) reflecting the main components of the project (1. data sourcing, 2. data analysis, 3. IT application and 4. testing):



Graph 3 – Project Components (Work Packages)

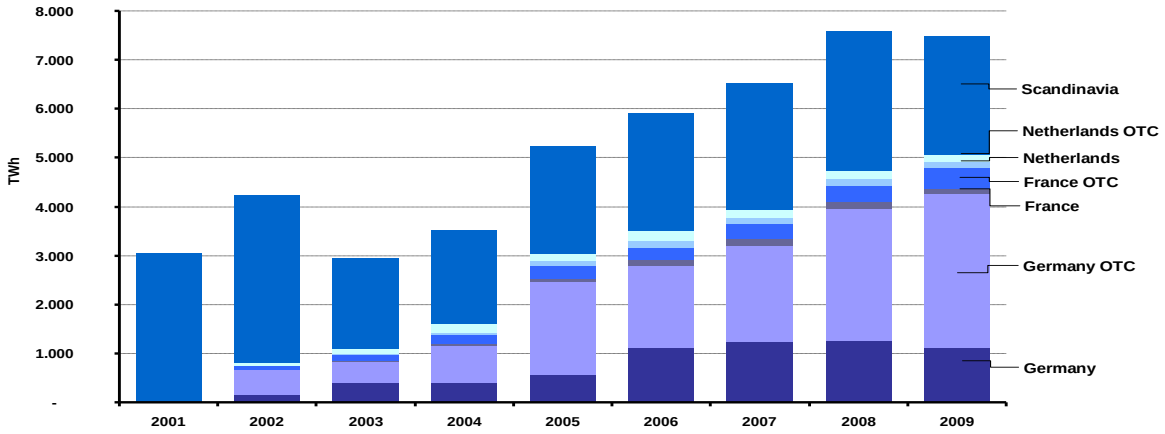
4.2 Data Sourcing and Interfaces (Work Package 1)

This work package primarily included carrying out market research on potential European trading venues and products and the collection of historical data for data analysis. The pilot project scope involved both trade and fundamental data to be collected and used for monitoring purposes:

4.2.1 Trade Data

Electricity:

The electricity wholesale market in Europe has seen continuous growth over the past years. Germany[16] continues to be the most active market with an annual trading volume of around 4,100 terawatt hours (TWh). Scandinavia is second with a volume of around 3,000 TWh, followed by the Netherlands and France. In total, the trading volume for these countries reached a level of almost 8,000 TWh in 2008 (2007: around 6,400 TWh).



Source: RWE Fact and Figures, August 2010

Graph 4 – Liquidity of European Power Derivatives Markets (in billion kWh; measurable trading volume on exchanges and through electronic brokerage plattforms OTC)

[16] The Austrian wholesale market is integrated with the German market.

However, within the CWE+ area, trading of electricity is still predominantly performed OTC, i.e. outside exchanges.

Gas

The issue of liquidity on the Central and Eastern European gas markets will be tackled through the implementation of the 3rd Energy Package; it foresees the creation of Virtual Trading Points, embedded in Entry/Exit systems in all European Member States.

This will lead to two trends: especially in the Central European and South European countries hub-trading will emerge, facilitated by the implementation of entry-exit systems and gas exchanges.

The large imbalance between OTC and exchange-based trading in the gas wholesale market currently leads to a rather opaque picture of the Central and Eastern European markets; trades, reported by brokers and very few trades on the emerging spot and futures markets are the only sources for price comparison.

More trading on gas exchanges may in the future lead to more price transparency and more data to be available for monitoring purposes.

The pilot project made use of all electricity trade transaction types (exchange traded and OTC) in the CWE+ area. But due to time constraints and the existing legal framework, the trade data collection *for monitoring purposes* was limited to:

- A sample of historic trade data from EEX, EPEX Spot and EXAA and for OTC trades via broker and trading companies were collected and imported to the pilot project database (over 500.000 reported transactions in the electricity sector), i.e. a significant share of the EU market; and

- A sample of historic fundamental data from the EEX transparency platform and Genscape was collected and imported to the pilot project database (over 30.000 reported records).

For the purpose of the pilot project, transaction data has been provided encrypted – without counterparty information. Concerning the data content, the pilot project could rely on the work of the CESR and ERGEG advice to the European Commission in the context of the Third Energy Package from 12 January 2009. The following table presents the

different pieces of content to be kept under MiFID and proposes additional contents which are considered to be necessary for a clear understanding of electricity and gas market transactions:

Contents to be kept under MiFID (Article 8 of Regulation No. 1287/2006/EC)	Designation of the client
	Trading day
	Trading Time
	Buy/Sell indicator
	Instrument identification
	Unit price
	Price notation (currency)
	Quantity
	Quantity notation (number of underlying assets)
	Counterparty ID
	Venue ID
	Total price
	Nature of the transaction if other than buy or sell
	Natural person who executed the transaction or who is responsible for the execution
Additional necessary contents	Commodity (Gas or Electricity)
	Daily or hourly quantities
	Load type
	Delivery point
	Delivery Start-Date and time
	Delivery End-Date and time
	Option Indicator
	Swap Indicator
	Indexation formula

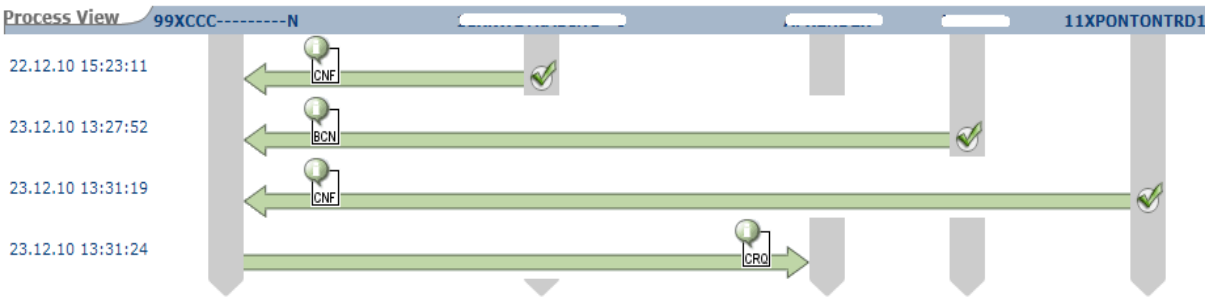
Graph 5 – Content of reported trade data

Solely *matched trades* were taken into consideration in the pilot project. The necessity of a collection of *unmatched orders*, i.e. bids and asks, was discussed in detail in the course of the pilot project. It became clear that any future EU market abuse regime covering attempted market manipulation would require an assessment of unmatched orders. However, since any supervisory framework should involve the Agency for the Cooperation of Energy Regulators (ACER), national regulatory authorities and market surveillances from trading venues, an option could be that the latter market surveillances assess and store the unmatched orders and cooperate closely with national regulatory authorities and ACER in case of any suspected market manipulation detected. In this scenario, market surveillances should also regularly report about their assessment and findings about the monitoring of unmatched orders to the competent authority. As market manipulation, or attempted market manipulation, would only be relevant for market places setting reference prices, this would most likely only concern market surveillances from energy exchanges. However, the necessity to report such unmatched orders may depend on the risk of market manipulation activities performed by using unmatched orders.

