

## Hydrogen and Decarbonised Gas Markets Regulation

### Compromise Amendments (consolidated draft final)

#### **CA 1: Separation of regulatory asset bases (covers Art 4; Rec 8)**

*All relevant AMs fall, including: AMs 3, 17-20, 136-138, 228-276*

#### *Articles*

Article 4 - paragraph 1 - introductory part 1. Where a transmission system operator or a hydrogen network operator provides regulated services for gas, hydrogen ~~and/or~~ electricity, it shall comply with the requirement for unbundling of accounts as laid down in Article 69 of [recast Gas Directive as proposed in COM(2021) xxx] and Article 56 of Directive (EU) 2019/944 and it shall have a *separate* regulatory asset base ~~separately~~ for gas, electricity or hydrogen assets. A separate regulatory asset base shall ensure that:

Article 4 - paragraph 1 - point a (a) services revenues obtained from the provision of specific regulated services can ~~only~~ be used *only* to recover the capital and operational expenditures related the assets included in the ~~regulated~~ *regulatory* assets base on which the regulated services were provided;

Article 4 - paragraph 1 - point b (b) when assets are transferred to a different regulatory asset base, their value will be established. The value set for the transferred asset is subject to an audit and approval by the competent regulatory authority. The value established will be such that cross-subsidies do not occur.

2. A Member State ~~may~~ *shall not* allow financial transfers between regulated services that are separate *within the meaning of* as meant in in the first paragraph ~~1~~, provided that:
  - ~~(a) all revenues needed for the financial transfer are collected as a dedicated charge;~~
  - ~~(b) the dedicated charge is collected only from exit points to final customers located within the same Member States as the beneficiary of the financial transfer;~~
  - ~~(c) the dedicated charge and financial transfer or the methodologies underlying their calculation are approved prior to their entry into force by the regulatory authority referred to in Article 70;~~
  - ~~(d) the approved dedicated charge and financial transfer and the methodologies, where methodologies are approved are published.~~
- 2 a. *In order to avoid undue and excessive cross-subsidies among first and future users of hydrogen networks, Member States may allow hydrogen network operators to spread network development costs over time, by ensuring that future users pay part of the initial costs. Such an inter-temporal cost allocation mechanism and its underlying methodology shall be subject to approval by the competent regulatory authority referred to in Article 70 of recast Gas Directive. Where Member States*

*apply such a mechanism, they shall put in place a State guarantee to cover the financial risk of hydrogen network operators.*

- 2 b.** *By way of derogation from paragraph 2 of this Article, the regulatory authority referred to in Article 70 of recast Gas Directive may allow, as a last resort measure where no more cost-efficient options are available, financial transfers between regulated services that are separate within the meaning of paragraph 1. The regulatory authority shall take such a decision only on the basis of an impact assessment that demonstrates its impact on cross-subsidisation between users of gas networks and users of hydrogen networks, confirms its cost-efficiency and that the level playing field across Member States is preserved, and that the resulting gas network tariffs do not unreasonably distort cross-border trade.*
- 2 c.** *If supported by the impact assessment referred to in paragraph 2b, a Member State may allow financial transfers between regulated services that are separate within the meaning of paragraph 1, provided that:*
- (a) all revenues needed for the financial transfer are collected as a dedicated charge;*
  - (b) the dedicated charge is collected only from exit points to final customers located within the same Member States as the beneficiary of the financial transfer;*
  - (c) the dedicated charge and financial transfer or the methodologies underlying their calculation are approved prior to their entry into force by the regulatory authority referred to in Article 70 of recast Gas Directive and their implementation starts at the beginning of a defined gas year;*
  - (d) the approved dedicated charge and financial transfer and the methodologies, where methodologies are approved are published before their implementation;*
  - (e) ACER has issued a recommendation, in accordance with paragraph 4, and the Commission has been notified of the dedicated charges.*
- 3.** The regulatory authority may only approve a financial transfer and dedicated charge referred to in paragraph 2**b**, provided that:
- (a) network access tariffs are charged to users of the ~~regulated~~ **regulatory** asset base that benefits from a financial transfer;*
  - (b) the sum of financial transfers and service revenues collected through network access tariffs cannot be larger than the allowed revenues;*
  - (c) a financial transfer is approved for a limited period in time and can never be longer than one third of the depreciation period of the infrastructure concerned.*
- (3a)** *Costs associated with feasibility studies related to the repurposing of the networks to hydrogen shall not to be considered to be financial transfers between regulated assets*
- 4.** By ... [*one year after the date of entry into force of this Regulation* ~~date of adoption~~ *+1 year*] ACER shall issue recommendations to transmission *system operators* or *hydrogen* network operators and regulatory authorities on the *criteria to allow and determine the inter-temporal allocation of network development costs among users of hydrogen network. Where necessary, ACER shall issue methodologies for:*

- (a) the determination of the value of the assets that are transferred to another ~~regulated~~ **regulatory** asset base and the destination of any profits and losses that may occur as a result;
- (b) the calculation of the size and maximum duration of the financial transfer and dedicated charge;
- (c) the criteria to allocate contributions to the dedicated charge among final consumers connected **to** the ~~regulated~~ **regulatory** asset base.

ACER shall update the recommendations *referred to in the first subparagraph* at least once every two years.

### *Recitals*

(8) It is, generally, most efficient to finance infrastructure by revenues obtained from the users of that infrastructure and to avoid cross-subsidies. Moreover, such cross-subsidies would, in the case of regulated assets, be incompatible with the general principle of cost-reflective tariffs. In exceptional cases, such cross-subsidies could nonetheless bring societal benefits, in particular during earlier phases of network development where booked capacity is low compared to technical capacity and uncertainty as to when future capacity demand will materialise is significant. Cross-subsidies could therefore contribute to reasonable and predictable tariffs for early network users and de-risk investments for network operators, ~~which. Cross-subsidies~~ could thus contribute to an investment climate supportive to the ~~Union's~~, decarbonisation objectives *of the Union. In order to avoid undue and excessive cross-subsidies among first and future users of hydrogen networks, it should be possible for hydrogen network operators to spread network development costs over time by allowing Member States to provide for the possibility that future users pay part of the initial costs, by way of an inter-temporal cost allocation mechanism. The methodology and features of that mechanism should be approved by the regulatory authority. The mechanism should be accompanied by a State guarantee to cover the financial risk of hydrogen network operators. As a last resort measure where no more cost-efficient options are available, the regulatory authority should be able to allow, on the basis of an impact assessment, financial transfers between separate regulated services from gas and hydrogen networks.* Cross-subsidies should not be financed by network users in other Member States, ~~regardless as to whether directly or indirectly~~ **and** it is thus appropriate to collect financing for cross-subsidies only from exit points to final customers within the same Member State. Moreover, as cross-subsidies are exceptional, it should be ensured that they are proportional, transparent, limited in time and set under regulatory supervision, *subject to notification to the Commission and recommendation by ACER.*

**CA 2: Third party access services, market assessment and principles of capacity allocation mechanism and congestion management procedures (covers Art 5, 6, 8, 9; Rec 13)**

*All relevant AMs fall, including: AMs 21-23, 140-141, 277-296*

### *Articles*

Article 5 – paragraph 1 – subparagraph 1 In regard to point (a) of the first subparagraph, where a transmission system operator offers the same service to different customers, it shall do so under equivalent contractual terms and conditions, either using harmonised transport contracts or a common network code approved by the competent authority in accordance with the procedure laid down in Article 72 or 73 of recast Gas Directive as proposed in COM(2021) xxx.

***Article 5 - paragraph 1a No tariffs shall be charged pursuant to Article 15 for access to transmission systems at interconnection points between Member States unless the regulatory authorities concerned jointly agree on a tariff regime for such access. In the absence of an agreement between the regulatory authorities concerned, ACER shall decide on the tariff regime, including the possibility of avoiding the application of tariffs, in accordance with Article 6(10) of Regulation (EU) 2019/942. When deciding on that tariff regime the regulatory authorities concerned or ACER shall ensure an appropriate return on investment and covering of the operational expenditure born by the gas transmission network operators in relation to the specific interconnection point.***

Article 6 – paragraph 3 3. The maximum duration for capacity contracts shall be 20 years for infrastructure completed by [date of entry into force] and 15 years for infrastructure completed after this date. Regulatory authorities shall have the right to impose shorter maximum durations if necessary to ensure market functioning, to safeguard competition and to ensure future cross-border integration. ***When adopting a decision on the imposition of a shorter maximum duration, the regulatory authorities shall take into account, inter alia, commitment from users to secure network financing, negative implications on planning and refinancing possibilities.***

Article 6 – paragraph 5 5. Hydrogen network operators shall regularly assess market demand for new investment, taking into account security of supply and the efficiency of the final hydrogen uses.

***Article 6 – paragraph 5 a (new) (5 a) Where there is less capacity than potential users, hydrogen network operators shall, in cooperation with both relevant regulatory authorities and potential users, give priority access to users who can demonstrate the highest potential of greenhouse gas abatement per tonne of consumed hydrogen and where no more energy and cost efficient options are available. This paragraph shall not apply to access to the hydrogen network that has already been granted.***

Article 6 – paragraph 7 7. As of 1 January 2031, Article 15 shall apply also to tariffs for access to hydrogen networks. Articles 16 and 17 shall not apply. ***From 1 January 2031, no tariffs shall be charged pursuant to Article 15 for access to hydrogen networks at interconnection points between Member States, unless the regulatory authorities concerned jointly agree on a tariff regime for such access. In the absence of an agreement between the regulatory authorities concerned, ACER shall decide on the tariff regime, including the possibility of avoiding the application of tariffs, in accordance with Article 6(10) of Regulation (EU) 2019/942. When deciding on that tariff regime the regulatory authorities concerned or ACER shall ensure an appropriate return on investment and covering of the operational expenditure born by the hydrogen transmission network operators in relation to the given interconnection point.*** Where a Member State decides to apply regulated third party access to hydrogen networks in accordance with Article 31 of [recast Gas Directive] before 1 January

2031, ~~paragraph 1~~ of Article 15(1) of this Regulation shall be applicable to access tariff to hydrogen networks in that Member State.

Article 8 - title 8 Market assessment for renewable and low carbon gases by LNG and storage system operators

Article 8 – paragraph 1 1. LNG and storage system operators shall, ***in cooperation with relevant regulatory authorities and*** at least every two years, assess market demand for new investment, allowing the use of renewable and low carbon gases in the facilities, ***including repurposing for hydrogen derivatives and hydrogen terminals***. When planning new investments, LNG and storage system operators shall assess market demand and take into account security of supply, ***as well as market demand for liquid hydrogen and new related investments***. LNG and storage system operators shall make publicly available any plans regarding new investments allowing ***prioritising*** the usage of renewable and low carbon gases in their facilities.

Article 9 – paragraph 2 – point a (a) provide appropriate economic signals for the efficient and maximum use of technical capacity, facilitate investment in new infrastructure and facilitate cross-border exchanges in natural gas, ***taking into account investments in decommissioning, cost-savings from repurposing to hydrogen and investments in alternative demand-side solutions not requiring new infrastructure investments;***

Article 9 - paragraph 4 4. Transmission system operators shall regularly assess market demand for new investment taking into account the joint scenario as developed for the integrated network development plan based on Article 51 of [recast Gas Directive as proposed in COM(2021) xxx] as well as security of supply.

### *Recitals*

(13) Conditional capacity should only be offered when network operators are not able to offer firm capacity. Network operators should define the conditions for conditional capacity on the basis of operational constraints in a transparent and clear manner. The regulatory authority should ensure that the number ***and type*** of conditional capacity products is limited to avoid a fragmentation of the market and to ensure compliance with the principle of providing efficient third-party access.

### **CA 3: Tariffs, tariff discounts, revenues and transparency requirements (covers Art 15, 16, 17, 30; Rec 37, 38, 39, 40)**

*All relevant AMs fall, including: AMs 24-28, 156-164, 300-337, 461*

### *Articles*

Article 15 – paragraph 1 – introductory part 1. Tariffs, or the methodologies used to calculate them, applied by the transmission system operators and approved by the regulatory

authorities pursuant to Article 72(7) of Recast Gas Directive , as well as tariffs published pursuant to Article 27(1) of that Directive, shall be transparent, take into account the need for system integrity and its improvement and reflect the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator and are transparent, whilst including an appropriate return on investments . Tariffs, or the methodologies used to calculate them, shall be applied in a non discriminatory manner.

Article 15 – paragraph 1 – subparagraph 1 Tariffs may also be determined through market-based arrangements, such as auctions, provided that such arrangements and the revenues arising therefrom are approved by the regulatory authority.

Article 15 – paragraph 1 – subparagraph 2 Tariffs, or the methodologies used to calculate them, shall facilitate efficient gas trade and competition, while at the same time avoiding cross-subsidies between network users and providing incentives for investment and maintaining or creating interoperability for transmission networks. ***They shall aim to avoid creating incentives for the practice of blending hydrogen into the natural gas system for the purpose of increasing the volume of natural gas transported or stored or of prolonging the lifetime of natural gas infrastructure.***

Article 15 – paragraph 1 – subparagraph 3 Tariffs for network users shall be non-discriminatory and set separately for every entry point into or exit point out of the transmission system. Cost-allocation mechanisms and rate setting methodology regarding entry points and exit points shall be approved by the regulatory authorities. Member States shall ensure that network charges shall not be calculated on the basis of contract paths.

Article 15 – paragraph 2 2. Tariffs for network access shall neither restrict market liquidity nor distort trade across borders of different transmission systems. Where differences in tariff structures would hamper trade across transmission systems, and notwithstanding Article 72(7) of Recast Gas Directive, transmission system operators shall, in close cooperation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles.

***Article 15 – paragraph 2 a (new) 2a. The regulatory authority may apply a discount of up to 100% to capacity-based transmission and distribution tariffs at entry points from and exit points to underground storage facilities and LNG facilities, unless and to the extent that such a facility is connected to more than one transmission or distribution network and is used to compete with an interconnection point. The Commission shall re-examine that tariff discount by ... [five years after the date of entry into force of this Regulation]. The Commission shall assess whether the level of the discount set out in this paragraph remains adequate for the purpose of increasing security of supply and in light of the storage obligation pursuant to Article 6a of Regulation (EU) 2017/1938 of the European Parliament and of the Council<sup>1a</sup>.***

***1a. Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 (OJ L 280, 28.10.2017, p. 1).***

~~Article 16 – paragraph 1 1. When setting tariffs, a discount for renewable and low carbon gases shall be applied to:~~

(a) entry points from renewable and low carbon production facilities. A discount of ~~75~~**100**% shall ~~may~~ be applied to the respective capacity based tariffs for the purposes of scaling up the injection of renewable ~~gases~~ and ~~a discount of 75% may be applied for~~ low carbon gases;

(b) capacity based transmission tariffs at entry points from and exit points to storage facilities, unless a storage facility is connected to more than one transmission or distribution network and used to compete with an interconnection point. Such a discount shall be set at a level of 75% in the Member States where the renewable and low carbon gas was first injected into system.

Article 16 — paragraph 2 2. Regulatory authorities may set discount rates lower than those set in paragraph 1 of this Article provided that the discount is in line with the general tariff principles as set out in Article 15 and in particular the principle of cost reflectiveness, taking into account a need for stable financial frameworks for existing investments where appropriate, and the advancement of the roll out of renewable and low carbon gases in the Member State concerned.

Article 16 — paragraph 3 3. Details on the discounts granted in accordance with paragraph 1 may be set in the network code on tariff structures as referred to in Article 52(1), point (e).

Article 16 — paragraph 4 4. The Commission shall re-examine the tariff reductions pursuant to paragraph 1 [5 years after entry into force of the Regulation]. It shall issue a report providing an overview of their implementation and ~~of those set by regulatory authorities pursuant to paragraph 2 and~~ assess whether the level of the reductions set in paragraph 1 is still adequate in view of the latest market developments. The Commission ~~report shall also include an assessment of the impacts of implemented discounts on tariff structures and stability. The report~~ shall be empowered to adopt delegated acts in accordance with Article 63 in order to change ~~accompanied by a legislative proposal to revise~~ the discount levels as set in paragraph 1, ~~if appropriate.~~

Article 16 — paragraph 5 5. As of 1 January in the year after the adoption, network users shall receive a discount of 100% on the regulated tariff from the transmission system operator at all interconnection points, including entry points from and exit points to third countries as well as entry points from LNG terminals for renewable and low carbon gases, after providing the respective transmission system operator with a proof of sustainability, based on a valid sustainability certificate pursuant to Articles 29 and 30 of Directive (EU) 2018/2001 of the European Parliament and of the Council<sup>10</sup> and registered in the Union database.

With regard to this discount:

(a) Transmission system operators shall be required to provide the discount only for the shortest possible route in terms of border crossings between the location of where the specific proof of sustainability declaration, based on the sustainability certificate, was first recorded in the Union database and where it has been cancelled as considered consumed. Any potential auction premium shall not be covered by the discount.

(b) Transmission system operators shall provide information on actual and expected volumes of renewable and low carbon gases and the effect of applying the tariff discount on their revenues towards the respective regulatory authority. Regulatory authorities shall monitor and assess the impact of the discount on tariff stability.

(c) Once the revenue of a transmission system operator from these specific tariffs is reduced by 10% as a result of applying the discount, the affected and all neighbouring transmission

~~system operators are required to negotiate an inter transmission system operator compensation mechanism. The system operators concerned shall agree within 3 years. Where within that time period no agreement is reached, the involved regulatory authorities shall decide jointly on an appropriate inter transmission system operator compensation mechanism within 2 years. In absence of agreement among the regulatory authorities, Article 6 of ACER Regulation shall apply. Where the regulatory authorities have not been able to reach agreement within 2 years, or upon their joint request, ACER shall decide, in accordance with the second subparagraph of Article 6(10) of Regulation (EU) 2019/942.~~

~~(d) Further details required to implement the discount for renewable and low carbon gases, such as the calculation of the eligible capacity for which the discount applies and the required processes, shall be set in a network code established on the basis of Article 53 of this Regulation.~~

Article 16 - paragraph 5a (new) 5a. ***Regulatory authorities shall assess whether to offer support to lower grid connection costs and fees for renewable and low-carbon gases production facilities.***

Article 17 - paragraph 1 1. As of [1 year after transposition], the relevant regulatory authority shall ensure transparency on the methodologies, parameters and values used to determine allowed or target revenues of transmission system operators. The regulatory authority shall publish the information referred to in Annex I, or shall require the publication by the relevant transmission system operator. This information shall be made available in a user-friendly format, and to the extent possible, in one or more commonly understood languages.

Article 17 – paragraph 2 2. The costs of the transmission system operator shall be subject to an efficiency comparison between Union transmission system operators, to be appropriately defined by ACER. ACER shall publish on [3 years after transposition] and every four years thereafter a study comparing the efficiency of Union transmission system operators' costs. The relevant regulatory authorities and the transmission system operators shall provide ACER with all the data necessary for this comparison. The results of such comparison shall be taken into account by the relevant regulatory authorities, together with national circumstances, when periodically setting the allowed or target revenues of transmission system operators.

Article 17 - paragraph 3 3. The relevant regulatory authorities shall assess the long-term evolution of transmission tariffs based on the expected changes in their allowed or target revenues and in gas demand until 2050. To perform this assessment the regulatory authority shall include the information of the strategy described in the national energy and climate plans of the respective Member State and the scenarios underpinning the integrated network development plan as developed in accordance with Article 51 of [recast Gas Directive as proposed in COM(2021)xxx].

Article 30 – paragraph 5 5. The transmission system operator shall always disclose the information required by this Regulation in a ***meaningful***, quantifiably clear and easily accessible ***way*** and on a non-discriminatory basis.

### *Recitals*

(37) Transparency on transmission system operators allowed or target revenue should be increased to enable benchmarking and an assessment by network users. Increased transparency should also facilitate cross-border cooperation and the setting up of ITC

mechanisms between operators either for regional integration or for the implementation of tariff discounts for renewable and low carbon gases as set out in this Regulation.

