

Response by EuroPEX

to the

**ERGEG Public Consultation on Draft Comitology Guidelines on
Fundamental Electricity Data Transparency**

28 October 2010

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I. Introduction

EuroPEX welcomes the opportunity to take part in the ERGEG consultation regarding the *draft comitology Guidelines on fundamental electricity data transparency*, which is part of the initiative by the Directorate General for Energy to strengthen the energy markets' integrity and transparency.

In line with the conclusions of the Energy Sector Inquiry 2007 EuroPEX supports the objective to provide transparency on fundamental data that have a noticeable impact on prices in order to create a more level playing field and thus enhance market trust by reducing the risk of insider trading and abuse of dominant positions.

Power exchanges have considerably knowledge in operating transparency platforms and enforcing rules linked to disclosure requirements. Based on this experience EuroPEX also took part/contributed to:

- *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 served 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)*

The present consultation is closely linked to the papers/consultations mentioned above as disclosure and transparency obligations serve as a basis for energy sector specific legislation of surveillance – especially for market abuse provisions. It is therefore absolutely necessary that the issue of transparency and integrity is treated by all involved stakeholders in a highly harmonised way.

EuroPEX is looking forward to take further part in the consultation process and is open to any questions or further discussions.

II. Answers to questions

General Issues

1. Are there additional major problems or policy issues that should be addressed by the draft Comitology Guideline on Fundamental Electricity Data Transparency?

In the following we point out the issues which from our point of view should be further addressed in the ongoing consultation process..

Surveillance & Enforcement

- (1) There have to be “incentives” to comply with any regulation. As a consequence there has to be a clear obligation of the owner of the data to publish fundamental data. This goes hand in hand with firstly surveillance/monitoring and secondly enforcement by the relevant supervisory bodies. Both aspects should be thoroughly addressed by the guidelines as they supplement the mere publication of data.
- (2) The guidelines should define regulators’ powers to ensure compliance with the guidelines in detail based on exact definitions of the roles of all involved stakeholders (reporting companies, transparency platform operators).
- (3) Existing market surveillance offices by power exchanges are closest to the market and therefore best suited to control information disclosure. Additional surveillance should be committed by national supervisory bodies as they are familiar with the regional characteristics of the market. This could be supplemented by a coordinating body on a European level, such as ACER.

Reporting structures & Security

- (4) Reporting structures – both IT and legal structures – 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 should be on the agenda from the very first beginning in order not to risk the later acceptance of the transparency requirements.
- (5) The reporting structure should be developed between data providers and data collectors and be overseen and approved by national regulators. The overall European framework of data provision should be overseen by a coordination body such as ACER.

- (6) Security is key. It has to be assured that the used IT infrastructure as well as the daily operations fulfil the highest standards of security in order not to risk that third parties get unauthorised access and/or manipulate the data.
- (7) Reporting structures should be as simple as possible. Data should be sent directly by its owner to the platform where it is published.

Proposal for a 3rd policy option: Harmonisation of existing transparency platforms

- (8) Transparency standards both on a regulatory as well as a voluntary basis have been remarkably improved in recent years and transparency platforms that already exist (e.g. run by Nord Pool) have been joined by new ones (e.g. EEX transparency platform). Nevertheless, we share the view of ERGEG in the *Initial Impact Assessment of the ERGEG Draft Comitology Guidelines on Fundamental Electricity Data Transparency (page 19)* that the current approach by the Congestion Management Guidelines did not bring the desired result of fully harmonised transparency standards across all of Europe.
- (9) However, EuroPEX fears that with ERGEG's new proposal of one central European transparency platform to be run exclusively by ENTSO-E, standards that have already been achieved (definitions, reporting structures, IT-infrastructure) will be neglected.
- (10) Therefore we propose that a **third policy option** (see Annex) is included in the *ERGEG Draft Comitology Guidelines on Fundamental Electricity Data Transparency* as an **alternative** to a new central European transparency platform to be run exclusively by ENTSO-E: the **harmonisation of transparency platforms** that already exist.
- (11) These harmonised transparency platforms would stand **alongside** a possible ENTSO-E platform, the latter continuing to be primarily responsible for TSO-owned data (e.g. load). The obligation by power plant operators to provide transparency would be fulfilled once they have sent data to one transparency platform. They should not have to send data to several transparency platforms.
- (12) The harmonised transparency platforms **would not send** data they receive from power plant operators on to another platform. Competent authorities such as ACER would have direct access to all established platforms (see graph in the Annex).
- (13) Due to this harmonisation, it would be assured that the users of transparency platforms (e.g. traders, regulators, journalists, interested public) experience the same standards across Europe.

