ECRB Proposal for a Harmonized System of Wholesale Trade Licensing in the 8th Region

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Background - Process

- ECRB WP 2009 → ECRB EWG *Discussion Paper on the possibilities of establishing a harmonized system of licensing in the 8th Region*

- Focus: licensing of wholesale traders
  - need to make difference between wholesale trading and the supply activities of the market participants
  - supply is assumed to be of national character and subject to national licensing requirements

- 2 work-streams were established
  - SEE Coordinated Auctions Work-stream (CAO Work-stream)
  - General Work-stream
Background - Legal

• **Article 34** of the Treaty allows the Energy Community to take Measures concerning mutual recognition of licences.

• **Article 47(b)** Treaty: such Measures shall be taken by the MC

• **Article 56(a)** Treaty: PHLG shall prepare the work of the MC

• **Article 58(a)** Treaty: the ECRB shall advise the MC or the PHLG on the details of statutory, technical and regulatory issues
• Discussion Paper and proposal were elaborated using experiences of the work already conducted under the Licensing and Competition Committee of ERRA as a starting point

• EWG made survey/benchmarking exercise on the licensing regimes in the 8th Region in order to get clear answers on current licensing regime of wholesale traders

→ only the response from Bulgaria is missing
Based on the survey, 2 basic models were identified in the 8th Region

1. **Explicit request for license** with *4 sub-models dependant on the request for national or wider presence and differentiation between trade and transit:
   - National presence (trade & transit)
   - National presence (only trade)
   - Wider presence (only trade)
   * Only national companies (trade & transit)

2. **No licensing requirements**

   but other specific solutions apply
Available Options - Overview

1. HARMONISATION OF LICENSING PROCEDURES
2. ABOLITION OF LICENSES
3. FADE OUT OF LICENSING IN EACH JURISDICTION COMPLEMENTED WITH OTHER MEASURES ENSURING A LEVEL PLAYING FIELD FOR TRADERS WHILE ENSURING FAIR MARKET CONDUCT
4. ONE LICENSE VALID IN THE REGION
Available Options_1

1. HARMONISATION OF LICENSING PROCEDURES

• Underlying question behind this approach is: what would be the potential benefits of its implementation?

• Implementation would require changes to the individual legal frameworks within the 8th Region

  → could be lengthy

  → only result in giving the licenses the same “weight”, without resolving burning issues

• Legal enforcement of this option would require a Measure of MC of EnC (Decision or Recommendation)

  → based on the presence of political will and support
Available Options_2

2. ABOLITION OF LICENSES

- **Most recommended by EFET** and traders in general, as it would mean taking this topic off the agenda

- **Regulatory oversight over traders** is conducted via the administrative relation established between the traders and the regulator by **issuing a license**
  
  → Although necessary regulatory supervision could also be established by other means, **this would still not be a sufficient means of efficiently ensuring fair market conduct**

- **Legal enforcement** of this option would require a Decision of MC of EnC, in order to ensure that all jurisdictions involved will implement the requirement for abolition
3. FADE OUT OF LICENSING IN EACH JURISDICTION COMPLEMENTED WITH OTHER MEASURES ENSURING A LEVEL PLAYING FIELD FOR TRADERS WHILE ENSURING FAIR MARKET CONDUCT

• Means the **abolition of licenses for wholesale traders, but in a more gradual manner**

• Ensures:

  → **proper conduct from traders via contracts and other mechanisms**, such as bank or other financial guarantees,

  → established **between TSO/MO on the one hand, and market participants (including traders), on the other hand**

• **Means**: traders **would not be licensed**, but their **proper market conduct is ensured primarily through contractual and financial responsibility**
Available Options_4

- Licenses obsolete under the following assumption: regulatory oversight over traders is ensured in another manner set out in relevant legislation
  → such as the possibility of the regulator to seek the relevant data from the traders themselves or the Balance Responsible Party
  → regulator to be equipped with the necessary legal instruments to ensure fair market conduct

- In order to be fully set up, this model assumes that all of the abovementioned mechanisms are fully in place before the final abolition of wholesale trading licenses can take place

- Legal enforcement of this option would require a two step process:
  1. Decision of MC of EnC to set up the necessary mechanisms ensuring proper market conduct of the traders, both in terms of setting up their financial responsibility and their susceptibility to regulatory oversight, which would be followed by verification of the full implementation in the 8th Region
  2. Decision of MC of EnC requesting abolition of wholesale trading licenses
4. ONE LICENSE VALID IN THE REGION

- Often mentioned as an ideal solution, but one that is the hardest (if not impossible) to implement

- **Problems lie** both in the issuing procedure and the enforcement
  → mainly legal nature
  → in the 8th Region it is generally not possible to issue a license to a foreign entity → national regulators do not have administrative powers over foreign entities

- Requires the absolute same conditions for **issuing a license** and the exact same monitoring rights of all the regulators involved, in order to ensure a level playing field
Available Options

- Regarding the **enforcement**, the situation is much more **complex**, e.g. in case trader makes an infringement in a jurisdiction, and it requires revocation of trading license

- **Very heavy legal requirement** to give possibility for all regulators to sign **legally binding multilateral international agreements** with other regulators, by which they could regulate monitoring functions, rights and obligations of regulators in the “one license valid in the whole region” concept

- Fact that **there are jurisdictions** in the region **without licensing requirements** (Italy, Austria, Montenegro, Slovenia)

  → **hard to justify the need to (re)introduce licensing** requirements for wholesale traders
ECRB Recommendation

- ECRB discussed and analyzed presented four Options taking into consideration:
  - Advantages and disadvantages
  - Scope of facilitating trade across borders
  - Reduce the barriers for new market entrants
- ECRB concluded that the preferred option which should be pursued in the 8th Region is the Option 3:

✓ **FADE OUT OF LICENSING IN EACH JURISDICTION COMPLEMENTED WITH OTHER MEASURES ENSURING A LEVEL PLAYING FIELD FOR TRADERS WHILE ENSURING FAIR MARKET CONDUCT**
Next Steps_1: ECRB

- Given that the same issue is being discussed on EU level/ERGEG (study results expected around March 2010) **the recommendations of the ECRB paper remain preliminary** to the extent of **possible alignment with the result of the ongoing discussions on European level**

→ **ECRB will continue cooperation with the EC and ERGEG in this respect and develop a final position** after finalisation of the EU discussions
Next Steps_2: PHLG/MC

Decision lies with PHLG/MC!

1. ECRB Paper presented to PHLG 09/2009

2. Topic to be in depth discussed at PHLG 12/2009

3. 2010 final ECRB recommendation
   • Streamlined with EU approach (if necessary) to be presented to PHLG
     • PHLG position **whether** Measures under Art. 34 should be taken
     • PHLG position **which** approach should be implemented
     • PHLG position to **task ECRB** to work on legal details that need to be taken for implementing the approach chosen?

4. Based on the advice of the PHLG, the **MC might take a final decision on Measures** in line with Article 34 of the Treaty
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