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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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Subject:	Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen (recast) 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

I. INTRODUCTION

1. On 15 December 2021, the Commission submitted a proposal for the Regulation and Directive on the internal markets for renewable and natural gases and for 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 and for consumer protection.

3. In the European Parliament, the Industry, Research and Energy (ITRE) is the leader for both files. For the Directive, the rapporteur is MEP Jens Geier (S&D, Germany) and for the Regulation the rapporteur is MEP Jerzy Buzek (EPP, Poland). The Parliament adopted both reports on 16 February 2023.

4. On 19 May 2022, the European Economic and Social Committee adopted its opinion on both proposals and the European Committee of the Regions delivered its opinions 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 proposals. The first trilogue, based on the Council general approach, took place on 1 June 2023. Subsequently, multiple technical meetings have taken place, in addition to 2 trilogues for the Directive and 3 for the Regulation.

2. During the negotiations most of the elements of both files were agreed in technical meetings. The suggested 'provisionally agreed' compromise proposals discussed at technical are included in document 15069/23 ADD 1 (Directive) and 15069/23 ADD 2 (Regulation).

III. PREPARATION FOR THE NEXT TRILOGUES

1. The fourth trilogue on the Directive and the fifth one on the Regulation will take place on 27 November 2023.

2. The agenda of the meeting for the Directive will consist of the following points:

   a) Unbundling for hydrogen Transmission System Operators (TSOs) (Articles 62 and 63);
   b) Confirmation on split between Transmission System Operators (TSOs) and Distribution System Operators (DSOs) for hydrogen.

3. The agenda of the meeting for the Regulation will consist of the following points:

   a) Diversification of gas supplies (Articles 3a, 5 (only lines 183a-183e) and 7 (only lines 208a-208e));
   b) Upscaling of renewable gas and low-carbon gas in coal and carbon-intensive regions (Article 3b);
   c) Biomethane (Articles 3c, 17a and 20b);

d) Tariffs for hydrogen and gas networks (Articles 5(1a) and 6(7));

e) Cross-border coordination of gas quality in the natural gas system (Article 19, only lines 283a and 283c regarding the percentage);

f) EU entity for Hydrogen Network Operators (ENNOH) and ENTSOG&H (Articles 21-24, 26-29 and 40-47);

g) Demand Aggregation (Article 67);

c) Solidarity (Article 67).

4. All the above issues were discussed during technical meetings with the Parliament and the Commission. Moreover, the Presidency presented and discussed drafting proposals regarding most of the above-mentioned items at the Energy Working Party. Following these considerations, the Presidency asks for flexibilities and proposes the below compromises.

5. <u>In the Directive:</u>

(a) <u>In Article 62</u> **<u>regarding the unbundling of hydrogen transmission network operators</u>** (vertical unbundling) the positions of the Council and the Parliament converge. The Parliament did not make significant changes to the Commission's proposal, and Council's main change concerns paragraph 4. Consequently, the Presidency's proposal is to combine Council and Parliament text, in all paragraphs except paragraph 4.

The Presidency shares with the Member States the importance of the derogation in paragraph 4 regarding the permanent use of the vertically integrated Independent Transmission Operator (ITO) unbundling model for hydrogen. The objective of the Presidency is to remain within the framework of the General Approach. However, some redrafting was required to provide legal certainty and align it with Article 54. The revised text clarifies the various interactions between different unbundling models of gas TSOs and a hydrogen ITO. The Presidency would like to ask Member States to confirm their overall agreement to the text of this Article, an in particular on the two options for paragraph 4 as presented in the Annex to this note, depending on the final outcome on Article 63.

In <u>Article 63</u> **<u>on the horizontal unbundling of hydrogen network operators</u>**, the Commission proposed to guarantee a legal separation between hydrogen network operators and gas or electricity network operators, i.e., different legal entities. The Parliament deleted this Article, considering it is an unnecessary burden.

The Presidency continues to believe that the independence of a hydrogen network operator – at least in terms of its legal form – would allow for a clear separation between the gas and hydrogen sectors, bring transparency in cost-allocation and avoid cross-subsidies.

The Presidency considers that the benefits widely exceed the costs and the administrative procedures of setting up a separate legal entity. In addition, this Article is an important complement to the proposed provisions in paragraph 4 of Article 62.

Following several intense technical discussions with the Parliament, the Presidency proposes three potential ways forward:

1. to preserve the Article as proposed by the Commission and introduce a 'grandfathering clause' for small gas Distribution System Operators (DSOs), which may operate networks in the hydrogen sector without legal separation.

2. to delay the application of this Article to 5 years after the entry into force of the Directive and apply it only to hydrogen TSOs, while excluding hydrogen DSOs.

3. to delete the Article.

For the first 2 options, the Presidency also proposes to add a provision inviting the Member States to establish an enabling regulatory framework for the transfer of assets to hydrogen TSOs. Such framework would help in enabling an efficient transfer of assets from gas to hydrogen operators, by clarifying the regulatory treatment, allocation and recovery of the costs arising from repurposing gas assets to hydrogen. In particular, Member States may minimise potential costs resulting from the taxes related to the transfer of assets between different legal entities, provided that state aid rules are respected.

The latest compromise is included in the Annex to this note.

(b) **Split between TSOs and DSOs for hydrogen**. Following intense discussions during the last three months, the Council and the Parliament have found a balanced compromise on all the provisions. The text separating TSO-DSO categories for hydrogen is based on new definitions and functional criteria. The most relevant Articles are adapted to provide for the split, as discussed during the Energy Working Party meetings.

The Presidency would like to ask Member States to confirm their overall agreement to the text presented in the Annex to this note. Final technical adaptations of all relevant Articles will be undertaken following the political agreement in the trilogue.

6. For the Regulation:

(a) **Diversification of gas supplies.** As regards these Articles, both institutions agree on the need for a strong and legally sound wording, which should be future proof, not encroach upon powers linked to restrictive measures and be in line with the international obligations. A compromise proposal was discussed with the European Parliament and during the meetings of the Energy Working Party.

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.

The Presidency will ensure that the provisions are watertight in terms of addressing essential security interests linked to the access of gas from the Russian Federation and Belarus.

The latest compromise is included in the Annex to this note.

(b) **Article 3b** on upscaling of renewable gas and low-carbon gas in **coal and carbon-intensive regions**. This is a very important Article for the Parliament. The Article puts an obligation on the Commission to support and provide incentives to encourage the dissemination of renewable and low-carbon gases, in particular in coal and carbon-intensive regions.

As this Article as proposed by the Parliament may not be acceptable to a number of Member States, the Presidency would be willing to explore with the Parliament the following two options:

1. Instead of this Article, propose a recital based on it, which would reflect its objectives more adequately. The text would specify the need for the Commission to support decarbonisation of coal and carbon intensive regions.

2. Instead of this Article, mirror in a recital the principles of Article 4 of Regulation (EU) 2019/943 on the internal market for electricity regarding 'just transition'.

As an alternative option Member States are also welcome to express their flexibility on alternative options, including on accepting Parliament's Article as it is.

(c) **<u>Biomethane</u>.** The Parliament maintains its demand to introduce in the Articles a 35 billion cubic meters (bcm) Union target for biomethane produced and injected into the grid by 2030 and to oblige 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.

The Presidency aims to maintain the Council's position and will continue to refuse the establishment of a new target for biomethane. The Presidency will continue to work with the Parliament on the compromise based on the following elements:

- A new recital linking biomethane to the National Energy and Climate Plans (NECPs) process, where Member States would need to specify policies and measures to develop biogas and biomethane.

- A new recital underlining that this Regulation intends to support the production of sustainable biomethane as set out in the REPowerEU Plan.

- A reference in Article 23(4) would stipulate that the European supply adequacy outlook should monitor progress in production of sustainable biomethane and its injection into the grid.

- The compromise could also include in Article 23(4) a possibility for the Commission to issue recommendations to the Member States in case of a big gap between Member States' potential and expected production of biomethane. The Parliament may request the introduction of a reference to a collective potential or ambition for annual sustainable production of biomethane of 35 bcm. In that case, the Presidency will insist on avoiding any reference to the concept of target.

The latest compromise is included in the Annex to this note.

(d) As regards **network tariffs**, in **Article 5(1a)** where the Parliament proposes to remove tariffs for access to transmission systems at interconnection points between Member States for **natural gas**, the Presidency will continue underlining that removing these tariffs for natural gas would be detrimental to the current functioning of the entire natural gas sector.

In **Article 6(7)** the Presidency understands Member States' strong stance that the implementation of a zero tariff at interconnection points between Member States for **hydrogen** is not supported (as opposed to the Parliament), and each national regulatory authority should retain the competencies to set interconnection tariffs.

As a compromise, the Presidency proposes that every national regulatory authority will consult the neighbouring national regulatory authorities on the draft tariff methodology and submit it to ACER.

- Each national regulatory authority will preserve its right to set its own tariff. Moreover, upon a request of a national regulatory authority, ACER shall propose solutions by means of a non-binding factual opinion. ACER will inform the Commission on the outcome. This compromise would reinforce cross-border coordination required by the Parliament.

The latest compromise is included in the Annex to this note.

