

## STUC POSITION PAPER: ACHIEVING REGIONAL MARKETS

### 1- Introduction

To achieve progress towards a sustainable, secure and competitive energy market, in the view of Eurogas, a well functioning integrated EU market necessitates policies focused on

- improved regional co-operation involving a better harmonized regulatory process and measures to enhance co-operation among TSOs and remove barriers to competition
- non-discriminatory access and system operation.

Eurogas is concerned that the proposed Third Package, although it contains welcome measures to enhance regional co-operation and cross-border issues, will not offer rapid enough progress in developing Regional markets and therefore wishes to propose ways of strengthening this regional aspect. The paper does not touch on the unbundling debate.

In April 2006, ERGEG launched the Gas Regional Initiative (GRI) as a practical step towards the development of the single competitive market. Its approach was based on the voluntary cooperation of the industry, the Member States, the European Commission and other stakeholders. Eurogas supports this activity, as we consider there is potential for progress in a number of practical areas within the current regulatory framework. Nonetheless, we consider that there is also need for additional measures, in order to build effective regional markets.

- The common priorities identified in ERGEG's GRI are:
  - a) The development of new interconnections and the improvement of the efficient use of existing capacity
  - b) The improvement of transparency
  - c) The improvement of interoperability
  - d) The development of gas hubs

There is thus a high degree of consistency on core priorities, although the varying levels of market development assign a different weight to these priorities and leads to different solutions across the three regions. More coherence is required. This does not necessarily mean that all solutions need to be the same, as market conditions and circumstances are different, but they should be compatible. Regulatory practices should seek to fulfil the principles of better Regulation\*. Adoption of the Eurogas Guidelines on Good Regulatory Practice would contribute to this goal.

### 2- The measures included in the Third Package

#### 2.1- The new Directive amending the Directive 2003/55

##### Promotion of regional cooperation (art 5b)

According to this article, "Member States shall co-operate among themselves for the purpose of integrating national markets at least at a regional level. In particular, Member States shall promote the co-operation of network operators at regional level, and foster the consistency of their legal and regulatory framework".

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\* Eurogas endorses the Fifth Report of the HLG on Competitiveness, Energy and the Environment and the consensus on the key principles of Better Regulation.

This is a broad, unspecific requirement, and could be interpreted differently by different Member States. There is a need for more binding provisions. At the very least Member States should be required to remove all obstacles to regional progress.

#### Regulatory regime for cross-border issues (art 24d)

This article is more precise and mainly establishes that:

- "Regulatory authorities shall cooperate at least on a regional level to foster the creation of operational arrangements in order to ensure an optimal management of the network, develop joint gas exchanges and the allocation of cross-border capacity, and to ensure a minimum level of interconnection capacity within the region...".
- The Agency shall decide upon the regulatory regime for infrastructures connecting at least two Member States if it receives a joint request to do so, or where the competent NRAs cannot agree within a certain time period.
- The Commission may adopt guidelines on the extent of the duties of regulators to cooperate and on the situations in which the Agency becomes competent to decide on the regulatory regime.

The reach of this article (as well as others) will mainly depend on the guidelines that may be adopted. In the interests of coherence and consistency, the Regulation should set out the most relevant provisions on cross-border issues.

## **2.2- The Regulation amending the Regulation 1775/2005**

The provisions on regional cooperation are limited and included as one of the functions of the ENTSOG (European Network of TSOs for Gas).

#### Tasks of the ENTSOG (art 2c)

From the several tasks of ENTSOG some will have a positive impact on achieving regional markets:

- The adoption of market codes on a series of areas: security, access, data exchange, interoperability, emergency, capacity allocation, rules for trading, transparency, balancing, tariff structures, energy efficiency.

This is a key article with potential for developing regional markets but much will depend on the way this article is implemented. Eurogas considers that in principle codes are essential tools for the European market integration, and therefore for regional integration.

At the same time we have concerns about the role of ENTSOG in relation to "market codes", in so far as these may include commercial supply issues that are largely a matter for market suppliers. We are doubtful too on the question of gas TSOs involvement in energy efficiency issues. Nonetheless provided that it is clear that the codes in question will be about operational activities, we support the aim and would argue indeed that this objective requires clarification and reinforcement.

