



MEMORANDUM OF UNDERSTANDING BETWEEN THE COMMISSION DE REGULATION DE L'ENERGIE AND THE AUTORITE DES MARCHES FINANCIERS

Between the undersigned:

THE COMMISSION DE REGULATION DE L'ENERGIE, referred to hereafter as the "CRE", represented by Mr Philippe de LADOUCKETTE, its Chairman

and,

THE AUTORITE DES MARCHES FINANCIERS, referred to hereafter as the "AMF", represented by Mr Jean-Pierre JOUYET, its Chairman

referred to jointly as "*the Authorities*" and individually as "*the Authority*".

PREAMBLE

- 1) European Union law establishes the principle of cooperation between the energy sector regulator and the financial regulator. To this effect, recital 39 of Directive n° 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 provides that *“trust in the market, its liquidity and the number of market participants needs to increase, and, therefore, regulatory oversight of undertakings active in the supply of electricity needs to be increased. Such requirements should be without prejudice to, and compatible with, existing Community law in relation to the financial markets. Energy regulators and financial market regulators need to cooperate in order to enable each other to have an overview over the markets concerned”*. Article 37-4.b of the abovementioned Directive states that *“(…) For this purpose, the regulatory authority [the regulation authority of the sector] shall have at least the following powers: (…) to carry out investigations into the functioning of the electricity markets, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the market. Where appropriate, the regulatory authority shall also have the power to cooperate with the national competition authority and the financial market regulators or the Commission in conducting an investigation relating to competition law.”* Identical provisions for the gas market are in recital 36 and article 41-4. b of Directive 2009/73/EC of 13 July 2009.

- 2) It should also be remembered that according to the terms of the European regulation on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community, these auctions are carried out on platforms that are *“authorised as regulated markets”* and the said Regulation specifies that the authorisation of the auction platform as a regulated market is subject to the condition that the *“regulated market and its market operator comply with the provisions of Title III of Directive 2004/39/EC, as transposed into the national legal order of the Member State of their establishment”*, with the decision on authorisation being made in accordance with Title IV of Directive 2004/39/EC.¹ The said Regulation provides that *“the competent national authorities referred to in paragraph 5 of this Article shall maintain effective market oversight and take the necessary measures to ensure that the requirements referred to in that paragraph are complied with”* and that *“the competent national authorities (…) shall maintain effective market oversight and take the necessary measures to ensure that the provisions of Articles 37 to 42 of this Regulation are complied with”*, with the said provisions concerning the rules on market abuse.

- 3) In national law, the Law on Banking and Financial Regulation of 11 October 2010 allows the admission of greenhouse gas emission allowances defined in Article L.229-15 of the Environmental Code and of other units referred to in Book II, Section II, Chapter IX of the Environmental Code, to trading on regulated financial instrument markets. This law also amended Law n° 2000-108 of 10 February 2000 on the modernisation and development of the public electricity service, with the effect of extending the mandate of the CRE to include analysis of the consistency between electricity and gas market fundamentals and the transactions carried out on the CO2 market by participants in these sectors.

- 4) Finally, the said law of 11 October 2010 established the principle of cooperation between the AMF and the CRE. The Monetary and Financial Code thus provides for cooperation

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 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

between the two authorities and the possibility for the AMF to disclose information covered by professional secrecy to the CRE. Symmetrically, Law n° 2000-108, as amended, also establishes the principle of cooperation between the two Authorities and authorises the CRE to disclose information covered by professional secrecy to the AMF.

The present Memorandum of Understanding (hereafter the "*Memorandum*") defines the scope and practical terms of implementation of this cooperation.

Article I. Purpose of the Memorandum

The purpose of the present Memorandum is to define the terms of cooperation between the CRE and the AMF in order to allow the Authorities to benefit mutually from their information and expertise and to ensure that their respective mandates are fulfilled efficiently in accordance with the provisions of Article L. 621-21 of the Monetary and Financial Code and Articles 28 and 29 of Law n° 2000-108 of 10 February 2000.

To this effect, the Authorities will seek the greatest possible cooperation in their action relating to the control and supervision of the products entering within the scope of application of the present Memorandum, and in their public communication relating to these products and to their mandates.

They will organise in particular the coordination of their oversight of all transactions and services relating to the scope of application of the Memorandum, in order to identify risk factors and share their information and expertise.

