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**LIMITE**

**ENER**
**ENV**
**CLIMA**
**IND**
**RECH**
**COMPET**
**ECOFIN**
**CODEC**



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**CONTRIBUTION**

| | |
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| From: | General Secretariat of the Council |
| To: | Working Party on Energy |
| Subject: | LU comments on the Gas package (REV 5) |

Delegations will find in the annex the LU comments on the Gas package (REV 5).

# - Directive -

## Art 2 Definitions

| ***REV 5***<br><br>***[highlighted in yellow]*** | ***Drafting suggestion***<br><br>***[highlighted in blue]*** | ***Comment*** |
|---|---|---|
| *Article 2* | | |
| (10) 'low-carbon hydrogen' means hydrogen the energy content of which is derived from non-renewable sources, which meets ~~a~~ **the** greenhouse gas emission reduction threshold of 70% **compared to the fossil fuel comparator EF(t) set out in Annex V of Directive (EU) 2018/2001**; | (10) 'low-carbon hydrogen' means hydrogen the energy content of which is derived from non-renewable sources, which meets ~~a~~ **the** greenhouse gas emission reduction threshold of ~~70%~~ ***73.4%*** **compared to the fossil fuel comparator EF(t) set out in Annex V of Directive (EU) 2018/2001**; | In alignment with the EU taxanomy |
| (11) 'low-carbon gas' means the part of gaseous fuels in recycled carbon fuels as defined in Article 2, point (35) of Directive (EU) 2018/2001, low-carbon hydrogen and synthetic gaseous fuels the energy content of which is derived from low-carbon hydrogen, which meet the greenhouse gas emission reduction threshold of 70% | (11) 'low-carbon gas' means the part of gaseous fuels in recycled carbon fuels as defined in Article 2, point (35) of Directive (EU) 2018/2001, low-carbon hydrogen and synthetic gaseous fuels the energy content of which is derived from low-carbon hydrogen, which meet the greenhouse gas emission reduction threshold | |

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| **compared to the fossil fuel comparator EF(t) set out in Annex V of Directive (EU) 2018/2001;** | of ~~70%~~ *73.4%* **compared to the fossil fuel comparator EF(t) set out in Annex V of Directive (EU) 2018/2001;** | |
| (12) 'low-carbon fuels' means recycled carbon fuels as defined in Article 2 of Directive (EU) 2018/2001, low-carbon hydrogen and synthetic gaseous and liquid fuels the energy content of which is derived from low-carbon hydrogen, which meet the greenhouse gas emission reduction threshold of 70% **compared to the fossil fuel comparator EF(t) set out in Annex V of Directive (EU) 2018/2001**; | (12) 'low-carbon fuels' means recycled carbon fuels as defined in Article 2 of Directive (EU) 2018/2001, low-carbon hydrogen and synthetic gaseous and liquid fuels the energy content of which is derived from low-carbon hydrogen, which meet the greenhouse gas emission reduction threshold of ~~70%~~ *73.4%* **compared to the fossil fuel comparator EF(t) set out in Annex V of Directive (EU) 2018/2001**; | |

## Art. 4a (new) *Securing supply and prices for final customers*

| ***REV 5*** <br><br> ***[highlighted in yellow]*** | ***Drafting suggestion*** <br><br> ***[highlighted in blue]*** | ***Comment*** |
|---|---|---|
| | *New article 4a* | |
| | *Securing supply and prices for final customers* | |

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| | ***Member States shall impose that suppliers properly hedge their contracts with final customers.***<br><br>***Member States shall ensure that at least one supplier and every supplier that has more than 100 000 final customer offers a fixed-price contract of at least one year.*** | |



## Art. 8 Certification of renewable and low carbon fuels

| ***REV 5***<br><br>***[highlighted in yellow]*** | ***Drafting suggestion***<br><br>***[highlighted in blue]*** | ***Comment*** |
|---|---|---|
| Article 8 | | |
| **Certification of renewable and low carbon fuels** | | |
| 1. **For the purposes of certification of renewable and low carbon fuels, Member States shall require economic operators to show that the conditions for renewable gases** ~~Renewable gases shall~~ ~~**comply with the sustainability and greenhouse gas saving criteria**~~ | 1. **For the purposes of certification of renewable and low carbon fuels, Member States shall require economic operators to show that the conditions for renewable gases** ~~Renewable gases shall~~ ~~**comply with the**~~ | According to the Definitions of 'renewable gas' under Artice 2(2) of this Directive both biogas, but also RFNBOs are covered. Since Article 29 of RED only covers the sustainability and GHG |

