

RESPONSE TO GREEN PAPER ON SERVICES OF GENERAL INTEREST

Gas supply companies have always given significant policy emphasis to the delivery of high quality services to their customers. In order to compete successfully with other energies and also in gas-to-gas competition, gas companies have placed at the core of their business the interests of their customers by ensuring efficient delivery of safe and secure supplies at competitive prices.

In responding, therefore to the Green Paper, Eurogas takes as our starting point that it is mainly through competition that consumer welfare is in principle maximised. To the extent, however, that Member States perceive that other measures, including possible security of supply, environment and social protection measures are additionally required, there is the possibility to introduce these as transparent public service obligations, within the framework of EU law. The Second Gas Market Directive as well as current EU Legislation permits Member States to choose this approach.

Eurogas would like to highlight some main points that its answers to the individual questions that follow, will reinforce.

- Eurogas would be very concerned if in future there were to be a shift in the present balance between implementation of services of general interest and Article 86. Services of General Interest should not lead to a distortion of competition.
- It is for the competent national, regional and local authorities to define, organise, finance and monitor services of general economic interest. Member states will naturally vary in their approaches to this. The European Community, for its part, has competencies in – among other areas.
- The internal market, competition and State Aid, environment, and trans-European networks. It is for important consideration whether or not clarification is needed on how responsibilities are shared.
- Eurogas argues that it is important to distinguish between PSOs and measures to protect customers. The Green Paper fails to make a clear distinction.
- The gas business operates in the context of a service of general economic interest. It is, however, different from other services of general economic interest, notably electricity, which should be taken account of with regard to issues surrounding PSO.
- If legal competence is given to the Community, for example in the form of a framework Directive it should comply with the existing sectoral directive. It should clarify such a distinction between the gas sector and other sectors. Also it has to be consistent with the current Treaty articles, not compromise competitive markets and recognise Member States' powers to determine and finance any PSO obligations.
- In the view of Eurogas, the interests of domestic customers are looked after by effective competition and consumer protection measures. Where, however, Public Service Obligations are considered appropriate by a Member State, they must be specified clearly and unambiguously within the law/regulations of the country concerned indicating where responsibility has to be allocated.

- Any such measures must be checked against competition law and should be proportional to the objectives.
- With regard to the suggested “common set” of obligations Eurogas stresses that gas, different from electricity, is not a universal service. Furthermore Eurogas rejects the concept of “affordable price” for gas; the Gas Directive refers to reasonable price.

The answers to the individual questions follow.

WHAT KIND OF SUBSIDIARITY ?

1. *Should the development of high-quality services of general interest be included in the objectives of the Community? Should the Community be given additional legal powers in the area of services of general economic and non-economic interest?*

Eurogas recognizes that high-quality services of general-interest, that is services to which all in the Union attribute value, should be promoted in the interests of the welfare of the citizens and the EU's economic growth.

As stated above, the gas business operates in the context of a service of general economic interest, and Eurogas does not therefore feel it is appropriate or necessary to comment on those issues affecting services of general non-economic interest.

The emphasis of Article 16 provides for the concept of services of general economic interest recognizing that they have a place in shared Community values, as well as promoting social and territorial cohesion. Although that Article does not provide the Community with specific means of action, the reference to respective powers of Community and the Member States recognizes legal competences are present under EU law for the Community to act in this area. The balance of responsibilities referred to in Article 16 is elaborated in Article 86(2), further clarified by competition case law over the years.

As the Green Paper makes clear the Community has several competencies that are relevant for services of general economic interest. With regard to the gas industry, Eurogas does not see a role for the European Community beyond these specified competencies.

If legal competence is given to the Community, for example in the form of a minimum framework Directive, it should comply with the existing sectoral directive.

2. *Is there a need for clarifying how responsibilities are shared between the Community level and administrations in the Member States? Is there a need for clarifying the concept of services without effect on trade between Member States? If so, how should this be done?*

As the Green Paper says the division of tasks and powers between the Community and the Member States is complex. In relation to the gas industry, the respective competencies and responsibilities seem to us to be already clearly defined. The present balance of responsibilities has worked well. Within the framework competences of the Community especially competition law, it is primarily the responsibility of the competent national authorities to define and organize services of general economic interest. Now, however, as the Green Paper recognizes circumstances are evolving in such a way that clarification could be useful (e.g. clearer definition of services of general economic interest) providing the principle of subsidiarity is maintained at the same level of importance in EU law as today.

