

# **New Gas Infrastructure Investment Regulation (NGIIR)**

**Draft, Discussion ongoing**

**Vienna, 13<sup>th</sup> October 2006**

## Content:

- Legal Framework – Scope
- Rules for TPA Regime
- Rules for Exemption

- **Treaty Energy Community entered into force 1<sup>st</sup> July 2006**
  
- **Long term objective of gas market in Energy Community:**
  - Effective competition – real benefits
  - Stable regulatory framework – facilitating investments
  - Secure supplies
  - Choice
  - Suppliers market services across Energy Community
  
- **Parties to implement Directive 2003/55/EC:**
  - within 1 year

- **Characteristics of SEE (gas):**
  - Small emerging markets Western Balkans; more mature Eastern Balkans
  - Gas networks poorly interconnected
  - Limited indigenous production
  
- **New bulk Infrastructure will serve following purposes:**
  - Facilitation of effective cross border gas trade
  - Interconnection of existing and/or new networks
  - Diversification of supplies for the countries of the region
  
- **NGIIR applicable to new infrastructure:**
  - considered of regional priority interest and
  - in sense of art. 22 of Dir. 2003/55/EC

- **Geographic scope: art 26/27 of Treaty**
  
- **NGIIR intend to provide means:**
  - co-ordinated implementation Directive 2003/55/EC
  - in particular implementation/exemption from TPA
  - developments/experience of EU considered
  
- **NGIIR focus on:**
  - Issues related to efficient/non-discriminatory TPA
  - Appropriate approach towards exemption from TPA
  - co-existence of “exemptions” and liberalised market

- **NGIIR address role of ECRB – TPO:**
  - ECRB (idea: single regulatory decision if regional project)
  - ECRB one counter party/interface to TPO (one stop shop)
  - Transmission Project Operator “TPO” (idea; discussion ongoing):
    - **Legal entity** – act as counterpart to third parties to project (**one stop shop**)
    - **responsible** for implementation NGIIR
    - eventual operation of project
    - **TPO applies** for exemption, if any, at **ECRB**
  - If project doesn't cover role of TPO – then rules to involved TSOs

- **MC/PHLG/EC decides on qualification of project:**
  - “Project of priority Interest to Energy Community” criteria (discussed):
    - o SoS – improvement
    - o development of intermediate and final markets
  
- **TPA - rules: Dir. 2003/55/EC and in substance Reg. 1775/200**
  
- **Rules apply for entire pipeline system of TPO**
  
- **Network customer shall have 1 contract with TPO**
  
- **Unbundling requirements (Dir. 2003/55) fully apply to TPO**
  
- **If complaints: TPO grant ECRB right for inspection**

- **Art. 8 of Dir. 2003/55 shall apply**
  - Operation/maintenance of network; co-operation with TSOs
  - Non-discriminatory access
  - Sufficient long term planning
  - Maintaining physical system balance
  - Developing system to meet required adequate capacity
  
- **TPO to offer unbundled TPA-/ancillary services in line with Dir. 2003/55 and in sense of Reg. 1775 (discussion ongoing):**
  - Range of services: non-discriminatory
  - Recovery of efficiently incurred costs/return on investments
  - Standard contracts; services facilitate trading re-utilisation of services
  - Sufficient entry/exit points to increase competition

- **TPO co-operate with system operators to develop IAs/OBAs**
  - IAs must cover:
    - o Chemical gas specification
    - o Pressure/temperature
    - o Interconnection points operation
    - o Change of flow rates
  - OBAs must be used to pool small operational imbalances
- **TPOs actively facilitate interoperability (harmonisation, etc.)**
- **Co-ordination of maintenance**

- **TPO to offer long-/short term capacity, incl. backhaul flows**
  
- **TPO to conduct open season prior to final terms for capacity:**
  - Start/end of open season
  - Intake-off take points and relative amount of capacity
  - products to be offered
  - Open season should already inform:
    - o Product portfolio the TPO plans to offer
    - o Allocation procedure incl. possibility of future expansion
    - o Rules for 2<sup>nd</sup> round, if any

- **TPO shall implement/publish allocation mechanism:**
  - Facilitate competition/avoid barriers/capacity trading
  - Facilitate investments
  - Provide economic signals for efficient use
  - Discourage capacity hoarding
  - Flexible/compatible with market mechanism
  
- **In case of complaints regulatory authority to review**
  
- **TPO shall publish at least:**
  - Information about services offered, incl. charges
  - Booked and available firm capacities; interruptible capacities
  - Physical usage of capacities
  - Tariff structure/methodology

- **TPOs shall calculate available capacities on network modelling**
- **TPO/ECRB agree ex-ante regulated tariff methodology**
- **This agreement can not be amended over defined period; if change then derogation from art 25 (4) of Dir. 2003/55 autom.**
- **Tariffs to be derivated according to principles:**
  - Tariffs reflect efficiently incurred costs, appr. return on investment
  - Tariffs avoid cross-subsidies
  - Tariffs facilitate trade and promote efficient use of network
  - Backhaul-flows shall be taken into account
  - No charging principles/tariff structures that restrict market liquidity
  - Price of interruptible capacity shall reflect probability of interruption