4.2.1.1 Gathering of OTC data through a trade confirmation system

The pilot project took advantage of the testing phase of EFETnet's eXRP (**e**lectronic e**X**change **R**elated **P**rocesses) standard currently under development. eXRP is also foreseen to cover exchange-traded transactions, but this function could not yet be offered during the pilot project phase. The use of eXRP was therefore limited to standardised OTC product data. eXRP is envisaged to become a new EFETnet[17] trade confirmation standard to standardise and automate the clearing registration and margin reconciliation process.

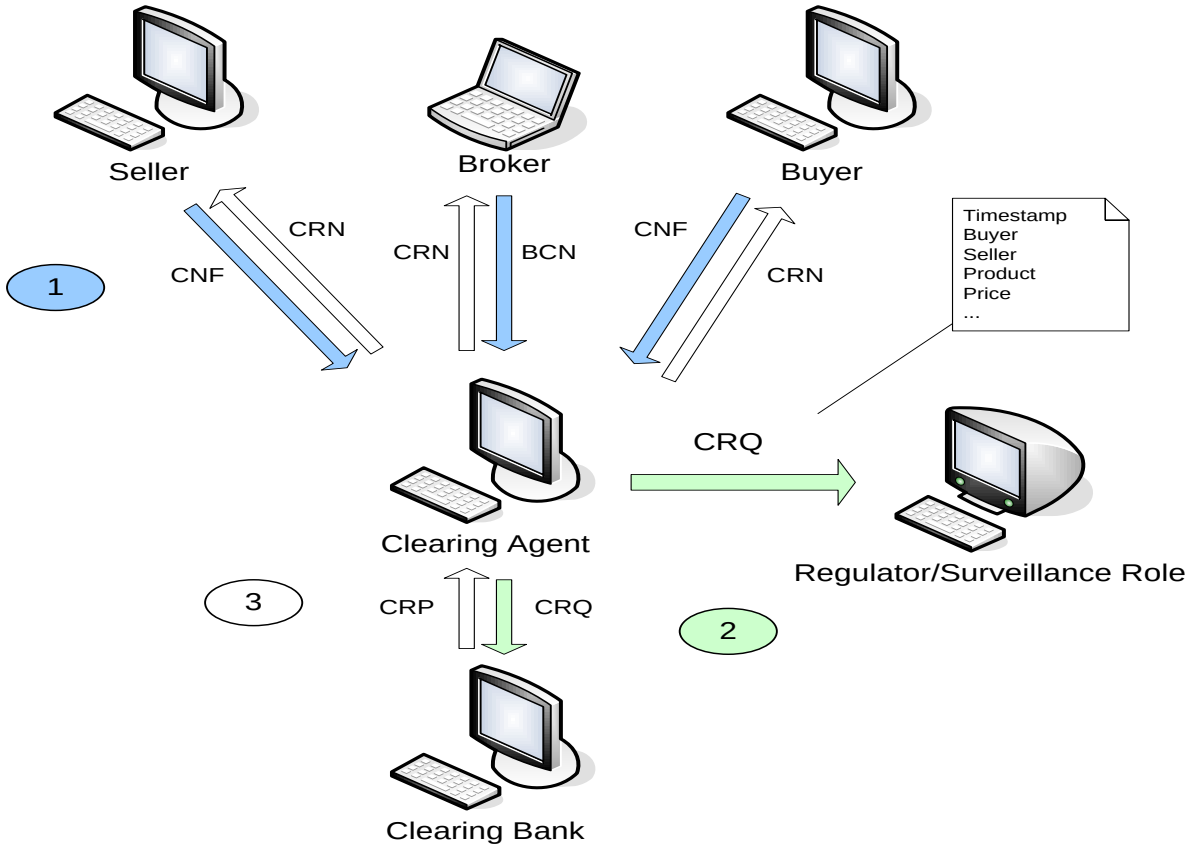
During the testing phase of eXRP, a regulator/surveillance role was simulated, in order to test the possibility of gathering OTC data for regulators within the eXRP system, since it would anyway cover all information on the trade data necessary for regulatory purposes.



Graph 6 – EFETnet eXRP Process View

A number of OTC trades were reported in a standardised format to the pilot project database facilitating the eXRP standard developed by EFETnet. The next graph describes the XRP process in more detail.

[17] EFETnet B.V. is an independent company 100% owned by the European Federation of Energy Traders (EFET). EFET was founded in 1999 by Europe's leading energy companies. EFETnet B.V. was set up in 2004 by EFET to serve those actively involved in energy trading. It is intended to deliver the benefits of electronic data exchange standardisation that was first pioneered by EFET and its members.

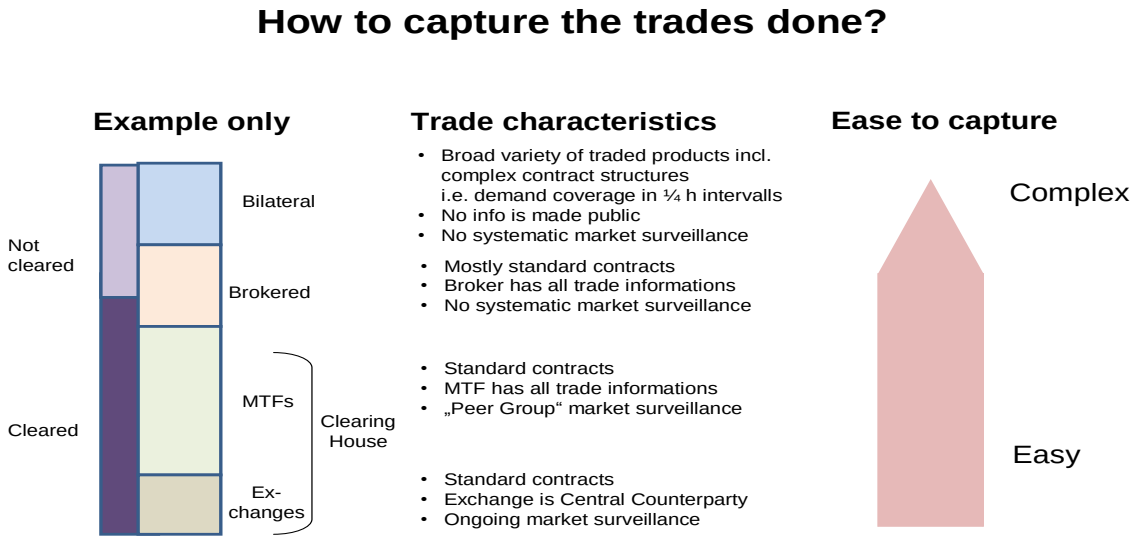


Graph 7 – eXRP UMTF Process Used for Pilot Project

First the Seller, Buyer and Broker send their trade information in a so called trade confirmation file (CNF/BCN) to the Clearing Agent. If the three files contain the same information (they match), the role of the Clearing Agent packs up these information (Clearing Request – CRQ) and transmits it to the Regulator Role. A copy of this CRQ is also sent to the Clearing Bank which on her part gives back the Clearing Response (CRP). In order to notify the Seller, Buyer and Broker of the Clearing Response, a Clearing Notification (CRN/BCN) is generated and sent back to them. The feasibility of trade data reporting via EFETBox (eXRP) was tested and proven by the pilot project.

In the course of the pilot project, meetings were also held with other providers of trade matching, trade reporting and trade confirmation systems for energy trade data. It was concluded that for a European scheme an open and non-exclusive data reporting standard has to be ensured.

