

## Eurogas position

Proposal for a Council Regulation “Enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks”

### General comments

Eurogas welcomes the two proposed delegated regulations to **ease the increased liquidity pressure** on non-financial market participants resulting from the rise in the margin requirements. Minor amendments, as further outlined in the [Joint Association letter of 26 October](#), would significantly improve their effectiveness.

Eurogas welcomes the recognition of the need to consider **demand reduction measures for ‘non-essential demand’** of protected customers in case of an emergency.

Eurogas welcomes the initiative of the European Commission to **coordinate and intensify energy supply negotiations** with all reliable partners, who are currently benefiting from revenues well above the normal range because of high prices.

Eurogas agrees that there is a need to **improve the coordination of filling of gas storages** ahead of the next filling season. Eurogas recognises the objectives of the temporary EU ‘Gas Storage Regulation’. Yet, ensuring that specific filling levels are achieved at pre-defined points in time has led to substantial concurrent demand for gas across the Union, which in turn has further weighed on gas prices. Eurogas thus favours enabling the EU to improve the commercial filling of storages. Member States could start by **sharing good regulatory practices and examples of market-based mechanisms set for storage capacity booking purposes** (cf. auctions) which were successfully deployed to fill storages – avoiding forcing ‘fill at all cost’ situations observed in some Member States.

Eurogas notes that **demand aggregation and joint purchasing mechanism must be voluntary**. It is currently **unclear how the proposed mechanism would function**, in particular regarding EU competition rules. It is also unclear how it would differ or be more efficient than the existing possibilities to aggregate demand through private seasoned market participants. The proposal contains several design elements, which may negatively impact Europe’s security of supply, by **disincentivising or significantly delaying contracting by market operators** while also distorting competition. More generally, demand aggregation and joint purchasing may have limited effect on overall gas prices during a situation of ongoing global supply shortages. They may even have the opposite effect by creating additional buying interest. This unwanted effect could even be aggravated should the participation to the platform and/or the buying of gas through the platform be made mandatory (even if only in part).

Eurogas notes that it is **unclear how an additional LNG price index, on top of existing ones, could address the problem of high energy prices**. Moreover, the proposed Regulation also jeopardises commercial confidentiality rules, in particular the proposal to surrender contracting formulas. Honouring confidentiality clauses is fundamental to build longstanding relationships with reliable partners.

## Specific comments

### Regarding the reporting requirements under Article 3

Eurogas questions the necessity of Article 3. A requirement to report the requested information at least six weeks before concluding a legally binding contract undermines commercial contracting. Moreover, the most important details are agreed upon towards the end of the negotiations. This may unnecessarily slow down negotiations at a time when it is important to rapidly secure new supplies. The Article should be deleted, be applicable only to regulated entities or amended to require natural gas undertakings to provide information following the conclusion of commercial agreements.

While Eurogas does not support the reporting requirement laid out in Article 3, should policy makers nonetheless pursue this option, the 5 TWh threshold triggering any possible reporting requirement should be significantly increased to reduce the administrative burden.

It should be noted that companies already report relevant information to ACER under REMIT rules. With a view to avoiding unnecessary red tape, ACER's current oversight might be deemed sufficient.

### Regarding the role and process of the evaluation by the European Commission and the Steering Board under Article 3(3) and (4) as well as Article 4(4)

The role of and process for evaluation by the European Commission and the Steering Board in the context of Article 3 are not clear. It is unclear what objective metrics are to be applied to determine if a planned gas purchase may have a negative impact on joint purchasing, the internal market, security of supply or energy solidarity. It also is unclear what actions the European Commission or Member States can take to avoid such a negative impact.

It is important to avoid creating the perception that contracts between market operators may be blocked because of an assessment by a public body that gas volumes are more valued elsewhere and/or by another market player. The perception of such a risk would greatly disincentivise or significantly delay contracting by market operators at a time when the opposite is needed. Furthermore, it may place the EU at a competitive disadvantage vis-à-vis Asian and international competitors. Institutions should instead create a framework that enables companies to bring as much gas as possible to the EU.

### Regarding the criteria for selecting the service provider under Article 6

Eurogas underlines that the service provider must be a European company and any data regarding demand aggregation should only be kept in the EU and should not be transmitted to any non-European affiliate of the service provider. This also requires that all servers and information are physically located and stored in the territory of the Union.

## Regarding the tasks of the service provider under Article 7

Eurogas does not believe that any existing IT tool can handle the full complex task of demand aggregation. The development of a new and fully comprehensive tool will be complex and cannot be done in time for the next storage season. Therefore, any meaningful demand aggregation could only be done with the help of experts, and the choice of these experts and their confidentiality obligations are essential to make aggregation possible.

Regarding Article 7 (b) Eurogas notes that the service provider shall under no circumstance be responsible for allocating access to LNG, transmission, or storage capacity necessary to supply gas procured under joint procurement. This would infringe the rights and obligations of TSOs, LSOs and SSOs and could lead to expropriation of already booked capacity if sufficient capacity is not available to deliver the jointly procured gas.

