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CORRIGENDUM

This document corrects document COM (2021) 803 final of 15.12.21

Concerns all language versions.

The text shall read as follows:

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on common rules for the internal markets in renewable and natural gases and in hydrogen (recast)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

1.1 Introduction

The European Union has set an ambitious goal to be the first climate neutral continent by 2050. To achieve this, Member States and the European Parliament have agreed, in the European Climate Law, to reduce greenhouse gas emission by at least 55% by 2030. In order to achieve these targets and, at the same time, contribute to competitiveness, growth and jobs, the energy system needs a systemic change: We have to reduce the use of fossil fuels – including fossil gas – and increase renewable sources. Therefore, we need to design today an ambitious transition of the gas sector towards low-carbon and renewable gases.

Fossil gas constitutes around 95% of today's gaseous fuels consumed in the EU. Gaseous fuels, account for roughly 22% of total EU energy consumption today (including around 20% of EU electricity production, and 39% of heat production). According to the relevant scenarios used by the Climate Target Plan Impact Assessment, the share of gaseous fuels to total EU energy consumption in 2050 would be about 20%.Gaseous fuels will play an important part in the energy mix by 2050, requiring the decarbonisation of the gas sector via a forward-looking design for competitive decarbonised gas markets. Despite their minor contribution to the current EU energy mix, biogas, biomethane, renewable and low carbon hydrogen as well as synthetic methane (all together renewable and low carbon gases) would represent some 2/3 of the gaseous fuels in the 2050 energy mix, with fossil gas with CCS/U (carbon capture, storage and utilisation) representing the remainder. The present initiative is equally part of the Fit-for-55 package. It covers the market design for gases, including hydrogen. It will remove existing regulatory barriers and create the conditions for this to take place in a cost effective manner. This is an important part of moving to integrated energy system that minimises the costs of transition towards climate neutrality, in particular for consumers and open new opportunities for reducing their energy bills and active participation in the market.

Hydrogen is expected to be used mainly in the areas where electrification is not an option, including today's energy-intensive industry (e.g. refineries, fertilisers, steel making) and certain heavy-duty transport sectors (maritime transport, aviation, long distance heavy vehicles). Developing a dedicated hydrogen infrastructure is necessary to release the full potential of hydrogen for these specific end-use applications. The objective of promoting renewable and low-carbon gases is to decarbonise these sectors, increase the flexibility of the electricity system thanks to power-to-X technologies, strengthen security of supply by reducing dependence on natural gas imports and allow to store (and produce) electricity. This allows linking various sectors of the economy, in conjunction with other forms of storage and flexibility, such as batteries and demand response. Likewise, it will support self-production and smart use of distributed energy supply, contribute to greater consumer empowerment. Consumers also need clear and easily accessible information to help change energy consumption patterns and switch to renewable and low-carbon solutions, similarly to what they are able to do in electricity market.

While aiming for a maximum of renewable hydrogen from 2030 onwards, in the short and medium term other forms of low-carbon gases in particular low-carbon hydrogen can play a role, primarily to rapidly reduce emissions from existing hydrogen production and support the parallel and future uptake of renewable hydrogen. In line with the EU hydrogen strategy, the production of renewable hydrogen in the EU should reach 1 million tonnes by 2024 and up to

10 million by 2030. From then onwards, renewable hydrogen should be deployed at a large scale and replace low-carbon hydrogen.

An efficient and sustainable development of renewable and low-carbon gases as well as the hydrogen market requires to adapt the market framework.This is because the renewable and low-carbon gases today face regulatory barriers for market and grid access that represent a comparative disadvantage versus natural gas. Moreover, for a decarbonised gas market to be set up and contribute to the energy transition, significantly higher shares of renewable energy sources in an integrated energy system with an active participation of consumers in competitive markets are needed. This should allow consumers to benefit from affordable prices, good standards of service, and effective choice of offers mirroring technological developments.

The deployment of various renewable and low-carbon types of gases are likely to emerge in parallel and are expected to develop at a different pace across the EU:

- a hydrogen-based infrastructure will progressively complement the network for natural gas;
- a gas infrastructure in which fossil gas will progressively be replaced by other sources of methane.

In addition, events on increasing energy prices have reminded us that the resilience of the European energy system is increasingly important as the EU energy system integrates more decentralised renewable energy and fossil fuels are gradually phased out. The security of supply and risk preparedness arrangements of the gas sector must be fit for the clean energy transition. The Commission's Communication on tackling rising energy prices (A toolbox for action and support)[1], highlights the interplay between security of supply, the optimal use of storage capacities and the volatility of energy prices.

1.2 Objectives of the proposal

The present initiative seeks to facilitate the penetration of renewable and low-carbon gases into the energy system, enabling a shift from natural gas and to allow for these new gases to play their needed role towards the goal of EU climate neutrality in 2050.

Within this context, it addresses the following areas:

Low level of customer engagement and protection in the green gas retail market. For new gases to play a full role in the energy transition, the retail market rules should empower customers to make renewable and low carbon choices. This is not currently the case. Moreover, there is no common EU terminology and certification system for low carbon fuels and gases. In addition, the retail gas markets exhibit market concentration and low levels of new entry and innovation. This prevents customers from benefiting from competition by making low carbon choices.

To be able to make sustainable energy choices, customers need sufficient information on their energy consumption and origin, as well efficient tools to participate in the market. Moreover, Member States should take the necessary measures to protect vulnerable and energy poor customers. The decarbonised gas market should not be developed without them being able to fully benefit from it .

Hydrogen infrastructure and hydrogen markets. The current regulatory framework for gaseous energy carriers does not address the deployment of hydrogen as an independent energy carrier via dedicated hydrogen networks. There are no rules at EU level on tariff-based

[1] COM(2021) 660 final.

investments in networks, or on the ownership and operation of dedicated hydrogen networks. In addition, no harmonized rules on (pure) hydrogen quality exist. Consequently, barriers exist for the development of a cost-effective, cross-border hydrogen infrastructure and competitive hydrogen market, a prerequisite for the uptake of hydrogen production and consumption. The present proposal seeks to address these deficiencies. It includes a proposal for a system of terminology and certification of low carbon hydrogen and low carbon fuels.

Renewable and low-carbon gases in the existing gas infrastructure and markets, and energy security. Today, renewable and low-carbon gases represent a minor share in the EU energy mix. To untap their potential, access to the gas wholesale market, i.e. the virtual trading points, represents a key prerequisite. Abolishing costs for cross-border trade of those gases and facilitating connection of production facilities will also improve the business case. Differences in gas quality parameters and in the volume of hydrogen blended in the natural gas system can affect the design of gas infrastructure, end-user applications and cross-border system interoperability, thus risk fragmenting the internal market. However, current gas quality rules are not fit to deal with future developments. On LNG, addressing the residual barriers regarding access to LNG terminals could open the way to import renewable and low carbon gases from abroad supporting the decarbonisation of the EU gas market. Finally, preserving and strengthening resilience in the transition require appropriate arrangements of security of supply.

Network planning. As outlined in the Commission's Energy System Integration Strategy, coordinated planning and operation of the entire EU energy system, across multiple energy carriers, infrastructures, and consumption sectors is a prerequisite to achieve the 2050 climate objectives. Current network planning schemes and practices are deficient asthere are discrepancies between the EU-wide ten-year network development plan ('TYNDP') and national network development plans ('NDP') A better linkage between TYNDP and NDP would allow transnational exchange of information on transmission systems usage.

Security of supply and storage. In reaction to the significant and EU-wide energy price increases in autumn 2021, the European Council invited the Commission to swiftly consider medium and long-term measures that increase the resilience of the EU's energy system including measures which enhance security of supply. To contribute to a timely response to this crisis and possible new crisis at Union level, this proposal includes specific measures to improve cooperation and resilience, notably to ensure a more effective and coordinated use storage and operational solidarity arrangements. The measures are targeted to reinforce the resilience of the EU energy system against future shocks in a timely manner. They cover measures in this Regulation and Regulation (EU) 2017/1938 on security of gas supply. In order to ensure a coherent response, the measures on security of supply are part of this legislative proposal and not proposed as a separate legislative proposal. As indicated in the Communication on energy prices of 13 October 2021 entitled 'Tackling rising energy prices: a toolbox for action and support', coordination of security of supply across borders is crucial for the resilience against future shocks.

The measures proposed require Member States to explicitly make storages part of their security of supply risks assessments, both at national and regional level, including risks linked to the control of storage by entities from third countries. Member States should consider storage measures through regional cooperation in case of unaddressed risks. The proposal defines enabling conditions to deployment of voluntary joint procurement of gas strategic stocks to be used in case of emergency. Measures are also introduced to improve the transparency and access to storages, address cybersecurity risks of gas and facilitates bilateral solidarity arrangements between Member States in case of crisis. The Commission

encourages the Member States to proceed with solidarity arrangements without waiting so that even in a severe crisis households receive the gas they need.

- **Consistency with existing policy provisions in the policy area**

The proposed initiative is strongly linked and complementary to the legislative proposals brought forward in the context of the Fit-for-55 package to implement the European Green Deal, including:

The revised Renewable Energy Directive ('RED II'), which is the main EU instrument dealing with the promotion of energy from renewable sources. It aims to accelerate the penetration of renewable energy, including renewable gases in the energy system. Its proposed amendment increases the target for renewable sources in the EU's energy mix to 40% and promotes the uptake of renewable fuels, such as renewable hydrogen in industry and transport, with additional targets. In relation to this initiative, the RED II defines renewable hydrogen as 'renewable fuels of non-biological origin' and 'biomass fuels' that meet a 70% greenhouse gas emission reduction compared to fossil fuels setting specific sub-targets for the consumption of renewable hydrogen (50% of total hydrogen consumption for energy and feedstock purposes in industry by 2030 and 2.6% of the energy supplied to the transport sector).

The Energy Efficiency Directive ('EED') and the related Energy Performance of Buildings Directive ('EPBD') including the proposals for their amendment interact with the present initiative as they affect the level and structure of gas demand. Energy efficiency measures can alleviate energy poverty and reduce consumer vulnerability. As gaseous fuels are currently dominating theEuropean heating and cooling supply and the cogeneration plants, their efficient use stays at the core of the energy efficiency measures. The Gas Directive and the Gas Regulation are coherent with the energy efficiency first principle: an open and competitive EU market with prices that reflect energy carriers' production costs, carbon costs, and external costs and benefits would efficiently provide clean and safe hydrogen to end users who value it most.

The TEN-E Regulation, as proposed by the Commission in December 2020, aims to better support the modernisation of Europe's cross-border energy infrastructure for the European Green Deal. It introduces hydrogen infrastructure as a new infrastructure category for European Network Development. The present initiative is complementary to the proposed TEN-E Regulation as it focuses on alignment of the national plans with the requirements of the European wide Ten Year Network Development plan.

As announced in the EU strategy to reduce methane emissions, the Commission will propose **legislation to reduce methane emissions in the energy sector**. The initiative will seek to improve information for all energy-related methane emissions. The present initiative is complementary as it seeks to facilitate the penetration of renewable and low-carbon gases, enabling a shift from natural gas.

- **Consistency with other Union policies**

The Emission Trading Scheme ('ETS') increases the price of using fossil fuels relative to renewable and low-carbon gases and, thus, fosters the demand for such gases and investments in related production technology. The Commission has proposed strengthening, including reinforcements in and extensions to the aviation sector, maritime and road transport, and buildings. Under this Scheme all hydrogen production facilities are included, as well as electrolysers with a production capacity exceeding 25 tonnes/day. The Innovation Fund, which was established by the EU Emission Trading System (EU ETS) Directive for the period 2021 to 2030, is one of the funding instruments supporting the transition to a climate neutral

Europe by 2050. The Innovation Fund, which was established by the EU ETS Directive for the period 2021 to 2030, is one of the funding instruments supporting the transition to a climate neutral Europe by 2050.

The revision of the Energy Taxation Directive strives to align the taxation of energy products with EU energy and climate policies, promote clean technologies and remove outdated exemptions and reduced rates that currently encourage the use of fossil fuels. Under the revised Directive, products covered by the Directive are grouped and ranked according to their environmental performance. According to this, the revision sets a preferential minimum levels of taxation of EUR 0.15/ GJ (compared to EUR 10.75/GJ for fossil fuels) For renewable and low-carbon hydrogen fuels used as motor fuels. For renewable and low-carbon hydrogen fuels used as heating fuels, it sets a preferential minimum levels of taxation of EUR 0.15/ GJ (compared to EUR 0.6/GJ for natural gas).

The revised Alternative Fuels Infrastructure Regulation ('AFIR'), which will repeal Directive 2014/94/EU on deployment of alternative fuels infrastructure (AFID), as proposed by the Commission in July 2021, aims to tackle rising emissions in road transport to support the transition to a nearly zero-emission car fleet by 2050. The Regulation requires Member States to expand their network of recharging and refuelling infrastructure in line with zero emissions car sales, and to install charging and fuelling points at regular intervals on major highways. The revision of the Alternative Fuel Infrastructure Regulation will require one refuelling stations (min. 2 t/day, 700 bar) every 150 km along the TEN-T core network and in every urban node by 2030; this would result in around 700 HRS along transport nodes, and 88 HRS in urban nodes.

The Amendment of the Regulation setting CO2 emission standards for cars and vans aims to ensure a clear pathway from 2025 towards zero-emission transport. The regulation notably defines zero-emission vehicles as battery electric vehicles, fuel-cell and other hydrogen powered vehicles, and sets a target of zero average emissions of the new vehicle fleets by 2030.

The FuelEU Maritime proposal aims to increase the share in the fuel mix of international maritime transport of sustainable low and zero-carbon alternative fuels including: liquid biofuels, e-liquids, decarbonised gas (including bio-LNG and e-gas), decarbonised hydrogen and decarbonised hydrogen-derived fuels (including methane, and ammonia). The focus on fuels and power technologies should enable significant and rapid emission reductions, using fully the existing technologies and infrastructure alongside incentives provided by other measures to be proposed. It will also facilitate the definition of decarbonisation pathways for the entire maritime cluster.

The REFuel EU Aviation proposal which targets to advance the potential of sustainable aviation fuels to reduce aviation's GHG footprint is yet largely untapped. In order to decrease significantly its emissions, the aviation sector will need to reduce its current reliance on fossil jet fuel and rely increasingly on the use of sustainable aviation fuels (SAF) in the years to come. The proposal sets out a minimum share of 0.7% of 'synthetic aviation fuels' in the aviation fuels supplied to aircraft operators where 'synthetic aviation fuels' are renewable fuels of non-biological origin, as defined in the renewable energy directive.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The objectives of this initiative cannot be achieved on a national level. The planned measures of the present initiative seek to advance the four objectives set out in Article 194 of the Treaty

of the Functioning of the European Union (TFEU), while at the same time contributing to the decarbonisation of the EU's economy. The planned measures are to be adopted on the basis of Article 194 (2) TFEU together with Article 114 (1) TFEU. In the field of energy, the EU has a shared competence pursuant to Article 4 (2) (i) TFEU.

The present initiative also builds upon a comprehensive set of legislative acts that have been adopted and updated during the past two decades. With the objective of creating an internal energy market, the EU has adopted four consecutive legislative packages between 1996 and 2019, with the overarching aim of integrating markets and liberalising national electricity and gas markets. These provisions cover a wide range of aspects, from market access to transparency, consumer rights, increase the liquidity of gas markets, and the independence of regulatory authorities.

- **Subsidiarity (for non-exclusive competence)**

Currently, there are no rules at EU-level regulating dedicated hydrogen networks or markets and low-carbon hydrogen and low-carbon fuels. In view of the current efforts at EU and national levels to promote the use of renewable hydrogen as a replacement for fossil fuels, Member States would be incentivised to adopt rules on the transport of hydrogen through dedicated infrastructure at national level. This creates the risk of a fragmented regulatory landscape across the EU, which could hamper the integration of national hydrogen networks and markets, thereby preventing or deterring cross-border trade in hydrogen.

Harmonising rules for hydrogen infrastructure at a later stage (i.e. after national legislation is in place) would lead to increased administrative burdens for Member States and higher regulatory costs and uncertainty for companies, especially where long-term investments in hydrogen production and transport infrastructure are concerned.

The creation of a regulatory framework at EU-level for dedicated hydrogen networks and markets would foster the integration and interconnection of national hydrogen markets and networks. EU-level rules on the planning, financing and operation of such dedicated hydrogen networks would create long-term predictability for potential investors in this type of long-term infrastructure, in particular for cross-border interconnections (which might otherwise be subject to different and potentially divergent national laws).

When it comes to biomethane, without an initiative at EU level, it is likely that by 2030 a regulatory patchwork would still exist regarding access to wholesale markets, connection obligations and transmission system operator (TSO)- distribution system operator (DSO) coordination measures. Likewise, without some harmonisation at the EU level, renewable and low-carbon gases producers will be facing vastly different connection and injection costs across the EU, resulting in an unequal playing field.

Without further legislation at the EU level Member States would continue to apply different gas quality standards and rules on hydrogen blending levels, risking cross-border flow restrictions and market segmentation. Gas quality standards would continue to be mainly defined by the quality parameters of natural gas, limiting the integration of renewable gases in the network

All these aspects are likely to lower cross-border trade with renewable and low-carbon gases that might be compensated by higher natural gas imports. The utilisation of the LNG terminals and imports could remain restricted to natural gas, despite that no adaptation of LNG terminals would be necessary in case competitive biomethane or synthetic methane from non-EU sources were available.

National network planning will be required to be developed only in Member States where certified Independent Transmission Operators (ITO) and Independent System Operators (ISO)

are operating. While most Member States have a single gas national development plan within which gas operators cooperate, there is still limited cross-sector cooperation.

EU coordinated emergency preparedness for the current gas sector has proven to be more efficient than action only at national level.

- **Proportionality**

The initiative complies with the proportionality principle. It falls within the scope for of Article 194 of the Treaty on the Functioning of the European Union. The policy intervention is proportional to the dimension and nature of the problems defined and the achievement of the set objectives.

The proposal does not go beyond what is necessary to achieve the general objective pursued to facilitate the decarbonisation of gaseous fuels in a competitive manner at least economic costs whilst ensuring energy security and placing consumers at the heart of the energy markets. The preferred set of options are considered proportionate and builds to the extent possible on existing approaches. The balance between obligations and consideration of the different capabilities to act among Member States and private entities is considered appropriate given the imperative of achieving climate neutrality by 2050.

- **Choice of the instrument**

Building on the overall evaluation of the current regulatory framework for the gas market, the instruments chosen are a Directive, to recast the Directive 2009/73/EC, and a Regulation to recast Regulation No 715/2009. The choice of a recast of these existing legal acts will enhance legal clarity. Recourse to an amending act may have been inadequate to address a wide set of new provisions. The choice of the instruments thus calls for a revision of rules already adopted and implemented, as a natural evolution of current legislation,in view of this changes. Further acts will need to be amended through the Gas Regulation such as: the SoS Regulation (EU) 2017/1938, ACER Regulation (EU) 2019/942 and REMIT Regulation (EU) No 1227/2011.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The entry into force of the Third Energy package has positively contributed to the competition and performance of the internal energy markets. Nevertheless, the current regulatory framework for gas focuses on fossil-based natural gas and does not fully anticipate the emergence of alternatives for methane gases (including natural gas and biomethane), such as hydrogen.

A re-examination of the current gas market regulatory framework is needed and it has already been announced in the European Commission's communication on a hydrogen strategy for a climate-neutral Europe. Given the different potential in EU Member States for the production of renewable and low carbon hydrogen, a suitable market framework could facilitate hydrogen to play its role as an energy carrier and as an enabler of energy system integration.

On this basis, four main drivers have been identified under Problem Area I of the Impact Assessment: (i) decarbonisation will result in the emergence of a European hydrogen value chain reliant on a cross-border hydrogen market; (ii) lack of hydrogen infrastructure investments hinder market development; (iii) hydrogen infrastructure is likely to constitute a natural monopoly, resulting in non-competitive market structures; (iv) diverging hydrogen quality rules may hinder cross-border flows and incur additional costs.

The existing gas rules, focusing on fossil-based natural gas mainly imported from outside the EU, do not address the specific characteristics of decentralized renewable and low-carbon gases production within the EU. In addition, the growing volumes of biomethane, hydrogen but also LNG affect gas quality and thereby the design of gas infrastructure and end-user appliances. In particular, the Impact Assessment recognizes five main drivers related to this Problem Area: (i) constrained market and grid access for local producers of biomethane connected to the distribution grids, divergence of rules regarding obligation to connect and costs of grid connection for renewable and low carbon gases and intra-EU entry/exit tariffs hinder the establishment of a fully integrated, liquid and interoperable EU internal gas market; (ii) differences in gas quality and hydrogen blending levels can negatively impact cross-border flows and end-users, while current gas quality rules are not fit to deal with future developments; (iii) LNG terminals equipped to receive mainly natural gas, limited access for new gases to LNG terminals; (iv) long term supply contracts for unabated natural gas may lock-in natural gas and hinder supply of renewable gases towards 2050; (v) current energy security arrangements only address risks related to the supply of natural gas and not of renewable and low carbon gases.

Concerning network planning, cooperation between TSOs and regulators needs to evolve further. The increasing penetration of intermittent energy sources requires the whole energy system to be better integrated and the infrastructure to become more interconnected, based on a more holistic and inclusive approach The Impact Assessment outlines three main drivers regarding this Problem Area: (i) network planning varies between Member States and TSOs, separate planning for electricity and gas; (ii) no transparency on potential of existing infrastructure for repurposing or decommissioning; (iii) DSOs not explicitly included in TSO planning. Furthermore, a more harmonized system development strategy would further increment interlinkages between electricity and gases systems including hydrogen.

The evaluation showed that competition needs to improve to ensure that the full benefits of market integration are passed on to EU consumers. Furthermore, consumers are still deprived from the necessary tools to get actively involved in the market. Consumer protection provisions in the analysed legislation prove to only be partially fit for purpose. In particular protection for vulnerable customers is still uneven between Member States and energy poverty continues to be significant across the EU. Concordantly, Problem Area IV identified three problem drivers: (i) untapped competition potential in retail markets; (ii) insufficient customer empowerment in terms of switching, price comparison tools, billing information, energy communities, and access to data; and (iii) inadequate consumer protection in particular for vulnerable and energy poor.

- **Stakeholder consultations**

In line with the Better Regulation Guidelines, the Commission carried out a comprehensive and inclusive stakeholder consultation based on a consultation strategy that included a range of methods and tools. This strategy aimed to ensure that all relevant evidence was taken into account, including data about costs, societal impact, and benefits of the initiative. Several consultation tools were employed: a consultation on the inception impact assessment (Roadmap), an online public consultation based on a questionnaire, a presentation by the Commission and feedback from stakeholders, including the Gas Regulatory Forum, discussions with the Member States, with members of the European Parliament and with National Regulatory Authorities, and discussions with stakeholders in a large stakeholder workshop.

The Commission received 263 responses to the open public consultation. In general, respondents confirmed that they see a need to revise the Gas Directive and Gas Regulation to

help to achieve decarbonisation objectives. Moreover, over 60% of respondents expect that the technological and regulatory changes necessary to decarbonise the gas market have the potential to create new jobs by 2030.

Regarding the development of hydrogen infrastructure and markets, a majority of the respondents support the introduction of regulation at an early stage to foster a well-functioning and competitive hydrogen market and infrastructure. Respondents advocated for an EU legislative framework that defines key regulatory principles and takes a step-wise approach. A large majority supports e.g. third party access, rules for access to hydrogen pipelines, import terminals and storage, and advocates for network activities to be unbundled. Most respondents considered it important to define early the role of private parties in developing hydrogen infrastructure. A large majority of respondents also consider that existing and future private networks may be (temporarily) exempted from certain regulatory requirements but that convergence on a single regulatory framework needs to be assured. The vast majority of respondents consider that rights and permitting requirements for new hydrogen infrastructure should be similar to those applicable to methane gas pipelines today.

Regarding the promotion of the access of renewable and low carbon gases to the existing gas market and infrastructure, stakeholders agree on a need to revise the current regulatory framework to help achieve decarbonisation objectives. A majority of stakeholders considers it important to ensure full market access and facilitate the injection of RES&LC gases into the gas grid. Many respondents advocate an obligation for network operators to connect RES&LC gases producers and introduce an injection charge reduction. The majority of respondents supports as well the improvement of the transparency framework for LNG terminals. There is also a strong support for the harmonised application of gas quality standards across the EU, for reinforced cross-border coordination and increased transparency. Respondents are divided on hydrogen blending, but the majority agrees that it can provide a cost-efficient and fast first step, despite the high technical costs, to energy system decarbonisation. Few stakeholders support the removal of intra-EU cross-border tariffs. The majority of the respondents consider gas-specific security challenges and cyber-security measures as important.

Regarding integrated network planning, the majority of stakeholders support aligning the timing of the Network Development Plan (NDP) with the TYNDP, and a single gas plan irrespective of the unbundling model chosen. A majority of respondents expressed even stronger support for a joint electricity and gas scenario. A substantial number of stakeholders ask for the inclusion of hydrogen projects in the NDP. Most stakeholders agree on the role of DSOs to provide and share information, with several respondents also supporting that DSOs provide their own plan including system optimisation across different sectors. Respondents also preferred a joint gas and electricity plan to joint scenarios with separate plans. Several stakeholders pointed out that a joint methane and hydrogen plan, with a separate electricity plan, would be the preferred option.

Regarding customer engagement and protection in the green gas retail market, the majority of the stakeholders called for higher ambitions in the citizen/consumer-related provisions by mirroring those in the electricity market. As well, energy poverty provisions should help ensure consumers are not paying the cost of switching to clean gas-based options. Representatives of the private sector support the plans to phase out regulated prices, while some consumer organisations would opt for keeping them to protect energy poor and vulnerable consumers. Almost half of all respondents want provisions on the comparability of offers and accessibility of data, transparency, smart metering systems, and switching to be reinforced. No respondent has supported the non-regulatory approach.

- **Collection and use of expertise**

The proposed initiative and its underpinning Impact Assessment draw on evidence from the stakeholder input to the extensive consultations carried out in this respect, as well as literature review, and modelling. The literature review included the results of a serie of topical studies on key elements such as the role of hydrogen and decarbonised gas infrastructure, market and production, that were conducted for the Impact Assessment or that contributed to its scope, as well as assessments carried out in for other relevant Commission initiatives. Conclusions adopted in the framework of several stakeholder forums, most importantly the one on gas regulation (Madrid Forum), and the one on electricity regulation (Florence Forum) were also considered in the analysis. Discussions with Member States, with members of the European Parliament, with National Regulatory Authorities, ACER and discussions with other stakeholders were equally considered.

- **Impact Assessment**

Following the Better Regulation guidelines, the Commission carried out an Impact Assessment of several policy options. This work was supported by a consultation within the Commission via an Inter-Service Steering Group.

The Impact Assessment was presented to and discussed with the Regulatory Scrutiny Board (RSB). The Regulatory Scrutiny Board issued a 'positive opinion with reservation'. Reservations were notably addressed by: (i) integrating the conclusions of the evaluation into the problem description, (ii) spelling out the role of the initiative as part of the enabling framework of the 'Fit for 55' package, (iii) clarify the baseline of the impact of the policy options, (iv) distinguish more between different actors, in particular between natural gas and hydrogen producers and consumers, (v) provide an assessment of how the initiative may have different impacts for SMEs compared to other (larger) companies, (vi) better reflect the dissenting and minority views throughout the report, including in the problem definition, the construction of the options, analysis of impacts and the choice of the preferred option, (vii) improve the narrative of the report, and (viii) complete the cost and benefit tables in the appropriate format.

Throughout the Impact Assessment work, a range of measures was considered across four Problem Areas to address the identified problems and problem drivers to reach the objectives of the initiative: Following an assessment of their effectiveness, efficiency, coherence and proportionality, a package of preferred options has been found best suited to contribute to the set objectives.

Problem Area I: Hydrogen infrastructure and hydrogen markets

Problem Area I considers the following policy options: to tender the rights for hydrogen network operation (Option 1); to introduce main regulatory principles inspired by those currently applicable to the natural gas market but adapted to the development stage of hydrogen markets (Option 2); and to establish a fully developed regulatory regime for hydrogen (similar to the one currently applicable to the natural gas sector) without need for a transition to a more mature hydrogen market (Option 3). The preferred option is to introduce key regulatory principles from the start whilst providing clarity on the final (future) regulatory regime. (Option 2b 'Main regulatory principles with a vision'). The key benefit of this option is that it fosters market integration, provides clarity for investors, avoids the emergence of non-competitive market structures as well as costs of ex-post adjustments of rules once the market is mature, but leaves flexibility to tailor the regulation to the staged ramp-up of the hydrogen sector.

Problem Area II: Renewable and low carbon gases in the existing gas infrastructure and markets, and energy security

Problem Area II contains options that promote access of renewable and low-carbon (RES&LC) gases to the existing gas market and infrastructure. All options include also a progressive level of intervention for addressing energy security concerns, notably extending existing tools, standards and procedures to RES&LC gases, effective solidarity and addressing risks linked to cybersecurity for the gas sector. Option 3 'Allow and promote renewable and low-carbon gases full market access' is the preferred option for Problem Area II. This option contains measures to support access of renewable and low carbon gases to the wholesale market, LNG terminals, and transmission grid (regardless of the place of connection), including tariff discounts for injection to the grid and cross-border transport. Gas quality would be governed by a harmonised EU approach for cross-border interconnection points while leaving flexibility to the Member States. The allowed cap for hydrogen blends is set at 5% for all cross-border points – a level that is cost-efficient in terms of adaptation and abatement costs.

Allowing and promoting renewable and low-carbon full market: The measures foreseen are consistent with the Union's efforts to fight climate change and necessary to achieve the objectives of the European Green Deal. The key benefit is that the measures will decrease the production costs for producers of renewable and low carbon gases, increase competition, liquidity and trade for renewable gases, while encouraging a reduction of greenhouse gas emissions. In this way, consumers and taxpayers will benefit as support could be lowered. It will also limit risks for energy security and save time and resources, reduce uncertainties, improve the efficiency of emergency measures, and strengthen security-specific requirements for gas companies.

Problem Area III: Network planning

Problem Area III considers options regarding integrated network planning. The preferred option for Problem Area III is Option 2 'National Planning based on European Scenarios'. The option allows for national planning but requires that it is based on joint scenarios for gas and electricity, aligned with the TYNDP and linked to the relevant National Energy and Climate Plan. It includes all relevant actors (DSOs) and enables the identification of pipelines that can be used for repurposing from methane to H2 on a level of detail that would not be easily achievable on the European level.

Establish National Planning based on European Scenarios: The key benefit is that this will eliminate risks that electricity and gas TSOs plan the evolution of their systems based on incompatible assumptions. It enables sector integration and a conceptual system plan while keeping the benefits of more detailed sector-specific network development plans. It ensures a common vision of the different stakeholders implying that network planning takes into account the decarbonisation strategies at the national and EU levels, reducing the risk of potential lock-ins or stranded assets.

Problem Area IV: Low level of customer engagement and protection in the green gas retail market

Problem Area IV contains options that postulate for a non-regulatory approach in tackling competition and consumers' engagement or instead require addressing the problem drivers through new legislation, mostly mirroring what was already established in the electricity sector. In light of the analysis, the preferred option is Option 2 'Flexible legislation', which mirrors the electricity market consumer protection and also the empowerment provisions.

This option is most likely to be the most effective, efficient, and consistent with other Problem Areas.

The key benefit is that it will offer significant savings potential, help new suppliers and service providers to enter the market, develop innovative products, resulting in increased competition, consumer engagement and economic benefit. It would also enable citizens and communities to increase social acceptance, mobilise private capital and facilitate the deployment of renewable and low-carbon gases. Reducing the risk of over-investments will have a positive environmental impact.

- **Regulatory fitness and simplification**

The proposals for amending the existing legislation are designed in accordance with the most cost-effective policy options scrutinised in the Impact Assessment. It is expected from some of the preferred options to increase administrative, implementation and enforcement costs for regulatory bodies and market operators. For example, higher administrative exchanges between NRAs and natural gas shippers, increased coordination efforts between DSOs and TSOs, and further regulatory and implementation efforts for Member States and national authorities might stem from the proposed measures. However, lower and more efficient regulatory costs are also expected from the amended framework.

Furthermore, the Impact Assessment shows that the proposed measures offer the most cost-effective regulatory options to achieve the overarching objective of the initiative, namely the establishment of rules for the transmission, distribution, supply and storage of methane and hydrogen gases that can support the decarbonisation of the energy system while ensuring secure and affordable energy.

The short-term regulatory costs entailed in some of the preferred measures must be assessed against the costs and efforts that a late integration and decarbonisation of the energy system would require in the long term. The benefits that the options are expected to produce in terms of support for renewable sources, energy system integration, consumer protection and energy security will largely outweigh the immediate administrative and implementation costs.

The proposal further contributes to simplifying the current regulatory framework by harmonising the provisions on gas infrastructure and market with the new regulatory architecture conceived by the Clean Energy Package for the electricity sector. Higher alignment between sectors is expected to benefit many regulatory areas, notably consumer empowerment and protection, governance and regulatory oversight. Similar contributions are also foreseen in the early introduction of a regulatory framework for hydrogen infrastructures and markets. Whilst these rules will likely increase the immediate administrative costs and regulatory burdens for national authorities and market operators, an early harmonisation of regulatory principles for hydrogen is expected to significantly lower future compliance costs and prevent the risk of major regulatory divergences and implementation costs.

- **Fundamental rights**

Safeguarding EU values and citizens' fundamental rights and security in a developing green, digital energy environment, is of paramount importance. The proposed policy measures on data management were developed with this in mind, aiming at ensuring widespread access and use of digital technologies and data-driven services while at the same time guaranteeing a high level of the right to private life and to the protection of personal data, as enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the EU, and the General Data Protection Regulation.

4. BUDGETARY IMPLICATIONS

The budgetary impact on the EU budget associated to the proposal under this package concerns the human resources of the Agency for the Cooperation of Energy Regulators (ACER) and of the European Commission's Directorate-General (DG) for Energy which are described in the Legislative Financial Statement accompanying the Commission proposal for a recast of the [Gas Regulation]. Essentially, the new tasks to be carried out by ACER, notably as regards rules facilitating the development of a competitive hydrogen sector, but also the increasing complexity of gas markets due to an increasing share of other gases than natural gas, require a phasing in of 21 additional FTE in ACER from 2023 onwards. For implementing the proposed new rules for a new and growing sector, for integrating new types of gases into the gas market and infrastructure as well as for enforcing the strengthened consumer provisions, also the human resources of DG Energy need to be reinforced by 5 additional FTE.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Progress monitoring will consist of a two-tier approach of annual reporting by ACER and an evaluation by the Commission.

ACER's mandate of annual monitoring and reporting of market performance in its annual market monitoring report (obligation in Regulation (EC) No. 715/2009) will be retained, with its scope extended to hydrogen. Within one year of the adoption of the proposals, the Commission will invite ACER to review and update its current monitoring indicators (with the involvement of affected stakeholders) to ensure their continuing relevance for monitoring progress towards the objectives underlying the present proposals. ACER will continue relying on the already established data sources used for the preparation of the market monitoring report, extended with relevant data on hydrogen.

ACER's annual reporting will replace the Commission's reporting obligations that are currently still existing under the Gas Directive. The detailed proposals will ensure that ACER's monitoring is complementary to other monitoring exercises (especially monitoring under the Governance of the Energy Union and Climate Action) avoiding any overlaps.

The Commission will carry out a fully-fledged evaluation of the impact of the proposed initiatives, including the effectiveness, efficiency, continuing coherence and relevance of the proposals, within a given timeline after the entry into force of the adopted measures (indicatively, five years). By 31 December 2030, the Commission shall review this Directive and shall submit a report to the European Parliament and to the Council.

- **Explanatory documents (for directives)**

Following the ruling of the European Court of Justice in Commission vs Belgium (case C-543/17), Member States must accompany their notifications of national transposition measures with sufficiently clear and precise information, indicating which provisions of national law transpose which provisions of a directive. This must be provided for each obligation, not only at 'article level'. If Member States comply with this obligation, they would not need, in principle, to send explanatory documents on the transposition to the Commission.

The Regulation will be directly and uniformly implemented in the Member States, and hence not requiring an Explanatory Document.

- **Detailed explanation of the specific provisions of the proposal**

The proposed **revised directive** consists of ten chapters comprising 90 articles.

Chapter 1 – Subject matter, scope and definitions

This chapter sets out the subject matter and scope of the rules for the transmission, distribution, supply, and storage of gases using the natural gas system as well as the rules for the transport, supply and storage of hydrogen using the hydrogen system. It also defines the main terms used in the proposed directive.

Chapter 2 – General rules for the organisation of the markets

This chapter lays down the rules to ensure competitive, consumer-centred, flexible and non-discriminatory markets for gas. It contains provisions on market access such as the free choice of supplier, market-based supply prices, public service obligations, sustainability, certification of renewable and low-carbon gases, promotion of regional cooperation, and technical rules.

Chapter 3 – Consumer empowerment and protection and retail markets

This chapter provides in particular a set of rights for the consumer: It elaborates on basic contractual rights, switching rights and fees, and rules on comparison tools, active customers, and citizen energy communities. It also contains provisions on billing, smart and conventional metering, and data management.

It also contains provisions on single points of contact, right to out-of-court dispute settlement, vulnerable customers, and retail markets.

Chapter 4 – Third party access to infrastructure

This chapter is divided into 3 sections to cover the following: access to natural gas infrastructure, access to hydrogen infrastructure, and refusal of access and connection.

Chapter 5 – Rules applicable to transmission, storage and system operators of natural gas

This chapter elaborates on tasks of transmission, storage and LNG system operators, confidentiality and decision-making powers.

Chapter 6 – Distribution system operators of natural gas

This chapter sets the designation of distribution system operators, their tasks, the decision-making powers regarding the connection of the new production facilities for renewable and low-carbon gases to the distribution system, the unbundling of distribution system operators, the confidentiality obligations of distribution system operators, provisions on closed distribution systems, and combined operator.

Chapter 7 – Rules applicable to the dedicated hydrogen networks

This chapter provides in particular tasks of hydrogen network, storage and terminal operators, provision on existing hydrogen networks, geographically confined hydrogen networks, interconnectors with third countries, and confidentiality for operators.

Chapter 8 – Integrated network planning

This chapter elaborates on network development and powers to make investment decisions, on hydrogen network development reporting, as well as on financing cross-border hydrogen infrastructure.

Chapter 9 – Unbundling of transmission system operators

This chapter is divided into six sections to cover the following: ownership unbundling, independent system operators, independent transmission operators, the unbundling of dedicated hydrogen network operators and the designation, the certification of natural gas and hydrogen system operators, and unbundling and transparency of accounts.

Chapter 10 – Regulatory authorities

This chapter focuses on the designation and independence of regulatory authorities, on general objectives of the regulatory authority, on their duties and powers, on the regulatory regime for cross-border issues, on compliance with the network codes and guidelines, and on record keeping.

Chapter 11 – Final provisions

The last chapter focuses on final provisions and includes articles notably on safeguard measures, level playing field, technical agreements, derogations, empowerment procedure, the exercise of delegation, committee procedure, reporting, repeal, transposition, entry into force, Addressees.

Annex 1 is about the minimum requirements for billing and billing information.

Annex 2 deals with smart metering in natural gas.

Annex 3 contains a correlation table.

The proposed **revised regulation** consists of five chapters comprising 69 articles.

Chapter 1 – Subject matter, scope and definitions

This chapter sets out the subject matter and scope of the rules regarding the objectives of the Energy Union, climate and energy framework as well as consumers. It also defines the main terms used in the proposed regulation.

Chapter 2 – General rules for the organisation of the markets and infrastructure access

This chapter lays down the general principles as well as the separation of regulated asset bases, third party access services, market assessment for renewable and low carbon gases, principles of capacity-allocation mechanisms and congestion-management procedure, trading of capacity rights, balancing rules and imbalance charges, certification, and cooperation of transmission system operators.

Chapter 3 – Network access

This chapter elaborates on tariffs for access to networks, and discounts.

Chapter 4 – Transmission, storage, LNG, and hydrogen terminal system operation

This chapter sets out provisions on firm capacity for renewable and low-carbon gases, cross border coordination on gas quality, hydrogen blends, the European network of transmission system operators for gas, monitoring by ACER, regulatory authorities, consultations, costs, regional cooperation, TYNDP, transparency requirements, and record-keeping.

Chapter 5 – Distribution system operation

This chapter lays down the rules on firm capacity for renewable and low carbon gases, cooperation between DSOs and TSOs, transparency requirement, the European entity for distribution system operators. It includes procedures and tasks.

Chapter 6 – Access to dedicated hydrogen networks

This chapter focuses on cross-border coordination on hydrogen quality, the European Network of Network Operators for Hydrogen, its tasks, TYNDP for hydrogen, costs, and consultation, the monitoring by ACER, regional cooperation, and transparency requirements.

Chapter 7 – Network codes and guidelines

This chapter sets out provisions for the adoption of network codes and guidelines, the establishment of network codes, amendments of network codes and guidelines, the right of Member States to provide for more detailed measures, provision of information and confidentiality, and penalties. All three rules are adapted to hydrogen.

Chapter 8 – Final provisions

This chapter focuses on final provisions and includes articles notably on new natural gas and hydrogen infrastructure, committee procedure, exemptions, derogations, the exercise of delegation, amendments to regulations, amendment to extend the Regulation on security of gas supply to RES&LC gases and to include measures on cybersecurity, solidarity and storage, repeal, and entry into force.

Annex 1 contains guidelines.

Annex 2 contains a correlation table.

↓ 2009/73/EC (adapted)
⇨ new

2021/0425 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on common rules for the internal markets in renewable and natural gases and in hydrogen (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~establishing the European Community~~ ⌦ on the Functioning of the European Union ⌫ , and in particular ~~Article 47(2) and Articles 55 and 95~~ ⌦ Article 194(2) ⌫ thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[2],

Having regard to the opinion of the Committee of the Regions[3],

Acting in accordance with the ordinary legislative procedure,

Whereas:

⇩ new

(1) Directive 2009/73/EC of the European Parliament and of the Council[4] has been substantially amended several times[5]. Since further amendments are to be made, that Directive should be recast in the interests of clarity.

