



European Economic and Social Committee

TEN/653
Amending the Internal Gas Market Directive

OPINION

European Economic and Social Committee

Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/73/EC concerning common rules for the internal market in natural gas
[COM(2017) 660 final - 2017/0294 (COD)]

Rapporteur: **Baiba MILTOVIČA**

Referrals	European Parliament, 29/11/2017 Council of the European Union, 22/11/2017
Legal basis	Article 194 of the Treaty on the Functioning of the European Union
Sector responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	05/04/2018
Adopted at plenary	19/04/2018
Plenary session No	534
Outcome of vote (for/against/abstentions)	149/1/3

1. Conclusions and recommendations

- 1.1 Civil society as a whole can only flourish under the consistent rule of law. Therefore the European Economic and Social Committee, though noting some points of difference with the Commission and regretting the original oversight that created the legal void which this Directive seeks to fill, supports the intention of the amendments proposed to the 2009 Gas Directive, which, it is anticipated, will lead to better market integration and security of supply.
- 1.2 These proposed amendments to the Gas Directive¹ have resulted in extensive debate and disagreement at Member State level. The Committee believes that important issues of principle and solidarity are involved that need to be addressed unambiguously.
- 1.3 Political and economic sensitivities need to be fully recognised – which is not presently the case – but equally the EU will need to decide whether the goal of a coherent, sustainable and equitable energy market for all Member States is achievable in the present political climate. What is at stake in the short term is a challenge to some Member States to forgo what they perceive as being in their own national interests in favour of support for clear and consistent regulatory principles applied, in the context of energy supply and security, to the single market. In the long term, the challenge is different and there is a risk of locking in a costly fossil fuel infrastructure which, by facilitating increasing dependency, may reduce the EU's capacity to meet its climate commitments.
- 1.4 The Committee notes that eliminating external dependency is a long-term programme that requires further development of interconnectivity of gas supply between Member States, improving storage capacity and adding capacity for alternative supply options such as liquefied natural gas (LNG), and recognising the increasing role for renewable energy.
- 1.5 The Committee considers that one area of regulatory uncertainty (regarding future construction programmes due to lack of clarity about the proposed derogation process) may be a risk to investment security and block free market competition among national and regional authorities in attracting investment. This needs to be evaluated alongside the significant improvements in the gas market through regulatory processes that have been established in the last two decades.
- 1.6 Previous views expressed by the Committee in numerous opinions on energy and climate policy in recent years² have stressed that only through clear and effective governance – and a significant degree of political pragmatism and goodwill – can these sensitive issues pertaining to energy supply be resolved. This proposal from the Commission is in accord with those views and should be progressed swiftly.
- 1.7 The Committee notes, however, that there may be a range of legal challenges to the amendments and that there will certainly be significant political disagreements and also

¹ [OJ L 211, 14.8.2009, p. 94.](#)

² [OJ C 487, 28.12.2016, p. 70; OJ C 487, 28.12.2016, p. 81; OJ C 246, 28.7.2017, p. 34.](#)

commercial concerns from some industry stakeholders. The absence of an impact assessment in these circumstances is therefore regrettable.

- 1.8 The Committee supports the proposed Gas Directive amendments which aim to ensure that within the EU's jurisdiction the fundamental principles of the EU energy legislation, such as third-party access, tariff regulation, ownership unbundling and transparency would be applied to EU gas interconnectors with third countries. In this regard, the Committee believes that necessary amendments to the Gas Directive should to be adopted without further delay and should not leave any legal uncertainties regarding full applicability of the EU law to existing and planned interconnectors.
- 1.9 The Committee is of the opinion that any possibilities for exemption from the application of the main provisions of the Directive should be strictly limited and restricted in time (e.g. max ten years), granted only in exceptional cases after a comprehensive assessment by the Commission to ensure that any exemptions would not contradict Energy Unions goals and negatively affect competition and effective functioning of the Union's internal gas market or the security of gas supply in the Union.

