

**Eurogas Position Paper on  
“Progress in creating the internal gas market”**

1. Eurogas welcomes Commissioner Piebalgs’s willingness to consult with Eurogas and other stakeholders in the preparation process of the Progress Report as well as DG TREN’s announced intention of holding a major debate on the issues in the Report. With the present position paper, Eurogas wishes to contribute to the identification and determination of the issues to be considered in the Commission report outlining progress in creating the internal gas market as provided under Art. 31 of Directive 2003/55/EC (the “Progress Report”).
2. Eurogas wishes to reiterate its support for the completion of the internal markets in natural gas and electricity and the EU wide development of fair competition whilst ensuring an environment that
  - encourages companies active in an increasingly import-dependent European gas market to plan and invest in natural gas supplies and infrastructure, thus contributing to security of gas supply for the next 10, 15, 20 years, and beyond.
  - facilitates the development by the industry of new supplies to the European market from third country producers.

Eurogas therefore considers the Progress report should also include an analysis of the natural gas business in the increasingly competitive global market in which the need for European gas companies to secure competitive supplies for Europe’s consumers is recognized.

3. The Progress Report also needs to take account of different national starting points of Member States including market opening timetables and related legislative frameworks in establishing the base-line for evaluating progress towards a single European market.

**Proposed Criteria**

4. Eurogas wants to see steady progress towards a competitive gas market in line with the requirements of the Gas Directive 2003/55/EC. Taking as the starting point the text of Article 31 of the Directive, Eurogas has considered how items within its scope could be elaborated to provide criteria that will lead to a useful and effective analysis in the Progress Report. Eurogas divides its criteria, presented in question format, into two sections
  - implementation of EU legislation (mostly focused on system access questions and the implementation options open to Member States);
  - structure and functioning of the market and trends in market development.

**Implementation Aspects (Annex 1)**

5. After a period of decisive reform, it is now necessary to focus on effective implementation of the rules to achieve a fully competitive EU internal gas market. Eurogas attaches great importance to the full and correct implementation of the legislative requirements. The Progress Report should check most important implementation aspects and in assessing performance distinguish among responsibilities of national Governments, regulatory authorities, gas industry and

customers. The list does not claim to be comprehensive, but identifies important items from the perspective of gas market suppliers and network users.

### **Structure and functioning of the Market and Trends in Market Development (Annex 2)**

6. The development of the internal gas market is guided by EU legislation. It remains unclear, however, what the structure of the internal gas market will be and how this market will function. It would be beneficial to industry if the Progress Report would summarise its vision of a market situation that could be considered reflective of a single European gas market with respect to the required level of and appropriate balance between market and regulation. Sustainability and security of supply identified alongside competitiveness as pillars of energy policy\* should remain paramount in a balanced approach.
7. Furthermore, the Progress Report should include criteria that will allow assessment of whether or not the outcome expected from the cost-benefit and economic impact assessments carried out before the various measures were introduced is achieved, and highlight this assessment.
8. In drawing up the criteria in Annex 2, Eurogas has in mind the following main points:
  - The Progress Report should not just focus on quantitative parameters to measure market opening, but also assess if the mechanisms are in place to promote development in the right direction. So for example Eurogas has introduced questions about switching procedures for eligible customers, to be included alongside any questions about switching rates. Furthermore Eurogas notes that we are producing a Report on Customer Switching Procedures that can contribute to assessment of this point.
  - A critical issue is the need for stable and effective policies and regulatory frameworks to incentivise gas market development, including the necessary investment in infrastructure. Taking into account that the European gas market is rapidly becoming more import dependent, the Progress Report should, among other aspects, focus on issues relating to security of supply of natural gas in the EU including the progress achieved with regard to bilateral relations with third countries which produce and export or transport natural gas. Therefore, Eurogas has proposed a number of new questions related to these issues.
  - It is valuable to assess the trend in market mechanisms ranging from secondary markets in capacity trading to development of hubs and hub services.
  - It is also important to assess to what extent customers can choose among different services and different price concepts.
  - A new category of questions on interpenetration of markets has also been introduced.
9. As indicators in the Benchmarking Report 2004 are most likely to be employed again in preparing the Progress Report Eurogas has also reviewed these and offers some methodological comments with a view to improving the basis of data used (Annex 3).

