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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on conditions for access to the natural gas transmission networks**

**(recast)**

**Proposal for a**  
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on conditions for access to the natural gas transmission networks (recast)**  
**(recast)**  
**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the ~~Treaty establishing the European Community~~  Treaty on the  
Functioning of the European Union  , and in particular Article ~~95~~  194 (2)  thereof,  
Having regard to the proposal from the Commission,  
Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,  
Having regard to the opinion of the Committee of the Regions<sup>2</sup>,  
Acting in accordance with the  ordinary legislative procedure  ~~procedure laid down in  
Article 251 of the Treaty~~<sup>3</sup>,  
Whereas:

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↓ new

- (1) Regulation (EU) No 715/2009 of the European Parliament and of the Council<sup>4</sup> has been substantially amended several times. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.

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↓ 715/2009 recital 1

- (1) The internal market in natural gas, which has been progressively implemented since 1999, aims to deliver real choice for all consumers in the ~~Community~~  Union , be they citizens or businesses, new business opportunities and more cross-border trade, so as to achieve efficiency gains, competitive prices and higher standards of service, and to contribute to security of supply and sustainability.

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<sup>1</sup> OJ C 211, 19.8.2008, p. 23.

<sup>2</sup> OJ C 172, 5.7.2008, p. 55.

<sup>3</sup> ~~Opinion of the European Parliament of 9 July 2008 (not yet published in the Official Journal), Council Common Position of 9 January 2009 (OJ C 75 E, 31.3.2009, p. 38) and Position of the European Parliament of 22 April 2009 (not yet published in the Official Journal). Council Decision of 25 June 2009.~~

<sup>4</sup> Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).

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↓ 715/2019 recital 2

- (2) Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas<sup>5</sup> and Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks<sup>6</sup> have made significant contributions towards the creation of such an internal market in natural gas.

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↓ 715/2009 recital 3

- (3) Experience gained in the implementation and monitoring of a first set of Guidelines for Good Practice, adopted by the European Gas Regulatory Forum (the Madrid Forum) in 2002, demonstrates that in order to ensure the full implementation of the rules set out in those guidelines in all Member States, and in order to provide a minimum guarantee of equal market access conditions in practice, it is necessary to provide for them to become legally enforceable.

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↓ 715/2019 recital 4

- (4) ~~A second set of common rules entitled ‘the Second Guidelines for Good Practice’ was adopted at the meeting of the Madrid Forum on 24 and 25 September 2003 and the purpose of this Regulation is to lay down, on the basis of those guidelines, basic principles and rules regarding network access and third party access services, congestion management, transparency, balancing and the trading of capacity rights.~~

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↓ 715/2009 recital 5

- (5) Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas<sup>7</sup> provides for the possibility of a combined transmission and distribution system operator. The rules set out in this Regulation do not therefore require modification of the organisation of national transmission and distribution systems that are consistent with the relevant provisions of that Directive.

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↓ 715/2019 recital 6

- (6) ~~High pressure pipelines linking up local distributors to the gas network which are not primarily used in the context of local distribution are included in the scope of this Regulation.~~

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↓ 715/2009 recital 7

⇒ new

- (7) It is necessary to specify the criteria according to which tariffs for access to the network are determined, in order to ensure that they fully comply with the principle of non-

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<sup>5</sup> OJ L 176, 15.7.2003, p. 57.

<sup>6</sup> OJ L 289, 3.11.2005, p. 1.

<sup>7</sup> See page 94 of this Official Journal.

discrimination and the needs of a well-functioning internal market and take fully into account the need for system integrity 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 appropriate return on investments, ⇒ and enabling the integration of renewable and low carbon gases ⇐ and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities.

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⇐ new

- (8) Whereas it is, generally, most efficient that infrastructure is financed by revenues obtained from the users of that infrastructure and that cross-subsidies are avoided. Whereas, moreover, such cross-subsidies would, in the case of regulated assets, be incompatible with the general principle of cost-reflective tariffs. That, in exceptional cases, such cross-subsidies can nonetheless bring societal benefits, in particular during earlier phases of network development when booked capacity is low relative to available capacity and uncertainty as to when future capacity demand will materialise is significant and, hence, cross-subsidies can contribute to predictable tariffs for early network users and de-risk investments for network operators. Cross-subsidies would thus contribute to an investment climate supportive to the EU's decarbonisation objectives. Whilst Member States should have discretion as to whether such cross-subsidies are allowed, it should be avoided that cross-subsidies are financed by network users in other Member States, regardless as to whether directly, through collecting dedicated charge on cross-border points, or indirectly, through collecting a dedicated charge on assets that can be important to non-domestic system users. Moreover, as cross-subsidies are exceptional, it should be ensured that they are proportional, transparent, limited in time and set under regulatory supervision.
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↓ 715/2019 recital 8

- (8) ~~In calculating tariffs for access to networks, it is important to take account of the actual costs incurred, insofar as such costs correspond to those of an efficient and structurally comparable network operator, and are transparent, as well as of the need to provide appropriate return on investments and incentives to construct new infrastructure, including special regulatory treatment for new investments as provided for in Directive 2009/73/EC. In that respect, and in particular if effective pipeline-to-pipeline competition exists, the benchmarking of tariffs by the regulatory authorities will be a relevant consideration.~~
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↓ 715/2009 recital 9

⇒ new

- (9) The use of market-based arrangements, such as auctions, to determine tariffs has to be compatible with the provisions laid down in **Directive 2009/73/EC** ⇒ and Commission Regulation (EU) 2017/459 ⇐.
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↓ 715/2019 recital 10

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

Community ~~⊗~~ 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.