Any such system is limited to standardised OTC and exchange-traded products. Gathering of non-standardised OTC data was not tested within the pilot project and would also be the challenge for any data collection by regulators, which may elucidate the following graph:



Graph 8 - Trade characteristics impact on reporting

The collection of non-standardised OTC data was discussed in detail within the pilot project. Whilst standardised OTC trades, particularly if traded electronically, could easily be reported to regulators within 24 hours following the transaction, this would most likely be too burdensome for non-standardised contracts which are tailor-made to the needs of the contract partners and normally traded bilaterally, i.e. non-electronically and without being cleared. However, not covering non-standardised trade may involve the risk of circumvention of any reporting obligation for standardised contracts.

4.2.1.2 Gathering of historical data from energy exchanges

For developing surveillance routines, several energy exchanges were approached to gather historical trade data, which were anonymised for the purpose of the pilot project for reasons of confidentiality.

Anonymised historic electricity trade data was provided by EXAA Energy Exchange Austria and Wiener Börse AG, Vienna, EEX European Energy Exchange, Leipzig, and EPEX Spot, Paris for Germany and Austria. The trade data collected covered the derivatives market and the spot market (trades for the German/Austrian zone on the day-ahead and intraday segments including OTC clearing service trades). The selected trading period covered the period from 1 November 2009 to 31 January 2010, which coincided with the renewed launch of the EEX transparency platform for the publication of fundamental data. The geographical coverage of the pilot project (including limited historic OTC data through eXRP) was therefore the following:

Graph 9 – Sourcing of historical exchange data

4.2.2 Fundamental Data

For the development of surveillance routines, also fundamental data was collected. In the course of the pilot project, both fundamental data on generation, load and network were considered essential for monitoring purposes. However, for the purpose of the pilot project, fundamental data was limited to generation data including the reporting of plant outages (but no cross-border capacity allocation information). As data sources, existing data sources such as the EEX Transparency Platform and Genscape were used.

Gas

(Near-to) real-time access to fundamental data also is a critical issue for the wholesale gas market – especially data on gas transmission and storage capacity and usage. Fundamental data in gas markets particularly include midstream issues; changes to forecasts in transport capacity, storage withdrawal and injection capability. Technical problems such as the breakdown of the Transitgas pipeline, connecting Switzerland and Italy or repeating interruptions of some contracts on the West Austria Pipeline are affecting liquidity and therefore the gas price immediately, Fundamental data does not only include incidents that fall under “Force Majeure” clauses but includes also regular maintenance works, which have to be announced in advance.

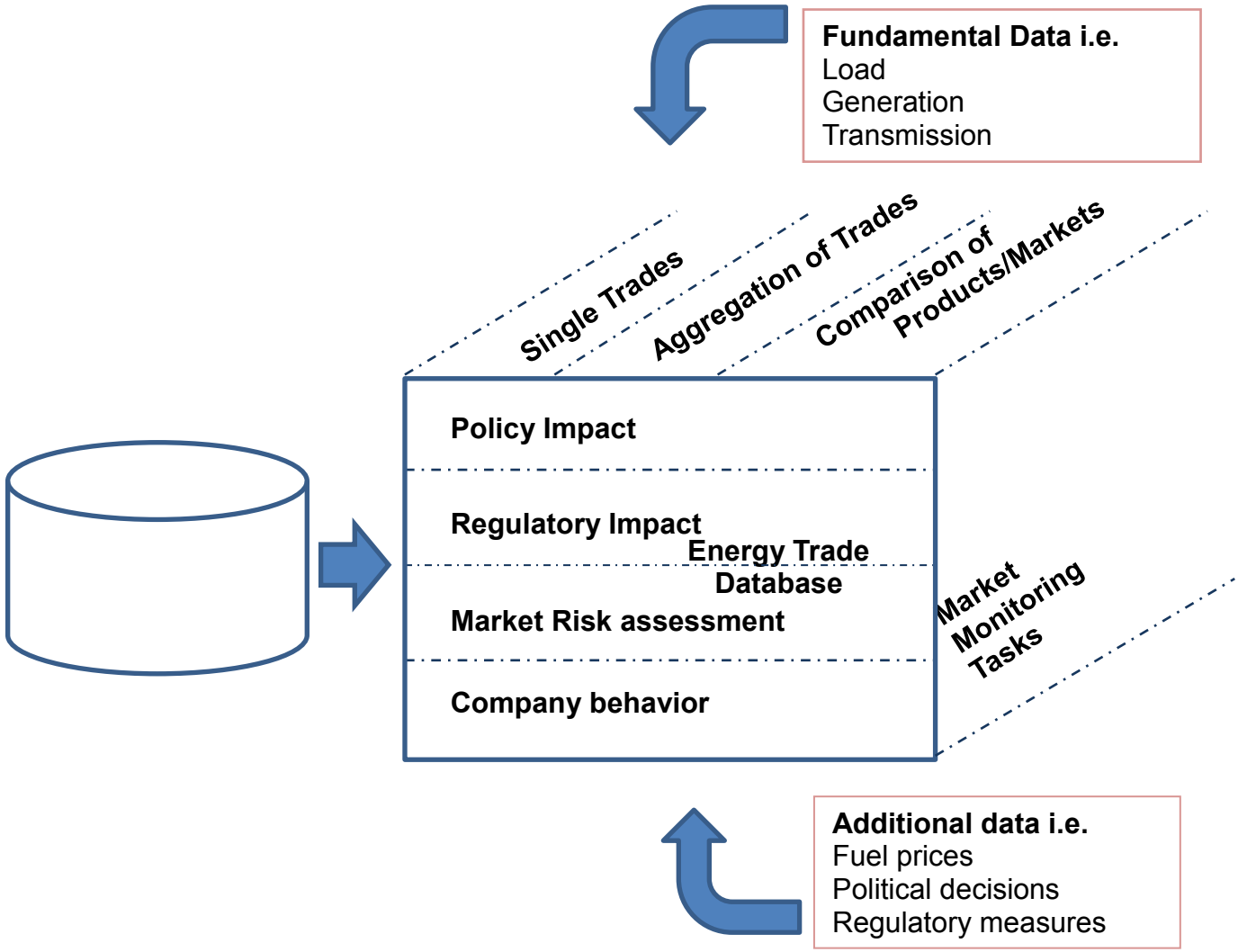
On the demand side, weather effects play an important role for the gas demand, but weather data should be available to any market participant. It is crucial that a monitoring database gathers all the information that has an effect on the transport and storage of gas that may have an influence on the gas-price in the future.

In general, weather conditions may play an important role. In order to track down market abuse, weather data should be collected so as to understand major market shifts and hence market prices. It is crucial that a Trade Database gathers all the information that has an effect on electricity and gas prices that may have an influence on the wholesale energy price of intraday or within-day, day-ahead and futures products.

4.3 Data Analysis and Statistics (Work Package 2)

This work package’s main task was to develop a concept for wholesale energy monitoring including the provision of representative examples for data analysis and statistics.

Market Monitoring is an ongoing effort with different levels of complexity. Graph 10 depicts the various levels of market monitoring tasks which can be performed using an energy trade database.



Graph 10 – General Concept for Wholesale Energy Market Monitoring

Starting with the analysis of information about single trades, regulators can be enabled to identify clusters of intensive trading activities, the distribution of size of trades between trading venues and any unusual developments for a specific trading contract (i.e. out of the market trades, price jumps and volatility changes). Any of those observations should trigger a closer investigation into the "why".

