EFET European Federation of Energy Traders
SO YOU CAN RELY ON THE MARKET

Amstelveenseweg 998
1081 JS Amsterdam
+31 20 520 7970
secretariat@efet.org
www.efet.org

Gas Hub Programme under the Strategy for Responsible Development – Sector Consultation

EFET would like to highlight some of the major barriers that its members are facing when entering or operating on the Polish gas market. Despite promising initial market developments in response to the EU third gas package legislation foreclosing provisions over the past five years have prevented and delayed the development of a liquid wholesale gas market, to the detriment of Polish consumers. Until such time as Poland removes these foreclosing provisions it has no chance of becoming a liquid satellite market for other countries in the region, let alone either of the other merger models described in ACER's Gas Target Model (market merger and trading region).

I. General matters (2000 characters max)

1. Please define the expected scope of national legislative measures modifying the legal environment, that in your opinion would form the bases for the development of a regional center for gas transmission and trade in Poland, or in particular areas would eliminate regulatory barriers limiting the freedom to operate on the Polish gas market.

   The revision of the Act on the reserve of crude oil, refinery products, and natural gas (henceforth "Storage Act") from October 2017 has done significant damage to the Polish wholesale gas market, discouraging many companies from trading and undermining Poland's attractiveness as a place to do business. Any action aimed at improving the functioning of the Polish gas market must, as a minimum, begin with the repeal or revision of the Storage Act. Any storage obligations still deemed necessary for security of supply despite the significant infrastructure investments made in improving Poland's connectivity should be targeted towards end customers, not wholesale market participants.

   We further note that the licensing procedure as defined in the Energy Act is undoubtedly the most complex and time-consuming procedure of this sort in all of the EU. Ideally, no license for wholesale traders should exist and instead new entrants would only be obliged to register with the NRA. But if licensing is still considered necessary for wholesale trading activities, the process should be significantly simplified in line with EU best practice such, that new entrants can quickly obtain the necessary license to compete in the market without undue administrative burden or cost.

   However, making any licensing procedure more efficient counts for little if the reporting obligations imposed on the licensed entities, as defined in different pieces of legislation, remain unduly burdensome. Regretfully, Poland has among the most burdensome reporting obligations in the EU, which often duplicate the information already disclosed under REMIT and which add little to the overall market transparency, while increasing the costs and complexity of participating to the Polish gas market. We believe that sufficient transparency

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and integrity can already be ensured under the EU acquis and so, as a minimum, these obligations should be reviewed following a stakeholder consultation or removed altogether.

Finally, the position of the Polish incumbent remains overwhelmingly dominant and is expected to grow even further. Legislators should address this problem by making sure the storage system operator is strictly supervised by the independent NRA, while at the same time obliging the incumbent to release a share of any capacity (both pipeline and LNG) that may be being withheld and which is blocking competition. The current gas release programme should be reviewed in order to ensure more effective stimulation of competition at the wholesale level.

2. Please define the expected non-legislative measures (also in the international context) that would support turning Poland into a regional center for gas transmission and trade

While the design of the Polish VTP is reasonably compliant with the EU acquis, it is not perceived as an attractive place to trade primarily due to the above considerations as well as the highly unstable regulatory environment that forces gas trading companies to put significant effort in remaining compliant with the changing legislation. The primary issue in this context is a lack of transparency regarding the works of the authorities, which can lead to companies being surprised by revised legislative proposals which threaten or complicate their trading activities on the Polish gas market. Consultation periods are often very short and even if sufficient time is given to provide feedback, that feedback has little or no impact on the shape of the final document. Often processes are poorly designed and deadlines not respected, e.g. the slow response by Polish authorities to European Commission's request for information in the context of infringement procedures. EFET firmly believes that a liquid gas hub can only be built on trust, where market participants know that any changes in legislation are made only after a constructive dialogue with all the stakeholders and a detailed impact analysis, where applicable.

Although not within the remit of legislators, consideration should be given to Poland's relative competitiveness with neighboring countries. Participation on the Polish commodity exchange remains fairly expensive when compared to its competitors e.g. Germany or Czech Republic. Tariffs at cross-border IPs are high, reducing the country's attractiveness as a transit route e.g. towards Ukraine. In the context of implementing the EU Tariff Network Code, other countries have chosen a more aggressive entry-exit split which has led to reduced spread with neighboring markets and increased competition at the wholesale level, possibly with France and Italy being the best examples.

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Storage products offered by the Polish SSO are far more expensive than those offered e.g. in Germany. And finally, all licensed activities on the Polish gas market are subject to a fee. Altogether, these costs add to the spread between the Polish VTP and the developed markets in Western Europe, increasing the costs for the domestic consumers.

