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CONTRIBUTION

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

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

**Written Comments by Germany on the REV5 versions for the Gas and Hydrogen
Internal Market Directive and Regulation (6910/23 and 6911/23)**

Germany asks for due consideration of the following main comments and proposals based on this week's EWP discussion:

Directive

Art. 2 Definitions 10, 11, 12 low carbon hydrogen, gases and fuels

Replace: [...GHG reduction threshold of] **70%** [compared to the fossil fuel comparator set out in RED...] by ***“73.4% as in Annex I to the Delegated Regulation...to Regulation (EU) 2020/852”***.

Rationale: 73.4% is the calculated GHG reduction of the Taxonomy Regulation and more suitable to the low carbon gases or hydrogen than the RED comparator and would raise the ambition to a level at which the least efficient production of low carbon hydrogen would be incentivized to improve.

Art. 8a Usage of low-carbon hydrogen and fuels

Delete Article

Rationale: Changing of accounting rules in the RED via the Gas Directive by accounting low-carbon as “renewable” is neither acceptable nor legally feasible.

Art. 48 Geographically confined hydrogen networks

With regard to hydrogen distribution systems replace by the differentiation as in the European Parliament's report (Art. 21a, 21b, Art. 42, Art. 62, Art. 63)

Rationale: the newly proposed Art. 48 in REV5 aims to enable individual decisions by Regulatory authorities to exempt defined hydrogen networks: This approach is, however, burdened with complexity and uncertainty as compared to the straightforward approach by EP.

Also the requirement of maximum connection to only one other hydrogen network would eliminate the most relevant distribution systems from applying Art. 48 (a risk of distributions systems acting as transport systems is non-existent as these systems provide the link to industry and power plants, which can also be regulated).

Any exemption would also need to include Art. 63 “legal unbundling”.

Art. 49 Hydrogen interconnectors with third countries

Keep paragraphs 1 and 2 of REV4.

Alternatively a more balanced Article on the Empowerment Procedure adapted from earlier Art. 49b of Dir. 2009/73 could be envisaged and is currently drafted for further scrutiny next week

Rationale:

- (1) It is necessary to clarify that interconnectors with third countries remain subject to Union rules effectively applied on Union territory. This should not be deleted.
- (2) It should be clarified that an intergovernmental agreement can be concluded that is in conformity with the so-called IGA decision
- (3) The Union can be empowered to conclude an international agreement. This agreement should, however, not automatically become a prerequisite for any operation.

Art. 70 Regulatory Authorities

Add new paragraph 7

“Notwithstanding the independence of regulatory authorities, Member States may lay down policy principles and guidelines regarding rules on access to networks and tariffs. Member States shall ensure that respective principles and guidelines do not preempt an impartial and independent individual decision on the individual case by the regulatory authority”

Rationale: Decisions relating to energy and climate policy choices, strategies and support instruments as well as on general principles, including i.a. network access, should be decided by member states and their legislative procedures. Decisions of a more technical, implementing or regulatory nature should be mandated to the independent regulatory authorities.

Regulation

Art 16 para 2, newly para 6 Derogation on tariff discounts

Replace “Regulatory authority” with “Member States” in para 6

Rationale: REV5 leaves the decision that is to be taken on the scope and level of tariff discounts for renewable and low-carbon gases in the hands of the Regulatory authorities. We maintain that this is an issue of energy and climate policy, of support instruments and energy choices, which Art. 194 TFEU reserves to Member states and their parliaments not regulators.

Art. 18 Firm capacity for RE and LC gases to the transmission system

Add Derogation for Member States as in Art. 16 para 6

Rationale: Firm capacity (giving guaranteed priority) is a support instrument. The final decision should remain with Member States.

Art. 13b Certification of storage system operators

Add sentence at the end of para 4:

(...)Provided that all persons exercising direct or indirect control or any right over the storage system operator within the meaning of Article 9 of Directive 2009/73/EC are residents of the Union or the European Economic Area, the concerned storage system operator shall be exempted from the certification procedure."

Alternatively, it could also be

"...assumed that EU/EWR residents would, in general, not endanger energy supply security or security interests of the Union and Member States, without prejudice to comprehensive examination".

Rationale: The gas storage certification process covering all storages generates a disproportionate administrative burden. Germany – like other Member States – has already taken comprehensive measures to prevent negative Russian influence. With more than 20 gas storage operators, most of which are controlled by entities with headquarters in Europe, Germany is especially affected. With sanctions in force and Russian entities almost entirely withdrawn from gas storages, a comprehensive certification process for all storage operators generates only very limited additional value. The proposal above would enable a more proportionate approach.