



## **Public consultation on ACER evaluation under Article 34 of Regulation 713/2009**

### **Enagás response to DG ENER's public consultation**

18 September 2013



## **I. GENERAL INFORMATION**

### **1) Please specify which institution/organization you represent:**

- a) EU Institution
- b) National Regulatory Authority/Association of Regulators
- c) Transmission system operator
- d) Consumers' representatives
- e) Industry representatives (companies, associations) ✓
- f) Academia
- g) Other, please specify

### **2) Please specify which area of work of the Agency you are aware of/familiar with?**

- a) Development of Framework Guidelines and Network Codes for gas and electricity ✓
- b) Regional Initiatives ✓
- c) Infrastructure and Ten Year Network Development Plans (TYNDPs) ✓
- d) Monitoring and reporting on the electricity and gas sectors ✓
- e) Monitoring of wholesale energy trading and market integrity (under REMIT) ✓
- f) Exemptions from third party access and tariff regulation for major new infrastructures ✓
- g) Coordination and promotion of cooperation between National Regulatory Authorities
- h) Other (please specify)

## **II. RESULTS ACHIEVED BY THE AGENCY**

### **3) How do you evaluate the results achieved by the Agency so far in relation to its objective, mandate and tasks?**

- a) How do you rate in general the results of the Agency achieved since its establishment?
1. Enagás rates positively the results achieved so far since the creation of the Agency. We understand the difficulties that the set-up of a completely new body entails and believes that in so far as its objective, mandate and tasks, the Agency has done a good job so far.
    - b) Has the Agency so far met its objectives as defined in the third energy package and complementary legislation?
  2. With regards to the tasks assigned to the Agency in Article 6 of Regulation 713/2009, the Agency has been successful in delivering opinions on; the

different network codes elaborated, Community-wide network development plan, draft ENTSOG statutes, list of members and draft rules of procedure.

3. However, the timelines of delivery of the framework guidelines prior to network code drafting have not always been met, especially with regards to the Framework Guideline on Transmission Tariffs for gas, which is already suffering a 11-month delay. The European Commission and ACER should make an effort to deliver the Framework Guidelines on time, if the objective of achieving the integrated energy market wants to be achieved by 2014.
4. In addition, we see a lack of commitment from the Agency with regards to other tasks that were assigned such as paragraph 7 of Article 6.

*"7. The Agency shall monitor the progress as regards the implementation of projects to create new interconnector capacity"*

5. This issue is of particular relevance since the adoption Regulation 347/2013, as the Agency has been granted additional tasks including *"monitoring the progress achieved in implementing the projects of common interest and, if necessary, make recommendations to facilitate the implementation of projects of common interest"* and providing *"an opinion to Member States and the Commission on the methodologies"* developed by ENTSOG. The Agency should pay particular attention to the methodology and ensure that the parameters that have been defined are the correct ones to measure market integration, security of supply and sustainability, properly outweighing the costs against the benefits.
6. With regards to the whole process identification of Projects of Common Interest, the Agency should also seek for consistency amongst the different regional groups. It is of utter importance that ACER fulfills its tasks in due time with regards to Regulation 34/2013 including the publication of *"a set of indicators and corresponding reference values for the comparison of unit investment costs for comparable projects of the infrastructure categories included in Annex II.1 and 2"*.

**c) Which of its tasks has the Agency in your view executed particularly well?**

7. The involvement of ACER in the Network Code on Balancing for gas has been particularly successful. We note that the early involvement of the Agency ensures that the process in ran smoothly and leads to early adoption of network. The same applies to the process of the Interoperability Network Code.
8. However, it seems shocking that even though the process seemed to have run with no constraints in the development of the Balancing Network Code, the code was not adopted in comitology during the first meeting. ACER should have had

a more active role in defending that the network code had the approval of the TSOs, the Agency and the stakeholders.

d) Are there any tasks which in your view the Agency has not given sufficient attention and/or which it has not (fully) executed?

9. In Enagás' view, the Agency has not done sufficient work with regards to tasks assigned under paragraphs 7, 8 and 9 of Article 6 of Regulation 713/2009.

10. The Agency has not worked so far on the monitoring of the "*implementation of the Community-wide network development plans*" and has not identified any "*inconsistencies between such a plan and its implementation*". In addition, it is not clear how the Agency is working on the monitoring of regional cooperation of transmission system operators (TSOs).

#### **4) What do you think of the results of the Agency measured against ACER Annual Work Programmes?**

a) Do you follow the development of the ACER Annual Work Programmes (by taking part in public consultations, workshops organized by the Agency)?

11. Yes.

b) Do you consider that ACER has set the right priorities in its Annual Work Programmes?

12. Yes, in general terms Enagás agrees with the proposed priorities.

13. Nevertheless we believe that the Agency should better think its priorities in advance and seek consensus with relevant stakeholders.

c) Do you follow the Work Programme implementation through the reporting published by ACER in its Annual Activity Reports?

14. Yes.

d) Do you think that ACER carried out its Work Programmes? If not, please indicate where this has not been the case.

