

European Union Agency for the
Cooperation of Energy Regulators
Trg republike 3
1000 Ljubljana
Slovenia

Department for Environmental and
Energy Policy
Wiedner Hauptstraße 63 | Postfach 189
1045 Vienna
T +43 590 900-4195 | F +43 590 900-269
E up@wko.at
W wko.at/up

By e-mail to:
pc_2019_G_06@acer.europa.eu

Up/053/VG/DK
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Public Consultation on „The Bridge beyond 2025“ - PC_2019_G_06

Dear Madam or Sir,

The Austrian Federal Economic Chamber (hereinafter referred to by its German abbreviation as “WKÖ”) is a self-governing body duly recognized under constitutional law representing the interests of the Austrian business community. We thank you for the opportunity to comment the consultation document regarding the trends in the European energy sector - and particularly in the gas sector - beyond 2025.

We generally welcome that ACER is engaged in the future of the Gas Market especially with regard to the necessary adjustment to renewable gases. Gas - by 2050 certainly also natural gas - will continue to play an important role in the future energy system, because (renewable) electricity alone will not be able to achieve the energy transition.

The functioning of gas markets depends fundamentally on a proper implementation of the existing legislation in all EU Member States in order to avoid distortion of competition. Adjustments of the current design of market regulation will be needed in order to pave the way towards decarbonisation. However, overregulation, hindrance of market based developments or red-tape must be avoided.

Regarding the competitiveness of our companies - energy suppliers and energy consumers - it is absolutely essential that costs do not exceed extensively. A forward-looking regulation has to incentivize new technologies and should positively shape the future of gas. Green gas, including hydrogen (H₂), will be one of the future alternatives. In order to decarbonise our energy system, every technological possibility must be exploited. No single measure is the solution to all problems.

The aim must be to encourage climate protection and ensure security of supply at the lowest possible cost. This can be achieved through open markets and market integration. The best possible market conditions must be created for this while unbundling principle must be retained. Subsidies or interventions in the regulated area (e.g. regarding storage) may only be considered if it can be proven that the market cannot guarantee the service or security of supply.

TOPIC 1: TARGETED REGULATION AND MARKET FUNCTIONING

1. Is the proposed response set out above appropriate to address the challenges the sector faces? What should be done differently and why?

From our point of view a well-established and resilient EU-wide legislative framework (3rd Energy Package, Network Codes) is already in place, that if applied properly is able to deal adequately with most situations. Deficiencies in single Member States and local markets should be first and foremost dealt with on that level. We agree with ACER's statement, that governments have put in place several important measures to enhance security of supply. In this context we want to highlight the reverse flow obligation which should alleviate infrastructure bottlenecks. When new infrastructure is built, reverse flow must be standard. Existing pipelines have to be upgraded.

As shown in recent ACER reports Austria is among the advanced hubs, with sufficient liquidity on balancing platforms, competing sources of supply and a well-established regulatory and legal framework.

Tailor-made EU wide legislation should be only proposed after a careful analysis on a case-by-case basis and rolled out after a careful assessment and discussion of its costs and benefits. One of the factors to be considered in such analysis must be, whether - with regard to the problem at hand - this could not be remedied by better and more effective by other (already existing) means.

Cross-border flows and transmission tariffs

Tariff pancaking is not per se a hindrance to trade as long as the tariffs are cost-reflective. There are sufficient checks foreseen in the Tariff Code.

1a. For monitoring the GTM metrics and prompting action, should the threshold values be set out at EU level? What should they be? Who should set these values?

The current legal and regulatory framework provides a stable basis for the implementation of the internal gas market, which is well progressed in most Member States. The GTM metrics give a good indication of the market situation. However, their effective fulfilment always has to be seen in the context of the concrete market situation and evaluation by the NRAs. Mandatory EU thresholds would take away this flexibility and is therefore not considered to be beneficial.