2. **Introduction**

- 2.1 Gas remains one of the main primary energy sources for the EU and the efficient functioning of the internal market for gas plays an important part in both the economy and the energy security of many EU Member States. It is also true that the EU's dependency on energy imports of all types has been steadily increasing over the last 25 years, from 44% in 1990 to 53% in 2015. It is necessary to import nearly 70% of the natural gas used in the EU, 90% of which arrives by pipeline from third countries. The largest supplier is Russia, which accounts for some 40% overall, though in some countries of eastern Europe this proportion is considerably higher.
- 2.2 Recognising that this dependency can also create vulnerability, one of the major aspects of the Gas Directive has been to improve the interconnectivity of gas supply between Member States, to improve storage capacity and to add capacity for alternative supply options such as LNG. The continuing objective for the Energy Union is to increase internal resilience while recognising that eliminating external dependency is a long-term programme.
- 2.3 The Gas Directive established common rules for the transmission, distribution, supply and storage of natural gas between EU Member States, but does not apply to pipelines connecting Member States with third countries. By proposing a number of amendments, this Directive seeks to extend the principles of the Gas Directive to existing and future pipelines, up to the borders of the EU. Some of those pipelines, for example those entering from the territory of the Energy Community, are already subject to the Gas Directive, but there are existing gas pipelines which will be impacted by this proposal that enter the EU from Norway, Algeria, Libya, Tunisia, Morocco and Russia, and the proposal may also have an impact – post-Brexit – on pipelines connecting the UK with EU Member States.
- 2.4 Clearly, EU law applies only in EU jurisdictions and not in third countries but these amendments will ensure that it does apply to any legal and contractual arrangements made

between a Member State and a third country at the point of entry of a pipeline into the EU jurisdiction. Nevertheless, the individual Member States who undertake such agreements with third country suppliers would be able to grant derogations from many of the key principles of the Gas Directive for existing pipelines. New pipelines, planned or under construction at the point this Directive enters into force, would be subject to all requirements of the internal market for natural gas. Should national authorities and the Commission find an exemption request to be justified, a project-specific regulatory framework could nevertheless be granted. In effect, this would give the European Commission a significant if not determining role concerning the regulatory and market access terms of any agreement on a new pipeline. These powers can be seen as an essential compliance mechanism in shaping the overall energy supply market and in maintaining the balance between affordability, security and sustainability. This approach is recognised by the Committee as being consistent with the governance framework of the Energy Union and its overall objectives.

3. **Gist of the Commission's proposal**

3.1 The extension of the principles of the Gas Directive is considered important because the process of creating an internal market in natural gas for the EU needs to deal with the reality that gas transmission systems are similar to a natural monopoly. The huge investment required to establish such massive infrastructure undertakings creates an exceptionally high entry barrier to other market operators. There is therefore a requirement for measures ensuring an obligation of third party access, the separation of gas production and supply activities from activities of gas transmission via the unbundling of transmission system operators, and the obligation on national regulatory authorities to set or approve non-discriminatory and cost-reflective tariffs for the use of transmission systems.

3.2 The proposal sets out a number of amendments to the Gas Directive which fall under four broad headings:

- ***specifying a wider scope:*** the definition of "interconnector" is extended to pipelines from/to third countries;
- ***unbundling rules:*** alternative unbundling models are facilitated;
- ***consultation requirements:*** EU regulatory authorities to consult with the relevant authorities of third countries on the application of the Gas Directive up to EU borders;
- ***derogation:*** a Member State may grant a derogation from the provisions of some of the articles of the Gas Directive for existing gas pipelines to and from third countries.

4. **General comments**

4.1 It is important to note that although the main objective of the proposal is to improve the medium to long-term effectiveness of the internal energy market, it can be argued that, in practice, these amendments may introduce, in the short term, a degree of regulatory uncertainty. This is because Member States may choose to seek a range of derogations from some requirements of the Gas Directive for existing pipelines. However, it should be noted that such uncertainty would eventually be resolved by full and consistent application of the Gas Directive

requirements, including the core principles of this directive i.e. unbundling, third-party access and tariffs based on all construction and operation costs.

- 4.2 A number of new pipeline projects are also under development – in particular, the Nord Stream 2 project is the one that has aroused significant opposition among some EU Member States. This new element of regulatory uncertainty may have an impact on construction programmes and introduce delay. It is also argued that the amendments would block free market competition among national and regional authorities in attracting foreign investment. However, in the development of the single market there have been many instances of forgoing national control in the interests of EU citizens as a whole, recognising that extensive benefits result from solidarity of action.
- 4.3 High-pressure, long-distance pipelines are complex and costly pieces of infrastructure where costs have to be recouped over many years. Even though there may be some potential for using such assets for innovative low carbon gas (bio/hydrogen) delivery there is a substantial risk of locking in a costly fossil fuel infrastructure which, by facilitating increasing dependency, may reduce the EU's capacity to meet its climate commitments.
- 4.4 It is possible that some Member States could regard the amendments as limiting their sovereignty to some degree. This is because a Member State will not be able to deviate from EU law through a bilaterally negotiated intergovernmental agreement in the area covered by the Gas Directive, an area not previously regulated by the EU. The Committee agrees that it is logical and appropriate for this legal void to be filled.
- 4.5 The Committee, regarding the points set out above, is concerned that the Commission felt that an impact assessment was not required. It is evident that in this politically sensitive area where economic factors come into play evidence must be tabled to underpin the arguments being made for the proposed amendments. Some of this evidence, it can be noted, is contained in the staff working document or in-depth analysis conducted by the Commission such as Impact Assessment of the Gas Directive.
- 4.6 Greater clarity from the Commission is also needed on the ways in which the internal market is benefited. There remain gaps in the implementation of the Third Energy Package in several Member States but it is not obvious how these amendments will affect implementation.
- 4.7 Nevertheless, it is also clear that the proposal is seeking to create the possibility of a significant intervention, where necessary and at agreed EU policy level, which could restrict creating further dependency on Russian gas and thereby stimulate diversity of supply. The Committee believes this is an objective which will further the best interests of the EU.

