

**CEER response to:**

**the European Commission's Communication  
"Second Strategic Energy Review - An EU  
Energy Security and Solidarity Action Plan"**

**the European Commission's Consultation on  
the Green Paper "Towards a secure,  
sustainable and competitive European Energy  
Network" and**

**the European Commission's Communication  
on Directive 2004/67/EC (concerning measures  
to safeguard security of natural gas supply)**

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## Background

The European Commission presented its Second Strategic Energy Review (2<sup>nd</sup> SER) proposing an “EU Energy Security and Solidarity Action Plan” on 13 November 2008<sup>1</sup>. Twelve documents elaborating on specific issues towards increased energy security in the European Union (EU) accompany this action plan, including a Green Paper “Towards a Secure, Sustainable and Competitive European Energy Network” (Green Paper)<sup>2</sup> which is under public consultation until 31 March 2009.

This note is structured as follows: Section 2 includes highlights of the CEER views on the horizontal issues addressed in the European Commission’s Communication “Second Strategic Energy Review - An EU Energy Security and Solidarity Action Plan”. Issues relating to external energy policy are presented in Section 3. Section 4 presents some general views on the Green Paper with relevance to electricity. Section 5 presents views on the new impetus on energy efficiency. Section 6 presents some views on making better use of indigenous energy resources. Annex (I) presents the European Energy Regulators’ response (for electricity and gas, respectively) to the specific questions raised in the European Commission’s public consultation on the Green Paper. Finally, Annex II presents some views on the Communication on Directive 2004/67/EC (concerning measures to safeguard security of natural gas supply)<sup>3</sup>.

## 1 Highlights

CEER welcomes the recently published 2<sup>nd</sup> SER and its far-reaching initiatives for shaping the future EU energy market landscape. European Energy Regulators very much welcome the European Commission’s initial analysis and recommendations for improving energy security policy for Europe.

### 1.1 Internal Energy Market

In the Regulators’ view, there are a number of over-arching matters which must be addressed urgently if the ultimate goals for the EU energy market are to be achieved. Chief among them is the entry into force of the 3<sup>rd</sup> energy package and its implementation. In this regard, we welcome the 19<sup>th</sup> February 2009 Energy Council Conclusions on the 2<sup>nd</sup> SER, which call for an agreement on the internal energy market package before the end of the European Parliament’s mandate. The development of EU network codes as foreseen in the 3<sup>rd</sup> energy package, the harmonisation and leveling up of the powers and independence of national regulators, the creation of an Agency for the Cooperation of Energy Regulators (ACER) and the mandatory cooperation of TSOs at EU level are all necessary for the completion of the single EU energy market, for security of supply and for sustainability. It is also important to note that the role of regulators is an important means to deliver stable systems and independent judgment which is crucial to infrastructure development. We regret

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<sup>1</sup> COM (2008)0781

<sup>2</sup> COM (2008) 0782

<sup>3</sup> COM (2008) 0769

that the role and potential of the future Agency to help deliver the priorities outlined in the 2<sup>nd</sup> SER, including in the development of the 10 year network development plan, have not been brought to the fore.

## 1.2 Legally binding codes

We need to put in place the EU legally binding network codes which will be the backbone of the EU grid, transparency requirements, operational security and reliability rules, grid connection and access rules, which together will provide for the seamless interaction between national transmission networks and together form the basis for a single European market.

## 1.3 Investments in new infrastructure

As the 2<sup>nd</sup> SER rightly points out, the next stage of EU energy policy should address infrastructure and diversification of energy supplies. In this regard, regulators would like to highlight the elements of the 2<sup>nd</sup> SER that merit the highest priority and constitute the most difficult challenges to market participants for developing a European grid (although the European Commission's use of the term "supergrid" needs further clarification), which will ensure security of supply and promote renewables.

Investments in new infrastructure depend on a number of factors, including building and construction authorisations and permissions. Acquiring the necessary permits to proceed with infrastructure projects is one of the most difficult factors for companies to achieve, often presenting absolute stumbling blocks. Current provision of transmission network infrastructure is largely driven by national laws and requirements. Obligations on authorities or Transmission System Operators (TSOs) seldom or insufficiently extend to cross-border infrastructure or the need to integrate markets. Consequently, the cross-border development of transmission infrastructure may be impeded. Processes need to be clarified and expedited. Clear political support is needed. In this context, Regulators recall the European Council's decision of March 2007 inviting the European Commission "to table proposals aiming at streamlining approval procedures". Despite this, the issue of accelerating infrastructure approval/ licensing procedures (networks, pipelines, power plants, etc.) remains inadequately addressed in the 2<sup>nd</sup> SER in terms of concrete proposals. In this regard, we welcome the 19<sup>th</sup> February 2009 Energy Council Conclusions on the 2<sup>nd</sup> SER, which call for streamlining of planning and consultation procedures or by appointing European coordinators, in order to help remove barriers to investment. Regrettably, however, the conclusions fall short of inviting specific action or proposals from the European Commission.

A related investment issue raised in the Commission's Green Paper is the possibility of underground cables which, in our view, merits careful consideration given the costs, technical restrictions and environmental impact considerations.

## 1.4 10-year network development plan

A further related issue is the investment in new infrastructure and the need to develop an overall investment strategy. The 3<sup>rd</sup> Package provisions for a 10-year network development plan are helpful: regulators have already outlined in their consultation paper<sup>4</sup> their commitment to start work during the interim period with the ENTSOs to develop the 10-year network development plan on the basis of certain overall principles. The European energy regulators have also finalized their recommendations for the 10-year network development plan in gas and will prepare their recommendations on the 10-year network development plan for electricity. ERGEG considers that the 10-year network development plan should provide a shared vision of the future by all stakeholders. For gas, it has to take into account obstacles to gas transit across Europe and address priority developments and TSO projects. The gas supply disruption from Russia has increased the spotlight on security of supply, and illustrated the need for the network development plan to anticipate potential gas deficits and infrastructure bottlenecks, the need to diversify current gas supplies and to assess the capacity of the European gas system to cope with emergency procedures and solidarity mechanisms.

