



**London Energy Brokers' Association response to ACER's recommendations
to the Commission as regards the records of wholesale energy market
transactions**

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I Summary points of LEBA position

- LEBA believes that, in principle, systemic risk is best managed by active supervision and this is dependent upon an adequate and timely supply of price and transaction data. Therefore, the efficient role of trade repositories, trade identifiers and legal entity identifiers should become central to the monitoring of systemic risk.
- LEBA also understand that systemic risk is best mitigated by liquid and well-functioning markets that facilitate frictionless risk transfer and a comprehensive set of price signals. The development of a physical hub and derivative model across European energy markets in place of a physical forward market has increased liquidity, lowered prices and enhanced participation and competition. Therefore, rules and definitions applying to REMIT need to operate seamlessly within the MiFID, MAD/MAR and EMIR since there is, in reality, no difference between cash settled and physically delivered markets.
- LEBA would emphasise that the vast majority of European gas and power trade volumes are arranged through the platforms of its members and that these fall outside the parameters of "Exchanges" (Regulated Markets (RMs)). This emphasises the importance of the standardised and non-standardised frameworks for data reporting in light of the huge importance of the latter over the former and the difficulty for that section of the market to report pre-trade indications of interest in contrast to the firm orders that exist in the RM framework.
- LEBA would therefore encourage more emphasis on post trade reporting and within that note that the publication of such to the public needs to be made in a suitably calibrated way to transmit price information without threatening the provision of liquidity by market participants.

II LEBA and the European Energy markets

Most LEBA members are active in the business of arranging trades in gas, power, coal, oil and carbon derivatives and their associated deliverable products. Together they collectively account for over three quarters of all energy trading in Europe. These markets would be characterised by us as largely traded off exchange but frequently cleared. Most exchange related volume data sets refers to trades arranged by LEBA members subsequently novated onto the clearing house of an RM. The LEBA volume data is published monthly and may be found in the annex along with a list of member firms.

LEBA members act as "Limited License/Limited Activity" firms, regulated by the FSA via ARROW, ICAAP and SREP methodologies. The LEBA member firms are all keenly aware that as arrangers of trades, they need to ensure that at no stage are they

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ever considered to act, by market participants, as estimators of price or publishers of advice.

III Questions

Question 1

Do you agree with the proposed definitions? If not, please indicate alternative proposals.

Given the close inter-relationship between physically delivered and cash settled energy markets in Europe we emphasise the importance of a consistency of approach across the physical and financial market infrastructure regimes. Therefore, we agree with ACER that definitions applicable to REMIT also need to be those within MiFID, MiFID2, MiFIR, EMIR and the CRD.

The definition of "**Standardised Contract**" that is proposed in the Consultation Paper is "*a contract admitted to trading at an organised market place or TSO auction platform or subject to a standard agreement*". This definition appears somewhat circular since EMIR, MiFID2 drafts and MiFIR seek to characterise both eligible clearing requirements and admission to trading requirements via a threshold of a degree of standardisation also.

Rather, in respect to the scope of a standardised contract, LEBA believes standards should be tighter and narrower in order to create a smaller population of trades with a more straightforward set of reporting requirements.

A standardised contract will contain the requirements that the product should (a) be made available to be centrally cleared at multiple CCPs where possible; (b) be made available for bi-lateral execution where appropriate and reported to trade repositories for supervisory review; (c) be made available for electronic straight-through-processing; (d) have standardised identifiers; (e) be suitable for fully electronic confirmation and affirmation; (f) be suitable for processing by an approved trade repository; and (g) be able to be supported by compression, aggregation, and netting of trades for capital efficiency.

It may, therefore, be more practicable to limit this scope to those contracts only listed on RMs, which would lead the definition of **non-standardised contracts** to be the obverse.

The proposed definition of "**Order to trade**" also needs to be very closely aligned with the developing MiFID2 and MiFIR drafts which may likely separate the definitions of a firm order from an indicative level for normal market size. The great majority of volumes in energy markets are initiated via expressions of interest. The definition of an order inside REMIT would benefit from a narrower definition which

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specifically references MiFID and should be separated from the contingent nature of the ability to trade contained within an expression of interest.