(14) Advantages of this **third policy option** – which potentially save money and time – would be:

- a. Existing reporting structures can be further used.
- b. IT-Infrastructures of existing transparency platforms can be further used.
- c. Ongoing improvements of existing platforms are not interrupted.
- d. Responsibility for running transparency platforms lies with operators which have many years of experience in the different regions, especially with the publication of power plant data.
- e. Existing Market Surveillance Offices of Power Exchanges (e.g. by Nord Pool) can further control disclosure of information and can detect misuse as they have insight knowledge on how the actual information impacts pricing.

2. What timescale is needed to implement the Comitology Guideline on Fundamental Electricity Data Transparency seen from your organisation's point of view?

(15) EuroPEX believes that quality should stand above speed. Although quickly implemented harmonised European transparency standards are desirable the focus should be on creating a reliable and trustworthy infrastructure.

(16) Another – more efficient – option (*proposed policy option 3*) would be to harmonise already existing neutral transparency platforms run e.g. by power exchanges which will be also a challenge but might in the end save time (and money) as existing infrastructure is used.

(17) From experience we know that defining the exact requirements of transparency is very time consuming. Hence we propose to build on existing definitions/ blueprints on technical, content and legal issues which have both been established on a regional level (ERGEG Reports on transparency) as well as on national level (e.g. by EEX and Nord Pool).

(18) Once a platform is implemented the running of it involves a considerable amount of work. Experience with regional platforms has shown that daily operations include constant and time consuming communications with reporting companies as well as the users of the platforms (e.g. traders, analysts, interested public).

3. Do you see a need for more firm specification of the role of each market participant in delivering transparency data to the TSO/information platform in the Comitology Guideline on Fundamental Electricity Data Transparency?

- (19) The role of all involved stakeholders – depending on European and regional characteristics – should be clearly specified. This involves the reporting companies, the operators of the transparency platforms as well as the regulators.
- (20) Data publication shall be mandatory for the owner of the data. The current legal situation based on the Congestion Management Guidelines has the design fault that TSO are obliged to publish data from power plant operators – data which the TSO do not own themselves. This construction is in its core one of the main obstacles for a smooth implementation of transparency standards.
- (21) EuroPEX believes that transparency information should be provided according to consistent minimum standards across all Member States with respect to:
- a. coverage – the minimum set of information which is made available in a Member State or control area should not depend on the structure of its electricity sector. Individual Member States should then be allowed to require additional information being made available, taking into account the specific factors which may affect market developments in each jurisdiction;
 - b. level of detail – the information should be made available according to the same minimum standard of detail in all Member States, again irrespective of the structure of the electricity sector;
 - c. definition – the information should be published according to common definitions in all Member States so as to facilitate its use by market participants and other interested parties across the EU;
 - d. time resolution and updating frequency – similar information related to different Member States or control areas should be provided according to the same minimum standards of time resolution and updating frequency;
 - e. format – the information should be made available in a format which makes it readily usable by IT systems.
- (22) In general there has to be a clear distinction between data which are used for transparency issues and data which are needed for operating grids in order not to endanger the principle of certainty.

(23) Experience has proven that although it is necessary to have firm and binding obligations it is also necessary to allow a certain flexibility to give room for further improvements of transparency standards.

4. Do you see a need for more firm specification of the role of the TSO in collecting data in the Comitology Guideline on Fundamental Electricity Data Transparency?

