

## **ANP – Procedures for social participation in changes to the regulation**

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The National Petroleum, Natural Gas and Biofuels Agency (ANP) has made changes to its Internal Regulation removing the obligation that Regulatory Impact Analysis Reports (AIR) be submitted to Public Consultation.

### **Social participation:**

Social participation is particularly important in the construction of regulations, since it ensures transparency in the decision-making process and adapts the new regulation to the reality of the market and society, taking into account the interests of all players who will be directly affected by the public policy.

The ANP recently published guidelines for social participation, establishing that public hearings and public consultations are mandatory for regulatory changes - Resolution n. 856, of June 25, 2021. However, the public consultation for Regulatory Impact Analysis Reports is not included in the list of mandatory requirements.

The possibility of social participation takes place as follows: **(i)** the Agency internally analyzes the theme and the staff produce the Regulatory Impact Analysis Report, considering the possibility of prior consultation with society; **(ii)** thereafter, based on the considerations, the Agency proposes a Draft of a normative act to be created or amended, oriented by Technical Notes that guide it, as well as the legal opinion of the Attorney General of ANP, considering the possibility of prior consultation; **(iii)** giving continuity, there is the approval by the Board of Directors for disclosure of the Draft; **(iv)** during the social participation process, a public consultation and hearing will necessary be held, gathering suggestions and considerations of the market and interested parties; **(v)** upon receipt, the Agency analyzes the contributions and the feasibility of accepting them or not; **(vi)** after the formal procedures, the technical area submits the final version of the Draft Normative Act, which must go through the analysis of the Board of Directors and, if approved, published in the Brazilian Official Journal (Federal Register) for the beginning of its efficacy.

### **Recent change in the ANP:**

With the recent change in the ANP, the Regulatory Impact Analysis Report may be the object of prior consultation (it is not obligatory), a procedure prior to the effective proposition of change in a normative act.

The Regulatory Impact Analysis (AIR) is a first analysis by the Regulatory Agency to provide information and data on the effects that a normative act may cause in society and in the regulated market, so that before a change or edition of a new norm, the entity has to ensure the reasonability and the economic impact that the act may cause.

Please find below the changes in the ANP's procedures:

Amend	Article 25, ANP Ordinance n. 265/2020 ( <u>former Internal Regulations</u> )	Article 25, ANP Ordinance n. 265/2020 ( <u>current Internal Regulations</u> )
<b>Requirement and Deadline</b>	<ul style="list-style-type: none"> <li>- Will be submitted to Public Consultation;</li> <li>- Minimum term: 45 days.</li> </ul>	<ul style="list-style-type: none"> <li>- It may be subject to specific previous consultation;</li> <li>- Minimum term: it must be carried out before deciding on the best alternative for the regulatory problem and before preparing a draft of the eventual regulatory act.</li> </ul>
<b>Report Content</b>	<ul style="list-style-type: none"> <li>- It must contemplate, as much as possible, the contributions received in the Public Consultation.</li> </ul>	<ul style="list-style-type: none"> <li>- It must, whenever possible, be detailed and complemented with additional elements specific to the case, and shall contain, when applicable, the contributions received in the specific previous consultation.</li> </ul>
<b>No Prior Consultation</b>	-	If prior consultation is not carried out, the reason for this should be presented by the responsible unit when forwarding the AIR report for the Board of Directors' manifestation.

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According to the ANP, the draft resolution does not exclude the possibility of a previous Public Consultation on the Final Report of the AIR, making it optional according to pertinence, degree of complexity, scope, repercussion of the matter and its impact on the regulated market.

However, this update promoted by the ANP did not go unnoticed, since the Public Consultation is an important via of social participation for the market's contribution towards a positive adjustment for the sector as a whole.

The Agency's justification for this change is that, because AIR is a new procedure, its elaboration process must still undergo improvements and gain experience. It ensures, in any case, popular participation in public consultations and hearings when amending a normative act.











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## About the firm

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 <b>Government Relations Leading Firm</b> 2019-2021  Marcos Joaquim Gonçalves Alves Fernanda Burle, Leandro Modesto Bárbara Teles, Bruna Cardoso	 <b>Civil and Commercial Litigation</b> 2019-2020  Marcos Joaquim Gonçalves Alves Alan Flores Viana	 <b>General Corporate Tax</b> 2019-2021 <b>Tax Controversy</b> 2020-2021 <b>Highly Regarded Tax Controversy</b> 2017-2021  Marcos Joaquim Gonçalves Alves	 <b>Litigation</b> 2019-2020  Marcos Joaquim Gonçalves Alves Alan Flores Viana	 <b>Tax Administrative Law</b>  Marcos Joaquim Gonçalves Alves 2017-2021 Fernanda Burle 2020-2021