

**Response to the
DG Energy Public Consultation on
“Enhanced data transparency on electricity market fundamentals”**

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I. Introduction

EUROPEX welcomes the opportunity to take part in the public consultation on *Enhanced data transparency on electricity market fundamentals*, an important policy initiative started by the Directorate General for Energy to strengthen the integrity and transparency of the European energy markets.

We fully share ERGEG's view in the Initial Impact Assessment of the *Draft Comitology Guidelines on Fundamental Electricity Data Transparency* that the current approach by the *Congestion Management Guidelines* has not achieved the desired objective of fully harmonising transparency standards across Europe. However, it can be noted that, in the context of the regional market approach, harmonisation has been achieved on a regional level. Nevertheless, the quality of implementation varies across countries.

We believe that a clear need exists to further harmonise, or at least ensure compatible, minimum transparency standards across Europe in order to provide a level playing field for all actors in the European electricity market.

Energy Exchanges have considerable knowledge and experience in operating transparency platforms and enforcing rules linked to disclosure requirements. Based on this extensive track record EUROPEX also took part in / contributed to the following previous consultations and discussions:

- Joint CESR / ERGEG Consultative Working Group on Record Keeping, Transparency and Information Exchange
- Draft Discussion Paper on Transparency and Integrity of Traded Wholesale Markets in Electricity and Gas initiated by the Commission (April 2010)
- Public Consultation by the Directorate General for Energy on Measures to Ensure Transparency and Integrity of Wholesale Markets in Electricity and Gas (July 2010)
- Public Consultation by the Directorate General Internal Market and Services on "A Revision of the Market Abuse Directive" (July 2010)
- ERGEG Public Consultation on Draft Comitology Guidelines on Fundamental Electricity Data Transparency (October 2010)

We are convinced that the new guidelines will constitute an important step forward towards achieving the objective of a fully **liberalised European energy market** by 2014 as recently confirmed by the conclusions of the European Council on 4 February 2011.

We look forward to participating in the further consultation process and are open to any questions and discussion.

II. Answers to the questions of the public consultation

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?

Central point of access: One access, different platforms, same publication

- (1) A new centralised European transparency platform should be implemented in both a cost- and time-efficient manner. This is to avoid any extra burden and stranded investments for reporting companies such as power plant operators and platform operators like Energy Exchanges. In this context, it should be taken into account that several institutions across Europe have significantly contributed to market transparency in the past, and are today perceived as frontrunners. Their complex activities and significant investments must not be devaluated or even neglected by the new *ERGEG Guidelines*. More clearly said: those that have complied with the previous Congestion Management Guidelines since the early days must not be unjustly punished to the benefit of latecomers.

- (2) An efficient implementation is also in line with the overall principle stated in REMIT (cf. 7(4)):

"The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible."

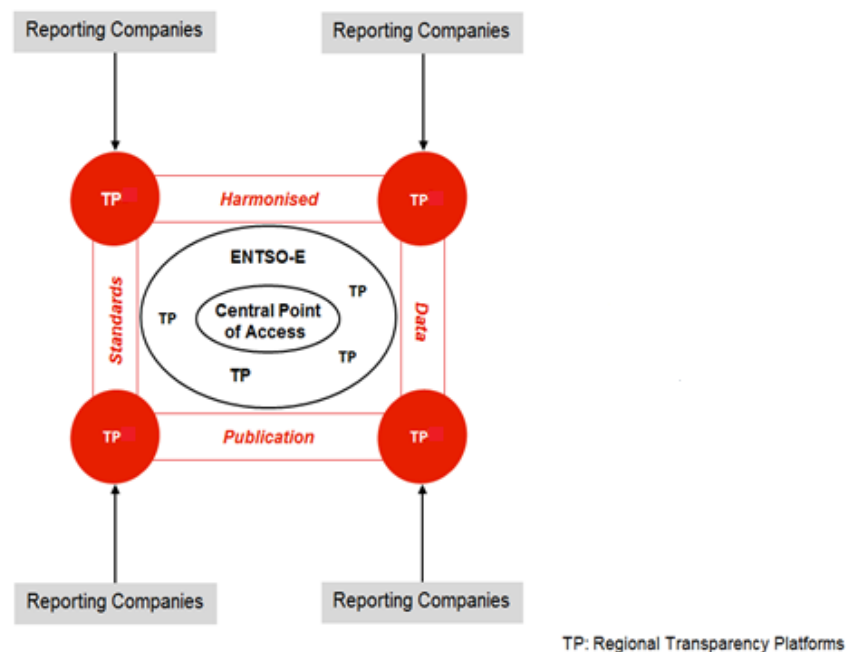
- (3) Consequently, EUROPEX has proposed a **Third Policy Option** to be included in the *ERGEG Draft Comitology Guidelines on Fundamental Electricity Data Transparency* as an alternative to a new central European transparency platform exclusively provided by ENTSO-E. This proposal aimed at the harmonisation of already existing, well-established and well-working transparency platforms to which market participants submit data at a regional level.