Regulation Article 2e proposes that "After consulting the Agency, the Commission may invite the ENTSOG, within a reasonable period of time to prepare the codes... where such codes are necessary for the efficient functioning of the market". This provision is too weak. The preparation of any Network Code requires time and effort. The requirement to consider different national realities makes the objective even more difficult. It is therefore important to simplify the process and optimize the process from the viewpoint of time. ENTSOG should work within a clear programme established by the Commission on the Agency's advice, and the

codes should, after elaboration by ENTSOG (with explicit involvement of system users), be confirmed by the Agency. Throughout the process there has to be adequate transparency and opportunity for robust involvement and appeal by the users.

Furthermore, Eurogas would like to see the concept of market code clarified.

#### Regional cooperation of TSOs (Art 2h)

These are the main points of this article:

- TSOs shall establish regional cooperation within the ENTSOG to contribute to the tasks of that body. In particular they shall publish a regional investment plan every two years.
- TSO shall promote operational arrangements in order to ensure optimum management of the network, and promote development of gas exchanges, the allocation of cross-border capacity and the integration of balancing mechanisms.
- The Commission may define the area covered by each regional cooperation structure.

Again the reference to the cooperation to be established is very general and no specific outcome is determined. Some more precise measures are required, including perhaps the establishment of regional entities responsible for regional operation of interconnecting lines and related infrastructure.

### **2.3- The Regulation establishing an Agency for the Cooperation of Energy Regulators**

The Agency will have a limited role at the regional level:

- Article 6: the Agency shall monitor the regional cooperation of TSOs.
- Article 7: the Agency shall decide on the regulatory regime of interconnections.

### **3- The possible new measures**

The development of regional integration in a reasonable period of time requires the adoption of urgent measures and the establishment of regional approaches to facilitate implementation of these measures. Key among them are improvements in interconnections, the upgrading of existing capacity, harmonisation of European network codes, and eventually the establishment of regional entities.

#### **3.1- Interconnections and upgrading of existing capacity**

As identified by the Commission, a basic condition for the existence of a European Internal Market is the availability of sufficient capacity for interconnection and transit. Differences in this respect are significant. In some countries the European interconnection capacity is well above 100% of the internal consumption whereas in other countries it is below 5%, which may restrict possibilities to benefit from internal and regional market opportunities.

In the case of countries with limited interconnection capacities, some basic concepts such as European market, harmonization, or cooperation and solidarity between countries have a limited reach. It also has a very negative effect on security of supply. Therefore, an urgent effort has to be made to improve the situation.

New investment should primarily respond to market signals, driven by users' demands for additional capacity. These demands are presently established in different ways according to national practices, and while such a flexible approach should continue, provided that it is transparent and non-discriminatory, an increasing attention to users' needs at regional level is required. Also there should be more emphasis on the European dimension and necessary areas for co-operation between TSOs.

Eurogas agrees with the proposed introduction of ENTSOG's responsibility for a 10 year investment plan plus (i.e. the plan should be more than the sum of TSOs' investment plans, but should reflect a European conception). The involvement of the Agency and the requirement for regional consistency and coherence with such plans will go some way towards enhancing regional market planning, but Eurogas suggests more specific measures.

- There should be a clearer involvement by ENTSOG of system users and of the Agency within the development of the 10 year plan (the consultation provisions for users should refer explicitly to the 10 year plan) together with a defined approval role for the Agency.
- Although the plan will build on individual TSOs' investment plans, this should not mean it is limited to TSOs' proposals, as it is important that the right to invest is opened to the largest number of investors.
- It has to be clear that the 10 year investment plan should include interconnection capacity objectives, defined by ENTSOG after consultation with users. The progress towards those objectives should be monitored by the Agency, who should make its reports available to users and the Commission.
- ENTSOG should identify priority interconnection projects and require that these are advanced urgently within clearly established deadlines.
- TSO's investment plans should be approved by National Regulators (rather than simply reviewed). Monitoring of national investments progress should be undertaken by NRAs, and projects with a European dimension, notably interconnectors, by the Agency.
- Clear resolution mechanisms are needed if investments are not undertaken in due time (for instance due to TSO's disagreement with the Regulator on regulatory conditions), such as the right for the NRA and/or the Agency to launch calls for interest.
- There should be clearer recognition of the need for investment-friendly regulation.
- The Agency should have a general competence on the regulation of cross border infrastructure involving more than one Member State (instead of by default or on request of regulators, as provided in the package). Also, a clearer provision is needed as regards infrastructure located in one Member State but with an impact on access conditions to another Member State. Also the Agency should be empowered to create adequate incentives for regional market integration and to review and overrule decisions of national energy regulators that have an adverse impact on other national markets or regional market integration.