The completion of an "**Execution**" in cleared markets does not occur until the novation is affirmed and margined. This is evidently later than the point of legal agreement under commercial law.

The proposed definition of "**Organised Market Place**" is "*any trading venue for wholesale energy products, including exchanges and broker platforms, the latter only if considered as MTF*". Again, LEBA would argue for this definition to cross-reference MiFID, more especially in the light of the emerging MIFID2 and MiFIR text whereby it may be the case that energy products will be mainly traded inside the OTF category rather than the current situation where over 75% of volumes are arranged by wholesale market brokers as OTC contracts, albeit that they are reported via MTFs and frequently cleared. Therefore, a possible draft could read, "*Organised market place is any trading venue for wholesale energy products, including exchanges and broker platforms as within the meaning of Articles 4(1)(14) and 4(1)(15) of Directive 2004/39/EC or any subsequent directive or regulation*".

Question 2

What are your views regarding the details to be included in the records of transactions as foreseen in Annex II? Do you agree that a distinction should be made between standardised and non-standardised contracts? Do you agree with the proposal on the unique identifier for market participants?

LEBA largely agrees with the record specifications for standardised contracts given our comments above that this set needs to be more precisely and narrowly defined.

For the non-standardised contracts, LEBA remains sceptical that the array of field identifiers is simply and easily available in a cross product format across the global markets at this point in time. We believe that only universal identifiers used not only across the other European reporting frameworks including EMIR, MiFID and SSR but also spanning the incoming global regimes of trade reporting especially the work streams in the United States on Unique Swap Identifiers and Legal Entity Identifiers.

We therefore do not support the creation of a separate set of ACER codes which may only add complications to an already crowded landscape.

Question 3

Do you agree with the proposed way forward to collect orders to trade from organised market places, i.e. Energy exchanges and broker platforms? Do you think that the proposed fields in Annex II.1 will be sufficient to capture the specificities of orders, in particular as regards orders for auctions?

Since the majority of European Energy volumes are arranged via Wholesale Market Brokers via contingent indications of interest, *orders to trade* as defined, are of far

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less relevance in systemic terms and should be regarded as such in relation to post trade reporting. Consequently and in tandem with our responses to questions 1 & 2, it would appear simpler that the collection of orders to trade is restricted to RMs.

Question 4

Do you agree with the proposed way forward concerning the collection of transactions in non-standardised contracts? Please indicate your view on the proposed records of transactions as foreseen in Annex II.2, in particular on the fields considered mandatory.

LEBA agrees that responsibility for reporting of non-standardised contracts should rest with the participants to the trade.

Question 5

Please indicate your views on the proposed collection of scheduling/nomination information. Should there be a separate Annex II.3 for the collection of scheduling/nomination data through TSOs or third parties delegated by TSOs?

LEBA has no business at the TSO field of operations.

Question 6

What are your views on the above-mentioned list of contracts according to Article 8(2)(a) of the Regulation (Annex III)? Which further wholesale energy products should be covered? Do you agree that the list of contracts in Annex III should be kept rather general? Do you agree that the Agency should establish and maintain an updated list of wholesale energy contracts admitted to trading on organised market places similar to ESMA's MiFID database? What are your views on the idea of developing a product taxonomy and make the reporting obligation of standardised contracts dependent from the recording in the Agency's list of specified wholesale energy contracts?

LEBA concurs with the list of contracts specified in Annex III, and see no need for any additional products to be covered at this stage. We agree that the list of contracts in Annex III should be kept general. We further concur that the Agency should establish and maintain an updated list of wholesale energy contracts admitted to trading on organised market places, but would implore ACER to maintain a philosophy that employs a cost/benefit framework around this role in order to avoid overlap with ESMA and national authorities.

LEBA notes that all trades made within the Union are also captured regardless of the geography of the index or delivery (*(b) derivatives relating to natural gas or electricity produced, **traded** or delivered in the Union*). This would seem both impracticable and somewhat extraterritorial in scope.



