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WORKING DOCUMENT

From: General Secretariat of the Council
To: Working Party on Energy

Subject: Non-paper on joint purchasing

Following the Energy Working Party held on 6 th July, delegations will find in the Annex the non-paper on demand aggregation and joint purchasing of gases as part of the hydrogen and decarbonisation package, prepared by the Commission.

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Non-paper on demand aggregation and joint purchasing of gases
as part of the hydrogen and decarbonisation package

I. Introduction

In the original proposal of December 2021 the Commission introduced a provision on a permanent mechanism for the joint procurement of strategic stocks by transmission system operators as part of the preventive measures to ensure security of supply. On this basis the Parliament, in June 2022 (so before adoption of the Solidarity Regulation), proposed an amendment to broaden the scope of the TSO-oriented joint procurement mechanism to all categories of buyers.

The Parliament has included an amendment aimed at making the demand aggregation and joint purchasing mechanisms accessible to a broader category of buyers: undertakings designated by the Member States, gas suppliers and “other relevant market participants”. The Parliament also introduced an amendment inspired by the transparency provisions from the Solidarity Regulation. The Council has deleted the joint procurement provision in its general approach.

At the first inter-institutional technical meetings, both the European Parliament and the Council Presidency requested the Commission to provide drafting proposals based on the experience with the implementation of the mechanism under the Solidarity Regulation, so as to facilitate reaching a compromise on this matter.

II. Main elements of future, permanent regulatory framework

1. General remarks

Based on the lessons learned of the implementation of the demand aggregation and joint purchasing process, we are proposing a **(1) permanent mechanism supporting decarbonization by opening it up towards renewable and decarbonized gases and hydrogen** (including biomethane, etc.) with the possibility to **(2) use the mechanism in cases of a crisis limited to the natural gas market.**

The **building blocks** of a permanent mechanism are **identified** as follows:

- voluntary or mandatory demand aggregation;
- scope of the demand aggregation and joint purchasing regarding types of gases;
- who will be in charge of the implementation and operation of demand aggregation and joint purchasing platform;
- access to the mechanism for entities from outside the Union;
- relevance of the remaining provisions of the Solidarity Regulation related to demand aggregation and joint purchasing for the Hydrogen and Decarbonization Package.

2. Voluntary vs mandatory demand aggregation

Mandatory demand aggregation was driven by the crisis situation. Under normal market functioning and especially in case of a wider range of gases or energy carriers, such mandatory element is not seen as necessary or of value added. Therefore, we propose that the platform is **voluntary by default**. A mandatory element limited to the demand aggregation step may come in only **for natural gas in a crisis situation.**

The triggering of the crisis situation in relation to natural gas could be defined by taking inspiration from or referring to other provisions, such as the Gas Security of Supply Regulation e.g. requested by at least 2 Member States, potentially following at least two

declarations of any crisis level (early warning, alert or emergency), proposed by the Commission or through another existing/currently proposed mechanism.

3. Scope

Given the context of the Hydrogen and Decarbonization Package, the scope of demand aggregation and joint purchasing is proposed to align with the scope of the Hydrogen and Gas Regulation, this means 'gases' (methane based gases and hydrogen) and potentially include other energy commodities or services (e.g. CC(U)S) in order to count with enough flexibility to design a future demand aggregation and joint purchasing mechanism that is fit for the possible developments in the EU energy context.

The Hydrogen and Decarbonization Package defines the energy carriers in the following way:

- 'natural gas' means all gases that primarily consist of methane, including biogas and gas from biomass, in particular biomethane, or other types of gas, that can technically and safely be injected into, and transported through, the natural gas system;
- 'gases' mean natural gas and hydrogen;

The use of the mechanism as an emergency measure would be limited to natural gas.

