



GDF SUEZ response to the public consultation “ACER evaluation under Article 34 of Regulation 713/2009”

GDF SUEZ

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FRANCE

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GENERAL INFORMATION

1. Please specify which institution/organization you represent

- a) EU Institution
- b) ~~National Regulatory Authority/Association of Regulators~~
- c) Gas Transmission system operator in France
- 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)~~

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?**

The Agency has succeeded in meeting its defined tasks with regard to implementation of the third package and REMIT in a globally satisfactory way.

- b) **Has the Agency so far met its objectives as defined in the third energy package and**

complementary legislation?

We appreciate all efforts made by the Agency in implementing successfully the third package : **The establishment of framework guidelines is progressing on schedule**, the opinion on network codes and on the work programme of ENTSOs is also produced in due time. **However we would have appreciated if ACER could have given a global vision on all codes and the link between the different codes preventing in some cases possible risks of overlapping.**

With regard to REMIT, we appreciate the Agency's continuous efforts to provide clarity to market participants, but we regret the ongoing lack of concrete guidance regarding gas/LNG, relative to power, which may create some uncertainty on the regulatory obligations that fall upon market participants

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

As for the gas sector, the implication of ACER in the development of the network codes is crucial. We have really appreciated the improvement in the way of implementing between CAM and Balancing : the demand from ACER relating to the balancing NC could be understood, even anticipated. This was not the case with CAM (modifications imposed by ACER at the last minute).

We hope that this process will continue to be improved in the future .

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

GDF SUEZ was disappointed that the Agency has not been able to exercise more beneficial influence on Member States, where implementation of the Third Package is difficult. While ACER is not responsible for those national issues, it should nonetheless seek to engage fully in its work NRAs where there are problems.

Concerning specific issues :

- **As for gas, as explained in b), ACER did not succeed totally in giving a global vision on all codes and their interlinks.** Consequently the Framework guidelines issued by ACER and their opinion concerning network codes did not take in account the links between them.
For example, it has been a very long task to reach some agreement on CAM network and today, while CAM is still not approved, the necessity of amendments to CAM is foreseen because ACER did not anticipate the case of incremental capacity.

The decision process of ACER is not always transparent. This is sometimes quite difficult to understand the link between the consultations made by ACER and the resulting conclusions. For instance, regarding CAM, the opposition to the sunset clause made by almost all stakeholders was not taken into account in the FG.

Moreover, the framework guidelines are too detailed, giving ENTSG no sufficient room to develop the network codes in accordance with the stakeholders' needs. This was the case concerning the odourisation part of the interoperability FG.

At last, once they are published, the Framework Guidelines cannot be modified and the related network codes have to comply with them, even if it turns out that a correction should be made in order to get more efficient rules which would be closer to the stakeholders' needs.

- **Regarding electricity, another issue concerns the competence of ACER towards NRAs.**
Regulation No 713/2009 says:

article 7-2: "The Agency may, in accordance with its work programme or at the request of the Commission, make recommendations to assist regulatory authorities and market players in sharing good practices."

We expect ACER to enforce more its competencies in this area.

In this same perspective, **framework guidelines are often drafted too open** and do not take a clear position.

For the same example on cross-border intraday, the framework guidelines only say "Where applicable, as a transitional arrangement, the capacity management module may provide direct explicit access". This is not taking a clear position, and it leaves the door open to NRA for further accepting it on one side of the border and refusing it on the other side of the border.

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)?**

Yes

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

Globally we agree with the proposed priorities.

As explained in 3 b) **we believe that the Agency needs to build in its priorities a "compatibility" check between network codes**, and if needed, put on hold parts of network codes that will be explained or justified in other documents, even if they might be guided by other framework guidelines (for example refer to links between LFC&R and RfG codes)..

With regard to REMIT, an increasingly important aspect is becoming the need for coordination with ESMA, in view of potentially overlapping or conflicting obligations on market participants. We are aware that many regulatory texts, including ACER Guidance documents, stress the intention to avoid such overlaps, duplications or conflicts, but in practice we see little priority given to address such issues, particularly in the field of transaction reporting obligations.