In this next stage of EU energy policy, regulators are aware of the global financial downturn and are prepared to assess whether it has an impact on financial viability of utilities and their ability to invest to meet the challenges of the 20-20-20 package.

## 1.5 Priority access of RES

This issue is all the more important when considering just how extensive the investments in infrastructure will need to be, keeping in mind not only the problem of ageing infrastructure but the significant added expense of integrating renewables (as well as back-up generation) into a re-designed grid, accommodating a move towards decentralised generation. Addressing climate change concerns will have substantial implications for the reliable operation of networks and energy markets and pose additional challenges to the development and operation of Europe's energy infrastructure. The issue of priority access is central to our role as regulators: mandatory priority access could, in our view, have substantial implications on competition, security of supply and costs to consumers. In particular it could act to dissuade investment in non-renewable forms of generation. This would drive up prices and raise concerns about the availability of sufficient reserve generation (often from thermal plants) to provide back-up for intermittent renewables in order to avoid blackouts and preserve the integrity of the system. We, therefore, welcome the enhancements reflected in the agreement between the Council and the EP on the Renewable Energy Directive which make priority access being subject to certain conditions related to the maintenance of the reliability and safety of the grid based on transparent and non discriminatory criteria.

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<sup>4</sup> Implementing the third energy package - an initial consultation paper by the European Energy Regulators (Overview) – (C08-GA-45-08). Consultation period 2008/10/21-2008/12/31.

## 1.6 Smart Grids

European energy regulators believe that the development of smart interconnected electricity networks is needed much earlier in order to support the achievement of the 2020 targets. The uptake of large amounts of decentralised (renewable) production will be difficult without smart solutions, including smart metering, for the electricity networks. The 2020 targets are also the key driver of the Smart Grids Technology Platform in which some of our members participate. A clear understanding of what is meant by smart grids and how they can be accomplished must be set out. With this in mind, European energy regulators have included smart grids as a priority in their 2009 work programme and are cooperating closely with the Commission, CEN and CENELEC on European standards in this area.

## 1.7 Regional dimension

With respect to the inter-regional dimension and the European Commission's proposals to introduce an independent company to manage a unified gas transport network throughout the EU, the cooperation of TSOs at regional level would be useful as a tool to achieve the EU single energy market. However, improving market integration does not remove the need to resolve the EU's deep-seated problem of undue discrimination on the part of vertically integrated companies. A strong precondition for the acceptability of regional TSO arrangements is effective unbundling along with appropriate market arrangements and effective regulatory oversight.

## 2 Issues related to external energy policy

Among the issues addressed in the 2<sup>nd</sup> SER, external relations are particularly emphasised. This section identifies the areas where action by the European energy regulators is needed or should be enhanced in light of the European Commission's proposals.

The "umbrella document" proposing an "EU Energy Security and Solidarity Action Plan" repeatedly mentions that the EU should strengthen its "collective weight" and that the development of an effective external energy policy should be achieved through several steps, namely by "*speaking with one voice, identifying infrastructure of major importance to its energy security and then ensuring its construction, and acting coherently to deepen its partnerships with key energy suppliers, transit countries and consumers*". European energy regulators welcome an effective common foreign energy policy for the EU, whilst underlining that the European Commission needs to elaborate more on how to develop a "common voice", which is an important issue for strengthening the EU's position vis-à-vis its external suppliers.

Indeed, European energy regulators welcome the development of stable relations with countries outside the EU and the better recognition of energy issues in these relations is identified as one of the five pillars of the EU Energy Security and Solidarity Action Plan.

In particular, European energy regulators are convinced that sharing common rules and a "single voice" with third countries is necessary to create a stable environment conducive to investments and to the development of the necessary international infrastructure, as emphasised in the Green Paper which proposes to reinforce EU policy on energy network development.

The international dimension of NRAs activities through CEER could be considerably enhanced through the 2<sup>nd</sup> SER's new priorities for EU energy policy. Energy regulators have a clear task with regard to the diffusion of the internal energy market *acquis communautaire* to better integrate energy markets of South-East European countries (Energy Community) as well as Mediterranean countries into the internal energy market. Indeed, the European Commission strongly supports the integration of the Energy Community and its enlargement to Turkey, Moldova and Ukraine. In particular, the European Commission intends to work together with European energy regulators and the European networks of transmission system operators on the 10-year network development plan proposed in the 3<sup>rd</sup> Energy Package in order to identify and develop the missing gas and electricity interconnections within Central and South-Eastern Europe. In addition, the European Commission stresses the importance of pursuing the development of relations with North Africa, of developing a Trans-Sahara gas pipeline and of completing the Mediterranean energy ring, with a view to contributing to the diversification of energy supplies. The European Commission also proposes to intensify its efforts within the EU-Africa Energy Partnership, especially as regards the definition of adequate policies towards a better regional integration of African electricity markets. Regulators intend to pursue the dialogue with the African Forum for Utility Regulators (AFUR) in the form of a bilateral Roundtable to exchange regulatory experience on issues of common interest and to focus on issues of mutual concern.

In addition, NRAs should cooperate closely on the implementation of incentives for the development of strategic infrastructure related to **EU security of supply**, in the framework of the policy dialogue with Russia and Caspian Sea countries. The involvement of European energy regulators may be particularly useful for the development of clear and stable rules for access to transmission networks; the importance of which was recently demonstrated by the gas supply disruption which affected a number of European states. Moreover, technical cooperation could be all the more useful since the restructuring and liberalisation of energy sectors in Russia and in most of the Baku Initiative countries are well underway.