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LEBA would be sceptical of an ACER led product taxonomy since such a defined framework may work to prevent and impede market developments and innovations to the detriment of consumer choice and stability.

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Question 7

Which of the three options listed above would you consider being the most appropriate concerning the de minimis threshold for the reporting of wholesale energy transactions? In case you consider a de minimis threshold necessary, do you consider that a threshold of 2 MW as foreseen in Option B is an appropriate threshold for small producers? Please specify your reasons.

LEBA notes that any de minimis threshold should only apply if the market participant does not trade at organised market places. Given the MiFID2 and MiFIR proposals currently under negotiation we are concerned that these three options cut across the other legislations and would propose ACER defer until they are set.

We would envisage the majority of trade arranging and execution occurring under either the OTF category or under all three of the proposed venues in MiFID2 and MiFIR. For trades made bilaterally, LEBA members would find it highly unusual to intermediate a trade under 5 mW.

Question 8

Are there alternative options that could complement or replace the three listed above?

As mentioned above, the EMIR, MiFID and SSR regimes form the alternative options.

Question 9

Do you agree with the proposed approach of a mandatory reporting of transactions in standardised contracts through RRM's?

We agree it is essential to avoid duplicate reporting and therefore LEBA, in principle, agrees with the ACER approach which is seeking to avoid double reporting under EMIR, MiFID/MiFIR and REMIT.

We therefore remain a little concerned that the ACER approach to an RRM regime may overlap with the expanded MiFID ARM regime and note that all reportable wholesale transactions will likely occur on either MTFs or OTFs and will therefore be captured under MiFID.

Question 10

Do you believe the Commission through the implementing acts or the Agency when registering RRM's should adopt one single standardised trade and process data format for different classes of data (pre-trade/execution/post-trade data) to facilitate reporting and to increase standardisation in the market? Should this issue be left to the Commission or to the Agency to define?

As per above, LEBA believes it is important to ensure consistency as far as possible with the reporting requirements under EMIR, MAD/MAR and MiFID/MiFIR. Given the

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ongoing ESMA consultation around EMIR and forthcoming ESMA work on reporting under MiFID, we would encourage ACER to engage with ESMA and ensure that the data format for reporting requirements under REMIT, EMIR, MAD/MAR and MiFID/MiFIR are aligned as far as possible.

We would also welcome clarification around the use of the data that is reported to ACER, in parallel to that reported to the commodity trade repository, that commercial rights will be protected in regards to public availability.

Question 11

Do you agree that market participants should be eligible to become RRMs themselves if they fulfil the relevant organisational requirements?

LEBA does not have any concerns with regard to the aspirations of eligible market participants to become RRMs.

Question 12

In your view, should a distinction be made between transactions in standardised and non-standardised contracts and reporting of the latter ones be done directly to the Agency on a monthly basis?

LEBA would encourage this distinction and notes the periodicity of current national reporting requirements in this regard.

Question 13

In view of developments in EU financial market legislation, would you agree with the proposed approach for the avoidance of double reporting?

As per the answer to question 12 above, LEBA would support the proposal that ACER and EMIR should cooperate and share information where this is appropriate (i.e. in accordance with statutory objectives) and subject to the necessary safeguards, including data protection requirements.

Question 14

Do you agree with the proposed approach concerning reporting channels?

LEBA supports ACER's proposal that, as a minimum, all the referenced entities could apply to become RRMs under REMIT to report transactions on behalf of market participants.

Question 15

In your view, how much time would it take to implement the above-mentioned organisational requirements for reporting channels?

LEBA would infer a time frame commensurate with MiFID2 and MiFIR which would likely infer completion by the start of 2016.

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Question 16

Do you agree with this approach of reporting inside information?

We note that the obligation to report inside information and transparency information rests with the market participant, and operating as non-position taking firms under Limited Activity and Limited Licence LEBA firms do not take a stance on this.

Question 17

Please indicate your views on the proposed way forward on the collection of regulated information.

See above answer to Question 16.

