



CEER Draft

Advice on the introduction of a Europe-wide Energy Wholesale Trading Passport

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Milan, 17 June 2011

Anigas, the **National Association of the Gas Industry**, represents all the companies, regardless of their constitution, that are engaged in any one or more of the following activities: storage, transportation, distribution, sale of natural gas on the consumer market, wholesale, trading and regasification of liquefied natural gas.

The Association **was founded on May 9, 1946** as ANIG, and has, since then, been a member of Confindustria (Confederazione Generale dell'Industria Italiana). Since its inception, the main objective has been to protect and support the interests of member companies, conduct labor union activities, promote and foster understanding and create consensus on economic aspects.

Roughly **70** companies are represented within Anigas, which has a **workforce of 11,000** employees. Among the members are the largest industry players, as well as small and medium-sized companies, which together represent more than 60% of the Italian gas market.

Member companies distribute **over 50 billion cubic meters** of gas each year for public use, small crafts, commercial and industrial applications.

The same member companies that serve **10 million customers** throughout Italy are present in **more than 4,000** municipalities both large and small, including several provincial capitals such as Rome, Naples, Turin, Florence, Taranto, Venice, Piacenza, Rimini and Avellino.

Introduction

Anigas submits its comments to the *Draft Advice on the introduction of a Europe-wide Energy Wholesale Trading Passport* which the Council of European Energy Regulators (CEER) has presented its guidelines for dealing with the existing shortcomings regarding regulatory access to trading on electricity and gas wholesale markets along the lines which were presented and welcomed at the Florence Forum in December 2010.

The four options discussed in the draft advice comprise:

- *to continue with the status quo and not introduce any changes;*
- *to extend the existing MiFID (Markets in Financial Instruments Directive) passport to electricity and gas trading;*
- *to set certain minimum and maximum requirements for national licensing regimes;*
- *to introduce a Europe-wide Energy Wholesale Trading Passport.*

Comments

Anigas welcomes the consultation on the introduction of a Europe-wide Energy Wholesale Trading Passport. In a market in which trading activities become increasingly important; we believe that a harmonisation of the regulatory framework is necessary.

We agree with the analysis presented and appreciate that it highlights the barriers to entry into national markets that are the result of existing licensing regimes. Anigas believes that differences in trading license requirements create higher costs and barriers to trade across Europe. Therefore, we urge that such requirements be removed as soon as possible to enable the full integration of wholesale energy markets at the EU level.

In line with this analysis we believe that an EU license should include the right to supply large industrial customers. Indeed, there is no need to require a separate supply license to serve this sophisticated group of end-customers.

With reference to the solutions presented in the consultation, we believe that the extension of MiFID to energy trading is unreasonable and not backed by evidence. In fact, financial markets are not as closely linked to physical markets as the energy sector.

Anigas, sharing CEER's view, is strongly in favor of a European wide wholesale trading passport.

In our opinion, to grant a fair development of the market, regulators (and traders for that matter) should be informed about who is actively participating in the market – we believe that the passport can provide that information.

Anigas believes that any new regime should encompass a balanced approach and the related requirements (in terms of technical and organizational capacity, financial stability, historical track record...) should be kept to the minimum level necessary to guarantee a regular functioning of markets.

It is our view that, if a passport-style license is to be introduced, it should be based on a simple process and it must replace any need for national licenses which exist currently, including any related reporting requirements.

In fact, it can be a useful instrument if it replaces national licensing regimes and similar requirements such as licenses to “import” gas or electricity into a country. This would remove the barriers (language, creation of a branch, time...) that newcomers frequently encounter when deciding to enter national markets while not duplicating provisions for other market participants. In our opinion it is important that this passport is all-encompassing. Otherwise, national rules and regulations remain fundamental barriers to entry into particular markets.

We are deeply concerned about the European Parliament's (EP) amendments to the REMIT. The EP's Committee on Industry, Research and Energy (ITRE) has proposed to allow member states to maintain their national license regimes – and to create a mandatory EU license requirement for all other countries. This would mean:

- an extension of market barriers in countries with national license regimes **and**
- an increase in bureaucracy in gas and electricity markets in countries without license regime.

By any standard, the ITRE compromise would therefore be a change for the worse.

Administrative requirements shall be kept to a minimum and adequate level.

Further it is important that the National Regulatory Authority and ACER share the information established in the Third Energy Package. ConnectionExtensive reporting obligations cause substantive costs and require significant time and effort.

In our opinion the fact that a company that is licensed by the EU does not need a local branch or the presence of local personnel to commence trading elsewhere is a cardinal element. As a matter of fact the local requirements are in opposition to the Treaty on European Union – companies have the right to move goods and deliver services in every Member State without establishing a branch. Further, Anigas believes that the ban of branch office requirements proposed by CEER is incomplete if companies still have to keep and audit separate books for every country they trade in.

Anigas believes that any possible level of fees should be cost-based and be payable once. License fees or any other fee related to the activity in the wholesale energy market should not be based on transaction volumes or turnover. Thus, registration fees should compensate competent authorities only for the administrative costs related to the registration of the company of the license.

The passport provision should make sure that any sanction must be proportionate. A license withdrawal must only be a sanction of last resort if there are severe violations (which typically also constitute a criminal offence, e.g. fraud). In all other cases, a fine should be sufficient.