In conclusion, most of the elements of this international agenda are highly relevant to CEER activities, concerning in particular our dialogue with regulators from third countries, including through the Energy Community and MEDREG. In this regard, **European regulators would welcome an invitation by the European Commission to participate in the dialogue with third countries on energy issues within the partnership agreements of relevance to regulators.**

### **3 Green Paper “Towards a secure, sustainable and competitive European Energy Network”<sup>5</sup>**

Together with the 2<sup>nd</sup> SER, the European Commission has tabled a Green Paper that launches a reflection on how the existing TEN-E instrument could be replaced with the **EU Energy Security and Infrastructure Instrument (ESII)**, with the following objectives: (i) completing the Internal Energy Market (ii) ensuring the development of the grid to permit the

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<sup>5</sup> For detailed comments to the paper within the context of the European Commission's public consultation, please see Annex I, which addresses both electricity and gas issues.

achievement of the EU's renewable objectives and (iii) guaranteeing EU security of energy supply through assistance for key infrastructure projects within and outside the EU. Regulators support these objectives, but underline the importance of network reinforcements for both electricity and gas being based also on socio-economic analysis.

Of particular interest to regulators are the European Commission's proposals for a North-Sea offshore grid; a Baltic interconnection plan; the sufficient development of transmission infrastructure in the highly meshed and often congested CEE and SEE region; a Mediterranean energy ring; a new Southern Gas Corridor (especially in the wake of the gas crisis); North-South gas and electricity interconnections within Central and South-East Europe; and liquefied natural gas (LNG), which is essential for the development of a competitive and reliable regional electricity market.

The European Commission states that its Mediterranean energy ring would link Europe with the Southern Mediterranean through gas and electricity interconnectors and would be essential in developing the region's solar and wind energy potential. The North-Sea offshore grid would interconnect national electricity grids in North-West Europe and plug-in the numerous planned offshore wind projects. These two infrastructure projects as well as the Baltic interconnection plan will form – in the Commission's view – the building blocks of a future European supergrid. The infrastructure developments in the CEE and SEE region are equally important. It is also crucial that new developments and infrastructure enhancements (such as a new corridor for natural gas and LNG) take place and that the new transit routes and new sources of natural gas ensure that new gas-fired plants can be established to enhance security of supply and the competitiveness of the EU.

In anticipation of further information from the European Commission on their intended approach to these projects - (in 2009, a Baltic Interconnection Plan; in 2010, a Communication on the Mediterranean Ring outlining a plan for "completing the missing links" and a "Blueprint" for a North Sea offshore grid that would set out specific actions to be adopted) - the European Commission has already proposed some ideas for a more strategic, coordinated approach to these priority infrastructure projects. These include increased cooperation within the European Network of Transmission System Operators (ENTSO) within the framework of the 3<sup>rd</sup> Energy Package, where the establishment of a regular 10-year network development plan is envisaged and the Agency has a role in coordinating regulatory matters by, for example, ensuring more market mechanisms and more coordinated, flexible and favourable conditions are put in place as well as by ensuring consistency between the national network development plans and the 10-year network development plan.

Regulators **would welcome more information from and cooperation with the European Commission on these priority infrastructure projects** for electricity and gas in order to effectively contribute at each stage of the debate. Indeed, it is difficult to assess how these proposals would impact the European energy customers, given the lack of information and cost implications available and the different regulatory systems in existence across the EU.

The European Commission's ideas for these **priority projects** are, in principle, positive. Connecting Member States **would reduce security of supply concerns and provide a more competitive and efficient market in which consumers and suppliers in Member States could buy and sell energy** (including renewable energy). Increased interconnection between Member States may improve the ability of parties to balance their energy requirements, minimising some of the costs associated with intermittency. With respect to the European Commission's offshore plans, combining interconnection and offshore generation

projects also implies the need for more efficient grid structures and better use of resources in the construction and maintenance phases, compared with projects run separately.

However, we have some concerns regarding these infrastructure proposals. Firstly, it is important to ensure that they are **economic and efficient** and are firmly rooted in market principles. The costs could be considerable (given the distances between the points to be connected) and the location of any offshore generators or interconnector routes may ultimately depend on the different support schemes available in Member States (as exist presently), and thus require clear rules and criteria for such situations. European energy regulators believe **any infrastructure project for electricity or gas, be it a generator or interconnector, should be developed in the most economically efficient way possible and with minimum cost to consumers** and we would encourage the use of cost benefit analyses and impact assessments to ensure this is the case.

Secondly, there are a number of regulatory regimes/offshore schemes for offshore wind generation already in place or under development in many Member States, with projects at varying stages of development. It is important that projects currently in development are not subject to undue or unnecessary regulatory change or uncertainty. For example, in Great Britain, the offshore regulatory regime currently being developed involves competitive tendering for the offshore transmission line, distinct from the arrangements for onshore wind and also different from those currently present elsewhere in Europe. Changes to the regulatory framework may raise concerns for those involved in projects that are already in development or planning. Given the role these projects will play in achieving the EU's 2020 targets, minimising regulatory uncertainty is essential.

