



GTE Comments

Proposals for amending the Gas Directive 98/30 dated 7th June 2002

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1. GTE has recently commented (see GTE Comments dated 8th May 2002) on the proposals for amending the Gas Directive by the Commission of 13th March 2001, as well as amendments from the European Parliament, following the first reading of 13th March 2002. The Commission has since amended its proposals and published this amended proposal for a Directive amending both the Gas and Electricity Directives on the 7th June 2002. GTE is committed to making an active contribution to the debate concerning the Gas Directive. In this paper GTE presents its main comments on the new proposals. Wherever relevant our previous comments are repeated. Additionally, comments on specific Articles are repeated separately.
2. GTE promotes genuine achievement of the internal gas market in Europe through development of the cross-border trade, non-discriminatory and transparent conditions and clear regulatory framework to maintain a high degree of security of supply.

Electricity and Gas

3. GTE is opposed to the adapting of the Electricity and Gas Directives in one new Directive. There are strong differences between gas and electricity at both the production, transmission and storage level. They therefore unquestionably require a different approach.

Gas is a mineral resource and found where nature has placed it and has to be physically moved from the source to the consumer. Because most European countries are not self sufficient in gas, they are heavily dependent on imports. Most of the gas has to be transported on a thousand kilometres or more: over 60% of the gas consumed in the EU crosses at least one national border.

Electricity is a secondary energy carrier. It is brought from the power station to the consumer more or less instantaneously. Electricity in continental Europe is not imported except where there is regional surplus capacity or regional advantages in electricity generation (hydro, nuclear).

The gas market is, more than electricity, characterised by private investment.

The freedom to lay pipelines or to build LNG terminals has practical meaning in gas, as examples throughout Europe (e.g. Germany, Italy, Netherlands, Spain) show.

Gas is in competition with other fuels. For economical reasons some parts of Europe are not currently supplied with gas. In other words, gas is not a universal service. This has important implications for investment obligations.

GTE notes that all the above mentioned differences currently still apply, and that it is these differences that have lead to the separate Directives for gas and electricity. By combining amendments to these Directives in one new proposal, the Commission underestimates these differences which leads to a convergence in legislation which is not supported by the underlying market characteristics. Examples are Recital 23, which seemingly treats gas as a universal service, and Definition 32 in Article 1, which uses an electricity definition of imbalances. Given that the



proposals for amendments are grouped together for the Electricity and Gas Directives anyway, it ought to be relatively simple to fully separate the proposals.

Madrid Process

4. In the past years the Commission, CEER, GTE and other market participants have made significant progress in the Madrid Forum in shaping practical guidelines on subjects such as good practice, transparency requirements with respect to capacities and allocation as well as further development of the roles and responsibilities of market participants. Market participants have furthermore made significant progress in the area of removing obstacles to cross border trade (notably through the setting up of EASEE-gas). The qualitative proposals in the draft second Directive address to a large extent the same issues that have been addressed in these practical guidelines. GTE believes that the functioning of the gas market is enhanced by the progress of the Madrid Forum and is of the opinion that the practical guidelines agreed at the Madrid Forum might provide a significant support to the Directive for improving the gas market. Where the proposals by the Commission are concerned with issues relating to the practical guidelines agreed at Madrid, GTE is of the opinion that the proposals should not conflict with these guidelines, where there is evidence of common principles and objectives. For example Article 7.2 is concerned with balancing charges. In Madrid, it was agreed that balancing charges should be non-discriminatory but also providing appropriate incentives on shippers to balance their input and off take. The incentives have not been taken into account in Article 7.2.

