

## Annex – Internal Guidelines to WGs/TFs on Public Consultation Practices

### Version 4, 17 March 2011

**Purpose of this document:** This Internal Guideline contains advice to WGs/TFs Chairs on how to implement in practice the Guidelines on CEER's public consultation practices (C07-EP-16-03) of 17 March 2011, which are public on the website. This is a comprehensive standalone document so there is no need to cross check against the version on the website.

#### **Rules on conducting public consultation:**

The WG/TF responsible for a public consultation should conduct consultations in line with the Guidelines on CEER's public consultation practices (C07-EP-16-03) of 17 March 2011 and with the GA agreed rules on quality and transparency (C09-GA-49-11) of March 2009; recognising in particular:

- All CEER public consultations should be concluded within a maximum of 5 months of the launch of the consultation (including the standard 8 weeks consultation period for receipt of responses).
- Stakeholders can be consulted in a variety of forms such as the tried and tested standard Public Consultations of CEER and Calls for Evidence. When a full public consultation is not appropriate, Feedback Statements can be used to solicit views from stakeholders (i.e. in which case no conclusions document is required).
- Public consultations shall be publicly announced in the Annual Work Programme and in the rolling 6-month calendar of current and forthcoming consultations.
- TFs must use the public consultation templates for (1) CEER public consultation/conclusions papers, (2) draft Guidelines of Good Practice (GGP) for public consultation/conclusion.
- When concluding a consultation, there must be a proper Evaluation of Responses either within the core Conclusions Paper itself or as a separate standalone document. A summary of the responses received is **not** sufficient.

Some of the key features of the Public Consultation Templates include:

- A maximum 40-page document for all public CEER reports.
- An Information Page (identifying target audience etc.), a 2-page max. Executive Summary and a List of abbreviations (clearly explaining acronyms and abbreviations used in the document).
- The document must have an Introduction which (a) identifies the **problem**; (b) sets out the objective and **purpose** of the consultation (referring to any related papers that have been published); and (c) contains a **list of questions** for consultation.
- Question must be included in all public consultations – in the Evaluation of Responses, this will be a Recap of the Consultation Questions.
- The document must have a Conclusions chapter (which “wraps up” the main findings, highlights the recommendations and issues arising from the paper, and outlines the next steps including a timetable). In the case of a Conclusions Paper, the Conclusions chapter should summarise the key conclusions of the document.
- Where appropriate, it is important to explain how this CEER consultation fits in the context of other consultations (e.g. by the European Commission/European Network bodies of Transmission System Operators (ENTSOs)).

### On the period and timing of consultation:

A standard 8-week consultation period should be applied, but allowances should be made during holiday periods as respondents might need more time to get internal agreement from their members on their positions.

The overall duration of a public consultation exercise should last no longer than 5 months (including the 8-week consultation period). For example, if a public consultation follows the standard 8-week period from 2 January – 27 February 2009, the consultation should be concluded within a further 3 months (i.e. Evaluation of Comments and Conclusions Paper published by 2 May 2009). If for some reason the consultation will be delayed or never concluded, then the GA should be informed and an explanation posted on the website

#### 1. On whom they consult, Regulators will, wherever appropriate:

- i) seek to consult the full range of interested parties such as network users (generators, suppliers and traders) and market participants, Transmission System Operators (including the EU TSO bodies), System Storage Operators, LNG System Operators, Distribution System Operators, consumers, end-users, Member States, competition authorities, policy makers and the general public. The views of individual companies as well as views from their EU associations will be sought. To do so, Regulators will make consultation proposals widely known and available through all appropriate means, but most particularly via the internet [**Note – TF Chairs should specify the target audience in the Information Page, and also advise the Secretariat if specific groups (other than the usual stakeholders) need to be directly informed**];
- ii) in addition, Regulators will seek to inform those parties directly affected by making clear the target audience in the public consultation document. Regulators will make interested parties aware by appropriate means such as the web or its subscriber mailing list, when the public consultation section of the website has been updated;
- iii) consult at national, regional, European and international levels.

#### 2. On when they consult, Regulators will:

- i) publish **in advance** the annual work programme indicating the **forthcoming consultations for the year ahead** to inform all interested parties of the planned consultations [**Note: The internal Work Programme states the month of the year when the deliverable is due to be completed. Furthermore, it signals whether or not a public consultation and/or a public hearing/workshop is foreseen. It should also define the type of consultation (e.g. standard consultation, call for evidence)**];
- ii) publish a calendar of future public consultations on the website or using other means (such as the monthly *European Energy Regulators News* newsletter) [**Note: Each WG will confirm (to Secretariat each month) the date of future consultations 6 months in advance for the rolling 6-month calendar of consultations**];
- iii) organise, where appropriate, informal discussions at an early stage;
- 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 consultation period will normally be set. In practice, proper allowance needs to be made for the complexity of the issue under consideration and the time of the year consultations are conducted.

