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General Secretariat

Brussels, 15 September 2023

WK 11630/2023 INIT

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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	PL comments on the Hydrogen transmission and distribution networks – new definitions and key articles in the Hydrogen and Gas Directive (WK 10760/23)

Delegations will find in the annex the PL comments on the hydrogen transmission and distribution networks - new definitions and key articles in the Hydrogen and Gas Directive (WK 10760/23).



Council of the European Union
General Secretariat

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MEETING DOCUMENT

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

Subject: Hydrogen transmission and distribution networks – new definitions and key articles in the Hydrogen and Gas Directive

Following the debate in the Energy Working Party on 13 July and the comments received from Member States to the Steering Note WK 9414 2023 INIT, delegations will find in the Annex the new definitions and new wording suggestions on the key articles to differentiate between transmission and distribution networks for hydrogen in the Hydrogen and Gas Directive.

Delegations are invited to send written comments to the Presidency ([REDACTED]) and to the Secretariat ([REDACTED]) by **6 September 2023**.


WK 10760/2023 INIT

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Hydrogen transmission and distribution networks – new definitions and key articles in the Directive

Article 2 – Definitions				
COM Proposal		EP position	Council GA	Compromise proposal
189a		<p><i>(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;</i></p>		<p><i>‘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 infrastructure projects of common interest, 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.</i></p>
189b		<p><i>(21b) ‘hydrogen distribution’ means the transport of hydrogen through local or regional pipeline networks with a view to its delivery to customers, excluding supply;</i></p>		<p><i>‘hydrogen distribution network’ means a network of pipelines for the 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 or infrastructure projects of common interest, and are not directly</i></p>

				<p><i>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.</i></p>
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Article 42				
553	Article 42 Unbundling of distribution system operators	Article 42 Unbundling of distribution system operators <i>and hydrogen distribution network operators</i>	Article 42 Unbundling of distribution system operators	Article 42 Unbundling of distribution system operators <i>and hydrogen distribution network operators</i>
Article 42(1)				
554	<p>1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. Those rules shall not create an obligation to separate the ownership of assets of the distribution system from the vertically integrated undertaking.</p>	<p>1. Where the distribution system operator <i>or the hydrogen distribution network operator</i> is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. Those rules shall not create an obligation to separate the ownership of assets of the distribution system <i>or the hydrogen distribution network</i> from the vertically integrated undertaking.</p>	<p>1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. Those rules shall not create an obligation to separate the ownership of assets of the vertically integrated undertaking.</p>	<p>1. Where the distribution system operator <i>or the hydrogen distribution network operator</i> is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. Those rules shall not create an obligation to separate the ownership of assets of the distribution system <i>or the hydrogen distribution network</i> from the vertically integrated undertaking.</p>
Article 42(2)				

555	2. In addition to the requirements under paragraph 1, where the distribution system operator is part of a vertically integrated undertaking, it shall be independent in terms of its organisation and decision-making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:	2. In addition to the requirements under paragraph 1, where the distribution system operator <i>or the hydrogen distribution network operator</i> is part of a vertically integrated undertaking, it shall be independent in terms of its organisation and decision-making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:	2. In addition to the requirements under paragraph 1, where the distribution system operator is part of a vertically integrated undertaking, it shall be independent in terms of its organisation and decision-making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:	2. In addition to the requirements under paragraph 1, where the distribution system operator <i>or the hydrogen distribution network operator</i> is part of a vertically integrated undertaking, it shall be independent in terms of its organisation and decision-making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:
Article 42(2), point (a)				
556	(a) the persons responsible for the management of the distribution system operator shall not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, transmission, transportation and supply of gases;	(a) the persons responsible for the management of the distribution system operator <i>or the hydrogen distribution network operator</i> shall not participate in company structures of the integrated natural gas undertaking <i>or the vertically integrated undertaking</i> responsible, directly or indirectly, for the day-to-day operation of the production, transmission, transportation and supply of <i>gas</i> ;	(a) the persons responsible for the management of the distribution system operator shall not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, transmission, transportation transport and supply of gases;	(a) the persons responsible for the management of the distribution system operator <i>or the hydrogen distribution network operator</i> shall not participate in company structures of the integrated natural gas undertaking <i>or the vertically integrated undertaking</i> responsible, directly or indirectly, for the day-to-day operation of the production, transmission, transportation transport and supply of gases;
Article 42(2), point (b)				
557	(b) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the distribution system operator are taken into account in a manner	(b) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the distribution system operator <i>or the hydrogen distribution network</i>	(b) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the distribution system operator are taken into account in a manner	(b) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the distribution system operator <i>or the hydrogen distribution network</i>

