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From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	DE comments on the Internal Gas and Hydrogen Market Directive and Regulation

Delegations will find in the annex the DE comments on the Internal Gas and Hydrogen Market Directive and Regulation.

Comments by Germany on the draft Internal Gas and Hydrogen Market Directive and Regulation (REV2)

Germany reiterates the comments and proposals made in the past Energy Working Parties as well as in COREPER and wishes to summarize and highlight the following key aspects with a view to the upcoming next REV version and the Progress Report of the Presidency to the Council. We reserve broader and more detailed commenting in the further process.

I. Proposal for a Directive on common rules for the internal market in renewable and natural gases and in hydrogen

Art. 2 numbers 10, 11 and 12 on definitions for "low carbon" hydrogen, gas and fuels have not been adjusted since the original proposal: the 70% reduction threshold lacks a reference system (which would allow any further assessment), lacks a gas-specific comparator, lacks ambition and dynamization over time.
Proposal: Commission should present analysis of options (e.g. taxonomy, RED or natural gas) and impacts, to be able to determine specifications.

Art. 8 (10) and Art. 8a (new): We continue to strongly oppose inclusion in the gas market legislation of any rules changing the system or the intentions of especially legislation on renewable energies and specifically contradicting Council decisions in the legislative process on the RED.
Proposal: Deletion of Art. 8a

Art. 34 ("refusal rights"): Germany has flagged up the need for a new approach to bring access and connection to natural gas systems in line with decarbonization objectives. Para 1 and 2 are regarded as insufficient, to ensure that natural gas undertakings are allowed to refuse connection and access not only on the grounds of lack of capacity but also on the grounds of decarbonization objectives which are inevitably associated with the decommissioning of parts of the distribution system.
Proposal: We attach a wording proposal at the end of this document as a basis for further discussion.

Art. 52 on hydrogen network development continues to focus on (nearly open-ended) "reporting" of hydrogen infrastructure "aims" rather than mandating a network development plan (NDP) according to the rules as for gas NDPs. Only in para 6, included by REV1, NDP is a requirement for member states opting for regulated TPA, which mainly points to the time line for implementation there (now moved to 2036). However, we see reliable network planning beginning in the 2020s as essential for the rapid development challenge ahead in H2, also with a view to linking neighbouring member states and strengthening the internal market.
Proposal: Change para 1 to H2 NDPs following Art. 51 from 2026

Art. 62 on Unbundling of hydrogen network operators has seen some improvement (especially on the ITO) but essential points have not been solved yet: the hydrogen ISO continues to be limited exclusively to H2 networks set up within a deadline (now moved to 2030). This effectively makes it impossible to make use of this unbundling option permanently to build and finance hydrogen networks by including both converted gas networks and new investors alike. Further, the limitation makes no sense with regard to nearness of the ISO to the ownership unbundling model.
Proposal: In para 3 delete the "completion before January 2031" requirement

Hydrogen at DSO level: With regard to unbundling we also wish to remind that the uniform definition of hydrogen network operators would directly end the existing unbundling exemption for

DSOs in this field. Many gas and future hydrogen grids at the DSO level link industries, power and heating plants to the high pressure network and will need to be included in the future hydrogen networks. Forcing these to be unbundled would create unnecessary and counterproductive obstacles for their inclusion.
Proposal: In Art. 62 para 1 refer to hydrogen transport system operators.

Art. 70: Role of independent regulatory authorities: Art. 16 below illustrates very well why we propose a clearer identification of where decisions of a more competition-securing, regulatory and technical nature should be authorized to NRAs, but at the same time decisions relating to energy and climate policy choices and strategies need to remain in the authority of Member states.
Proposal: Clarification in a new sentence 2 to para 1.

