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CONTRIBUTION

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

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

ARTICLE	DRAFTING SUGGESTIONS	COMMENTS
Article 19 of the Regulation		
Cross-border coordination of~~n~~ gas quality ***in the natural gas system***		The Czech Republic wants to reintroduce the previous wording of Article 19 and reinstate Article 20 as in REV3 with increased blending level of up to 5% of the Gas Regulation. The Article 19 in its current form is very complicated and the overall process is hard to follow. The previous wording of both Articles followed the discussion at TTE Council on 25 October and was further confirmed during COREPER in December. We do not see any need to change that compromise.
1. This Article shall ~~only~~ **not** ***apply to hydrogen blends~~,~~ where the hydrogen content blended into the natural gas system~~,~~ ~~does not exceed~~ exceeds [2 %] by volume.***	~~**This Article shall only apply to hydrogen blends, where the hydrogen content blended into the natural gas system, does not exceed [2 %] by volume.**~~	The previous wording in REV3 of both Articles created the possibility to have 2% blending from the beginning without the necessity of TSOs to bilaterally agree on it. The current wording in the REV5 does not explicitly state any level of blending. Harmonization on the EU level is crucial. Also, the Article 19 currently does not explicitly mentions blending higher than 2% or as Czech Republic proposes 5%. Legal certainty is needed that there is a certain starting point for blending and that higher and lower levels of blending are possible should the relevant Member States agree on it.
6a. Where a ~~the~~ restriction to cross-border flows is due to hydrogen blending in the natural gas system that does not exceed ~~up to~~ [2 %] by volume ~~the percentage set out in Article 20(1),~~	***6a Where a ~~the~~ restriction to cross-border flows is due to hydrogen blending in the natural gas system*** **~~that does not exceed~~ up to~~up to~~ ~~[2 %] by volume~~** the percentage set out in Article 20 (1)	The Czech Republic cannot accept for one of the parties to unilaterally decline any percentage of blending. This will create great obstacles for Member States who wish to develop hydrogen market but do

the concerned regulatory authorities ~~or transmission system operator~~ may, through ~~with~~ a joint coordinated decision taken within six months as set out in Article 6(10) of Regulation (EU) 2019/942, state that no further action should be pursued, taking into account the cost benefit analysis prepared by the concerned transmission system operators and the results of the public consultation ~~within six months as set out in Article 6(10) of Regulation (EU) 2019/942~~. If the concerned regulatory authorities do not reach a joint coordinated decision for removing a recognised restriction arising due to different practices for blending hydrogen not exceeding [2 %] by volume into the natural gas system within six months from the submission of a joint solution by the concerned ~~transmission system operators~~ regulatory authorities, or if the concerned ~~transmission system operators~~ regulatory authorities do not reach an agreement on a solution pursuant to paragraph 4 ~~of this article~~, the technical specifications existing at the date of the submission shall continue to apply. When the concerned regulatory authorities do not reach a joint coordinated agreement, they may individually request, every two years, the concerned transmission system operators to perform the process established in paragraph 4 following the coordinated decision pursuant to paragraph 3.	~~the percentage set out in Article 20(1)~~, ***the concerned regulatory authorities ~~or transmission system operator~~ may, through ~~with~~ a joint coordinated decision taken within six months as set out in Article 6(10) of Regulation (EU) 2019/942, state that no further action should be pursued, taking into account the cost benefit analysis prepared by the concerned transmission system operators and the results of the public consultation*** ~~within six months as set out in Article 6(10) of Regulation (EU) 2019/942~~. **~~If the concerned regulatory authorities do not reach a joint coordinated decision for removing a recognised restriction arising due to different practices for blending hydrogen not exceeding [2 %] by volume into the natural gas system within six months from the submission of a joint solution by the concerned transmission system operators regulatory authorities, or if the concerned transmission system operators regulatory authorities do not reach an agreement on a solution pursuant to paragraph 4 of this article, the technical specifications existing at the date of the submission shall continue to apply. When the concerned regulatory authorities do not reach a joint coordinated agreement, they may individually request, every two years, the concerned transmission system operators to perform the process established in paragraph 4 following the coordinated decision pursuant to paragraph 3.~~**	not have sufficient potential for development of renewable sources of electricity or hydrogen itself in the early stages. Moreover, ACER must always be included in the process as a neutral mediator.
10. Where the relevant regulatory authorities cannot take a	10. Where the relevant regulatory authorities cannot take a	ACER must always be included in the process as a neutral mediator.

