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Document title: Guidance Note on Consultations by ACER

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**Guidance Note
on Consultations by the Agency for the
Cooperation of Energy Regulators**

11 September 2013

1. Introduction

- 1.1 Effective public stakeholder involvement and consultation is an important element for the Agency when preparing its positions and acts.
- 1.2 This principle is already reflected in Regulation (EC) No 713/2009¹. Pursuant to Article 10(1) of this Regulation, the Agency, in carrying out its tasks, shall consult extensively and at an early stage with market participants, transmission system operators, consumers, end-users and, where relevant, competition authorities, without prejudice to their respective competence, in an open and transparent manner. Moreover, various provisions of Regulation (EC) No 714/2009², Regulation (EC) No 715/2009³, and Regulation (EC) No 1227/2011⁴ provide for the conduct of consultations on specific issues.
- 1.3 While those Regulations lay the basis for public consultation, they do not sufficiently elaborate how such consultations are to be run. Therefore, to ensure an effective and transparent consultation process, the Agency has prepared the present guidance note which outlines its policy on consultations.
- 1.4 This note specifies how the Agency will conduct its public consultations and establishes a clear consultation process. Deviations from the consultation process as outlined in the present note, including but not limited to deviations from the consultation period, may however be unavoidable and are possible, in particular where the scope and the timetable of the Agency's work is determined by legislation or linked to external factors. If it is not possible for the Agency to follow the outlined consultation process, the Agency will explain the reasons for any deviation.
- 1.5 The Agency will review this note and its consultation practices on a regular basis to ensure that its consultations are effective and give due consideration to best practices. The Agency encourages stakeholders to provide input if they consider this could be useful to enhance the Agency's consultation practices.

¹ Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing the Agency for the Cooperation of Energy Regulators, OJ L 211/1, 14.8.2009.

² Articles 5(2), 6(3), 6(7), 6(10) and 7(2) of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, OJ L 211/15, 14.8.2009.

³ Articles 5(2), 6(3), 6(7), 6(10) and 7(2) of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, OJ L 211/36, 14.8.2009.

⁴ Article 7(3) of Regulation (EC) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, OJ L 326/1, 8.12.2011.

2. Objectives

- 2.1 The Agency's consultations aim at involving all affected and interested parties in an open, transparent, coherent, timely and efficient manner, while ensuring confidentiality of responses, whenever justified, and allowing a flexible approach.
- 2.2 Through public consultations, the Agency aims at benefiting from stakeholders' and other parties' expertise and at obtaining more comprehensive information on the impact of positions and acts which are considered for adoption by the Agency, thus ensuring a high level of quality and well-substantiated output.

3. Target group

The Agency will target the full range of affected and interested parties, including, but not limited to, producers, system operators, suppliers, traders, shippers, power exchanges, consumers, end-users, public authorities, policy makers and academics, and encompassing individuals, associations/organisations representing stakeholders, and other bodies.

4. Timing

- 4.1 The Agency will indicate in its annual work programme the planned consultations for the following year and inform about the updated status of planned consultations through a rolling 6-month calendar on its website.
- 4.2 The Agency will consult at a sufficiently early stage during the preparation of its positions/acts, in order to take, as far as possible, all responses into account.
- 4.3 The Agency will allow adequate time to responding to public consultations, taking account of the complexity of the issues under consultation and any deadline set. For this purpose, the Agency will set a consultation period of:
 - at least two months for Framework Guidelines, in accordance with Article 6(3) of Regulation (EC) No 714/2009 and Article 6(3) of Regulation (EC) No 715/2009;
 - in general six weeks, but no less than four weeks in any other case, unless specific circumstances require setting a shorter consultation period.

5. Means and process

- 5.1 The Agency will produce consultation documents drafted as clearly and concisely as possible, including a description of its proposed position/act, typically a questionnaire and, where possible, an assessment of the possible impact of its proposed position/act. The Agency will also indicate – in the consultation documents and/or on its website – the objectives pursued, the parties considered to be directly affected, the deadlines for responses, the form of submitting responses, any limitation to the scope/format of submissions (in particular page or character limits), contact details, and the steps of the

consultation process (e.g. when the non-confidential responses, the Agency's evaluation of responses or its final position/act are likely to be published).

- 5.2 When public consultations are launched or other events aimed at involving stakeholders are organised, the Agency will inform all parties registered on its website through its newsletter or email alerts. The Agency will make consultation documents widely available, primarily through the Agency's website.
- 5.3 The Agency will use primarily the format of a questionnaire for obtaining comments on its proposed position/act and internet-based/e-mail communication for receiving those comments, but may also use other means such as public hearings, conferences, roundtables, workshops and reports. When launching each consultation, the Agency will specify the format(s) which will be used to collect responses.
- 5.4 The Agency may also informally discuss its views with relevant stakeholders, including bilaterally, ahead of or during the public consultation period. Furthermore, the Agency may use specific fora such as expert groups⁵, advisory groups (e.g. ACER Electricity Stakeholder Advisory Group), Working Groups, the Regional Initiatives process or the Florence, Madrid and London Fora to better target consultations and/or to obtain experts' comments.

6. Feedback

- 6.1 The Agency shall carefully consider all responses received (whether confidential or not), but anonymous responses will generally not be taken into consideration. Also responses from respondents who do not want their identity to be made public will be taken into consideration only if the Agency is satisfied that the respondent has a valid reason for not having his/her identity disclosed.
- 6.2 The Agency will make public the number of responses received to formal consultations, the names of the respondents (except those with a valid reason for not having their identity disclosed), and all non-confidential responses.
- 6.3 The Agency will make public the final document adopted by it as a result of a formal consultation together with its evaluation of the responses, including a summary of the responses per topic, an indication of how it has taken into account the responses, an explanation of why it has or has not taken the comments on board and a clarification where it has based its position on confidential information. In the public evaluation of responses the Agency will not link responses to specific respondents or groups of respondents unless this is appropriate. Furthermore, the Agency will publish, in accordance with Article 10(2) of Regulation (EC) No 713/2009, also all documents and minutes of consultation meetings conducted during the development of Framework Guidelines or during the amendment of Network Codes.

⁵ The full list of ACER experts groups is available on www.acer.europa.eu.

- 6.4 If necessary and if time permits, the Agency will consult a second time if the responses to the initial consultation reveal significant problems, or if the revised documents are substantially different from the proposal on which the initial consultation was based. The Agency may limit the scope of the second consultation to the significant problems revealed and to the substantial amendments on its initial proposal. When time limitations do not permit to run a second public consultation, a workshop or similar event can be organised instead.

7. Confidentiality

- 7.1 Respondents may request that information or data in their responses is treated as confidential.
- 7.2 The Agency will assess, in co-ordination with the respondents requesting confidentiality, which information or data shall not be made public and may request from the respondents an explanation of their confidentiality interests and a non-confidential version of their response for publication. If the Agency does not recognise the confidentiality interest requested by the respondent, the respondent may withdraw its input or parts thereof within three days upon notification of the non-recognition. In case of such withdrawal the Agency shall not consider the withdrawn input.
- 7.3 The Agency will evaluate confidential responses as transparently as possible without undermining the respondents' confidentiality interests.



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