

# EC Public Consultation: Guidelines on Fundamental Electricity Data Transparency

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A EURELECTRIC response paper



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■ Growth, added-value, efficiency

**Environmental Leadership**

■ Commitment, innovation, pro-activeness

**Social Responsibility**

■ Transparency, ethics, accountability

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## **EURELECTRIC Response to the EC Public Consultation: Guidelines on Fundamental Electricity Data Transparency**

### **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?**

As argued in the previous public consultations on transparency, EURELECTRIC believes that Guidelines on Fundamental Electricity Data Transparency is an indispensable legislative tool to achieve EU-wide harmonised and legally binding transparency requirements for all relevant parties.

In our view, during the adoption process of the guidelines via comitology, the Commission main objective should be to ensure the legal certainty and clarity of all provisions and definitions that market parties (generators and consumers) and TSOs will be subject to. If any doubt about competition issues exists at this stage within the Commission, this should be solved without ambiguity before the final version of the guidelines is adopted. As a general principle we believe that no exceptions or discrepancies of treatment should be allowed for any player or market: a level playing field is needed at EU level.

EURELECTRIC is fully supportive of a speedy EU-wide harmonised implementation of the transparency provisions: for this reason, we believe it is fundamental that in the guidelines a clear deadline is set for the complete implementation of the transparency requirements. In this respect, the European Commission and the Agency for the Cooperation of Energy Regulators, in cooperation with all relevant stakeholders, should take a leading role in the harmonisation process towards a European-wide solution. Where they exist, energy transparency platforms should be primarily used as a first basis for a European architecture on fundamental data disclosure.

As well pointed out in the document issued by EC in this public consultation, ERGEG has produced a draft guideline (submitted in December 2010), after having carried out an Initial Impact Assessment, a public consultation and two public workshops. Considering that ERGEG has cooperated closely with ENTSO-E in the work process, we think that before adding new requirements it is necessary to assess, by gaining some experience with the current proposals, whether the transparency goal is properly addressed.

## Question 2:

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

No.

We believe that many items (e.g. generation unit, generation type, forecast margin, reservoirs filling rates, total load, etc.) don't currently have a precise or practical definition. In our response<sup>1</sup> to the ERGEG Consultation on its Draft Advice we listed the most critical ones (in particular: 100 MW threshold applied to generation units and not to production units, removal of the point 4.3.2.3 as it is not of any significant value for the market, and a request for a standard translation methodology of the reservoir filling rate in energy volumes expressed in MWh). Moreover, it is stated that data should be provided on a unit-by-unit basis by the primary owners of the data, but it is not clearly stated that the information on unavailability shall be published on a unit-by-unit basis as well.

EURELECTRIC also considers that forecasted information resulting from all ex-ante requirements should be provided on a reasonable endeavour basis. Fundamental data should be provided in good faith and based on 'best efforts'. Against this background, it should be clearly mentioned that information providers shall not be held liable to market participants if such information proves later to be incorrect at a later stage, provided they have duly updated this information and unless it is demonstrated that the incorrect information was disclosed on purpose. The monitoring process of data accuracy should remain under scrutiny of the NRAs.

For these reasons, we believe that the drafting process of the definitions for the Fundamental Transparency Guidelines, which was informally initiated by ENTSO-E earlier this year, represents a crucial element needed to ensure the implementation of clear, balanced and practical Guidelines. Such process should therefore be carried out with great care and with a continuous and effective stakeholder involvement (currently insufficient). While we can understand that ENTSO-E takes a central role in the drafting of the definitions, we believe that the Commission and ACER should also contribute to the process along with market participants, in order to ensure that the definitions are fully consistent with the legally binding Guidelines.

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<sup>1</sup> See "ERGEG Draft Comitology Guidelines on Fundamental Electricity Data Transparency – a EURELECTRIC response paper", October 2010.

### **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)?**

Only information on unavailabilities of consumption units that can have impact on market outcomes should be released (thus only consumption units higher than 100MW). We do not see a need to disclose the “name” and the “location” of the consumption unit, the bidding area should be sufficient.

Additionally we would like to remark that whatever solution is decided it should be for all consumption units (above the mentioned threshold) in all Member States in order to ensure the same level playing field across Europe.

### **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)?**

We agree with the request on specific units, provided that competition authorities approve such level of details (in some markets this may cause concern of facilitating possibilities of collusion).

Generally, we would like to stress that information of a single unit's unavailability is usually not relevant to assist the price formation process. Its main interest may be to provide additional information to cross checked the aggregated amount of unavailable capacity by fuel type in each bidding area which remains the most practical information to help market participants forming a view on the relevant market price level. It is therefore important that such aggregated figure is, equally accessible to all players, through the information platform. For EURELECTRIC, it is fundamental at this stage that, **the Competition Authorities explicitly agree on it to avoid regulatory uncertainty and future legal issues to the market participants.**

Other aspect to be considered for its implications from a competition point of view is the moment in which the unavailability should be released. EURELECTRIC believes that the information should be disclosed immediately "when expected to last longer than 1 hour"<sup>2</sup>. However, it must be reminded that the Guidelines should specify that information about the cause of unplanned outages shall be provided on a reasonable endeavours basis mostly because this information frequently remains unclear for some time after the event. For these reasons companies should not be hold liable if such information proves later to be incorrect, provided they have updated it as soon as new reliable intelligence was available, and unless it is demonstrated that the information disclosed was intentionally incorrect. Finally, such information should be fully aligned with the provisions and requirements of REMIT, to avoid any legal uncertainty.

#### **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)?**

We understand that this information is requested for the market and will contribute to enhancing trust in the market. Technically, we are of the view that it is not relevant whether it is plant/unit A or B that is producing at a certain moment in time but it is the aggregated volumes (aggregated per production type/fuel and bidding area) that is of interest. Moreover, due to the complexity of the supply/demand balance assessment, and thanks to the process of European market integration, such information will increasingly lose of its interest and should prove ineffective to illegitimate attempt to manipulate price formation.

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<sup>2</sup> See "ERGEG Draft Comitology Guidelines on Fundamental Electricity Data Transparency – a EURELECTRIC response paper", October 2010

A thorough assessment of the regulatory options and their consequences should be carried out by the Commission and relevant authorities to establish what level of detail/disaggregation is the best for the market functioning.

**In any case, the existence of potential competition issues (e.g. risk of collusion) should be clarified by the Commission: the requirements of these guidelines should be examined and approved by competition authorities before their adoption through comitology in order to avoid ex-post regulatory intervention to correct undesired effects.**

**Question 6:**

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

No.

Potential competition concerns should in any case neither unnecessary constraint generators legitimate hedging activities, nor jeopardise the level of transparency needed by consumers to ensure trust in the market.





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