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| ***set out in Article 27(2) and 29 of Directive (EU) 2018/2001 are complied with. Compliance with thosee sustainability and greenhouse gas saving criteria shall be demonstrated in accordance with Article 30 of that Directive ~~be certified in accordance with Article 29 and 30 of Directive (EU) 2018/2001.~~*** | ***~~sustainability and greenhouse gas saving criteria~~ set out in Article ~~27(2)~~ 29 of Directive (EU) 2018/2001 29a [Amended RED 2021/XX]. and are complied with. Compliance with thosee sustainability and greenhouse gas saving criteria shall be demonstrated in accordance with Article 30 of that Directive ~~be certified in accordance with Article 29 and 30 of Directive (EU) 2018/2001.~~*** | saving criteria for biogas, a reference to Article 29a of RED III on "*Greenhouse gas emissions saving criteria for renewable fuels of non-biological origin and recycled carbon fuels*" needs to be added. |
| | | |
| 5. ***Within 12 months of entry into force of this Directive~~By 31 December 2024~~***, the Commission shall adopt delegated acts in accordance with Article 83 to supplement this Directive by specifying the methodology for assessing greenhouse gas emissions savings from low carbon fuels. The methodology shall ensure that credit for avoided emissions is not given for carbon dioxide the capture of which has already received an emission credit under other provisions of law ***and shall be consistent with the methodology for assessing greenhouse gas emissions savings from*** | 5. ***Within 12 months of entry into force of this Directive~~By 31 December 2024~~***, the Commission shall adopt delegated acts in accordance with Article 83 to supplement this Directive by specifying the methodology for assessing greenhouse gas emissions savings from low carbon fuels. The methodology shall ***cover the entire GHG emission life cycle and*** ensure that credit for avoided emissions is not given for carbon dioxide the capture of which has already received an emission credit under other provisions of law ***and shall be consistent with the*** | |

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| ***renewable liquid and gaseous transport fuels of non-biological origin and from recycled carbon fuels.*** | ***methodology for assessing greenhouse gas emissions savings from renewable liquid and gaseous transport fuels of non-biological origin and from recycled carbon fuels.*** | |



## Art 8a [Possibility to use low-carbon hydrogen and low-carbon fuels in decarbonisation objectives]

**Deletion of entire article**

## Art. 14 Citizen energy communities *on the natural gas market*

| ***REV 5***<br><br>***[highlighted in yellow]*** | ***Drafting suggestion***<br><br>***[highlighted in blue]*** | ***Comment*** |
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| *Article 14* | | |
| **Citizen energy communities** ***on the natural gas market*** | | |
| 1. Member States ~~***shall***~~ ***may*** provide an enabling regulatory framework for citizen energy communities. | | |

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| ***2. Where Member States provide an enabling framework as referred to in paragraph 1, they shall ensure that: ~~ensuring that:~~*** | | |
| (a) participation in a citizen energy community is open and voluntary~~;~~ | | |
| (b) members or shareholders of a citizen energy community are entitled to leave the community, in which case Article 11-applies; | | |
| (c) members or shareholders of a citizen energy community do not lose their rights and obligations as household customers or active customers; | | |
| (d) subject to fair compensation as assessed by the regulatory authority, relevant distribution system operators cooperate with citizen energy communities to facilitate transfers of renewable ~~natural~~ gases within citizen energy communities; | | |
| (e) citizen energy communities are subject to non-discriminatory, fair, proportionate and transparent procedures and charges, including with respect to grid | | |

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| connection, registration and licensing, and to transparent, non-discriminatory and cost-reflective network charges, ensuring that they contribute in an adequate and balanced way to the overall cost sharing of the natural gas system. | | |
| 3~~2~~. **Where Member States provide an enabling framework as referred to in paragraph 1, they may provide in that enabling framework that citizens energy communities:** ~~Member States may provide in the enabling regulatory framework that citizen energy communities~~: | | |
| (a) are open to cross-border participation~~;~~ | | |
| (b) are entitled to own, establish, purchase or lease distribution networks and to autonomously manage them subject to conditions set out in paragraph 4 of this Article; | | |
| (c) are subject to the exemptions provided for in Article 28(2). | | |
| 4~~3~~. **Where Member States provide an enabling framework as referred to in paragraph 1, they shall ensure that citizen energy communities:**~~Member States shall ensure that citizen energy communities~~: | | |