- **TPOs shall design non-discriminatory balancing rules:**
  - Charges non-discriminatory, broadly cost neutral
  - Provide incentives to balance in-put and off take of gas
  - Not endanger system stability
  - TPOs to ensure compatibility of balancing regimes of other TPOs
  - Market participants shall be provided with sufficient information
  - Not prevent ex ante pooling and trading of imbalance services
  
- **TPOS shall organize TPA rights to be freely trade able**
  
- **Secondary market without obstacles – standardised contracts**
  
- **Provision of cost reflective services**

- **Art. 22 of Directive 2003/55 allows for exemptions to TPA**
- **Exemptions to be considered on case by case basis**
- **General criteria to be met**
- **If cross border project regulatory authorities to decide:**
  - In line with Art. 22(3) e of Directive 2003/55
  - Consultation with other regulatory authorities concerned
  - Final decision shall apply to whole new infrastructure
- **Assess projects impact: international best practice techniques**

1. ***“enhance competition in gas supply and enhance security of supply”***
2. ***“The level of risk attached to the investment is such that the investment would not take place unless an exemption is granted”***
3. ***“The infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal from the system operators in whose systems that inter-connector will be built”***
4. ***“Charges are levied on users of that infrastructure”***
5. ***“The exemption is not to the detriment of competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the infrastructure is connected”***

- Rules how to assess “*enhance competition/ enhance SoS*”:
  - Project partners ensure legal unbundling, incl. cross border affiliations
  - Project company must not be controlled in terms of merger regulations:
    - Producer/supplier having a dominant position in importing/exporting countries
  - Project sponsor must be willing to engage in open season:
    - Before deciding on capacity
    - Optional open season on equity
    - Mandatory open season on capacity

- o Open season must be meaningful: independent of project company
- o Information: size of project
- o Information: costs to accommodate different amounts of capacity
- o If lot of demand and commitment, expand capacity non-discriminatory
- o Allow all interested, also potential competitors to join in
- o Same services granted under same tariffs to all parties committing
- If open season offers capacity in exchange for obligation to pay tariff:
  - o Tariffs have to be the same as for project sponsors themselves

- Project sponsors have to disclose documents to regulator
- Regulators to ensure that project company doesn't offer unattractive terms
- Regulators to evaluate adequacy of an open season
- Project sponsors shall publish technical information on capacity
- Unused capacity can be auctioned at market prices
- New infrastructure enhances SoS as long as:
  - o New infrastructure does not cause congestion on domestic transport networks
- Not to intervene to tariffs offered in open season if investor bears the risk

- TPO to actively endeavour discouraging capacity hoarding:
  - o Network users entitled to re-sell unused capacity on secondary market
  - o TPO to organize a bulletin board
  - o TPO shall install UIOLI
  - o Provisions in sense of Reg. 1775; defined in explanatory notes apply
  - o Except firm UIOLI in case open season has been undertaken and TPO has built at least capacity requested by all committing users

- Rules how to assess “*level of risk is such that investment would not take place*”:
  - Regulatory authority will determine that project passes test if:
    - It is more efficient to let investors bear the risk
  
- Rules how to assess “*Infrastructure owner separated at least legally from operator in whose system inter-connector will be built*”:
  - Sufficiently covered by test “sponsor structure/ownership”

- Rules how to assess “*charges are levied on users of that infrastructure*”:
  - No additional guidelines since project sponsors will already have the obligation to provide contracts showing terms with users
  
- Rules how to assess “*detriment of competition or functioning of internal market or efficient functioning of regulated system, infrastructure is connected to*”:
  - If new infrastructure creates congestion on existing regulated system the project sponsor shall pay for upgrades necessary to relieve congestion
  - The project will not cause constraints on regulated system requiring investments having a significant adverse effect on regulated tariffs

- **In any case, even when exemption is granted respective TPA provisions shall apply (Dir. 2003/55 and substance 1775)**
- **If exemption not granted to backhauls then TPA for backhauls**
- **If project is of priority interest ECRB to distinguish between importing countries that lie further up- or downstream on route**
- **ECRB to consider potential interaction between exemption requirements on the relevant markets**
- **TPO to apply for exemption, if any, at ECRB (one stop shop)**

- **Treaty foresees regional approach with:**
  - Stable regulatory framework
  - Enhance security of supply
  - Facilitate investments
  
- **New bulk infrastructure will be developed for region**
  
- **NGIIR provide means for:**
  - Co-ordinated implementation of Directive
  - In particular implementation and/or exemptions from TPA
  - Co-existence of “exemptions” and liberalisation to be ensured
  
- **Exemptions: case by case basis but general criteria to be met**
  
- **Thus reduce risks of investor and IFIs**