

GLE comments on

European Commission Action Points

I. Introduction.

1. At the XV Madrid Forum meeting (6th–7th November 2008) the Commission asked all interested stakeholders to provide detailed comments to the Staff Working Document on LNG by the end of January 2009. This invitation is also addressed at “Conclusions of the 15th meeting of the European Gas Regulatory Forum”.
2. GLE welcomes the opportunity to respond to this document and hopes the Commission finds GLE contribution constructive.
3. The present comments by GLE are intended to provide input on whether or not action on LNG issues beyond the Guidelines for Good Third Party Access Practice for LNG System Operators (GGPLNG) and the Proposal for Third Package is needed by the Commission. As far as the GGPLNG apply only to regulated terminals, the LNG action points should only apply to regulated terminals.
4. GLE has already expressed at the XV Madrid Forum its willingness to:
 - Discuss the study on LNG “Interoperability of LNG Facilities and Interchangeability of Gas and Advice on the Opportunity to set up an Action Plan for the Promotion of LNG Chain Investments” carried out by MVV Consulting in May 2008;
 - Collaborate with ERGEG to monitor the GGPLNG; and
 - Cooperate with the European Commission in any other areas covered by the proposed action points where the contribution of GLE might be valuable.
5. At the same time, GLE fully supports the statement highlighted by stakeholders at the XV Madrid Forum:

“Stakeholders underlined the need for any Community level action on LNG to recognise the fact that LNG is a global business and to take into account the possible impact of Community level action on the attractiveness of the European gas market”.
6. LNG plays a key role in the European Energy Policy in terms of security of supply, supply diversification and enhancement of competition. In this broad context, GLE has already expressed in previous documents its full support to the CEER/ERGEG initiative to assess whether a proposal for the development of guidelines for access to LNG terminals at a European level is appropriate or not. GLE supports the idea that the application of some basic

28th January 2009
Ref:09GLE022

rules to all LNG terminals subject to GPLNG is a key point in order to increase the role and the contribution of LNG in the development of effective competition and the internal gas market.

7. GLE also considers that the appropriateness of any regulatory measure should be assessed against the particular market environment and regulatory framework in which they are to be applied. GLE would like to remark that the regulatory framework must not hamper competition in the commodity market by imposing unnecessary or disproportionate conditions on LSOs or TUs.
8. GLE notes EFET's comments on GPLNG in particular advising the Commission that LNG market is a world market and therefore a more prescriptive approach in the EU (with less flexibility) could place it at a competitive disadvantage to other markets, potentially reducing the flow of LNG to EU.
9. The DG TREN presentation on the "Draft Staff Working Document on LNG" explained at the Madrid Forum states that the Paper was developed under the context of the "*Findings of EC study on LNG*". Furthermore, the Paper makes a large number of references to the study "Interoperability of LNG facilities and Interchangeability of Gas and Advice on the Opportunity to set up an Action Plan for the Promotion of LNG Chain Investments". The full report has not been released. GLE would appreciate that the full study was made available more widely to enable GLE to better understand the conclusions underlined in the Action Plan.
10. GLE is willing also to support the Commission's initiative through the organisation of a Workshop in March 2009 where all stakeholders will be invited to express their own views regarding the LNG business. This invitation was addressed at the XV Madrid Forum:

"GLE offered to support the work on these points by organizing a workshop with stakeholders and ERGEG in March 2009. The findings of the workshop will be reported to the next Forum."

11. GLE continues to support efforts to outline common operational areas, definitions and procedures. GLE would also like to remark that its position has been also issued in several papers:
 - Capacity Methodology (ref. 06GLE181);
 - LNG Ship Approval Procedure (ref. 04LNG089);
 - Roles and Responsibilities (ref. 06GLE182-final);
 - Services offered by Terminal Operators (ref. 07GLE179); and
 - Position paper on LNG business (ref. 07GLE137).

II. Action Points.

Action point 1): ERGEG to monitor GPLNG.

12. GLE has contributed to the development of the GPLNG, which have been the result of the consensus between all the stakeholders involved in the LNG business.

