



Annex 1

Guidelines on ERGEG's Public Consultation Practices

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General Remarks

1. The European Regulators Group for Electricity and Gas (ERGEG) has once again reviewed and revised (March 2009) its public consultation guidelines recognising in particular:
 - the importance of consultation in providing expert input and views on draft proposals;
 - the need for a flexible approach to consultation (one that can be adapted according to the significance and urgency of an issue);
 - the principles of openness, transparency, consistency, and accountability;
 - the need for clear rule on confidentiality; and
 - the need to ensure a high quality of consultation including the use, when appropriate, of regulatory impact assessments.
2. In carrying out consultations, ERGEG will be guided by a number of principles, several of which reflect the Union's approach to better regulation. Whenever adherence to these principles is not possible, an explanation will be given.
3. ERGEG's consultation will provide the basis for its policy recommendations to the European Commission as required in Commission Decision of 11 November 2003 (2003/796/EC), which set up ERGEG. An EU-wide consultation may, however, be reinforced by national or regional consultations to ensure that any particular concern may be adequately explored and represented. Such consultations will not, however, replace the ERGEG consultation nor will they be permitted to delay the timetables agreed for that consultation.

Principles of Consultation

4. On whom they consult, Regulators will, wherever appropriate:
 - i) seek to consult the full range of interested parties such as network users (generators, suppliers and traders), market participants, Transmission System Operators (including the EU TSO bodies), Storage System Operators, LNG System Operators, Distribution System Operators, consumers, end-users, Member States, competition authorities or other authorities, policy - makers and the general public. The views of individual companies as well as views from their EU associations will be sought. To do so, Regulators will make consultation proposals widely known and available through all appropriate means, but most particularly via the internet;
 - ii) in addition, Regulators will seek to inform those parties directly affected by making clear the target audience in the public consultation document. Regulators will make interested parties aware by appropriate means, such as the web or its subscriber mailing list, when the public consultation section of the website has been updated;
 - iii) consult at national, regional, European and international levels.

5. On when they consult, Regulators will:

- i) publish in advance the annual work programme indicating the forthcoming consultations for the year ahead to inform all interested parties of the planned consultations;
- ii) publish a calendar of future public consultations on the website or using other means (such as the monthly *European Energy Regulators News* newsletter);
- iii) publish any request for advice received from the European Commission, as appropriate;
- iv) organise, where appropriate, informal discussions at an early stage;
- v) consult at a sufficiently early stage to take responses into account;
- vi) allow those consulted adequate time to respond, taking account of the complexity of the issue and any deadlines set. An eight week minimum consultation period will normally be set. In practice, proper allowance needs to be made for the complexity of the issue under consideration and the time of the year consultations are conducted. The maximum consultation period permitted will be four months, in order to ensure that the process of policy formation is not unduly delayed.

6. On how they consult, Regulators will:

- i) provide an opportunity for interested parties to comment on proposals following a request for advice from the European Commission or where the Regulators themselves initiate major new pieces of work. Consultation exercises can take a variety of forms, including calls for evidence and full public consultations, as a function of the nature of the work in hand. A Call for Evidence¹ should be organised, where appropriate, following publication of a request for advice received from the European Commission or within the context of other work. The type of consultation will be clearly defined at an early stage and in the Regulators' work programme where possible;
- ii) when necessary, indicate publicly their thinking on specific initiatives at various stages, to test preliminary analysis or thinking;
- iii) produce reasoned proposals to be consulted upon, drafted as clearly and concisely as possible and indicating the objectives pursued. These proposals will be based on a thorough analysis of the issues including, where possible, any relevant economic analysis. Wherever possible, preliminary information on the impact of the proposals, in particular through impact assessments, will be provided;
- iv) whenever appropriate, establish ad-hoc consultative groups of experts. In particular, when consideration is given to future legislation and on technical content issues, an ad-hoc group of experts that may be consulted may be created. This consultation will supplement the written consultation of stakeholders;

¹ A "Call for evidence" is usually conducted at the very beginning of the development of a new policy proposal. It consists of a short document with a few questions. It is usually "internet based". Calls for evidence are used to gather evidence. The outcome is a fact finding report.

- v) use a variety of tools, including public hearings/roundtables/workshops and, most commonly, internet-based public consultations;
 - vi) publish clear, concise and reasoned documents that are easy to read. Special formats and standard templates (including a summary of key questions) should be used. The length of a consultation document should not exceed 40 pages (excluding annexes).
7. On how they respond to consultation, Regulators will:
- i) give appropriate consideration to all responses received;
 - ii) make public all non-confidential responses to formal consultations and the total number of responses received;
 - iii) make public the final ERGEG position following the consultation (e.g. conclusions paper) including an evaluation of the responses received explaining the reasons why comments have or have not been taken on board in respect of major issues. Wherever the ERGEG position is based on confidential information, it will state why the relevant information cannot be disclosed;
 - iv) publish the results and proceedings of public hearings/workshops;
 - v) if necessary, and where timescales permit, consult a second time if the response to the first consultation reveals significant problems or where revised proposals are radically different from the original proposals on which consultation was based;
 - vi) publish and justify all formal proposals and advice, including advice to the European Commission.
8. On how they treat confidential information, Regulators will:
- i) list the names of all respondents (whether confidential or not) or, alternatively, make public the number (but not the names) of confidential responses received;
 - ii) assess in co-ordination with the respondent explicitly requesting confidentiality which information or data within their response shall not be made public in the evaluation of responses;
 - iii) not link responses to specific respondents in the evaluation of responses;
 - iv) carry out an evaluation of responses in a transparent way to all third parties without undermining their confidentiality rights as protected herein.
9. In respect of the Athens, Maribor, London, Florence & Madrid Fora, the Regulators:
- i) recognise the importance of these Fora in the overall consultation process;
 - ii) will ensure that all relevant ERGEG documents are circulated adequately in advance of such meetings, thereby allowing participants the opportunity to provide views on important proposals at the early stages of a consultation process and, when timetables permit, at a later stage before final recommendations are presented to the European Commission; and
 - iii) encourage participants to provide regular assessments of developments in electricity and gas markets.

10. In respect of the Regional Initiatives, the Regulators:

Recognise that separate public consultations may be organised by regulators at the regional level under the umbrella of the Regional Initiatives. Where the outcome of any such consultation is considered by the Regional Co-ordination Committee (RCC) of regulators of the region in question to have a broader application at EU level, the RCC may propose to ERGEG that a full public consultation is launched on a European level.

Review

The Regulators will review these consultation practices on a regular basis.