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↓ 715/2009 recital 11

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

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↓ new

(12) Third party access should be arranged on the principles as set out in this Regulation. The organisation of entry-exit systems which enable a free allocation of gas on the basis of firm capacity was welcomed by the XXIV. Madrid Forum already in October 2013. This Regulation introduces a definition of an entry-exit system and ensures the integration of the distribution system level in the balancing zone which helps to achieve a level playing field for renewable and low carbon gases connected to either the transmission or distribution level. Tariff setting of distribution system operators and the organisation of capacity allocation between the transmission and distribution system is left to Member States on the basis of the principles enshrined in **Directive XXXX/XXX.**

(13) Access to the entry-exit system should be based on firm capacity. Network operators are required to cooperate in a way that maximises the offer of firm capacity which enables network users to freely allocate the gas entering or exiting on the basis of firm capacity to any entry or exit point in the same entry-exit system.

(14) Conditional capacity can only be offered in case network operators are not able to offer firm capacity. Network operators need to define the conditions on the basis of operational constraints in a transparent and clear manner. The regulatory authority shall ensure that the number of conditional capacity products is limited to avoid a fragmentation and on the principle of providing efficient third party access.

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↓ 715/2019 recital 12

(15) 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.

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↓ 715/2009 recital 13

(16) **The Communication of the Commission of 10 January 2007 entitled ‘An Energy Policy for Europe’ highlighted the importance of completing the internal market in natural gas and creating a level playing field for all natural gas undertakings in the Community ~~⊗~~ Union ~~⊗~~. The Communications of the Commission of 10 January 2007 entitled ‘Prospects for the internal gas and electricity market’ and ‘Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report)’ demonstrated that the present rules and measures neither provide the necessary framework nor provide for the creation of**

interconnection capacities to achieve the objective of a well-functioning, efficient and open internal market.

↓ 715/2019 recital 14

- (17) In addition to thoroughly implementing the existing regulatory framework, the regulatory framework for the internal market in natural gas set out in Regulation (EC) No 1775/2005 should be adapted in line with those communications.

↓ 715/2009 recital 15 (adapted)

⇒ new

- (18) ~~In particular, i~~ Increased cooperation and coordination among transmission ~~and~~, where relevant, distribution ~~system operators~~ is required to create network codes for providing and managing effective and transparent access to the transmission networks across borders, and to ensure coordinated and sufficiently forward looking planning and sound technical evolution of the transmission system in the ~~Community~~ ~~Union~~ ~~,~~ including the creation of interconnection capacities, with due regard to the environment. The network codes should be in line with framework guidelines which are non-binding in nature (framework guidelines) and which are developed by ~~ACER~~ ~~the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators<sup>8</sup> (the Agency)~~. ~~ACER~~ ~~the Agency~~ should have a role in reviewing, based on matters of fact, draft network codes, including their compliance with the framework guidelines, and it should be enabled to recommend them for adoption by the Commission. ~~ACER~~ ~~the Agency~~ should assess proposed amendments to the network codes and it should be enabled to recommend them for adoption by the Commission. Transmission system operators should operate their networks in accordance with those network codes.

↓ 715/2019 recital 16(adapted)

- (19) In order to ensure optimal management of the gas transmission network in the ~~Community~~ ~~Union~~ ~~,~~ a European Network of Transmission System Operators for Gas (the ENTSO for Gas), should be established. The tasks of the ENTSO for Gas should be carried out in compliance with ~~Community~~ ~~Union's~~ ~~,~~ competition rules which remain 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 at ~~Union~~ ~~Community~~ level. Cooperation within such regional structures presupposes effective unbundling of network activities from production and supply

<sup>8</sup> ~~See page 1 of this Official Journal.~~

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 gas.

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↓ 715/2009 recital 17

- (20) All market participants have an interest in the work **expected** of the ENTSO for Gas. An effective consultation process is therefore essential and existing structures set up to facilitate and streamline the consultation process, such as the European Association for the Streamlining of Energy Exchange, national regulators or ~~⊗~~ ACER ~~⊗~~ ~~the Agency~~ should play an important role.
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↓ 715/2019 recital 18 (adapted)

- (21) In order to ensure greater transparency regarding the development of the gas transmission network in the ~~Community~~ ~~⊗~~ Union ~~⊗~~, the ENTSO for Gas should draw up, publish and regularly update a non-binding ~~Community~~ ~~⊗~~ Union ~~⊗~~-wide ten-year network development plan (~~Community~~ ~~⊗~~ Union ~~⊗~~-wide network development plan). 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.
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↓ 715/2009 recital 19