~~(38) — In order to exploit the most economic locations for the production of renewable and low carbon gases, network users should benefit from discounts in capacity based tariffs. These should include a discount for injection from renewable and low carbon gases production facilities, a discount for tariffs at entry points from and exit points to storage facilities and a discount on the cross border tariff and entry points from LNG facilities. In case of a change of the value of non cross border discounts, the regulatory authority needs to balance out the interest between networks users and network operators taking into account stable financial frameworks specifically for existing investments, in particular for renewable production facilities. Where possible, indicators or conditions for changing the discount should be provided sufficiently before any decision to change the discount is taken. This discount should not affect the general tariff setting methodology, but should be provided ex post on the relevant tariff. In order to benefit from the discount, network users should present the required information towards the transmission system operator on the basis of a certificate which would be linked to the union database.~~

~~(39) — Revenue decreases from the application of discounts shall be treated as general revenue decreases, e.g. from reduced capacity sales and need to be recovered via tariffs in a timely manner, for instance by an increase of the specific tariffs following the general rules contained in Article 15 of this Regulation. The Commission should be empowered to change the discount levels via delegated acts to mitigate structural imbalances of revenues for transmission system operators.~~

(40) In order to increase efficiencies in the natural gas distribution networks in the Union and to ensure close cooperation with transmission system operators and the ~~ENTSOG&H for Gas~~, an entity of distribution system operators in the Union ('EU DSO entity') should be provided for which also includes natural gas distribution system operators. The tasks of the EU DSO entity should be well-defined and its working method should ensure efficiency, transparency and representativeness among Union distribution system operators. The EU DSO entity should closely cooperate with the ~~ENTSOG&H for Gas~~ on the preparation and implementation of the network codes where applicable and should work on providing guidance on the integration inter alia of distributed generation and other areas, which relate to the management of distribution networks.

#### **CA 4: Biomethane (covers Art 3, 17, 20; Rec 10, 14, 33, 44)**

*All relevant AMs fall, including: AMs 15, 29, 37, 139, 142-143, 155, 165, 170, 223, 338-342, 376*

#### *Articles*

#### ***Article 3 c (new) (3c) Mainstreaming biomethane in the gas system***

***In order to support the sustainable production of biomethane to safeguard the security of gas supply in the Union and decrease dependence on fossil natural gas imports, Member***

***States shall, by 31 December 2030, ensure collectively that at least 35 bcm of sustainable biomethane that complies with Directive (EU) 2018/2001 is produced and injected into the natural gas system at the level of the transmission system operators or of the distribution system operators.***

***Article 17 a (new) 17a. Facilitating biomethane connections and potential analysis***

***1. By ... [one year after the transposition deadline referred to in Article 5(1), first subparagraph, of RED III Directive [COD 2021/0218]], Member States shall establish regional maps that identify the areas that, due to the availability of raw materials, such as waste or residues, or to existing operating biogas or biomethane plants, have the highest potential for production of sustainable biogas and biomethane from biomass fuels. Such biomass fuels shall fulfil the sustainability criteria in accordance with Article 29 of Directive (EU) 2018/2001. Before establishing those regional maps, the Member States shall consult the competent regulatory authority, regional and local authorities, the transmission system operators and the distribution system operators and other relevant stakeholders. Regional maps may be updated to consider new sources of sustainable feedstock for biogas and biomethane production.***

***2. Distribution system operators and transmission system operators shall map connection potential on the basis of existing and expected capacity to facilitate connection requests, taking into consideration the potential for an increase of production of sustainable biogas and biomethane from biomass fuels as referred to in paragraph 1.***

***3. By ... [two years after the date of entry into force of this Regulation], each Member State shall, taking into account the regional maps referred to in paragraph 1, establish national strategies on the production of sustainable biogas and biomethane and their use in order to assess the potential for the production of sustainable biogas and biomethane, evaluate any barriers for the production or injection of biomethane in the grid as well as establish a trajectory to reach the identified national potentials by 2030 and 2050. Member States' national strategies shall be closely linked with their integrated National Energy and Climate Plans under Regulation (EU) 2018/1999. Member States shall report on the progress in achieving their contribution to the 35 bcm Union target as part of their biennial reporting pursuant to Regulation (EU) 2018/1999.***

***4. By 2024 and regularly thereafter, regulatory authorities shall, in cooperation with relevant stakeholders, issue a progress report on the production, transport and uptake of biomethane.***

***5. National standardisation body shall adopt appropriate gas quality standards, based on the European standards adopted by the European Committee for Standardisation (CEN), allowing for injection of biomethane in the existing gas networks while ensuring the integrity of the system.***

***Recitals***

(10) A common minimum set of third-party access services is necessary to provide a common minimum standard of access in practice throughout the Union, to ensure that third-

party access services are sufficiently compatible and to allow the benefits accruing from a well-functioning internal market in natural gas to be exploited.

(14) A sufficient level of cross-border gas interconnection capacity should be achieved and market integration fostered in order to complete the internal market in natural gas.

***(14 a) The Commission communication of 8 March 2022 entitled ‘RePowerEU: Joint European Action for more affordable, secure and sustainable energy’ (RePowerEU) calls for urgent action to mitigate the impact of rising energy prices, diversify the Union gas supply and accelerate the clean energy transition. In order to allow renewable gases, such as biomethane and biogas, to play their important role towards achieving those goals, it is of the utmost importance to achieve by 2030 the production of 35 billion cubic meters (bcm) of biomethane per year within the Union. Achieving this should enable the replacement of 20 % of Russian natural gas imports with a sustainable, cheaper and locally produced alternative, as well as provide the Union with a more resilient and sustainable energy system. The 2030 goal for biomethane is based on the initial projections for production potential for biogas and biomethane<sup>1</sup>, and it takes into account major changes in the energy area such as the high current prices of natural gas and a broad set of additional measures presented in the Staff Working Document of the Commission of 15 May 2022 Implementing RepowerEU action plan: investment needs, hydrogen accelerator and achieving the bio-methane targets that target the expansion of production of sustainable biomethane and its use.***

***For this scale-up to 35 bcm to happen not only the market integration of renewable gases should be fostered but also the necessary infrastructure should be developed in due time. Specifically, this means developing a strategic approach, based on regional maps identifying the areas that have the highest potential for production of sustainable biogas and biomethane from biomass, to overcome existing technical barriers to boost sustainable biomethane within the Union and to fully integrate biomethane into the current gas system.***

(33) Transmission system operators could be allowed to reserve storages for natural gas exclusively for carrying out their functions and for the purpose of security of supply. The filling of these strategic stocks could be done by means of joint purchasing using the trading platform as mentioned in Article 10 of Commission Regulation (EU) No 312/2014 without prejudice to Union competition rules. Withdrawal of natural gas should only be possible for the transmission system operators to carry out their functions or in case of a declared emergency situation, as mentioned in Article 11 (1) of that Regulation, in order not to interfere with the regular functioning of the market.

(44) A strong cross-border coordination and dispute settlement process between transmission system operators on gas quality, including on biomethane and hydrogen blends, is essential to facilitate efficient transport of natural gas across natural gas systems within the Union and thereby to move towards greater internal market integration. Enhanced transparency requirements on gas quality parameters, including on gross calorific value, Wobbe Index and oxygen content, and hydrogen blends and their development over time

<sup>1</sup> Study “Assistance to assessing options improving market conditions for bio-methane and gas market rules” performed to support the IA for the hydrogen and gas decarbonisation package. [https://op.europa.eu/en/publication-detail/-/publication/d24343db-5ee8-11ec-9c6c-01aa75ed71a1/language-en?pk\\_campaign=ENER%20Newsletter%20December%202021](https://op.europa.eu/en/publication-detail/-/publication/d24343db-5ee8-11ec-9c6c-01aa75ed71a1/language-en?pk_campaign=ENER%20Newsletter%20December%202021)

combined with monitoring and reporting obligations should contribute to the well-functioning of an open and efficient internal market in natural gas.

**CA 5: Provision of and access to information, new infrastructure, derogations, delegation and other final provisions (covers Art 58, 60, 62, 63, 69; Rec 45)**

*All relevant AMs fall, including: AMs 96, 171, 608-618*

*Articles*

Article 58 – paragraph 4 4. In its request for information, the Commission shall state the legal basis of the request, the time limit within which the information is to be provided, the purpose of the request, and the penalties provided for in Article 59(2) for supplying incorrect, incomplete or misleading information.

Article 58 – paragraph 6 – subparagraph 1 The Commission shall, at the same time, send a copy of its decision to the regulatory authorities of the Member State within the territory of which the person is resident or the seat of the undertaking is situated.

Article 60 - paragraph 1 1. Major new natural gas infrastructure, that is to say interconnectors, LNG and storage facilities, may, upon request, be exempted, for a defined period of time, from the provisions of this Regulation as well as from Articles, 28, 27(1), 29, 54 and Article 72(7), (9) and 73(1) of [recast Gas Directive]. Major new hydrogen infrastructure, that is to say interconnectors, hydrogen terminals and underground hydrogen storage may, upon request, be exempted, for a defined period of time, from the provisions of Articles 62, 31, 32, 33 of [recast Gas Directive] and Article 15 of this Regulation. ***Any such exemption shall be subject to all of the*** The following conditions apply:

- (a) the investment enhances competition in gas supply or hydrogen supply and enhance security of supply;
- (b) the investment contributes to ***the decarbonisation achievement of the Union's climate and energy targets;***
- (c) the level of risk attached to the investment is such that the investment would not take place unless an exemption was granted;  
***(c a) demand-side solutions that do not require new infrastructure investments have been taken into account as possible alternative solutions to the new infrastructure;***
- (d) the infrastructure is 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;
- (e) charges are levied on users of that infrastructure; ~~and~~
- (f) the exemption is not detrimental to competition in the relevant markets which are likely to be affected by the investment, to the effective functioning of the internal ***and integrated*** market in ***energy, including*** gas, ***electricity, hydrogen and demand-side solutions,*** to the efficient functioning of the regulated systems concerned, to decarbonisation or to security of supply in the Union;
- (fa) the infrastructure has not received Union financial assistance for works under Regulation (EU) 2021/1153;***
- (fb) the exemption promotes the energy efficiency first principle and energy system integration and does not lead to the stranding of assets.***

These conditions should be assessed taking into account the principles of energy solidarity. National authorities should take into account the situation in other affected Member State and balance possible negative effects with the beneficial effects on its territory.

Article 60 - paragraph 2 2. The exemption in 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 renewable and low carbon gases supply.

Article 60 – paragraph 3 3. The regulatory authority 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 regulatory authority, or where appropriate another competent authority of that Member State, shall consult:

- (a) the 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 or do not provide grounds for the exemption in their response** ~~to the consultation~~ within a reasonable time frame or within a set deadline not exceeding three months, the regulatory authority concerned may adopt the necessary decision.

Article 60 – paragraph 4 4. Where the infrastructure in question is located in the territory of more than one Member State, ACER may submit an advisory opinion to the regulatory authorities of the Member States concerned within two months from the date on which the request for exemption was received by the last of those regulatory authorities. That opinion may be used as a basis for their decision.

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 ACER of their decision. Where the infrastructure concerned is a transmission line between a Member State and a third country, the 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 before the adoption of the decision on the exemption the relevant authority of that third country with a view to ensuring, as regards the infrastructure concerned, that this Regulation 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 regulatory authority concerned may adopt the necessary decision.

ACER shall exercise the tasks conferred on the regulatory authorities of the Member States concerned by this 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 the third subparagraph, point (a), is extended by up to three months.

Article 60 – paragraph 5 5. Before taking a decision, the ACER shall consult the relevant regulatory authorities and the applicants.

Article 60 – paragraph 6 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 paragraph 1, points (a), (b) and (e), 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.

Article 60 – paragraph 7 7. When analysing whether a major new infrastructure is expected to enhance the security of supply pursuant to paragraph 1, point (a), the relevant authority shall consider to what extent the new infrastructure is expected to improve Member States' compliance with their obligations under Regulation (EU) 2017/1938 of the European Parliament and of the Council<sup>20</sup>, both at regional and national level.

Article 60 – paragraph 8 8. Member States ~~may~~ **shall** provide that their regulatory authority or ACER, 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.

Article 60 – paragraph 9 9. The regulatory authority shall transmit to the Commission, without delay, a copy of every request for exemption as of its receipt. The exemption decision shall be notified, without delay, by the competent authority to the Commission, together with all the relevant information. That information may be submitted to the Commission in aggregate form, enabling the Commission to assess the exemption 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 the relevant point or points of paragraph 1 on which that 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 resulting from the grant of the exemption;

- (c) the reasons for the duration of the exemption and the share of the total capacity of the infrastructure for which the exemption is granted;
- (d) where the exemption relates to an interconnector, the result of the consultation with the regulatory authorities concerned;
- (e) the contribution of the infrastructure to the diversification of supply.

Article 60 – paragraph 10 10. Within 50 working days of the day following that of receipt of the notification under paragraph 7, the Commission may ~~take~~ **adopt** a decision requesting the notifying bodies to amend or withdraw the decision to grant an exemption. ***Before adopting the decision on the exemption, the Commission may seek an opinion of the European Scientific Advisory Board on Climate Change established under Article 10a of Regulation (EC) No 401/2009<sup>2</sup> as to whether the exemption contributes to achieving the Union’s climate and energy targets.*** That period may be extended by an additional 50 working days where further information is requested by the Commission. The additional period shall begin on the day following receipt of the complete information. The initial period may also be extended by consent of both the Commission and the notifying bodies.

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.

When the Commission approves an exemption decision, that approval shall lose its effect:

- (a) after two years from its adoption where the construction of the infrastructure has not yet started,
- (b) after five years from its adoption where the infrastructure has not become operational within that period, unless the Commission decides that any delay is due to major obstacles beyond control of the ***natural or legal*** person to whom the exemption has been granted.

Article 60 – paragraph 11 11. The Commission is empowered to adopt delegated acts in accordance with Article 63 in order to set guidelines for the application of the conditions laid down in paragraph 1 of this Article and for the procedure to be followed for the application of paragraphs 3, 6, 8 and 9 of this Article.

***Article 60 - paragraph 11 a (new) 11a. The exemptions granted by ... [the date of entry into force of this Regulation] shall remain valid.***

***Article 62 –subparagraph 1 a (new) As regards the derogations granted under Article 81 (of recast Gas Directive XXXX) the Commission shall, by ... [3 months after the date of entry into force of this Regulation] submit a report to the European Parliament and to the Council on derogations granted under that Article of [recast Gas Directive]. Thereafter,***

<sup>2</sup> ***Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (OJ L 126 21.5.2009, p. 13).***

***the Commission shall submit such a report upon the request of at least one Member State. The report shall, in particular, assess the impact of derogations on the effective functioning of and competition in the internal market in natural gas as well as on security of energy supply and the essential security interests of the Union and the Member States, taking into account the principle of energy solidarity and the REPowerEU Plan objectives. If the report finds that a derogation granted presents a threat to the effective functioning of or competition in the internal market in natural gas, to security of energy supply or the essential security interests of the Union or the Member States, the Commission shall, within one month of the submission of the report, adopt a decision requiring the relevant competent authority to revoke the derogation. Following any such revocation, the relevant Member State shall ensure that the enforcement of rules set out in this Regulation and [recast Gas Directive] takes into account their effective application on Union territory and the integrated nature of the transmission line.***

[Article 63 – paragraph 2 2. The power to adopt delegated acts referred to in Article 46, 28, 53, 54, 56 and 60 shall be conferred on the Commission for ~~a an indeterminate~~ period of **five years** ~~time~~ from ... [date of entry into force]. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***

Article 63 – paragraph 3 3. The delegation of power referred to in Article 46, 28, 53, 54, 56 and 60 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 acts already in force.

Article 63 – paragraph 6 6. A delegated act adopted pursuant to Article 46, 28, 53, 54, 56 ~~and~~ **or** 60 shall enter into force only if no objection has been expressed either by the European Parliament or 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 69 - paragraph 1 - subparagraph 3. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

~~It shall apply from 1 January 2023.~~

***Article 67, point (8a) shall apply from ... [date of end of application of Regulation (EU) 2022/2576].***

#### *Recitals*

30 The Member States and the competent national authorities should be required to provide, ***upon request***, relevant information to the Commission. ***The request for the information should include the reasons why the information is necessary for the purposes***

*of implementing this Regulation.* Such information should be treated confidentially by the Commission.

(45) In order to amend non-essential elements of this Regulation and to supplement this Regulation in respect of non-essential elements of certain specific areas which are fundamental for market integration, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry 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<sup>6</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts should systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. ***The Commission should also ensure that the public has access to all documents submitted to the Commission in connection with the adoption of the delegated acts.***

#### **CA 6: ACER (amendments to Regulation (EU) 2019/942) (covers Art 65)**

*All relevant AMs fall, including: AMs 97, 619-623*

#### *Articles*

Article 65 – paragraph 1 – point 2 At ACER's request, the regulatory authorities, the ENTSO for Electricity, the ~~ENTSO~~ ***G&H for Gas***, ~~the ENNOH~~, the regional coordination centres, the EU DSO entity, the transmission system operators, hydrogen network operators, the nominated electricity market operators, and entities established by transmission system operators for gas, LNG system operators, gas or hydrogen storage system operators or hydrogen terminal, ***gas or hydrogen market operators and gas and hydrogen suppliers*** provide to ACER the information in the same level of detail necessary for the purpose of carrying out ACER's tasks under this Regulation, unless ACER has already requested and received such information.

Article 65 – paragraph 1 – point 7 (9b) ACER may issue recommendations to regulatory authorities on the allocation of costs of solutions for restrictions to cross-border flows due to gas quality differences pursuant to Article 19(8) of [the recast Gas Regulation as proposed in COM (2021)804] ***and due to the disruption of the gas supply.***

Article 65 – paragraph 1 – point 16 (16) ACER, in close cooperation with the Commission, the Member States and the relevant national authorities, including the regulatory authorities, and without prejudice to the competences of competition authorities, shall monitor the wholesale and retail markets in electricity and natural gas, ~~in particular the~~ ***including the functioning of those markets, wholesale and retail prices of electricity and natural gas prices and price-setting mechanism, including those set out in commercial contracts, with regard to possible anti-competitive, unfair or untransparent behaviour by market operators, and with regard to*** compliance with the consumer rights laid down in Directive (EU) 2019/944 and [the recast Gas Directive as proposed in COM (2021) 803], the impact of market

developments on household customers, access to the networks including access of electricity produced from renewable energy sources, the progress made with regard to interconnectors, potential barriers to cross-border trade, including the impact of blending hydrogen into the natural gas system and barriers to the cross-border flow of biomethane, regulatory barriers for new market entrants and smaller actors, including citizen energy communities **and renewable energy communities**, state interventions preventing prices from reflecting actual scarcity, such as those set out in Article 10(4) of Regulation (EU) 2019/943, the performance of the Member States in the area of security of supply of electricity based on the results of the European resource adequacy assessment as referred to in Article 23 of that Regulation, taking into account, in particular, the ex-post evaluation referred to in Article 17 of Regulation (EU) 2019/941.

Article 65 – paragraph 1 – point 18 ACER shall publish annually a report on the results of the monitoring referred to in paragraph 1. In that report, it shall identify any barriers, **including any behaviour on the part of market operators that is anti-competitive, unfair or untransparent**, to the completion of the internal markets for electricity, natural gas and hydrogen.’.