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\* Green Paper "For a European Energy Policy" (1995)

10. Eurogas welcomes this opportunity to participate in the preparation process of the Progress Report and submits its proposal on the scope of and criteria to be used in the Progress Report in annexes to this position paper. Eurogas would like to have a meeting with DG TREN to discuss our ideas in this paper.
11. Eurogas will make this paper available to the European Parliament and other stakeholders, and recommends that in the course of 2005, before the Progress Report is completed, a public Hearing is arranged on the evolution of the internal market.

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## ANNEX 1

### Implementation of legislation (mostly focused on access to the system and implementation options open to Member States)

	<i>The existence of non-discriminatory network access</i>
1.	Have Member States designated or have they required (1) natural gas undertakings which own transmission, storage or LNG facilities to designate one or more system operators (2) undertakings which own or are responsible for distribution systems to designate one or more distribution system operators?
2.	a) Are tariffs or at least the methodology used to calculate or establish the terms and conditions for connection and access to national networks and LNG facilities and for the provision of balancing services fixed or approved by regulatory authorities? b) Are the above mentioned tariffs or methodologies submitted for formal decision to the relevant body in the Member State?
3.	Are there standard contracts or a network code governing network access approved by a regulatory authority? Are these published prior to their entry into force?
4.	What information relating to capacities is published? What other information is provided to network users e.g. adequate notification of maintenance; gas quality specifications? Is the above information regularly updated?
5.	Is the method for setting balancing charges transparent?
6.	What ancillary services does the system operator offer?
7.	Have the TSOs/DSOs/combined operator established effective compliance programmes and are the annual compliance reports being published?
8.	Have Member States allowed for the possibility of the operation of combined system operators?
	<i>Effective regulation</i>
9.	Is there an effective and swift appeal mechanism against decisions by the regulatory authorities?
	<i>The development of interconnection infrastructure, the conditions of transit and the security of supply situation in the Community</i>
10.	Does the existing legislative framework in the Member State contain rules which transpose Article 22 of Directive 2003/55/EC into national law?
	<i>The extent to which the full benefits of the opening of the market are accruing to small enterprises and households, notably with respect to public service standards</i>
11.	Have Member States imposed on undertakings operating in the gas sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies, and environmental protection, including energy efficiency and climate protection?
12.	Are such obligations clearly defined, transparent, non discriminatory, verifiable and will they guarantee equality of access for EU gas companies to national consumers?
13.	In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals, have Member States introduced the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system?
	<i>The extent to which customers are actually switching suppliers and renegotiating tariffs</i>
14.	What have Member States decided about categories of eligible customers until 2007?

	<i>Whether effective and non-discriminatory third party access to gas storage exists when technically and/or economically necessary for providing efficient access to the system.</i>
15.	Has the Member State chosen regulated third party access, negotiated third party access, or both for access to storage facilities? What services are being offered?
16.	Which information in accordance with the GGPSSO is made available to storage users and is it sufficient for efficient access to and use of the storage system?
	<i>The experience gained in the application of the Directive as far as the effective independence of system operators in vertically integrated undertakings is concerned and whether other measures in addition to functional independence and separation of accounts have been developed which have effects equivalent to legal unbundling</i>
17.	Is the Member State postponing the implementation of Article 13.1 of the Directive until 1 <sup>st</sup> July 2007?
18.	Has the Member State decided not to apply Article 13.1 and/or 13.2 to integrated natural gas undertakings serving less than 100.000 connected customers?