With regard to services without effect on trade between member states, the need for regulatory action against, for example, discriminatory practices exists in national markets as well as at a Community level. This area is best addressed through national regulation/legislation in the first instance (as is argued in paras. 34 and 35 of the Green Paper) but in a manner consistent with Community Policy.

3. Are there services (other than the large network industries mentioned in para. 32) for which a Community regulatory framework should be established?

It is not appropriate for Eurogas to comment on other services.

4. Should the institutional framework be improved? How could this be done? What should be the respective roles of competition and regulatory authorities? Is there a case for a European regulator for each regulated industry or for Europe-wide structured networks of national regulators?

With regard to the gas sector, the role of the regulatory authorities should be exercised at all times with due regard for competition law. Furthermore, it is the responsibility of national Governments to determine any public service obligation and ensure their transparency. National regulators should monitor their implementation.

There is no justification for a European regulator. Eurogas accepts the principle of national sector-specific regulation, supported as necessary by national and Community competition law. National circumstances can still differ, a factor that advocates national level regulatory approaches to take account of these differences. National measures must be checked against competition law and should not constitute a disproportionate obstacle to the completion of the internal market. The Madrid Forum and the possibilities for national regulators to meet informally in the CEER allow opportunity for convergence.

SECTOR SPECIFIC LEGISLATION AND GENERAL LEGAL FRAMEWORK

5. Is a general Community framework for services of general interest desirable? What would be its added value compared to existing sectoral legislation? Which sectors and which issues and rights should be covered? Which instrument should be used (e.g. directive, regulation, recommendation, communication, guidelines, inter-institutional agreement)?

If Member States favour a Community framework, it should emphasize the necessary distinction between services of general economic and services of general non-economic interest and recognize that there are different categories of services of general economic interest which need to be subject to different approaches. As already pointed out gas is different from electricity and is not a universal service.

6. What has been the impact of sector-specific regulation so far? Has it led to any incoherence?

In the short time since the Directive 98/30 has been implemented, no such evaluation across Member States has been possible.

The current and amended Gas Directive refers to public service obligations and under Article 3(2) allows Member States to impose PSOs on gas undertakings in the general economic interest. The requirement for Member States to inform the Commission of all such measures and their possible effect on national and international competition should avoid any incoherence.

ECONOMIC AND NON-ECONOMIC SERVICES

- 7. *Is it necessary to further specify the criteria used to determine whether a service is of an economic or a non-economic nature? Should the situation of non-for profit (sic) organizations and of organizations performing largely social functions be further clarified?***

Yes, to ensure the general recognition that the energy sector is an economic service, and furthermore that there are different categories of economic services.

- 8. *What should be the Community's role regarding non-economic services of general interest?***

Eurogas does not see discussion of non-economic services of general interest as relevant to the competitive gas (and electricity) markets, and on this basis has no comment.

- 9. *Are there other requirements that should be included in a common concept of services of general interest? How effective are the existing requirements in terms of achieving the objectives of social and territorial cohesion?***

Issues concerning services of general economic interests (as of services of general interest) are best handled sector by sector. As mentioned in the answer to 6, there has not been enough time to assess the effectiveness of existing requirements.

- 10. *Should all or some of these requirements be extended to services to which they currently do not apply?***

Each sector has to be analyzed and only if these requirements or other requirements are appropriate to that sector, should they be introduced.

- 11. *What aspects of the regulation of these requirements should be dealt with at Community level and which aspects left to the Member States?***

In principle, Member States should deal with all aspects of the regulation.

- 12. *Have these requirements been effectively implemented in the areas where they apply?***

The requirement of universal service does not apply to gas nor affordability; the Gas Directive refers to reasonable price. Continuity, Quality of Service, and User and Consumer Protection have been effectively achieved by the gas sector.

- 13. *Should some or all of these requirements also be applied to services of general interest of a non-economic nature?***

No comment.

- 14. *Which types of services of general interest could give rise to security of supply concerns? Should the Community take additional measures?***

As the Green Paper has identified security of supply is an issue related to the energy sector. As Eurogas has argued, what is needed primarily are not additional measures at Community level as now proposed but confidence in market dynamics to deliver supply security. The Commission could have a monitoring role.