(e) **Cross-border coordination of gas quality** in the natural gas system (Article 19). This Article is provisionally agreed except for the percentage figures for allowed hydrogen blends. The Council proposes 2%, whereas the Parliament proposes 3%. Presidency would welcome Member States' flexibility on the final figure between 2% and 3%.

Any movement towards the Parliament position would be counterbalanced by reinforcing the wording on blending in recital 34, where it is already stated that the blending of hydrogen into the natural gas system is less efficient compared to using hydrogen in its pure form.

(f) **<u>EU entity for Hydrogen Network Operators (ENNOH) vs ENTSOG&H</u>**. Intense discussions took place between the institutions, with Parliament signalling that this was one of the key issues for the final compromise. The Presidency underlined that the hydrogen market should be fully independent from methane-based gases, and the governance of a new sector should be based on new pillars and principles. ENNOH would ensure promoting dedicated hydrogen infrastructure, cross-border coordination, interconnector network construction as well as elaboration of specific technical rules.

On the other hand, the Parliament extended the competencies of the existing European Network of Transmission System Operators for Gas (ENTSOG) to Hydrogen, thus creating ENTSOG&H instead of providing for a new entity. The Parliament argued that a combined entity would allow better system efficiency and energy system integration. Such a body would facilitate the development of interlinkages between gas and hydrogen, the sharing of experiences and would be most cost efficient for users.

As a compromise, the Presidency proposes to keep the separate entities while ensuring that the key elements which Parliament sees as important in a combined entity could be established through a strengthened cooperation between ENNOH and ENTSOG. As one of the key policies promoted by the Parliament is energy system integration, the Presidency would suggest also involving the European Network of Transmission System Operators for Electricity (ENTSOE), as electricity has strong links with hydrogen.

In particular, the Presidency suggests the following areas for compromise with the Parliament:

- **ENNOH should be created as an independent entity** as originally proposed by the Commission. This principle is essential to guarantee that the hydrogen sector develops in an independent manner, under equal conditions and with a proper interplay with electricity and gas.

    - However, as a compromise, close cooperation should be ensured with ENTSOE and ENTSOG. Such cooperation should make use of synergies between sectors, while ensuring that conflict of interest is avoided. Collaboration would ensure energy system integration and energy system efficiency – both key demands of the Parliament.

- Another element of the compromise would be to foster service contracts between ENNOH, ENTSOE and ENTSOG. The provision of services could include legal, financial, human resources and Information Technology (IT) services, however, excluding any tasks related to The Ten-Year Network Development Plan (TYNDP) for hydrogen (Article 43). Such services should not account for a more than a certain pre-defined percentage of the overall yearly costs of ENNOH.

- The TYNDP for hydrogen should be independent from gas to prevent undesirable conflicts of interest, leading to excessive repurposing of gas infrastructure or the construction of unnecessary hydrogen-ready gas pipelines.

  - Nevertheless, the Presidency proposes a compromise where ENNOH, together with ENTSOE and ENTSOG, could develop integrated TYNDPs which would include joint scenarios, and infrastructure gap reports.

  - ENNOH would draft sectoral methodologies for wide hydrogen cost-benefit analysis. These would need to be consistent with those developed by ENTSOE and ENTSOG. The methodologies would provide transparency on the most cost-efficient solutions across energy carriers.

  - ENNOH and ENTSOG could cooperate on decommissioning existing gas infrastructure as well as repurposing of such infrastructure for hydrogen transport. They would draft technical reports for ACER.

  - Finally, ENNOH, ENTSOE and ENTOG could establish working groups to fulfil the above-mentioned tasks. Such cooperation would be of particular added value in preparing the above-mentioned integrated TYNDPs and additional potential tasks related to security of energy supply and repurposing.

- Certified hydrogen TSOs would be members of ENNOH. Specific provisions will be introduced to ensure a sufficient degree of inclusiveness in ENNOH: Member States may appoint non-certified hydrogen TSOs or other entities to participate as associated partners.

- Hydrogen DSOs will be able to participate in the EU DSO Entity on a voluntary basis, together with electricity and gas DSOs.

(g) **<u>Demand Aggregation</u>** is one of the key elements of this Regulation for the European Parliament. During the negotiations, the Parliament was asking for a strong instrument with sufficient powers for the Commission to act efficiently, in particular during a crisis situation. The Presidency frequently conveyed Member States' concerns with the establishment of such an instrument on a permanent basis, initially set up in 2022 as an emergency tool and for a temporary period[1]. The Presidency also underlined the Council's preference to establish this instrument later, through the ordinary legislative procedure following an impact assessment.

Following lengthy discussions, the Parliament showed flexibility regarding the Council's prerogatives and margin for manoeuvre. However, it will not be possible to delete this provision in its entirety. In the spirit of compromise, the Presidency proposes to keep a voluntary framework for the gas market, while asking the Commission to work on the potential extension of the mechanism to hydrogen in a separate legislative proposal.

The Presidency will insist during the trilogue on the following elements:

– Demand aggregation needs to remain fully **voluntary**. Obligatory participation could only be envisaged in crisis situations following a proposal of the Commission and a Council decision by means of an implementing act.

– Regarding **third country participation**, <u>only</u> Energy Community countries should be permitted to participate in demand aggregation.

– The Parliament insists on naming the mechanism Demand Aggregation/**Joint Purchasing**. Presidency would like to underline that the content of this mechanism will not include any joint purchasing elements. Nevertheless, the Presidency is willing to compromise on this issue, considering the name of lesser importance than the actual content of the proposal.

– Provisions will be foreseen on **restrictions to the supply of natural gas, including Liquefied Natural Gas (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, having regard also to the security of supply and diversification objectives, as appropriate. The provision established in Articles 3a, 5 and 7 mentioned above, could be used as a basis.

[1] 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.

– **Hydrogen** should be excluded from this mechanism since it is not a sufficiently mature market. However, as this is a strong point for the Parliament, the Presidency may explore the possibility for the Commission to establish a temporary, voluntary pilot mechanism for market development, demand assessment and demand aggregation for hydrogen.

– The Presidency will recall during the negotiations that if Commission would deem the hydrogen market sufficiently developed, it may adopt a legislative proposal accompanied by an impact assessment for demand aggregation/joint purchasing of hydrogen. The Presidency has proposed to the Parliament a review clause to that effect.

– The Parliament has also requested to reflect the voluntary option for Member States to provide liquidity support, including guarantees, to participants in demand aggregation. The Presidency suggests working in that direction while restricting this provision for security of supply crises.

The latest compromise is included in the Annex to this note.

(h) **Solidarity** provisions are one of the essential aspects of this legislation for the Parliament. Where the Council deleted many related provisions in its General Approach, the Parliament strengthened them by integrating elements of the emergency Council Regulation (EU) 2022/2576 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders.

The Presidency will reiterate to the Parliament the strong preference of the Council for a future comprehensive revision of Regulation 2017/1938 on security of gas supply (Security of gas supply Regulation) accompanied by an impact assessment, rather than a review in the framework of these interinstitutional negotiations. The priority should be the inclusion in this Regulation of a review clause triggering the process for amending the Security of gas supply Regulation concerning measures to safeguard the security of gas supply, to be adopted by the Commission without delay and not later than February 2025.

While maintaining this principle, the Presidency proposes the following compromise through targeted amendments to the Security of gas supply Regulation:

- Establishment of **default provisions** to operationalise the solidarity principle in case bilateral agreements are not in place (Article 13(8) and (8a) of the Security of Gas Supply Regulation).

- Establishment of a **cross-border conciliation mechanism** for an ex-post revision of the compensation (Article 13(10)).

- **Voluntary reduction of non-essential consumption of protected customers** (Article 13(3)(a) and 3a).

- **Safeguards for cross-border flows** (Article 12(5)). Measures that would unduly restrict the flow of gas or that would endanger the gas supply within the internal market should be avoided.

During the discussions, the Parliament insisted on introducing a cap on compensation for the indirect costs. The Presidency underlined that such cap should be avoided to preserve a fair and complete compensation. Therefore, as an alternative, the Parliament is proposing a **voluntary mechanism**, where on the demand of the Member State requesting solidarity, a Member State not directly connected to that Member State could also provide assistance. The Parliament argues that such additional alternative would alleviate overall costs for all involved Member States.

The latest compromise is included in the Annex to this note.

7. <u>For both the Directive and the Regulation:</u>

In relation to the development of the **hydrogen market**, there is a number of **dates marking the end to the transitional period**. The most important deadline applies to the start of the regime for regulated Third Party Access (TPA) to hydrogen networks and storage. The Commission proposed 2030. The Parliament maintained this date, while Council delayed the period until 2035. The Presidency suggests agreeing on an intermediate date during the trilogues.

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 fourth trilogue on the Directive and fifth one on the Regulation taking place on 27 November 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.

