IOSCO Consultation on Commodity Storage and Delivery Infrastructures: Good or Sound Practices

A Eurelectric response paper

September 2018

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

WG Financial Regulation & Market Integrity

Contact:
Ronan HAAS, Advisor Gas to Power and Financial Regulation - rhaas@eurelectric.org

On 4 July 2018, the International Organisation of Securities Commissions (IOSCO) published for consultation a report, Commodity Storage and Delivery Infrastructures: Good or Sound Practices (the Report). This document aims to provide the feedback of the Power sector on the draft Good or Sound Practices.

1. Relevant points

In general, we would like to have more clarity on the objective of the IOSCO initiative as regards physical storage practices. In this context it is important to recognize that European energy commodities (including energy storage products) are already included in a comprehensive regulatory framework. Thus, further initiatives need to be carefully evaluated.

Physical storage and delivery of commodities is an outstanding part of the business of some energy companies. As a market participant and a heavy user of RSI, we can express our expectations regarding the best practices in order to get more transparent and robust framework for the physical storage and delivery of commodities.

Following the structure of the report, the practices fall into five broad areas: oversight, transparency, conflicts of interest, fees and incentives and operations. Eventually, we can provide comments in some of the areas.

Regarding the part of the market **oversight**, we generally agree that a sound and uniform regulatory structure for the storage and delivery of commodities is important to guarantee confidence in the market, regardless of the location of the trading venue or applicable jurisdiction. This issue is particularly significant when a derivatives contract permits the delivery at an RSI that is located in a territory other than the one in which the trading venue or CCP is located, and/or the contract is listed for trading. Sometimes there is a lack of clarity over the application of the rules of the trading venue or CCP and, by extension, its financial regulator, over extra-territorial RSIs. This lack of clarity can delay or interfere with the ability to take measures to address issues arising from contracts which have deliveries in extra-territorial locations.

Nevertheless, we strongly advise that punitive and sanctioning powers should remain only within the Relevant Authority's function and not to be anyhow meant to be performed by Trading venues (this misunderstanding arises because of unification under the same definition of Relevant Oversight Bodies (ROBs) of the different market actors, such as market authority, trading venue or a statutory regulator).

One of the main concerns on **transparency** issues is a lack of data on the location of commodities, of movements in and out of RSIs, and of stock levels within RSIs. This is particularly relevant when knowledge of stocks can be used by market participants to assess supply of the underlying commodity and make decisions on the settlement and delivery of commodity derivatives and their underlying commodities.

We generally agree that, without relevant information, market participants' ability to make economic decisions about making or taking delivery, re-tendering the delivery instrument, or continued storage of the commodity may be compromised. Nevertheless, Trading Venues (TVs) should not go beyond the requirements established by relevant regulations in relation to audit procedures and mandatory reference to be published by TV.

Regarding **operations**, dysfunction or disruption in the storage or delivery processes of the underlying commodity may have a material impact on price convergence and may cause market premiums for the cash commodity. Operations performed by RSIs have a direct impact on risk management and price formation and thereby play a key role in achieving convergence between derivatives and physical market prices, which affects market integrity and efficiency.

However, we do not agree that ROBs should have greater oversight on contract specifications than they do over contracts between trading venues and RSIs.

To sum up, we sympathise with the IOSCO intention to provide best practices guidance in order to have a more transparent and robust framework for the physical storage and delivery of commodities. In the same time we consider that, at least for EU perimeter, it should be clearly differentiated the definition and powers of the relevant market authorities and trading venues. As mentioned before, trading venues should not go beyond the market rules and have any sanctioning powers regarding market participants.

2. Relation with the European regulatory framework.

The European Energy sector has a workable and covering regulatory setup. The EU adopted a range of legislations, including the European Market Infrastructure Regulation (EMIR), the Markets in Financial Instruments Directive (MiFID), the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT), the Market Abuse Regulation and Directive (MAR/D) but also the 3rd Energy Package, which are already providing a clear and stable framework. The European legislation increased transparency in the Energy market, implemented clear rules for markets participants to avoid conflict of interest or market manipulation as well as increased competition and consumer protection in investment services.

Regulators/IOSCO should take into account this EU based legislative framework before considering new regulatory initiatives and deliverables. In the situation where the IOSCO initiatives would end-up providing guidance with regard to financial issues for more concrete consideration for regulation, it is important that the content recognises and integrates the current EU regulatory framework. The overall objective of this effort is to avoid the risk of double-regulation which could create inappropriate and inefficient regulatory environment for businesses.

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability

Union of the Electricity Industry - Eurelectric aisbl
Boulevard de l'Impératrice, 66 – bte 2 - 1000 Brussels, Belgium
Tel: + 32 2 515 10 00 - VAT: BE 0462 679 112 • www.eurelectric.org
EU Transparency Register number: 4271427696-87