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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Transport - Intermodal Questions and Networks
N° prev. doc.:	WK 163/2023
N° Cion doc.:	COM (2021) 559 final
Subject:	Proposal for a Regulation on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/E - Comments from Germany on the positions and compromises presented in the 4 column document (WK 163/2023)

Delegations will find in the annex the German position on the EP amendements and the position in the negotiations as presented in WK 163/2023.

Comments and Amendments proposed by GERMANY

regarding

the Proposal for a Regulation of the European Parliament and of the Council

on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU

of the European Parliament and of the Council

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Germany thanks to the previous and current Presidency for the progress achieved during the trilogue negotiations. The following remarks relate to selected aspects, which in our opinion are of the greatest relevance to find compromises, especially as far as future investments and legal certainty are concerned.

Article 2 — Definitions

- Line 119a: 'payment card': From our perspective, no AFIR-specific definition of "payment card" (line 119a) should be included. A reference to the existing legal definition in Article 2 (15) of Regulation (EU) 2015/751 should be made instead.

EP mandate:

> 'payment Card' means ~~a payment service that works on the basis of a physical and digital debit or credit card and includes payment embedded cards in a smartphone application~~;

Amendment proposed by GER:

> 'payment card' means **a category of payment instrument that enables the payer to initiate a debit or credit card transaction, as defined in Art. 2 (15) Regulation (EU) 2015/751**.

Art. 3 — Targets for LDV

- Lines 154b-154c: We reject the EP proposals for **smart and bidirectional charging** as far as they relate to publicly accessible **fast** charging infrastructure. The classic application of the fast charging infrastructure is designed for rapid full charging of vehicles and not for controlled charging operations and the return of electricity to the grid. Bidirectional charging is particularly relevant for the use case of non-public/private charging.
- Lines 156-156d (BEV), 157-157d (PHEV): We welcome the fact that EP is aiming for a higher level of ambition, but we reject its proposal for a **degressive reduction of the fleet-based targets.** Complex dynamic goals are not feasible in view of planning,

approval and implementation periods as well as the need for investment security. In addition, the annual period is too short for a suitable governance by the Member State.

- Lines 157 g-157i: We reject obligation introduced by the EP for fleet-base infrastructure targets.
- Lines 159-162: We support the EP proposal to align the objectives of the comprehensive network with the core network. However, because of the lack of technical requirements, we reject an increase in the recharging capacity for 2025 from 150 kW to 300 kW (line 160, EP).

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Art. 4 — Targets for HDV

- Lines 167a-167d: In this context, we would like to once again state our position: **in our view, not only 40 % but at least 75 % of network coverage should be achieved in 2027**.
- Line 169, EP: We support the EP proposal to increase the overall charging capacity.
- Lines 169-170, EP: The increase in the individual charging capacity from 350 kW to 800 kW is currently not technically feasible, for this reason we reject the proposed amendments. However, after the adoption of the MCS standard, individual recharging capacity can be increased (from 2030 onwards).
- Lines 174-174a: We welcome the EP ambition for safe and secure parking area and increase on four charging stations. However, we are critical of the proposed changes regarding intelligent and bidirectional charging, as the vehicles, being recharged at publicly accessible charging points do not usually remain on-site for long time and are therefore not suitable for controlled charging operations.
- Lines 175-176: the increase in the level of ambition in urban nodes can be supported.

Art. 5 — Recharging infrastructure

- Line 181: With regard to payment options (Article 5(2)), we welcome the **obligation** introduced by EP for payment card readers and devices for electronic payments through **payment cards** for ad-hoc charging **for all charging stations, regardless** of their charging capacity. This is consumer-friendly and will strengthen the ad-hoc charging. We also welcome that payment by a physical card remains possible.
- In order not to make recharging stations unnecessarily more expensive and not to hamper the deployment of recharging infrastructure, the AFIR should ensure that payments by payment cards are exempted from the obligation of strong customer authentication (Payment Services Directive 2, (EU) 2015/2366), otherwise this will indirectly result in an obligation to install expensive PIN pads. For this reason, we suggest that, in addition to recital 30 (line 40), a provision should be included in Article 5(2).

Amendment of Art. 5 (2) proposed by GER:

> **For devices with a contactless functionality a strong costumer authentication is not applicable. The exemption of Article 12 of Commission Delegated Regulation (EU) 2018/389 shall apply accordingly.**

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- Line 188: **We reject** any **retrofitting obligation in the meaning of Art 5 (2), Subpara (2).** The subsequent installation of a payment card reader causes additional effort in economic and technical terms, while the associated costs remain disproportionate to the benefit. The obligation in Line 188 may lead to the removal of existing infrastructure.
- Line 191: EP proposals cannot be accepted.
- Line 191a: We agree with the Commission that the proposal will not be included in AFIR. In our opinion, it is a matter of EU competition law.
- Line 192 (likewise Lines 34, 54, 196, 214, 300): The EP proposals for mandatory **price per kWh/kg** and transparency of complete refuelling or recharging costs, consumer and user-friendliness and better data availability are generally positive. In **any case, the price of ad hoc recharging/refuelling must be shown per kWh or per kg**. EP proposal should be supported, in order to comply with the provisions of Article 5, paragraph 4, first sentence.
- Line 192: Due to increasing volatility in ad hoc charging prices, the final price must be shown **dynamically, e.g. on a display**. For this reason, we support the proposal presented by the Presidency in the 4th Column: "*Operators of recharging points shall clearly make the information on the ad hoc price available at all publicly accessible recharging stations operated by them.*"
- Lines 196a-197: We reject the EP proposals.
- Point 191a: In principle, we welcome the proposal to prevent unfair practices at the expense of consumers. However, as proposed by the EU Commission, they should not be subject of AFIR.
- Line 198b: We welcome the fact that operators of publicly accessible charging points should ensure that they function permanently and that defects are repaired in short terms.
- Line 201b: We see the **amendments** proposed by EP as problematic. This would create additional hurdles for the construction of recharging infrastructure.

