EUROGAS COMMENT ON THE COMMISSION'S DISCUSSION DOCUMENTS

INTRODUCTION

1. Eurogas welcomes the opportunity to discuss with the European Commission the implementation of the Gas Directive. It is in the interests of all players that a smooth transition is achieved towards an internal gas market, and the gas sector's views are of significant relevance in this respect. Eurogas thinks that many issues which appear problematical now will be resolved in practice by the market but nevertheless the Commission has an important role in monitoring the implementation process and developments to ensure this. The complex process will benefit from continuing consultation in which Eurogas is ready to play its part.

2. Eurogas recalls that it was with the aim of facilitating the development of the internal gas market, and in recognition of the very different circumstances affecting Member States' gas companies, their different policy and operational considerations, that the Council favoured a framework Directive. Eurogas considers that the implementation of the Gas Directive and the operations of natural gas companies should be driven by the objective of a competitive gas market throughout the EU, with due respect for the principle of subsidiarity alluded to in the Directive and emphasised in the negotiations.

3. Eurogas understands that at this critical time of transposing the Gas Directive, some Member States may be seeking clarification on particular Articles of the Directive in order to have a clearer view on transposing the text into national legislation. In so far as the discussion documents constitute a response to this possible requirement, by explaining the sometimes complex legal documents in plainer language, Eurogas agrees their usefulness in this respect and sees no problems in the approach.

4. Eurogas is concerned, however, that in places the wording of the discussion documents could lead to re-opening and perhaps to re-interpreting points on which a finely balanced compromise was achieved in the Council. In other words, these documents could go beyond the objective of clarification and restrict the subsidiarity principle underpinning the Directive. The discussion documents should explain and when necessary clarify the existing legislation but avoid, at the same time, any restriction of the Directive's provisions as well as the re-opening of a debate on the agreement reached by the Council.

5. With this objective, and aside from the remarks which follow on specific chapters, Eurogas considers it advisable for the Commission to review the current draft documents to suppress those unnecessary explanations, assessments or technical developments which would raise confusion or disagreement. Eurogas sees potential scope for problems in the following :

   - some chapters, for example "emergent regions" and "up-stream pipeline networks" deal with topics which seem clear enough in the Directive's text. In these cases, any alternative wording or unnecessary elaboration on the topic could lead to confusion or be counter-productive, instead of clarifying the Directive.
   - other chapters introduce a theoretical approach to the implementation on a specific topic, as in the case of access charges. It should be emphasised that this approach is not aiming to set up required correct implementation procedures but only to outline some possible solutions.
   - Yet other chapters, instead of limiting themselves to the explanatory objective, introduce assessments of specific aspects of the gas market or assessments of the possible effects of the Directive's provisions, notably in the "Take-or-pay contracts" chapter. Given the diversity of the European gas market, such kinds of approach can be controversial and

make quite difficult a generalised agreement. In so far as the interpretation must not necessarily be based on these kinds of assessments, Eurogas considers it advisable to avoid them as much as possible.

Access Charges

The Commission has made a comprehensive analysis of the issues, which can be useful to Member States. The Directive, however, states the principles, and providing these are adhered to, a number of approaches are possible which can be developed according to particular circumstances, which will vary from country to country, as shown by examples in the Commission's working document. Eurogas does not consider the possible diversity of national tariffs systems problematical, as systems may evolve differently but not necessarily produce inconsistencies or inconsistent results in the way the Commission seems to fear.

Eurogas questions the value of a reference to an historic proposal to tariff setting which was rejected in 1992 as too detailed and inappropriate for inclusion in the Directive.

A particular question has been raised about cross-border tariffs.

In general, Eurogas does not see a need for a distinct approach because gas crosses a border. In any case, overtime it could be expected that the market would develop a practical system linked possibly with the emergence of major trading hubs and maintained co-operation among gas companies. Differences, particularly at a regional level may remain but should not present barriers to free trade.

Eurogas would be interested to know in more detail why the Commission may be envisaging the need for a cross-border tariff system.