↓ 2009/72/EC Recital 1 (adapted)

(2) The internal market in natural gas, which has been progressively implemented throughout the ~~Community~~ ⌦ Union ⌫ since 1999, aims to deliver real choice for all consumers of the European Union, be they citizens or businesses, new business opportunities and more cross-border trade, so as to achieve efficiency gains,

[2] OJ […], […], p. […].
[3] OJ […], […], p. […].
[4] Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).
[5] See Annex III, Part A.

competitive prices, and higher standards of service, and to contribute to security of supply and sustainability.

↓ 2009/73/EC Recital 2 (adapted)

(3) Directive 2003/55/EC of the European Parliament and of the Council ~~of 26 June 2003 concerning common rules for the internal market in natural gas~~[6] ⌦ and Directive 2009/73/EC of the European Parliament and of the Council have ⌫ ~~has~~ made a significant contribution towards the creation of such an internal market in natural gas.

⇩ new

(4) As part of the Package "Clean Energy for all Europeans" proposed by the Commission on 30 November 2016, Regulation (EU) 2019/943[7] and Directive (EU) 2019/944[8] brought about a further step in the development of the internal market for electricity with citizens at its core and contributing to the Union's objectives of transition to a clean energy system and reducing greenhouse gas emissions. The internal market in natural gas should be built on those same principles and, in particular, ensure an equal level of consumer protection.

(5) The Union has aims to cut greenhouse gas emissions. It has therefore adopted a set of initiatives to reach that goal, including the energy system integration strategy and the hydrogen strategy published by the Commission in July 2020, which set out how to update the energy markets, including the decarbonisation of gas markets as well as Regulation (EU) 2018/1999 and Regulation (EU) 2021/1119. This Directive should contribute to achieving these goals, ensuring security of supply and a well-functioning internal market for gases, including for hydrogen.

(6) This Directive aims to facilitate the penetration of renewable and low-carbon gases into the energy system enabling a shift from fossil gas and to allow these new gases to play an important role towards achieving the EU's 2030 climate objectives and climate neutrality in 2050. The Directive aims also to set up a regulatory framework which enables and incentivises all market participants to take the transitional role of fossil gas into account while planning their activities to avoid lock-in effects and ensure gradual and timely phase-out of fossil gas notably in all relevant industrial sectors and for heating purposes.

(7) The EU hydrogen strategy recognises that, as EU Member States have different potential for the production of renewable hydrogen, an open and competitive EU market with unhindered cross-border trade has important benefits for competition, affordability, and security of supply. Moreover, it stresses that moving towards a liquid market with commodity-based hydrogen trading would facilitate entry of new producers and be beneficial for deeper integration with other energy carriers. It would

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6 ~~OJ L 176, 15.7.2003, p. 57~~

7 Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54).

8 Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

create viable price signals for investments and operational decisions. The rules laid down in this Directive should thus be conducive for hydrogen markets, commodity-based hydrogen trading and liquid trading hubs to emerge and any undue barriers in this regard should be eliminated by Member States. Whilst recognising the inherent differences, existing rules that enabled efficient commercial operations developed for the electricity and gas markets and trading should be rendered applicable to Union hydrogen markets to the extent appropriate and within a suitable time frame.

(8) In line with the EU Hydrogen Strategy, renewable hydrogen is expected to be deployed on a large-scale from 2030 onwards for the purpose of decarbonising certain sectors, ranging from aviation and shipping to hard-to-decarbonise industrial sectors. All final customers connected to hydrogen systems will benefit from basic consumer rights applicable to final customers connected to the natural gas system such as the right to switch supplier and accurate billing information. In those instances where customers are connected to the hydrogen network, e.g. industrial customers, they will benefit from the same consumer protection rights applicable to natural gas customers. However, consumer provisions designed to encourage household participation on the market such as price comparison tools, active customers and citizen energy communities do not apply to the hydrogen system.

(9) In line with the EU Hydrogen Strategy, the priority for the EU is to develop renewable hydrogen produced using mainly wind and solar energy. Renewable hydrogen is the most compatible option with the EU's climate neutrality and zero pollution goal in the long term and the most coherent with an integrated energy system. However, low-carbon fuels (LCFs) such as low-carbon hydrogen (LCH) may play a role in the energy transition, particularly in the short and medium term to rapidly reduce emissions of existing fuels, and support the uptake of renewable fuels such as renewable hydrogen. In order to support the transition, it is necessary to establish a threshold for greenhouse gas emission reductions for low-carbon hydrogen and synthetic gaseous fuels. Such threshold should become more stringent for hydrogen produced in installations starting operations from 1 January 2031 to take into account technological developments and better stimulate the dynamic progress towards the reduction of greenhouse gas emissions from hydrogen production. The EU Energy System Integration strategy highlighted the need to deploy an EU–wide certification system to also cover low-carbon fuels with the aim to enable Member States to compare them with other decarbonisation options and consider them in their energy mix as a viable solution. In order to ensure that LCF have the same decarbonisation impact as compared to other renewable alternatives it is important that they are certified by applying a similar methodological approach based on a life cycle assessment of their total greenhouse gas ('GHG') emissions. This would allow deploying a comprehensive EU-wide certification system, covering the whole Union energy mix. Taking into consideration that LCF and LCH are not renewable fuels, their terminology and certification could not be included in the proposal for the revision of Directive (EU) 2018/2001 of the European Parliament and of the Council[9]. Therefore, their inclusion in this Directive fills in this gap.

[9] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

🡻 2009/73/EC Recital 3

(10) The freedoms which the Treaty guarantees the citizens of the Union — *inter alia*, the free movement of goods, the freedom of establishment and the freedom to provide services — are achievable only in a fully open market, which enables all consumers freely to choose their suppliers and all suppliers freely to deliver to their customers.

🡻 2009/73/EC Recital 4

~~(4) However, at present, there are obstacles to the sale of gas on equal terms and without discrimination or disadvantages in the Community. In particular, non-discriminatory network access and an equally effective level of regulatory supervision in each Member State do not yet exist.~~

🡻 2009/73/EC Recital 5

~~(5) The Communication of the Commission of 10 January 2007 entitled 'An Energy Policy for Europe' highlighted the importance of completing the internal market in natural gas and of creating a level playing field for all natural gas undertakings established in the Community. The Communications of the Commission of 10 January 2007 entitled 'Prospects for the internal gas and electricity market' and 'Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report)' showed that the present rules and measures do not provide the necessary framework for achieving the objective of a well-functioning internal market.~~

🡻 2009/73/EC recital 48 (adapted)
⇨ new

(11) Consumer interests should be at the heart of this Directive and quality of service should be a central responsibility of natural gas undertakings. Existing rights of consumers ⇨ and rights for access to essential services, including energy, and safeguarding against energy poverty, as stated in the European Pillar of Social Rights communication ⇦ need to be strengthened and guaranteed, and should include greater transparency. Consumer protection should ensure that all consumers in the wider remit of the ~~Community~~ ⌦ Union ⌫ benefit from a competitive ⌦ gas ⌫ market. Consumer rights should be enforced by Member States or, where a Member State has so provided, the regulatory authorities.

⇩ new

(12) The European Pillar of Social Rights places energy among the essential services everyone shall have access to and calls for support measures for those in need (principle 20). UN Sustainable Development Goal number 7 (SDG7) also calls for ensuring access to affordable, reliable, sustainable and modern energy for all.

↓ 2009/73/EC recital 47 (adapted)

(13) ~~The~~ Public service requirements and the common minimum standards that follow from them need to be further strengthened to make sure that all consumers, especially vulnerable ones, can benefit from competition and fair prices. The public service requirements should be defined at national level, taking into account national circumstances; ~~Community~~ ⌦ Union ⌫ law should, however, be respected by the Member States. ~~The citizens of the Union and, where Member States deem it to be appropriate, small enterprises, should be able to enjoy public service obligations, in particular with regard to security of supply and reasonable tariffs.~~

⇩ new

(14) Member States should have a wide discretion to impose public service obligations on gas undertakings in pursuing objectives of general economic interest. However, public service obligations in the form of price setting for the supply of natural gas constitute a fundamentally distortive measure that often leads to the accumulation of tariff deficits, the limitation of consumer choice, poorer incentives for energy saving and energy efficiency investments, lower standards of service, lower levels of consumer engagement and satisfaction, and the restriction of competition, as well as to there being fewer innovative products and services on the market. Consequently, Member States should apply other policy tools, in particular targeted social policy measures, to safeguard the affordability of natural gas supply to their citizens. Public interventions in price setting for the supply of natural gas should be carried out only as public service obligations and should be subject to specific conditions. A fully liberalised, well-functioning retail natural gas market would stimulate price and non-price competition among existing suppliers and provide incentives to new market entrants, thereby improving consumer choice and satisfaction.

(15) Public service obligations in the form of price setting for the supply of natural gas should be used without overriding the principle of open markets in clearly defined circumstances and beneficiaries and should be limited in duration. In order to mitigate the distortive effects of public service obligations in price setting for the supply of natural gas, Member States applying such interventions should put in place additional measures, including measures to prevent distortions of price setting in the wholesale market. Member States should ensure that all beneficiaries of regulated prices are able to benefit fully from the offers available on the competitive market when they choose to do so. To that end, they should be directly and regularly informed of the offers and savings available on the competitive market, and should be provided with assistance to respond to and benefit from market-based offers.

(16) Public interventions in price setting for the supply of natural gas should not lead to direct cross-subsidisation between different categories of customer. According to that principle, price systems must not explicitly make certain categories of customer bear the cost of price interventions that affect other categories of customer.

↓ 2009/73/EC recital 49 (adapted)
⇨ new

(17) Clear and comprehensible information should be made available to consumers concerning their rights in relation to the energy sector. The Commission ~~should establish~~ ⌦ has established ⌫ , after consulting relevant stakeholders including Member States, ~~national~~ regulatory authorities, consumer organisations and natural gas undertakings, an accessible, user-friendly energy consumer checklist providing consumers with practical information about their rights. That energy consumer checklist should be ⇨ maintained to date, ⇦ provided to all consumers and should be made publicly available.

⇩ new

(18) Member States should take into account the fact that the successful transition requires enhanced investment in education and skills for workers in the gas industry, including in relation to infrastructure development. Such mention would be in line with the proposal for a revision of EED (2021/0203 (COD).

(19) Market rules should protect and empower customers to make low carbon choices, in order for new renewable and low carbon gases to be fully embedded in the energy transition.

(20) Natural gas still plays a key role in energy supply, as household energy consumption from natural gas is still higher than from electricity. Although electrification is a key element of the green transition, in the future there will still be household natural gas consumption including increasing volumes of renewable gas.

(21) As the natural gas sector, including the natural gas retail market was not part of the Clean Energy for all Europeans Package, the related provisions on consumer engagement and protection have not been adapted to the needs of the energy transition, which corresponds instead to the situation of over a decade ago when the Third Energy Package was adopted.

(22) The natural gas market witnesses poor customer satisfaction and engagement as well as slow uptake of new renewable and low-carbon gases, which all reflect limited competition in many Member States. Unlike falling prices in wholesale markets, natural gas prices for household customers rose in the last decade resulting in household consumers paying two or three times more for their natural gas consumption than industrial customers.

(23) As in the electricity sector, market flexibilities and an adequate Union consumer rights' legal framework in the natural gas sector are essential to ensure that consumers can participate in the energy transition and benefit from affordable prices, good standards of service, and effective choice of offers mirroring technological developments.

(24) The switch from fossil gas to renewable alternatives will concretise if energy from renewable sources becomes an attractive, non-discriminatory choice for consumers based on truly transparent information where the transition costs are fairly distributed among different groups of consumers and market players.

(25) To address the current gaps in the retail gas market, it is necessary to tackle the existing competition and technical barriers to the emergence of new services, better levels of service, and lower consumer prices, whilst ensuring the protection of energy poor and vulnerable consumers.

(26) In order to ensure a high level of consumer protection and empowerment consistently across energy sectors, the legislative framework in the decarbonised gas market legislation should reflect the electricity market customer protection and where relevant its empowerment provisions.

(27) To be coherent and effective, this mirroring approach should be encompass all consumer protection and empowerment provisions, whenever feasible and adaptable to the gas market. This should go from basic contractual rights to rules for billing information, switching energy provider, having at disposal reliable comparison tools, protecting vulnerable and energy poor consumers, ensuring adequate data protection for smart meters and data management, and efficient alternative dispute resolution rules.

(28) In pursuing the consistency of provisions across sectors, burdens for national administrations and businesses should be limited and proportionate by also building on the experience with the Clean Energy for All Europeans Package.

(29) The modernisation of the gas sector is expected to lead to substantial economic benefits in terms of both improved retail competition and its social and distributional benefits and customer empowerment, including strengthened contractual rights and better available information on consumption and energy sources leading to greener choices. Energy communities-of-interest should contribute to the uptake of renewable gas.

(30) Switching is an important indicator of consumer engagement as well as in important tool to boost competition on both the natural gas and hydrogen markets. Switching rates remain inconsistent among Member States and consumers are discouraged from switching by exit and termination fees. Although removing such fees might limit consumer choice by eliminating products based on rewarding consumer loyalty, restricting their use further should improve consumer welfare, consumer engagement and competition in the market.

(31) Shorter switching times are likely to encourage customers to search for better energy deals and switch supplier. With the increased deployment of information technology, by the year 2026, the technical switching process of registering a new supplier in a metering point at the market operator should typically be possible to complete within 24 hours on any working day. Ensuring that it is possible by that date for the technical process of switching to take place within 24 hours would minimise switching times, helping to increase consumer engagement and retail competition.

(32) Several factors impede consumers from accessing, understanding and acting upon the various sources of market information available to them. It follows that the comparability of offers should be improved and barriers to switching should be minimised to the greatest practicable extent without unduly limiting consumer choice.

(33) Independent comparison tools, including websites, are an effective means for smaller customers to assess the merits of the different energy offers that are available on the market. They should aim to include the broadest possible range of available offers, and to cover the market as completely as is feasible so as to give the customer a representative overview. It is crucial that smaller customers have access to at least one

comparison tool and that the information given on such tools be trustworthy, impartial and transparent. To that end, Member States could provide for a comparison tool that is operated by a national authority or a private company.

(34) Final customers should also be able to consume, to store and to sell self-generated renewable gas and participate in all natural gas markets by providing ancillary services to the system, for instance through energy storage. Member States should be able to have different provisions in their national law with respect to taxes and levies for individual and jointly-acting active customers.

(35) Recognising the role they can play in decarbonizing the energy system, certain categories of citizen energy initiatives should be recognised in the natural gas market at the Union level as 'citizen energy communities'. These communities should facilitate the use of renewable gas in the natural gas system. In order to provide them with an enabling framework, fair treatment, a level playing field and a well-defined catalogue of rights and obligations should be laid down which generally reflects the membership structure, governance requirements and purpose of citizen energy communities in Directive (EU) 2019/944.

(36) The provisions on citizen energy communities do not preclude the existence of other citizen initiatives such as Renewable Energy Communities in Directive (EU) 2018/2001 or those stemming from private law agreements. Membership of citizen energy communities should be open to all categories of entities. However, the decision-making powers within a citizen energy community should be limited to those members or shareholders that are not engaged in large-scale commercial activity and for which the energy sector does not constitute a primary area of economic activity. This means that citizen energy communities and individual members or shareholders need to be financially and economically independent from entities engaged in such activities, notwithstanding the possibility for citizen energy communities to delegate the management of the installations required for their activities, including installation, operation, data handling and maintenance.

(37) Bills and billing information are an important means to inform and empower final customers. Energy bills remain the most common consumer concern and source of consumer complaints, a factor that contributes to the persistently low levels of consumer satisfaction and engagement in the gas sector. Provisions for billing information in the gas sector also lag behind rights granted to consumers in the electricity sector. It is therefore necessary to align them and to set minimum requirements for bills and billing information in the gas sector, so that consumers have access to transparent, easy to understand information. Bills should convey information to the final consumers on their consumption and costs, thus facilitating comparison between offers and switching supplier, as well as information on their consumer rights (such as on alternative dispute resolution). In addition, bills should be a tool to actively engage consumers in the market, so that consumers can manage their consumption patterns and make greener choices.

(38) The regular provision of accurate billing information based on actual gas consumption, facilitated by smart metering, is important to help customers to control their gas consumption and costs. Nevertheless, customers, in particular household customers, should have access to flexible arrangements for the actual payment of their bills.

↓ 2009/73/EC recital 47 (adapted)
⇨ new

(39) A key aspect in supplying customers is access to objective and transparent consumption data. Thus, consumers should have access to their consumption data and associated prices and services costs so that they can invite competitors to make an offer based on ~~those data~~ ⌦ that information ⌫ . Consumers should also have the right to be properly informed about their energy consumption. Prepayments should ⇨ not place a disproportionate disadvantage on their users, while ⇦ ~~reflect the likely consumption of natural gas and~~ different payment systems should be non-discriminatory. Information on energy costs provided to consumers frequently enough ~~will~~ ⌦ should ⌫ create incentives for energy savings because it will give customers direct feedback on the effects of investment in energy efficiency and change of behaviour.

↓ 2009/73/EC recital 52 (adapted)
⇨ new

(40) ⇨ When deciding at national level on the deployment of natural gas smart metering systems, ⇦ ~~I~~it should be possible to base ⌦ such decision ⌫ ~~the introduction of intelligent metering systems~~ on an economic assessment. ⇨ That economic assessment should take into account the long-term benefits of the deployment of smart metering systems to consumers and the whole value chain. ⇦ Should that assessment conclude that the introduction of such metering systems is economically reasonable and cost-effective only for consumers with a certain amount of ⇨ natural ⇦ gas consumption, Member States should be able to take this into account when ~~implementing intelligent metering systems~~ ⌦ proceeding with deployment ⌫. ⇨ However, such assessments should be reviewed regularly in response to significant changes in the underlying assumptions, or at least every four years, given the fast pace of technological developments. ⇦

⇩ new

(41) In order to assist final customers' active participation in the market, the smart metering systems to be deployed should have due regard to the use of relevant available standards, including those enabling interoperability on the level of the data model and the application layer, to best practices and the importance of the development of data exchange, to future and innovative energy services. Moreover, the smart metering systems that are deployed should not represent a barrier to switching supplier in the case of natural gas consumers, and should be equipped with fit-for-purpose functionalities that allow final customers to have timely access to their consumption data, to modulate their energy behaviour, be rewarded for it, and obtain savings in their bills.

(42) Member States that do not systematically deploy smart metering in the natural gas system should allow consumers to benefit from the installation of a smart meter, upon request and under fair and reasonable conditions, and should provide them with all the relevant information.

(43) Currently, different models for the management of data have been developed or are under development in Member States following deployment of smart metering systems. Independently of the data management model it is important that Member States put in place transparent rules that data can be accessed under non-discriminatory conditions and ensure the highest level of cybersecurity and data protection as well as the impartiality of the entities which process data.

↓ 2009/73/EC recital 51 (adapted)

(44) Greater consumer protection is guaranteed by the availability of effective means of dispute settlement for all consumers. Member States should ~~introduce~~ ⌦ provide for ⌫ speedy and effective complaint handling procedures.

↓ 2009/73/EC recital 50 (adapted)

~~(50) Energy poverty is a growing problem in the Community. Member States which are affected and which have not yet done so should, therefore, develop national action plans or other appropriate frameworks to tackle energy poverty, aiming at decreasing the number of people suffering such situation. In any event, Member States should ensure the necessary energy supply for vulnerable customers. In doing so, an integrated approach, such as in the framework of social policy, could be used and measures could include social policies or energy efficiency improvements for housing. At the very least, this Directive should allow national policies in favour of vulnerable customers.~~

⇩ new

(45) Member States should take appropriate measures, such as providing benefits by means of their social security systems, to ensure the necessary supply to vulnerable customers, or providing for support for energy efficiency improvements, to address energy poverty where identified pursuant to Article 3(3), point (d) of Regulation (EU) 2018/1999 of the European Parliament and of the Council[10], including in the broader context of poverty. Such measures could differ according to the particular circumstances in the Member States in question and could include social or energy policy measures relating to the payment of any gases bills, to investment in the energy efficiency of residential buildings, or to consumer protection such as disconnection safeguards.

[10] Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

(46) Pursuant to Regulation (EU) 2018/1999 and Directive (EU) 2019/944 of the European Parliament and of the Council[11], the Commission provided indicative guidance[12] on appropriate indicators for measuring energy poverty and defining a 'significant number of households in energy poverty'.

(47) The simplification and streamlining of administrative permit granting processes and clear time limits for decisions to be taken by the authorities competent for issuing an authorisation should ensure that the deployment of hydrogen production facilities and hydrogen system infrastructure can occur at an adequate pace. Member States should be requested to report on progress made. Grandfathering of authorisations (such as licences, permissions, concessions or approvals), granted under national law for the construction and operation of existing natural gas pipelines and other network assets, is needed once the transported gaseous energy carrier in a gas pipeline changes from natural gas to (pure) hydrogen. This should prevent undue delay in repurposing existing natural gas pipelines and other networks assets for hydrogen transport. It should be avoided that conditions for granting authorisations for hydrogen system infrastructure are materially different unless sufficiently justified. Technical safety considerations might justify a differentiated approach in grandfathering existing or issuing new authorisations. The provisions on authorisation procedures should apply without prejudice to international and Union law, including provisions to protect the environment and human health. Where duly justified on the grounds of extraordinary circumstances, it should be possible to extend the time limits for authorisation procedures by up to one year.

(48) Providing guidance to applicants throughout their administrative permit application and granting processes by means of an administrative contact point is intended to reduce complexity for project developers and increase efficiency and transparency. The availability for applicants to submit relevant documents in digital form and the availability of a manual of procedures for applicants could contribute to efficiency. Member States should ensure that the authorities implementing authorisation procedures are actively involved in the tackling of remaining barriers, including non-financial ones such as insufficient knowledge, digital and human resources that hinder their processing of a growing number of authorisation procedures.

↓ 2009/73/EC Recital 6

(49) Without effective separation of networks from activities of production and supply (effective unbundling), there is a risk of discrimination not only in the operation of the network but also in the incentives for vertically integrated undertakings to invest adequately in their networks.

↓ 2009/73/EC Recital 7

(50) The rules on legal and functional unbundling as provided for in Directive 2003/55/EC have not, however, led to effective unbundling of the transmission system operators.

[11] Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

[12] Commission Recommendation of 14.10.2020 on energy poverty, C(2020) 9600 final

At its meeting on 8 and 9 March 2007, the European Council therefore invited the Commission to develop legislative proposals for the 'effective separation of supply and production activities from network operations'.

↓ 2009/73/EC Recital 8 (adapted)

(51) Only the removal of the incentive for vertically integrated undertakings to discriminate against competitors as regards network access and investment can ensure effective unbundling. Ownership unbundling, which implies the appointment of the network owner as the system operator and its independence from any supply and production interests, is clearly an effective and stable way to solve the inherent conflict of interests and to ensure security of supply. For that reason, the European Parliament, in its resolution of 10 July 2007 on prospects for the internal gas and electricity market[~~13~~] referred to ownership unbundling at transmission level as the most effective tool ~~by which~~ to promote investments in infrastructure in a non-discriminatory way, fair access to the network for new entrants and transparency in the market. Under ownership unbundling, Member States should therefore be required to ensure that the same person or persons are not entitled to exercise control over a production or supply undertaking and, at the same time, exercise control or any right over a transmission system operator or transmission system. Conversely, control over a transmission system or transmission system operator should preclude the possibility of exercising control or any right over a production or supply undertaking. Within those limits, a production or supply undertaking should be able to have a minority shareholding in a transmission system operator or transmission system.

↓ 2009/73/EC Recital 9

(52) Any system for unbundling should be effective in removing any conflict of interests between producers, suppliers and transmission system operators, in order to create incentives for the necessary investments and guarantee the access of new market entrants under a transparent and efficient regulatory regime and should not create an overly onerous regulatory regime for ~~national~~ regulatory authorities.

↓ 2009/73/EC Recital 10

(53) The definition of the term 'control' is taken from Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)[14].

↓ 2009/73/EC Recital 11

(54) ~~Since ownership unbundling requires, in some instances, the restructuring of undertakings, Member States that decide to implement ownership unbundling should be granted additional time to apply the relevant provisions.~~ In view of the vertical

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13 ~~OJ C 175 E, 10.7.2008, p. 206.~~

14 OJ L 24, 29.1.2004, p. 1.

links between the electricity and gas sectors, the unbundling provisions should apply across the two sectors.

⇩ new

(55) In contrast, with regard to the hydrogen sector, the emergence of vertically integrated undertakings could be avoided in the first place by setting clear up-front rules. This is preferable over costly ex-post unbundling requirements that would take time to implement.

🡻 2009/73/EC Recital 12

(56) Under ownership unbundling, to ensure full independence of network operation from supply and production interests and to prevent exchanges of any confidential information, the same person should not be a member of the managing boards of both a transmission system operator or a transmission system and an undertaking performing any of the functions of production or supply. For the same reason, the same person should not be entitled to appoint members of the managing boards of a transmission system operator or a transmission system and to exercise control or any right over a production or supply undertaking.

🡻 2009/73/EC Recital 13

(57) The setting up of a system operator or a transmission operator that is independent from supply and production interests should enable a vertically integrated undertaking to maintain its ownership of network assets whilst ensuring an effective separation of interests, provided that such independent system operator or such independent transmission operator performs all the functions of a system operator and detailed regulation and extensive regulatory control mechanisms are put in place.

🡻 2009/73/EC Recital 14 (adapted)

(58) Where, on 3 September 2009, an undertaking owning a transmission system ~~is~~ ⌦ was ⌫ part of a vertically integrated undertaking, Member States should therefore be given a choice between ownership unbundling and setting up a system operator or transmission operator which is independent from supply and production interests.

🡻 2009/73/EC Recital 15 (adapted)

(59) To ⌦ fully ⌫ preserve ~~fully~~ the interests of the shareholders of vertically integrated undertakings, Member States should have the choice of implementing ownership unbundling either by direct divestiture or by splitting the shares of the integrated

undertaking into shares of the network undertaking and shares of the remaining supply and production undertaking, provided that the requirements resulting from ownership unbundling are complied with.

↓ 2009/73/EC Recital 16 (adapted)

(60) The full effectiveness of the independent system operator or independent transmission operator solutions should be ensured by way of specific additional rules. The rules on the independent transmission operator provide an appropriate regulatory framework to guarantee fair competition, sufficient investment, access for new market entrants and the integration of gas markets. Effective unbundling through the independent transmission operator provisions should be based on a pillar of organisational measures and measures relating to the governance of transmission system operators and on a pillar of measures relating to investment, connecting new production capacities to the network and market integration through regional cooperation. The independence of the transmission operator should also, *inter alia*, be ensured through certain 'cooling-off' periods during which no management or other relevant activity giving access to the same information as could have been obtained in a managerial position is exercised in the vertically integrated undertaking. ~~The independent transmission operator model of effective unbundling is in line with the requirements laid down by the European Council at its meeting on 8 and 9 March 2007.~~

↓ 2009/73/EC Recital 17
⇨ new

(61) In order to develop competition in the internal market in gas, large non-household customers ⇨ , engaged in large-scale commercial activities, ⇦ should be able to choose their suppliers and enter into contracts with several suppliers to secure their gas requirements. Such customers should be protected against exclusivity clauses, the effect of which is to exclude competing or complementary offers.

↓ 2009/73/EC recital 18 (adapted)

(62) A Member State ⌦ should have ⌫ ~~has~~ the right to opt for full ownership unbundling in its territory. Where a Member State has exercised that right, an undertaking ~~does~~ ⌦ should ⌫ not have the right to set up an independent system operator or an independent transmission operator. Furthermore, an undertaking performing any of the functions of production or supply ~~cannot~~ ⌦ should not ⌫ directly or indirectly exercise control or any right over a transmission system operator from a Member State that has opted for full ownership unbundling.

↓ 2009/73/EC recital 19 (adapted)

(63) ~~Under this Directive~~ ~~d~~Different types of market organisation ~~will~~ exist in the internal market in natural gas. The measures that Member States could take in order to ensure a

level playing field should be based on overriding requirements of general interest. The Commission should be consulted on the compatibility of the measures with the ~~Treaty~~ ⌦ TFEU ⌫ and ~~Community~~ ⌦ Union ⌫ law.

↓ 2009/73/EC recital 20

(64) The implementation of effective unbundling should respect the principle of non-discrimination between the public and private sectors. To that end, the same person should not be able to exercise control or any right, in violation of the rules of ownership unbundling or the independent system operator option, solely or jointly, over the composition, voting or decision of the bodies of both the transmission system operators or the transmission systems and the production or supply undertakings. With regard to ownership unbundling and the independent system operator solution, provided that the Member State in question is able to demonstrate that the requirement is complied with, two separate public bodies should be able to control production and supply activities on the one hand and transmission activities on the other.

↓ 2009/73/EC recital 21(adapted) (adapted)

(65) Fully effective separation of network activities from supply and production activities should apply throughout the ~~Community~~ ⌦ Union ⌫ to both ~~Community~~ ⌦ Union ⌫ and ~~non-Community~~ ⌦ non-Union ⌫ undertakings. To ensure that network activities and supply and production activities throughout the ~~Community~~ ⌦ Union ⌫ remain independent from each other, regulatory authorities should be empowered to refuse certification to transmission system operators that do not comply with the unbundling rules. To ensure the consistent application of those rules across the ~~Community~~ ⌦ Union ⌫, the regulatory authorities should take utmost account of the Commission's opinion when the former take decisions on certification. To ensure, in addition, respect for the international obligations of the ~~Community~~ ⌦ Union ⌫ and solidarity and energy security within the ~~Community~~ ⌦ Union ⌫, the Commission should have the right to give an opinion on certification in relation to a transmission system owner or a transmission system operator which is controlled by a person or persons from a third country or third countries.

⇩ new

(66) Pipeline networks for hydrogen should constitute an important means of efficient and sustainable transport for hydrogen, both onshore and offshore. As a result of the high capital expenditure required for their construction, hydrogen pipeline networks could constitute natural monopolies. Experience with the regulation of natural gas markets has shown the importance of ensuring open and non-discriminatory access to pipeline networks with a view to safeguarding competition on commodity markets. Therefore, well-established principles of network operation, such as third-party access, should be applicable to onshore and offshore hydrogen networks in the Union.

(67) The operation of hydrogen networks should be separated from activities of energy production and supply in order to avoid the risk of conflicts of interest on behalf of the

network operators. The structural separation of ownership of hydrogen networks and participations in energy production and supply guarantees the absence of such conflicts of interest. Member States should be able to rely on the alternative unbundling model of "integrated hydrogen network operator" until 2030 to provide a transitional period for existing vertically integrated hydrogen networks. Member States should also be able to allow the use of the "independent hydrogen network operator" model to allow vertically integrated owners of hydrogen networks to retain ownership of their networks while ensuring the non-discriminatory operation of such networks after 2030.

(68) Whereas the joint operation of hydrogen networks and gas or electricity grids can create synergies and should thus be allowed, activities of hydrogen network operation should be organised in a separate legal entity in order to ensure transparency regarding financing and the use of access tariffs.

(69) The operation of hydrogen networks should be separated from the activities of energy production and supply in order to avoid the risk of conflicts of interest on behalf of the network operators. The structural separation of ownership of hydrogen networks and participation in energy production and supplies should guarantee the absence of such conflicts of interest. Member States should be able to rely on the alternative unbundling model of integrated hydrogen network operator until 2030 to provide a transitional period for existing vertically integrated hydrogen networks. Member States should also be able to offer the use of an independent hydrogen network operator to allow vertically integrated owners of hydrogen networks to retain ownership of their networks while ensuring the non-discriminatory operation of such networks after 2030.

(70) In order to ensure transparency with regard to the costs and financing of regulated activities, activities of hydrogen network operation should be separated from other network operation activities for other energy carriers at least in relation to the legal form and accounts of network operators.

(71) Hydrogen networks should be subject to third-party access in order to ensure competition and a level playing field in the market for hydrogen supply. Regulated third-party access on the basis of regulated access tariffs should be the default rule in the long-term. In order to ensure the necessary flexibility for operators and to reduce administrative costs during the ramp-up phase of the hydrogen market, Member States should have the option to allow the use of negotiated third-party access until 2030.

(72) The availability of large-scale underground hydrogen storage facilities is limited and distributed unevenly across Member States. In view of the potentially beneficial role for the functioning of hydrogen transport and markets, the access to such large-scale underground storages should be subject to regulated third party access in order to ensure a level playing field for market participants.

(73) Terminals for the conversion of liquid hydrogen or liquid ammonia into gaseous hydrogen constitute a means of hydrogen import, but they compete with other means of hydrogen transport. While third-party access to such terminals should be ensured, Member States should have the choice of imposing a system of negotiated third-party access with a view to reducing administrative costs for operators and regulatory authorities.

(74) Existing vertically integrated hydrogen networks should be integrated into the regulatory framework following a transition period.

(75) Localised hydrogen clusters should be an important building block of the European hydrogen economy. Such clusters could benefit from simplified regulatory requirements during the ramp-up phase of the hydrogen market.

(76) Pipeline interconnectors with third countries can serve as a means of transport for imports or exports of hydrogen. The operating rules for such hydrogen interconnectors with third countries and rules on the certification of renewable and low-carbon hydrogen, should be enshrined in an intergovernmental agreement to ensure a coherent regulatory framework and its consistent application for the entire infrastructure.

(77) To ensure the efficient operation of the European hydrogen networks, hydrogen network operators should be responsible for the operation, maintenance and development of the hydrogen transport network in close cooperation with other hydrogen network operators as well as with other system operators to which their networks are or can be connected with, including to facilitate energy system integration.

(78) Hydrogen network operators should be tasked with building sufficient cross-border capacity for the transportation of hydrogen accommodating all economically reasonable and technically feasible demands for such capacity, thereby enabling market integration.

(79) In some cases, depending among others on the topography of hydrogen networks and the population of end-users connected to the hydrogen networks, hydrogen quality management by hydrogen network operators could become necessary (e.g. purification). Therefore, regulatory authorities can task hydrogen network operators with ensuring efficient hydrogen quality management in their networks where necessary for system management. When undertaking such activities, hydrogen network operators should comply with applicable hydrogen quality standards.

(80) Where system operators for natural gas or hydrogen network operators refuse requests for access or connection due to a lack of capacity, should refusals should be duly substantiated, and operators should be required to enhance their system in order to enable the requested connections or access where it is economic to do so.

↓ (EU) 2019/692 recital 3 (adapted)

(81) ~~This Directive seeks~~ ~~to address~~ O~~o~~bstacles to the completion of the internal market in natural gas which result from the non-application of Union market rules to gas transmission lines to and from third countries ⌦ should also be adressed ⌫ . ~~The amendments introduced by~~ ~~this Directive~~ ⌦ It is necessary ⌫ ~~are intended~~ to ensure that the rules applicable to gas transmission lines connecting two or more Member States are also applicable, within the Union, to gas transmission lines to and from third countries. This ~~will~~ ⌦ should ⌫ establish consistency of the legal framework within the Union while avoiding distortion of competition in the internal energy market in the Union and negative impacts on the security of supply. It ~~will~~ ⌦ should ⌫ also enhance transparency and provide legal certainty to market participants, in particular investors in gas infrastructure and system users, as regards the applicable legal regime.

⇩ new

(82) Member States and the Contracting Parties to the Treaty establishing the Energy Community[15] should cooperate closely on all matters concerning the development of an integrated gas market and its decarbonisation and should take no measures that endanger the further integration of gas markets or the security of supply of Member States and Contracting Parties. This could include cooperation on storage capacities and invitation of experts to relevant regional gas risk groups.

🡻 (EU) 2019/692 recital 5

(83) Pipelines connecting a third-country oil or gas production project to a processing plant or to a final coastal landing terminal within a Member State should be considered to be upstream pipeline networks. Pipelines connecting an oil or gas production project in a Member State to a processing plant or to a final coastal landing terminal within a third country should not be considered to be upstream pipeline networks for the purpose of this Directive, since such pipelines are unlikely to have a significant impact on the internal energy market.

🡻 (EU) 2019/692 recital 6

(84) Transmission system operators should be free to conclude technical agreements with transmission system operators or other entities in third countries on issues concerning the operation and interconnection of transmission systems, provided that the content of such agreements is compatible with Union law.

🡻 (EU) 2019/692 recital 7

(85) Technical agreements regarding the operation of transmission lines between transmission system operators or other entities should remain in force provided that they comply with Union law and the relevant decisions of the ~~national~~ regulatory authority.

🡻 (EU) 2019/692 recital 8

(86) When such technical agreements are in place, the conclusion of an international agreement between a Member State and a third country or of an agreement between the Union and a third country regarding the operation of the gas transmission line concerned is not required by this Directive.

[15] OJ L 198, 20.7.2006, p. 18.

↓ (EU) 2019/692 recital 9 (adapted)

(87) The applicability of ~~Directive 2009/73/EC~~ ⌦ this Directive ⌫ to gas transmission lines to and from third countries ~~remains~~ ⌦ should be ⌫ confined to the territory of the Member States. As regards offshore gas transmission lines, ~~Directive 2009/73/EC~~⌦ this Directive ⌫ should be applicable in the territorial sea of the Member State where the first interconnection point with the Member States' network is located.

↓ (EU) 2019/692 recital 10

(88) It should be possible for existing agreements concluded between a Member State and a third country on the operation of transmission lines to remain in force, in accordance with this Directive.

↓ (EU) 2019/692 recital 11

(89) With regard to agreements or parts of agreements with third countries which may affect common rules of the Union, a coherent and transparent procedure should be established by which to authorise a Member State, upon its request, to amend, extend, adapt, renew or conclude an agreement with a third country on the operation of a transmission line or an upstream pipeline network between the Member State and a third country. The procedure should not delay the implementation of this Directive, should be without prejudice to the allocation of competence between the Union and the Member States, and should apply to existing and new agreements.

↓ (EU) 2019/692 recital 12

(90) Where it is apparent that the subject matter of an agreement falls partly within the competence of the Union and partly within that of a Member State, it is essential to ensure close cooperation between that Member State and the Union institutions.

↓ (EU) 2019/692 recital 14 (adapted)

(91) In order to ⌦ ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to ⌫ adopt decisions authorising or refusing to authorise a Member State to amend, extend, adapt, renew or conclude an agreement with a third country~~, implementing powers should be conferred~~

~~on the Commission~~. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[16].

↓ 2009/73/EC recital 22 (adapted)
⇨ new

(92) The security of energy supply is an essential element of public security and is therefore inherently connected to the efficient functioning of the internal market in gas and the integration of the isolated gas markets of Member States. Gas can reach the citizens of the Union only through the network. Functioning open gas markets and, in particular, ~~the~~ networks and other assets associated with gas supply are essential for public security, for the competitiveness of the economy and for the well-being of the citizens of the Union. Persons from third countries should therefore only be allowed to control a transmission system or a transmission system operator if they comply with the requirements of effective separation that apply inside the ~~Community~~ ⌦ Union ⌫. Without prejudice to the international obligations of the ~~Community~~ ⌦ Union ⌫, the ~~Community~~ ⌦ Union ⌫ considers that the gas transmission system sector is of high importance to the ~~Community~~ ⌦ Union ⌫ and therefore additional safeguards are necessary regarding the preservation of the security of supply of energy to the ~~Community~~ ⌦ Union ⌫ to avoid any threats to public order and public security in the ~~Community~~ ⌦ Union ⌫ and the welfare of the citizens of the Union. The security of supply of energy to the ~~Community~~ ⌦ Union ⌫ requires, in particular, an assessment of the independence of network operation, the level of the ~~Community~~ ⌦ Union ⌫'s and individual Member States' dependence on energy supply from third countries, and the treatment of both domestic and foreign trade and investment in energy in a particular third country. Security of supply should therefore be assessed in the light of the factual circumstances of each case as well as the rights and obligations arising under international law, in particular the international agreements between the ~~Community~~ ⌦ Union ⌫ and the third country concerned. Where appropriate the Commission ⇨should⇦ ~~is encouraged to~~ submit recommendations to negotiate relevant agreements with third countries addressing the security of supply of energy to the ~~Community~~ ⌦ Union ⌫ or to include the necessary issues in other negotiations with those third countries.

↓ 2009/73/EC recital 23

(93) Further measures should be taken in order to ensure transparent and non-discriminatory tariffs for access to transport. Those tariffs should be applicable to all users on a non-discriminatory basis. Where a storage facility, linepack or ancillary service operates in a sufficiently competitive market, access could be allowed on the basis of transparent and non-discriminatory market-based mechanisms.

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[16] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

↓ 2009/73/EC recital 24 (adapted)

(94) It is necessary to ensure the independence of storage system operators in order to improve third-party access to storage facilities that are technically ~~and/~~or economically necessary for providing efficient access to the system for the supply of customers. It is therefore appropriate that storage facilities are operated through legally separate entities that have effective decision-making rights with respect to assets necessary to maintain, operate and develop storage facilities. It is also necessary to increase transparency in respect of the storage capacity that is offered to third parties, by obliging Member States to define and publish a non-discriminatory, clear framework that determines the appropriate regulatory regime applicable to storage facilities. That obligation should not require a new decision on access regimes but should improve the transparency regarding the access regime to storage. Confidentiality requirements for commercially sensitive information are particularly important where data of a strategic nature are concerned or where there is only a single user of a storage facility.

↓ 2009/73/EC recital 25 (adapted)

(95) Non-discriminatory access to the distribution network determines downstream access to customers at retail level. The scope for discrimination as regards third party access and investment, however, is less significant at distribution level than at transmission level where congestion and the influence of production interests are generally greater than at distribution level. ~~Moreover, legal and functional unbundling of distribution system operators was required, pursuant to Directive 2003/55/EC, only from 1 July 2007 and its effects on the internal market in natural gas still need to be evaluated. The rules on legal and functional unbundling currently in place can lead to effective unbundling provided they are more clearly defined, properly implemented and closely monitored.~~ To ~~create~~ ⌦ lay down ⌫ a level playing field at retail level, the activities of distribution system operators should ~~therefore~~ be monitored so that they are prevented from taking advantage of their vertical integration as regards their competitive position on the market, in particular in relation to household and small non-household customers..

