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CONTRIBUTION

From:	General Secretariat of the Council
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Subject:	Informal courtesy draft suggestion on demand aggregation of gases as part of the hydrogen and decarbonisation package - HU comments

Delegations will find in the annex the HU comments on the Informal courtesy draft suggestion on demand aggregation of gases as part of the hydrogen and decarbonisation package.

Informal courtesy draft suggestion on demand aggregation of gases as part of the hydrogen and decarbonisation package

Recitals:

- (1) Demand aggregation can play a pivotal role in the long term and beyond crisis situations by facilitating mutually beneficial partnerships that contribute to transparency, diversification and security of supply. Demand aggregation can ensure more equal access for undertakings across Member States to new or additional gas sources and lead to competitive contractual conditions for the purchase of gases from third countries, which can benefit final consumers.
- (2) Demand aggregation should also extend to hydrogen, renewable or low-carbon gases or other energy commodities to meet these objectives as well as to contribute to the decarbonisation of the Union's energy supply. For hydrogen this should be under the activities of the European Hydrogen Bank. The Commission may use the tools provided by service providers, notably for demand aggregation, adapted to the needs of the developing hydrogen market, in the context of the activities carried out under the European Hydrogen Bank. The mechanism should assist the European Hydrogen Bank in providing transparency on hydrogen demand, supply, flows and prices and ensuring coordination of funding activities in the field of hydrogen.
- (3) Demand aggregation contributes to the unity of the Union's energy market by improving transparency, as well as facilitating the assessment and aggregation of demand across Member States and by making full use of the Union's collective weight to attract competitive offers for energy supplies from global and diversified sources. Enhanced international outreach to natural gas suppliers (both pipeline and LNG) as well as to suppliers of other gases, including renewable hydrogen under the activities of the European Hydrogen Bank, is essential for this purpose. In particular, coordination with and among Member States via-à-vis third countries via the demand aggregation mechanisms and the European Hydrogen Bank would ensure a more effective use of the Union's collective weight.
- (4) In case of a Union emergency of natural gas, the Commission might decide to make the participation of natural gas undertakings and undertakings consuming gas mandatory if this is necessary to remedy deterioration of the natural gas supply situation. The demand aggregation should also help fill up gas storage facilities in such situations. Moreover, those measures should help purchase gas in a more coordinated manner in the spirit of solidarity. In order to ensure that such a mandatory application only applies in exceptional circumstances, it should be limited to a Union emergency in the supply of natural gas and should be conditioned upon a Council decision.
- (5) One of the objectives of demand aggregation in EU emergency is to reduce the risk of unnecessary price increases driven by undertakings bidding for the same tranche of gas. Ensuring that the full benefits of demand aggregation reach final consumers ultimately depends on the decisions of the undertakings themselves. Large undertakings should be restrained even if they can sell the gas at higher prices. Undertakings benefiting from lower prices for the purchase of gas should pass those benefits to the consumers. The

pass-through of lower prices would be an important indicator for the success of demand aggregation, as it is crucial for consumers.

- (6) The demand aggregation mechanism developed under this Regulation should consist of two steps. As a first step, natural gas undertakings or undertakings consuming gas established in the Union would aggregate their gas demand through a service provider, contracted by the Commission. This would allow gas suppliers to make offers on the basis of large, aggregated volumes, instead of many smaller offers to purchasers approaching them individually. In a second step, natural gas undertakings or undertakings consuming gas established in the Union may voluntarily conclude gas purchase contracts.
- (7) In addition to the above, the mechanisms devoted to hydrogen, renewable or low-carbon gases and other energy resources that the Commission may set up will count with additional steps focused on transparency and non-binding demand assessment with the aim, among others, to assist the European Hydrogen Bank in providing visibility on hydrogen demand, supply, flows and prices. The European Hydrogen Bank will coordinate such information to strengthen confidence in the developing hydrogen market, provide increased demand visibility by linking hydrogen producers with hydrogen off-takers and with parallel Member State initiatives.
- (8) The participation in demand aggregation of natural gas does not oblige natural gas undertakings or undertakings consuming gas to subsequently purchase the volumes which the service provider has matched with available supplies. Natural gas undertakings and undertakings consuming gas remain free to proceed with the negotiation and conclusion of supply contracts or memoranda of understanding with the gas suppliers or producers they have been matched with.
- (9) The Commission should contract the necessary services of service providers through a procurement procedure in accordance with the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (1) without undue delay in order to ensure continuity between the services contracted under Regulation 2022/2576 and services to be contracted under this Regulation. Given the importance of these services for transparency, diversification, decarbonisation, and security of supply in the Union, in particular in case of a deterioration of the security of supply situation, the services should be procured from entities established in the Union.
- (10) The process of aggregating demand should be carried out by suitable service providers. The aggregation of demand and the purchasing of gases are complex processes, which need to take into account various elements, which are not limited to prices, but also include volumes, delivery points and other parameters. Therefore, the selected service providers should have the necessary level of experience and capacity in managing and aggregating purchases of gases or associated services at the Union level. Given the importance of these services for transparency, diversification, decarbonisation, and security of supply in the Union, in particular in case of a deterioration of the security of supply situation, undertakings targeted by Union restrictive measures established on the