Market monitoring as a basis for action

From our point of view the threshold values should not be set at EU level. GTM metrics will be in many cases a reasonable starting point for further analyses, as any initial finding. In a second step it needs to be tested against the concrete situation.

While there is a need - as with any economic model used - to critically re-assess the GTM metrics from time-to-time, we do not see any urgency to undertake such re-assessment right now.

To allow the needed flexibility the GTM based "regulatory toolkit" should stay a non-exhaustive list of measures. Thus providing the flexibility to adapt it as needed for the situation at hand and allowing it to take on board concrete stakeholder feedback.

Administrative and legal requirements

We agree that it could be supportive for further development and integration of the gas market to mutually recognise licenses. However, it is of utmost importance that a standardized set of minimum requirements, which respect national law, is agreed.

To the extent that excessive licensing requirements are in place and form a barrier to entry, a system of mutual recognition of licenses should be discussed and implemented.

In setting this standardized set of minimum requirements, a (only seemingly) quick solution with agreeing on a “lowest common denominator“ should be avoided. In fact the “highest common denominator shall be agreed and guaranteed. How such licences are monitored and revoked needs to be discussed in detail. Unless such system is set up in a resilient, easy-to administer and cost-efficient way we see a danger that the risks of fraud and misuse as well as the overall costs will increase.

Regarding the proposal to decide on the type of regulation for storage facilities we would like to point out that this is already laid down in Art 33 Gas-Directive 2009/73/EC and that there is a well-functioning competition between storage-facilities as well as with other flexibility sources.

Under the current market situation for storage it is not possible to earn back the costs of new investments. Thus, it would be necessary to reduce the level of regulation while ensuring the principle of unbundling.

Oversight of regional entities and market areas

Regarding regional cooperation in context with new entities, ACER should bring concrete examples to enable a broader discussion. Based on such examples a substantive discussion regarding perceived shortcomings could take place. For the time being the Austrian Gas Industry does not see any need to further regulate any delegation of TSOs tasks and responsibilities to third parties, as these companies still have to fulfil their obligations and are ultimately responsible.

1b. Should there be new principles for tariff and allowed revenue methodologies in legislation - e.g. ensuring a level playing field between the gas and electricity sectors? What principles would be crucial?

Transmission tariffs and cross-border capacity allocation

Determining or approving TSOs revenues and tariffs respectively their methodologies is a core NRA competence. NRAs are best placed for evaluating cost and revenue drivers considering the specific system needs. Any revision of this key principle should therefore be carefully evaluated in order not to undermine the choices made by the NRA according to the national circumstances.

The focus should remain with the current implementation of the TAR Network Code and no pre-mature adjustments should be taken. As regards for example the topic of cross-subsidies, resilient principles are already stipulated in Art 5 TAR Network Code and need to be applied.

The level playing field argument cannot justify that principles coming from the electricity sector are without further deliberation applied in the gas sector as in the electricity sector (mirroring), as each sector has its specifics (physical flow, balancing, interoperability etc.) which need to be taken into account.

Depreciation periods for fixed assets shall not be of hindrance for attracting investors. In case depreciation periods for tariff calculations have to be aligned with other legal frameworks local GAAP rules would be the preferred option.

Long Term Capacity Contracts (LTCs) are and will be the basis of market driven present and future infrastructure development. Therefore, for the Gas Industry these long-term commitments will be a vital contribution to a reliable and sustainable change enabling a future energy market with the focus to reach the climate targets. The Gas Industry is of the opinion that the existing legal framework (e.g. open seasons, transparent auction mechanisms, congestion management procedures and as a last resort competition law) is sufficient. In judging concrete cases and the need to restrict the booking of Interconnection Points for a long time the particular market circumstances need to be taken into consideration. This in our view is best dealt with on national level by the respective NRAs and only as a last resort by ACER and the European Commission.

