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## ALERT:

### THE CLOSURE OF DATA ON THE ELECTRICITY MARKET SIGNIFICANTLY IMPAIRS ITS TRANSPARENCY AND REQUIRES PROPER JUSTIFICATION

The closure of detailed information on trading results in three segments of the electricity market significantly worsens the conditions for the effective operation and development of Ukraine's energy sector, in particular, due to increased uncertainty, corruption risks, and a weakening business climate. This decision may contradict the legislation, complicates the European integration process, creates hurdles for new market participants, and significantly complicates effective public monitoring and surveillance of the market and pricing.

We emphasize that the decision to restrict data access was enacted without proper justification and application of the legally required "three-part test", questioning the expediency and prudence of such a decision.

# WHAT HAPPENED?

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On December 30, the [Market Operator JSC](#) (MO) and [Ukrainian Energy Exchange LLC](#) (UEEX) posted information about the termination of publication of a number of datasets on the operation of the wholesale electricity market, in particular the day-ahead (DAM), intraday (IDM) and bilateral contract markets (BCM).

The **Market Operator** has closed access to detailed information on the trading results of DAM and IDM, including all historical data and market overviews. In particular, the following information is no longer available:

- bidding and actual hourly volumes of purchase and sale of electricity on DAM and IDM;
- bidding and actual daily volumes and weighted average prices of purchase and sale of electricity on DAM and IDM by type of market participant (producers, suppliers, etc.);
- detailed hourly volumes and prices of all market participants' bids for the purchase and sale of electricity on DAM;
- base, peak, and off-peak price indices on DAM and IDM in Ukraine and neighboring countries;
- a register of DAM and IDM participants;
- the structure of electricity sold on DAM and IDM by type of energy sources used for its production.

The MO continues to publish only a small part of the information, including [hourly prices](#) on DAM and IDM, daily and monthly [DAM indices](#), weighted average prices on DAM and IDM for similar periods, and price caps.

At the same time, the indices and weighted average prices for DAM and IDM remain available only on the website's home page in a non-machine-readable format. This format complicates data processing and analysis, which reduces its practical value for analysts and market participants.

The UEEEX [stopped publishing](#) electricity auction bulletins and weighted average price bulletins, including historical ones. These documents included detailed information on BCM auctions, including data on the initiators of the auctions, starting and ending prices, trading volumes, number and volume of trading lots, delivery periods, and other information.

Currently, as in the case of the DAM, only [general price information](#) on auction results remains available: minimum, maximum, and weighted average prices grouped by delivery periods and load types.

It is noteworthy that the UEEEX, in its notice of termination of data publication, refers to the order of the Minister of Energy, Head of the Works on elimination of the consequences of a state-level military emergency in the power system No. 27-dsk dated 27.12.2024.

The adoption of such an order is probably provided for in p. 8 of Article 75 of the [Civil Protection Code of Ukraine](#). At the same time, such orders should relate to the following measures:

- **evacuation;**
- **suspension of the activities of business entities located in the emergency zone and restriction of public access to such zone;**
- **involvement of business entities and citizens located in the emergency zone in emergency rescue operations upon their consent;**
- **suspension of emergency rescue and other urgent works;**
- **other decisions necessary to eliminate the consequences of the emergency and ensure the safety of the victims.**

The order could likely have been aimed at «ensuring the safety of victims» of Russian terrorist attacks - electricity producers, transmission and distribution system operators. However, there was no official communication on how the closure of data on trading results in specific wholesale electricity market segments would improve market participants' security. In addition, the decision to close market data will have adverse consequences that should be considered.

# WHAT ARE THE EXPECTED CONSEQUENCES?

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The decision to restrict access to information on DAM, IDM, and BCM operation will deteriorate the energy sector transparency and may cause various adverse consequences.

In particular, Order No. 27-dsk **may contradict Ukraine's legislation**. The transparency principle, which applies to public authorities and market participants, is provided for in p. 12 of Article 2 of the [Electricity Market Law](#). In the context of disclosure of information on DAM and IDM, this principle is specified in the Law and its implementing regulations. In particular, paragraph 7 of part 3 of Article 51 of the Law obliges the market operator to publish information on trading on DAM and IDM, including prices and volumes of electricity purchase and sale. Section 3.7 of the [DAM and IDM Rules](#) details the list of information to be disclosed, including data on the bidding volumes of electricity purchase and sale in these market segments, which were also closed. In addition, paragraph 2.1.12 of the Rules stipulates that the market operator must publish and regularly update the register of DAM and IDM participants.

Such a contradiction may be grounds for declaring Order No. 27-dsk unlawful. For example, in case [No. 320/8505/20](#), the Kyiv District Administrative Court declared unlawful Order No. 3 of the Head of Emergency Response in Bila Tserkva, which temporarily suspended the privileges for the transportation of passengers by public transport for the duration of quarantine measures related to the COVID-19 outbreak. One of the court's arguments was, in particular, the inconsistency of the order with the requirements of laws and regulations, in particular, the Law «On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine». Similarly, Order No. 27-dsk directly contradicts the provisions of the Electricity Market Law.

In addition, this decision may **complicate the purchase and sale of electricity for certain market participants**. For example, restricting access to the register of DAM and IDM participants complicates for consumers to verify the credibility of potential suppliers. For example, in public procurement, some customers [set](#) as a qualification requirement the participation of a potential supplier in the DAM/IDM as a prerequisite for further proper execution of supply contracts. With the closure of the DAM/IDM participants register, it will be difficult to verify the respective qualification requirement. Thus, access to important information necessary for the optimal choice of an electricity supplier by a consumer will be limited.

