

# **PUBLIC CONSULTATION DOCUMENT<sup>1</sup>**

## **GUIDELINES ON FUNDAMENTAL ELECTRICITY DATA TRANSPARENCY**

### **THE ISSUE OF TRANSPARENCY**

Transparency refers to the public availability of all relevant information. A prerequisite for a market to function properly is to have that information available to all market participants including potential and prospective market entrants.

Poor transparency can have adverse effect on competition and price formation as not all the market actors have access to the same information resulting in an unlevel playing field. Asymmetry of information can also create opportunities for market manipulation, thus reducing trust in the price formation process and the integrity of the marketplace. Therefore lack of transparency is a barrier to the development of competitive electricity markets and to the development of a single EU energy market. However, transparency can, in particular on concentrated markets, also facilitate anti-competitive behaviour<sup>2</sup>.

Fundamental data transparency refers to the availability of information on the relevant aspects affecting the electricity market through its impact on the behaviour of market actors (TSOs, generators, users and traders) and thus on price formation and electricity trade taking place. Market participants rely heavily on accurate, complete and timely information on both the availability of transmission infrastructure and market fundamentals (information on supply and demand) for their trading decisions. For the electricity transmission infrastructure, these data include e.g. available and reserved transmission capacity, information on the actual use of the infrastructure, long-term forecasts of available capacity, forecasts of grid development through investments and effect to transfer capacity and information on maintenance periods. For market fundamentals, the data includes, among other things, forecasts on aggregated demand, planned and unplanned generation outages and the realised values for the forecasted data.<sup>3</sup>

### **WHY EU ACTION ON TRANSPARENCY?**

EU level fundamental data transparency requirements are set out in an annex to Regulation 714/2009. The requirements date back to 2006 and have been largely inspired by the findings of the Commission's Energy Sector Inquiry<sup>4</sup>, which found that "More information should be published on technical availability of interconnectors and TSO networks, on generation, balancing and reserve power and load" Although the rules have provided for an enhanced framework for improved data disclosure, their level of detailing and ensuing divergences in national applications have left traders with differing sets of market data across the EU. Also, the lack of harmonisation in type and format of the published information makes it impossible

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<sup>1</sup> *This document does not represent an official position of the European Commission and its contents do not prejudice the form or content of any future policy proposal by the European Commission.*

<sup>2</sup> See e.g. the Commission Guidelines on Horizontal Co-operation Agreements, OJ (2011) C 11/01, at paragraphs 55 et seq.

<sup>3</sup> ERGEG Advice – Comitology Guidelines for Fundamental Electricity Data Transparency – Initial Impact Assessment - E10-ENM-05-01

<sup>4</sup> DG Competition Report on Energy Sector Inquiry, 10 January 2007, SEC(2006) 1724

for market participants to develop a coherent and accurate view of electricity market fundamentals.

In order to remedy the situation, in January 2010 the Commission requested ERGEG<sup>5</sup> to give advice in this matter and prepare a draft guideline by the end of 2010. The draft which was submitted in December 2010 serves as an important input to legally binding rules which the Commission intends to adopt in 2011.

In preparing the draft guideline ERGEG carried out an Initial Impact Assessment<sup>6</sup> to analyse the problem, objectives and policy options. Based on this impact assessment, it produced a draft document<sup>7</sup> that was put under public consultation from 8 September 2010 to 28 October 2010. In the work process ERGEG has cooperated closely with ENTSO-E as well has taken into account the work done so far by ENTSO-E on the Common European Electricity Transparency platform. Furthermore, two public workshops have been organised in co-operation with ENTSO-E to involve interested stakeholders.

The result of ERGEG's public consultation<sup>8</sup> on its draft guideline gives a good overview of different stakeholders' views. Nevertheless before drafting its legal proposal, the Commission would like to give an opportunity to all interested parties to provide a direct input, especially with regards to the completeness of the proposal and potential competition issues relating to the proposed measures.

## QUESTIONS

### 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?**

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

### Competition aspects

Improved transparency will reduce risk and uncertainty and with it the cost of transactions. However, on concentrated markets disclosure of detailed information can increase the risk of anticompetitive behaviour (e.g. by way of collusion amongst competitors<sup>9</sup> or market manipulation such as “capacity withholding<sup>10</sup>”).

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<sup>5</sup> European Regulator's Group for Electricity and Gas – [www.energy-regulators.eu](http://www.energy-regulators.eu)

<sup>6</sup> ERGEG Advice – Comitology Guidelines for Fundamental Electricity Data Transparency – Initial Impact Assessment - E10-ENM-05-01

<sup>7</sup> ERGEG Draft Comitology Guidelines on Fundamental Electricity Data Transparency - E10-ENM-02-07

<sup>8</sup> ERGEG Public Consultation on Fundamental Electricity Data Transparency – Evaluation of responses – E10-ENM-27-03a

<sup>9</sup> Commission Guidelines on Horizontal Co-operation Agreements, OJ (2011) C 11/01, at paragraphs 65 et seq.

<sup>10</sup> See on the problem of so-called “capacity withholding” e.g. competition case COMP/39.388 – *German Electricity Wholesale Market (E.ON)*, OJ C 36, 13.2.2009, p. 8 et seq.

**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)?**

**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)?**

**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)?**

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

#### **SUBMISSION OF RESPONSE**

Please, submit your response to this public consultation **by 16 September 2011** at the latest to the following e-mail address: [ENER-ELECTRICITY-TRANSPARENCY@ec.europa.eu](mailto:ENER-ELECTRICITY-TRANSPARENCY@ec.europa.eu). The Commission may want to make the responses it receives public. If you do not want your submission to be made public, please indicate it accordingly in your submission.

#### **RELATED DOCUMENTS**

- ERGEG Advice - Comitology Guidelines on Fundamental Electricity Data Transparency - Ref: E10-ENM-27-03, 7 December 2010

[http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS)

[/ELECTRICITY/Comitology%20Guideline%20Electricity%20Transparency/CD/E10-ENM-27-03\\_FEDT\\_7-Dec-2010.pdf](#)

- ERGEG Advice on Comitology Guidelines for Fundamental Electricity Data Transparency Initial Impact Assessment - (December 2010 update) - Ref: E10-ENM-05-01, 7 December 2010

[http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/ELECTRICITY/Comitology%20Guideline%20Electricity%20Transparency/CD/E10-ENM-05-01\\_FEDT%20IIA%20update\\_7-Dec-2010.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/ELECTRICITY/Comitology%20Guideline%20Electricity%20Transparency/CD/E10-ENM-05-01_FEDT%20IIA%20update_7-Dec-2010.pdf)

- ERGEG Public Consultation on Fundamental Electricity Data Transparency - Evaluation of responses - Ref: E10-ENM-27-03a, 7 December 2010

[http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/ELECTRICITY/Comitology%20Guideline%20Electricity%20Transparency/CD/E10-ENM-27-03a\\_FEDT\\_EoR\\_7-Dec-2010.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_CONSULT/CLOSED%20PUBLIC%20CONSULTATIONS/ELECTRICITY/Comitology%20Guideline%20Electricity%20Transparency/CD/E10-ENM-27-03a_FEDT_EoR_7-Dec-2010.pdf)

- Commission Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (see in particular chapter on information exchange in paragraphs 55-110):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:011:0001:0072:EN:PDF>