

EUROGAS RESPONSE TO THE CONSULTATION ON A EUROPEAN CHARTER ON THE RIGHTS OF ENERGY CONSUMERS

1. Introduction

Eurogas has considered with interest the Commission's Communication on this subject and the accompanying Annex. This response puts forward a number of comments and suggestions from Eurogas on the approach and wording proposed.

Our main concerns centre on:

- the need for greater clarity about the purpose and nature of the Charter as proposed and its target audience (we believe it should be directed at household energy consumers only),
- the process by which the Charter will be finalised (we look forward to the suggested stakeholder workshop, which we see as essential to the process),
- how the Charter fits with existing consumer protection in Member States and the importance of maintaining subsidiarity in this area.

Throughout our response we continue to emphasise our belief that properly functioning competitive markets can be relied upon to safeguard the interests of consumers in most respects. This means that any additional sector-specific consumer protection measures must be carefully designed in order to avoid distorting competition or placing an unnecessary burden on suppliers.

2. Consumer protection in the competitive market

In general Eurogas welcomes initiatives which inform household customers of their right to choose their energy supplier, which assist customers to understand the competitive market and which reassure them of the customer protection measures available to them, through normal consumer law and through sector-specific measures which many Member States have also introduced. As the Commission notes, consumers will only be active on the market place if they are confident that their rights will continue to be protected in particular when switching supplier.

However there is a balance to be achieved between the means of delivering consumer protection and competition. Sector-specific consumer protection measures have to be designed in such a way that they do not hinder the efficient operation of the competitive market, by introducing distortions or creating an excessive administrative burden on suppliers. In any case, Eurogas believes that in many cases competition itself can be relied upon to safeguard the interests of energy consumers and incentivise responsible behaviour by market participants.

We therefore caution the Commission against the temptation to regulate in all areas, or even to look to 'self-regulatory' measures, when competition will often result in appropriate protection, at much lower cost or risk of market distortion.

In addition to the protection of consumers both generally and in particular in switching, the Commission sees the proposed charter as dealing with ways to help the most vulnerable EU citizens understand the competitive market and deal with higher energy prices. The latter objective raises the fundamental question of how support mechanisms could be designed so they do not undermine the competitive market. In general, Eurogas believes that energy policy and social policy should not be confused.

In our comments below, we expand on these initial observations.

3. The nature of the Charter

The Communication seeks to explain the concept of a European Charter for energy consumers. However Eurogas remains uncertain about the status of the proposed Charter, given that it is not confined to a restatement of existing consumer rights under EU directives/regulations, but introduces ideas and specific suggestions for areas which are expressly matters of subsidiarity, and where individual regulators may need wording appropriate to their national circumstances.

Eurogas also notes that Member States differ in the extent to which they rely on general consumer protection law or have sector specific obligations. This makes it difficult to develop an adequate formulation of energy consumer rights across the EU.

In view of the uncertainty around the nature and role of the proposed Charter as well as its concerns on a number of detailed points of wording, Eurogas believes strongly that there is a need for a stakeholder meeting to consider further the nature of a European Charter on the lines proposed, who it is intended for and how it will be communicated. The meeting should also review the inclusion in the charter of the possible areas for Member State measures or self-regulation, and how this approach fits with subsidiarity.

We therefore support the reference in the Communication to the idea of a stakeholder workshop on the subject. Eurogas believes that in view of the novelty of the Charter approach and the considerable uncertainty on these aspects, such a workshop is essential if stakeholders are to be able to contribute in an informed way to the development of the Charter, and if they are to commit in due course to the eventual version of the Charter.

For the avoidance of doubt, we do not believe that the Commission can rely on the present consultation alone as the means by which views can be invited, the draft refined and the support of the maximum number of stakeholders ensured.

In Annex 1 of the Commission's proposals, nine areas are described in detail for the Charter. The intention is to increase the publicity of existing rights. Eurogas offers the following general comments on these, before considering in section 4 of this response the detailed wording proposed.

3.1 Scope/application of the Charter

Article 3 and Annex A of the existing Directives contain a number of elements for the protection of consumers. Whatever the scope of the Directives themselves, Eurogas believes that the proposed Charter should focus on household customers only, since this will ensure there is a clear statement of the rights of this important group of customers, in a consolidated form. The nature of protection appropriate for generally more sophisticated business customers is different, and to attempt to cover them in the same document is likely to confuse.

