**Czech Gas Association reply to the proposal for a directive of the EP and of the Council amending Directive 2009/73/EC concerning common rules for the internal market in natural gas**

The Czech Gas Association (CGA) is an independent association of organizations and experts operating in the gas and related industries and represents the Czech gas industry at the international level. By providing this reply, the CGA would like to express mainly its concerns regarding the decision-making procedure and legal uncertainty that this proposal would create.

The CGA does not agree with the steps of the European Commission (EC) undertaken to pass the legislation in a fast-track procedure without an impact assessment and proper legal scrutiny in the European Parliament and the Council. Furthermore, the CGA is concerned about a deviation from the established decision-making practice and the principles of Commission’s own Better Regulation Guidelines and with the Interinstitutional Agreement of 13 April 2016. This is much more questionable since the Commission did not provide an impact assessment and did not conduct a public consultation in advance of launching the legislative initiative.

The CGA believes that the impact assessment should be conducted as the proposal will fundamentally change the territorial scope of gas regulation in the EU. A substantiated impact assessment is necessary to verify the legal compatibility and to clarify the consequences of applying the revised Gas Directive. Even the statement of the EC that the proposal is essential for the proper functioning of the internal market and security of supply, proves the importance of impact assessment. Moreover, impact assessment should provide the benefits arising from the revision, which are not clear in the current situation.

The proposal of the EC to expand the Gas Directive to all import pipelines from third countries, would shift the EU from the existing coherent legal and regulatory framework and create difficult legal problems for the operation of existing or initiated pipelines and development of new ones.

It is evident that existing pipelines are currently operating in a clear and certain legal environment without any known legal or regulatory problems. However, the proposal of the Gas Directive would require them to apply for a derogation, whose granting process is not described in the proposal and thus create an uncertainty for market participants.

As concerns new or already initiated pipelines projects, the basic precondition of any future investment is the possibility to rely on a clear, stable and predictable legal and regulatory environment which is required by the investors and shareholders. The CGA believes the revision of the Gas Directive sends a very negative message to investors and not only to the investors of the gas industry. This is more evident in the case of gas pipelines when these will be operated for decades. Under the new rules proposed by the EC, they would be required to undergo either the derogation procedure or rely on negotiated international agreements.

The proposal will furthermore move competence from the Member States to the EU and it is likely to affect the ability of the Member States to choose gas supply routes from third countries which is guaranteed by the Art. 194 TFEU. The EC fails to provide sufficient evidence that the proposal contributes towards the objectives set out in the Art. 194 TFEU, particularly in the functioning of the internal energy market and to security of energy supply in the European Union.

We would also like to point out that the territorial extension of European regulation as introduced by the proposal would create a situation of unfair discrimination among pipelines coming from different third countries as some of them would be affected (undersea pipelines) and some would not (overland pipelines).

Moreover, the proposal brings not only above-mentioned concerns and risks, but has further questionable impact, e.g. application of the proposal to the Exclusive Economic Zones, potential incompatibility with United Nations convention on the Law of the Sea (UNCLOS), inequitable treatment of imported LNG and pipeline gas affecting diversity and competition.

**The CGA expresses its concerns not only with the proposal as such, which is controversial and not detailed enough, but also with the legislative procedure which does not respect usual standards. The EC should consider the reopening of the legislative process which would comprise ex ante public consultation and would provide the impact assessment that would identify risks as well as benefits of the possible future amendment of the Gas Directive.**

Prague, 22nd January 2018