	that ensures that they are capable of acting independently;	<i>operator</i> are taken into account in a manner that ensures that they are capable of acting independently;	that ensures that they are capable of acting independently;	<i>operator</i> are taken into account in a manner that ensures that they are capable of acting independently;
Article 42(2), point (c)				
558	(c) the distribution system operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network; in order to fulfil those tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, financial and physical resources; this shall not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 72(7) in a subsidiary are protected; in particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of its subsidiary; it	(c) the distribution system operator <i>or the hydrogen distribution network operator</i> shall have effective decision-making rights, independent from the integrated natural gas undertaking <i>or the vertically integrated undertaking</i> , with respect to assets necessary to operate, maintain or develop the network; in order to fulfil those tasks, the distribution system operator <i>or the hydrogen distribution network operator</i> shall have at its disposal the necessary resources including human, technical, financial and physical resources; this shall not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 72(7) in a subsidiary are protected; in particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of	(c) the distribution system operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network; in order to fulfil those tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, financial and physical resources; this shall not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 72(7) in a subsidiary are protected; in particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of its subsidiary; it	(c) the distribution system operator <i>or the hydrogen distribution network operator</i> shall have effective decision-making rights, independent from the integrated natural gas undertaking <i>or the vertically integrated undertaking</i> , with respect to assets necessary to operate, maintain or develop the network; in order to fulfil those tasks, the distribution system operator <i>or the hydrogen distribution network operator</i> shall have at its disposal the necessary resources including human, technical, financial and physical resources; this shall not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 72(7) in a subsidiary are protected; in particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the

	shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument;	the distribution system operator <i>or the hydrogen distribution network operator</i> and to set global limits on the levels of indebtedness of its subsidiary; it shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument;	shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument;	distribution system operator <i>or the hydrogen distribution network operator</i> and to set global limits on the levels of indebtedness of its subsidiary; it shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument;
Article 42(2), point (d)				
559	(d) the distribution system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored; the compliance programme shall set out the specific obligations of employees to meet that objective; an annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme, the compliance officer of the distribution system operator, to the regulatory authority referred to in Article 70(1) and shall be published; the compliance officer	(d) the distribution system operator <i>or the hydrogen distribution network operator shall</i> establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored; the compliance programme shall set out the specific obligations of employees to meet that objective; an annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme, the compliance officer of the distribution system operator <i>or the hydrogen distribution</i>	(d) the distribution system operator shall establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored; the compliance programme shall set out the specific obligations of employees to meet that objective; an annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme, the compliance officer of the distribution system operator, to the regulatory authority referred to in Article 70(1) and shall be published; the compliance officer	d) the distribution system operator <i>or the hydrogen distribution network operator shall</i> establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored; the compliance programme shall set out the specific obligations of employees to meet that objective; an annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme, the compliance officer of the distribution system operator <i>or the hydrogen distribution</i>

	<p>of the distribution system operator shall be fully independent and shall have access to all the necessary information of the distribution system operator and any affiliated undertaking to fulfil his task.</p>	<p>network operator, to the regulatory authority referred to in Article 70(1) and shall be published; the compliance officer of the distribution system operator or the hydrogen distribution network operator shall be fully independent and shall have access to all the necessary information of the distribution system operator or hydrogen distribution network operator and any affiliated undertaking to fulfil his task.</p>	<p>of the distribution system operator shall be fully independent and shall have access to all the necessary information of the distribution system operator and any affiliated undertaking to fulfil his task.</p>	<p>network operator, to the regulatory authority referred to in Article 70(1) and shall be published; the compliance officer of the distribution system operator or the hydrogen distribution network operator shall be fully independent and shall have access to all the necessary information of the distribution system operator or hydrogen distribution network operator and any affiliated undertaking to fulfil his task.</p>
Article 42(3)				
560	<p>3. Where the distribution system operator is part of a vertically integrated undertaking, the Member States shall ensure that the activities of the distribution system operator are monitored by regulatory authorities or other competent bodies so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.</p>	<p>3. Where the distribution system operator or the hydrogen distribution network operator is part of a vertically integrated undertaking, the Member States shall ensure that the activities of the distribution system operator or the hydrogen distribution network operator are monitored by regulatory authorities or other competent bodies so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators or the hydrogen distribution network operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply</p>	<p>3. Where the distribution system operator is part of a vertically integrated undertaking, the Member States shall ensure that the activities of the distribution system operator are monitored by regulatory authorities or other competent bodies so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.</p>	<p>3. Where the distribution system operator or the hydrogen distribution network operator is part of a vertically integrated undertaking, the Member States shall ensure that the activities of the distribution system operator or the hydrogen distribution network operator are monitored by regulatory authorities or other competent bodies so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators or the hydrogen distribution network operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply</p>

