

GIE response to ACER's Public Consultation on the Draft Guidance Note on Consultation

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1. Introduction

GIE welcomes ACER's consultation of its draft guidance note on consultation. GIE is glad to contribute to these public consultations with its views.

2. Who is GIE?

Gas Infrastructure Europe (GIE) is an association representing the sole interest of the infrastructure industry in the natural gas business such as Transmission System Operators, Storage System Operators and LNG Terminal Operators. GIE has currently 70 members in 25 European countries.

One of the objectives of GIE is to voice the views of its members vis-à-vis the European Commission, the regulators and other stakeholders. Its mission is to actively contribute to the construction of a single, sustainable and competitive gas market in Europe underpinned by a stable and predictable regulatory framework as well as by a sound investment climate

3. General statements

Public consultations are a critical step in the EU regulatory development process. It is important not only to consult the market but to do it on the right way. Without an adequate consultation process in place ACER would lose the possibility of taking the best input from the market stakeholders. An inadequate consultation process will decrease ACER's credibility, will reduce the quality of the ACER's deliverables and lastly it will be detrimental for the market stakeholders as well as for the development of the internal gas market.

For these reasons, GIE would like to make specific comments on the draft guidance note on consultation ([link](#)).

Before entering into detailed comments, GIE would like to advocate for a consistency between the CEER guidelines for public consultation and ACER's approach way to consultation. We understand that ACER might have consultation periods and deadlines fixed by the EU regulation, but GIE invites ACER to follow as much closely as possible the CEER guidelines for public consultation.

Furthermore, GIE also invites ACER to learn from the ENTSOG experience in consulting market parties during the network code development process. ENTSOG has been recognised as successfully

conducting very extensive consultation processes involving many parties and taking as much as possible the views from the different parties into account. At ENTSOG consultations, all actors are invited to participate in the processes at all stages and the process involves high levels of transparency and ensures the commitment of all actors to participate. ENTSOG is fulfilling its commitment to openness as indicated in its motto “fair partner to all”. GIE hopes that ACER can follow the same example.

4. Detailed comments on draft consultation guideline

a. Paragraph 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 and acts which are considered for adoption by the Agency, thus ensuring a high level of quality and well-substantiated output”.

GIE would like to stress that the process should be more than just consultation. It needs early involvement of stakeholders and recognition that the process must be fully inclusive. It should be regarded as a multi-lateral process of both development and consultation.

GIE also wonders why ACER only limits the scope of public consultations to formal positions and acts of the agency. There are other documents produced by the agency which might be also worth to be mentioned in this paragraph (e.g REMIT deliverables, annual work program, other public reports, annual activity report, etc.)

b. Paragraph 4.3

“The Agency will allow those consulted adequate time to respond, 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, no less than four weeks for any other case, unless specific circumstances require to set a shorter consultation period.”*

ACER should take into account that many of the stakeholders answering their public consultations are European associations. Due to the large number of companies they represent, European associations need several weeks to go through the internal drafting and approval process. Moreover, sometimes the complexity of the subject makes necessary to allow even more time than usual for the preparation of a high-quality response.

For this reason GIE believes that ACER should take into account the following recommendations:

- The adequate period for consultation should be of at least 8-week period.
- When this period is not possible, a minimum 6-week period should be ensured in any case.

- The number of weeks for a consultation period should refer to **working weeks only**. Summer, Christmas, Easter period should be avoided and in case this is not possible, then the consultation period should be longer.

c. Paragraph 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.”

GIE understands that on-line questionnaires are also possible. In this sense, GIE thinks that it would be convenient to consult on the technical characteristics/format that those on-line questionnaires will have.

In any case GIE proposes that, regardless the means chosen for the public consultation (i.e. questionnaire, web-based questionnaire, e-mail communication, public hearing, etc.), ACER should be always open to receive position papers from market stakeholders and to take these position papers into account with the same importance as the official consultation channel selected.

The advantage of a position paper is that it might include additional information (i.e. context, background, deeper analyses) which is not covered by the questions of the public consultation; it can also include graphs, pictures, tables, etc. which potentially could not be attached to on-line questionnaires.

d. Paragraph 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 groups, 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.”

GIE thinks that ACER should be able to informally discuss its views with relevant stakeholders, including bilaterally, not only ahead of or during the public consultation period, but also when the public consultation is finished and ACER is analysing the answers received. At this point it could be very useful for ACER to gain a better understanding from some market stakeholders about the input they have provided.

A public workshop after the publication of ACER final document/act/etc. could be in some cases very useful and necessary. In this workshop ACER would explain the reasons of its decision and exchange views with stakeholders in order to guide future work on the document’s topic.

e. Paragraph 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.”

GIE wonders if ACER should not have a maximum period for analysing the input provided by the stakeholder and publishing the answers received. This would help third parties to easier follow the process.

f. Paragraph 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.”

GIE would like to know whether the second consultation would follow the same rules (and consultation period) than the first consultation period. It could be convenient to clarify this aspect.