If such measures fail to bring progress, then a role for the Commission could perhaps be envisaged, but Eurogas is confident that the measures listed above would lead to improvements.

### **3.2- The European Network Code**

The progressive establishment of a basic European Network Code (ENC) is a good initiative to ensure a good practical level of harmonization and is a good step to build a European Internal Market. The process should push for harmonisation of rules as soon as practicable, as that will enhance market coherence and interoperability. The preparation, however, of any Network Code is complex and requires effort and time. Therefore the process to follow should be simplified and the Commission's requirements should be demanding in terms of time. Users' must be consulted on the Code's development, and the Agency should co-ordinate the process.

- a) The Commission should establish a tight programme for ENTSOG to issue a proposal for a European Network Code applicable to all regions and countries. The Commission should

- adopt the Code after hearing the opinion of the Agency, which should take account of users' views in a public consultation.
- b) The ENTSOG should take into account the views of users and the inevitable differences existing in some markets due to physical and geographical constraints.
  - c) The ENC must be adopted by chapters taking into account the priorities pointed out by ERGEG from its GRI.
  - d) The ENTSOG must provide the necessary technical resources to minimize the period of time to produce the ENC.
  - e) Should the ENTSOG fail in the preparation of one chapter, the Commission should issue the corresponding guidelines.
  - f) Each region may complement the European Network Code with aspects especially adapted to its peculiarities provided that these do not lead to market barriers. In each region, national Regulators will set up a technical body responsible for that Code and work with the region's TSOs, monitored by the Agency. Network users must also be consulted in the process. The complementary provisions will be subject to approval by the Commission.

### **3.3- The establishment of regional operators**

Operational aspects should be considered more from a user point of view. Transporting gas over long distances presents a challenge, especially as a shipper has to reserve capacity with several transmission operators, each with its own different set of rules. This is notably a barrier for new shippers. Therefore Eurogas would support the transmission operators organizing a single interface (an OSS) to facilitate gas transport through different systems.

More formal regional co-operation than proposed in Regulation Article 2h would also bring benefits to system users. A practical way to develop regional integration would be for TSOs, which will be effectively unbundled, to be subject to more specific requirements for regional co-operation in identified areas. In addition to investment plans and implementation and the other general provisions set out in the Regulation Article 2h, this should include operation of interconnecting lines and related infrastructure, capacity calculation, capacity allocation and management, harmonisation of services, and other aspects to be decided. More precise definition of the areas for co-operation would require further consideration; Eurogas can support the list of tasks in EFET's paper on Regional Gas Grids as a good basis for discussion\*. The TSOs could consider setting up regional operational entities, with defined responsibilities in these areas. Any such entity would have to meet strict governance criteria, ensuring neutral solutions, within an agreed regulatory framework.

Eurogas also notes EFET's proposal for Regional Regulatory Boards. Such an element could be worth exploring.

Market instruments should be developed at regional level such as hubs/exchanges, and secondary capacity trading mechanisms.

## **4- CONCLUSIONS**

The Third Package is the legal instrument to put in place necessary measures, but improvements are needed if regional market development is to succeed. At present Eurogas considers that it would be necessary to sharpen the open and general provisions on regional integration. Furthermore, possible progress is heavily dependent on cooperation between Regulators and between TSOs, but more attention needs to be given to the voice of network users, as well as defining in more detail the regional co-operative aspects envisaged.

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\* EFET's paper on Regional Gas Grids – Towards the single European market of October 2007, Section 2.6.

The European internal market cannot be achieved in a single step but will require a complex process requiring a certain time. In some regions there has been some progress in ERGEG's GRI process but experience to date suggests that more timely progress will not be achieved unless supported and complemented by additional obligatory measures as proposed above.

Elements in the Third Package which push the development of regional markets and integration should be more specific, more demanding and it should try to reduce the time required by the whole process. Problems exist in the market and will continue, unless timely and real change is achieved.

In the light of the suggestions in this paper, Eurogas proposes specific amendments to the Third Package.