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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

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)

- Progress report

Delegations will find in Annex a progress report on the proposals mentioned in the subject above, due to be presented at the TTE (Energy) Council on 19 December 2022, with a view to inviting the Council to take note of it.

The present report has been drawn up under the responsibility of the Presidency and is without prejudice to particular points of interest or further contributions of individual delegations. It sets out the work done so far in the Council's preparatory bodies and gives an account of the state of play in the examination of the above-mentioned proposals.

ANNEX

Information from the Presidency on the progress achieved in the examination of the proposals for Directive and Regulation on the internal markets for renewable and natural gases and for hydrogen

I. INTRODUCTION

- 1) On 15 December 2021, the Commission submitted proposals for the Directive on common rules for the internal markets in renewable and natural gases and in hydrogen and the Regulation on the internal markets for renewable and natural gases and for hydrogen as a new EU framework to decarbonise gas markets, promote hydrogen and reduce methane emissions.
- 2) The Hydrogen and Gas markets Decarbonisation Package aims at enabling the decarbonisation of natural gas consumption, creating a regulatory framework for dedicated hydrogen infrastructure and markets and integrated network planning. They also establish rules for the consumers and strengthen security of supply.
- 3) On 19 May 2022, the European Economic and Social Committee adopted its opinion on the proposal and the European Committee of the Regions delivered its opinion on 12 October 2022.
- 4) At the European Parliament, the Industry, Research and Energy (ITRE) is the leader for both files. The rapporteur appointed for the Regulation is MEP Jerzy Buzek (EPP, Poland) and for the Directive it is MEP Jens Geier (S&D, Germany).

II. STATE OF PLAY

- 1) In July 2022, the Czech Presidency started discussions on the proposals in the Energy Working Party. Based on the first outcomes of these discussions, the Presidency submitted the first revision of both the Regulation and the Directive on 9 September 2022. Further technical discussions on the first revision followed in the Energy Working Party.

The proposals were also discussed at the TTE (Energy) Council on 25 October 2022 in Luxembourg with the main focus on crucial and sensitive elements, in particular:

- I. the time frame of development of hydrogen markets and the vertical unbundling of Hydrogen Network Operators;
 - II. cross-border tariffs in dedicated hydrogen networks and tariff discounts for renewable and low-carbon gases in the natural gas system; and,
 - III. blending of hydrogen in the natural gas grid.
- 2) Ministers provided the Presidency with political guidance and set a direction for further work. Subsequently, the Presidency proposed the second revision of the Regulation and Directive on 23 November 2022, which was discussed in the Energy Working Party and on 7 December 2022 in Coreper. In general, the Member States supported the manner in which the TTE policy debate was reflected in the second revision of the proposals and raised some more concerns to be reflected in the course of further work on the legislation. The third revision, set out in documents: 15919/22 and 15920/22 was sent out to delegations on 12 December 2022. In the third revision, the Presidency addressed the outcome of the latest debates as well as a number of technical changes that reflect comments made by Member States in writing and the Commission's Corrigendum (15111/1/21 REV 1 + ADD 1 REV 1 and 15096/1/21 REV 1 + ADD 2 REV 1) as issued on 23 November 2022. All delegations hold a scrutiny and/or parliamentary reservations on the text and are still analysing the provisions of both files.

III. MAIN ISSUES

1) The main political elements addressed as follow-up to the Energy Council on 25 October 2022

a) Vertical unbundling of hydrogen network operators

The initial Commission proposals for the vertical unbundling of hydrogen network operators in Article 62 of the Directive comprised the expiry of the Independent Transmission Operator ('ITO') unbundling model by the end of 2030 and the availability of the independent system operator ('ISO') and ITO models only for hydrogen networks which belonged to vertically integrated undertakings at the entry into force of the Gas Package. The REV 3 no longer contains an expiry date for the ITO unbundling model and explicit possibility for the Commission to review the feasibility of the ITO unbundling model by 2031, whilst time limitation for the ISO unbundling model was removed. The ownership unbundling model was retained as the default unbundling model. Hydrogen Network Operators can also benefit from derogations for existing hydrogen networks and geographically confined networks (Articles 47 and 48 of the Directive), whose application has been simplified and facilitated in REV 3.

b) Hydrogen market design and the end of the transition phase

The Commission proposals included a ramp-up phase for hydrogen markets to develop until 2030, after which more detailed rules would apply. To reflect the uncertainties of the development of the emerging hydrogen market, this date was generally postponed until [2035]. This means that, among other provisions, the implementation of regulated third party access to hydrogen networks (Article 31 of the Directive), as well as the new hydrogen market design with no tariffs for access at interconnection points between Member States (Article 6 of the Regulation) will only come into effect at the end of the transition phase, as of 1 January 2036.