Institutional and governance arrangements

We are convinced that the 3rd Energy Package provides enough regulatory oversight (TYNDP, Network Codes etc.) and there is no necessity for incorporating any new provisions e.g. by mirroring from the Clean Energy Package into the “new” decarbonisation package. We do not agree that the regulatory framework of the electricity sector should be copy-pasted one-to-one into the gas sector as there are substantial differences between electricity and gas.

In respect to the competencies of the Agency we believe that the Agency should - as it has today - have the powers to decide in individual cases (e.g. disagreement between Hungary/Austria NRAs regarding IP Mosonmagyaróvár - the HUAT-project).

2. Should the Agency develop a joint Electricity and Gas Target Model in view of sector coupling and what key features should this model have?

On the path towards decarbonisation sector coupling will be of increasing importance. When increasing the renewable energy production linking the electricity and gas sector as well as mobility, heating and cooling will be essential. However, we do not believe that in view of sector coupling it is necessary to develop a joint Electricity and Gas Target Model as sector coupling is only a part of the ongoing transition process and may include even more energy carriers than only electricity and gas. Rather than a “one-size fits-all” approach for sector coupling - that potentially disregards that the gas and electricity markets in the Member States differ - targeted solutions seem to be better suited to address specific needs and to ensure a level playing field at the point of use.

Taking also into account the specificities of the electricity and gas market, a joint target model is not considered the most appropriate tool. Instead, there might be (still to be evaluated and discussed) need for a dedicated model and regulatory framework for sector coupling, which is developed in cooperation with the relevant stakeholders to clarify key elements at the relevant interfaces between the Electricity and Gas systems. Services provided by the gas sector to the electricity sector shall be fairly remunerated and vice versa. Taxation shall not act as barrier to sector integration, therefore we call for the deletion of taxes and levies for the users of Power to Gas facilities. This approach, which should incentivise the development of more targeted solutions, will prove more beneficial than creating a joint Electricity and Gas Target Model.

Today sector coupling is in its initial phase, which also entails that at the moment several technologies are not profitable yet. Therefore, a special approach (regulatory and financial) needs to be developed in order to enable R&D pilot projects and roll out new technologies. As regards imminent investments, focus should be on Power to Gas capacities.

If, however, a joint Electricity and Gas Target Model in view of sector coupling will be developed,

- the development has to be done integrated.
- in the case of a revision or preparation of Network Codes, it is necessary that this is in accordance with the DSOs. As Network Codes are an important component of regulation of the energy system, it must be ensured that DSOs are involved from the beginning and can actively participate in the revision and set up process of the Network Codes.

Coupling points between the electricity and gas infrastructures have to be established for sector coupling. At these interfaces, the roles and responsibilities have to be clearly defined. As a result all concerned parties, including the system operators are able to provide an energy-overlapping infrastructure optimum and thus ensure security of supply.

TOPIC 2: ENABLING NEW PRODUCTS AND ENHANCING INFRASTRUCTURE GOVERNANCE

3. Is the proposed response set out above appropriate to address the challenges the sector faces? What should be done differently and why?

We support that regulation should be based on market-based principles and be dynamic in order to be adaptable to future developments. From our point of view a detailed EU regulation at this stage would be counterproductive. A sustainable energy transition will require substantial investments in research and development in different innovative technologies as well as new assets. A legislative and regulatory framework which supports the transition towards a decarbonised energy system should be technology neutral, foster innovative investments as well as competition.

Impact of new products on markets and regulation

Primarily clear and uniform definitions of “green” and “low-carbon” gases as well as a definition of “conversion” must be discussed and introduced to ensure the possibility of EU-wide. There should also be a regulatory differentiation between competitive market activities and natural monopolies. We support ACER’s dynamic regulatory approach which foresees the adoption of consistent principles at European level rather than detailed legislation at this stage.

As regards uniform definitions we support the view, that some additional ground rules (e.g. for conversion facilities) might be called for on EU level, to avoid potential uncertainty and unwanted distortions.