## ANNEX 2

### Structure and functioning of the market and trends in market development

	<i>The existence of non-discriminatory network access</i>
1.	Is there an opportunity for network users to resell booked capacity on a secondary market for capacity?
2.	When customers change their supplier, is it required that capacity at or to the exit-point directly connected to the end-consumer automatically transfers between suppliers/shippers?
3.	Are there anti-hoarding mechanisms in place? If so, what kind of mechanisms?
4.	Are tariffs based on actual costs incurred by the system operator?
5.	Which balancing mechanisms are used by TSOs?
6.	How is system capacity allocated to network users?
7.	Are delay times in responding to access requests meeting the requirements of network users?
	<i>Effective regulation</i>
8.	Is there a transparent consultation process with stakeholders for new (or changes to) national regulation? Are the results of the consultations binding?
9.	Does the regulatory authority guarantee confidential treatment of information gathered from gas companies?
	<i>The development of interconnection infrastructure, the conditions of transit, and the security of supply situation in the Community.</i>
10.	What is the import/export balance of each Member State?
11.	Are there examples in the Member State of projects which applied for and were granted an exemption from third party access obligations under the local equivalent of Article 22 of the Directive?
12.	Does the existing legislative framework in the Member State contain other rules/mechanisms which are conducive to the development of new infrastructure (including interconnectors)? Please describe these briefly.
13.	For each Member State, what is the proportion which transit volumes bear to the national consumption of natural gas?
14.	Are the roles and responsibilities of the different gas market players with regard to security of supply clear in the Member State?
15.	Which security of supply measures have been put in place in each Member State by the different stakeholders (government/industry/regulators)? <ul style="list-style-type: none"> <li>- a diversified portfolio of long-term supply contracts;</li> <li>- access to liquid spot and term markets;</li> <li>- interconnectors;</li> <li>- interruptible sales contracts;</li> <li>- underground storage facilities;</li> <li>- LNG terminal facilities;</li> <li>- a "supplier of last resort" mechanism (specify which mechanism);</li> <li>- measures to ensure an adequate quality and level of maintenance of the networks;</li> <li>- emergency plans.</li> </ul>
16.	How many entry points are there to the national transmission grid(s) in each Member State?
	<i>The extent to which the full benefits of the opening of the market are accruing to small enterprises and households, notably with respect to public service standards</i>
17.	Is information about prices and services offered by different suppliers available to small enterprises and households? Can customers compare the prices easily (for example via the internet)?

18.	Are there flexible contract termination mechanisms in place in favour of small enterprises and households?
19.	What are the parameters used for measuring consumers' satisfaction apart from price? Eurogas considers other parameters are availability to customers of information about switching processes, clear and transparent contractual terms, smooth billing and transfer processes, etc.
	<i>The extent to which markets are in practice open to effective competition, including aspects of market dominance, market concentration and predatory or anti-competitive behaviour.</i>
20.	What is the number of companies selling gas in more than one European Member State (directly or through affiliates)?
21.	What is the number of suppliers offering gas to customers (non-household and household) in each Member State?
22.	What is the trend that can be identified when comparing the percentage of sales by gas suppliers on the national market and within the EU but outside the national market over the last three years?
23.	In the relevant market, is gas in interfuel competition? If so, what are the principles and effects of that competition?
	<i>The extent to which customers are actually switching suppliers and renegotiating tariffs.</i>
24.	Are there standardized procedures in place to facilitate customer switching?
25.	Is the switching process non-discriminatory for suppliers?
26.	What is the time delay from the request to switch to completion of the procedure?
27.	To what extent are customers informed about their ability to switch supplier and the mechanisms which apply in such case?
28.	To what extent are customers renegotiating contracts with existing suppliers?
	<i>Price developments, including supply prices, in relation to the degree of the opening of markets.</i>
29.	Are wholesale gas prices converging across national borders?
30.	Can the customers choose from different indexation formulas among sellers? For instance, can industrial customers choose price offerings that are based on a traded wholesale gas price or a fixed price?
	<i>Whether effective and non-discriminatory third party access to gas storage exists when technically and/or economically necessary for providing efficient access to the system.</i>
31.	What is the number of TPA users of storage facilities in each Member State?
32.	Do suppliers use storages across borders?
33.	What capacity information is made available to storage users?
34.	Is there legislation which provides for preferential access to storage capacities for companies supplying gas to temperature-sensitive clients (small enterprises and households)?
35.	Are there gas storage facilities which are exempted from TPA-rules? What percentage of storage capacity (working volume) does this represent in the Member State?
36.	Which percentage of annual national gas consumption in each Member State is covered by storage facilities (working volume) on national territory?
	<i>Analysis of the wholesale gas market (trade of gas for resale to final customers via bilateral contracts (long term or short term) or gas hubs/exchanges</i>
37.	Are there (developing) gas hubs and/or spot/forward/futures markets for gas in a Member State?
38.	Is there easy access to the hubs? What ancillary services are available at the hubs?
39.	Is the traded wholesale price at gas hub(s) in a Member State publicly available for market participants?