Question 18

Do you agree with the proposed approach for the reporting of regulated information? Please indicate your view on the proposed mandatory reporting of regulated information through RISs and transparency platforms. Should there remain at least one reporting channel for market participants to report directly to the Agency?

LEBA would understand that this is an issue for market participants rather than venues, but in principal do not object to the ACER proposals.

Question 19

The recommendation does not foresee any threshold for the reporting of regulated information. Please indicate whether, and if so why, you consider a reporting threshold for regulated information necessary.

LEBA would understand that this is an issue for market participants rather than venues but, in principal, do not object to the ACER proposals.

Question 20

What is your view on the proposed timing and form of reporting?

LEBA agrees that the form of reporting needs to be as standardised and electronic as possible. Both timing and form need to relate closely to those applying to EMIR, MiFID, MAD/MAR and SSR under ESMA. We therefore hope for close cooperation between ACER and ESMA on protocols.

With regards to timing, we note that reporting to regulators and to the public serve very different purposes and the framework for these needs to be structured with reference to maintaining maximum wholesale market liquidity, with equivalent treatment being made to both physical forwards and cash settled swaps and derivatives.

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IV Annex 1

About WMBA and LEBA

The Wholesale Market Brokers' Association (WMBA) and the London Energy Brokers' Association (LEBA) are the European industry association for the Interdealer Brokers (IDBs) in the Over-the-Counter (OTC) financial, energy/commodity, equity, credit, cash and derivative products. Together the associations have eighteen members comprising the majority of the IDB sector, which are listed below.

WMBA and LEBA members are limited activity firms that act as intermediaries in wholesale financial markets, with a principal client base made up of global banks, primary dealers, leading regional banks, asset managers, oil companies, energy generators and transmission operators.

WMBA Members:

- BGC Partners
- EBS Group Ltd
- GFI Group Inc
- Gottex Brokers SA
- ICAP plc
- Martin Brokers (UK) Ltd
- Reuters Transaction Services Ltd
- Sterling International Brokers Ltd
- Tradition (UK) Ltd
- Tullett Prebon plc
- Vantage Capital Markets LLP

LEBA Members:

- Evolution Markets Ltd
- GFI Group, Inc
- ICAP Energy Ltd
- PVM Oil Associates Ltd
- Spectron Group Ltd
- Tradition Financial Services Ltd
- Tullett Prebon Energy Ltd

For further information please visit www.wmba.org.uk and www.leba.org.uk

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IV Annex 2

**LONDON ENERGY BROKERS' ASSOCIATION JUNE 2012 VOLUMES IN GAS POWER
EMISSIONS AND COAL**

London, 03 July 2012 - London Energy Brokers' Association ("LEBA"), the industry association representing the FSA regulated wholesale market brokers in the OTC and exchange traded UK and liberalised European energy markets, today publishes the regular monthly volume report and additional accompanying analysis covering the main European gas, power, coal and emissions markets.

