



Council of the European Union
General Secretariat

Brussels, 20 October 2023

WK 13601/2023 INIT

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CONTRIBUTION

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

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

AT comments on the non-paper on the presidency compromise proposal on solidarity in the hydrogen and gas regulation (Doc. WK 12559/2023)

It is welcomed that the indirect costs are now no longer capped at 100 % of the gas price. With regard to a cross-border conciliation mechanism involving ACER, the proposal could be accepted in principle for the sake of finding a compromise. Since certain national compensation obligations could arise several months after the end of the emergency due to court proceedings in the solidarity-providing MS, either the deadlines for the ex-post review should be extended or a possibility should be created allowing compensation obligations arising later to be submitted subsequently if this can be well justified.

Regarding the deadlines for solidarity requests, it would be advisable to follow the agreed deadlines in Article 28 (4) of the Regulation (EU) 2022/2576. Longer lead times allow gas-intensive industries to gradually phase down their production processes, which can prevent damage and thus lower compensation payments can be expected. In addition, a higher amount of market-based solidarity offers can be expected. Therefore a corresponding solidarity request should be sent to the relevant MS 72 hours before the required delivery. The response to a solidarity request, i.e. the solidarity offer, should be submitted within 24 hours. Confirmation of a full or partial call of quantities from the solidarity offer should be submitted by the solidarity requesting MS to the solidarity providing MS as soon as possible, but at least 24 hours, before the scheduled delivery time. Receipt of e-mails should always be confirmed immediately.

In order to ensure cross-border gas flows in the best possible way also in emergency situations, AT would strongly support the permanent alignment of Article 12(6) subparagraph 2 of the Gas SoS Regulation with Article 25 of the Enhancing Solidarity Regulation. If the EC requests a MS to end undue restrictions on cross-border gas flows, then the MS has to end this undue restriction immediately.

AT would support the inclusion of a provision to restrict the non-essential gas consumption of protected customers in the Gas SoS Regulation. However, it should be possible to deduct all volumes consumed by solidarity protected customers from a solidarity offer, as the potential savings from curtailing non-essential gas consumption cannot be estimated.

The extension of the solidarity obligation to MS to which one is linked through another MS is seen critically, as it is unclear how this could be implemented operationally.