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ACER
Agency for the Cooperation of
Energy Regulators
Trg republike 3
1000 Ljubljana
Slowenien

Public consultation on the Draft Guidance Note on Consultation (PC_2012_E_12)

Dear Sir or Madam

The involvement of stakeholders in the regulatory process with the objective to create a real and effective internal European energy market is of utmost importance. Therefore, BDEW welcomes the approach taken by ACER to set out clear rules and standards for its consultation procedures.

BDEW believes that transparency and clear communication are pivotal for all procedures carried out by ACER, in particular within the consultation procedures. In our view, the most important point is that consultation procedures should be conducted in a spirit of dialogue.

The draft Guidance Note on Consultation shows that ACER acknowledges these fundamental concepts. Therefore, BDEW strongly supports the Draft Guidance Note on Consultation and its application in the upcoming procedures.

In February 2011, the heads of state and governments set an ambitious timeframe for the completion of the Internal Energy market, requiring ACER, national regulators and transmission system operators to “step up their work on market coupling and guidelines and on network codes [...] so as to allow gas and electricity to flow freely by 2014”. Hence, BDEW acknowledges the necessity for ACER’s and ENTSO-E/G’s tight time schedules.

Nevertheless, the consultation procedures need to be organised in such a way which allows for a profound analysis of draft documents by stakeholders, including internal consultation amongst our membership in order

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to ensure meaningful contributions. This has to be taken into account when deadlines are set.

Our experience to date shows that the deadlines in the ACER consultation processes were acceptable when there was a minimum of 2 months to respond. The consultation processes for REMIT did not allow for adequate discussions. Especially, when consultations touch on a topic which will generate significant costs for our member companies such as “Recommendations to the European Commission as regards the records of wholesale energy market transactions according to REMIT”, we expect the planning to be in a way that as many interested stakeholders as possible can participate. In the mentioned case, we were not sure if this principle was fully adhered to. We would therefore appreciate ACER to maintain its practice of a minimum of two months in all of the upcoming processes.

At the same time, we would like to suggest the consultation periods for ENTSO-E/G’s draft network codes to be reconsidered. Since the analysis of these technical documents requires specialised knowledge, finding positions on all relevant aspects within two months is very challenging. BDEW appreciates that ENTSO-E/G usually publish pre-draft versions, enabling stakeholders to evaluate and comment the network codes in advance of the formal consultation. We encourage ENTSO-E and ENTSG to proceed equally in the future in order to allow for a well-founded evaluation of the documents.

BDEW agrees with ACER that workshops, hearings and conferences are an important part of the consultation procedure. However, BDEW would welcome if ACER allowed for easier access to these events. One means could be live streaming via internet, which is already applied in several processes. Since this cannot replace physical attendance, the reachability of the venues for conferences, workshops etc. is important. Therefore, we suggest considering also other European cities than just Ljubljana (e.g. Brussels) for the organisation of ACER events, especially when other events to related topics are being held the day before or the day after. BDEW also appreciates the use of expert groups, despite the fact that we have not been successful with our applications. It must, however, be clear that these expert groups can in no way replace the orderly, transparent and fair consultation of all stakeholders. By design, only a very limited number of stakeholders can take part and BDEW would like to urge ACER

to ensure that the membership in such an expert group does not result in an exclusive knowledge on processes or outcomes. Also transparency is of paramount importance for these groups. Especially, agendas and minutes should be provided in due time.

The presentation of planned consultations in an annual work programme and a regular update on the website helps stakeholders like BDEW, to better structure their work and, as a consequence, to contribute more often and precisely to consultations. However, the new website has not improved usability. We would strongly urge ACER to overhaul especially the section on consultations so that users have easy access to all documentation.

With regard to the concrete rules on transparency, BDEW fully supports the approach taken by ACER. This kind of standard will create trust in ACER's work and will ensure that the final outcome is based on a broad majority.

BDEW has no doubt that by combining all the aspects mentioned in the draft an effective and transparent consultation procedure can be realized which will be beneficial for all parties involved.

To conclude, BDEW supports the draft Guidance Note on Consultation and regarded it as a helpful tool to ensure smooth and balanced consultation procedures.