

## **ENTSOG's Response to ACER's Document for the Consultation Template foreseen by Article 26(5) of the TAR NC**

Approved by ENTSOG's Board on 7 June 2017

### Summary

ENTSOG welcomes the opportunity to respond to ACER's document for the consultation template for national tariff consultations as laid out in Article 26(5) of the TAR NC.

In general, ENTSOG supports the content and structure of the proposed consultation template. The two main reservations ENTSOG has are: (1) ACER's consultation template must not be obligatory for use in the national consultations; and (2) the submission process to ACER must be further clarified. These reservations are based on the legal text of the TAR NC and are further explained in our answers below.

ENTSOG's response is structured in the following way:

1. **Part 1:** this document includes answers to three consultation elements and two consultation questions highlighted by ACER on page 2 of their document. **Attachment 1:** additionally, and for enhanced user-friendliness, ENTSOG submits a version of ACER's document with some comment boxes included. The comment boxes contain responses to Element 3 and Question 2 of ACER's document highlighted in yellow and grey.
2. **Part 2:** also, this document includes answers to two additional requests submitted by ACER via email on 25 May. **Attachment 2:** as requested, ENTSOG forwards to ACER some TSOs' files corresponding to additional requests.
3. **Part 3:** ENTSOG provides some reactions to comments mentioned at ACER's Open House of 23 May. **Attachment 1:** a version of ACER's document with some comment boxes mentioned above also includes additional remarks not captured by Part 1.

ENTSOG will publish this document and Attachment 1.

ENTSOG is looking forward to discussing with ACER our response to their document at the earliest opportunity. It is essential for ENTSOG to have such discussion or else to receive an early written communication from ACER as it will help us to understand whether and how ACER plans to consider our comments. The development of the consultation template is an important contribution to harmonisation and therefore, it is in our mutual interest to find a compromise solution for the consultation template and recommend it for use by TSOs and NRAs in the national consultation processes.

### Contact details

Should you have any questions on this ENTSOG's response, please contact Irina Oshchepkova via [Irina.Oshchepkova@entsog.eu](mailto:Irina.Oshchepkova@entsog.eu).

## Part 1. Consideration of Elements and Questions in ACER's document

Element 1	On the procedure
<ul style="list-style-type: none"> <li> <p>• <b>Consultation template appears to be obligatory for the use by TSOs/NRAs:</b> ENTSOG would like to point out that ACER's consultation template must not be presented as obligatory. Nothing in Article 26(5) of the TAR NC suggests that the consultation template developed by ACER is obligatory. ACER's document is not clear on this. On the one hand, on page 2 of ACER's document, it is stated that ACER's consultation template, in the form of the online tool, 'could' be included in the national consultation document. However, on the other hand, on page 5 of ACER's document it is suggested that should an approach other than ACER's consultation template be used, 'the nature of the deviation' must be provided. Additionally, on the same page of ACER's document it is stated that should a completely different approach rather than ACER's consultation template be used, it is nevertheless necessary to consider filling in ACER's consultation template. ENTSOG is of the opinion that these two statements on page 5 of ACER's document must be removed. Instead, it is necessary to clarify that ACER's consultation template is not obligatory for use and any other solutions – be they amendments to ACER's consultation template or a complete new approach – are possible. At the Open House session of 23 May, ACER noted that the use of the template is not mandatory for the consultation, and ENTSOG would like to see it clearly stated when the final template is published.</p> </li> <li> <p>• <b>Consultation template as an online tool must not be rigid:</b> ENTSOG understands that ACER has chosen to present the consultation template in the form of an online tool. However, ENTSOG believes that a more detailed explanation of how the online tool will function is needed. Furthermore, the online tool must be flexible enough for consultation purposes (e.g. by having as many 'free text' areas as possible) so that it can be customised per given TSO/NRA needs. If the online tool is not flexible, it might lead to the undermining of an effective and complete consultation process.</p> </li> <li> <p>• <b>Consultation template as an annex to a national consultation document is practical:</b> if a TSO/NRA chooses to follow ACER's consultation template (as proposed by ACER or as amended) or follows an alternative approach, ENTSOG believes that it may be of added value to include the filled-in template as an annex to a national consultation document. Having such an annex will: (1) serve as a checklist for a TSO/NRA whether all relevant information required by Article 26(1) is included in the national consultation document; and (2) ease the search of the relevant consultation information.</p> </li> </ul>	

The topic of ACER's publication of completed and submitted consultation templates is discussed in Element 2 as it is a consequence of 'submission of the online template to ACER' (please see last bullet point in Element 2 below).