The role of transparency in the running of the electricity and gas networks should not be underestimated. Minimum and harmonised requirements on the availability of market information are crucial to enabling cross-border trade, investment decisions, emergency procedures and the entry of new market participants. **The ERGEG Regional Initiatives are making great strides to improve transparency standards and practices in the 7 electricity and 3 gas regions.**

Regarding gas specifically, the recent gas crisis between Russia and the Ukraine has highlighted some of the inadequacies currently existing in Europe's national gas networks, and the need to coordinate and cooperate at EU-level. In this context, European energy regulators have written to the EU Energy Commissioner<sup>6</sup> to outline a number of concrete measures which could help to mitigate security of supply risks. Regarding network issues, the regulators' proposals include recommendations for enhancing coordination in national emergency planning; regionally coordinated gas network access (capacity management and dispatching); infrastructure planning procedures including emergency scenarios; increasing transparency; as well as for greater and improved interconnections between markets, as also recognised in the 2<sup>nd</sup> SER.

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<sup>6</sup> [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_ERGEG\\_PAPERS/Gas/2009/LM\\_Piebalgs\\_090210.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Gas/2009/LM_Piebalgs_090210.pdf)

Expansion of the gas transport system would both enhance security of supply and serve as a basis for a wider, more integrated EU gas market. In this respect, connections with the Mediterranean and Central and Eastern Europe, as also discussed in the 2<sup>nd</sup> SER, would help to mutualise gas flexibility and supply tools, improving gas supply diversification. This relates to the question of gas storage as well, and in 2008 European energy regulators issued an ERGEG Status Review on Capacity Allocation Mechanisms (CAM) and Congestion Management Procedures (CMP) for Gas Storage. European energy regulators have also committed to develop in 2009 Guidelines for Good Practice for Capacity Allocation Mechanisms and Congestion Management Procedures to storage facilities.

Regulators note the importance of optimal transparency and full information about the overall supply situation across the Union, notably when faced with an urgent and fast moving crisis. To improve transparency, a harmonised minimum level of information must be made available to the market, especially in crisis situations and as the basis for any emergency measure. In this regard, we welcome the 19<sup>th</sup> February 2009 Energy Council Conclusions on the 2<sup>nd</sup> SER, which call for more transparency in the internal energy market.

European energy regulators are currently working on some recommendations to provide guidance to the European Network of Transmission System Operators for Gas (ENTSOG) and Electricity (ENTSOE) for the development of the 10-year network development plan. As illustrated by the recent experience with gas supply disruptions, it is of utmost importance that the development of the 10-year network development plan builds upon security of supply scenarios which also need to take account of the assumption of supply and import interruptions via certain routes/infrastructures. The 10-year network development plan should thus highlight remedies to resolve current infrastructure gaps between markets in order to ensure sufficient interconnection capacity under strained supply situations as well.

Overall, we would like to reiterate the importance of several considerations relating to the development of European electricity and gas networks. Chief among them is the need for cost and impact assessments, to ensure that economically efficient projects are taken forward as well as of regulatory certainty, including for projects under development. In this regard, more information is needed from the European Commission on the priority projects set out in its 2<sup>nd</sup> SER and in the Economic Recovery Plan, which is currently being debated. In addition, regulators will be involved in discussions on the 10-year network development plan, including its interaction with regulatory frameworks in the Member States. Coherence between the 10-year network development plan and the TEN-E guidelines should be ensured. As stated above, the adequacy of infrastructure investments depends to a great extent on maximising regulatory certainty for market participants. Meanwhile the efficient functioning of national and an EU internal energy market(s) implies a high and coordinated degree of transparency.

#### **4 A new impetus on Energy Efficiency**

European energy regulators welcome the European Commission's "new impetus" on energy efficiency, and the package of measures to address these issues. Energy efficiency measures are one of the most cost-effective means of reducing greenhouse gas emissions. As the carbon price feeds into the electricity price, it will increasingly encourage consumers to take measures to conserve energy and reduce their electricity consumption. The costs of investment in energy efficiency may even be offset by money saved through a reduction in

energy consumption. Without a reduction in final energy consumption, the ambitious 20% reduction in carbon emissions targets will not be met.

European energy regulators note the European Commission's suggestion for a market-based instrument for the trading of energy performance certificates. In practice, the successful design of these instruments is vital in ensuring that they meet their objective. Given that some European energy regulators have powers in the administration of energy efficiency support schemes, regulators are happy to offer advice in the design of any such scheme to ensure its suitability for all Member States<sup>7</sup>.

Whilst the European Commission's decision to introduce a green tax lies outside the regulators' remit, **we would be interested in particular in the European Commission's understanding of the link between public support and energy efficiency** (possibly through the revised Energy Services Directive) as proposed by the European Commission, and what this would entail.

## 5 Making better use of the EU's indigenous energy reserves

European Energy Regulators support the European Commission's statement that all cost-effective measures to promote the development and use of the indigenous resources should form an important element of the EU's future energy policy.

**The Green Package provides the framework for the treatment of renewables. Regulators support the principles, laid down in the new Renewable Energy Directive, of non-discriminatory grid-access for all types of energy.**

We also welcome the enhancements reflected in the agreement between the Council and the EP on the Renewable Energy Directive which make priority access being subject to certain conditions related to the maintenance of the reliability and safety of the grid based on transparent and non discriminatory criteria.

European energy regulators emphasise the importance of the European Commission's monitoring and facilitating the proper implementation of the Green Package following its adoption. Whilst recognising that it falls within the European Commission's responsibility to decide the key elements of the Communication "Overcoming Barriers to Renewable Energy in the EU", European energy regulators suggest that it focuses primarily on reporting its findings with respect to the progress of implementation of the Green Package, rather than proposing any new suggestions.