⇒ new

- (22)** To enhance competition through liquid wholesale markets for gas, it is vital that gas can be traded independently of its location in the system. The only way to do this is to give network users the freedom to book entry and exit capacity independently, thereby creating gas transport through zones instead of along contractual paths. ⇒ To ensure the freedom of booking capacity independently at entry and exit points, tariffs shall be offered for these points separately and the tariff should not bundle the entry and exit charge in a single price. This Regulation establishes a definition of the entry-exit system. ⇐ ~~The preference for entry exit systems to facilitate the development of competition was already expressed by most stakeholders at the 6th Madrid Forum on 30 and 31 October 2002. Tariffs should not be dependent on the transport route. The tariff set for one or more entry points should therefore not be related to the tariff set for one or more exit points, and vice versa.~~
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↓ new

- (23) 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 and the transmission system operator. In order to better integrate renewable and low carbon gases within the entry-exit system, the balancing zone shall cover also the distribution system level. This Regulation defines the virtual trading point. The virtual trading point is used to exchange gas between network users balancing accounts.

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↓ 715/2019 recital 20

- (24) References to harmonised transport contracts in the context of non-discriminatory access to the network of transmission system operators do not mean that the terms and conditions of the transport contracts of a particular system operator in a Member State must be the same as those of another transmission system operator in that Member State or in another Member State, unless minimum requirements are set which must be met by all transport contracts.
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↓ 715/2009 recital 21

- (25) ~~There is substantial contractual congestion in the gas networks. The congestion management and capacity allocation principles for new or newly negotiated contracts are therefore based on the freeing up of unused capacity by enabling network users to sublet or resell their contracted capacities and the obligation of transmission system operators to offer unused capacity to the market, at least on a day-ahead and interruptible basis. Given the large proportion of existing contracts and the need to create a true level playing field between users of new and existing capacity, those principles should be applied to all contracted capacity, including existing contracts.~~
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↓ 715/2019 recital 22

- (26) ~~Although physical congestion of networks is, at present, rarely a problem in the Community, it may become one in the future. It is important, therefore, to provide the basic principle for the allocation of congested capacity in such circumstances.~~
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↓ 715/2009 recital 23

- (27) ~~Market monitoring undertaken over recent years by the national regulatory authorities and by the Commission has shown that current transparency requirements and rules on access to infrastructure are not sufficient to secure a genuine, well functioning, open and efficient internal market in gas.~~
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↓ 715/2019 recital 24

- (28) 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 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.
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↓ 715/2009 recital 25

- (29) 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.

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↓ 715/2019 recital 26

- (30) To enhance trust in the market, its participants need to be sure that those engaging in abusive behaviour can be subjected to effective, proportionate and dissuasive penalties. The competent authorities should be given the competence to investigate effectively allegations of market abuse. To that end, it is necessary that competent authorities have access to data that provides information on operational decisions made by supply undertakings. In the gas market, all those decisions are communicated to the system operators in the form of capacity reservations, nominations and realised flows. System operators should keep information in relation thereto available to and easily accessible by the competent authorities for a fixed period of time. The competent authorities should, furthermore, regularly monitor the compliance of the transmission system operators with the rules.
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↓ 715/2009 recital 27

⇒ new

- (31) Access to gas storage facilities and liquefied natural gas (LNG) facilities is insufficient in some Member States, and therefore the implementation of the existing rules needs to be improved ⇒ , including in the transparency area. Such improvement should take into account the potential and uptake of renewable and low-carbon gases for these facilities in the internal market. ⇐ 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.
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↓ 715/2019 recital 28

⇒ new

- (32) ⇒ Such improvement should take into account the potential and uptake of renewable and low-carbon gases for these facilities in the internal market. ⇐ Non-discriminatory and transparent balancing systems for gas, operated by transmission system operators, are important mechanisms, particularly for new market entrants which may have more difficulty balancing their overall sales portfolio than companies already established within a relevant market. It is therefore necessary to lay down rules to ensure that transmission system operators operate such mechanisms in a manner compatible with non-discriminatory, transparent and effective access conditions to the network.
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↓ 715/2009 recital 29

- (33) ~~The trading of primary capacity rights is an important part of developing a competitive market and creating liquidity. This Regulation should therefore lay down basic rules relating to such trading.~~

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↓ 715/2019 recital 30  
⇒ new

- (34) ~~National~~ Regulatory authorities should ensure compliance with the rules contained in this Regulation and ⇒ the network codes and ⇐ ~~g~~ Guidelines adopted pursuant thereto.
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↓ 715/2009 recital 31

- (35) In the Guidelines annexed to this Regulation, specific detailed implementing rules are defined ~~on the basis of the Second Guidelines for Good Practice~~. Where appropriate, those rules will evolve over time, taking into account the differences of national gas systems.
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↓ 715/2019 recital 32

- (36) When proposing to amend the Guidelines annexed to this Regulation, the Commission should ensure prior consultation of all relevant parties concerned with the Guidelines, represented by the professional organisations, and of the Member States within the Madrid Forum.
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↓ 715/2009 recital 33

- (37) The Member States and the competent national authorities should be required to provide relevant information to the Commission. Such information should be treated confidentially by the Commission.
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↓ 715/2019 recital 34

- (38) This Regulation and the Guidelines adopted in accordance with it are without prejudice to the application of the ~~Community~~ Union ~~rules~~ rules on competition.
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↓ 715/2009 recital 35

- (39) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>9</sup>.
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↓ 715/2019 recital 36

- (40) In particular, the Commission should be empowered to establish or adopt the Guidelines necessary for providing the minimum degree of harmonisation required to achieve the aims of this Regulation. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

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<sup>9</sup> OJ L 184, 17.7.1999, p. 23.