**Article 66 - paragraph 1 - point (aa) (new) (aa) in Article 2, the following points are added:**

**‘(16) ‘LNG trading’ means bids, offers or transactions for the purchase or sale of LNG:**

**(a) that specify delivery in the Union;**

**(b) that result in delivery in the Union; or**

**(c) in which one counterparty re-gasifies the LNG at a terminal in the Union;**

**(17) ‘LNG market data’ means records of bids, offers or transactions for LNG trading with corresponding information as specified in Article 8d;**

**(18) ‘LNG market participant’ means any natural or legal person, irrespective of that person’s place of incorporation or domicile, who engages in LNG trading;**

**(19) ‘LNG price assessment’ means the determination of a daily reference price for LNG trading in accordance with a methodology to be established by the Agency;**

**(20) ‘LNG benchmark’ means the determination of a spread between the LNG price assessment and the settlement price for the Title Transfer Facility (TTF) Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis.’;**

**Article 66 - paragraph 1 - point (ba) (new) (ba) the following articles are inserted:**

**‘Article 8a**

**Tasks and powers of Agency to carry out LNG price assessments and benchmarks**

**1. The Agency shall produce and publish an LNG price assessment. For the purpose of the LNG price assessment, the Agency shall systematically collect and process LNG market data on transactions.**

**2. The Agency shall produce and publish the LNG benchmark, for the purposes of which the Agency shall systematically collect and process all LNG market data.**

**3. By way of derogation from Article 3(4), point (b), of Regulation 1227/2011, the market participant obligations and prohibitions of this Regulation shall apply to LNG market participants. The powers conferred on the Agency under this Regulation and Implementing Regulation (EU) No 1348/2014 shall also apply in relation to LNG market participants including the provisions on confidentiality.**

#### **Article 8b**

##### **Publication of LNG price assessments and benchmark**

- 1. The LNG price assessment referred to in Article 8a(1) shall be published daily, and by no later than 18.00 CET for the outright transaction price assessment. The Agency shall also, on a daily basis, publish the LNG benchmark referred to in Article 8a(2) by no later than 19.00 CET or as soon as technically possible.**
- 2. For the purposes of this Article, the Agency may make use of the services of a third party.**

#### **Article 8c**

##### **Provision of LNG market data to the Agency**

- 1. LNG market participants shall submit daily to the Agency the LNG market data in accordance with the specifications set out in Article 8d, in a standardised format, through a high-quality transmission protocol, and as close to real-time as technologically possible before the daily publication of the LNG price assessment (18.00 CET).**
- 2. The Commission may adopt implementing acts specifying the point in time by which LNG market data is to be submitted before the daily publication of the LNG price assessment as referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).**
- 3. Where appropriate, the Agency shall, after consulting the Commission, issue guidance on:**
  - (a) the details of the information to be reported, in addition to the current details of reportable transactions and fundamental data under Implementing Regulation (EU) No 1348/2014, including bids and offers; and**
  - (b) the procedure, standard and electronic format and the technical and organisational requirements for submitting data to be used for the provision of the required LNG market data.**
- 4. LNG market participants shall submit the required LNG market data to the Agency free of charge and through the reporting channels established by the Agency, where possible using existing and available procedures.**

#### **Article 8d**

##### **LNG market data quality**

- 1. LNG market data shall include details of:**
  - (a) the parties to the contract, including buy/sell indicator;**

- (b) the reporting party;*
- (c) the transaction price;*
- (d) the contract quantities;*
- (e) the value of the contract;*
- (f) the arrival window for the LNG cargo;*
- (g) the terms of delivery;*
- (h) the delivery points;*
- (i) the timestamp information on all of the following:*
  - (i) the time of placing the bid or offer;*
  - (ii) the transaction time;*
  - (iii) the time of reporting of the bid, offer or transaction;*
  - (iv) the receipt of LNG market data by the Agency.*

**2. LNG market participants shall provide the Agency with LNG market data in the following manner:**

- (a) transaction, bid and offer unit prices shall be reported in the currency specified in the contract and in €/MWh and shall include applied conversion and exchange rates if applicable;*
- (b) contract quantities shall be reported in the units specified in the contracts and in MWh;*
- (c) arrival windows shall be reported in terms of delivery dates expressed in UTC format;*
- (d) the delivery point shall indicate a valid identifier listed by the Agency, such as that referred to in the list of LNG facilities subject to reporting and this Regulation and Implementing Regulation (EU) No 1348/2014; the timestamp information shall be indicated in UTC format;*
- (e) if relevant, the price formula in the long-term contract from which the price is derived shall be reported in its integrity.*

**3. The Agency shall issue guidance regarding the criteria under which a single submitter accounts for a significant portion of LNG market data submitted within a certain reference period and how this situation is to be addressed in its LNG price assessment and LNG benchmarks.**

#### **Article 8e**

#### **Business continuity**

*The Agency shall regularly review, update and publish its LNG reference price assessment and LNG benchmark methodology as well as the methodology used for LNG market data reporting and the publication of its LNG price assessments and LNG benchmarks, taking into account the views of market data contributors.*

### **Recitals**

*(67a new) The current empowerments vested on ACER by Regulation (EU) No 1227/2011 of the European Parliament and of the Council<sup>8</sup> and Commission Implementing Regulation (EU) No 1348/2014<sup>9</sup> (together referred to as ‘REMIT’) do not suffice to create a complete and comprehensive dataset of all LNG deliveries into the Union. However, such a comprehensive and complete dataset for daily LNG price assessment is necessary for the Union to manage, in a spirit of solidarity, its procurement policies for international LNG imports, in particular during the on-going crisis situation. Relevant data and information on LNG contracts are also necessary to ensure monitoring of price developments as well as perform data quality control and quality assurance. Although the crisis situation resulting from the Russian Federation’s unprovoked and unjustified military aggression against Ukraine required urgent action, including the conferral of additional powers and tasks to ACER under Council Regulation (EU) 2022/2576<sup>3</sup>, the establishment of a daily LNG price assessment and LNG benchmark on a permanent basis should be included.*

**CA 7: Security of supply (amendments to Regulation (EU) 2017/1938) (covers Art 67; Rec 68, 69, 71)**

*All relevant AMs fall, including: AMs 12, 98-117, 177-182, 624-668, 670-671*

### **Articles**

Article 67 – paragraph 1 – point 1 (Regulation (EU) 2017/1938, Article 1) This Regulation establishes provisions aiming to safeguard the security of gas supply in the Union by ensuring the proper and continuous functioning of the internal market in natural gas and renewable and low carbon gases (‘gas’), by allowing for exceptional measures to be implemented when the market can no longer deliver the gas supplies required, including solidarity measure of a last resort, and by providing for the clear definition and attribution of responsibilities among natural gas undertakings, the Member States and the Union regarding both preventive action and the reaction to concrete disruptions of gas supply;

*This Regulation also encourages preventive measures that reduce gas demand, including measures enhancing energy efficiency and increasing the share of renewable energy, in order to decrease the Union's dependence on gas imports.*

<sup>3</sup> Council Regulation (EU) 2022/2576 of 19 December 2022 enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders (OJ L 335, 29.12.2022, p. 1).

~~Article 67 – paragraph 1 – point 2 (Regulation (EU) 2017/1938, Article 2 – paragraph 1 – point 28) (28) ‘strategic stock’ means gas purchased, managed and stored by transmission system operators exclusively for carrying out their functions as transmission system operators and for the purpose of security of supply. Gas stored as part of a strategic stock shall be dispatched only where required to keep the system in operation under secure and reliable conditions in line with Article 35 [recast Gas Directive as proposed in COM(2021) xxx] or in case of a declared emergency under Article 11 of Regulation (EU) 2017/1938 of the European Parliament and of the Council and can otherwise not be sold on wholesale gas markets;~~<sup>2</sup>

~~Article 67 – paragraph 1 – point 2 (Regulation (EU) 2017/1938, Article 2 – paragraph 1 – point 29) (29) ‘storage user’ means a customer or a potential customer of a storage system operator.~~

***Article 67 - paragraph 1 point 2 (Regulation (EU) 2017/1938, Article 2 – paragraph 1 – point 29a) (29a) ‘trading venue’ means any of the following:***

***(a) ‘regulated market’ as defined in Article 4(1), point (21), of Directive 2014/65/EU;***

***(b) ‘multilateral trading facility’ as defined in Article 4(1), point (22), of Directive 2014/65/EU;***

***(c) ‘organised trading facility’ as defined in Article 4(1), point (23), of Directive 2014/65/EU;***

***Article 67 - paragraph 1 point 2 (Regulation (EU) 2017/1938, Article 2 – paragraph 1 – point 29b) (29b) ‘energy-related commodity derivative’ means a commodity derivative, as defined in Article 2(1), point (30), of Regulation (EU) No 600/2014 of the European Parliament and of the Council (16), traded on a trading venue and the underlying of which is electricity or gas, and whose maturity does not exceed 12 months;***

***Article 67 – paragraph 1 – point 3 a (new) (Regulation (EU) 2017/1938, Article 3 – paragraph 5) "5. The Commission shall coordinate the action of the competent authorities at regional and Union levels, pursuant to this Regulation, inter alia, through the GCG or, in particular, in the event of a regional or Union emergency pursuant to Article 12(1), through the crisis management group referred to in Article 12(4)."***

***Article 67 – paragraph 1 – point 3 b (new) (Regulation (EU) 2017/1938, Article 3 – paragraph 6) "6. In the event of a regional or Union emergency, the transmission system operators shall cooperate and exchange information using the ReCo System for Gas established by ENTSOG. ENTSOG shall inform the Commission and the competent authorities of the Member States concerned accordingly."***

***Article 67 – paragraph 1 – point 3 c (new) (Regulation (EU) 2017/1938, Article 4) "1. A Gas Coordination Group (GCG) shall be established to facilitate the coordination of measures concerning the security of gas supply. The GCG shall be composed of representatives of the Member States, in particular representatives of their competent authorities, as well as the Agency for the Cooperation of Energy Regulators (the ‘Agency’), ENTSOG and representative bodies of the industry concerned and those of relevant customers. The Commission shall, in consultation with the Member States, decide on the composition of the GCG, ensuring it is fully representative. The Commission shall chair the GCG. The GCG shall adopt its rules of procedure."***

**Article 67 – paragraph 1 – point 3a new (Regulation (EU) 2017/1938, Article 6b(1)) (3a) in Article 6b(1), third subparagraph, point (e) is replaced by the following:**

**'(e) using voluntary mechanisms for the joint procurement of natural gas, ~~regarding the application of which the Commission may, if necessary, issue guidance by 1 August 2022;~~ '**

Article 67 – paragraph 1 – point 4 (Regulation (EU) 2017/1938, Article 7) (4) Article 7 is amended as follows: (a) paragraph 1 is replaced by the following: '1. By 1 November 2017, ENTSOG shall carry out a Union-wide simulation of gas supply and infrastructure disruption scenarios. The simulation shall include the identification and assessment of emergency gas supply corridors and shall also identify which Member States can address identified risks, including in relation to storage and LNG, **and shall in addition include scenarios examining ways to decrease gas demand through energy savings and energy efficiency measures.** The gas supply and infrastructure disruption scenarios and the methodology for the simulation shall be defined by ENTSOG in cooperation with the GCG. ENTSOG shall ensure an appropriate level of transparency and access to the modelling assumptions used in its scenarios. The Union-wide simulation of gas supply and infrastructure disruption scenarios shall be repeated every four years until circumstances warrant more frequent updates.'

Article 67 – paragraph 1 – point 6 (Regulation (EU) 2017/1938, Article 7a) Member States shall take appropriate preventive and emergency **measures, including energy savings and energy efficiency** measures. These measures have to take into account the results of the most recent Union wide simulation of disruption scenarios foreseen in Article 7 and need to be appropriate to address the risks identified in the common and national risk assessments.

**Article 67 – paragraph 1 – point 7 a (new) (Regulation (EU) 2017/1938, Article 8 – paragraph 4 - subparagraph 1) "4.** The competent authorities shall report regularly to the GCG on the progress achieved on the preparation and adoption of the preventive action plans and the emergency plans, in particular the regional chapters. In particular, competent authorities shall agree on a cooperation mechanism for the preparation of the preventive action plan and the emergency plan, including the exchange of draft plans. They shall report to the GCG on such agreed cooperation mechanism 16 months before the deadline for agreement of those plans and the updates of those plans."

Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7b – paragraph 1) (1) Member States shall ensure the use of the existing infrastructure at national and regional level, for the benefit of the security of supply in an efficient way. In particular, Member States shall enable the cross border exchange of gas and cross border access to storage and LNG.

Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7b – paragraph 2) (2) The common risk assessments and any subsequent updates shall include an analysis of the adequacy of the capacity of storage facilities available in the region, on the functioning of the storage capacities and their contribution to security of supply of the Union, including risks related to **the direct or indirect ownership or control of storage infrastructure relevant for the security of gas supply by third-country entities. The common risk assessments and any subsequent updates shall identify energy savings and energy efficiency measures, in line with the energy efficiency first principle pursuant to [Article X Energy Efficiency Directive recast] and the system efficiency principle pursuant to [Article X Energy Efficiency Directive recast].** This analysis shall compare the role of gas storages with alternative measures such as investments in energy efficiency and renewables. **The analysis shall**

***include the cost efficiency of gas storage and shall take into account the risk of stranded investments.***

Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7b – paragraph 3 – subparagraph 1) 3. Where the results of this analysis in the common risk assessment or in any updates to this assessment indicate that there is a risk at regional level, which may be a risk for one or several Member States of the same risk group, that cannot otherwise be addressed, the Member States shall consider ~~one or several of the following measures:~~

- a) ~~obliging gas storage users to store a minimum volume of gas in underground storage,~~
- b) ~~tendering, auctioning or equivalent mechanisms which incentivise bookings of storage capacities under which the potential shortfalls in costs are covered,~~
- e) ~~obliging a transmission system operator to purchase and manage strategic stocks of gas,~~
- Ⓧ) ~~allowing for a possibility to fully integrate storages in the network of the transmission system operator in case the storage would otherwise stop operations, if such stop of operations would put at risk the secure and reliable functioning of the transmission system.~~

***Member States shall consult the relevant risk group before allowing for such a possibility, in particular with regard to how the measures address the risks identified in the common risk assessment. Such a measure shall apply to any storage facility, including storage sites controlled by third-country entities.***

~~Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7b – paragraph 3 – subparagraph 2) 3. Such measures shall be subject to consultation in the relevant risk group, in particular on how the measures address the risks identified in the common risk assessment.~~

***Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7b – paragraph 3a (new) 3a. Member States in the relevant risk group shall agree on a common coordinated procedure to withdraw the gas stored in storage referred to in paragraph 3 of this Article in the case of a crisis, as referred to in Article 11(1). The common coordinated procedure shall include the arrangements for the withdrawal of gas as part of the actions coordinated by the Commission in the case of a regional or Union emergency pursuant to Article 12(3).***

Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7b – paragraph 4) 4. The measures adopted pursuant to Article 7a and paragraph 3 of this Article ~~shall be necessary, clearly defined, transparent, proportionate, non-discriminatory and verifiable, and shall not unduly distort competition or the effective functioning of the internal market in gas or endanger the security of gas supply of other Member States or of the Union~~ ***and shall be without prejudice to national security of supply rules which include gas stocks.*** The ~~measures shall not block or restrict cross-border capacities allocated in line with the provisions of Commission Regulation (EU) 2017/459.~~

~~Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7b – paragraph 5) 5. If regional risks are identified, Member States in the relevant risk group shall aim at agreeing in the regional risk group on the targeted level of stocks in the region to ensure that the identified security of supply risk is covered in line with the common analysis of risks. Member States in the relevant risk group shall seek to agree on joint financing schemes of the measures taken pursuant to paragraph 3 chosen on the basis of the common risk assessment. The allocation of cost across Member States shall be fair and based on the analysis conducted in accordance with paragraph 2. If the measure is financed through a levy, this levy shall not be allocated to cross-border interconnection points. If Member States cannot agree on joint~~

financing schemes, the Commission may adopt a legally non-binding guidance on the key elements to be included.

~~Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7b – paragraph 6) 6. Member States in the relevant risk group shall agree on a common coordinated procedure to withdraw the gas stored in storage referred to in paragraph 3 of this Article in case of emergency, as defined in Article 11(1). The common coordinated procedure shall include the procedure in case of withdrawal of gas as part of the actions coordinated by the Commission in case of regional or Union emergency as referred to in Article 12(3).~~

Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7b – paragraph 7) 7. After the internal consultation in the relevant risk group referred to in paragraph 3, the Member States shall consult the **GCG** Gas Coordination Group. The Member States shall inform the Gas Coordination Group of the joint financing schemes and withdrawal procedures in paragraph 5 and 6.

~~Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7b – paragraph 8) 8. The measures which result from paragraph 3 shall be included in the risk assessments, and where applicable in the preventive action plan and the emergency plan, corresponding to the given period.~~

Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7d – title) **Voluntary mechanism for the joint procurement for of gas strategic stocks**

Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7d – paragraph 1 – subparagraph 1) Member States may set up a **voluntary** mechanism for the joint procurement of **gas strategic stocks** by transmission system operators **or other undertakings designated by the Member States** as part of the preventive measures to ensure security of supply.

Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7d – paragraph 1 – subparagraph 2) ~~The~~ **Such a** mechanism shall be designed in compliance with **Union law, in particular Union and national EU law** and competition rules and in a way so that **gas can also the strategic stocks can** be used as part of the actions coordinated by the Commission in **the event of a case** of regional or Union emergency, as referred to in Article 12(3).

Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7d – paragraph 1 – subparagraph 3) The mechanism shall be open to participation of all transmission system operators **or other undertakings designated by the Member State, gas suppliers and other relevant market participants** within the Union who wish to join after its establishment.

Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7d – paragraph 2) 2. The participating Member States shall notify their intention to establish such **a** mechanism to the Commission. The notification shall include the information necessary to assess the compliance with this Regulation, such as the volume of gas to be purchased, the duration of the measure, the participating transmission system operators **or other undertakings designated by the Member States as well as gas suppliers and other relevant market participants**, the governance arrangements, the operating procedures and conditions for activation in an emergency situation. It shall also specify the costs and benefits expected. **The Commission shall inform the Gas Coordination Group of the notification received and if appropriate ACER.**

Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7d – paragraph 3) 3. ***Within three months of a notification as referred to in paragraph 2***, the Commission may issue an opinion ~~within a time limit of three months~~ as to the compliance of the envisaged mechanism with this Regulation. ~~The Commission shall inform the Gas Coordination Group of the notification received and if appropriate ACER.~~ The participating Member States shall take the Commission opinion in the utmost account.

***Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7da (new)) 7da Commission guidelines on the use of voluntary mechanism for the joint procurement of gas***

***By ... [three months after the date of entry into force of this Regulation], the Commission shall adopt guidelines on the use of voluntary mechanism for the joint procurement of gas referred to in Article 7d of this Regulation. When adopting those guidelines, the Commission shall take into account the lessons learnt from demand aggregation and joint purchasing established under Regulation (EU) 2022/2576.***

Article 67 – paragraph 1 – point 8 (Regulation (EU) 2017/1938, Article 7e (new)) 7e Report on storage and ***voluntary mechanism for the joint procurement of gas*** ~~for strategic stocks~~

***By ... [one year after the date of entry into force of this Regulation], the Commission shall issue submit a report three years after the entry into force of this Regulation to the European Parliament and the Council on the application of Articles 7b, Articles 7c and Article 7d and on the experience, benefits, costs, and any obstacles encountered in the use of the possibility of joint procurement of gas for strategic stocks. That report shall be accompanied, if appropriate, by a legislative proposal.***

***Article 67 – paragraph 1 – point 8 a (new) (Regulation (EU) 2017/1938, Article 7e a (new)) 7ea. Transparency and information exchange***

***1. Natural gas undertakings or undertakings consuming gas established in the Union or authorities or regulated entities of Member States, which intend to enter into negotiations with natural gas producers or suppliers on the purchase, trade or supply of gas of a volume above 5 TWh/year, shall inform the Commission of their intention to conclude a gas supply contract or a memorandum of understanding before concluding such a contract or memorandum of understanding in accordance with this Article.***

***2. Natural gas undertakings or undertakings consuming gas established in the Union or authorities or regulated entities of Member States shall inform the Commission at least six weeks before concluding a legally binding contract or memorandum of understanding referred to in paragraph 1, about the identity of the contract partner or partners, the relevant volumes, the relevant dates, the origin of gas and, where applicable, the service provider organising such purchases on behalf of a Member State.***

***3. If the Commission considers that planned gas purchases of natural gas undertakings or undertakings consuming gas established in the Union or of authorities or regulated entities of Member States may have a negative impact on functioning of joint purchasing, the internal market, essential security interests of the Union, or on security of supply or energy solidarity, the Commission shall issue a recommendation to the relevant Member States to***

*take appropriate measures to avoid such a negative impact. The Member State concerned shall take the utmost account of the Commission's recommendation.*

*4. When providing information to the Commission in accordance with paragraphs 1 and 2, the entities providing the information may indicate whether any part of the information, be it commercial or other information the disclosure of which could harm the activities of the parties involved, is to be regarded as confidential and whether the information provided can be shared with other Member States.*

*5. Requests for confidentiality under this Article shall not restrict the access of the Commission itself to confidential information. The Commission shall ensure that access to the confidential information is strictly limited to the Commission services for which it is absolutely necessary to have the information available. Commission representatives shall handle sensitive information with due confidentiality.*

*6. Without prejudice to Article 346 TFEU, information that is confidential shall be exchanged with the Commission and other relevant authorities only where such exchange is necessary for the application of this Regulation. The information exchanged shall be limited to that which is relevant and proportionate to the purpose of such exchange. Such exchange of information shall preserve the confidentiality of that information and protect the security and commercial interests of the entities falling within the scope of this Regulation. The Facility shall not use the information collected for any other purpose than for carrying out the contract.*

*7. All servers and information shall be physically located and stored in the territory of the Union.*

*Article 67 – paragraph 1 – point 12 - point a - point iii a (new) (Regulation (EU) 2017/1938, Article 11 – paragraph 2) "2. When the competent authority declares one of the crisis levels referred to in paragraph 1, it shall immediately inform the Commission as well as the competent authorities of the Member States with which the Member State of that competent authority is directly connected and provide them with all the necessary information, in particular with information on the action it intends to take. In the event of an emergency which may result in a call for assistance from the Union and its Member States, the competent authority of the Member State concerned shall without delay notify the Commission's Emergency Response Coordination Centre (ERCC)."*

*Article 67 – paragraph 1 – point 13 a (new) (Regulation (EU) 2017/1938, Article 12 – paragraph 2) "2. The Commission shall convene the GCG as soon as it declares a regional or Union emergency"*

*Article 67 – paragraph 1 – point 13 b (new) (Regulation (EU) 2017/1938, Article 12 – paragraph 3 - introductory part) "3. In a regional or Union emergency, the Commission shall coordinate the action of the competent authorities. In particular, the Commission shall:"*

*Article 67 – paragraph 1 – point 13 c (new) (Regulation (EU) 2017/1938, Article 12 – paragraph 4) 4. The Commission may convene a crisis management group composed of the crisis managers referred to in point (g) of Article 10(1), of the Member States concerned by the emergency. The Commission, in agreement with the crisis managers, may invite other*

relevant stakeholders to participate. The Commission shall ensure that the GCG is informed regularly about the work undertaken by the crisis management group.