Regulatory Framework / Access Regime

5. The proposed amendments do no longer allow for a choice in regulated or negotiated access to the transmission and LNG systems. They even exclude the possibility of negotiated access for transit of gas as well, which was not considered at the beginning of amending process. Member States have either adopted negotiated or regulated TPA, subject to subsidiary legislation. GTE Members are not convinced that, only two years after the entry into force of the Gas Directive it can be concluded that negotiated access does not work, or is especially distortive for the functioning of the internal market. Indeed, here also we refer to the recent adoption of the guidelines for good practice, which give a very good framework for non-discriminatory access. Negotiated access is compatible with current practice in the transmission market, as well as with a healthy development of that market. GTE points to the numerous transmission contracts (such as contracts for transit) that have been concluded long before the adoption of the first Directive.
6. One of the main concern of GTE is that the regulatory framework should not hamper the development of the necessary new infrastructures, particularly those infrastructures which will be needed for maintaining a high degree of security of supply for Europe and to improve the flexibility of the European network, and/or are in effective competition with competing infrastructures (pipelines or LNG terminals). In this respect, some GTE Members are of the opinion that the Gas Directive should explicitly allow Member States to put in place specific rules or tariffs for access to such infrastructures.
7. GTE believes that long-term transmission contracts will remain necessary in some circumstances for developing new infrastructures, and that the market will require from TSOs long-term transmission contracts in parallel with shorter-term contracts. It should therefore be clearly stated that long-term transmission contracts are not incompatible with the Gas Directive.
8. Furthermore, the new proposals entail the setting up of national regulators with far reaching authority and responsibilities. There is a real risk that the current proposals lead to heavy handed regulation which will distort incentives to make efficient use of the network as well as incentives for transmission companies to further invest in their networks. This applies notably for transit where long-term contracts are supposed to continue to play an important role in the future. An option for negotiated access should therefore be granted for transit.

Whilst GTE supports a clear regulatory framework, it is of the opinion that it is a matter for Member States to model the detail of regulation, notably the definition of specific rules to be



adopted in accordance with local market characteristics and national energy policy. The Articles (such as Article 22) should be compatible with the principle of subsidiarity.

Flexibility instruments

9. GTE is concerned about access requirements to services or facilities that the transmission system operators need for the day to day operational management of their systems. For example, line pack is mainly used by system operators to ensure the integrity of the network, it is thus part of its basic operation. If access to third parties has to be given to these services, those may then not be available for the TSO itself, thereby endangering the system, and consequently the security of supply in the system. GTE therefore is of the opinion that access to flexibility instruments should be limited to the part which is not necessary for the TSO for carrying out its day-to-day business. In the comments on Articles, a suggestion for an amended text is given.

In addition, GTE believes that definition of "flexibility instruments" should be made clearer, e.g. GTE does not clearly understand what is the meaning of "flexibility in the LNG chain".

10. Taking into account the proposed definition for "ancillary services", such services are "necessary for the operation of transmission networks". Therefore, GTE is of the opinion that no access to such services should be granted to third parties, for the same reason as stated above.

Subsidiarity

11. In the previous paragraph GTE already mentioned concerns with respect to the principle of subsidiarity and the proposed regulatory framework as well as the change in access regime. Another example may be the Annex, where a detailed description is given of obligations of Member States. GTE supports the principle of subsidiarity because local circumstances in Member States uniquely affect the functioning of (and/or access to) the transmission systems. The variation in carriage terms, which characterise the way in which transportation is organised in the individual countries reflects not only the different physical design models within the gas industry itself, but also different emphases within the national energy policies of the Member States. Common carriage terms would not necessarily promote efficient use of transmission systems which have different physical characteristics. Thus adoption of uniform terms would not necessarily promote the development of the internal EU market for gas.

Unbundling

12. The proposals (Article 7a.2) state that, unless there is already ownership unbundling of the transmission and other activities, legal unbundling of the transmission system operator is required, notwithstanding the possibility of a combined system operator for LNG, transmission and storage (Article 11a.). Even though a number of GTE members has thus far unbundled their transmission activities in either accounting, legal or ownership form, this has in many instances been on a voluntary basis. Furthermore, the Guidelines for Good Practice agreed in Madrid safeguard the necessary non-discrimination. On top of these Guidelines, GTE does not consider an obligation for further legal unbundling necessary.
13. GTE is highly concerned that Article 7a, notably in section 2b and 2c, could induce limitations of the normal rights of shareholders of a TSO to appoint company's officers and to monitor the investments of the company. Such limitations could be in contradiction with the national and European legislation.

Comments on specific Articles and Recitals

14. Recital 6 states that network tariffication is one of the main obstacles to arriving at a fully operational internal market. GTE notes that each country has chosen a model which best suits the specific circumstances of the network. Political, social and, more importantly, economic factors have helped to determine how these matters are organised. Taking due account of local circumstances will benefit the effectiveness and efficiency of gas transmission in the EU Member



States. If the tariffs are clear, comprehensible, transparent and applied in a non-discriminatory manner, the differences will have no adverse effect on cross-border trade. Furthermore, the one-stop-shop concept, which is currently proposed by some companies, enables shippers to book cross border transmission more easily and can thus help overcome administrative complications caused by differences in tariff systems.