ANNEX

1. Unbundling (Article 62, clarifcation on 62(4), article 63)

Article 62

		Commission Proposal	EP Mandate	Council Mandate	Draft Agreement	
	Article 62					
G	789	Article 62 Unbundling of hydrogen network operators	Article 62 Unbundling of hydrogen ***transmission*** network operators	Article 62 Unbundling of hydrogen network operators	Article 62 Unbundling of hydrogen ***transmission*** network operators	G
	Article 62(1)					
G	790	1. Member States shall ensure that from [end of transposition period+1year] hydrogen network operators are unbundled in accordance with the rules for natural gas transmission system operators set out in Article 54(1) to (3).	1. Member States shall ensure that from **...** [end of transposition period+1year] hydrogen ***transmission*** network operators are unbundled in accordance with the rules for natural gas transmission system operators set out in Article 54(1) to (3).	1. Member States shall ensure that from [end of transposition period+1year] hydrogen network operators are unbundled in accordance with the rules for natural gas transmission system operators set out in Article 54(1) to (3)**, (6), (7) and (12)** .	1. Member States shall ensure that from [end of transposition period+1year] hydrogen ***transmission*** network operators are unbundled in accordance with the rules for natural gas transmission system operators set out in Article 54(1) to (3)***, (6), (7) and (12)***.	G
	Article 62(2)					
G	791	2. For the purpose of this Article, of Articles 42 and 54, and of Articles 35 and 43 of Directive (EU) 2019/944, ‘production or supply’ shall include production and supply of hydrogen, and ‘transmission’ shall include transport of hydrogen.	2. For the purpose of this Article, of Articles 42 and 54 ***of this Directive***, and of Articles 35 and 43 of Directive (EU) 2019/944, ‘production or supply’ shall include production and supply of hydrogen, and ‘transmission’ shall include transport of hydrogen	2. For the purpose of this Article, of Articles 42 and 54, and of Articles 35 and 43 of Directive (EU) 2019/944, ‘production or supply’ shall include production and supply of hydrogen, and ‘transmission’ shall include transport of hydrogen.	2. For the purpose of this Article, of Articles 42 and 54 ***of this Directive***, and of Articles 35 and 43 of Directive (EU) 2019/944, ‘production or supply’ shall include production and supply of hydrogen, and ‘transmission’ shall include transport of hydrogen.	G

		Commission Proposal	EP Mandate	Council Mandate	Draft Agreement	
			through a network which mainly contains high-pressure pipelines.			
Article 62(3)						
G	792	3. Where on [entry into force] the hydrogen network belonged to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1. In such case, the Member State concerned shall designate an independent hydrogen network operator unbundled in accordance with the rules on independent system operators for natural gas set out Article 55. Hydrogen network operators and transmission system operators for gas unbundled in accordance with Article 54(1) can act as independent hydrogen network operator, subject to the requirements pursuant to Article 63.	3. Where on **...** [***date of*** entry into force ***of this Directive***] the hydrogen network belonged to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1. In such ***a*** case, the Member State concerned shall designate an independent hydrogen ***transmission*** network operator unbundled in accordance with the rules on independent system operators for natural gas set out Article 55. Hydrogen ***transmission*** network operators and transmission system operators for gas unbundled in accordance with Article 54(1) can act as independent hydrogen ***transmission*** network operator ▌	3. ~~Where on [entry into force] the~~**For** hydrogen ~~network belonged~~**networks belonging** to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1. In such case, the Member State concerned shall designate an independent hydrogen network operator unbundled in accordance with the rules on independent system operators for natural gas set out **in** Article 55. Hydrogen network operators and transmission system operators for gas unbundled in accordance with Article 54(1) ~~can~~**may** act as independent hydrogen network operator, subject to the requirements pursuant to Article 63.	3. ~~*Where on [entry into force] the*~~***For*** hydrogen ~~*network belonged*~~***networks belonging*** to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1. In such case, the Member State concerned shall designate an independent hydrogen ***transmission*** network operator unbundled in accordance with the rules on independent system operators for natural gas set out ***in*** Article 55. Hydrogen ***transmission*** network operators and transmission system operators for gas unbundled in accordance with Article 54(1) ~~*can*~~***may*** act as independent hydrogen ***transmission*** network operator, subject to the requirements pursuant to Article 63.	G
Article 62(4)						
Y	793	4. Until 31 December 2030, Member State may designate an integrated hydrogen network operator unbundled in accordance with the rules on independent transmission operators for natural	4. ▌ Member State may designate an integrated hydrogen ***transmission*** network operator unbundled in accordance with the rules on independent transmission operators for natural gas set out in	4. ~~Until 31 December 2030~~**By way of derogation from Article 54, where a hydrogen network belongs to a certified transmission system operator for gas, or where on [entry into**	Options below	Y

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
	gas set out in Section 3 of Chapter IX. Such designation shall expire by 31 December 2030 at the latest.	Section 3***, independently from the unbundling models adopted in natural gas and electricity sectors by Member States before ... [the date of entry into force of this Directive] and without prejudice to those models****.*** ***Section 3 shall only apply in relation to the parts of the vertically integrated undertaking other than natural gas or electricity transmission system operator or distribution system operator***[redacted] .	**force of Directive] a hydrogen network belonged to a vertically integrated undertaking**, Member ~~State may~~ **States may decide not to apply paragraph 1 and** designate an **entity under the sole control of the transmission system operator or of the vertically integrated hydrogen undertaking as an** integrated hydrogen network operator unbundled in accordance with the rules on independent transmission operators for natural gas set out in Section 3 of Chapter IX. ~~Such designation shall expire by 31 December 2030 at the latest.~~	
Article 62(5)				
794	5. The rules applicable to transmission system operators set out in Article 66 shall apply to hydrogen network operators.	5. The rules applicable to transmission system operators set out in ***Articles 65 and*** 66 shall apply to hydrogen ***transmission*** network operators.	5. The rules applicable to transmission system operators set out in Article 66 shall apply to hydrogen network operators.	5. The rules applicable to transmission system operators set out in Article 66 shall apply to hydrogen <u>***transmission***</u> network operators.

Article 62(4)

PRES compromise proposal on article 62.4 (vertical unbundling for hydrogen TSOs)
This new compromise proposal does not introduce substantial changes to the proposal included in WK 14195 2023. The targeted amendments are:

- **Option 1**: if article 63 is maintained in the final agreement (provision requiring legal separation between gas and hydrogen network operators), the approach included in WK 14195 2023 is completely valid. However, the Parliament requested to allow the option of more than one single gas TSO exercising decisive control over the entity designated as a hydrogen network operator unbundled under the Independent System Operator (ITO). Therefore, it is necessary to clarify that both the sole control by a gas TSO (General Approach) or the joint control by several gas TSOs are possible options.

- **Option 2**: this option is presented to cover the scenario where article 63 is deleted. In such case, it would be necessary to create a new paragraph to describe the case of gas TSOs operating under the Ownership Unbundling (OU) model or the Integrated System Operator (ISO) model which are part of a Hydrogen Vertically Integrated Undertaking (VIU) and exercise control over the hydrogen TSO unbundled under the ITO model, since the same legal entity cannot play the role of gas TSO under the OU or ISO model and the role of hydrogen TSO under the ITO model.

  Therefore, according to the definitions of the OU and ISO models in the gas sector, where one or more than one gas OUs or ISOs exercise the sole/joint control over the entity designated as ITO hydrogen TSO, creating a subsidiary for the hydrogen sector would be necessary.

Option 1: Article 63 is retained

62.4. ~~Until 31 December~~ ~~*2030*~~~~***By way of derogation from Article 54,***~~ ~~***where***~~ ***Where*** **a hydrogen** ***transmission*** **network belongs to one or more** ~~**a**~~ **certified transmission system operators for gas, or where on [entry into force of Directive] a hydrogen** ***transmission*** **network belonged to a vertically integrated undertaking**, Member States may **decide not to apply paragraph 1 and** designate an **entity under the sole control of the transmission system operator or the joint control of two or more transmission system operators, or under the sole control of the vertically integrated hydrogen undertaking as an** integrated hydrogen ***transmission*** network operator unbundled in accordance with the rules on independent transmission operators for natural gas set out in Section 3 of Chapter IX. ~~Such designation shall expire by 31 December 2030 at the latest.~~

[PRES: new text introduced to clarify that both the sole control by a gas TSO (General Approach) or the joint control by several gas TSOs over the hydrogen TSO operating under the ITO model are possible options].

Where an undertaking includes a transmission system operator unbundled in accordance with Article 54(1) and an integrated hydrogen transmission network operator, this undertaking may be active in hydrogen production or supply, but not in the production or supply of natural gas or electricity. Where such undertaking engages in hydrogen production or supply, the transmission system operator for gas shall comply with the requirements set out in Section 3 of Chapter IX, and the undertaking and all parts thereof shall not book or use capacity rights to inject any hydrogen into a transmission or distribution system for gas operated by the undertaking.

<u>**Option 2: Article 63 is deleted**</u>

62.4. ~~Until 31 December~~ ~~*2030*~~***~~By way of derogation from Article 54,~~ ~~where~~ Where*** **a hydrogen *transmission* network belongs to <u>one or more</u> certified transmission system operators for gas <u>unbundled in accordance with the rules on independent transmission operators for natural gas set out in Section 3 of Chapter IX,</u> Member**~~ State may ~~**States may decide not to apply paragraph 1 and** designate this **entity or an entity under the joint control of two or more transmission system operator<u>s as an</u>** integrated hydrogen ***transmission*** network operator unbundled in accordance with the rules on independent transmission operators for natural gas set out in Section 3 of Chapter IX.

[PRES note: this paragraph applies to gas TSOs operating under the ITO model].