Such analysis of energy markets will most likely always require taking a closer look at market fundamentals such as load, generation and transmission and relevant other parameters such as fuel prices, decisions taken or discussed as well as publishing of information. The pilot started from the assumption that any such information can be made available from external sources.

At a next level of complexity, the single trades can be aggregated in various dimensions. Adding for example all trades done for a certain regional market across the various trading venues and instruments and comparing them to the physical demand would provide a valid assessment of the trading multiple, often referred to as a good indicator for market liquidity and reliability of the price signals provided.

Regulators might be interested to aggregate data across trading companies in order to monitor the market share of major companies and detect potentially harmful exposure of the market to the solvency of a single company.

Additional insights will be generated when products and markets are put into perspective. Comparing i.e. trading multiples across European wholesale markets for electricity, gas and EUA (the EU Allowance would be a good indication for relative “success” in terms of establishing a sound framework for trading activities and thus quality of the prices provided by the wholesale market.

As already indicated, the “why” is of utmost relevance for the effectiveness of market monitoring. Sudden and significant changes in liquidity might for example be the result of political or regulatory decisions taken. Sound market monitoring will be able to highlight such impacts and trigger a fact-based discussion on the precondition that the benefits of the measure are achieved and effects not intended are comparably negligible.

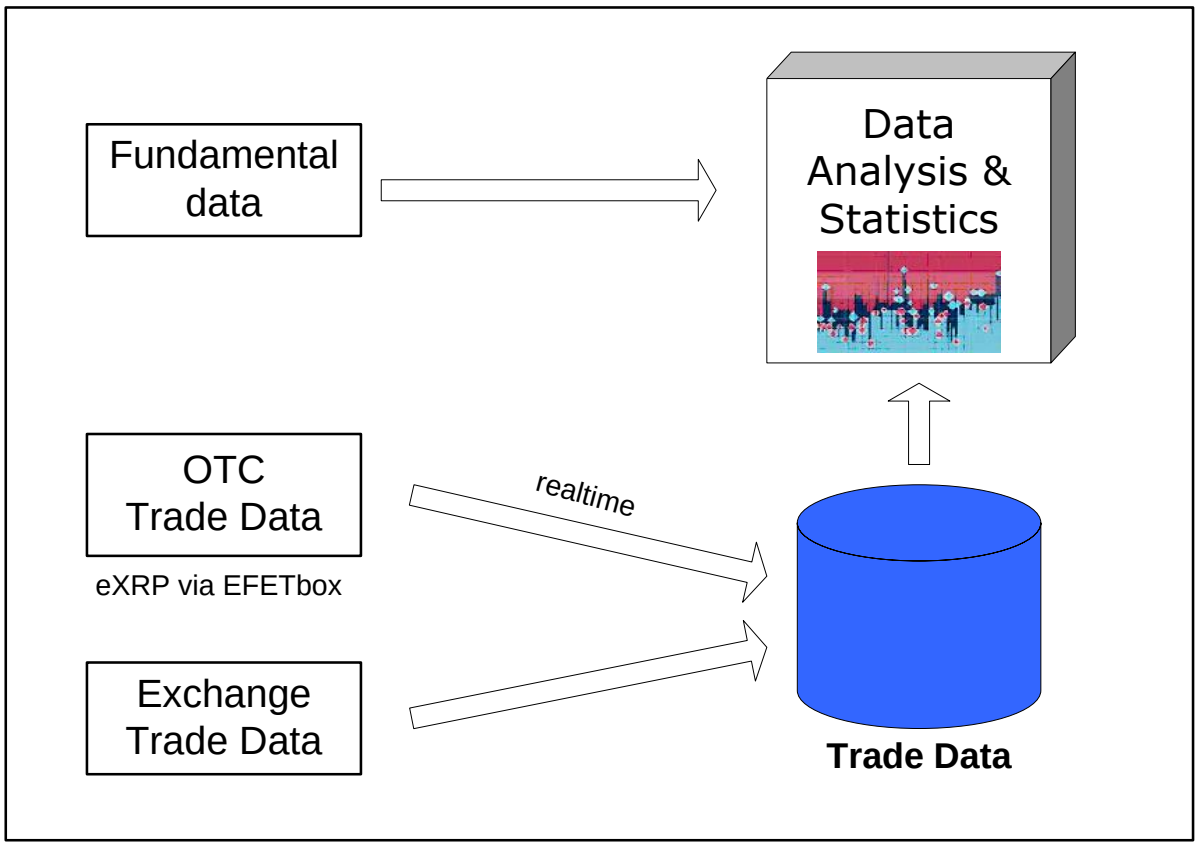
Having a comprehensive view of the traded market also helps to generate an early warning tool i.e. the systemic risk associated with the market having a significant exposure towards a single company.

Finally, regulators having gathered the full set of wholesale market transactions of trading companies in electricity, gas and possibly also European Union Allowances (EUAs) are much better equipped to detect any misconduct at an early stage, especially if such behavior involves trading activities reaching across various EU Member States.

4.4 IT Application (Work Package 3)

This work package involved the development of a specification and implementation of an IT application for the pilot project.

The following graph describes the IT-setup of the pilot project. There are mainly three data sources consisting of exchange trade data, OTC trade data and fundamental data.



Graph 11 – Overview of the Pilot Project IT-architecture

The exchange trade data from trading venues such as EPEX Spot, EXAA and EEX was transmitted in different data- and file formats. Furthermore every exchange used their individual description codes for the traded products. Therefore a new file-parser for every data type including matching tables for product- and other description codes had to be developed. Looking at a future trade database it will be crucial to define mandatory standards for data formats.

In order to import OTC trade data the pilot project IT application was connected directly to EFETnet's eXRP system via the EFETbox, a software to securely transmit data. With this constellation it is possible to process OTC data in real time.

The third data source was fundamental data which was streamed directly into the analysis software from other sources.

For data analysis and statistics a software tool developed by the company SCILA was used. The programme was used to analyse and aggregate information from the trade database and the fundamental data to identify questionable trading behaviour and calculated the gathered information for reports.

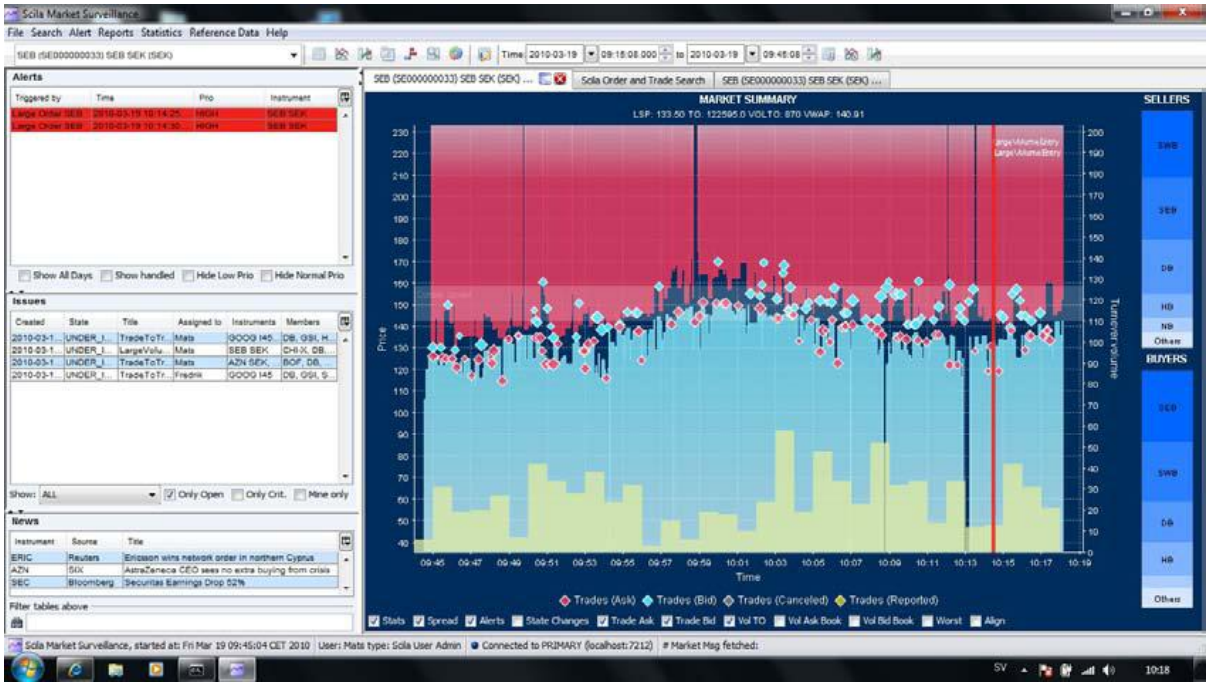
4.5 Proof of Concept and Conclusion (Work Package 4)

