

# Public Consultation on the ACER Draft Guidance Note on Consultation

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A EURELECTRIC response paper



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▶ Transparency, ethics, accountability

# EURELECTRIC response to the Public Consultation on the ACER Draft Guidance Note on Consultation

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EURELECTRIC welcomes ACER initiative aimed at stakeholder's feedback on ways of improving forthcoming ACER consultations. Indeed, many network codes are in the process of being drafted or should be drafted in the near future by ENTSOE which will require specific opinions from ACER. Setting up a consultation process by ACER is very much welcomed firstly because it shows the intention of ACER to involve and take into account Stakeholders' views when preparing their position on the network codes and secondly because it promotes transparency of the whole process in terms of steps and timelines .

We believe ACER intent is to address consultation more broadly than merely limiting to network codes; however our response will mainly focus on this aspect due to a clear need for substantial improvements.

### **Earlier and more active involvement of Stakeholders will smoothen the whole process**

Even though this point does not directly affect ACER but rather ENTSOE we would like to emphasize the importance of engaging Stakeholders earlier and in a more active way in the process of drafting the network codes. Earlier discussion between all parties involved will help understand each other's views from the very beginning. This first step will definitely contribute to developing converging positions at an early stage thereby proving more efficient than a time- consuming process of analysing all the different comments received during consultation.

### **A second public consultation round is in some cases necessary**

Recent codes drafted by ENTSOE and subjected to consultation proved to be highly controversial, - e.g. the RfG NC receiving 6000 amendments, CACM NC receiving 2000 amendments -. In such cases, we believe that ACER should be involved early in the process so as to facilitate the elaboration of the network code and ensure that a convergence of views can be found. We therefore see it most beneficial if ACER conducts a second consultation (a point which is already provided by in §6.4 of ACER consultation document) and investigate the grounds for such a disagreement between parties. For this purpose, it may be justified to extend to 3 months the time planned for ACER to issue their opinion so as to give 2-3 weeks to Stakeholders to formally present their final comments.

Moreover, EURELECTRIC has experienced that the final ENTSOE Network Code version submitted to the Agency included in some cases substantially different points from the version that ENTSOE submit for public consultation not solely in the way that the final version is amended by taking on board comments received during the consultation, but also that it reflected new insights and views included ex-post. A recent example is the CACM NC, in which a new and non-consulted chapter on governance guidelines has been

recently included without any involvement of stakeholders. Also the RfG NC was amended at the last minute without being consulted. We believe such substantial changes introduced in the code without any feedback from the stakeholders on issues highly relevant to the functioning of integrated wholesale markets should deserve an additional consultation.

### **The process of public consultation can be improved**

The stakeholder consultation tools are reasonable and adequate but we would like to stress that these means shall be used accordingly. In other words, where a consultation or a Stakeholders Group is established, it is important that the party who runs the consultation or organizes the group explains and justifies why the amendments or comments received have not been considered. We understand that this implies additional workload on the side of ENTSOE/ACER but we have experienced that comments/amendments are very frequently repeated. Stakeholders, who will be heavily affected by network codes, deserve receiving a sound explanation why their concerns have been partly or entirely dismissed.

We experienced in the feedback after consultations the statement that the “answers are counted”. It is important to realize that the result of such counting can be often misleading and not representative. So, head counting of answers should be considered very carefully.

During consultation, pre-formatted answers are sometimes being proposed, i.e. the respondent is limited to choose between yes/no or between pre-established options. We believe that such a format does not allow stakeholders providing a substantiated response and valuable feedback. Therefore stakeholders should be given the opportunity to add a new response or to choose more than one of pre-established options.

It is also important to establish a user-friendly consultation by which Stakeholders have the possibility to submit their comments (in pre-defined format if needed) in an aggregated way.

For issues where a respondent does want to remain anonymous, we have noted ACER intent to break up anonymity or confidentiality (§7.2) but fear that this may be counterproductive since there is a risk that the input is not be handed over to ACER either on a formal or on an informal basis if a party suspects that its confidentiality request will be rejected. One alternative could be that in case the anonymity or confidentiality request is not accepted by ACER, the party has the right to withdraw its input from the consultation.



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