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<sup>7</sup> For a review of energy efficiency support schemes across the EU (and the NRAs' competencies in this area), see [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_ERGEG\\_PAPERS/Electricity/2008/C08-SDE-05-03\\_RES%20and%20EE%20support\\_10-Dec-2008.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Electricity/2008/C08-SDE-05-03_RES%20and%20EE%20support_10-Dec-2008.pdf)

## Annex (I) – Electricity Issues

### CEER response to the European Commission consultation on the Green Paper “Towards a secure, sustainable and competitive European Energy Network” (Electricity)

#### Introduction

European energy regulators welcome the opportunity to provide the European Commission with their views on the Green Paper, as regarding network policy and TEN-E. In addition to our response to the questions below, we also draw attention to some ERGEG documents which are of relevance to the issues addressed by the Green Paper (and are publicly available):

- Cross-border Framework for Electricity Transmission Network Infrastructure – An ERGEG Conclusion Paper, Ref E07-ETN-01-03, April 2007<sup>8</sup>;
- ERGEG Status Review on Building and Construction Authorisation and Permit Process – Case Examples, Ref: E08-EFG-27-04, February 2008<sup>9</sup>;
- 3<sup>rd</sup> Legislative Package Input, Paper 3: Network Regulation – Overall Framework, Ref: C07-SER-13-06-3-PD, June 2007<sup>10</sup>;

The 3<sup>rd</sup> energy package reflects many of ERGEG’s proposed measures and improvements (development of EU binding network codes, mandatory cooperation of TSOs at EU level, creation of an EU Regulatory Agency, enhanced unbundling rules, etc). We are confident that these will help achieve the goal of a single EU internal market.

The responses to the following questions assume that the 3<sup>rd</sup> energy package is adopted. Nevertheless, some obstacles would still remain and would need to be further addressed in the future.

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<sup>8</sup> [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_ERGEG\\_PAPERS/Electricity/2007/E07-ETN-01-03\\_CB-Framework-ETNI\\_V24-04.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Electricity/2007/E07-ETN-01-03_CB-Framework-ETNI_V24-04.pdf)

<sup>9</sup> [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_ERGEG\\_PAPERS/Electricity/2007/E07-ETN-01-03\\_CB-Framework-ETNI\\_V24-04.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Electricity/2007/E07-ETN-01-03_CB-Framework-ETNI_V24-04.pdf)

<sup>10</sup> [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_ERGEG\\_PAPERS/Cross-Sectoral/2007/C07-SER-13-06-3-PD\\_3rdLegPackage\\_Network\\_Regulation\\_fina.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_ERGEG_PAPERS/Cross-Sectoral/2007/C07-SER-13-06-3-PD_3rdLegPackage_Network_Regulation_fina.pdf)

## Network Policy

### **1. What do you consider to be the main barriers to the development of a European grid and gas network? How far can they be addressed at national/regional level, and when should the EU act?**

With regard to the further development of a European grid, one of the main barriers are overly complex and lengthy planning and authorisation procedures (for both the electricity and gas sectors). The acceleration and simplification of these processes by Member States, but most notably also at EU-level (e.g. by necessary adjustments to the Environmental Impact Assessment (EIA) Directive), for new infrastructure remain important objectives.

A prerequisite for the development of the networks will also be the proper unbundling of TSOs, regulatory oversight and TSO cooperation at EU-level, as well as the existence of an adequate incentive system for investments (at national and cross-border level).

A sound investment climate is one of the key building blocks for a successful and competitive EU electricity (and gas) market. A clear and stable legal and regulatory framework should be the main precondition for stimulating private investment.

### **2. What circumstances justify an EU intervention in local planning disputes related to energy infrastructure? In those circumstances, what should the EU do?**

Similar to the EU institutions, European energy regulators do not usually have powers over land use planning for electricity and gas infrastructure. Therefore, we do not have a specific view on this question. One typical situation where an intervention of the EU may be justified is where projects affect more than one Member State and have a high importance for security of supply at a European level. Energy regulators could have some role in assessing the relevance of specific projects for the internal energy market and for enhancing security of supply, in particular through the 10-year network development plan. Projects with a significant importance to complete the European network may also be projects which justify an EU intervention with regard to local planning issues.

### **3. Is a more focussed and structured approach to research and demonstration relating to European networks needed? How should it look?**

Technology for electricity transmission grids is well developed and there are sufficient means for research and demonstration. Nevertheless, more resources are needed for Smart Grids concepts (e.g. [www.smartgrids.eu](http://www.smartgrids.eu)) and the integration of distributed, renewable and other intermittent generation, demand response and future electricity system concepts beyond current technologies and infrastructure.

### **4. What do you think is the most important activity for the EU in network development?**

It is of the utmost importance to secure homogeneous and coherent implementation of all relevant legal provisions from the existing (and future amended) Electricity Directive but also from the Electricity Regulation and accompanying Guidelines (the same applies for gas). The EU's key role will remain in future to supervise and contribute, as far as is legally possible, a common approach and developments, especially concerning the legal situation and all the

relevant “cross-border” issues. A stable regulatory framework will provide certainty to investors and help to make infrastructure investments attractive. Infrastructure projects are accompanied by major investments which could have a positive impact on economic recovery. Furthermore, there should be a clear support from the EU side to increase acceptance in the population for building new infrastructure.

**5. Should the EU be more involved in facilitating infrastructure projects in third countries? If so, in what way?**

With respect to electricity infrastructure, the EU should focus primarily on EU projects and aim at independence from third countries. This clearly does not exclude involvement of accession and candidate countries. In order to enhance or at least not endanger security of supply, EU involvement in third countries might be beneficial and should be considered (e.g. North Sea offshore grid), provided that such facilitation of infrastructure projects is done according to the most economically efficient criteria.

**TEN-E**

**6. What sort of support should the EU provide to developers of new energy networks to have the greatest impact, considering that resources are limited? Is the approach of TEN-E still relevant? How can the EU help improve the conditions for investment?**

We think that the TEN-E approach is still valid and that already identified priority projects should remain the main focus of the EU. However, given the existence of new challenges, such as how to address the issue of back-up generation that comes with shifts in generation portfolios due to environmental concerns, it is important to ensure TEN-E is fit-for-purpose.

