

GUIDELINES FOR TRANS-EUROPEAN ENERGY INFRASTRUCTURE

ENTSOG Communication

General

ENTSOG offers support for the proposal and believes action by the European Commission aimed at supporting gas infrastructure development is positive. ENTSOG agrees with the Commission that the new arrangements should support market-driven processes and facilitate investment into infrastructures where market forces perceive too high risks and do not address the overall welfare such investment would deliver.

The granting of PCI label to projects and the subsequent 'priority' treatment of them should avoid distortion¹ of the internal energy market, which might lead to different (inefficient) behaviour of market participants. PCI identification should be linked to the benefit of the project according to the criteria defined rather than its quantitative characteristics such as the dimension. It should also ensure that projects with indirect impact such as system flexibility increase are eligible as needed for cross-border capacity enhancement.

ENTSOG notes the call for consistency between electricity and gas as embedded in the proposal. It would nevertheless like to highlight that differences exist between the two markets (network operation, dependence on imports, especially from third-countries, and the subsequent long distance transport across multiple systems, investments based on sufficient booking capacity commitments, existence of storage and LNG infrastructure) and should be reflected in the Regulation.

ENTSOG welcomes the opportunity to propose clarifications of the provisions to ensure the risk of misinterpretation of the arrangements is mitigated.

ENTSOG underlines that deadlines related to the decisions to be taken under the proposed Regulation should be expressed in terms of months/years as from the entry into force of the Regulation.

Identification of PCIs

The proposed process for the PCI identification seems to be unnecessarily complex and possibly not sufficiently transparent.

¹ Distortion means '[that there is a situation] when prices and production are higher than levels that would normally exist in a competitive market'. (Source: WTO)

ENTSOG agrees that the Regional Groups² should be identified as the key decision-makers and the most appropriate platform to identify relevant projects. To support the regional decision-making process, the provisions should explicitly state that identification of PCIs will be made based on consensus³ of the Regional Group. Clarity is also required to ensure that members of the Regional Group will consider such decision binding and will take into account the results of the CBA analysis when making decisions, in their own capacity, in the subsequent process leading to the construction and putting into operation of the PCI infrastructure.

ENTSOG would also like to recommend that when identifying the list of PCIs, all projects selected as PCI are considered on an equal footing and no ranking is done among them by the Regional Group.

The consistency of the assessment of all applying projects across regions that is currently to be ensured by an additional layer of assessment by ACER should be rather ensured at the very level of the Regional Group, where ACER (as a participant of such Regional Group) contributes to the evaluations, analysis and decisions thereby taken. This will allow for the necessary transparency and efficiency of the process. Once the Commission receives the PCIs list endorsed by the Regional Groups for final adoption, a deletion of a PCI project from the list should be allowed only under pre-defined circumstances. No new project would be eligible for entry onto the PCI list at that stage.

CBA methodology development and application

ENTSOG supports that the CBA methodology development is indeed developed by ENTSOG, which is consistent with the role of ENTSOG as defined in Article 4 of Regulation (EC) 715/2009. During such process, ENTSOG would apply its best practises regarding consultation of stakeholders.

The proposal requests ENTSOG to develop CBA methodology for infrastructure projects (covering at least 20 years) and its application to PCIs in a 'harmonised energy system-wide cost-benefit analysis at Union-wide level'. This CBA methodology is to be further used by individual (PCI) project promoters. Generally, the proposal creates quite an extensive framework for the CBA methodology development and application and makes it quite a complex exercise.

In addition, the timetable for the development of the CBA methodology is insufficient. The proposal only allows for 1 month after the entry into force of the Regulation, for ENTSOG to be ready for submission of the methodology proposal to ACER and the Commission. This is hardly possible considering the need to develop the concept, ensure proper consultation with Member States and wider stakeholders, finalize the proposal and follow the ENTSOG statutory approval process. It is anticipated that an extended timeframe of about 12 months would be necessary to ensure the

² Consisting of the Commission, MSs, NRAs, TSOs, relevant project promoters, ACER and ENTSOG (for gas projects)) and contributing thus to the implementation of the obligation by MSs, NRAs and TSOs to cooperate at the regional level as enshrined in Directive 2009/73/EC (Art. 7) and Regulation (EC) 715/2009 (Art. 12).