Where **a hydrogen *transmission* network belongs to one or more certified transmission system operator for gas unbundled in accordance with Article 54(1) or Article 55, or where on [entry into force of Directive] a hydrogen *transmission* network belonged to a vertically integrated undertaking**, Member **States may decide not to apply paragraph 1 and** designate an **entity under the sole control of the transmission system operator or under the joint control of two or more transmission system operators, or under the sole control of the vertically integrated hydrogen undertaking as an** integrated hydrogen ***transmission*** network operator unbundled in accordance with the rules on independent transmission operators for natural gas set out in Section 3 of Chapter IX.

[PRES note: this paragraph applies to gas TSOs operating under the OU/ISO model].

Where an undertaking includes a transmission system operator unbundled in accordance with Article 54(1) and an integrated hydrogen transmission network operator, this undertaking may be active in hydrogen production or supply, but not in the production or supply of natural gas or electricity. Where such undertaking engages in hydrogen production or supply, the transmission system operator for gas shall comply with the requirements set out in Section 3 of Chapter IX, and the undertaking and all parts thereof shall not book or use capacity rights to inject any hydrogen into a transmission or distribution system for gas operated by the undertaking.

Article 63 - 1st option

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 63				
795	Article 63 Horizontal unbundling of hydrogen network operators	Article 63 ▌	Article 63 Horizontal unbundling of hydrogen network operators	Article 63 Horizontal unbundling of hydrogen **transmission** network operators
Article 63, first paragraph				
796	Where a hydrogen network operator is part of an undertaking active in transmission or distribution of natural gas or electricity, it shall be independent at least in terms of its legal form.	▌	Where a hydrogen network operator is part of an undertaking active in transmission or distribution of natural gas or electricity, it shall be independent at least in terms of its legal form.	**1.** Where a hydrogen **transmission** network operator is part of an undertaking active in transmission or distribution of natural gas or electricity, it shall be independent at least in terms of its legal form. **Member States may decide not to apply the first subparagraph until [5] years [after entry into force of this Directive].**
796a				**2. Without prejudice to Article 4 of [the recast Gas Regulation] and Article 7(7) and 7(8a) of this Directive, Member States and Regulatory Authorities, where relevant, shall set out rules for the efficient transfer of assets between regulatory asset bases..** **Such rules shall include transparency on the allocation and recovery of the costs resulting from repurposing natural gas assets to hydrogen, in**

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				accordance with applicable rules on State Aid and other national and Union laws. **These costs may include:** **i) the cost of the assessment of the technical feasibility of repurposing,** **ii) the remaining depreciation cost of the relevant natural gas asset,** **iii) costs of decommissioning and repurposing** **iv) costs arising from the payment of taxes for the transfer of assets from transmission and distribution system operators to hydrogen transmission system operators]** ***<u>Recital:</u>*** **Regulatory authorities should provide for an enabling regulatory framework for the transfer of assets from the natural gas sector to the hydrogen sector by providing transparency on the calculation or allocation of the costs of decommissioning, the remaining regulatory value of assets, the previous technical assessments**

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				and the costs arising from the taxation regime applicable to asset transfers, and on the side of the hydrogen network operator, the costs of repurposing. **Regulatory authorities should set out the rules for the calculation and allocation of these costs to gas and hydrogen customers whilst ensuring that the general rules applicable to asset bases established in Article 4 of [the Gas Regulation] are respected.** **Moreover, for the effective functioning of such regulatory framework, Member States should ensure that national taxations regimes respect the principles of neutrality, effectiveness, and fairness, avoiding unintentional excessive taxation on the emerging hydrogen sector which may undermine its development by posing an excessive burden on hydrogen consumers.** **All measures should ensure compliance with State aid rules.**

<u>Article 63 – 2nd option</u>

Preserve Article 63 for both hydrogen transmission and distribution network operators + ‘grandfathering derogation’ for DSOs+regulatory framework for TSOs/DSOs in art 63)

2. Transmission System Operators (TSO) and Distribution System Operators (DSO) for hydrogen

		Commission Proposal	EP Mandate	Council Mandate	Draft Agreement	
	Article 2, first paragraph, point (21a)					
G	189a		*(21a) 'hydrogen transmission' means the transport of hydrogen through a network which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to the delivery of hydrogen to customers, excluding supply;*		**(21a) 'hydrogen transmission network' means a network of pipelines for the transport of hydrogen of a high grade of purity, in particular, networks which include hydrogen interconnectors, or which are directly connected to hydrogen storage, hydrogen terminals or two or more hydrogen interconnectors or which primarily serve the purpose of transporting hydrogen to other hydrogen networks, hydrogen storages or hydrogen terminals. Such networks may serve the purpose of supplying directly connected customers.**	G
	Article 2, first paragraph, point (21b)					
G	189b		*(21b) 'hydrogen distribution' means the transport of hydrogen through local or regional pipeline networks with a view to its delivery to customers, excluding supply;*		**(21b) 'hydrogen distribution network' means a network of pipelines for the local or regional transport of hydrogen of a high grade of purity, which primarily serve the purpose of supplying directly connected customers, and do not include hydrogen interconnectors, and are not**	G

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				directly connected to hydrogen storage, unless the network in question was a gas distribution system on [entry into force of this Directive] and has been partially or fully repurposed for the transport of hydrogen, to hydrogen terminals or to two or more hydrogen interconnectors.

Recital on hydrogen cross-border distribution networks:

Hydrogen interconnectors, as hydrogen networks which serve the important purpose of connecting the national hydrogen networks of Member States, should be operated by hydrogen transmission network operators. Hydrogen distribution networks which extend across the border of a Member State but do not establish a cross-border connection between other hydrogen networks should not be considered as hydrogen interconnectors. In very limited cases and where a hydrogen distribution network is set out in the respective network development plan, it may be connected to a hydrogen transmission network in another Member State. As long as this distribution network is not additionally connected to a transmission network in the Member State where the distribution network is located, it should be operated as distribution network.

Recital on hydrogen storage facilities:

Hydrogen distribution networks, which mainly serve the purpose of supplying directly connected customers, should benefit from a lighter regulatory regime in relation to vertical unbundling and network planning. Such networks should not include hydrogen interconnectors or feature connections to major infrastructure, such as large-scale underground storage - unless the network in question is a repurposed gas network - or hydrogen interconnectors or terminals. However, the connection of smaller, underground or aboveground hydrogen storage installations, including easily replicable hydrogen storage tanks, to hydrogen distribution networks should not be restricted as they are expected to play a key role in balancing these networks.

3. Diversification of gas supplies (Articles 3a, 5 (only lines 183a-183e) and 7(only lines 208a-208e))

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 **taken by Member States pursuant** ~~referred~~ to 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~~ **their** 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 **taken by Member States pursuant** ~~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~~ **their** 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.

4. Biomethane (Articles: 3c, 17a, 20b)

A new Recital on the consideration of biomethane throughout Gas Regulation

The amendments set out in this Regulation are also intended to support the production of sustainable biomethane in the Union. In its 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', the Commission has proposed to significantly increase the production of sustainable biomethane in the Union [up to 35 bcm per year].

A new Recital to link with NECPs process

That coordinated mapping for the deployment of biogas and biomethane serves as a contribution for Member States to determine the contribution of biomethane to 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. Where Member States have established national trajectories for biogas and biomethane, they should in their NECPs specify policies and measures for their development, 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. In order to facilitate this, the European Commission has provided to Member States with significant biomethane potential an analysis of their national potential, as well as suggestions how the potential could be best harnessed. Furthermore article 25(2) of directive 2023/2413 (RED III) allows Member States to take into account for the transport targets in article 25(1) biogas that is injected into the national gas transmission and distribution infrastructure.

A reference to the 35 bcm biomethane objective in the European supply adequacy outlook which includes both a monitoring obligation and legal base to follow up through a Commission recommendation. Added in article 23(4) (line 322 of the 4-column document)

Article 23(4), first subparagraph			
4. 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	4. The European supply adequacy outlook referred to in paragraph 3, point (b), shall cover the overall adequacy of the gas ~~system~~***and hydrogen systems*** to supply current and projected demands for gas ***and***	4. 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-	4. 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

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.	***hydrogen*** 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 ***gas*** transmission system ***operator and hydrogen network*** operator.	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.	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 on the annual production of sustainable biomethane [in view of the ambition of 35 billion cubic meters].** **In case both the European supply outlook and the final updated national energy and climate plans show that the annual production is not sufficiently progressing [in view of the level of ambition of 35 bcm], the Commission may, if necessary to ensure the achievement of objectives of the Energy Union, issue recommendations to the Member States.**

