

OMV Gas Response to ERGEG Roadmap

A) Positive achievements in the developments of the Internal Market for Natural Gas

- OMV Gas welcomes the ERGEG invitation (paragraph 13) to “all interested parties” to participate in the process of the Roadmap consultation.

- We are convinced that the active participation of the gas industry results in increased reliance in the industry’s ability to police itself and tap its experience which has been proven as shown by its excellent track record over the decades.

- Significant progress has been achieved in implementation or preparation to the implementation of the following pillars of the EU legislative framework

- The second Internal Gas Market Directive (2003/55/EC)
- The Directive concerning security of supply (2004/67/EC)
- Regulation (No. 1775/2005) on access conditions to the gas transmission network (shall apply from July 2006) and
- Voluntary agreements: GGPTSO II and GGPSSO

- The Austrian gas market is one of the most open in Europe with 100% market opening as from October 2002 and significant volumes of customers switching supplier.

- We are convinced that now the European gas industry has reached a stage when it is appropriate to take stock, to analyse the experience and to consider a consolidation phase which should be used for effective implementation of currently existing legislation and regulation and letting this regulation work.

B) General remarks on the paper

- OMV Gas welcomes that the consultation paper focuses on regional initiatives. We believe that this “*per partes*” approach will bring us closer to the single market. We have to state though that the regional initiative Baumgarten to be defined in the ERGEG roadmap as comprising Austria, Hungary and Slovakia may be possibly appropriate in the future, but does not reflect the transactions currently taking place which are more directed towards the South of Europe.

- Additionally, with respect to our significant engagement in the South Eastern European region we welcome that the CEER through its SEE Working Group is also interested and active in establishing an effective and competitive SEE energy market. We appreciate its joint work with the gas industry, represented by the GIE ECSEE Working Group, with the aim to establish particular Guidelines on Infrastructure Investment Regulation (GIIR) which will create an appropriate framework for trading and safeguarding investments and financing in the gas infrastructure in that region.

- We expect that in further steps in the development of the Roadmap also the other issues dealt with in the consultation paper will be prioritised and that in this context, such issues as natural gas supply security and stable and predictable regulatory framework receive a high priority.

- The paper mainly deals with issues at two levels: at the level of the European single gas market and at the regional level. We are missing the third dimension, the national level which represents the first stage in the development towards the internal market of natural gas. National conditions have to be considered principally in such issues as respecting the specifics of transit in individual countries, security of supply, actual opening of the market represented by the number of active suppliers, the possibility of switching supplier and the currently given level of TPA.

C) Answer to the question: “Does this paper identify the main problems in European gas markets today?”

- Regional initiatives based around actual and potential development of hubs are certain to be a positive contribution to European trading. However, the differences between gas and electricity have to be taken into account. One has to appreciate though the rapid development of hubs having taken place over the last years – the National Balancing Point, followed by Zeebrugge, the TTF, Baumgarten, the PSV and the French PEGs, the Eurohub, the Danish GTF and the BEB Virtual Point mostly developed within the last few years, based partly on market initiative and partly on regulatory effort. It is evident that hubs have benefits and facilitate trading. At the same time it is our strong belief that considering this positive development there is no requirement for regulation or legislation in this respect.

- We consider that regulatory cooperation can develop successfully e.g. in cross-border issues. Here, we have in mind particularly investments into transit infrastructure. The establishment of a regulatory one-stop shop should be considered for cross-border issues which would involve solely the respective competent authorities concerned by the investment. These regulatory one-stop shops should be established separately for each cross-border investment. The roles and responsibilities of these regulatory one-stop shops shall be clearly defined based on the existing European legal framework, or respectively the implemented provisions in the National laws. As far as these cross-border investments concern the pan-European area (outside the European Union) the respective roles and responsibilities should be based on the acquires communitarian which will be applicable in pan-European countries according to The Athens Memorandum 2003 as well as the ECSEE-Treaty which will become effective after the European Community and six Contracting Parties have ratified the ECSEE-Treaty.

An effective right of appeal procedure should also be developed involving only those countries directly affected by the investment. The authority acting as court of appeal should therefore consist only of members of energy regulators/authorities of the countries directly involved in the cross-border investment in order to avoid a complicated and long decision-making process (by involving a priori all regulators/authorities of the Energy Community in case of cross-border disputes although some of them might bear no direct relation to the respective cross-border investment).

Therefore we consider important, however, in the Discussion Paper not sufficiently dealt with:

- Stable and predictable investment climate, namely sufficiently long regulation periods and stable tariff principles.