	<i>Degree of interpenetration of wholesale and retail gas markets</i>
40.	What trend can be identified in the percentage of gas sales by suppliers (new suppliers and existing suppliers / national and non-national) in each Member State over the last three years?
	<i>The relevant market</i>
41.	Taking into account progress made in establishing the internal market for natural gas, on what grounds is the national market still considered the relevant geographic market?
	<i>Certainty and stability of regulatory policies and rules in order to incentivise future investment</i>
42.	Certain projects for the construction of new LNG terminals, storage facilities and interconnectors have obtained exemptions from certain third party access obligations and tariff rules. Does this indicate problems in the standard regulatory system's ability to incentivise future investment?

### **ANNEX 3**

#### **Comments on the 2004 Benchmarking Report**

Eurogas considers that the Benchmarking Report sometimes fails to reflect fully the progress achieved and gives an overly pessimistic account of the market situation. Some of the criteria chosen for the Benchmarking Report and certain inconsistencies in the data collected (as witnessed by the content of the Technical Annexes to the report) contribute to this assessment. The Benchmarking Report would provide a better assessment of the internal market and have greater legitimacy if improvements were made in the following areas:

- The extent to which customers are switching suppliers as a criterion to measure market opening is subject to, among others, the following qualifications:
  - In some Member States, customers, although eligible, have the choice between regulated gas prices (if they do not switch supplier) or market prices (if they switch supplier); in such a situation some customers may opt for the certainty of regulated prices;
  - In markets with low residential end-user prices and high levels of customer service customers may not have a sufficient incentive to switch supplier if there is no noticeable financial gain to be expected for them;
  - Therefore to make a balanced assessment the report should also assess the real possibility for a customer to switch supplier, the availability to the customer of transparent information about the possibility to switch supplier, the level of awareness among customers of their right to switch and the existence of efficient, user-friendly mechanisms which apply when a customer switches supplier; and
  - On some markets, the national legislator has chosen (in accordance with the provisions of Directive 2003/55/EC) to delay until 2007 the opening of the market for residential customers. This political choice is necessarily reflected in switching and other statistics, but should not be misinterpreted in the comments on the efficiency of the market mechanisms which are in place.

The technical annexes are the basis for the conclusions taken in the Benchmarking Report. Therefore the reliability and consistency of the data collected is essential for developing meaningful conclusions. Especially for comparability reasons common definitions for the compilation are mandatory. Eurogas is aware about all the difficulties and risks of compiling and combining information from different data sources. However, we see some possibilities for improvement in order to underpin the credibility of the Benchmarking Report and would like to mention some examples below:

In order to be able to compare switching rates this data should be based on a clear definition. (Number of customers or natural gas volume)

Natural Gas prices from Eurostat, used in the Annexes, are according to a standard consumer collection system which does not sufficiently reflect a liberalised market. Therefore, the methodology for natural gas prices is currently under review within Eurostat. However, prices as published in the Annexes, are based on the old methodology. In order to avoid distortions caused by different market sizes of Eurostat categories I.3 and I.4, separated graphs could be used.