

## **GIE answer to European Commission's consultation on ACER evaluation under Article 34 of Regulation 713/2009**

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### **Introduction**

The [Third Energy Package](#) has set up a new institutional framework which includes the establishment of the Agency for the Cooperation of the Energy Regulator (ACER) through [Regulation 713/2009](#).

ACER plays a central role in the development of EU-wide network and market rules with a view to create a single Internal Energy Market. It coordinates regional and cross-regional initiatives which favour market integration. The Agency monitors the work of European networks of transmission system operators (ENTSOs) and notably their EU-wide network development plans. Finally ACER monitors the functioning of gas and electricity markets in general, and wholesale energy trading in particular. This last task had been added by the [Regulation \(EU\) No 1227/2011](#) on Wholesale Energy Market Integrity and Transparency ("REMIT"). There are also additional tasks envisaged for ACER in the recently adopted [Regulation on guidelines for trans-European energy infrastructure](#) ("EIP").

Article 34 of Regulation 713/2009 requires the Commission to carry out an evaluation of the activities of the Agency. The evaluation shall cover the results achieved by the Agency and its working methods, in relation with its objective, mandate and tasks defined in Regulation 713/2009 and in the Agency's annual work programs.

GIE welcomes the opportunity to respond to the public consultation and to assess the ACER's work developed during the last years.

### **Who is GIE?**

Gas Infrastructure Europe (GIE) is an association representing the sole interest of the infrastructure industry in the natural gas business such as Transmission System Operators, Storage System Operators and LNG Terminal Operators. GIE has currently 69 members in 25 European countries.

GIE voices the views of its members vis-à-vis the European institutions, regulators and other stakeholders. Its mission is to actively contribute to the construction of a single, sustainable and competitive gas market in Europe underpinned by a stable and predictable regulatory framework as well as by a sound investment climate.

### **Answers to consultation's questions**

#### **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)

### 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?

Positive

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

GIE very much appreciates the good efforts made by the Agency although recognises there is always room for improvement. GIE feels that ACER could have given a better global and strategic vision on all codes and the links between the different codes. Early identification of the interactions between the various codes and existing/upcoming Regulations would have helped to prevent the risks of overlapping or contradiction. In this sense, the Target Model process was initiated too late. It would have been desirable to have it as a basis for the Framework Guidelines (FG) and Network Codes (NCs). Even more, it is not totally clear now at which stage the Gas Target Model is, how it is going to be handled (by CEER, ACER, both?) and what its real scope is.

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

As regards the gas sector, the early involvement of ACER in the development of the network codes is crucial. The involvement of ACER within the Balancing Network code development process has been well made. However, this was not the case with CAM NC process, where ACER demanded at the very end of the process to include modifications which had not been subject to stakeholders' discussion.

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

As for gas, and as explained in b), ACER could have given a global and strategic vision on all codes and their interlinks. Consequently the Framework guidelines issued by ACER,

and their opinion concerning network codes, did not take into account the links between them.

Moreover, the internal processes of ACER could be more transparent. More specifically, GIE would appreciate having more transparency about the development of documents delivered by ACER. Besides, there are occasions when ACER publishes a document without a clear explanation or reasoning behind it which might help the stakeholders to understand the views and opinions of the Agency. This is counterproductive for the overall regulatory process as well as for the good involvement of the stakeholders.

GIE also believes that ACER should be able to have a higher rigour with respect to the evaluation of different policy options. Higher transparency on the reasons and arguments to support one specific option against others would be highly appreciated. Thus, GIE thinks that a good reasoning and argumentation accompanying the ACER publications, and explaining the fundamentals and logic behind each ACER action would be needed.

On the other side, GIE notes that ACER tries to involve the stakeholders in its activities through workshops and (formal/informal) public consultations. However, it is sometimes quite difficult to understand the links between the consultations made by ACER and the resulting conclusions being published later (or reflected in the final documents). In GIE's views, ACER could also better explain the reasons to accept/decline the requests/recommendations made by the stakeholders.

Disappointments and inefficiencies could be avoided if ACER was more binding in informal communication e.g. in the course of bilateral meetings and consultations.

#### 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?

In general terms, GIE agrees with the proposed priorities.

Nevertheless we believe that the Agency needs to build within 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.

Moreover, the workload linked to the ACER activity has been increasing significantly over the last years and it is accompanied on many occasions with tight deadlines. Gas Infrastructure operators find it hard to duly react to such a heavy task, which turns out to be very costly. In addition, small infrastructure operators experience some difficulties to react on a timely basis, some of them having even given up.

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

Yes, although we note sometimes delays (e.g. Tariff Framework guideline delivery)

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

In general terms, yes, GIE believes that ACER has carried out its work programmes.

#### **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?

GIE thinks that stakeholders still perceive no clear roles and clear borders between ACER and CEER. There is too much overlapping of representatives between both organisations, some of them speaking (even at the same event) sometimes on behalf of ACER, sometimes on behalf CEER. This creates confusion among market stakeholders.

- 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?

GIE thinks that NRA cooperation could be improved. For instance, there seem to be too many co-chairs. Some NRAs are more active in ACER than others. It would be beneficial to ensure that all NRAs are equally involved and contribute in an equal manner to the ACER processes.

- 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?

As mentioned above, there is still some room for improvement for ACER in terms of working relationships, in particular with stakeholders. A more streamlined way of interacting with stakeholders and greater transparency would be beneficial.

- 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)?

GIE believes that ACER is independent from companies, Governments and TSOs. Regarding the Commission, GIE recognises that ACER is accountable to EC (as well as to the European Parliament and Council).

