

Social Affairs Working Group Meeting

Eurogas Views on the Third Package

Brussels, 8 February 2008

*Presentation by Ms. Simona Basiu
Snr. Manager Medial Rel. & Information.*

euro  **gas**
THE EUROPEAN UNION OF THE NATURAL GAS INDUSTRY

The Third Package and the Internal Market

Eurogas advocacy

- Publication: «The European natural gas market – Eurogas views on the way forward » (October 2006, 44 p.)
- Number of position papers, for example:
 - Guidelines for good regulatory practice
 - Position paper on proposals on the internal market – Improved market integration
 - Position paper on sustainability and energy efficiency
 - Position paper on proposals of the internal market – a strategy for a competitive, secure market
 - Board – 4th December 2007: Approval of several Position Papers on “Third package” (e.g. Powers of regulators, Guidelines, Interface Agency-Regulators-Commission)

Which Governance?

Eurogas position on regulatory powers and the respective roles of the national regulators, the Agency, the Commission and the European network of transmission system operators for gas

- It is essential that a **clear policy framework** is established within which the national regulatory authorities can implement their powers
- The policy framework for the regulatory authorities work should include
 - A duty for the regulatory authority to consult with market participants
 - A duty for the regulatory authority to publish fully reasoned decisions
 - Decisions by regulatory authority should be proportionate
 - A memorandum of understanding at national level should be established that sets up the process of cooperation between the national competition authority and the national regulatory authority

Power for the Commission to adopt guidelines on a wide range of subjects

- => binding rules would be adopted via the so called Comitology procedure, i. e. outside the normal legislative process in the following key areas: public service obligations, regional solidarity cooperation, extent of the duties of the regulatory authorities etc;
- => EP and Council would still have a measure of control, but this is only a negative power to oppose draft guidelines
- => Consequence: Democratic legitimacy could be restricted, because comitology procedure is exercised differently to the co-decision procedure
- => Comitology procedure will only apply in case of amending non-essential elements of the Directive/Regulation and therefore there is a risk of discussions on what is « essential » and « non essential »

Eurogas proposes :

- No confusion between **law making and regulation making powers**
- Scope of guidelines should focus on regulated network activities
- All guidelines should be subject to regulatory impact assessment by the Commission and ACER

Role of the national regulators, the Agency, the Commission and the European network of transmission system operators for gas

Role of ACER

- Eurogas endorses the proposal to establish a single independent energy regulatory authority with harmonised powers in each MS.
- The creation of ACER is an important step in the right direction but the degree of independence of ACER from the Commission and national energy regulators is unclear.

ACER should be empowered to

- create adequate incentives for regional and European grid integration
- to coordinate the process of adoption of harmonised technical rules
- enforce compliance with harmonised rules
- review and overrule decisions of national energy regulators that have an adverse impact on other national markets or regional market integration

Regional markets: improvement needed to stimulate their integration

Role of the national regulators

- There should be no confusion between responsibilities of regulators and competition authorities
- Art. 24c (3) of the Proposal for amending Directive 2003/55/EC allows regulators to adopt « any appropriate measures » (e.g. gas release programmes) even in the absence of violation of competition rules
- This creates legal uncertainty and economic instability – Regulators would have a very broad discretion for market design
- Moreover, the powers of regulators should be clearly restricted to regulated infrastructures and should not include natural gas as a commodity

European Network of Transmission System Operators (ENTSOG)

The third package introduces powers for ENTSOG to establish and adopt technical and market codes.

- ⇒ Eurogas generally welcomes the role of ENTSOG on grid issues. However the reference to « market codes » is misleading
 - ⇒ **Real danger of confusion**
- ⇒ ENTSOG should work within a clear programme established by the COM on the Agency's advice, and codes should, after elaboration by ENTSOG (with explicit involvement of system users), be confirmed by the Agency
- ⇒ Market players should have a formally defined role in commenting on and participating in the development of any proposed codes.

Exemptions on Major New Infrastructures (Art. 22 of the Proposal to amend Directive 2003/55/EC)

- The third package proposes to amend the already existing rules for possible exemptions from third party access and regulation, which is subject to certain conditions
- Eurogas endorses the need for improvements to ensure a more harmonized approach to the current Art. 22
- Eurogas welcomes the principle of a clearer procedure for handling cross-border projects by ACER
- Infrastructure building, timing and operation should be addressed in a time scale to be proposed in each final regulatory decision, but not in the Directive itself
 - ⇒ 2 and 5 years pre-established "validity" of Commission decision to be withdrawn
- Each decision should be handled on a case by case basis

Thank you for your attention

www.eurogas.org