15. In general terms Enagás believes that ACER has carried out its work programmes.

### **III. WORKING METHODS:**

#### **5) Governance, organizational structure, independence and resources:**

- a) Are you aware of the organization of ACER and its governance arrangements (Administrative Board, Board of Regulators, Board of Appeal, Director)? If yes, do you consider the governance arrangements suited for the fulfillment of ACER's objectives, mandate and tasks?
16. Enagás is aware of the organization of ACER. However, in Enagás' view there are still tasks which overlap between CEER and ACER.
17. In addition, there are some tasks which have been assigned to ACER for which the Agency does not have enough resources, i.e. collection and monitoring of data under Regulation 1227/2011.
- b) How do you assess National Regulatory Authorities' coordination and cooperation through the Agency? Has the coordination and cooperation improved since the establishment of the Agency?
18. Enagás has the impression that the voices of some National Regulatory Authorities are more represented than others. The Agency should encourage the participation of all National Regulatory Authorities to participate in the working groups in order to strive to find a more balanced approach.
- c) Please specify to what extent ACER has succeeded in your view in setting up effective and efficient working relationships with the EU institutions, NRAs, ENTSOs and other stakeholders, the public at large?
19. Yes. Taking into account that ACER has only been running for a short period of time, Enagás is of the opinion that the relationships have been well established.
- d) Please specify the extent to which you think that ACER is independent (from gas and electricity companies, from Governments, from TSOs, from the Commission)?
20. Being an Agency for cooperation of NRAs, ACER cannot be more independent than their members are. A full implementation of Directive 2009/73/EC as regards independence and competencies of NRAs shall be pursued. The transpositions made in some MSs do not guarantee independence from governments.
- e) Do you consider that ACER has adequate resources to carry out its tasks?
21. As mentioned earlier on, ACER should encourage the participation of all involved National Regulatory Authorities. Personnel based in the Agency's premises should act as coordinators and mediators of National Regulatory Authorities' opinions.

22. However, Enagás is aware that new Regulations 1227/2011 and Regulation 347/2013 grants the Agency with additional tasks which may lead to the need additional of increasing its resources. In this sense, Enagás is of the view that as far as it is possible, tasks such as the collection and monitoring of data under Regulation 1227/2011 should be done at national level by the National Regulatory Authorities and coordinated via ACER.
23. Overlapping and duplication of tasks between National Regulatory Authorities and ACER should be avoided.

## 6) Communication and Transparency

- a) How do you rate in general ACER's communication? Are you sufficiently informed of its activities? Which channels of communication do you consider to be most effective?
24. ACER's communication could be improved. The most important channel of communication is the website which in Enagás' view could be seriously improved.
- b) How do you rate ACER's website? How often have you visited it in the past 3 months? Did you find what you were looking for?
25. ACER's website needs serious improvement.
26. Enagás enters ACER's on a daily basis and even several times per day.
27. It is extremely difficult and time-consuming to find new documents which have been uploaded on the website. The website is not intuitive or user-friendly at all. Some of the information is outdated on other information is even duplicated in two different parts of the website.
28. Moreover with regards to regional Initiatives there it is very difficult to have the complete picture of the activities that have been undertaken since their creation, as part of the information is published on CEER's website and other information is published on the Agency's website.
- c) Did you read any of the documents that ACER has produced so far? Which ones did you consider particularly useful? Which ones did you consider less useful and why?
29. Enagás reads documents that are related to the gas market.
30. Enagás believes that the most useful documents are those which are binding and need to be delivered under the different Regulations.

- d) What is your assessment of the quality of the documents that ACER has produced so far (framework guidelines, recommendations, guidelines, opinions, others)? Do they contain a clear position? Are they clearly drafted?
31. In general terms the quality of documents produced by ACER has increased. Nevertheless, sometimes it is not easy to identify a clear position and seems that a compromise version which does not really provide any clear guidance to TSOs.
- e) Are the public consultation arrangements of ACER sufficient, efficient and effective? In particular, does the Agency make efficient use of communication tools: Workshops? Publications? Website? Other?
32. Enagás thinks that ACER workshops could be improved (organisations, logistics, timings, early-announcement, moderation of the workshops, etc.). Besides, ACER should have more budget for organising this kind of events, particularly in Ljubljana (e.g. with appropriate technical equipment, catering services, etc.)
33. With regards to public consultations, Enagás believes that on a general basis consultation are smoothly run. Nevertheless, the Agency could provide further analysis of the responses received and provide explanation for the inclusion or non-inclusion of comments provided by stakeholders.
34. Enagás would also like to call particular attention to the establishment of ad-hoc expert groups within ACER in the framework of the preparatory work for the framework guideline process or other developments. The constitution and selection of the members for these expert groups lacks transparency and it is not subject to public and objective selection criteria. Members are selected on an "*ad personam*" basis, however there are no clear guidelines with regards to the rights and obligations that members have when they accept participation in these groups. Moreover, the operation and conclusions of these groups are not made public.

## **7) Suggestions for improvement to ACER's working methods**

- a) Do you have any suggestions for improvement to ACER's working methods?
- ACER's workshops should be organised in two places in parallel; Ljubljana and Brussels, provided that the correct means are in place to ensure that the meeting runs smoothly.
  - ACER should devote more resources in the improvement of the website and the alert system.
  - Roles between CEER and ACER should be further clarified

- Avoidance of duplication of work between National Regulatory Authorities and ACER should be sought.
- National Regulatory Authorities should be further encouraged to participate in the Agency's working groups.
- A formal procedure for the participation at ad-hoc expert groups should be developed.

b) Do you see a need for changes to Regulation 713/2009? If so, which changes and why?

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