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**Public Consultation by the Directorate General for Energy on ERGEG's advice:
Guidelines on Fundamental Electricity Data Transparency, July 2011
Comments by Oesterreichs Energie (Register ID number: 80966174852-38)**

Dear Madam,
Dear Sir,

Oesterreichs Energie, the Association of Austrian Electricity Companies, welcomes the opportunity to comment on the European Commission's public consultation on ERGEG's Advice: Guidelines on Fundamental Electricity Data Transparency. Oesterreichs Energie represents more than 130 energy companies active in generation, trading, transmission, distribution and sales which in total cover more than 90 per cent of the Austrian electricity generation and the entire distribution.

Oesterreichs Energie supports the aim of having in place clear, proportionate, legally binding transparency requirements which will ensure cost-effectiveness for market participants. Hence, we would like to underline the following principles:

Questions by the EU Commission:

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 expressed in our previous comments on these guidelines Oesterreichs Energie is convinced that existing transparency platforms which already proved their well functioning should be used for collecting and disclosing fundamental data.

Regarding any disclosure, sensitive business data have to be kept in confidence as very detailed transparency information bears the danger of indirect price-signalling. It has to be ensured that the notifying companies cannot be held liable for data they provided on their best

knowledge (best effort basis). Transparency in electricity wholesale markets is fulfilled by aggregated information e.g. for each market area or balancing area available.

According to point 3.3, ENTSO-E is urged to ensure that the central information platform is installed and operated in the most efficient and cost-effective manner. In point 5.3, ACER is put in charge to review the postulated efficiency and cost-effectiveness on an annual basis. In order to promote confidence in the installation and operation of the central information platform, we urge to amend the stated provisions by adding the obligation to publish an annual report on the platform's efficiency and cost-effectiveness.

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

Definitions are crucial for the quality of transparency as well as providing certainty for the entity obliged to publish fundamental data. Therefore we believe that the Commission and ERGEG along with market participants should develop clear and complete definitions, in order to avoid misunderstandings. Generation unit, generation type, forecast margin, reservoirs filling rates, total load, owner of the data might need further clarification.

The term "capacity" is used repeatedly in various arrangements in points 4.1.3.6, 4.1.3.7., 4.3.2.1, 4.3.2.2, 4.3.2.3. We suggest providing a definition of these terms to distinguish between the "total sum of generation capacity", the "installed generation (gross) capacity" and the "available generation capacity" easily.

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)?

Generally the plant is the relevant criterion for unavailability, not the single unit which would only increase reporting burden without real benefit for forecasting market participants' bidding behaviour or TSOs' work on load flow and congestions or other interested parties.

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 infor-

mation 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)?

Regarding point 4.3.2.3 we suggest as “ex-ante forecast of available capacity” an annual forecast for the two following years for each plant. A forecast over a three year period, especially for the 3rd year includes too many uncertainties.

According to point 4.3.2.5 the relevant information relating to “ex-post information on unplanned unavailability” of the relevant generation units should be published no later than H+2 after the failure. For security reasons the workmanship in the power plant is completely busy to fix the error. Therefore H+1 is too short. The reason for the unavailability during an event is confidential information and does not increase transparency. From a market participant's perspective the aggregated amount of unavailable capacity in each bidding area is of interest, not the information of a single unit's unavailability.

Generally, we assess ex-ante information to be more likely to create competition concerns and therefore to be more sensitive. As regards point 4.3.2.4, we furthermore believe that most information is also covered by the reporting requirements in accordance with points 4.3.2.2 and 4.3.2.3. The unavailable capacity should be derived by subtracting the available capacity from the installed one. We do not believe that further information should be claimed in guidelines purporting to establish a minimum common level of fundamental data.

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 question if excessively increased transparency could bring socio-economic benefits which exceed the risk of reducing competition by revealing commercially sensitive information. Generators, in fact, do not normally use plant by plant information to elaborate their bidding strategy: for market price formation, it is not relevant whether it is plant A or B that is producing at a certain moment in time, it is the aggregated volumes (aggregated per production type/fuel and balancing zone) that is of interest.

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.

Oesterreichs Energie believes that a series of concerns have to be taken into account in the

final drafting of the guidelines and in their implementation:

- The existence of potential competition issues (e.g. risk of collusion) should be carefully assessed: the requirements of these guidelines should be approved by competition authorities before their adoption by comitology in order to avoid ex-post regulatory intervention to correct undesired effects.
- The application of the unit by unit aggregation level could result impractical in those markets with a limited level of liquidity and integration (especially in the intraday market).
- The definition of “unit” is in any case unclear and needs to be better specified.

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

Data collecting by TSOs results in advanced information for TSOs within competitive environment as TSOs act as competitors themselves (balancing, RES integration, purchase of grid losses). Therefore TSOs' data handling has in principle to be carefully determined and therefore we prefer to report to a neutral platform like a power exchange (e.g. EEX transparency platform). In this regard, we suggest amending points 3.6 and 3.7 accordingly.

Regarding point 4.3.2.10 we suggest that information shall be published D-1 at the latest at one hour before the end of the D-1 bidding process at the respective power exchange.

According to points 4.1.3.6 and 4.2.1 “information shall be published one week before the yearly transmission capacity auction or at the latest one week before the delivery year”, we recommend to consider that, since the information is crucial for bidding, it shall be published at least one week before the yearly transmission capacity auction whenever possible.

In our opinion, the reporting requirements in points 4.3.2.7 and 4.3.2.10 should be abolished or – at least – amended. Presently, these provisions put certain renewable energy sources at a competitive disadvantage. We do not understand why these reporting requirements are not subject to the specific threshold of a 100 MW installed generation capacity like any other source. Especially, hydro power is generally divided into small-scale and large-scale generation.

Thank you for taking our comments into consideration. If you have any further questions, please do not hesitate to contact us.

Yours sincerely,

DI Dr. Peter Layr
President

Dipl.-W.Ing. Dr. Tomas Müller
Deputy Secretary General