



Council of the European Union
General Secretariat

Brussels, 24 May 2023

WK 6783/2023 INIT

LIMITE

ENER
ENV
CLIMA
IND
RECH
COMPET
ECOFIN
CODEC

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	IE comments on the Gas package

Delegations will find in the annex the IE comments on the Gas package.

IE written comments on the Current Draft Regulation (8939/23) and Directive (8934/23) on the internal markets for renewable and natural gases and for hydrogen (recast)

IE's general position:

- IE broadly supports the general approach taken by the Council on the Directive and Regulation. IE's view is that this will help achieve the aim of decarbonising the EU gas market by facilitating the uptake of renewable and low carbon gases, which is in line with the EU's climate targets and also with IE's climate targets and our Climate Action Plan.
- A very important consideration for IE's approach to the revised Gas Package is that we are no longer directly connected to the EU grid. The arrangements for natural gas flows from the UK have been largely unimpacted by Brexit given that the markets were very well established and closely aligned at the point of the UK leaving the European Union. However, this issue is likely to become more challenging for the hydrogen market which is very immature, and it is possible that the EU and UK markets could develop in different ways, or be underpinned by different standards/technical specifications.

Gas Directive:

Article 2 (21) & (22): TSO – DSO Split

IE favours the Parliament's proposed text as IE would prefer the inclusion of definitions for hydrogen transmission/distribution networks which do not significantly diverge from the existing definitions for gas transmission/distribution networks. The existing definitions for transmission system operator and distribution system operator applicable to both gas and electricity networks are well-established, familiar and provide clarity and comparability for investors, regulatory authorities and end-consumers. IE is concerned that the introduction of a new "Hydrogen Network Operator" definition will create potential regulatory ambiguity.

Article 27 (2) : Third-party access to natural gas distribution and transmission and LNG terminals

IE notes that Article 27 (2) is not included in the Parliaments mandate, and strongly supports the Councils inclusion of this provision. TSOs are currently prohibited from engaging in activities relating to the supply of gas and for this reason do not, in general, book capacity in transportation networks. The definition of 'Network User' (in both Directive 2009/73 and this draft Directive) does however encompass system operators "in so far as it is necessary for them to carry out their functions" and it may be argued therefore that TSOs are allowed book capacity in any network but only within such limited circumstances. IE's position is that the explicit right should be maintained, and that Article 27(2) should be kept in the Gas Directive given its importance in agreements underpinning both Ireland's and Northern Ireland's gas markets.

Previous iterations of the Council's draft Directive did not explicitly prohibit a TSO from accessing the network of another TSO for the purposes of carrying out its functions, but had explicitly deleted the existing provision, which was restored after IE raised this issue at EWP and it is now included in the Councils mandate following the General Approach, however it is missing in the Parliament mandate text.

Article 34: Refusal of Access and Connection

IE is of the view that flexibility should be given to member states in regard to refusal of Access and connection to the Gas grid in order to protect security supply and achieve IE's ambitious climate targets. Therefore, IE's position on Article 34 is that we are strongly in favour of maintaining the Councils mandate text as it currently stands.

Article 39: Hydrogen DSOs:

The lack of provisions for specific Hydrogen DSOs in presents several challenges for gas distribution network owners and operators and potentially could create challenges in terms of applying regulatory rules which are clearly only relevant for transmission of hydrogen, such as cross border network codes etc. to the operation of hydrogen distribution networks, which is overly burdensome and not compatible with the rules for DSOs today. Therefore, a distinct regulatory framework for

hydrogen distribution network operators should be considered within the Gas Market Package and this framework could be aligned with the regulatory principles that gas DSOs operate within today. IE can accept the Hydrogen Network Operator, but IE's preference would be to align with the Parliament's proposed text for the sake of clarity.

Article 45: Combined operators

The concept of a combined operator has proven effective for many existing TSOs to date including in IE. IE favours keeping the option open for this to be extended to hydrogen related activities in the future, when policy decisions are made regarding the designated Hydrogen operation. Therefore, IE's position is that the Parliament's mandate best reflects this view.

Article 48 (1): Geographically confined hydrogen networks

The reference to removing the derogation if the hydrogen network is connected to storage would be an issue for IE. IE is of the view that storage will need to be included even on a regional cluster level, and therefore, IE believes the Parliament's mandate text would best reflect this in Article 48 (1).

