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MEETING DOCUMENT

From: General Secretariat of the Council
To: Working Party on Energy

Subject: NL comments on the solidarity measures in the recast Hydrogen and Gas Regulation (WK 10753/23)

Delegations will find in the annex the NL comments on the solidarity measures in the recast Hydrogen and Gas Regulation (WK 10753/23).

Comments of the Netherlands on the non paper on solidarity – 5 September 2023

1. Introduction

On the 30th of August 2023 the Spanish Presidency circulated a document from the Commission with informal courtesy draft suggestions for compromise amendments to Regulation (EU) 2017/1938 to incorporate key measures improving solidarity in case of a gas emergency adopted under Council Regulation 2022/2576 (Council document WK 10753/2023 INIT). Delegations were invited to send written comments to the Presidency and to the Secretariat by 6 September 2023. This document gives the initial, preliminary comments from the Netherlands.

2. Comments on solidarity provisions

General comments

- The Commission proposes to make measures from Regulation (EU) 2022/2576 that were agreed upon as temporary measures for one year in the context of a crisis situation, permanent. In order to come to a well-balanced opinion on the continuation (or not) of the solidarity provisions, based on proper procedures and discussions with and between Member states, the Commission should at first present an impact assessment of these provisions together with the review which the Commission has to carry out according to article 30 of Regulation (EU) 2022/2576. The impact assessment should among others address the contribution of the solidarity provisions to the gas security of supply situation of the Union as well as their impact on the functioning of the internal market for natural gas.
- The Netherlands would rather see that the Commission comes forward with a complete overhaul of Regulation (EU) 2017/1938 reflecting the fundamentally changed EU gas situation (market as well as security of supply). The current regulation is written for significant gas supply disruptions with last a couple of weeks at the most, not for disruptions which could last for months. An evaluation of this Regulation (EU) 2017/1938 by the Commission is due later this fall. This evaluation, together with the aforementioned impact assessment and review regarding provisions from Regulation (EU) 2022/2576, should be the basis for further discussion.

Specific comments

- Article 12 (7): the possibility for Member States to diverge from the position of the Commission should maintained.
- Article 13:
 - Article 13 (1): the Netherlands does not agree with the additional solidarity obligations for Member States with LNG facilities, at least not in its current form as they (no longer) are justified or proportionate. These obligations were justified in 2022 given the immediate nature of the crisis, but since then Member States without LNG facilities could have taken measures to overcome this situation, either by realizing LNG facilities themselves or, if not possible, by contracting LNG capacity in Member States with LNG facilities. This was for instance done by the Czech company CEZ (owned for 70% by the Czech State) who contracted capacity in the Dutch EemsEnergyTerminal. Furthermore, in absence of further guidance, it is unclear how article 13 should or even could be implemented.
 - Article 13 (2): the Netherlands does not agree with the proposal to expand the Member States to whom solidarity (may) have to be provided to, in theory, all Member States. The obligation to provide solidarity should remain restricted to directly connected Member States.
 - Article 13 (8) and (8a): the rules for compensation and the elements covered by compensation should be the same, regardless if there is a solidarity arrangement or not.
 - Article 13 (8b): the proposed time lines are too short and not line with the time lines mentioned in Regulation (EU) 2022/2576, Article 28: "Solidarity requests shall be submitted at least 72 hours before the indicated delivery time. The response to solidarity requests shall be done within 24 hours. The confirmation of receipt and of the volume to be taken by the Member State requesting solidarity shall be done within **24** hours of the

delivery time needed.". No distinction should be made between timelines for LNG and timelines for pipeline gas.

- Article 13 (8b): the response times of 12 hours and four hours are too short. Both should at least be 24 hours.

For further information:

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