Article II. Scope of Application of the Memorandum

The products concerned are:

- greenhouse gas emission allowances defined in Article L.229-15 of the Environmental Code and the other units referred to in Book II, Title II, Chapter IX of the Environmental Code (collectively referred to hereafter as "CO2 emission allowances") and derivatives in which CO2 emission allowances are the underlying;
- electricity and derivatives in which electricity is the underlying;
- natural gas and derivatives in which natural gas is the underlying.

Article III. Principles of Information and Cooperation between Authorities

Within the framework of the present Memorandum, the Authorities undertake to provide each other with mutual assistance, notably by methodological support or the provision of expertise, and to exchange the information necessary for the fulfilment of their mandates.

In the event of an anomaly detected on the markets by either of the Authorities, the Authorities undertake to inform each other promptly, without prejudice to the referral to one of the Authorities by the other Authority at a later date, on the grounds of the provisions of Article 39-1 of the Law of 10 February 2000 and Article L. 621-21 of the Monetary and Financial Code.

When an Authority is in possession of information of use to the other Authority for the fulfilment of its mandate, it may disclose the said information to that Authority on its own initiative, even in the absence of a formal request to do so.

Each of the Authorities will check the consistency and relevance of the information it supplies as regards the legal and regulatory provisions applicable on the national and European level.

As necessary, and if it should prove useful for the conduct of their mandates or to avoid similar requests by both Authorities, the Authorities may set up an arrangement enabling them to

exchange the information they collect systematically. The practical terms of this arrangement will be defined as necessary within the framework of the meetings referred to in Article VI.

Article IV. Referrals to one Authority by the other Authority

In accordance with Article 39-1 of the Law of 10 February 2000, if the CRE should have knowledge, in the conduct of its mandate, of any possible breaches of the obligations arising from the legislative or regulatory provisions or from the professional rules relating to insider trading, price manipulation, publication of misleading information or any other breach likely to be detrimental to the proper working of the market for CO2 allowance transactions, it will inform the AMF and provide it with all the information in its possession relating to these possible breaches.

In accordance with Article L. 621-21 of the Monetary and Financial Code, the AMF will refer to the CRE any questions concerning electricity or gas markets, or any questions concerning the transactions of electricity or gas market operators on CO2 allowance markets.

Article V. Requests for Assistance or Information

Requests for assistance or information will be sent to the correspondent(s) designated by each Authority.

Each request will be examined on a case-by-case basis by the Requested Authority to determine whether information and/or assistance must be provided in application of the present Memorandum. If the request cannot be satisfied in full, the Requested Authority will transmit what it can provide in reply to the Requesting Authority within the framework of the legislation applicable to it.

Depending on the subject of the request, the correspondents designated in each of the Authorities will determine between them the most efficient way of replying to it, which may take the form of:

- a written response,
- an e-mail,
- verbal information provided by telephone or at a meeting organised between the two Authorities,
- the designation of a person within the Requested Authority to assist the Requesting Authority in the course of a given audit mission or investigation.

As an example, the information and analyses that might be provided are notably:

By the AMF:

- data enabling the reconstitution of transactions conducted on the market in products mentioned in Article II;
- information enabling the reconstitution of the trading venue order book and developments therein;
- data identifying the final owner and the person having effective control for each transaction or order transmitted to the market;
- any explanatory information to inform the analysis of a suspicious situation (e.g. an unusual price change), such as the identification of atypical orders (multiple cancellations, repeated buying and selling...) and the analysis of their impact on the market, pinpointing unusual operations by a market participant compared with their usual operating mode;
- the minutes of the hearing of a person or, if authorised, of the testimony under oath of a person, relating to the questions mentioned in the request for assistance;

By the CRE:

- data necessary for the reconstitution of all the transactions conducted in the products mentioned in Article II by the players concerned;
- data relating to the actual production and consumption of the products underlying the products mentioned in Article II, notably in the case of electricity producers and their trading subsidiaries;
- information of an operational nature (breakdowns, industrial action) concerning infrastructures (electricity production facilities, electricity or gas transport networks) likely to influence the transactions of the players concerned.

Article VI. Quarterly Bilateral Meetings

Each Authority will name a correspondent for the implementation of the present Memorandum. These correspondents will organise quarterly bilateral meetings on the premises of each of the Authorities alternately. In addition to the correspondents themselves, these meetings will be attended, at the initiative of the correspondents of each Authority, by any member of the services of the Authorities whose presence is deemed useful to achieve the objectives of the present Memorandum, in the light of the agenda of the meeting.

The correspondent of the Authority in which the meeting will be held will draw up the agenda.

