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#### NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	15096/1/21 REV 1 + ADD 1 REV 1
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the internal markets for renewable and natural gases and for hydrogen (recast) - Preparation for the trilogue

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#### I. INTRODUCTION

1. On 15 December 2021, the Commission submitted a proposal for the Regulation on the internal markets for renewable and natural gases and for hydrogen that, together with the Directive, will be the new EU framework to decarbonise gas markets and promote hydrogen.
2. The legislation aims at enabling the decarbonisation of natural gas consumption, creating a regulatory framework for dedicated hydrogen infrastructure and markets and integrated network planning. It also strengthens rules for security of supply.
3. In the European Parliament, the Industry, Research and Energy (ITRE) is the leader for this file. The appointed rapporteur is MEP Jerzy Buzek (EPP, Poland). The Parliament adopted its report on 16 February 2023.

4. On 19 May 2022, the European Economic and Social Committee adopted its opinion on the proposal and the European Committee of the Regions delivered its opinion on 12 October 2022.

## II. INTERINSTITUTIONAL NEGOTIATIONS – STATE OF PLAY

1. The TTE (Energy) Council on 28 March 2023, agreed on a general approach on the above-mentioned proposal and the first trilogue, based on the Council general approach, took place on 1 June 2023.
2. During the first trilogue, both institutions explained their views on the main political issues and recognised the need to swiftly advance on this file. A broad mandate was given to the subsequent technical meetings to identify and make progress on areas of compromise in view of the second informal trilogue that took place on 18 July.
3. During the second trilogue, the discussions concerned cross-border coordination on gas quality (blending), diversification of gas supplies and Russian imports, joint purchasing/demand aggregation, different options for the EU entity for Hydrogen Network Operators: ENNOH in the General Approach and Commission proposal, or a combined structure with existing gas sector ENTSOG&H proposed by the Parliament, as well as upscaling of renewable gas and low-carbon gases in coal and carbon-intensive regions. Both institutions expressed their positions and flexibilities, while respecting their mandates.
4. After the second trilogue intense discussions have taken place at technical meetings between the Parliament and the Council, and the Commission provided its support as an honest broker. At the Energy Working Party meetings in July and September 2023, delegations were invited to express their positions and flexibilities on the Parliament's amendments concerning the entire set of articles as well as on various compromise proposals; namely on demand aggregation, security of supply, diversification of gas supplies, biomethane, separation of regulatory asset bases and upscaling of renewable gas and low-carbon gas in coal and carbon-intensive regions.
5. The suggested 'provisionally agreed' compromise proposals discussed at technical are included in document 12687/23 ADD 1.

### III. PREPARATION FOR THE NEXT TRILOGUE

1. The third informal trilogue will take place on 28 September 2023. The agenda of the meeting will consist of four highly political chapters on:
  - a) Demand aggregation
  - b) Security of supply
  - c) Biomethane and
  - d) Diversification of gas supplies.
2. All the above issues were discussed during technical meetings with the Parliament and the Commission. Moreover, the Presidency presented and discussed drafting proposals at the Energy Working Party. Following these considerations, the Presidency asks for flexibilities and proposes the below compromises.
3. **Demand aggregation** is one of the key elements of this legislation for the European Parliament. The Parliament is asking for a strong instrument with sufficient powers for the Commission to act efficiently, in particular during a crisis situation. The Presidency understands Member States concerns with establishment of such an instrument on a permanent basis, initially set up in 2022 as an emergency and temporary<sup>1</sup>.

In order to bridge the gap between the two sides, the Presidency proposes to explore a compromise based on the following conditions:

- It is essential that the participation in the mechanism remains voluntary.
- At the outset, hydrogen should be excluded from demand aggregation. In case hydrogen market matures, the Commission will be asked to present a legislative proposal accompanied by an impact assessment, to establish as appropriate a mechanism for transparency, voluntary demand assessment and demand aggregation for hydrogen.
- Any potential obligations on gas undertakings will need to be precisely defined. The mechanism should respect the competition law. Additional reporting or additional administrative burden should be minimised.

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<sup>1</sup> Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders.

- Regarding third country participation, only Energy Community countries should be permitted to participate in demand aggregation. Additionally, provisions on restrictions to supply of natural gas including LNG from Russia or Belarus through this mechanism with the aim of protecting the essential security interests of the Member States or of the Union should be foreseen, having regard also to security of supply and diversification objectives as appropriate.
- The Commission will be asked to review the mechanism by 2030.