*Article 67 – paragraph 1 – point 14 (Regulation (EU) 2017/1938, Article 13)* ~~Article 13 is amended as follows:~~

(a) paragraphs 3, 4 and 5 are replaced by the following:

~~‘3. A solidarity measure **shall be a last resort measure and** shall apply only if the requesting Member State has:~~

- ~~(a) declared an emergency state under Article 11;~~
- ~~(b) not been able to cover the deficit in gas supply to its solidarity protected customers despite the application of the measure referred to in Article 11(3);~~
- ~~(c) exhausted all market based measures (‘voluntary measures’), all non market based measures (‘mandatory measures’) and other measures contained in its emergency plan;~~
- ~~(d) notified an explicit request to the Commission and to the competent authorities of all Member States with which it is connected either directly or pursuant to paragraph 2 via a third country, accompanied by a description of the implemented measures referred to in point (b) of this paragraph **and by the explicit commitment** to pay fair and prompt compensation to the Member State providing solidarity in accordance with paragraph 8.~~

~~4. The Member States **that receive a request for a solidarity** measure shall make such offers on the basis of voluntary demand side measures as much as and for as long as possible, before resorting to non market based measures.~~

~~Where market based measures prove insufficient for the Member State providing solidarity to address the deficit in gas supply to solidarity protected customers in the requesting Member State, the Member State providing solidarity may introduce non market based measures in order to comply with the obligations laid down in paragraphs 1 and 2.~~

~~5. If there is more than one Member State that could provide solidarity to a requesting Member State, the requesting Member State shall, after consulting all Member States required to provide solidarity, seek the most advantageous offer on the basis of cost, speed of delivery, reliability and diversification of supplies of gas. **Where the available market based offers is not enough to cover the deficit in gas supply to the solidarity protected customers in the requesting Member State, the Member States required to provide solidarity shall be obliged to activate non-market based measures.**~~

(b) In paragraph 10, the following subparagraph is added:

~~‘Where a solidarity measure has been provided in accordance with paragraphs 1 and 2, the final amount of the compensation that has been paid by the requesting Member State shall be subject to ex post control by the Regulatory Authority and/or the Competition Authority of the Providing Member State, within three months of the lifting of the emergency. The Requesting Member State shall be consulted and give its opinion on the conclusion of the ex post control. Following the consultation with the Requesting Member State, the authority which exercises this ex post control is entitled to require a rectification of the amount of the compensation, taking into account the opinion of the Requesting Member State. The conclusions of this ex post control shall be transmitted to the European Commission, which will take them into consideration in its report on the emergency pursuant to Article 14(3).’;~~

(c) paragraph 14 is replaced by the following:

~~‘14. The applicability of this Article shall not be affected if Member States fail to agree or finalise their technical, legal and financial arrangements. In such a situation, where **a solidarity measure**~~

~~is needed to guarantee the gas supply to solidarity protected customers, the arrangements contained in (new) Annex IX shall apply by default to the request and provision of the relevant gas.<sup>2</sup>;~~

*Article 67 – paragraph 1 – point 14a (Regulation (EU) 2017/1938, Article 13a new) 13a the following Articles are inserted:*

*Article 13a Extension of solidarity protection to critical gas volumes for electricity security of supply*

*1. By way of derogation from Article 13(3), a solidarity measure pursuant to Article 13(1) and (2) shall apply only if the Member State requesting solidarity has not been able to cover:*

*(a) the deficit in gas supply to its solidarity protected customers or, where a Member State has taken temporary measures to reduce the non-essential consumption of protected customers in accordance with Article 13b, the essential volumes of consumption of gas to its solidarity protected customers;*

*(b) the critical gas volume for electricity security of supply, despite the application of the measure referred to in Article 11(3). The conditions set out in Article 13(3), points (b), (c) and (d) shall apply.*

*2. The Member States which are obliged to provide solidarity pursuant to paragraph 1 shall be entitled to deduct from the solidarity offer:*

*(a) supplies to its solidarity protected customers to the extent essential volumes are affected or, where a Member State has taken temporary measures to reduce the non-essential consumption of protected customers in accordance with Article 13b, the supplies of the essential volumes of consumption of gas of its solidarity protected customers;*

*(b) supplies of critical gas volumes for electricity security of supply;*

*(c) supplies of gas volumes for the electricity needed for the production and transportation of gas; and*

*(d) gas volumes necessary for the operations of security of supply critical infrastructure as referred to in Annex VIIIb as well as other installations crucial for the functioning of military, national security and humanitarian aid services.*

*3. The critical gas volumes for electricity security of supply as referred to in paragraph 1, point (b), and paragraph 2, points (b) and (d) shall not exceed the volumes indicated in Annex VIIIa. If a Member State can demonstrate that a higher volume of gas is required to avoid an electricity crisis of a Member State, the Commission may, upon a duly reasoned request, decide to allow the deduction of higher volumes.*

*4. If Member States whose electricity system is synchronised only with the electricity system of a third country are requested to provide solidarity measures, they may exceptionally deduct higher volumes of gas in the event the electricity system is desynchronised from that third country's system for as long as isolated power system services or other services to the power transmission system operator are required to ensure the safe and reliable operation of the power system.*

**Article 13b Demand reduction measures concerning protected customers**

**1. Member States may, exceptionally, take temporary measures to reduce the non-essential consumption of protected customers, in particular when one of the crisis levels pursuant to Article 11(1) and Article 12, or the Union alert pursuant to Regulation (EU) 2022/1369, has been declared. Such measures shall be limited to non-essential uses of gas and shall take into account the elements set out in Article 6(2) of Regulation (EU) 2022/1369. Such exceptional measures may be taken only after an assessment is carried out by the competent authorities with regard to the conditions to determine such non-essential volumes of gas.**

**2. As a result of measures referred to in paragraph 1 of this Article, the consumption of vulnerable customers, as defined by Member States in accordance with Article 25 of the recast Directive 2009/73/EC, shall under no circumstance be reduced, and Member States shall not disconnect protected customers as a result of the application of paragraph 1 of this Article.**

**Article 13c Safeguards for cross-border flows**

**In the case of a Commission request pursuant to Article 12(6), first subparagraph, to terminate undue restrictions of cross-border gas flows or of access to gas infrastructure, or measures endangering the gas supply in another Member State, the competent authority, or the Member State shall, instead of following the procedure provided for in Article 12(6), second subparagraph, modify its action or take action in order to ensure compliance with Article 12(5).**

**Article 13d Temporary extension of solidarity obligations to Member States with LNG facilities**

**1. The obligation to provide solidarity measures pursuant to Article 13(1) shall not only apply to Member States directly connected to the requesting Member State, but also to Member States with LNG facilities, provided that the necessary capacity in the relevant infrastructure, including the LNG vessels and carriers, is available.**

**2. Article 13, paragraphs (2) to (9), shall apply to Member States with LNG facilities unless otherwise provided for in this Regulation.**

**3. Member States with LNG facilities that are not directly connected to a requesting Member State may agree bilaterally with any other Member States on the necessary technical, legal and financial solidarity arrangements that apply to the provision of solidarity.**

**4. The default rules for the provision of solidarity measures pursuant to Article 13e shall also apply to the non-connected Member States in so far as no bilateral arrangement is concluded at the time of the receipt of a solidarity request.**

**Article 13e Default rules for solidarity measures**

**1. Where two Member States have not agreed on the necessary technical, legal and financial arrangements pursuant to Article 13(10) (solidarity agreement), the delivery of gas pursuant to the obligation in Article 13(1) in the event of an emergency shall be subject to the conditions in this Article.**

**2. The compensation for the solidarity measure shall not exceed the reasonable costs and, by derogation from Article 13(8), shall in any event include:**

**(a) the price for gas in the Member State providing solidarity;**

*(b) the storage and transport costs, including possible fees resulting from the deviation of LNG cargoes to the interconnection point requested;*

*(c) litigation costs for related judicial or arbitration proceedings involving the Member State providing solidarity;*

*(d) other indirect costs that are not covered by the price for gas, such as the reimbursement of financial or other damages resulting from enforced firm load shedding of customers related to the provision of solidarity, provided that those indirect costs do not exceed 100 % of the price for gas.*

*3. If a Member State requests compensation for indirect costs pursuant to paragraph (2), point (d) exceeding 100% of the gas price, the Commission shall, after consulting the relevant competent authorities, decide whether a higher compensation is appropriate, taking into account the specific contractual and national circumstances of the case and the principle of energy solidarity.*

*4. Unless the Member State requesting solidarity and the Member State providing solidarity agree on another price, the price for the gas supplied to the Member State requesting solidarity shall correspond to the day-ahead market price in the Member State providing solidarity the day preceding the request for solidarity or the corresponding day-ahead market price at the closest accessible exchange virtual trading point, or at an agreed hub over the day preceding the request for solidarity.*

*5. Compensation for the gas volumes delivered in the context of a solidarity request pursuant to Article 13f shall be paid directly by the Member State requesting solidarity to the Member State providing solidarity or the entity both Member States indicate in their response to the solidarity request and the confirmation of receipt and of the volume to be taken.*

*6. A Member State to which the request for a solidarity measure is addressed shall provide the solidarity measures as soon as possible and no later than three days after the request. A Member State may refuse to provide solidarity to a Member State requesting solidarity only where the first Member State demonstrates that:*

*(a) it does not have enough gas for the volumes referred to in Article 13a(2); or*

*(b) it does not have sufficient interconnection capacity available, as set out in Article 13(7) and it does not have the possibility to provide sufficient volumes of LNG.*

*7. In addition to the default rules provided for in this Article, Member States may agree on technical arrangements and coordination of the provision of solidarity.*

*8. This Article shall be without prejudice to existing arrangements for the safe and reliable operation of the gas system.*

#### *Article 13f Procedure for solidarity measures in the absence of a solidarity agreement*

*1. The Member State requesting the application of the solidarity measures shall issue a solidarity request to another Member State, indicating at least the following information:*

*(a) the contact details of the competent authority of the Member State;*

*(b) the contact details of the relevant transmission system operators of the Member State (if relevant);*

*(c) the contact details of the third party acting on behalf of the Member State (if relevant);*

*(d) the delivery period including the timing of the first possible delivery and the anticipated duration of deliveries;*

*(e) delivery and interconnection points;*

*(f) the gas volume in kWh for each interconnection point;*

*(g) the gas quality.*

*2. The solidarity request shall be sent, simultaneously, to Member States that are potentially able to provide solidarity measures, to the Commission and to the crisis managers designated pursuant to Article 10(1), point (g).*

*3. The Member States receiving a solidarity request shall send a response that indicates the contact details referred to in paragraph 1, points (a), (b) and (c), and the volume that can be supplied to the interconnection points and at the time requested as referred to in paragraph 1, points (d) to (g). The response shall indicate the volume resulting from possible curtailment, or, where strictly indispensable, release of strategic stocks where the volume that can be supplied by voluntary measures is insufficient.*

*4. Solidarity requests shall be submitted at least 72 hours before the indicated delivery time for LNG and at least 24 hours before the indicated delivery time for gas transported by pipeline. The response to solidarity requests shall be effected within 12 hours. The confirmation of receipt and of the volume to be taken by the Member State requesting solidarity shall be effected within four hours of receipt of the solidarity offer.*

*5. The request may be submitted for a period of one day or several days, and the response shall match the requested duration.*

*6. Where there are several Member States providing solidarity and bilateral solidarity arrangements are in place with one or several of them, those arrangements shall prevail between the Member States having agreed bilaterally. The default rules provided for in this Article shall be applicable only in relation to the other Member States providing solidarity.*

*7. The Commission may facilitate the implementation of solidarity agreements, in particular by a template in the form of a secured online platform to enable real-time transmission of requests and offers.*

#### *Article 13g Review of solidarity measures*

*By 1 July 2025, the Commission shall assess the applicability and efficiency of the LNG solidarity and the feasibility of solidarity involving Member States not directly connected. The Commission shall submit a report on the main findings of that assessment to the European Parliament and to the Council, and shall, if appropriate, propose amendments to the solidarity provisions of this Regulation.*

*Article 67 – paragraph 1 – point 14b (Regulation (EU) 2017/1938, Article 14a new) the following Articles are inserted:*

**Article 14a Intra-day volatility management mechanism**

- 1. By ... [one month after the entry into force of this Regulation], each trading venue on which energy-related commodity derivatives are traded shall set up, for each energy-related commodity derivative traded on it, an intra-day volatility management mechanism based on an upper and lower price boundary (price boundaries) that defines the prices above and below which orders may not be executed (intra-day volatility management mechanism). Trading venues shall ensure that the intra-day price volatility management mechanism prevents excessive movements of prices within a trading day for energy-related commodity derivatives. When setting up the intra-day volatility management mechanism, trading venues shall also ensure that the implementation of these measures does not prevent the formation of reliable end-of-day closing prices.**
- 2. For each energy-related commodity derivative traded on them, trading venues shall establish the applicable calculation method to determine the price boundaries relative to a reference price. The first reference price of the day shall be equal to the price determined upon the opening of the relevant trading session. The subsequent reference prices shall be the last market price observed at regular intervals. In the case of an interruption in trading during the trading day, the first reference price after the interruption shall be the opening price of the resumed trading.**
- 3. The price boundaries shall be expressed either in absolute value, or in relative terms in the form of a percentage variation relative to the reference price. Trading venues shall adjust that calculation method to the specificities of each energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile. The trading venue shall inform the competent authority of the method without undue delay.**
- 4. Trading venues shall renew the price boundaries at regular intervals during trading hours, based on the reference price.**
- 5. Trading venues shall without undue delay make public the features of the intra-day volatility management mechanism they have put in place or whenever they have applied a modification.**
- 6. Trading venues shall implement the intra-day volatility management mechanism either by integrating it into their existing circuit breakers already established in accordance with Directive 2014/65/EU or as an additional mechanism thereto.**
- 7. Where a trading venue intends to modify the calculation method for the price boundaries applicable to a given energy-related commodity derivative, it shall inform the competent authority of the intended modifications without undue delay.**
- 8. Where the information collected by the European Securities and Market Authority (ESMA) in accordance with Article 14b(3) show that further consistency of implementation of the mechanism is needed to ensure more efficient management of excessive price volatility across the Union, the Commission may adopt implementing acts specifying the uniform principles for the implementation of the intra-day volatility management mechanism, taking into account the specificities of each energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile. In particular, in order to ensure the smooth operation of trading venues that offer trading in energy-related commodity derivatives, the Commission may specify the intervals at which the price boundaries will be renewed or the measures to be taken if trading moves outside those price boundaries including provisions to ensure the formation of reliable closing prices. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18a(2).**

### ***Article 14b Role of competent authorities***

- 1. Competent authorities shall supervise the implementation of the intra-day volatility management mechanism. Competent authorities shall ensure that divergences in the implementation of the intra-day volatility management mechanisms by trading venues established in their Member States are duly justified by the specificities of the trading venues or energy-related commodity derivative concerned.***
- 2. Competent authorities shall ensure that trading venues implement appropriate preliminary mechanisms ensuring that excessive volatility in energy-related commodity derivatives markets is mitigated until the set-up of the intra-day volatility management mechanism as referred to in [Article 14a(1)].***
- 3. Competent authorities shall report to ESMA on the implementation of the intra-day volatility management mechanism by trading venues they supervise within three weeks from the date referred to in [Article 14a (1)] and at least on a quarterly basis.***

### ***Article 14c Coordination role of ESMA***

- 1. ESMA shall coordinate and monitor the implementation of the intra-day volatility management mechanisms on the basis of reports submitted to it by the competent authorities in accordance with Article 14b(3).***
- 2. ESMA shall document any divergences in the implementation of the intra-day volatility management mechanisms across jurisdictions in the Union based on the reports from competent authorities. By 30 June 2023 and periodically thereafter, ESMA shall submit a report to the Commission evaluating the efficiency of the intra day volatility management mechanisms. On the basis of that report, the Commission shall consider whether to submit a legislative proposal for the amendment of this Regulation to the Council.***

***Article 67 – paragraph 1 – point 15 a (new) (Regulation (EU) 2017/1938, Article 14 – paragraph 2 - introductory part)*** "2. In the event of a regional or Union emergency, the Commission may request that the competent authority referred to in paragraph 1 provide it without delay with at least:"

***Article 67 – paragraph 1 – point 15 b (new) (Regulation (EU) 2017/1938, Article 14 – paragraph 3 - subparagraph 2)*** "The Commission shall analyse the assessments of the competent authorities and shall inform the Member States, the European Parliament and the GCG of the results of its analysis in an aggregated form."

***Article 67 – paragraph 1 – point 15 c (new) (Regulation (EU) 2017/1938, Article 14 – paragraph 6 - subparagraph 2)*** "The competent authority shall notify the data listed in point (a) of the first subparagraph to the Commission in an anonymised form. In the event of new contracts being concluded or changes being made to existing contracts, the whole set of data shall be notified by the end of September of the relevant year. Where the competent authority has doubts whether a given contract obtained under point (b) of the first subparagraph puts the security of gas supply of a Member State or a region at risk, it shall notify the contract to the Commission."

**Article 67 – paragraph 1 – point 15d (new) (Regulation (EU) 2017/1938, Article 17a – paragraph 1 a (new)) (15d) in Article 17a, the following paragraph is added: '2. The Commission shall, when it submits its report pursuant to paragraph 1, by 28 February 2025, include a general assessment of the application of Articles 6a to 6d, Article 7(1) and (4)(g), Article 16(3), Article 17a, Article 18a, Article 20(4), and Annexes Ia and Ib. The report shall be accompanied, if appropriate, by a legislative proposal.'**

**Article 67 – paragraph 1 – point 16 a (new) (Regulation (EU) 2017/1938, Article 22 – paragraph 4) (16a) in Article 22, paragraph 4 is deleted;**

**Article 67 – paragraph 1 – point 16 b (new) (Regulation (EU) 2017/1938, Annex I - point 3.1.1. (16b) Annex I is amended as follows:**

**a) point 3.1.1.(d) is replaced by the following: “(d) ; in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis.**

**b) point 3.1.1.(e) is replaced by the following: “(e) in a downloadable format that has been agreed between transmission system operators and the national regulatory authorities — on the basis of an opinion on a harmonised format that shall be provided by ACER — and that allows for quantitative and comparative analyses;”**

**Article 67 – paragraph 1 – point 17 a (new) (Regulation (EU) 2017/1938) (17a) The following Annexes are inserted:**

#### ANNEX VIIIa

(a) Maximum critical gas volumes for electricity security of supply pursuant to Article 13a for the period between December 2022 to March 2023 (values in million cubic metres) (1):

Member State	December 2022	January 2023	February 2023	March 2023
AT	74,24	196,83	152,20	139,35
BE	399,05	458,77	382,76	398,99
BG	61,49	71,26	61,55	63,29
CY	-	-	-	-
CZ	17,26	49,64	34,80	28,28
DE	2 090,53	2 419,56	2 090,59	1 863,77
DK	249,48	295,56	254,87	268,09
EE	5,89	5,78	5,00	1,05
EL	209,95	326,68	317,18	232,80
ES	1 378,23	1 985,66	1 597,27	1 189,29
IE	372,76	375,29	364,26	375,74
FI	28,42	39,55	44,66	12,97
FR	876,37	875,58	802,53	771,15
HR	10,95	66,01	59,99	48,85
HU	82,13	133,97	126,44	93,72

IT	2 166,46	3 304,99	3 110,79	2 774,67
LV	89,26	83,56	84,96	66,19
LT	16,13	20,22	18,81	4,21
LU	-	-	-	-
MT	32,88	34,84	31,43	33,02
NL	684,26	762,31	556,26	480,31
PL	158,14	158,64	136,97	148,64
PT	409,97	415,22	368,54	401,32
RO	130,35	179,35	162,41	159,71
SI	12,98	15,15	13,35	12,80
SK	33,99	47,26	34,80	34,76
SE	18,05	18,61	17,71	15,76

(b) Maximum critical gas volumes for electricity security of supply pursuant to Article 13a for the period between April 2023 to December 2023 (values in million cubic metres):

Member State	Monthly value
AT	140,66
BE	409,89
BG	64,40
CY	-
CZ	32,50
DE	2 116,11
DK	267,00
EE	4,43
EL	271,65
ES	1 537,61
IE	372,01
FI	31,40
FR	831,41
HR	46,45
HU	109,06
IT	2 839,23
LV	80,99
LT	14,84
LU	-
MT	33,03
NL	620,79

PL	150,60
PT	398,76
RO	157,96
SI	13,57
SK	37,70
SE	17,53

(1) The figures in Annex I, parts (a) and (b), are based on data from the winter adequacy assessment pursuant to Article 9 of Regulation (EU) 2019/941 by the European Network of Transmission System Operators for Electricity (ENTSO-E), except for Malta for which the electricity generation relies exclusively on LNG deliveries with no significant storage capacities. Given the specificity of the low-calorific gas, the values for the Netherlands in this table should be multiplied with a conversion factor of 37,89 divided by 35,17. Annex I, part (a), represents the individual monthly volumes calculated by ENTSO-E for the months December 2022 to March 2023; the figures in Annex I, part (b), for the months April 2023 to December 2023 represent the average of the values in the period between December 2022 and March 2023.

