

**Opinion on the proposal for a Council Directive on the transit of natural gas through the major systems<sup>(1)</sup>**

(90/C 75/05)

On 25 September 1989 the Council decided to consult the Economic and Social Committee, under Article 100A of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Energy, Nuclear Questions and Research, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 1 December 1989. (rapporteur: Mr Frandi).

At its 273rd plenary session (meeting of 31 January 1990), the Economic and Social Committee adopted the following Opinion *nem. con.* with 4 abstentions.

**1. General comments**

1.1. The Committee regards this Opinion as a suitable opportunity to comment both on the proposal for a Directive (Council Directive on the transit of natural gas through the major systems) on which it has been formally consulted and on the communication 'Towards the completion of the Internal Market for natural gas', to which the proposal is appended.

1.2. The Committee cannot give valid views on the common carrier question until the Commission has completed its cost-benefit analysis of the system and issued a concrete proposal on the subject.

1.3. The stated aim of the communication is to achieve a more open market for gas, with greater competition both in the gas industry and 'gas to gas'. The Commission is proposing a three-stage approach:

- adoption of a Directive establishing arrangements for the application of transit rights between Community gas companies in the EC high-pressure grid,
- establishment of a consultation procedure for all concerned, to define conditions under which it would be possible to give third parties (notably public distributors and/or industrial consumers) more general access to transport systems,
- promoting the Community dimension in gas transmission investments.

1.4. The Commission has submitted a separate proposal for a Regulation<sup>(2)</sup> on the third of these stages; this proposal has been referred to the Committee for Opinion and will be the subject of a separate Opinion.

**2. General comments on the communication**

2.1. The Committee stresses that, whilst pursuing the aim of establishing a Single Market in the gas sector, care must nevertheless be taken to ensure that investment and security of supply are not adversely affected by the higher risks associated with the special nature of the market in natural gas.

2.2. Technical constraints (daily and seasonal peaks in consumption) in this market necessitate a complex system involving various types of infrastructure in order to meet transmission and storage requirements. These are basic features of the grid and account for the bulk of costs.

2.3. It should not be forgotten that exploration and operational costs are so high that the handful of operators in this area normally set up consortia.

2.4. Careful consideration should also be given to the implications in terms of safety and cost of the proposed natural gas supply system, including the common carrier option (bearing in mind that the Community is dependent on non-EC countries for 40% of its natural gas requirements), as all categories of consumer could be affected.

2.5. It is worth pointing out here that the nature of the natural gas supply network and the size of investments require long-term agreements between gas companies and consumers to guarantee that investments (in the various stages of production, transport, transmission and storage) break even. Investments are usually obtained from the international market.

2.6. With this proviso, the Committee welcomes the Commission's drive to implement a comprehensive strategy to create a single energy market.

<sup>(1)</sup> OJ No C 247, 28. 9. 1989, p. 6.

<sup>(2)</sup> OJ No C 250, 3. 10. 1989, p. 5.

2.7. Although in principle the Committee has no intention of challenging the claim that an open, flexible supply system is more likely to be beneficial than otherwise, it feels that, in the light of the above considerations, the detailed studies planned by the Commission into all relevant factors—both positive and negative—should be finally completed.

2.8. The same request was also made in the information report of the Section for Energy, Nuclear Questions and Research on Community energy policy and completion of the Internal Market which stated that:

'In order to guarantee reliability of supplies and profitability of investments, the Commission should carry out a detailed investigation into the problem of exclusive concessions for the transport of natural gas existing alongside third-party consumer access to gas networks (common carrier system) or special exchange arrangements.'

2.9. It must also be remembered that the international market is in the hands of a small oligopoly of producers. This means that a small circle of producers might be the only ones to benefit from an increase in the number of buyers. On the other hand, it should be borne in mind that greater competition could mean more efficient and rational use of existing natural gas transmission and distribution systems, which would have a positive effect on costs and consumer prices.

2.10. A specific point should therefore be included to give as clear a definition as possible of the term 'third party' and determine the evidence of reliability needed to guarantee stability and continuity.

2.11. Serious consideration should be given to the need to further integrate the transmission and storage system at Community level. Arrangements for drawing up contracts and ensuring transparency—possibly involving negotiation by supply consortia, transmission companies and major EEC consumers, under the terms of Community law—should also be studied in more depth. The proposals contained in Part III (a step-by-step approach to the problem) are tempered by the need to exercise caution, in view of the complexity of the subject. As a result, the Commission is merely proposing a draft Directive on transit for the time being, while indicating that the question of third-party access needs to be studied more closely.