Unfortunately, in the evaluation of the responses ERGEG reacted to this proposal by merely stating that it *"is not within the framework of the task given to ERGEG from the European Commission"*. The proposal was though part of the answer to the question: *"Are there additional major problems or policy issues that should be addressed by the draft Comitology Guideline on Fundamental Electricity Data Transparency?"* It is therefore difficult to understand why this option has not been discussed more in depth.

For this reason, we would like to express our strong believe that this is an issue which clearly falls into the scope of ERGEG's advice. Hence, we are very pleased that the current consultation by DG ENER is providing the opportunity to raise some essential points regarding the overall architecture / infrastructure of the envisaged platform.

Clarifying such practical yet important details in the beginning of the process helps avoid lengthy discussions before it comes to the actual implementation of the new guidelines.

- (4) While the initial Third Policy Option by EUROPEX suggested that harmonised transparency platforms would stand **alongside** a possible ENTSO-E platform – the latter continuing to be primarily responsible for TSO-data (e.g. load) – our new proposal which can be summed up as *“one access, different platforms, same publication”* foresees the possibility to access all given types of data via **one central access** and looks as follows:



The **central point of access** embodies the **European Transparency Platform** and consists of a **central website** from which the user has access to data on regional transparency platforms via linkages.

The harmonisation of data standards ensures that the data readers (e.g. traders, analysts, regulators, journalists, interested public) are able to read the same information in the same quality across Europe.

ENTSO-E together with the relevant regional platform operators forms an effective governance structure for the organisation of this access point. While the platform operators also ensure the interests of their reporting companies / power plant operators, the organisation is less complex due to the limited number of involved stakeholders. Such an approach is initially implementable within only a few months' time, followed by a reasonable adaption and harmonisation period. Again, this approach has significant advantages as regards time- and cost-efficiency.

- (5) Experience with regional platforms has shown that daily operations include constant and time consuming communications with reporting companies in order to ensure the trustworthy disclosure of information. The track record of some Energy Exchanges

clearly indicates that information is often published inadequately and / or incorrectly if there is no continuous and proactive monitoring of the information reporting. In the *central point of access* this coordination task lays with the regional platform operators. In the context of some 40 reporting TSOs and potentially hundreds or thousands of potential generation and consumption reporting units a model where there is only one central operator does not seem feasible, neither technically nor in a time- or cost-efficient manner.

- (6) The power plant operators' obligation to provide data is fulfilled once they have sent the information to regional transparency platforms which are directly connected to the central European access portal.
- (7) Regions / countries without an established reporting structure have either the option to develop their own regional platform for collecting data which are then linked to the central point of access or to join already existing platforms. In our opinion, the latter seems to be more efficient since it involves only a limited technical and organisational effort.
- (8) **Advantages** of a *central point of access* would be:
 - a. A time and cost-efficient implementation of the new platform would be made possible.
 - b. Existing reporting structures can be further used.
 - c. IT-infrastructure of existing transparency platforms can be further used.
 - d. On-going improvements of existing platforms will not be interrupted.
 - e. Responsibility for running transparency platforms lies with the operators which have many years of experience in the different market regions, especially as regards the publication of power plant data.
 - f. Quick win effects within a short period of time can be accomplished to the benefit of all.
- (9) To sum up: The *central point of access* could be implemented quickly and cost-efficiently while the adaption of the harmonised publication standards would lie within the responsibility of the regional platforms. The increased visibility and the possibility to compare the status of progress of the implementation between regional platforms will support and accelerate a quick and consistent adaption.

Transparency & Integrity

- (10) For consistency and efficiency reasons, the existent reporting infrastructure should be used for collecting data with the aim to foster transparency, integrity and monitoring.