A significant restriction of access to public information regarding the electricity market creates entry barriers for new participants, restrains **competition development, and increases information asymmetry**. Without access to historical data and detailed information on market dynamics, new companies will not be able to properly analyze market opportunities and risks, assess the return on investment, etc. This can lead to the preservation of current market composition, limiting investment, competition, and liquidity. This, in turn, will limit the end user's ability to choose the best market offer and adversely affect prices and affordability of electricity.

Restrictions on access to information on the Ukrainian electricity market are likely to **complicate its integration into the EU energy market**. European energy markets are characterized by a high level of transparency. In particular, the establishment of transparent electricity markets and pricing is among the priorities set out in Article 1 of [Directive \(EU\) 2019/944](#) on common rules for the internal market for electricity. That is why restricting access to information about the Ukrainian market may create additional obstacles to EU membership and complicate the compliance assessment of national practices with European requirements.

The problem may become even more critical in the context of the expected market coupling of the Ukrainian and European DAM and IDM. Such integration requires Ukraine to transpose and implement a number of EU acquis within the [Electricity Integration Package](#). Among other things, part 2 of Article 62 of [Regulation \(EU\) 2015/1222](#) on capacity allocation and congestion management, which is part of the above-mentioned legislative package, requires each nominated electricity market operator (NEMO) to ensure the publication of information on aggregated sales **volumes** and prices on the IDM for at least the last five years. European NEMOs comply with this obligation, particularly [Nordpool](#) energy exchange.

The restriction of access to a significant part of public data on the electricity market inevitably **limits public monitoring and surveillance**, including the detection of unusual market dynamics that may be caused by market abuse of individual participants. Without supply and demand data, and the volume of electricity trading, it will be much more difficult for independent observers and analysts to identify unfair competition practices (concerted actions, etc.).

The transposition and implementation of Regulation (EU) 1227/2011 on the Wholesale Energy Market Integrity and Transparency (REMIT), will provide NEURC with access to a much wider array of information on market operation, which should allow it to effectively identify and eliminate the consequences of market manipulation. However, the Regulator and other responsible public authorities still have limited capacity to monitor and analyze market performance, which may also limit their ability to identify potential abuses in a large-scale market data stream.

The public sector (think tanks, other civil society organizations, and the media), with sufficient public information, can assist the responsible authorities in identifying abuses. With the restriction of public access to important market data, this possibility is significantly limited.

Ultimately, data closure makes **conducting market research** much more difficult. The impossibility of developing econometric models, using statistical methods, and verifying hypotheses about market processes significantly reduces the quality of research and, as a result, the quality of recommendations based on its results. In the long run, this may also worsen the quality of energy market regulation.

# WHAT CAN BE DONE TO MAKE AN INFORMED DECISION?

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In Ukraine, there is a legally defined mechanism for restricting access to public information, which in this case, the Ministry of Energy and data holders did not apply. According to the Law «On Access to Public Information,» access to information may be restricted by applying the so-called «**three-part test**». This means that the data holder must sequentially check three mandatory conditions:

- whether the restriction of access to the data corresponds to one of the legitimate interests defined in Article 6 of the Law (e.g., national security, territorial integrity, public order, etc.);
- whether the disclosure of information may cause significant harm to this interest;
- whether the harm from disclosure outweighs the public interest in obtaining the information.

Only if the answer to all three questions is yes, the data holder may restrict access to information. In doing so, it must justify its decision, indicating which interest is threatened by the disclosure of data, and assessing the specific harm that may occur and why it outweighs the related public interest.

The possible harm from the publication of detailed data on the trading results in the electricity market is not obvious. First, the restriction of access to data on the official websites of the MO and the UEEEX does not guarantee the complete unavailability of information or control over its dissemination. Data holders exercise control at the stage of granting users access to their platforms. However, the copying of data by users and its further dissemination is problematic to control. Secondly, detailed data on DAM, IDM, and BCM results were freely available from the very beginning of the full-scale invasion. In addition, DAM and IDM data have always been aggregated and depersonalized (without reference to specific energy facilities or market participants). At the same time, there are no publicly known facts of the adverse impact of this data on energy security.

The application of the «three-part test» should determine and assess the harm that may be caused by the disclosure of data and compare it with the adverse consequences of closing public data access. The results of the test can provide a basis for clear communication of the decision and thus improve its perception among stakeholders - market participants, international partners, CSO, experts, media, etc. It is possible that the test results will show that some of the data is not risky, such as DAM and IDM participants' register, trade volumes, weighted average prices, etc.

The decision to close detailed data on trading results of DAM, IDM, and BCM shows that in almost three years of full-scale war and attacks on critical energy infrastructure, Ukraine has not developed a systematic approach to (non)disclosure of information regarding the energy sector. DiXi Group experts have been emphasizing the need for this since 2022 and even proposed specific mechanisms for implementing such decisions. **The policy of the responsible public authorities should move from reactive, i.e., adopted as a quick response to incidents (massive Russian attacks), to systemic, i.e., informed and predictable, with a clear understanding of the consequences of the decisions made, while restricting access to only really sensitive data that the enemy can use for further attacks on the energy system.**

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