Element 2	On the submission of the online template to the Agency
<ul style="list-style-type: none"> <li> <p>• <b>Submission of the consultation template to ACER must not become a substitute for submission of the final consultation documents to ACER:</b> ENTSOG expresses its concerns regarding ACER's interpretation of the TAR NC. Article 27(1) of the TAR NC explicitly states that what is supposed to be submitted to ACER 'upon launching the final consultation' – is 'the consultation documents'. Yet, it appears that instead of the final national consultation documents, a TSO/NRA must submit to ACER the completed consultation template. Moreover, in ACER's document it is stated that 'the means', i.e. the only means, of the submission is the proposed online tool. The online tool must not be the only medium to submit the final national consultation documents to ACER (e.g. sending them by email should also be possible) as there should be alternatives to choose from to make the process more user-friendly and flexible. At the Open House session of 23 May, ACER noted that the submission of the template is not mandatory to ACER and is not a substitute for the submission of the final consultation documents to ACER (unless the final consultation documents equal the completed consultation template), and ENTSOG would like to see it clearly stated when the final template is published.</p> </li> <li> <p>• <b>Absence of consultation with ENTSOG regarding draft guidelines on 'files' for submission to ACER as final consultation documents:</b> as mentioned in the first bullet point above, the TAR NC obliges a TSO/NRA to submit to ACER the final national consultation documents. Such consultation documents may be structured as per the template developed by ACER. From ACER's consultation document, ACER seems to interpret this task as developing the online tool that, once completed, can be annexed to a national consultation document. However, on top of such interpretation, ACER intends to 'provide guidelines' 'on the format of the files to submit'. These 'files to submit' appear to govern the structure of the final national consultation documents. Therefore, we conclude that ACER will develop additional templates on top of the currently consulted one. But it is not stated anywhere in ACER's document that such 'guidelines' will be consulted with ENTSOG and made available by 5 July 2017 as required by the TAR NC. ENTSOG cannot support additional templates unless consulted with ENTSOG in a timely manner.</p> </li> <li> <p>• <b>Not clear how to submit the final consultation documents to ACER via the consultation template:</b> ACER states that the online tool must be used for submitting the national</p> </li> </ul>	

consultation documents. However, on page 5 of ACER's document, ACER requests that the documentation should be submitted through the listed file types. The TAR NC requires the submission of the final national consultation documents to ACER. It is not clear for ENTSOG how the consultation template developed by ACER will collect the final national consultation documents. We recommend that the link between the template and the national consultation is made clearer. At the Open House session of 23 May, ACER noted that it will be possible to send the final consultation documents by other means and that the consultation template can attach the final consultation documents, and ENTSOG would like to see it clearly stated when the final template is published.

- **Only final national consultation documents must be submitted to ACER:** as stated above in the first bullet point, the TAR NC obliges the submission of the consultation documents associated with the final national consultation to ACER. The TAR NC provides for an option to have intermediate national consultation(s) covering all/some elements of Article 26(1). However, the final national consultation must include all the elements of Article 26(1) even though they have been subject to the previous intermediate national consultations. Yet, on page 3 ACER suggested that the 'final consultation shall compile the previous consultation documents'. Such a request does not have a legal basis in the TAR NC and also, makes little sense as in any case, the final national consultation documents must cover all the elements of Article 26(1). Therefore, we do not agree that all intermediate consultations need to be sent to ACER. At the Open House session of 23 May, ACER noted that it is not necessary to send the intermediate consultation documents, and ENTSOG would like to see it clearly stated when the final template is published.
- **ACER's publication of completed and submitted consultation templates must not substitute for the publication of the final national consultation documents:** it is not clear why ACER suggests to publish only the completed and submitted consultation templates rather than the submitted final national consultation documents. What is important for the publication is the final national consultation documents submitted to ACER rather than the completed consultation templates. The consultation template may or may not be used, whereas the final national consultation must take place in all Member States. Therefore, ACER's publication of only the completed and submitted consultation templates – and not of all the final national consultation documents – will result in an incomplete picture of national consultations throughout the EU. The TAR NC does not foresee that ACER must publish the submitted final consultation documents – however, such documents are anyhow publicly available and then submitted to ACER. ACER's publication of all the final national consultation documents is deemed useful as it will allow having all final national consultation documents in one place. ACER's publication of the completed and submitted consultation templates is welcomed by ENTSOG but must not substitute for ACER's publication of all the submitted national

consultation documents. At the Open House session of 23 May, ACER noted that the publication of the templates will not be a substitute for the publication of the final consultation documents (unless the final consultation documents equal the completed consultation template), and ENTSOG would like to see it clearly stated when the final template is published.

<b>Element 3</b>	On the content of the template
<p>ENTSOG checked the content of the template and concludes that it is largely in line with the content of Article 26(1) of the TAR NC.</p> <p>ENTSOG welcomes the structure of the consultation template per Article 26(1). ENTSOG also welcomes the idea of having cross-references to a given page in the consultation document as it is not possible to fit some information in the cells of the consultation template.</p> <p>ENTSOG also believes that it is useful to have the fields 'not applicable' where a given element of Article 26(1) does not fit the TSO/NRA consultation proposal. However, we do not think it is necessary to provide an explanation where a given element of the consultation template is not applicable. Non-applicability may be already self-explanatory, and where it is not self-explanatory enough, there should be an optional field to provide additional clarification.</p> <p><b>Attachment 1:</b> In certain instances ENTSOG has noticed that sometimes ACER's consultation template goes beyond Article 26(1) and ENTSOG's proposal. These instances are highlighted in comment boxes in the included in ACER's draft document. The high priority comments are highlighted in yellow, and the low priority comments – in grey. ENTSOG invites ACER to provide ENTSOG with their reasoning where ACER's consultation template goes beyond Article 26(1) of the TAR NC. We do not think the template should go beyond the TAR NC.</p>	