Authorisations for new distribution pipelines

Eurogas considers that the provisions on authorisation for new pipelines are clear enough, and there is no need for elaboration. Eurogas, however, is surprised that the Commission's working paper suggests, that the derogation permitted under Art. 4.4 should follow the 10 year period as in the case of emergent markets. No indication of this sort is given in the Directive and while the Commission may be motivated by practical reasons, each situation will need to be judged on a case by case basis.

Emergent Regions

Eurogas considers that the flexible approach taken in Art. 26 is workable, but would argue that the Commission's involvement in the system is kept to the minimum necessary, particularly in situations in which the supply contract has been awarded on a competitive basis; in such circumstances there is little need for a detailed review process.

Eurogas does not agree with the Commission's statement that Article 26(3) cannot provide for derogations in relation to the distribution sector. The Statement by the Commission 95/98 notwithstanding, distribution infrastructure is not excluded by the wording. Article 26.3 protects long-term supply operations, while Art. 4.4 permits a refusal of authorisation to build and operate new distribution systems.

Publication of Main Commercial Conditions

The issue of main commercial conditions will primarily be an issue between the company in question and its relevant national authorities.

Eurogas considers that the approach taken in the paper to list a number of aspects which may be included among main commercial conditions with the point that it is not exhaustive is correct. The subsequent emphasis, however, on publishing tariffs seems inappropriate in view of the Council's clear decision not to impose such an obligation, under the NTPA system. Probably, some companies under the NTPA system will choose to give tariff indications, but as is clear from the Council's decision reflected in the Directive other approaches, for example the general principles on which negotiations will be conducted are equally acceptable.

The role of storage or similar services in a competitive gas market

The Commission states in its paper that third parties have access to storage facilities (upstream and downstream), but the text of Directive does not say that; its careful wording reflects the in-depth discussions on this point which led to a recognised compromise.

Storage is only one of a range of services necessary for the effective functioning o a competitive market. Physical storage is itself only one of a range of possible means to provide security and supply modulation, although depending on circumstances it may be the most efficient.

Storage (or comparable services) are not in themselves natural monopolies requiring a priori the type of approach pursued for pipelines in the Directive. Even in the UK, where storage services are provided, most of BG's sites have recently been released from regulation. It is, nevertheless, the case that the historical development of gas industries and different geological or market conditions have led to different situations in the light of considerations regarding security of supplies, PSO or competitive issues. In the future other issues may be raised, including in connection with competition law in the absence of appropriate behaviour by owners/operators. It may also be the case that the facts of the market will change over time and resolve the underlying issues.

General access is not imposed by the Directive. The requirement in the Directive as interpreted by a Commission and Council statement in connection with Article 2.13 is; "The Council and the Commission consider that the provisions on access to the system in relation to storage facilities or activities do not cover access to such facilities/activities independent of system use. Access to such facilities should only be possible when such access is technically necessary for providing efficient access to transmission and/or distribution networks".

Take or Pay Contracts

The Gas Directive expressly acknowledges that Take-or-Pay contracts are a market-reality of European gas supplies. By concluding Take or Pay contracts, gas companies in EU consumer countries for their part assume long-term payment commitments for fixed volumes. Gas producers for their part enter into long-term commitments for the supply of volumes at agreed pricing.

In recognition of the importance of Take or Pay contracts for assuring Europe's gas supply and competitive prices in the past and in the future, the Council arrived at a delicately balanced approach which would respect the well known strengths offered by the system without undermining progress towards a competitive gas market. Companies can seek derogations from certain provisions if they are or would be in serious economic difficulties because of their take-or-pay obligations.

Eurogas does not envisage on the basis of the Gas Directive that there will be much recourse to this derogation facility (none that is unjustified) or that it will have an undue impact on market dynamics, but as the Directive makes clear any problems which arise should be treated on a case by case basis. An objective view should be taken of the well thought out list of criteria, for which no ranking can be deduced. In this respect as in others, the Directive takes account of the differences between the national gas industries.

The Commission's role in the system is well defined in the Directive, which should ensure that the implementation of this aspect works smoothly.

With regard to the discussion document, Eurogas is concerned at the Commission's guidance with regard to old and new contracts. An early attempt to draw a distinction between these was rejected, and the Commission's emphasis on the date of the contract signature is inappropriate.