2.12. To this end the Commission proposes setting up a representative body of organizations responsible for studying transit conditions, and two consultative committees to examine third-party access. The structure and composition of the proposed bodies will have to be discussed in more detail before the proposals can be accepted.

2.13. In spite of its reservations, the Committee endorses the Commission's step-by-step approach to opening up the Community market in natural gas, outlined in Part III of the communication.

2.14. Nevertheless, the draft Directive, which is the first stage in this process, raises many questions; the Committee would therefore suggest a number of changes and additions to the text (see below).

### 3. Specific comments on the draft Directive

#### 3.1. Article 2(1)

3.1.1. The proposed Directive aims to introduce the measures required to ensure free circulation of natural gas across national frontiers, with a view to consolidating integration of the European gas market. Article 2(1) should therefore be reworded to make this clear:

'All transmission of natural gas between Member States under the following conditions shall constitute transit of natural gas through transmission grids within the meaning of this Directive: (...)'

#### 3.2. Article 2(1)(b)

3.2.1. The wording of this clause, which refers to Member States' gas companies, could give rise to confusion by giving the impression that the scope of the proposed Directive is confined to the transmission of natural gas between national (or regional) public gas companies.

3.2.2. Admittedly, in most Member States gas companies are entirely state-owned. However, other Member States (Belgium and the Netherlands) have semi-public companies and in the United Kingdom and West Germany gas companies are privately owned.

3.2.3. It is therefore proposed that this clause be reworded to read:

'b) the transport is carried out between gas companies in the Member States.'

#### 3.3. Article 3(2)

3.3.1. The Committee does not see why requests for transit should in all cases, including those where an

agreement could be reached between the entities responsible for the networks concerned, first be communicated to the Commission and the competent national authorities.

3.3.2. To avoid unnecessary red tape, the Committee would suggest that notification of requests be limited to cases where agreement cannot be reached in the twelve-month period laid down by the Directive, so that recourse can be had to the procedures provided for in Article 4. In other cases, 'a posteriori' notification should be enough to guarantee the necessary transparency.

#### 3.4. Article 3(2), third indent

3.4.1. The following additions should be made to the third indent:

'(...) payment for transit must take account of plant depreciation, operating costs resulting from responsibilities (...) quality of service, as well as allowing for a fair profit;'

#### 3.5. Article 5

3.5.1. The Committee questions the relevance of the proposed Article 5 which is merely a 'declaration of intent' by the Commission to frame supplementary proposals to the Council at a later stage, as far as it is necessary, on the detailed rules of intra-Community transit.

3.5.2. In addition, the Committee finds Article 5 inappropriate since it could imply that the proposed Directive is an initial step designed to culminate automatically and more or less surreptitiously in the introduction of a system of third-party access to the Community natural gas grid ('common carrier').

3.5.3. The Committee is convinced—as is the Commission, which states its intention of implementing appropriate procedures to this effect of the need to carry out detailed studies on the matter and conduct extensive

consultations with all the economic and social groups concerned.

3.5.4. The Committee therefore recommends the deletion of Article 5 along with the final recital (which relates to this Article) and the removal from the last but one recital of the following phrase:

'(...) in order to realize this first stage of the internal energy market in satisfactory competitive conditions, (...).'

3.6. The Communication states that the Commission intends to set up a representative body of organizations responsible for the high-pressure networks, to assist with the implementation of the Directive. This body will have two tasks (see pp. 13/14 — point 21 — of the communication for further details), viz.:

- to assist the Commission in studying the arrangements for increased access to transit,
- in the event of difficulty, to secure agreement, by conciliation, between the networks concerned on transit operations which are in the Community interest.

3.6.1. The Committee is most surprised that the draft Directive includes no reference either to the proposed body or to the role the Commission wishes it to play in the draft Directive's implementation.

3.6.2. The Committee urges the Commission and the Council to remedy this serious shortcoming so as to confer on this body (which has its full endorsement) the recognition and authority it requires in order to carry out its future tasks *vis-à-vis* the various entities responsible for the major networks and *vis-à-vis* the relevant national authorities of the Member States. The following Article should therefore be added to the draft Directive:

'A representative body of organizations responsible for high-pressure networks is to be set up to assist the Commission in implementing the Directive.'

Done at Brussels, 31 January 1990.

*The Chairman*  
*of the Economic and Social Committee*  
Alberto MASPRONE