c) Tariff discounts for renewable and low-carbon gases in the natural gas system

In Article 16 of the Regulation, a distinction was introduced between tariff discounts for renewable and low-carbon gases in the natural system with tariffs where renewable gases receive tariff discounts of [100 %] and low-carbon gases a discount of [75 %]. The possibility for the national regulatory authorities to decide to decrease or not to apply discounts for injection from production facilities and storage was explicitly introduced, reflecting the concerns of those Member States which have, or expect to have, a high share of renewable/low-carbon gases in the energy mix or might have concerns with the potential impact on cross-border flows. Tariff discounts at entry and exit points to and from third countries were removed from the proposal.

d) Blending of hydrogen and gas quality

The maximum level of hydrogen blended into the natural gas network that gas Transmission System Operators are obliged to accept at interconnection points, following the dispute settlement procedure stipulated in Art. 19 of the Regulation where relevant, was changed from 5% to [2]%. The reduction reflects the scepticism of several Member States towards blending, whilst still ensuring unhindered cross-border flows of gas. The Regulation maintains a harmonized approach concerning gas quality management and dispute settlement, which was welcomed by many Member States.

e) Low-carbon gases

A new Article 8a in the Directive was introduced following calls of significant number of Member States for such provision at the October Energy Council to clarify the possibility for Member States to use low-carbon hydrogen and low-carbon fuels to meet the decarbonisation objectives. However, there is also an equal number of those Member States who want to put focus on renewable gases.

2) The main changes in the third revision are as follows:

- A new Recital 74a of the Regulation was introduced to anticipate that Member States, to ensure the security of supply, may decide to take proportionate measures to temporarily limit up-front bidding for capacity by any single network user at entry points from third countries and at LNG terminals.
- In Article 20b of the Regulation on Common specifications for biomethane, the additional wording provides clarification on the scope of this Article.
- Article 54 of the Regulation was amended to avoid that the first movers have a monopoly on developing hydrogen market rules/network codes in the ENNOH, respective changes were proposed in Recital 56 to align with this Article.
- In Article 67 (paras 4, 9, 11) of the Regulation, a more extensive addition was incorporated reflecting the Corrigendum 15096/1/21 REV 1 + ADD 2 REV 1.
- Recital 70 of the Directive now clarifies that the horizontal unbundling provisions enshrined in Article 63 of the Directive do not imply functional unbundling and thus, synergies between network operators, such as by sharing services and governance structures, can be fully retained.
- In Article 8a of the Directive on the role of low-carbon hydrogen in decarbonization objectives, these provisions were put in square brackets in order to enable further discussion with a view to find a compromise.
- Article 46(2) of the Directive was amended to provide discretion for the Member States to attribute the responsibility for building cross-border interconnections to certain hydrogen network operators only.
- In Article 62 of the Directive, the time constraint on the availability of the ISO unbundling model for hydrogen network operators was removed.
- Article 80 of the Directive was changed to modify the circumstances under which the Member States that are not directly connected to the interconnected system of any other Member State may derogate from the particular provisions of the Directive.

- 3) Whilst important progress has been made, some work nonetheless remains to be done. This includes, based on discussions that took place during the Czech Presidency, among other things, the following points:
- The alignment of the security of supply provisions in Article 67 of the Recast Regulation with new provisions agreed in parallel work streams, including the Storage Regulation (Regulation (EU) 2022/1032)) and the proposed Solidarity Regulation COM(2022) 549 final) and Emergency Regulation (COM/2022/473 final). It will need to be considered to what extent and how the new agreed rights and obligations should be incorporated in the Gas Security of Supply Regulation for the long term.
 - Ensuring that the rules on access and connection to natural gas networks enable a phase-out of gas while protecting adequately consumer rights.
 - A clarification of Article 14 Directive on Citizens energy communities, its role and link with citizens energy communities established by the Directive 2019/944 and renewable energy communities set up under Directive 2018/2001.
 - Further elaboration on the possibility to take proportionate measures to temporarily limit up-front bidding for capacity at entry points from third countries and at LNG terminals.
 - Comprehensive discussion to continue the quest for solution on the role of low-carbon hydrogen in decarbonization objectives under Article 8a of the Directive.

IV. CONCLUSION

- 1) The Council is invited to take note of the progress report provided by the Presidency.