- In the context of the ERGEG Gas Focus Group Work Programme for 2007, CEER/ERGEG, as part of their Work Programme announced that ERGEG's Liquefied Natural Gas Task Force (LNG TF) would deliver "*Guidelines for Good Practice on TPA to LNG facilities (GPLNG) including an impact assessment of the proposal covering why the proposal is necessary; what are the advantages and disadvantages including the option of not taking any further measures*".
- During July 2007, ERGEG launched a pre-consultation process with stakeholders which included GLE. On July 25th 2007 GLE delivered its initial comments to the preliminary draft GPLNG to ERGEG ("GLE comments on Guidelines for Good Third Party Access Practice for LNG System Operators (GPLNG)", ref. 07GLE183). On September 25th 2007 GLE submitted complementary comments to the draft GPLNG ("GLE complementary comments on Guidelines for Good Third Party Access Practice for LNG System Operators (GPLNG)", ref: 07GLE221).
- On 13th December 2007, ERGEG launched a public consultation on its Draft Guidelines of Good TPA Practice for LNG System Operators involving all the stakeholders. ERGEG stated, once again, that the GPLNG will not go beyond the Directive 2003/55/EC in creating or restricting TPA rights, and that the GPLNG intended as possible input from ERGEG for an amendment of Regulation 1775/2005 and its annexes.
- On 23rd January 2008, GLE delivered its comments to the draft GPLNG public consultation: "GLE detailed comments on "Draft Guidelines for Good Third Party Access for LNG System Operators (GPLNG)" (ref. 08GLE021) and "GLE general comments on Draft Guidelines for Good Third Party Access for LNG System Operators (GPLNG)" (ref. 08GLE022).
- On 7th May 2008, ERGEG published the Evaluation of Comments which summarises the responses received and the Conclusions of the GPLNG public consultation. Furthermore, ERGEG presented the final document at the XIV Madrid Forum (22nd-23rd May 2008).

13. GLE has already expressed at the XV Madrid Forum its willingness to collaborate with ERGEG to monitor the GPLNG. The monitoring activity to be carried out by ERGEG will be positive if it leads to further discussion and consensus-building on what provisions of the GPLNG are currently applied by the regulated LSOs. However, GLE would like to remind that the GPLNG are applied on a voluntary basis.

14. GLE believes that the monitoring results, as well as any further action, should be analysed considering the regulatory framework applied in each country, the technical characteristics and specific business models of the existing LNG terminals in order to avoid any detrimental situation and distortion of the market and technically inapplicable requests, and should not be done in any way as to affect current or future investments.
15. GPLNG shall aim at avoiding an unstable regulatory framework with particular regard to the rules concerning LNG terminals that would hinder the LNG market development. This means that LNG business should not be constrained in a binding and detailed European regulatory regime, irrespective of the status of competition and historical development in the downstream market place in which each terminal is involved.

Action Point 2): Further analysis of the tariffs and revenue regulation applied to regasification terminals in the EU is needed.

16. Comparing LNG charges is a complex task due to the fact that tariffs applied by LSOs differ in terms of charging structure and to different levels and types of services. Simple comparisons of regasification volume, LNG vessels size, level of usage of LNG tanks, etc, can be made but the resulting differences between tariff levels require a detailed examination of the historical, geographical, physical and economic drivers behind tariff determination, which implies that it would be inappropriate to align LSO tariff levels. Any comparison of this would clearly be meaningless.
17. GLE would like to remark that it is in any event extremely difficult to find structurally comparable LSOs, and that LSOs' business models might diverge for many reasons such as, technology choices due to particular sites or gas quality in local markets and loading ports, or the taxation framework. It is important to note the temporal impact as, available technology and related costs at the time of making the investment may quickly change. . A comparison of tariffs charged by European LSOs might point out these singularities rather than give an overview of costs and therefore not yield meaningful comparison.
18. Differences in the LNG tariffs between terminals could be attributable, among other, to the following factors:
 - Levels of service: different levels of service could be included in TPA charges, e.g. balancing flexibility offered with regasification contract, overrun tolerances, booked capacity period. Patterns of demand in the market served by the terminal may influence the levels of service.
 - Infrastructures: elements that have an impact on tariff levels are the number of LNG tanks, vaporizers and other elements, capacity of unloading facilities, geographic location, age of assets, and prevailing costs at the time of the investment. The latter is particularly relevant because of the changes in the price of certain elements, e.g. nickel steel prices and labour rates have risen up abruptly within the last two or three years, alongside the price of other commodities; moreover, the availability of appropriate engineering companies at a given moment might also impact construction prices and lead times significantly.