In general, we support market-based approaches, however in some cases the market doesn’t attract investments. In those cases technology-neutral regulation is needed. TSOs and DSOs should be allowed to invest in decarbonized activities, both under a regulated and a fully commercial framework.

The Power-to-Gas business will require some changes in the legislative and regulatory framework to enable a roll-out, such as:

- exemptions from taxes and levies because of its classification as a conversion facility
- reduction of both gas and electricity network tariffs
- adaption of the EU state aid rules (H₂-production should be classified like an energy-intensive activity)
- third party access under certain conditions, also for exclusive H₂ networks
- setting of allowed H₂ levels in all European gas networks in order not to endanger cross-border flows
- classification and certification of renewable gases for cross-border trade

Such potential adaptation of the existing legislation should be considered carefully and discussed with all stakeholders.

We support the idea of involving DSOs in DSO relevant issues. When establishing an EU-DSO forum for practical reasons the high number of DSOs has to be taken into account.

Defining new technologies

We agree that as a starting point any gas regulation should be based on a stable framework, but with a dynamic approach as only this enables the necessary flexibility to react to future changes in the markets. However some clarifications may be useful such as:

- Agreement on the interpretations of definitions in RED II (decarbonized products)
- Clarification of gas quality standards (concerning “new” gases) on EU- level would be beneficial to avoid that variations become a barrier to cross-border trade.

Dynamic regulation for new activities

We support the view of ACER that the regulation of new activities should be technology-neutral and these activities themselves follow a market-based approach.

Nevertheless we find that in case where the market does not attract commercial business some kind of support is necessary. In this context we call for an amendment of the TEN-E Regulation.

In addition to the consideration of supporting “energy transition investments” the importance of market-driven projects shall not be neglected. The EU energy objectives shall be achieved in a cost-efficient manner. Market-driven projects play a significant role in this context and thus deserve more acknowledgement. Such projects shall be supported in the best possible way. Hence, the TEN-E Regulation shall ensure that market-driven projects enjoy the access to accelerated approval and permit granting procedures i.e. market driven projects shall be on the PCI list by default. This will ensure that these projects are not disadvantaged compared to non-market-driven projects.

Each Member State should have the option to conduct its analysis to evaluate market interest for investment in new decarbonisation facilities.

Governance for infrastructure planning

In our view the already existing governance system is a good and viable starting point, that is also able to deal with new products and infrastructure. Typically, the National Energy and Climate Plan sets the basis for the resulting investments.

We think that ACER's argument with the natural monopoly of TSOs (in the identification of system needs) is biased and in total disregard of the current legal and process framework and the roles of other stakeholders. It is also a fact that natural gas as energy source has competed over the last decades with all the other energy sources.

ACER argues that its position regarding regulatory oversight should be strengthened on all levels. We do not share this view, as in our view

- the current separation of tasks and powers is well established and functioning;
- adequate means (e.g. stakeholder engagement, transparency) are already in place;
- potential or actual shortcomings in single Member States should be dealt with in other ways and do not justify a general reallocation of regulatory roles;
- until now it has not been proven that in the new oversight model the benefits would outweigh the costs;

To take on board the gas as well as the electricity side, ENTSO-G in close cooperation with ENTSO-E should further develop interlinked models, a joint assessment methodology for competing or complimentary projects and coordinated scenarios.

One of the duties of system operators is to ensure security of supply. Thus, it is necessary for them to build, own and operate grid assets that ensure grid stability.

Regulation of new networks

We support the view of ACER that decarbonized gases like H₂ could benefit from setting a regulatory framework, which would be modelled on the existing regulatory framework in the gas sector (e.g. third-party access). We also agree on ACER's view to exclude direct pipes to or within the industrial sites of individual industrial users from regulation.

To get H₂ ready for the market financial incentives will be needed. The significant investment costs and high operating costs for H₂ projects must be covered mainly by the Important Projects of Common European Interests (IPCEI) at EU level as well as on national level. Furthermore funds will be needed for analysing to what extent the already existing infrastructure can cope with H₂. The result may vary between Member States.