5. Tariffs for hydrogen and gas networks (Article 6(7)

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 6(7)				
191	7. As of 1 January 2031, Article 15 shall apply also to tariffs for access to hydrogen networks. Articles 16 and 17 shall not apply. No tariffs shall be charged pursuant to Article 15 for access to hydrogen networks at interconnection points between Member States. Where a Member State decides to apply regulated third party access to hydrogen networks in accordance with Article 31 of [recast Gas Directive] before 1 January 2031, paragraph 1 of Article 15 shall be applicable to access tariff to hydrogen networks in that Member State.	7. As of 1 January 2031, Article 15 shall apply also to tariffs for access to hydrogen networks. Articles 16 and 17 shall not apply. ***From 1 January 2031,*** no tariffs shall be charged pursuant to Article 15 for access to hydrogen networks at interconnection points between Member States***, unless the regulatory authorities concerned jointly agree on a tariff regime for such access. In the absence of an agreement between the regulatory authorities concerned, ACER shall decide on the tariff regime, including the possibility of avoiding the application of tariffs, in accordance with Article 6(10) of Regulation (EU) 2019/942. When deciding on that tariff regime the regulatory authorities concerned or ACER shall ensure an appropriate return on investment and covering of the operational expenditure born by the hydrogen transmission network operators in relation to the given interconnection point***.	7. As of 1 January ~~2031~~**[2036]**, Article 15 shall apply also to tariffs for access to hydrogen networks **and the obligations on transmission system operators set out in paragraphs 1 and 2 of Article 15 shall apply to hydrogen network operators**. Articles 16 and 17 shall not apply~~.~~ ~~No tariffs shall be charged pursuant to Article 15 for access to hydrogen networks~~ **to hydrogen networks, but only to the natural gas system.** At interconnection points between Member States~~.~~, **when capacity is allocated via auctions, competent national authorities may decide to apply zero reserve price.** Where a Member State decides to apply regulated third party access to hydrogen networks in accordance with Article 31 of [recast Gas Directive] before 1 January ~~2031~~**[2036]**, paragraph 1 of Article 15 shall be applicable to access tariff to hydrogen networks in that Member State.	7. As of 1 January **[203X], or where a Member State decides to apply regulated third party access to hydrogen networks in accordance with Article 31 of [recast Gas Directive] before 1 January [203X],** Article 15 shall apply also to tariffs for access to hydrogen networks **and the obligations on transmission system operators set out in paragraphs 1 and 2 of Article 15 shall apply to hydrogen network operators**. Articles 16 and 17 shall not apply **to hydrogen networks, but only to the natural gas network.** ~~No tariffs shall be charged pursuant to Article 15 for access to hydrogen networks~~ ~~**to hydrogen networks, but only to the natural gas system.**~~ **Regulatory authorities shall consult regulatory authorities of directly connected Member States and stakeholders before taking a decision on the methodology for setting hydrogen network access tariffs**

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		Where a Member State decides to apply regulated third party access to hydrogen networks in accordance with Article 31 of [recast Gas Directive] before 1 January 2031, ~~*paragraph 1 of Article 15*~~***Article 15(1) of this Regulation*** shall be applicable to access tariff to hydrogen networks in that Member State.		**for the entry and exit points** at interconnection points between **them** ~~Member States~~, **including for any virtual interconnection points. Regulatory authorities shall also submit the envisaged tariff methodology to ACER. By derogation from article 15, the regulatory authorities may decide to charge no network access tariffs or, when capacity is allocated via auctions, to set the reserve prices to zero.** **When deciding on the methodology for setting network access tariffs at an interconnection point between Member States, the regulatory authorities concerned shall apply the tariff principles set out in paragraphs 1 and 2 of Article 15, ensure an appropriate return on investment for hydrogen network operators and take into account the outcome of the consultation, in particular with to the other regulatory authority, and the impact of the chosen network access tariffs on cross-border trade and market functioning in the Member States concerned.** **The regulatory authorities**

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				concerned may request ACER to provide a factual opinion on the methodology for setting the network access tariffs or reserve prices for such interconnection point, in accordance with Article 6(5) of Regulation (EU) 2019/942. ACER shall inform the Commission, where relevant, in accordance with Article 6(6) of Regulation (EU) 2019/942. When providing a factual opinion, ACER shall carry out its assessment with due regard to the principles referred to in the third subparagraph. ~~**when capacity is allocated via auctions, competent national authorities may decide to apply zero reserve price.**~~ Where a Member State decides to apply regulated third party access to hydrogen networks in accordance with Article 31 of [recast Gas Directive] before 1 January **[203X]**, paragraph 1 of Article 15 shall be applicable to access tariffs to hydrogen networks in that Member State. **Further details required to implement elements of this paragraph, in particular the**

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
				procedure for cross-border consultation or requesting an opinion of ACER, shall be set in a network code established on the basis of Article 54(2) of this Regulation. **Reference to be included in Article 54(2), point (e):** Changes in **yellow** to the General Approach: (e) rules regarding harmonised tariff structures for hydrogen network access, including **for tariffs at interconnection points as referred to in Article 6(7),** rules on the application of a reference price methodology, the associated consultation and publication requirements **including for the allowed and target revenues** as well as the calculation of reserve prices for standard capacity products and allowed revenue; **To note**: Date in Article 6(7) in brackets (set at 2036 in the Council GA) should be aligned with date in Article 6(6) on entry-exit system use for hydrogen.

6. Solidarity (Article 67)

Consolidated text of articles 11, 12 and 13 of the Security of Gas Supply Regulation

Article 11

Declaration of a crisis

[…]

(7a) By way of derogation from Articles 6(1) to (3), 6(b)(1)(a), 6(c)(2)(b) and 10(1)(l), Member States may, exceptionally, decide to take temporary measures to reduce the non-essential consumption of protected customers, in particular when one of the crisis levels pursuant to Article 11(1) and Article 12 is declared. Such measures shall be limited to non-essential uses of gas and shall take into account the following elements:

(a) the impact of a disruption on supply chains that are critical for society;

(b) the possible negative impacts in other Member States, in particular on supply chains of downstream sectors that are critical for society;

(c) the potential long-lasting damage to industrial installations;

(d) the possibilities for reducing consumption and substituting products in the Union.

Such exceptional measures may be taken only after an assessment is carried out by the competent authorities, as defined in Article 2, point (7), of Regulation (EU) 2017/1938, with regard to the conditions to determine such non-essential volumes of gas.

As a result of measures referred to in the first subparagraph, the reduction of consumption of vulnerable customers, as defined by Member States in accordance with Article XX of [recast Gas Directive], shall be avoided.

Article 12

Regional and Union emergency responses

[…]

5. The Member States, and in particular the competent authorities, shall ensure that:

(a) no measures are introduced which unduly restrict the flow of gas within the internal market at any time, in particular the flow of gas to the affected markets;

(b) no measures are introduced that are likely seriously to endanger the gas supply situation in another Member State; and

(c) cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible, in accordance with the emergency plan.

6. Where, at the request of a competent authority or a natural gas undertaking or on its own initiative, the Commission considers that, in a regional or Union emergency, action taken by a Member State or a competent authority or the behaviour of a natural gas undertaking is contrary to paragraph 5, the Commission shall request that Member State or competent authority to modify its action or to take action in order to ensure compliance with paragraph 5, informing it of the reasons therefor. Due account shall be taken of the need to operate the gas system safely at all times.

Within three days of notification of the Commission request, the Member State or the competent authority shall modify its action and notify the Commission thereof, or shall inform the Commission of the reasons for which it disagrees with the request. In the latter case, the Commission may, within three days of being informed, amend or withdraw its request or convene the Member State or the competent authority and, where the Commission considers it to be necessary, the GCG in order to consider the issue. The Commission shall set out its detailed reasons for requesting any modification to the action. The Member State or the competent authority shall **modify its action or take action in order to ensure compliance with paragraph 5 as far as technically and safely possible for the integrity of the gas system. The competent authority or the Member State shall inform to the Commission of the measures adopted.**

Article 13

Solidarity

[Note from the Presidency: paragraph 1 would remain as currently in force in the Security of Gas Supply Regulation]

1. If a Member State has requested the application of the solidarity measure pursuant to this Article, a Member State which is directly connected to the requesting Member State or, where the Member State so provides, its competent authority or transmission system operator or distribution system operator shall as far as possible without creating unsafe situations, take the necessary measures to ensure that the gas supply to customers other than solidarity protected customers in its territory is reduced or does not continue to the extent necessary and for as long as the gas supply to solidarity protected customers in the requesting Member State is not satisfied. The requesting Member State shall ensure that the relevant volume of gas is effectively delivered to solidarity protected customers in its territory.

In exceptional circumstances and upon a duly reasoned request by the relevant electricity or gas transmission system operator to its competent authority, the gas supply may also continue to certain critical gas-fired power plants as defined pursuant to Article 11(7) in the Member State providing solidarity if the lack of gas supply to such plants would result in severe damage in the functioning of the electricity system or would hamper the production and/or transportation of gas.

[Note from the Presidency: paragraph 2 would remain as currently in force in the Security of Gas Supply Regulation]

2. A Member State shall also provide the solidarity measure to another Member State to which it is connected via a third country unless flows are restricted through the third country. Such an extension of the measure shall be subject to the agreement of the relevant Member States, who shall involve, as appropriate, the third country through which they are connected.

[Note from the Presidency: the text below in paragraph 3 in **bold and italics** *is already in lines 800 to 804 of the General Approach]*

3. A solidarity measure shall be taken as a last resort and shall apply only if the requesting Member State has:

(a) declared an emergency state under Article 11;

(b) not been able to cover the deficit in gas supply to its solidarity protected customers despite the application of the measure referred to in Article 11(3) **or, where a Member State has taken temporary measures to reduce the non-essential consumption of protected customers in accordance with Article 11(7a), the essential volumes of consumption of gas to its solidarity protected customers;**

(c) exhausted all market-based measures ('voluntary measures'), all non-market-based measures ('mandatory measures') and other measures contained in its emergency plan;

(d) notified an explicit request to the Commission and to the competent authorities of all Member States with which it is connected either directly or pursuant to paragraph 2 via a third country, accompanied by a description of the implemented measures referred to in point (c) of this paragraph;

(3a) The Member States which are obliged to provide solidarity pursuant to paragraph 1 shall be entitled to deduct from the solidarity offer the supplies to its solidarity protected customers or, where a Member State has taken temporary measures to reduce the non-essential consumption of protected customers in accordance with Article 11(7a), the supplies of the essential volumes of consumption of gas to its solidarity protected customers.

