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Position Paper on the Draft Commission Delegated Regulation on the first phase of the establishment of a common Union rating scheme for data centres and its Annexes

Berlin, 15.01.2024

With the new Energy Efficiency Directive (EED) the EU aims to increase energy efficiency across the EU in order to contribute to the achievement of a 55% reduction of Green House Gas emissions by 2030, and ultimately the carbon neutrality of the EU by 2050. With the recast EED, Energy Efficiency First is established as a guiding principle across all industries. The ICT sector, and especially data centres, are identified as a key sector with a significant potential for energy efficiency improvements. Particularly, Article 12 of the EED contains provisions obliging operators of data centres with an installed IT capacity of 500 kW will be obliged to publish energy efficiency data. The efficiency indicators for data centres are yet to be defined by means of a delegated act by the Commission. On 11 December, the European Commission published a draft delegated regulation on the first phase of the establishment of a common Union rating scheme for data centres¹.

eco – Association of the Internet Industry is in favor of policy measures promoting the efficiency-oriented and demand-driven expansion of data centres (DC) and supports the establishment of common European standards for the energy-efficient and climate-neutral operation of data centres. Common standards across the EU are necessary to ensure the continued improvement of energy efficiency in data centres while maintaining a level playing field. However, in establishing common reporting standards the Commission must ensure that the competitiveness of the European data centre sector is not compromised through the creation of undifferentiated performance standards and undue administrative burden. Thus, eco welcomes the opportunity to participate in the consultation and to provide feedback on the proposed reporting regime.

▪ Scope of the reporting obligations

eco welcomes the regulatory drive to better understand the DC Industry and its potentials for energy efficiency. However, it must be ensured that new reporting and publication obligations remain focussed on KPIs which are relevant in determining a DCs energy efficiency and sustainability. eco has

¹ Hereinafter referred to as Delegated Act (DA)



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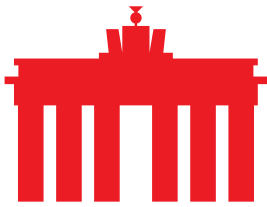
identified a number of reporting obligations which go beyond the scope set out in Annex VII of the Energy Efficiency Directive. Moreover, some indicators should be critically reviewed since their proliferation and subsequent publication conflict with contractual requirements and may also interfere with central aspects of cyber- and information security and data protection.

Indicators such as KPIs related to incoming or outgoing data traffic, while being commercially sensitive, have no impact on the sustainability of DC operation. Similarly, data on the number of racks does not allow any useful conclusions to be drawn about the power consumption or efficiency of the racks. Racks have a wide range of maximum IT performance depending on the type of rack, dimensions, equipment and positioning. Conversely, indicators concerning the potential for grid flexibility (i.e., Annex II, 1(f)-(h)) are relevant for efficiency of operation to a limited degree. However, the potential for the provision of data concerning grid functions by DC is strictly limited to the kind of grid functions provided in cases where explicit agreements between a grid operator and a DC operator exist and allow for the disclosure of functions provided. Moreover, misappropriation of emergency power aggregates for the purpose of grid flexibility cannot be considered as viable.

To ensure soundness and reliability of reporting data, eco recommends avoiding creeping beyond the scope laid out in Annex VII EED. The inclusion of metrics which cannot be accurately reported, or which do not directly contribute to the assessment of a DCs efficiency does not accurately reflect the goals set out in Annex VII EED. To achieve an increased comparability across the DC sector as well as an improved transparency of DC operation, the metrics identified should be removed from the reporting scheme. Especially given the list of indicators is different and longer than the one set out in the Technical Assistance Study.

The indicators in question are:

- Annex I
 - 3(c)- total number of modular capacity steps or separately provisioned halls
 - 3(d) - total number of racks
- Annex II
 - 1(c) - Data centre computer room floor area
 - 1(f) - Electrical grid functions
 - 1(g) - Average battery capacity
 - 1(h) - Battery time
 - 1(m) - Rated cooling capacity
 - 1(n) - Type of refrigerant used
 - 1(o) - Cooling degree days
 - 3(a) - Incoming traffic bandwidth
 - 3(b) - Outgoing traffic bandwidth



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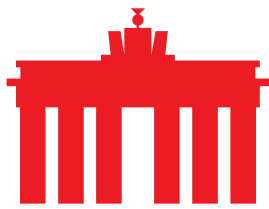
- 3(c) - Incoming data traffic
- 3(d) - Outgoing data traffic

▪ **Protecting commercially sensitive data**

According to Article 12(1) EED sustainability data reported by DCs shall be published with the exception of protected confidential data and business secrets. However, neither the EED nor the DA includes any guidance for Member States regarding which reporting data is to be considered confidential. In transposing the DA, member States may require DC operators to publicly disclose commercially sensitive data such as facility-level information on data stored, data processed and data traffic. Moreover, storing reported data within the Commission's database raises concerns about potential reactive data publication in response to access requests under existing transparency frameworks such as Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents and Directive 2003/4/EC on public access to environmental information. To ensure protection of sensitive data all key performance indicators and other reported information should be erased once the sustainability indicators have been calculated or within one year from the date they are reported. The DA should be expanded to include a clear legal basis to ensure the confidentiality as well as guidance for member states regarding which data should remain non-public and which KPIs are affected by confidentiality exemptions provided for in Article 12(1) EED. Guidance should also be included regarding reporting exemptions for operators of colocation and co-hosting datacentres.