joint coordinated decisions as referred to in paragraphs 6 and 7, ACER shall decide on the solution to remove the recognised restriction and on the allocation of the investment costs to be borne by each transmission system operator for implementing the agreed solution ***or for stating that no further action should be pursued pursuant to paragraph 6a of this Article***, following the process set out in Article 6(10) of Regulation (EU) 2019/942.	joint coordinated decisions as referred to in paragraphs 6, **6a** and 7, ACER shall decide on the solution to remove the recognised restriction and on the allocation of the investment costs to be borne by each transmission system operator for implementing the agreed solution ***or for stating that no further action should be pursued pursuant to paragraph 6a of this Article***, following the process set out in Article 6(10) of Regulation (EU) 2019/942.	
~~**Article 20 of the Regulation**~~	Article 20	
~~**Hydrogen blends at interconnection points between Union Member States in the natural gas system**~~	**Hydrogen blends at interconnection points between Union Member States in the natural gas system**	The Czech Republic wants to reinstate Article 20 in accordance with comments to Article 19.
~~1. Transmission system operators shall accept gas flows with a hydrogen content of up to ***5[2]%*** by volume at interconnection points between Union Member States in the natural gas system from 1 October 2025***. In case hydrogen blending of up to 5[2]% is recognised as a restriction to cross-border flows pursuant to Article 19 of this Regulation, transmission system operators shall be subject to the obligations set in paragraph 1 only after*** subject to the ***completion of the*** procedure described in Article 19 of this Regulation.~~	1. Transmission system operators shall accept gas flows with a hydrogen content of up to 5~~***5[2]***~~% by volume at interconnection points between Union Member States in the natural gas system from 1 October 2025***. In case hydrogen blending of up to 5~~5[2~~]% is recognised as a restriction to cross-border flows pursuant to Article 19 of this Regulation, transmission system operators shall be subject to the obligations set in paragraph 1 only after*** subject to the ***completion of the*** procedure described in Article 19 of this Regulation.	The Czech Republic prefers blending up to 5 % as previously in the Commission's proposal.
~~2. When the hydrogen content blended in the natural gas system exceeds ***5[2]%*** by volume, the process described in Article 19 of this Regulation shall not apply.~~	2. When the hydrogen content blended in the natural gas system exceeds **5~~*5[2]*~~*%*** by volume, the process described in Article 19 of this Regulation shall not apply.	The Czech Republic prefers blending up to 5 % as previously in the Commission's proposal.

~~3. Member States shall not use hydrogen blending in the natural gas system to restrict cross-border gas flows.~~	3. Member States shall not use hydrogen blending in the natural gas system to restrict cross-border gas flows.	
[***New article 8a of the Directive***		We insist on keeping the new Article 8a. Recognition of contribution of low-carbon gases towards decarbonization remains to be absolutely crucial for the Czech Republic. Low-carbon gases, including low-carbon hydrogen, undeniably will have an important role in achieving decarbonization and as such must be recognized also in legislation.
Possibility to use low-carbon hydrogen and low-carbon fuels in decarbonisation objectives		
Member States may take into account low-carbon fuels of non-biological origin, including low-carbon hydrogen, as a complement in calculation of:		
a) the greenhouse gas intensity reduction referred to in article 25 point (a) of the recast [Renewable Directive 2018/2001];		
b) the targets of renewable fuels of non-biological origin referred to in article 25 point (b) of the recast [Renewable Directive 2018/2001];		
c) the share of renewable fuels of non-biological origin referred to in article 22a point (b) of the recast [Renewable Directive 2018/2001].		
Low-carbon fuels of non-biological origin shall not be labelled, nor advertised, as renewable fuels of non-biological origin.		