Gas infrastructure investments are very capital intensive. A stable and predictable investment environment has therefore a huge importance for the realisation and efficient operation of such investments. These infrastructure investments have been funded up to now on long-term contracts. We are convinced that long term contracts will also remain the basis for infrastructure investment in the future. Without them neither the producers nor the transmission system operators will be prepared to invest and also the banks will not be prepared to finance very large amounts of money for a very long time without sufficient security that the goods and services can be sold in the long term and under predictable conditions as well.

As a general rule, the level of bureaucracy and therefore level of regulation should be kept to the required minimum and market initiative should be solicited wherever possible.

- We consider that the Roadmap should deal more with issues of security of supply. The latest developments in delivering Russian gas through Ukraine to Europe have confirmed the urgent need of supply diversification and thus the need for construction of new transit pipelines. In this connection the TEN projects will play a significant role. As stated above, also for the successful accomplishment of TEN projects, a stable and healthy investment climate is needed which will enable a long term secured and appropriate income for their amortization. For the creation of these preconditions, granting of exemption from the TPA provisions of the Gas Directive according to its Article 22 is of vital importance for the feasibility of TEN projects.

D) Statements to individual issues in the Roadmap

Ad 4.3 Hub-to-hub transmission

With regard to tariffication two aspects should be especially considered:

a) We understand hub-to-hub-transmission as transit in general; hub-to-hub transmission represents no special case of transit, but is a synonym for transit. In cases where, taking into account the specific conditions in the Member States, which form the route between the different hubs, the cross-subsidization is clearly identifiable and produces unacceptable distortions the application of specific tariffs for transit/ hub-to-hub transmissions could be more appropriate

b) the price differential between two different hubs reflects not only the lack of available capacity between these different hubs, but reflects much more the influence of external factors (e.g. different tax regimes to be applied in the different Member states where the hubs are located, different national market conditions/different market structures etc.) and the need for a further diversification of supply sources (as diversification of supply sources might allow a decrease of the mentioned price differential from the commodity's price perspective).

Investments in transnational interhub links might facilitate the decrease of price differentials as these investments enable an increase of supply of gas quantities to be tradable in the hubs.

In this respect a diversification of supply sources may also be needed. New investments into infrastructure linking hubs with new supply sources are therefore required but have to be left to the responsibility of market participants, as future developments like a change in flow patterns due to new direction of supplies cannot be regulated.

Ad 3.2./ 35 Decoupling contractual and physical flows

The emphasis on the role of swaps with regard to the decoupling of contractual and physical flows and to the development of competition seems to be misleading: Precondition for the possibility of offering swaps is the existence of physical transportation logistic on a long-term basis. We consider that swaps do not increase security of supply because they represent contractual transactions between traders and are not transactions between TSOs. Swaps between traders, being in competition to each other, will not represent stable transactions on a long-term base as it is clear that one trader will not support the entering of another trader (being his competitor) into his own market. Swaps might therefore only be seen as add-on services to transportation. Transportation on a long-term base is the precondition of swaps and the only guarantee for security of supply on a long-term base.

Ad 3.6./ 63. Cross border infrastructure

The statement that a fully regulated investment allows investors to secure forward income from tariffs seems to be an uni-dimensional point of view which does not take into account other aspects such as risks to the income from tariffs (e.g. risk from unforeseeable market developments etc.), which can not be dealt by regulating the investment.

We consider that the element of safeguarding investment principally lies in a stable and predictable regulatory framework, which does not need to implicate regulation of investment. The TSOs should be left to develop the most efficient solutions. TSOs should not be withdrawn the freedom of choice in undertaking their investments (circumstances, return etc.).

Ad 4.1./ 83. Regulatory co-operation and gaps between jurisdictions

We do not agree with the opinion that tariffs must be regulated to protect users. Users might be protected from regulators' side against non-economic tariffs by a stable and predictable regulatory framework, which gives TSOs the possibility to undertake long-term investments into gas infrastructure in order to provide the possibility for a competitive market for offering logistical services on market-driven tariffs.

Ad 4.6./ 116. Cross-border trading – Instituting of an EU wide entry-exit system

The TSOs should be left to develop the most efficient solutions and consumers should be given the freedom of choice. (e.g.: In this context TSOs could, where appropriate, with regard to the specifics of the infrastructure and with regard to the avoidance of potential shortcomings, apply other tariff structures than entry-exit).