

**RESPONSE TO ERGEG'S CONSULTATION ON IMPLEMENTING
THE THIRD ENERGY PACKAGE**

Introductory Remarks

Eurogas welcomes the consultation by ERGEG as a good basis for discussing and building consensus on the complex issues that will have to be addressed in realizing the new institutional arrangements envisaged in the Third Package. Eurogas supports the concept of a robust Agency acting as a guardian of the public interest in respect of the development of technical rules and Codes, while necessarily operating in an accountable and transparent way. Eurogas welcomes the emphasis that ERGEG places in its documents on stakeholder involvement in the consultation process.

Overall we can support the principles outlined in the consultative documents and the main elements of the approach. Below are our responses to the individual questions.

Section 2

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

We welcome ERGEG's initiative in preparing the ground for the new institutional regime to be set up by the Third Package, without prejudice to the role of the Commission and Parliament in finalizing the legislation, and recognizing that arrangements to be put in place in the interim period should be in line as far as possible with the awaited outcome.

As a general remark, we consider that the impact assessment referred to in Appendix 1, 3.12 should be routine for any significant regulatory policies, beyond those foreseen in the legislation. Also, Eurogas agrees the considerations listed in Appendix 1, Annex 2.1 and consider that the arrangements proposed generally seem to provide a good basis for consultation while noting that experience gained by all parties should sharpen and improve the process.

Whom to consult?

Eurogas agrees the proposed list of those to be publicly consulted, and also that some discretionary element will recognize the need for targeted consultations with parties most affected, within a framework of transparency. It has to be clear, however, that the consultation process must permit individual companies to express their individual positions at each stage, as well as seeking the views of associations.

Eurogas recommends that until ENTSOG is formally operational, ERGEG will have to take steps to ensure that the input advice from the network operations grouping is offered in accordance with the principles that will eventually underpin ENTSOG's operations.

When to consult?

Eurogas can also agree with the consultation timing envisaged and on the procedures. We query, however, the reference to internal discussions in 5 iii. This could be seen as contradicting the need for a fair and transparent pre-consultation process.

In principle, the same consultation procedure should be followed for both the elaboration of the first Codes and for their eventual revision.

How to consult?

Eurogas can agree with the lines of the approach, but a number of elements need further clarification and indeed are somewhat out of line with discussion points elsewhere. We consider that advisory ad hoc groups have a role to play, but we wish to see greater clarity in how these will be chosen, and also recall our emphasis on the need throughout the process for input to be allowed from individual companies.

Also, the procedures should allow for sufficient explanations of why comments have/have not been taken into account.

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

The wording implies that all three forums operate today in an identical way, which is not the case.

If what is meant by enhancement is the introduction of more functions, this may not make the forums more efficient. Nonetheless we agree that it would be sensible to make use of existing forums as far as possible, to avoid duplication and parallel structures for dialogue.

We would expect the Madrid Forum to continue to provide a market driven context for the development of gas technical codes and rules. This Forum could be improved by more assiduous follow-up of agreed Action Points arising from meetings, shorter Agendas, and more structured debate. Eurogas has no experience of the Florence Forum.

We question that there is a comparable role for the London Forum in the context of code development. The London Forum is concerned with the retail market and with consumer issues, where subsidiarity not harmonisation is the guiding principle.

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) to the Florence, Madrid and the new London Fora to avoid the proliferation of consultation structures, ensure the effective delivering of stakeholder views and proper representation? Or should the ad-hoc panels be organized independently of the Fora in close co-operation with energy consumer and network user representatives.

Ad hoc panels of experts, selected on the basis of their subject expertise in accordance with a fair and transparent process could represent an efficient element in the code development process, but they should be seen as additional to a wider consultation open to all stakeholders, not a replacement for it.

Also, it should be clear that they are ad hoc and not permanent groups, and linked to specific topics. The composition of groups and their reports should be made public. Eurogas considers that the groups should report to the Agency, and should be independent of the Madrid Forum, although such an arrangement would not preclude the possibility that progress reports on development of guidelines and codes be made to the Madrid Forum, similar to reports on GRI developments today.

Again we would emphasize the importance of ensuring that individual companies continue to be consulted at all times.

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

We support the suggested measures for an annual report, work programme, evaluation report and a review. In the interests of transparency, these should be made public. In order to ensure further accountability of the Agency, the Commission should consult stakeholders on their views of its performances.

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?

We would emphasize the following aspects:

- A clear distinction and common understanding on the respective competences and roles of the NRAs and the Agency as provided for in the Third Package.
- The Agency can facilitate communications among NRAs, contribute to improved insight on regulatory issues and their impacts and, when appropriate, advise the NRAs while respecting their competences.
- At the same time the development of sound operational arrangements between NRAs and the Agency and also between the Agency and ENSTOG.
- Processes should be efficient.
- The Agency should have the resources to be able to fulfil its role efficiently.

Section 3

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

Eurogas can agree the ranking, and especially welcomes that capacity and balancing are placed in the first category. The work on balancing should be focussed on achieving convergence of approach. Present inconsistencies and incompatibilities which impede the smooth flow of gas across Europe have to be resolved.

B. Do you agree with our proposed approach grouping the technical areas into codes (see Appendix 2)? If so, what could the groupings be?

The proposed approach is pragmatic.

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

The focus should be on improved network operation through codes that will contribute to a well-functioning market, and they have to be founded on well understood concepts and principles that are geared to achieving this objective.

It is in the interests of all market participants to see convergence of network operations as soon as possible. We would at this stage favour emphasis on operational aspects that will improve cross-border flows and interoperability, and enhance the access regime. Transparency requirements are also key. Quick wins should be identified.

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?

This requires more time for analysis within Eurogas, but we see paragraphs 33-54 on gas as a reasonable starting point for the development of the necessary codes. Clearly terms of reference would have to be elaborated in consultation with stakeholders.

Section 4

- A. Are the mechanisms and observations outlined above – notably in relation to the interaction between the Agency and the ENTSOs (and CEER and GTE+/ENTSO-E) adequate? Are there changes that should be considered for their improvement?**

Eurogas agrees that there has to be greater clarity on the interactions between the Agency and ENTSG. The driver should be the legislation and the role required of ENTSG to comply with that legislation. At least in the early days the operations of ENTSG should be closely overseen, not least to build market confidence in the institutional arrangements.

It follows, therefore, that an even more scrupulous approach has to be taken towards GTE+ in the interim period. It will not be subject to the requirements of the new energy legislation, but its conduct must be seen nonetheless to anticipate these, including the public interest duties.

The Agency should be the guardian of public interest, on a clearly defined basis. The outcome of ENTSG's work must be neutral with regard to relations between TSOs and relations between TSOs and other market players.

Section 5

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

On the understanding that stakeholder consultation and opportunity for participants in the three GRIs remain high, then less in-depth consultation may be required in the process of co-ordination. The indents, however, leave unclear what opportunities there will be to interact with the co-ordination process, as the only reference is to use "European and appropriate regional approaches". Eurogas acknowledges the good intentions, but does not understand from the text how they will be realized in practice and would like to see more clarification on this point.

In view of the growing interactions between markets, the process has to deliver improved co-operation between regulators and TSOs as foreseen in the Third Package. This is especially true regarding issues like co-ordinated network planning and co-ordinated capacity and congestion management.

- 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 network codes at EU level?**

The GRIs are useful, and will continue to be useful into the future. The regional initiatives can concentrate on the practicalities of establishing regional markets in ways compatible with the drive towards a Single European Market.