- (41) Member States and the Energy Community Contracting Parties should closely cooperate on all matters concerning the development of an integrated gas trading region and should take no measures that endanger the further integration of gas markets or security of supply of Member States and Contracting Parties.
- (42) Transmission system operators are allowed to reserve storages exclusively for carrying out their functions, based on **Art. 2(9) Regulation (EC) 715/2009 [reference to be updated]**. The filling of these strategic emergency reserves can be done jointly using the trading platform as mentioned in Article 10 of Commission Regulation (EU) No 312/2014 without prejudice to competition law. Withdrawal of gas is only possible in a declared emergency situation, as mentioned in Article 11 (1) (c) of this Regulation, in order not to interfere with the regular functioning of the market.
- (43) In order to ensure the minimum degree of harmonization required for effective market functioning, 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 in respect of areas which are fundamental for market integration. These should include the adoption and amendment of network codes and guidelines, as well as the application of exemption provisions for new interconnectors. 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 on Better Law-Making of 13 April 2016<sup>10</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (44) In case a regional markets integration is undertaken, the relevant transmissions system operators and regulatory authorities should address issues having a cross-border impact such as tariff structures, balancing regime, capacities at remaining cross-border points, investment plans and the fulfilment of transmissions system operators' and regulatory authorities' tasks.
- (45) The energy transition and the continuing integration of the gas market will require further transparency on the allowed or target revenue of the TSO. A number of decision related to natural gas networks will be based on this information. For example, the transfer of transmission assets from a gas network to a hydrogen network or the implementation of an inter-TSO compensation mechanism area require more transparency than it currently exists. In addition, the assessments of tariff evolutions on the long term will require clarity on both, natural gas demand and cost projections. Transparency on allowed revenue should be an enabler of the latter. NRAs should, in particular, provide information on the methodology used to calculate the revenues of TSOs, the value of their regulatory asset base and its depreciation over time, the value of operational expenditures, the cost of capital applied to transmission system operators and the incentives and premia applied.
- (46) Gas TSOs' expenditures are predominantly fixed costs. Their business model and the current national regulatory framework rely on the assumption of a long-term utilisation

<sup>10</sup> OJ L 123, 12.5.2016, p. 1.

of their networks (30 to 60 years depreciation periods are standard). In the context of the energy transition, NRAs should therefore be able to anticipate gas demand decrease to modify the regulatory arrangements in due time and prevent a situation where the cost recovery of Gas TSOs through tariffs threatens the affordability for consumers (due to an increasing ratio of fixed costs to gas demand). Where necessary, the depreciation profile or remuneration of transmission assets could, for example, be modified.

- (47) Transparency on transmission system operators allowed or target revenue shall 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 Article 14 of this Regulation.
- (48) In order to exploit the most economic locations for the production of renewable and low carbon gases, network users shall benefit from discounts in capacity-based transmission 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. This discount shall not affect the general tariff setting methodology at cross-border points, but is provided ex-post on the relevant tariff. In order to benefit from the discount, network users need to present the required information on the basis of a certificate and linked to the union database towards the transmission system operator.
- (49) In order to increase efficiencies in the gas distribution networks in the Union and to ensure close cooperation with transmission system operators and the ENTSO for Gas, an entity of distribution system operators in the Union (EU DSO entity) should be established. 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 ENTSO 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.
- (50) Distribution system operators have an important role to play when it comes to the integration of renewable and low carbon gases into the system, as for example about half of the biomethane production capacity is connected to the distribution grid. In order to facilitate the participation of these gases in the wholesale market Directive [...] will adapt the notion of entry-exit systems whereby entities connected to the distribution grid in all Member States will be part of this system. Furthermore this Regulation foresees that distribution system operators and transmission system operators will work together to enable reverse flows from the distribution to the transmission network or to ensure the integration of the distribution system via alternative means to facilitate the market integration of renewable and low carbon gases.
- (51) Pipeline networks for hydrogen constitute an efficient and sustainable means of transport hydrogen. Due to the high capital expenditure required for their construction, hydrogen pipeline networks can constitute natural monopolies. Experience with the regulation of natural gas markets has shown the importance of ensuring open and non-

discriminatory access to network infrastructure with a view to safeguarding competition on commodity markets. The operation of hydrogen networks should be separated from activities of energy production and supply in order to avoid the risk of conflicts of interest on behalf of the network operators. The structural separation of ownership of hydrogen networks and participations in energy production and supply guarantees the absence of such conflicts of interest. Member States should be able to rely on the alternative unbundling model of “integrated hydrogen network operator” until 2030 to provide a transitional period for existing vertically integrated hydrogen networks. Member States should also be able to allow the use of the “independent hydrogen network operator” model to allow vertically integrated owners of hydrogen networks to retain ownership of their networks while ensuring the non-discriminatory operation of such networks after 2030.