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| (a) are able to access all natural gas markets in a non-discriminatory manner; | | |
| (b) are treated in a non-discriminatory and proportionate manner with regard to their activities, rights and obligations as final customers, producers, suppliers or distribution system operators or market participants; | | |
| (c) are financially responsible for the imbalances they cause in the natural gas system or shall delegate their balancing responsibility in line with Article 3 (e) of [recast Gas Regulation as proposed in COM(2021) ~~xxx~~ ***804***]; | | |
| (d) are treated like active customers in accordance with point (e) of paragraph 2 and points (a), (c) and (d), of Paragraph 4 of Article 13 ~~*[Active Customers]*~~; | | |
| (e) are entitled to arrange within the citizen energy community the sharing of renewable gas that are produced by the production units owned by the community, subject to other requirements laid down in this Article and subject to the community members retaining their rights and obligations as final customers. | | |

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| | ***(f – new) are autonomous from individual members and private undertakings, or their subsidiaries, engaged in large-scale commercial activity that participate in the community as members or shareholders, or who cooperate through other means such as investment*** | This provision operationalises the added recital (36). Otherwise, autonomy from individual members or members engaged in large-scale commercial activity remains just aspirational. Autonomy should be an operative governance principle of CECs |
| | ***g – new) are effectively controlled by shareholders or members that are located in the proximity of the renewable gas projects that are owned and developed by the legal entity.*** | Regardless of whether CECs can operate beyond their local areas, they should remain effectively controlled by local participants. This will ensure ownership, and enhance local acceptance while allowing for benefits of the activity to stay local. |
| For the purposes of the first subparagraph, point (e), where renewable gases are shared, this shall be without prejudice to applicable network charges, tariffs and levies, in accordance with a transparent cost-benefit analysis of distributed energy resources developed by the competent national authority. | | |

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| 45. Member States may decide to grant citizen energy communities the right to manage distribution networks in their area of operation and establish the relevant procedures, without prejudice to Chapter VI or to other rules and regulations applying to distribution system operators. | | |
| Where ~~***such***~~ a right ***as referred to in the*** ~~***fourth***~~ ***first subparagraph*** is granted, Member States shall ensure that citizen energy communities: | | |
| (a) are allowed to transport non-renewable gas where such gas is for a natural gas customer who is not a member of the citizen energy community or is necessary for secure system operation; | (a) are allowed to transport non-renewable gas where such gas ~~is for a natural gas customer who is not a member of the citizen energy community or~~ is necessary for secure system operation; | CECs should focus on renewable gases. Therefore, fossil gas should not become a new stream of commercial activity. The transport of non-renewable, de fact fossil gas should be confined to ensuring secure system operation. |
| (b) are entitled to conclude an agreement on the operation of their network with the relevant distribution system operator or transmission system operator to which their network is connected; | | |

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| (c) are subject to appropriate network charges at the connection points between their network and the distribution network outside the citizen energy community; | | |
| (d) do not discriminate or harm customers who remain connected to the distribution system. | | |
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| **6. Where Member States provide an enabling framework as referred to in paragraph 1, they may decide that private undertakings that are engaged in large-scale commercial activity and for which the gas sector constitutes a primary area of economic activity are not allowed to participate, either directly or indirectly through a subsidiary, in a citizen energy community.** | **6. Where Member States provide an enabling framework as referred to in paragraph 1, they ~~may decide~~ *shall ensure* that private undertakings, ~~that are engaged in large-scale commercial activity and~~ for which the ~~gas~~ *energy* sector constitutes a primary area of economic activity are *ineligible as a member and* not allowed to participate, either directly or indirectly through a subsidiary, in a citizen energy community. *This shall not prevent Renewable Energy Communities, defined in Article 2(16) in Directive 2018/2001ECs, as a private undertaking, from organising themselves through a CEC to supply renewable gas as primary commercial activity.*** | If a MS decides for providing an enabling framework for CECs, it needs to be ensured that there is no corporate capture of the concept in particular from within the energy sector. At the same time it needs to be clarified that this is not applying to RECs. The reference to the energy sector (instead of *gas*), reflects the language in recital 36. |