basis of Article 215 TFEU, or owned or controlled by any other natural or legal person, entity or body subject to such restrictive measures, should be excluded from becoming a service provider for demand aggregation. The Commission should specify the requirements applicable for the service providers in the tender specifications.

- (11) The Commission should ensure that the service providers organise the tasks of transparency, demand assessment and demand aggregation taking into account the objectives of the mechanisms and the specificities of the relevant gases. In particular, when allocating access rights to the supply among undertakings aggregating demand, the service providers should apply methods that would not discriminate between smaller and larger participants of the demand aggregation and should be fair regardless of gas volumes requested by individual undertakings. For instance, the service provider should allocate access rights in proportion to the gas volumes that individual undertakings declared to buy for the given delivery time and destination. This might be relevant in cases where supply does not sufficiently cover demand in the Union market. The Commission should specify the relevant requirements applicable to the tasks to be performed by the service providers in the respective tender specifications.
- (12) Demand aggregation should be open to undertakings established in the Union. In particular, industrial consumers which use gas intensively in their production processes, such as producers of fertilisers, steel, ceramic and glass, may also benefit from demand aggregation by enabling them to pool their demand, to contract gas and LNG cargoes, and to structure supply according to their particular needs. The process of organising the demand aggregation should have transparent rules on how to join it and should ensure its openness.
- (13) Opening of demand aggregation also for Western Balkans and the three associated Eastern Partnership countries is a declared political aim of the Union. Therefore, undertakings established in the Energy Community Contracting Parties should be allowed to participate in the demand aggregation established by this Regulation provided that necessary arrangements are in place.
- (14) However, in order to lower the dependency of the Union on gases supplied by undertakings from third countries subject to restrictive measures, demand aggregation should not be open to undertakings targeted by Union restrictive measures established on the basis of Article 215 TFEU, or owned or controlled by any other natural or legal person, entity or body subject to such restrictive measures. Those undertakings should therefore be excluded from participating in demand aggregation, in particular as a supplier and as a buyer.
- (15) The escalation of the Russian military aggression against Ukraine since February 2022 has led to declining natural gas supplies from Russia and Belarus, which have seriously jeopardised the security of energy supply in the Union as a whole. Those weaponised reductions of natural gas supplies and manipulation of the markets through intentional disruptions of gas flows have laid bare vulnerabilities and dependencies in the Union and its Member States with the clear potential of a direct and serious impact on their

essential security interests and security of energy supply. Past evidence has also shown that natural gas may be used to weaponize and manipulate energy markets to the detriment of the Union's essential security interests and security of energy supply.