## ANNEX VIIIb

### Security of supply critical infrastructure pursuant to Article 13a(2), point (d)

Sector	Subsector	
I Energy	1. Electricity	Infrastructures and facilities for generation and transmission of electricity in respect of supply electricity
	2. Oil	Oil production, refining, treatment, storage and transmission by pipelines
	3. Gas	Gas production, refining, treatment, storage and transmission by pipelines LNG terminals
II Transport	4. Road transport	
	5. Rail transport	
	6. Air transport	

### Recitals

(68) In reaction to the significant and EU-wide energy price increases evidenced in autumn 2021 and their negative impacts, the communication of the Commission of 13 October 2021 entitled ‘Tackling rising energy prices: a toolbox for action and support’ highlighted the importance of an effective and well-functioning internal energy market and of the effective use of gas storages in Europe across the Single market. That communication also emphasised that a better coordination of security of supply across borders is crucial for the resilience against future shocks. On 20/21 October 2021, the European Council adopted conclusions inviting the Commission to swiftly consider measures that increase the resilience of the EU’s energy system and the internal energy market, including measures which enhance security of supply. *In response to Russia’s invasion of Ukraine, the Commission presented*

**the REPowerEU Plan on 8 March 2022 in order to phase out Union's dependency on Russian fossil fuels and to accelerate the clean energy transition.** To contribute to a consistent and timely response to this crisis and possible new crisis at Union level, specific rules to improve cooperation and resilience, notably **in particular** concerning better-coordinated storage and solidarity rules, should be introduced in this Regulation and in Regulation (EU) 2017/1938, **complementing the mandatory minimum level of gas in storage facilities.**

(69) The analysis of the functioning of the storage capacities in the regional common risk assessments should be based on objective assessments of the needs for the security of supply, duly taking into account cross-border cooperation and the solidarity obligations under this Regulation. It should also take into account the **full potential of the energy efficiency policies and energy savings** and importance of avoiding stranded assets in the clean energy transition and the goal of reducing the dependency of the Union ~~to~~ **on** external fossil fuels providers. The analysis should include an assessment of the risks linked to the **direct or indirect ownership or** control of storage infrastructure by third country entities. The analysis should take into account the possibility to use storage facilities in other Member States and for transmission system operators to set up joint procurement of **gas** provided that the conditions of this Regulation are respected. The regional common risk assessments and national risk assessments should be consistent with each other in order to identify the measures of the national preventive and emergency plans in compliance with this Regulation ensuring that any measures taken do not harm the security of supply of other Member States and do not unduly hinder the effective functioning of the gas market. For instance they should not block or restrict the use of cross-border transport capacities.

(71) Joint procurement of ~~gas strategic stocks~~ by several transmission operators of different **Member States or other undertakings designated by the** Member States should be designed in a way so that ~~they~~ **it** can be used in ~~the~~ case of Union wide or regional emergency as part of the actions coordinated by the Commission pursuant to Article 12(3) of Regulation (EU) 2017/1938. Transmission system operators **or other undertakings designated by the Member States** which engage in joint procurement of ~~gas strategic stocks~~ shall ~~should~~ ensure that any joint purchasing agreement complies with the ~~EU~~ **Union** competition rules, and in particular with the requirements of Article 101 TFEU. The notification ~~done~~ **effected** to assess the compliance **of the envisaged voluntary mechanism for the joint procurement of gas** with this Regulation is without prejudice to the notification of aids granted by States, where applicable, under Article 108(3) TFEU.

**(71a)** Trading venues offering energy-related commodity derivatives often admit for participation various energy firms from all Member States. Such energy firms rely heavily on derivatives traded on such trading venues to ensure crucial supplies of gas and electricity across the Union. Excessive price movements occurring on energy-related commodity derivatives trading venues therefore affect the operation of energy firms across the whole Union, ultimately also adversely affecting end-consumers. Therefore, in a spirit of solidarity between Member States, coordination of the implementation and application of the intra-day volatility management mechanism should be undertaken, to ensure that operators essential for the security of the energy supply in all Member States benefit from safeguards against large price movements that are detrimental to the continued operation of their business, which would also be detrimental to the end-consumers.

**(71b)** The intra-day volatility management mechanism should ensure that excessive movements in prices within a trading day are prevented. The mechanism should be based on the observed market price at regular intervals. Given the wide diversity of instruments in energy derivatives

markets and the peculiarities of the trading venues associated with such instruments, the intra-day volatility management mechanisms should be adapted to the specificities of those instruments and markets. Therefore, price limits should be set up by trading venues taking into account the specificities of each relevant energy-related commodity derivative, the liquidity profile of the market for such derivative and its volatility profile.

**(74a)** It is important for the Commission and the Member States to have a clear picture of intended and concluded gas supply contracts across the Union, in order to assess whether the objectives of security of supply and energy solidarity are met. Therefore, undertakings or authorities of Member States should inform the Commission and the Member States in which those undertakings are established of large planned gas purchases above 5 TWh/year. This should in particular apply to basic information regarding new or renewed contracts. The Commission should be allowed to issue recommendations to the natural gas undertakings or authorities of the relevant Member States, in particular where further coordination could improve the functioning of joint purchasing or where the launch of a tender for the purchase of gas or planned gas purchases may have a negative impact on security of supply, the internal market or energy solidarity. The issuing of a recommendation should not prevent natural gas undertakings or authorities of the relevant Member States from proceeding with the negotiations in the meantime.

**(74b):** *Where the Commission has reasonable grounds for considering that extraordinary circumstances have occurred in which security of supply of the Union or of a given region or of a Member State cannot be fully ensured without addressing missing links, in particular taking into account the Union's aim to end dependence on a single supplier, it is encouraged to mandate the ENTSOG to carry out a transparent and in-depth analysis of the identified risks to the security of supply and of possible solutions to address it. On the basis of ENTSOG's analysis, the Commission, taking into account the need to promote Union energy security and solidarity, the rapid ending of dependence on a single supplier and the overcoming of related bottlenecks in the internal energy market may identify missing links with a view to resolving or mitigating the identified risks to the security of supply. The Commission may also identify means to support the development of such investment projects, including through an accelerated permitting procedure and financial assistance. It is important that any such investment project is future-proof and compatible with the Union objectives of climate neutrality laid down in Regulation (EU) 2021/1119 and does not lead to stranded assets.*

**CA 8: Firm capacity, cross-border coordination and hydrogen blends (covers Art 18, 19, 20; Rec 43)**

*All relevant AMs fall, including: AMs 5, 30-36, 133, 166-169, 343-375*

*Articles*

Article 18 – paragraph 1 1. Transmission system operators shall ensure firm capacity for the access of production facilities of renewable and low carbon gases connected to their grid. For this purpose, transmission system operators shall, ~~develop~~ in cooperation with the distribution system operators, **develop** procedures and arrangements, including investments,

to ensure reverse flow from *the* distribution *network* to *the* transmission network, *and network reinforcement plans to ensure network reinforcement, where appropriate.*

Article 18 – paragraph 2 2. Paragraph 1 shall be without prejudice to the possibility for transmission system operators to develop alternatives to reverse flow investments, such as smart grid solutions or connection to other network operators. Firm access may only be limited to offer capacities subject to operational limitations, in order to ensure *infrastructure safety and* economic efficiency. The regulatory authority shall *be responsible for reviewing and approving the transmission system operators' conditions for conditional capacity and shall* ensure that any limitations in firm capacity or operational limitations are introduced on the basis of transparent and non-discriminatory procedures and do not create undue barriers to market entry. Where the production facility bears the costs related to ensuring firm capacity, no limitation shall apply.

*Article 18 – paragraph 2a (new) 2a. For the purpose of the swift implementation of grid connection of renewable gas production, Member States shall ensure that:*

*(a) the transmission system operator complies with reasonable time limits to assess the requests for the injection of renewable gases, make an offer and implement the connection, under the monitoring of the national regulatory authority carried out in accordance with Article 37 and Article 72(1), point (t) of [the recast Gas Directive as proposed in COM(2021) xxx];*

*(b) permitting procedures for the implementation of the connection are not hampered by a lack of administrative capacity and do not create a hurdle to the achievement of the national renewable energy target.*

Article 19 – paragraph 1 1. Transmission system operators shall cooperate to avoid restrictions to cross-border flows due to gas quality differences on interconnection points between ~~Union~~ Member States. *When cooperating, transmission system operators shall take into account the characteristics of installations of final gas customers.*

*Article 19 – paragraph 1a (new) 1a. Transmission system operators shall only accept gas flows with a hydrogen content of up to 3% by volume at interconnection points between Member States in the natural gas system, subject to the completion of the procedure described in this Article.*

*Article 19 – paragraph 1 b (new) 1b. Member States shall ensure that diverging technical specifications, including gas quality parameters, such as oxygen content and hydrogen blending in the natural gas system, are not used to restrict cross-border gas flows.*

Article 19 – paragraph 4 – introductory part 4. Where the ~~concerned~~ regulatory authorities *concerned* recognise the restriction, they shall request the concerned transmission system operators to perform, within 12 months from the recognition, the following actions in sequence:

Article 19 – paragraph 4 – point a (a) cooperate and develop technically feasible options, without changing the gas quality specifications, which may include flow commitments and gas treatment, in order to remove the recognised restriction *taking into account information provided by end-customers directly connected to the transmission system operator grid,*

***distribution system operator or any other stakeholder that could be affected by that procedure;***

Article 19 – paragraph 4 – point b (b) jointly carry out a cost-benefit analysis on the technically feasible options to define economically efficient solutions which shall specify the breakdown of costs and benefits among the categories of affected parties;

Article 19 – paragraph 4 – point d (d) conduct a public consultation, ***in particular of affected end customers connected to the transmission network***, on identified feasible solutions and take into consideration the results of the consultation;

Article 19 – paragraph 6 6. The ~~concerned~~ regulatory authorities ***concerned*** shall take a joint coordinated decision ~~for to removing or maintain~~ the recognised restriction, ~~or for stating that no further action should be pursued~~, taking into account the cost benefit analysis prepared by the concerned transmission system operators and the results of the public consultation within six months as set out in Article 6(10) of Regulation (EU) 2019/942. ***Any decision to maintain the recognised restriction shall be reviewed every four years.***

Article 19 – paragraph 7 7. The joint coordinated decision of the concerned regulatory authorities shall include a decision on the allocation of the investment costs to be borne by each transmission system operator for implementing the agreed solution, as well as their inclusion in tariffs, taking into account the economic, social and environmental costs and benefits of the solution in the concerned Member States.

Article 19 – paragraph 10 10. Where the ~~relevant~~ regulatory authorities ***concerned*** cannot take a joint coordinated decisions as referred to in paragraphs 6 and 7, ACER shall decide on the solution to remove ***or maintain*** the recognised restriction and on the allocation of the investment costs to be borne by each transmission system operator for implementing the agreed solution, following the process set out in Article 6(10) of Regulation (EU) 2019/942. ***Any decision to maintain the recognised restriction shall be reviewed every four years.***

Article 19 – paragraph 11 11. Further details required to implement ~~elements of this Article~~, including details on the cost benefit analysis ***and on a common binding natural gas quality specification for cross-border natural gas***, shall be set in a network code established on the basis of Article 53 ~~of this Regulation~~.

~~Article 20 20. Hydrogen blends at interconnection points between Union Member States in the natural gas system~~

~~1. Transmission system operators shall accept gas flows with a hydrogen content of up to 5% by volume at interconnection points between Union Member States in the natural gas system from 1 October 2025, subject to the completion of the procedure described in Article 19 of this Regulation.~~

~~2. When the hydrogen content blended in the natural gas system exceeds 5% by volume, the process described in Article 19 of this Regulation shall not apply.~~

~~3. Member States shall not use hydrogen blending in the natural gas system to restrict cross-border gas flows.~~

*Recitals*

(43) The blending of hydrogen into the natural gas system ***should be a last resort solution, as it*** is less efficient compared to ***the use of*** using hydrogen in its pure form and diminishes the value of hydrogen. It also affects the operation of gas infrastructure, end-user applications, and the interoperability of cross-border systems. ***Member States should therefore prioritise the production and use of renewable and low-carbon hydrogen in their pure form in the hard-to-decarbonise sectors, such as in industry and transport applications. However, all efforts should be made to avoid the use of hydrogen for applications with regard to which more energy-efficient alternatives exist, such as the heating of buildings, and the production of hot water for sanitary use and of low-grade heat for industrial processes. This Regulation should promote the most efficient uses of hydrogen, but Member States should retain the possibility to decide*** decision on whether to apply blending hydrogen in their national natural gas systems should be preserved. At the same time, a ***Therefore,*** harmonised approach on blending hydrogen into the natural gas system in the form of a Union-wide allowed cap at ***rules on coordination on*** cross-border interconnection points between Union Member States, where transmission system operators have to accept natural gas with a blended ***restrictions due to differences in*** hydrogen ***blending levels will*** level below the cap, would limit the risk of market segmentation. Adjacent transmission systems should remain free to agree on higher hydrogen blending levels for cross-border interconnection points.

**CA 9: ENTSG&H and network development plan (covers Art 21, 22, 23, 24, 26, 27, 28, 29, 40, 41, 42, 43, 44, 45, 46, 47; Rec 16, 17, 47, 48, 49, 50, 53)**

*All relevant AMs fall, including: AMs 6-10, 38-72, 78-85, 144-149, 172-176, 377-460, 525-581, 669*

*Articles*

Article 21 – title ~~European network of~~ ***The joint EU organisation of Gas*** transmission system operators ~~for gas~~ ***and Hydrogen Network Operators***

Article 21 – paragraph 1 All ***gas*** transmission system ***operators and hydrogen network*** operators shall cooperate at Union level through the ***joint EU Organisation of Gas*** ~~European Network of Transmission System Operators~~ ***and Hydrogen Network Operators (ENTSG&H)*** ~~for Gas (the ENTSO for Gas)~~, in order to promote the completion and functioning of the internal market in natural gas ***and hydrogen*** and cross-border trade and to ensure the optimal management, coordinated operation and sound technical evolution of the natural gas transmission network ***and of the hydrogen network.***

Article 22 – title ***Organisation of the ENTSG&H*** ~~for Gas~~

Article 22 – paragraph 1 1. ~~The ENTSO~~ ***By 1 September 2024, the ENTSG&H*** shall submit ***and publish*** to the Commission and to ACER the draft statutes, a list of members ***and candidates awaiting certification as hydrogen network operator*** and draft rules of

procedure, including the rules of procedures on the consultation of other stakeholders, of the **ENTSO for Gas** in *the* case of changes of those documents or upon a reasoned request of the Commission or ACER.

**Article 22 – paragraph 1 a (new) 1a.** *Before submitting the documents to the Commission and ACER pursuant to paragraph 1 of this Article, the ENTSOG&H shall conduct a public stakeholder consultation in accordance with Article 26. The consultation shall be effective and extensive and shall take place in a timely adequate, open, inclusive and transparent manner. The participation of stakeholders in the consultation shall be voluntary and all relevant stakeholders shall be invited. The ENTSOG&H shall take into account the results of that consultation.*

Article 22 – paragraph 4 4. Within three months of the day of receipt of the Commission's opinion the **ENTSO for Gas** shall adopt and publish the revised statutes and rules of procedure of the **ENTSO for Gas**.

**Article 22 – paragraph 4 a (new) 4a.** *The statutes of the ENTSOG&H referred to in paragraph 1 shall ensure that:*

*(a) participation in the work of the ENTSOG&H is limited to registered hydrogen network operators and transmission system operators or other relevant stakeholders for the purpose of completing ENTSOG&H's regulatory tasks;*

*(b) strategic decisions regarding the activities of the ENTSOG&H as well as policy guidelines for the board of the ENTSOG&H are adopted by the board of the ENTSOG&H;*

*(c) decisions of the general assembly enable the achievement of the ENTSOG&H's purpose;*

*(d) the board members of the ENTSOG&H are elected by the general assembly for a mandate of a maximum of four years;*

*(e) the board nominates the President and the Vice-President from among the members of the board of the ENTSOG&H;*

*(f) cooperation between transmission system operators for gas and hydrogen network operators pursuant to Article 21 is led by the board of the ENTSOG&H;*

*(g) on the basis of a proposal by the board of the ENTSOG&H, the General Director is appointed by the general assembly for a mandate of four years, renewable once;*

*(h) the ENTSOG&H publish the minutes of its assembly meetings, board meetings and provide the public with regular information on its decision-making and activities.*

**Article 22 – paragraph 4 b (new) 4b.** *The rules of procedure referred to in paragraph 1 shall safeguard the fair and proportionate treatment of its members and shall reflect the diverse geographical, demographic, economic and sectoral structure of its members. In particular, they shall provide for the board to be composed of:*

*(a) a President and a Vice-President designated respectively and on a three-year rotating term from the hydrogen network operators and the transmission system operators groups or vice-versa with alternating roles between transmission system operators and hydrogen network operators; and*

*(b) an equal number of board members that are designated from both the transmission system operators' representatives and the hydrogen network operators' representatives, ensuring a fair balance between hydrogen network operators and transmission system operators. The statutes of ENTSOG&H shall contain an equal number of board members per category. An equal number of board members shall be reached once there is a sufficient number of certified hydrogen network operators from different Member States.*

*Article 22 – paragraph 4 c (new) 4c. The statutes of ENTSOG&H shall provide for clear organisational rules, including with regard to the budget dedicated to transmission system operators' activities and hydrogen network operators' activities, within the ENTSOG&H while ensuring efficiency and shared services being provided by the ENTSOG&H staff to both gas transmission system operators and hydrogen network operators.*

*Article 22 - paragraph 4d (new) The statutes will also provide for clear organisational rules on the establishment of working-level groups and the definition of their scope and activity, safeguarding the fair and balanced treatment of the organisation's members. Specific working-level groups shall be created to specifically focus on the development of hydrogen infrastructure covering quality, supply and demand outlooks as well as infrastructure needs.*

Article 23 – title Tasks of the *joint EU organisation of Gas Transmission System Operators and Hydrogen Network Operators (ENTSOG&H)* ~~ENTSO for Gas~~

Article 23 – paragraph 1 1. The *ENTSOG&H* ~~ENTSO for Gas~~ shall *develop* ~~elaborate~~ network codes in the areas *set out in Articles 53 and 54* upon a request addressed to it by the Commission in accordance with Article 53(9) *or Article 54(9)*.

Article 23 – paragraph 2 2. The *ENTSOG&H* ~~ENTSO for Gas~~ may *develop* ~~elaborate~~ network codes in the areas set out in *Articles 53 and 54* ~~paragraph 6~~ with a view to achieving the objectives set out in Article 21 where those network codes do not relate to areas covered by a request addressed to it by the Commission. Those network codes shall be submitted to ACER for an opinion. That opinion shall be duly taken into account by the *ENTSOG&H* ~~ENTSO for Gas~~.

Article 23 – paragraph 3 – introductory part The *ENTSOG&H* ~~ENTSO for Gas~~ shall adopt *and publish*:

(a) common network operation tools to ensure coordination of network operation in normal and emergency conditions, including a common incidents classification scale, and research plans;

(b) a non-binding Union-wide ten-year network development plan *for gas and hydrogen networks* (Union-wide network development plan); including *European Plan for Priority Corridors for Hydrogen that is consistent with Annex I to Regulation (EU) 2022/869 and reinforced by the REPowerEU Plan*, and a European supply adequacy outlook, every two years; *the Union-wide network development plan shall be developed in cooperation with*

*the regulatory authorities and, where technically possible, be harmonised with the Union-wide network development plan for electricity;*

(c) recommendations relating to the coordination of technical cooperation between Union and third-country transmission system operators *and third country hydrogen network operators*;

*(c a) recommendations relating to the coordination of technical cooperation in the Union between gas transmission and distribution system operators on one hand, and hydrogen network operators on the other;*

(d) an annual work programme;

(e) an annual report;

(f) annual summer and winter supply outlooks; ~~and~~

*(f a) annual outlook for the supply of hydrogen covering Member States where hydrogen is used in electricity generation or for supplying.*

(g) a gas quality *and decarbonisation* monitoring report by 15 May 2024 *and a gas and hydrogen quality and decarbonisation monitoring report by 15 May 2026* at the latest and every two years afterwards, including developments of gas quality parameters, developments of the level and volume *of renewable and low carbon gases injected into the gas system as well as* of hydrogen blended into the natural gas system, forecasts for the expected development of gas quality parameters and of the volume of hydrogen blended into the natural gas system, the impact of blending hydrogen on cross-border flows as well as information on cases related to differences in gas quality specifications or in specifications of blending levels and how such cases were settled *in view of meeting the quality requirements of different end-use applications.*

(h) the gas *and hydrogen* quality *and decarbonisation* monitoring report, *which* shall also cover the development for the areas listed in point (g) where as far as relevant for the distribution network, based on information provided by the entity of distribution system operators in the Union ('EU DSO entity').