## Recitals – linked to CECs

| ***REV 5*** <br> ***[highlighted in yellow]*** | ***Drafting suggestion*** <br> ***[highlighted in blue]*** | ***Comment*** |
|---|---|---|
| *(35a) **Renewable energy communities, pursuant to Directive (EU) 2018/2001, and citizen energy communities~~, under~~ pursuant to Directive (EU) 2019/944 and ~~under~~ this Directive, can contribute to the production, storage and supply of renewable gas, helping to decarbonise the energy system. In particular, renewable energy communities can help contribute to the development of a local circular economy, particularly in rural regions. Citizen energy communities can help mobilise private capital investments for the decarbonisation of energy supply and use of farms and villages, increase transparency and acceptance of renewable gas offers, and help connect rural supply potential with demand of consumer members. There is a need to provide a level playing field so that renewable gases, such as biomethane, produced by citizen energy*** | *(35a) **Renewable energy communities, pursuant to Directive (EU) 2018/2001, and citizen energy communities~~, under~~ pursuant to Directive (EU) 2019/944 and ~~under~~ this Directive, can contribute to the production, storage and supply of renewable gas, helping to decarbonise the energy system. In particular, renewable energy communities can help contribute to the development of a local circular economy, particularly in rural regions. Citizen energy communities can help mobilise private capital investments for the decarbonisation of energy supply and use of farms and villages, increase transparency and acceptance of renewable gas offers, and help connect rural supply potential with demand of consumer*** | |

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| ***communities can be integrated into the natural gas system.*** | ***members. There is a need to provide a level playing field so that renewable gases, such as biomethane, produced by citizen*** **and renewable** ***energy communities can be integrated into the natural gas system.*** | |
| (36) The provisions on citizen energy communities do not preclude the existence of other citizen initiatives such as Renewable Energy Communities in Directive (EU) 2018/2001 or those stemming from private law agreements. Membership of citizen energy communities should be open to all categories of entities. However, the decision-making powers within a citizen energy community should be limited to those members or shareholders that are not engaged in large-scale commercial activity and for which the energy sector does not constitute a primary area of economic activity. This means that citizen energy communities and individual members or shareholders need to be financially and economically independent from entities engaged in such activities, notwithstanding the possibility for citizen energy communities to delegate the management of the installations | (36) The provisions on citizen energy communities do not preclude the existence of other citizen initiatives such as Renewable Energy Communities in Directive (EU) 2018/2001 or those stemming from private law agreements. Membership of citizen energy communities should be open to all categories of entities. However, the decision-making powers within a citizen energy community should be limited to those members or shareholders that are not engaged in ~~large-scale~~ commercial activity and for which the energy sector does not constitute a primary area of economic activity. This means that citizen energy communities and individual members or shareholders need to be financially and economically independent from entities engaged in such activities, notwithstanding the possibility for | |

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| required for their activities, including installation, operation, data handling and maintenance. | citizen energy communities to delegate the management of the installations required for their activities, including installation, operation, data handling and maintenance. | |
| *(36a) The provisions on citizen energy communities should not preclude the existence of other citizen initiatives such as* **r**~~R~~*enewable* **e**~~E~~*nergy* ~~C~~**c***ommunities in Directive (EU) 2018/2001 or those stemming from private law agreements. Membership of citizen energy communities should be open to all categories of entities. It is appropriate that effective control,* ~~in line with definition~~**as defined in** ~~Article 2 (51) of~~ *this Directive, and thus decisive influence over decision-making,* ~~sits~~ **remains** *with small enterprises, local authorities and natural persons.* **Member States should be able to decide to limit the risk of decisive influence by private undertakings that are engaged in large-scale commercial activity and for which the gas sector constitutes a primary area of economic activity over decision-making by excluding their participation, or putting limitations on the** | *(36a) The provisions on citizen energy communities should not preclude the existence of other citizen initiatives such as* **r**~~R~~*enewable* **e**~~E~~*nergy* ~~C~~**c***ommunities in Directive (EU) 2018/2001 or those stemming from private law agreements. Membership of citizen energy communities should be open to all* ***final customers, in particular household customers*** ~~*categories of entities*~~*. It is appropriate that effective control,* ~~in line with definition~~**as defined in** ~~Article 2 (51) of~~ *this Directive, and thus decisive influence over decision-making,* ~~sits~~ **remains** *with small enterprises, local authorities and natural persons.* **Member States should** ~~be able to decide to~~ **limit the risk of decisive influence by private undertakings** ~~that are engaged in large-scale commercial activity and~~ **for which** | |

