Position Statement by European Energy Exchange AG on the Price Adjustment Options under Section 24 of the Energy Security Act[1]

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European Energy Exchange AG (EEX) welcomes the rapid crisis preparations being made by the German federal government and the Federal Network Agency. EEX is fully aware of the urgency of the measures which are currently being discussed to ensure security of supply. As a market operator, EEX is willing and available to support the federal government, the state governments, as well as other relevant bodies during this particularly challenging time. In this process, the existing market solutions can generally be used, with just minor adjustments. We would like to refer, e.g., to the EEX comment on the solidarity platform (link) in this respect. EEX would like to comment on the amendments to the Energy Security Act and, in particular, section 24 below. We are, of course, available to discuss this.

Comment on section 24 (Price adjustment rights in the event of reduced gas imports)

Section 24 of the bill submitted for an Energy Security Act gives the energy supply companies the right to adjust the prices they charge their customers to an appropriate level in the event of a significant reduction in the total gas import volume under the alert or emergency level. This is designed to enable energy supply companies to pass on higher procurements costs to their customers.
Exchange transactions and resulting positions are not subject to the price adjustment right according to section 24 EnSiG. As the central market operator for German natural gas, EEX recommends the addition of a clarification that exchange transactions will not be covered by section 24 EnSiG.

The following reasons are material in this opinion:

1. Reference effect of the exchange prices

- Exchange prices are officially determined according to section 24 of the German Exchange Act (Börsengesetz, BörsG). Therefore, unilateral adjustments do not appear to be possible. Section 24 sub-section 2 BörsG stipulates that exchange prices have to be established in accordance with the rules and must comply with the actual market situation in exchange trading, while also fulfilling the requirements of transparency and ensuring a level playing field for all trading participants. Any subsequent adjustment of these prices would violate the statutory conditions under BörsG.

- Moreover, exchange prices are also referred to as a precondition for special treatment in a number of other provisions, e.g. in the case of the realisation of pledged assets by way of a private sale or at a public auction, sections 1221, 1235 sub-section 2, 1295 BGB [German Civil Code], 821 ZPO [German Code of Civil Procedure], in the event of delayed acceptance of the buyer, section 373 sub-section 2 sentence 1 HGB [German Commercial Code], a fixed period commercial transaction, section 376 sub-sections 2 and 3 HGB, or an

1 The quotation marks refer to the bill amending the Energy Security Act dated 26th April 2022 (link).

insolvency as per section 104 InsO [German Insolvency Code], art. 105 EGInsO [Introductory Act to the German Insolvency Code].
All of these provisions are based on the existence and accuracy of exchange prices.

- Moreover, exchange prices have a reference effect which goes beyond the exchange sector itself. For example, they form a reference for delivery agreements concluded off the exchange. If these were to be adjusted because of exchange prices being increased subsequently, energy supply companies might feel it necessary to claim a price adjustment also for other transactions concluded on the exchange. This would trigger a self-reinforcing spiral since natural gas trading is a highly interconnected system with complex interdependencies.

- The so-called settlement prices, which are, e.g., used for the daily settlement of open positions of exchange transactions, are exchange prices with a particularly high reference effect. Based on these, market participants provide additional collateral or receive collateral back every day depending on the development of prices. This prevents a situation in which losses accumulate over a longer period of time and forms a central margining mechanism of exchange transactions. In the event of a subsequent increase in exchange trading prices, this collateral would also have to be adjusted – which could cause sudden, high margin calls. This, in turn, could further aggravate the tight liquidity situation of the trading participants concerned. Moreover, it would raise a number of follow-up questions and issues of natural justice.

2. Anonymous settlement of the exchange transactions via a central counterparty

- In the case of the natural gas transactions concluded via EEX, the European Commodity Clearing (ECC) steps into the process chain as the central counterparty between a gas-buying and a gas-selling company. ECC is the contracting party for both the buyer and the seller, ensures margining of the positions of the transactions concluded and assumes the financial and physical settlement of the positions.

- If the selling trading participant were to increase the prices agreed in exchange trading towards ECC, it remains unclear whether ECC, in turn, could pass on this price increase to the buying trading participant. EnSiG refers to “energy supply companies” – presumably within the meaning of section 3 no. 18 EnWG [German Energy Industry Law] – that are granted the right to adjust prices. As a result, ECC is not covered as a central counterparty. Moreover, a termination of the transaction would also be out of the question for ECC because it has an obligation toward the buying trading participant until the fulfilment of the transaction.
  ECC assumes hedging of the physical and financial settlement of the positions; however, it does so without having any natural gas volumes of its own or having its own demand for natural gas. ECC is neither an energy supply company nor an energy consumer. Exchange transactions are no energy supply contracts.

EEX proposal

As lined out above price adjustments according to section 24 EnSiG are not applicable to exchange transactions and resulting positions. For the sake of clarity, this has to be legally established in a corresponding clause.

Because of the high complexity of natural gas trading, EEX considers any interventions as to the pricing mechanism as being risk prone in principle. Ideally, section 24 should be deleted in its entirety and replaced with more direct measures, such as liquidity support, in order to prevent energy supply companies from becoming insolvent.

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