- Government/Regulatory frameworks: e.g. Regulatory Asset Base definition rules, asset life assumptions and depreciation profiles, allowances/incentive mechanisms for funding investment and maintenance, taxation regime.
 - Tariff structure/methodologies: e.g. allocation of costs (capacity/commodity split, treatment of gas losses and fuel gas, potential cross-subsidies between different gas infrastructures).
19. In summary, GLE agrees with MVV conclusions that a meaningful horizontal comparison would be very difficult. GLE believes that comparison of tariffs levels would not be a good proxy of cost efficiency and yield anything meaningful.

Action Point 3): Assess the benefits of defining detailed requirements for the tradability of terminal access services, and assess the possibilities and the benefits standard contracts for the same services offered by LSOs.

20. GLE considers that the Commission should not aim at standardising contracts, but at harmonising the terminology and minimum contents.
21. It should be taken into account that contracts, regasification/system codes, and other rules and procedures might have been developed in each Member State with different approaches in response to different needs. The rules and conditions might be established in different documents (LNG terminal contracts, regasification/system codes, procedures, laws, decrees, orders, etc), and it might not be possible to fully harmonise contracts, at least in the short and medium term. On the other hand, the harmonisation of contracts also depends on the possibility to harmonise services which is a highly complex task when considering terminals of very different technical characteristics and business models.
22. EFET, when submitting comments to the ERGEG GPLNG, did not support the idea of imposing standard contracts:

"We believe that the guidelines should not be prescriptive regarding standard contracts. The market should be left to respond to develop appropriate products and any appropriate levels of standardisation would evolve as a consequence. Excessive standardisation risk imposing solutions which fail to allow for the differences between terminals, which are perhaps only fully understood when the actual detailed issues are considered on a case by case basis".

23. GLE considers that the main specific areas where harmonisation could be more appropriate are, for example, transparency, confidentiality, roles and responsibilities, terminology employed in the procedures, coordination of certain operational aspects such as ship approval procedures. These areas are appropriately covered by the GPLNG and therefore GLE does not consider necessary any further action in this field.

Action Point 4): Identification of all technically possible and commercially relevant “unbundled services”.

24. In September 2006, GLE delivered a Position Paper on “Services offered by the Terminal Operators” (06GLE179-final), that clarified the different type of services that might be offered by each LSO:
 - a summary of the contents of 2nd Gas Directive which explicitly address the issues related to the LNG Terminal activities and to the “ancillary services”;
 - a definition of the “specific services” that can be offered by LSOs in addition to the “ancillary services necessary for regasification” mentioned in the 2nd Gas Directive;
 - a definition of the “Technical Specific Services”;
 - a definition of the “Trading Specific Services”.
25. Although this Position Paper does not include the concept of “unbundled services”, it might be a basis for determining what type of necessary TPA services could be offered as bundled and/or unbundled.
26. GLE is willing to further contribute to Commission work to identify the services that could potentially be offered as unbundled. Such services would have to be identified to be compatible with any specific business model and technical/operational constraints.
27. It should be noted that it might not be possible to offer certain LNG terminal services as unbundled, or its offering could neither bring benefits nor introduce flexibility for shippers or downstream market participants. As detailed by the GPLNG, LSO can offer non-bundled services such as regasification, LNG storage, or reception capacity, comprising berthing and unloading. But, for example, it is not clear whether or not the latter service might be offered separately from LNG storage and regasification (i.e. separated from the standard bundled LNG service).
28. GLE notes EFET's position on GPLNG is that it should avoid being overly prescriptive in respect of how bundled and unbundled services should be offered so that no barriers are created to innovation and product differentiation in the market. The level of prescriptiveness of the guidelines is about right and provides flexibility for regulatory authorities to recognise the practical differences between different terminals.

Action Point 5): Address the costs and benefits of establishing minimum gas quality requirements at the entrance of LNG terminals in the development of standards issued to CEN.

29. GLE understands that the term “entrance” is intended to mean send-out into the interconnected grid.

- 30. GLE strongly recommends that, before taking any action, the Commission should wait for the results of the mandate issued to CEN, the organisation for European Normalisation, to develop European standards for gas qualities.
- 31. GLE agrees that an analysis of the costs and benefits should be part of the assessment developed by CEN. To this end, CEN should seriously take into account the global sources of natural gas, and not take as a starting point the quality that TSOs can handle.
- 32. The results obtained by CEN, in terms of costs and benefits, should be validated with other gas industry stakeholders.
- 33. Importing LNG certainly improves security of supply by diversifying supply sources, by forming an alternative to pipeline transmission and by adding more importation entry points into the network. For these reasons, the conclusions of CEN should not be a barrier for LNG to flow or expansion of flow to Europe.

