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CONTRIBUTION

From: General Secretariat of the Council

To: Working Party on Energy

Subject: IT comments on Hydrogen & Gas Directive (ST 13324/23)

Delegations will find in the annex the IT comments on Hydrogen & Gas Directive (ST 13324/23).

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IT written comments on:

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) – preparation for the trilogue
- WK 13324/23 –

a) Split between Transmission System Operators (TSO) and Distribution System Operators (DSO) for hydrogen

We appreciate the compromise text of the Annex with an amendments for hydrogen distribution network that in our view further improve the functional distinction between transport and distribution networks; please find our amendments **highlighted in green**:

*21b) ‘hydrogen distribution network’ means a network of pipelines for the local or regional transport of hydrogen of a high grade of purity, which primarily serve the purpose of supplying directly connected **domestic** customers, and do not include hydrogen interconnectors or infrastructure projects of common interest, and are not directly 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.*

b) Network planning (articles 51, 52, 52a, 52b)

We agree with the compromise proposal of **art. 51**; we welcome increased cooperation between the gas/hydrogen sectors in infrastructure planning. We have few amendments at par. 2 lett. b) and 2 lett. e), **highlighted in green**:

- **Art. 51. 2 b):** we ask for the deletion of the following critical requirement in the context of ten-year planning:

*(b) contain all the investments already decided and identify new investments **and demand-side solutions not requiring new infrastructure investments** which have to be executed in the next three years;*

- **Art. 51. 2 e):** the requirement of the submission of scenarios to the competent national authority and the European Scientific Advisory Board on Climate Change (ESABCC) seems to be burdensome; we agree with the proposal of the Presidency of keeping the consultation of ESABCC on a voluntary basis; we also suggest that the involvement of the NCAs should only be limited at requesting suggestions and eventual proposals of modification.

With reference to **art. 52** regarding reporting obligations of hydrogen DSOs, we note that:

- the draft agreement reduces the frequency of report presentation from 2 to 5 years: this reduction seems too much considering that the hydrogen sector is developing and there is a need to follow its evolution more closely;
- the Council's proposal on the timing of sending the first reporting has been deleted; even in this case, it seems to be more appropriate to keep an indication of when it should be sent for the first time, and then a frequency;
- the Council's text in paragraph 5a of article 52 provides for the possibility of designating another competent authority to examine the overview developed by the hydrogen DSOs; we prefer that NRA carry out this task.

We agree with the deletion of **art. 52a** to avoid overlapping with Energy Efficiency Directive.

With reference to the **art. 52b**, we have to note that the draft agreement seems to exclude future planning of the gas networks by the DSOs in favour of the decommissioning of the gas networks and possible repurposing of them to hydrogen: this provision seems to be in contrast with the EU and Italian objectives of production of biomethane for consumption. Anyway we reserve to finalize our comments on this revised draft agreement.

c) Existing hydrogen networks (article 47) and geographically confined hydrogen networks (article 48)

With reference to **art. 47** par. 1 on the existing hydrogen networks, we agree with compromise text of the Annex, but we suggest maintaining the deadline for derogation at the latest on 31.12.2030 or subject to NRA's decision, modifying art. 47. 2 lett. d) as **highlighted in green**:

Article 47 - Existing hydrogen networks

1. [...]
2. The derogation shall ~~be limited in time and shall~~ expire:
 - (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;
 - (b) where the hydrogen network benefitting from the derogation is connected to another hydrogen network;
 - (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**
 - (d) **at the latest on 31 December 2030 or** 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~~ efficient deployment of hydrogen infrastructure or the development of the hydrogen market in the Member State or the Union.
3. [...]

With reference to **art. 48** on geographically confined networks, we do not agree with the proposed derogation from the art. 42 on the vertical functional/legal unbundling of the DSOs of H2 which, on the other hand, should maintain at least a functional/legal separation from the other companies belonging to the vertically integrated group.

We also suggest maintaining the deadline for derogation at the latest on 31.12.2030 or subject to NRA's decision and modifying par. 2.

We therefore suggest the following amendments, **highlighted in green**:

Art. 48 - Geographically confined hydrogen networks

1. Member States may provide for regulatory authorities to grant a derogation from Articles 62 and 65 ~~or Article 42~~, for hydrogen networks which transport hydrogen from one entry point to a limited number of exit points within a geographically confined confined **area. For the duration of the derogation, such network shall fulfil all of the following conditions;**
~~industrial or commercial area.~~

[...]

2. The derogations under paragraph 1 shall apply at least until 31 December 2030. As from 1 January 2031, the 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.**

Member States shall take the necessary measures to ensure that access requests **of hydrogen producers as well as connection requests of industrial customers** are notified to the regulatory authority **and treated pursuant to article 38.**

d) Consumer issues – protection of vulnerable groups (Articles 11a, 25, 25a)

With regard to art. 25.1, we support the Presidency position to ensure that vulnerable customers are protected from gas disconnections, in particular in critical times and during the winter, rather than introducing a total ban on disconnections as proposed by the Parliament. This EP proposal is too generic and is not applicable considering potential cost on tariffs of such a provision.

We support possible compromise based on article 28a of Electricity Directive: “Member States shall ensure that vulnerable customers are protected from gas disconnections, in particular in critical times and during the winter”.

The same consideration should apply to the proposed complete ban on disconnections during judicial or out-of-court disputes that seem to be not implementable, and we prefer to adopt a compromise similar to the one above mentioned for “critical times and during the winter”.

Furthermore, with regard to definition of “vulnerable customers”, we prefer to allow Member States to define the category of vulnerable customers under the framework of the criteria provided for by the Electricity Directive.

e) Unbundling (Articles 62 and 63) (*Presentation of positions*)

With reference to the articles 62 and 63 regarding respectively the vertical and horizontal unbundling regime for hydrogen network operators (HNOs), we support the General Approach; above all, for vertical unbundling (art. 62) we reiterate the importance of the principle, also stated by the Parliament in its mandate, that the unbundling regime should not discriminate between future HNOs on the basis of the unbundling regime already adopted by the TSO in the gas sector.

We also prefer maintaining art. 63 regarding horizontal unbundling of hydrogen network operators, as proposed by Presidency, to guarantee a legal separation between hydrogen network operators and gas or electricity network operators.