Support systems should not be limited to H₂ pipeline networks rather include the whole value chain of H₂ (e.g. electrolysis, fuel-filling infrastructure, H₂ buses, etc). When comparing different projects, a multitude of factors (e.g. cost per saved unit CO₂) have to be taken into consideration for the final ranking.

Regarding the proposal for an obligation to measure and report methane emissions we would like to point out, that there are no emissions in regular storage operation and therefore no measurement device. Also reporting in an public report seems to be an excessive measure.

3a. Who should provide data on the availability of decarbonised gases by location so as to enable assessment of changes of gas system needs and flows, in parallel to greater availability of decarbonised gases? At what frequency should this data be provided to the Agency?

In the case of data collection on the availability of decarbonised gases DSOs would have to take over these tasks in their grids since they might have the nearest view of local entrepreneurial activities. This is to ensure that the high gas quality in the grids is maintained. DSOs should therefore be brought to the fore as a market facilitator that make it possible to find an optimum in the energy sector.

The TSO and/or the DSO is currently responsible and also will remain responsible for network operations and network planning. This includes quality measurement and in particular making the network fit for the purpose of decarbonisation by e.g. conducting corresponding studies and potentially followed by necessary infrastructure investments in order to increase the percentage of H₂ to be transported through the network. For providing the data already existing communication interfaces and the related frequency could be used. The frequency should follow the timeline of the TYNDP.

In Austria, the EDA system ("energy-economic data exchange"), which is recognized as a best practice model in Europe, is already in use. The communication platform energy-economic data exchange has established itself as an easily accessible, standardized data interface for numerous market processes. In addition, the system will be further developed for future requirements.

3b. Do TSOs face a conflict of interest in the future in planning gas and electricity infrastructure? If so, would stronger regulatory oversight resolve the problem? Which powers are needed and at which level (European, regional, national)? Would transparency requirements on TSOs/ENTSOs mitigate this problem and if yes, what shall be done?

As long as TSOs would provide conversion services, excluding the marketing, sale and supply of the converted energy, we do not perceive a conflict of interest.

We do not agree that a stronger regulatory oversight concerning infrastructure is needed as proposed by ACER. We believe that the current allocation of power at EU level is well done. In most Member States, there is also a national development plan being drafted by TSOs and approved/or controlled by the regulator and the responsible ministries. ACER's point made in the consultation document about having additional oversight again illustrates that any additional regulation would lead to increasing cost for consumers and needs to be considered carefully.

Undue regulatory oversight may hamper the fulfilment of the decarbonisation targets more than potential conflicting interest which should not manifest in the scale-up phase. Gas TSOs, together with other sector players, are prepared to contribute to the development of future sustainable energy systems in order to contribute to achieving decarbonisation goals. Giving gas TSOs the possibility to invest in decarbonising activities either in a regu-

lated or commercial way, will accelerate the evolution and scaling-up of markets. To foster investments, the concept of “regulatory sandboxes”, which means giving financial and regulatory space for performing R&D and pilot projects to test and roll out new technologies and test new business models under a flexible regulatory regime are required. Dedicated regulation and measure should be addressed. The assessment on dedicated rules to prevent that potential conflict of interest harm competition, should eventually be postponed after the deployment of the scale-up phase.

Regarding Power to Gas and Gas Liquefaction facilities, such facilities are dedicated to conversion activities (from electricity to H₂ and natural gas or from natural gas to LNG) and therefore should not be subject to taxes and levies for electricity, dedicated to end consumers. Furthermore, both electricity and gas TSOs should have the possibility to offer a discount on the network tariffs justified by the benefits that such facilities bring to the complete energy system.

TSOs owning and operating such facilities, granting third party access and providing regulated services to network users will play a key role in enabling an efficient and timely delivery of decarbonisation. The ability of the gas infrastructure to provide seasonal storage at big scale, makes green gases an ideal match for intermittent RES generation. Increasing penetration of RES generation resulting in increased system volatility will require even more flexibility which can be offered by the gas networks in the future.