Our comments in this response assume that the Charter is focused only on the protection of household customers.

3.2 Language

It is unclear whether the wording in the Annex to this Communication is intended to help guide regulators and industry stakeholders in this area, or whether the final text is supposed to be appropriate for the ordinary household customer. If the latter, the wording of the Directive is not always readily understandable, and in many cases, it could give the customer a misleading impression of his/her rights if the exact wording of the Directive is used. This is especially true where adequate

measures are already in place in Member States which have perhaps been open to competition for a number of years.

Eurogas believes that if the intention is to reach a wording for the Charter which is suitable for end-consumers, the present wording in the Annex would have to be completely rewritten and then subject to a further consultation. As an association representing gas suppliers, Eurogas would be keen to engage in such a process.

3.3 Subsidiarity

As noted earlier, the Commission does not confine itself to existing Directives/Regulations, but suggests possible supplementary elements coming under member state responsibility, and others which could be achieved through self-regulation. Eurogas believes that inclusion of these proposals, however sensible, undermines the principle of subsidiary in the very sensitive area of consumer protection, and that a stakeholder workshop should be held to consider this aspect in greater depth.

In section 4 of this response, we include a number of examples of topics which we see as inappropriate for inclusion in an explicitly European charter.

Our concern about subsidiarity is reinforced by the comment that the Commission does not exclude the possibility that it will put forward additional legislative proposals.

3.4 PSOs

Eurogas is concerned by the frequent linking of consumer' protection with what some Member States refer to as public service obligations. PSOs according to the Directives can cover both retail (supply) obligations and network obligations, and include environmental protections measures; they have to be notified to the Commission (initially and every two years thereafter) and their possible impact on national and international competition assessed. In contrast, consumer protection is a broad concept, which can be ensured by a variety of means, including ordinary consumer law and self regulation; it does not necessarily require sector-specific regulation and may have very little effect on competition.

Eurogas would like to see greater clarity resulting from this consultation on what is consumer protection and what are PSOs required to be notified to the Commission.

3.5 Sector-specific regulation

While recognising the need for consumer protection, it is essential in Eurogas's view that the scope of any sector-specific measures is limited to what is necessary and proportionate, and that they do not undermine competition. Over-prescriptive regulations may be well-intentioned, but they can affect competition between suppliers, restrict new entry or create other market distortions. They also have a cost, which customers ultimately bear. It is Eurogas's belief that where there is effective competition, competitive and customer pressures should in principle be sufficient to encourage responsible behaviour. Sector-specific regulations in this area should be kept to a minimum, and if felt to be necessary they must be carefully scrutinised before they are introduced, and reviewed thereafter as competition develops.

3.6 Network and supplier obligations

The charter aims to set out the rights of customers. However, the language it uses and the way it is structured risks confusing the clear separation of distribution and supply required by the Directives. We believe the opportunity should be taken in the Charter to clarify the obligations in the directives, and note in the following section some instances where the wording should be tightened to avoid confusing the roles of distribution companies and suppliers.

4. Detailed comments

In this section, Eurogas comments primarily from a gas perspective. Although we recognise that many issues apply equally to electricity, there are some differences e.g. those deriving from the universal service nature of electricity, which the directives did not extend to gas, and the Charter should therefore reflect them.

4.1 Connection

The wording of the European directives refer to universal service (electricity) and the possible elements to a right to be supplied where available (gas). Both suggest an obligation on network companies to connect. The directives go on to refer to 'at reasonable price', which Eurogas understands to relate to the cost of connection. It is important for the structure and clarity of the charter that this section deals only with network connections and the basis on which they are made available. It should be made clear that this section does not refer to retail pricing issues, which are for suppliers and should be considered in 'contract' or 'prices/tariffs' sections.

On the suggestion of a right of connection to the gas network (which in contrast to electricity is not envisaged in the present gas directive), Eurogas believes that it should be made clear that any such right would be subject to connection being economically possible, at reasonable cost.

Many of the other elements suggested in this section are a mixture of network and supplier issues, which confuses the structure and clarity of the Charter and responsibilities under it.

On supplier of last resort (SOLR), it should also be clarified that this relates to the temporary arrangements which apply where a supplier becomes bankrupt, not to default supplier or other situations. Since the purpose in either case is to ensure continuity of contractual supply (not physical delivery), SOLR should not come under this section anyway.

