

## IEWS ON PROPOSED DIRECTIVE AMENDING DIRECTIVE 98/30/EC

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1. Eurogas, the European Union of the Gas Industry, calls for the gas industry to be fully involved in the ongoing discussions to amend the Gas Directive 98/30. As the Commission's own data shows, the initial planned progressive approach to market opening established by 98/30 has been overtaken by developments; an EU average of 79% of the gas market is theoretically open, when the minimum requirement is for 20%. The Commission now proposes more measures to consolidate and extend the impact of market opening regulation.
2. The measures include the following main elements
  - the target full market opening dates. These were proposed in the original Commission's proposal as 1<sup>st</sup> January 2004/2005 for non-domestics and all customers respectively but not agreed in discussions in the Stockholm Council;
  - an independent national regulator, with defined powers;
  - the removal of NTPA/RTPA choice with regard to access, in favour solely of RTPA and the introduction of NTPA/RTPA system for storage LNG facilities and flexibility instruments;
  - the requirements of legal unbundling for transmission and distribution;
  - more emphasis on public service obligations, also objectives, apparently to apply to all Member States.

The flexible framework approach of 98/30 which permitted national choices on aspects of implementation provided that the Directive's principles and objectives were achieved is rejected in the proposals in favour of a more rigid "harmonised" approach and not in line with the subsidiarity principle.

3. Eurogas considers that completion of market opening will bring benefits to consumers. Provided that equitable results are obtained throughout Europe in accordance with the principles of the Directive, Eurogas members emphasise that national systems will show differences and several question that amendments to Directive 98/30 are proposed before there has been time to assess progress, albeit achieved in different ways, based on the current version of the Directive. Their national situations influence their perspectives on the proposals and there is not unanimity on all issues, but the emphasis and priorities in respect of achieving a sustainable gas market are common to all.

### MARKET OPENING

4. Several companies are meeting dates for full market opening by 2004/2005. On this point therefore the Directive poses no difficulties for them. Although these companies support in principle the proposal to accelerate the right to choose for all customers in all Member States, most recognise that this acceleration presents a real challenge to Member States whose Governments have not already in view a swift timetable, and that a political compromise has to be found, to take account of the concerns about deep disruption of

national gas markets affected. Discussion, however, on establishing some sort of deadline should continue as part of the overall amendment package.

## **DIFFERENCES BETWEEN GAS AND ELECTRICITY**

5. The acceleration of gas market opening is much faster than the electricity market's; the liberalisation of the electricity market began two years before that of the gas market, with Directive 96/92/EC planning a 33% opening for 2002 while Directive 98/30 scheduled a 33% opening for 2008.
6. Similarities exist, in so far as the sectors are both network-based activities providing energy to end consumers, but there are also significant differences. Too little account is being taken of the differences between electricity and gas. Notably gas must travel from sources mainly outside the EU to markets, either through pipelines or in LNG form, whereas electricity can be locally produced; indeed the advantages of decentralised production are increasingly pursued. This difference has implications for the management of gas supply, requiring a different operational approach.
7. It was established in the discussions surrounding the introduction of Directive 96/92 EC and Directive 98/30 that gas should be treated separately from electricity. Now one Directive is proposed to amend both. Although there is a separate list of amendments for the Gas Directive, Eurogas is concerned that the distinction between the two energies is weakening in policy makers' intentions, particularly when the accompanying explanatory Communications are considered. Eurogas recalls that there is a need to maintain the distinction in measures proposed. As the Communication notes gas unlike electricity is not a universal service, since it has to compete in all the energy markets sectors. Investment in network infrastructure should be undertaken on a commercial basis.
8. Eurogas is concerned that regulatory based initiatives presented in the context of electricity may imply similar approaches for gas. Eurogas also questions the new emphasis on public service obligations and also public service objectives, uncertain about what this could mean for gas as competing fuel. Although the drafting is unclear, it seems that the intention is to promote same sort of public service measures for gas as well as electricity.
9. Furthermore a significant percentage of gas is imported into the EU from outside Western Europe. This external dependency could rise from just under 50 to around 70 percent by 2020. Unlike electricity, therefore, the implications of an external dimension in Europe's supply and the balance between the EU and producer countries need to be taken into consideration,