Nevertheless, the Parliament may ask to explore a mandatory element of this mechanism.

4. **Security of supply** is an essential aspect of this legislation for the Parliament and the Council. Where the Council deleted many related provisions in its General Approach, the Parliament strengthened them by integrating elements of the 2022 emergency Council Regulation<sup>2</sup>.

The Presidency will convey to the Parliament the strong preference of Member States for a future comprehensive revision of the Regulation on security of gas supply accompanied by an impact assessment, rather than a review in the framework of these interinstitutional negotiations.

While maintaining this principle, the Presidency proposes to analyse possibilities for a compromise with the Parliament around specific default solidarity provisions in case Member States had not signed bilateral agreements. Such default rules could include the procedure to submit and respond to a solidarity request, including the deadlines, to operationalise the solidarity principle.

Although Member States are committed to making their best efforts to provide solidarity in form of pipeline gas or LNG, the legal obligation would not be extended to LNG facilities since the resulting responsibilities and its practical implementation are not clear. Finally, critical gas volumes for electricity would not be included as solidarity for protected customers.

The Presidency is aware of Member States' strong scepticism towards this proposal. Therefore, the Presidency would welcome Coreper's guidance on any flexibilities in this respect or any alternative solutions for a compromise with the European Parliament.

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<sup>2</sup> Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders

5. As regards **biomethane**, the Parliament introduces a 35 bcm Union target by 2030 and obliges the Member States to establish national strategies on the production of biomethane and its use, evaluate any barriers for the production or injection of biomethane in the grid as well as establish a trajectory to reach the identified national potentials by 2030 and 2050. Member States would also need to report on the progress with achieving their contribution to the target as part of their biennial reporting.

During the exchanges in the Energy Working Party, Member States expressed their doubts on such a provision, in particular regarding the establishment of the new target. It may be difficult politically and technically to accommodate such a target and assess its compatibility with those established recently within the Renewables (RED) Directive. Consequently, the Presidency would suggest seeking a compromise with the Parliament based on the doc. WK 10924/23 presented at the Energy Working Party (Annex to this note).

The compromise would include recitals specifying that the regulation supports the achievement of annual production of biomethane of 35 bcm by 2030. A ‘Union target’ would not be mentioned, only a reference to the Commission’s Staff Working Document accompanying the REPowerEU Plan<sup>3</sup>, where Commission mentions that in order to reduce reliance on Russian gas, the EU needs to boost biomethane production to 35 bcm by 2030. In addition, a link with the National Energy and Climate Plans could be made, where Member States should specify policies and measures to develop biogas and biomethane, provided that the language on trajectories is adjusted.

With respect to articles, the Presidency proposes to add a paragraph in Article 23(4), specifying that the European supply adequacy outlook will include monitoring of the progress towards achieving the annual production of high volume of biomethane by 2030. The Presidency also proposes to work with the Parliament on strengthening the existing provisions; namely regarding removing barriers to the deployment of biomethane, rather than setting a target.

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<sup>3</sup> [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022SC0230&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022SC0230&from=EN)

6. **Diversification of gas supplies.** In case of these articles, all three institutions agree on the need for a strong and legally sound wording, which would be future proof, not encroach upon powers linked to restrictive measures and be in line with the international obligations. A compromise proposal in articles 5(6) and 7(7) was already discussed with the European Parliament and during one of the Energy Working Groups<sup>4</sup> (Annex to this note). In addition to the wording of the General Approach limiting the up-front bidding or provision for capacity in gas networks and LNG facilities, the revised articles clearly state that such measures may be taken to protect the essential security interests of the Member States and those of the Union.

#### IV. CONCLUSIONS

1. The Permanent Representatives Committee is invited to:
  - reflect on the above-mentioned issues, and
  - to agree on a revised mandate for the third informal trilogue on 28 September 2023, on the basis of the above-mentioned issues, the text included in the Annex to this note and suggestions and flexibilities expressed during the meeting of the Permanent Representatives Committee.