Detailed matters (1500 characters max)

II. Risks and barriers in the legal environment that hinder market development, including licensed activities, reporting requirements and security of supply measures

1. Please identify the risks and barriers in the legal environment applicable to national gas trading

   Art. 33 and art. 35 of the Energy Act lay down the necessary conditions to be fulfilled by all licensees and all the information that need to be submitted. These procedures add little in terms of market integrity, but instead create a major entry barrier.
   Art. 24 of the Storage Act requires importers to hold firm capacities solely for fulfilling the storage obligations; it also requires agreements with the TSOs & SSOs that ensure unconditional delivery to Poland as envisaged by the storage obligations. Collectively, these provisions make compliance with the Storage Act economically and contractually non-viable, effectively foreclosing competition in the Polish gas market and disincentivizing the Polish SSO to develop attractive storage products.
   Articles 23, 24, 27 and 49 of the Energy Act Article 30 of the Act on public statistics and secondary legislation, where applicable, lay down the reporting requirements imposed on licensed entities. These reports need to be submitted to the NRA, Ministry, Statistics Office, The Material Reserves Agency, Energy Market Agency, TSO in monthly, quarterly and yearly intervals, imposing a significant operational burden on energy trading companies that are already under strict supervision within the framework of REMIT and/or EMIR.

   Please identify the risks and barriers in the legal environment applicable to gas transmission
2. Please identify the risks and barriers in the legal environment applicable to LNG market
   All the capacity has been allocated to the incumbent on a long-term basis and there is no Use-It-Or-Lose-It congestion management procedure envisaged in the Terminal Code. The fact that the code has not been approved by the Regulator is in itself a problem. Costs of regasification are also relatively high and a remedy for this could be to replicate the Italian allocation methodology based on auctions with reserve price lower than the regulated tariff.

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3. Please identify the risks and barriers in the legal environment applicable to gas storing
   The revised art. 9g of the Energy Act outlining the minimum scope of the Storage Service Rules and the obligation to have them approved by the NRA is still in the draft version of the Act as of November 2018. This is an inevitable first step in the long-overdue reform of the Polish storage system, giving market participants the necessary reassurance that the storage services are provided to them in a non-discriminatory manner.
   The other barrier within the storage system in Poland is that it remains far more expensive than the storage facilities in neighboring markets, e.g. Germany or Ukraine. This cost is all the more burdensome under the design of the storage obligations, due to the non-overlapping periods of annual storage products on offer (April – April i.e. the "storage year" as defined by the storage service rules) and strategic gas reserves (October – October as per art.25 subpoint 4 of the Storage Act). A way to overcome the excessive cost put on storage users, limiting access to flexibility and therefore liquidity on the wholesale market, could be to replicate the French or the Italian allocation methodology based on auctions with reserve prices lower than the regulated tariff.
4. Please identify the risks and barriers in the legal environment applicable to cross-border gas trading

   OGZ licensing procedure is complex and time consuming – please refer to our answer in first paragraph under section II.1. Please also refer to our answer to II.4.

III. Legislative expectations aiming at improving liquidity on the Polish wholesale gas market

1. Please state your expected legislative changes in terms of infrastructure access that would improve the flexibility of gas deliveries and trading.

   Please refer to our response to points II.3 and II.4.

2. Please state what kind of legislative actions would improve the liquidity and efficient functioning of the wholesale market

   Removal or revision of the storage obligations, as outlined under point I.1.
   Reform of the storage services provisions as described in our answer to point II.4.
   Reform of the LNG regasification services provisions as described in our answer to point II.3.

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Simplification or removal of the licensing procedure (as mentioned under point II.1), or at least recognition of the entities already approved to trade in other Member States.
Removal of the multiple reporting obligations (as described in the last paragraph under II.1)

3. Please state what legislative changes would improve the transparency of the market and the symmetry of information held by different participants

   Open access to information on contracted and available capacities at different timeframes should be enabled by both the TSO and SSO. Key aggregated statistics (both current and historical) on exchange-based trading should be made available without additional costs to the market participants.

4. Please state what legislative changes would ease access to the wholesale gas market access

   See our answer to point III.2.

5. Please state what legislative changes would improve the competitive environment on the wholesale market

   See all of our answers under section III.

IV. Competitive wholesale gas market – increasing the liquidity and the number of market participants

1. Please indicate what products and services (currently not on offer) should be made available on the regulated market

   In a well-functioning wholesale gas market we would typically expect to see broker and exchange platforms offering a range of prompt (within day, day-ahead, weekly) short term (balance of month, front month, M+2 – M+5, front quarter, Q+2 - Q+4, seasonal) and long term (calendar and gas years out to three years forward) products. This is not the case in Poland where TGE offer only a limited number of prompt and forward products and where brokers do not exist. However, there is no reason why this product range should not expand significantly once political willingness to unblock Poland's foreclosed market is signaled and demonstrated through tangible legislative and regulatory measures.

