The Proposed Gas Directive Amendment
A solution in search of a problem?

Alex Barnes, Energetika XXI 15th November 2018
The Proposed Gas Directive Amendment (1)

European Commission’s aim:

- Extend Third Gas Directive and related acts to import pipelines from third countries
- Apply EU gas market rules to import pipelines (ownership unbundling, third party access, tariff regulation, transparency)
- Derogations for existing pipelines and exemptions for new pipelines are possible

European Commission’s justification:

- “Ensure that there is no discrimination between operators of pipelines to and from the EU and other market participants to whom the Gas Directive fully applies”
- “Proposed changes are necessary to achieve the purpose of an integrated EU gas market and cannot be reached at a national level”
- “Pipelines to and from third countries are in most cases of a capacity which is capable of impacting the internal gas market and security of supply in several Member States”
Other points raised by the Commission:

- As a result of the amendment “pipelines to and from third countries would thus be subject to at least two different regulatory frameworks . . . The appropriate instrument for ensuring a coherent regulatory framework for the entire pipeline will often be an international agreement with the third country or third countries . . . (In the absence of such an agreement, derogation or exemption) the pipelines may only be operated in line with the . . . Directive . . within the borders of EU jurisdiction.”

- A detailed impact assessment is not required “as the changes . . . reflect the practice of applying core principles (of the Gas Directive) . . . these principles are reflected in several international agreements between Member States and third countries or the EU and third countries”

- “Without an effective third party access regime, individual suppliers could gain unduly privileged access to the Union market and downstream infrastructure”
What would an Impact Assessment ask?

> Is there a market failure that needs to be addressed? (Only regulate where necessary)

> If there is a market failure, does the amendment solve it?

> Does the amendment create new problems of its own?

> Are there other means of addressing the market failure?

> Overall is the amendment fit for purpose? Does it meet its own objectives?
Widespread concerns about proposed Gas Directive amendment

Council Legal Service
Application to the EEZ would be contrary to UNCLOS

Council Gas Association
Creates unfair discrimination between different pipelines
Creates legal problems for existing and future pipelines
Move competences from Member States to the EU

European Parliamentary Research Service
Assumes economic gains without citing evidence
No fitness check of existing legislation

CON INDUSTRIA
Potential conflicts with international law (UNCLOS, WTO)
Risk it will not lead to harmonisation

UPRIGAZ
Makes it more difficult for new pipelines
risks encouraging producers to send their gas elsewhere

BUSINESS EUROPE
Lack of proper impact assessment

European Federation of Energy Traders
Unclear what the benefits will be
Could undermine commercial arrangements
Need for more rigorous consultation and analysis

gasunet
Cannot guarantee successful negotiations with third countries
No material need for the proposed amendment

Risks to security of supply
Likely adverse and detrimental effects
Inconsistency in the Commission’s arguments

Nord Stream 2 AG
ACER Analysis shows the market is working well

> “European gas wholesale markets continued to show increasing levels of convergence . . . the maximum spread between EU MS for supply sourcing costs decreased to below 3.5 €/MWh, and in most cases was below 1 €/MWh. A couple of years ago spreads of 5 €/MWh were common.”

> “The European gas system is characterised by high overall levels of Security of Supply . . . Investments in infrastructure and regulatory measures (like the application of reverse flows) to alleviate bottlenecks appear to be effective.”

> “The EU gas system showed high levels of resilience . . . in 2017. . . This shows that . . the infrastructure can guarantee gas supply even during unexpected events.”

Source: ACER Market Monitoring Report 2017 – Gas Wholesale Markets. 3rd October 2018
In May 2018 Gazprom and EU Commission agreed a settlement of the anti trust case in return for commitments by Gazprom.

Gazprom customers in Latvia, Lithuania, Estonia, Poland and Bulgaria can request their contract prices reflect Western European market prices.

- In 2017 EU Commission noted that Slovakia, Czechia and Hungary could already access Western hubs.

Gazprom customers can ask to take delivery of gas at different locations (“swaps”) where there is currently limited interconnection.

Gazprom customers can resell their gas freely.

“These obligations address the Commission's competition concerns and achieve its objectives of enabling the free flow of gas in Central and Eastern Europe at competitive prices.”

Source: EU Commission Press Release 24th May 2018

Nord Stream 2 AG
Import capacity vastly exceeds current imports, and only 22% of current imports would be affected by the amendment.

**European gas supply portfolio by origin in 2016, total 433 bcma**

- Russian pipeline imports
- Norwegian pipeline imports
- Dutch pipeline exports to Europe
- Algerian pipeline imports
- UK pipeline exports to Europe
- Libyan pipeline imports
- Azerbaijani pipeline imports
- Other European pipeline imports
- Qatar LNG imports
- Algerian LNG imports
- Nigerian LNG imports
- Other LNG imports

Only 22% of imports come from 3rd countries as pipeline gas via subsea lines!

**EU import capacities for pipelines and LNG regasification terminals, total 729 bcma**

- Russian pipelines
- Norwegian pipelines
- Algerian pipelines
- Libyan pipelines
- Other pipelines
- LNG Terminals

Note: 1) Other LNG imports include US, Peru, Trinidad and Tobago, Norway, UAE and Angola; ENTSOG, Transmission Capacity Map
Import pipelines from third countries

- Import pipelines asking for an exemption face tougher hurdles than those asking for exemptions
- Different treatment of upstream pipelines e.g. from Norway
- Transparency already exists where gas enters the internal market (ENTSOG platform)
- Import pipelines may cross transit countries (e.g. Tunisia, Morocco)
Agreements required for an import pipeline

**Inter-Governmental Agreement (IGA: state-state)**
- Legal & fiscal jurisdiction, regulatory environment, mutual assurances of co-operation
- Defines governing law, fiscal regime and arrangements for transit fees

**Host Government Agreement (HGA: state-investor)**
- Grants access rights to land use, facilities, regulation, participation of state-owned enterprise, etc.
- General IGA principles implemented (tax, H&S, etc.)

**Joint Venture Shareholders Agreement (JVSA)**
- Sets out rights and obligations of each project participant, including obligation to provide financing, or external financing
- Some shareholders often state-owned

**Gas Sale and Purchase Agreement (GSPA: buyer-seller)**
- GSPA between buyer and seller contains clauses for volume, price, delivery point, term, etc.

**Gas Transportation Agreement (GTA: buyer/seller – pipeline operator)**
- For transport of gas under the GSPA. A GTA may not be necessary if seller owns the pipe to the border and buyer owns the pipe to market area.

**Pipeline Operating Agreement (POA: pipeline owner-operator)**
- Governs day-to-day operation of facilities and appoints one company to conduct operations on behalf of the joint venture

Application depends on circumstances, and agreements can be combined, but these issues have to be handled somehow and somewhere.
Questions to be answered

- EU gas market is functioning well – what is the problem?
- Unclear how regulated third party access to import pipelines will improve competition between suppliers to the EU.
- Risk of uneven playing field between third country suppliers to the EU:
  - LNG vs. pipelines
  - Upstream pipelines vs. import pipelines from third countries
  - Sub sea pipelines vs. overland pipelines
  - Patchwork of different derogations and exemptions
- Challenge of (re)negotiating agreements with third countries
- Legal questions e.g. UNCLOS, WTO