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

Yes

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

Yes.

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 fulfilment of ACER's objectives, mandate and tasks?

The functioning of ACER as well as the implication of NRAs in ACER are not so clear. Sometimes the NRAs speak for themselves, and sometimes on behalf of ACER. This turns out to be difficult to follow the respective positions.

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?

ACER is of course an important place where NRA meet and exchange opinions. It is for ACER a difficult task to balance on one hand an harmonized view in order to implement an integrated European market and on another hand leave enough place to NRA to solve local issues without impacts on cross-border exchanges.

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?

We would suggest to set up more regular meetings with major stakeholders on specific topics.

For example we appreciate the open dialogue that ACER has with market participants in the REMIT area.

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)?

We appreciate that **ACER is independent from companies, Governments and TSOs**. On the contrary **ACER is maybe too much linked with the Commission** and should have more independence in its opinion.

For example the CAM elaboration has proved on some issues the difficulties for ACER to balance a pragmatic vision of the market and a theoretical view of the Commission, which in fact would be complementary.

e) Do you consider that ACER has adequate resources to carry out its tasks?

The increase in ACER staff costs and budget may be justified by an increase in ACER's work. However, **considering the economic crisis, we would advise that ACER stabilizes its expenses instead of increasing them**. Currently, **the operators have a hard time coping with the existing consultations/regulations and adapting to the ever changing rules**. Major companies will find it difficult to manage efficiently a too ambitious programme; this problem will, of course, be even greater for small operators.

For the “European affairs” issues (like Network Codes related to cross-border issues), we believe that a **better balance should be found by the amount of ACER staff and the the amount of NRA staff.**

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?

Yes. Website, calendar alerts (via e-mail) are a good general channel of communication. ACER workshops on REMIT provide useful insight and feedback.

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?

Except some specific subjects (REMIT for example) the **ACER web site could be improved.** It is quite difficult to find quickly on-going consultations, work shops or any events concerning any issues. ENTSOG website could be a useful model.

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?

Yes and we carefully read all documents concerning codes, REMIT, ... ACER has some important missions defined by the regulation 713. The documents produced show a high level of implication.

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?

We believe that the **documents are generally properly drafted.** However, we are not convinced that the opinions are well balanced with regard to some issues. As stated before, it is sometimes **hard to follow the link between the output of ACER's consultations and the final ACER decision.** Explanations of the choices should be more clearly stated. In particular, stakeholders' views should be better taken into account.

Fo example for the RfG code, many comments have been given by the industry, also in a workshop organized by ACER. However in its opinion, few of these comments have been addressed, while no justification has been given why some comments from the market are “ignored”.

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?

The arrangements are correct but could be improved in some ways :

Sometimes, ACER implements ad-hoc expert groups (ex. for gas tariffs, or for the balancing network code power, or for REMIT) but it is unclear how the selection is done to be invited to these groups, neither how the recommendations and opinions delivered in these expert groups are taken on board.

7. Suggestions for improvement to ACER's working methods

a) Do you have any suggestions for improvement to ACER's working methods?

During the one year drafting process of ENTSO-E and G, more involvement of ACER would be appreciated. We would appreciate ACER to take position during the ENTSO workshops and not to remain often silent or not expressing its opinion at all.

We also think that framework guidelines should be more flexible so that they could evolve during the ENTSO process where appropriate.

Moreover some points should be improved :

- **Take more into account the stakeholder voice.**
- **Don't multiply written consultation** (for example for Tariffs FG, 3 formal consultations plus one informal and the FG is still not ready).
- **Organize more work shops with stakeholders.**
- **we would suggest to organise ACER workshops at more convenient places than Ljubljana,** like Vienna or Brussels to give indeed the target audience sufficient opportunities to attend the workshops.

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

As already expressed, we believe that the governance of ACER should be more independent from the NRAs. And at the same time, sufficiently independency from the Commission should be guaranteed.