15. Recital 14 is a clear example of the confusion that results from a combined Electricity and Gas Directive. It speaks of distributed generation, which clearly is not about gas.
16. GTE is concerned about the monitoring set out in Article 4a and Recital 20 to be carried out by Member states and to be followed by a report at Community level by the Commission. The concern of GTE is that a report at EU level will contain policy conclusions that have the character of investment obligations. The fact that such monitoring has to be carried out sufficiently early to allow for measures to be taken further strengthens this view. The European gas network has been developed on the basis of market demand for gas. It is clear that the Commission is worried that this development of the network will not proceed in a liberalised market with separate responsibilities for transmission and trading unless obligatory investments are made. However, as GTE has stated before, gas is not a universal service, and investment obligations may distort the market for new infrastructure.

The Commission's proposals may further conflict with the current freedom (in most Member States) to build new gas infrastructures and these proposals might thus be a barrier to competition in the transmission market. GTE believes that instead the investment climate should be stable and favourable for new investments.

17. Article 1 states that the provisions of these proposals also apply to biogas. GTE notes that transmission companies will only be able to accommodate gasses insofar as they are within the technical quality limits for a given network.
18. Ancillary services and flexibility instruments. Please see above (sections 9 and 10) for the comments on the need for transmission operators to have at its disposal the flexibility which is necessary for technical and operational reasons. For clarity reasons, GTE therefore suggests:
 - to add the following in Article 2 Definition 15: *"but excluding the portion of the instruments used by the TSO for the safe and efficient operation of the network and/or facilities."*
 - and the delete in Article 15.1 the words *"as well as for the organisation of access to ancillary services"*, as by definition *"ancillary services"* are needed by the TSO for its own operation.

19. Definition 32 in Article 2 is wrong. In the gas market imbalances deal with input and off take, not nominated and realised amounts. Suggestion for an amendment:

"energy imbalance" means the difference between the quantity of gas injected into the transmission/distribution system at one or more given locations over a given period of time and the quantity of gas withdrawn from such system at one or more locations over the same time period.

20. Article 7.2 deals with the rules that TSOs adopt for balancing the gas system. GTE proposes to change this into *"for balancing the gas transmission system"* since the TSO may not have any authority over other parts of the gas system. Moreover, the Guidelines for Good practice agreed in Madrid state that balancing charges should be *"broadly cost neutral for the TSO"* and ought to provide incentives on shippers to balance their input and off-take. GTE therefore suggests:
 - to replace the words *"and cost-reflective"*, by *"broadly cost neutral to the TSO"* as was also mentioned in the Guidelines for Good Practice adopted in Madrid;



- and to add the following to Article 7.2: *"whilst providing appropriate incentives on shippers to balance in-put and off-take of gas"* as also mentioned in the Guidelines.

21. Article 7b. GTE agrees with the need for the TSO to procure their energy according to transparent and non-discriminatory rules and procedures. There is no reason for further requirements, which could lead to excessive and unjustified complexity to deal with what is only a limited part of the operational expenses of the TSO. GTE therefore suggests to delete the words *"market based"*.
22. Article 14. GTE supports the principles of the amendments included in proposal of the European Council dated 30th April 2002 under Article 14.3 (see section 6 above).

Summary of proposed amendments

GTE asks that his concerns as expressed in the present document be taken into account in the new Gas Directive, including those which it does not make specific proposals.

Where GTE is proposing changes in the wording, here is a list of such proposals to amend the text of the Directive:

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| Article 2 Definition 15 | <i>"but excluding the portion of the instruments used by the TSO for the safe and efficient operation of the network and/or facilities."</i> |
| Article 2 | <i>"energy imbalance" means the difference between the quantity of gas injected into the transmission/distribution system at one or more given locations over a given period of time and the quantity of gas withdrawn from such system at one or more locations over the same time period.</i> |
| Article 7.2 | to replace the words <i>"and cost-reflective"</i> , by <i>"broadly cost neutral to the TSO"</i> ;

to add the following to Article 7.2: <i>"whilst providing appropriate incentives on shippers to balance in-put and off-take of gas"</i> ;

and to change <i>"gas system"</i> into <i>"gas transmission system"</i> . |
| Article 7.b | to delete the words <i>"market based"</i> . |