Reporting structures & security

- (11) Reporting structures – both IT and legal – are crucial for the success of any transparency platform. Experience derived from the implementation of the *Congestion Management Guidelines* has shown that the different roles of the involved stakeholders and their (reporting) interactions must be on the agenda of the new *ERGEG Guidelines on Fundamental Electricity Data Transparency* from the very beginning in order to avoid any future delay of implementation or the acceptance of the transparency requirements by the stakeholders.
- (12) The reporting structure should be developed between data providers and data collectors and be supervised and approved by national regulators. The overall European framework of data provision should be overseen by a coordination body such as ACER.
- (13) Security is key. It has to be made sure that the used IT infrastructures as well as the daily operations meet the highest standards of security in order to anticipatorily avoid that third parties get unauthorised access to and/or manipulate the data.

Taken the above mentioned into account we propose the following amendments to the *ERGEG Guidelines*' text as marked with []:

2.2

In application of Article 3.2 of these guidelines, ENTSO-E [**in close cooperation with existing transparency platform operators,**] shall develop the detailed definitions for each data item specified in these guidelines including the generation types of Appendix 1 herein. These definitions are to be prepared in a transparent manner and to be consulted upon publicly before their application. The Agency for the Cooperation of Energy Regulators (Agency) shall provide an opinion on these detailed definitions.

3.2

ENTSO-E shall ensure that the central information platform is set up and maintained in the most efficient and cost-effective manner. **[This could be a central website serving as a central point of access to regional transparency platforms.]** To this end, ENTSO-E shall submit, sufficiently in advance, its proposal for the central information platform to the Agency for approval.

3.1.2

In close cooperation with the data providers [**existing transparency platform operators**] and the primary owners of the data, and with respect to usual market practices and needs, for the purpose of publication, ENTSO-E shall establish and maintain standardised ways of communication between the different information systems, as well as **[agree with the existing transparency platform operators on definitions of]** the quality criteria, the accuracy and the format of the fundamental data to be provided.

4.1.1

As data providers, TSOs shall be responsible for collecting and sending all relevant data on load in their control area **[either directly or via a duly authorised third party regional transparency platform operator]** to the central information platform. The consumption units, the generation units and the DSOs that are located within the TSOs' control area[s] shall provide the TSOs with all the relevant data that are required to fulfil the obligations of these guidelines.

4.1.3

TSOs shall be responsible for providing **[either directly or via a duly authorised third party regional transparency platform operator]** to the central information platform at least the following load data:

4.3.1

Generators are responsible for providing all relevant generation data specified in Chapter 4.3 of these guidelines **[either directly or via a duly authorised third party regional transparency platform operator to the central website]**.

4.4.1

TSOs or where applicable operators of balancing markets shall provide at least the following information on the balancing and balancing market **[either directly or via a duly authorised third party regional transparency platform operator to the central website]**. TSOs are the primary owners of the following data:

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

- (14) Speaking from experience, we consider that the definitions outlined in the draft are generally not detailed enough. This concerns especially the definition of consumption units but also others. Furthermore, it is important to develop a reporting manual explaining the exact minimum reporting procedure in addition to the necessary minimum detailed data item definitions. Therefore, we again urge the European Commission to rely on the experience of existing transparency platform operators.
- (15) The decision on future changes of the definitions must be made in a transparent and open manner and should be preceded by a public consultation involving all relevant stakeholders. Once agreed upon, the new definitions should be communicated to the relevant stakeholders at least six months in advance to ensure a smooth and technically stable adaptation of the transparency platforms.

Question 3: Points 4.1.3.7 and 4.1.3.8 of ERGEG's guideline require publishing ex-ante information on planned and ex-post information on the unplanned unavailability of consumption units including the name of the consumption units, location, bidding area, available capacity during the event, installed capacity, etc. Do you consider that publishing this information on a unit-by-unit base would be likely to create any competition concerns (e.g. because of the commercially sensitive nature of information on energy consumption of individual companies)? If yes, for which industries, in which Member States, etc.? How does this concern relate to the potential benefit this information yields to participants of traded electricity markets? Could this concern be remedied in a way which would nevertheless enable market participants to properly assess such an important change in a demand fundamental (e.g. by publishing data in aggregated form)?