5. **Specific comments**

- 5.1 This proposal should be understood as part of the programme to enhance coherence, solidarity, security, competitiveness, and market regularity in the EU's energy policy – as represented by the Energy Union. In this context there is a medium-term objective of reducing dependency on a dominant gas supplier by increased utilization of the EEA indigenous gas sources and of LNG

Terminals, improved energy efficiency and an increasing role for renewables. In the short term there is modest scope for substituting natural gas in some areas of power generation such as some co-generation plants. It is especially significant for district heating schemes. Quickly controllable gas-fired power plants and co-generation plants are also used to cushion the natural fluctuations in renewable energy, making an important contribution to the security of supply in the electricity sector and also ensuring the security of supply in the heating sector. There is little scope for natural gas substitution in the residential and commercial sector as it is unrealistic for the sector to maintain alternative equipment/infrastructure.

- 5.2 It should also be noted that governments of the Member States repeatedly announce that "interconnectivity" (integration with neighbours, establishing a common natural gas market, development of regional natural gas infrastructure such as the Baltic Connector, etc.) will ensure preconditions for fair competition among gas suppliers, better service quality and wider choice for all consumers of natural gas. In markets where natural gas consumption is dropping year by year, only a few suppliers are interested in providing a service to household consumers.
- 5.3 In the ongoing debate about natural gas supplies to the EU, the phrase "energy security" is being interpreted in two different ways. On the one hand, it is argued that greatly increasing the capacity of pipelines bringing gas to Europe will enhance energy resilience by allowing additional natural gas supplies to meet any shortfall caused by the continuing fall in production of all types of fossil fuels within Europe (coal, oil and gas). It can also play a role in meeting shortfalls caused by intermittency in the supply of renewable electricity and can play an important role in the energy transition. Natural gas, having the lowest carbon footprint of the fossil fuels, is clearly a priority choice when renewables or nuclear energy are either inappropriate or unavailable.
- 5.4 On the other hand, it is argued that Europe's vulnerability might be increased if capacity growth in natural gas encourages reliance on supply from a country (Russia) whose interests may significantly diverge from those of the EU and which may use the supply of gas as an economic and foreign policy bargaining chip. The Member States' economic and political interests are in some degree of conflict on this point and it is difficult to see how these two interpretations can be reconciled in the short to medium term.
- 5.5 On balance, the Committee's view, expressed in numerous opinions in recent years and in particular in those pertaining to the establishment and functioning of the Energy Union, has been that only through an effective and agreed governance mechanism will the agreed climate and energy security objectives of the EU be achieved. This includes mitigating the risk of overdependence on one energy supplier.
- 5.6 This Directive seeks to deal with a legislative grey area and ensure that the rules and principles of the single market are applied and an unregulated area comes within the scope of EU law with greater involvement of the European Commission in exploring issues of common interest.
- 5.7 Gas Directive amendments aim to ensure that within the EU's jurisdiction the fundamental principles of the EU energy legislation, such as third-party access, tariff regulation, ownership unbundling and transparency, would be applied to EU gas interconnectors with third countries.

In this regard, the Committee believes that necessary amendments to the Gas Directive should be adopted without further delay and should not leave any legal uncertainties regarding full applicability of the EU law to existing and planned interconnectors.

- 5.8 The Committee is of the opinion that any possibilities for exemption from the application of the main provisions of the Directive should be strictly limited and restricted in time (e.g. max ten years) and granted only in exceptional cases after a comprehensive assessment by the Commission to ensure that any exemptions would not contradict the Energy Union's goals and negatively affect competition and the effective functioning of the Union's internal gas market or the security of gas supply in the Union.

Brussels, 19 April 2018.

Luca Jahier

The President of the European Economic and Social Committee