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

(53) Whereas it is, generally, most efficient that infrastructure is financed by revenues obtained from the users of that infrastructure and that cross-subsidies are avoided. Whereas, moreover, such cross-subsidies would, in the case of regulated assets, be incompatible with the general principle of cost-reflective tariffs. That, in exceptional cases, such cross-subsidies can nonetheless bring societal benefits, in particular during earlier phases of network development when booked capacity is low relative to available capacity and uncertainty as to when future capacity demand will materialise is significant and, hence, cross-subsidies can contribute to predictable tariffs for early network users and de-risk investments for network operators. Whilst Member States should have discretion as to whether such cross-subsidies are allowed, it should be avoided that cross-subsidies are financed by network users in other Member States, regardless as to whether directly or indirectly. Moreover, as cross-subsidies are exceptional, it should be ensured that they are proportional, transparent, limited in time and set under regulatory supervision.

(54) The integration of growing volumes of renewable and low-carbon gases in the European [natural] gas system will change the quality of gases transported and consumed in Europe. To ensure unhindered cross-border flow of these gases, maintain the interoperability of markets and enable market integration, this Regulation will increase transparency on gas quality and on the costs of its management, provide for a harmonised approach on the roles and responsibilities of regulatory authorities and system operators and reinforce cross-border coordination. While ensuring a harmonised approach on gas quality for cross-border interconnection points, this Regulation maintains Member States’ flexibility as regards the application of gas quality standards in their domestic [natural] gas systems.

(55) The blending of hydrogen into the [natural] gas system affects the operation of gas infrastructure, end-user applications, and the interoperability of cross-border systems. This Regulation preserves Member States’ decision on whether to apply blending hydrogen in their national [natural] gas systems. At the same time, a harmonised approach on blending hydrogen into the [natural] gas system in the form of an EU-wide allowed cap at cross-border interconnection points, where Transmission System Operators have to accept gases with a blended hydrogen level below the cap, limits the risk of market segmentation. Adjacent Transmission System Operators are free to agree on higher hydrogen blending levels for cross-border interconnection points.

- (56) A strong cross-border coordination and dispute settlement process between Transmission System Operators on gas quality, including on hydrogen blends, is essential to facilitate efficient transport of gases across [natural] gas systems within the Union and thereby to move towards greater internal market integration. Enhanced transparency requirements on gas quality parameters and hydrogen blends and their development over time combined with monitoring and reporting obligations will contribute to the well-functioning of an open and efficient internal market in gases.
- (57) Commission Regulation (EU) 2015/703 sets out interoperability and data exchange rules for the [natural] gas system, in particular with respect to interconnection agreements, including rules for flow control, measurement principles for gas quantity and quality, rules for the matching process and for the allocation of gas quantities, communication procedures in case of exceptional events; common set of units, gas quality, including rules on managing cross-border trade restrictions due to gas quality differences and due to differences in odourisation practices, short- and long-term gas quality monitoring and information provision; data exchange, and reporting on gas quality,; transparency, communication, information provision and cooperation among relevant market participants;
- (58) Commission Regulation (EU) 2015/703 sets out interoperability and data exchange rules for the [natural] gas system, in particular with respect to interconnection agreements, including rules for flow control, measurement principles for gas quantity and quality, rules for the matching process and for the allocation of gas quantities, communication procedures in case of exceptional events; common set of units, gas quality, including rules on managing cross-border trade restrictions due to gas quality differences and due to differences in odourisation practices, short- and long-term gas quality monitoring and information provision; data exchange, and reporting on gas quality,; transparency, communication, information provision and cooperation among relevant market participants;
- (59) In order to ensure optimal management of the Union hydrogen network and to allow trading and supplying hydrogen across borders in the Union, the European Network of Network Operators for Hydrogen (ENNOH) should be established. The tasks of the ENNOH should be carried out in compliance with Union competition rules, which remain applicable to the decisions of the ENNOH. The tasks of the ENNOH should be well-defined and its working method should ensure efficiency, transparency and the representative nature of the ENNOH. The network codes prepared by ENNOH are not intended to replace the necessary national network codes for non cross-border issues.
- (60) Until the European Network of Network Operators for Hydrogen (ENNOH) is established, a temporary platform should be set up under the lead of the European Commission with the involvement of all relevant market participants. This platform should support early work on scoping and developing issues relevant for the building up of the hydrogen network and markets without formal decision-making powers. The platform should be dissolved once ENNOH is established.
- (61) The European Network of Network Operators for Hydrogen will adopt and publish a non-binding Union-wide ten-year network development plan for hydrogen targeted at the needs of the developing hydrogen markets. The European Network of Network Operators for Hydrogen will 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 Regulation on guidelines for trans-European energy infrastructure for the development of the lists of projects of common interest. The European Network of Network Operators for Hydrogen. For this purpose, the European Network of Network Operators for Hydrogen should closely cooperate with the European Network of Transmission System Operators for Electricity and the European Network of Transmission System Operators for Gas to facilitate system integration. The European Network of Network Operators for Hydrogen should undertake above tasks for the first time for the development of the [8<sup>th</sup>] 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].