<b>Question 1</b>	Will ENTSOG recommend TSOs to include the resulting template as part of their consultation?
<p>Yes, ENTSOG will recommend the use of the consultation template by TSOs in national consultation processes on the assumption that ENTSOG's comments on its content are taken on board in the final version.</p> <p>Also, it must be clarified that such a template is not obligatory and TSOs/NRAs may amend the template as they need or may use a completely different approach.</p>	

ENTSOG also would like to understand whether ACER would recommend the use of the template by NRAs in national consultation processes where it is NRA who is responsible for consultation.

<b>Question 2</b>	Are the consultation requirements based on Article 26, as it is laid out in this template, in line with the ENTSOG's understanding of the article?
Please see our answer to Element 3 above.	

## Part 2. Response to additional requests by ACER

<b>Additional request 1</b>	ACER will extend the reach of the template to include several 'template files' to be proposed for the input to the RPM. These files would include the technical parameters described in Article 30(a)(i-iv). For this purpose, ACER would like to request examples of such files to ENTSOG.
<p>ENTSOG welcomes the intent of ACER to further harmonise the consultation template. However, ENTSOG believes that since it is ACER's task to develop the consultation template per Article 26(1), and now that ACER requests additional examples of template files – ACER should develop the first proposal for such template files for technical characteristics of transmission system and send it to ENTSOG for comment.</p> <p><b>Attachment 2:</b> ENTSOG would like to point out that currently, it is possible to extract information on capacities and flows from ENTSOG's Transparency Platform in an excel format.</p> <p>In the spirit of cooperation, ENTSOG hereby submits to ACER some TSOs' files corresponding to the following technical characteristics of transmission system: technical capacity, forecasted contracted capacity, quantity and direction of the gas flow, structural representation of transmission network. These files are in different format: spreadsheet (.xls), document (.doc) or an extract of a given TSO online tool (.doc/.pdf). ENTSOG notes that in some MSs, it is the NRA who is responsible for structuring and publishing such data.</p>	

<b>Additional request 2</b>	<p>ACER would like to request ENTSOG TSO calculations of the following articles whenever they are available:</p> <p>Article 5: Cost allocation assessment</p> <p>Article 7: Choice of reference price methodology</p>
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	Article 8: CWD methodology
<p>Same as above, ENTSOG welcomes the intent of ACER to make the consultation template reasonably detailed and useful for stakeholder use. For Article 5 and 8, ENTSOG invites ACER to refer to ENTSOG's Implementation Document published in March 2017.</p> <p><b>Attachment 2:</b> In the spirit of cooperation, ENTSOG hereby submits to ACER the excel files for the calculations for Article 5 and 8 used in the Implementation Document.</p> <p>Also, ENTSOG submits some TSOs' files corresponding to ACER's requests. ENTSOG would like to point out that TSOs are currently in the process of making the calculations and the draft files are preferred not to be shared.</p>	

### Part 3. Additional comments by ENTSOG

ENTSOG deems it opportune to react to some comments raised by stakeholders during ACER's Open House Session of 23 May:

- Consultation on revenue parameters:** ENTSOG underlines that Article 26(1) of the TAR NC outlines only the following requirements for consulting on TSOs' allowed/target revenues: indicative allowed/target revenue, indicative transmission services revenue, indicative splits of transmission services revenue (capacity/commodity, entry/exit, cross-system/intra-system). Therefore, the revenue parameters such as RAB, WACC etc. are not subject to consultation per minimum TAR NC requirements. If a TSO/NRA chooses to consult on revenue parameters, nothing prevents them from doing so – however, it is not required by the TAR NC. The stakeholder concerns regarding absence of transparency on revenue parameters in case they are not consulted upon is eliminated by publication requirements of the TAR NC. Article 30 of the TAR NC requires publication of applicable revenue parameters at least 30 days before the start of each tariff period. Moreover, it has been agreed that in some Member States (with TSOs functioning under a tariff period other than 1-year January-December tariff period: DK, GB, NIR, RO, SE, BE, SK, PT, FR, HU, AT, IE), applicable current revenue information will be published on TSO/NRA website already by end of 2017 – and not before the start of the tariff period beginning after the application date of 1 October 2017 for TAR NC Chapter on Publication requirements. Please note that ENTSOG cannot commit to such an early publication of the current tariff information in Member States where the NRA is responsible for publication.
- ITC consultation:** ENTSOG underlines that the details of ITC arrangements must not be included in consultation template per Article 26(1). Per Article 10 of the TAR NC, ITC consultation is to be done by NRAs in case of multi-TSO entry-exit systems within a

Member State. There is no consultation template required by the TAR NC for such ITC consultation. Consultation per Article 10 is separate from consultation per Article 26(1).

**Attachment 1:** Other comments can be found in the green comment boxes in the version of ACER's document that ENTSOG submits to ACER as well (same document as referred to in Part 1 above).