II. Proposal for a Regulation on common rules for the internal market in renewable and natural gases and in hydrogen

Art. 16 tariff discounts: para 1 still contains mandatory discounts not only for renewable but also for low-carbon gases. According to the draft and the REV exemptions are to be decided not by Member states but by NRAs. However, in our view, this is clearly an issue in the prerogative of Member states as it relates to energy choices (Art. 194 TFEU). Also it is an issue of energy and climate strategies, not of regulatory nature and should thus remain in the competence of Member states and their Legislature.
Similarly, in **Art. 18 on guaranteed Firm capacity**, Member states should reserve the right to differentiate between renewable and low-carbon gases.
Proposal: in Art. 16 and 18 leave the authority to decide on privileging certain energy carriers to Member States.

Presidency compromise	*Drafting suggestions*
SECTION III	
REFUSAL OF ACCESS AND CONNECTION	
🡻 2009/73/EC (adapted)	
⇨ new	
Article 34~~35~~	
Refusal of access ⌦ and connection ⌫	
1. Natural gas ⇨ and hydrogen ⇦ undertakings may refuse access ⇨ or connection ⇦ to the ~~system~~ ⇨natural gas or hydrogen system ⇦ on the basis of lack of capacity, ~~or where the access to the system would prevent them from carrying out the public service obligations referred to in Article 3(2) which are assigned to them or on the basis of serious economic and financial difficulties with take-or-pay contracts having regard to the criteria and procedures set out in Article 48 and the alternative chosen by the Member State in accordance with paragraph 1 of that Article~~. Duly substantiated reasons shall be given for any such a refusal.	1. Natural gas ~~⇨ and hydrogen ⇦~~ undertakings may refuse access ⇨ or connection ⇦ to the ~~system~~ ⇨natural gas ~~or hydrogen~~ system ⇦ on the basis of lack of capacity, **or, where grid connection or capacity expansion would lead to cost which cannot be recovered by appropriate grid charges within regular depreciation periods** ~~where the access to the system would prevent them from carrying out the public service obligations referred to in Article 3(2) which are assigned to them or on the basis of serious economic and financial difficulties with take-or-pay contracts having regard to the criteria and procedures set out in Article 48 and the alternative chosen by the Member State in accordance with paragraph 1 of that Article~~. Duly substantiated reasons shall be given for any such a refusal.
	1. a **Natural gas undertakings may refuse access or connection to the natural gas system where** **the network development plan pursuant to Article 51 as approved by the regulatory authority envisages the decommissioning of the transmission system or relevant parts thereof.** **Member States may allow natural gas undertakings to refuse access or connection to the natural gas system based on non-discriminatory criteria adopted for the purpose of supporting the climate-neutrality objective set out in Article 2(1) of Regulation (EU) 2021/1119.** **Duly substantiated reasons shall be given for any such a refusal.**

	1. b **Member States may decide that natural gas undertakings may disconnect final customers based on non-discriminatory criteria adopted for the purpose of supporting the climate-neutrality objective set out in Article 2(1) of Regulation (EU) 2021/1119. Member States shall take adequate measures to protect final customers as set out in Chapter III., which is inter alia sufficiently taken into account whenever the final customer is replacing an appliance reliant on natural gas and can be referred to a reasonable alternative appliance not directly reliant on natural gas or on a natural gas distribution system.** Duly substantiated reasons shall be given for any such a refusal/ disconnection
	2. Hydrogen undertakings may refuse access ⇨ or connection ⇦ to the ~~system~~ ⇨~~natural gas or~~ hydrogen system ⇦ on the basis of lack of capacity. Duly substantiated reasons shall be given for any such a refusal.
2. ⇨ Taking into account national and Union decarbonisation objectives, ⇦ Member States ⇨ shall ⇦ ~~may~~ take ~~the~~ ⇨ appropriate ⇦ measures ~~necessary~~ to ensure that the natural gas ⇨ or hydrogen ⇦ undertaking refusing access ⇨ or connection ⇦ to the ⇨ natural gas ⇦ system ⇨ or hydrogen system ⇦ on the basis of lack of capacity or a lack of connection makes the necessary enhancements as far as it is economic to do so or when a potential customer is willing to pay for them. ~~In circumstances where Member States apply Article 4(4), Member States shall take such measures.~~	**[2. a PCY text as in 2.]**
3. …	**[3. PCY text as in 3.]**