- (16) The Gas Coordination Group (GCG), established under Regulation (EU) 2017/1938 may assist the Commission in facilitating the coordination and information exchange with Member States in relation to demand aggregation of gases as well as in addressing the role and coordinating demand aggregation in case of Union alert due to deterioration of gas supply.
- (17) Should the Commission set up an expert group for matters related transparency, demand assessment and demand aggregation of hydrogen, such expert group should be dedicated specifically to hydrogen, and it should coordinate its activities with those of the European Hydrogen Bank.
- (18) The Commission may establish mechanisms for transparency, voluntary demand assessment, demand aggregation for hydrogen, renewable or low-carbon gases or other energy resources, where such mechanisms would contribute to diversification and decarbonisation. The Commission might establish such mechanisms itself or through the necessary service providers. If the Commission decides to establish such a mechanism through a service provider, the provisions regarding the contracts with service providers, the criteria for selecting service providers, and the tasks of service providers should also apply.
- (19) In case of a Union emergency of the gas supply situation, the Commission might decide to make the participation of natural gas undertakings and undertakings consuming gas in the process of demand aggregation for natural gas mandatory, if this is necessary and appropriate to contribute to an improvement of the gas supply situation. Such a decision should specify the period of validity which may be for a period of up to one year.
- (20) In such situations, participants of demand aggregation of gas may need financial guarantees, if any of the undertakings would not be able to pay for the final volume contracted. Member States or other stakeholders should provide financial support, including guarantees, to participants in demand aggregation. Providing financial support should take place in accordance with Union State aid rules, including the Temporary Crisis Framework adopted by the Commission on 23 March 2022, as amended on 28 October 2022, where applicable.
- (21) Moreover, in case of a Union emergency due to the deterioration of the gas supply situation, filling gas storage facilities is vital to ensure security of supply in the Union. Due to the drop in supplies of natural gas from the Russian Federation, Member States may face challenges in filling the gas storage facilities to ensure the security of the gas supply. Demand aggregation of natural gas could help the Member States to diminish those challenges. It could, within the limits of competition law, in particular support coordinated filling and storage management, avoiding the excessive price peaks caused, inter alia, by uncoordinated storage filling.

- (22) Further, in case of EU emergency of the gas supply situation, Member States should take appropriate measures to ensure that natural gas undertakings and undertakings consuming gas established in their territory participate in the process of demand aggregation as a possible means to ensure security of supply.
- (23) [Regulation (EU) 2022/1032 requires that Member States fill their gas storage facilities up to 90 % by 1 November 2023. This target is higher than the target for 1 November 2022(80 %). Demand aggregation could help the Member States meet this new target. In doing so the Member States might require domestic undertakings to use the service provider to aggregate demand with sufficiently high volumes of gas in order to decrease the risk that their gas storage facilities cannot be filled. Member States might require that volumes equivalent to at least 15 % of their storage filling target volume for next year, which is equivalent to around 13,5 billion cubic metres for the Union as a whole, be included by their undertakings in the demand aggregation process. Member States without underground gas storage facilities in their territory should participate in the demand aggregation process with volumes equivalent to 15 % of their burden-sharing obligation under Article 6c of Regulation (EU) 2017/1938 of the European Parliament and of the Council (5).]
- (24) Demand aggregation does not prescribe the management of gas storage facilities, including strategic gas storage facilities, and is without prejudice to Regulations (EU) 2017/1938 and (EU) 2022/1032.
- (25) The protection of commercially sensitive information is of utmost importance when information is made available to the Commission, the members of the Gas Coordination Group, expert groups, or the service providers. The Commission should therefore apply effective instruments to protect this information against any unauthorised access and cybersecurity risks. Any personal data that might be processed as part of demand aggregation should be processed in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council (2) and Regulation (EU) 2018/1725 of the European Parliament and of the Council (3).
- (26) In accordance with the principle of proportionality, the measures with respect to demand aggregation do not go beyond what is necessary to achieve their objective, as those measures will be implemented on a voluntary basis, with only a limited exception as regards mandatory participation in demand aggregation for natural gas in case of a Union emergency due to the deterioration of the gas supply situation, and private undertakings will remain parties to the contracts for gas supply concluded under the demand aggregation.

Article X-1

[tbd if needed, ...]

CHAPTER II

**GENERAL RULES APPLICABLE TO THE NATURAL GAS
AND HYDROGEN SYSTEMS**

(...)

SECTION 5

Demand aggregation of gases

Article X-0

Mechanisms for demand aggregation of gases

1. The Commission shall establish a mechanism to enable voluntary demand aggregation of natural gas pursuant Articles Xa to Xf, in an EU emergency situation under the Gas SOS Regulation and may decide to make the participation in the process of demand aggregation for natural gas mandatory under the conditions set out in Article Xg.
2. The Commission may establish mechanisms for transparency, voluntary demand assessment and demand aggregation also for hydrogen, renewable or low-carbon gases or other energy resources pursuant to Article Xfa.
3. Such a mechanism for hydrogen may, in particular, assist the European Hydrogen Bank in supporting the production of renewable hydrogen within the European Union and internationally, by providing transparency on demand, supply, flows and prices and ensuring coordination of funding activities in the field of hydrogen.