EU support should focus on accelerating building and construction authorisations and permissions (BCAPs), including land planning, and putting its political weight behind the priority cross-border projects.

It is of the utmost importance that public and EU funding of infrastructure projects, where appropriate, continues to complement and mirror principles of private investment (fund feasibility studies as opposed to actual project, public private partnerships, use of the European Investment Bank, etc) to ensure risk and reward has been properly identified. This will ensure there is sufficient market appetite for such projects and should limit the risk exposure of EU tax payers. In addition, the appointment of European coordinators can help stimulate project development.

**7. In view of the proposed revision to the TEN-E guidelines, how can the EU improve the focus, effectiveness and impact of the TEN-E policy within its existing budget?**

As stated in the European Commission’s Priority Interconnection Plan (PIP), 60% of electricity network projects are behind schedule mainly due to the complexities and lack of harmonisation in planning and authorisation procedures. In order to make TEN-E guidelines more focussed and effective, emphasis should be given to improving current procedures in planning and authorisation. Furthermore, TEN-E should take account and endorse the work which will be done by the ENTSOs for the 10-year network development plan.

**8. Should TEN-E be extended to oil infrastructure? Should it also be extended to new networks for CO<sub>2</sub>, biogas or other networks?**

No position at present as regards electricity.

**9. Do you have views on, or suggestions for new priority projects which the EU should give backing to?**

As a general rule, the list of priority projects should be continuously updated, reflecting changes in the economic, environmental and social environment. As already stated, the 10-year network development plan by ENTSOs should be utilised in defining the priority projects. In parallel, projects which are already identified should be prioritised and their implementation ensured.

European Energy Regulators are currently preparing recommendations to provide guidance for the development of a 10-year network development plan to be developed by the new European Network of Transmission System Operators for Electricity (ENTSO-E). Therefore, coherence between the 10-year network development plan and the TEN-E guidelines should be ensured. As outlined in the response to this question for gas (below), the network development plan should take into account security of supply scenarios and highlight remedies to resolve current infrastructure gaps between markets. Priority projects of EU importance should be supported first, and to the extent they are efficient network investments. The specific projects intended for inclusion in TEN-E should be sufficiently consulted upon taking also into account the priorities defined in the 10-year network development plan.

**10. Would it help TEN-E/EU to gain more impact and visibility if it was turned into an operational security of supply and solidarity instrument?**

TEN-E should remain an instrument for ensuring and prioritising long-term investments in transmission grids. Operational security of supply, as a largely short term issue, should be dealt with by market-oriented instruments and by operational frameworks (largely legally binding in the future), as presently envisaged by the 3<sup>rd</sup> Energy Package.

**11. What additional EU measures beyond those mentioned in this Green Paper would help secure a sustainable infrastructure for the EU?**

The establishment of the Agency and adoption and consistent implementation of 3<sup>rd</sup> Energy Package provisions will be the key to ensuring a stable approach to cross-border infrastructure issues. Moreover, much more sophisticated forecasting and system adequacy assessment methods are required during the next years.

## ANNEX (I) –Gas Issues

### CEER response to the European Commission consultation on the Green Paper “Towards a secure, sustainable and competitive European Energy Network” (Gas)

#### Network Policy

#### 1. What do you consider to be the main barriers to the development of a European grid and gas network? How far can they be addressed at national/regional level, and when should the EU act?

A clear and stable legal and regulatory framework should be the main precondition for stimulating private investment. European energy regulators consider that the lack of adequate capacity allocation mechanisms and congestion management procedures is the key obstacle to efficient use of the existing gas network infrastructure. With respect to the further development of a European grid and gas network, one of the main barriers is the complex and lengthy planning and authorisation procedures (as also mentioned above with respect to the electricity network). Furthermore, cooperation of (adjacent) TSOs in different Member States should be significantly improved.

Another factor may be the level of investment risk for project developers. This risk may increase in the course of the financial crisis and European energy regulators are prepared to assess whether it would be necessary to provide project developers with financial support to implement projects, although preference should be given to market-based measures. A sound investment climate is one of the key building blocks for a successful and competitive EU gas market. The lack of the necessary infrastructure would hamper effective regional market integration and competition. In a sound investment climate, investments in capacity should be sufficient and timely and persistent physical congestion should be avoided. Investments should facilitate gas supplies from diverse sources to meet the need for secure gas supplies.

Network operation is by default a regulated business but within the regulatory framework risks can be appropriately taken into account and rewarded in different manners. One approach is to have regulated investment, whereby energy regulators guarantee a rate of return and investment is underwritten by all gas customers. Within regulated systems, incentives may be designed in a way as to encourage the network operator to make more efficient investment decisions. Another approach to creating the correct investment climate is to allow merchant investment, which would entail third party investors earning a return on the investment based on market conditions. In such cases, risks (such as underutilisation) are not underwritten by all gas customers. Merchant investments can be either regulated or non-regulated.

There is not a single EU or regional regime designed to encourage or facilitate investment in cross border infrastructure, such as interconnectors. Energy regulators work to provide clarity on national arrangements that relate to or have an impact on cross-border infrastructure. In our view, it might also be difficult for some Member States to financially support certain projects without EU support. Increased EU funding of infrastructure projects, where appropriate, should continue to complement and reflect principles of private investment to

ensure risk and reward has been properly identified (see question 6). However, utilities overall still face a lower risk compared to other industries and might therefore even benefit from the current crisis as a "safe harbour".