(24) The role of all involved stakeholders – depending on European and regional characteristics – should be clearly specified. This involves the reporting companies, the operators of the transparency platforms as well as the regulators.

(25) TSO are very important data providers (e.g. load, wind and solar forecast). There might arise a potential conflict of interest if TSO themselves are obliged to publish these information only on their own transparency platform.

(26) Unbundling means in principle that TSO are not active as producers, suppliers or traders in electricity markets. In some regions/countries though – like Scandinavia and Germany – they are obliged by law to sell and buy electricity at power exchanges for different reasons. Given that TSO are obliged to publish fundamental data of power plants, a potential conflict of interest arises.

(27) One option to solve the described conflicts of interest is that regulation foresees a clear separation between the publication of fundamental power plant data and other TSO activities in order to obtain neutrality in the most sustainable way. If the data shall serve another purpose than transparency for the wholesale market (e.g. the running of transmission lines) this has to be clearly stated in order not to infringe the “principle of certainty”.

(28) Another – more efficient – option (*proposed policy option 3*) would be to harmonise already existing neutral transparency platforms run e.g. by power exchanges which would avoid a conflict of interest from the beginning and increases the credibility of the data in general.

5. Taking into account the interface between wider transparency requirements and the costs of data storage, do you consider storage of basic data for 3 years, to be made available for free, as sufficient?

(29) EuroPEX agrees that storage for three calendar years is sufficient as a minimum requirement. Data exceeding this time horizon should be available for surveillance purposes according to current regulation.

6. Are the suggested market time units for information reporting and publication requirements adequate and compatible with wider transparency in a European perspective?

(30) The minimum standard for a market time unit should be 1 hour.

7. How do you see the costs and benefits of the proposed transparency framework for fundamental data in electricity? If possible, please provide qualitative and/or quantitative evidence on the costs and benefits or ideas about those.

(31) Generally a quantitative cost-benefit analysis regarding transparency is a very difficult task. In general terms and based on theories, the benefits related to transparency will greatly exceed expected costs.

(32) Regarding the costs several positions have to be taken into consideration:

- a. implementation of transparency platforms,
- b. implementation of reporting structures,
- c. implementation of internal data collecting procedures within the reporting companies,
- d. running of the platform,
- e. surveillance,
- f. enforcement of the rules,
- g. cost of further regulation and
- h. further improvement and adjustment to new publication standards

(33) Especially for smaller stakeholders, the financial burden which is caused by the implementation of transparency requirements in regards to the limited impact they have on price formation is questionable and might not be appropriate.

(34) Against this backdrop the harmonisation of already existing regional platforms (*proposed policy option 3*) is more cost-efficient as existing infrastructure is used.

Load issues

8. Do you see a need for publication of load data linked to different timeframes or an update of load data linked to different timeframes than those suggested in the draft document?

(35) In order to ensure the trust of the market into the published data it is important that the information is as much precise as possible. In that regard it is to a certain extent questionable whether predictions for longer time periods have a high value as they are based on many uncertainties. Load forecast just for the next day as a minimum requirement seems therefore to be adequate.

9. The draft document suggests that the information on unavailability of consumption units is disclosed in an anonymous manner identifying the bidding area, timeframes and unavailable load. Do you consider these pieces of information sufficient for the transparency needs of the internal wholesale electricity market or should also the name of the consumption unit be published?

(36) Publication of the names of consumption units is important for understanding how information on them relates to the market.

(37) Generally the naming of production/consumption units as well as the location of transmission lines allows the public to fulfil a certain control function whether the published information by the relevant stakeholders is correct.

(38) As a minimum European requirement, 200 MW seems to be appropriate. The reasons for this is to limit costs for sending information to the market and that the price impact for information below this threshold might be insignificant in some markets. Dependent on their characteristics thresholds in the different regions though could be lower.