The development of a concept and examples for data analysis and statistics was one of the main objectives of the pilot project. Based on discussions on regulators´ current practices in various countries, a concept for market monitoring and some representative examples for data analysis and statistics were developed.

The discussions were held with energy regulators already performing market monitoring tasks and with several market surveillances from energy and derivatives exchanges. They led to the impression that currently no harmonised approach regarding the use of surveillance methodologies exists. Consequently, there is no software that fits all and mostly individual, in-house software solutions are being used. This might become specifically an issue when national and EU level oversight regimes will have to cooperate more closely in the future. In addition, few software providers seem to offer surveillance software geared towards regulators (market insights and handling of large data volume).

However, for the proof of concept of the pilot project a newly developed market surveillance software (SCILA Surveillance Software, provided by CINNOBER) was made available that did fit the needs of the pilot project.

SCILA surveillance software was chosen since it has proven its value for financial and commodity market surveillance purposes. It has more than 50 existing alerts for market oversight purposes. These predefined alerts were partially adapted and successfully implemented to the energy wholesale market data available. In addition, new and custom made alerts and reports were developed relevant for effective energy wholesale market supervision (such as the import and usage of fundamental data). Specifically for systematic risk it appeared important not only to monitor trading positions but also to be able to add the natural position of market participants such as generation capacity and physical delivery obligations to final customers



Graph 12 – Sample view of a Scila Surveillance Software Report

Since to date no sector-specific EU market abuse regime for the energy wholesale market exists and the MAD provisions hardly apply, examples for surveillance routines had to be developed in the course of the pilot project (based on the concept of market abuse in REMIT, which itself is based on the concept of market abuse stipulated in MAD), taking into account:

- Prohibition of insider dealing; and
- Prohibition of market manipulation.

On the basis of more than 50 pre-defined alert rules, examples for surveillance routines for market abuse analysis, position reporting and statistics were developed. The examples for surveillance routines for market abuse analysis were based on a case-by-case scenario and *inter alia* involved the following issues:

- insider dealing;
- market abuse through
    - false or misleading information;
    - abusive squeeze / cornering;
    - ramping;
    - cross-market-manipulation;
    - wash trades;
    - circular trading.

5 Recommendations for a Future European Trade Data and Reporting Scheme

The following recommendations shall contribute as a scoping exercise to the European Energy Regulator's 2011 work programme's deliverable on "CEER Guidelines of Good Practice on transaction reporting and detecting market misconduct" and to the "CEER Advice on the legal framework for sector-specific oversight regime – competences and cooperation of regulators" and should be seen in the context of the REMIT proposal.

5.1 General Aspects of the Legal Framework

An appropriate legal framework for cross-border cooperation between regulatory authorities and data access across borders has to be ensured. A European energy market supervision scheme needs a coordinating role for implementation and operation. The Agency for the Cooperation of Energy Regulators (ACER) is the logical entity for playing that role in coordinating activities of national regulatory authorities and market surveillances from trading venues. The latter should cooperate closely with national regulatory authorities and ACER. ACER and the European Securities and Markets Authority (ESMA), energy and financial regulators as well as competition authorities should also closely cooperate.

A legal framework is needed to stipulate market abuse rules for the energy wholesale market, taking into account the specific market characteristics. Also clear reporting obligations for market participants (and possibly trading venues) have to be part of a future legal framework.

5.2 Data Reporting

5.2.1 Reporting Channel

The MiFID review highlights the difficulties to implement a harmonised transaction reporting system at national level if the market is a European one, both with regard to harmonised data content and reporting channels. Currently hardly any comprehensive transaction reporting on energy wholesale trades exist, neither at EU nor at national level (except rare examples such as France).

The pilot project results underpin a recommendation in preference for a central data reporting system at EU level as opposed to national schemes. A central data reporting system at EU level would strongly support the regulatory oversight of the market and eliminate possible coordination problems amongst regulators. This approach would also eliminate multiple reporting of cross-border trades and ensure a harmonised set of data (trade and fundamental) across Europe.

A single harmonised and open reporting standard will also reduce costs and efforts by market participants.

Regardless of the reporting channel or the legal basis the data is reported on, it must be ensured that all wholesale energy trade data are consolidated in one central database operated by ACER. It is expected that EU financial market legislation will lead to an increased number of exchange-traded and/or cleared volume of wholesale energy transactions, which will further facilitate the data collection through energy exchanges, trade matching, trade reporting and trade confirmation systems. For smaller market players, specific software exists to transform their trade confirmations from a paper into an electronic version. It is expected that at least 80 to 90 % of standardised wholesale energy transactions could thus be collected through the aforementioned systems.

5.2.2 Trade Data

Any future legal framework should oblige market participants to report their trades to a central database at EU level as quickly as possible. Trade matching, trade reporting and/or trade confirmation systems as well as trading venues may play a major role in facilitating a central data reporting system at EU level. The following distinction for the reporting of trade data could be considered:

5.2.2.1 Standard versus non-standard contracts

As in the financial market legislation, traders should report their standard contracts through a daily single transaction reporting, which will normally be electronic trades, within 24 hours. However, in contrast to MiFID, it should be directly reported to a central database at EU level. In order to reduce red tape, it could be considered for purely bilateral contracts not cleared by a clearing house whether solely the seller reports the trades. Trades performed at trading venues could be reported by these trading venues and/or by trade matching, trade reporting or trade confirmation systems. Bilateral trades cleared could be reported by clearing houses or through trade reporting or trade confirmation systems. Remaining bilateral trades could be reported by one trading party, e.g. the seller, on behalf of the other trading party, e.g. the buyer, if that would simplify reporting for smaller market participants.

In case the transaction reporting of non-standardised contracts is considered to complicated, the reporting of non-standard contracts without risking circumvention of reporting obligations, trading companies could be obliged to perform a monthly position reporting of their total trading volume with external counterparties to the competent regulator. As long as there is no significant increase in the share of non-standardised contracts, no specific reporting requirements for non-standards would be deemed necessary. If however, the share does increase and/or non-standardised contracts appear to become a threat to system security, the regulator concerned may require a reporting of the data concerned. In this respect, regulators could rely on the record keeping obligation introduced by the 3rd Package and request information if a certain threshold of “non-standardised” trades is reached, which would have to be defined in advance. The reporting could either be done directly to a central database at EU level or via the competent national regulatory authority.