▪ **Reduce administrative burden**

Additional reporting requirements always come hand in hand with a significant administrative burden for operators of DC. Hence, the additional administrative burden of reporting obligations must be weighed against their potential energy efficiency improvements. Double reporting must be avoided as to ensure that reporting obligations do not lead to an overbearing administrative cost especially for smaller DC operators. Therefore, the coherence of reporting requirements at EU and Member States level must be ensured. Particularly Article 5(2) of the Delegated Act promulgating that KPIs “shall be made public in an aggregated manner, at Member State and Union level”, requires clarification. Some level of ambiguity remains regarding the possibility of duplicate reporting obligation, i.e., the current wording could be interpreted to leave open a possibility that DC operators must fulfil congruent reporting obligations both to the MS-level databases (as per EED Annex VII) as well as the EU database (as specified in the DA). To ensure a level playing field across the common market, a clarification should be added in



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Article 3 of the DA that the requirement established for Member States in Article 12.1 of the EED is fully met by Articles 3.1 and 3.2 of the Delegated Act.

- **Timeline and reporting deadlines**

To ensure a smooth and representative first reporting cycle, it is crucial that the Commission affords DC operators the time necessary to fulfil the reporting obligations established by the DA. Especially colocation and co-hosting datacentres who must engage with customers to collect reporting data will have to expend significant time and resources to meet reporting obligations. Hence, eco welcomes the extension of the reporting deadline for colocation and co-hosting datacentres until May 2026.

However, also enterprise DC operators will require additional time to set up the reporting infrastructures. The May 2024 deadline for enterprise DC is challenging and may not be feasible for some operators, especially in cases where external reporting obligations are not in line with internal reporting cycles. eco recommends an extension of the first reporting deadline.

Moreover, given the list of indicators is different and longer than the one set out in the Technical Assistance Study, it is impossible for DC operators to collect data against all metrics listed in the DA for the year preceding the date of its entry into force. To ensure all operators report against the same indicators already on day one, eco recommends a clear inclusion of language in Article 3 of the draft delegated act that, for the first reporting deadline, would allow operators to submit only information set out in Annex VII a) and c) of the Energy Efficiency Directive, in accordance with Standard EN 50600-4.

- **Further comments**

Annex II - 1(k) Waste heat reused

It is not understandable why the DA exclusively focuses on waste heat reused outside of the boundaries of a DC as a basis for the sustainability rating scheme. Waste heat reused as part of DC operation on premise should also be considered for a more comprehensive assessment of waste heat utilisation.

Annex II - 1(p) Total renewable energy consumption

eco recommends clarifying what the geographic boundaries are for reporting on REF and that the basis for the calculation should be on full site consumption not just IT load. Our concern with a basis of IT load is that it will not align with other reporting and would lead to lower data quality.



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Annex II – 2 ICT capacity indicators

It has to be noted that SERT active state performance as an indicator is not suitable to comprehensively assess a DCs data processing capacity. Moreover, the indicators described in (a) and (b) may not be available for all servers, particularly in co-hosting and colocation DC where contractual frameworks between the DC operator and customers do not permit the collection of this data.

Conclusion

With the DA the Commission has proposed a comprehensive energy performance and sustainability reporting scheme for data centres, in fulfilment of Article 12 and pursuant to the delegated powers afforded in Article 33(3) of the recast EED. eco welcomes the establishment of EU-wide energy efficiency criteria as well as their enforcement based on harmonised mechanisms so as to ensure the cross-border competitiveness. However, the draft at hand includes a number of reporting KPIs which go beyond the scope set out in Annex VII EED. Removing the identified metrics from the reporting scheme is essential to enhance comparability and transparency in the DC sector. This streamlining would contribute to a clearer understanding of DC operations. Conversely, the imposition of additional reporting requirements poses a substantial administrative burden for DC operators. Evaluating this burden is crucial, necessitating a careful balance against potential energy efficiency improvements. Especially reporting obligations which touch upon sensitive information regarding data privacy or business secrets should be critically evaluated regarding their necessity and added value in terms of efficiency evaluation. Furthermore, the DA lacks guidance for member states to ensure the protection of commercially sensitive data. Finally, for a successful and representative first reporting cycle, the Commission must acknowledge the complexity of reporting obligations and grant DC operators an extension of the May 2024 reporting deadline. This extension is deemed necessary to ensure a smooth transition and uphold the integrity of the reporting process for enterprise data centres. Regulatory efforts should always aim to create attractive framework conditions for energy efficiency. Especially undue administrative burden caused by duplicate reporting should be avoided. Data centres are a crucial component of the digital energy transition, and regulatory efforts should not unduly inhibit the operation of this sector in a competitive market.