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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) - General approach

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 (“Gas Package”) 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. It also establishes rules for the consumers and strengthen security of supply.

II. STATE OF PLAY

1. In July 2022, the Czech Presidency started negotiations on the proposals in the Energy Working Party, which were continued by the Swedish Presidency during first quarter of 2023. Based on these discussions, the Presidency submitted 6 revisions of both the Regulation and the Directive.
2. The proposals were also discussed at the TTE (Energy) Council on 25 October 2022 in Luxembourg with the main focus on the development of hydrogen markets, tariff discounts for hydrogen, renewable and low-carbon gases and blending of hydrogen into natural gas system. Ministers provided the Presidency with political guidance and set a direction for further work.
3. The current 6th revision as set out in documents 7160/23 and 7161/23 should serve as the basis for the General Approach. In the current revision, changes are highlighted in yellow and new text is **bold underline** and deletions are ~~strikethrough~~. Text from 5 previous revisions is marked ***bold italics*** and deletions are ~~***strikethrough bold italics***~~

III. WORK WITHIN THE EUROPEAN PARLIAMENT AND OTHER UNION BODIES

1. In 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). The Parliament adopted both reports on 16 February 2023.
2. 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.

IV. MAIN ELEMENTS OF THE PRESIDENCY COMPROMISE PROPOSAL

1. The Member States supported the manner in which the TTE policy debate and discussions within the Energy Working Party were reflected in the course of work on the six revisions of the two proposals.
2. The most notable changes can be summarised as follows:

As regards the Regulation:

- a) In Article 3 within the market principles, it was clarified that undertakings active in the same entry-exit system will be able to exchange gases at the virtual trading points or physically at interconnection points.
- b) In Articles 5(6), 7(7) and recital 70a, a new exceptional provision was introduced allowing Member States to take proportionate measures to limit temporarily up-front bidding for capacity by any single network user at entry points and at LNG terminals for deliveries from the Russian Federation and Belarus.
- c) Regarding certification of storage system operators, the text from the Regulation on Gas Storage adopted in June 2022 was incorporated here in new Article 13b. In relation to this addition, a new paragraph 3 was added to Article 15 concerning application of a 100% discount to capacity-based transmission and distribution tariffs to underground gas storage facilities and LNG facilities.
- d) In Article 16, it was differentiated between tariff discounts for renewable and low-carbon gases in the natural system with tariffs being set at 100% and 75% respectively. The possibility for the national regulatory authorities to decide not to apply discounts or to set them lower was included, reflecting the concerns of those Member States which have, or expect to have, high share of renewable/low-carbon gases in the energy mix or might have concerns with the potential impact on cross-border flows.

- e) Article 19 regarding the cross-border coordination of gas quality in the natural gas system now applies only to hydrogen blends where the hydrogen content blended into the natural gas system does not exceed 2 per cent by volume. As a mean of conflict resolution on hydrogen blends of up to 2 per cent by volume, the National Regulatory Authority of any of the involved Member States may unilaterally decide to not continue the conflict resolving process. Any of the involved National Regulatory Authorities may request, every two years, that the concerned transmission system operators restart the process to find a joint agreement. This solution reflects the scepticism of several Member States towards blending, whilst still ensuring unhindered cross-border flows of gas. The goal of the Regulation is to maintain a harmonized approach at the EU level concerning gas quality, including oxygen content and blending.
- f) In Article 40 in respect to the European Network of Network Operators for Hydrogen (ENNOH), the new paragraph (1a) specifies that only certified hydrogen network operators will be able to join ENNOH.
- g) In Article 20b on common specifications for biomethane, the additional wording provides a clarification on the scope of this Article.
- h) As regards Article 67 (amendments to the regulation on security of energy supply), various provisions were considered outdated and were therefore deleted. They were written before the energy crisis, and since then, they were superseded by emergency Council Regulation on enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders and by Commission's work on the gas purchasing platform. In addition, many delegations considered that it is not yet the moment to proceed with detailed amendments to the legislation on security of supply, due to the ongoing crisis.