A level playing field between gas and electricity is a key element to avoid distortions. However, specificities of the two energy carriers have to be taken into account.

4. What powers are needed for dynamic regulation to be effective?

We underline the importance of a regulation to be technology neutral. The power of regulating DSOs and to evaluate and approve the network development plans should lie in the hands of the Member States/NRAs. Moreover, we welcome the idea to set up a DSO entity for gas similar to the one for electricity to ensure coordination on EU level.

Seen that new technologies are still under development and the future mix is rather uncertain, we welcome the idea of ACER’s dynamic regulatory approach rather than too detailed legislation at this stage. This enables more flexibility to speed up the development of new technologies and activities. More authorization for the Member States to follow-up their individual paths in the energy transition is required, instead of any new regulation.

We see a big challenge in setting a new regulatory framework, which will ensure that system operators have the flexibility to offer new products and services based on new (decarbonisation) technologies to the energy market during the energy transition. The regulatory framework has to be defined in such way that it enables and promotes innovation without creating unjustified barriers to gas TSOs and maintains the principle of technology neutrality.

Dynamic regulation should provide for the possibility to review and include a framework for the decision-making power of NRAs and consultation with stakeholders avoiding the creation of unnecessary regulatory overpowers, which might limit the capability to react quickly to market needs. In the mature phase, after the scale-up phase, a viable approach to set the appropriate regulation should involve the relevant stakeholders.

For dynamic regulation to be effective we propose following:

- Regulation should be based on current (3rd energy package) high-level principles with additional rules supporting the EU decarbonisation through technology neutrality with room for reviews in case of unbalanced distribution of and uneconomic regulatory power.
- It is necessary for system operators to have sufficient investment incentives designed to have long-term planning security and ensure security of supply at all times.

- It should be rolled out via flexible processes involving all stakeholders targeting R&D projects and early stage development projects. The financial and regulatory support of regulatory sandboxes for such projects would be very welcome. When the market is ready to scale-up the new technologies, NRA's and stakeholders may agree on rules supporting this step. Later on legislative adaptations might follow if needed again with the involvement of all relevant stakeholders.

From our point of view the current separation of task and powers is well established and functioning, hence there is no need for additional powers for NRAs/authorities.

It is important to emphasize that in the case of own H₂ networks these networks should be regulated in order not to distort markets. H₂ networks must not compete with gas networks, but they must supplement each other. For own H₂ networks, it would therefore be reasonable and cost-effective that system operators are also operators of these H₂ networks.

However, another option is to inject H₂ into existing gas grid infrastructures. In the medium term, the H₂ share can be increased step by step so that customers or market participants generally have no additional costs. In addition, the current regulation of the gas networks can be maintained and the existing and valuable infrastructure can be optimally utilized. In addition, the consumer protection rights must be observed with dynamic regulation, so that they are not exposed to disadvantages or additional costs.

In the future, a substantial proportion of natural gas will be replaced by renewable gases. The injection of renewable gases has to be monitored by the system operators to safeguard the defined quality into the grid, whereas the producer is responsible for reaching and injecting the defined gas quality.

Network Codes are an important component of regulation of the energy system, therefore, it is essential and it must be ensured that DSOs are involved from the beginning and can actively participate in the revision and set up process of the Network Codes.

We kindly ask you to consider our concerns and views.

Yours sincerely,



Stephan Schwarzer

Director of the Department for
Environmental and Energy Policy, WKÖ

The Austrian Federal Economic Chamber is the legal representative of the entire Austrian business community and represents all Austrian companies - some 517,000 businesses drawn from the areas of Crafts and Trade, Industry, Commerce, Banking and Insurance, Information and Consultancy, Tourism and Leisure, Transportation and Communication. 99,6% of our members are SME with less than ten employees.