[Note from the Presidency: the part of the text below in ***bold and italics*** is already in line 805 to 807 of the General Approach]

4. The Member States that receive a request for a solidarity measure shall make offers on the basis of voluntary demand-side measures as much as and for as long as possible, before resorting to non-market-based measures.

Where market-based measures prove insufficient for the Member State providing solidarity to address the deficit in gas supply to solidarity protected customers in the requesting Member State, the Member State providing solidarity may introduce non-market-based measures in order to comply with the obligations laid down in paragraphs 1 and 2.

5. If there is more than one Member State that could provide solidarity to a requesting Member State, the requesting Member State shall, after consulting all Member States required to provide solidarity, seek the most advantageous offer on the basis of cost, speed of delivery, reliability and diversification of supplies of gas. Should the available market based offers not be ~~enough~~sufficient to cover the deficit in gas supply to the solidarity protected customers in the requesting Member State **or, where the requesting Member State has taken temporary measures to reduce the non-essential consumption of protected customers in accordance with Article 11(7a), the deficit in gas supply of the essential volumes of consumption to its solidarity protected customers,** ***the Member States required to provide solidarity shall be obliged to activate non-market based measures.'***

6. The competent authority of the requesting Member State shall immediately inform the Commission and the competent authorities of the Member States providing solidarity when gas supply to solidarity protected customers in its territory is satisfied or where the obligations under paragraphs 1 and 2 are, based on its needs, reduced, or where they are suspended at the request of the Member State receiving solidarity.

7. The obligations laid down in paragraphs 1 and 2 shall apply subject to the technically safe and reliable operation of the gas system of a Member State providing solidarity and the limit of the maximum interconnection export capability of the relevant Member State infrastructure towards the requesting Member State. Technical, legal and financial arrangements may reflect such circumstances in particular those under which the market will deliver up to maximum interconnection capacity.

8. Solidarity under this Regulation shall be provided on the basis of compensation. The Member State requesting solidarity shall promptly pay, or ensure prompt payment of, fair compensation to the Member State providing solidarity.

Where two Member States have agreed on the necessary technical and legal arrangements pursuant to paragraph 10 (‘solidarity agreement’), such fair compensation shall cover at least:

(a) the gas delivered into the territory of the requesting Member State;

(b) all other relevant and reasonable costs incurred when providing solidarity, including, where appropriate, costs of such measures that may have been established in advance;

(c) reimbursement for any compensation resulting from judicial proceedings, arbitration proceedings or similar proceedings and settlements and related costs of such proceedings involving the Member State providing solidarity *vis-a-vis* entities involved in the provision of such solidarity.

Fair compensation pursuant to the first subparagraph shall include, inter alia, all reasonable costs that the Member State providing solidarity incurs from an obligation to pay compensation by virtue of fundamental rights guaranteed by Union law and by virtue of the applicable international obligations when implementing this Article and further reasonable costs incurred from payment of compensation pursuant to national compensation rules.

Member States shall adopt the necessary measures, in particular the technical, legal and financial arrangements pursuant to paragraph 10, to implement the first**,** second **and third** subparagraphs of this paragraph. Such measures may provide for the practical modalities of prompt payment.

(8a) Where two Member States have not agreed on the necessary technical, legal and financial arrangements by way of a solidarity agreement under paragraph 10, the delivery of gas pursuant to the obligation in paragraph 1 in the event of an emergency shall be subject to the conditions set out in this paragraph.

The compensation for the solidarity measure shall not exceed reasonable costs and, unless both the Member State requesting solidarity and the Member State providing solidarity agree otherwise, it shall include:

(a) the price for gas in the Member State providing solidarity;

(b) the storage and transport costs;

(c) litigation costs for related judicial or arbitration proceedings involving the Member State providing solidarity;

(d) other indirect costs that are not covered by the price for gas, such as the reimbursement of financial or other damages resulting from enforced firm load shedding of customers related to the provision of solidarity.

Unless the Member State requesting solidarity and the Member State providing solidarity agree on another price, the price for the gas supplied to the Member State requesting solidarity shall correspond to the [day-ahead market price in the Member State providing solidarity the day preceding the request for solidarity or the corresponding day-ahead market price at the closest accessible exchange, at the closest accessible virtual trading point, or at an agreed hub over the day preceding the request for solidarity.]

Compensation for the gas volumes delivered in the context of a solidarity request shall be paid directly by the Member State requesting solidarity to the Member State providing solidarity or the entity both Member States indicate in their response to the solidarity request and the confirmation of receipt and of the volume to be taken.

The Member State to which the request for a solidarity measure is addressed shall provide the solidarity measure as soon as possible and no later than the indicated delivery time for the request. A Member State may refuse to provide solidarity to a Member State requesting solidarity only if it demonstrates that:

(a) it does not have enough gas for the volumes referred to in Article 2(6); or

(b) it does not have sufficient interconnection capacity available, as set out in Article 13(7), or flows are restricted through a third country;.

Such refusal shall be strictly limited to the volumes of gas affected by one or both of the aforementioned limitations.

In addition to the default rules provided for in this paragraph, Member States may agree on technical arrangements and coordination of the provision of solidarity.

This paragraph shall be without prejudice to existing arrangements for the safe and reliable operation of the gas system.

<u>(8b) Where two Member States have not agreed on the necessary technical, legal and financial arrangements by way of a solidarity agreement pursuant to paragraph 10, the Member State requesting the application of the solidarity measures shall issue a solidarity request to another Member State, indicating at least the following information:</u>

<u>(a) contact details of the competent authority of the Member State;</u>

<u>(b) contact details of the relevant transmission system operators of the Member State (if relevant);</u>

<u>(c) contact details of the third party acting on behalf of the Member State (if relevant);</u>

<u>(d) delivery period including timing of the first possible delivery and the anticipated duration of deliveries;</u>

<u>(e) delivery and interconnection points;</u>

<u>(f) gas volume in kWh for each interconnection point;</u>

<u>(g) gas quality.</u>

<u>The solidarity request shall be sent simultaneously to Member States potentially being able to provide solidarity measures, to the Commission and to the crisis managers designated pursuant to Article 10(1), point (g).</u>

<u>The Member States receiving a solidarity request shall send a response that indicates the contact details referred to in paragraph 1, points (a), (b) and (c), and the volume and quality that can be supplied to the interconnection points at the time requested as referred to in paragraph 1, points (d) to (g). If the volume that can be supplied by voluntary measures is insufficient, t~~T~~he response shall indicate the volume resulting from possible curtailment, from the release of strategic stocks or from the application of other measures.</u>

<u>Solidarity requests shall be submitted at least [48] hours before the indicated delivery time for gas.</u>

<u>The response to solidarity requests shall be effective within [18] hours. The confirmation of the volume to be taken by the Member State requesting solidarity shall be effective within [six hours] of receipt of the solidarity offer and at least 24 hours before the indicated delivery time.</u>

The request may be submitted for a period of one day or several days, and the response shall match the requested duration.

Where there are several Member States providing solidarity and bilateral solidarity arrangements are in place with one or several of them, those arrangements shall prevail between the Member States having agreed bilaterally. The default rules provided for in this paragraph shall only be applicable in relation to the other Member States providing solidarity.

The Commission may facilitate the implementation of solidarity, in particular by means of a template accessible on a secured online platform to enable real-time transmission of requests and offers.

9. Member States shall ensure that the provisions of this Article are implemented in conformity with the Treaties, the Charter of Fundamental Rights of the European Union, as well as the applicable international obligations. They shall take the necessary measures to that effect.

10. By 1 December 20**24**~~18~~, the Member States shall **make their best endeavours to** adopt the necessary measures, including those agreed in technical, legal and financial arrangements, to ensure that gas is supplied to solidarity protected customers in the requesting Member State in accordance with paragraphs 1 and 2. The technical, legal and financial arrangements shall be agreed among the Member States which are directly connected or, in accordance with paragraph 2, **connected** via a third country, and shall be described in their respective emergency plans. Such arrangements may cover, among others, the following elements:

(a) the operational safety of networks;

(b) gas prices to be applied and/or the methodology for their setting, taking into account the impact on the functioning of the market;

(c) the use of interconnections, including bi-directional capacity and underground gas storage;

(d) gas volumes or the methodology for their setting;

(e) categories of costs that will have to be covered by a fair and prompt compensation, that may include damages for curtailed industry;

(f) an indication of the method how the fair compensation could be calculated.

The financial arrangement agreed between Member States before solidarity is requested shall contain provisions that allow for the calculation of the fair compensation of at least all relevant and reasonable costs incurred when providing solidarity and an undertaking that such compensation will be paid **to**.