10. Should the publication obligations regarding planned or actual outages of the transmission grid and interconnectors require the publication of the location and type of the asset (i.e. identify the part of transmission infrastructure that due to planned outage or a failure is facing a limitation in its transmission capacity) or should the information on transmission infrastructure equipment outage be non-identifiable? Please justify your position why either identified information would be necessary or why only anonymous information on the transmission infrastructure outages should be published.

(39) The location of the line, the bidding area and the capacity that is concerned should be published; because these factors strongly influence the dimension of a deficiency/blackout (e.g. underwater cables bear other risks than land lines).

11. The requirement to disclose outages in the transmission infrastructure is proposed to be placed on such events where the impact on capacity is equal to or greater than 100 MW during at least one market time unit. Do you consider this absolute, MW based threshold appropriate, or should the threshold be in relation to e.g. the total generation or load of the bidding area, or alternatively, should the absolute threshold be complemented with a relative threshold? The relative threshold would mean, for example, that the publishing requirement would apply if a planned or actual outage of transmission infrastructure would equal to or be greater than 5 per cent (or any specified percentage value). This question on relative threshold stems from the fact that for some bidding areas the proposed 100 MW threshold may be relatively high. However, raising the general European threshold might in the majority of the European bidding areas lead to too low a threshold and a vast amount of information being reported.

(40) As a minimum European requirement, 200 MW seems to be appropriate. The reasons for this is to limit costs for sending information to the market and that the price impact for information below this threshold might be insignificant in some markets. Dependent on their characteristics thresholds in the different regions though could be lower.

12. With regard to publishing requirements on congestion (in paragraph 22 (d) and (e)), what kind of information do you consider important to receive and how frequently? Please justify your position.

(41) It doesn't seem clear to what this question refers to?

Generation

13. Should unavailability of generation infrastructure relate to a given plant or a given unit? Please justify your position.

(42) The requirement should be given on a unit level. For large power plants, different units may operate independently from each other, and giving information on a power plant level can be very complicated. It is also possible that incidents affect different units within the same power plant at the same time. However, giving information only relating to units may imply that incidents relating to a number of units at the same time may not be disclosed if each individual unit is smaller than the chosen threshold. We therefore suggest that there should also be an obligation to report incidents that **affect more than 200 MW in total**. One example may be an incident affecting production in a number of power plants located along a river. Even if each individual unit is not very large, the total effect of the incident may be considerable, and it is therefore important that the market receives the information.

(43) As a minimum European requirement, 200 MW seems to be appropriate. The reasons for this is to limit costs for collecting and sending information as well as that the price impact of information below this threshold might be not significant in some markets. Dependant on their characteristics thresholds in the different regions though could be lower. .

14. The draft document proposes that actual unit by unit output for units equal to or greater than 10 MW be updated real time as changes occur. Do you consider the 10 MW threshold for generation units appropriate?

(44) Reporting on units by power plants – and likewise for consumption units as well as corresponding transmission lines – up from 10 MW will result in an enormous amount of new plants to be reported which results in additional costs for implementation and quality. Also changes of availability of plants with a size of 10 MW up to 200 MW level is in most countries, and definitely from a regional perspective, not too significant. The benefit of such disclosure seems to be very limited in comparison to the implementation costs. As a minimum European requirement, 200 MW seems to be appropriate.

(45) All data published should be relevant data for market players. Further it has to be taken into consideration whether non-compliance with publication requirements might lead to the risk of the infringement of rules against e.g. insider trading and market manipulation. Against this backdrop the proposal of 10 MW again seems to be too low.

15. The requirement to disclose hourly information on actual aggregated generation output is now related to generation type. Should this threshold be linked to fuel requirements or generation technology?

(46) Generally providing information on actual generation per fuel type is sufficient.

Balancing and wholesale data

16. The transparency requirements on balancing have been widened compared to the Transparency Reports prepared within the framework of the Electricity Regional Initiatives. Is the proposed list of data items sufficient - also taking into account the evolution towards cross-border balancing markets?