Article 23 – paragraph 4 – introductory part 4. The European supply adequacy outlook referred to in paragraph 3, point (b), shall cover the overall adequacy of the gas ~~system~~ *and hydrogen systems* to supply current and projected demands for gas *and hydrogen* for the next five-year period as well as for the period between five and 10 years from the date of that outlook. The European supply adequacy outlook shall build on national supply outlooks prepared by each individual *gas* transmission system operator *and hydrogen network operator*.

Article 23 – paragraph 4 – subparagraph 1 The Union-wide network development plan referred to in paragraph 3, point (b), shall include the modelling of the integrated network, including hydrogen networks, scenario development, a European supply adequacy outlook, *a climate impact assessment*, and an assessment of the resilience of the system. *The plan shall promote the energy efficiency first principle and energy system integration, contribute to the prudent and rational utilisation of natural resources and to achieving the Union's climate and energy targets.*

Article 23 – paragraph 5 5. The annual work programme referred to in paragraph 3, point (d), shall contain a list and description of the network codes to be prepared, a plan on coordination of operation of the network, and research and development activities, to be realised in that year, and an indicative calendar. ***The annual programme shall clearly state which activities relate to hydrogen, to gas, or to both of them.***

~~Article 23 – paragraph 6 6. The network codes referred to in paragraphs 1 and 2 shall cover the following areas, taking into account, if appropriate, regional special characteristics:~~

- ~~(a) network security and reliability rules;~~
- ~~(b) network connection rules;~~
- ~~(c) third party access rules;~~
- ~~(d) data exchange and settlement rules;~~
- ~~(e) interoperability rules;~~
- ~~(f) operational procedures in an emergency;~~
- ~~(g) capacity allocation and congestion management rules;~~
- ~~(h) rules for trading related to technical and operational provision of network access services and system balancing;~~
- ~~(i) transparency rules;~~
- ~~(j) balancing rules including network related rules on nominations procedure, rules for imbalance charges and rules for operational balancing between transmission system operators' systems;~~
- ~~(k) rules regarding harmonised transmission tariff structures;~~
- ~~(l) energy efficiency regarding gas networks;~~
- ~~(m) cyber security regarding gas networks.~~

Article 23 – paragraph 8 8. The ***ENTSOG&H*** ~~ENTSO for Gas~~ shall monitor and analyse the implementation of the network codes and the guidelines adopted by the Commission in accordance with Article 53(13), ***54*** or 56, and their effect on the harmonisation of applicable rules aimed at facilitating market integration. The ***ENTSOG&H*** ~~ENTSO for Gas~~ shall report its findings to ACER and shall include the results of the analysis in the annual report referred to in paragraph 3, point (e), of this Article.

Article 23 – paragraph 9 9. The ***ENTSOG&H*** ~~ENTSO for Gas~~ shall make available all information required by ACER to fulfil its tasks under Article ***24*** ~~24(1)~~. ***In order to enable the ENTSOG&H to fulfil that requirement, transmission system operators and hydrogen network operators shall provide the ENTSOG&H with the requested information.***

Article 23 – paragraph 10 10. ACER shall review national ten-year network development plans to assess their consistency with the Union -wide network development plan. If ACER identifies inconsistencies between a national ten-year network development plan and the Union -wide network development plan, it shall recommend amending the national ten-year network development plan or the Union -wide network development plan as appropriate. If such *a* national ten-year network development plan is **developed** ~~elaborated~~ in accordance with Article 51 of [recast Directive as proposed in COM(2021) xxx] , ACER shall recommend that the competent regulatory authority amend the national ten-year network development plan in accordance with Article 51(5) of that Directive and inform the Commission thereof. ***The ENTSOG&H shall amend Union-wide network development plan taking into account ACER’s recommendations. To ensure early and effective participation, the ENTSOG&H shall publish its draft Union-wide network development plan in a timely adequate manner prior to the submission to the regulatory authority, for comments by the stakeholders.***

Article 23 – paragraph 11 11. Upon request of the Commission, the **ENTSOG&H** ~~ENTSOG for Gas~~ shall give its views to the Commission on the adoption of the guidelines as laid down in Article 56.

***Article 23 – paragraph 11 a (new) 11a. The ENTSOG&H shall promote cyber security and data protection with regard to gas and hydrogen networks in cooperation with relevant authorities and regulated entities.***

Article 24 – paragraph 1 – introductory part 1. ACER shall monitor the execution of the tasks referred to in Article 23(1), (2) and (3) of the **ENTSOG&H** ~~ENTSOG for Gas~~ and report to the Commission.

Article 24 – paragraph 1 – subparagraph 1 1. ACER shall monitor the implementation by the **ENTSOG&H** ~~ENTSOG for Gas~~ of network codes **developed** ~~elaborated~~ under Article 23(2) and network codes which have been developed in accordance with Article 53 (1) to (12) **or Article 54 (1) to (12)** but which have not been adopted by the Commission under **Articles Article 53(13) or 54 (13)**. Where the **ENTSOG&H** ~~ENTSOG for Gas~~ has failed to implement such network codes, ACER shall request the **ENTSOG&H** ~~ENTSOG for Gas~~ to provide a duly reasoned explanation as to why it has failed to do so. ACER shall inform the Commission of that explanation and provide its opinion thereon.

Article 24 – paragraph 1 – subparagraph 2 ACER shall monitor and analyse the implementation of the network codes and the guidelines adopted by the Commission as laid down in Articles 52, 53, **54**, 55 and 56, and their effect on the harmonisation of applicable rules aimed at facilitating market **and energy system** integration as well as on non-discrimination, effective competition, **the Union’s climate and energy targets, the energy efficiency first principle**, and the efficient functioning of the market, and report to the Commission.

Article 24 – paragraph 2 – subparagraph 1 1. The **ENTSOG&H** ~~ENTSOG for Gas~~ shall submit the draft Union-wide network development plan, the draft annual work programme, including the information regarding the consultation process and the other documents referred to in Article 23 (3), to ACER for its opinion. ***Upon receipt of those documents, ACER shall submit the draft Union-wide network development plan and the draft annual work programme to the European Scientific Advisory Board on Climate Change. The European***

***Scientific Advisory Board on Climate Change shall publish an independent analysis and opinion regarding their consistency with the Union's climate and energy targets.***

Article 24 – paragraph 2 – subparagraph 2 Within two months from the day of receipt, ACER shall ~~provide a~~ ***publish its*** duly reasoned opinion as well as recommendations to the ~~ENTSO for Gas~~ ***ENTSOG&H*** and to the Commission where it considers that the draft annual work programme or the draft Union-wide network development plan submitted by the ~~ENTSO for Gas~~ ***ENTSOG&H*** do not contribute to non-discrimination, effective competition, the efficient functioning of the market or a sufficient level of cross-border interconnection open to third-party access. ***The programme and plan shall duly take into account ACER's opinion and recommendations.***

Article 26 – paragraph 1 1. While preparing the network codes, the draft Union -wide network development plan and the annual work programme referred to in Article 23(1), (2) and (3), the ~~ENTSO for Gas~~ ***ENTSOG&H*** shall conduct an extensive ***public*** consultation process, at an early stage and in an open and transparent manner, involving all relevant market participants, and, in particular, the organisations representing all stakeholders, in accordance with the rules of procedure referred to in Article 22(1). That consultation shall also involve regulatory authorities and other national, ***regional and local*** authorities, supply and production undertakings, network users including customers, distribution system operators, including relevant industry associations, technical bodies, ***civil society*** and stakeholder platforms. ***The ENTSOG&H shall publish drafts of those documents for comment by the stakeholders and provide sufficient time for the stakeholders to effectively participate. The ENTSOG&H shall aim at to identifying the views and proposals of all relevant parties during the decision-making process.***

Article 26 – paragraph 3 3. Before adopting the annual work programme and the network codes referred to in Article 23 (1), (2) and (3), the ~~ENTSO for Gas~~ ***ENTSOG&H*** shall indicate how the observations received during the consultation have been taken into consideration. It shall provide reasons where observations have not been taken into account.

Article 27 – paragraph 1 1. The costs related to the activities of the ~~ENTSO for Gas~~ ***ENTSOG&H*** referred to in Articles 21 to 23, 52, and 53 and 54 of this Regulation, and in Article 11 of Regulation (EU) No 347/2013 of the European Parliament and of the Council<sup>17</sup> shall be borne by the ***gas transmission system operators and the hydrogen network operators*** and shall be taken into account in the calculation of tariffs. Regulatory authorities shall approve those costs only if they are reasonable and appropriate.

Article 28 – title Regional cooperation of transmission system operators ***and hydrogen network operators***

Article 28 – paragraph 1 1. Transmission system ***operators and hydrogen network operators*** shall establish regional cooperation within the ~~ENTSO for Gas~~ ***ENTSOG&H*** to contribute to the tasks referred to in Article 23 (1), (2) and (3).

Article 28 – paragraph 2 2. Transmission system ***operators and hydrogen network operators*** shall promote operational arrangements in order to ensure the optimum management of the network and shall promote the development of energy exchanges, the coordinated allocation of cross-border capacity through non-discriminatory market-based solutions, paying due

attention to the specific merits of implicit auctions for short-term allocations and the integration of balancing mechanisms.

Article 29 – title Ten-years network development plan *for gas and hydrogen*

Article 29 – paragraph 1 1. The ~~ENTSO for Gas~~ **ENTSOG&H** shall adopt and publish the Union-wide network development plan referred to in Article 23 paragraph 3, point (b), every two years. The Union -wide network development plan shall include the modelling of the integrated network, scenario development, a European supply adequacy outlook, **a climate impact assessment** and an assessment of the resilience of the system.

The Union -wide network development plan shall, in particular:

Article 29 – paragraph 2 – point a (a) build on national investment plans and Chapter IV of Regulation (EU) 347/2013;

Article 29 – paragraph 2 – point b (b) regarding cross-border interconnections, also build on the reasonable needs of different network users and integrate long-term commitments from investors referred to in Articles 56 and 52 of [recast Gas Directive as proposed in COM(2021)xxx] ; and

Article 29 – paragraph 2 – point c (c) identify investment gaps, ~~notably~~ **in particular** with respect to cross-border capacities, **where available considering the European Plan for Priority Corridors for Hydrogen consistent with Annex I to Regulation (EU) 2022/869 and reinforced by the REPowerEU Plan, as well as investments with regard to the decommissioning of infrastructure or for repurposing of natural gas infrastructure for the transport of hydrogen and investments for demand-side solutions not requiring new infrastructure investments, supported by a cost-benefit analysis consistent with the methodologies set forth in Article 11 of Regulation EU 2022/869.**

**Article 29 – paragraph 2 – point c a (new) (c a) further energy system integration, promote and implement the energy efficiency first principle, and contribute to achieving the Union’s climate and energy targets;**

**Article 29 – paragraph 2 – point c b (new) (c b) take into account the need to priorities the use of hydrogen in hard to decarbonise sectors;**

Article 29 – paragraph 3 In regard to the second subparagraph, point (c), a review of barriers to the increase of cross-border capacity of the network arising from different approval procedures or practices **including demand-side alternatives not requiring new infrastructure investments** may be annexed to the Union -wide network development plan.

**Article 29 – paragraph 3a (new) When developing the Union-wide ten-year network development plan, the ENTSOG&H shall cooperate with the ENTSO for Electricity in particular on the development of the energy system wide cost-benefit analysis, capacity needs across the energy system, and the interlinked energy market and network model including electricity, gas and hydrogen transport infrastructure as well as storage, the Union’s climate and energy efficiency objectives, LNG and hydrogen terminals and electrolyzers referred to in Article 11 of Regulation (EU) 2022/869, the scenarios for the Ten-Year Network Development Plans referred to in Article 12 of Regulation (EU)**

**2022/869 and the infrastructure gaps identification referred to in Article 13 of Regulation (EU) 2022/869.**

**Article 29 - paragraph 3b (new) If the Commission submits a legislative proposal concerning a reform of the electricity market design, it shall, if appropriate, ensure that the areas of cooperation between the ENTSOG&H and ENTSO for Electricity referred to in paragraph (3a) are retained or introduced in the tasks of ENTSOE.**

**By 31 December 2035, the Commission shall submit a report to the European Parliament and the Council assessing the necessity of further integration of planning tasks and governance between the ENTSOG&H and ENTSO for Electricity and, if appropriate, accompany it with a legislative proposal.**

~~Article 40 European Network of Network Operators for Hydrogen~~

~~1. Hydrogen network operators shall cooperate at Union level through the European Network of Network Operators for Hydrogen (ENNOH), in order to promote the development and functioning of the internal market in hydrogen and cross-border trade and to ensure the optimal management, coordinated operation and sound technical evolution of the European hydrogen network.~~

~~2. In performing its functions under Union law, the ENNOH shall act with a view to establishing a well-functioning and integrated internal market for hydrogen and shall contribute to the efficient and sustainable achievement of the objectives set out in the policy framework for climate and energy, in particular by contributing to the efficient integration of hydrogen produced from renewable energy sources and to increases in energy efficiency while maintaining system security. The ENNOH shall be equipped with adequate human and financial resources to carry out its duties.~~

~~3. By 1 September 2024, the hydrogen network operators shall submit to the Commission and to ACER the draft statutes, a list of members and draft rules of procedure, including the rules of procedures on the consultation of stakeholders, of the ENNOH to be established.~~

~~4. The hydrogen network operators shall submit to the Commission and to ACER any draft amendments to the statutes, list of members or rules of procedure of the ENNOH.~~

~~5. Within four months of receipt of the drafts and the draft amendments to the statutes, list of members or rules of procedure, ACER, after consulting the organisations representing all stakeholders, in particular the system users, including customers, shall provide an opinion to the Commission on these drafts or draft amendments to the statutes, list of members or rules of procedure.~~

~~6. The Commission shall deliver an opinion on the drafts and draft amendments to the statutes, list of members or rules of procedure taking into account ACER's opinion as provided for in paragraph 5 and within three months of receipt of ACER's opinion.~~

~~7. Within three months of receipt of the Commission's favourable opinion, the hydrogen network operators shall adopt and publish the statutes, list of members and rules of procedure.~~

~~8. The documents referred to in paragraph 3 shall be submitted to the Commission and ACER where there are changes thereto or upon the reasoned request of either of them. The Commission and ACER shall deliver an opinion in accordance with paragraphs 5, 6 and 7.~~

#### ~~Article 41 Transition to the ENNOH~~

~~1. Until the ENNOH is established in line with Article 40, the Commission will set up a temporary platform involving ACER and all relevant market participants, including the ENTSO for Gas, the ENTSO for Electricity and the EU DSO entity and ensures its administrative support. This platform will promote work on scoping and developing issues relevant for the building up of the hydrogen network and markets. The platform will cease to exist once ENNOH is established.~~

~~2. Until the ENNOH is established, the ENTSO for Gas will be responsible for the development of Union-wide network development plans for gas and hydrogen networks. In carrying out this task ENTSO for Gas shall ensure the effective consultation and inclusion of all market participants, including hydrogen market participants.~~

#### ~~Article 42 Tasks of the ENNOH~~

~~1. The ENNOH shall:~~

~~(a) develop network codes in the areas set out in Article 54 with a view to achieving the objectives set out in Article 40;~~

~~(b) adopt and publish biannually a non-binding Union-wide ten-year network development plan, including a European supply adequacy outlook;~~

~~(c) cooperate with the ENTSO for Electricity and with the ENTSO for Gas;~~

~~(d) develop recommendations relating to the coordination of technical cooperation between gas transmission and distribution system operators on one hand, and hydrogen network operators on the other hand in the Union;~~

~~(e) develop recommendations relating to the coordination of technical cooperation between Union and third party network operators;~~

~~(f) adopt an annual work programme;~~

~~(g) adopt an annual report;~~

~~(h) adopt an annual outlook for the supply of hydrogen covering Member States where hydrogen is used in electricity generation or for supplying households;~~

~~(i) adopt a hydrogen quality monitoring report by 15 May 2026 at the latest and every two years afterwards, including developments and forecasts for the expected developments of hydrogen quality parameters, as well as information on cases related to differences in hydrogen quality specifications and how such cases were settled;~~

~~(j) promote cyber security and data protection in cooperation with relevant authorities and regulated entities.~~

~~2. The ENNOH shall monitor and analyse the implementation of the network codes and the guidelines adopted by the Commission in accordance with Article 54, 55 and 56, and their effect on the harmonisation of applicable rules aimed at facilitating market development and integration. The ENNOH shall report its findings to ACER and shall include the results of the analysis in the annual report referred to in paragraph 1, point f) of this Article.~~

~~3. The ENNOH shall publish the minutes of its assembly meetings, board meetings and committee meetings and provide the public with regular information on its decision-making and activities.~~

~~4. The annual work programme referred to in paragraph 1, point (f) shall contain a list and description of the network codes to be prepared, a plan on the coordination of the operation of the network, a list of research and development activities, to be realised in that year, and an indicative calendar.~~

~~5. The ENNOH shall provide ACER with the information ACER requires to fulfil its tasks pursuant to Article 46. In order to enable the ENNOH to meet that requirement, hydrogen network operators shall provide the ENNOH with the requested information.~~

~~6. Upon request of the Commission, the ENNOH shall give its views to the Commission on the adoption of the guidelines as laid down in Article 56.~~

#### ~~Article 43 – Ten-year network development plan for hydrogen~~

~~1. The Union-wide ten-year network development plan referred to in Article 42 shall include the modelling of the integrated network, scenario development and an assessment of the resilience of the system.~~

~~The Union-wide ten-year network development plan shall in particular:~~

~~(a) build on the national hydrogen network development reporting as set out in Article 52 of recast Gas Directive where available and Chapter IV of Regulation (EU) xxx [TEN-E Regulation];~~

~~(b) regarding cross-border interconnections, also build on the reasonable needs of different network users and integrate long-term commitments from investors referred to in Articles 55 and Chapter IX Section 3 of recast Gas Directive;~~

~~(c) identify investment gaps, notably with respect to cross-border capacities.~~

~~With regard to the second subparagraph, point (c), a review of barriers to the increase of cross-border capacity of the network arising from different approval procedures or practices may be annexed to the Union-wide network development plan.~~

~~2. ACER shall provide an opinion on the national hydrogen network development reports where relevant to assess their consistency with the Union-wide network development plan. If ACER identifies inconsistencies between a national hydrogen network development report~~

and the Union-wide network development plan, it shall recommend amending the national hydrogen network development report or the Union-wide network development plan as appropriate.

3. When developing the Union-wide ten-year network development plan as referred to in Article 42, the ENNOH shall cooperate with the ENTSO for Electricity and with the ENTSO for Gas, in particular on the development of the energy system-wide cost-benefit analysis and the interlinked energy market and network model including electricity, gas and hydrogen transport infrastructure as well as storage, LNG and hydrogen terminals and electrolyzers referred to in Article 11 [TEN-E revision], the scenarios for the Ten-Year Network Development Plans referred to in Article 12 [TEN-E revision] and the infrastructure gaps identification referred to in Article 13 [TEN-E revision].

#### Article 44 – Costs

The costs related to the activities of the ENNOH referred to in Articles 42 of this Regulation shall be borne by the hydrogen network operators and shall be taken into account in the calculation of tariffs. Regulatory authorities shall approve those costs only if they are reasonable and appropriate.

#### Article 45 – Consultation

1. While preparing the proposals pursuant to the tasks referred to in Article 42, the ENNOH shall conduct an extensive consultation process at an early stage and in an open and transparent manner, involving all relevant market participants, and in particular the organisations representing all stakeholders, in accordance with the rules of procedure referred to in Article 40 of this Regulation. The consultation process shall accommodate stakeholder comments before the final adoption of the proposal, aiming at identifying the views and proposals of all relevant parties during the decision-making process. The consultation shall also involve regulatory authorities and other national authorities, producers, network users including customers, technical bodies and stakeholder platforms.

