

Position Paper

on the proposal for an amendment of the Gas Directive

Berlin, 29th of January 2018

Feedback on the proposal for an amendment of the Gas Directive

We would like to take the opportunity to provide feedback on the Commission's proposal of 8th November 2017 to expand the Gas Directive to apply to all interconnectors to and from third countries. In general we welcome the efforts of the Commission regarding the completion of the Internal Market for Gas. As certified and fully regulated German TSOs - operating their pipelines in a cross-border context - we are fully committed to the goals of a Single European Market and the security of supply within this market. Having this in mind, we evaluate the proposed amendments of the Commission as very critical especially because of the following reasons:

Objectives of the proposal

Throughout the proposal and the accompanying Commission Staff Working Document, the Commission is providing a variety of different reasons for the proposed amendments, such as security of supply and the creation of a single, efficient and well-functioning internal market. It is not evident at all how the changes of the Gas Directive can contribute to these goals of the European Union. We believe that the recently reformed Security of Supply Regulation 2017/1938 is the primary tool to ensure gas security of supply in the European gas market. In principle, we believe that additional offshore pipeline connections to the European gas market are beneficial to the security of supply in the EU. Also the goal of providing clarification and consistency with existing policy provisions is not achieved by the proposed amendments. The concerns of the Council Legal Service regarding the legal void have not been addressed; it remains therefore unclear how the operation of off-shore-pipelines from third countries creates a 'legal void'. This question is particularly relevant against the backdrop of a number of offshore pipeline connections, which for decades have supplied the EU gas market, without any apparent legal void.

Since – from our point of view – the amendments of the Gas Directive proposed by the Commission do not contribute to any of the indicated objectives, a profound impact assessment is needed in order to clarify the different evaluations and allow policy makers, to reflect upon the stakeholder input. Therefore, the opinion of the Commission that a detailed impact assessment is not required cannot be shared in any way.

Investment security /security of supply

The proposal establishes obstacles to existing and future pipelines entering the EU. Moreover, they complicate commercial investments for pipelines which contribute to the supply of natural gas of the European Union. In the past these investments have ensured the EU's security of supply on the basis of clear investment rules for pipeline projects connecting the EU with third countries. By changing retroactively these rules for existing pipelines and for projects for which the investment decision have already been taken, the legal security for these investments would be seriously undermined. This will further reduce the willingness to invest into the gas infrastructure.

Therefore, we as TSOs investing in pipeline projects consider these proposals as very critical since they create an uncertain investment climate. We also see it as critical that the amendments would curtail the sovereignty of EU member states to determine their choice between energy sources and the structure of their energy supply.

High administrative effort

The view of the Commission that the amendment would only increase administrative requirements to a very limited extent and would lead to a regulatory simplification, cannot be supported. Especially with regard to the derogation procedures and to the negotiations with third countries high administrative efforts can be anticipated. As already mentioned above we see no positive effects for the gas market from the proposal which could justify these high administrative efforts. Thus, we do not comprehend the expectations of the Commission that no budgetary implications would arise from the proposal. We further see the risk that as already discussed within the legislative process the administrative barriers with respect to derogations would be further increased, therefore making an impact assessment pivotal.

Increase in complexity

With the proposal to expand the Gas Directive to interconnectors up to the border of Union jurisdiction the Commission raises many legal questions. The originally intended clarification of the relation to third countries is definitely not evident. Many serious questions such as about the compliance with other international agreements and law, e.g. the UN Convention for the Law of the Seas (UNCLOS) regarding the application of the Gas Directive in the EEZ, have to be answered profoundly. Moreover the implementation of the regulatory provisions would be very complex if a pipeline routing goes through the waters of several member states (e.g. Zeepipe from Norway to Belgium). This would lead to several regulatory national systems for one pipeline.

In order to analyse all these very complex regulatory and legal implications of the Commission's proposal, an impact assessment as well as a profound legal analysis of the "Council Legal Service" is urgently needed.

About FNB Gas

Vereinigung der Fernleitungsnetzbetreiber Gas e. V. (FNB Gas) is the association of German transmission system operators, i.e. the operators of the major supra-regional and cross-border gas pipelines. The Association was established at the end of 2012 and has operated an office in Berlin since April 2013. One main focus of the Association's activities is the Network Development Plan Gas, which has been drawn up annually by the transmission system operators since 2012. Furthermore, the Association represents its members as a point of contact for politicians, media and the public.