Art. 6 — Targets for Hydrogen

- Lines 203-205: We welcome the ambitious amendments proposed by EP on H2-refuelling infrastructure, incl. those for urban nodes. However, with regard to the target horizon, especially for the capacity requirements, we support the EU Commission proposal (deployment by 2030 and not earlier).
    - Line 75a 'along the TEN-T network': Too high requirements must not hinder the deployment of infrastructure, e.g. the limit proposed by the EP in line 75a of the maximum distance of the hydrogen refuelling stations to the nearest TEN-T exit at 1.5 km is clearly too low.
    - The distance of 10 km from the hydrogen filling station to the next exit of the TEN-T road is therefore considered necessary.

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Art. 7 — Hydrogen refuelling infrastructure

- Amendments **analogous to Article 5** are supported.
- Line 214: Proposal EP ("price per kg") is considered necessary.

Art. 9 — OPS in maritime ports

- Line 220: As proposed by the EU Commission and EP, the number of port calls should remain at 50 calls.
- Line 223-226: We welcome the position of EP. Zero-emission vessels should not be exempted from the number of port calls, as in the Council position.

Art. 11 — Liquefied methane in maritime ports

- Line 232-234 in conjunction with line 256: In the course of the compromise, we can agree with the proposals of the Presidency in line 232-234 if methanol is also included in the examples in line 256 with regard to the introduction of alternative fuel infrastructure in seaports:

    "(III) a deployment plan for alternative fuels infrastructure in maritime ports other than for liquefied methane and shore-side electricity supply for use by sea going vessels, for instance for hydrogen, ammonia, *methanol* and electricity."

Art. 12a — Targets for railway lines

- Lines 239c-239 g: We strongly reject the infrastructure targets for railway lines introduced by the EP. The proposals are in principle worth considering in their direction of impact, however the proposal does not contain in our opinion any cross-border benefit. In addition, **CO2 savings would be low**, while CO2 avoidance costs would be extremely high.

Art. 13 — National policy frameworks

- In principle, we support the Presidency's negotiating position (4th column), but rejects the obligation on alternative fuel infrastructures **for captive fleets** in line 247.
- The EP proposals in lines 253, 253b-c are being rejected.

Art. 14 — Reporting

- We reject reporting obligations that go beyond the subject-matter of AFIR and thus do not contribute to the verification of the achievement of targets. In our view, the progress report should not necessarily contain all the information listed in Annex I.
- Line 270: In our view, shorter intervals within the framework of reporting obligations do not contribute to a better achievement of targets. On the contrary, there is a risk of overburdening both on the part of the Member States and on the part of the Commission. Progress reports should not have to be submitted in periods of less than two years. In addition, we support the first submission date in 2027.
- Lines 272-273: We consider the intervals proposed in the General Approach for reports under Art. 14(3) and (4) to be preferable (every 4 years).

Art. 15 — Review of national policy frameworks

- In principle, DE supports the Presidency's negotiating position **(**4th column**)**.

Art. 18 — Data provisions

- Line 309-321f (excluding 317a): We consider that CPO should be obliged to make available the static and dynamic data required for the recharging process. This in the highest possible quality. In this respect, the additions proposed by EP in Article 18(2) must be critically considered. Currently, there are no data fields for such information in common data formats and protocols. In addition, the list of data should, where technically appropriate, use the data denominations already laid down in Delegated Regulation (EU) 2022/670.
- Line 317a: we support the EP proposal.
- Line 321 g, 322: We reject the exceptions proposed by EP in Article 18(2), Subpara.1a and in Article 18(3), as operators may refuse to share dynamic data on this basis. However, it could be examined whether a wording for the protection of trade secrets should be included, as it is currently discussed in the Data Act.
- Line 322a: We reject the provision in Article 18(3a). The AFIR and its subordinate acts should describe the **types of data** to be shared and the **obligation to share** them

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on the NAP. Any additional provisions on the functioning of the NAPs should be governed by the ITS Directive and its delegated regulations.

- Lines 322a, 322b and line 56 (Recital 46): The EP proposal in Recital 46 implies that EU Commission should establish a common European access point at Union level. The EP proposal in Article 18(3a)-3b also says that by the end of 2026 the common European access point should be established and that a machine-machine interface (automated real-time data exchange) to the NAPs should be provided. The requirement for a common European access point appears to be very ambitious given that the specification and technical adaptations of the NAPs still need to be made. In addition, EP intends to enshrine a similar regime in the context of the revision in the ITS Directive. The requirements for cooperation between the NAPs and a common European access point should also be regulated solely in the ITS Directive and its delegated regulations.
- Line 326 a-e: In general, we prefer implementing acts such as delegated acts in Article 18(4). There should be no possibility of supplementing the functioning of the NAPs, as such should be established exclusively through the ITS Directive.

Art. 22 — Review

- Line 348: We support an early review of the mandatory targets as well as a "technology readiness report" on the targets for heavy-duty vehicles that should be submitted by the European Commission by the end of 2024, as introduced by the General Approach.

Art. 24 — Entry into force

- Line 353a: We support the General Approach. A transition period of 6 months is needed by the Member States to adapt the current national legal framework and businesses.

Further information:

Recital 23

Line 33: From a competitive point of view, we support the first sentence of the EP proposal "*Therefore, MS should prevent the emergence* [...]".

Recital 31

Line 41: We reject requirement that recharging stations should not be in places with curbstones, because this affects a large part of the recharging infrastructure already installed in German cities.