- (62) All market participants have an interest in the work expected of the European Network of Network Operators for Hydrogen. An effective consultation process is therefore essential.
- (63) In order to ensure transparency regarding the development of the hydrogen network in the Union, the European Network of Network Operators for Hydrogen should establish, publish and regularly update a non-binding Union-wide ten-year network development plan. Viable hydrogen transportation networks and necessary interconnections, relevant from a commercial point of view, should be included in that network development plan.
- (64) Given that more effective progress may be achieved through an approach at regional level, hydrogen network operators should set up regional structures within the overall cooperation structure, while ensuring that results at regional level are compatible with network codes and EU-wide non-binding ten-year network development plans. Member States should promote cooperation and monitor the effectiveness of the network at regional level. Cooperation at regional level should be compatible with progress towards a competitive and efficient internal market for hydrogen.
- (65) Transparency requirements are necessary to ensure that trust in the emerging hydrogen markets in the Union can develop among market participants. Equal access to information on the physical status and functioning of the hydrogen system is necessary to enable all market participants to assess the overall demand and supply situation and to identify the reasons for market price developments. Information should be always disclosed in a meaningful and easily accessible manner and on a non-discriminatory basis.
- (66) The European Network of Network Operators for Hydrogen will establish a central, web-based platform for making available all data relevant for market participants to gain effective access to the network.
- (67) The conditions for access to hydrogen networks in the early phase of market development should ensure efficient operation and non-discrimination and transparency for network users while preserving sufficient flexibility for operators. More detailed rules on capacity allocation and balancing should apply only after the transition to cost-based tariff regulation. Limiting the maximum duration of capacity contracts should reduce the risk of contractual congestion and capacity hoarding.
- (68) General conditions for granting third-party access to hydrogen storage facilities and hydrogen terminals should be set out in order to ensure non-discriminatory access and transparency for network users.

- (69) Hydrogen network operators should cooperate to create network codes for providing and managing transparent and non-discriminatory access to the networks across borders and to ensure coordinated development of the network in the Union, including the creation of interconnection capacities. The network codes should be in line with non-binding framework guidelines (framework guidelines) developed by the Agency for the Cooperation of Energy Regulators established by Regulation [ACER Regulation] (ACER). ACER should have a role in reviewing, based on matters of fact, draft network codes, including their compliance with the framework guidelines, and it should be enabled to recommend them for adoption by the Commission. ACER should assess proposed amendments to the network codes and it should be enabled to recommend them for adoption by the Commission. Hydrogen network operators should operate their networks in accordance with those network codes.
- (70) The network codes prepared by the European Network of Network Operators for Hydrogen are not intended to replace the necessary national rules for non-cross-border issues.
- (71) The quality of hydrogen transported and consumed in Europe can vary depending on its production technology and transportation specificities. Therefore, harmonised EU-level approach to hydrogen quality management at cross-border interconnectors should lead to the cross-border flow of hydrogen and to market integration.
- (72) Where the regulatory authority considers it necessary, hydrogen network operators can become responsible for managing hydrogen quality in their networks, within the framework of applicable hydrogen quality standards, ensuring reliable and stable hydrogen quality for end-consumers.
- (73) A strong cross-border coordination and dispute settlement process between hydrogen system operators is essential to facilitate the transport of gases across hydrogen networks within the Union and thereby to move towards greater internal market integration. Enhanced transparency requirements on hydrogen quality parameters and on their development over time combined with monitoring and reporting obligations will contribute to the well-functioning of an open and efficient internal market in hydrogen.
- (74) In order to ensure the minimum degree of harmonisation required for effective market functioning, the power to adopt acts in accordance with Article 290 of TFEU should be delegated to the Commission in respect of non-essential elements of certain specific areas which are fundamental for market integration. Those acts should include the adoption and amendment of certain network codes and guidelines where they supplement this Regulation. 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<sup>11</sup> on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (75) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers in accordance with Article 291 of TFEU should be conferred on

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<sup>11</sup> OJ L 123, 12.5.2016, p. 1.



the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.<sup>12</sup>

- (76) To ensure the efficient operation of the European hydrogen networks, hydrogen network operators should be responsible for the operation, maintenance and development of the hydrogen transport network in close cooperation with other hydrogen network operators as well as with other system operators their networks are connected with, including to facilitate energy system integration.
- (77) This Directive tasks hydrogen system operators with building sufficient cross-border capacity for the transportation of hydrogen accommodating all economically reasonable and technically feasible demands for such capacity, thereby enabling market integration.
- (78) ACER is tasked to publish a monitoring report on the status of congestion based on Chapter 2 of the Annex to this Regulation. Based on published reports, the congestion situation has become less dynamic. In order to reduce administrative burden, ACER may hence be allowed not to publish a report, in case it requests the suspension of publication to the Commission. ACER shall set out the reasons why a congestion report is not needed to be published in a given year, when asking for its suspension.
- (79) Recital on amendments to the Sos regulation
- (80) Recital on amendments to the Sos regulation
- (81) Recital on amendments to the Sos regulation
- (82) Recital on amendments to the Sos regulation

↓ 715/2009 (adapted)

- (83) Since the objective of this Regulation, namely the setting of fair rules for access conditions to natural gas transmission networks, storage and LNG facilities cannot be sufficiently achieved by the Member States and can therefore be better achieved at ~~Community~~ Union level, the ~~Community~~ Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (84) Given the scope of the amendments that are being made herein to Regulation (EC) No ~~715/2009~~ ~~1775/2005~~, it is desirable, for reasons of clarity and rationalisation, that the provisions in question should be recast by bringing them all together in a single text in a new Regulation,

HAVE ADOPTED THIS REGULATION:

<sup>12</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ([OJ L 55, 28.2.2011, p. 13](#)).