5.2.2.2 Matched versus unmatched orders (Bids and Offers)

From the experiences of the pilot project, it could be an option to limit the reporting of energy wholesale data to matched trades in order to minimise the data volume to be reported. The unmatched orders, which will be relevant for the assessment of market manipulation, including attempted market manipulation, could be stored at trading venues and assessed by market surveillances of the trading venues. They would have to inform the competent national regulatory authority and/or ACER immediately in case of any suspected market manipulation detected through orders. A similar approach is foreseen under the MiFID review. However, the necessity to report unmatched orders may depend on the risk of market manipulation activities performed by using unmatched orders and thus, the need to report such orders may change. In this scenario, market surveillances should also regularly report their assessment and findings about the monitoring of unmatched orders to the competent authority. However, since fundamental data may be important to assess certain kinds of attempted market manipulation, it may be another option to collect at least the unmatched orders from energy exchanges are reported to a trade database.

Gas

Trades, reported by brokers and very few trades on the emerging spot and futures markets are the only sources for price comparison. The 3rd Package foresees the creation of Virtual Trading Points, embedded in Entry/Exit systems in all European Member States. The aim is to attract liquidity to these Virtual Trading Points.

Increasing liquidity on Eastern and Southern European gas exchanges will facilitate access to trade data crucially. The creation of an energy trade database for gas trading will be recommendable. Some characteristics of standardised products will be comparable to characteristics of electricity products. The biggest differences, however, can be found when considering the inclusion of fundamental data.

5.2.3 Fundamental Data

Trading in energy is strongly linked to fundamentals (i.e. supply, demand and infrastructure availability). However, the pilot project revealed that data is not sufficiently available and lacks consistency between countries for market monitoring purposes.

Standards need to be defined and easy data access for regulators needs to be ensured in order to identify the identity of the publisher at platforms like ETSOvista and/or exchange transparency platforms for an effective monitoring. For the purposes of market monitoring, exchange transparency platforms may also play a crucial role to inform market participants in the future, but instant and simultaneous information delivery has to be ensured in case of several platforms.

The fundamental data necessary for market monitoring purposes consists in particular of information related to the capacity of facilities for production, storage, consumption or transmission of electricity or natural gas. Disclosure requirements have to be clearly stipulated either at EU or national level or in exchange rules/GTCs.

Gas

In gas markets, high emphasis lies on the news concerning midstream issues; many European countries are dependent on imports. Thus, midstream data is crucial for market supervision. These cover:

- Capacity (technical, available, booked);
- Usage (actual physical flows and nominated gas flows);
- Force Majeure incidents on pipelines (Transitgas pipeline in 2010);
- Political disputes along import pipelines and their impact on transmission (Ukraine-Russia dispute in 2009);
- Maintenance works that need to be announced weeks ahead;
- Storage injection and withdrawal rates according to forecasts.

The future comitology guidelines for fundamental data transparency in electricity and gas should be the most important source for the publication of fundamental data. The collection of fundamental data beyond the data foreseen for publication in the comitology guidelines may depend on national market specificities, e.g. given the different generation mix in Member States. Such data could be best collected by national regulatory authorities.

5.2.4 Additional Data

Additional data relevant for market monitoring purposes may consist of information from data providers like Platts, Montel Power News, Dow Jones Energy, Genscape, etc., and adjacent markets like carbon markets (if not covered by the same legal framework as electricity and gas), coal and oil in order to be able to assess any interdependencies with electricity and gas markets.

Finally, weather conditions may play an important role. In order to track down market abuse, weather data should be collected so as to understand major market shifts and hence market prices. It is crucial that a Trade Database gathers all the information that has an effect on electricity and gas prices that may have an influence on the wholesale energy price of intraday or within-day, day-ahead and futures products.

5.3 Data Access

Wholesale markets for electricity and gas have evolved quite differently across Europe. Specifically the share of exchange based trading in comparison to the OTC-business varies significantly between regional markets. While exchanges usually are obliged and/or keen on providing information about the market place (at least partially for free), brokers often prefer not to advertise OTC prices. As a consequence public awareness of the OTC traded market is low and thus these markets are often an area of public concerns.

For professional market participants these information asymmetries do not exist. Trades done on the electronic OTC screens can be seen by all registered users of this platform. The visible trade information contains all relevant data (i.e. trade time, volume, location and price) except counterparty information. In addition a number of commercial information providers do gather OTC price data and offer services containing this data.

5.3.1 Data Access at National and European level

In case all data for monitoring energy markets is reported centrally at European level it has to be ensured that both at EU and national level access is provided to the relevant authorities.

In view of existing EU financial market legislation and the one under discussion, there is a need for close cooperation with European financial market authorities. They need to be involved at the early stage of the definition of market abuse, the stage of harmonisation of reporting standards from European energy regulators and financial market authorities and the identification of misbehaviour and enforcement at national level.

5.3.2 Public Data Access

The level of public insight into the European energy markets for electricity, gas and EUAs is comparably low specifically for those regions where OTC trading is more important than exchange based trading and no other reporting obligations exist.

In line with this observation also academic work is usually based only on easy to access information and therefore often does not provide a valid and comprehensive picture of the traded markets. Cross-country comparisons suffer even more from a disparity in access to trade information.

Overall, European electricity, gas, and EU Allowance (EUA) markets would benefit from an improved level of transparency of the wholesale market by increasing customer trust in the reliability of wholesale market prices and making academic efforts and research more effective.

Any solution needs to strike a balance between the benefits of increased transparency, the very important issue of confidentiality of commercially sensitive information embedded in the trades as well as the interests of information providers and trading venues.

As a result it appears appropriate to conclude that the energy trade database should be able to make available and/or report aggregated and significantly delayed trade data i.e. comparing monthly trade volumes on European markets to support a well-informed public discussion about appropriate market designs. Academic insight and progress would be best supported by providing on demand access to single trade information as is available for professional market participants requiring appropriate registration and legitimating procedures in order not to interfere with the commercial activity of providing market intelligence.

In both cases of publication, confidentiality on the trading companies needs to be secured at all times.

5.4 Monitoring (Analysis and Statistics)

Whilst at EU level, there would be a cross-border oversight, in addition, useful interpretation of energy trading requires profound national market knowledge and the correct interpretation of fundamental data at national level. Therefore any legal framework has to foresee sufficient means and resources for a meaningful monitoring of the energy wholesale market both at EU and at national regulatory level.