2. Please indicate what type of actions and technical solutions would improve the conditions of gas trading on the regulated market

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Trading hours on the gas market should be harmonized with other EU markets (i.e. trading open until 18:00 instead of 14:00). Price floors and caps should be removed from the trading rules at the exchange along with the discretion rule that limits the maximum order size.

3. Please indicate what type of actions would serve the development and standardization of the OTF and OTC market functioning

4. Please indicate what actions would facilitate price harmonization with the dominant gas hubs in Europe

   A liquid wholesale market in Poland, that is already well interconnected with the neighboring Member States, will undoubtedly reduce the price spreads compared with the liquid hubs of the EU. That liquidity can, however, only be built over time, in a stable and transparent regulatory environment and only after the changes we have mentioned above have been implemented.

5. Please indicate what type of services should be made available to serve the development of zero-emission and low-emission gas markets.

   Introduction of guarantees of origin (GOs) for renewable and low-carbon gases in a format corresponding to the already existing and developed schemes around the EU and when possible accessible via a registry fully integrated with other EU registries, e.g. via AIB. This setup should ensure cross-border recognition and full tradability of the GOs issued in Poland, as well as the recognition of the Polish GOs in other EU Member States.

V. Gas Infrastructure – terms of use and product offer

1. Please indicate the actions that would stimulate the growth of gas volumes being transported through the territory of Poland

   Redefinition of tariffs at cross-border IPs, taking into account the costs of transmission through competing transit routes (benchmarking, as envisaged by article 6(4) of NC TAR).

   Polish regulator kept the 45/55 entry/exit split while implementing NC TAR. Generally, lower entry tariffs incentivize access into the VTP and a lower hub price formation, while higher exit tariffs tend to increase the transportation costs for domestic consumers and/or for exporting gas acquired at the VTP. Given the high Polish wholesale price, a decrease of the entry share shall be beneficial to competition once all existing barriers are removed.

2. Please indicate the actions that would facilitate optimal use of the existing and future transmission capacities (both at domestic and cross-border points)

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3. Please indicate the actions that would facilitate optimal use of the existing and future LNG capacities (regasification/small-scale LNG/bunkering/reloading/storage)

   Please refer to our answer under II.3.

4. Please indicate the actions that would facilitate optimal use of the existing and future storage capacities (for both types of gas storage in Poland)

   Please refer to our answer under II.4.

VI. Gas system – terms of functioning

1. Please state your expectations with reference to the rules governing the functioning of a VTP

   Poland has a functioning VTP and an appendix to the EFET Master Agreement exists for Poland which can be used bilaterally by counterparties as the basis for trading at the VTP. Should the conditions for liquidity to develop in Poland ever be realized, we would expect other exchanges (e.g. EEX, CEGH) and brokers to want to offer Polish VTP products on their platforms, so the rules relating for VTP nominations should provide for this.

2. Please indicate your expectations with reference to the rules governing the entry-exit system

Poland has two high cal entry-exit systems within its territory, one for national transmission and one for transit. In due course we would expect these systems to be integrated into a single operating high cal entry exit system, although we accept that this cannot solely be achieved by the Polish government.

3. Please indicate your expectations with reference to the rules governing capacity bookings

Our expectation is that Gaz System will continue to comply with the rules governing entry and exit capacity bookings, as laid down in the Third Energy Package and in particular the EU Network Codes on Capacity Allocation and Congestion Management. To its credit, Gaz System was committed to implementing these rules from an early stage and did so in a relatively open and transparent manner, so it is no fault of theirs that the market has stagnated subsequently.

4. Please indicate your expectations with reference to the balancing rules

Our expectation is that Gaz System will continue to comply with the rules governing system balancing, as laid down in the EU Network Code on Balancing. To its credit, Gaz System was committed to implementing these rules from an early stage and

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did so in a relatively open and transparent manner. As such, shippers are now properly incentivized to balance their positions and Gaz System plays a residual system balancing role by predominantly taking balancing actions on the exchange, albeit with a limited choice of market participants.
As mentioned by ACER: “All tools required by BAL NC for balancing are implemented but the TSO triggers balancing actions every day. There are several causes for the low development of spot trades in Poland (e.g. some regulatory and administrative barriers, for example storage obligations, the requirement of an additional cross-border license, reporting obligations etc).”

5. Please indicate your expectations with reference to tariffs

Our expectation is that Gaz System and ERO will continue to comply with the rules tariff setting, as laid down in the EU Network Code on Harmonized Transmission tariffs. As stated earlier, we would expect them to evaluate and consult on adopting a more aggressive entry-exit split and benchmarking the costs of transmission through competing transit routes, as means to improve the competitiveness of transmission tariffs and reduce price spreads with other more developed EU markets. We also highlight that it is important to know the tariffs applicable to entries/exits or storage products sufficiently in advance of the respective auctions so that market participants can adjust their booking strategies accordingly.