↓ 2009/73/EC recital 26

(96) Member States should take concrete measures to assist the wider use of biogas and gas from biomass, the producers of which should be granted non-discriminatory access to the gas system, provided that such access is compatible with the relevant technical rules and safety standards on an ongoing basis.

⇩ new

(97) Producers of renewable and low-carbon gases are often connected to the distribution grid. To facilitate their uptake and market integration, it is essential that they obtain unhindered access to the wholesale market and the relevant virtual trading points.

Participation in the wholesale market is determined by the way in which the entry-exit systems are defined. In several Member States, producers connected to the distribution grid are not part of the entry-exit system. Therefore, the access of renewable and low-carbon gases to the wholesale market should be facilitated by providing a definition of an entry-exit system and ultimately ensuring that production facilities connected to the distribution system are part of it. In addition, Regulation [the recast Gas regulation as proposed in COM(2021)xxx] provides that distribution system operators and transmission system operates are to work together to enable reverse flows from the distribution to the transmission network or alternative means to facilitate the market integration of renewable and low carbon gases.

↓ 2009/73/EC recital 27 (adapted)

(98) To avoid imposing a disproportionate financial and administrative burden on small distribution system operators, Member States should be able, where necessary, to exempt the undertakings concerned from the legal ~~distribution~~ unbundling requirements.

↓ 2009/73/EC recital 28 (adapted)

(99) Where a closed distribution system is used to ensure the optimal efficiency of an integrated energy supply requiring specific operational standards, or a closed distribution system is maintained primarily for the use of the owner of the system, it should be possible to exempt the distribution system operator from obligations which would constitute an unnecessary administrative burden because of the particular nature of the relationship between the distribution system operator and the users of the system. Industrial, commercial or shared services sites such as train station buildings, airports, hospitals, large camping sites with integrated facilities or chemical industry sites ~~can~~ ⌦ could ⌫ include closed distribution systems because of the specialised nature of their operations.

⇩ new

(100) With the integration of growing volumes of renewable and low-carbon gases in the natural gas system, the quality of gases transported and consumed in Europe will change. To ensure the efficient operation of the natural gas system, transmission system operators should be responsible for gas quality management in their facilities. Where the injection of renewable and low-carbon gases takes place at distribution level and where necessary to manage their impact on gas quality, regulatory authorities can task distribution system operators with ensuring the efficient gas quality management in their facilities. When undertaking gas quality management tasks, transmission and distribution system operators should comply with applicable gas quality standards.

↓ 2009/73/EC recital 29 (new)

~~(29) Directive 2003/55/EC introduced a requirement for Member States to establish regulators with specific competences. However, experience shows that the effectiveness of regulation is frequently hampered through a lack of independence of regulators from government, and insufficient powers and discretion. For that reason, at its meeting on 8 and 9 March 2007, the European Council invited the Commission to develop legislative proposals providing for further harmonisation of the powers and strengthening of the independence of national energy regulators. It should be possible for those national regulatory authorities to cover both the electricity and the gas sectors.~~

↓ 2009/73/EC recital 30 (new)

(101) Energy regulators need to be able to take decisions in relation to all relevant regulatory issues if the internal market in natural gas is to function properly, and to be fully independent from any other public or private interests. ~~This precludes neither judicial review nor parliamentary supervision in accordance with the constitutional law of the Member States. In addition, approval of the budget of the regulator by the national legislator does not constitute an obstacle to budgetary autonomy.~~ The provisions relating to autonomy in the implementation of the allocated budget of the regulatory authority should be implemented within the framework defined by national budgetary law and rules. While contributing to the independence of the ~~national~~ regulatory authority from any political or economic interest through an appropriate rotation scheme, it should be possible for Member States to take due account of the availability of human resources and of the size of the board.

↓ 2009/73/EC recital 31 (adapted)

(102) In order to ensure effective market access for all market players, including new entrants, non-discriminatory and cost-reflective balancing mechanisms are necessary. This should be achieved through the setting up of transparent market-based mechanisms for the supply and purchase of gas, needed in the framework of balancing requirements. ~~National~~ ~~r~~Regulatory authorities should play an active role to ensure that balancing ⌦ prices ⌫ ~~tariffs~~ are non-discriminatory and cost-reflective. At the same time, appropriate incentives should be provided to balance the in-put and off-take of gas and not to endanger the system.

↓ 2009/73/EC recital 32 (adapted)

(103) ~~National~~ ~~r~~Regulatory authorities should be able to fix or approve tariffs, or the methodologies underlying the calculation of the tariffs, on the basis of a proposal by the transmission system operator or distribution system operator(s) or liquefied natural gas (LNG) system operator, or on the basis of a proposal agreed between those

operator~~(s)~~ and the users of the network. In carrying out those tasks, ~~national~~ regulatory authorities should ensure that transmission and distribution tariffs are non-discriminatory and cost-reflective, and should take account of the long-term, marginal, avoided network costs from demand-side management measures.

⇩ new

(104) Regulatory authorities should promote, in close cooperation with the Agency for the Cooperation of Energy Regulators (ACER), established by Regulation (EC) No 942/2019 of the European Parliament and of the Council[17], an open, competitive, secure and environmentally sustainable internal market in hydrogen with unhindered cross-border flows. Regulatory authorities need to be able to take decisions in relation to all relevant regulatory issues if the internal market in hydrogen is to function properly.

🡻 2009/73/EC recital 33
⇨ new

(105) Energy regulators should have the power to issue binding decisions in relation to natural gas ⇨ or hydrogen ⇦ undertakings and to impose effective, proportionate and dissuasive penalties on natural gas ⇨ or hydrogen ⇦undertakings which fail to comply with their obligations or to propose that a competent court impose such penalties on them. Energy regulators should also be granted the power to decide, irrespective of the application of competition rules, on appropriate measures ensuring customer benefits through the promotion of effective competition necessary for the proper functioning of the internal market in natural gas ⇨ and in hydrogen ⇦.The establishment of gas-release programmes is one of the possible measures that can be used to promote effective competition and ensure the proper functioning of the market.

🡻 2009/73/EC recital 33 (adapted)

(106) Energy regulators should also be granted the powers to contribute to ensuring high standards of public service in compliance with market opening, to the protection of vulnerable customers, and to the full effectiveness of consumer protection measures. Those provisions should be without prejudice to both the Commission's powers concerning the application of competition rules including the examination of mergers with a ~~Community~~ ⌦ Union ⌫ dimension, and the rules on the internal market such as the free movement of capital. The independent body to which a party affected by the decision of a ~~national~~ ~~regulator~~ ⌦ regulatory authority ⌫ has a right to appeal could be a court or other tribunal empowered to conduct a judicial review.

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[17] See page 1 of this Official Journal.

↓ 2009/73/EC recital 34

(107) Any harmonisation of the powers of ~~national~~ regulatory authorities should include the powers to provide incentives to ~~natural gas~~ undertakings and to impose effective, proportionate and dissuasive penalties on ~~natural gas~~ undertakings or to propose that a competent court impose such penalties. Moreover, regulatory authorities should have the power to request relevant information from ~~natural gas~~ undertakings, make appropriate and sufficient investigations and settle disputes.

⇩ new

(108) The regulatory authorities and ACER should provide information on the hydrogen market to ensure transparency, including aspects such as supply and demand, transport infrastructure, quality of service, cross-border trade, investments, consumer prices, market liquidity.

(109) Transmission system operators play an important role in ensuring cost effective investments in gas networks. For an optimised planning across energy carriers and to bridge the gap between the diverse national and EU-wide network planning approaches, additional requirements for consistent planning are introduced. The network planning should also take account of the increased interlinkages between natural gas and electricity, as well as hydrogen.

(110) When developing the network development plan, it is important that infrastructure operators take the energy efficiency first principle[18] into account, in particular, the expected consumption used for the joint scenario development.

(111) The energy system integration strategy points out the importance of the coordinated planning and operation of the energy system in achieving the decarbonisation objectives. Therefore it is necessary to draw up a network development plan based on a joint scenario developed on a cross-sectoral basis. While still keeping separate sectorial plans, infrastructure operators should work towards a higher level of integration taking into account system needs beyond specific energy carriers.

(112) Network development plans are an important element to identify infrastructure gaps and provide information on infrastructure that either needs to be built or that can be decommissioned and could be used for other purposes, such as hydrogen transport. This is true irrespective of the unbundling model chosen for the network operators.

(113) Providing information on infrastructure that can be decommissioned within the network development plan may mean either leaving the infrastructure unused, dismantling it or using it for other purposes, such as hydrogen transport. The objective of this increased transparency on infrastructure takes into account that repurposed infrastructure is comparatively cheaper than newly built infrastructure and hence should enable a cost effective transition.

(114) In Member States where a hydrogen network will be developed, reporting on the development of hydrogen infrastructure should ensure that the construction of a

[18] Commission Recommendation of 28.9/2021 on Energy Efficiency First: from principles to practice. Guidelines and examples for its implementation in decision-making in the energy sector and beyond, COM (2021) 7014 final

hydrogen system is based on a realistic and forward-looking demand projections including potential needs from the perspective of the electricity system. If Member States decide to allow for dedicated charges as a means of co-funding new hydrogen infrastructure, the report should support the regulatory authority in its assessment of these charges. The report should be submitted to the regulatory authority on a regular basis to be decided by the regulatory authority. In light of the ramp-up character of the hydrogen market, a disproportionate and continuous sequencing of the reporting obligation should however be avoided.

(115) Information contained in the network development plan should enable a forecast on the impacts on tariffs based on planning and decommissioning affecting the regulated asset base as mentioned in Article 51 of this Directive.

(116) Instead of providing a national network development plan on individual Member State level, Member States should be allowed to choose to draw up a network development plan on regional level including more than one Member State and in line with voluntary regional gas market integration.

(117) In contrast to electricity, the role of natural gas is expected to decrease, which also affects the demand for infrastructure investments. The network development plan therefore needs to balance competition concerns and avoid stranded assets. Consequently, ownership unbundled transmission system operators should not be covered by Article 51 (7).

⬇ 2009/73/EC recital 35 (adapted) ⇨ new

(118) Investments in major new infrastructure should be strongly promoted while ensuring the proper functioning of the internal market ⇨ of gases ⇦ ~~in natural gas~~. In order to enhance the positive effect of exempted infrastructure projects on competition and security of supply, market interest during the project planning phase should be tested and congestion management rules should be implemented. Where an infrastructure is located in the territory of more than one Member State, ACER should handle as a last resort the exemption request in order to take better account of its cross-border implications and to facilitate its administrative handling. Moreover, given the exceptional risk profile of constructing those exempted major infrastructure projects, it should be possible temporarily to grant partial ⇨ or full ⇦ derogations to undertakings with supply and production interests in respect of the unbundling rules for the projects concerned. The possibility of temporary derogations should apply, for security of supply reasons, in particular, to new pipelines within the ~~Community~~ ⌦ Union ⌫ transporting gas from third countries into the ~~Community~~ ⌦ Union ⌫. Exemptions ⇨ and derogations ⇦ granted under Directives 2003/55/EC ⇨ and 2009/73/EC with amendments ⇦ ⌦ should ⌫ continue to apply until the scheduled expiry date as decided in the granted exemption decision ⇨ or derogation ⇦ .

⇩ new

(119) It is necessary to progress towards interconnected hydrogen markets in the Union and thereby facilitate investments in cross-border hydrogen infrastructure. After 31

December 2030 when the regulated third-party access regime is applied comprehensively in all Member States and in the absence of cross-border transportation tariffs, a system of financial compensation should provide financial incentives for market participants to develop cross-border interconnectors.

↓ 2009/73/EC recital 36 (adapted)

(120) ~~The internal market in natural gas suffers from a lack of liquidity and transparency hindering the efficient allocation of resources, risk hedging and new entry~~. Trust in the market, its liquidity and the number of market participants needs to increase, and, therefore, regulatory oversight of undertakings active in the supply of gas needs to be increased. Such requirements should be without prejudice to, and compatible with, existing ~~Community~~⌦ Union ⌫ law in relation to the financial markets. Energy regulators and financial market regulators need to cooperate in order to enable each other to have an overview of the markets concerned.

↓ 2009/73/EC recital 37 (adapted)

(121) Natural gas is mainly, and increasingly, imported into the ~~Community~~ ⌦ Union ⌫ from third countries. ~~Community~~ ⌦ Union ⌫ law should take account of the characteristics of natural gas, such as certain structural rigidities arising from the concentration of suppliers, the long-term contracts or the lack of downstream liquidity. Therefore, more transparency is needed, including in regard to the formation of prices.

↓ 2009/73/EC recital 38 (adapted)

(122) Prior to the adoption by the Commission of ~~G~~guidelines defining further the record-keeping requirements, ~~the Agency~~ ⌦ ACER ⌫ and the Committee of European Securities Regulators (the 'CESR'), established by Commission Decision 2009/77/EC[19], should confer and advise the Commission in regard to their content. ~~The Agency~~ ⌦ ACER ⌫ and the CESR should also cooperate to investigate further and advise on whether transactions in gas supply contracts and gas derivatives should be subject to pre- and/or post-trade transparency requirements and, if so, what the content of those requirements should be.

↓ 2009/73/EC recital 39

(123) Member States or, where a Member State has so provided, the regulatory authority, should encourage the development of interruptible supply contracts.

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[19] OJ L 25, 29.1.2009, p. 18.

↓ 2009/73/EC recital 40

~~(40) In the interests of security of supply, the balance between supply and demand in individual Member States should be monitored, and such monitoring should be followed by a report on the situation at Community level, taking account of interconnection capacity between areas. Such monitoring should be carried out sufficiently early to enable appropriate measures to be taken if security of supply is compromised. The construction and maintenance of the necessary network infrastructure, including interconnection capacity, should contribute to ensuring a stable gas supply.~~

↓ 2009/73/EC recital 41 (adapted)
⇨ new

(124) Member States should ensure that, taking into account the necessary quality requirements, biogas and gas from biomass, ⇨ in particular biomethane, ⇦ or other types of gas are granted non-discriminatory access to the gas system, provided ⌦ that ⌫ such access is permanently compatible with the relevant technical rules and safety standards. Those rules and standards should ensure that those gases can technically and safely be injected into~~,~~ and transported through the natural gas system and should also address their chemical characteristics.

↓ 2009/73/EC recital 42 (adapted)
⇨ new

(125) Long-term contracts ~~will continue to be~~ ⌦ are ⌫ an important part of the gas supply of Member States ⇨ . However, they should not constitute a barrier to the entry of renewable and low carbon gases, which is why the duration of contracts for the supply of fossil gas will not be able to run beyond 2049. Such contracts shall always be in line with ⇦ ~~and should be maintained as an option for gas supply undertakings in so far as they do not undermine~~ the objective of this Directive and are compatible with the ~~Treaty~~ ⌦ TFEU ⌫, including the competition rules. It is ~~therefore~~ necessary to take into account long-term contracts in the planning of supply and transport capacity of ~~natural gas~~ undertakings.

↓ 2009/73/EC recital 43 (adapted)

(126) In order to ensure the maintenance of high standards of public service in the ⌦ Union ⌫ ~~Community~~, all measures taken by Member States to achieve the objectives of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high public service standards.

↓ 2009/73/EC recital 44 (adapted)

(127) Respect for the public service requirements is a fundamental requirement of this Directive, and it is important that common minimum standards, respected by all Member States, are specified in this Directive, which take into account the objectives of common protection, security of supply, environmental protection and equivalent levels of competition in all Member States. It is important that the public service requirements can be interpreted on a national basis, taking into account national circumstances and subject to the respect of ~~Community~~ ⌦ Union ⌫ law.

↓ 2009/73/EC recital 45 (adapted)

(128) It should be possible for measures implemented by Member States to achieve the objectives of social and economic cohesion to include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and ~~Community~~ ⌦ Union ⌫ tools. It should be possible for such tools to include liability mechanisms to guarantee the necessary investment.

↓ 2009/73/EC recital 46 (adapted)

(129) To the extent to which measures taken by Member States to fulfil public service obligations constitute State aid under Article ~~87(1)~~ ⌦ 107(1) ⌫ of the Treaty, there is an obligation under Article ~~88(3)~~ ⌦ 108(3) ⌫ of the Treaty to notify them to the Commission.

↓ 2009/73/EC recital 53

(130) Market prices should give the right incentives for the development of the network.

↓ 2009/73/EC recital 54
⇨ new

(131) Promoting fair competition and easy access for different suppliers should be of the utmost importance for Member States in order to allow consumers to take full advantage of the opportunities of a liberalised internal market in ~~natural gas~~ ⇨ gases ⇦ .

↓ 2009/73/EC recital 55 (adapted)

(132) In order to contribute to security of supply whilst maintaining a spirit of solidarity between Member States, notably in the event of an energy supply crisis, it is important

to provide ⌦ for ⌫ a framework for regional cooperation in a spirit of solidarity. Such cooperation may rely, if Member States so decide, first and foremost on market-based mechanisms. Cooperation for the promotion of regional and bilateral solidarity should not impose a disproportionate burden on or discriminate between market participants.

↓ 2009/73/EC recital 56 (adapted)

(133) With a view to creating an internal market in natural gas, Member States should foster the integration of their national markets and the cooperation of system operators at ~~Community~~ ⌦ Union ⌫ and regional level, also incorporating the isolated systems forming gas islands that persist in the ~~Community~~ ⌦ Union ⌫.

⇩ new

(134) Voluntary regional markets integration, notably market mergers, can provide various benefits, depending on the specificities of the markets. Market integration may be an opportunity to make best use of infrastructure provided it does not negatively impact neighbouring markets, for instance by increased cross-border tariffs. It is also a chance to increase competition, liquidity and trade to the benefit of the end-consumers in the region, by attracting suppliers which otherwise would not come due to the small market size. Market integration allows also to create bigger zones accessing more supply sources. Such diversification might have an impact on the wholesale market prices, thanks to an improved competition between sources, but may also improve security of supply if there is no remaining internal congestion in the new merged zone. Market integration could be a basis to further support the transformation of the natural gas market, including the deployment of renewable and low-carbon gases. Member States, regulatory authorities and transmission system operators should cooperate to facilitate regional integration.

↓ 2009/73/EC recital 57 (adapted)

(135) The development of a true internal market in natural gas, through a network connected across the ~~Community~~⌦ Union ⌫, should be one of the main goals of this Directive and regulatory issues on cross border interconnections and regional markets should, therefore, be one of the main tasks of the regulatory authorities, in close cooperation with ⌦ ACER ⌫ ~~the Agency~~ where relevant.

↓ 2009/73/EC recital 58
⇨ new

(136) Securing common rules for a true internal market and a broad supply of gas should also be one of the main goals of this Directive. To that end, undistorted market prices

would provide an incentive for cross-border ⇨ trade ⇦ ~~interconnections~~ while leading, ~~in the long term,~~ to price convergence.

↓ 2009/73/EC recital 59

(137) The regulatory authorities should also provide information on the market to permit the Commission to exercise its role of observing and monitoring the internal market in natural gas and its short, medium and long-term evolution, including aspects such as supply and demand, transmission and distribution infrastructure, quality of service, cross-border trade, congestion management, investments, wholesale and consumer prices, market liquidity and environmental and efficiency improvements. ~~National r~~Regulatory authorities should report to the competition authorities and the Commission those Member States in which prices impair competition and proper functioning of the market.

↓ 2009/73/EC recital 60 (adapted)
⇨ new

(138) Since the objective of this Directive, namely the creation of a fully operational internal market in natural gas ⇨ and in hydrogen ⇦ , cannot be sufficiently achieved by the Member States ~~and~~ ⌦ but ⌫ can ~~therefore~~ ⌦ rather, by reason of the scale or effects of such an action, ⌫ be better achieved at ~~Community~~ ⌦ Union ⌫ level, the ~~Community~~ ⌦ Union ⌫ may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty ⌦ on European Union ⌫ . In accordance with the principle of proportionality~~,~~ as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

↓ 2009/73/EC recital 61 (adapted)
⇨ new

(139) Under Regulation (EC) No 715/2009 of the European Parliament and of the Council[20] ~~of 13 July 2009 on conditions for access to the natural gas transmission networks[21]~~, the Commission may adopt ~~G~~guidelines ⌦ or network codes ⌫ to achieve the necessary degree of harmonisation. Such ~~G~~guidelines⌦ or network codes ⌫, which constitute binding ~~implementing measures~~ ⇨ rules adopted as Commission Regulations ⇦ , are, also with regard to certain provisions of this Directive, a useful tool which can be adapted quickly where necessary.

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[20] Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).

[21] ~~See page 36 of this Official Journal.~~

↓ 2009/73/EC recital 62

~~The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[22].~~

↓ 2009/73/EC recital 63

(140) In particular, the Commission should be empowered to adopt the g~~G~~uidelines necessary for providing the minimum degree of harmonisation required to achieve the aim of this Directive. ~~Since those measures are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.~~

↓ 2009/73/EC recital 64 (adapted)

~~In accordance with point 34 of the Interinstitutional Agreement on better law-making[23], Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.~~

(141) ⌦ In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified, in particular following the judgment of the European Court of Justice in Case Commission vs Belgium (case C-543/17). ⌫

↓ 2009/73/EC recital 65 (adapted)

(~~65) Given the scope of the amendments made to Directive 2003/55/EC herein, it is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast by bringing them all together in a single text in a new Directive.~~

[22] ~~OJ L 184, 17.7.1999, p. 23.~~

[23] ~~OJ C 321, 31.12.2003, p. 1.~~

🡻 2009/73/EC recital
⇨ new

(142) This Directive respects the fundamental rights, and observes the principles, recognised in particular by the Charter of Fundamental Rights of the European Union~~,~~. ⇨ Accordingly, this Directive should be interpreted and applied in accordance with those rights and principles, in particular the right to the protection of personal data guaranteed by Article 8 of the Charter. It is essential that any processing of personal data under this Directive comply with Regulation (EU) 2016/679 of the European Parliament and of the Council[24]. ⇦

⇩ new

(143) In order to provide the minimum degree of harmonisation required to achieve the aim of this Directive, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of non-essential elements of certain specific areas which are fundamental for achieving the objectives of this Directive. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[25]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of the delegated acts.

(144) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission to determine interoperability requirements and non-discriminatory and transparent procedures for access to data. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

(145) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

(146) In order to ensure a smooth and effective implementation of the provisions laid down in this Directive, the Commission supports Member States through the Technical Support Instrument[26]providing tailor-made technical expertise to design and implement reforms, including those promoting a competitive internal market in natural gas and in hydrogen, enabling the integration of renewables and low carbon gases, and increasing cooperation and coordination among transmission and distribution system operators. The technical support, for example, involves strengthening of administrative capacity, harmonising the legislative frameworks, and sharing of relevant best practices.

[24] OJ L 119, 4.5.2016, p. 1.
[25] OJ L 123, 12.5.2016, p. 1.
[26] Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021 establishing a Technical Support Instrument (OJL 57, 18.2.2021, p.1).

(147) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the date of application of the Directives set out in Annex III, Part B.

↓ 2009/73/EC (adapted)
⇨ new

HAVE ADOPTED THIS DIRECTIVE:

Chapter I

Subject matter, scope and definitions

Article 1

Subject matter and scope

1. This Directive establishes common rules for the transmission, distribution, supply and storage of ⇨ gases within the meaning of Article 2, point (2) using the natural gas system defined in point (3) of that Article ⇦ ~~natural gas~~. It lays down the rules relating to the organisation and functioning of ⌦ that ⌫ ~~the natural gas~~ sector, access to the market, the criteria and procedures applicable to the granting of authorisations for transmission, distribution, supply and storage of ~~natural gas~~ ⇨ gases using the natural gas system⇦ and the operation of systems.

~~2. The rules established by this Directive for natural gas, including LNG, shall also apply in a non-discriminatory way to biogas and gas from biomass or other types of gas in so far as such gases can technically and safely be injected into, and transported through, the natural gas system.~~

⇩ new

2. This Directive establishes rules for the transport, supply and storage of natural gas and the transition of the natural gas system to a system based on renewable and low-carbon gases.

3. This Directive establishes common rules for the transport, supply and storage of hydrogen using the hydrogen system. It lays down the rules relating to the organisation and functioning of this sector, access to the market, the criteria and procedures applicable to the granting of authorisations for networks, supply and storage of hydrogen and the operation of systems.

4. This Directive establishes rules for the progressive establishment of a Union-wide interconnected hydrogen system contributing to the reduction of net greenhouse gas emissions of difficult to decarbonise sectors and thereby supporting to the decarbonisation of the EU energy system.

↓ 2009/73/EC

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

⇩ new

(1) ‘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;

(2) ‘renewable gas’ means biogas as defined in Article 2, point (28) of Directive (EU) 2018/2001, including biomethane, and renewable gaseous fuels part of fuels of non-biological origins (‘RFNBOs’) as defined in Article 2, point (36) of that Directive;

(3) ‘gases’ mean natural gas and hydrogen;

(4) ‘natural gas system’ means a system of infrastructures, including pipelines, LNG terminals and storage facilities, which transports gases, that primarily consist of methane and include 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 pipeline system;

(5) ‘hydrogen system’ means a system of infrastructure, including hydrogen networks, hydrogen storage, and hydrogen terminals, which contains hydrogen of a high grade of purity;

(6) ‘hydrogen storage facility’ means a facility used for the stocking of hydrogen of a high grade of purity:

(a) including the part of an hydrogen terminal used for storage but excluding the portion used for production operations, and facilities reserved exclusively for hydrogen network operators in carrying out their functions;

(b) including large, in particular underground, hydrogen storage but excluding smaller, easily replicable hydrogen storage installations;

(7) ‘hydrogen linepack’ means the storage of hydrogen of a high grade of purity by compression in hydrogen networks, excluding facilities reserved for hydrogen network operators carrying out their functions;

(8) ‘hydrogen terminal’ means an installation used for the transformation of liquid hydrogen or liquid ammonia into gaseous hydrogen for injection into the hydrogen network or the liquefaction of gaseous hydrogen, including ancillary services and temporary storage necessary for the transformation process and subsequent injection into the hydrogen network, but not any part of the hydrogen terminal used for storage;

(9) ‘hydrogen quality’ means hydrogen purity and contaminants in line with applicable hydrogen quality standards for the hydrogen system;

(10) ‘low-carbon hydrogen’ means hydrogen the energy content of which is derived from non-renewable sources, which meets a greenhouse gas emission reduction threshold of 70%;

(11) ‘low-carbon gas’ means the part of gaseous fuels in recycled carbon fuels as defined in Article 2, point (35) of Directive (EU) 2018/2001, low-carbon hydrogen and synthetic gaseous fuels the energy content of which is derived from low-carbon hydrogen, which meet the greenhouse gas emission reduction threshold of 70%;

(12) ‘low-carbon fuels’ means recycled carbon fuels as defined in Article 2 of Directive (EU) 2018/2001, low-carbon hydrogen and synthetic gaseous and liquid fuels the energy content of which is derived from low-carbon hydrogen, which meet the greenhouse gas emission reduction threshold of 70%;

(13) ‘hydrogen undertaking’ means a natural or legal person carrying out at least one of the following functions: hydrogen production, hydrogen transport, supply, purchase or storage of hydrogen, or operating a hydrogen terminal, and which is responsible for the commercial, technical or maintenance tasks related to those functions, but not including final customers;

↓ 2009/73/EC (adapted)
⇨ new

(14~~1~~) ‘natural gas undertaking’ means a natural or legal person carrying out ~~at least one of the following functions:~~ production, transmission, distribution, supply, purchase or storage of natural gas, including LNG, ⌦ and ⌫ which is responsible for the commercial, technical ~~and/~~or maintenance tasks related to those functions, but ~~shall~~ not ~~include~~ ⌦ including ⌫ final customers;

(15~~2~~) ‘upstream pipeline network’ means any pipeline or network of pipelines operated and/or constructed as part of an oil or ⇨ natural ⇦ gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal;

(16~~3~~) ‘transmission’ means the transport of natural gas through a network, which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;

(17~~4~~) ‘transmission system operator’ means a natural or legal person who carries out the function of transmission and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transport of ⇨ natural ⇦ gas;

(18~~5~~) ‘distribution’ means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply;

(19~~6~~) ‘distribution system operator’ means a natural or legal person who carries out the function of distribution and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term

ability of the system to meet reasonable demands for the distribution of ⇨ natural ⇦ gas;

⇩ new

(20) ‘hydrogen network’ means a network of pipelines used for the transport of hydrogen of a high grade of purity with a view to its delivery to customers, but not including supply;

(21) ‘hydrogen transport’ means the transport of hydrogen through a hydrogen network with a view to its delivery to customers, but not including supply, irrespective of the pressure, the geographic coverage or the connected customer group of the network;

(22) ‘hydrogen network operator’ means a natural or legal person who carries out the function of hydrogen transport and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the hydrogen network in a given area and, where applicable, its interconnections with other hydrogen networks, and for ensuring the long-term ability of the system to meet reasonable demands for the transport of hydrogen;

🡻 2009/73/EC (adapted)
⇨ new

(23~~7~~) ‘supply’ means the sale, including resale, of natural gas, including LNG, ⇨ or hydrogen, including liquid hydrogen ⇦ , to customers;

(24~~8~~) ‘supply undertaking’ means any natural or legal person who carries out the function of supply;

(25~~9~~) ‘storage facility’ means a facility used for the stocking of natural gas and owned and/or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;

(26~~10~~) ‘storage system operator’ means a natural or legal person who carries out the function of storage ⇨ of natural gas ⇦ and is responsible for operating a storage facility;

(27~~11~~) ‘LNG facility’ means a terminal which is used for the liquefaction of natural gas or the importation, offloading, and re-gasification of LNG, ~~and includes~~ ⌦ including ⌫ ancillary services and temporary storage necessary for the re-gasification process and subsequent delivery to the transmission system, but ~~does~~ not ~~include~~ ⌦ including ⌫ any part of LNG terminals used for storage;

(28~~12~~) ‘LNG system operator’ means a natural or legal person who carries out the function of liquefaction of natural gas, or the importation, offloading, and re-gasification of LNG and is responsible for operating a LNG facility;

(29~~13~~) ‘system’ means any transmission networks, distribution networks, LNG facilities ~~and/~~or storage facilities owned ~~and/~~or operated by a natural gas undertaking, including linepack and its facilities supplying ancillary services and those of related undertakings necessary for providing access to transmission, distribution and LNG;

(30~~14~~) ‘ancillary services’ means all services necessary for access to and the operation of transmission networks, distribution networks, LNG facilities, ~~and/~~or storage facilities, including load balancing, blending and injection of inert gases, but not including facilities reserved exclusively for transmission system operators carrying out their functions;

(31~~15~~) ‘ ⇨ natural gas ⇦ linepack’ means the storage of ⇨ natural ⇦ gas by compression in gas transmission and distribution systems, but not including facilities reserved for transmission system operators carrying out their functions;

(32~~16~~) ‘interconnected system’ means a number of systems which are linked with each other;

🡻 2019/692 Art. 1.1

(33~~17~~) ‘interconnector’ means a transmission line which crosses or spans a border between Member States for the purpose of connecting the national transmission system of those Member States or a transmission line between a Member State and a third country up to the territory of the Member States or the territorial sea of that Member State;

⇩ new

(34) ‘hydrogen interconnector’ means a hydrogen network which crosses or spans a border between Member States, or between a Member State and a third country up to the territory of the Member States or the territorial sea of that Member State;

🡻 2009/73/EC (adapted)
⇨ new

(35~~18~~) ‘direct line’ means a natural gas pipeline complementary to the interconnected system;

(36~~19~~) ‘integrated natural gas undertaking’ means a vertically or horizontally integrated undertaking;

(37~~20~~) ‘vertically integrated undertaking’ means a natural gas undertaking or a group of natural gas undertakings ⇨ or a hydrogen undertaking or group of hydrogen undertakings ⇦ where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission, distribution, ⇨ hydrogen transport, hydrogen terminal operation, ⇦ LNG or ⇨ natural gas or hydrogen ⇦ storage, and at least one of the functions of production or supply of natural gas⇨ or of hydrogen ⇦;

(38~~21~~) ‘horizontally integrated undertaking’ means an undertaking performing at least one of the functions of production, transmission, distribution, supply or storage of natural gas, and a non- ⇨ natural ⇦ gas activity;

(39~~22~~) ‘related undertaking’ means an affiliated undertaking, ~~within the meaning of Article 41 of Seventh Council Directive 83/349/EEC of 13 June 1983 based on the~~

~~Article 44(2)(g)[27] of the Treaty on consolidated accounts[28] and/or an associated undertaking, within the meaning of Article 33(1) of that Directive~~ ⌦ as defined in point (12) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council[29], ⌫ ~~and/~~or an undertaking which ~~belong~~ ⌦ belongs ⌫ to the same shareholders;

(40~~23~~) 'system user' means a natural or legal person supplying to, or being supplied by, the system;

(41~~24~~) 'customer' means a wholesale or final customer of ~~natural gas~~ ⇨ gases ⇦ or a natural gas ⇨ or hydrogen ⇦ undertaking which purchases ~~natural gas~~ ⇨ gases ⇦;

(42~~25~~) 'household customer' means a customer purchasing ~~natural gas~~ ⇨ gases ⇦ for his own household consumption;

(43~~26~~) 'non-household customer' means a customer purchasing ~~natural gas~~ ⇨ gases ⇦ which ~~is~~are not for his own household use;

(44~~27~~) 'final customer' means a customer purchasing ~~natural gas~~ ⇨ gases ⇦ for his own use;

~~(28) 'eligible customer' means a customer who is free to purchase gas from the supplier of his choice, within the meaning of Article 37;~~

(45~~29~~) 'wholesale customer' means a natural or legal person other than a transmission system operator or distribution system operator who purchases ~~natural gas~~ ⇨ gases ⇦ for the purpose of resale inside or outside the system where he is established;

⇩ new

(46) 'microenterprise' means an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million;

(47) 'small enterprise' means an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million;

🡻 2009/73/EC (adapted)
⇨ new

~~(30) 'long-term planning' means the planning of supply and transport capacity of natural gas undertakings on a long-term basis with a view to meeting the demand for natural gas of the system, diversification of sources and securing supplies to customers;~~

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27 ~~The title of Directive 83/349/EEC has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 54(3)(g).~~

28 ~~OJ L 193, 18.7.1983, p. 1.~~

29 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

~~(31)~~ ~~'emergent market' means a Member State in which the first commercial supply of its first long-term natural gas supply contract was made not more than 10 years earlier;~~

(48~~32~~) 'security' means both security of supply of natural gas and technical safety;

~~(33)~~ ~~'new infrastructure' means an infrastructure not completed by 4 August 2003;~~

(49~~34~~) 'gas supply contract' means a contract for the supply of ~~natural gas~~ ⇨ gases ⇦ , but does not include a gas derivative;

(50~~35~~) 'gas derivative' means a financial instrument specified in points 5, 6 or 7 of ~~Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments~~ ⌦ Section C of Annex I to Directive 2014/65/EU on market financial instruments[30] ⌫ , where that instrument relates to ~~natural~~ gas;

(51~~36~~) 'control' means any rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

(a) ownership or the right to use all or part of the assets of an undertaking;

(b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking;~~.~~

⇩ new

(52) 'long-term contract' means a supply contract exceeding one year;

(53) 'entry-exit system' means the aggregation of all transmission and distribution systems to which one specific balancing regime applies;

(54) 'balancing zone' means an entry-exit system to which a specific balancing regime applies;

(55) 'virtual trading point' means a non-physical commercial point within an entry-exit system where gases are exchanged between a seller and a buyer without the need to book transmission or distribution capacity;

(56) 'entry point' means a point subject to booking procedures by network users or producers providing access to an entry-exit system;

(57) 'exit point' means a point subject to booking procedures by network users or final customers enabling gas flows out of the entry exit system;

(58) 'interconnection point' means a physical or virtual point connecting adjacent entry-exit systems or connecting an entry-exit system with an interconnector, in so far as these points are subject to booking procedures by network users;

(59) 'virtual interconnection point' means two or more interconnection points which connect the same two adjacent entry-exit systems, integrated together for the purposes of providing a single capacity service;

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[30] OJ L ~~145, 30.4.2004, p. 1~~ ⌦ 173, 12.6.2014, p. 349–496 ⌫.

(60) ‘market participant’ means a natural or legal person who buys, sells or produces gases or who is an operator of storage services including through the placing of orders to trade in one or more gas markets including balancing markets;

(61) ‘contract termination fee’ means a charge or penalty imposed on customers by suppliers or market participants, for terminating a gas supply or service contract;

(62) ‘switching-related fee’ means a charge or penalty for changing suppliers or market participants, including contract termination fees, that is directly or indirectly imposed on customers by suppliers, market participants or system operators;

(63) ‘billing information’ means the information provided on a final customer's bill, apart from a request for payment;

(64) ‘conventional meter’ means an analogue or electronic meter with no capability to both transmit and receive data;

(65) ‘smart metering system’ means an electronic system that is capable of measuring gas fed into the grid or gas consumed from the grid, providing more information than a conventional meter, and that is capable of transmitting and receiving data for information, monitoring and control purposes, using a form of electronic communication;

(66) ‘interoperability’ means, in the context of smart metering, the ability of two or more energy or communication networks, systems, devices, applications or components to interwork to exchange and use information in order to perform required functions;

(67) ‘most recent available’ means, in the context of smart metering data, that it is provided within a period matching the shortest settlement period in the national market;

(68) ‘best available techniques’ means, in the context of data protection and security in a smart metering environment, the most effective, advanced and practically suitable techniques for providing, in principle, the basis for complying with the Union data protection and security rules;

(69) ‘energy poverty’ means energy poverty as defined in point (49) of Article 2 of Directive (EU) 2021/0203 COD of the European Parliament and of the Council;

(70) ‘citizen energy community’ means a legal entity that:

(a) is based on voluntary and open participation and is effectively controlled by members or shareholders that are natural persons, local authorities, including municipalities, or small enterprises;

(b) has for its primary purpose to provide environmental, economic or social community benefits to its members or shareholders or to the local areas where it operates rather than to generate financial profits; and

(c) engages in production, distribution, supply, consumption, or storage of renewable gas in the natural gas system, or provides energy efficiency services or maintenance services to its members or shareholders;

(71) ‘active customer’ means a final natural gas customer, or a group of jointly acting final natural gas customers, who consumes or stores renewable gas, produced within its premises located within confined boundaries or, where permitted by a Member State, within other premises, or who sells self-produced renewable gas using the

natural gas system, or participates in energy efficiency schemes, provided that those activities do not constitute its primary commercial or professional activity;

↓ 2009/73/EC (adapted)
⇨ new

Chapter II

General rules for the organisation of the ~~sector~~ ⌦ market ⌫

Article 3~~37~~

~~Market opening and reciprocity~~ ⌦ Competitive, consumer-centred, flexible and non-discriminatory markets for gases ⌫

1. Member States shall ensure that ~~the eligible customers comprise:~~ ⇨ all customers are free to purchase gases from the supplier of their choice and shall ensure that all customers are free to have more than one supply contract for natural gas or hydrogen at the same time, provided that the required connection and metering points are established. ⇦

⇩ new

2. Member States shall ensure that their national law does not unduly hamper cross-border trade in gases, the functioning and emergence of liquid trading for gases, consumer participation, investments into, in particular, renewable and low carbon gases, or energy storage between Member States, and shall ensure that prices for gases reflect actual demand and supply.

3. Member States shall ensure that no undue barriers exist within the internal market for gases as regards market entry and exit, trading and operation.

4. Member States shall ensure that energy undertakings are subject to transparent, proportionate and non-discriminatory rules, fees and treatment, in particular with respect to access to wholesale markets, access to data, switching processes and billing regimes and, where applicable, licensing.

5. Member States shall ensure that market participants from third countries, when operating within the internal market for gases, comply with applicable Union and national law.

↓ 2009/73/EC Article 37

~~(a) until 1 July 2004, eligible customers as specified in Article 18 of Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning~~

~~common rules for the internal market in natural gas[31]. Member States shall publish, by 31 January each year, the criteria for the definition of those eligible customers;~~

~~(b) from 1 July 2004, all non-household customers;~~

~~(c) from 1 July 2007, all customers.~~

~~2. To avoid imbalance in the opening of the gas markets:~~

~~(a) contracts for the supply with an eligible customer in the system of another Member State shall not be prohibited if the customer is eligible in both systems involved; and~~

~~(b) where transactions as described in point (a) are refused because the customer is eligible in only one of the two systems, the Commission may, taking into account the situation in the market and the common interest, oblige the refusing party to execute the requested supply, at the request of one of the Member States of the two systems.~~

⇩ new

Article 4

Market based supply prices

1. Suppliers shall be free to determine the price at which they supply gases to customers. Member States shall take appropriate actions to ensure effective competition between suppliers.

2. Member States shall ensure the protection of energy poor and vulnerable household customers pursuant to Articles 25 by social policy or by other means than public interventions in the price setting for the supply of gases.

3. By way of derogation from paragraphs 1 and 2, Member States may apply public interventions in the price setting for the supply of natural gas to energy poor or vulnerable household customers. Such public interventions shall be subject to the conditions set out in paragraphs 4 and 5.

4. Public interventions in the price setting for the supply of natural gas shall:

   (a) pursue a general economic interest and not go beyond what is necessary to achieve that general economic interest;

   (b) be clearly defined, transparent, non-discriminatory and verifiable;

   (c) guarantee equal access for Union natural gas undertakings to customers;

   (d) be limited in time and proportionate as regards their beneficiaries;

   (e) not result in additional costs for market participants in a discriminatory way.

5. Any Member State applying public interventions in the price setting for the supply of natural gas in accordance with paragraph 3 of this Article shall also comply with of Article 3(3), point (d) and with Article 24 of Regulation (EU) 2018/1999, regardless of whether the Member State concerned has a significant number of households in energy poverty.

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[31] ~~OJ L 204, 21.7.1998, p. 1.~~

6. For the purpose of a transition period to establish effective competition for natural gas supply contracts between suppliers, and to achieve fully effective market-based retail pricing of gas in accordance with paragraph 1, Member States may apply public interventions in the price setting for the supply of natural gas to household customers and to microenterprises that do not benefit from public interventions pursuant to paragraph 3.