- (16) For the time being, reliable fundamental data are not sufficiently available in the European Union. If implemented, the comitology guidelines would constitute an important step forward to consistently improve this situation. As regards to the issue of the right form of data publication, it is important to note that different regional perspectives exist. In Germany, e.g., a unit-by-unit publication of fundamental data is seen critical by many stakeholders. In the Nordic / Baltic countries, on the contrary, plant-by-plant reporting is considered an essential part of overall transparency based, inter alia, on the argument that unit-by-unit transparency would enable participants to uncover potential inaccuracies or false information, which is vital for ensuring a high quality of the published information. Furthermore, information about unavailable consumption capacity might constitute insider information according to REMIT. Hence, it is precisely this information which must be published in order to avoid that the holder of the information can act from an insider position.

Question 4: Points 4.3.2.4 and 4.3.2.5 of ERGEG's guideline require publishing ex-ante information on planned and ex-post information on the unplanned unavailability of generation units including the name of the generation units, location, bidding area, available capacity during the event, installed capacity, etc. Do you consider that publishing this information on a unit-by-unit base would be likely to create any competition concerns? If yes, how does this concern relate to the potential benefit this information yields to market participants? Could this concern be remedied in a way which would nevertheless enable market participants to properly assess such an important change in a supply fundamental (e.g. by publishing data in aggregated form, for instance per production type and balancing zone)?

- (17) We would like to draw the attention to the frequent discussions among cartel and anticompetitive authorities as well as energy regulators about what level of transparency is most suitable. Different (regional) perceptions of the potential risk that too much transparency could facilitate collusive behaviour persist. In Germany, e.g., a unit-by-unit publication of fundamental data is seen critical by many stakeholders. In

the Nordic/Baltic countries, on the contrary, plant-by-plant reporting (beyond a 100-200 MW threshold) is considered an essential part of overall transparency based, inter alia, on the argument that unit-by-unit transparency would enable participants to uncover potential inaccuracies or false information, which is vital for ensuring a high quality of the published information. Furthermore, information about unavailable generation capacity might constitute insider information according to REMIT. Hence, it is precisely this information which must be published in order to avoid that the holder of the information can act from an insider position.

- (18) Item 4.3.2.1 requires generators equalling or exceeding 1 MW of installed capacity to report data to the data collecting entity. In some countries (e.g. Germany) experience has shown that implementing the respective reporting processes and IT tools is an excessive burden to small operators. In this case, we recommend requiring TSOs to collect this kind of data directly from all underlying DSOs as these figures are in principle available.
- (19) Item 4.3.2.3 is redundant as this information can be derived from 4.3.2.4 (planned unavailability). Given the accumulated needs in certain countries, we recommend focusing on the important core data and abstaining from redundant information.

Taken the above mentioned into account, we propose the following changes to the *Guidelines*:

4.3.2.3

To be deleted due to redundancy, see (19).

Question 5: Point 4.3.2.8 of ERGEG's guideline requires publishing actual unit-by-unit generation updated every hour. Do you consider that hourly publishing this information on a unit-by-unit base would be likely to create any competition concerns (e.g. by increased possibilities to monitor the behaviour of competitors, to enter into collusive strategies)? If yes, how does this concern relate to the potential benefit this information yields to market participants? How in your view could the concern be remedied (e.g. by publishing data in aggregated form, for instance per production type and balancing zone and/or by publishing with a longer delay than one hour)?

- (20) We would like to draw the attention to the frequent discussions among cartel and anticompetitive authorities as well as energy regulators about what level of transparency is most suitable. Different (regional) perceptions of the potential risk that too much transparency could facilitate collusive behaviour persist. In Germany, e.g., a unit-by-unit publication of fundamental data is seen critical by many stakeholders. In the Nordic / Baltic countries, it is considered an essential part of overall transparency that “real time” data on what is being produced / consumed plant-by-plant or even aggregated data per production type can potentially lead to market manipulation and collusive behaviour.

- (21) Given that EUROPEX considers this clause to be of great importance, for the time being, we remain unsure about the costs/benefits of it, and would therefore like to suggest carrying out a further impact assessment.

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

- (22) Due to the fact that Transmission System Operators (TSOs) are also in some countries active energy trading participants for e.g. procuring balancing resources, they cannot be considered as neutral parties with regard to the publication of fundamental data of power plant operators. Hence, we believe that ENTSO-E as an association should play an important but no exclusive role in the set-up of a one central access platform website. Importantly, a preferential access to fundamental data shall not be granted to any TSO under no circumstances. A neutral platform operator of the central website will remove any suspicions market participants may have.