As an example, the following subjects may be addressed:

- A review of developments on the electricity, gas and fossil fuel markets (coal, fuel oil...);
- A review of changes to the regulations on financial markets or commodities markets in general, relating to the subject of the present Memorandum;
- A review of institutional developments and of publications by the ACER, ERGEG, ESMA... relating to the subject of the present Memorandum;
- Analysis of energy fundamentals of relevance to the CO2 market;
- Analysis of global transactions on BlueNext and of the weight of the different economic sectors (energy companies, financial intermediaries, others...);
- Points raised by the supervision services of the two Authorities in the course of the quarter, analyses and investigations/audits underway;
- Discussions on market supervision methodologies developed by the two Authorities, and their results;
- Evaluation of the terms and scope of data collection and exchange;
- Organisation of joint teams to work on ways of improving control of the markets;
- Other points relating to the present Memorandum.

The correspondent of the Authority in which the meeting is held will draw up the minutes of the meeting in consultation with the correspondent of the other Authority.

On the occasion of these meetings, the Authorities will carry out monitoring of the efficiency of their relations, of the initiatives they have taken within the framework of the Memorandum and will discuss any related issues.

Relations between the Authorities will be conducted via the designated correspondents, unless decided otherwise by mutual agreement.

Once yearly, the correspondents will send a joint review of their cooperation over the past year to the Secretary General of the AMF and the Director General of the CRE, making any proposals that might be necessary to extend or improve the terms of cooperation between the two Authorities.

Article VII. Use of Information Received within the Framework of the Present Memorandum

As a matter of principle, the assistance and/or information supplied in application of the Memorandum will be used by the other Authority for the sole purposes of fulfilling its functions of regulation, control and enforcement.

If the Requesting Authority wishes to use the information supplied to it within the framework of the Memorandum to fulfil a purpose other than those stipulated above, it must obtain the prior written agreement of the Requested Authority.

Article VIII. Confidentiality

Each Authority will use the information disclosed to it in accordance with the rules of professional secrecy in force, on the terms applicable to the disclosing Authority and the receiving Authority.

The assistance and/or information supplied under the terms of the Memorandum may not be disclosed to any third parties without the prior agreement of the Requested Authority. Each Authority will implement all necessary and appropriate resources to protect the confidentiality of the information exchanged and the assistance provided.

In accordance with the laws and regulations applicable to it, each Authority will preserve the confidentiality of:

- all requests for information made within the framework of the Memorandum and of any aspect of them arising at a later date, including consultations between the Authorities and the assistance provided spontaneously by one to the other, except if the disclosure of the said information is likely to contribute to the effective fulfilment of the said request;
- all information received within the framework of the present Memorandum, except if the disclosure of the said information is likely to contribute to the effective fulfilment of an assistance request.

The Requesting Authority will not disclose the non-public information and documents supplied to it within the framework of the present Memorandum, except in the cases mentioned above or in response to a binding demand. In the event of a binding demand, the Requesting Authority will inform the Requested Authority before replying and will seek application of the appropriate legal exemptions or privileges relating to the information, if there are any. The Requesting Authority will make every effort to protect the confidentiality of the non-public information and documents supplied to it within the framework of the present Memorandum.

If any information supplied within the framework of the Memorandum is likely to have to be disclosed by an Authority in response to a binding demand, the said Authority will inform the other Authority of the situation in accordance with the laws and regulations in force. The Authorities will discuss and determine together the most appropriate terms for the said disclosure.

Article IX. Public Communication

The Authorities undertake to inform each other prior to any public communication relating to the purpose and scope of application of the Memorandum.

Except in urgent cases, this information will be supplied within a suitable timeframe to allow each Authority to react, if it so wishes, and to organise joint communication between the two Authorities to the fullest extent possible.

Article X. Adaptation of the Memorandum

The Authorities may, at the request of one or the other of them, meet to adapt the Memorandum by mutual agreement.

In the event of any significant change to the legislation, practices or market conditions that might have an influence on the application of the Memorandum, the Authorities will consult each other in due time to examine the terms of revision of the Memorandum.

Article XI. Term and Termination

The Memorandum is entered into for an unspecified term.

Each Authority may terminate the Memorandum unilaterally by sending a registered letter with acknowledgement of receipt.

The termination will take effect at the end of a period of 6 months as of receipt of the termination letter by the other Authority.

Article XII. Entry into Force

The Memorandum will take effect on the date of signature by the Authorities.

Drawn up in duplicate in Paris on 10 December 2010

For the CRE

The Chairman

For the AMF

The Chairman