## **TENDENCY TOWARDS GREATER REGULATORY CONTROL**

10. Eurogas members accept there is need for an adequate legal framework to allow an internal market to develop and for supervision that the principles of the Directive and of competition law are observed in full. Market solutions, however, should be respected and stimulated. Most of the Eurogas members already operate under a system with an independent regulator and in so far as this system is necessary to obtain a consistent approach to network access, while still respecting subsidiarity, would agree with the proposal considering it essential in order to achieve a competitive gas market on a non-discriminatory basis. Some members, however, are opposed and argue that legislation to introduce a national regulator could be argued to go beyond EU competence as it constitutes unacceptable interference with the market system, leading to a lack of

flexibility, huge bureaucracy and measures out of tune with market needs, especially if a national market structure has made such progress that no regulation is required or indeed would be counter productive.

11. With regard to the proposed powers for the regulator, most of the companies in favour of a regulator consider they could exceed what is necessary for efficient market functioning. The proposal that the regulator should fix or approve access terms and conditions will remove the discretionary responsibility of companies and / or of national Ministries in this connection. It would be more appropriate if the regulator were to establish the basis and criteria to be used after consultation with all interested parties. Furthermore, instead of defining the rules for management and allocation of interconnection capacity, the regulator's role should be to ensure that transparent, non discriminatory rules are in place. As presently drafted the regulator has too much opportunity for commercial intervention which could also reflect political pressures.

## ACCESS

12. Eurogas members consider that the access system should be transparent, and responsive to market needs. Companies subject to RTPA or a hybrid form in general expect or hope that the system will meet these two important criteria but if it can be shown that a negotiated access system meets these criteria, then some Eurogas members consider a negotiated access system as equally appropriate and acceptable. Even in an RTPA system, some members think that it may be necessary to maintain the possibility of negotiation under specific circumstances: length, large volumes, investments required.
13. A majority of companies are concerned at the introduction of TPA for storage, and the implication of its extension to flexibility services, beyond reasons of technical justification.

## LEGAL UNBUNDLING

14. Eurogas notes that all companies recognising the need to ensure customer confidence in non discriminatory access have taken steps beyond the requirements of the Gas Directive to comply with its principles, by unbundling to different degrees management responsibilities for transmission from other business areas. Companies already in ownership or legal unbundling consider effective separation essential to promote real competition in gas supply and welcome the aim to make legal unbundling more general as proposed in the recent Directive. Others consider this proposal is unnecessary to guarantee non-discriminatory access, and that such a disproportionate requirement is a major intervention in companies freedom of organisation, also that constraints on management control (arguably on ownership) resulting from legal unbundling are unreasonable and cannot be justified under EC law. Different perspectives are also taken on the criteria and compliance programme.
15. In addition it is recalled that in so far as legal unbundling leading to the publication of separate accounts will increase transparency beyond the present requirements, this could have an impact on the negotiating balance with natural gas suppliers outside the EU, to the detriment of EU gas importers.