Any compensation mechanism shall provide incentives to participate in market-based solutions such as auctions and demand response mechanisms. It shall not create perverse incentives, including in financial terms, for market players to postpone their action until non-market-based measures are applied. All compensation mechanisms or at least their summary shall be included in the emergency plans.

[Note from the Presidency: the part of the text below in ***bold and italics*** is already in line 809 of the General Approach]

Where a solidarity measure been provided in accordance with paragraphs 1 and 2, the final amount of the **fair** ***compensation that has been paid by the requesting Member State shall be subject to ex-post control by the Regulatory Authorit*****ies** ***of the providing Member State*** **and the requesting Member State*****, within three months of the lifting of the emergency.***

[Where the national regulatory authorities have not reached an agreement on the calculation of the final amount of the fair compensation, they shall inform the relevant competent authorities, the Commission and the Agency [ACER] without delay. In that case, or upon a joint request from the national regulatory authorities, the Agency shall calculate the appropriate level of the fair compensation for the indirect costs occurred as a result of the provision of solidarity and provide a factual opinion within three months of the date of referral to the Agency. Before providing such factual opinion, the Agency shall consult the national regulatory authorities and the relevant competent authorities. The three-month period referred to in the second subparagraph may be extended by an additional period of two months where further information is sought by the Agency. That additional period shall begin on the day following receipt of the complete information]~~***. The Requesting Member State shall be consulted and give its opinion on the conclusion of the ex-post control. Following the consultation with the Requesting Member State, the authority which exercises this ex-post control is entitled to require a rectification of the amount of the compensation, taking into account the opinion of the Requesting Member State.***~~ ***The conclusions of this ex-post control shall be transmitted to the European Commission, which will take them into consideration in its report on the emergency pursuant to Article 14(3).***

Where new and significant reasonable costs to be included in the fair compensation arise, as a result of national judicial proceeding pursuant to point (c) of the second subparagraph of paragraph 8 after concluding the ex-post control process, the providing Member State shall inform immediately the requesting Member State. The Regulatory Authorities, and the Agency where relevant, shall carry out a new ex-post control pursuant to the fourth subparagraph of this paragraph. The outcome of this new ex-post control is without prejudice to the obligation for a providing Member State to compensate damages to customers under national law and its right to receive a fair compensation.

11. For as long as a Member State can cover the gas consumption for its solidarity protected customers from its own production, it shall be exempt from the obligation to conclude technical, legal and financial arrangements with Member States with which it is directly connected or, in accordance with paragraph 2, via a third country, for the purpose of receiving solidarity. Such an exemption shall not affect the obligation of the relevant Member State to provide solidarity to other Member States pursuant to this Article.

~~**12. By 1 December 2017 and after consulting the GCG, the Commission shall provide for legally non-binding guidance for the key elements of the technical, legal and financial arrangements especially on how to apply the elements described in paragraphs 8 and 10 in practice.**~~

~~**13. Where Member States do not agree on the necessary technical, legal and financial arrangements by 1 October 2018, the Commission may after consulting the competent authorities concerned, propose a framework for such measures setting out the necessary principles to make them operational which shall build on the Commission's guidance set out in paragraph 12. Member States shall finalise their arrangements by 1 December 2018 taking utmost account of the Commission's proposal.**~~

~~**14. The applicability of this Article shall not be affected if Member States fail to agree or finalise their technical, legal and financial arrangements. In such a situation the Member States concerned shall agree on the necessary ad hoc measures and the Member State requesting solidarity shall provide an undertaking in accordance with point (d) of paragraph 3.**~~

~~15~~**12**. The obligations laid down in paragraphs 1 and 2 of this Article shall cease to apply immediately after the declaration of the end of an emergency or **when** the Commission concludes, in accordance with the first subparagraph of Article 11(8), that the declaration of an emergency is not or is no longer justified.

~~16~~**13**. Where the Union incurs costs by virtue of any liability, other than for unlawful acts or conduct pursuant to the second paragraph of Article 340 TFEU, in respect of measures that Member States are required to take pursuant to this Article, those costs shall be reimbursed to it by the Member State receiving solidarity.

New article 13a of the Security of Gas Supply Regulation

"Article 13a

Voluntary contribution by indirectly connected Member States based on voluntary measures

1. **Without prejudice to the principle of energy solidarity and the obligation to provide solidarity pursuant to Article 13(1) and (2), Member States which are indirectly connected via another Member State and have received a request pursuant to paragraph 3 may contribute to provide the requested gas volumes pursuant to Article 13(1) or (2) pursuant to the provisions of this Article, using voluntary measures as defined in Article 13(3).**

2. **The Member State requesting solidarity under Article 13 may send a request for a voluntary contribution simultaneously to one or more indirectly connected Member States to seek the most advantageous offer or combination of offers on the basis of cost, speed of delivery, reliability and diversification of supplies of gas pursuant to Article 13(4).**

Requests for voluntary contributions to other indirectly connected Member States pursuant to subparagraph 1 shall be submitted to the indirectly connected Member States potentially being able to provide gas volumes on the basis of voluntary measures, to the Commission and to the crisis managers designated pursuant to Article 10(1), point (g), at least 48 hours before the indicated delivery time for gas and indicate at least the information referred to in points (a) to (g) of the first subparagraph of Article 13(8b).

Member States that receive the request for a voluntary contribution pursuant to subparagraph 1, shall respond to the requesting Member State, and inform the Commission and the crisis managers designated pursuant to Article 10(1), point (g) within 18 hours, indicating if they can make offer gas volumes on the basis of voluntary measures. The response shall indicate at least the information referred to in Article 13(8a). Member States may respond by indicating their inability to participate with a voluntary contribution.

3. **When the sum of the gas volumes resulting from the offers pursuant to Article 13(1), (2) and offers pursuant to this Article do not reach the required volumes, offers pursuant to this Article shall be automatically selected.**

When the sum of the gas volumes resulting from the offers pursuant to Article 13(1), (2) and offers pursuant to this Article exceed the required volumes, offers pursuant to this Article shall be taken into account in the process of selecting offers pursuant to Article 13 paragraph 4, and the requesting Member State shall, after consulting all involved Member States, seek the most advantageous offer, or a combination of offers amongst offers pursuant to Article 13 or this article, on the basis of cost, speed of delivery, reliability and diversification. In case voluntary contributions under this Article are selected by the requesting Member States, the request under Article 13(1) and (2) shall be reduced accordingly.

Where the requesting Member State selects a combination of offers pursuant to Article 13(1), (2) and offers pursuant to this Article, the Commission shall consult without delay and within 4 hours with ENTSOG, and ENTSOG with the relevant gas transmission system operators, whether such selected combination of offers is technically feasible.

The requesting Member State shall inform the concerned Member States which volumes it has selected within six hours of receipt of the offer and at least 24 hours before the indicated delivery time.

4. **When an indirectly connected Member State agrees to provide a voluntary contribution to the requesting Member State pursuant to paragraphs 1 and 2, the fair compensation shall not exceed reasonable costs and may include the costs set out in the second subparagraph of Article 13(8a). The final amount of the fair compensation shall be subject to the ex-post control mechanism described in the fourth subparagraph of Article 13(10).**

5. **The voluntary contributions provided by indirectly connected Member States shall be coordinated by the transmission system operators of the relevant Member States who shall cooperate and exchange information using the ReCo System for Gas established by ENTSOG pursuant to Article 3(6), in order to identify the available interconnection capacities. ENTSOG shall inform the Commission and the competent authorities of the Member States concerned accordingly.”**

Consolidated text of article 17a of the Security of Gas Supply Regulation

Article 17a

Commission reporting

1. By 28 February 2023 and annually thereafter, the Commission shall submit reports to the European Parliament and to the Council, containing:

(a) an overview of the measures taken by Member States to fulfil the storage obligations;
(b) an overview of the time needed for the certification procedure set out in Article 3a of Regulation (EC) No 715/2009;
(c) an overview of the measures requested by the Commission in order to ensure compliance with the filling trajectories and the filling targets;
(d) an analysis of the potential effects of this Regulation on gas prices and potential gas savings in relation to Article 6b(4).

2. The report that is to be submitted by 28 February 2025 shall also include a general assessment of the application of Articles 6a to 6d, Article 7(1) and (4)(g), **Article 13,** ***Article 16(3), Article 17a, Article 18a, Article 20(4), and Annexes Ia and Ib to this Regulation. The report shall be accompanied, where necessary, by a legislative proposal to amend this Regulation.***

Consolidated text of article 6(5) the ACER Regulation (Regulation (EU) 2019/942)

[Note from the Presidency: This provision should be inserted in article 65 of the Hydrogen and Gas Regulation, as a new line 689a. Text unmarked, is text in the ACER Regulation. Text in **yellow, bold and underlined** would be new text to be introduced in the ACER Regulation by this amendment.

Article 6(5) is replaced by the following:

"5. ACER shall provide a factual opinion at the request of one or more regulatory authorities or of the Commission, on whether a decision taken by a regulatory authority complies with the network codes and guidelines referred to in Regulation (EU) 2019/943, Regulation (EC) No 715/2009, Directive (EU) 2019/944 or Directive 2009/73/EC, ~~or~~ with other relevant provisions of those directives or regulations, **or with article 13 of Regulation (EU) 2017/1938,**"

7. Demand aggregation (Article 67)

CHAPTER II

GENERAL RULES APPLICABLE TO THE NATURAL GAS AND HYDROGEN SYSTEMS

(...)