Article X a

Contracts with service providers

1. By 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 will 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 on the basis of 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 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 transparency, demand assessment, and demand aggregation. 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) search of offers from gases suppliers or producers in order to match them with the aggregated demand;
- (c) allocation of access rights to supply, taking into account a proportionate distribution between smaller and larger participants in demand aggregation.

Article X d **Participation in demand aggregation**

1. Participation in the mechanisms of transparency, demand assessment and demand aggregation shall be open to natural gas undertakings and undertakings consuming gas established in the Union regardless of the volume requested. Such undertakings shall be precluded from participating as suppliers, producers and purchasers in demand aggregation, 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 resulting from participation in the process of demand aggregation organised by the service provider 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. Participants in demand aggregation 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. The Commission may request service providers to organise dedicated demand aggregation, for which undertakings established in third countries with which the Union

has a trade agreement may submit their demand, if this is necessary to protect the essential security interests or security of supply of the Union or Member States.

5. Participants in demand aggregation shall report to the Commission or the relevant service provider and Member State in emergency or its competent authority, as appropriate, the following elements of the concluded contracts:
 - a. volume;
 - b. counterparts;
 - c. duration.
6. Participants in demand aggregation may report to the Member State in emergency, the competent authority and the Commission or the relevant service provider, as appropriate, if matching and tendering did not result in the conclusion of a supply contract.

Article X f **Coordination groups**

1. In order to facilitate the coordination and information exchange in relation to demand aggregation of gases the Commission may use the Gas Coordination Group, as set up in Regulation (EU) 2017/1938.
2. Coordination and information exchange in relation to transparency, demand assessment and demand aggregation of hydrogen may be facilitated by an expert group separate from expert groups dedicated to other gases and in coordination with the activities of the European Hydrogen Bank.

Article X fa **Application to renewable or low-carbon gases, hydrogen or other energy resources**

Where the Commission decides to establish transparency, voluntary demand assessment and demand aggregation also for hydrogen under the activities of the Hydrogen Bank, renewable or low-carbon gases or other energy resources, the Commission shall take into account the specificities of these gases and Articles Xa-Xe shall apply. Where the Commission decides not to contract a service provider, Articles Xa to Xc will not apply.

Article X g **Mandatory demand aggregation for natural gas** **in case of Union emergency due to severe deterioration of gas supply**

1. The Commission, , shall declare a Union emergency due to the deterioration of the gas supply situation, if two or more competent authorities have declared an emergency at national level pursuant to Article 12(1), , of Regulation (EU) 2017/1938.

2. The decision declaring a Union emergency due to the deterioration of the gas supply situation shall specify the period of validity of that decision which may be for a period of up to one year.
3. The Commission shall present a proposal to make the participation of natural gas undertakings and undertakings consuming gas in the process of demand aggregation for natural gas mandatory pursuant paragraphs 6 to 10 of this Article.
4. The Council, acting by a qualified majority, may amend the Commission proposal.
5. Where the Council has adopted a decision pursuant to paragraph 1, the Commission may decide to make the participation of natural gas undertakings and undertakings consuming gas in the process of demand aggregation for natural gas mandatory pursuant paragraphs 6 to 10 of this Article.
6. Member States shall take appropriate measures to ensure that natural gas undertakings and undertakings consuming gas established in their territory participate in the process of demand aggregation organised by the service provider as one of the possible means to meet [the filling targets referred to in Article 6a and 20 of Regulation (EU) 2017/1938].
7. Member States with underground gas storage facilities may require natural gas undertakings and undertakings consuming gas established in their territory to participate in the process of demand aggregation organised by the service provider with volumes at least equal to 15 % of the total volume necessary to meet the [filling targets referred to in Articles 6a and 20 of Regulation (EU) 2017/1938].
8. Member States without underground gas storage facilities shall require natural gas undertakings and undertakings consuming gas established in their territory to participate in the process of demand aggregation organised by the service provider with volumes at least equal to 15 % of the volumes corresponding to the cross-border [filling targets referred to in Article 6c and 20 of Regulation (EU) 2017/1938].
9. The natural gas undertakings and undertakings consuming gas participating in demand aggregation under a mandatory obligation may decide not to purchase the gas after the aggregation process. The gas purchased may be used for other purposes than storage filling.
10. The Member States shall monitor the fulfilment by the natural gas undertakings and undertakings consuming gas of the obligations arising from this Article.
11. Member States, or other stakeholders may provide liquidity support, including guarantees, to participants in the process of demand aggregation organised by the service provider, in accordance with State aid rules, where applicable.