**2. What circumstances justify an EU intervention in local planning disputes related to energy infrastructure? In those circumstances, what should the EU do?**

Similar to the EU institutions, European energy regulators do not usually have powers over land use planning for electricity and gas infrastructure. Therefore, we do not have a specific view on this question. One typical situation where an intervention of the EU may be justified is where projects affect more than one Member State and have a high importance for addressing security of supply at a European level. Energy regulators could have some role in assessing the relevance of specific projects for the internal energy market and for enhancing security of supply, in particular through the 10-year network development plan. Projects with a significant importance to complete the European network may also be projects which justify an EU intervention with regard to local planning issues.

**3. Is a more focussed and structured approach to research and demonstration relating to European networks needed? How should it look?**

Given that for each major gas infrastructure project an assessment of its implications on the whole European gas network is needed. Research should, therefore, be extended and focused on developing common European gas network planning models including all transmission pipelines, storage facilities, LNG facilities and being capable of accommodating different regional demand/supply scenarios, including security of supply issues, to allow for assessment of existing and future changes of gas flows.

Modelling could be used to identify bottlenecks, evaluate efficient gas infrastructure projects, and support or validate the TSOs 10-year-investment plans, provided it is properly updated with all necessary European TSO (and market) data. The European energy regulators are committed to start working together with GTE+ on this issue in 2009.

**4. What do you think is the most important activity for the EU in network development?**

It is of the utmost importance to secure homogeneous and coherent implementation of all relevant legal provisions from the existing (and future amended) Gas Directive but also from the Gas Regulation and accompanying Guidelines (the same applies for electricity). The EU's key role will remain in future to supervise and contribute, as far as is legally possible, a common approach and developments, especially concerning the legal situation and all the relevant "cross-border" issues. A stable regulatory framework will provide certainty to investors and help to make infrastructure investments attractive (see also the answer to question 1 above). Infrastructure projects are accompanied by major investments which could have a positive impact on economic recovery. Furthermore, there should be a clear support from the EU side to increase acceptance in the population for building new infrastructure.

**5. Should the EU be more involved in facilitating infrastructure projects in third countries? If so, in what way?**

Especially for gas infrastructure projects, where third countries are mostly directly concerned, it is necessary that the EU uses its collective weight and formulates a joint position to bring forward infrastructure projects.

**TEN-G**

**6. What sort of support should the EU provide to developers of new energy networks to have the greatest impact, considering that resources are limited? Is the approach of TEN-G still relevant? How can the EU help improve the conditions for investment?**

To ensure the establishment of already identified priority infrastructure projects it is of the utmost importance to support relevant projects in various ways. The appointment of European coordinators can stimulate project development. Direct financial support may be granted for certain eligible projects to reduce the investment risk for project developers. Support for Member States may also include support to ministries and energy regulators regarding the coordination and harmonisation of decisions which have to be taken in several Member States. In this context, it is of the utmost importance that public and EU funding of infrastructure projects, where appropriate, continues to complement and mirror principles of private investment (fund feasibility studies as opposed to actual project, public private partnerships, use of European Investment Bank, etc) to ensure that risks and rewards have been properly identified.

In addition, EU support should focus on accelerating building and construction authorisations and permissions (BCAPs), including land planning, and putting its political weight behind the priority cross-border projects.

The Green Paper puts forward in particular the idea of a block purchasing mechanism which has, in our view, to be compatible with the promotion of the Internal Energy Market. This mechanism has to be designed in a manner which is compatible with the principles of competition law. Remedies to ensure the compatibility with such principles may include spot market trading provisions.

**7. In view of the proposed revision to the TEN-E guidelines, how can the EU improve the focus, effectiveness and impact of the TEN-E policy within its existing budget?**

In our view, it is necessary to increase the existing TEN-E budget and to adjust the scope of the instrument to ensure that TEN-E promotes infrastructure projects and ensures the implementation of priority projects. In order to make TEN-E guidelines more focussed and effective, emphasis should be given to improving current procedures in planning and authorisation. Furthermore, TEN-E should take account and endorse the work which will be done by the ENTSOs for the 10-year network development plan.

**8. Should TEN-E be extended to oil infrastructure? Should it also be extended to new networks for CO<sub>2</sub>, biogas or other networks?**

No position at present as regards gas.

### **9. Do you have views on, or suggestions for new priority projects which the EU should give backing to?**

European energy regulators are currently finalising their recommendations to provide guidance for the development of a 10-year network development plan to be developed by the new European Network of Transmission System Operators for Gas (ENTSO-G). The 10-year network development plan should also be utilised in defining the priority projects. Therefore, coherence between the 10-year network development plan and the TEN-E guidelines should be ensured. As the recent disruption in Russian gas deliveries via the Ukraine has heavily affected certain regions in the EU, it is of the utmost importance that the development of the 10-year network development plan takes account of security of supply scenarios based also on the assumption of import disruptions via certain routes/infrastructure. The 10-year network development plan should thus highlight remedies to resolve current infrastructure gaps between markets in order to have sufficient interconnection capacity also under strained supply situations. In order to enhance security of supply, storage projects should also be supported at European level.

The 10-year network development plan might show that transportation capacity between Member States could be significantly increased and market integration could be improved with a limited number of enhancements to the network. These minor improvements may enhance security of supply given that alternative routes for supplying gas markets would exist.

In our view, it is of utmost importance that priority projects shall be supported as a first step. Projects which are important to increase the security of supply in the EU, such as the Nabucco pipeline, shall be promoted first. It must also be recalled that regulators are required, under existing legislation, to approve only efficient network investments.