4. Implementation and operation of demand aggregation and joint purchasing

The development of the mechanism for demand aggregation and joint purchasing requires very specific expertise. While the Commission is responsible for the implementation of the mechanism, it should be left with the freedom to contract a service provider to help it with it (current solution under the Solidarity Regulation). Flexibility for the Commission is needed to cater for potentially different arrangements (process, tasks, etc) for different gases. In particular, a different service provider might be needed for demand aggregation for hydrogen.

Therefore, we propose to **grant the Commission with a mandate to organise demand aggregation and joint purchasing** whilst allowing it to contract the services of one or more service providers.

The legal basis **should not include the selection criteria for the service provider** in the legal text as these will be included in the tender specifications when procuring the services. Exception to this may be certain exclusion criteria (e.g. needs to be a company established in the EU)

For natural gas, the contractual negotiations between buyers and sellers take place outside of AggregateEU. In order to allow for continuous improvement and the measurement of the effectiveness of the tool a **mandatory reporting following negotiations** through the tool is proposed. The **required information should be limited** to basic necessary information (volume, counterparts, duration), however, in order not to create administrative burden.

5. Users of the Platform

5.1 Sellers

The current regulation **excludes Russian gas** and Russia-linked or owned entities. This exclusion is driven by the war started by Russia and its weaponization of energy and the objective to diversify away from Russian fossil fuels.

We propose to **keep this approach in the Hydrogen and Gas Package with possible adaptation of the legal tools to a permanent regulatory framework** and broader scope of commodities. As a minimum, excluding undertakings subject to EU restrictive measures is seen as necessary. Restrictions to selling gases through the mechanism could be also aligned with the Gas Package's approach to restricting undertakings from capacity bookings.

5.2 Buyers

Demand aggregation and joint purchasing as primarily serving EU objectives and financed by the EU budget should remain open for undertakings primarily from the Union and the Energy Community Contracting Parties.

In the new Hydrogen and Gas Regulation we propose the possibility to make the demand aggregation mechanism accessible to undertakings from partner third countries for specific or dedicated tendering rounds where this could correspond to EU strategic security of supply considerations.

6. Future of complimentary provisions

6.1 Article 3 on transparency and coordination

This measure was included in the Solidarity Regulation as a gas crisis-driven instrument. From the Commission's perspective and based on experience, the added value of the transparency measure is quite limited compared to the difficulty it poses to enforce it and process it. It has value of better coordination in the case of notification of planned tenders.

The Commission thus proposes to maintain it as a crisis measure with the purpose of enhancing coordination of natural gas purchases at European level but also in this case **limited to tenders only** and not for bilateral contract negotiations as for this latter it is very difficult to enforce and the pre-signature period is a commercially very sensitive stage for companies.

6.2 Article 4 on Steering Board

Based on the lessons learnt from the Solidarity Regulation, a body, such as the Steering Board of Member States and Commission, is a useful element of the overall governance. The Commission proposes to be able to set up the relevant coordination groups composed by Member States representatives or rely on existing expert groups in order **to facilitate the coordination and information exchange** in relation to demand aggregation and joint purchasing of gases.

For hydrogen demand aggregation a dedicated expert group – separate from the group for natural gas and other gases – should be set up in the framework of the European Hydrogen Bank.

6.3 Article 8.3 on Financial incentives

The new framework could:

- maintain the grounds for providing financial incentives for natural gas at times of crisis, when mandatory aggregation of demand is activated;
- indicate the grounds for providing financial incentives for other gases, as well as for hydrogen, e.g. through European Hydrogen Bank

6.4 Article 11 on Consortia

The article on consortia has a politically driven messaging rather than a regulatory need providing reassurance to companies that they can aggregate their demand and tender it to the market jointly. Striking a legal and political balance on its content has been complex when adopting the Solidarity Regulation. The implementation process – through identifying company cooperation models that are not very likely to raise competition concerns – has also been challenging.

Keeping the article on consortia could be used to provide reassurance for existing company cooperation models developed under the Solidarity Regulation. It could also be useful in case company cooperation is needed in the future for other gases, such as hydrogen. Therefore, **we propose to keep the text as it is currently in the Solidarity Regulation.**