

## **Draft conclusions**

### **Conclusions of the 13<sup>th</sup> meeting of the European Gas Regulatory Forum Madrid, 16-17 October 2007**

#### **I. General**

1. The Forum was attended by representatives of the Commission, the representative of the Portuguese presidency, regulators, representatives of Member States of the EU, other EEA Member States and candidate countries of the EU as well as the EFTA Surveillance Authority and EFTA Secretariat, industry and consumer associations and Gazprom (as observer).

#### **II. Presentation of legislative proposal**

2. The Commission presented the key pillars of the proposed new legislative measures for the gas and electricity market (“3rd energy package”), notably its proposals for more efficient unbundling, greater transparency, strengthened cooperation of transmission system operators (TSOs), greater independence and powers of national regulators, the creation of an Agency for the Cooperation of European Regulators and improved solidarity between Member States.
3. Participants generally welcomed the Commission’s initiative to propose a new legislative package in order to complete the internal energy market. Some Member States, regulators and stakeholders raised concerns on specific points of the legislative package, such as the governance of the TSO arrangements established to develop codes and the need for stakeholder/user involvement, in particular EASEE-Gas, in this process, the need for stringent legal requirements to integrate markets as well as ownership unbundling/independent system operators.
4. The Forum underlined that the further legislative process should be as fast as possible to avoid any negative effects on further progress in the regions or on investment due to an uncertain legal framework and invited Member States and the European Parliament to come to an agreement on the basis of the proposals of the Commission as soon as possible in line with the Summit conclusions in particular with respect to effective regulation.
5. GTE will start preparing the set-up of the European Network of TSOs for Gas already in the beginning of 2008, and it will focus its work on institutional and organisational issues, like statutes, rules of procedure and the consultation process. The Forum welcomed this initiative and asked that the Commission, ERGEG, Member States and stakeholders are kept informed and involved in the process.
6. Europex underlined the growing importance of gas trading and exchanges for the development of the internal gas market and announced to start discussions with the aim of setting up an association representing the European gas exchanges.

### **III. Regulation 1775/2005: Compliance monitoring report**

7. ERGEG presented the draft results of their extended monitoring on the transparency requirements of Regulation (EC) No 1775/2005 focussing on compliance with the EC Staff Working Document on Article 6 of the Gas Regulation and its analysis on the efficiency of national penalties on non-compliance with the provision of the Regulation.
8. The Commission and stakeholders welcomed the comprehensive monitoring exercise done by ERGEG and underlined the key role of regulators in monitoring compliance with existing legislation with a view to ensure comprehensive implementation of existing legislation.
9. The Forum thanked ERGEG for the work done and raised concerns with respect to the remaining areas of non-compliance and stressed that current discussions about improvements of the legislative framework via the 3<sup>rd</sup> package shall neither neglect the importance of, nor serve as, an excuse for inadequate implementation of existing EU legislation. In this respect the Forum urged TSOs to rapidly improve the level of compliance with the Regulation.
10. The Forum requested ERGEG to continue their monitoring exercise on the remaining provisions of the Regulation including the relevant EC Staff Working Documents on Article 3 and 5 of the Regulation and the voluntary guidelines developed by ERGEG on balancing and open season. The Forum invited stakeholders to cooperate with ERGEG in this exercise and ERGEG to present an update report to the next Forum.
11. The Forum stressed that monitoring and enhancing implementation of legislation is key to the establishment of an internal market, and a key task of national regulatory authorities. The Commission will in close cooperation with ERGEG study the existing tariff and balancing regimes in Member States and the minimum level of harmonisation needed.
12. The Commission expressed strong concerns on the level of Member States' compliance with Article 13 of the Regulation more than one year after the deadline of 1 July 2006. The Forum underlined the responsibility of Member States to implement effective, proportionate and dissuasive penalties and appropriately empower the relevant authorities to sanction non-compliance with the requirements of the Regulation. The Commission confirmed to provide information on the status of notifications to ERGEG.
13. The Commission urged Member States to fulfil their obligation according to Article 13 Gas Regulation without further delay and reserved its rights to infringements in case of non-notification and non-compliance. The Commission announced to further look into the effectiveness, proportionality and dissuasiveness of penalties in Member States.
14. The Forum expressed strong concerns about the limited extent to which regulatory authorities are making use of their powers to sanction non-compliance with requirements of the Regulation. The Forum re-called that there shall be no room for negotiation in case of non-compliance and urged regulators to make effective use of their enforcement powers.

#### **IV. Interoperability**

15. EASEE-gas presented an overview of barriers for the implementation of CBP's. In its survey, EASEE-gas registered generally good progress, particularly in markets with largest interconnection. It concluded that many implementation problems are due to legislative and regulatory barriers that exist in some countries, particularly concerning gas quality and harmonisation of units. It pointed out that limited response was received from countries further east. Since modifying national network codes takes time and resources EASEE-gas asked for full commitment of all stakeholders.
16. GTE highlighted that implementation barriers are due to legal, regulatory and contractual issues, like the existence of legacy contracts that cannot always be resolved by TSOs. GTE confirmed they will continue to monitor and stimulate implementation of the CBP's. Future works include the development of a new CBP for a message transmission protocol.
17. The Commission underlined that CBP's are agreed by all stakeholders so they are expected to be implemented.
18. The Forum thanked EASEE-gas and GTE for their work and urged all TSOs to implement the CBP's where the barriers addressed in paragraph 16 do not prevent this. The Forum asked cooperation from Member States and National Regulatory Authorities to make implementation of CBP's possible where legal and regulatory problems currently hinder this.
19. The Forum invited EASEE-gas and GTE to continue monitoring of implementation of CBP's and report on problems to the next Forum, and to enhance transparency on implementation by, if possible, integrating other CBP's in the standard publication platform.