## SECURITY OF SUPPLY - A CLIMATE CONDUCTIVE TO LONG-TERM INVESTMENT

16. Eurogas emphasises that liberalisation has to contribute to security of supply which requires also a framework conducive to long-term investment. The drive towards gas market opening should be consistent with a policy framework, providing market signals for the necessary investment at one level in system capacity and on another level future supplies of gas within and outside of Europe. Responsibility for security of supply should rest with the companies (as endorsed by the Council of Ministers in May 2000) and Member States' Governments.
17. The new proposals seem to reflect a move in a different direction, towards EU intervention and control above and beyond the implications of even the Green Paper on Security of Supply although that also proposes elements of centralised control, which are not shown to be necessary. Eurogas does not consider that Art. 4a of the new Directive which requires a national monitoring and reporting system designed to underpin on EU investigatory process and allowing for the possibility of recommendations by the Commission, is justified. The existing ad-hoc group on gas security of supply set up by the Council, if effectively developed, gives the opportunity for monitoring developments on a less bureaucratic and interventionist basis. Such a provision in proposals to amend 98/30 is inappropriate. The responsibilities for security of supply need to be explored and clarified in a wider context before conclusions can be drawn in respect of specific proposals.
18. Furthermore, it is proposed that investment could become a regulatory obligation rather than a market led decision, with unclear responsibilities shared between the TSO (at the requirement of national authorities) and the regulator. Member States should be free to put in place whatever arrangements are appropriate for their systems but any EU activity should be restricted to the role of catalyst in market forces. This shift towards regulatory based investment away from market oriented business practices is a matter of concern. It is unclear, how this system would provide incentives for long-term planning. When accompanying policy papers, referring to central co-ordination or funding in infrastructure, are taken into consideration, Eurogas is concerned at the possibility of an economically inefficient, centrally planned approach to infrastructure development.
19. It should remain the responsibility of the gas industry to ensure security of supply on commercial grounds to the benefit of the market. If there is concern that the changing markets might have an adverse impact on the present security of supply levels, the EU should monitor if the investment climate deteriorates because of the changes in regulatory framework that are being discussed. It is best to rely on the market to allocate the resources in an efficient manner instead of reliance on central planning.
20. In the proposals to amend the Directive and in the Strategy Paper, as well as in connected studies being launched by DG TREN, there are reflected centralized policy making trends which Eurogas considers risk undermining expected benefits from the market opening. Centralised planning will not provide the right signals on long-term market investment essential for the long-term interests of Europe's gas consumers and for security of gas supply to Europe. This would have consequences for other EU economic and environmental objectives.

## ROLE OF TSOs

21. With regard to the activities of the TSOs in facilitating the development of a competitive gas market, Eurogas welcomes the involvement of the GTE in the discussions and hopes that the significant contribution the GTE is developing will help to avoid introduction of detailed regulatory EU wide requirements. However, it is important to develop a clear understanding of the TSO's functions. In its separate input to the Madrid Forum process will seek to ensure that the roles and responsibilities of the TSOs are clearly defined and understood. There are however, already concerns that in the Directive and also in the Strategy Paper the role attributed to the TSOs might go beyond what is possible and necessary, and for this reason Eurogas is studying this question and will offer its views.

## CONCLUSIONS

22. The above points confirm the need recognised by Member States and already in hand by the European Commission to monitor progress in market opening, analyse different national approaches as a means of determining what further EU level action may be necessary. This is all the more important since the proposed amendments represent only one route which the EU Commission is taking to accelerate and deepen the gas market opening. In working papers produced for the Madrid Gas Regulatory Forum, notably the Strategy Paper "A long-term vision of a fully operational single market for gas in Europe" the proposed approach seeks to anticipate implementation of the amendments and elaborate on the various elements, even though the amendments are only now beginning to be discussed by Member States and the European Parliament.

23. If the Member States decide to give further legislative impetus to the internal gas market, then

- the proposals should reflect a coherent market based approach
  - conducive to security of supply and incentives to long-term investment;
  - recognising the responsibility of companies and Member States on security of supply questions, and avoiding centralized planning;
  - confining the proposals in the Directive to those necessary to achieve the objectives;
  - restricting regulatory approaches to a minimum, in favour of market creativity;
  - consistent with a sound understanding of where the responsibilities will lie in future market evolution and what should be the functions of the different market participants, TSOs, network users, and traders, to guarantee a sustainable European gas industry for European Gas customers.
- there should be preferably separate treatment of electricity and gas which can be assured more effectively by separate Directives, with the gas Directive taking into account sector specific considerations; if, as now seems likely, there is one Directive, then the amendments and the subsequent debate should take full account of the differences, as well as the similarities, between gas and electricity.