

**Response by europex**  
to the  
**Consultation**  
**“CEER Draft Advice**  
**on the introduction of a**  
**Europe-wide Energy Wholesale Trading Passport”**

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# I. Introduction

EUROPEX welcomes the opportunity to take part in the CEER consultation regarding the “Draft Advice on the introduction of a Europe-wide Energy Wholesale Trading Passport”.

The European Council at its meeting on 4 February 2011 reiterated the objective by the 3rd Energy Package to create a fully integrated energy market by 2014. We agree with CEER that this can first and foremost be achieved for wholesale energy markets.

Energy exchanges (EX) are in so far some of the most visible results of the liberalisation of the energy markets in Europe. They offer trading platforms to generators, transmission system operators (TSO), importers, distributors, banks, traders, brokers, industries and large consumers buying and selling electricity, gas and emission allowances. The trading venues are optional and anonymous and accessible to all participants satisfying admission requirements. The main objective of energy exchanges is to ensure a transparent and reliable wholesale price formation mechanism.

Liquidity and a high number of market participants – representing different trading motivations – are important indicators for both the well-functioning of and the trust in the market. Requirements regarding the access to energy markets have to take into consideration thoughts on security but also on efficiency. Over the years energy exchanges have developed considerable knowledge in this field in order to best serve customers’ and market’s needs in the context of legal and regulatory requirements.

We welcome the efforts taken by CEER proposing an Energy Wholesale Trading Passport and we generally agree with the passport’s envisaged goals: improving security standards of energy markets (e.g. against VAT-fraud), harmonizing admission requirements and cut of entry barriers to national markets.

On the contrary we would like to point out that the possibilities of such a passport should not be overestimated. In so far we see the need that by defining the passport requirements in more detail it is clearly evaluated what can realistically be achieved and what might just create additional administrative burdens.

That goes along with the perception that in the context of the passport discussion the exact definitions of the words “certification”, “licensing” and “registration” – respectively the

borderline between these terms – do not seem to be fully clear (e.g. the report on REMIT by the rapporteur in the European Parliament, Mr. Chatzimarkakis, uses these terms in the same context without further specifying them).

Generally from our point of view it seems to be more appropriate that a passport has the nature of a registration rather than of a certification / licensing system.

A registration would ensure that all active trading companies are known both to national regulators as well as to ACER and that it is clear to whom REMIT applies.

Certification and licensing in our perception go beyond that. The emission of a passport based on such a more detailed scope would certify in much more detail that the passport holder complies with certain requirements (e.g. demonstration of technical, financial and organisational capacity). The corresponding emission process would cause a considerable amount of administrative work; the controlling of the requirements for acquiring the passport would need a lot of experience and proximity to the market. In so far a cost-benefit analysis might come to the result that a registration process is more promising.

Summing up, we welcome the idea of an Energy Wholesale Trading Passport in the context of a harmonized registration system throughout Europe. The passport's success will clearly depend on the specification of its requirements (please see question 6 for more details).

We are looking forward to take further part in the consultation process and are open to any questions or further discussions.

## II. Answers to questions

### Question 1:

#### (1a) Do you agree with the described analysis of existing licensing regimes in general?

From the point of EUROPEX we want to emphasize the following aspects of the analysis:

- (1) We welcome the assessment in the draft advice that the passport requirements shall not include *“any provisions related to security of supply, specifying or requesting collaterals, checking the potential economic success of applicants ...”* In that regard clearing houses/central counter parties – complementary to exchanges – have already sophisticated rules regarding the posting of collaterals and credits.
- (2) Regarding *Collaterals-Systemic risk minimisation* (p.17) EUROPEX understands that CEER hesitates to combine a regulatory access with the specification of collateral amounts.

Indeed this is clearly not within the scope of a trading passport. We agree with the view that *“it is perceived to be more effective to place more responsibility for checking collateral requirements on a party who has a direct interest in the quality of the checking procedure. A counter party has a direct interest in a trader having sufficient collateral to cover a trade, because it is the counterparty that would suffer if the trader went bankrupt. Organised exchanges and in particular clearing houses have sophisticated rules regarding the posting of collateral and credit.”*

- (3) We welcome the clarification that additional requirements for trading activities related to trading venues (such as energy exchanges) are not in scope of the recommendations.
- (4) We agree that the regulatory access regime should not attempt to check the companies' *potential* economic success.

- (5) Regarding the *Economic success check* (p 17) EUROPEX agrees with CEER that “*quality checks such as trading exams, proof of the success of the trader’s activity or any other requirements related to the competence of the applicant’s staff*” should not be covered by a Energy Wholesale Trading Passport.

Energy exchanges are in so far best suited to commit such quality checks as they are close to the business and deal with the market participants on a daily basis.

- (6) Energy exchanges have - in addition to the obvious requirements on signing and abiding to terms in standard agreements for trading/clearing - developed high admission standards (e.g. proof of personal reliability, and/or successfully passed trader examination, “Know-Your-Customer-Rules”, and Market Conduct Rules) over the last decade. We welcome that these standards are positively recognized by CEER and are therefore not within the scope of the proposed measures.

It has to be clearly stated that **a *trading passport* can neither be a compensation for any admission requirement of energy exchanges nor can it lead to an automatic access to a trading venue.** Energy exchanges have in so far their own responsibility for maintaining a fair and orderly market.

- (7) The definition of “*wholesale trading*” in the context of the trading passport doesn’t seem to be clear: Does that also include energy derivatives? How is in so far the alignment with MiFID?

As wholesale energy trading on organized markets and OTC/bilateral comprises both physical and financial contracts harmonised and compatible standards and requirements should be established for all companies regardless if they mainly trade on their own account or on behalf of others.