		branch of the vertically integrated undertaking.		branch of the vertically integrated undertaking.
560a		<i>3a. The distribution system operator and the hydrogen distribution network operator shall comply with Articles 64 and 69.</i>		<i>3a. The distribution system operator and the hydrogen distribution network operator shall comply with Articles 63, 64 and 69.</i>
Article 42(4)				
561	4. Member States may decide not to apply paragraphs 1, 2 and 3 to integrated natural gas undertakings serving less than 100 000 connected customers.	4. Member States may decide not to apply paragraphs 1, 2 and 3 to integrated natural gas undertakings serving less than 100 000 connected customers.	4. Member States may decide not to apply paragraphs 1, 2 and 3 to integrated natural gas undertakings serving less than 100 000 connected customers.	4. Member States may decide not to apply paragraphs 1, 2 and 3 to <i>distribution system operators which are part of an</i> integrated natural gas undertakings serving less than 100 000 connected customers.

Article 47				
588	Article 47 Existing hydrogen networks	Article 47 Existing hydrogen networks	Article 47 Existing hydrogen networks	Article 47 Existing hydrogen networks
Article 47(1)				
589	1. Member States may decide to grant a derogation from the requirements of Articles 31, 62, 63 and 64 of this Directive, and Articles 6 and 47 of [recast Gas Regulation as proposed in COM(2021) xxx] to hydrogen networks that belonged to a	1. Member States may decide to grant a derogation from the requirements of Articles 31, 42, 62 and 64 of this Directive, and Articles 6 and 47 of [recast Gas Regulation as proposed in COM(2021) xxx] to hydrogen networks that belonged to a	1. Member States may decide provide for regulatory authorities to grant a derogation from the requirements of one or more of Articles 31, 62, 63, 64 and 65 and 64 of this Directive, and Articles 6 and 47 of [recast Gas Regulation as proposed in	1. Member States may decide provide for regulatory authorities to grant a derogation from the requirements of one or more of Articles 31, 42, 51, 52, 62, 63, 64 and 65 and 64 of this Directive, and Articles 6 and 47 of [recast Gas Regulation as proposed

	vertically integrated undertaking on [date of entry into force]. The derogation shall be limited in scope to the network capacity in operation on [date of entry into force].	vertically integrated undertaking on [date of entry into force]. The derogation shall be limited in scope to the network capacity in operation on [date of entry into force].	COM(2021)- xxx 804] to hydrogen networks that belonged to a vertically integrated undertaking on [date of entry into force]. The derogation shall be limited in scope to the network capacity in operation on [date of entry into force].	in COM(2021)- xxx 804] to hydrogen networks that belonged to a vertically integrated undertaking on [date of entry into force]. The derogation shall be limited in scope to the network capacity in operation on [date of entry into force].
Article 47(2)				
590	2. The derogation shall be limited in time and shall expire:	2. The derogation shall be limited in time and shall expire:	2. The derogation shall be limited in time and shall expire:	2. The derogation shall be limited in time and shall expire:
Article 47(2), point (a)				
591	(a) where the vertically integrated undertaking submits a request to the regulatory authority to end the derogation and such request is approved by the regulatory authority;	(a) where the vertically integrated undertaking submits a request to the regulatory authority to end the derogation and such request is approved by the regulatory authority;	(a) where the vertically integrated undertaking submits a request to the regulatory authority to end the derogation and such request is approved by the regulatory authority;	(a) where the vertically integrated undertaking submits a request to the regulatory authority to end the derogation and such request is approved by the regulatory authority;
Article 47(2), point (b)				
592	(b) where the hydrogen network benefitting from the derogation is connected to another hydrogen network;	(b) where the hydrogen network benefitting from the derogation is connected to another hydrogen network;	(b) where the hydrogen network benefitting from the derogation is connected to another hydrogen network;	(b) where the hydrogen network benefitting from the derogation is connected to another hydrogen network;
Article 47(2), point (c)				
593	(c) where the hydrogen network benefitting from the derogation or its capacity is expanded;	(c) where the hydrogen network benefitting from the derogation or its capacity is expanded;	(c) where the hydrogen network benefitting from the derogation or its capacity is expanded by more than [5%] in terms of length or capacity compared to [date of entry into force of this Directive]; or	(c) where the hydrogen network benefitting from the derogation or its capacity is expanded by more than [5%] in terms of length or capacity compared to [date of entry into force of this Directive]; or