7. Public interventions pursuant to paragraph 6 shall comply with the criteria set out in paragraph 4 and shall:

(a) be accompanied by a set of measures to achieve effective competition and a methodology for assessing progress with regard to those measures;

(b) be set using a methodology that ensures non-discriminatory treatment of suppliers;

(c) be set at a price that is above cost, at a level where effective price competition can occur;

(d) be designed to minimise any negative impact on the wholesale natural gas market;

(e) ensure that all beneficiaries of such public interventions have the possibility to choose competitive market offers and are directly informed at least every quarter of the availability of offers and savings in the competitive market, and shall ensure that they are provided with assistance to switch to a market-based offer;

(f) ensure that, pursuant to Articles 18 and 19, all beneficiaries of such public interventions are entitled to, and are offered to, have smart meters installed at no extra upfront cost to the customer, are directly informed of the possibility of installing smart meters and are provided with necessary assistance;

(g) not lead to direct cross-subsidisation between customers supplied at free market prices and those supplied at regulated supply prices.

8. Member States shall notify the measures taken in accordance with paragraphs 3 and 6 to the Commission within one month after their adoption and may apply them immediately. The notification shall be accompanied by an explanation of why other instruments were not sufficient to achieve the objective pursued, of how the requirements set out in paragraphs 4 and 7 are fulfilled and of the effects of the notified measures on competition. The notification shall describe the scope of the beneficiaries, the duration of the measures and the number of household customers affected by the measures, and shall explain how the regulated prices have been determined.

9. From 15 March 2025, and every two years thereafter, as part of the integrated national energy and climate progress reports, Member States shall submit reports to the Commission on the implementation of this Article, the necessity and proportionality of public interventions under this Article, and an assessment of the progress towards achieving effective competition between suppliers and the transition to market-based prices. Member States that apply regulated prices in accordance with paragraph 6 shall report on the compliance with the conditions set out in paragraph 7, including on compliance by suppliers that are required to apply such interventions, as well as on the impact of regulated prices on the finances of those suppliers.

10. The Commission shall review and submit a report to the European Parliament and to the Council on the implementation of this Article for the purpose of achieving market-based retail pricing of natural gas, together with or followed by a legislative proposal, if appropriate. This report may be combined with the report on the implementation of Article 5 of Directive (EU) 2019/944. That legislative proposal may include an end date for regulated prices.

🡻 2009/73/EC (adapted)
⇨ new

Article 5~~3~~

Public service obligations ~~and customer protection~~

1. Member States shall ensure, on the basis of their institutional organisation and with due regard to the principle of subsidiarity, that, without prejudice to paragraph 2, natural gas ⇨ and hydrogen ⇦ undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive, secure and environmentally sustainable market in ~~natural gas~~ ⇨ gases ⇦ , and shall not discriminate between those undertakings as regards their rights or obligations.

2. Having full regard to the relevant provisions of the ⌦ TFEU ⌫~~Treaty~~, in particular ~~Article 86~~ ⌦ Article 106 ⌫ thereof, Member States may impose ⇨ on natural gas and hydrogen ⇦ undertakings ~~operating in the gas sector~~, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, ⌦ and ⌫ quality ~~and price~~ of supplies, and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for natural gas ⇨ undertakings and hydrogen ⇦ undertakings of the ~~Community~~ ⌦ Union ⌫ to national consumers. ~~In relation to security of supply, energy efficiency/demand-side management and for the fulfilment of environmental goals and goals for energy from renewable sources, as referred to in this paragraph, Member States may introduce the implementation of long-term planning, taking into account the possibility of third parties seeking access to the system.~~

⇩ new

3. Public service obligations related to the security of gas supply shall not go beyond what is necessary to ensure compliance with the gas supply standards pursuant to Article 6 of Regulation (EU) 2017/1938 and shall be coherent with the results of the national risk assessments carried out pursuant to Article 7(3), as detailed in the Preventive Action Plans prepared pursuant to Article 9(1), points (c),(d) and (k) of the same Regulation.

4. Where financial compensation or other forms of compensation are granted by a Member State for the fulfilment of the obligations set out in this Article, it shall be done in a non-discriminatory and transparent way.

↓ 2009/73/EC (adapted)
⇨ new

~~3. Member States shall take appropriate measures to protect final customers, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers. In this context, each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, *inter alia*, to the prohibition of disconnection of gas to such customers in critical times. Member States shall ensure that rights and obligations linked to vulnerable customers are applied. In particular, they shall take appropriate measures to protect final customers in remote areas who are connected to the gas system. Member States may appoint a supplier of last resort for customers connected to the gas system. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms. Member States shall ensure that the eligible customer is in fact able easily to switch to a new supplier. As regards at least household customers those measures shall include those set out in Annex I.~~

~~4. Member States shall take appropriate measures, such as formulating national energy action plans, providing social security benefits to ensure the necessary gas supply to vulnerable customers, or providing for support for energy efficiency improvements, to address energy poverty where identified, including in the broader context of poverty. Such measures shall not impede the effective opening of the market set out in Article 37 and market functioning and shall be notified to the Commission, where relevant, in accordance with paragraph 11 of this Article. Such notification shall not include measures taken within the general social security system.~~

~~5. Member States shall ensure that all customers connected to the gas network are entitled to have their gas provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules and subject to security of supply requirements. In this regard, Member States shall take all measures necessary to ensure that administrative procedures do not constitute a barrier for supply undertakings already registered in another Member State.~~

~~6. Member States shall ensure that:~~

~~(a) where a customer, while respecting the contractual conditions, wishes to change supplier, the change is effected by the operator(s) concerned within three weeks; and~~

~~(b) customers are entitled to receive all relevant consumption data.~~

~~Member States shall ensure that the rights referred to in points (a) and (b) of the first subparagraph are granted to customers in a non-discriminatory manner as regards cost, effort or time.~~

~~7. Member States shall implement appropriate measures to achieve the objectives of social and economic cohesion and environmental protection, which may include means to combat climate change, and security of supply. Such measures may include, in particular, the provision of adequate economic incentives, using, where appropriate, all existing national and Community tools, for the maintenance and construction of necessary network infrastructure, including interconnection capacity.~~

~~8. In order to promote energy efficiency, Member States or, where a Member State has so provided, the regulatory authority shall strongly recommend that natural gas undertakings optimise the use of gas, for example by providing energy management services, developing innovative pricing formulas or introducing intelligent metering systems or smart grids where appropriate.~~

~~9. Member States shall ensure the provision of single points of contact to provide consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute. Such contact points may be part of general consumer information points.~~

~~Member States shall ensure that an independent mechanism such as an energy ombudsman or a consumer body is in place in order to ensure efficient treatment of complaints and out-of-court dispute settlements.~~

~~10. Member States may decide not to apply the provisions of Article 4 with respect to distribution insofar as their application would obstruct, in law or in fact, the performance of the obligations imposed on natural gas undertakings in the general economic interest and insofar as the development of trade would not be affected to such an extent as would be contrary to the interests of the Community. The interests of the Community include, inter alia, competition with regard to eligible customers in accordance with this Directive and Article 86 of the Treaty.~~

5~~11.~~ Member States shall, upon implementation of this Directive, inform the Commission of all measures adopted to fulfil public service obligations, including consumer and environmental protection, and their possible effect on national and international competition, whether or not such measures require a derogation from the provisions of this Directive. They shall notify the Commission subsequently every two years of any changes to such measures, whether or not they require a derogation from this Directive.

~~12. The Commission shall establish, in consultation with relevant stakeholders, including Member States, the national regulatory authorities, consumer organisations and natural gas undertakings, a clear and concise energy consumer checklist of practical information relating to energy consumer rights. Member States shall ensure that gas suppliers or distribution system operators, in cooperation with the regulatory authority, take the necessary steps to provide their consumers with a copy of the energy consumer checklist and ensure that it is made publicly available.~~

Article 6~~7~~

Promotion of regional cooperation ⌦ and integration ⌫

1. Member States as well as the regulatory authorities shall cooperate with each other for the purpose of integrating their national markets at one and more regional levels, ~~as a first step~~ towards ⇨ the creation of regional markets, where Member States as well regulatory authorities so decided, and further towards⇦ the creation of a fully liberalised internal market. In particular, the regulatory authorities where Member States have so provided or Member States shall promote and facilitate the cooperation of ⇨ natural gas ⇦ transmission system operators ⇨ and hydrogen network operators ⇦ at a regional level, including on cross-border issues, with the aim of creating a competitive internal market ⇨ for gases ⇦ ~~in natural gass~~, foster the consistency of their legal, regulatory and technical framework and facilitate integration of the isolated systems forming gas islands that persist in the ~~Community~~

⌦ Union ⌫. The geographical areas covered by such regional cooperation shall include cooperation in geographical areas defined in accordance with Article 28~~12~~(3) of ⌦ Recast Gas Regulation as proposed in COM(2021) 804 final ⌫ ~~Regulation (EC) No 715/2009~~. Such cooperation may cover other geographical areas. ⇨ Where the Commission considers that the rules at Union level are relevant for the regional integration of markets for gases, it shall provide appropriate guidance taking into account the specificities of these markets and the impact on neighbouring markets. ⇦

2. The Agency ⌦ for the Cooperation of Energy Regulators ('ACER') ⌫ shall cooperate with ~~national~~ regulatory authorities and transmission system operators to ensure the compatibility of regulatory frameworks between ⇨ and within ⇦ the regions with the aim of creating a competitive internal market in ~~natural gas~~ ⇨ gases ⇦. Where ⌦ ACER ⌫ ~~the Agency~~ considers that binding rules on such cooperation are required, it shall make appropriate recommendations.

~~3. Member States shall ensure, through the implementation of this Directive, that transmission system operators have one or more integrated system(s) at regional level covering two or more Member States for capacity allocation and for checking the security of the network.~~

3~~4~~. Where vertically integrated transmission system operators participate in a joint undertaking established for implementing such cooperation, the joint undertaking shall establish and implement a compliance programme which sets out the measures to be taken to ensure that discriminatory and anticompetitive conduct is excluded. That compliance programme shall set out the specific obligations of employees to meet the objective of excluding discriminatory and anticompetitive conduct. It shall be subject to the approval of ⌦ ACER ⌫ ~~the Agency~~. Compliance with the programme shall be independently monitored by the compliance officers of the vertically integrated transmission system operators.

Article 7~~4~~

Authorisation procedure

1. In circumstances where an authorisation (for example, a licence, permission, concession, consent or approval) is required for the construction or operation of natural gas facilities ⇨, hydrogen production facilities and hydrogen system infrastructure ⇦ , the Member States or any competent authority they designate shall grant authorisations to build and/or operate such facilities, ⇨ infrastructure, ⇦ pipelines and associated equipment on their territory, in accordance with paragraphs 2 to 11~~4~~. Member States or any competent authority they designate may also grant authorisations on the same basis for the supply of ~~natural gas~~ ⇨ gases ⇦ and for wholesale customers.

2. Where Member States have a system of authorisation, they shall lay down objective and non-discriminatory criteria which shall be met by an undertaking applying for an authorisation ⇨ to supply gases or ⇦ to ⌦ construct ⌫ ~~build~~ and/or operate natural gas facilities ⇨ , hydrogen production facilities or hydrogen system infrastructure ⇦ ~~or applying for an authorisation to supply natural gas~~. The non-discriminatory criteria and procedures for the granting of authorisations shall be made public. Member States shall ensure that authorisation procedures for ⌦ such ⌫ facilities, ⇨ infrastructure, ⇦ pipelines and associated equipment take into account the importance of the project for the internal market ~~in natural gas~~ ⇨ for gases ⇦ where appropriate.

⇩ new

3. The authorisation procedures for the activities referred to in paragraph 1 shall not exceed two years, including all relevant procedures of competent authorities. Where duly justified on the grounds of extraordinary circumstances, that two-year period may be extended by up to one year

4. Member States shall assess which legislative and non-legislative measures are necessary to streamline authorisation procedures, including any procedural steps related to environmental impact assessment procedures. Member States shall report to the European Commission on the results of such an assessment as part of their integrated national energy and climate plans as referred to in, and in accordance with, the procedure set out in Article 3 and Articles 7 to 12 of Regulation (EU) 2018/1999, and as part of their integrated national energy and climate progress reports pursuant to Article 17 of Regulation (EU) 2018/1999.

5. The deadlines established in paragraph 3 shall apply without prejudice to obligations under applicable Union environmental law, to judicial appeals, remedies and other proceedings before a court or tribunal, and to alternative dispute resolution mechanisms, including complaints procedures, non-judicial appeals and remedies, and may be extended for the duration of such procedures.

6. Member States shall set up or designate one or more contact points. Those contact points shall, upon request by the applicant, and free of charge, guide through and facilitate the entire authorisation procedure for the activities referred to in paragraph 1 up to the delivery by the responsible authorities at the end of the procedure. The applicant shall not be required to contact more than one contact point for the entire process.

7. Member States shall ensure that authorisations under national law for the construction and operation of natural gas pipelines and other network assets used for the transport of natural gas shall apply also to pipelines and network assets for the transport of hydrogen.

8. Member States shall ensure that existing contractual land-use rights for the construction and operation of natural gas pipelines and other network assets shall be understood as encompassing also pipelines and other network assets for the transport of hydrogen.

🡻 2009/73/EC
⇨ new

9~~3~~. Member States shall ensure that the reasons for any refusal to grant an authorisation are objective and non-discriminatory and that they are given to the applicant. Reasons for such refusals shall be notified to the Commission for information. Member States shall establish a procedure enabling the applicant to appeal against such refusals.

10~~4.~~ For the development of newly supplied areas and efficient operation generally, and without prejudice to Article 30~~38~~, Member States may decline to grant a further authorisation to build and operate distribution pipeline systems ⇨ for natural gas ⇦ in any particular area once such pipeline systems have been or ~~are proposed~~ ⇨ are

authorised ⇦ to be built in that area and if existing or proposed capacity is not saturated.

⇩ new

Article 8

Certification of renewable and low carbon fuels

1. Renewable gases shall be certified in accordance with Articles 29 and 30 of Directive (EU) 2018/2001.

2. In order to ensure that the greenhouse gas emissions savings from the use of low carbon fuels and low carbon hydrogen are at least 70% in accordance with the definitions in Article 2, points (10) and (12), Member States shall require economic operators to show that this threshold and the requirements established in the methodology referred to in paragraph 5 of this Article have been complied with. For those purposes, they shall require economic operators to use a mass balance system in line with Article 30 (1) and (2) of Directive (EU) 2018/2001.

3. Member States shall ensure that economic operators submit reliable information regarding the compliance with the 70% greenhouse gas emissions savings threshold set in paragraph 2 and with the greenhouse gas emissions saving methodology referred to in paragraph 5, and that economic operators make available to the relevant Member State, upon request, the data that were used to develop the information. Member States shall require economic operators to put in place an adequate standard of independent auditing of the information submitted, and to provide evidence that this has been done. The auditing shall verify that the systems used by economic operators are accurate, reliable and protected against fraud.

4. The obligations laid down in paragraph 2 shall apply regardless of whether low carbon fuels are produced within the Union or are imported. Information about the geographic origin and feedstock type of low carbon fuels or low carbon hydrogen per fuel supplier shall be made available to consumers on the websites of operators, suppliers or the relevant competent authorities and shall be updated on an annual basis.

5. By 31 December 2024, the Commission shall adopt delegated acts in accordance with Article 83 to supplement this Directive by specifying the methodology for assessing greenhouse gas emissions savings from low carbon fuels. The methodology shall ensure that credit for avoided emissions is not given for carbon dioxide the capture of which has already received an emission credit under other provisions of law.

6. The Commission may decide that voluntary national or international schemes setting standards for the production of low carbon fuels or low carbon hydrogen provide accurate data on greenhouse gas emission savings for the purposes of this Article and demonstrate compliance with the methodology referred to in paragraph 5 of this Article.

7. Where an economic operator provides evidence or data obtained in accordance with a scheme that has been the subject of a recognition pursuant to paragraph 6, a Member State shall not require the economic operator to provide further evidence of

compliance with the criteria for which the scheme has been recognised by the Commission.

8. Competent authorities of the Member States shall supervise the operation of certification bodies that are conducting independent auditing under a voluntary scheme. Certification bodies shall submit, upon the request of competent authorities, all relevant information necessary to supervise the auditing, including the exact date, time and location of audits. Where Member States find issues of non-conformity, they shall inform the voluntary scheme without delay.

9. At the request of a Member State, which may be based on the request of an economic operator, the Commission shall, on the basis of all available evidence, examine whether the greenhouse gas emissions saving criteria laid down in this Article, the methodology developed in line with paragraph 5 of this Article, and the greenhouse gas emissions savings thresholds set in Article 2, points (9) and (10) have been met. Within six months of receipt of such a request, the Commission shall decide whether the Member State concerned may:

   (a) accept the evidence already provided to show compliance with the greenhouse gas emissions saving criteria for low carbon fuels; or

   (b) by way of derogation from paragraph 7, require suppliers of the source of low carbon fuels to provide further evidence of their compliance with the greenhouse gas emissions saving criteria and the 70% greenhouse gas emissions savings threshold.

10. Member States shall also require the relevant economic operators to enter into the Union database information on the transactions made and the sustainability characteristics of low carbon fuels in line with the requirements established in Article 28 of Directive (EU) 2018/2001.

⬇ 2009/73/EC (adapted) ⇨ new

Article 9~~8~~

Technical rules

The regulatory authorities where Member States have so provided or Member States shall ensure that technical safety criteria are defined and that technical rules establishing the minimum technical design and operational requirements for the connection to the system of LNG facilities, storage facilities, other transmission or distribution systems, ~~and~~ direct lines, ⇨ as well as to the hydrogen system, ⇦ are developed and made public. Those technical rules shall ensure the interoperability of systems and shall be objective and non-discriminatory. ⌦ ACER ⌫ ~~the Agency~~ may make appropriate recommendations towards achieving compatibility of those rules, where appropriate. Those rules shall be notified to the Commission in accordance with Article 5~~8~~ of Directive (EU) 2015/1535~~98/34/EC~~ of the European Parliament and of the Council[32] ~~of 22 June 1998 laying down a procedure for the~~

[32] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

~~provision of information in the field of technical standards and regulations and of rules on Information Society services~~[33].

⇩ new

Where relevant, Member States shall require transmission system operators, distribution system operators and hydrogen network operators in their territory to publish technical rules in accordance with Article 9, in particular regarding network connection rules that include gas quality, gas odourisation and gas pressure requirements. Member States shall also require transmission and distribution system operators to publish the connection tariffs to connect gas from renewable sources based on objective, transparent and non-discriminatory criteria.

CHAPTER III

CONSUMER EMPOWERMENT AND PROTECTION AND RETAIL MARKETS

Article 10

Basic contractual rights

1. Member States shall ensure that all final customers are entitled to have gases provided by a supplier, subject to the supplier's agreement, regardless of the Member State in which the supplier is registered, provided that the supplier follows the applicable trading and balancing rules. In that regard, Member States shall take all measures necessary to ensure that administrative procedures do not discriminate against suppliers already registered in another Member State.

2. Without prejudice to Union rules on consumer protection, in particular Directive 2011/83/EU of the European Parliament and of the Council and Council Directive 93/13/EEC, Member States shall ensure that final customers have the rights provided for in paragraphs 3 to 12 of this Article.

3. Final customers shall have the right to a contract with their supplier that specifies:

   (a) the identity and address of the supplier;

   (b) the services provided, the service quality levels offered, as well as the time for the initial connection;

   (c) the types of maintenance service offered;

   (d) the means by which up-to-date information on all applicable tariffs, maintenance charges and bundled products or services may be obtained;

   (e) the duration of the contract, the conditions for renewal and termination of the contract and services, including products or services that are bundled with those services, and whether terminating the contract without charge is permitted;

   (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met, including inaccurate or delayed billing;

33 ~~OJ L 204, 21.7.1998, p. 37.~~

(g) the method of initiating an out-of-court dispute settlement procedure in accordance with Article 24;

(h) information relating to consumer rights, including information on complaint handling and all the information referred to in this paragraph, clearly communicated on the bill or the hydrogen or natural gas undertaking's web site.

Conditions shall be fair and well known in advance. In any case, the information shall be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the information referred to points (a) to (f) shall also be provided prior to the conclusion of the contract.

Final customers shall be provided with a summary of the key contractual conditions in a prominent manner and in concise and simple language.

4. Final customers shall be given adequate notice of any intention to modify contractual conditions and shall be informed about their right to terminate the contract when the notice is given. Suppliers shall notify their final customer directly and in a transparent and comprehensible manner, of any adjustment in the supply price and of the reasons and preconditions for the adjustment and its scope, no later than two weeks, or no later than one month in the case of household customers, before the adjustment comes into effect. Member States shall ensure that final customers are free to terminate contracts if they do not accept the new contractual conditions or adjustments in the supply price notified to them by their supplier.

5. Suppliers shall provide final customers with transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gases services.

6. Suppliers shall offer final customers a wide choice of payment methods. Such payment methods shall not unduly discriminate between customers. Any difference in charges related to payment methods or prepayment systems shall be objective, non-discriminatory and proportionate and shall not exceed the direct costs borne by the payee for the use of a specific payment method or a prepayment system, in accordance with Article 62 of Directive (EU) 2015/2366 of the European Parliament and of the Council[34].

7. Household customers who have access to prepayment systems shall not be placed at a disadvantage by the prepayment systems.

8. Suppliers shall offer final customers fair and transparent general terms and conditions, which shall be provided in plain and unambiguous language and shall not include non-contractual barriers to the exercise of customers' rights, such as excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods.

9. Final customers shall have the right to a good standard of service and complaint handling by their suppliers. Suppliers shall handle complaints in a simple, fair and prompt manner.

10. Suppliers shall provide natural gas household customers with adequate information on alternative measures to disconnection sufficiently in advance of any planned

[34] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015).

disconnection. Such alternative measures may include information about sources of support to avoid disconnection, prepayment systems, energy audits, energy consultancy services, alternative payment plans, debt management advice or disconnection moratoria and shall not entail an extra cost to the customers facing disconnection.

11. Suppliers shall provide final customers with a final closure account after any switch of supplier no later than six weeks after such a switch has taken place.

Article 11

Right to switch and rules on switching-related fees

1. Customers shall have the right to switch gases suppliers or market participants. Member States shall ensure that a customer wishing to switch suppliers or market participants, while respecting contractual conditions, is entitled to such a switch within a maximum of three weeks from the date of the request. By 2026 at the latest, the technical process of switching supplier or market participant shall take no longer than 24 hours and shall be possible on any working day.

2. Member States shall ensure that the right to switch supplier or market participant is granted to customers in a non-discriminatory manner as regards cost, effort and time.

3. Member States shall ensure that at least household customers and small enterprises are not charged any switching-related fees for gases. However Member States may allow suppliers or market participants to charge customers contract termination fees where those customers voluntarily terminate fixed-term, fixed-price supply contracts before their maturity, provided that such fees:

   (a) are part of a contract that the customer has voluntarily entered into; and

   (b) are clearly communicated to the customer before the contract is entered into.

   Such fees shall be proportionate and shall not exceed the direct economic loss to the supplier or the market participant resulting from the customer's termination of the contract, including the costs of any bundled investments or services that have already been provided to the customer as part of the contract. The burden of proving the direct economic loss shall be on the supplier or market participant. The permissibility of contract termination fees shall be monitored by the regulatory authority, or by another competent national authority.

4. Household customers for gases shall be entitled to participate in collective switching schemes. Member States shall remove all regulatory or administrative barriers for collective switching, and provide a framework that ensures the consumer protection to avoid any abusive practices.

Article 12

Comparison tools

1. Member States shall ensure that at least natural gas household customers, and microenterprises, have access, free of charge, to at least one tool comparing the offers of suppliers, including bundled offers. Customers shall be informed of the availability of such tools in or together with their bills or by other means. The tools shall meet at least the following requirements:

(a) they shall be independent from market participants and ensure that natural gas undertakings are given equal treatment in search results;

(b) they shall clearly disclose their owners and the natural or legal person operating and controlling the tools, as well as information on how the tools are financed;

(c) they shall set out clear and objective criteria on which the comparison is to be based, including services, and disclose them;

(d) they shall use plain and unambiguous language;

(e) they shall provide accurate and up-to-date information and state the time of the last update on the information;

(f) they shall be accessible to persons with disabilities, by being perceivable, operable, understandable and robust;

(g) they shall provide an effective procedure for reporting incorrect information on published offers;

(h) they shall perform comparisons, while limiting the personal data requested to that strictly necessary for the comparison.

Member States shall ensure that at least one tool covers the entire natural gas market. Where multiple tools cover the market, those tools shall include, as complete as practicable, a range of gas offers covering a significant part of the market and, where those tools do not completely cover the market, a clear statement to that effect, before displaying results.

2. The tools may be operated by any entity, including private companies and public authorities or bodies.

3. Member States may require comparison tools referred to in paragraph 1 to include comparative criteria relating to the nature of the services offered by the suppliers.

4. Member States shall appoint a competent authority to be responsible for issuing trust marks for comparison tools that meet the requirements set out in paragraph 1, and for ensuring that comparison tools bearing a trust mark continue to meet those requirements. That authority shall be independent of any market participants and comparison tool operators.

5. Any tool comparing the offers of market participants shall be eligible to apply for a trust mark in accordance with this Article on a voluntary and non-discriminatory basis.

6. By way of derogation from paragraphs 4 and 5, Member States may choose not to provide for the issuance of trust marks to comparison tools if a public authority or body provides a comparison tool that meets the requirements set out in paragraph 1.

Article 13

Active customers

1. Member States shall ensure that final customers are entitled to act as active customers without being subject to disproportionate or discriminatory technical requirements, administrative requirements, procedures and charges, and to network charges that are not cost-reflective.

2. Member States shall ensure that active customers are:

(a) entitled to operate directly;

(b) entitled to sell self-produced renewable natural gases using the natural gas system;

(c) entitled to participate in energy efficiency schemes;

(d) entitled to delegate to a third party the management of the installations required for their activities, including installation, operation, data handling and maintenance, without that third party being considered to be an active customer;

(e) subject to cost-reflective, transparent and non-discriminatory network charges, ensuring that they contribute in an adequate and balanced way to the overall cost sharing of the system;

(f) are financially responsible for the imbalances they cause in the natural gas system or shall delegate their balancing responsibility in accordance with Article 3 (e) of [recast Gas Regulation as proposed in COM(2021) xxx].

3. Member States may have different provisions applicable to individual and jointly-acting active customers in their national law, provided that all rights and obligations under this Article apply to all active customers. Any difference in the treatment of jointly-acting active customers shall be proportionate and duly justified.

4. Member States shall ensure that active customers that own facilities that store renewable gas:

(a) have the right to a grid connection within a reasonable time after they made a request to that effect, provided that all necessary conditions, such as balancing responsibility, are fulfilled;

(b) are not subject to any double charges, including network charges, for stored renewable gas remaining within their premises;

(c) are not subject to disproportionate licensing requirements or fees;

(d) are allowed to provide several services simultaneously, if technically feasible.

Article 14

Citizen energy communities

1. Member States shall provide an enabling regulatory framework for citizen energy communities ensuring that:

(a) participation in a citizen energy community is open and voluntary;

(b) members or shareholders of a citizen energy community are entitled to leave the community, in which case Article 11 applies;

(c) members or shareholders of a citizen energy community do not lose their rights and obligations as household customers or active customers;

(d) subject to fair compensation as assessed by the regulatory authority, relevant distribution system operators cooperate with citizen energy communities to facilitate transfers of renewable natural gases within citizen energy communities;

(e) citizen energy communities are subject to non-discriminatory, fair, proportionate and transparent procedures and charges, including with respect to grid connection, registration and licensing, and to transparent, non-discriminatory and cost-reflective network charges, ensuring that they contribute in an adequate and balanced way to the overall cost sharing of the natural gas system.

2. Member States may provide in the enabling regulatory framework that citizen energy communities:

(a) are open to cross-border participation;

(b) are entitled to own, establish, purchase or lease distribution networks and to autonomously manage them subject to conditions set out in paragraph 4 of this Article;

(c) are subject to the exemptions provided for in Article 28(2).

3. Member States shall ensure that citizen energy communities:

(a) are able to access all natural gas markets in a non-discriminatory manner;

(b) are treated in a non-discriminatory and proportionate manner with regard to their activities, rights and obligations as final customers, producers, suppliers or distribution system operators or market participants;

(c) are financially responsible for the imbalances they cause in the natural gas system or shall delegate their balancing responsibility in line with Article 3 (e) of [recast Gas Regulation as proposed in COM(2021) xxx];

(d) are treated like active customers in accordance with point (e) of paragraph 2 and points (a), (c) and (d) of Paragraph 4 of Article 13;

(e) are entitled to arrange within the citizen energy community the sharing of renewable gas that are produced by the production units owned by the community, subject to other requirements laid down in this Article and subject to the community members retaining their rights and obligations as final customers.

For the purposes of the first subparagraph, point (e), where renewable natural gases are shared, this shall be without prejudice to applicable network charges, tariffs and levies, in accordance with a transparent cost-benefit analysis of distributed energy resources developed by the competent national authority.

4. Member States may decide to grant citizen energy communities the right to manage distribution networks in their area of operation and establish the relevant procedures, without prejudice to Chapter VI or to other rules and regulations applying to distribution system operators.

Where such a right is granted, Member States shall ensure that citizen energy communities:

(a) are allowed to transport non-renewable gas where such gas is for a natural gas customer who is not a member of the citizen energy community or is necessary for secure system operation;

(b) are entitled to conclude an agreement on the operation of their network with the relevant distribution system operator or transmission system operator to which their network is connected;

(c) are subject to appropriate network charges at the connection points between their network and the distribution network outside the citizen energy community;

(d) do not discriminate or harm customers who remain connected to the distribution system.

Article 15

Bills and billing information

1. Member States shall ensure that bills and billing information are accurate, easy to understand, clear, concise, user-friendly and presented in a manner that facilitates comparison by final customers and that they fulfil the minimum requirements set out in Annex I. On request, final customers shall receive a clear and understandable explanation of how their bill was derived, especially where bills are not based on actual consumption.

2. Member States shall ensure that final customers receive all their bills and billing information free of charge.

3. Member States shall ensure that final customers are offered the option of electronic bills and billing information and are offered flexible arrangements for the actual payment of the bills.

4. Where the contract provides for a future change of the product or price, or a discount, this shall be indicated on the bill together with the date on which the change takes place.

5. Member States shall consult consumer organisations when they consider changes to the requirements for the content of bills.

Article 16

Smart metering systems in the natural gas system

1. In order to promote energy efficiency and to empower final customers, Member States or, where a Member State has so provided, the regulatory authority shall strongly recommend that natural gas undertakings optimise the use of natural gas, inter alia, by providing energy management services, and introducing smart metering systems that are interoperable, in particular with consumer energy management systems and with smart grids, in accordance with the applicable Union data protection rules.

2. Member States shall ensure the deployment in their territories of smart metering systems. Such deployment may be subject to a cost-benefit assessment which shall be undertaken in accordance with the principles laid down in Annex II.

3. Member States that proceed with the deployment of smart metering systems shall adopt and publish the minimum functional and technical requirements for the smart metering systems to be deployed in their territories, in accordance with Article 18 and Annex II. Member States shall ensure the interoperability of those smart metering systems, as well as their ability to provide output for consumer energy management systems. In that respect, Member States shall have due regard to the use of the relevant available standards, including those enabling interoperability, to best

practices and to the importance of the development of smart grids and the development of the internal market for natural gas.

4. Member States that proceed with the deployment of smart metering systems shall ensure that final customers contribute to the associated costs of the deployment in a transparent and non-discriminatory manner, while taking into account the long-term benefits to the whole value chain. Member States or, where a Member State has so provided, the designated competent authorities, shall regularly monitor such deployment in their territories to track the delivery of benefits to consumers.

5. Where the deployment of smart metering systems has been negatively assessed as a result of the cost-benefit assessment referred to in paragraph 2, Member States shall ensure that the assessment is revised at least every four years in response to significant changes in the underlying assumptions and in response to technological and market developments. Member States shall notify to the Commission the outcome of their updated cost-benefit assessment as it becomes available.

6. The provisions in this Directive concerning smart metering systems shall apply to future installations and to installations that replace older smart meters. Smart metering systems that have already been installed, or for which the 'start of works' began, before [date of entry into force], may remain in operation over their lifetime. However, smart metering systems that do not meet the requirements of Article 20 and Annex II, shall not remain in operation after [12 years after entering into force of this Directive].

7. For the purpose of paragraph 6, 'start of works' means either the start of construction works on the investment or the first firm commitment to order equipment or other commitment that makes the investment irreversible, whichever is the first in time. Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies shall not considered as start of works. For take-overs, 'start of works' means the moment of acquiring the assets directly linked to the acquired establishment.

Article 17

Smart metering systems in the hydrogen system

1. Member States shall ensure the deployment of smart metering systems that can accurately measure consumption, provide information on actual time of use, and are capable to transmit and receive data for information, monitoring and control purposes, using a form of electronic communication.

2. Member States shall ensure the security of the metering systems and respective data communication, and the privacy of final customers, in compliance with relevant Union data protection and privacy legislation, as well as their interoperability and having regard to the use of appropriate standards.

3. The Commission shall adopt, by means of implementing acts, interoperability requirements for smart metering and procedures to ensure, for those eligible, access to data coming from those metering systems. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 4 of Regulation (EU) No 182/2011.

Article 18

Functionalities of smart metering systems in the natural gas system

Where the deployment of smart metering systems is positively assessed as a result of the cost-benefit assessment referred to in Article 16(2), or where smart metering systems are systematically deployed after [date of entry into force], Member States shall deploy those systems in accordance with European standards, the following requirements, and Annex II:

(a) the smart metering systems shall accurately measure actual natural gas consumption and shall be capable of providing to final customers information on actual time of use, including validated historical consumption data which shall be made easily and securely available and visualised to final customers on request and at no additional cost, and non -validated most recent available consumption data which shall also be made easily and securely available to final customers at no additional cost, through a standardised interface or through remote access, in order to support automated energy efficiency programmes, and other services;

(b) the security of the smart metering systems and data communication shall comply with relevant Union security rules, having due regard to the best available techniques for ensuring the highest level of cybersecurity protection while bearing in mind the costs and the principle of proportionality;

(c) the privacy of final customers and the protection of their data shall comply with relevant Union data protection and privacy rules;

(d) if final customers request it, their natural gas consumption data shall be made available to them, in accordance with the implementing acts adopted pursuant to Article 23, through a standardised communication interface or through remote access, or to a third party acting on their behalf, in an easily understandable format allowing them to compare offers on a like-for-like basis;

(e) appropriate advice and information shall be given to final customers prior to or at the time of installation of smart meters, in particular concerning their full potential with regard to the management of meter reading and the monitoring of energy consumption, and concerning the collection and processing of personal data in accordance with the applicable Union data protection rules;

(f) smart metering systems shall enable final customers to be metered and settled at the same time resolution as the shortest settlement period in the national market.

For the purposes of point (d) of the first subparagraph, it shall be possible for final customers to retrieve their metering data or transmit them to another party at no additional cost and in accordance with their right to data portability under Union data protection rules.

Article 19

Entitlement to a smart meter for natural gas

1. Where the deployment of smart metering systems has been negatively assessed as a result of the cost-benefit assessment referred to in Article 16(2) and where smart metering systems are not systematically deployed, Member States shall ensure that every final customer is entitled on request, while bearing the associated costs, to have installed or, where applicable, to have upgraded, under fair, reasonable and cost-effective conditions, a smart meter that:

(a) is equipped, where technically feasible, with the functionalities referred to in Article 18, or with a minimum set of functionalities to be defined and published by Member States at national level in accordance with Annex II;

(b) is interoperable and able to deliver the desired connectivity of the metering infrastructure with consumer energy management systems.

2. Where a customer requests a smart meter pursuant to paragraph 1, Member States or, where a Member State has so provided, the designated competent authorities shall:

(a) ensure that the offer to the final customer requesting the installation of a smart meter explicitly states and clearly describes:

(i) the functions and interoperability that can be supported by the smart meter and the services that can be provided as well as the benefits that can be realistically attained by having that smart meter at that moment in time;

(ii) any associated costs to be borne by the final customer;

(b) ensure that the smart meter is installed within a reasonable time, and in any case no later than four months after the customer's request;

(c) regularly, and at least every two years, review and make publicly available the associated costs, and trace the evolution of those costs as a result of technology developments and potential metering system upgrades.

Article 20

Conventional meters for natural gas

1. Where final natural gas customers do not have smart meters, Member States shall ensure that final customers are provided with individual conventional meters that accurately measure their actual consumption.

2. Member States shall ensure that final natural gas customers are able to easily read their conventional meters, either directly or indirectly through an online interface or through another appropriate interface.

Article 21

Data management

1. When laying down the rules regarding the management and exchange of data, Member States or, where a Member State has so provided, the designated competent authorities shall specify the rules on the access to data of the final customer by eligible parties in accordance with this Article and the applicable Union legal framework. For the purpose of this Directive, data shall be understood to include metering and consumption data as well as data required for customer switching, and other services.

2. Member States shall organise the management of data in order to ensure efficient and secure data access and exchange, as well as data protection and data security.

Independently of the data management model applied in each Member State, the parties responsible for data management shall provide access to the data of the final customer to any eligible party, in accordance with paragraph 1. Eligible parties shall have the requested data at their disposal in a non-discriminatory manner and

simultaneously. Access to data shall be easy and the relevant procedures for obtaining access to data shall be made publicly available.

3. The rules on access to data and data storage for the purpose of this Directive shall comply with the relevant Union law.

The processing of personal data within the framework of this Directive shall be carried out in accordance with Regulation (EU) 2016/679.

4. Member States or, where a Member State has so provided, the designated competent authorities, shall authorise and certify or, where applicable, supervise the parties responsible for the data management, in order to ensure that they comply with the requirements of this Directive.

Without prejudice to the tasks of the data protection officers under Regulation (EU) 2016/679, Member States may decide to require that parties responsible for the data management appoint compliance officers who shall be responsible for monitoring the implementation of measures taken by those parties to ensure non-discriminatory access to data and compliance with the requirements of this Directive.

Member States may appoint compliance officers or bodies referred to in point (d) of Article 44(2) of this Directive to fulfil the obligations under this paragraph.

5. No additional costs shall be charged to final customers for access to their data or for a request to make their data available.

Member States shall be responsible for setting the relevant charges for access to data by eligible parties.

Member States or, where a Member State has so provided, the designated competent authorities shall ensure that any charges imposed by regulated entities that provide data services are reasonable and duly justified.

Article 22

Interoperability requirements and procedures for access to data

1. In order to promote competition in the natural gas retail market and to avoid excessive administrative costs for the eligible parties, Member States shall facilitate the full interoperability of energy services within the Union.

2. The Commission shall adopt, by means of implementing acts, interoperability requirements and non-discriminatory and transparent procedures for access to data referred to in Article 21(1). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 4 of Regulation (EU) No 182/2011.

3. Member States shall ensure that natural gas undertakings apply the interoperability requirements and procedures for access to data referred to in paragraph 2. Those requirements and procedures shall be based on existing national practices.

Article 23

Single points of contact

Member States shall ensure that single points of contact are established to provide customers with all necessary information concerning their rights, the applicable law and dispute settlement mechanisms available to them in the event of a dispute. Such single points of contact may be part of general consumer information points and may be the same entities as

the single contact points for electricity referred to in Article 26 of Directive 2019/944/EU [on common rules for the internal market in electricity.

Article 24

Right to out-of-court dispute settlement

1. Member States shall ensure that final customers have access to simple, fair, transparent, independent, effective and efficient out-of-court mechanisms for the settlement of disputes concerning rights and obligations established under this Directive, through an independent mechanism such as an energy ombudsman or a consumer body, or through a regulatory authority. Where the final customer is a consumer within the meaning of Directive 2013/11/EU of the European Parliament and of the Council[(23)], such out-of-court dispute settlement mechanisms shall comply with the quality requirements of that Directive and shall provide, where warranted, for systems of reimbursement and compensation.

2. Where necessary, Member States shall ensure that alternative dispute resolution entities cooperate to provide simple, fair, transparent, independent, effective and efficient out-of-court dispute settlement mechanisms for any dispute that arises from products or services that are tied to, or bundled with, any product or service falling under the scope of this Directive.

3. The participation of gas undertakings in out-of-court dispute settlement mechanisms for household customers shall be mandatory unless the Member State concerned demonstrates to the Commission that other mechanisms are equally effective.

Article 25

Protection of vulnerable customers and suppliers of last resort

Member States shall take appropriate measures to protect final customers, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers. In this context, each Member State shall define the concept of vulnerable customers which may refer to energy poverty. Measures to protect vulnerable customers may include, inter alia, to the prohibition of disconnection to such customers in critical times.

In particular, Member States shall take appropriate measures to protect final customers in remote areas who are connected to the natural gas or hydrogen systems. Member States may appoint a supplier of last resort for household customers, and, where Member States deem it to be appropriate, small enterprises connected to the natural gas or hydrogen systems. They shall ensure high levels of consumer protection, particularly with respect to transparency regarding contractual terms and conditions, general information and dispute settlement mechanisms.

↓ 2009/73/EC

~~*Article 45*~~

~~**Retail markets**~~

~~In order to facilitate the emergence of well functioning and transparent retail markets in the Community, Member States shall ensure that the roles and responsibilities of transmission~~

~~system operators, distribution system operators, supply undertakings and customers and if necessary other market parties are defined with respect to contractual arrangements, commitment to customers, data exchange and settlement rules, data ownership and metering responsibility.~~

~~Those rules shall be made public, be designed with the aim to facilitate customers' and suppliers' access to networks and they shall be subject to review by the regulatory authorities or other relevant national authorities.~~

⇩ new

Chapter IV

Third party access to infrastructure

SECTION I

ACCESS TO NATURAL GAS INFRASTRUCTURE

Article 26

Market access for renewable and low carbon gases

Member States shall enable the access of renewable and low carbon gases to the market and infrastructure regardless whether the renewable and low carbon gases production facilities are connected to distribution or transmission networks.

