

Eni Gas & Power's response to ERGEG's Consultation Paper on Implementing the Third Energy Package

Introduction

Eni welcomes the opportunity to contribute through ERGEG consultation to the discussion on issues to be addressed to allow implementing the third energy package into practice; we agree on the approach of making progress in this direction without waiting for the 3rd package proposals definitively agreed.

As general principle related to the described approaches, Eni supports the creation of a powerful Regulatory European Agency acting as guarantee of harmonized implementation of European rules and technical Codes.

Furthermore taking into account the complex sets of relationships and interactions, we deem that the role of each institutional body should be clearly defined to provide real benefits to European consumers and also to promote simplification and transparency in the regulatory framework.

Moreover it's at the same time important to define precisely national and European competencies, identifying clear borders between National Regulatory Authorities'(NRA) powers and Agency's ones. In particular:

- regulatory decisions on matters affecting two or more Member States, as well as provisions having implicit and explicit supra-national impacts and consequences (i.e. conditions for the development of Codes, unbundling, exemptions and balancing issues), should be covered by the Agency;
- regulatory provisions concerning matters with a local impact and national implementation of Agency's provisions, should be covered by NRAs .

For what concerns network Codes we believe that they should represent legally binding instruments, directly enforceable; other approaches could not properly guarantee the harmonization aim. The possibility of conformation at national level should be allowed in respect of regional structural differences only, requiring long time to be addressed and harmonised.

Responses to the main Consultation questions

Section 2

Question A: Please comment on the Consultation Arrangements proposed in this paper (see Appendix 1 Annex 2) as a basis for the interim period and for the later decision by the Agency as its own process

Eni shares the importance of a wide and proper involvement of stakeholders at all stages of the consultation process and considers that in principle Consultation Arrangements proposed in Appendix 1 Annex 2 are appropriate to guarantee it.

Nevertheless the development of Network Codes could require more complex approaches where coordination steps require more clarifications among ad hoc expert panel, stakeholders, Agency and other institutional bodies.

Question B: Could the fora (i.e. Florence, Madrid, London) be further enhanced to allow stakeholder to make an effective contribution to the development of the single European energy market? How could this be done in a practical way?

Question C: Could focused “ad hoc panels” of interested expert stakeholders assist the Agency in the development of regulatory policies? Should they be linked (though without full representation rights) to the Florence, Madrid, and the new London fora to avoid the proliferation of consultation structures, ensure the effective delivery of stakeholder views and proper representation? Or should the ad hoc panels be organized independently of the fora in close cooperation with energy consumer and network user representatives?

We support the creation of ad hoc panels of interested expert stakeholders, to help the discussion on technical specific issues, in addition to the wider consultation process involving all market participants. Panels should be restricted to a small number of experts for each specific matter to be discussed, but they should be representative and selected in accordance with a fair and transparent process: composition of groups and finalised documents should be made public. Ad hoc panels should interact strictly with other existing bodies and groups (Fora and GRIs) and should take into account results of market participant’s consultations.

As a consequence we deem that fora should be maintained as the widest discussion groups with visibility on work results and proposals of other consultation groups, as well as an arena for presenting and raising possible priority areas to be covered as well as relevant areas of concern.

Question D: Are proposed measures to ensure the proper public accountability of the Agency broadly adequate?

Eni agree with the proposed accountability measures; evaluation report should investigate and monitor the level of implementation and harmonization reached at national level, with reference to the main regulatory provisions and technical rules.

Question E: What do you consider to be the key elements for the successful establishment of the Agency? What are the most important issues relating to the NRAs and their role within the Agency?

As key elements for successful establishment and operating of the Agency, we would like to underline the following :

- a clear identification of objectives and field of action between national and European level;
- adequate resources available to Agency to fulfil its role efficiently;
- good coordination between institutional bodies in view of creating an effective harmonized regulatory framework.

Section 3

Question A: Are the proposed priorities for the codes and technical areas the right ones? If not, what should the priorities be?

Question B: Do you agree with our proposed approach grouping the technical areas into codes (see Appendix 2)? If no, what could the groupings be?

Question C: Which aspects of market design or network operation should be fully harmonized across the Union through the first set of codes?

Eni supports the proposed priorities and the proposed grouping measures, underlining the importance of balancing technical area, where convergence of approach should be fostered. Moreover, to increase market interoperability and liquidity, operational aspects improving cross border flows and harmonized interactions should be considered as priorities.

Question D: In Annex 1 of Appendix 2 we describe the content of each area mentioned in the Commission's initial proposals. Do you think the description is complete? If not, what aspects should be elaborated within the areas?

