

GUIDANCE NOTE ON CONSULTATION

1. Introduction

- 1.1 Effective public consultation is an important element for the Agency when formulating its formal positions.
- 1.2 This principle is already reflected in the Agency's regulation. Pursuant to Article 10(1) of Regulation (EC) No 713/2009¹ 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 public consultations on specific issues.
- 1.3 While those regulations lay the basis for public consultation, they contain only some details on how such consultations are to be run. Therefore, to ensure an effective and transparent consultation process, the Agency makes the present guidance note available, which outlines its policy on consultations.
- 1.4 More specifically, this note provides information on how the Agency will conduct its public consultations. Though the note aims at establishing a clear consultation process, deviation from it may be unavoidable, in particular where the scope and the timetable of the Agency's work is predetermined by legislation or linked to external factors. If it is not possible for the Agency to follow the process as outlined in this note, the Agency will explain the reasons of any deviation.
- 1.5 The Agency will review this note when appropriate.

2. Objectives

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(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(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 Articles 7(3) and 10(1) 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.

- 2.1 The Agency's consultations aim at involving all affected and interested parties in an open, transparent, coherent, timely and efficient manner while ensuring confidentiality 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 formal positions proposed 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/organizations 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 elaboration process of the Agency's position, in order to take, as far as possible, all responses into account.
- 4.3 The Agency will allow those consulted adequate time to respond, taking account of the complexity of the issue and any deadlines 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;
 - at least four weeks in the other cases.

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, a questionnaire and, when possible, an assessment of the possible impact of its proposed position. In the consultation documents and/or on its website the Agency will also indicate the objectives pursued, the parties considered to be directly affected, the deadlines for responses, the form of submitting responses, any limitation to the scope 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 formal position are likely to be published).

- 5.2 The Agency will make consultation documents widely known and available, primarily through the Agency's website, its newsletter and email-alerts.
- 5.3 The Agency will use primarily the format of a questionnaire for obtaining comments on its proposed position and internet-based/e-mail communication for receiving those comments, but may apply also 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 take steps ahead of, but also during the public consultation, to discuss elements of its views informally. Further, 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, London and Athens Fora to better target consultations and/or to obtain expert comments.

6. Feedback

- 6.1 The Agency will consider carefully all non-anonymous responses received. Anonymous responses or responses from respondents who do not want their identity to be made public will generally not be taken into consideration.
- 6.2 The Agency will make public the number of responses received to formal consultations, the names of the respondents, 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. Further, 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.
- 6.4 The Agency will consult, if necessary and time permits, a second time if the responses to the initial consultation reveal significant problems, or if the revised consultation documents are substantially different from the proposal on which the initial consultation was based.

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

The Agency may limit the scope of the second consultation to the significant problems revealed and to the substantial amendments on its initial proposal.

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.
- 7.3 The Agency will evaluate confidential responses as transparently as possible without undermining the respondents' confidentiality interests.