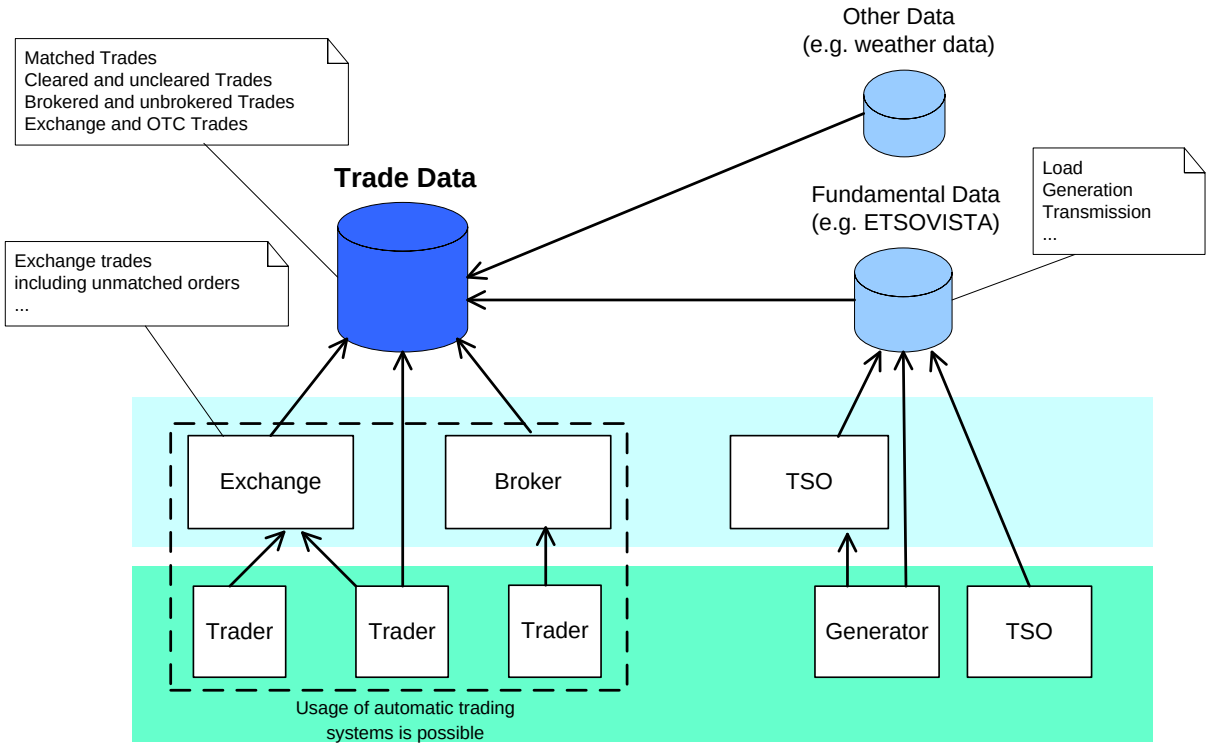
Since market surveillances at trading venues have a close to real-time oversight of market developments at the trading venues and also monitor those orders not matched. Regulators should make use of existing market surveillances at trading venues and both should closely cooperate with each other. An effective monitoring of the energy wholesale market can be easier achieved with state of the art surveillance software similar to the surveillance software tested in the context of the pilot project. In any case, as already proposed by European Energy Regulators in the ERGEG draft advice on the regulatory oversight of Energy Exchanges public consultation document[18], each trading venue where wholesale energy products are traded should have its own market surveillance.

5.5 IT architecture

In order to perform analyses and generate statistical reports on an EU wide basis it is necessary to have access to data from all relevant markets and market players. On the other hand it is important to make data reporting for relevant market players as easy and secure as possible, preventing sending the same data to different authorities in perhaps different data formats and intervals.

Thus it is recommended to send all matched trades to a trade database irrespective of whether they are traded via an exchange, broker or OTC as described in the following graph:

[18] ERGEG draft advice on the regulatory oversight of energy exchanges. An ERGEG public consultation document, Ref. C10-WMS-13-03, 5 April 2011.



Graph 13 – Data Flow Concept

In addition, TSOs and power producers need to send fundamental data like load, generation and transmission to a fundamental database on a regular basis and in defined intervals. Such a database can be run by an independent provider such as ETSOvista and should be publicly accessible for purposes like exchange surveillance. Other data which is also needed for analyses (e.g. weather data) can be sourced via publicly available platforms.

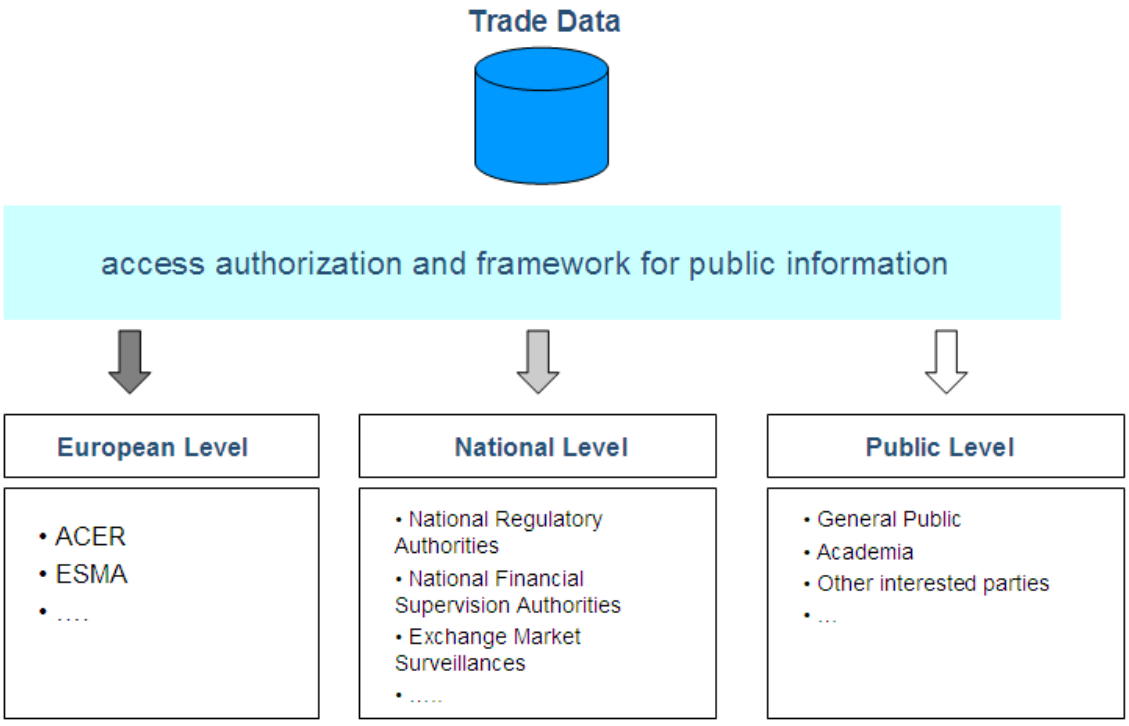
Since intraday markets are closely linked to secondary or balancing markets, given the specificities of such markets, there should be a data collection through national regulatory authorities from TSOs at national level, if considered necessary or useful, rather than at EU level.

To prevent the build-up of similar national repositories, every national authority should have access to their relevant data, considering strong security and privacy rules. The geographical area covered in the pilot project is an example for integrated electricity markets. As the level of integration will increase over the next years (e.g. via market coupling projects in electricity markets) a purely national view is insufficient for a comprehensive market monitoring as prices are influenced by cross-country developments. Thus involved authorities will need to

have access to data of all relevant neighbouring markets in addition to the pure “national” information in order to perform a thorough and reliable surveillance.

Furthermore, other institutions like single traders or academia may have access to defined anonymised data helping them to get a better understanding of the market. Full access should be only granted to official authorities like ACER and ESMA on a legislative basis (see Graph 14 – Data Access Concept).

Because of the high sensitivity of the stored data it is important to ensure high security standards in the entire system. Therefore, a validation based on international common standards like ISO 27001 or ISO Common Criteria should be considered. Also privacy laws have to be taken into account, according to national legislation. The concrete time delay and level of aggregation should be clarified by ACER as a governance issue, possibly after having consulted stakeholders.