15. Should additional measures be taken at Community level to improve network access and interconnectivity? In which areas? What measures should be envisaged, in particular with regard to cross-border services?

The activity regarding gas in this connection is quite adequate.

16. Which other sector-specific public service obligations should be taken into consideration?

It is not established that the issues mentioned will be automatically developed as PSOs. The Gas Directive identified options and it is the responsibility of Member States to decide if the issues mentioned will be the basis of PSOs

17. Should the possibility to take concrete measures in order to protect pluralism be reconsidered at Community level? What measures could be envisaged?

No comment.

DEFINITION OF OBLIGATIONS AND CHOICE OF ORGANISATION

18. Are you aware of any cases in which Community rules have unduly restricted the way services of general interest are organized or public service obligations are defined at national, regional or local level? Are you aware of any cases in which the way services of general interest are organized or public service obligations are defined at national, regional or local level constitutes a disproportionate obstacle to the completion of the internal market?

As yet, Eurogas is not aware of any problems, but as the internal market in energy evolves, difficulties could arise.

19. Should service-specific public service obligations be harmonized in more detail at Community level? For which services?

No, only monitored.

20. Should there be an enhanced exchange of best practice and benchmarking on questions concerning the organization of services of general interest across the Union? Who should be involved and which sectors should be addressed?

Only if there would be clear cost-benefits. If such an exercise is undertaken, it should be on a sectoral basis.

21. Are you aware of any cases in which Community law, and in particular the application of State aid rules, has impeded the financing of services of general interest or led to inefficient choices?

No

22. Should a specific way of financing be preferred from the point of view of transparency, accountability, efficiency, redistributive effects or competition? If so, should the Community take appropriate measures?

If compensatory financing is required then providing it meets the objectives of transparency, accountability efficiency and is compatible with competition policy, then it should be left to the

Member State to decide. Redistributive effects are not on the same level as these perspectives. They may be a motivation to justify a financing approach and therefore should meet the other objectives.

Eurogas sees any such measures as a responsibility of national sector-specific regulators rather than the Community.

23. Are there sectors and/or circumstances in which market entry in the form of «cream skimming» may be inefficient and contrary to the public interest?

It is part of the functioning of any competitive market that new entrants will wish to 'cream-skim'. In some cases, this is only an entry strategy, and players swiftly move to target the whole market. To attempt to constrain 'cream-skimming' would be a fundamental distortion of the market and should not be undertaken.

This is not to say that there may not be a minority of 'vulnerable customers' for which special protection/safeguards may be appropriate, within a competitive market.

24. Should the consequences and criteria of solidarity-based financing be clarified at Community level?

The choice and organisation of any such funding are primarily at the discretion of Member States albeit to be notified at EU level.

EVALUATION

25. How should the evaluation of the performance of services of general interest be organized at Community level? Which institutional arrangements should be chosen?

A distinction has to be made between the market performance of companies operating in sectors of general economic interest, and the evaluation of public service obligations with regard to specific areas of activities. In the first case, market surveys, involvement of consumer groups, in combination with data collection and monitoring by independent consultants should provide the basis of periodic reports without being too onerous on Community resources. In the case of PSO, it is primarily the role of national authorities to evaluate performance although in certain circumstances the involvement of an independent third party to carry out the assessment would be desirable.

26. Which aspects should be covered by Community evaluation processes? What should be the criteria for Community evaluations? Which services of general interest should be included in an evaluation at Community level?

See above

27. How could citizens be involved in the evaluation? Are there examples of good practice?

It is more important to involve customers in any evaluation.

28. How can we improve the quality of data for evaluations? In particular, to what extent should operators be compelled to release data?

Analysis would probably conclude there is already adequate data in the public domain to permit adequate evaluation. If data is not publicly available and is sensitive commercially operators

should not be compelled to release it unless to the national regulator in accordance with his powers.

29. Is there any specific development at European Community internal level that deserves particular attention when dealing with services of general interest in international trade negotiations? Please specify.

In relation to the market for energy within the European Community, Eurogas is not aware of any aspects that need to be taken into account in international trade negotiations

30. How can the Community best support and promote investment in the essential services needed in developing countries in the framework of its development co-operation policy?

One way forward might be to ensure bilateral contacts between the industrial sectors of the EU and developing countries.

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