Action Point 6): Assess steps to improve cooperation between LSOs and interconnected TSOs.

- 34. GLE supports the Commission's statement according to which cooperation between LSOs and interconnected TSOs is important in order to facilitate interoperability of LNG facilities and their connection to the grid.
- 35. GLE would be happy to contribute assessing the steps to improve cooperation between LSOs and interconnected TSOs.
- 36. In particular, GLE considers that cooperation between LSOs and TSOs is a central point for taking appropriate investment decisions. LSOs need prior to any development of LNG terminal capacities, to get the assurance that consistent transportation capacities will be developed downstream of the LNG facility on TSO's side with compatible long term entry capacity allocation mechanism and calendar. GLE notes that different contractual and regulatory regimes may apply to TSOs and LSOs. NRAs must ensure that the regulatory framework allows infrastructure providers to successfully cooperate.
- 37. Moreover, TSOs and LSOs should pay attention to the operational issues in order to ensure interoperation particularly in the start up phase.
- 38. In addition, GLE considers that this should be discussed with TSOs and would be also happy to cooperate with GTE+, in particular on the establishment of the European 10 Year Capacity Development Plan as well as on the future development of network codes.

Action Point 7): After adoption of the new Regulation, implementation needs to be monitored and evaluated. Application of CAM principles to past capacity bookings needs to be ensured.

- 39. GLE considers that a stable regulatory framework is fundamental for the LNG industry which remains based in a large majority on long term contracts with underwritten investments. Any

28th January 2009
Ref:09GLE022

non agreed modification of already booked LNG terminal capacities would have tremendous impact on the contractual commitments of LSOs toward their clients, as well as on the upstream and downstream supply chain, including security of supply issues. LNG terminals customers need to be confident on the stability of their contracts with LSOs.

40. Thus, GLE would like clarification about the aims of the Commission on this matter and the linkages with general liberalisation goals.

Action Point 8): Analysis of the need for harmonisation of anti-hoarding notification periods and anti-hoarding rules regarding the effect on capacity rights.

Action Point 9): (If the analysis under 8) concludes that harmonisation is needed): make recommendation on what such notification period and anti-hoarding rules should be.

41. GLE understands that by "anti-hoarding" the Commission is referring to shorter notice actions that may be reasonably taken to ensure optimal use of the infrastructure by giving shippers access to the infrastructure when capacity is physically available, provided this capacity is not used or traded by the primary holder.
42. GLE agrees with the Commission, when it notes that LNG plays different roles in various European markets, so that the concept of capacity hoarding has to be considered in different way than for pipelines.
43. In fact, as almost each terminal has a specific business model and a specific competition environment, a "one size fits all" approach is not applicable. It would not be appropriate to impose detailed/prescriptive provisions on access rules, notice periods and effects on capacity rights.
44. General principles and criteria can be agreed in the context of the GPLNG, without prejudice to the freedom of each LSO (or the relevant NRA where competent) to define which notice periods and effect on capacity rights are the most appropriate for its specific business model. Even in those systems where this responsibility has been granted to the NRA, the concerned LSOs must have a preferential consultative role in the definition of the provisions.
45. A general principle could be that the notice periods should be long enough to allow potential third party users of unused capacity to take necessary arrangements to be materially able to use such capacity, but without prejudice to the right of the primary terminal user to take advantage of its scheduled capacity.
46. In any case, the principle should be that the notice periods and rules applied by the LSO must be transparent and non-discriminatory and should not constitute a barrier for new entrants.



Action Point 10): Analysis of the need for rules on prospective transparency.

Action Point 11): Analysis of the need for detailed rules on transparency with regards to services offered.

47. GLE supports the concept according to which information transparency is important for the development of an efficient upstream and downstream market. Information transparency obligations must be limited to that available to the LSO. In case commercially sensitive information is required from LSOs, then the results should be published on an aggregate basis.
48. GLE notes that the GGPLNG already provide for a large range of information to be published by the LSOs. This includes the publication of "existing and future LNG terminal capacity" as well as "contracted and available LNG facility capacity for the services provided" on "a regular and rolling basis".
49. As access to LNG terminals is different from access to pipelines, and as almost each terminal has a specific business model and a specific competitive environment, GLE considers that more detailed/prescriptive provisions on prospective information transparency should not be imposed. In particular, the "one size fits all" approach would not be appropriate.
50. With regards to services offered, GLE believes that the GGPLNG already provide sufficient transparency for the publication of detailed commercial information. GLE considers that there is no need to go further on this matter.