³ Consensus means agreement, characterized by the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the views of all parties concerned and to reconcile any conflicting arguments. Consensus does not need to imply unanimity. (EN 45020)

robustness of the CBA methodology. ENTSOG will start preparatory work aiming at drafting a preliminary CBA as soon as viable.

In addition, ENTSOG proposes to streamline the process and enable establishing a clear and workable framework for responsibilities linked to the application of the CBA methodology.

ENTSOG proposes that application is performed in two steps:

- ✓ Firstly ENTSOG would apply that part of the methodology which is in line with the wider objectives of the Ten-Year Network Development Plan (TYNDP), namely the modelling of the European gas network, development of scenarios, assessment of adequacy of the gas system to supply current and projected demand for gas and the system's resilience. This also fits with the objective to establish a 'harmonised energy system-wide cost-benefit analysis at **Union-wide level**'.
- ✓ Secondly, the aspects of the CBA methodology relevant to individual projects would be elaborated by the respective project promoters. This concerns especially the financial and economical parts of the analysis which are clearly project specific. The CBA analysis would be submitted by the project promoter upon the submission of the project to the Regional Group and would serve as basis for the project assessment for a PCI status. The detail of the CBA analysis thus submitted would reflect the maturity of the project. Necessary confidentiality provisions would be established so that commercially sensitive data from the CBA would be made available only to the Commission, ACER, and concerned Member States and NRAs.

ENTSOG would also like to highlight that it is necessary to make clear that two CBA methodologies should exist, one for gas and one for electricity. ENTSOG would also like to see more clarity regarding the link between the methodologies for electricity and gas.

Regulatory Treatment

Basically, infrastructure costs should be underwritten primarily by long-term capacity agreements, and/or alternatively by commitments of Member States or regulatory authorities. In its current form, ENTSOG believes that the chapter dealing with cross-border cost allocation could significantly distort the market as the ex-ante cost allocation will not be able to identify beneficiary on the long term due to the evolution on the gas market, and the procedure neither guarantees that the costs will be born by the actually benefitting gas consumers. The proposed cross-border cost allocation process also does not take into account the realities of the gas market design. Due to the fact that gas infrastructures entail long-term investments and natural gas usually crosses (several) borders before consumption, infrastructure costs should be primarily underwritten by long-term bookings of system users who pass these costs on to exactly those users who benefit from the infrastructure. Abstract cost-sharing decisions between regulators based on assumed benefits of infrastructure would introduce a vastly complex and contestable administrative process which is neither necessary nor appropriate.

Cross-border cost allocation should focus on the concept of cost bearing by system users in the form of long-term capacity bookings; such commitments could also be entered into by shippers through a

public service obligation or non-market players such as Member States or entities established by Member States for that purpose. Capacity formally contracted by such non-market players would be subject to the obligation to offer to the market. Cost allocation based on long term capacity bookings should be left for development under the framework of Tariff Framework Guidelines and Network Code or Commission guidelines in accordance with REG-715.

Where a Member State decides that long-term commitments equal to long-term capacity bookings by users should be taken by National (Energy) Regulatory Authorities, in case of investment with cross-border impact, it must be guaranteed that a consistent solution is applied across the border and an appropriate remuneration scheme is put in place that does not disadvantage either TSO with regards to regulatory accounting and tax regimes.

