12 December 2011

Eurogas comments on the Infrastructure Package from 19 October 2011

Eurogas welcomes the Commission's general proposals. Below are some further detailed Eurogas comments on the 3 proposals:

1) Regulation on Guidelines for Trans European Energy infrastructure
2) Regulation on Connecting Europe Facility
3) Communication on the pilot for the Europe 2020 Project Bond Initiative

Regulation on guidelines for Trans European Energy infrastructure

1. Eurogas welcomes the proposed regulation on guidelines for trans-European energy infrastructure, repealing Decision No 1364/2006/EC.

2. We particularly consider constructive the Commission's highlighting that natural gas will continue to play a key role in the EU's energy mix in the coming decades, and we support all four aspects of the TEN-E guidelines, aiming at:
   - objective rules for determining Projects of Common Interest with a wide regional diversification;
   - harmonization and acceleration of licensing procedures with a far-reaching proposal to facilitate and accelerate permit granting, with a time-limit and a "one-stop-shop" possibility;
   - more integrated cross-border regulation with common principles for costs and benefits allocation;
   - specific and well-diversified finance structures to help important projects take the final step.

3. We would like to bring the following comments and questions in order to achieve further understanding and improvements:

1) Process of identification of PCIs (Art.3)

Periodic review

4. To give flexibility to the selection process, the Commission proposes the bi-annual review of the list of selected projects. However this flexibility should not cause inappropriate uncertainties for investors (Art.3.1). It is important to keep in mind that investment planning requires a long-term view and therefore the PCI status should remain, once a certain milestone of the project is reached (connected to Article 5)

Time schedule for the identification of PCIs

5. The outlined theoretical time schedule for selecting the Projects of Common Interest (PCI) is very ambitious (Article 3). If the first list of PCIs should be in place by 31st of July 2013, the regulation concerning Guidelines for trans-European energy infrastructure would have to enter into force by end of February 2012. The evaluation and identification process for PCIs has to be coherent with the outlined time-frame. One should be careful not to speed up the process at any cost, introducing the risk of insufficient rigour in selection process and choices, and in particular the risk of introducing market distortions.

Role of Member States

6. We understand that for a project with an impact on a Member State (MS) the MS concerned will have the final approval regarding the project involved (Article 3.3). Our interpretation is that such MS approval would take place at the time of selection within the regional groups (there would not be any value added in a MS final approval for a project, following the Commission decision on the PCI label). Furthermore, MS should not be allowed to oppose a candidacy for PCI label (due to subsidiarity principle) without providing some proper justification.

2) Financing – Economic against Commercial viability (Article 4 v/s 15)

7. We support that the "*economic viability"* is considered as a pre-condition for a project to be included among the PCIs (Art. 4.1 b).

8. Article 15 on Eligibility of projects for Union financial assistance would need to be further clarified. We read in Art 15.2.b with regard to grants for works that a project is only eligible for financing through the CEF if it is "*commercially not viable".* This could be problematic for market distortion, if there are competing projects. Furthermore we would like some clarification on criteria for PCI to obtain other financial instruments for credit enhancement, such as subordinated loans or guaranties by BEI (see our comments on CEF here below).

9. Eurogas considers that any infrastructure project should ideally be a self supporting, private initiative that is financed primarily by private commercial funding. Only under specific circumstances and then to a lesser extent, can they be supported by EU financial support in a form of funds or even credit enhancement mechanism. Eurogas recalls that the best way broadly to encourage market driven investment is to ensure a level playing field amongst the projects at all times. In the case of competing projects, allocating financial support to a project that is not commercially viable could lead to weakening or even destroying the business case of another commercially viable project which would hold the same objective. The EU funding should not distort the market by facilitating false competition. Commercially viable projects will always be preferred amongst competing projects providing similar benefits. Financial support will be granted for a PCI only if such PCI provides economic and social benefits which cannot be achieved via any commercial projects in competition. Furthermore EU public support will ultimately benefit to EU society and end-users.

3) Rules and indicators concerning criteria for projects of common interest (Article 4 and Annex IV)

Eurogas submits the following comments on the indicators concerning criteria for PCIs:

10. Annex IV, point 1(c): the indicator of at least 10% needs further clarification. We also generally question the merits of having minimum size criteria for PCIs, as individual small projects could, added together, bring material contributions.