Here below some remarks of the gas technical areas mentioned in the Annex 1 Appendix 2

Transparency rules

With regard to transparency, the priority should be the implementation of existing requirements and of the user-friendly ways to provide information: it is important to consider that the adoption of transparency requirements can be considered effective when information is really available in a user-friendly manner and to all European market operators.

This means for examples that effective transparency should be realized also through:

- resolving linguistic barriers. Nowadays documents are often not available in English or are available just after the conclusion of the procedure to which documents are related;
- websites alerts: in case of deadlines or new relevant information, TSOs websites should send alerts to all transmission users and to operators registered in the website;
- the adoption of excel or cvs formats to publish numerical data; pdf formats don't allow for easily handling and processing of information.

In our vision it would be important that effective transparency levels were progressively monitored and that a reference level of effective transparency to be reached homogeneously in the European market were identified through Network Codes, as a goal under European Network of Transmission System Operators for Gas (ENTSOG) responsibility.

Capacity allocation and congestion management rules

The procedure in order to allocate available capacity and at the same time to assess market capacity needs and to support economically and financially the consequent investments is an Open Season (OS) procedure as the one described below.

In fact, in our opinion, it is necessary that an OS procedure determines not only the market capacity needs but also the availability by each interested stakeholder (sale operators, TSO, other sponsors) to support economically and financially the necessary investments.

Thus, we think that shippers participating in the OS should be asked to clearly state the limits of their possibility to support the investment by indicating in a binding offer:

1. the amount of capacity, the period and the duration of the relevant commitment for which they undertake to enter into ship-or-pay contracts;
2. the price they offer for the requested capacity, as variation (\geq) in respect to the expected tariff indicated by the TSOs; these binding offers will be utilized just in case of congestion.

In case the market assessment of point one ends in a need for new capacity (presence of congestion) in our opinion it is proper that the TSOs publishes the expected tariff level so that the shippers are able to estimate their commitments in order to present their binding bids through the procedure described below.

The possible range of duration of shippers' commitments could be reasonably set, in our opinion, between a minimum of a month and a maximum of 20 years.

The allocation rules must provide different methodology in case or absence of congestions.

- In the absence of congestion for every month to every shipper will be allocated the capacity equivalent in terms of amount, duration and period to its request; the tariff paid will be equivalent to the transportation tariff determined by the TSO.
- In case of congestion: we believe the most suitable and not discriminatory methodology is an auction one.

The capacities allocated each month of the 20 years reference period to each shipper result from the most profitable combination of the shippers commitments as stated in the OS (see answer to issue 10 above) and the corresponding monthly price is the so called System Marginal Price, i.e. the lowest price among those offered by the shippers to whom capacity is allocated in that month. The investment in new capacity is supposed to happen if the results of the auction cover the costs deriving from the tariff structure published by the TSO.

The procedure must provide mechanisms in order to align bookings of existing and new capacity and bookings made where two or more interconnected TSOs operate different booking systems.

In terms of UIOLI mechanism, in our vision it wouldn't be acceptable the introduction of a stricter UIOLI application.

Eni Gas & Power supports the effective application of existing UIOLI regulation to make available interruptible capacity (Interruptible UIOLI). Interruptible UIOLI, when applied, on the one hand is a sufficient negative incentive and on the other hand is consistent with the principle of respect of firm capacity right expressed above.

However, interruptible UIOLI mechanism should allow the capacity owner to recover capacity cost and the interruptible capacity released should be priced on the basis of

interruptible capacity market value and should reflect the interruption probability; this would avoid opportunistic behaviours in primary market capacity requests.

Balancing rules

In order to create effective liquidity, removing obstacles that hinder the development of the existing hubs, and to guarantee the harmonisation at European level it is necessary to conceive hubs, initially, as Balancing Points. The creation of hubs as Balancing Points is the right and the most efficient instrument to address the harmonization of balancing regimes, fundamental point to solve in the view to attain a single European gas market.

Initially hubs should be conceived as balancing points in the day ahead and within the gas day, or ex-post once the users know the extent of such imbalances. In fact at present different balancing and metering regimes in force in the different Member States are not consistent one another and don't guarantee an effective information of gas allocation data on a daily basis.

To support this kind of development, it is necessary to introduce adequate incentives, for example reducing balancing penalties for users who decide to trade their imbalance in the hub.

In the meantime, it is important to develop and harmonize metering regimes (ways and timetable) that are strictly interdependent with gas allocation and balancing, with the aim of developing more liquid and efficiently functioning hubs balancing points afterwards (daily consistent balancing regime).

The interaction among balancing hubs will, gradually and with the increase of transactions, identify a market price signal of imbalance that would constitute the common reference imbalance price.

Moreover the implementation of a common balancing regime through balancing hubs will optimize the use of storage, creating the conditions for increasing the gas storage reserves available to face climatic emergency situations.

