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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	FI comments on solidarity in the Hydrogen and Gas Regulation (WK 12559/23)

Delegations will find in the annex the FI comments on solidarity in the Hydrogen and Gas Regulation (WK 12559/23).



18 October 2023

FI written comments on Presidency compromise proposal on solidarity in the Gas Market Package trilogies

Finland would like to thank the Presidency on the hard work on Solidarity in the Gas Market Package.

1. *Would be the delegations open to replace the cap for indirect costs by a cross border conciliation mechanism, where needed? Relevant drafting in article 13 (10), last subparagraph, is in brackets.*

While understanding the need for solidarity to be operational between the Member States, Finland would like to point out, that among the seven signed bilateral agreements is the one of Finland and Estonia and that it indeed is possible to agree upon the details, including financial ones on solidarity gas.

Upon the negotiations of Gas SOS Regulation (EU) 2017/1938, it was crucial in order to reach a General Approach in the Council that the details of the solidarity gas, i.e. price, is left for the Member States in question to agree upon.

Concerning the Presidency compromise proposal on replacing the 100% cap with a cross-border conciliation mechanism, we find it pivotal to have more information on the character the proposed conciliation mechanism such as the calculation method how ACER could decide on the compensation. There is a fear that this conciliation mechanism could actually be the 100% cap on the costs.

Finland considers that compensation for the solidarity supply of gas **should be based on the principle of full compensation** and that **the compensation basis should appear in the SOS Regulation**.

According to the Chapter of Fundamental Rights in the Finnish Constitution, expropriation for general purposes must be regulated by law and expropriation must be based on full compensation. Therefore, from the point of view of the Finnish government, limiting the amount of compensation means the risk that the Finnish state will have to cover the difference in the amount of compensation from the state budget, if the compensation liability of the Member State requesting solidarity is limited. This is not in accordance with the objectives of the SOS Regulation. The regulations must also be fair to the Member State offering solidarity.

It is crucial that limitations of fundamental rights should be written down directly in the legislation. Legal certainty should be guaranteed, as the question is what kind of compensation operators receive for their assets in case of expropriation of gas. In addition, it should be stated whether the decision could be appealed.

Finland could agree upon default solidarity rules as are stated in the current SOS Regulation (EU) 2017/1938 article 13(10) with no cap on the costs or the principle of full compensation should be written in the legislation.

Changes to the core definitions of solidarity in the Article 13 on Solidarity in the Gas SOS Regulation (EU) 2017/1938 should be made in the ordinary legislative procedure with a review of the SOS Regulation, with impact assessments.

2. *Would the delegations be open to extend the obligation for requesting Member States to provide solidarity to Member States not directly connected? Relevant text in article 13, paragraphs 2, 3(d), 10 and 11, is in brackets.*

Extending the obligation to provide solidarity to Member States not directly connected would drastically change the definitions of Solidarity agreed upon in the Gas SOS Regulation (EU) 2017/1938. It would need to be vetted properly, how an EU-wide solidarity would work in reality, with impact assessments.

A proposal on an EU-wide solidarity would put the default solidarity provision also in a totally different perspective as these would now cover the whole EU and all Member States.

Changes to the core definitions of solidarity in the Article 13 on Solidarity in the Gas SOS Regulation (EU) 2017/1938 should be made in the ordinary legislative procedure with a review of the SOS Regulation, with impact assessments.

3. *Would the delegations be open to include additional provisions in article 11 to reduce non-essential consumption of protected customers, along the lines of article 24 of the Emergency Regulation? Relevant text in article 13, paragraphs 3(a) and 3a, is in brackets.*

Limiting the supply of gas to protected customers with regard to the use of non-essential gas could be justified. While this change also goes to the core of the Gas SOS Regulation (EU) 2017/1938 as regards the definition of protected customers and would be better suited in the review of the Gas SOS Regulation, Finland is willing to show flexibility.

4. *Would the delegations be open to explore additional provisions on the safeguards for cross-border flows, along the lines of article 25 of the Emergency Regulation?*

Changes along the lines of Article 25 of the Emergency Regulation (EU) 2022/2576 to Article 12(6) of the Gas SOS Regulation (EU) 2017/1938 should be limited only to crisis situation.