Article 47(2), point (d)				
594	(d) at the latest on 31 December 2030.	(d) at the latest on 31 December 2030.	(d) at the latest on 31 December 2030 where the regulatory authority concludes by decision that the continued application of the derogation would carry the risk of impeding competition or adversely affecting the efficient deployment of hydrogen infrastructure or the development of the hydrogen market in the Member State or the Union.	(d) at the latest on 31 December 2030 where the regulatory authority concludes by decision that the continued application of the derogation would carry the risk of impeding competition or adversely affecting the efficient deployment of hydrogen infrastructure or the development of the hydrogen market in the Member State or the Union.
Article 47(3)				
594a			3. Regulatory authorities may request operators of existing hydrogen networks to provide them with all information necessary for the execution of their tasks.	3. Regulatory authorities may request operators of existing hydrogen networks to provide them with all information necessary for the execution of their tasks.
595	Article 48 Geographically confined hydrogen networks	Article 48 Geographically confined hydrogen networks	Article 48 Geographically confined hydrogen networks	Article 48 Geographically confined <i>distribution</i> hydrogen networks
Article 48(1)				
596	1. Member States may provide for regulatory authorities to grant a derogation from Article 62 for hydrogen networks which transport hydrogen from one entry point to a limited number of exit points within a geographically	-1. Member States may provide for regulatory authorities to grant a derogation from Article 42 or 62 for hydrogen networks which transport hydrogen from one entry point to a limited number of exit points within a geographically	1. Member States may provide for regulatory authorities to grant a derogation from Article 62 Articles 62 and 65 for hydrogen networks which transport hydrogen from one entry point to a limited number of exit points within a geographically	1. Member States may provide for regulatory authorities to grant a derogation from Articles 42 and 52 62 for hydrogen <i>distribution</i> networks which transport hydrogen from one entry point to a limited number of exit points

	confined, industrial or commercial area..	confined, industrial or commercial area. █	confined area. For the duration of the derogation, such network shall fulfil all of the following conditions: industrial or commercial area.	within a geographically confined, industrial or commercial area. For the duration of the derogation, such networks shall not be connected to other hydrogen networks.
596a		<i>Before granting a derogation pursuant to the first subparagraph, the regulatory authorities shall take into account the connection to the hydrogen network of end-users in hard-to decarbonise sectors with the highest greenhouse gas abatement potential where no other more energy or cost efficient alternatives are available</i>		<i>delete</i>
Article 48(1), first subparagraph i				
596b			i. It shall not include hydrogen interconnectors.	<i>delete</i>
596c			ii. It shall not have direct connections to hydrogen storage facilities or hydrogen terminals, unless such storage facilities or terminals are also connected to a hydrogen network which does not benefit from a derogation under this Article or Article 47.	<i>delete</i>

596d			iii. It shall primarily serve the purpose of supplying hydrogen to customers directly connected to this network.	<i>delete</i>
Article 48(2), first subparagraph				
597	2. The derogations under paragraph 1 shall apply at least until 31 December 2030. As from 1 January 2031, the derogation shall expire when one of the conditions below is fulfilled:	2. The derogations under paragraph 1 shall apply at least until 31 December 2030. As from 1 January 2031, the derogation shall expire when one of the conditions below is fulfilled:	2. The derogations under national regulatory authority shall adopt a decision to withdraw the derogation pursuant to paragraph 1 shall apply at least until 31 December 2030. As from 1 January 2031, the derogation shall expire when one if it concludes that the continued application of the derogation would carry the risk of impeding competition or adversely affecting the efficient deployment of hydrogen infrastructure or the development of the hydrogen market in the Member State or the Union, or where any of the conditions below is listed under paragraph 1 is no longer fulfilled.	2. The derogations under national regulatory authority shall adopt a decision to withdraw the derogation pursuant to paragraph 1 shall apply at least until 31 December 2030. As from 1 January 2031, the derogation shall expire when one if it concludes that the continued application of the derogation would carry the risk of impeding competition or adversely affecting the efficient deployment of hydrogen infrastructure or the development of the hydrogen market in the Member State or the Union, or where any of the conditions below is listed under paragraph 1 is no longer fulfilled.
Article 48(2), first subparagraph, point (a)				
598	(a) where a competing renewable hydrogen producer wants to get access to the network;	(a) where a competing renewable hydrogen producer wants to get access to the network;	(a) where a competing renewable hydrogen producer wants to get access to the network;	<i>delete</i>
Article 48(2), first subparagraph, point (b)				
599	(b) where the exempted hydrogen network becomes connected to another hydrogen network.	(b) where the exempted hydrogen network becomes connected to another hydrogen network.	(b) where the exempted hydrogen network becomes connected to another hydrogen network.	<i>delete</i>

Article 48(2), second subparagraph			
600	Member States shall take the necessary measures to ensure that access requests referred to in point (a) of this paragraph are notified to the regulatory authority.	Member States shall take the necessary measures to ensure that access requests referred to in point (a) of <i>the first subparagraph</i> are notified to the regulatory authority <i>and information on derogations, type of end-users served, type and extension of the geographically confined area are made publicly available, with due regard of commercially sensitive information.</i>	Member States shall take the necessary measures to ensure that access requests referred to in point (a) of this paragraph are notified to the regulatory authority. <i>delete</i>