Eurogas is also somewhat concerned, however, at the Commission's view that the case-by-case analysis should be one which renders a derogation indispensable for the continued economic activity of a given gas company. This is too extreme and measures should be permitted before arriving at this situation. The Commission is somehow implying that warranted protection of Take or Pay contracts is to be viewed in a similar light to state aids, but there is no comparison between the two.

Furthermore the Commission anticipates that the completion of the single gas market will lead to rising demand for gas and simultaneously falling prices. Gas-exporting countries or producers are expected – at a time of lower prices – to carry on making adequate supplies available, to renegotiate their existing contracts, to accept new price risks and other risks and to allow greater flexibility in the agreed volumes. This theoretical analysis is open to challenge and therefore it is not helpful to argue an interpretation of the Directive based on this kind of assessment.

Indeed the majority of companies within Eurogas would advance an alternative assessment. The importance of TOP contracts could increase to the extent that the import share of EU Member States and of the EU as a whole increases.

All parties should agree that the market will certainly become more changeable, justifying the prudent approach allowing for flexible solutions taken by the Council.

Unbundling of Accounts

The Directive requires unbundling of accounts, not administrative/management unbundling.

The articles referring to the unbundling of accounts or the preservation of commercially-sensitive information are clear enough.

Eurogas does not understand, therefore, why the Commission's Document states referring to articles 8 and 11, that "This provision (known as "Chinese walls") has the objective to prevent the flow of information between the activities both of transmission and distribution undertakings ...".

This is not the content of articles 8 and 11, which establish the obligation to preserve confidentiality and prevent abuse of commercially-sensitive information, generally. The question of preventing the flow of information between transmission and distribution and trading is a different issue.

Provided, however, that the provisions of non-abuse of commercially-sensitive information are observed to the satisfaction of national authorities, different solutions in company/national systems should not present problems.

Upstream pipeline networks

Eurogas considers that the wording of the Directive in respect of up-stream pipeline networks is clear; the key Article 23 was discussed in depth by the Council in order to reach a compromise wording acceptable to all Member States.

Eurogas is surprised therefore at the suggestion in the working document that "the gas directive as such applies to up-stream pipeline networks with the exception of access rules ....". The up-stream sector is treated differently as regards the accounting requirements and other detailed exceptions.

Other issues raised by DG XVII

Technical Rules for Access & Interconnection Interoperability of the Networks

In the views of Eurogas, the Gas Directive entrusts the Member States with the responsibility to ensure that the technical rules for access and interconnection are developed and made available. Those rules have to be objective, transparent and non-discriminatory. Their main objectives are to ensure a safe and economic operation of the network.

Regulations in this area are to be kept to a minimum (see art. 5). Indeed, the continuous enhancement of grid to grid interconnections and the market forces within the European gas market create a favourable commercial environment, which will impress on commercial operators the importance for technical harmonisation and which should facilitate efficient utilisation of the interconnected grid.

Eurogas would be concerned if the Commission were to seek to identify as technical interoperability questions, matters which are properly of a commercial dimension.

Capacity

Questions about capacity raise enormously complex issues which will be dealt with on a case by case basis.

Harmonisation requirements.

Eurogas cannot immediately identify harmonisation requirements as implied by Article 27.

If energy taxation was originally in view then Eurogas notes that the issue is now on the Council's agenda. Eurogas does not favour the introduction of new and additional energy taxes, but if that is the policy route followed there should be a carbon-tax; ie there should be a harmonised energy/environment integrated policy to promote the displacement by gas of other fossil fuels. At present, the Commission's proposal on taxation of energy products not only would harm the competitiveness of natural gas in relation to competing fuels but also have environmental consequences, and not achieve the objective of tax harmonisation.

Furthermore, Eurogas does not foresee any need for particular harmonisation on environment. Comparable standards on environment are very important. Eurogas notes that legislation is increasingly set in place to arrive at a common approach on emissions limits, air quality, impact assessment, appliance standards etc. Environmental legislation is moving in the right direction and no longer risks undermining the move towards a successful internal market. Post Kyoto policy makers have as a major priority the reduction of CO_2. Therefore policy should be on ways to encourage use of gas, in electricity production and other end uses, which will lead to environmental benefits.