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

GIE notes that since its foundation, ACER has significantly increased its budget and staff. Whereas this reflects an increase in ACER's workload, GIE believes this trend is not sustainable, particularly considering the economic crisis, as well as the fact that this increase in ACER's work will lead to an even greater workload for infrastructure operators. GIE is of the opinion that ACER should stabilize its budget and staff.

Currently, the operators have a hard time coping with the existing consultations/regulations and adapting to the ever changing rules. Big operators find it difficult to manage efficiently a too ambitious programme. This problem is, of course, even greater for small operators.

ACER has to deliver the tasks and outputs which are fixed in the EU regulations. Moreover, ACER has to ensure a high quality in the development of all its deliverables. However, ACER is not expected to be a European regulator, but a platform for the cooperation of NRAs. Therefore, instead of increasing the budget/staff of ACER, the NRAs should contribute more to ACER tasks. NRAs could dedicate more resources to ACER's work and ACER staff would coordinate this work. This would avoid ACER having to recruit additional staff while ensuring a high-quality output.

European Regulations and Network Codes specify the responsibilities and competencies of ACER's and national NRAs. However, in everyday life the question of authority needs a clear answer in order to avoid f.e. double reporting and data provision by system operators.

Regarding budget, ACER would ideally need, within the same total budget, to reallocate some of its expenses. Travelling, event organization and communication should be given more importance within the budget.

Whilst it is important sometimes to go to the seat of the Agency, on other occasions, there might be merit in ACER travelling more in order to optimise all industry players' travel. This may well imply that more ACER activity should be conducted in Brussels.

GIE is also of the opinion that ACER has room for re-arranging its internal activity and for seeking better organisation and higher efficiencies, whilst focusing its work on really important matters.

Furthermore, as said before, GIE acknowledges that ACER has a great responsibility in delivering the tasks that are envisaged in the EU regulations. For this reason, GIE thinks that well-trained, experienced and professional staff is essential. Moreover, GIE also perceives from time to time, an absence of senior management behind ACER activities. GIE would support having both the ACER Director (and the Head of Unit) more involved in the day-to-day regulatory activities of the Agency.

## 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?

GIE follows ACER activities and tries to be informed about all its activities. In this sense, an e-mail alert or ACER newsletter is the best way to be informed. Twitter would be also very welcome as CEER is currently doing.

- 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?

GIE strongly believes that ACER's website should be drastically improved. It is difficult and very time-consuming to find documents and publications. The website is not intuitive or user-friendly at all. Some parts of the membernet are displaying outdated information (e.g. click [here](#) to see an invitation to answer a public consultation closed 1 year ago) or the information is duplicated in two different parts of the website which creates a lot of confusion. For instance, there are two different sections for Framework Guidelines at the ACER's website (under GAS section and under Acts of the Agency). There is not clear order for the documents and on occasions the documents are displayed in sections out of their scopes.

Finally, it is difficult to identify all the documents corresponding to all the tasks that ACER has got according to the different EU regulations on the website. Offering this information would be very helpful.

- 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, GIE follows the activity of ACER, and reads all those documents especially those who have a more direct impact on GIE members' businesses.

GIE sees an overlapping between the market monitoring activities of ACER and the market monitoring activities of DG ENER.

- 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?

The qualities of the ACER's documents have been improving during the last years. In general we think that the documents are properly drafted. However, sometimes GIE has the impression that the ACER's documents are a "pancaking" of different NRAs opinions, without a homogeneous approach. This also applies to the terminology used by ACER.

- 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?

GIE thinks that ACER workshops should be significantly 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.)

GIE has the impression that ACER has not always consulted at an early stage, as requested by the regulation 713/2009. ACER has the practice of running informal consultations on very important matters. It would be appreciated that ACER produces guidelines for

carrying out these “informal consultations”, so that they are better structured and allows for better engagement and contribution from the stakeholders.

Regarding public consultations, ACER sometimes publishes the answers received. However, it would be desirable that ACER also publishes its own analysis of the answers received. On several occasions, ACER has not taken into account the views expressed by a majority of the workshop participants, without giving detailed reasons or explanations.

GIE also believes that the framework guidelines should be more flexible, so that they can evolve during the ENTSO process where appropriate.

Finally, GIE would also like to call the attention on the ad-hoc expert groups that ACER set-up on regular basis for each framework guideline process or other developments. The constitution and selection of the members for these expert groups lacks of enough transparency and it is not subject to public and objective selection criteria. Moreover, the operation and conclusions of these groups are not made public and the members are not allowed to externally report on them.

Given the major influence that these expert groups have on ACER’s work, GIE would advocate for more transparency and objectivity on the composition and outcome of these expert groups.

## 7. Suggestions for improvement to ACER's working methods

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

- It would be useful that ACER opens a representation in Brussels and have representatives closer to the Brussels institutions, ENTSOs and stakeholders. This would allow ACER organise more workshops and interactions with stakeholders in Ljubljana. Flying to Ljubljana is very expensive and not convenient for the majority of the stakeholders. This should be done without increasing the budget (see our proposal on reallocation of expenses).
- It would be appreciated that ACER is more directly involved in the drafting process of the NC in close cooperation with stakeholders and ENTSOG.
- ACER should better engage with the stakeholders, setting up more organized workshops/meetings and giving enough time to the stakeholders to prepare their answers. The practice of giving stakeholders only a few days after a workshop to submit their answers is not credible and it is detrimental for the whole regulatory process.
- ACER’s total budget should be reallocated (not increased), in order to allow its staff to participate at relevant events in Brussels or elsewhere
- More NRAs should be involved in the ACER’s work. Only a few NRAs are really involved in the ACER’s work, while many NRAs are not significantly contributing to it.

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



The regulation could also be changed to allow a double seat of the Agency (Ljubljana and Brussels) or at least the possibility of having a representation in Brussels, provided this does not lead to an increase in ACER's budget, but to a reallocation of priorities.