Graph 14 – Data Access Concept

Whilst at European level, ACER and ESMA would have complete access to all data, at national level the access could primarily concern the national data set plus some cross-border information where necessary. Finally, the access authorisation at the public level should in any case solely concern time delayed aggregated data.

5.6 Governance Issues

With respect to reporting issues, the pilot process and results strongly recommend to establish an Advisory Board composed of all relevant stakeholders. The Steering Committee established for the pilot project provided valuable input to the project and this could be continued in a similar format. An Advisory Board could be consulted if changes in reporting standards deem necessary (i.e. amendments to the IT-protocol(s) used). Eventually this Advisory Board should be entitled to request a cost/benefit analysis of any changes proposed or to veto the proposed change. The composition of such an Advisory Board would need to be discussed, however participants would have to demonstrate legitimate basis for participation.

Trading companies and the empowered authority operating the Energy Trade Database should be entitled mutually to request a position matching process in order to make sure that the company positions in the Energy Trade Database do correctly reflect the company's own view.

The analysis part of the pilot project demonstrated that detecting misbehaviour is not a simple task. From any first suspicion a detailed investigation needs to be started in order to be able to decide whether any misbehaviour indeed occurred. Thus, if during the market monitoring process some issues are detected that raise concerns of potential company misconduct, the empowered authority should inform and consult with the respective market participant for giving room to a potential swift clarification before the case is given to the relevant enforcement authority for further investigation.

6 The Pilot Project in View of REMIT

The pilot project coincides with the discussion of the Commission proposal for a Regulation on Energy Market Integrity and Transparency (REMIT – COM2010 726/3) of 8 December 2010 and the review of the EU financial market legislation, namely the review of MAD[19], the review of MiFID[20] and the Commission proposal on OTC derivatives, central counterparties and trade repositories (European Market Infrastructure Regulation - EMIR)[21]. REMIT may therefore be a means to implement the recommendations of this pilot project.

More detailed rules will have to be defined in secondary legislation, similarly to the EU financial market legislation. The results of the pilot project may serve to facilitate the discussion of REMIT and of the secondary legislation required.

The Commission proposal already foresees many recommendations made in this report, e.g. a market abuse regime for the energy wholesale market, monitoring through ACER and national regulatory authorities, the establishment of transaction reporting obligations to a central trade database administered by ACER at EU level, the reporting of fundamental data, access for ESMA, national regulatory authorities, national financial market authorities and national competition authorities and provisions on data security and publication of aggregated data.

However, the aforementioned review of MiFID and the introduction of EMIR pose the risk of different reporting obligations for energy wholesale transactions, different reporting channels, contents and formats, which may cause significant costs for market participants, red tape and harm the effective monitoring of energy wholesale markets. Whilst REMIT in fact stipulates a single rulebook for all energy wholesale market transactions, it also provides in Article 7(2) that persons who have reported transactions in accordance with MiFID and EMIR are not subject to reporting obligations in addition to those set out in that legislation. Although

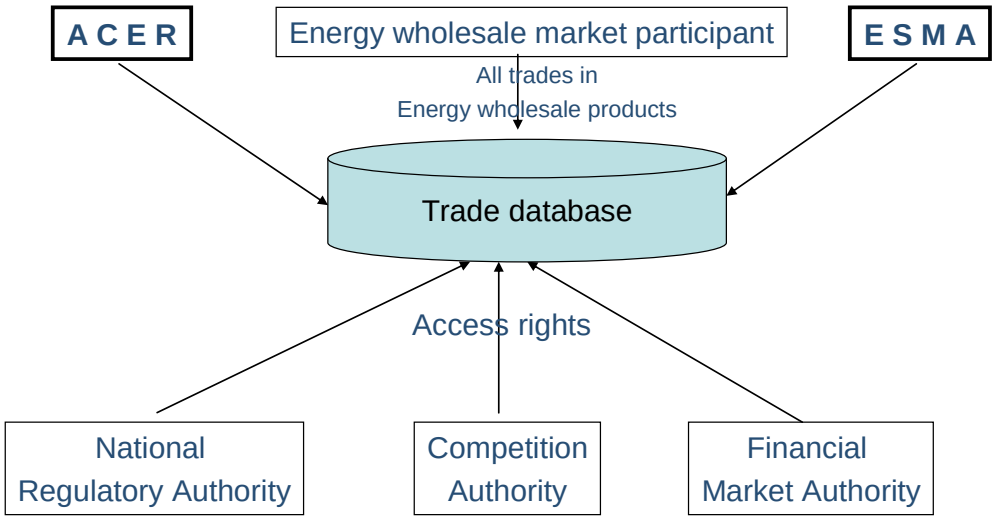
[19] http://ec.europa.eu/internal_market/consultations/docs/2010/mad/consultation_paper.pdf

[20] http://ec.europa.eu/internal_market/consultations/docs/2010/mifid/consultation_paper_en.pdf

[21] Regulation (EC) ---/--- of the European Parliament and of the Council on OTC Derivatives, central counterparties and trade repositories [European Market Infrastructure Regulation – 2010/0250(COD)]

the information reported under MiFID and EMIR will have to be forwarded from the competent entities to the central database foreseen under REMIT, pursuant to Article 7(3)(d) and (e) of REMIT, this will cause market participants to consider to whom to report under which legislation for each and every single transaction in energy wholesale products. The recipients under EMIR would be trade repositories, under MiFID the competent national financial market authority, with the MiFID review proposing to shift the reporting obligation under MiFID to the European level.

However, regardless of the legal basis of the reporting obligation, the vision developed in the course of the pilot project is a central EU energy trade database, possibly administered by ACER, enabling a simple reporting from market participants and an effective monitoring of the energy wholesale market for all relevant authorities, monitoring the energy wholesale market under their respective energy regulatory, financial market or competition legislation.



Graph 15 – Vision: One central trade database for the wholesale energy market

The pilot project as a contribution to a scoping exercise to the European Energy Regulator's 2011 work programme's deliverable on "CEER Guidelines of Good Practice on transaction reporting and detecting market misconduct" and to the "CEER Advice on the legal framework for sector-specific oversight regime – competences and cooperation of regulators" may be a prototype of a centralised energy trade data reporting and monitoring scheme, which has successfully been developed and implemented within a period of six months.

Annex 1 – CEER / ERGEG

The Council of European Energy Regulators (CEER) is a not-for-profit association in which Europe's independent national regulators of electricity and gas voluntarily cooperate to protect consumer' interests and to facilitate the creation of a single, competitive, efficient and sustainable internal market for electricity and gas in Europe

CEER acts as a preparatory body for the European Regulators' Group for Electricity and Gas (ERGEG). ERGEG is the European Commission's formal advisory group of energy regulators. ERGEG was established by the European Commission, in November 2003, to assist the Commission in creating a single-EU market for electricity and gas. ERGEG's members are the heads of the national energy regulatory authorities in the 27 EU Member States.

This report was prepared by the Wholesale Market Functioning Task Force of the Financial Services Working Group.

Annex 2 – List of abbreviations

Term	Definition
CEER	Council of European Energy Regulators
CESR	Committee of European Securities Regulators
ERGEG	European Regulators Group for Electricity and Gas
FIS WG	Financial Services Working Group
MAD	Market Abuse Directive
MiFID	Markets in Financial Instruments Directive
MTF	Multilateral Trading Facility (as defined in MiFID)
NRA	National Regulatory Authority
EUAs	European Union Allowances
OTC	Over the Counter