🡻 2009/73/EC (adapted)
⇨ new

Article 27~~32~~

Third-party access ⌦ to natural gas distribution and transmission and LNG terminals ⌫

1. Member States shall ensure the implementation of a system of third party access to the transmission and distribution system, and LNG facilities based on published tariffs, applicable to all ~~eligible~~ customers, including supply undertakings, and applied objectively and without discrimination between system users. Member States shall ensure that those tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 72~~41~~ by a regulatory authority referred to in Article 70~~39(1)~~ and that those tariffs — and the methodologies, where only methodologies are approved — are published prior to their entry into force. ⇨ Tariff discounts can be granted only if so provided by Union legislation. ⇦

~~2. Transmission system operators shall, if necessary for the purpose of carrying out their functions including in relation to cross-border transmission, have access to the network of other transmission system operators.~~

2~~3~~ The provisions of this Directive shall not prevent the conclusion of long-term contracts ⇨ for renewable and low carbon gases ⇦ in so far as they comply with ~~Community~~ ⌦ Union ⌫ competition rules ⇨ and contribute to decarbonisation. No long-term contracts for supply of unabated fossil gas shall be concluded with a duration beyond the end of year 2049 ⇦.

⇩ new

3. This Article shall also apply to citizen energy communities that manage distribution networks.

🡻 2009/73/EC (adapted)
⇨ new

Article 28~~34~~

Access to upstream ⌦ natural gas ⌫ pipeline networks

1. Member States shall take the necessary measures to ensure that natural gas undertakings and eligible customers, wherever they are located, are able to obtain access to upstream pipeline networks, including facilities supplying technical services incidental to such access, in accordance with this Article, except for the parts of such networks and facilities which are used for local production operations at the site of a field where the gas is produced. The measures shall be notified to the Commission in accordance with the provisions of Article 88~~54~~.

2. The access referred to in paragraph 1 shall be provided in a manner determined by the Member State in accordance with the relevant legal instruments. Member States shall apply the objectives of fair and open access, achieving a competitive market in natural gas and avoiding any abuse of a dominant position, taking into account security and regularity of supplies, capacity which is or can reasonably be made available, and environmental protection. The following ~~matters~~ ⌦ needs ⌫ may be taken into account:

   (a) the need to refuse access where there is an incompatibility of technical specifications which cannot reasonably be overcome;

   (b) the need to avoid difficulties which cannot reasonably be overcome and could prejudice the efficient, current and planned future production of hydrocarbons, including that from fields of marginal economic viability;

   (c) the need to respect the duly substantiated reasonable needs of the owner or operator of the upstream pipeline network for the transport and processing of gas and the interests of all other users of the upstream pipeline network or relevant processing or handling facilities who may be affected; and

   (d) the need to apply their laws and administrative procedures, in conformity with ~~Community~~ ⌦ Union ⌫ law, for the grant of authorisation for production or upstream development.

3. Member States shall ensure that they have in place dispute-settlement arrangements, including an authority independent of the parties with access to all relevant

information, to enable disputes relating to access to upstream pipeline networks to be settled expeditiously, taking into account the criteria in paragraph 2 and the number of parties which may be involved in negotiating access to such networks.

↓ 2019/692 Art. 1.4

4. In the event of cross-border disputes, the dispute-settlement arrangements for the Member State having jurisdiction over the upstream pipeline network which refuses access shall be applied. Where, in cross-border disputes, more than one Member State covers the network concerned, the Member States concerned shall consult each other with a view to ensuring that the provisions of this Directive are applied consistently. Where the upstream pipeline network originates from a third country and connects to at least one Member State, the Member States concerned shall consult each other and the Member State where the first entry point to the Member States' network is located shall consult the third country concerned where the upstream pipeline network originates, with a view to ensuring, as regards the network concerned, that this Directive is applied consistently in the territory of the Member States.

↓ 2009/73/EC (adapted)

Article 29~~33~~

Access to storage ⌦ of natural gas ⌫

1. For the organisation of access to storage facilities and linepack when technically ~~and/~~or economically necessary for providing efficient access to the system for the supply of customers, as well as for the organisation of access to ancillary services, Member States may choose either or both of the procedures referred to in paragraphs 3 and 4. Those procedures shall operate in accordance with objective, transparent and non-discriminatory criteria.

⇩ new

When choosing the procedure for access to storage under this Article, Member States shall take into account the results of the common and national risk assessments carried out under Article 7 of Regulation (EU) 2017/1938.

↓ 2009/73/EC (adapted)

The regulatory authorities ~~where Member States have so provided or Member States~~ shall define and publish criteria according to which the access regime applicable to storage facilities and linepack may be determined. They shall make public, or oblige storage and transmission system operators to make public, which storage facilities, or which parts of those storage facilities, and which linepack is offered under the different procedures referred to in paragraphs 3 and 4.

~~The obligation referred to in the second sentence of the second subparagraph shall be without prejudice to the right of choice granted to Member States in the first subparagraph~~.

2. ~~The provisions of~~ P~~p~~aragraph 1 shall not apply to ancillary services and temporary storage that are related to LNG facilities and are necessary for the re-gasification process and subsequent delivery to the transmission system.

3. In the case of negotiated access, ~~Member States or, where Member States have so provided~~, the regulatory authorities shall take the necessary measures for ~~natural gas~~ undertakings and eligible customers either inside or outside the territory covered by the interconnected system to be able to negotiate access to storage facilities and linepack, when technically and/or economically necessary for providing efficient access to the system, as well as for the organisation of access to other ancillary services. The parties shall be obliged to negotiate access to storage, linepack and other ancillary services in good faith.

   Contracts for access to storage, linepack and other ancillary services shall be negotiated with the relevant storage system operator ~~or natural gas undertakings~~. The regulatory authorities ~~where Member States have so provided or Member States~~ shall require storage system operators and natural gas undertakings to publish their main commercial conditions for the use of storage, linepack and other ancillary services ~~by 1 January 2005 and~~ on an annual basis ~~every year thereafter~~.

   When developing ⌦ those ⌫ ~~the~~ conditions ~~referred to in the second subparagraph~~, storage operators ~~and natural gas undertakings~~ shall consult system users.

4. In the case of regulated access, the regulatory authorities ~~where Member States have so provided or Member States~~ shall take the necessary measures to give natural gas undertakings and eligible customers either inside or outside the territory covered by the interconnected system a right to access to storage, linepack and other ancillary services, on the basis of published tariffs ~~and/~~or other terms and obligations for use of that storage and linepack, when technically ~~and/~~or economically necessary for providing efficient access to the system, as well as for the organisation of access to other ancillary services. The regulatory authorities ~~where Member States have so provided or Member States~~ shall consult system users when developing those tariffs or the methodologies for those tariffs. The right of access for eligible customers may be given by enabling them to enter into supply contracts with competing ~~natural gas~~ undertakings other than the owner ~~and/~~or operator of the system or a related undertaking.

⬇ 2009/73/EC (adapted) ⇨ new

Article 30~~38~~

Direct lines ⌦ for natural gas ⌫

1. Member States shall take the necessary measures to enable:

   (a) ~~natural gas~~ undertakings established within their territory to supply the eligible customers through a direct line; and

(b) any such ~~eligible~~ customer within their territory to be supplied through a direct line by natural gas undertakings.

2. In circumstances where an authorisation ~~(~~for example, licence, permission, concession, consent or approval~~)~~ is required for the construction or operation of direct lines, the Member States or any competent authority they designate shall lay down the criteria for the grant of authorisations for the construction or operation of such lines in their territory. Those criteria shall be objective, transparent and non-discriminatory.

3. Member States may issue an authorisation to construct a direct line subject either to the refusal of system access on the basis of Article 34~~35~~ or to the opening of a dispute-settlement procedure under Article 73~~41~~.

⇩ new

SECTION II

ACCESS TO HYDROGEN INFRASTRUCTURE

Article 31

Third-party access to hydrogen networks

1. Member States shall ensure the implementation of a system of regulated third party access to hydrogen networks based on published tariffs and applied objectively and without discrimination between any hydrogen network users.

1. Member States shall ensure that those tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 72 by a regulatory authority referred to in Article 70 and that those tariffs — and the methodologies, where only methodologies are approved — are published prior to their entry into force.

3. Hydrogen network operators shall, where necessary for the purpose of carrying out their functions, including in relation to cross-border network transport of hydrogen, have access to the network of other hydrogen network operators.

4. Until 31 December 2030, a Member State may decide not to apply paragraph 1. In such case, the Member State shall ensure the implementation of a system of negotiated third party access to hydrogen networks in accordance with objective, transparent and non-discriminatory criteria. The regulatory authorities shall take the necessary measures for hydrogen network users to be able to negotiate access to hydrogen networks. The parties shall be obliged to negotiate access to hydrogen networks in good faith.

5. Where negotiated access is used, regulatory authorities shall provide guidance to hydrogen network users on how negotiated tariffs will be affected when regulated third party access is introduced.

Article 32

Third-party access to hydrogen terminals

1. Member States shall ensure the implementation of a system of third party access to hydrogen terminals based on negotiated access in an objective, transparent and non-discriminatory manner, whereby the regulatory authorities shall take the necessary measures for hydrogen terminal users to be able to negotiate access to such terminals. The parties shall be obliged to negotiate access in good faith.

2. Regulatory authorities shall monitor conditions for third party access to hydrogen terminals and their impact on hydrogen markets and, where necessary in order to safeguard competition, take measures to improve access in line with the criteria set out in paragraph 1.

Article 33

Access to hydrogen storage

Member States shall ensure the implementation of a system of regulated third party access to hydrogen storage, and line pack when technically and/or economically necessary for providing efficient access to the system for the supply of customers, as well as for the organisation of access to ancillary services, based on published tariffs and applied objectively and without discrimination between any hydrogen system users. Member States shall ensure that those tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 72 by the regulatory authority.

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.

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.~~

⇩ new

3. Access to the system for renewable and low carbon gases may only be refused subject to the provisions of Article 18 and 33 of [recast Gas Regulation as proposed in COM(2021) xxx].

🡻 2009/73/EC

~~*Article 36*~~

~~**New infrastructure**~~

~~1. Major new gas infrastructure, i.e. interconnectors, LNG and storage facilities, may, upon request, be exempted, for a defined period of time, from the provisions of Articles 9, 32, 33 and 34 and Article 41(6), (8) and (10) under the following conditions:~~

~~(a) the investment must enhance competition in gas supply and enhance security of supply;~~

~~(b) the level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted;~~

~~(c) the infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built;~~

~~(d) charges must be levied on users of that infrastructure; and~~

🡻 2019/692 Art. 1.5(a)

~~(e) the exemption must not be detrimental to competition in the relevant markets which are likely to be affected by the investment, to the effective functioning of the internal market in natural gas, the efficient functioning of the regulated systems concerned, or to security of supply of natural gas in the Union.~~

🡻 2009/73/EC

~~2. Paragraph 1 shall also apply to significant increases of capacity in existing infrastructure and to modifications of such infrastructure which enable the development of new sources of gas supply.~~

🡻 2019/692 Art. 1.5(b)

~~3. The regulatory authority referred to in Chapter VIII may, on a case-by-case basis, decide on the exemption referred to in paragraphs 1 and 2.~~

~~Before the adoption of the decision on the exemption, the national regulatory authority, or where appropriate another competent authority of that Member State, shall consult:~~

~~(a) the national regulatory authorities of the Member States the markets of which are likely to be affected by the new infrastructure; and~~

~~(b) the relevant authorities of the third countries, where the infrastructure in question is connected with the Union network under the jurisdiction of a Member State, and originates from or ends in one or more third countries.~~

~~Where the third-country authorities consulted do not respond to the consultation within a reasonable time frame or within a set deadline not exceeding three months, the national regulatory authority concerned may adopt the necessary decision.~~

↓ 2009/73/EC

~~4. Where the infrastructure in question is located in the territory of more than one Member State, the Agency may submit an advisory opinion to the regulatory authorities of the Member States concerned, which may be used as a basis for their decision, within two months from the date on which the request for exemption was received by the last of those regulatory authorities.~~

↓ 2019/692 Art. 1.5(c)

~~Where all the regulatory authorities concerned agree on the request for exemption within six months of the date on which it was received by the last of the regulatory authorities, they shall inform the Agency of their decision. Where the infrastructure concerned is a transmission line between a Member State and a third country, before the adoption of the decision on the exemption, the national regulatory authority, or where appropriate another competent authority of the Member State where the first interconnection point with the Member States' network is located, may consult the relevant authority of that third country with a view to ensuring, as regards the infrastructure concerned, that this Directive is applied consistently in the territory and, where applicable, in the territorial sea of that Member State. Where the third country authority consulted does not respond to the consultation within a reasonable time or within a set deadline not exceeding three months, the national regulatory authority concerned may adopt the necessary decision.~~

↓ 2009/73/EC

~~The Agency shall exercise the tasks conferred on the regulatory authorities of the Member States concerned by the present Article:~~

~~(a) where all regulatory authorities concerned have not been able to reach an agreement within a period of six months from the date on which the request for exemption was received by the last of those regulatory authorities; or~~

~~(b) upon a joint request from the regulatory authorities concerned.~~

~~All regulatory authorities concerned may, jointly, request that the period referred to in point (a) of the third subparagraph is extended by up to three months.~~

~~5. Before taking a decision, the Agency shall consult the relevant regulatory authorities and the applicants.~~

~~6. An exemption may cover all or part of the capacity of the new infrastructure, or of the existing infrastructure with significantly increased capacity.~~

~~In deciding to grant an exemption, consideration shall be given, on a case-by-case basis, to the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the infrastructure. When deciding on those conditions, account shall, in particular, be taken of the additional capacity to be built or the modification of existing capacity, the time horizon of the project and national circumstances.~~

~~Before granting an exemption, the regulatory authority shall decide upon the rules and mechanisms for management and allocation of capacity. The rules shall require that all potential users of the infrastructure are invited to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including for own use, takes place. The regulatory authority shall require congestion management rules to include the obligation to offer unused capacity on the market, and shall require users of the infrastructure to be entitled to trade their contracted capacities on the secondary market. In its assessment of the criteria referred to in points (a), (b) and (e) of paragraph 1, the regulatory authority shall take into account the results of that capacity allocation procedure.~~

~~The exemption decision, including any conditions referred to in the second subparagraph of this paragraph, shall be duly reasoned and published.~~

~~7. Notwithstanding paragraph 3, Member States may provide that their regulatory authority or the Agency, as the case may be, shall submit, for the purposes of the formal decision, to the relevant body in the Member State its opinion on the request for an exemption. That opinion shall be published together with the decision.~~

~~8. The regulatory authority shall transmit to the Commission, without delay, a copy of every request for exemption as of its receipt. The decision shall be notified, without delay, by the competent authority to the Commission, together with all the relevant information with respect to the decision. That information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well-founded decision. In particular, the information shall contain:~~

~~(a) the detailed reasons on the basis of which the regulatory authority, or Member State, granted or refused the exemption together with a reference to paragraph 1 including the relevant point or points of that paragraph on which such decision is based, including the financial information justifying the need for the exemption;~~

~~(b) the analysis undertaken of the effect on competition and the effective functioning of the internal market in natural gas resulting from the grant of the exemption;~~

~~(c) the reasons for the time period and the share of the total capacity of the gas infrastructure in question for which the exemption is granted;~~

~~(d) in case the exemption relates to an interconnector, the result of the consultation with the regulatory authorities concerned; and~~

~~(e) the contribution of the infrastructure to the diversification of gas supply.~~

~~9. Within a period of two months from the day following the receipt of a notification, the Commission may take a decision requiring the regulatory authority to amend or withdraw the decision to grant an exemption. That two-month period may be extended by an additional period of two months where further information is sought by the Commission. That additional period shall begin on the day following the receipt of the complete information. The initial~~

~~two-month period may also be extended with the consent of both the Commission and the regulatory authority.~~

~~Where the requested information is not provided within the period set out in the request, the notification shall be deemed to be withdrawn unless, before the expiry of that period, either the period has been extended with the consent of both the Commission and the regulatory authority, or the regulatory authority, in a duly reasoned statement, has informed the Commission that it considers the notification to be complete.~~

~~The regulatory authority shall comply with the Commission decision to amend or withdraw the exemption decision within a period of one month and shall inform the Commission accordingly.~~

~~The Commission shall preserve the confidentiality of commercially sensitive information.~~

~~The Commission's approval of an exemption decision shall lose its effect two years from its adoption in the event that construction of the infrastructure has not yet started, and five years from its adoption in the event that the infrastructure has not become operational unless the Commission decides that any delay is due to major obstacles beyond control of the person to whom the exemption has been granted.~~

~~10. The Commission may adopt Guidelines for the application of the conditions laid down in paragraph 1 of this Article and to set out the procedure to be followed for the application of paragraphs 3, 6, 8 and 9 of this Article. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(3).~~

⇩ new

Chapter V

Rules applicable to transmission, storage and LNG system operators of natural gas

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🡻 2009/73/EC (adapted)
⇨ new

Article 35~~13~~

Tasks of transmission, storage ~~and/~~or LNG system operators

1. Each transmission, storage ~~and/~~or LNG system operator shall:

   (a) operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage ~~and/~~or LNG facilities to secure an open market, with due regard to the environment, ⇨ the obligations laid down in [Regulation (EU) 2022/ … (Methane Regulation)] ⇦ ensure adequate means to meet service obligations;

   (b) ~~refrain from discriminating~~ ⌦ not discriminate ⌫ between system users or classes of system users, ~~particularly~~ ⌦ specifically ⌫ in favour of its related undertakings;

(c) provide ⌦ to ⌫any other transmission system operator, any other storage system operator, any other LNG system operator ~~and/~~or any distribution system operator, sufficient information to ensure that the transport and storage of natural gas may take place in a manner compatible with the secure and efficient operation of the interconnected system; ~~and~~

(d) provide system users with the information they need for efficient access to the system.

2. Each transmission system operator shall build sufficient cross-border capacity to integrate European transmission infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of gas supply.

⇩ new

3. Transmission system operators shall cooperate with distribution system operators to ensure the effective participation of market participants connected to the grid in retail, wholesale and balancing market.

4. Transmission system operators shall ensure efficient gas quality management in their facilities in line with applicable gas quality standards.

🡻 2009/73/EC

5~~3~~. Rules adopted by transmission system operators for balancing the gas transmission system shall be objective, transparent and non-discriminatory, including rules for the charging of system users of their networks for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by transmission system operators shall be established pursuant to a methodology compatible with Article 72~~41~~ (7) in a non-discriminatory and cost-reflective way and shall be published.

6~~4.~~ The regulatory authorities where Member States have so provided or Member States may require transmission system operators to comply with minimum standards for the maintenance and development of the transmission system, including interconnection capacity.

⇩ new

7. Member States may provide that one or several responsibilities listed in paragraph 1 are assigned to a transmission system operator other than the one which owns the transmission system to which the responsibilities concerned would otherwise be applicable. The transmission system operator to which the tasks are assigned shall be certified under the ownership unbundling, the independent system operator or the independent transmission system operator model and fulfil the requirements provided for in Article 54, but shall not be required to own the transmission system it is responsible for.

8. The transmission system operator shall fulfil the requirements provided for in Chapter IX and be certified in accordance with Article 57. This shall be without prejudice to the possibility for transmission system operators which are certified under the ownership unbundling, the independent system operator or the independent transmission system operator model to delegate, on their own initiative and under their supervision, certain tasks to other transmission system operators which are certified under the ownership unbundling, the independent system operator or the independent transmission system operator model, where the delegation of tasks does not endanger the effective and independent decision-making rights of the delegating transmission system operator.

9. LNG and storage system operators shall cooperate, within one Member State and regionally, to ensure the most efficient use of facilities capacities and synergies between these facilities, taking into account system integrity and operation.

↓ 2009/73/EC (adapted)

10~~5.~~ Transmission system operators shall procure the energy they use for the carrying out of their functions according to transparent, non-discriminatory and market based procedures.

Article 36~~16~~

Confidentiality for transmission system operators and transmission system owners

1. Without prejudice to Article 68~~30~~ or any other legal duty to disclose information, each transmission, storage ~~and/~~or LNG system operator, and each transmission system owner, shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its activities, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner. In particular, it shall not disclose any commercially sensitive information to the remaining parts of the undertaking, unless this is necessary for carrying out a business transaction. In order to ensure the full respect of the rules on information unbundling, Member States shall ensure that the transmission system owner including, in the case of a combined operator, the distribution system operator, and the remaining part of the undertaking do not use joint services, such as joint legal services, apart from purely administrative or IT functions.

2. Transmission, storage ~~and/~~or LNG system operators shall not, in the context of sales or purchases of natural gas by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

3. Information necessary for effective competition and the efficient functioning of the market shall be made public. That obligation shall be without prejudice to protecting commercially sensitive information.

⇩ new

Article 37

Decision-making powers regarding the connection of new production facilities for renewable and low carbon gases to the transmission system

1. The transmission system operator shall establish and publish transparent and efficient procedures for non-discriminatory connection of new production installations of renewable and low carbon gases. Those procedures shall be subject to approval by the regulatory authorities.

2. The transmission system operators shall not be entitled to refuse economically reasonable and technically feasible connection requests of a new production facility installation for renewable and low carbon gases.

🡻 2009/73/EC (adapted)
⇨ new

Article 38~~23~~

Decision-making powers regarding the connection ~~of storage facilities, LNG regasification facilities and industrial customers~~ to the transmission system ⌦ and the hydrogen network ⌫

1. The transmission system operator ⇨ and the hydrogen network operator ⇦ shall establish and publish transparent and efficient procedures and tariffs for non-discriminatory connection of ⇨ natural gas and hydrogen ⇦ storage facilities, LNG regasification facilities ⇨ , hydrogen terminals ⇦ and industrial customers to the transmission system ⇨ and the hydrogen network ⇦. Those procedures shall be subject to approval by the regulatory authority.

2. The transmission system operator ⇨ and the hydrogen network operator ⇦ shall not be entitled to refuse the connection of a new ⇨ natural gas or hydrogen ⇦ storage facility, LNG regasification facility ⇨, hydrogen terminal ⇦ or industrial customer on the grounds of possible future limitations to available network capacities or additional costs linked with necessary capacity increase. The transmission system operator ⇨ and hydrogen network operator ⇦ shall ensure sufficient entry and exit capacity for the new connection.

~~*Article 6*~~

~~**Regional solidarity**~~

~~1. In order to safeguard a secure supply on the internal market in natural gas, Member States shall cooperate in order to promote regional and bilateral solidarity.~~

~~2. Such cooperation shall cover situations resulting or likely to result in the short term in a severe disruption of supply affecting a Member State. It shall include:~~

~~(a) coordination of national emergency measures referred to in Article 8 of Council Directive 2004/67/EC of 26 April 2004 concerning measures to safeguard security of natural gas supply[35];~~

~~(b) identification and, where necessary, development or upgrading of electricity and natural gas interconnections; and~~

~~(c) conditions and practical modalities for mutual assistance.~~

~~3. The Commission and the other Member States shall be kept informed of such cooperation.~~

~~4. The Commission may adopt Guidelines for regional cooperation in a spirit of solidarity. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(3).~~

Chapter VI

Distribution ~~and supply~~ ⌦ system operation of natural gas ⌫

Article 39~~24~~

Designation of distribution system operators

Member States shall designate, or shall require undertakings which own or are responsible for distribution systems to designate, for a period of time to be determined by Member States, having regard to considerations of efficiency and economic balance, one or more distribution system operators and shall ensure that those operators act in accordance with Articles 40~~25~~, 42~~26~~ and 43~~27~~.

Article 40~~25~~

Tasks of distribution system operators

1. Each distribution system operator shall be responsible for ensuring the long-term ability of the system to meet reasonable demands for the distribution of gas, and for operating, maintaining and developing under economic conditions a secure, reliable and efficient system in its area, with due regard for the environment ⇨ , the obligations laid down in [Regulation (EU) 2022/ … (Methane Regulation)] ⇦ and energy efficiency.

⇩ new

2. When so decided by regulatory authorities, distribution system operators may be responsible for ensuring efficient gas quality management in their facilities in line with applicable gas quality standards, where necessary for system management due to the injection of renewable and low-carbon gases.

[35] ~~OJ L 127, 29.4.2004, p. 92.~~

↓ 2009/73/EC

3~~2~~. In any event, the distribution system operator shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings.

4~~3.~~ Each distribution system operator shall provide any other distribution, transmission, LNG, and/or storage system operator with sufficient information to ensure that the transport and storage of natural gas takes place in a manner compatible with the secure and efficient operation of the interconnected system.

5~~4.~~ Each distribution system operator shall provide system users with the information they need for efficient access to, including use of, the system.

6~~5.~~ Where a distribution system operator is responsible for balancing the distribution system, rules adopted by it for that purpose shall be objective, transparent and non-discriminatory, including rules for the charging of system users for energy imbalance. Terms and conditions, including rules and tariffs, for the provision of such services by distribution system operators shall be established pursuant to a methodology compatible with Article 72~~41~~(7) in a non-discriminatory and cost-reflective way and shall be published.

⇩ new

7. Distribution system operators shall cooperate with transmission system operators to ensure the effective participation of market participants connected to their grid in retail, wholesale and balancing market in the entry-exit system to which the distribution system belongs to.

8. The distribution system operators shall establish and publish transparent and efficient procedures for non-discriminatory connection of new production installations of renewable and low carbon gases. Those procedures shall be subject to approval by the regulatory authorities.

9. The distribution system operators shall not be entitled to refuse economically reasonable and technically feasible connection requests of a new production facility for renewable and low carbon gases.

Article 41

Decision-making powers regarding the connection of new production facilities for renewable and low carbon gases to the distribution system

Regulatory authorities shall oblige the distribution system operator to publish transparent and efficient procedures for non-discriminatory connection of new production installations of renewable and low carbon gases. Those procedures shall be subject to approval by the regulatory authorities.

↓ 2009/73/EC (adapted)
⇨ new

Article 42~~26~~

Unbundling of distribution system operators

1. Where the distribution system operator is part of a vertically integrated undertaking, it shall be independent at least in terms of its legal form, organisation and decision making from other activities not relating to distribution. Those rules shall not create an obligation to separate the ownership of assets of the distribution system from the vertically integrated undertaking.

2. In addition to the requirements under paragraph 1, where the distribution system operator is part of a vertically integrated undertaking, it shall be independent in terms of its organisation and decision-making from the other activities not related to distribution. In order to achieve this, the following minimum criteria shall apply:

   (a) ~~those~~⌦ the ⌫ persons responsible for the management of the distribution system operator ~~must~~ ⌦ shall ⌫ not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production, transmission ⇨, transportation ⇦ and supply of ⇨ gases ⇦ ~~natural~~ ~~gas~~;

   (b) appropriate measures ~~must~~ ⌦ shall ⌫ be taken to ensure that the professional interests of persons responsible for the management of the distribution system operator are taken into account in a manner that ensures that they are capable of acting independently;

   (c) the distribution system operator ~~must~~ ⌦ shall ⌫ have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the network;~~.~~ i~~I~~n order to fulfil those tasks, the distribution system operator shall have at its disposal the necessary resources including human, technical, financial and physical resources;~~.~~ t~~T~~his ~~should~~ ⌦ shall ⌫ not prevent the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets, regulated indirectly in accordance with Article 72~~41~~(7) in a subsidiary are protected;~~.~~ i~~I~~n particular, this shall enable the parent company to approve the annual financial plan, or any equivalent instrument, of the distribution system operator and to set global limits on the levels of indebtedness of its subsidiary;~~.~~ i~~I~~t shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of distribution lines, that do not exceed the terms of the approved financial plan, or any equivalent instrument; ~~and~~

   (d) the distribution system operator ~~must~~ ⌦ shall ⌫ establish a compliance programme, which sets out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored;~~.~~ t~~T~~he compliance programme shall set out the specific obligations of employees to meet that objective;~~.~~ a~~A~~n annual report, setting out the measures taken, shall

be submitted by the person or body responsible for monitoring the compliance programme, the compliance officer of the distribution system operator, to the regulatory authority referred to in Article 70~~39~~(1) and shall be published;~~.~~ t~~T~~he compliance officer of the distribution system operator shall be fully independent and shall have access to all the necessary information of the distribution system operator and any affiliated undertaking to fulfil his task.

3. Where the distribution system operator is part of a vertically integrated undertaking, the Member States shall ensure that the activities of the distribution system operator are monitored by regulatory authorities or other competent bodies so that it cannot take advantage of its vertical integration to distort competition. In particular, vertically integrated distribution system operators shall not, in their communication and branding, create confusion in respect of the separate identity of the supply branch of the vertically integrated undertaking.

4. Member States may decide not to apply paragraphs 1, 2 and 3 to integrated natural gas undertakings serving less than ~~100000~~100 000 connected customers.

Article 43~~27~~

Confidentiality obligations of distribution system operators

1. Without prejudice to Article 68~~30~~ or any other legal duty to disclose information, each distribution system operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner.

2. Distribution system operators shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

Article 44~~28~~

Closed distribution systems ⌦ of natural gas ⌫

1. Member States may provide for ~~national~~ regulatory authorities or other competent authorities to classify a system which distributes ⇨ natural ⇦ gas within a geographically confined industrial, commercial or shared services site and does not, without prejudice to paragraph 4, supply household customers, as a closed distribution system if:

   (a) for specific technical or safety reasons, the operations or the production process of the users of that system are integrated; or

   (b) that system distributes ⇨ natural ⇦ gas primarily to the owner or operator of the system or to their related undertakings.

2. Member States may provide for ~~national~~ regulatory authorities to exempt the operator of a closed ⇨ natural gas ⇦distribution system from the requirement under Article 27~~32~~(1) that tariffs, or the methodologies underlying their calculation, are approved prior to their entry into force in accordance with Article 72~~41~~.

3. Where an exemption is granted under paragraph 2, the applicable tariffs, or the methodologies underlying their calculation, shall be reviewed and approved in

accordance with Article 72~~41~~ upon request by a user of the closed ⇨ natural gas ⇦ distribution system.

4. Incidental use by a small number of households with employment or similar associations with the owner of the distribution system and located within the area served by a closed distribution system shall not preclude an exemption under paragraph 2 being granted.

⇩ new

5. Closed distribution systems shall be considered as distribution systems for the purposes of this Directive.

🡻 2009/73/EC (adapted)
⇨ new

Article 45~~29~~

Combined operator

Article ~~26~~44 (1) shall not prevent the operation of a combined transmission, LNG, storage and distribution system operator provided that ⌦ the ⌫ operator complies with Article 54~~9~~ (1), or ⌦ Articles ⌫ 55~~14~~ and 56~~15~~, or Chapter IX~~IV~~ ~~or falls under Article 4982(6)~~.

⇩ new

ChapterVII

Rules applicable to the dedicated hydrogen networks

Article 46

Tasks of hydrogen network, storage and terminal operators

1. Each operator of hydrogen networks, storage or terminal shall be responsible for:

   (a) operating, maintaining and developing under economic conditions a secure and reliable infrastructure for hydrogen transport or storage with due regard to the environment, in close cooperation with connected and neighbouring hydrogen network operators;

   (b) ensuring the long-term ability of the hydrogen system to meet reasonable demands for the transport and storage of hydrogen;

   (c) ensuring adequate means to meets its obligations;

   (d) providing to the operator of other networks or systems with which its system is interconnected sufficient information to ensure the secure and efficient

operation, coordinated development and interoperability of the interconnected system;

(e) not discriminating between system users or classes of infrastructure users, specifically in favour of its related undertakings; and

(f) providing system users with the information they need for efficient access to the infrastructure;

(g) taking all reasonable measures available to prevent and minimise hydrogen emissions in their operations and carrying out, at regular intervals, a hydrogen leak detection and repair survey of all relevant components under the operator responsibility;

(h) submitting a hydrogen leak detection report and, where necessary, a repair or replacement programme to the competent authorities;

2. Each hydrogen network operator shall build sufficient cross-border capacity to integrate European hydrogen infrastructure accommodating all economically reasonable and technically feasible demands for capacity and taking into account security of hydrogen supply.

3. Hydrogen network operators may be responsible for ensuring efficient hydrogen quality management in their networks in line with applicable hydrogen quality standards, where necessary for system management and subject to the approval of the regulatory authority.

Article 47

Existing hydrogen networks

1. Member States may decide to grant a derogation from the requirements of Articles 31, 62, 63 and 64 of this Directive, and Articles 6 and 47 of [recast Gas Regulation as proposed in COM(2021) xxx] to hydrogen networks that belonged to a vertically integrated undertaking on [date of entry into force]. The derogation shall be limited in scope to the network capacity in operation on [date of entry into force].

2. The derogation shall be limited in time and shall expire:

(a) where the vertically integrated undertaking submits a request to the regulatory authority to end the derogation and such request is approved by the regulatory authority;

(b) where the hydrogen network benefitting from the derogation is connected to another hydrogen network;

(c) where the hydrogen network benefitting from the derogation or its capacity is expanded;

(d) at the latest on 31 December 2030.

Article 48

Geographically confined hydrogen networks

1. Member States may provide for regulatory authorities to grant a derogation from Article 62 for hydrogen networks which transport hydrogen from one entry point to a

limited number of exit points within a geographically confined, industrial or commercial area..

2. The derogations under paragraph 1 shall apply at least until 31 December 2030. As from 1 January 2031, the derogation shall expire when one of the conditions below is fulfilled:

(a) where a competing renewable hydrogen producer wants to get access to the network;

(b) where the exempted hydrogen network becomes connected to another hydrogen network.

Member States shall take the necessary measures to ensure that access requests referred to in point (a) of this paragraph are notified to the regulatory authority.

Article 49

Hydrogen interconnectors with third countries

1. Hydrogen interconnectors between Member States and third countries shall be subject to the rules applicable to hydrogen networks as set out in this Directive and in [recast Gas Regulation as proposed in COM(2021) xxx]. Member States shall ensure that the enforcement of these rules takes into account their effective application on Union territory and the integrated nature of the interconnector.

2. For the purpose of implementing the requirements set out in paragraph 1, the Union shall, for each hydrogen interconnector, conclude prior to its operation an intergovernmental agreement with the connected third country, or third countries, setting out the operating rules for the hydrogen interconnector concerned where the Commission has determined that such an agreement is necessary to ensure compliance with the rules referred to in paragraph 1.

3. Such intergovernmental agreement may contain, as appropriate, rules specifying the implementation of the requirements of third-party access, tariff regulation and on the unbundling of the operator of the hydrogen interconnector, as well as rules on the certification of renewable and low-carbon hydrogen, including rules ensuring the collection of required data and the application of the criteria for accounting hydrogen produced from electricity as renewable hydrogen.

Article 50

Confidentiality for operators of hydrogen networks, hydrogen storage facilities and hydrogen terminals

1. Without prejudice to legal duties to disclose information, each operator of a hydrogen network, hydrogen storage facility or hydrogen terminal, and each owner of a hydrogen network, shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its activities, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner. In particular, if the operator of a hydrogen network, hydrogen storage facility or hydrogen terminal, or the owner of a hydrogen network is part of a vertically integrated undertaking, it shall not disclose any commercially sensitive information to the remaining parts of the undertaking, unless this is necessary for carrying out a business transaction.

2. The operator of a hydrogen network, hydrogen storage facility or hydrogen terminal shall not, in the context of sales or purchases of hydrogen by related undertakings, misuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

3. Information necessary for effective competition and the efficient functioning of the market shall be made public. That obligation shall be without prejudice to protecting commercially sensitive information.

Chapter VIII

Integrated network planning

↓ 2009/73/EC (adapted)
⇨ new

Article 51~~22~~

Network development and powers to make investment decisions

1. ⇨ At least ⇦ e~~E~~very ~~year~~ ⇨ two years ⇦ , ⌦ all ⌫ transmission system operators shall submit to the⌦ relevant ⌫regulatory authority a ten-year network development plan based on existing and forecast supply and demand after having consulted all ~~the~~ relevant stakeholders. ⇨ There shall be at least one single network development plan per Member State. Infrastructure operators, including LNG terminal operators, storage operators, distribution system operators as well as hydrogen, district heating infrastructure and electricity operators shall be required to provide and exchange all relevant information to the transmission system operators required for developing the single plan.⇦ That network development plan shall contain efficient measures in order to guarantee the adequacy of the ⇨ natural gas ⇦ system and the security of supply ⇨, in particular the compliance with the infrastructure standards under Regulation (EU) 2017/1938. The ten-year network development plan shall be published and accessible on a website ⇦.

2. The ten-year network development plan shall, in particular:

   (a) ~~indicate to market participants~~ ⇨ contain ⇦ the main ~~transmission~~ infrastructure that needs to be built or upgraded over the next ten years;

   (b) contain all the investments already decided and identify new investments which have to be executed in the next three years; ~~and~~

⇩ new

   (c) include information on infrastructure that can or will be decommissioned; and

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↓ 2009/73/EC
⇨ new

   (d~~c~~) provide for a time frame for all investment ⇨ and decommissioning ⇦ projects;~~.~~

⇩ new

(e) be based on a joint scenario framework developed between the relevant infrastructure operators, including relevant distribution system operators, of at least gas and electricity;

(f) be consistent with the results of the common and national risk assessments under Article 7 of Regulation 2017/1938;

(g) be in line with the integrated national energy and climate plan and its updates, and with the integrated national energy climate reports submitted in accordance with Regulation (EU) 2018/1999 and support the climate-neutrality objective set out in Article 2(1), of Regulation (EU) 2021/1119.

🡻 2009/73/EC (adapted)
⇨ new

3. When elaborating the ten-year network development plan, ⇨ the transmission system operator shall fully take into account the potential for alternatives to system expansion, for instance the use of demand response, as well as expected consumption following the application of the energy efficiency first principle, trade with other countries and the Union-wide network development plan. The transmission system operator shall assess how to address, where possible, a need across electricity and gases systems including information on the optimal location and size of energy storage and power to gas assets⇦ ~~the transmission system operator shall make reasonable assumptions about the evolution of the production, supply, consumption and exchanges with other countries, taking into account investment plans for regional and Community-wide networks, as well as investment plans for storage and LNG regasification facilities~~.

4. The regulatory authority shall consult all actual or potential system users on the ten-year network development plan in an open and transparent manner. Persons or undertakings claiming to be potential system users may be required to substantiate such claims. The regulatory authority shall publish the result of the consultation process, in particular possible needs for investments.

5. The regulatory authority shall examine whether the ten-year network development plan covers all investment needs identified during the consultation process, and whether it is consistent with ⇨ the most recent Union wide simulation of disruption scenarios carried out by the ENTSO for Gas under Article 7 of Regulation (EU) 2017/1938, with the regional and national risk assessments and ⇦ the non-binding ~~Community~~ ⌦ Union ⌫ -wide ten-year network development plan (~~Community~~ ⌦ Union ⌫-wide network development plan) referred to in Article 30(1), point (b), of Regulation (EU) 2019/943 ~~Article 8(3)(b) of Regulation (EC) No 715/2009~~. If any doubt arises as to the consistency with the ~~Community~~ ⌦ Union ⌫-wide network development plan, the regulatory authority shall consult ⌦ ACER ⌫ ~~the Agency~~. The regulatory authority may require the transmission system operator to amend its ten-year network development plan.

⇩ new

The competent national authorities shall examine the consistency of the ten-year network development plan with the national energy and climate plan and its updates and with the integrated national energy climate reports submitted in accordance with Regulation (EU) 2018/1999.

🡻 2009/73/EC (adapted)
⇨ new

6. The regulatory authority shall monitor and evaluate the implementation of the ten-year network development plan.

7. In circumstances where the ~~transmission system operator~~ ⇨ independent system operator or independent transmission operator ⇦, other than for overriding reasons beyond its control, does not execute an investment, which, under the ten-year network development plan, was to be executed in the following three years, Member States shall ensure that the regulatory authority is required to take at least one of the following measures to ensure that the investment in question is made if such investment is still relevant on the basis of the most recent ten-year network development plan:

   (a) to require the transmission system operator to execute the investments in question;

   (b) to organise a tender procedure open to any investors for the investment in question; ~~or~~

   (c) to oblige the transmission system operator to accept a capital increase to finance the necessary investments and allow independent investors to participate in the capital.

   Where the regulatory authority has made use of its powers under point (b) the first subparagraph, it may oblige the transmission system operator to agree to one or more of the following:

   (a) financing by any third party;

   (b) construction by any third party;

   (c) building the new assets concerned itself;

   (d) operating the new assets concerned itself.

   The transmission system operator shall provide the investors with all information needed to realise the investment, shall connect new assets to the transmission network and shall generally make its best efforts to facilitate the implementation of the investment project.

   The relevant financial arrangements shall be subject to approval by the regulatory authority.

8. Where the regulatory authority has made use of its powers under ~~the first subparagraph of~~ paragraph 7, the relevant tariff regulations shall cover the costs of the investments in question.

⇩ new

Article 52

Hydrogen network development reporting

1. Hydrogen network operators shall submit to the regulatory authority, at regular intervals as determined by that authority, an overview of the hydrogen network infrastructure they aim to develop. That overview shall in particular:

   (a) include information on capacity needs, both in volume and duration, as negotiated between network users and hydrogen network operators;

   (b) include information on the extent to which repurposed natural gas pipelines will be used for the transport of hydrogen;

   (c) be in line with the integrated national energy and climate plan and its updates, and with the integrated national energy and climate reports submitted in accordance with Regulation (EU) 2018/1999 and support the climate-neutrality objective set out in Article 2(1) of Regulation (EU) 2021/1119.

2. Hydrogen storage and terminal operators shall provide and exchange all relevant information required for developing the overview with the hydrogen network operators. Hydrogen network operators shall exchange all relevant information required for developing the overview with other hydrogen network operators.

3. The regulatory authority shall examine the overview. It shall take the overall energy-economic necessity of the hydrogen network into account in this examination as well as the joint scenario framework developed under Article 51 (2), point e).

4. The regulatory authority shall take the examination of the overview into account in its approval of dedicated charges within the meaning of Article 4 of [recast Gas Regulation as proposed in COM(2021)xxx].

5. Hydrogen network operators shall publish on a regular basis a joint report on the development of the hydrogen system based on the overview submitted to the regulatory authority. They shall take the examination of the regulatory authority under paragraph 3 into account.