## Chapter I

### Subject matter, scope and definitions

#### Article 1

##### Subject matter and scope

This Regulation aims at:

- (a) setting non-discriminatory rules for access conditions to natural gas ⇒ and hydrogen ⇐ transmission 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 ⇐ gas; ⇒ and ⇐
- (b) ~~setting non-discriminatory rules for access conditions to LNG facilities and storage facilities taking into account the special characteristics of national and regional markets; and~~
- (c) facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in ⇒ gases ⇐ gas and providing mechanisms to harmonise the network access rules for cross-border exchanges in ⇒ gases ⇐ gas.

The objectives referred to in the first subparagraph shall include the setting of harmonised principles for tariffs, or the methodologies underlying their calculation, for access to the ⇒ natural gas ⇐ network, but not to storage facilities, the establishment of third-party access services and harmonised principles for capacity-allocation and congestion-management, the determination of transparency requirements, balancing rules and imbalance charges, and the facilitation of capacity trading.

This Regulation, with the exception of [Article 3149\(4\)](#), shall apply only to ⇒ natural gas and hydrogen ⇐ storage facilities falling under [Article 33\(3\) or \(4\) of Directive 2009/73/EC](#).

The Member States may establish an entity or body set up in compliance with [Directive 2009/73/EC](#) for the purpose of carrying out one or more functions typically attributed to the transmission system operator ⇒ or hydrogen network operator ⇐, which shall be subject to the requirements of this Regulation. That entity or body shall be subject to certification in accordance with [Article 133](#) of this Regulation and shall be subject to designation in accordance with [Article 6840](#) of [Directive 2009/73/EC](#).

#### Article 2

##### Definitions

1. For the purpose of this Regulation, the following definitions apply:

↓ new

(1) 'regulatory asset base ('RAB') means all network assets of a network operator used for the provision of regulated network services that are taken into account when calculating network related services revenue based on 13

↓ 715/2009

⇒ new

(2) ~~1~~ 'transmission' means the transport of natural gas through a network, which mainly contains high-pressure pipelines, other than an upstream pipeline network and other than the part of high-pressure pipelines primarily used in the context of local distribution of natural gas, with a view to its delivery to customers, but not including supply;

(3) ~~2~~ 'transport contract' means a contract which the transmission system operator ~~⇒~~ or hydrogen network operator ~~⇐~~ has concluded with a network user with a view to carrying ~~⇒~~ out transport services for gases ~~⇐~~ ~~transmission~~;

(4) ~~3~~ 'capacity' means the maximum flow, expressed in normal cubic meters per time unit or in energy unit per time unit, to which the network user is entitled in accordance with the provisions of the transport contract;

(5) ~~4~~ 'unused capacity' means firm capacity which a network user has acquired under a transport contract but which that user has not nominated by the deadline specified in the contract;

(6) ~~5~~ 'congestion management' means management of the capacity portfolio of the transmission system operator with a view to optimal and maximum use of the technical capacity and the timely detection of future congestion and saturation points;

(7) ~~6~~ 'secondary market' means the market of the capacity traded otherwise than on the primary market;

(8) 7) 'nomination' means the prior reporting by the network user to the transmission system operator of the actual flow that the network user wishes to inject into or withdraw from the system;

(9) ~~8~~ 're-nomination' means the subsequent reporting of a corrected nomination;

(10) ~~9~~ 'system integrity' means any situation ~~in respect of a transmission network including necessary transmission facilities~~ in which the pressure and the quality of the natural gas remain within the minimum and maximum limits ~~laid down by the transmission system operator~~, so that the ~~⇒~~ transport ~~⇐~~ ~~transmission~~ of natural gas is guaranteed from a technical standpoint;

(11) ~~10~~ 'balancing period' means the period within which the off-take of an amount of ~~⇒~~ gases ~~⇐~~ natural gas, expressed in units of energy, must be offset by every network user by means of the injection of the same amount of ~~⇒~~ gases ~~⇐~~ natural gas ~~into the transmission network~~ in accordance with the ~~transport contract or~~ the network code;

