



ENTSO-E Response

EC Public consultation on ERGEG Advice on Comitology Guidelines on Fundamental Electricity Data

15 September 2011

Introduction

The European Network of Transmission System Operators for Electricity (ENTSO-E) welcomes the opportunity to respond to the European Commission's consultation on ERGEG advice on Comitology Guidelines of Fundamental Electricity Data.

ENTSO-E has actively collaborated with ERGEG in drafting Advice on Comitology Guidelines on Fundamental Electricity Data Transparency (issued on the 7 Dec 2010), has sought to play an active role at each stage of this process and will actively continue participating in the process in the coming months. The comments contained in this response build on those submitted previously.

While ENTSO-E is supportive of the process followed to date, we consider that there are a number of important areas in which further changes and greater clarity would enhance the effectiveness of proposals. We stress these points in the first section of this response before providing more detailed responses to the questions posed in the consultation. We would, of course, be very pleased to discuss any issue raised in this response with the European Commission.

Key Issues

In ENTSO-E's view there are three issues which would particularly benefit from being addressed:

Ensuring efficient implementation – ENTSO-E would like to stress the importance of ensuring that all parties have sufficient time to implement the requirements of the Guideline. Different Member States face different challenges in delivering enhanced transparency. The extent to which data is made publically available today differs significantly between Member States. There are also complexities involved in developing a central platform. Significant time and effort will be required to develop, implement and test the required infrastructure and processes for the new transparency platform. Therefore ENTSO-E insists on an efficient implementation plan based on a minimum of two years following the Regulation. Overly tight timescales could create a risk of unintended consequences and we would therefore like to work with the Commission to ensure that there is an appropriate balance between implementing the Guideline in a timely manner and ensuring robust processes.

Applicability of provisions to non EU countries – ENTSO-E would like to stress the importance of consistent levels of transparency in delivering a seamless market. Different standards and asymmetric levels of information between EU and non EU countries could lead to market distortions, undermine competition and erode some of the significant benefits which we consider the Guideline could deliver. ENTSO-E is therefore urging the EC to take appropriate actions to ensure a quick and

effective applicability of the Guidelines to non-EU countries, especially those whose market conditions impact on the EU.

Ensuring recovery of efficiently incurred costs – Developing processes to meet the requirements of the Guideline will be a significant undertaking. Significant amounts of IT infrastructure, both with individual TSOs and centrally within ENTSO-E, will need to be developed during the initial phase and maintained on an ongoing basis. In ENTSO-E's view it is critical that TSOs are provided with comfort that the costs related to this necessary expenditure will be recoverable via national tariffs in order to avoid unhelpful disincentives to deliver quickly. ENTSO-E will also undertake all endeavours necessary to ensure the cost efficient implementation of the infrastructure and processes required to meet the provisions of a future Guideline and accordingly to minimise additional burdens on tariff customers, such as for example building on existing achievements in publishing fundamental data.

We would urge the Commission to take action in these areas. Should you wish to discuss this responses please contact Peter Campbell at the ENTSO-E Secretariat (peter.campbell@entsoe.eu).

Answers to questions raised in EC Public Consultation Document: "Guidelines on Fundamental Electricity Data Transparency"

Section 1 - Completeness of the proposal

Question 1: Do you have any major problems or policy issues related to transparency which go beyond ERGEG's advice and which you think should be addressed in the Commission's proposal?

We refer to the points made above.

Question 2: Do you consider that definitions are complete and clear enough to avoid any potential problems when applied?

- Clear definitions of data for publication are necessary

In order to successfully foster a level playing field all over Europe, prevent any potential anticompetitive behaviour which could arise as a consequence of differing interpretations of data publication requirements and to give the parties responsible for the publication of data a strong and incontestable legal basis, ENTSO-E underlines the need to have clear and unambiguous definitions of the data that ENTSO-E will be required to publish according to the forthcoming guidelines, and the thresholds of publication. While it is a task for the Commission to decide on the definitions in the guidelines, ENTSO-E would be keen to work with the Commission in this area to ensure that the descriptions are compatible with the technical organisation of the sector.

Section 2 – Competition aspects

Answers to questions 3, 4 and 5 are combined below where they relate to the following paragraphs of ERGEG's Guidelines:

Paragraphs 4.1.3.7 & 4.1.3.8 (Require publishing ex-ante information on planned and ex-post information on the unplanned unavailability of consumption units);
Paragraphs 4.3.2.4 and 4.3.2.5 (Require publishing ex-ante information on planned and ex-post information on the unplanned unavailability of generation units) and;
Paragraph 4.3.2.8 requires publishing actual unit-by-unit generation updated every hour.

- Striking the right balance between confidentiality and transparency

When deciding on the type of data to publish, it is necessary to strike an appropriate balance between ensuring an appropriate level of data transparency which can foster competition and avoiding information overload or excess complexity which could be counterproductive. This challenge will arise when, for example, determining how disaggregated and granular data should be.

- Article to foresee cases of exemption or delay of publication

As far as the timing and the form of fundamental data publication is concerned, ENTSO-E underlines that there are several reasons related, for example, to cases of force majeure or to constraints in European and/or National Competition law, for which it is indispensable to foresee cases of exemption or at least delays in the public disclosure of sensitive inside information.

As such, ENTSO-E deems indispensable for the Guidelines to include additional indications inspired by the principle contained in Articles 3a.2 of the REMIT (Regulation of the European Parliament and of the Council on Energy Market Integrity and Transparency) as related to public disclosure of inside information. For instance, it could be possible for a primary owner of a data to be allowed to exceptionally delay the public disclosure of commercially sensitive information such as not to prejudice its legitimate interest. In this case, the primary owner shall without delay provide this information, together with a justification for the delay of public disclosure, to the national relevant authority, and to the central information platform, that will not publish it before authorization by the relevant national authority.

- Compatibility with critical infrastructure protection and national security

The draft Transparency Guideline should take into account the need for compatibility with the Council Directive 2008/114/EC on the identification and designation of European critical infrastructures. This Directive requires taking caution when disclosing information related to critical infrastructure, which, if disclosed, could be used to plan and act with a view to causing disruption or destruction of critical infrastructure installations.

Unit-based information is in many instances considered as “critical infrastructure information”, subject to particular protection and generally not publicly available in real time. This would support the publication of aggregated values close to real time and unit by unit data ex-post.

Question 6: Do you see any other issues arising from ERGEG’s proposal which may in your view give rise to competition concerns?

From a competition law perspective, ENTSO-E would like to draw the Commission’s attention to the following issue. The task entrusted to ENTSO-E by ERGEG’s proposal in organising the transparency platform is and must stay a purely passive service task: the Commission has to ensure that ENTSO-E has no role and even no margin of discretion in deciding what has to be published, in which format (aggregated or not, anonymously or not, etc.), in which frequency (hourly, daily, ex ante, etc.). Therefore, it will be important to clearly specify in the final Guidelines the obligations placed on ENTSO-E and to define the types of information which need to be published in a suitably precise manner. In ENTSO-E’s view, the Commission has an important role to play in this area. Finally, in this context, ENTSO-E welcomes the proposal for ACER to provide its opinion on the detailed definitions which ENTSO-E, shall develop according to Article 3.2.