11. Annex IV: while for measuring market integration, competition and system flexibility of electricity systems (point 2.a, p. 40) an explicit reference to the Ten-Year Network Development Plan (TYNDP) is made, we wonder why when it comes to natural gas (Annex IV, point 3), the TYNDP is not explicitly mentioned as a reference .

12. Annex IV, point 3 sub (b): the Herfindahl Hirschmann Index is not related to market integration and has proved to have various methodological limitations. We therefore recommend the suppression of this indicator.

13. Annex IV, point 3 sub (d): sustainability is a new criterion for selecting projects of common interest. Eurogas accepts the addition of this criterion, but calls for more transparent and detailed definition.

14. Article 4.4: The interoperability/compatibility with existing infrastructure should be added among the criteria mentioned for the evaluation to rank the projects within each priority corridor.

15. The references to TPA exempted projects shall ensure no discrimination between projects exempted under Directive 2009/73/EC and under Directive 2003/55/EC.

4) <u>Implementation and Monitoring of projects of common interest (Art.5)</u>

16. The possibility for a project to be removed from the PCI list represents a cause of insecurity for the promoters and the market players. The conditions of a potential removal should be clarified and the level of a project's progress should be taken into account.

17. Eurogas supports a speedy process for the implementation of PCIs. However, for PCIs that involve connections beyond European borders and run via several countries consisting of MS and non-MS a two –year deadline can be too strict (Article 5.6 & 5.7). Eurogas calls for more flexibility and proposes to formulate deadlines reflecting the scope and the nature of a PCI.

18. The "insufficient justification" that gives the Commission the power to intervene is too vague and would create a wide range of interpretations and lead to additional uncertainties. If any action is to be taken by the Commission, it should be limited to removing the project from the Union-wide list of PCIs. No other interventions on project's sponsorship or shareholding should be foreseen.

19. Moreover, art. 5,7,c provides for projects having submitted "incorrect" information to lose the status of priority project. The concept should be better defined and it would be better to be more precise e.g. "intentionally incorrect information" or "misleading information to a degree significantly impacting the viability and the economic assessment of the project since some information given "de bonne foi" at the beginning are based on assumptions which may vary (ex: price of steel for gas pipeline).

20. The criteria to remove a PCI from the Union-wide list in Article 5.7b are connected to the inclusion of the project in the TYNDP. Since not all projects are presently part of the TYNDPs of the ENTSOs, Eurogas calls for the guidelines to be applicable to projects of other infrastructure operators, such as LNG and Storage operators. As achieving one single reference list would be recommended, the TYNDP could be adapted with rules (transparent and non discriminatory, to be discussed with stakeholders) on how to include in the TYNDP all relevant projects which have reached a certain level of maturity, whatever the nature of the sponsors.

5) <u>EUROPEAN COORDINATOR (Art.6)</u>

21. Eurogas welcomes the proposal to install a European coordinator (Article 6). Yet it remains unclear what specific powers a European Coordinator has. The project promoters should be involved in the appointment of a European Coordinator.

6) Corridors (Annex I)

22. In line with the Commission approach on infrastructure development to increase Europe's security of gas supply, the Corridors should be defined in such a way to allow the inclusion of projects aimed at developing flows in one direction and/or the other.

7) Regional identification of PCIs (Annex III)

23. The Groups of Regional Cooperation define the list of projects of common interest and the ranking, and gas supply companies are not part of the Groups. Stakeholders should be part of the Groups of Regional Cooperation that advise the EC. If the participation of stakeholders is limited to consultations, the success of the project might be endangered.

Stakeholders involvement

24. Eurogas therefore proposes that the identification process and the ranking should be jointly made by project promoters (TSOs or non-TSOs), NRAs and Member States but also by stakeholders such as gas supply companies. The involvement of suppliers is a prerequisite to guarantee the success of the projects.

Structure of the Regional groups

25. Today different regional groups with varying focuses and functions already exist. Therefore the existing and the newly established regional groups for the EIP should be streamlined. The establishment of additional regional groups especially for the purpose of identifying and assessing projects of common interest within the European Energy Infrastructure Packages imply partly redundant work as the GRIPs are already in place. To avoid duplication of works and to minimize the workload for each of the regional groups we propose that the basis of the EIP regional groups should be formed out of the existing GRIPs, extended to involve all relevant and presently missing stakeholders, in particular extended to the project sponsors.

