

Proposed response to ACER Consultation

EUROGAS – 172 Avenue de Cortenbergh – 1000 Brussels
Register ID number: 17909506129-41

LTS 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 in a satisfactory way. When it was established there was a learning curve for the Agency and stakeholders alike. Eurogas has seen how the Agency has adapted its practices and procedures as it gained in experience. It is helpful, however, when ACER gives informal regulatory insight into the issues in the SJWS of ENTSG, which is not always the case.

b) Has the Agency so far met its objectives as defined in the third energy package and complementary legislation?

The Agency has by and large met its objectives in terms of its tasks, although the final success can only be judged when the Codes in line with the FGs are implemented.

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

The Balancing Code process went well, and Eurogas appreciated that the Agency's Opinion on the draft Code favoured network users' arguments about the market's requirements. Also it seemed that a pragmatic working relationship with ENTSG smoothed the final stages of the Code's preparation.

Eurogas has also appreciated the coordination by ACER of the Gas regional Initiatives. The GRIs are better managed and their activities are more transparent than in the past.

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

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

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)?**

Eurogas follows the developments and responds to the consultations, taking part where possible in the workshops.

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

Yes. The priorities are largely predetermined by stakeholder consensus.

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

Yes, complemented by study of the reports to the Madrid Forum.

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

Yes, and in cases where there has been slippage, this is due to consultation outcomes.

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?**

Yes, Eurogas is familiar with the organizational aspects mentioned, was supportive of the basic structure, and sees no reason to change this in the near future, unless it becomes necessary to make ACER more independent from NRAs (see 7b).

- 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?**

This is not a question Eurogas can answer since we are not privy to the internal workings of ACER, and only see the output.

- 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?**

Eurogas is only in a position to comment on its own efficient working relationships with ACER and these have been satisfactory at high level, working level, and between Secretariats. ACER's

relationships with ENTSOs and other stakeholders are a matter of hearsay and cannot appropriately be commented on. It is also not appropriate for Eurogas to comment on working relationships with NRAs, but the dedication of NRA representatives in the working groups points to a sound engagement, but as mentioned above there seem to be problems in sufficiently involving the NRAs of certain Member States. It is unlikely that the public at large is even aware of ACER's activities.

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)?

ACER looks to be adequately independent, certainly from industry, national Governments, and TSOs. Its independence from the Commission is more difficult to judge.

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

Eurogas is not aware of any problems in ACER's delivery on its tasks to date caused by lack of resources, but it is important that no resource problems arise with the budgeted resources on REMIT.

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?

ACER's communication has improved. The Secretariat and members find the newsletter an effective communication tool. The quarterly debriefings on ACER's activities are a good initiative.

However, that said, the process on the Tarification Code has been somewhat bewildering and also ACER's intended activities on incremental capacity are unclear. With regard to tariffs, the information on the agreement of part of the FG, while there was open consultation only on other parts was initially only clarified through personal contacts. With regard to incremental capacity, it is still unclear what we are to expect of a brief or shadow FG. Even the terms do not seem to be decided.

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?

The Secretariat visits the website regularly and member companies also consult it frequently. Sometimes we find that information is lacking, or not updated, and more background papers to the issues could be posted. ENTSG's website is a useful model.

There is confusion, however, because three addresses seem to be operating:

<http://www.acer.europa.eu/Pages/ACER.aspx>
http://www.energy-regulator.eu/portal/page/portal/ACER_HOME
http://acernet.acer.europa.eu/portal/page/portal/ACER_HOME

One website at one address should be organized.

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, the Secretariat/members have read ACER's documents. Their utility can be measured in relation to their role in the consultation process.

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?

Eurogas considers the documents of good quality at a technical level, and they furnish a clear basis for discussion.

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 it would help with the forward planning if workshops to be held in Ljubljana can be announced more in advance. Two centre workshops, or workshops that are webstreamed are recommended. Eurogas found the Q/A session on tariffs on 7 July a good model, well managed, accessible and informative.

7. Suggestions for improvement to ACER's working methods

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

- To ensure credibility of the process and acceptability of the Codes, ACER should take into account stakeholders' views, the earlier the better, but throughout the process. This was not the case on the bundled products controversy in CAM but balancing was a better experience. This may also be related to the governance issue, if individual NRAs have too much discretion in determining output.
- Try to avoid too many written consultations (with Tariffs, there have now been 3 formal consultations and the FG is still not ready).
- More face to face consultation with stakeholders is always welcome.
- Clarity about procedures, especially new procedures (e.g. Brief/Shadow FG) is essential.
- Taking account of the difficulties for many stakeholders in reaching Ljubljana based meetings, find creative alternatives.

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

The governance of ACER should be more independent from the NRAs. At the same time, sufficient independence from the Commission should be guaranteed. To what extent this requires changes to Regulation 713/2009 remains to be assessed.