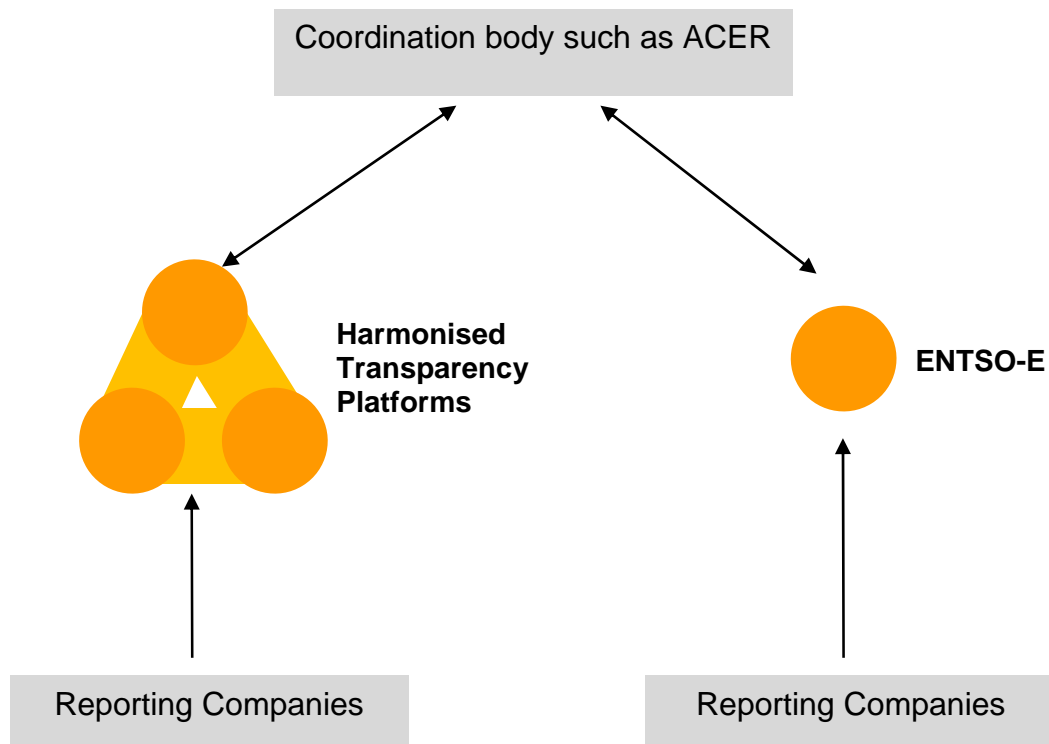
(47) The proposed list of data items related to balancing is in its' current form very unclear and thus must be revised before it is possible to assess what is asked for. There are now both several conflicting requirements and a number of requirements that are hard to understand what they refer to.

17. The transparency requirements on wholesale market data have been deliberately left outside the draft Guidelines as they will most likely be addressed by other legal measures that are currently under preparation. Should some basic wholesale data, i.e. information on aggregate supply and demand curves, prices and volumes for each standard traded product and for each market timeframe (forward, day-ahead, intraday) as well as prices and volumes of the OTC market still be part of the Comitology Guideline on Fundamental Electricity Data Transparency?

(48) It is not necessary that transparency requirements on wholesale market data are part of this consultation as they are already tackled in the current consultation on the revision of the MAD by DG Market in the *Consultation on measures to ensure transparency and integrity of wholesale markets in electricity and gas* by DG ENER.

III. Annex

Proposal for a 3rd policy option: Harmonisation of existing transparency platforms



Explanation: Harmonised transparency platforms would stand **alongside** a possible ENTSO-E platform, the latter continuing to be primarily responsible for TSO owned data (e.g. load). The obligation by power plant operators to provide transparency is fulfilled once they have sent data to one transparency platform. They should not have to send data to several transparency platforms. The harmonised transparency platforms **would not send** data they received from power plant operators on to another platform. A co-ordination body such as ACER would have direct access to all established platforms.

Due to this harmonisation, it would be assured that the users of transparency platforms (e.g. traders, regulators, journalists, interested public) experience the same standards across Europe.