Governance and arbitrary selection due to lack of procedures

26. The regional groups as defined in Annex III are large and the proposed Regulation does not precisely define its rules of governance, and more precisely it does not define the procedures to be followed to select and rank the PCIs. This may lead to a selection of PCIs on the basis of arbitrary considerations. In any case a possibility of appeal should be envisaged. Part of the solution to these concerns would be to discus and assess projects within the regional groups based on the prevailing CBA methodology. We could also envisage possible involvement at these early stages the ENTSOG and the BEI (these parties would have a key role in any case in the following procedures to progress on the PCIs.)

Confidentiality concerns

27. The detailed application for the status of project of common interest is to be communicated to all members of the Groups (annex III, 2,1), but the large number of participants, as well as the fact that promoters of competing projects (i.e. several existing projects, TSO and non-TSO projects etc.) are represented, creates some concerns regarding the guarantee of sufficient confidentiality, as this factor may lead to disclosure of commercially sensitive information if not properly handled.

8) COST BENEFIT ANALYSIS (Article 12 and ANNEX V)

Timing and consultation of suppliers

28. Article 12 foresees an ambitious time-schedule for the development of the cost benefit analysis. Eurogas is therefore of the opinion that the timing for the development of a comprehensive methodology is not sufficient to ensure proper consultation with all stakeholders. Furthermore, it should be clearly stated in Article 12 that any such analysis should be discussed and subject to contributions from all stakeholders involved, especially the gas supply companies.

29. The European Investment Bank could be involved in the process of the costs/benefits analysis.

30. Once the CBA methodology has been duly defined by the ENTSOs, after consulting the relevant stakeholders, this should be used as a reference also in the first selection phase of PCIs and not only when applying for cross-border cost allocation decision.

Additional points that should be taken into account when preparing the CBA

Investment costs

31. The cost allocation of projects selected as PCIs has to bear in mind the European perspective and, if necessary, be also addressed as foreseen by the Third Package for cross border issues (Article 42 of the Gas Directive and Article 4 of the Regulation on ACER). In case of pipelines, there should be an oversight of the investment costs incurred by regulated TSOs and, if significant differences are noted, a benchmark of adjacent TSOs could be carried out.[1]

Positive externalities

32. The current regulatory framework places significant risks on shippers, as binding commitments are required. To meet the investment challenges of the EU energy policy, a more balanced risk sharing approach should be considered. Cross-border energy infrastructures provide benefits in terms of: Market integration (single energy market), competition and security of supply. These positive externalities should be considered when developing the cost benefit analysis socializing part of the costs.

9) Licensing (permitting) – (Chapter III, article 7 – 11)

33. The exclusion of non-PCI projects from the permitting facilitations will cause market distortions between the PCIs and the other projects. Eurogas therefore calls for the amended licensing procedures to be applied to non-PCI projects as well.

[1] Excerpt of Eurogas Position Paper of 13 July 2011 – 11NO512 - Eurogas comments on European Commission's presentation 29th June 2011

Connecting Europe Facility

34. The document only describes general tools for funding. Specifics are missing and the messages are too general which can impede project planning.

35. Certain clarifications are needed, especially as far as the funds allocation is concerned, as for example how the 9.1 billion envelope dedicated to energy will be divided by the three financing tools (grants; equity, loans, guarantees; and EU project bonds) and the First Come First Served principle to allocate the funds needs to be further discussed (Art.15, p.31).

Communication on a pilot for Europe 2020 Project Bond Initiative

36. Eurogas is calling on the European Commission to ensure that the project bond initiative will not be discriminatory with regard to financing other projects in competitive segments in the open market because banks and other investors strongly prefer well supported low-risk investments. Infrastructure investments should not be further delayed, while waiting for future financial support.

37. We understand that the budget for all energy infrastructure projects is limited to 10 M€, coming from the TEN-E budget. Such a limited amount seems not sufficient to test adequately the Project Bonds.

38. We understand that this instrument is made available for projects that are economically and technically sound, cost-effective and have a real prospect of financial viability. On the one hand, we agree with the importance of supporting economically sound projects that can easily access revenues and contracts. On the other hand we think that projects such as cross-border interconnections and storage sites which are not market-driven but that would entail positive externalities in terms of security of supply objectives may not meet these criteria. In this sense the EU efforts aimed at developing *ad hoc* rules conducive to an appropriate return for investors in such projects are very much welcomed. Once completed, this process will certainly contribute making the EU project bond instrument accessible also to this type of infrastructure which, as the European Commission underlines in several policy papers, is crucial to integrate national markets, delivering positive effects on security and flexibility of the system.