**(1b) Do you agree that differences in trading license requirements across EU Member States create higher costs for traders and create barriers to trade across Europe?**

- (8) As energy exchanges are concerned fees for admission are charged on a cost basis or access to the trading platform is even provided free of charge.

**(1c) If you do not see this as a problem, then please explain why?**

No further comment

**Question 2:**

**(2a) Do you agree with the objectives of the CEER policy advice identified in Chapter 1 of this document?**

- (9) We underline the need for a **central list hosted by ACER** including all registered trading companies falling under REMIT making the new regulation better applicable. This will also be beneficial in the fight against cross-border VAT-fraud as fraudsters are better traceable throughout Europe.
- (10) EUROPEX agrees with the idea that REMIT should cover the rules concerning the trading passport in order to ensure a harmonised approach throughout Europe. However, considering the advanced state of the REMIT adoption procedure, it might be preferable not to include it ad hoc before all details of the passport have been fully discussed and evaluated.

**(2b) Are there any additional objectives that should be included?**

- (11) The passport should stand for a Europe wide harmonized registration rather than for a certification.
- (12) It has to be clearly stated that a trading passport can neither be a compensation for any admission requirement of energy exchanges nor can it lead to an automatic access to a trading venue. Energy exchanges have in so far their own responsibility for maintaining a fair and orderly market.

**Question 3: What are the main benefits and drawbacks of harmonising energy trading access across Europe?**

See introduction.

**Question 4: Are there experiences or lessons to be learnt from the design and implementation of other similar regimes that we can use to inform our approach to the harmonisation of energy trading (for example the MiFID licensing regime)?**

- (13) It is important to ensure the close co-operation between National Regulatory Authorities.
- (14) It should be clarified whether it is possible that a MiFID licence can replace the Energy Wholesale Trading Passport and vice versa.

**Question 5:**

**(5a) Which of the options set out in Chapter 4 best achieves the CEER objectives?**

See question six

**(5b) Are there other options that could achieve these objectives which have not been considered?**

See question six

**Question 6:**

**(6a) What is your opinion on the suggested scoping, detailed requirements and administrative standards of a wholesale energy trading market access regime? Please explain the reasons for your views.**

- (15) EUROPEX is in favour of a passport which stands for a registration rather than for a certification/licensing.
- (16) In that light EUROPEX agrees with CEER (3.4.1 of the consultation) that the wholesale energy market access regime shall require:

- a. Basic details on the company (e.g. year established, main office address, etc)., a list of persons who effectively direct the business, fields of activity, as well as information in which countries the trader will be active
- b. The proof that the people effectively directing the company have not been convicted on criminal offences.

This requirement has to be in line with national and EC level legislation and protection of personal integrity and confidentiality. However, even in the event that individuals of the company have been convicted this should not in itself and never as a stand-alone constitute a reason for not providing a passport to the company, as long as the company can explain routines they apply to protect themselves against employees conducting criminal offenses linked to their duties within the company.

(17) EUROPEX does not agree with CEER (3.4.1. of the consultation) that the wholesale energy market access regime shall require:

- a. to have adequate systems and controls to undertake such transactions as ongoing business
- b. to be organized so that regulatory requirements can be fulfilled
- c. an agreement not to infringe REMIT (“good behaviour clause”)

The reason for this is that controlling such requirements needs experience and proximity to the market and the market participants in order to be efficient. Market Places – in particular linked to clearing activities – have such skills (e.g. also market players themselves via application of standard contractual terms and counterparty controls; various rating and/or credit institutions). In addition, NRAs and other authorities on a national level have the ability to perform specific checks when deemed needed.

**(6b) Are there other or different requirements which should be included in such a regime?**

- (18) It should be legally evaluated whether market participants trading on behalf of a third party could also provide information concerning their clients.
- (19) Generally, methods should be elaborated to identify who is the original trader if a trade is committed for third parties over several steps e.g. by brokers.
- (20) Provided information (e.g. list of persons who effectively direct the business) for the registration should be updated either every time there is a substantial change or on a regular basis (i.e. once a year).
- (21) Home-state regulators should become lead regulators and co-operate with ACER and other national regulators if a breach of rules – non-compliance with REMIT – is conducted by a passport holder.
- (22) It has to be taken into consideration that some of the required information for receiving the passport might already (decentralised) be available in the public Commercial Registries/Chamber of Commerce of the Member States.

For registering a new company national authorities might need to have access to these information by other Member States.

- (23) Emphasis should be put on the question how it is ensured that the provided information is correct (e.g. self assessment, evaluation through third party).

It seems to be useful that certain provided information are approved by an internationally renowned auditor before entered in the registry.

- (24) An alignment with the MiFID passport rules is important. Generally passports should be acknowledged between the two regimes in order to avoid double obligations.

- (25) There should be a clarification in regards to the consequences in the case a passport is not provided by the NRA: If you consider the registration as a prerequisite for engaging in wholesale energy trading then the exemption from the registry by one NRA might constitute a ban from profession throughout Europe.

In order to ensure an adequate protection of market participants it is necessary to provide a sufficiently lengthy period for applying and receiving the initial passport and to install both Europe-wide harmonized interpretation rules for the withdrawal of a passport/exemption from the registry as well as an appeal and objection system concerning the decisions of national regulators on European level. During the appealing time continuation of wholesale trading activities should be possible if there are no major objections.

- (26) For harmonisation reasons, de minimis/ threshold rules which are possibly implemented in REMIT should also apply for the acquisition of the passport in order to avoid unnecessary market entry barriers.