A hub functioning as balancing point needs common regulatory rules that on one side guarantee non discriminatory third party access, but on the other side allow transactions based on market mechanisms operating without constrictions.

Rules regarding harmonised transportation tariffs

In terms of tariffs calculation, the principle of applying cost reflectivity avoiding cross-subsidization requires an adequate allocation of transmission costs between capacity and commodity components. A cost allocation on commodity components higher than the corresponding weight of variable costs (as in Italian system where 30% of total costs are allocated on commodity) penalizes regular capacity users while irregular ones take advantages. Moreover, in general terms transmission tariffs frameworks should guarantee grid competition, avoiding the risk of grid duplication. Moreover in respect of cost reflectivity principle, transmission tariffs should be calculated so that cubic meter tariff decreases when volumes delivered increase. In any case transmission tariffs conditions applied in Member State should be homogenous and guarantee equal treatment of customers to avoid differences in treatment that distort also industrial competition between Member State. (Nowadays in some Member States Transmission tariffs decrease when volumes delivered increase, in some others, as Italy, it doesn't happen).

Short term capacity: should be made available only at the end of long term and annual capacity contracting procedure and related tariffs should be calculated on the basis of the contractual duration. Tariffs must give correct market signals, reflecting system transmission costs; for this reason short term capacity tariffs should be higher then tariffs for long term transportation services and should be calculated so that all users could

equally contribute to cover infrastructure fixed costs through tariffs. From this point of view, a seasonal variation of tariffs during the year, where winter tariffs are higher than summer ones, is also recommended

Transportation on interruptible basis: relative tariffs should reflect both the expectance of interruption and the costs that system avoids through the activation of interruptions. Interruptible customers relieve the system from implementing alternative measures (i.e. storage infrastructures)

10-year network development plan

Capacity planning process should be conducted through Open Season instrument that should be open to every interested party as instrument to assess:

- capacity needs through a procedure open to every interested party;
- binding economical and financial commitments to support the cost of investment, for example through long term ship or pay contracts for capacity and/or, in particular, exemption procedures ex art 22.

An Open Season procedure, conceived only as an instrument to investigate demand side, is not effective without the existence of operators available to finance investment projects and any administrative action to identify them would produce the risk of shifting costs on the system in use. For this reason every different model of investment procedure not based on the central role for the exemption procedure ex art. 22 and without any binding financial and economic commitment to support investments by operators or investors (sponsors) would result in the following principles:

- obligations to invests on existing TSOs coherently with a capacity planning of the regulatory authorities;
- pass through of costs and risks to final customers (residential and industrial customers).

These principles would entail very serious drawbacks:

- the model is not in line with the ongoing process of liberalization of natural gas market and, taking into account the potentially relevant impacts on final customers, implies a very high level of regulatory risks.
- it would not ensure that the market assessment is both significant and useful.

In the context of a market oriented procedure the central point is the exemption procedure ex art. 22. The exemption procedure allows for an adequate balance between market needs (in particular with the percentage of capacity not under exemption, in the case of partial exemption) and security that system capacity needs will be effectively in place.

The only right and coherent regulatory level in which to assess the impact of single exemption procedures is the European market, not the single national markets.

Section 4

<p>Question A: Are there mechanisms and observations outlined above – notably in relation to the interaction between the Agency and the ENTSOs (and CEER and GTEplus/ENTSO-E) adequate? Are there changes that should be considered for their improvement?</p>

Interactions between the Agency and the ENTSOs request a high level of coordination that should be governed by clear guidelines. Agency will act clearly as guardian of the public interest but also as guarantee of the achievement of the desired level of harmonization. The coordination will have to apply also to the actions to be taken at national level to fulfill and implement tasks and technical rules.

The outcome of ENTSOG's work must be neutral with regard to relations between TSOs and relations between TSOs and other market players.

Section 5

Question A: Are the proposals in paragraph 69 to ensure the regional level involvement of stakeholders adequate? If not, how could they be further improved?

Question B: How do you envisage the regional Initiatives operating after the entry into force of the 3rd package legislation? Will their role become less important, given the development of networks codes at EU level?

Proposals in paragraph 69 could represent some elements related to the matter of coordination at regional and EU level, coordination that in principle we consider important to avoid duplication of work and discussion of regional solutions not consistent with an European vision. Regional initiatives, in view of the development of network codes at EU level should aim to converge both in terms of priority identified and in terms of solution approaches.

It is understandable that some of the different approaches which exist in different regions of Europe may need to continue during the transition to a single European market in those cases where they cannot be harmonised immediately, with codes drafted in a way which accommodates these existing essential regional differences within a European framework. Regional Initiatives should coordinate works of the Agency, ENTSOs and ad hoc panels to identify convergence solutions that should be adopted through Codes, but also to understand how to manage conformation process.

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