On access monitoring, we do not believe that this warrants inclusion in the charter. Those Member States where this is a significant issue are free to pursue such a route if they wish.

On justification of customer categories we are unsure what is meant or how it would benefit the individual consumer.

On calculation methods we are also unclear what is intended.

On disconnection we believe that disconnection should be described as a 'last resort' remedy rather than an 'undesirable' remedy. Gas suppliers generally reserve the right to disconnect after all other options have been tried and failed.

4.2 Contract

Eurogas accepts the importance of the measures required by community legislation. On the suggested additional Member State elements, we note that the wording on billing and energy efficiency has been derived from the Energy Services Directive, which has not yet been transposed into Member State legislation, so there is a danger that the charter anticipates and could actually pre-empt that transposition.

In addition, Eurogas does not believe that all of these measures should be part of the contract itself and feels that competition and self-regulation may be sufficient to fulfill at least some of these requirements.

In this area especially, the wording of the final Charter will need to be carefully considered, in order that it is clear what information customers will be able to have access to.

4.3 Prices, tariffs and monitoring

Eurogas believes that in general these provisions should be seen as applying at Member State level rather than necessarily to individual suppliers. Member States should ensure that customers have a wide choice of payment methods within the market place as a whole - it is not necessary for every supplier to offer the full range: there may be a niche role for internet only suppliers, for example.

On the requirement that (electricity and) gas prices be 'reasonable', Eurogas notes that effective competition between suppliers, a liquid wholesale market and close regulation of network prices are the best guarantee that customers will receive fair prices. The idea of 'reasonable' prices should be understood in the first instance as those resulting from the normal operation of an effectively competitive market. If there are regulated end-user prices below market conditions, suppliers will not be able to make competitive offerings and will not become or remain active in the market. For this reason, Eurogas has consistently opposed artificially low regulated retail prices, which are an inappropriate means of consumer protection and distort the market.

Eurogas notes again the wording of the Energy Services Directive has been used in relation to metering. There are significant differences between electricity and gas in this area as well as between the approaches to metering/meter reading between Member States. Eurogas believes that how the Directive is transposed in a way which is meaningful to customers should be for Member States to determine, and that Member States may well adopt different solutions, depending on local industry structures and requirements.

On the supplementary elements, Eurogas is not sure about the reference to 'competent bodies' which could be taken as referring to regulators or consumer organisations and could exclude the possibility of 'accredited bodies'. Recognising the variety of approaches in Member States in this area, Eurogas believes that it would be better to say that 'regulators or other competent bodies should ensure the public is able to compare prices and basic conditions of available offers' (i.e. the competent bodies do not necessarily have to present the comparisons themselves). We also believe the resulting comparisons should take into account all the main elements of a supplier's offering, not only price.

On the possible self-regulatory measures, those on billing and metering derive from the Energy Services Directive. Until this has been transposed, it is difficult to determine what self-regulatory steps need to be taken at Member State level, in particular whether promotional metering offers are appropriate.

4.4 Free choice of supplier

Community legislation refers to this ability of a customer to switch. Eurogas believes that the important thing is the ease of switching, not merely whether it is technically possible.

On the self-regulatory measures, Eurogas does not support either of the two areas mentioned. Eurogas agrees switching procedures should be efficient and that the period should be reasonable. However in many Member States procedures are efficient and customers can switch within one month, so there is certainly no urgent need for such a general requirement, especially where the benefit cannot be cost-justified.

On the expiry date of contracts, we agree with the need for customers to be clearly informed of their contractual position. However we do not agree that the date should necessarily be mentioned on the customer's bill. There are other ways in which the customer can be made aware of the expiry date – it will be part of the original contract, and any change to that contract should be notified to the customer in good time before expiry.

4.5 Information

Assuming the Charter and this section of it apply only to household customers, Eurogas supports this section, subject to the comments above about consumer protection/public service obligations and on our views regarding 'reasonable prices'.

However we do not agree that all of the supplementary information on consumption, benchmarks, energy efficiency, profiles etc should be provided in or with bills or contracts. It is essential that customers are not overloaded with information; too much information will generally confuse and imposes unnecessary additional costs. Again the wording in this area is based on the provisions of the Energy Services Directive, which has yet to be transposed. Eurogas believes that the detail of what and how information is provided should be for Member States to determine.

On the self-regulatory information suggested, we do not see there is any great value in most cases in providing customers with updated information on the gas supply available in their area (i.e. the extent of the gas supply area), but if a Member State felt it was necessary, it would generally not be a supplier responsibility.