#### **V. Directive 2003/55: New Investment under Article 22**

20. The Commission presented first principles on the clarifications of the criteria of Article 22 Directive 2003/55/EC. With a view to provide a predictable and stable framework for investors and facilitate necessary investments, the Commission aims to provide guidance on the practical application of the criteria required in Article 22 paragraph 1 on a legally non-binding basis. The Commission recognised that exemptions under Article 22 are granted on a case-by-case basis, but stressed that there is the need to guarantee a harmonised approach.
21. ERGEG presented its report on Article 22 guidelines. The Commission welcomed the report as useful input for the draft document that it will prepare.
22. The Forum addressed the relevance of Article 22 exemptions for the realisation of new projects as long as regulatory regimes do not provide sufficient incentives for investments. The Forum welcomed the Commission's initiative and confirmed the need for more transparency and harmonisation in the application of the Article 22 criteria without imposing more stringent requirements. The Forum stressed the need for a proper regulatory framework that is not overly complex and promotes investments and invited ERGEG to consider possible regulatory investment incentives.
23. The Forum invited the Commission to prepare a draft document based on the principles presented to the Forum and ensure proper consultation of stakeholders.

## **VI. Gas Regional Initiatives**

24. ERGEG presented progress of the Gas Regional Initiatives and report on the convergence and coherence of regions. The Forum congratulates ERGEG to the progress achieved and welcomed best practices, developed within the Regional Initiatives, notably, coordinated open season procedure under the supervision of regulators, standardized bulletin boards for secondary market trading, transparency on the status of future infrastructure development including the development of regional investment plans, regulatory coordination with respect to promoting harmonised regulatory decision making across borders and improved transparency.
25. With respect to coherence of development of regions ERGEG highlighted the convergence of priorities, notably transparency, interconnection capacity, interoperability and the role of hubs. The Forum underlined its ongoing support for the Regional Initiatives as a useful interim stepping stone towards a fully integrated and well functioning market and stressed the importance of continued reporting on coherence and convergence.
26. ERGEG presented a number of practical problems linked to the implementation of the discussed best practice models, notably legal constraints with respect to day-ahead cross border trading in Region North North West, interconnection capacity in Region South and insufficient implementation of Operational Balancing Agreements on major interconnection points, e.g. Baumgarten.
27. The Forum noted that in finding new solutions to deal with capacity allocation and congestion management across borders, such as the one-stop-shop service for shippers, utmost care must be taken to ensure compatibility of existing (and proposed) legislation. In this light the Commission expressed legal concerns on a distinction between cross border services (transit) and domestic transmission and that specific point-to-point tariff and capacity booking regimes do not enhance market integration. The Commission stated that it will follow up on the correct application of tariff and capacity allocation systems.
28. The Forum underlined the role of Member States for the progress of the Regional Initiatives. The Commission recalled that the 3<sup>rd</sup> package puts emphasis on market integration and regional cooperation. In this light, the Forum invited ERGEG to keep Member States informed about the existing legal barriers monitored within the regions and keep them involved in the process. The Forum urged Member States to eliminate any residual barrier and invited the Member States to address the relevant legal constraints, in cooperation with Regulators.
29. The Forum encouraged ERGEG to further work on practical results with the scope to use these EU wide, notably better coordination of investments in regulated infrastructure in cross-border connections. The Forum noted that the related TSO cooperation needs to respect competition law. The Forum invited the Regional Initiatives to assess the possibility to implement these best practice models in all regions and report on results and possible barriers to the next Forum. ERGEG was asked to develop best practice solutions further.

## **VII. Standardised Publication Platform**

30. GTE updated the Forum on two publication platforms. One is a transparency platform that focuses on available network capacity as a function of the route chosen by a user, the sec-

ond is an interactive map that publishes information on the implementation of CBPs on Gas Quality, Business Rules, IT and Data Format, Codification and Harmonisation of Units, based on information gathered by the Commission. GSE presented its publication platform on storage information, addressing both storage capacity and planned investments.

31. The Forum thanked GTE and GSE for its work and recognised the importance of increased transparency on the networks and storage. It asked continuous commitment from stakeholders, mainly from TSOs to provide and update the information, and to provide comments and discuss priorities with GTE and GSE. It invited GTE and GSE to keep the Forum informed on its progress.
32. The Forum takes note of GTE's plan to have the interactive map online by end 2007, and to put the transparency platform online by middle of 2008. The Forum encourages both GTE and GSE to improve their platforms further, in particular through workshops with stakeholders, and to include also available capacity (considering maintenance) and flows in GTE's transparency platform.
33. The Commission and Marcogaz gave an update on their cooperation with CEN in the standardisation work for the harmonisation of gas quality and the related cost-benefit-analysis. The Forum underlined the importance of harmonised gas quality standards and asked stakeholders to remain committed to a European agreement. The Forum stressed that the process should be speed up as much as possible and receive appropriate funding as soon as possible.