6. Member States may decide to apply the requirements pursuant to Article 51 to hydrogen network operators.

Article 53

Financing cross-border hydrogen infrastructure

1. Where Member States apply a system of regulated third party access to hydrogen networks pursuant to Article 31, paragraph 1 and where a hydrogen interconnector project is included in the EU-wide ten-year network development plan as referred to in Article 29 or Article 43 of [recast Gas Regulation as proposed in COM(2021)xxx] and is not a project of common interest as referred to in [Chapter II and Annex I point 3 of Regulation xxx on Guidelines for trans-European energy infrastructure], adjacent and affected hydrogen network operators shall design a project plan, including a request for cross-border cost allocation, and submit it jointly to the concerned regulatory authorities for a joint approval.

2. The project plan and request for cross-border cost allocation shall be accompanied by a project-specific cost-benefit analysis, taking into account benefits beyond the borders of Member States concerned, and by a business plan evaluating the financial viability of the project, which shall include a financing solution and specify whether the hydrogen network operators involved agree on a substantiated proposal for a cross-border cost allocation.

3. The concerned regulatory authorities shall, after consulting the hydrogen network operators, take coordinated decisions on the allocation of investment costs to be borne by each network operator for the project.

4. Where the concerned regulatory authorities cannot reach an agreement on the request within six months, ACER shall take a decision, following the process pursuant to Article 6(10) in Regulation (EU) 2019/942.

5. After 31 December 2030, all affected hydrogen network operators shall negotiate a system of financial compensation to ensure financing for cross-border hydrogen infrastructure. While developing that, hydrogen network operators shall conduct an extensive consultation process involving all relevant market participants.

6. The hydrogen network operators concerned shall agree on the system of financial compensation within 3 years and by 31 December 2033. If no agreement is reached within that period, the involved regulatory authorities shall decide jointly within 2 years. Where the relevant regulatory authorities cannot reach a joint agreement within 2 years, ACER shall take a decision, following the process pursuant to Article 6(10) in Regulation (EU) 2019/942.

7. The system of financial compensation shall be implemented in line with Article 72(1), point (b).

8. For the transition to a system of financial compensation mechanism, existing capacity contracts shall not be affected by the established financial compensation mechanism.

9. Further details required to implement the process set out in this Article, including required processes and time frames, process for reviewing and if necessary amending the compensation mechanism allowing taking into account tariff evolution and the development of the hydrogen networks, shall be set in a network code established on the basis of Article 54 of [recast Gas Regulation as proposed in COM(2021)xxx].

↓ 2009/73/EC (adapted)
⇨ new

Chapter IX

⌦ Unbundling of transmission system operators ⌫

SECTION 1
⌦ OWNERSHIP UNBUNDLING ⌫

Article 54~~9~~

Unbundling of transmission systems and transmission system operators

1. Member States shall ensure that ~~from 3 March 2012~~:

   (a) each undertaking which owns a transmission system acts as a transmission system operator;

   (b) the same person or persons are entitled neither:

      (i) directly or indirectly to exercise control over an undertaking performing any of the functions of production or supply, and directly or indirectly to exercise control or exercise any right over a transmission system operator or over a transmission system; nor

      (ii) directly or indirectly to exercise control over a transmission system operator or over a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of production or supply;

   (c) the same person or persons are not entitled to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking, of a transmission system operator or a transmission system, and directly or indirectly to exercise control or exercise any right over an undertaking performing any of the functions of production or supply; ~~and~~

   (d) the same person is not entitled to be a member of the supervisory board, the administrative board or bodies legally representing the undertaking, of both an undertaking performing any of the functions of production or supply and a transmission system operator or a transmission system.

2. The rights referred to in ~~points (b) and (c) of~~ paragraph 1, points (b) and (c), shall include, in particular:

   (a) the power to exercise voting rights;

   (b) the power to appoint members of the supervisory board, the administrative board or bodies legally representing the undertaking; or

   (c) the holding of a majority share.

3. For the purpose of paragraph 1, point (b), the ~~notion~~ ⌦ term ⌫ 'undertaking performing any of the functions of production or supply' shall ~~include~~ ⌦ be understood as including ⌫ 'undertaking performing any of the functions of

generation ~~and~~ ⌦ or ⌫ supply' within the meaning of Directive ~~2009/72/EC~~(EU) 2019/944 of the European Parliament and of the Council[36] ~~[37] of 13 July 2009 concerning common rules for the internal market in electricity[38]~~, and the terms 'transmission system operator' and 'transmission system' shall ⌦ be understood as including ⌫ ~~include~~ 'transmission system operator' and 'transmission system' within the meaning of that Directive.

~~4. Member States may allow for derogations from points (b) and (c) of paragraphs 1, until 3 March 2013, provided that transmission system operators are not part of a vertically integrated undertaking~~.

~~5~~4. The obligation set out in paragraph 1, point (a), of this Article shall be deemed to be fulfilled in a situation where two or more undertakings which own transmission systems have created a joint venture which acts as a transmission system operator in two or more Member States for the transmission systems concerned. No other undertaking may be part of the joint venture, unless it has been approved under Article 55~~14~~ as an independent system operator or as an independent transmission operator for the purposes of Section 3~~Chapter IV~~.

~~6~~5. For the implementation of this Article, where the person referred to in points (b), (c) and (d) of paragraph 1 is the Member State or another public body, two separate public bodies exercising control over a transmission system operator or over a transmission system on the one hand, and over an undertaking performing any of the functions of production or supply on the other, shall be deemed not to be the same person or persons.

~~7~~6. Member States shall ensure that neither commercially sensitive information referred to in Article 36~~16~~ held by a transmission system operator which was part of a vertically integrated undertaking, nor the staff of such a transmission system operator, is transferred to undertakings performing any of the functions of production and supply.

↓ 2019/692 Art. 1.2(a)

~~8~~7. Where on 3 September 2009 the transmission system belonged to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1. As regards the part of the transmission system connecting a Member State with a third country between the border of that Member State and the first connection point with that Member State's network, where on 23 May 2019 the transmission system belongs to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1.

↓ 2009/73/EC

In such case, the Member State concerned shall either:

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36 Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

37 ~~Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity (OJ L 211, 14.8.2009, p. 55).~~

38 ~~See page 55 of this Official Journal.~~

(a) designate an independent system operator in accordance with Article 55~~14~~, or

(b) comply with the provisions of Section 3~~Chapter IV~~.

↓ 2019/692 Art. 1.2(b)

~~9~~8. Where on 3 September 2009 the transmission system belonged to a vertically integrated undertaking and arrangements are in place which guarantee more effective independence of the transmission system operator than the provisions of Section 3~~Chapter IV~~., a Member State may decide not to apply paragraph 1 of this Article.

As regards the part of the transmission system connecting a Member State with a third country between the border of that Member State and the first connection point with that Member State's network, where on 23 May 2019 the transmission system belongs to a vertically integrated undertaking and arrangements are in place which guarantee more effective independence of the transmission system operator than the provisions of Section 3~~Chapter IV~~., that Member State may decide not to apply paragraph 1 of this Article.

↓ 2009/73/EC (adapted)

~~10~~9. Before an undertaking is approved and designated as a transmission system operator under paragraph 9 of this Article, it shall be certified ⌦ in accordance with ⌫ ~~according to~~ the procedures laid down in Article 65~~10~~(4), (5) and (6) of this Directive and in Article 3 of Regulation (EC) No 715/2009~~, pursuant to which~~ ⌦ After that, ⌫ the Commission shall verify that the arrangements in place clearly guarantee more effective independence of the transmission system operator than the provisions of Section 3~~Chapter IV~~.

~~11~~10. Vertically integrated undertakings which own a transmission system shall not in any event be prevented from taking steps to comply with paragraph 1.

~~12~~11. Undertakings performing any of the functions of production or supply shall not in any event be able to directly or indirectly take control over or exercise any right over unbundled transmission system operators in Member States which apply paragraph 1.

SECTION 2

⌦ INDEPENDENT SYSTEM OPERATORS ⌫

Article 55~~14~~

Independent system operators

↓ 2019/692 Art. 1.3 (adapted)
⇨ new

1. Where on 3 September 2009 the transmission system belonged to a vertically integrated undertaking, a Member State may decide not to apply Article 56~~9~~ (1) and

to designate an independent system operator upon a proposal from the transmission system owner.

As regards the part of the transmission system connecting a Member State with a third country between the border of that Member State and the first connection point with that Member State's network, where on 23 May 2019 the transmission system ~~belongs~~ ⌦ belonged ⌫ to a vertically integrated undertaking, that Member State may decide not to apply Article 59~~9~~(1) and to designate an independent system operator upon a proposal from the transmission system owner.

The designation of an independent system operator shall be subject to approval by the Commission.

2. The Member State may approve and designate an independent system operator only where:

(a) the candidate operator has demonstrated that it complies with the requirements of Article 54~~9~~ (1), points (b), (c) and (d);

(b) the candidate operator has demonstrated that it has at its disposal the required financial, technical, physical and human resources to carry out its tasks under Article 35~~13~~;

(c) the candidate operator has undertaken to comply with a ten-year network development plan monitored by the regulatory authority;

(d) the transmission system owner has demonstrated its ability to comply with its obligations under paragraph 5.,~~.~~ t~~T~~o ⌦ which ⌫ end~~s~~ , it shall provide all the draft contractual arrangements with the candidate undertaking and any other relevant entity; ~~and~~

(e) the candidate operator has demonstrated its ability to comply with its obligations under ~~Regulation (EC) No 715/2009~~ ⌦ [recast Gas regulation as proposed in COM(2021) xxx] ⌫ including the cooperation of transmission system operators at European and regional level.

3. Undertakings which have been certified by the regulatory authority as having complied with the requirements of Article 66~~11~~ and of paragraph 2 of this Article shall be approved and designated as independent system operators by Member States. The certification procedure in either Article 65~~10~~ of this Directive and Article 3 of Regulation (EC) No 715/2009 or in Article 66~~11~~ of this Directive shall be applicable.

4. Each independent system operator shall be responsible for granting and managing third-party access, including the collection of access charges and congestion charges, for operating, maintaining and developing the transmission system, as well as for ensuring the long-term ability of the system to meet reasonable demand through investment planning. When developing the transmission system the independent system operator shall be responsible for planning (including the authorisation procedure), construction and commissioning of the new infrastructure. For this purpose, the independent system operator shall act as a transmission system operator in accordance with this Chapter. The transmission system owner shall not be responsible for granting and managing third-party access, nor for investment planning.

5. Where an independent system operator has been designated, the transmission system owner shall:

(a) provide all the relevant cooperation and support to the independent system operator for the fulfilment of its tasks, including in particular all relevant information;

(b) finance the investments decided by the independent system operator and approved by the regulatory authority, or give its agreement to financing by any interested party including the independent system operator;~~,~~ t~~T~~he. The relevant financing arrangements shall be subject to approval by the regulatory authority;~~,~~ p~~P~~rior. Prior to such approval, the regulatory authority shall consult the transmission system owner together with other interested parties;

(c) provide for the coverage of liability relating to the network assets, excluding the liability relating to the tasks of the independent system operator; ~~and~~

(d) provide guarantees to facilitate financing any network expansions with the exception of those investments where, pursuant to point (b), it has given its agreement to financing by any interested party including the independent system operator.

6. In close cooperation with the regulatory authority, the relevant national competition authority shall be granted all relevant powers to effectively monitor compliance of the transmission system owner with its obligations under paragraph 5.

⬇ 2009/73/EC (adapted) ⇨ new

Article 56~~15~~

Unbundling of transmission system owners, ~~and~~ storage system ⌦ and hydrogen storage ⌫ operators

~~1.~~ ~~A~~ ~~t~~Transmission system ⇨ and hydrogen network ⇦ ~~owner~~ ⌦ owners ⌫ , where an independent system operator ⇨ or an independent hydrogen network operator⇦ has been appointed, and ~~a~~ storage system ~~operator~~ ⌦ operators ⌫ ⇨ or hydrogen storage facility operators ⇦ which are part of vertically integrated undertakings shall be independent at least in terms of their legal form, organisation and decision making from other activities not relating to transmission, distribution ⇨ , transport ⇦ and storage ⇨ of gases ⇦ .

This Article shall apply only to ⇨ natural gas ⇦ storage facilities that are technically and/or economically necessary for providing efficient access to the system for the supply of customers pursuant to Article 29~~33~~.

~~2.~~ In order to ensure the independence of the transmission system ⇨ or hydrogen network ⇦ owner and storage system ⇨ or hydrogen storage operator ⇦ referred to in the first paragraph ~~paragraph 1~~, the following minimum criteria shall apply:

(a) persons responsible for the management of the transmission system ⇨ or hydrogen network ⇦ owner and storage system ⇨ or hydrogen storage ⇦ operator shall not participate in company structures of the integrated natural gas undertaking responsible, directly or indirectly, for the day-to-day operation of the production and supply of ~~natural gas~~ ⇨ gases ⇦;

(b) appropriate measures shall be taken to ensure that the professional interests of persons responsible for the management of the transmission system ⇨ or hydrogen

network ⇦ owner and storage system ⇨ or hydrogen storage ⇦ operator are taken into account in a manner that ensures that they are capable of acting independently;

(c) the storage system⇨ or hydrogen storage ⇦ operator shall have effective decision-making rights, independent from the integrated natural gas undertaking, with respect to assets necessary to operate, maintain or develop the storage facilities~~. T~~; this shall not preclude the existence of appropriate coordination mechanisms to ensure that the economic and management supervision rights of the parent company in respect of return on assets regulated indirectly in accordance with Article 72~~41~~(7) in a subsidiary are protected~~. In particular, this~~ ⌦ ; it ⌫ shall enable ⌦ in particular ⌫ the parent company to approve the annual financial plan, or any equivalent instrument, of the storage system ⇨ or hydrogen storage ⇦ operator and to set global limits on the levels of indebtedness of its subsidiary; it~~I~~t shall not permit the parent company to give instructions regarding day-to-day operations, nor with respect to individual decisions concerning the construction or upgrading of storage facilities, that do not exceed the terms of the approved financial plan, or any equivalent instrument; ~~and~~

(d) the transmission system ⇨ or hydrogen network ⇦ owner and the storage system ⇨ or hydrogen storage ⇦ operator shall establish a compliance programme, which ~~sets~~ ⌦ shall set ⌫ out measures taken to ensure that discriminatory conduct is excluded, and ensure that observance of it is adequately monitored~~. The compliance programme~~ ⌦ ; it ⌫ shall ⌦ also ⌫ set out the specific obligations of employees to meet those objectives; a~~A~~n annual report, setting out the measures taken, shall be submitted by the person or body responsible for monitoring the compliance programme to the regulatory authority and shall be published.

~~3.~~ The Commission ~~may~~ ⇨ is empowered ⇦ to adopt ⇨ delegated acts in accordance with Article 83 supplementing this Directive in order to set ⇦ ~~G~~guidelines to ensure full and effective compliance of the transmission system ⇨ or hydrogen network ⇦ owner and of the storage system ⇨ or hydrogen storage ⇦ operator with paragraph 2 of this Article . ~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(3).~~

~~CHAPTER IV~~

SECTION 3

INDEPENDENT TRANSMISSION ~~OPERATOR~~ ⌦ OPERATORS ⌫

Article 57~~17~~

Assets, equipment, staff and identity

1. Transmission system operators shall be equipped with all human, technical, physical and financial resources necessary for fulfilling their obligations under this Directive and carrying out the activity of gas transmission, in particular:

   (a) assets that are necessary for the activity of gas transmission, including the transmission system, shall be owned by the transmission system operator;

   (b) personnel necessary for the activity of gas transmission, including the performance of all corporate tasks, shall be employed by the transmission system operator;

(c) leasing of personnel and rendering of services, to and from any other parts of the vertically integrated undertaking shall be prohibited. A transmission system operator may, however, render services to the vertically integrated undertaking as long as:

(i) the provision of those services does not discriminate between system users, is available to all system users on the same terms and conditions and does not restrict, distort or prevent competition in production or supply; ~~and~~

(ii) the terms and conditions of the provision of those services are approved by the regulatory authority;

(d) without prejudice to the decisions of the Supervisory Body under Article 60~~20~~, appropriate financial resources for future investment projects ~~and/~~or for the replacement of existing assets shall be made available to the transmission system operator in due time by the vertically integrated undertaking following an appropriate request from the transmission system operator.

2. The activity of gas transmission shall include at least the following tasks in addition to those listed in Article 35~~13~~:

(a) the representation of the transmission system operator and contacts to third parties and the regulatory authorities;

(b) the representation of the transmission system operator within the European Network of Transmission System Operators for Gas (ENTSO for Gas);

(c) granting and managing third-party access on a non-discriminatory basis between system users or classes of system users;

(d) the collection of all the transmission system related charges including access charges, balancing charges for ancillary services such as gas treatment, purchasing of services (balancing costs, energy for losses);

(e) the operation, maintenance and development of a secure, efficient and economic transmission system;

(f) investment planning ensuring the long-term ability of the system to meet reasonable demand and guaranteeing security of supply;

(g) the setting up of appropriate joint ventures, including with one or more transmission system operators, gas exchanges, and the other relevant actors pursuing the objective to develop the creation of regional markets or to facilitate the liberalisation process; ~~and~~

(h) all corporate services, including legal services, accountancy and IT services.

3. Transmission system operators shall be organised in a legal form as referred to in Annex II to Directive (EU) 2017/1132 of the European Parliament and of the Council ~~Article 1 of~~ ~~Council Directive 68/151/EEC~~[39].

[39] ~~First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ L 65, 14.3.1968, p. 8).~~

4. The transmission system operator shall not, in its corporate identity, communication, branding and premises, create confusion in respect of the separate identity of the vertically integrated undertaking or any part thereof.

5. The transmission system operator shall not share IT systems or equipment, physical premises and security access systems with any part of the vertically integrated undertaking, nor use the same consultants or external contractors for IT systems or equipment, and security access systems.

6. The accounts of transmission system operators shall be audited by an auditor other than the one auditing the vertically integrated undertaking or any part thereof.

Article 58~~18~~

Independence of the transmission system operator

1. Without prejudice to the decisions of the Supervisory Body under Article 60~~20~~, the transmission system operator shall have:

   (a) effective decision-making rights, independent from the vertically integrated undertaking, with respect to assets necessary to operate, maintain or develop the transmission system; ~~and~~

   (b) the power to raise money on the capital market in particular through borrowing and capital increase.

2. The transmission system operator shall at all times act so as to ensure it has the resources it needs in order to carry out the activity of transmission properly and efficiently and develop and maintain an efficient, secure and economic transmission system.

3. Subsidiaries of the vertically integrated undertaking performing functions of production or supply shall not have any direct or indirect shareholding in the transmission system operator. The transmission system operator shall neither have any direct or indirect shareholding in any subsidiary of the vertically integrated undertaking performing functions of production or supply, nor receive dividends or any other financial benefit from that subsidiary.

4. The overall management structure and the corporate statutes of the transmission system operator shall ensure effective independence of the transmission system operator in compliance with this Chapter. The vertically integrated undertaking shall not determine, directly or indirectly, the competitive behaviour of the transmission system operator in relation to the day to day activities of the transmission system operator and management of the network, or in relation to activities necessary for the preparation of the ten-year network development plan developed pursuant to Article 51~~22~~.

5. In fulfilling their tasks ⌦ listed ⌫ in Article 35~~13~~ and Article 57~~17~~(2) of this Directive, and in complying with Article 15~~13~~(1), Article 5~~14~~(1)(a), Article 9~~16~~(2), (3) and (5), Article 30~~18~~(6) and Article 12~~21~~(1) of ~~Regulation (EC) No 715/2009~~ ⌦ [recast Gas Regulation as proposed in COM(2021) xxx] ⌫ , transmission system operators shall not discriminate against different persons or entities and shall not restrict, distort or prevent competition in production or supply.

6. Any commercial and financial relations between the vertically integrated undertaking and the transmission system operator, including loans from the transmission system operator to the vertically integrated undertaking, shall comply with market conditions. The transmission system operator shall keep detailed records of such commercial and financial relations and make them available to the regulatory authority upon request.

7. The transmission system operator shall submit for approval by the regulatory authority all commercial and financial agreements with the vertically integrated undertaking.

8. The transmission system operator shall inform the regulatory authority of the financial resources, referred to in Article 57~~17~~(1), point (d), available for future investment projects ~~and/~~or for the replacement of existing assets.

9. The vertically integrated undertaking shall refrain from any action impeding or prejudicing the transmission system operator from complying with its obligations in this Chapter and shall not require the transmission system operator to seek permission from the vertically integrated undertaking in fulfilling those obligations.

10. An undertaking which has been certified by the regulatory authority as being in compliance with the requirements of this Chapter shall be approved and designated as a transmission system operator by the Member State concerned. The certification procedure in either Article 65~~10~~ of this Directive and Article 13~~3~~ of Regulation (EC) No 715/2009 or in Article 66~~11~~ of this Directive shall apply.

⇩ new

11. The transmission system operator shall make public detailed information regarding the quality of the gases transported in its networks, based on Articles 16 and 17 of Regulation (EU) 2015/703

🡻 2009/73/EC (adapted)

Article 59~~19~~

Independence of the staff and the management of the transmission system operator

1. Decisions regarding the appointment and renewal, working conditions including remuneration, and termination of the term of office, of the persons responsible for the management ~~and/~~or members of the administrative bodies of the transmission system operator shall be taken by the Supervisory Body of the transmission system operator appointed in accordance with Article 60~~20~~.

2. The identity of, and the conditions governing the term, the duration and the termination of office of, the persons nominated by the Supervisory Body for appointment or renewal as persons responsible for the executive management and/or as members of the administrative bodies of the transmission system operator, and the reasons for any proposed decision terminating such term of office, shall be notified to the regulatory authority. Those conditions and the decisions referred to in

paragraph 1 shall become binding only if the regulatory authority has raised no objections within three weeks of ⌦ the ⌫notification.

The regulatory authority may object to the decisions referred to in paragraph 1 where:

(a) doubts arise as to the professional independence of a nominated person responsible for the management and/or member of the administrative bodies; or

(b) in the case of premature termination of a term of office, doubts exist regarding the justification of such premature termination.

3. No professional position or responsibility, interest or business relationship, directly or indirectly, with the vertically integrated undertaking or any part of it or its controlling shareholders other than the transmission system operator shall be exercised for a period of three years before the appointment of the persons responsible for the management ~~and/~~or members of the administrative bodies of the transmission system operator who are subject to this paragraph.

4. The persons responsible for the management and/or members of the administrative bodies, and employees of the transmission system operator shall have no other professional position or responsibility, interest or business relationship, directly or indirectly, with any other part of the vertically integrated undertaking or with its controlling shareholders.

5. The persons responsible for the management ~~and/~~or members of the administrative bodies, and employees of the transmission system operator shall hold no interest in or receive any financial benefit, directly or indirectly, from any part of the vertically integrated undertaking other than the transmission system operator. Their remuneration shall not depend on activities or results of the vertically integrated undertaking other than those of the transmission system operator.

6. Effective rights of appeal to the regulatory authority shall be guaranteed for any complaints by the persons responsible for the management ~~and/~~or members of the administrative bodies of the transmission system operator against premature terminations of their term of office.

7. After termination of their term of office in the transmission system operator, the persons responsible for its management ~~and/~~or members of its administrative bodies shall have no professional position or responsibility, interest or business relationship with any part of the vertically integrated undertaking other than the transmission system operator, or with its controlling shareholders for a period of not less than four years.

8. Paragraph 3 shall apply to the majority of the persons responsible for the management ~~and/~~or members of the administrative bodies of the transmission system operator.

The persons responsible for the management ~~and/~~or members of the administrative bodies of the transmission system operator who are not subject to paragraph 3 shall have exercised no management or other relevant activity in the vertically integrated undertaking for a period of at least six months before their appointment.

The first subparagraph of this paragraph and paragraphs 4 to 7 shall be applicable to all the persons belonging to the executive management and to those directly reporting to them on matters related to the operation, maintenance or development of the network.

Article 60~~20~~

Supervisory Body

1. The transmission system operator shall have a Supervisory Body which shall be in charge of taking decisions which may have a significant impact on the value of the assets of the shareholders within the transmission system operator, in particular decisions regarding the approval of the annual and longer-term financial plans, the level of indebtedness of the transmission system operator and the amount of dividends distributed to shareholders. The decisions falling under the remit of the Supervisory Body shall exclude those that are related to the day to day activities of the transmission system operator and management of the network, and in relation to activities necessary for the preparation of the ten-year network development plan developed pursuant to Article 51~~22~~.

2. The Supervisory Body shall be composed of members representing the vertically integrated undertaking, members representing third party shareholders and, where the relevant legislation of a Member State so provides, members representing other interested parties such as employees of the transmission system operator.

3. ~~The first subparagraph of~~ Article 59~~19~~(2), first subparagraph, and Article 59~~19~~ (3) to (7) shall apply to at least half of the members of the Supervisory Body minus one.

   Article 59~~19~~(2), second subparagraph, point (b), shall apply to all the members of the Supervisory Body.

Article 61~~21~~

Compliance programme and compliance officer

1. Member States shall ensure that transmission system operators establish and implement a compliance programme which sets out the measures taken in order to ensure that discriminatory conduct is excluded, and ensure that the compliance with that programme is adequately monitored. The compliance programme shall set out the specific obligations of employees to meet those objectives. It shall be subject to approval by the regulatory authority. Without prejudice to the powers of the national regulator, compliance with the program shall be independently monitored by a compliance officer.

2. The compliance officer shall be appointed by the Supervisory Body, subject to the approval by the regulatory authority. The regulatory authority may refuse the approval of the compliance officer only for reasons of lack of independence or professional capacity. The compliance officer may be a natural or legal person. Article 59~~19~~(2) to (8) shall apply to the compliance officer.

3. The compliance officer shall be in charge of:

   (a) monitoring the implementation of the compliance programme;

   (b) elaborating an annual report, setting out the measures taken in order to implement the compliance programme and submitting it to the regulatory authority;

   (c) reporting to the Supervisory Body and issuing recommendations on the compliance programme and its implementation;

   (d) notifying the regulatory authority on any substantial breaches with regard to the implementation of the compliance programme; ~~and~~

(e) reporting to the regulatory authority on any commercial and financial relations between the vertically integrated undertaking and the transmission system operator.

4. The compliance officer shall submit the proposed decisions on the investment plan or on individual investments in the network to the regulatory authority. This shall occur at the latest when the management ~~and/~~or the competent administrative body of the transmission system operator submits them to the Supervisory Body.

5. Where the vertically integrated undertaking, in the general assembly or through the vote of the members of the Supervisory Body it has appointed, has prevented the adoption of a decision with the effect of preventing or delaying investments, which under the ten-year network development plan, was to be executed in the following three years, the compliance officer shall report this to the regulatory authority, which then shall act in accordance with Article 51~~22~~.

6. The conditions governing the mandate or the employment conditions of the compliance officer, including the duration of ⌦ its ⌫ ~~his~~ mandate, shall be subject to approval by the regulatory authority. Those conditions shall ensure the independence of the compliance officer, including by providing it with all the resources necessary for fulfilling ⌦ its ⌫ ~~his~~ duties. During ~~his~~ ⌦ its ⌫ mandate, the compliance officer shall have no other professional position, responsibility or interest, directly or indirectly, in or with any part of the vertically integrated undertaking or with its controlling shareholders.

7. The compliance officer shall report regularly, either orally or in writing, to the regulatory authority and shall have the right to report regularly, either orally or in writing, to the Supervisory Body of the transmission system operator.

8. The compliance officer may attend all meetings of the management or administrative bodies of the transmission system operator, and those of the Supervisory Body and the general assembly. The compliance officer shall attend all meetings that address the following matters:

(a) conditions for access to the network, as defined in ~~Regulation (EC) No 715/2009~~ ⌦ [recast Gas Regulation as proposed in COM(2021)xxx] ⌫ , in particular regarding tariffs, third party access services, capacity allocation and congestion management, transparency, balancing and secondary markets;

(b) projects undertaken in order to operate, maintain and develop the transmission system, including investments in new transport connections, in expansion of capacity and in optimisation of existing capacity;

(c) energy purchases or sales necessary for the operation of the transmission system.

9. The compliance officer shall monitor the compliance of the transmission system operator with Article 36~~16~~.

10. The compliance officer shall have access to all relevant data and to the offices of the transmission system operator and to all the information necessary for the fulfilment of his task.

11. After prior approval by the regulatory authority, the Supervisory Body may dismiss the compliance officer. It shall dismiss the compliance officer for reasons of lack of independence or professional capacity upon request of the regulatory authority.

12. The compliance officer shall have access to the offices of the transmission system operator without prior announcement.

⇩ new

SECTION 4

UNBUNDLING OF DEDICATED HYDROGEN NETWORK OPERATORS

Article 62

Unbundling of hydrogen network operators

1. Member States shall ensure that from [end of transposition period+1year] hydrogen network operators are unbundled in accordance with the rules for natural gas transmission system operators set out in Article 54(1) to (3).

2. For the purpose of this Article, of Articles 42 and 54, and of Articles 35 and 43 of Directive (EU) 2019/944, 'production or supply' shall include production and supply of hydrogen, and 'transmission' shall include transport of hydrogen.

3. Where on [entry into force] the hydrogen network belonged to a vertically integrated undertaking, a Member State may decide not to apply paragraph 1. In such case, the Member State concerned shall designate an independent hydrogen network operator unbundled in accordance with the rules on independent system operators for natural gas set out Article 55. Hydrogen network operators and transmission system operators for gas unbundled in accordance with Article 54(1) can act as independent hydrogen network operator, subject to the requirements pursuant to Article 63.

4. Until 31 December 2030, Member State may designate an integrated hydrogen network operator unbundled in accordance with the rules on independent transmission operators for natural gas set out in Section 3 of Chapter IX. Such designation shall expire by 31 December 2030 at the latest.

5. The rules applicable to transmission system operators set out in Article 66 shall apply to hydrogen network operators.

Article 63

Horizontal unbundling of hydrogen network operators

Where a hydrogen network operator is part of an undertaking active in transmission or distribution of natural gas or electricity, it shall be independent at least in terms of its legal form.

Article 64

Unbundling of accounts for hydrogen system operators

Member States shall ensure that the accounts of hydrogen system operators are kept in accordance with Article 69.

↓ 2009/73/EC (adapted)
⇨ new

SECTION 5

⌦DESIGNATION AND CERTIFICATION OF NATURAL GAS AND HYDROGEN NETWORK OPERATORS ⌫

Article 65~~10~~

Designation and certification of transmission system operators ⌦ and hydrogen network operators ⌫

1. Before an undertaking is approved and designated as transmission system operator ⇨ or hydrogen network operator ⇦ , it shall be certified according to the procedures laid down in paragraphs 4, 5 and 6 of this Article and in Article 13~~3~~ of ~~Regulation (EC) No 715/2009~~ ⌦ [recast Gas Regulation proposed by COM(2021) xxx] ⌫ .

2. Undertakings ~~which own a transmission system and~~ which have been certified by the ~~national~~ regulatory authority as having complied with the requirements of Article 54~~9~~ ⇨ or 62 ⇦ , pursuant to the certification procedure, shall be approved and designated as transmission system operators ⇨ or hydrogen network operators ⇦ by Member States. The designation of transmission system operators ⇨ and hydrogen network operators ⇦ shall be notified to the Commission and published in the *Official Journal of the European Union*.

3. ~~Transmission system operators~~ ⇨ Certified undertakings ⇦ shall notify to the regulatory authority any planned transaction which may require a reassessment of their compliance with the requirements of Article 54~~9~~ ⇨ or Article 62 ⇦ .

4. The regulatory authorities shall monitor the continuing compliance of ~~transmission system operators~~ ⇨ certified undertakings ⇦ with the requirements of Article 54~~9~~ ⇨ or Article 62 ⇦. They shall open a certification procedure to ensure such compliance:

   (a) upon notification by the of ~~transmission system operators~~ ⇨ certified undertaking ⇦ pursuant to paragraph 3;

   (b) on their own initiative where they have knowledge that a planned change in rights or influence over ~~transmission system owners or of~~ ~~transmission system operators~~ ⇨ certified undertakings or transmission system owners⇦ may lead to an infringement of Article 54~~9~~ ⇨ or Article 62 ⇦ or where they have reason to believe that such an infringement may have occurred; or

   (c) upon a reasoned request from the Commission.

5. The regulatory authorities shall adopt a decision on the certification of a ⇨ natural gas ⇦ transmission system operator ⇨ or a hydrogen network operator ⇦ within ~~a period of four months~~ ⇨ 100 working days ⇦from the date of the notification by ⇨ the natural gas ⇦ transmission system operator ⇨ or the hydrogen network operator ⇦ or from the date of the Commission request. After expiry of that period, the certification shall be deemed to be granted. The explicit or tacit decision of the

regulatory authority shall become effective only after the conclusion of the procedure set out in paragraph 6.

6. The explicit or tacit decision on the certification ~~of a transmission system operator~~ shall be notified without delay to the Commission by the regulatory authority, together with all the relevant information with respect to that decision. The Commission shall act in accordance with the procedure laid down in Article 13~~3~~ of ~~Regulation (EC) No 715/2009~~ ⌦ [recast Gas Regulation proposed by COM(2021) xxx] ⌫.

7. The regulatory authorities and the Commission may request from transmission system operators, ⇨ hydrogen network operators ⇦ and undertakings performing any of the functions of production or supply any information relevant for the fulfilment of their tasks under this Article.

8. The regulatory authorities and the Commission shall preserve the confidentiality of commercially sensitive information.

Article 66~~11~~

Certification in relation to third countries

1. Where certification is requested by a transmission system owner, ~~or~~ a transmission system operator, ⇨ a hydrogen network operator or a hydrogen network owner ⇦ which is controlled by a person or persons from a third country or third countries, the regulatory authority shall notify the Commission.

   The regulatory authority shall also notify to the Commission without delay any circumstances that would result in a person or persons from a third country or third countries acquiring control of a transmission system, ~~or~~ a transmission system operator ⇨ , a hydrogen network or a hydrogen network operator ⇦.

2. The transmission system operator ⇨ or hydrogen network operator ⇦ shall notify to the regulatory authority any circumstances that would result in a person or persons from a third country or third countries acquiring control of the transmission system or the transmission system operator ⇨ or of the hydrogen network or the hydrogen network operator ⇦ .

3. The regulatory authority shall adopt a draft decision on the certification of a transmission system operator ⇨ or hydrogen network operator ⇦ within ~~four months~~ ⇨ 100 working days ⇦ from the date of notification by the transmission system operator ⇨ or hydrogen network operator ⇦ . It shall refuse the certification if it has not been demonstrated:

   (a) that the entity concerned complies with the requirements of Article 54~~9~~ ⇨ or Article 62 ⇦ ; and

   (b) to the regulatory authority or to another competent authority designated by the Member State that granting certification will not put at risk the security of energy supply of the Member State and the ~~Community~~ ⌦ Union ⌫. In considering that question the regulatory authority or other competent authority so designated shall take into account:

      (i) the rights and obligations of the ~~Community~~ ⌦ Union ⌫ with respect to that third country arising under international law, including any agreement concluded with one or more third countries to which the

~~Community~~ ⌦ Union ⌫ is a party and which addresses the issues of security of energy supply;

(ii) the rights and obligations of the Member State with respect to that third country arising under agreements concluded with it, insofar as they are in compliance with ~~Community~~ ⌦ Union ⌫ law; ~~and~~

(iii) other specific facts and circumstances of the case and the third country concerned.

4. The regulatory authority shall notify the decision to the Commission without delay, together with all the relevant information with respect to that decision.

5. Member States shall provide for the regulatory authority or the designated competent authority referred to in paragraph 3, point (b), before the regulatory authority adopts a decision on the certification, to request an opinion from the Commission on whether:

(a) the entity concerned complies with the requirements of Article 54~~9~~ ⇨ or Article 62 ⇦ ; and

(b) granting certification will not put at risk the security of energy supply to the ~~Community~~ ⌦ Union ⌫.

6. The Commission shall examine the request referred to in paragraph 5 as soon as it is received. Within a period of ⇨ 50 working days ⇦ ~~two months~~ after receiving the request, it shall deliver its opinion to the ~~national~~ regulatory authority or, if the request was made by the designated competent authority, to that authority.

In preparing the opinion, the Commission may request the views of ⌦ ACER ⌫ ~~the Agency~~, the Member State concerned, and interested parties. In the event that the Commission makes such a request, the ~~two-month~~ ⇨ 50 working days ⇦ period shall be extended by ⇨ further 50 working days ⇦ ~~two months~~.

In the absence of an opinion by the Commission within the period referred to in the first and second subparagraphs, the Commission is deemed not to raise objections to the decision of the regulatory authority.

7. When assessing whether the control by a person or persons from a third country or third countries will put at risk the security of energy supply to the ~~Community~~ ⌦ Union ⌫, the Commission shall take into account:

(a) the specific facts of the case and the third country or third countries concerned; and

(b) the rights and obligations of the ~~Community~~ ⌦ Union ⌫ with respect to that third country or third countries arising under international law, including an agreement concluded with one or more third countries to which the ~~Community~~ ⌦ Union ⌫ is a party and which addresses the issues of security of supply.

8. The ~~national~~ regulatory authority shall, within a period of ⇨ 50 working days ⇦ ~~two months~~ after the expiry of the period referred to in paragraph 6, adopt its final decision on the certification. In adopting its final decision the ~~national~~ regulatory authority shall take utmost account of the Commission's opinion. In any event Member States shall have the right to refuse certification where granting certification puts at risk the Member State's security of energy supply or the security of energy supply of another Member State. Where the Member State has designated another

competent authority to assess paragraph 3, point (b), it may require the ~~national~~ regulatory authority to adopt its final decision in accordance with the assessment of that competent authority. The regulatory authority's final decision and the Commission's opinion shall be published together. Where the final decision diverges from the Commission's opinion, the Member State concerned shall provide and publish, together with that decision, the reasoning underlying such decision.

9. Nothing in this Article shall affect the right of Member States to exercise, in compliance with ~~Community~~ ⌦ Union ⌫ law, national legal controls to protect legitimate public security interests.

10. The Commission ~~may~~ ⇨ is empowered to ⇦ adopt ⇨ delegated acts in accordance with Article 83 in order to provide ⇦ g~~G~~uidelines setting out the details of the procedure to be followed for the application of this Article. ~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(3).~~

11. ~~This Article, with exception of paragraph 3(a), shall also apply to Member States which are subject to a derogation under Article 49~~

Article 67~~12~~

Designation of ⌦ operators of natural gas ⌫ storage ⌦ , hydrogen storage, ⌫ ~~and~~ ⌦ LNG facilities and hydrogen terminals ⌫ ~~system operators~~

Member States shall designate, or shall require ~~natural gas~~ undertakings which own ⇨ natural gas ⇦ storage ⇨ , hydrogen storage, ⇦ ~~or~~ LNG facilities ⇨ and hydrogen terminals ⇦ to designate, for a period of time to be determined by Member States, having regard to considerations of efficiency and economic balance, one or more ~~storage and LNG system~~ operators ⇨ for these infrastructure ⇦.

~~CHAPTER VI~~

SECTION 6

UNBUNDLING AND TRANSPARENCY OF ACCOUNTS

Article 68~~30~~

Right of access to accounts

1. Member States or any competent authority they designate, including the regulatory authorities referred to in Article 70~~39~~(1) and the dispute settlement authorities referred to in Article 24~~34~~(3), shall, insofar as necessary to carry out their functions, have right of access to the accounts of natural gas and ⇨ hydrogen ⇦ undertakings as set out in Article 71~~31~~.

2. Member States and any designated competent authority, including the regulatory authorities referred to in Article 70~~39~~(1) and the dispute settlement authorities, shall preserve the confidentiality of commercially sensitive information. Member States may provide for the disclosure of such information where this is necessary in order for the competent authorities to carry out their functions.

Article 69~~31~~

Unbundling of accounts

1. Member States shall take the necessary steps to ensure that the accounts of natural gas ⇨ and hydrogen ⇦ undertakings are kept in accordance with paragraphs 2 to 5 ~~of this Article~~. ~~Where natural gas undertakings benefit from a derogation from this provision on the basis of Article 49(2) and (4), they shall at least keep their internal accounts in accordance with this Article.~~

2. Natural gas ⇨ and hydrogen ⇦ undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies adopted pursuant to Directive 2013/34/EU of the European Parliament and of the Council[40] ~~the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 44(2)(g)[41] of the Treaty on the annual accounts of certain types of companies[42]~~.

   Undertakings which are not legally obliged to publish their annual accounts shall keep a copy thereof at the disposal of the public at their head office.

3. ~~Natural gas~~ U~~u~~ndertakings shall, in their internal accounting, keep separate accounts for each of their transmission, distribution, LNG ⇨, hydrogen terminal, natural gas and hydrogen ⇦ ~~and~~ storage ⇨ and hydrogen transport ⇦ activities as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition. They shall also keep accounts, which may be consolidated, for other ~~gas~~ activities not relating to transmission, distribution, LNG ⇨ . hydrogen terminal, natural gas and hydrogen ⇦ ~~and~~ storage ⇨ and hydrogen transport activities ⇦ . ~~Until 1 July 2007, they shall keep separate accounts for supply activities for eligible customers and supply activities for non-eligible customers~~. Revenue from ownership of the transmission, ~~or~~ distribution ⇨ or hydrogen ⇦ network shall be specified in the accounts. Where appropriate, they shall keep consolidated accounts for other, non-gas activities. The internal accounts shall include a balance sheet and a profit and loss account for each activity.

4. The audit~~,~~ referred to in paragraph 2~~,~~ shall, in particular, verify that the obligation to avoid discrimination and cross-subsidies referred to in paragraph 3 is respected.

5. Undertakings shall specify in their internal accounting the rules for the allocation of assets and liabilities, expenditure and income as well as for depreciation, without prejudice to nationally applicable accounting rules, which they follow in drawing up the separate accounts referred to in paragraph 3. Those internal rules may be amended only in exceptional cases. Such amendments shall be mentioned and duly substantiated.

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40 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

41 ~~The title of Directive 78/660/EEC has been adjusted to take account of the renumbering of the Articles of the Treaty establishing the European Community in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 54(3)(g).~~

42 ~~OJ L 222, 14.8.1978, p. 11.~~

6. The annual accounts shall indicate in notes any transaction of a certain size conducted with related undertakings.

Chapter ~~VIII~~X

~~National~~ Regulatory Authorities

Article 70~~39~~

Designation and independence of regulatory authorities

1. Each Member State shall designate a single ~~national~~ regulatory authority at national level.

2. Paragraph 1 ~~of this Article~~ shall be without prejudice to the designation of other regulatory authorities at regional level within Member States, provided that there is one senior representative for representation and contact purposes at ~~Community~~ ⌦ Union ⌫ level within the Board of Regulators of ~~the Agency~~ ⌦ ACER ⌫ in accordance with Article 7~~14~~(1) of ~~Regulation (EC) No 713/2009~~ ⌦ Regulation (EU) 2019/942⌫ .