2. All documents and minutes of meetings related to the consultation shall be made public.

3. Before adopting the proposals referred to in Article 42 the ENNOH shall indicate how the observations received during the consultation have been taken into consideration. It shall provide reasons where observations have not been taken into account.

#### Article 46 – Monitoring by ACER

1. ACER shall monitor the execution of the tasks of the ENNOH referred to in Article 42 and report its findings to the Commission.

2. ACER shall monitor the implementation by the ENNOH of network codes and guidelines adopted by the Commission as laid down in Articles 54, 55, and 56. Where the ENNOH has failed to implement such network codes or guidelines, ACER shall request the ENNOH to provide a duly reasoned explanation as to why it has failed to do so. ACER shall inform the Commission of that explanation and provide its opinion thereon.

~~3. The ENNOH shall submit the draft Union-wide network development plan, the draft annual work programme, including the information regarding the consultation process, and the other documents referred to in Article 42 to ACER for its opinion.~~

~~Where it considers that the draft annual work programme or the draft Union-wide network development plan submitted by the ENNOH does not contribute to non-discrimination, effective competition, the efficient functioning of the market or a sufficient level of cross-border interconnection, ACER shall provide a duly reasoned opinion as well as recommendations to the ENNOH and to the Commission within two months of the submission of the programme or the plan.~~

#### ~~Article 47 Regional cooperation of hydrogen network operators~~

~~1. Hydrogen network operators shall establish regional cooperation within the ENNOH to contribute to the tasks referred to in Article 42.~~

~~2. Hydrogen network operators shall promote operational arrangements in order to ensure the optimum management of the network and shall ensure interoperability of the interconnected Union hydrogen system for facilitating commercial and operational cooperation between adjacent hydrogen network operators.~~

#### *Recitals*

(16) In order to ensure optimal management of the gas transmission network in the Union, a European Network of Transmission System Operators for Gas (the ENTSO for Gas), should be provided for. The tasks of the ENTSO for Gas should be carried out in compliance with the Union's competition rules which are applicable to the decisions of the ENTSO for Gas. The tasks of the ENTSO for Gas should be well-defined and its working method should ensure efficiency, transparency and the representative nature of the ENTSO for Gas. The network codes prepared by the ENTSO for Gas are not intended to replace the necessary national network codes for non cross-border issues. Given that more effective progress may be achieved through an approach at regional level, transmission system operators should set up regional structures within the overall cooperation structure, whilst ensuring that results at regional level are compatible with network codes and non-binding ten-year network development plans **for gas and hydrogen** at Union level. Cooperation within such regional structures presupposes effective unbundling of network activities from production and supply activities. In the absence of such unbundling, regional cooperation between transmission system operators gives rise to a risk of anti-competitive conduct. Member States should promote cooperation and monitor the effectiveness of the network operations at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market in gases.

(17) In order to ensure greater transparency regarding the development of the gas transmission network in the Union, the ENTSO for Gas should draw up, publish and regularly update a non-binding Union-wide ten-year network development plan **for gas and hydrogen** on the basis of a joint scenario and the interlinked model (Union-wide network development plan). ***The Union-wide network development plan should be developed following a transparent process involving meaningful public consultation, and it shall be***

*based on objective and scientific criteria. To that effect, the ENTSO for Gas should involve independent scientific bodies (such as the European Scientific Advisory Board on Climate Change, established under Regulation (EU) 2021/1119) in plan development. Viable gas transmission networks and necessary regional interconnections, relevant from a commercial or security of supply point of view, should be included in that network development plan. The network development plan should promote the energy efficiency first principle and energy system integration and contribute to the prudent and rational utilisation of natural resources and the achievement of the Union's climate and energy targets.*

(47) In order to ensure optimal management of the Union hydrogen network and to allow trading and supplying hydrogen across borders in the Union, ~~a European Network of ENTSO for Gas should be renamed the joint EU organisation for Gas Transmission System Operators and Hydrogen Network Operators (the 'ENTSOG&H') and incorporate for Hydrogen ('ENNOH') Network Operators into its membership and, its tasks should be expanded to include hydrogen activities. Those established. The tasks of the ENNOH should be carried out in compliance with Union competition rules, The tasks of the ENNOH should be well-defined and its~~ **be performed in a manner representative to gas and hydrogen. The working method of the ENTSOG&H should ensure efficiency, and transparency and the representative nature of the ENNOH. The network codes prepared by the ENTSOG&H ENNOH should not replace the necessary national network codes for non cross-border issues.**

(48) ~~Until the ENNOH is established, a temporary platform should be set up under the lead of the Commission with the involvement of ACER and all relevant market participants, including the ENTSO for Gas, the ENTSO for Electricity and the EU DSO entity. This platform should support early work on scoping and developing issues relevant for the building up of the hydrogen network and markets without formal decisionmaking powers. The platform should be dissolved once ENNOH is established. Until the ENNOH is established, the ENTSO for Gas will be responsible for the development of Union-wide network development plans, including hydrogen networks.~~

(49) In order to ensure ~~transparency regarding~~ the **transparent and efficient** development of the hydrogen network in the Union, the ~~ENNOH~~ **ENTSOG&H** should establish, publish and regularly update **a single**, non-binding Union-wide ten-year network development plan for **gas and hydrogen targeted at paying due consideration to the needs of the two distinct gas and** developing hydrogen markets. Viable hydrogen transportation networks and necessary interconnections, relevant from a commercial point of view, should be included in that network development plan. The ~~ENNOH~~ **ENTSOG&H** should **continue to** participate in the development of the energy system wide cost-benefit analysis – including the interlinked energy market and network model including electricity, gas and hydrogen transport infrastructure as well as storage, LNG and electrolyzers, the scenarios for the ten-year network development plans and the infrastructure gaps identification report as set out in Articles 11, 12 and 13 of [the TEN-E Regulation as proposed in COM(2020) 824 final] for the development of the lists of projects of common interest. For that purpose, the ~~ENNOH~~ **ENTSOG&H** should closely cooperate with the ENTSO for Electricity ~~and the ENTSO for Gas to facilitate system integration. The ENNOH should undertake those tasks for the first time for the development of the 8th list of projects of common interest, provided it is operational and in the position to deliver the necessary input to the ten-year network development plan by 2026.~~

(50) All market participants have an interest in the work expected of the **ENTSOG&H ENNOH**. An effective consultation process is therefore essential. Overall, **the ENTSOG&H ENNOH** should seek, build on and integrate in its work experience with infrastructure planning, development and operation in cooperation with other relevant market participants and their associations.

(53) The **ENTSOG&H ENNOH** will establish a central, web-based platform for making available all data relevant for market participants to gain effective access to the network.

***(53a) In order to promote overall energy system integration, sector coupling and the increase of efficiency and synergies across the energy sectors, the ENTSOG&H and ENTSOE shall cooperate closely with each other. This shall include, in particular, on the development of the energy system wide cost-benefit analysis, capacity requirements across the energy systems, and the interlinked energy markets and network modelling including electricity, gas and hydrogen transport infrastructure as well as storage, the Union's climate and energy efficiency objectives, LNG and hydrogen terminals and electrolyzers referred to in Article 11 of Regulation (EU) 2022/869, the scenarios for the Ten-Year Network Development Plans referred to in Article 12 of Regulation (EU) 2022/869 and the infrastructure gaps identification referred to in Article 13 of Regulation (EU) 2022/869.***

***(53b) The achievement of the offshore wind development targets of the REPowerEU Plan are of paramount importance development for the needed acceleration of the decarbonisation and the development of the market for renewable hydrogen. Therefore, where technically possible, ENTSOG&H and ENTSO-E should harmonise their work under the European Plan for Priority Corridors for Hydrogen (consistent with Annex I to Regulation (EU) 2022/869 and reinforced by the REPowerEU Plan) and High-Level Strategic Integrated Offshore Network Development Plans (Art. 14.2 of 2022/869) in order to ensure that the site and size of the hydrogen injection points across the two systems are appropriate.***

#### **CA 10: Network codes (covers Art 52, 53, 54, 56; Rec 57)**

*All relevant AMs fall, including: AMs 11, 86-95, 582-607*

#### *Articles*

Article 52 – paragraph 1 1. The Commission may, subject to the empowerments in Articles 53 to 56, adopt implementing or delegated acts. Such acts may either be adopted as network codes on the basis of text proposals developed by the **ENTSOG&H-ENTSO for Gas or the ENNOH**, or, where so provided for in the priority list pursuant to Article 53(3), by the EU DSO entity, where relevant in cooperation with the ENTSO for Gas, ~~the ENNOH~~ and ACER, pursuant to the procedure laid down in Articles 53 to 55, or as guidelines pursuant to the procedure laid down in Article 56.

Article 52 – paragraph 2 – point d (d)apply to all interconnection points within the Union and entry points from and exit points to third countries.

Article 53 – paragraph 1 point (b) (b) interoperability rules for the natural gas system, implementing **Article 19 of this Regulation** and Articles 9 and 35 and 40 of [recast Gas Directive

as proposed in COM(2021) xxx] including addressing interconnection agreements, rules on flow control and measurement principles for gas quantity and quality, allocation and matching rules, common sets of units, data exchange, gas quality, including rules on managing cross-border restrictions due to gas quality differences or due to differences in odorisation practices or due to differences in the volume of hydrogen blended in the natural gas system, cost-benefit analyses for removing cross-border flow restrictions, **and on a common binding natural gas quality specification for cross-border natural gas interconnectors**, Wobbe Index classification, mitigating measures, minimum acceptance levels for gas quality parameters relevant for ensuring the unhindered cross-border flow of biomethane (e.g. oxygen content), short- and long-term gas quality monitoring, information provision and cooperation among relevant market participants, reporting on gas quality, transparency, communication procedures including in case of exceptional events;

**Article 53 – paragraph 2 – point f a (new) (fa) third-party access rules;**

**Article 53 – paragraph 2 – point f b (new) (fb) transparency rules.**

Article 53 – paragraph 3 3. The Commission shall, after consulting ACER, the **ENTSOG&H** ~~ENTSO for Gas~~, the ENNOH, the EU DSO entity and the other relevant stakeholders, establish every three years a priority list, identifying the areas set out in paragraphs 1 and 2 to be included in the development of network codes. If the subject matter of the network code is directly related to the operation of the distribution system and not primarily relevant to the transmission system, the Commission may require the EU DSO entity, in cooperation with the **ENTSOG&H** ~~ENTSO for Gas~~, to convene a drafting committee and submit a proposal for a network code to ACER.

Article 53 – paragraph 5 5. ACER shall consult the **ENTSOG&H** ~~ENTSO for Gas~~, the ENNOH, the EU DSO entity, and the other relevant stakeholders in regard to the framework guidelines, during a period of no less than two months, in an open and transparent manner.

Article 53 – paragraph 9 9. The Commission shall request the **ENTSOG&H** ~~ENTSO for Gas~~ or, where provided for in the priority list referred to in paragraph 3, the EU DSO entity in cooperation with the **ENTSOG&H** ~~ENTSO for Gas~~, to submit to ACER, within a reasonable period, not exceeding 12 months, of receipt of the Commission's request, a proposal for a network code in accordance with the relevant framework guideline.

Article 53 – paragraph 10 (10) The **ENTSOG&H** ~~ENTSO for Gas~~, or where provided for in the priority list referred to in paragraph 3 the EU DSO entity, in cooperation with the **ENTSOG&H** ~~ENTSO for Gas~~, shall convene a drafting committee to support it in the network code development process. The drafting committee shall consist of representatives of ACER, the **ENTSOG&H** ~~ENTSO for Gas~~, the ENNOH, where appropriate the EU DSO entity, and a limited number of the main affected stakeholders. The **ENTSOG&H** ~~ENTSO for Gas~~ or where provided for in the priority list pursuant to paragraph 3 the EU DSO entity, in cooperation with the **ENTSOG&H** ~~ENTSO for Gas~~, shall develop proposals for network codes in the areas referred to in paragraphs 1 and 2 where so requested by the Commission in accordance with paragraph 9.

**Article 53 – paragraph 10 a (new) 10a. Within three months of the date of receipt of the draft network code, ACER shall provide a reasoned opinion to the ENTSOG&H or the EU DSO entity, as appropriate.**

**Article 53 – paragraph 10 b (new) 10b. The ENTSOG&H or the EU DSO entity in cooperation with the ENTSOG&H, as appropriate, shall amend the network code in light of the opinion of ACER and re-submit it to ACER.**

Article 53 – paragraph 11 11. ACER shall revise the **re-submitted** ~~proposed~~ network code to ensure that it complies with the relevant framework guidelines and contributes to market integration, non-discrimination, effective competition, and the efficient functioning of the market, and shall submit the revised network code to the Commission within six months of receipt of the proposal. In the proposal submitted to the Commission, ACER shall take into account the views provided by all involved parties during the drafting of the proposal led by the **ENTSOG&H** ~~ENTSO for Gas~~ or the EU DSO entity and shall consult the relevant stakeholders on the version of the network code to be submitted to the Commission.

Article 54 – paragraph 3 3. The Commission shall, after consulting ACER, **ENTSOG&H** ~~the ENNOH, the ENTSO for Gas~~, the EU DSO entity and the other relevant stakeholders, establish a priority list every three years, identifying the areas set out in paragraphs 1 and 2 to be included in the development of network codes.

Article 54 – paragraph 9 9. The Commission shall request the **ENTSOG&H** ~~ENNOH~~ to submit, within a reasonable period not exceeding 12 months of the receipt of the Commission's request, a proposal for a network code in accordance with the relevant framework guideline to ACER.

Article 54 – paragraph 10 10. The **ENTSOG&H** ~~ENNOH~~ shall convene a drafting committee to support it in the network code development process. The drafting committee shall consist of representatives of ACER, the ENTSO for ~~Gas, the ENTSO for~~ Electricity and where appropriate the EU DSO entity, and a limited number of the main affected stakeholders. The **ENTSOG&H** ~~ENNOH~~ shall develop proposals for network codes in the areas referred to in paragraphs 1 and 2.

**Article 54 – paragraph 10 a (new) 10a. Within three months of the date of receipt of a network code, ACER shall provide a reasoned opinion to the ENTSOG&H or the EU DSO, as appropriate.**

**Article 54 – paragraph 10 b (new) 10b. The ENTSOG&H shall amend the network code in light of the opinion of ACER and re-submit it to ACER.**

Article 54 – paragraph 11 11. ACER shall revise the **re-submitted** ~~proposed~~ network code to ensure that it complies with the relevant framework guidelines and contributes to market integration, non-discrimination, effective competition, and the efficient functioning of the market and, shall submit the revised network code to the Commission within six months of receipt of the proposal. In the revised network code, ACER shall take into account the views provided by all involved parties during the drafting of the proposal led by the **ENTSOG&H** ~~European Network of Hydrogen Network Operators~~ and shall consult the relevant stakeholders on the revised version to be submitted to the Commission.

Article 54 – paragraph 12 12. Where the **ENTSOG&H** ~~ENNOH~~ has failed to develop a network code within the period set by the Commission under paragraph 9, the Commission may request ACER to prepare a draft network code on the basis of the relevant framework

guideline. ACER may launch a further consultation in the course of preparing a draft network code under this paragraph. ACER shall submit a draft network code prepared under this paragraph to the Commission and may recommend that it be adopted.

Article 54 – paragraph 13 13. Where the ~~ENTSOG&H~~ ~~European Network of Hydrogen Network Operators~~ has failed to develop a network code, or ACER has failed to develop a draft network code as referred to in paragraph 12, the Commission may adopt, on its own initiative, or upon the proposal of ACER under paragraph 11, one or more network codes in the areas listed in paragraphs 1 and 2.

Article 54 – paragraph 14 14. Where the Commission proposes to adopt a network code on its own initiative, it shall consult ACER, the ~~ENTSOG&H~~ ~~ENNOH~~, the ~~ENTSO for Gas~~ and all relevant stakeholders in regard to the draft network code during a period of no less than two months.

Article 54 – paragraph 15 15. This Article shall be without prejudice to the Commission's right to adopt and amend the guidelines as laid down in Article 56. It shall be without prejudice to the possibility for the ~~ENTSOG&H~~ ~~ENNOH~~ to develop non-binding guidance in the areas set out in paragraphs 1 and 2 where such guidance does not relate to areas covered by a request addressed to the ~~ENTSOG&H~~ ~~ENNOH~~ by the Commission. The ~~ENTSOG&H~~ ~~ENNOH~~ shall submit any such guidance to ACER for an opinion and shall duly take that opinion into account.

Article 56 – paragraph 5 5. When adopting or amending guidelines, the Commission shall consult ACER, the ~~ENTSOG&H~~ ~~ENTSO for Gas~~, the ~~ENNOH~~, the EU DSO entity and, where relevant, other stakeholders.

### *Recitals*

(57) The network codes prepared by the ~~ENTSOG&H~~ ~~ENNOH~~ are not intended to replace the necessary national rules for non-cross-border issues.

### **CA 11: Context, subject matter, scope, definitions and general principles (covers Art 1, 2, 3; Rec 3, 4, 5, 20, 22, 23, 25, 72)**

*All relevant AMs fall, including: AMs 1-2, 4, 13-14, 16, 118-132, 134-135, 150-154, 183-222, 224-227*

### *Articles*

Article 1 – paragraph 1 – point a (a) sets non-discriminatory rules for access conditions to natural gas and hydrogen systems taking into account the special characteristics of national and regional markets with a view to ensuring the proper functioning of the internal market in gases ***as well as to contribute to the long-term flexibility of the electricity system;*** ~~and~~

Article 1 – paragraph 1 – point a (new) ***(a a) encourages preventive measures reducing fossil gas demand through the implementation of the energy efficiency first principle leading to energy savings, increased direct electrification as part of a fully integrated***

*energy system, and increased use of renewable sources of energy, and contributes to the prudent and rational use of natural resources and the achievement of the Union's climate and energy targets; and*

Article 2 – paragraph 1 – point 2 (2) ‘transmission’ means *transmission as defined in Article 2, point (16) of [the Directive]* ~~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;~~

Article 2 – paragraph 1 – point 9 (9) ‘re-nomination’ means ~~the subsequent reporting of a corrected nomination;~~

Article 2 – paragraph 1 – point 12 (12) ‘network user’ means a customer or a potential customer of a *transmission system operator, and or hydrogen network operator, and transmission system operators or hydrogen network operators* themselves in so far as it is necessary for them to carry out their functions in relation to transport of natural gas and hydrogen;

Article 2 – paragraph 1 – point 23 (23) ‘primary market’ means the market of the capacity traded directly by the transmission system operator or hydrogen network operator;

Article 2 – paragraph 1 – point 24 (24) ‘physical congestion’ means ~~a situation where the level of demand for actual deliveries exceeds the technical capacity at some point in time;~~

Article 2 – paragraph 1 – point 30 (30) ‘entry-exit system’ means ~~the aggregation of all transmission and distribution systems to which one specific balancing regime applies~~ *an access model for natural gas transmission or distribution systems where system users book capacity rights independently on entry and exit points;*

Article 2 – paragraph 1 – point 32 (32) ‘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;

Article 2 – paragraph 1 – point 33 (33) ‘entry point’ means a point subject to booking procedures by network users ~~or producers~~ providing access to an entry-exit system, *enabling gas flows in the entry-exit system;*

Article 2 – paragraph 1 – point 34 (34) ‘exit point’ means a point subject to booking procedures by network users ~~or final customers~~ *providing access to an entry-exit system,* enabling gas flows out of the entry exit system;

Article 2 – paragraph 1 – point 38 (38) ‘new infrastructure’ means an infrastructure not completed by ~~[entry into force of this Regulation]~~ *4 August 2003;*

*(38a) ‘natural gas’ means natural gas as defined in Article 2, point (1)x of [the Directive, COD 2021/0425];*

*(38b) ‘renewable gas’ means renewable gas as defined in Article 2, point (2) of [the Directive, COD 2021/0425]*