## Regarding the participation in the joint purchasing under Article 8

The proposed rules entail the risk of distorting competition. Participation in demand aggregation and joint purchasing should be voluntary and not be a condition for whether market participants are entitled to receive liquidity support or not. Joint purchasing consortium and commercial undertakings should be able to compete on a level playing field.

## Regarding the ‘Mandatory use of the service provider’ under Article 10

On a general note, it remains unclear what “demand aggregation” means and if or how it differs from “joint purchasing”. It is unclear whether an obligation exists to purchase gas that has been aggregated via the platform. We welcome that it is explicitly suggested in the preamble of the proposed Regulation that no such obligation exists. This should be explicitly mentioned also in the relevant Recitals and Articles.

An obligation on natural gas undertakings to aggregate the volumes equivalent to at least 15% of the total volumes necessary to meet the 90% storage target may undermine commercial filling of storages. This would also be the case if the obligation was limited to regulated entities. Market participants may only feel incentivised to purchase gas equivalent to 75% of the total volumes necessary to meet the 90% storage target. Moreover, a single target figure applicable to all Member States would in any case not be appropriate as it does not consider national differences in storage volumes. Due to the variety of national rules in place to ensure the storage filling, a 15% mandatory aggregated volume target may be difficult to implement or hinder the open storage subscription processes set in some national legislations.

Natural gas undertakings should under no circumstances be obligated to purchase gas for storage filling or to aggregate demand via the platform.

Eurogas notes that good examples exist within the EU (e.g., Italy and France) on how to ensure the commercial filling of storages to ensure that specific filling levels are achieved at pre-defined points in time. Improved coordination of national processes through regular information exchanges and sharing of best practices could possibly be envisaged. A role could possibly be foreseen for the EU Energy Platform or the Gas Coordination Group.

### Regarding the Gas Purchasing Consortium under Article 11

Eurogas recalls that demand aggregation and joint purchasing must be voluntary. Moreover, we are concerned that the proposal does not provide details on how such a consortium could be designed in a manner that would be compatible with EU competition rules. While the preamble notes that such a consortium could possibly be in compliance with EU competition rules, the 'Legislative Financial Statement', indicates that DG Competition will work *ex-ante* on competition law compliant implementation of the gas purchasing consortium. Absent such clarification, commercial entities are unlikely to have sufficient assurance to engage in such a consortium. The lack of clarity also suggests that the mechanism may not become operational in time for the next storage filling season.

In any case, it is a precondition that consortium participants receive rapid and unequivocal clearance that the consortium is either compliant with competition law, or that it is given an exemption if not fully compliant.

### Regarding mechanisms to ensure effective use of transmission capacities of Article 14

Eurogas notes that abusive behaviour such as capacity hoarding and capacity withholding is already largely covered by regulatory provisions (i.e., REMIT/MAR/CMP Guidelines). The proposed measures may be counterproductive with regard to Security of Supply. Operators must be allowed to use allocated capacity in a way that reflects price signals and is functional to the exploitation of flexibilities in supply contracts. An excessive tightening of use-it-or-lose-it mechanisms could be counterproductive. Measuring capacity utilisation over a period of one month is too short to allow for the necessary flexibilities and so is requiring a utilisation of 80%. The cumulated transport capacity (at all IPs scale) is far above the entire gas demand for all European end-users, even in peak demand situations, contrary to the capacity of the power transmission network. The measure would for example entail that if a network user only used 50% of November 2023 capacity (for instance because storages were full), it would lose 30% of its January 2024 capacity, at a time when this capacity is critically needed along the entire supply route.

This measure would also put at risk short-term supply capacity because of the risk of withdrawal of capacity from the entities that currently hold them. Legitimate underutilisation of capacities dictated by market dynamics would be made impossible. As such, it could encourage the acquisition of such capacities by entities operating for short-term speculative purposes.

Finally, UIOLI mechanisms must consider the cost actually incurred by the original users. These could be higher than the regulated tariff (i.e., in the case of auction premiums) as it is aimed at ensuring an option of use when market prices make it economic.

Moreover, Eurogas notes that in the current market conditions, congestions are generally physical and not contractual. The disruption of Russian gas flow to Europe has structurally changed the pattern of gas flows in the European gas systems. Gas used to normally flow from East to Western Europe. Now, natural gas is flowing from Western LNG-rich hubs towards the more Russian-dependent markets in the East, a configuration for which the European gas system was not designed. The resulting physical congestions have led to price differentials between European hubs, where the ability of Member States to import gas from alternative sources (most notably, LNG) play a key role in determining price divergences. While Eurogas agrees that it is important to use existing capacities efficiently, the current situation should not be addressed by new regulation, be it through stricter application or the reinforcement of UIOLI provisions or an alternative LNG benchmark as further outlined below.