4.6 Complaints

Eurogas supports the development of dispute settlement systems, to be used when the customer has been unable to resolve an issue with his supplier. We are not clear about what is intended in the reference to the role of energy regulators, who may/may not be involved in such schemes; indeed the schemes themselves do not have to be specific for the energy sector. Whatever the nature of the scheme, the important thing is that the customer is informed of the existence of the scheme, not whether the regulator is involved in it.

On the common entry point for complaints, Eurogas believes that the customer should first be educated to understand the differing roles of distribution companies and suppliers in a competitive market and we see the supplier as the customer's primary point of contact. We are concerned by any general proposal for a common entry point for complaints, which risks confusing the customer as to the roles of network and supplier, and making functional separation more difficult, but recognise

that in a limited number of areas (e.g. new connections or metering), it may be more efficient that the customer is directed to the distribution company.

4.7 Representation

Eurogas supports the suggestion that the nature and form of consumer representation is for Member States to determine. We therefore do not favour any specific measures in the Charter, including the proposal for a regular dialogue between stakeholders, although this would no doubt generally happen where it is felt to be useful.

Nor should it automatically be assumed that there is a special category of consumer rights related to energy consumers; in some Member States this is covered by ordinary consumer protection arrangements. Energy consumers should have appropriate protection; this protection is not necessarily different from or higher than the rights of consumers in other markets.

The Commission recommends that consumer organisations and consumer protection authorities co-operate to check the information provided by energy suppliers. Again we feel this proposed activity is too prescriptive; any requirements should be left to Member States.

4.8 Social Measures

Eurogas agrees with the principles in the Charter that whatever social measures are introduced should be well targeted, should not distort competition and should not create an excessive administrative burden.

However, given the varying definitions of vulnerable customers across Member States, the measures appropriate will differ from country to country. For this reason, we do not support many of the specific ideas mentioned in the Charter, although we understand the intention behind them. It should be for Member States to define who 'vulnerable customers' are, what they should be entitled to, who should provide the service and how customers should be advised. In particular, it should be for Member States to determine whether 'essential energy services' should be maintained, and if so how they should be paid for.

Eurogas sees disconnection as a last resort for non-payment and other situations (e.g. unsafe installations). We would agree that special care should be taken where vulnerable customers are involved. However it should be for Member States to determine what steps should be taken before disconnection, and to ensure that the roles of the various parties involved in disconnection are clear.

On the possible supplementary elements suggested as being under Member State responsibility, Eurogas opposes on principle the intervention in the energy market for social purposes. We have seen in the use of regulated retail tariffs the market distortions that easily arise from such intervention. In general we believe that energy policy and social policy should not be confused. For this reason therefore we do not support mandated 'social tariffs' and we reject the idea that customers in remote areas or with special needs should have systematic access to the lowest (price) offer on the market. There are numerous other ways in which such customers can be assisted which do not undermine the competitive market, and we would urge the Commission and Member States to adopt these in preference to the measures suggested.

4.9 Unfair commercial practices

Eurogas does not condone any unfair commercial sales practices and fully supports the Unfair Commercial Practices Directive and co-operation at Member State level to address any problems which arise.

5. Conclusions

In conclusion Eurogas recognises the importance of well-informed consumers able to exercise their right to choose their energy supplier. In many cases competition itself and self-regulation can be relied upon to encourage responsible behaviour by suppliers, but in certain areas, additional consumer protection measures may be appropriate, which can be addressed through normal consumer law or by sector-specific measures.

Eurogas sees the value of a consumer charter to support the objective of well-informed consumers, but believes there is much for the Commission and stakeholders to do before the role of the present document is understood and its wording can be agreed. To that end, we support the idea of a workshop this autumn. The workshop should in particular consider how a European Charter fits with the subsidiarity principle applicable to many areas of consumer protection.

In general we believe the Charter should be focused on the protection appropriate for household customers, and that the opportunity should be taken as far as possible to clarify the responsibilities of network and supply companies.

We have numerous comments on the detailed drafting. Some are intended to remove areas of possible confusion in the proposed wording; others seek to make provisions less specific and therefore more able to be accommodated within the various Member State approaches and structures. We have particular concerns on what we see as the unduly specific nature of the Charter when considering the protection of vulnerable customers, and look forward to exploring these in the forthcoming workshop.