- (38c) *‘gas’ means gas as defined in Article 2, point (3) of [the Directive, COD 2021/0425];*
- (38d) *‘natural gas system’ means natural gas system as defined in Article 2, point (4) of [the Directive, COD 2021/0425];*
- (38e) *‘hydrogen system’ means hydrogen system as defined in Article 2, point (5) of [the Directive, COD 2021/0425];*
- (38f) *‘hydrogen storage facility’ means a hydrogen facility as defined in Article 2, point (6) of [the Directive, COD 2021/0425];*
- (38g) *‘hydrogen storage operator’ means a hydrogen storage operator as defined in Article 2, point (6a) of [the Directive, COD 2021/0425];(8) ‘hydrogen terminal’ means hydrogen terminal as defined in Article 2, point (8) of [the Directive];*
- (38h) *‘hydrogen terminal operator’ means hydrogen terminal operator as defined in Article 2, point (8a) of [the Directive, COD 2021/0425];*
- (38i) *‘hydrogen quality’ means hydrogen quality as defined in Article 2, point (9) of [the Directive, COD 2021/0425];*
- (38j) *‘low-carbon gas’ means low-carbon gas as defined in Article 2, point (11) of [the Directive, COD 2021/0425];*
- (38k) *‘transmission system operator’ means transmission system operator as defined in Article 2, point (17) of [the Directive, COD 2021/0425];*
- (38l) *‘distribution’ means distribution as defined in Article 2, point (18)of [the Directive, COD 2021/0425];*
- (38m) *‘distribution system operator’ means distribution system operator as defined in Article 2, point (19) of [the Directive, COD 2021/0425];*
- (38n) *‘hydrogen network’ means hydrogen network as defined in Article 2, point (20) of [the Directive, COD 2021/0425];*
- (38o) *‘hydrogen transport’ means hydrogen transport as defined in Article 2, point (21) of [the Directive, COD 2021/0425];*
- (38p) *‘hydrogen network operator’ means hydrogen network operator as defined in Article 2, point (22) of [the Directive, COD 2021/0425];*
- (38q) *‘supply’ means supply as defined in Article 2, point (23) of [the Directive, COD 2021/0425];*
- (38r) *‘storage facility’ means storage facility as defined in Article 2, point (25) of [the Directive, COD 2021/0425];*
- (38s) *‘storage system operator’ means storage system operator as defined in Article 2, point (26) of [the Directive, COD 2021/0425];*
- (38t) *‘LNG facility’ means LNG facility as defined in Article 2, point (27) of [the Directive , COD 2021/0425];*
- (38u) *‘LNG system operator’ means LNG system operator as defined in Article 2, point (28) of [the Directive, COD 2021/0425];*

- (38v) *'system' means system as defined in Article 2, point (29) of [the Directive, COD 2021/0425];*
- (38w) *'ancillary services' means ancillary services as defined in Article 2, point (30) of [the Directive, COD 2021/0425];*
- (38x) *'interconnector' means interconnector as defined in Article 2, point (33) of [the Directive, COD 2021/0425];*
- (38y) *'hydrogen interconnector' means hydrogen interconnector as defined in Article 2, point (34) of [the Directive, COD 2021/0425];*
- (38z) *'system user' means system user as defined in Article 2, point (40) of [the Directive, COD 2021/0425];*
- (38aa) *'customer' means customer as defined in Article 2, point (41) of [the Directive, COD 2021/0425];*
- (38ab) *'final customer' means final customer as defined in Article 2, point (44) of [the Directive, COD 2021/0425];*
- (38ac) *'security' means security as defined in Article 2, point (48) of [the Directive, COD 2021/0425];*
- (38ad) *'control' means control as defined in Article 2, point (51) of [the Directive, COD 2021/0425];*
- (38ae) *'interconnection point' means interconnection point as defined in Article 2, point (58) of [the Directive, COD 2021/0425];*
- (38af) *'virtual interconnection point' means virtual interconnection point as defined in Article 2, point (59) of [the Directive, COD 2021/0425];*
- (38ag) *'market participant' means market participant as defined in Article 2, point (60) of [the Directive, COD 2021/0425];*
- (38ah) *'interoperability' means interoperability as defined in Article 2, point (66) of [the Directive, COD 2021/0425];*
- (38ai) *'energy poverty' means energy poverty as defined in Article 2, point (69) of [the Directive, COD 2021/0425];*
- (38aj) *'energy efficiency first' means 'energy efficiency first' as defined in Article 2, point (18) of Regulation (EU) 2018/1999;*
- (38ak) *'repurposing' means repurposing as defined in Article 2, point (18) of Regulation 2022/869;*

Article 2 – paragraph 2-2. ~~Without prejudice to the definitions in paragraph 1, the definitions contained in Article 2 of recast Gas Directive as proposed in COM(2021) xxx, which are relevant for the application of this Regulation, also apply.~~

The definitions in points 4 to 24 of paragraph 1 in relation to transmission apply by analogy in relation to storage and LNG facilities.

Article 3 – paragraph 1 – point a (a) prices for gases shall be formed on the basis of demand and supply;

Article 3 – paragraph 1 – point c (c) tariffs charged at the entry and exit points shall be structured in such a way as to contribute to market integration, enhancing security of supply and promoting the interconnection between gas networks;

Article 3 – paragraph 1 – point g (g) market rules shall avoid actions which prevent price formation on the basis of demand and supply for gases;

Article 3 – paragraph 1 – point g a (new) ***(g a) market rules shall ensure a consumer-centred and energy efficient approach in the natural gas and hydrogen market;***

Article 3 – paragraph 1 – point i (i) market rules shall enable the decarbonisation of the natural gas and hydrogen systems, including by enabling the integration into the market of gases of gas from renewable energy sources, ~~and~~ by providing incentives for energy *savings and efficiency, fostering the integration of energy systems, contributing to the prudent and rational use of natural resources and facilitating the achievement of the Union's climate and energy targets;*

Article 3 – paragraph 1 – point j (j) market rules shall deliver appropriate investment incentives ***and incentives for interventions which do not require infrastructure investments where more efficient***, in particular for long-term investments in a decarbonised and sustainable gas system, for energy storage, energy efficiency and demand response to meet market needs, and shall facilitate fair competition and security of supply, ***while avoiding investment incentives that lead to stranded assets;***

Article 3 – paragraph 1 – point j a (new) ***(j a) market rules shall prioritise the use of hydrogen for industrial customers in hard-to-decarbonise sectors, including in heavy-duty transport, with the highest greenhouse gas abatement potential, where more energy and cost efficient options are not available;***

***Article 3 a (new) (3a) Diversification of gas supplies obligation***

***In order to safeguard the security of energy supply and the essential security interests of the Union in line with the objectives of the REPowerEU Plan, Member States shall diversify their gas supplies and shall ensure that imports of natural gas as well as of renewable and low-carbon gases through pipelines and LNG terminals do not originate from the Russian Federation.***

***Article 3 b (new) (3b) Upscaling of renewable gases and low-carbon gases in coal and carbon-intensive regions***

***The Commission shall support and provide incentives to encourage the penetration of renewable gases and low-carbon gases, in particular hydrogen and biomethane, into the Union energy system, in particular in coal and carbon-intensive regions pursuant to Regulation (EU) 2021/1056, by means of an enabling framework. That framework shall include:***

*(a) investments to facilitate a just transition of those regions, with the aim of increasing the share of renewable gases and low-carbon gases, in particular in industrial processes, district heating and energy storage for enhancing flexibility of the energy system;*

*(b) effective support measures to accelerate the phase out of solid fossil fuels in industrial and district heating sectors through investments in their modernisation, innovation and development as well as to decarbonise existing fossil-based hydrogen production sites;*

*(c) upskilling and reskilling programmes and projects aiming to create and strengthen a hydrogen-ready workforce;*

*(d) the implementation of hydrogen valleys or, where appropriate, Important Projects of Common European Interests (IPCEI), in particular innovation projects enabling the conversion from fossil fuels to renewable hydrogen and biomethane.*

#### *Recitals*

*(3) The Commission communication of 11 December 2019 entitled ‘The European Green Deal’ and Regulation (EU) 2021/1119 of the European Parliament and of the Council<sup>4</sup> the Climate law set the target for the Union EU to reduce its emissions by at least 55% compared to 1990 levels by 2030 and become climate neutral by 2050 in a manner that contributes to Union European competitiveness, growth and jobs. This Regulation should contribute to achieving those targets. For a decarbonised gas markets 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.*

*(3a) Recognising the volatilities created by the Union's overdependence on natural gas imports, in particular with regard to a monopolist supplier, and its wider geopolitical, security and economic impact, an effective policy and regulatory framework for internal market penetration of renewable and low-carbon gases, and in particular hydrogen, must ensure that the risk of sustained or new volatilities and dependencies on external suppliers are effectively addressed. To that end, the modernisation of existing and commissioning of new import infrastructure linking Member States and the internal market with third countries and external suppliers must take due account of the need for security of supply in terms of diversification of routes and suppliers, including by avoiding overdependence of any Member State on a single export country.*

*(3b) In light of the Russian Federation's unprovoked and unjustified military aggression against Ukraine and in order to prevent putting at risk the Union's energy security, the natural gas, renewable gases and low-carbon gases originating from the Russian Federation or other bodies controlled by Russian natural or legal persons or undertakings established in the Russian Federation, should be excluded from the Member States' and*

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<sup>4</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’) (OJ L 243, 9.7.2021, p. 1).

***Union's imports.***

(4) This Regulation aims to facilitate ***decarbonised, efficient and integrated energy systems consistent with the Commission communications of 8 July 2020 entitled ‘Powering a climate-neutral economy: An EU Strategy for Energy System Integration’ and ‘A hydrogen strategy for a climate-neutral Europe’, and the Commission Recommendation (EU) 2021/1749<sup>5</sup>. Those initiatives call for transitioning to a more circular energy system with energy efficiency at its core, a greater direct electrification of end-use sectors, prioritising demand-side solutions whenever they are more cost-effective than investments in energy infrastructure, and using renewable fuels, including hydrogen, for end-use applications where electrification is not feasible, not efficient or has higher costs. Therefore, this Regulation should 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. Member States should eliminate any undue barriers in this regard should be eliminated by Member States.*** The Regulation aims also to set up a regulatory framework that 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 ***individual*** heating purposes, ***while mitigating increasing energy poverty.***

(5) 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 create viable price signals for investments and operational decisions. The rules laid down in this Regulation should thus be conducive for hydrogen markets and 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 considered for a hydrogen market.

(20) Network users are to bear the responsibility of balancing their inputs against their off-takes with trading platforms established to better facilitate gas trade between network users. In order to better integrate renewable and low carbon gases within the entry-exit system, the balancing zone should also cover, ***to the extent possible***, the distribution system level. The virtual trading point should be used to exchange gas between balancing accounts of network users.

(22) Equal access to information on the physical status and efficiency of the system is necessary to enable all market participants to assess the overall demand and supply situation and to identify the reasons for movements in the wholesale price. This includes more precise information on supply and demand, network capacity, flows and maintenance, balancing and

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<sup>5</sup> ***Commission Recommendation (EU) 2021/1749 f 28 September 2021 on Energy Efficiency First: from principles to practice — Guidelines and examples for its implementation in decision-making in the energy sector and beyond (OJ L 350, 4.10.2021, p. 9).***

availability and usage of storage. The importance of that information for the functioning of the market requires alleviating existing limitations to publication for confidentiality reasons.

(23) Confidentiality requirements for commercially sensitive information are, however, particularly relevant where data of a commercially strategic nature for the company are concerned, where there is only one single user for a storage facility, or where data are concerned regarding exit points within a system or subsystem that is not connected to another transmission or distribution system but to a single industrial final customer, where the publication of such data would reveal confidential information as to the production process of that customer.

(25) Access to natural gas storage facilities, ~~and~~ liquefied natural gas (LNG) facilities **and hydrogen facilities** is insufficient **or non-existent** in some Member States, and therefore the implementation of the existing rules needs to be improved, ~~including in the~~ **as regards transparency ~~area~~ and the objectives of the communication of the Commission of 18 May 2022 on REPowerEU Plan (the 'REPowerEU Plan'), in particular rapidly reducing the Union's dependence on Russian energy resources.** Such improvement should take into account the potential and uptake of renewable and low-carbon gases, **in particular hydrogen and biomethane**, for these facilities in the internal market **and demand-side solutions**. Monitoring by the European Regulators' Group for Electricity and Gas concluded that the voluntary guidelines for good third-party access practice for storage system operators, agreed by all stakeholders at the Madrid Forum, are being insufficiently applied and therefore need to be made binding.

(72) The European energy sector is undergoing an important change towards a **highly efficient** decarbonised economy **based on renewable energy sources**, while ensuring security of supply and competitiveness. While cybersecurity in the electricity sub-sector is already advancing with a network code on cross-border electricity flow, sector-specific mandatory rules for the gas sub-sector are needed to ensure security of the European energy system.

**CA 12: Distribution system operation and hydrogen network rules (covers Art 33, 34, 35, 36, 37, 38, 39)**

*All relevant AMs fall, including: AMs 73-77, 462-469, 471-524*

*Articles*

Article 33 – paragraph 1 1. Distribution system operators shall ensure firm capacity **and continuous injection** for the access of the production facilities of renewable and low carbon gases connected to their grid. To this extent, distribution system operators shall ~~develop~~ in cooperation **among themselves and** with the transmission system operators, **develop** procedures and arrangements, including investments, to ensure reverse flow from **the** distribution **network to the** transmission network, **and network reinforcement plans to ensure network reinforcement, where appropriate.**

Article 33 – paragraph 2 2. Paragraph 1 shall be without prejudice to the possibility for distribution system operators to develop alternatives to reverse flow investments, such as smart grid solutions or connection to other network operators. Firm access may only be

limited to offer capacities subject to operational limitations, in order to ensure economic **infrastructure safety and** efficiency. The regulatory authority shall ensure that any limitations in firm capacity or operational limitations are introduced on the basis of transparent and non-discriminatory procedures and do not create undue barriers to market entry. Where the production facility bears the costs related to ensuring firm capacity, no limitation shall apply.

**Article 33 – paragraph 2a (new) (2a). For the purpose of the swift implementation of grid connection of renewable gas production, Member States shall ensure that:**

**(a) the distribution system operator complies with reasonable time limits to assess the requests for injection of renewable gases, make an offer and implement the connection, with monitoring of the regulatory authority in accordance with Article 41 and Article 72(1), point (t) of [the recast Gas Directive as proposed in COM(2021) xxx];**

**(b) permitting procedures for the implementation of the connection are not hampered by a lack of administrative capacity and do not create a hurdle to the achievement of the national renewable energy target.**

Article 34 – title Cooperation between distribution system operators, ~~and~~ transmission system operators **and hydrogen network operators**

Article 34 – paragraph 1 1. Distribution system operators shall cooperate with other distribution system operators, ~~and~~ transmission system **operators and hydrogen network operators** to coordinate maintenance, system development, new connections, **decommissioning** and the operation of the system to ensure system integrity and with a view to maximise capacity and minimise the use of fuel gas.

Article 35 – paragraph 1 1. Where distribution system operators are responsible for gas quality management in their networks, they shall make public detailed information regarding the quality of the gases transported in their networks, which might affect network users, based on Articles 16 and 17 of Commission Regulation (EU) 2015/703.

**Article 35 - paragraph 1a 1a. The development of a distribution system shall be based on a transparent network development plan that the distribution system operator shall publish at least every two years and shall submit to the regulatory authority. The network development plan shall provide transparency on the medium- and long-term gas services needed.**

**Article 35 - paragraph 1b 1b. The distribution system operator shall consult consumers, local authorities, relevant transmission system operators and other stakeholders, including trade unions, on the network development plan referred to in paragraph 1a. The distribution system operator shall publish the results of the consultation process along with the network development plan, and submit the results of the consultation and the network development plan to the regulatory authority. The regulatory authority may request amendments to the plan.**

**Article 35 - paragraph 1c 1c. Member States may decide not to apply the obligation set out in paragraph [2] to distribution system operators which serve less than 100 000 connected customers.**

Article 36 – paragraph 1 1. Distribution system operators operating a natural gas system **or hydrogen network** shall cooperate at Union level through the European entity for distribution system operators ('EU DSO entity') set up in accordance with Articles 52 to 57 of Regulation (EU) 2019/943 of the European Parliament and of the Council<sup>12</sup>, in order to promote the completion and functioning of the internal market for natural gas, **cooperate in the development of the hydrogen market** and to promote optimal management and a coordinated operation of distribution and transmission systems.

Article 36 – paragraph 2 Registered members may participate in the EU DSO entity directly or be represented by a national association designated by a Member State or by a Union-level association.

Article 36 – paragraph 3 The costs related to the activities of the EU DSO entity shall be borne by the distribution system operators that are registered members and shall be taken into account in the calculation of tariffs. Regulatory authorities shall only approve costs that are reasonable and proportionate **and provide reasons where they are not approved**.

Article 37 – paragraph 1 1. The rules and procedures on the participation of distribution system operators in the EU DSO entity pursuant to Article 54 of Regulation (EU) 2019/942 shall also apply to distribution system operators operating a natural gas system **or hydrogen network**.

Article 37 – paragraph 1 a (new) **1 a. The governance rules and structures of the EU DSO Entity shall guarantee a fair and balanced representation for gas and hydrogen distribution system operators.**

Article 37 – paragraph 2 2. The Strategic Advisory Group pursuant to Article 54(2), point (f), of Regulation (EU) 2019/942 shall also consist of representatives of associations representing European distribution system operators solely operating a natural gas system **or hydrogen network**.

Article 37 – paragraph 3 – introductory part 3. By [one year after **the date of** entry into force **of this Regulation**] the EU DSO entity shall submit to the Commission and to ACER draft updated statutes, including a code of conduct, a list of registered members, draft updated rules of procedure, including rules of procedures on the consultation with the ENTSO for Electricity, the **ENTSOG&H** and other stakeholders, and draft updated financing rules.

Article 37 – paragraph 3 – subparagraph 1 The draft updated rules of procedure of the EU DSO entity shall ensure balanced representation of all participating distribution system operators, including those solely owning or operating natural gas systems **or hydrogen network**.

Article 37 – paragraph 4 4. Within four months of receipt of the documents pursuant to paragraph 3, ACER shall provide the Commission with its opinion, after consulting organisations representing all stakeholders, in particular distribution system users, **including customers**.

Article 38 – paragraph 1 1. The EU DSO entity shall exercise the tasks listed in Article 55(1) points (a) to (e) of Regulation (EU) 2019/943 and undertake the activities listed in Article

55(2) points (c) to (e) of that Regulation also as regards those distribution networks which are part of the natural gas system *or hydrogen network*.

Article 38 – paragraph 2 – introductory part 2. In addition to the tasks listed in Article 55(1) of Regulation (EU) 2019/943 the EU DSO entity shall participate in the development of network codes which are relevant to the operation and planning of distribution grids and the coordinated operation of the transmission networks and distribution networks pursuant to this Regulation and contribute to mitigating fugitive methane emissions from the natural gas system.

Article 38 – paragraph 2 – subparagraph 1 When participating in the development of new network codes pursuant to Article 53, the EU DSO entity shall comply with the consultation requirements as laid down in Article 56 of Regulation (EU) 2019/943.

Article 38 – paragraph 3 – point a (a) cooperate with the ~~ENTSO for Gas~~ **ENTSOG&H** on the monitoring of the implementation of the network codes and guidelines adopted pursuant to this Regulation which are relevant to the operation and planning of distribution grids and the coordinated operation of the transmission networks and distribution networks;

Article 38 – paragraph 3 – point b (b) cooperate with the ~~ENTSO for Gas~~ **ENTSOG&H** and adopt best practices on the coordinated operation and planning of transmission and distribution systems including issues such as exchange of data between operators and coordination of distributed energy resources;

Article 38 – paragraph 3 – point c (c) work on identifying best practices for the implementation of the results of the assessments pursuant to Article 23(1a) [proposal for REDIII] and Article 23 [proposal for revised EED] and for the cooperation between operators of electricity distribution networks **systems**, of natural gas **distribution systems, of hydrogen distribution networks** and of district heating and cooling systems including for the purpose of the assessment pursuant to Article 24(8) [proposal for REDIII], **including recommendations for the suitable placement of electrolyzers with a view to ensure the use of waste heat in district heating network**.

Article 38 – paragraph 4 4. The EU DSO entity shall provide input to the ~~ENTSO for Gas~~ **ENTSOG&H** for its reporting on gas **and hydrogen** quality, with regard to the distribution networks where distribution system operators are responsible for gas quality management, as referred to in Article 23(3).

Article 39 – paragraph 1 1. Hydrogen network operators shall cooperate to avoid restrictions to cross-border flows of hydrogen due to hydrogen quality differences **in order to meet the quality requirements of different end-use applications in line with the applicable hydrogen quality standards**.

**Article 39 – paragraph 6 6. The regulatory authorities concerned** shall take a joint coordinated decision ~~for to removing~~ **ing or maintain** the recognised restriction, **taking into account** the cost-benefit analysis prepared by the concerned transmission system operators and the results of the public consultation within six months as set out in Article 6(10) of Regulation (EU) 2019/942. **Any decision to maintain the recognised restriction shall be reviewed every four years.**

Article 39 – paragraph 10 10. Where the ~~relevant~~ regulatory authorities **concerned** cannot take a joint coordinated decisions as referred to in paragraphs 6 and 7 of this Article, ACER shall decide on the solution to remove **or maintain** the recognised restriction and on the allocation of the investment costs to be borne by each system operator for implementing the agreed solution, following the process set out in Article 6(10) of Regulation (EU) 2019/942. ***Any decision to maintain the recognised restriction shall be reviewed every four years.***