SECTION 5

Demand aggregation <u>and joint purchasing</u>

ARTICLE X-0
MECHANISMS FOR DEMAND AGGREGATION <u>AND JOINT PURCHASING</u>

1. The Commission shall establish a mechanism to enable voluntary demand aggregation **<u>and joint purchasing</u>** of natural gas pursuant Articles Xa to Xf.

ARTICLE X A
CONTRACTS WITH SERVICE PROVIDERS

1. By **way of** derogation from Article 176 of Regulation (EU, Euratom) 2018/1046, the Commission may contract the necessary services of an entity or entities established in the Union through the relevant procurement procedures under Regulation (EU, Euratom) 2018/1046, in order to implement the objectives set out in Article X-0.
2. Where the Commission selects a service provider, it shall do so on the basis of criteria that safeguard the integrity of the internal market, ensure competition and security of supply, and are in line with Article Xb. The Commission **<u>shall</u>** specify the requirements applicable to the service providers in the relevant tender specifications.

ARTICLE X B
CRITERIA FOR SELECTING THE SERVICE PROVIDERS

1. The service providers shall be selected by the Commission **among entities complying with** the following eligibility criteria:

   (a) the service providers shall be established and have their operational seat in the territory of a Member State;

   (b) the service providers and their subcontractors shall not be:

   (i) subject to EU restrictive measures adopted under Article 29 of the Treaty on the European Union or Article 215 of the Treaty on the Functioning of the EU, consisting of a prohibition to make available or transfer funds or economic resources or to provide financing or financial assistance to them directly or indirectly, or of an asset freeze; or

   (ii) directly or indirectly **owned or** controlled by, or acting on behalf or at the direction of natural or legal persons, entities or bodies targeted by such Union restrictive measures.

2. Without prejudice to other due diligence obligations, contractual obligations between the Commission and the service providers shall be put in place to ensure that the service providers when carrying out their tasks do not make any funds or economic resources available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies:

   (a) subject to EU restrictive measures adopted under Article 29 of the Treaty on the European Union or Article 215 of the Treaty on the Functioning of the EU, consisting of a prohibition to make available or transfer funds or economic resources or to provide financing or financial assistance to them directly or indirectly, or of an asset freeze; or,

   (b) directly or indirectly owned or controlled by, or acting on behalf or at the direction of natural or legal persons, entities or bodies targeted by such Union restrictive measures.

3. The service providers shall not be part of a vertically integrated undertaking active in the production or supply of natural gas as referred to [Article 2, point (20), of Directive 2009/73/EC of the European Parliament and of the Council], except for an entity unbundled in accordance with [Chapter IV of that Directive].

ARTICLE X C
TASKS OF THE SERVICE PROVIDERS

The service providers shall organise the tasks of **demand aggregation and joint purchasing of natural gas**. In particular, but not exclusively, the service providers may implement the following elements:

(a) assessment and aggregation of demand of natural gas undertakings and undertakings consuming gas;

(b) **collection** of offers from **natural gas** suppliers or producers in order to match them with the aggregated demand;

(c) allocation of **supply offers to participants in demand aggregation**, taking into account a proportionate distribution between smaller and larger participants **depending on the volumes of demand submitted**.

ARTICLE X D
PARTICIPATION IN DEMAND AGGREGATION

1. Participation in the mechanisms **for demand aggregation and joint purchasing of natural gas**, demand assessment and demand aggregation shall be open **on a non-discriminatory basis** to natural gas undertakings and undertakings consuming **natural** gas established in the Union. Such undertakings shall be precluded from participating as suppliers, producers and purchasers, if they are:

   (a) subject to EU restrictive measures adopted under Article 29 of the Treaty on the European Union or Article 215 of the Treaty on the Functioning of the EU, consisting of a prohibition to make available or transfer funds or economic resources or to provide financing or financial assistance to them directly or indirectly, or of an asset freeze; or

   (b) directly or indirectly owned or controlled by, or acting on behalf or at the direction of natural or legal persons, entities or bodies targeted by such Union restrictive measures.

2. Contractual obligations shall be put in place to ensure that no funds or economic resources are made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, which are:

   (a) subject to EU restrictive measures adopted under Article 29 of the Treaty on the European Union or Article 215 of the Treaty on the Functioning of the EU, consisting of a prohibition to make available or transfer funds or economic resources or to provide financing or financial assistance to them directly or indirectly, or of an asset freeze; or

   (b) directly or indirectly owned or controlled by, or acting on behalf or at the direction of natural or legal persons, entities or bodies targeted by such Union restrictive measures.

3. **Natural gas undertakings and undertakings consuming gas** established in the Energy Community Contracting Parties may participate in the demand aggregation provided that the necessary measures or arrangements are in place to allow their participation in the demand aggregation pursuant to this Section.
4. Participants in demand aggregation shall report to the Commission or the relevant service provider, as appropriate, the following elements of the concluded contracts:
   a. volume;
   b. counterparts;
   c. duration.
5. Participants in demand aggregation **and joint purchasing** may report to the Commission or the relevant service provider, as appropriate, if matching and tendering did not result in the conclusion of a supply contract.
6. **The recipient of the information reported under paragraphs 6 and 7 shall ensure that access to confidential information is strictly limited to the service provider and to Commission services on a strictly need-to-know basis. Such information shall be handled with due confidentiality.**

ARTICLE X E
NATURAL GAS SUPPLIES EXCLUDED FROM DEMAND AGGREGATION AND JOINT PURCHASING

1. The Commission may decide to temporarily **reject** offers of natural gas **or natural gas supplies originating in, or of LNG supplies from LNG facilities located in,** the Russian Federation or Belarus**, for a fixed term which may be renewed if justified**, where this is necessary to protect the essential security interests or security of supply of one or several Member States or those of the Union, provided that such measures:
   a. 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;
   b. respect the principle of energy solidarity,
   c. are taken in compliance with the rights and obligations of the Member States and of the Union with respect to third countries.

2. The Commission shall decide on any measures referred to in paragraph 1 before the first tendering round and, where relevant, before each tendering round.

3. Taking into account the need to ensure security of supply in the Union, measures taken by the Commission pursuant to paragraph 1 may be aimed at diversifying gas or LNG supplies with a view to reducing dependence on Russian gas, where it can be demonstrated that such measures are necessary to protect their essential security interests and those of the Union.

4. Decisions referred to in paragraph 1, shall contain a list of:

a. Entry points from the Russian Federation or Belarus or other third countries serving as transit countries, which shall not be used to deliver natural gas supplies subject to demand aggregation.

b. LNG facilities located in the Russian Federation or Belarus, which shall not be used to liquefy or reload the natural gas supplies subject to demand aggregation.

5. Offers from natural gas suppliers or producers participating in the process of supply aggregation shall confirm, at the moment of submission of the offers, that their supplies are not excluded pursuant to paragraph 1.

Deliveries of supplies coordinated through the mechanism for demand aggregation and joint purchasing shall be accompanied by a certificate of origin informing about the origin of the gas.

6. The Commission shall take appropriate measures and may require from natural gas suppliers or producers participating in the process of demand aggregation all the necessary information to enable the effective application of this article.

ARTICLE X F
COORDINATION GROUPS

1. In order to facilitate the coordination and information exchange in relation to demand aggregation **and joint purchasing of natural gas**, the Commission **shall be assisted by a Steering Board**.

2. **The Steering Board shall be composed of one representative of each Member State and one of the Commission. The representatives of the Energy Community Contracting Parties may participate in the Steering Board upon invitation of the Commission on all matters of mutual concern. The Commission representative shall chair the Steering Board.**

ARTICLE XI GUARANTEES

A Member States [, in respect of participants established in its territory,] or other stakeholders, may provide liquidity support, including guarantees, to participants established in its territory in the process of demand aggregation of natural gas organised by the service provider, in compliance with State aid rules where applicable, and in particular where the competent authority of the relevant Member State has declared one of the crisis levels referred to in article 11(1) of the [Regulation (EU) 2017/1938].

ARTICLE XJ REPORTING

The Commission shall submit an annual report to the European Parliament and to the Council on the functioning on the mechanism to enable voluntary demand aggregation and joint purchasing of natural gas.

The report shall include at least:

i. **information on the number of gas undertakings and volumes of gas participating in the mechanism of demand aggregation;**

ii. **information on the number of contracts concluded and the resulting volumes of gas respectively contracted and delivered to the Union, differentiating by entry point and Member State or third country in which the gas originates;**

iii. **an assessment of the characteristics of the contracts concluded in relation to the context of the gas market;**

iv. **a description of the applicable rules in tendering rounds to participants in demand aggregation and gas suppliers or producers;**

v. **an overview of the overall cost of the mechanism, including the expenses incurred for the service provider.**

Article 63a

1. By 31 December 2030, the Commission shall review this Regulation and shall submit a report to the European Parliament and to the Council.

2. **By 31 December [202X], the Commission shall assess the functioning of the mechanism for demand aggregation and joint purchasing and analyse whether hydrogen should be included in that mechanism.**

The review referred to in the first paragraph shall, as appropriate, be accompanied by legislative proposals, including to establish voluntary demand assessment and demand aggregation for hydrogen, as appropriate.