As regards the Directive:

- a) New recitals 35a and 36a give more precisions on similarities and differences between the Renewable energy communities (pursuant to the Renewables Directive) and Citizens energy communities (pursuant to the gas directive).
- b) Recital 70 was clarified to ensure that the horizontal unbundling provisions for hydrogen enshrined in Article 63 do not imply functional unbundling of governance or separation of management or staff and thus, synergies between network operators, such as by sharing services and governance structures, can be fully retained.
- c) In case of definitions in Article 2:
 - Two definitions regarding hydrogen storage operator in (6a) and hydrogen terminal operator in (8a) were considered missing and were added for better framing of the operative part of the legislation.
 - Regarding the low-carbon definitions in paragraphs (10) to (12) to respond to Member States concerns that these definitions lacked precision regarding the greenhouse gas emission reduction threshold of 70%, a fossil fuel comparator was added (as set out in the Renewables Directive).
 - Substantial changes were made to the definition of the ‘entry-exit system’ in paragraph (53) to provide more clarity on access to production sites and the role of the TSOs and DSOs.
- d) In Article 8, it was specified that the Member States, for the purpose of certification of renewable and low carbon gases, will require from the economic operators compliance with sustainability and greenhouse gas saving criteria as set out in the Renewables Directive.
- e) A new Article 8a was added to allow for low carbon gases to contribute to targets in the Renewables Directive. The Article is currently in square brackets.

f) As regards the consumer provisions:

- In Article 11, it was clarified that in case of bundled offers, customers will be able to terminate individual services of a contract and customers will be able to terminate their gas supply contracts at short notice.
- New Article 11a was added to provide sufficient consumer protection rules in case of phasing out of natural gas. It was also specified that needs of vulnerable customers or customers affected by energy poverty should be taken into account.
- The Member States were given flexibility regarding establishment of the Citizen energy communities provided in Article 14.
- In Article 15, a clarification was made on which type of customers should receive the option of electronic bills and billing information.
- In Article 17, (similarly as in Article 16 regarding natural gas) a provision was added giving the possibility to a Member State to link obligation to deploy the smart metering system in hydrogen system with a cost-benefit analysis.
- In Article 20, a clarification was proposed that household customers not using gas for heating purposes could be exempted by the Member State from the requirement of having a conventional meter for natural gas. The exemption has also been extended to buildings where the majority of households use gas in such a way.

g) In Articles 31, the Commission proposal included a ramp-up phase for hydrogen markets to develop until 2030, after which more detailed rules would apply. However, the transition phase for hydrogen market design elements was prolonged until the end of 2035 to reflect concerns that the hydrogen market will not be mature enough by 2030 for implementation of regulated third party access. Setting a firm date also increases the predictability for stakeholders in comparison to a review mechanism.

- h) In Article 32, in principle Member States are obliged to ensure the implementation of a system of third-party access to hydrogen terminals based on negotiated access. However, a flexibility was added whereby Member States may also decide to apply a regulated third-party access to those terminals.
- i) In Article 34, regarding refusal access and connection was expanded, where a Member State could allow the TSO or a DSO to refuse access (or to disconnect) in order to ensure compliance with the implementation of the climate-neutrality objective set out in the EU Climate law.
- j) Article 46(2) was amended to provide discretion for the Member States to attribute the responsibility for building cross-border interconnections to certain hydrogen network operators only.
- k) Article 47 on derogations from some obligations for existing hydrogen network was amended, notably by removing the time limit for the derogations whilst including a market test for the National Regulatory Authority to conclude when a derogation should expire.
- l) Article 48 on geographically confined hydrogen networks has been expanded as to create the possibility to derogate from certain obligations for networks of isolated or distributive character, providing a similar framework as for distribution gas networks.
- m) Article 49 on hydrogen interconnectors with third countries was clarified. The revised version indicates that the Member States are obliged to conclude international agreements or an intergovernmental agreement pursuant to Article 82 before operating such interconnector.
- n) With regard to hydrogen network development reporting, the compromise text gives flexibility for Member States to apply either Article 52 or 51 when reporting an overview of the hydrogen network infrastructure they aim to develop.

- o) In Article 53 on financing cross-border hydrogen infrastructure, the compromise text states that hydrogen interconnectors projects, except projects of common interest, shall bear their own costs and may be financed through the tariff system. They may also design a project plan, including a request for cross-border cost allocation. Corresponding amendments have been made to Article 6 of the Regulation.
- p) In Article 62, the initial Commission proposals for the vertical unbundling of hydrogen network operators 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.

In the current revision, the ownership unbundling model was retained as the default unbundling model; however, the time constraint on the availability of the ISO and ITO unbundling models were removed. Hydrogen Network Operators can also benefit from derogations for existing hydrogen networks and geographically confined networks (Articles 47 and 48), whose application has been simplified.

- q) Article 80 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. In the same Article, a derogation from unbundling has been introduced for Luxembourg to reflect their current regulatory framework in the gas and electricity markets. Additional derogation in new Article 80a was provided for specific circumstances of Estonia, Latvia and Lithuania.

V. **CONCLUSIONS**

1. In light of the above, the Permanent Representatives Committee is invited to examine the compromise texts as set out in documents: 7160/23 and 7161/23, solve any outstanding issues that may arise during the meeting and submit the Presidency's revised compromise text to the TTE (Energy) Council, with the view to reaching a general approach at its meeting on 28 March.