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<sup>4</sup> 11181/23

**Biomethane**

1. New Recital on the consideration of biomethane throughout Gas Regulation (could be mirrored in Directive)

*The amendments set out in this Regulation [Directive] are also intended to support the achievement of the Union's target of an annual production of sustainable biomethane of 35 billion cubic meters by 2030, set out in the Commission staff working document of 18 May 2022 accompanying the REPowerEU Plan, entitled 'Implementing the Repower EU Action Plan: Investment needs, hydrogen accelerator and achieving the bio-methane targets', thereby supporting security of supply and the Union's climate ambitions.*

2. New Recital to link with NECPs process

*That coordinated mapping for the deployment of biogas and biomethane serves as a basis for Member States to determine the estimated trajectories from 2021 to 2030, including expected total gross final energy consumption and total planned installed capacity, as requested in the National Energy and Climate Plans. In order to comply with these estimated trajectories, Member States should specify policies and measures to develop biogas and biomethane, such as adopting national strategies on sustainable biogas and biomethane or setting national targets of annual consumption of biomethane, either expressed in absolute volumes or as a percentage of the volume of gases consumed by customers connected to the natural gas network.*

3. Reference to the 35 bcm biomethane objective in the European supply adequacy outlook – addition in Article 23(4) (line 322 of the 4-column document)

*[...] The European supply adequacy outlook referred to in paragraph 3, point (b), shall cover the overall adequacy of the gas system to supply current and projected demands for gas for the next five-year period as well as for the period between five and 10 years from the date of that outlook. The European supply adequacy outlook shall build on national supply outlooks prepared by each individual transmission system operator. The European supply adequacy outlook shall specifically include a monitoring of the progress towards achieving the Union's target of an annual production of sustainable biomethane of 35 billion cubic meters by 2030, which is set out in the Commission staff working document of 18 May 2022 accompanying the REPowerEU Plan, entitled 'Implementing the Repower EU Action Plan: Investment needs, hydrogen accelerator and achieving the bio-methane targets.*

## **Diversification of gas supplies**

Article 3a – *deleted*

Article 5(6)

*6. Paragraphs 1 to 5 shall be without prejudice to the possibility for Member States to take proportionate measures to temporarily restrict gas supplies from Russia, for a fixed term which may be renewed if justified, by limiting up-front bidding for capacity by any single network user at entry points from the Russian Federation or Belarus, where this is necessary to protect their essential security interests and those of the Union, and provided that such measures:*

- i. do not unduly disrupt the proper functioning of the internal gas market and cross-border flows of natural gas between Member States, and do not undermine the security of supply of the Union or a Member State*
- ii. respect the principle of energy solidarity,*
- iii. are taken in compliance with the rights and obligations of the Member States and of the Union with respect to third countries.*

*Taking into account the need to ensure security of supply in the Union, the measures referred to in the first subparagraph may be aimed at diversifying gas supplies with a view to reducing dependence on Russian gas, where it can be demonstrated that such measures are necessary to protect the essential security interests of the Member States and those of the Union.*

*Before deciding on a measure referred in the first subparagraph, the Member State concerned shall consult the Commission and, in so far as they are likely to be affected by the measure, other Member States, the Energy Community Contracting Parties, third countries that are Contracting Parties to the Agreement on the European Economic Area, and the United Kingdom of Great Britain and Northern Ireland. The relevant Member States shall take the utmost account of the situation in those Member States and third countries and any concerns raised in that respect by those Member States, third countries or the Commission.*

Article 7(7)

*7. Paragraphs 1-6 shall be without prejudice to the possibility for Member States to take proportionate measures to temporarily restrict LNG supplies from Russia, for a fixed term which may be renewed if justified, by limiting up-front bidding or provision for LNG facility capacity by any single network user for deliveries from the Russian Federation or Belarus, where this is necessary to protect their essential security interests and those of the Union, and provided that such measures:*

- i. do not unduly disrupt the proper functioning of the internal gas market, and cross-border flows of natural gas between Member States, and do not undermine the security of supply of the Union or a Member State.*
- ii. respect the principle of energy solidarity,*
- iii. are taken in compliance with the rights and obligations of the Member States and of the Union with respect to third countries.*

*Taking into account the need to ensure security of supply in the Union, the measures referred to in the first subparagraph may be aimed at diversifying LNG supplies with a view to reducing dependence on Russian gas, where it can be demonstrated that such measures are necessary to protect the essential security interests of the Member States and those of the Union.*

*Before deciding on a measure referred in the first subparagraph, the Member State concerned shall consult the Commission and, in so far as they are likely to be affected by the measure, other Member States, the Energy Community Contracting Parties, third countries that are Contracting Parties to the Agreement on the European Economic Area, and the United Kingdom of Great Britain and Northern Ireland. The relevant Member States shall take the utmost account of the situation in those Member States and third countries and any concerns raised in that respect by those Member States, third countries or the Commission.*