Article 63/64 : Horizontal Unbundling

IE is in favour of the Parliaments proposed text. This article requires that, where Natural Gas and Hydrogen operators form part of the same undertaking, they shall be independent at least in terms of their legal form. IE favours flexibility, as a decision on having a combined operator or a new independent operator has not been made yet. A level of combined operation of both natural gas and hydrogen networks should give rise to increased operational efficiencies. The concept of such combined operation exists today (Article 29 of Dir 2009/73) with regard to Transmission, LNG, Storage and Distribution networks and Article 45 of the draft Directive continues to permit the operation of a combined transmission, LNG, storage and distribution system operator provided that the operator complies with Article 54 (1) (Unbundling of transmission systems and transmission system operators), or Article 55 (Independent system operators). As IE's TSO/DSO are fully unbundled in accordance with Article 54, it is difficult to see if any conflict would arise if IE's TSO/DSO were to co-manage a natural gas and hydrogen network. As the extent of hydrogen networks may not be widespread in IE, the approach could offer a level of efficiency to consumers and also enable the deployment of experienced gas network personnel in hydrogen networks. Each

business involved in combined operation is obliged to keep separate accounts (Articles 64 and 69 of draft Directive). This is required to ensure cross subsidisation does not occur and to enable a regulated asset base to be maintained for each business. It could be argued that if the current level of separation is deemed adequate for Transmission, LNG, Storage and Distribution networks, it should be adequate also for Hydrogen i.e., that independence in legal form is not required.

Gas Regulation

Article 6 (7): Third-party access services concerning hydrogen network operators.

IE would oppose having zero tariffs at Interconnection points by default as it creates a range of technical issues and is inconsistent with the principle that tariffs should be designed to incentivise efficient use of networks. Therefore IE supports maintaining the Councils proposal for Article 6 (7) as it best reflects this view.

Article 16: Tariff discounts for renewable and low carbon gases

IE supports the Council text, especially with regard to the differentiated tariff structure for renewable and low carbon gases.

Articles 36 -38 EU DSO Entity

These Articles concern the creation of a European entity for distribution system operators. IE notes that expanding the remit of the EU DSO entity to cover both gas and electricity. IE's preference is that Hydrogen is included in order to clarify the role of DSOs in respect of Hydrogen development. Therefore, IE supports the Parliament's proposed text.

Article 67: Amendments to Regulation (EU) 2017/1938

General points

- In principle we are not in favour of making emergency regulations permanent, which were negotiated in a very short space of time, without proper scrutiny.
- The Parliament are taking large parts from Council Regulation (EU) 2022/2576 (on enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders.)

- Council Regulation (EU) 2022/2576 was an emergency regulation, which was adopted in accordance with an emergency treaty provision, was negotiated in a very short time period with no impact assessment, and extremely little time for consultation.
- In a spirit of European unity Member States supported this approach, as it was an emergency situation.
- Emergency regulation 2022/2576 continues in force until December 2023, so it is unclear why these provisions have to be included now.
- Legislation that is going to apply permanently should go through the normal legislative negotiating procedures.

More specific points

Volatility mechanism

We question whether the volatility protection mechanism is needed in non-emergency legislation.

Solidarity

We also re-iterate the points we made in relation to solidarity and the compensation arrangements during the negotiation for the temporary emergency regulation:

- In terms of solidarity, Ireland's interconnectors with Scotland are unidirectional and we can only receive gas.
- In terms of receiving solidarity whether directly from the UK or from an EU Member State via the UK, in either case an appropriate agreement with the UK is needed. Given this, it would make sense, if possible, to reach agreement with the UK to provide solidarity directly.
- IE would prefer a provision, which protected both the providing and receiving Member State from judicial or arbitration proceedings. There is a moral hazard here if the Member State receiving the solidarity gas cannot defend the proceedings but is liable for the costs.
- IE would prefer if the costs were limited to the transport costs and the price of the gas. It is very difficult to quantify and verify the costs that have been incurred for losses by those as a result of not having the use of the gas in the providing Member State. IE believes this potential yet unknown liability was one of the reasons so few solidarity agreements were finalised under the existing EU regulation 2017/1938.
- IE believes that the compensation rules should not exceed what is done at the domestic level in the providing Member State. The Member State receiving solidarity should not have to pay compensation any higher than is paid at the domestic level for diversion of gas in an emergency at the national level.