### **10. Would it help TEN-E/EU to gain more impact and visibility if it was turned into an operational security of supply and solidarity instrument?**

In our view it is time to focus on the implementation of the defined priority projects, which are mostly projects aimed to address security of supply concerns. As explained in the electricity answer, TEN-E should remain an instrument for ensuring and prioritising long-term investments in transmission grids. The inclusion of operational security of supply aspects and solidarity instruments would help to increase the impact of the envisaged revision of the Security of Gas Supply Directive; it is essential that these aspects are dealt with by market-oriented instruments and by operational frameworks (largely binding in the future) as envisaged under the 3<sup>rd</sup> energy package.

### **11. What additional EU measures beyond those mentioned in this Green Paper would help secure a sustainable infrastructure for the EU?**

The importance of gas storage as means for ensuring security of supply strongly depends on the national specificities (geology, geography, fuel resources, etc). Therefore, it is not efficient to prescribe whether and how Member States should implement strategic stocks or measures. Countries should have autonomy in the measures taken to ensure security of supply. As harmonisation of national measures is very important, the EC should develop ways to achieve sufficient harmonisation of the national schemes. In addition, the

establishment of the Agency and the adoption and consistent implementation of 3<sup>rd</sup> Energy Package provisions will be of prime importance to ensure a stable approach to cross-border infrastructure issues.

## **Annex II: COMMUNICATION ON DIRECTIVE 2004/67/EC**

### **(concerning measures to safeguard security of natural gas supply)**

#### **1. How to define comparable security of supply standards that put equal, reasonable burden on market players while respecting the differences between Member States?**

Increased transparency in access conditions and effective capacity allocation and congestion management to storage facilities are important issues across most Member States.

The type of security of supply scheme depends on the characteristics of a country, such as the degree of dependency on less secure exporters, the presence of a commercial storage market, the liquidity of the gas market, the amount of dual fuel and interruptible consumption, and the percentage of natural gas within total primary energy consumption.

Given that some Member States are more vulnerable to geopolitical risks in the supply of gas, (regional) solidarity mechanisms could be developed, taking into consideration the possible ‘moral hazard’ effect of such an insurance-like scheme. As a step in that direction, regulators could issue a proposal for the regulation of cross-border use of storage for security of supply considerations. In designing these measures, account should be taken of the impact of such measures on the operation of the market. For example, obligations to store gas may result in increased costs for consumers because they reduce availability of gas and market liquidity. Depending on their specific design, these obligations may also distort competition by placing some players in a competitive disadvantage.

The importance of storage as a means of ensuring security of supply depends strongly on the national situation (geology, geography, fuel sources, etc). Therefore, it is not efficient to prescribe whether and how Member States should implement strategic stocks or measures. Countries should have autonomy in the measures taken to ensure security of supply. As harmonisation of national measures is very important, the EC should develop ways to achieve sufficient harmonisation of the national schemes. The EC should provide that the authorities responsible for defining security of supply schemes in all Member States are the same, e.g. national regulatory authorities. Harmonisation should be aimed at ensuring that security of supply measures are transparent, non-discriminatory and compatible with the requirements of a competitive internal market. Any such measures should clearly define the roles and responsibilities of gas market players (including small players and new entrants) and not impose unreasonable or disproportionate burden on them.

As outlined in a recent letter from the European energy regulators to the Energy Commissioner, gas security of supply could also be improved through a number of concrete measures, including improving coordination of national emergency planning; regional coordination of network access; improving interconnections between markets; infrastructure planning procedures including emergency scenarios and careful monitoring of security of supply in order to increase transparency. Regulators have also suggested that Member States conduct peer reviews of the respective national emergency plans and have volunteered to help design a mechanism to ensure that Member States develop emergency plans. Regulators have also offered to develop a data reporting mechanism for the sake of increased transparency.

## **2. Should the Directive extend mandatory protection beyond households to power generators, small and medium-sized enterprises or other vulnerable customers?**

European energy regulators do not support such a proposal. In order for security of supply mechanisms to function effectively, it will be necessary to apply those in a way that minimises any negative impact on the economy of a Member State. For that reason, the competent authority in a Member State should be able to apply security of supply mechanisms to certain customers, including small and medium-sized enterprises. Household customers should be protected from supply disruptions to the greatest possible extent.

## **3. What should be the precise actions defined in the Community mechanism, in the regional and EU emergency plans?**

The national authorities responsible for security of supply in each Member State shall be provided with an institutional framework for the development of regional and EU emergency plans and effective cooperation in emergency situations. For that purpose and as mentioned above, the same authorities should be responsible for defining security of supply schemes in all Member States, e.g. national regulatory authorities, and European energy regulators could help design a mechanism for the development of emergency plans.

## **4. How should the regions for security of gas supply be best defined?**

Regions should be defined according to the level of interconnection and the predominant gas flows between Member States as well as regional storage capacity. The regions defined in ERGEG's Gas Regional Initiative could form a starting point for this definition.

## **5. How can solidarity be economically compensated?**

Any reservation of capacity rights – storage or transmission – and the purchase of associated gas volumes for solidarity purposes will incur costs based on the applicable tariffs which have to be compensated also in non-emergency situations. As a corollary, these capacity rights and the energy will not be available to the market, which may impact on the development of the internal gas market.

Intergovernmental agreements should be signed among Member States in a region to ensure that transit contracts and any other type of international gas supply contracts will not be curtailed in emergency situations.

## **6. How can security of gas supply be strengthened at lowest cost?**

The best policy to ensure the security of supply is to proceed towards fully liberalised gas markets and effective gas-to-gas competition, in which market parties can easily enter the market and both producers and consumers can flexibly respond to changing market circumstances.

The European Commission's proposal to enhance the powers of regulators at national level and to establish an Agency for the Co-operation of Energy regulators (ACER) is a step towards ensuring greater predictability of energy regulation in the EU.