Market	June 2012		June 2012		Year to Date	
	Avg Daily Volume	Total Volume	Avg Daily Cleared	Total Cleared	Total Volume	Total Cleared
Natural Gas (MWh)						
UK NBP	43,207,366	820,939,963	2,135,820	40,580,574	7,289,614,775	379,265,152
Netherlands TTF	28,974,683	550,518,976	459,847	8,737,090	3,596,934,217	60,149,230
Germany NCG	4,372,026	83,068,499	-	-	495,101,721	311,445
Germany GasPool	1,989,210	37,794,985	-	-	254,384,928	-
France PEG	919,117	17,463,219	-	-	121,120,785	2,796,975
Austria Baumgarten	617,474	11,732,007	-	-	32,012,879	-
Italy PSV	791,240	15,033,566	-	-	30,391,091	-
Other Gas	3,000,508	57,009,651	-	-	384,597,287	-
Total Gas	83,871,625	1,593,560,867	2,595,667	49,317,664	12,204,157,685	442,522,802
Power (MWh)						
UK Power	3,803,155	72,259,948	251,068	4,770,300	492,251,873	31,922,032
German Power	25,674,021	487,806,398	2,154,943	40,943,920	3,035,787,533	223,319,565
French Power	1,817,434	34,531,237	36,443	692,409	217,688,036	4,983,377
Nordic Power	1,367,952	25,991,093	1,367,952	25,991,093	53,186,927	53,186,927
Italy Power	2,574,892	48,922,947	9,279	176,300	100,570,336	600,905
Central & Eastern Europe Power	1,551,893	29,485,968	3,846	73,080	63,983,360	214,560
Other Power	2,392,833	45,463,833	106,782	2,028,867	685,922,557	137,836,443
Total Power	39,182,180	744,461,424	3,930,314	74,675,969	4,649,390,623	452,063,809
Coal (MT)						
API 2 Rotterdam	7,089,079	134,692,500	4,499,289	85,486,500	900,357,100	508,268,900
API 4 Richards Bay	1,646,579	31,285,000	1,137,500	21,612,500	180,482,750	125,985,750
Other Coal	1,913,816	36,362,500	600,132	11,402,500	145,155,250	63,754,750
Total Coal	10,649,474	202,340,000	6,236,921	118,501,500	1,225,995,100	698,009,400
Emissions (MT)						
EUA	8,167,476	171,517,000	7,742,286	162,588,000	1,047,736,000	986,879,000
CER	3,157,048	66,298,000	3,133,429	65,802,000	403,804,213	374,377,000
Other Emissions	327,762	6,883,000	292,048	6,133,000	40,972,100	34,766,000
Total Emissions	11,652,286	244,698,000	11,167,762	234,523,000	1,492,512,313	1,396,022,000

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Overview:

	YTD Total Market Volume Change 1 year	Proportion Cleared Jan to June 2012	Proportion Cleared Jan to June 2011	Average Price June 2012	Price Change 1 Month	Price Change 1 Year	Historical Volatility 1 Month	Price Benchmark
UK NBP	+ 6 %	5%	3%					
Netherlands TTF	+ 31 %	2%	4%					
Germany NCG	+ 51 %	0%	1%					
Germany GasPool	+ 111 %	0%	0%					
France PEG	- 41 %	2%	12%					
Other Gas	+ 25 %	0%	0%					
European Gas	+ 15 %	4%	3%	23.775 €/MWh	+ 4 %	+ 12 %	15%	LEBA TTF Day Ahead
UK Power	- 13 %	6%	3%					
German Power	+ 20 %	7%	8%					
French Power	- 17 %	2%	1%					
Other Power	+ 52 %	21%	3%					
European Power	+ 18 %	10%	6%	42.1673 €/MWh	+ 3 %	- 14 %	29%	LEBA UK Day Ahead
API 2 Rotterdam	+ 25 %	56%	49%					
API 4 Richards Bay	+ 26 %	70%	55%					
Other Coal	+ 88 %	44%	84%					
Coal	+ 30 %	57%	53%	86.56 US\$/MT	- 2 %	- 29 %	8%	LEBA API 2 Front Month
EUA	+ 17 %	94%	94%					
CER	+ 20 %	93%	92%					
Other Emissions	- 45 %	85%	4%					
Emissions	+ 14 %	94%	88%	7.24 €/MT	+ 30 %	- 39 %	39%	LEBA EUA Spot Average

Notes:

1. Price Change - 1 Month: calculated using the percentage change from the previous month
2. Price Change - 1 year: calculated using the percentage change from the previous year
3. Historical Volatility - 1 month: calculated by taking the annualised standard deviation of the daily logarithmic returns over the last month
4. Other Gas includes Austria Baumgarten and Italy PSV which is broken out in the monthly volume table from June 2012
5. Other Power includes Nordic, Italian and Central and Eastern European which is broken out in the monthly volume table from June 2012

HIGHLIGHTS

- Gas trading on the Continental European hubs has increased 15% over the same January to June period last year
- Power trading on the UK and Continental hubs has increased 18% over the same January to June period last year
- Coal trading shows strong increase over last year with 30% increase in the January to June period
- Emissions trading also shows an increase over last year of 14% in the January to June period
- All products with the exception of gas have been subject to marked price weakness over the last year.