We believe that the use of existing UIOLI rules should be incentivised, where not already applicable. We consider it crucial that existing capacities are maximised and efficiently used. This could be achieved via an improved NC CAM auctioning process. For instance, measures could be considered to speed up the process and TSOs could be authorised to carry out more frequent capacity auctions if the market signals are favourable.

### Regarding the intra-day volatility management mechanism of Article 15

It is important that the European Commission defines guiding principles *ex-ante* that trading venues should consider when setting up the intra-day volatility management mechanisms. This is necessary to provide a degree of uniformity across the EU and minimise uncertainty created by *ex-post* assessments. Trading platform and trading product specificities can be considered by the operators when setting an appropriate deviation. Finally, the measure should cover all energy-related derivatives with deliveries in the front-month (e.g., including the quarter and seasonal products) to be effective.

### Regarding the LNG price assessment and benchmark of Article 19

Eurogas notes that in principle a price assessment, depending on its design, could improve transparency by complementing existing, commercial price assessments for LNG delivered to Europe. However, regardless of its design, it will not change market fundamentals (i.e., the current supply and demand imbalance). It is questionable whether it can result in a reduction in gas prices paid by EU consumers.

Any successful new LNG index would need to be based on liquid trading upon which an associated derivatives market could develop and, above all, on market acceptance namely the willingness of sellers and buyers to use this index in commercial transactions. As such, LNG assessment will always reflect a segment of the European gas market only – the segment before gas has entered the interconnected

transport and distribution system that ensures access of actual end-consumers to it. This later segment is currently not well adapted to new flow patterns. This is causing bottlenecks in hub-to-hub transport which in turn lead to de-converging hub prices within the EU. Price signals stemming from physical congestion can be seen as transparent market signals towards the need for investing in increased intra-European capacities (i.e., reverse flows interconnections) and new regasification capacities in several European countries, for instance Germany, the Netherlands and Italy. In other words, it seems impossible to reduce price divergences – and reduce them to a single benchmark – if infrastructural bottlenecks across Europe persist. Under this perspective, price differentials can be expected to decline once new LNG infrastructural capacities (cf. FSRU plants to be commissioned or planned) and new transport connections become operational.

Whilst the Commission's initiative to increase market transparency and develop an alternative LNG import benchmark can be understood, it is questionable – assuming that it is successful – whether this will result in a reduction in gas prices paid by EU consumers (industrial and residential), if the physical causes at the origin of the crisis persist.

### Regarding the provision of LNG market data to ACER under Article 20

Data listed in Article 21 are commercially sensitive. Not disclosing them is important for antitrust reasons. ACER must guarantee that data are kept confidential and that only data that is strictly relevant for building the LNG assessment is collected and that the data is exclusively used in an aggregated manner for the purpose of building the LNG benchmark.

The mechanism would need to ensure that only comparable transactions are covered. According to the current proposal, the benchmark value of a specific day would be determined by including contracts with different delivery time-durations (and therefore with underlying economic rationales that cannot be compared). Prices deriving from short and long-term economic rationales would be combined and mixed-up improperly and compared with the value of the TTF front-month.

As for transaction-specific elements that characterise any LNG transaction, it is unclear why the price formula in the long-term contract from which the price is derived need to be reported to ACER for the purpose of the assessment. Eurogas does not consider this information relevant for the purpose of establishing an index.

For the time being, the EU LNG market is mainly a bilateral market (OTC). Contrary to an organised market, where the price is determined through bids and offers, in the OTC market many more contractual conditions are part of the negotiation process between counterparties. Until the development of an organised LNG market, the inclusion of bids and offers into the LNG assessment should therefore be avoided.

For the same reason, until the development of an organised LNG market, with data reported by the

organised market itself, it is also not possible for market operators to submit LNG market data real time. At best, it might be feasible for LNG spot transactions to be reported to ACER the day after the agreement of the contract before 16:00 CET.

### Regarding the extension of solidarity protection to critical gas volumes for electricity security of supply of Article 27

The amount of gas that is critical to power sector operations depends on the availability of alternative sources of electricity. While this Article aptly foresees the possibility of a Member State to demonstrate that a higher volume of gas is required to avoid an electricity crisis than what is assumed in Annex 1, the process required for such demonstration could take time and encounter technical difficulties that is difficult to foresee in advance. In any case, such a process should be based on clear rules set in advance (identification of relevant power plants, scarcity criteria and triggering conditions), in order to ensure transparency, reactivity and avoid any spill-over effects.

### Regarding default rules for determining compensation for solidarity measures of Article 31

It is important to apply prices that reflect actual market conditions. The market is volatile with significant price swings. Calculating the price on the basis of an average of the previous month, instead of the current “live” gas price observed in very tight conditions, leaves the providing Member State exposed to a very high price risk (cf. potential rebalancing requirements) and may create extensive distortions inside the EU. Therefore, it is proposed to establish this compensation based on the ex-post final price, in the period in which solidarity is provided, on the market of the country providing the solidarity.