3. By way of derogation from paragraph 1 ~~of this Article~~, a Member State may designate regulatory authorities for small systems in a geographically separate region whose consumption, in 2008, accounted for less than 3 % of the total consumption of the Member State of which it is part. That derogation shall be without prejudice to the appointment of one senior representative for representation and contact purposes at ~~Community~~ ⌦ Union ⌫ level within the Board of Regulators of ~~the Agency~~ ⌦ ACER ⌫ in compliance with Article 7~~14~~(1) of ~~Regulation (EC) No 713/2009~~ ⌦ Regulation (EU) 2019/942 ⌫ .

4. Member States shall guarantee the independence of the regulatory authority and shall ensure that it exercises its powers impartially and transparently. For this purpose, Member States shall ensure that, when carrying out the regulatory tasks conferred upon it by this Directive and related legislation, the regulatory authority:

   (a) is legally distinct and functionally independent from any other public or private entity;

   (b) ensures that its staff and the persons responsible for its management:

      (i) act independently from any market interest; ~~and~~

      (ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks. That requirement is without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government ⌦ and ⌫ not related to the regulatory powers and duties under Article 72~~41~~.

5. In order to protect the independence of the regulatory authority, Member States shall in particular ensure that:

   (a) the regulatory authority can take autonomous decisions, independently from any political body~~, and has separate annual budget allocations, with autonomy~~

~~in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties~~; ~~and~~

⇩ new

(b) the regulatory authority has all the necessary human and financial resources it needs to carry out its duties and exercise its powers in an effective and efficient manner;

(c) the regulatory authority has a separate annual budget allocation and autonomy in the implementation of the allocated budget;

(d) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once.

🡻 2009/73/EC
⇨ new

(~~c~~b) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed ⇨ based on objective, transparent and published criteria, in an independent and impartial procedure, which ensures that the candidates have the necessary skills and experience for any relevant position in the regulatory authority; ⇦ ~~for a fixed term of five up to seven years, renewable once~~;

⇩ new

(f) provisions on conflict of interest are in place and confidentiality obligations extend beyond the end of the mandate of the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management;

(g) the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management may be dismissed only based on transparent criteria in place;

(h) Member States may provide for the ex-post control of the regulatory authorities' annual accounts by an independent auditor.

🡻 2009/73/EC

In regard to ~~point (b) of~~ the first subparagraph, point (d), Member States shall ensure an appropriate rotation scheme for the board or the top management. The members of the board or, in the absence of a board, members of the top management may be relieved from office during their term only if they no longer fulfil the conditions set out in this Article or have been guilty of misconduct under national law.

⇩ new

6. By 5 July 2022 and every four years thereafter, the Commission shall submit a report to the European Parliament and the Council on the compliance of national authorities with the principle of independence set out in this Article.

🡻 2009/73/EC (adapted)
⇨ new

Article 71~~40~~

General objectives of the regulatory authority

In carrying out the regulatory tasks specified in this Directive, the regulatory authority shall take all reasonable measures in pursuit of the following objectives within the framework of their duties and powers as laid down in Article 72~~41~~, in close consultation with other relevant national authorities, including competition authorities ⇨ and authorities from neighbouring countries, including third countries, ⇦ as appropriate, and without prejudice to their competencies:

(a) promoting, in close cooperation with ~~the Agency,~~ regulatory authorities of other Member States, ~~and~~ the Commission ⌦ and ACER ⌫ , a competitive, ⇨ flexible, ⇦ secure and environmentally sustainable internal market in natural gas ⇨ , renewable and low-carbon gases and hydrogen ⇦ within the ~~Community~~ ⌦ Union ⌫ , ~~and effective market opening for all customers and suppliers in the Community,~~ and ensuring appropriate conditions for the effective and reliable operation of ⇨ natural ⇦ gas ⇨ and hydrogen ⇦ networks, taking into account long-term objectives ⇨ , thus contributing to the consistent, efficient and effective application of Union law in order to achieve the Union's climate and energy goals ⇦ ;

(b) developing competitive and properly functioning regional ⇨ cross-border ⇦ markets within the ~~Community~~ ⌦ Union ⌫ in view of the achievement of the objectives referred to in point (a);

(c) eliminating restrictions on trade in natural gas ⇨ and hydrogen ⇦ between Member States, including ⇨ eliminating restrictions due to differences in the quality of gases or differences in the volume of hydrogen blended into the natural gas system or to differences in the quality of hydrogen in the hydrogen system, ⇦ developing appropriate cross-border transmission ⇨ and/or transport ⇦ capacities to meet demand and enhancing the integration of national markets ⇨ ensuring the interoperability of the interconnected EU natural gas system or Union hydrogen system, ⇦ which may facilitate natural gas flow across the ~~Community~~ ⌦ Union ⌫;

(d) helping to achieve, in the most cost-effective way, the development of secure, reliable and efficient non-discriminatory systems that are consumer oriented, and promoting system adequacy and, in ~~line~~ ⌦ accordance ⌫ with general energy ⇨ and climate ⇦ policy objectives, energy efficiency as well as the integration of large and small scale production of gas from renewable ~~energy~~ sources and distributed production in both transmission and distribution networks ⇨ and

facilitating their operation in relation to other energy networks of electricity and heat ⇦ ;

(e) facilitating access to the network for new production capacity, in particular removing barriers that could prevent access for new market entrants and of gas ⇨ and hydrogen ⇦ from renewable ~~energy~~ sources;

(f) ensuring that system operators and system users are granted appropriate incentives, in both the short and the long term, to increase efficiencies ⇨ , especially energy efficiency, ⇦ in system performance and foster market integration;

(g) ensuring that customers benefit through the efficient functioning of their national market, promoting effective competition and helping to ensure consumer protection ⇨ in close cooperation with relevant consumer protection authorities ⇦ ;

(h) helping to achieve high standards of public service for natural gas, contributing to the protection of vulnerable customers and contributing to the compatibility of necessary data exchange processes for customer switching.

Article 72~~41~~

Duties and powers of the regulatory authority

1. The regulatory authority shall have the following duties:

(a) fixing or approving, in accordance with transparent criteria, transmission or distribution tariffs or their methodologies ⇨ , or both ⇦ ;

⇩ new

(b) as of 1 January 2031 or as from the date of applying Article 31(1) of this Directive, fixing or approving, in accordance with transparent criteria, tariffs for hydrogen network access or their methodologies, or both;

(c) fixing or approving, in accordance with transparent criteria (i) the size and duration of the dedicated charge referred in Article 4 of [recast Gas Regulation as proposed in COM(2021) xxx] or their methodologies or both (ii) the value of transferred assets and the destination of any profits and losses that may occur as a result and (iii) the allocating contributions to the dedicated charge;

🡻 2009/73/EC (adapted)
⇨ new

(d~~b~~) ensuring compliance of transmission ⇨ system operators ⇦ and distribution system operators, and where relevant, system owners, ⇨ hydrogen network operators ⇦ as well as of any natural gas ⇨ and hydrogen ⇦ undertakings ⇨ and other market participants, including citizen energy communities ⇦ , with their obligations under this Directive ⇨ , [the recast Gas Regulation as proposed in COM(2021) xxx],the network codes and guidelines adopted pursuant Article 52 and 53 of Gas Regulation, Regulation (EU) 2017/1938⇦ and other relevant ~~Community~~ ⌦ Union ⌫ legislation, including as regards cross-border issues ⇨ , as well as ACER's decisions ⇦ ;

⇩ new

(e) in close coordination with the other regulatory authorities, ensuring the compliance of the ENTSO for Gas, the EU DSO entity and the ENNOH with their obligations under this Directive [recast Gas Regulation as proposed in COM(2021) xxx], the network codes and guidelines adopted pursuant to Articles 52 to 56 of [the recast Gas Regulation proposed in COM(2021) xxx], and other relevant Union law, including as regards cross-border issues, as well as with ACER's decisions, and jointly identifying non-compliance of the ENTSO for Gas, the EU DSO entity and the ENNOH with their respective obligations; where the regulatory authorities have not been able to reach an agreement within a period of four months after the start of consultations for the purpose of jointly identifying non-compliance, the matter shall be referred to the ACER for a decision, pursuant to Article 6(10) of Regulation (EU) 2019/942;

(f) monitoring the development of gas qualities and gas quality management by transmission system operators and where relevant by distribution system operators, including monitoring the development of costs related to the management of gas quality by system operators and the developments related to the blending of hydrogen into the natural gas system.

(g) monitoring the development of hydrogen quality and hydrogen quality management by hydrogen network operators where relevant as referred to in Article 46, including monitoring the development of costs related to the management of hydrogen quality.

(h) examining and providing an assessment of the overview submitted by hydrogen network operators on the development of hydrogen transport infrastructure in accordance with Article 52, taking the overall energy-economic necessity of the hydrogen network into account in this examination as well as the joint scenario framework under the Article 51 (2), point (e) on network development planning;

(i) taking the examination and assessment of the overview of the development of the hydrogen transport infrastructure as requested under point (h) into account in its approval of dedicated charges within the meaning of Article 4 of [recast Gas Regulation as proposed in COM(2021) xxx].

🡻 2019/692 Art. 1.6 (adapted)
⇨ new

(j~~e~~) cooperating with regard to cross-border issues with the regulatory authority or authorities of the Member States concerned and with the ~~the Agency~~ ⌦ ACER ⌫ ⇨ , in particular through participation in the work of ACER's Board of Regulators pursuant to Article 21 of Regulation (EU) 2019/942 ⇦ In respect of infrastructure to and from a third country, the regulatory authority of the Member State where the first interconnection point with the Member States' network is located may cooperate with the relevant authorities of the third country, including those of the Energy Community Contracting Parties, after consulting the regulatory authorities of other Member States concerned, aiming

at, as regards ~~this~~ ⌦ that ⌫ infrastructure, consistent application of this Directive in the territory of the Member States;

↓ 2009/73/EC (adapted)
⇨ new

(k~~d~~) complying with, and implementing, any relevant legally binding decisions of ⌦ ACER ⌫ ~~the Agency~~ and of the Commission;

(l~~e~~) reporting annually on its activity and the fulfilment of its duties to the relevant authorities of the Member States, ⌦ ACER ⌫ ~~the Agency~~ and the Commission. Such reports shall cover the steps taken and the results obtained as regards each of the tasks listed in this Article;

(m~~f~~) ensuring that there are no cross-subsidies between transmission, distribution, ⇨ hydrogen transport, natural gas and hydrogen ⇦ storage, LNG ⇨ and hydrogen terminals ⇦ and ⇨ natural gas and hydrogen ⇦ supply activities;

(n~~g~~) monitoring investment plans of the transmission system operators, and providing in its annual report an assessment of the investment plans of the transmission system operators as regards their consistency with the ~~Community~~ ⌦ Union ⌫-wide network development plan referred to ⌦ in point (x) of Article 29 of [recast Gas Regulation as proposed in COM(2021) xxx] ⌫ ~~in Article 8(3)(b) of Regulation (EC) No 715/2009~~; such assessment may include recommendations to amend those investment plans;

(o~~h~~) monitoring compliance with and reviewing the past performance of network security and reliability rules and setting or approving standards and requirements for quality of service and supply or contributing thereto together with other competent authorities;

(p~~i~~) monitoring the level of transparency, including of wholesale prices, and ensuring compliance of natural gas ⇨ and hydrogen ⇦ undertakings with transparency obligations;

(q~~j~~) monitoring the level and effectiveness of market opening and competition at wholesale and retail levels, including on natural gas ⇨ and hydrogen ⇦ exchanges, prices for household customers including prepayment systems, switching rates, disconnection rates, charges for and the execution of maintenance services and complaints by household customers, as well as any distortion or restriction of competition, including providing any relevant information, and bringing any relevant cases to the relevant competition authorities;

(r~~k~~) monitoring the occurrence of restrictive contractual practices, including exclusivity clauses which may prevent large non-household customers from contracting simultaneously with more than one supplier or restrict their choice to do so, and, where appropriate, informing the national competition authorities of such practices;

(s~~l~~) respecting contractual freedom with regard to ~~interruptible supply contracts as well as with regard to~~ long-term contracts provided that they are compatible with ~~Community~~ ⌦ Union ⌫ law and consistent with ~~Community~~ ⌦ Union ⌫ policies ⇨ and provided they contribute to decarbonisation

objectives. No long-term contracts for supply of unabated fossil gas shall be concluded with a duration beyond the end of year 2049 ⇦ ;

(t~~m~~) monitoring the time taken by ⇨ natural gas ⇦ transmission and distribution system operators ⇨ or hydrogen network operators ⇦ to make connections and repairs;

(u~~n~~) monitoring and reviewing the access conditions to storage, linepack and other ancillary services as provided for in Article 29~~33~~ ⇨ or Article 33 ⇦ . In the event that the access regime to ⇨ natural gas ⇦ storage is defined according to Article 29~~33~~ (3), that task shall exclude the reviewing of tariffs;

(v~~o~~) helping to ensure, together with other relevant authorities, that the consumer protection measures, including those set out in Annex I, are effective and enforced;

(w~~p~~) publishing recommendations, at least annually, in relation to compliance of supply prices with Article 63, and providing those to the competition authorities, where appropriate;

(x~~q~~) ensuring ⇨ non-discriminatory ⇦ access to customer consumption data, the provision for optional use, of an easily understandable harmonised format at national level for consumption data and prompt access for all customers to such data ⇨ pursuant Articles 22 and 23 ⇦ ~~under point (h) of Annex I~~;

(y~~r~~) monitoring the implementation of rules relating to the roles and responsibilities of transmission system operators, distribution system operators, ⇨ hydrogen network operators, ⇦ suppliers and customers and other market parties pursuant to ~~Regulation (EC) No 715/2009~~ ⌦ [recast Gas Regulation as proposed in COM(2021) xxx] ⌫ ;

(z~~s~~) monitoring the correct application of the criteria that determine whether a ⇨ natural gas ⇦ storage facility falls under Article 29~~33~~ (3) or (4); and

(aa~~t~~) monitoring the implementation of safeguards measures as referred to in Article 77~~46~~;

(bb~~u~~) contributing to the compatibility of data exchanges processes for the most important market processes at regional level;~~.~~

⇩ new

(cc) implementing the network codes and guidelines adopted pursuant Article 52 through national measures or, where so required, coordinated regional or Union-wide measures;

(dd) ensuring a transparent and efficient process for the setting up of the national network development plan in line with the requirements set out in Articles 51 and 52;

(ee) approving and amending the network development plan;

(ff) monitoring gas quality control and management by transmission system operators, distribution system operators, storage system operators and LNG facility operators;

(gg) monitoring the implementation of the measures taken in emergency state, as provided for in Regulation (EU) 2017/1938 and laid down in the national emergency plan, including solidarity measures under its Article 13;

(hh) monitoring the availability of comparison websites, including comparison tools that fulfil the criteria in Article 12;

(ii) monitoring the removal of unjustified obstacles to and restrictions on the development of consumption of self-generated renewable natural gas and citizen energy communities.

🡻 2009/73/EC (adapted)
⇨ new

2. Where a Member State has so provided, the monitoring duties set out in paragraph 1 may be carried out by other authorities than the regulatory authority. In such a case, the information resulting from such monitoring shall be made available to the regulatory authority as soon as possible.

While preserving their independence, without prejudice to their own specific competencies and consistent with the principles of better regulation, the regulatory authority shall, as appropriate, consult ⇨ natural gas ⇦ transmission system ⇨ and hydrogen network ⇦ operators and, as appropriate, closely cooperate with other relevant national authorities when carrying out the duties set out in paragraph 1.

Any approvals given by a regulatory authority or the ~~the Agency~~ ⌦ ACER ⌫ under this Directive are without prejudice to any duly justified future use of its powers by the regulatory authority under this Article or to any penalties imposed by other relevant authorities or the Commission.

3. In addition to the duties conferred upon it under paragraph 1 of this Article, when an independent system operator ⇨ or an independent hydrogen network operator ⇦ has been designated under Article 55~~14~~ ⇨ or Article 62 ⇦ , the regulatory authority shall:

(a) monitor the transmission system owner's and the independent system operator's ⇨ and hydrogen network owner's and independent hydrogen network operator's ⇦ compliance with their obligations under this Article, and issue penalties for non compliance in accordance with paragraph 4, point (d);

(b) monitor the relations and communications between the independent system operator and the transmission system owner ⇨ or the hydrogen network owner and the independent hydrogen network operator ⇦ , so as to ensure compliance of the independent system operator ⇨ or the independent hydrogen network operator ⇦ with its obligations, and in particular approve contracts and act as a dispute settlement authority between the independent system operator and the transmission system owner ⇨ or the hydrogen network owner and the independent hydrogen network operator ⇦ in respect of any complaint submitted by either party pursuant to paragraph 11;

(c) without prejudice to the procedure under Article 55~~14~~(2), point (c), for the first ten-year network development plan, approve the investments planning and the multi-annual network development plan presented annually by the independent system operator ⇨ or the independent hydrogen network operator ⇦ ;

(d) ensure that network access tariffs collected by the independent system operator ⇨ or the independent hydrogen network operator ⇦ include remuneration for the network owner or network owners, which provides for adequate remuneration of the network assets and of any new investments made therein, provided they are economically and efficiently incurred; ~~and~~

(e) have the powers to carry out inspections, including unannounced inspections, at the premises of transmission system owner and independent system operator, ⇨ or of the hydrogen network owner and the independent hydrogen network operator ⇦ .

4. Member States shall ensure that regulatory authorities are granted the powers enabling them to carry out the duties referred to in paragraphs 1, 3 and 6 in an efficient and expeditious manner. For this purpose, the regulatory authority shall have at least the following powers:

(a) to issue binding decisions on natural gas ⇨ and hydrogen ⇦ undertakings;

(b) to carry out investigations into the functioning of the ~~gas~~ markets ⇨ for gases ⇦, and to decide upon and impose any necessary and proportionate measures to promote effective competition and ensure the proper functioning of the ~~gas~~ markets ⇨ for gases ⇦⌦ and ⌫, ~~.~~ w~~W~~here appropriate, the regulatory authority shall also have the power to cooperate with the national competition authority and the financial market regulators or the Commission in conducting an investigation relating to competition law;

(c) to require any information from natural gas ⇨ and hydrogen ⇦ undertakings relevant for the fulfilment of its tasks, including the justification for any refusal to grant third-party access, and any information on measures necessary to reinforce the network;

(d) to impose effective, proportionate and dissuasive penalties on natural gas ⇨ and hydrogen ⇦ undertakings not complying with their obligations under this Directive or any relevant legally binding decisions of the regulatory authority or of ⌦ ACER ⌫ ~~the Agency~~, or to propose to a competent court to impose such penalties~~.~~ ~~This shall include~~ ⌦ , including ⌫ the power to impose or propose the imposition of penalties of up to 10 % of the annual turnover of the transmission system operator ⇨ or hydrogen network operator ⇦ or of up to 10 % of the annual turnover of the vertically integrated undertaking on the transmission system operator ⇨ or hydrogen network operator ⇦ or on the vertically integrated undertaking, as the case may be, for non compliance with their respective obligations pursuant to this Directive; ~~and~~

(e) appropriate rights of investigations and relevant powers of instructions for dispute settlement under paragraphs 11 and 12.

⇩ new

5. The regulatory authority located in the Member State in which the ENTSO for Gas, the European Network of Network Operators for Hydrogen or the EU DSO entity has its seat shall have the power to impose effective, proportionate and dissuasive penalties on those entities where they do not comply with their obligations under this Directive, [the recast Gas Regulation proposed in COM(2021) xxx] or any relevant

legally binding decisions of the regulatory authority or of ACER, or to propose that a competent court impose such penalties.

↓ 2009/73/EC (adapted)
⇨ new

65. In addition to the duties and powers conferred on it under paragraphs 1 and 4 of this Article, when a ⇨ an independent ⇦ transmission system operator ⇨ or an integrated hydrogen network operator ⇦ has been designated in accordance with Chapter IXIV, Section 3, the regulatory authority shall be granted at least the following duties and powers:

(a) to issue penalties in accordance with paragraph 4, point (d) for discriminatory behaviour in favour of the vertically integrated undertaking;

(b) to monitor communications between the transmission system operator ⇨ or an integrated hydrogen network operator ⇦ and the vertically integrated undertaking so as to ensure compliance of the transmission system operator ⇨ or the integrated hydrogen network operator ⇦ with its obligations;

(c) to act as dispute settlement authority between the vertically integrated undertaking and the transmission system operator ⇨ or the integrated hydrogen network operator ⇦ in respect of any complaint submitted pursuant to paragraph 11;

(d) to monitor commercial and financial relations including loans between the vertically integrated undertaking and the transmission system operator ⇨ or the integrated hydrogen network operator ⇦ ;

(e) to approve all commercial and financial agreements between the vertically integrated undertaking and the transmission system operator ⇨ or the integrated hydrogen network operator ⇦ , on the condition that they comply with market conditions;

(f) to request justification from the vertically integrated undertaking when notified by the compliance officer in accordance with Article 6421(4),. Such justification shall in particular include ⌦ including ⌫ evidence to the end that no discriminatory behaviour to the advantage of the vertically integrated undertaking has occurred;

(g) to carry out inspections, including unannounced inspections, on the premises of the vertically integrated undertaking and the transmission system operator ⇨ or the integrated hydrogen network operator ⇦ ; and

(h) to assign all or specific tasks of the transmission system operator ⇨ or the integrated hydrogen network operator ⇦ to an independent system operator ⇨ or an independent hydrogen network operator, ⇦ appointed in accordance with Article 6414 in case of a persistent breach by the transmission system operator ⇨ or the integrated hydrogen network operator ⇦ of its obligations under this Directive, in particular in case of repeated discriminatory behaviour to the benefit of the vertically integrated undertaking.

76. The regulatory authorities shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for:

(a) connection and access to national ⇨ natural gas ⇦ networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities ⌦ , whereby ⌫ ~~. Those~~ tariffs or methodologies shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing those investments to ensure the viability of the networks and LNG facilities;

⇩ new

(b) connection and access to national hydrogen networks, including, as from 1 January 2031, the hydrogen network tariffs, where applicable, and terms and conditions and tariffs for access to for hydrogen storage and hydrogen terminals;

🡻 2009/73/EC (adapted)

(c~~b~~) the provision of balancing services which shall be performed in the most economic manner and provide appropriate incentives for network users to balance their input and off-takes~~.~~ ~~The balancing services shall be provided~~ in a fair and non-discriminatory manner and be based on objective criteria; ~~and~~

⇩ new

(d) approving and monitoring dedicated charges in accordance with Article 4 of [recast Gas Regulation as proposed in COM(2021) xxx].

🡻 2009/73/EC (adapted)
⇨ new

(e) access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management.

8~~7~~. The methodologies or the terms and conditions referred to in paragraph 7 shall be published.

9~~8~~. In fixing or approving the tariffs or methodologies and the balancing services, the regulatory authorities shall ensure that transmission and distribution system operators ⇨ and, as from 1 January 2031, hydrogen network operators ⇦ are granted appropriate incentive, over both the short and long term, to increase efficiencies, foster market integration and security of supply and support the related research activities.

10~~9~~. The regulatory authorities shall monitor congestion management of national ~~gas~~ transmission networks ⇨ and hydrogen networks ⇦ including interconnectors, and the implementation of congestion management rules. To that end, transmission system operators ⇨ , hydrogen network operators ⇦ or market operators shall submit their congestion management rules, including capacity allocation, to the ~~national~~

regulatory authorities. ~~National~~ ~~r~~Regulatory authorities may request amendments to those rules.

Article 73

⌦ Decisions and complaints ⌫

1~~10.~~ Regulatory authorities shall have the authority to require ⇨ natural gas ⇦ transmission, storage, LNG and distribution system operators, ⇨ hydrogen storage and terminal operators, and, as from 1 January 2031, hydrogen network operators⇦ if necessary, to modify the terms and conditions, including tariffs and methodologies referred to in this Article, to ensure that they are proportionate and applied in a non-discriminatory manner. In the event that the access regime to storage is defined according to Article 29~~33~~(3), that task shall exclude the modification of tariffs. In the event of delay in the fixing of ⇨ natural gas ⇦ transmission and distribution tariffs ⇨ and, where appropriate, hydrogen network tariffs, ⇦ regulatory authorities shall have the power to fix or approve provisional transmission and distribution tariffs or methodologies ⇨ and hydrogen network tariffs and methodologies ⇦ and to decide on the appropriate compensatory measures if the final tariffs or methodologies deviate from those provisional tariffs or methodologies.

2~~11~~ Any party having a complaint against a ⇨ natural gas ⇦ transmission, storage, LNG or distribution system operator ⇨ or a hydrogen network, storage or terminal operator ⇦ in relation to that operator's obligations under this Directive may refer the complaint to the regulatory authority which, acting as dispute settlement authority, shall issue a decision within a period of two months after receipt of the complaint. That period may be extended by two months where additional information is sought by the regulatory authorities. That extended period may be further extended with the agreement of the complainant. The regulatory authority's decision shall have binding effect unless and until overruled on appeal.

3~~12.~~ Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to this Article or, where the regulatory authority has a duty to consult, concerning the proposed tariffs or methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.

4~~13.~~ Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behaviour. Those mechanisms shall take account of the provisions of the ~~Treaty~~ ⌦ TFEU ⌫ , and in particular Article ~~82~~ ⌦ 102 ⌫ thereof.

5~~14~~. Member States shall ensure that the appropriate measures are taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where confidentiality rules imposed by this Directive have not been respected.

6~~15.~~ Complaints referred to in paragraphs 2~~11~~ and 3~~12~~ shall be without prejudice to the exercise of rights of appeal under ~~Community~~ ⌦ Union ⌫ or national law.

7~~16.~~ Decisions taken by regulatory authorities shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information.

8~~17.~~ Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

Article 74~~42~~

~~Regulatory regime for~~ ⌦ Regional cooperation between regulatory authorities ⌫ on cross-border issues

1. Regulatory authorities shall closely consult and cooperate with each other ⇨ , and in particular within ACER, ⇦ and shall provide each other and ~~the Agency~~ ⌦ ACER ⌫ with any information necessary for the fulfilment of their tasks under this Directive. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as that required of the originating authority.

2. Regulatory authorities shall cooperate at least at a regional level to:

   (a) foster the creation of operational arrangements in order to enable an optimal management of the network, promote joint gas ⇨ and hydrogen ⇦ exchanges and the allocation of cross-border capacity, and to enable an adequate level of interconnection capacity, including through new interconnections, within the region and between regions to allow for development of effective competition and improvement of security of supply without discriminating between supply undertakings in different Member States;

   (b) coordinate the development of all network codes for the relevant transmission system operators ⇨ , hydrogen network operators ⇦ and other market actors; ~~and~~

   (c) coordinate the development of the rules governing the management of congestion;~~.~~

⇩ new

   (d) to ensure regulatory compliance of legal entities fulfilling transmission operators' and network operators' tasks at cross-border or regional level.

🡻 2009/73/EC
⇨ new

3. ~~National~~ ~~r~~Regulatory authorities shall have the right to enter into cooperative arrangements with each other to foster regulatory cooperation.

4. The actions referred to in paragraph 2 shall be carried out, as appropriate, in close consultation with other relevant national authorities and without prejudice to their specific competencies.

~~5. The Commission may adopt Guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with the Agency. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(3).~~

⇩ new

5. The Commission is empowered to adopt delegated acts in accordance with Article 83 in order to supplement this Directive by establishing guidelines on the extent of the duties of the regulatory authorities to cooperate with each other and with ACER.

🡻 2019/692 Art. 1.7
⇨ new

6. Regulatory authorities, or where appropriate other competent authorities, may consult and cooperate with the relevant authorities of third countries ⇨ , including Energy Community Contracting Parties, ⇦ in relation to the operation of gas ⇨ and hydrogen ⇦ infrastructure to and from third countries with a view to ensuring, as regards the infrastructure concerned, that this Directive is applied consistently in the territory and territorial sea of a Member State.

🡻 2009/73/EC (adapted)
⇨ new

Article 75~~43~~

Compliance with the ⌦ network codes and ⌫ ~~G~~guidelines

1. Any regulatory authority and the Commission may request the opinion of ~~the Agency~~ ⌦ ACER ⌫ on the compliance of a decision taken by a regulatory authority with ⇨ the network codes and ⇦ the ~~G~~guidelines referred to in this Directive or in ~~Regulation (EC) No 715/2009~~ ⌦ [recast Gas Regulation as proposed in COM(2021) xxx] ⌫ .

2. ~~The Agency~~ ⌦ ACER ⌫ shall provide its opinion to the regulatory authority which has requested it or to the Commission, respectively, and to the regulatory authority which has taken the decision in question within three months from the date of receipt of the request.

3. Where the regulatory authority which has taken the decision does not comply with ⌦ ACER's ⌫ ~~the Agency's~~ opinion within four months from the date of receipt of that opinion, ⌦ ACER ⌫ ~~the Agency~~ shall inform the Commission accordingly.

4. Any regulatory authority may inform the Commission where it considers that a decision relevant for cross border-trade taken by another regulatory authority does not comply with the ⇨ network codes and ⇦ ~~G~~guidelines referred to in this Directive or in ~~Regulation (EC) No 715/2009~~ ⌦ [recast Gas Regulation as proposed in COM(2021) xxx] ⌫ within two months from the date of that decision.

5. Where the Commission, within two months of having been informed by ⌦ ACER ⌫ ~~the Agency~~ in accordance with paragraph 3, or by a regulatory authority in accordance with paragraph 4, or on its own initiative within three months from the date of the decision, finds that the decision of a regulatory authority raises serious doubts as to its compatibility with ⇨ the network codes and ⇦ the ~~G~~guidelines referred to in this Directive or in ~~Regulation (EC) No 715/2009~~

⌦ [recast Gas Regulation as proposed in COM(2021) xxx] ⌫, the Commission may decide to examine the case further. In such a case, it shall invite the regulatory authority and the parties to the proceedings before the regulatory authority to submit observations.

6. Where the Commission takes a decision to examine the case further, it shall, within four months of the date of such decision, issue a final decision:

   (a) not to raise objections against the decision of the regulatory authority; or

   (b) to require the regulatory authority concerned to withdraw its decision on the basis that ⇨ the network codes and ⇦ the ~~G~~guidelines have not been complied with.

7. Where the Commission has not taken a decision to examine the case further or a final decision within the time-limits set in paragraphs 5 and 6 respectively, it shall be deemed not to have raised objections to the decision of the regulatory authority.

8. The regulatory authority shall comply with the Commission decision to withdraw its decision within a period of two months and shall inform the Commission accordingly.

9. The Commission ~~may adopt Guidelines setting out the details of the procedure to be followed by the regulatory authorities, the Agency and the Commission as regards the compliance of decisions taken by regulatory authorities with the Guidelines referred to in this Article. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(3).~~ ⇨ is empowered to adopt delegated acts in accordance with Article 83 supplementing this Directive by establishing guidelines setting out the details of the procedure to be followed for the application of this Article. ⇦

Article 76~~44~~

Record keeping

1. Member States shall require supply undertakings to keep at the disposal of the national authorities, including the regulatory authority, the national competition authorities and the Commission, for the fulfilment of their tasks, for at least five years, the relevant data relating to all transactions in ⇨ natural ⇦ gas and ⇨ hydrogen ⇦ supply contracts and ⇨ natural ⇦ gas ⇨ and hydrogen ⇦ derivatives with wholesale customers and transmission system operators, ~~as well~~ as storage and LNG operators ⇨ as well as hydrogen network, storage and terminal operators ⇦.

2. The data shall include details on the characteristics of the relevant transactions such as duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled ⇨ natural ⇦ gas ⇨ and hydrogen ⇦ supply contracts and ⇨ natural ⇦ gas ⇨ and hydrogen ⇦ derivatives.

3. The regulatory authority may decide to make available to market participants elements of this information provided that commercially sensitive information on individual market players or individual transactions is not released. This paragraph shall not apply to information about financial instruments which fall within the scope of Directive ⌦ 2014/65/EU ⌫ ~~2004/39/EC~~.

4. ~~To ensure the uniform application of this Article,~~ T~~t~~he Commission ~~may~~ ⌧ is empowered to ⌫ adopt ⇨ delegated acts supplementing this Directive in accordance with Article 83, by establishing ⇦ g~~G~~uidelines which define the methods and arrangements for record keeping as well as the form and content of the data that shall be kept. ~~Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(3).~~

5. With respect to transactions in ⇨ natural ⇦ gas ⇨ and hydrogen ⇦ derivatives of supply undertakings with wholesale customers and ⇨ natural gas ⇦ transmission system operators , ~~as well as~~ storage and LNG operators ⇨ as well as hydrogen network, storage and terminal operators ⇦, this Article shall apply only once the Commission has adopted the g~~G~~uidelines referred to in paragraph 4.

6. The provisions of this Article shall not create additional obligations towards the authorities referred to in paragraph 1 for entities falling within the scope of Directive 2014/65/EU ~~2004/39/EC~~.

7. In the event that the authorities referred to in paragraph 1 need access to data kept by entities falling within the scope of Directive 2014/65/EU~~2004/39/EC~~, the authorities responsible under that Directive shall provide them with the required data.

Chapter ~~X~~XI

Final provisions

Article 77~~46~~

Safeguard measures

1. In the event of a sudden crisis in the energy market or where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Member State may ~~temporarily take the necessary safeguard measures~~ ⇨ declare an emergency state pursuant to Article 11 of Regulation (EU 2017/1938 and take the measures foreseen in the national emergency plan ⇦ .

~~2. Such measures shall cause the least possible disturbance to the functioning of the internal market and shall be no wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.~~

~~3. The Member State concerned shall, without delay, notify those measures to the other Member States, and to the Commission, which may decide that the Member State concerned must amend or abolish such measures, insofar as they distort competition and adversely affect trade in a manner which is at variance with the common interest.~~

↓ 2009/73/EC (adapted)

Article 78~~47~~

Level playing field

1. Measures that the Member States may take pursuant to this Directive in order to ensure a level playing field shall be compatible with the ⌦ TFEU ⌫ ~~Treaty~~, notably Article ~~30~~ ⌦ 36 ⌫ thereof, and with the legislation of the ~~Community~~ ⌦ Union ⌫ .

2. The measures referred to in paragraph 1 shall be proportionate, non-discriminatory and transparent. Those measures may be put into effect only following the notification to and approval by the Commission.

3. The Commission shall act on the notification referred to in paragraph 2 within two months of the receipt of the notification. That period shall begin on the day following receipt of the complete information. In the event that the Commission has not acted within that two-month period, it shall be deemed not to have raised objections to the notified measures.

~~*Article 48*~~

~~**Derogations in relation to take-or-pay commitments**~~

~~1. If a natural gas undertaking encounters, or considers it would encounter, serious economic and financial difficulties because of its take-or-pay commitments accepted in one or more gas-purchase contracts, it may send an application for a temporary derogation from Article 32 to the Member State concerned or the designated competent authority. Applications shall, in accordance with the choice of Member States, be presented on a case-by-case basis either before or after refusal of access to the system. Member States may also give the natural gas undertaking the choice of presenting an application either before or after refusal of access to the system. Where a natural gas undertaking has refused access, the application shall be presented without delay. The applications shall be accompanied by all relevant information on the nature and extent of the problem and on the efforts undertaken by the natural gas undertaking to solve the problem.~~

~~If alternative solutions are not reasonably available, and taking into account paragraph 3, the Member State or the designated competent authority may decide to grant a derogation.~~

~~2. The Member State, or the designated competent authority, shall notify the Commission without delay of its decision to grant a derogation, together with all the relevant information with respect to the derogation. That information may be submitted to the Commission in an aggregated form, enabling the Commission to reach a well-founded decision. Within eight weeks of receipt of that notification, the Commission may request that the Member State or the designated competent authority concerned amend or withdraw the decision to grant a derogation.~~

~~If the Member State or the designated competent authority concerned does not comply with that request within a period of four weeks, a final decision shall be taken expeditiously in accordance with the advisory procedure referred to in Article 51(2).~~

~~The Commission shall preserve the confidentiality of commercially sensitive information.~~

~~3. When deciding on the derogations referred to in paragraph 1, the Member State, or the designated competent authority, and the Commission shall take into account, in particular, the following criteria:~~

~~(a) the objective of achieving a competitive gas market;~~

~~(b) the need to fulfil public-service obligations and to ensure security of supply;~~

~~(c) the position of the natural gas undertaking in the gas market and the actual state of competition in that market;~~

~~(d) the seriousness of the economic and financial difficulties encountered by natural gas undertakings and transmission undertakings or eligible customers;~~

~~(e) the dates of signature and terms of the contract or contracts in question, including the extent to which they allow for market changes;~~

~~(f) the efforts made to find a solution to the problem;~~

~~(g) the extent to which, when accepting the take-or-pay commitments in question, the undertaking could reasonably have foreseen, having regard to the provisions of this Directive, that serious difficulties were likely to arise;~~

~~(h) the level of connection of the system with other systems and the degree of interoperability of those systems; and~~

~~(i) the effects the granting of a derogation would have on the correct application of this Directive as regards the smooth functioning of the internal market in natural gas.~~

~~A decision on a request for a derogation concerning take-or-pay contracts concluded before 4 August 2003 should not lead to a situation in which it is impossible to find economically viable alternative outlets. Serious difficulties shall in any case be deemed not to exist when the sales of natural gas do not fall below the level of minimum offtake guarantees contained in gas-purchase take-or-pay contracts or in so far as the relevant gas-purchase take-or-pay contract can be adapted or the natural gas undertaking is able to find alternative outlets.~~

~~4. Natural gas undertakings which have not been granted a derogation as referred to in paragraph 1 of this Article shall not refuse, or shall no longer refuse, access to the system because of take-or-pay commitments accepted in a gas purchase contract. Member States shall ensure that the relevant provisions of Articles 32 to 44 are complied with.~~

~~5. Any derogation granted under the above provisions shall be duly substantiated. The Commission shall publish the decision in the Official Journal of the European Union.~~

~~6. The Commission shall, within 4 August 2008, submit a review report on the experience gained from the application of this Article, so as to allow the European Parliament and the Council to consider, in due course, the need to adjust it.~~

↓ 2019/692 Art. 1.8 (adapted)
⇨ new

Article 79~~48a~~

Technical agreements regarding the operation of ⌦ natural gas and hydrogen pipeline lines with third countries ⌫ ~~transmission lines~~

This Directive does not affect the freedom of transmission system operators ⇨ , hydrogen network operators ⇦ or other economic operators to maintain in force or to conclude

technical agreements on issues concerning the operation of ~~transmission~~ ~~lines~~ ⇨ pipelines ⇦ between a Member State and a third country, insofar as those agreements are compatible with Union law and relevant decisions of the ~~national~~ regulatory authorities of the Member States concerned. Such agreements shall be notified to the regulatory authorities of the Member States concerned.

↓ 2009/73/EC

~~*Article 49*~~

~~**Emergent and isolated markets**~~

~~1. Member States not directly connected to the interconnected system of any other Member State and having only one main external supplier may derogate from Articles 4, 9, 37 and/or 38. A supply undertaking having a market share of more than 75 % shall be considered to be a main supplier. Any such derogation shall automatically expire where at least one of the conditions referred to in this subparagraph no longer applies. Any such derogation shall be notified to the Commission.~~

~~Cyprus may derogate from Articles 4, 9, 37 and/or 38. Such derogation shall expire from the moment when Cyprus is not qualifying as an isolated market.~~

~~Articles 4, 9, 37 and/or 38 shall not apply to Estonia, Latvia and/or Finland until any of those Member States is directly connected to the interconnected system of any Member State other than Estonia, Latvia, Lithuania and Finland. This subparagraph is without prejudice to derogations under the first subparagraph of this paragraph.~~

~~2. A Member State, qualifying as an emergent market, which, because of the implementation of this Directive, would experience substantial problems may derogate from Articles 4 and 9, Article 13(1) and (3), Articles 14 and 24, Article 25(5), Articles 26, 31 and 32, Article 37(1) and/or Article 38. Such derogation shall automatically expire from the moment when the Member State no longer qualifies as an emergent market. Any such derogation shall be notified to the Commission.~~

~~Cyprus may derogate from Articles 4 and 9, Article 13(1) and (3), Articles 14 and 24, Article 25(5), Articles 26, 31 and 32, Article 37(1) and/or Article 38. Such derogation shall expire from the moment when Cyprus is not qualifying as an emergent market.~~

~~3. On the date at which the derogation referred to in the first subparagraph of paragraph 2 expires, the definition of eligible customers shall result in an opening of the market equal to at least 33 % of the total annual gas consumption of the national gas market. Two years thereafter, Article 37(1)(b) shall apply, and three years thereafter, Article 37(1)(c) shall apply. Until Article 37(1)(b) applies the Member State referred to in paragraph 2 of this Article may decide not to apply Article 32 as far as ancillary services and temporary storage for the re-gasification process and its subsequent delivery to the transmission system are concerned.~~

~~4. Where the implementation of this Directive would cause substantial problems in a geographically limited area of a Member State, in particular concerning the development of the transmission and major distribution infrastructure, and with a~~

~~view to encouraging investments, the Member State may apply to the Commission for a temporary derogation from Articles 4 and 9, Article 13(1) and (3), Articles 14 and 24, Article 25(5), Articles 26, 31 and 32, Article 37(1) and/or Article 38 for developments within that area.~~

~~5. The Commission may grant the derogation referred to in paragraph 4, taking into account, in particular, the following criteria:~~

~~– a) the need for infrastructure investments, which would not be economic to operate in a competitive market environment,~~

~~– b) the level and pay-back prospects of investments required,~~

~~– c) the size and maturity of the gas system in the area concerned,~~

~~– d) the prospects for the gas market concerned,~~

~~– e) the geographical size and characteristics of the area or region concerned, and socioeconomic and demographic factors,~~

~~For gas infrastructure other than distribution infrastructure, a derogation may be granted only if no gas infrastructure has been established in the area or if gas infrastructure has been established for less than 10 years. The temporary derogation shall not exceed 10 years from the time gas is first supplied in the area.~~

~~For distribution infrastructure a derogation may be granted for a period not exceeding 20 years from when gas is first supplied through the said infrastructure in the area.~~

~~6. Article 9 shall not apply to Cyprus, Luxembourg and/or Malta.~~

~~7. The Commission shall inform the Member States of applications made under paragraph 4 prior to taking a decision pursuant to paragraph 5, taking into account respect for confidentiality. That decision, as well as the derogations referred to in paragraphs 1 and 2, shall be published in the *Official Journal of the European Union*.~~

~~8. Greece may derogate from Articles 4, 24, 25, 26, 32, 37 and/or 38 of this Directive for the geographical areas and time periods specified in the licences issued by it, prior to 15 March 2002 and in accordance with Directive 98/30/EC, for the development and exclusive exploitation of distribution networks in certain geographical areas.~~

⇩ new

Article 80

Derogations for natural gas system

1. Member States which are not directly connected to the interconnected system of any other Member State may apply to the Commission for derogations from Articles 3, 7, 54 and/or 27. Any such derogation shall expire from the moment when the first interconnector to the Member State is completed.