The proposed incentive framework focuses too much on incentives related to higher risks. It is not clear if the proposal assumes that PCIs always face higher risks than other projects but could lead to such treatment. In contrast, the priority treatment afforded to the PCIs according to the Regulation could make them projects with lower risks than others. ENTSOG maintains that the provisions of the current Directive 2009/73/EC (DIR-73) and Regulation (EC) 715/2009 (REG-715) are not yet properly implemented in many Member States with regards to infrastructure investment incentives and this is one of the key obstacles to development of gas infrastructure, in particular those with cross-border impact. ENTSOG believes that this Regulation on Infrastructure Guidelines should establish incentive principles for all *'[infrastructure] investment and maintaining and creating interoperability [between] transmission networks'* as foreseen in REG-715 equivalent to the ones established under Article 14(3) of the current proposal which provide a good example of such principles. Additional incentives should be considered for PCIs to ensure additional support in line with the objectives of the Regulation.

It should also be ensured that financial support already given to a PCI project (including also investment incentives) may not be retrospectively recalled should the project lose its PCI status, unless the project promoter clearly gave wrongfull information to obtain a PCI status. This would unnecessarily increase the risks associated with such project.

Permitting & Public Participation

ENTSOG welcomes the proposed framework to support the application of relevant best practises across Europe and the development of cross-border projects with consistent timelines. However, ENTSOG would like to recommend the following changes in order to improve the process.

ENTSOG believes that the proposed Integrated Scheme should be highlighted as the preferred solution in the Regulation while the Coordinated Scheme could possibly implemented with a expiration date. The Integrated Scheme allows a more efficient handling of the permitting process, considering the resources and expertize needed. In an integrated scheme resources and expertize would be accumulated within one authority which would facilitate the tight timelines. Such approach will also support cross-border cooperation between the respective Competent Authorities. This is in line with efficient and speedy handling of the process is in line with the MSs' strategic interests embedded in the PCIs implementation. The implementation of the Integrated Scheme will

incorporate the link with the regional and local authorities that need to stay in place to address the concerns of the affected parties.

With regards to the stages of the process, ENTSOG recommends considering only one-stage process (instead of the proposed two-stage process), namely the Statutory Permit Granting Procedure, which will allow for additional flexibility. The timeline for this procedure should be 1 year.

ENTSOG supports transparency as one of the key principles of the permitting process. ENTSOG recommends leaving the details of the process in the hands of the Competent Authorities in order to ensure the application of national legislations which already proved to work properly in terms of permit granting procedures.

Financing

ENTSOG acknowledges that the financing part of the proposal may have a positive impact on the infrastructure development of certain projects through the facilitation of necessary funds. The available amount of money to be spent through the special financing tools⁴ is not considered to be so large as to create significant distortions even though it cannot be completely discarded, especially from a regional perspective. Nevertheless, ENTSOG would like to highlight that the use of grants could reduce the appetite of shippers to commit to long-term capacity bookings which are still key to underpin infrastructure investments.

Given the similar role of the direct EU funding and TPA exemption in supporting financial viability of a project, ENTSOG also believes that decisions on both issues should be taken at the same stage. This should ensure the right balance between the two tools avoiding distortion between projects.

ENTSOG would like to note that the access to cheaper financing (e.g. cheaper interest rates through EIB) is not to be used for benchmarking within the national regulatory regimes for projects not making use of such financing. In addition, this should not replace incentive regimes as envisaged by DIR-73 and REG-715. These principles should be explicitly stipulated in the Regulation. Furthermore, European initiatives on project financing should also help to address market failures, i.e. the risks that the financial and insurance markets are currently unable or unwilling to price.

Conclusions

ENTSOG welcomes the initiative by the Commission to support the development of gas infrastructure in Europe by streamlining certain processes relevant for such development.

ENTSOG has outlined some aspects of the proposals that, in ENTSOG's opinion, deserve additional consideration and clarity to ensure feasibility and effectiveness of the proposed processes.

ENTSOG is prepared to provide its expertise to the concerned European institutions and further support the relevant discussion.

⁴ Approx.. € 9.1 bn for both electricity and gas transmission projects