

**CEER**

**Council of European  
Energy Regulators**



Fostering energy markets, empowering **consumers**.

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## **Guidelines on CEER's Public Consultation Practices**

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## General Remarks

1. The Council of European Energy Regulators' (CEER) public consultation guidelines, adopted in March 2011 and revised in April 2012, recognise 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 and transparency, consistency, and accountability;
  - the need for clear rules on confidentiality; and
  - the need to ensure a high quality to consultation including the use, when appropriate, of regulatory impact assessments.
2. In carrying out consultations, the CEER 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. The principles themselves will be reviewed regularly.
3. This revised version of the guidelines (v2, dated 24 April 2012) reflects some refinements following CEER's first review of its consultation rules and practices in Spring 2012. As well as drawing from our own experiences and reviewing best practice elsewhere, feedback was sought from respondents to our consultations through a variety of means including by e-mail and Twitter, an online poll (29 persons responded) and at a multi-stakeholder feedback meeting on CEER's consultation practices held in Brussels on 19th March 2012. In general, there was stakeholder acceptance of online questionnaires as being our standard form of consultation (with some suggestions for improvements). Our practice of providing feedback through an Evaluation of Responses and our efforts to facilitate stakeholder planning and engage stakeholders (e.g. through workshops) were appreciated. The improvements we have introduced relate mainly to the online questionnaire tool (increasing the technical limit and allowing respondents to upload position papers as background documents), singling out the voice of targeted groups in the Evaluation of Responses, providing more feedback on the process (e.g. Next Steps column in the online Public Consultation Calendar), and advocating best consultation practices generally by consulting bodies at EU level and better facilitating stakeholder planning.
4. CEER's consultations provide the basis for its policy recommendations. An EU-wide consultation may, however, be reinforced by national or regional consultation to ensure that any particular concern may be adequately explored and represented. Such consultation will not, however, replace the CEER consultation nor will it be permitted to delay the timetables agreed for that consultation.

## Principles of Consultation

5. On whom they consult, Regulators will, wherever appropriate:
  - i) consult the full range of interested parties, including producers, network operators, suppliers and consumers as appropriate;

- ii) make consultation proposals widely known and available through all appropriate means but most particularly, on the internet;
- iii) consult at national, regional, European and international levels; and
- iv) make interested parties aware by appropriate means such as the web or targeted communication when the public consultation part of the CEER website has been updated.

6. On when they will consult, Regulators will:

- i) publish forward an annual work programme to inform all interested parties of the planned consultations;
- ii) maintain on its website a rolling 6-month calendar of public consultations;
- iii) organise, upon request, informal discussions at an early stage with those most directly affected, recognising the limited resources that are available for this;
- iv) consult at a sufficiently early stage to take responses into account;
- v) allow those consulted adequate time to respond, taking account of the complexity of the issue and any deadlines set. An eight-week minimum period will normally be set for consultation. The maximum consultation period permitted will be four months in order to ensure that the process of policy formation is not unduly delayed.

7. On how they consult, Regulators will:

- i) provide an opportunity for interested parties to comment on proposals where the Regulators themselves initiate major new pieces of work or following a request for advice from the European Commission;
- ii) when necessary, indicate publicly their thinking on specific initiatives at various stages, (including the use of concept releases) to test preliminary analysis or thinking;
- iii) produce reasoned consultative proposals 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) will, whenever appropriate establish consultative working groups of experts, in addition to the present structure of working groups (see annex);
- v) use a variety of tools including public hearings/roundtables/workshops and, most commonly, internet-based consultations which require respondents to submit responses using an online questionnaire exclusively. This does not preclude respondents from submitting a background document (e.g. an e-mail, letter or a maximum 10-page document), which could be uploaded alongside the online response, which may complement and better explain their position. However, these will be treated as supplementary background documents. In the Evaluation of Responses, Regulators will only react to the online responses and not to other material uploaded by respondents or submitted by e-mail or any other means;
- vi) indicate clearly in the online consultation the character limit per answer box: the deadline for responding, and other relevant information, including the timing of the next steps; and
- vii) use appropriate processes in order better to target consultations at those who are most affected (this will include the use of bilateral discussions, as well as Florence, Madrid and London EU Regulatory Fora on electricity, gas and citizens' energy issues respectively).

8. On how they provide feedback to the consultation, Regulators will:
- i) indicate on the website and/or in the public consultation document the next steps in the process (e.g. inform when the non-confidential responses, the Evaluation of Responses or Conclusions Paper are likely to be published);
  - ii) give appropriate consideration to all responses received;
  - iii) make public all non-confidential responses to formal consultations and the total number of all responses;
  - iv) make public an Evaluation of Responses which explains by way of short summaries of aggregated responses, per topic: (a) the reasons why comments have or have not been taken on board in respect of major issues; (b) whether the CEER position is based on confidential information and why the relevant information cannot be disclosed;
  - 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 (normally in the form of a Conclusions Paper or in the form of non-binding CEER Guidelines of Good Practice (GGP), including advice to the European Commission.
9. 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 although feedback from the specific target audience (and, where appropriate, bodies representing households and small energy customers) may be highlighted and singled out 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.
10. In respect of the Florence, Madrid and London Fora (as well as the Athens and other Fora), the Regulators:
- i) recognise the importance of these fora in the overall consultation process;
  - ii) will ensure that all relevant CEER 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 Commission; and
  - iii) encourage participants to provide regular assessments of developments in electricity and gas markets.

## **Reviewing best practices and consultation planning at EU level**

11. Recognising that review is an integral part of the consultation process and leads to best practices, the Regulators:
- i) will review these consultation guidelines and CEER's consultation practices on a regular basis to ensure that CEER's consultations are as effective as possible;
  - ii) will continue to experiment with new tools in their consideration of how CEER's consultation practices can evolve (e.g. opinion polls, etc.) taking account of technological developments and social media;
  - iii) will continue to champion the importance of good consultation practices and encourage stakeholders themselves to contribute to the communication of why transparent, effective consultation is important.
  - iv) will, through CEER, work closely with the Agency for the Cooperation of Energy Regulators (ACER), the European Network of Transmission System Operators for Electricity (ENTSO-E), the European Network of Transmission System Operators for Gas (ENTSOG), and (where appropriate) the European Commission, in an effort to improve consultation practices and planning at EU level to the benefit of stakeholders.