2. Member States may apply to the Commission for derogations from applying Articles 3, 7, 54 and/or 27 to outermost regions within the meaning of Article 349 TFEU or to other geographically isolated areas. Any such derogation shall expire from the

moment a connection from the region or area to a Member State with an interconnected system is completed.

3. The Commission shall inform the Member States of applications for derogations referred to in paragraphs 1 and 2 before taking a decision, taking into account justified requests for confidentiality of commercially sensitive information.

4. Derogations granted by the Commission shall be limited in time and subject to conditions that aim to increase competition in and the integration of the internal market and to ensure that the derogations do not hamper the transition towards renewable energy or the application of the energy efficiency first principle within the meaning of Article 2, point (18) of Regulation (EU) 2018/1999.

5. Derogations pursuant to Directive 2009/73/EC without an expiry date shall expire on 31 December 2025. Member States that at the time of entry into force of this Directive are still benefitting from these derogations may apply to the Commission for a new derogation in accordance with the conditions established in this Article.

6. Decisions to grant derogations shall be published in the Official Journal of the European Union.

🡻 2019/692 Art. 1.9 (adapted)
⇨ new

Article 81~~49a~~

Derogations in relation to ⌦ natural gas ⌫ transmission lines to and from third countries

1. In respect of gas transmission lines between a Member State and a third country completed before 23 May 2019, the Member State where the first connection point of such a transmission line with a Member State's network is located may decide to derogate from Articles 54~~9~~, 65~~10~~, 66~~11~~ and 27~~32~~ and Article 72~~41~~(7), (9) and 73 (1) for the sections of such gas transmission line located in its territory and territorial sea, for objective reasons such as to enable the recovery of the investment made or for reasons of security of supply, provided that the derogation ~~would~~ ⌦ is ⌫ not ~~be~~ detrimental to competition on or the effective functioning of the internal market in natural gas, or to security of supply in the Union.

   The derogation shall be limited in time up to 20 years based on objective justification, renewable if justified and may be subject to conditions which contribute to the achievement of the ~~above~~ conditions ⌦ in the first subparagraph ⌫.

   Such derogations shall not apply to transmission lines between a Member State and a third country which has the obligation to transpose this Directive and which effectively implements this Directive in its legal order under an agreement concluded with the Union.

2. Where the transmission line concerned is located in the territory of more than one Member State, the Member State in the territory of which the first connection point with the Member States' network is located shall decide whether to grant a derogation for that transmission line after consulting all the Member States concerned.

Upon request by the Member States concerned, the Commission may decide to act as an observer in the consultation between the Member State in the territory of which the first connection point is located and the third country concerning the consistent application of this Directive in the territory and territorial sea of the Member State where the first interconnection point is located, including the granting of derogations for such transmission lines.

3. Decisions pursuant to paragraphs 1 and 2 shall be adopted by 24 May 2020. Member States shall notify any such decisions to the Commission and shall publish them.

Article 82~~49b~~

Empowerment procedure

1. Without prejudice to other obligations under Union law, and to the allocation of competence between the Union and the Member States, existing agreements between a Member State and a third country on the operation of a transmission line or an upstream pipeline network may be maintained in force until the entry into force of a subsequent agreement between the Union and the same third country or until the procedure under paragraphs 2 to 15 of this Article applies.

2. Without prejudice to the allocation of competence between the Union and the Member States, where a Member State intends to enter into negotiations with a third country in order to amend, extend, adapt, renew or conclude an agreement on the operation of a transmission line with a third country concerning matters falling, entirely or partly, within the scope of this Directive, it shall notify the Commission of its intention in writing.

   Such a notification shall include the relevant documentation and an indication of the provisions to be addressed in the negotiations or to be renegotiated, the objectives of the negotiations and any other relevant information, and shall be transmitted to the Commission at least five months before the intended start of the negotiations.

3. Further to any notification pursuant to paragraph 2, the Commission shall authorise the Member State concerned to enter into formal negotiations with a third country for the part which may affect Union common rules unless it considers that the opening of such negotiations would:

   (a) be in conflict with Union law other than the incompatibilities arising from the allocation of competence between the Union and the Member States;

   (b) be detrimental to the functioning of the internal market in natural gas, competition or security of supply in a Member State or in the Union;

   (c) undermine the objectives of pending negotiations of intergovernmental agreements by the Union with a third country;

   (d) be discriminatory.

4. When carrying out the assessment under paragraph 3, the Commission shall take into account whether the intended agreement concerns a transmission line or an upstream pipeline that contributes to the diversification of natural gas supplies and suppliers by means of new natural gas sources.

5. Within 90 days of receipt of the notification referred to in paragraph 2, the Commission shall adopt a decision authorising or refusing to authorise a Member State to enter into negotiations in order to amend, extend, adapt, renew or conclude

an agreement with a third country. Where additional information is needed to adopt a decision, the 90-day period shall run from the date of receipt of such additional information.

6. In the event that the Commission adopts a decision refusing to authorise a Member State to enter into negotiations in order to amend, extend, adapt, renew or conclude an agreement with a third country, it shall inform the Member State concerned accordingly and shall give the reasons therefor.

7. Decisions authorising or refusing to authorise a Member State to enter into negotiations in order to amend, extend, adapt, renew or conclude an agreement with a third country shall be adopted, by means of implementing acts, in accordance with the procedure referred to in Article 83~~51~~(2).

8. The Commission may provide guidance and may request the inclusion of particular clauses in the agreement envisaged, in order to ensure compatibility with Union law in accordance with Decision (EU) 2017/684 of the European Parliament and of the Council[43].

9. The Commission shall be kept informed of the progress and results of the negotiations to amend, extend, adapt, renew or to conclude an agreement throughout the different stages of such negotiations and may request to participate in such negotiations between the Member State and the third country in accordance with Decision (EU) 2017/684.

10. The Commission shall inform the European Parliament and the Council of the decisions adopted pursuant to paragraph 5.

11. Before signing an agreement with a third country, the Member State concerned shall notify the Commission of the outcome of negotiations and shall transmit the text of the negotiated agreement to the Commission.

12. Upon notification pursuant to paragraph 11, the Commission shall assess the negotiated agreement pursuant to paragraph 3. Where the Commission finds that the negotiations have resulted in an agreement which complies with paragraph 3, it shall authorise the Member State to sign and conclude the agreement.

13. Within 90 days of receipt of the notification referred to in paragraph 11, the Commission shall adopt a decision authorising or refusing to authorise a Member State to sign and conclude the agreement with a third country. Where additional information is needed to adopt a decision, the 90-day period shall run from the date of receipt of such additional information.

14. Where the Commission adopts a decision pursuant to paragraph 13, authorising a Member State to sign and conclude the agreement with a third country, the Member State concerned shall notify the Commission of the conclusion and entry into force of the agreement, and of any subsequent changes to the status of that agreement.

15. In the event that the Commission adopts a decision refusing to authorise a Member State to sign and conclude the agreement with a third country pursuant to paragraph 13, it shall inform the Member State concerned accordingly and shall give the reasons therefor.

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[43] Decision (EU) 2017/684 of the European Parliament and of the Council of 5 April 2017 on establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding instruments between Member States and third countries in the field of energy, and repealing Decision No 994/2012/EU (OJ L 99, 12.4.2017, p. 1).

↓ 2009/73/EC

~~*Article 50*~~

~~**Review procedure**~~

~~In the event that in the report referred to in Article 52(6), the Commission reaches the conclusion that, given the effective manner in which network access has been carried out in a Member State — which gives rise to fully effective, non-discriminatory and unhindered network access — certain obligations imposed by this Directive on undertakings (including those with respect to legal unbundling for distribution system operators) are not proportionate to the objective pursued, the Member State in question may submit a request to the Commission for exemption from the requirement in question.~~

~~Such request shall be notified, without delay, by the Member State to the Commission, together with all the relevant information necessary to demonstrate that the conclusion reached in the report on effective network access being ensured will be maintained.~~

~~Within three months of its receipt of a notification, the Commission shall adopt an opinion with respect to the request by the Member State concerned, and where appropriate, submit proposals to the European Parliament and to the Council to amend the relevant provisions of this Directive. The Commission may propose, in the proposals to amend this Directive, to exempt the Member State concerned from specific requirements subject to that Member State implementing equally effective measures as appropriate.~~

~~*Article 51*~~

~~**Committee**~~

~~1. The Commission shall be assisted by a committee.~~

~~2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

~~3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

↓ 2018/1999 Art. 51.2

~~*Article 52*~~

~~**Reporting**~~

~~The Commission shall monitor and review the application of this Directive and submit an overall progress report to the European Parliament and to the Council as an annex to the State of the Energy Union Report referred to in Article 35 of Regulation (EU) 2018/1999 of the European Parliament and of the Council[44].~~

~~[44] Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC,~~

⇩ new

Article 83

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 8, 56, 66, 74, 75 and 76 shall be conferred on the Commission for an indeterminate period of time from [date of entry into force].

3. The delegation of power referred to in Articles 8, 56, 66, 74, 75 and 76 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated act already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 8, 56, 66, 74, 75 and 76 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 84

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 85

Review and reporting

~~2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).~~

By 31 December 2030 the Commission shall review this Directive and shall submit a report to the European Parliament and to the Council. The review shall in particular examine the application of Article 8, and related definitions in Article 2, to assess whether facilities that begin operation from 1 January 2031 should demonstrate higher greenhouse gas emission savings from the use of low carbon fuels and low carbon hydrogen to receive certification pursuant to that Article. .

Article 86

Amendments to Directive 2012/27/EU

Directive 2012/27/EU is amended as follows:

(1) Articles 9, 10 and 11 are deleted;

(2) Annex VII is deleted.

🡻 2009/73/EC (adapted)
⇨ new

Article 87~~54~~

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive~~ ⇨ Article 2 to 5, Article 7 to 25, Articles 26, 27, and 29, Article 31 to 34, Article 35 (1) (a), (3), (4), (7),(8) and (9), Article 37 and 38, Article 40 (1), (2), (7), (8), and (9), Article 41, Article 42 (2), Article 46 to 53, Articles 56 and 58(11), Article 62 to 69, Article 70 (5) and (6), Article 71 to 73, Article 75 (1), (5), (6) and (9), Article 76 and 77, Annex I and Annex II⇦ by ⇨ 31 December 2023 ⇦ ~~3 March 2011~~. They shall ~~forthwith inform~~ ⌦ immediately communicate the text of those measures to ⌫ the Commission ~~thereof~~.

   ~~They shall apply those measures from 3 March 2011 with the exception of Article 11, which they shall apply from 3 March 2013.~~

   ~~Where~~ ⌦ When ⌫ Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. ~~The methods of making such reference shall be laid down by~~ Member States ⌦ shall determine how such reference is to be made and how that statement is to be formulated ⌫ .

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

↓ 2009/73/EC (adapted)
⇨ new

Article 88~~53~~

Repeal

Directive ~~2003/55/EC~~ ⌦ 2009/73/EC, as amended by the acts listed in Annex III, Part A, ⌫ is repealed ⌦ with effect ⌫ from ~~3 March 2011~~ ⇨ 1 January 2023, ⇦ without prejudice to the obligations of Member States concerning ⌦ relating to ⌫ the ~~deadlines~~ ⌦ time-limits ⌫ for ⌦ the ⌫ transposition ⌦ into national law ⌫ and ⌦ the date of ⌫ application of the ~~said Directive~~ ⌦ Directives set out in Annex III, Part B ⌫ .

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex IV~~II~~.

↓ 2009/73/EC (adapted)

Article 89~~55~~

Entry into force

This Directive shall enter into force on the ~~20th~~ ⌦ twentieth ⌫ day following ⌦ that of ⌫ its publication in the *Official Journal of the European Union*.

Article 90~~56~~

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned

1.3. The proposal/initiative relates to:

1.4. Objective(s)

1.4.1. General objective(s)

1.4.2. Specific objective(s)

1.4.3. Expected result(s) and impact

1.4.4. Indicators of performance

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

1.5.3. Lessons learned from similar experiences in the past

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

1.5.5. Assessment of the different available financing options, including scope for redeployment

1.6. Duration and financial impact of the proposal/initiative

1.7. Management mode(s) planned

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

3.2.2. Estimated output funded with operational appropriations

3.2.3. Summary of estimated impact on administrative appropriations

3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party contributions

3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT 'AGENCIES'

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen (recast).

Proposal for a Regulation of the European Parliament and of the Council on conditions the internal markets for renewable and natural gases and for hydrogen (recast)

1.2. Policy area(s) concerned

Policy area: Energy

Activity: European Green Deal

1.3. The proposal relates to

X a new action

☐ a new action following a pilot project/preparatory action[45]

☐ the extension of an existing action

☐ a merger of one or more actions towards another/a new action

1.4. Objective(s)

1.4.1. General objective(s)

The European Green Deal and the Climate law set the target for the EU to become climate neutral by 2050 in a manner that contributes to European competitiveness, growth and jobs. The greenhouse gas emissions reduction target of 55% is assessed to lead to a share of renewables of between 38% and 40 %. Gaseous fuels will continue to provide an important share of the energy mix by 2050, requiring the decarbonisation of the gas sector via a forward-looking design for competitive decarbonised gas markets. The present initiative is part of the Fit-for-55 package. It covers the market design for gases, including hydrogen. Whilst it will not deliver decarbonisation by itself, it will remove existing regulatory barriers and create the conditions for this to take place in a cost effective manner.

1.4.2. Specific objective(s)

The following specific objectives focus on those which are addressed by provisions which require additional resources for ACER and DG Energy.

Specific objective No 1:

Create a regulatory framework for a market-based development of the hydrogen sector and hydrogen networks.

Specific objective No 2:

[45] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

Improving the conditions for cross-border trade in natural gas, taking into account the increasing role of renewable and low-carbon gases, and more rights for consumers.

Specific objective No 3:

Ensure that pan-European entities of network operators comply with EU legislation.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The additional resources will allow ACER and DG Energy to carry out the tasks necessary to fulfil their mandate under EU legislation as per the requirements under this proposal.

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

Specific objective No 1:

Hydrogen infrastructure development and its joint utilisation by different market participants.

Specific objective No 2:

Level of trade and access of renewable and low-carbon gases to markets (e.g. volumes and number of traders, utilisation rates of LNG terminals and volumes of those gases received).

Specific objective No 3:

Timely establishment of the European Network of Network Operators for Hydrogen and timely inclusion of natural gas DSOs in the EU DSO entity.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The following assessment, to the extent that it concerns ACER, takes into account the estimates of resources needs for current tasks of the recent study undertaken by an independent consultant to establish the resource need for similar but additional tasks, with adjustment to avoid overestimation. Quoted FTE numbers for existing tasks are rounded estimates of required staff in 2023, but with an across-the-board reduction of 20% to take into account that the methodology applied by the consultant was prone to over-estimation as explained in Commission Opinion C(2021)7024 of 5.10.2021 'on the draft programming document of the European Union Agency for the Cooperation of Energy Regulators for the period 2022 – 2024 and on the sufficiency of the financial and human resources available to ACER. This LFS hence applies a more conservative estimate of required staff than the consultant did.

While volumes of natural gas supplied to EU customers will gradually decline, this will not lead to a reduction of workload for existing tasks of ACER for the foreseeable future: For

example, the implementation of natural gas network codes continues regardless the volumes transported by the network. Complexity will even increase given the increasing role of blending of renewable and low-carbon gases. Furthermore, with a network and market for hydrogen, the regulation of a new sector will be added to ACER's list of tasks.

Specific objective No 1: Create a regulatory framework for a market-based development of hydrogen sector and hydrogen networks

- As for electricity and for natural gas, the development of a market-based hydrogen sector requires more detailed rules in the form of **network codes or guidelines**. The proposal includes 9 empowerments to adopt new network codes or guidelines related to hydrogen in the form of Commission Regulations.

  Currently there are 6 network codes or guidelines adopted as Commission Regulations under Gas Regulation (EC) No 715/2009 or included as annexes to this Regulation. The consultant estimated that ACER requires 7 FTE for implementing them. Experience gained in the development and implementation of natural gas network codes and guidelines can be used when developing similar network codes and guidelines in hydrogen (e.g. capacity allocation, interoperability).

  It is therefore estimated that 5 FTEs are required for developing and then implementing the new network codes and guidelines related to hydrogen. Given the gradual development of the hydrogen sector, the additional FTEs should be phased in gradually: 1 FTE per year from 2023 onwards.

- ACER shall also take **decisions on distributing costs for new cross-border hydrogen infrastructure and for solutions removing restrictions due to differing quality of hydrogen or of other gases**. The consultant estimated that for an ACER decision on cross border cost allocation under the TEN-E Regulation 347/2013 in case Member States' regulatory authorities cannot agree, around 3 FTE are needed for 6 months and in case a decision is appealed further human resources are needed. Assuming a decision once every second year, this would require additional 1 FTE at a time when, with the increasing importance of hydrogen and other gases than natural gas, this decision power is likely to be triggered (i.e. 2026).

- A **4th volume** (next to electricity wholesale, natural gas wholesale and retail/consumers) **on hydrogen** is to be added to ACER's **Market Monitoring Report**, extending the scope of ACER's market monitoring activities. Currently 7-8 FTE work on those existing three volumes. Since hydrogen will be a new area for ACER for which in-house exertise needs to be established, it is estimated that additional 1 FTE is needed from entry into force of the proposals and 1 further FTE once the hydrogen sector is expected to start developing into a pan-European market (i.e. around 2027).

- Given the increasing importance of hydrogen and other gases than fossil gas, the **scope of REMIT needs to be extended**. This will require in total 5 additional FTE, 2 from 2024 onwards and additional 3 FTE once a hydrogen market starts developing, hence from 2027 onwards. Those 5 FTE will be eligible for funding by fees.

Specific objective No 2: Improving the conditions for cross-border trade in natural gas, taking into account the increasing role of renewable and low-carbon gases, and more rights for consumers

- A new Commission Regulation on **cybersecurity** is planned, equivalent to the one for the electricity sector. In line with the experience that ACER needs, on average, 1 FTE per network code or guideline, additional 1 FTE is required for cybersecurity from entry into force of the proposal.
- A new provision is to be introduced requiring network operators to have separate regulated asset bases for natural gas, hydrogen and/or electricity networks to avoid cross-subsidisation. ACER will be tasked with issuing **recommendations to network operators and Member States' regulatory authorities on determining the value of the assets and calculating the charges for network users** and to update them every second year. ACER will also be tasked with publishing every 4 years a **study comparing the efficiency of EU transmission system operators' costs**. For the existing best practice report on transmission and distribution tariffs pursuant to Article 18(9) of Electricity Regulation 2019/943 the consultant estimated 0.4 FTE per year, a little bit more than for the existing report on congestion at gas interconnection points. The proposal reduces the frequency of the latter report from yearly to, in principle, every two years. In consequence additional 0.5 FTE from 2024 onwards should be sufficient to cover both new reporting tasks.
- Mirroring the provisions in the recast Electricity Directive (EU) 2019/944, this proposal will strengthen provisions also for **gas consumers**. Those provisions should be matched by ACER's capacity to monitor consumer rights and retail markets and hence ACER's team working on its yearly Market Monitoring Report should be reinforced by 0.5 FTE from the time onwards when the provisions will need to be transposed by Member States (i.e. 2024).

<u>Specific objective No 3: Ensuring that pan-European entities of network operators comply with EU legislation</u>

- The proposal improves oversight of ENTSO-G (mirroring the provisions related to ENTSO-E), extends the scope of the EU DSO entity to distribution system operators for natural gas and creates a new European Network of Network Operators for Hydrogen.

  The setting up of the European Network of Network Operators for Hydrogen and the extension of the scope of the EU DSO entity creates peak workload for ACER in the first year after entry into force of the proposal followed by the regular monitoring tasks and possible, although rare, enforcement actions. 1 FTE should be sufficient who, after the first year, will also work on the main monitoring task over the new European Network of Network Operators for Hydrogen: the assessment of the new Union-wide network development plan.

Those additional FTE as described above do not include overhead. Applying an overhead ratio of around 25% (less than currently) mean that additional 5 FTE are required. Previous Commission Opinions on ACER's Programming Documents have questionned that ACER's establishment plan does not include provisions for staff doing clerical or secretarial tasks and ACER indeed relies on interim staff for such tasks. Those overhead FTE should therefore be AST/SCs to remedy this situation, without additional burden on the EU budget, since they would replace interim staff.

Of the total of 21 FTE, up to 7 would be eligible for funding by fees (2 TA ADs, 3 CAs FG IV and 2 TA AST/SC as secretarial support for the heads of the two REMIT departments).

While most of the additional workload for EU bodies will be within ACER, a hydrogen sector which will progressively develop into a pan-European market as well as the increased complexity of the network and market for natural gas due to the increasing supply of other gases than fossil gas will also increase the workload for DG Energy. A conservative estimate is that 1 additional FTE is needed to ensure proper implementation of the strengthened provisions for consumer protection. On wholesale aspect, currently 8 FTE work on markets in gases (including network planning and gas quality). The addition of hydrogen related rules and the increasing complexity of the sector for natural gas requires the multiplication of the workforce by factor 1.5, hence 4 additional FTE, staggered over the coming years in line with the development of the hydrogen sector and the increasing market share of other gases than fossil gas.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Currently, there are no rules at EU-level regulating dedicated hydrogen networks or markets. In view of the current efforts at EU and national levels to promote the use of renewable hydrogen as a replacement for fossil fuels, Member States would be incentivised to adopt rules on the transport of hydrogen dedicated infrastructure at national level. This creates the risk of a fragmented regulatory landscape across the EU, which could hamper the integration of national hydrogen networks and markets, thereby preventing or deterring cross-border trade in hydrogen.

Harmonising rules for hydrogen infrastructure at a later stage (i.e. after national legislation is in place) would lead to increased administrative burdens for Member States and higher regulatory costs and uncertainty for companies, especially where long-term investments in hydrogen production and transport infrastructure are concerned.

The creation of a regulatory framework at EU-level for dedicated hydrogen networks and markets would foster the integration and interconnection of national hydrogen markets and networks. EU-level rules on the planning, financing and operation of such dedicated hydrogen networks would create long-term predictability for potential investors in this type of long-term infrastructure, in particular for cross-border interconnections (which might otherwise be subject to different and potentially divergent national laws).

When it comes to biomethane, without an initiative at EU level, it is likely that by 2030 a regulatory patchwork would still exist regarding access to wholesale markets, connection obligations and TSO-DSO coordination measures. Likewise, without some harmonisation at the EU level, renewable and low-carbon gas producers will be facing vastly different connection and injection costs across the EU, resulting in an unequal playing field.

Without further legislation at the EU level Member States would continue to apply different gas quality standards and rules on hydrogen blending levels, risking cross-border flow restrictions and market segmentation. Gas quality standards would continue to be mainly

defined by the quality parameters of natural gas, limiting the integration of renewable gases in the network.

All these aspects are likely to lower cross-border trade with renewable gases that might be compensated by higher fossil gas imports. The utilisation of the LNG terminals and imports could remain restricted to fossil gas, despite that no adaptation of LNG terminals would be necessary in case competitive biomethane or synthetic methane from non-EU sources were available.

1.5.3. Lessons learned from similar experiences in the past

The experience with previous legislative proposals has shown that staffing needs of ACER are easily underestimated. This is especially the case if legislation includes empowerment provisions for the adoption of more detailed technical rules like the network codes and guidelines under the Electricity Regulation (EU) 2019/943. In order to avoid a repeat of the experience with the third internal market package of 2009, where underestimating the staffing needs resulted in structural understaffing (only comprehensively solved starting with the EU budget for 2022), for this proposal staffing needs are estimated for several years into the future and take into account likely future developments like the use of empowerments.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

This initiative is included in the Commission work programme for 2021 (COM(2020) 690 final) as part of the European Green Deal and the 'Fit For 55' Package' and will contribute to the greenhouse gas emissions reduction targets of at least 55% by 2030 compared to 1990 as set out by the European Climate Law Regulation and to the EU's objective of achieving climate neutrality by 2050.

1.5.5. Assessment of the different available financing options, including scope for redeployment

The FTE are needed for new tasks while existing tasks will not decrease in the foreseeable future: a hydrogen sector will develop in parallel to the continued use of the natural gas system, the latter even becoming more complex due to the increasing use of other sources of methane than fossil gas. Hence redeployment would not solve the additional staffing needs.

To the extent legally possible, additional FTE will be financed by the existing fee scheme for ACER's tasks under REMIT.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

– ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

– ☐ Financial impact from YYYY to YYYY

X unlimited duration

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

1.7. Management mode(s) planned[46]

X Direct management by the Commission through

– ☐ executive agencies

☐ **Shared management** with the Member States

X Indirect management by entrusting budget implementation tasks to:

☐ international organisations and their agencies (to be specified);

☐the EIB and the European Investment Fund;

X bodies referred to in Articles 70 and 71;

☐ public law bodies;

☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

[46] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

According to its financial regulation, ACER has to provide, in the context of its Programming Document, an annual Work Programme including details on resources, both financial and human, per each of the activities carried out.

ACER reports monthly to DG ENER on budget execution, including commitments, and payments by budget title, and vacancy rates by type of staff.

In addition, DG ENER is directly represented in the governance bodies of ACER. Through its representatives in the Administrative Board, DG ENER will be informed of the use of the budget and the establishment plan at each of its meetings during the year.

Finally, also in line with financial rules, ACER is subject to annual requirements for reporting on activities and the use of resources through the Administrative Board and its Annual Activity Report.

The tasks directly implemented by DG ENER will follow the annual cycle of planning and monitoring, as implemented in the Commission and the executive agencies, including reporting the results through the Annual Activity Report of DG ENER.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

While ACER will have to develop new expertise, it is nevertheless most cost-effective to allocate the new tasks under this proposal to an existing agency which already works on similar tasks.

DG ENER established a control strategy for managing its relations with ACER, part of the 2017 Internal Control Framework of the Commission. ACER revised and adopted its own Internal Control Framework in December 2018.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

Main risk are wrong estimates as regards the workload created by this proposal, given that it aims at providing a facilitating regulatory framework ex-ante, not ex-post after the establishment of national approaches and the appearance of new actors and new fuels (hydrogen and other “alternative gases”) in the energy sector. This risk needs to be accepted, since, as experience has shown, if additional resources needs are not included in the initial proposal, it is very difficult to remedy this situation later on.

That the proposal includes several new tasks mitigates this risk, since while the workload of some future tasks may be underestimated, others may be overestimated, providing scope for possible future redeployment.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

The allocation of additional tasks for the existing mandate of ACER is not expected to generate specific additional controls at ACER, therefore, the ratio of control costs over value of funds managed will remain unaltered.

Similarly, the tasks assigned for DG ENER will not result in additional controls or change in the ratio of control costs.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

ACER applies the anti-fraud principles of decentralised EU Agencies, in line with the Commission approach.

In March 2019 ACER adopted a new Anti-Fraud Strategy, repealing Decision 13/2014 of the Administrative Board of ACER. The new strategy, spanning over a three-year period, is based on the following elements: an annual risks assessment, the prevention and management of conflicts of interest, internal rules on whistleblowing, the policy and procedure for the management of sensitive functions, as well as measures related to ethics and integrity.

DG ENER also adopted a revised Anti-fraud Strategy (AFS) in 2020. The ENER AFS is based on the Comission Anti-fraud Strategy and a specific risk assessment carried out internally to identify the areas most vulnerable to fraud, the controls already in place and the actions necessary to improve DG ENER's capacity to prevent, detect and correct fraud.

Both the ACER Regulation and the contractual provisions applicable to public procurement ensure that audits and on-the-spot checks can be carried out by the Commission services, including OLAF, using the standard provisions recommended by OLAF.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[47]	from EFTA countries [48]	from candidate countries[49]	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
02	02 10 06 and 02 03 02	Diff./	YES~~/NO~~	~~YES/~~NO	~~YES/~~NO	~~YES/~~NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-	from EFTA	from candidate	from third	within the meaning of Article 21(2)(b)

[47] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
[48] EFTA: European Free Trade Association.
[49] Candidate countries and, where applicable, potential candidates from the Western Balkans.

		diff.	countries	countries	countries	of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	2	European Strategic Investments – Agency for the Cooperation of Energy Regulators (ACER)

ACER			Year **2023**	Year **2024**	Year **2025**	Year **2026**	Year **2027**	**TOTAL**
Title 1:	Commitments	(1)	0.690	0.994	1.380	1.614	1.918	**6.596**
	Payments	(2)	0.690	0.994	1.380	1.614	1.918	**6.596**
Title 2:	Commitments	(1a)						
	Payments	(2a)						
Title 3:	Commitments	(3a)						
	Payments	(3b)						
TOTAL appropriations for ACER	Commitments	=1+1a +3a	0.690	0.994	1.380	1.614	1.918	**6.596**
	Payments	=2+2a +3b	0.690	0.994	1.380	1.614	1.918	**6.596**

Heading of multiannual financial framework	7	'Administrative expenditure'

EUR million (to three decimal places)

		Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
DG: ENER							
• Human Resources		0.152	0.304	0.304	0.456	0.760	**1.976**
• Other administrative expenditure							
TOTAL DG ENER	Appropriations						

TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	0.152	0.304	0.304	0.456	0.760	**1.976**

EUR million (to three decimal places)

		Year 2023	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments	0.842	1.298	1.684	2.070	2.678	**8.572**
	Payments	0.842	1.298	1.684	2.070	2.678	**8.572**

3.2.2. *Estimated impact on ACER's appropriations*

– **X** The proposal/initiative does not require the use of operational appropriations

– ☐ The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **N**		Year **N+1**		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
	Type[50]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[51]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTAL COST																		

50 Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

51 As described in point 1.4.2. 'Specific objective(s)…'

3.2.3. Estimated impact on ACER's human resources

3.2.3.1. Summary

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– **X** The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year **2023**	Year **2024**	Year **2025**	Year **2026**	Year **2027**	**TOTAL**
Temporary agents (AD Grades)	0,456	0,760	0,912	1,064	1,216	4.408
Temporary agents (AST grades)						
Temporary agents (AST/SC grades)	0.152	0.152	0.304	0.304	0.456	1.368
Contract staff	0.082	0.082	0.164	0.246	0.246	0.820
Seconded National Experts						
TOTAL	0.690	0.994	1.380	1.614	1.918	**6.596**

Staff requirements (FTE):

	Year **2023**	Year **2024**	Year **2025**	Year **2026**	Year **2027**	**TOTAL**
Temporary agents (AD Grades)	3	6	7	8	10	**10**
Temporary agents (AST grades)						
Temporary agents (AST/SC grades)	1	2	3	4	5	**5**
Contract staff (FG IV)	1	2	3	3	6	**6**
Seconded National Experts						
TOTAL	**5**	**10**	**13**	**15**	**21**	**21**

Of which are funded by the EU contribution[52]:

	Year **2023**	Year **2024**	Year **2025**	Year **2026**	Year **2027**	**TOTAL**
Temporary agents (AD Grades)	3	5	6	7	8	**8**
Temporary agents (AST grades)						
Temporary agents (AST/SC grades)	1	1	2	2	3	**3**
Contract staff (FG IV)	1	1	2	3	3	**3**
Seconded National Experts						
TOTAL	**5**	**7**	**10**	**12**	**14**	**14**

Planned recruitment date for the FTEs is the 1 January of the respective year.

[52] Each year, in accordance with Article 3(1) of Commission Decision (EU) 2020/2152, ACER will identify those costs, including staff costs, which are eligible for funding by fees and present the result in its draft programming document. In accordance with Article 20 of Regulation (EU) 2019/942, the Commission provides an opinion on ACER's draft programming document, including the Agency's proposals as regards which costs are considered as eligible for funding by fees and the scope for thereby reducing the burden on the EU budget.

3.2.3.2. Estimated requirements of human resources for the parent DG

– ☐ The proposal/initiative does not require the use of human resources.

– **X** The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

		Year **2023**	Year **2024**	Year **2025**	Year **2026**	Year **2027**
• **Establishment plan posts (officials and temporary staff)**						
20 01 02 01 and 20 01 02 02 (Headquarters and Commission's Representation Offices)		1	2	2	3	5
20 01 02 03 (Delegations)						
01 01 01 01 (Indirect research)						
10 01 05 01 (Direct research)						
• **External staff (in Full Time Equivalent unit: FTE)**[53]						
20 02 01 (AC, END, INT from the 'global envelope')						
20 02 03 (AC, AL, END, INT and JPD in the Delegations)						
Budget line(s) (specify) [54]	- at Headquarters [55]					
	- in Delegations					
01 01 01 02 (AC, END, INT – Indirect research)						
10 01 05 02 (AC, END, INT – Direct research)						
Other budget lines (specify)						
TOTAL		1	2	2	3	5

These are new tasks, for which there is currently no staff assigned within DG ENER. The human resources required might be met by staff who have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

53 AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations.

54 Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

55 Mainly for the EU Cohesion Policy Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime Fisheries and Aquaculture Fund (EMFAF).

3.2.4. *Compatibility with the current multiannual financial framework*

– ☐ The proposal/initiative is compatible the current multiannual financial framework.

– **X** The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

– The 'Fit for 55' initiatives were not factored in when the MFF headings were calculated. This specific initiative being new, it will require reprogramming both for the line of the contribution to ACER and the line that will support additional work within DG ENER. To the extent that the budgetary impact of the additional human resources for ACER cannot be met from fees or from the current EU contribution, it will be covered by redeployment from other budget lines managed by DG ENER as regards non-fee financed additional FTE, in particular from CEF Energy Programme budget line 02 03 02), however without creating a precedent for the use of CEF funds.

– ☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework[56].

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. *Third-party contributions*

– The proposal/initiative does not provide for co-financing by third parties.

– The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

[56] See Articles 12 and 13 of Council Regulation (EU, Euratom) No 2093/2020 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027.

3.3. Estimated impact on revenue

– **X** The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

  – ☐ on own resources

  – ☐ on other revenue

  – ☐ please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[57]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

[57] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.

ANNEX
to the LEGISLATIVE FINANCIAL STATEMENT

Name of the proposal/initiative:

Gas Directive

1. NUMBER AND COST OF HUMAN RESOURCES CONSIDERED NECESSARY

2. COST OF OTHER ADMINISTRATIVE EXPENDITURE

3. TOTAL ADMINISTRATIVE COSTS

4. METHODS OF CALCULATION USED FOR ESTIMATING COSTS

4.1. HUMAN RESOURCES

4.2. OTHER ADMINISTRATIVE EXPENDITURE

This annex must accompany the legislative financial statement when the inter-services consultation is launched.

The data tables are used as a source for the tables contained in the legislative financial statement. They are strictly for internal use within the Commission.

1. Cost of human resources considered necessary

☐ The proposal/initiative does not require the use of human resources

X The proposal/initiative requires the use of human resources, as explained below:

EUR million (to three decimal places)

HEADING 7 of the multiannual financial framework		2023		2024		2025		2026		2027		2028		2029		2030	
		FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations
• Establishment plan posts (officials and temporary staff)																	
20 01 02 01 - Headquarters and Representation offices	AD	1	0.152	2	0.304	2	0.304	3	0.456	5	0.760						
	AST																
20 01 02 03 - Union Delegations	AD																
	AST																
• External staff [58]																	
20 02 01 and 20 02 02 – External personnel – Headquarters and Representation offices	AC																
	END																
	INT																
20 02 03 – External personnel - Union Delegations	AC																
	AL																
	END																

[58] AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT= agency staff; JPD= Junior Professionals in Delegations.

	INT																
	JPD																
Other HR related budget lines (*specify*)																	
Subtotal HR – HEADING 7		1	0.152	2	0.304	2	0.304	3	0.456	5	0.760						

These are new tasks, for which there is currently no staff assigned within DG ENER. The human resources required might be met by staff who have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Outside HEADING 7 of the multiannual financial framework			**2023**		**2024**		**2025**		**2026**		**2027**		**2028**		**2029**		**2030**	
			FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations
• Establishment plan posts (officials and temporary staff)																		
01 01 01 01 Indirect Research[59] 01 01 01 11 Direct Research Other (please specify)		AD																
		AST																
• External staff[60]																		
External staff from operational appropriations (former 'BA'	- at Headquarters	AC																
		END																
		INT																

59 Please choose the relevant budget line, or specify another if necessary; in case more budget lines are concerned, staff should be differentiated by each budget line concerned

60 AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT= agency staff; JPD= Junior Professionals in Delegations.

lines).	- in Union delegations	AC																
		AL																
		END																
		INT																
		JPD																
01 01 01 02 Indirect Research 01 01 01 12 Direct research Other (please specify)[61]		AC																
		END																
		INT																
Other budget lines HR related (*specify*)																		
Subtotal HR – Outside HEADING 7																		
Total HR (all MFF Headings)			1	0.152	2	0.304	2	0.304	3	0.456	5	0.760						

These are new tasks, for which there is currently no staff assigned within DG ENER. The human resources required might be met by staff who have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

[61] Please choose the relevant budget line, or specify another if necessary; in case more budget lines are concerned, staff should be differentiated by each budget line concerned

2. Cost of other administrative expenditure

X The proposal/initiative does not require the use of administrative appropriations
☐ The proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to three decimal places)

HEADING 7 of the multiannual financial framework	Year N[62]	Year N+1	Year N+2	Year N+3	Year N+4	Year N+5	Year N+7	Total
At headquarters or within EU territory:								
20 02 06 01 - Mission and representation expenses								
20 02 06 02 - Conference and meeting costs								
20 02 06 03 - Committees[63]								
20 02 06 04 Studies and consultations								
20 04 – IT expenditure (corporate)[64]								
Other budget lines non-HR related (*specify where necessary*)								
In Union delegations								
20 02 07 01 - Missions, conferences and representation expenses								

62 Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years

63 Specify the type of committee and the group to which it belongs.

64 The opinion of DG DIGIT – IT Investments Team is required (see the Guidelines on Financing of IT, C(2020)6126 final of 10.9.2020, page 7)

20 02 07 02 - Further training of staff								
20 03 05 – Infrastructure and logistics								
Other budget lines non-HR related (*specify where necessary*)								
Subtotal Other - HEADING 7 of the multiannual financial framework								

EUR million (to three decimal places)

Outside HEADING 7 of the multiannual financial framework	**Year N**[65]	**Year N+1**	**Year N+2**	**Year N+3**	**Year N+4**	**Year N+5**	**Year N+7**	**Total**
Expenditure on technical and administrative assistance (not including external staff) from operational appropriations (former 'BA' lines):								
- at Headquarters								
- in Union delegations								
Other management expenditure for research								
Policy IT expenditure on operational programmes[66]								

65 Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years

66 The opinion of DG DIGIT – IT Investments Team is required (see the Guidelines on Financing of IT, C(2020)6126 final of 10.9.2020, page 7)

Corporate IT expenditure on operational programmes[67]								
Other budget lines non-HR related (*specify where necessary*)								
Sub-total Other – Outside HEADING 7 of the multiannual financial framework								
Total Other admin expenditure (all MFFHeadings)								

[67] This item includes local administrative systems and contributions to the co-financing of corporate IT systems (see the Guidelines on Financing of IT, C(2020)6126 final of 10.9.2020)

3. Total administrative costs (all Headings MFF)

EUR million (to three decimal places)

Summary	2023	2024	2025	2026	2027	2028	2029	2030
Heading 7 - Human Resources	0.152	0.304	0.304	0.456	0.760			
Heading 7 – Other administrative expenditure								
Sub-total Heading 7	0.152	0.304	0.304	0.456	0.760			
Outside Heading 7 – Human Resources								
Outside Heading 7 – Other administrative expenditure								
Sub-total Other Headings								
TOTAL HEADING 7 and Outside HEADING 7	0.152	0.304	0.304	0.456	0.760			

These are entirely new tasks. The administrative appropriations required might be met by budget that might be redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

4.

4. Methods of calculation used to estimate costs

4.1 Human resources

This part sets out the method of calculation used to estimate the human resources considered necessary (workload assumptions, including specific jobs (Sysper 2 work profiles), staff categories and the corresponding average costs)

HEADING 7 of the multiannual financial framework
NB: The average costs for each category of staff at Headquarters are available on BudgWeb: https://myintracomm.ec.europa.eu/budgweb/EN/pre/legalbasis/Pages/pre-040-020_preparation.aspx
• Officials and temporary staff From 1 to 5 AD posts to monitor the implementation of the Regulation: - Supervision of and coordination with ACER - Develop a regulatory framework for a market-based development of hydrogen sector and hydrogen networks - Develop the necessary legal framework to improve conditions for cross-border trade in gas, taking into account the increasing role of renewable and low-carbon gases, and more rights for consumers - Ensure that pan-European entities of network operators comply with EU legislation The average costs come from the note Ares(2020)7207955.
• External staff

Outside HEADING 7 of the multiannual financial framework
• Only posts financed from the research budget
• External staff

4.2 Other administrative expenditure

Give details of the method of calculation used for each budget line

and in particular the underlying assumptions (e.g. number of meetings per year, average costs, etc.)

HEADING 7 of the multiannual financial framework

Outside HEADING 7 of the multiannual financial framework