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| **amount of voting rights, shares and commercial contracts they can hold. Such private undertakings do not include publically-owned companies**. ~~**In order to limit the risk of decisive influence over decision-making by private undertakings that are engaged in large-scale commercial activity and for which the gas sector constitute a primary area of economic activity, these undertakings should not have any decision making power meaning they should not hold any voting rights, hold majority of the shares, or have an exclusive commercial contract**~~. *To further mitigate the risk of corporate capture, Member States should monitor compliance of these initiatives with the governance and participation criteria set out in this Directive to ensure effective control sits with local authorities, citizens and small enterprises in accordance with* **this Directive**~~**Article 72 (1) (d) of this Directive**~~. | **the** ~~**gas**~~ ***energy*** **sector constitutes a primary area of economic activity over decision-making by excluding their participation** ***and their voting,*** ~~**or**~~ **putting limitations on** ~~**the amount of voting rights,**~~ **shares and commercial contracts they can hold. Such private undertakings do not include publically-owned companies**. ~~**In order to limit the risk of decisive influence over decision-making by private undertakings that are engaged in large-scale commercial activity and for which the gas sector constitute a primary area of economic activity, these undertakings should not have any decision making power meaning they should not hold any voting rights, hold majority of the shares, or have an exclusive commercial contract**~~. *To further mitigate the risk of corporate capture, Member States should monitor compliance of these initiatives with the governance and participation criteria set out in this* | |

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| | ***Directive to ensure effective control sits with local authorities, citizens and small enterprises in accordance with this Directive~~Article 72 (1) (d) of this Directive~~.*** | |



## Art. 80 Derogations for natural gas system

| ***REV 5***<br><br>***[highlighted in yellow]*** | ***Drafting suggestion***<br><br>***[highlighted in blue]*** | ***Comment*** |
|---|---|---|
| *Article 80* | | |
| **Derogations for natural gas system** | | |
| | ***ADD***<br><br>***(1a) Luxembourg may derogate from Article 54*** | We need to renew the derogation granted to Luxembourg already in the previous versions of the Gas Directive, as well as in the Electricity Directive. Given the small size of the country, the low number of customers and the limited length of the |

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| | | network operated, a strict unbundling regime for natural gas would represent a disproportionate financial burden for consumers without providing any benefit. |

**- Regulation –**

## Art 16 Tariff discounts for renewable and low carbon gases

| ***REV 5*** <br><br> ***[highlighted in yellow]*** | ***Drafting suggestion*** <br><br> ***[highlighted in blue]*** | ***Comment*** |
|---|---|---|
| *Article 16* | | |
| **Tariff discounts for renewable and low carbon gases** | | |
| ~~2~~6. **By way of derogation from paragraphs 1 and 5,** ~~r~~Regulatory authorities may ***decide not to apply discounts or to*** set discount rates lower than those set in paragraph 1 **and 5** ~~of this Article~~ provided that ~~the discount~~ **it** is in line with the general tariff principles as set out in Article 15 and in particular the principle of cost-reflectiveness, taking into account a need for stable | ~~2~~6. **By way of derogation from paragraphs 1 and 5,** ~~r~~Regulatory authorities may ***decide not to apply discounts or to*** set discount rates lower than those set in paragraph 1 **and 5** ~~of this Article~~ provided that ~~the discount~~ **it** is in line with the general tariff principles as set out in Article 15 and in particular the principle of cost- | MS need to be able to decide on their energy mix |

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| financial frameworks for existing investments, where appropriate, ~~and~~ the advancement of the roll-out of renewable and low-carbon gases in the Member State concerned **and the existence of alternative support mechanisms for scaling up the use of renewable and low carbons gases.** ~~.~~ | reflectiveness, taking into account a need for stable financial frameworks for existing investments, where appropriate, ~~and~~ the advancement of the roll-out of renewable and low-carbon gases in the Member State concerned **and the existence of alternative support mechanisms for scaling up the use of renewable ~~and~~ *or* low carbons gases.** ~~.~~ | |