The maximum consultation period permitted will be four months, in order to ensure that the process of policy formation is not unduly delayed. **[Note: The consultation must be completed within 5 months.** For example, if a public consultation follows the standard 8-week period from 2 January – 27 February 2009, it should be concluded within a further 3 months (i.e. Evaluation of Responses and Conclusions Paper published by 2 May 2009). If for some reason the consultation will be delayed or never concluded, then the GA should be informed and an explanation posted on the website.]

3. On how they consult, Regulators will:

- i) provide an opportunity for interested parties to comment on proposals where the Regulators initiate major new pieces of work or following a request for advice from the European Commission. Consultation exercises can take a variety of forms, including **calls for evidence** and **full public consultations**, as a function of the nature of the work in hand. A Call for Evidence<sup>1</sup> should be organised, where appropriate. The type of consultation will be clearly defined at an early stage and in the Regulators' work programme where possible. [Note in other circumstances, **for example a Status Review or a Monitoring report, the full public consultation is not appropriate, hence Feedback Statements can be used to solicit views from stakeholders** (i.e. in which case no conclusions document is required following the responses received and, no specific deadline is set for the receipt of comments)];
- ii) when necessary, indicate publicly their thinking on specific initiatives at various stages, to test preliminary analysis or thinking;
- iii) produce reasoned proposals to be consulted upon, 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) whenever appropriate, **establish *ad-hoc* consultative groups of experts**. In particular, when consideration is given to future legislation and on technical content issues, an *ad-hoc* group of experts that may be consulted may be created. This consultation will supplement the written consultation of stakeholders;
- v) use a variety of tools, including public hearings/roundtables/workshops and, most commonly, internet-based public consultations;
- vi) publish clear, concise and reasoned documents that are easy to read. Special formats and standard templates (**including a summary of key questions**) should be used. The length of a consultation document **should not exceed 40 pages** (excluding annexes).

4. On how they respond to consultation, Regulators will:

- i) give appropriate consideration to all responses received;
- ii) make public all non-confidential responses to formal consultations and the total number of responses received;

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<sup>1</sup> A "Call for evidence" is usually conducted at the very beginning of the development of a new policy proposal. It consists of a short document with a few questions. It is usually "internet based". Calls for evidence are used to gather evidence. The outcome is a fact finding report.

- iii) make public the final CEER position following the consultation (e.g. conclusions paper) including an **Evaluation of the Responses** received explaining the reasons why comments have or have not been taken on board in respect of major issues. Wherever the CEER position is based on confidential information, it will state why the relevant information cannot be disclosed;
- iv) publish the results and proceedings of public hearings/workshops;
- 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, including advice to the European Commission.

8. 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;**
- iv) carry out an evaluation of responses in a transparent way to all third parties without undermining their confidentiality rights as protected herein.

9. Following a public consultation, the Evaluation of Responses must be carried out. It must specify what the CEER position is in response to the comments received. **A summary of responses is not sufficient.** Evaluation of Responses can be either within the core Conclusions Paper itself (as an Annex) or as a separate standalone document. In any case the **Evaluation of Responses** document should follow the structure as specified in the templates (see below).

Typical format for the Evaluation of Responses to a public consultation:

- **Introduction**
  - (a) Recap of the CEER Consultation Paper;
  - (b) Responses received - here list the non-confidential respondents (organisation's name and abbreviated name), state if any confidential responses were received (in accordance with Paragraph 8 of the Guidelines on CEER public consultation practices (C07-EP-16-03)).

Responses were received from the following organisations:

Organisation	Abbreviated name
The Very Important Electricity Company of East Sussex	VIECES
Joe Bloggs Ltd	JBL

Organisation	Abbreviated name
Etc.	

Table 1 – List of Respondents

- **Evaluation of Responses**

- (c) Full evaluation of responses received, subdivided by subject from the public consultation document. This section should give the reasons why comments have or have not been taken on board in respect of major issues. The comments may be anonymised **i.e. not linked to specific respondents in the evaluation of responses.**

Consultation [question/issue] 1: [text of question/description of issue]

Respondents' views	CEER's position	Explanation
A number of respondents thought...	Agree/Disagree	
One respondent thought...	Agree/Disagree	

Consultation [question/issue] 1: [text of question/description of issue]

Respondents' views	CEER's position	Explanation
A number of respondents thought...	Agree/Disagree	
One respondent thought...	Agree/Disagree	

If the Evaluation of Responses is a standalone document, its title and referencing shall follow the following format [title of public consultation – Evaluation of Responses (e.g. Gas Balancing - Evaluation of Responses)]. In addition, the document's reference numbers should match the original public consultation number (e.g. Consultation document C11-IBP-xx-03; Evaluation C11-IBP-xx-03a and Conclusion C11-IBP-xx-03b).