Consequently, Member States shall ensure that final consumers are given the necessary information to differentiate between renewable fuels of non-biological origin and low-carbon fuels of non-biological origin. **]**		
Article 42~~26~~ of the Directive		
Unbundling of distribution system operators	**Unbundling of distribution system operators and hydrogen distribution network operators**	The Czech Republic thinks that it is necessary to differentiate between transmission and distribution levels in the hydrogen market. There are many industrial final customers connected directly to the distribution grid. For many of these customers renewable and low-carbon gases will be the most viable, if not only, option for decarbonization. If the current gas DSOs are not incentivized to invest into retrofitting and repurposing of their infrastructure, then the development of hydrogen infrastructure will be slowed down and more expensive than necessary and the competitiveness of the Czech and European industry could be undermined. Therefore, we propose to mirror the unbundling rules for gas DSOs also for hydrogen distribution network operators which provides the most stable and predictable investment environment. The inspiration for many provisions regarding differentiation between transmission and distribution in hydrogen and specifically for unbundling of hydrogen distribution network operators could be taken from the report of

		ITRE from 9 February 2023 based on the definitions inserted in this Article. Further changes will be necessary througout the Gas Package.
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.	Where the distribution system operator ***or the hydrogen distribution network 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 ***or the hydrogen distribution network*** from the vertically integrated undertaking.	
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:	In addition to the requirements under paragraph 1, where the distribution system ***operator or the hydrogen distribution network*** 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:	
(a) ~~those~~⌦ the ⌫ persons responsible for the management of the distribution system operator ~~must~~ ⌦ 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 ⇨, transportat~~***ion***~~ ⇦ and supply of ⇨ gases ⇦ ~~natural gas~~;	(a) ~~those~~⌦ the ⌫ persons responsible for the management of the distribution system operator ***or the hydrogen distribution network operator*** ~~must~~ ⌦ shall ⌫ not participate in company structures of the integrated natural gas undertaking ***or the vertically integrated undertaking*** responsible, directly or indirectly, for the day-to-day operation of the production, transmission	

	⇨, transportat~~ion~~ ⇦ and supply of ⇨ gases ⇦ ~~natural~~ ~~gas~~;	
(b) appropriate measures ~~must~~ ⌦ 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 that ensures that they are capable of acting independently;	(b) appropriate measures ~~must~~ ⌦ shall ⌫ be taken to ensure that the professional interests of persons responsible for the management of the distribution system operator ***or the hydrogen distribution network operator*** are taken into account in a manner that ensures that they are capable of acting independently;	
(c) the distribution system operator ~~must~~ ⌦ 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;~~,~~ i~~I~~n order to fulfil those tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, financial and physical resources;~~,~~ t~~T~~his ~~should~~ ⌦ 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~~41~~(7) in a subsidiary are protected;~~,~~ i~~I~~n 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;~~,~~ i~~I~~t shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual	(c) the distribution system operator ***or the hydrogen distribution network operator*** ~~must~~ ⌦ shall ⌫ have effective decision-making rights, independent from the integrated natural gas undertaking ***or the vertically integrated undertaking***, with respect to assets necessary to operate, maintain or develop the network;~~,~~ i~~I~~n order to fulfil those tasks, the distribution system operator ***or the hydrogen distribution network operator*** shall have at its disposal the necessary resources including human, technical, financial and physical resources;~~,~~ t~~T~~his ~~should~~ ⌦ 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~~41~~(7) in a subsidiary are protected;~~,~~ i~~I~~n particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator ***or the hydrogen distribution network***	

decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument; ~~and~~	***operator*** and to set global limits on the levels of indebtedness of its subsidiary;~~,~~ i~~I~~t 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; ~~and~~	
(d) the distribution system operator ~~must~~ ⌦ 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;~~,~~ t~~T~~he compliance programme shall set out the specific obligations of employees to meet that objective;~~,~~ a~~A~~n 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~~39~~(1) and shall be published;~~,~~ t~~T~~he compliance officer 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.	(d) the distribution system operator ***or the hydrogen distribution network operator*** ~~must~~ ⌦ 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;~~,~~ t~~T~~he compliance programme shall set out the specific obligations of employees to meet that objective;~~,~~ a~~A~~n 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 ***or the hydrogen distribution network operator***, to the regulatory authority referred to in Article 70~~39~~(1) and shall be published;~~,~~ t~~T~~he 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 the hydrogen distribution network operator*** and any affiliated undertaking to fulfil his task.	

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.	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 operator*** shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.	
	3a. The distribution system operator and the hydrogen distribution network operator shall comply with Article 64 and 69 of this Directive.	