- (12) ~~11)~~ ‘network user’ means a customer or a potential customer of a ~~transmission~~ system operator, and ~~transmission~~ system operators themselves in so far as it is necessary for them to carry out their functions in relation to  $\Rightarrow$  transport of natural gas and hydrogen  $\Leftarrow$  ~~transmission~~;
- (13) ~~12)~~ ‘interruptible services’ means services offered by the transmission system operator  $\Rightarrow$  or hydrogen network operator  $\Leftarrow$  in relation to interruptible capacity;
- (14) ~~13)~~ ‘interruptible capacity’ means gas transmission capacity that may be interrupted by the transmission system operator  $\Rightarrow$  or hydrogen network operator  $\Leftarrow$  in accordance with the conditions stipulated in the transport contract;
- (15) ~~14)~~ ‘long-term services’ means services offered by the transmission system operator  $\Rightarrow$  or hydrogen network operator  $\Leftarrow$  with a duration of one year or more;
- (16) ~~15)~~ ‘short-term services’ means services offered by the transmission system operator  $\Rightarrow$  or hydrogen network operator  $\Leftarrow$  with a duration of less than one year;
- (17) ~~16)~~ ‘firm capacity’ means gas transmission capacity contractually guaranteed as uninterruptible by the transmission system operator  $\Rightarrow$  or hydrogen network operator  $\Leftarrow$ ;
- (18) ~~17)~~ ‘firm services’ mean services offered by the transmission system operator  $\Rightarrow$  or hydrogen network operator  $\Leftarrow$  in relation to firm capacity;
- (19) ~~18)~~ ‘technical capacity’ means the maximum firm capacity that  $\Rightarrow$  can be offered  $\Leftarrow$  ~~the transmission system operator can offer~~ to the network users, taking account of system integrity and the operational requirements of the transmission  $\Rightarrow$  system or hydrogen  $\Leftarrow$  network;
- (20) ~~19)~~ ‘contracted capacity’ means capacity that ~~the transmission system operator~~ has  $\Rightarrow$  been  $\Leftarrow$  allocated to a network user by means of a transport contract;
- (21) ~~20)~~ ‘available capacity’ means the part of the technical capacity that is not allocated and is still available to the system at that moment;
- (22) ~~21)~~ ‘contractual congestion’ means a situation where the level of firm capacity demand exceeds the technical capacity;
- (23) ~~22)~~ ‘primary market’ means the market of the capacity traded directly by the transmission system operator  $\Rightarrow$  or hydrogen network operator  $\Leftarrow$  ;
- (24) ~~23)~~ ‘physical congestion’ means a situation where the level of demand for actual deliveries exceeds the technical capacity at some point in time;
- (25) ~~24)~~ ‘LNG facility capacity’ means capacity at an LNG terminal for the liquefaction of natural gas or the importation, offloading, ancillary services, temporary storage and re-gasification of LNG;
- (26) ~~25)~~ ‘space’ means the volume of gas which a user of a storage facility is entitled to use for the storage of gas;
- (27) ~~26)~~ ‘deliverability’ means the rate at which the storage facility user is entitled to withdraw gas from the storage facility;
- (28) ~~27)~~ ‘injectability’ means the rate at which the storage facility user is entitled to inject gas into the storage facility;

- (29) ~~28)~~ ‘storage capacity’ means any combination of space, injectability and deliverability.
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↓ new

- (30) ‘entry-exit system’ means the aggregation of all transmission and distribution systems or all hydrogen networks to which one specific balancing regime applies;
- (31) ‘balancing zone’ means an entry-exit system to which a specific balancing regime is applicable;
- (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.
- (33) ‘entry point’ means a point subject to booking procedures by network users or producers providing access to an entry-exit system.
- (34) ‘exit point’ means a point subject to booking procedures by network users or final customers enabling gas flows out of the entry exit system .
- (35) ‘conditional capacity’ means firm capacity that entails transparent and predefined conditions for either providing access from and to the virtual trading point or limited allocability
- (36) “allocability” means the discretionary combination of any entry capacity with any exit capacity or vice versa.
- (37) ‘allowed revenue’ means the sum of transmission services revenue and non-transmission services revenue for the provision of services by the transmission system operator for a specific time period within a given regulatory period which such transmission system operator is entitled to obtain under a non-price cap regime and which is set in accordance with [Article 41\(6\)\(a\) of Directive 2009/73/EC](#);
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↓ 715/2009

2. Without prejudice to the definitions in paragraph 1 of this Article, the definitions contained in Article 2 of [Directive 2009/73/EC](#), which are relevant for the application of this Regulation, also apply, with the exception of the definition of transmission in point 3 of that Article.

The definitions in points 3 to 23 of paragraph 1 of this Article in relation to transmission apply by analogy in relation to storage and LNG facilities.

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**PART I****GENERAL RULES APPLICABLE TO THE NATURAL GAS AND  
HYDROGEN SYSTEMS****Chapter II****General rules for the organisation of the markets and  
infrastructure access**

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*Article 3***General Principles**

Member States, regulatory authorities, transmission system operators, distribution system operators, storage operators, LNG operators, hydrogen system operators, and delegated operators such as market area operators or booking platform operators shall ensure that gases markets are operated in accordance with the following principles:

- (a) prices for gases shall be formed on the basis of demand and supply;
- (b) transmission and distribution system operators shall cooperate with each other to provide network users the freedom to book entry and exit capacity independently, thereby creating gas transport through the entry-exit system instead of along contractual paths.
- (c) tariffs charged at the entry and exit points shall be structured in a way to contribute to market integration, enhancing security of supply and promoting the interconnection between gas networks;
- (d) undertakings active in the same entry-exit system shall exchange gas at the virtual trading point ;
- (e) network users shall be responsible to balance their balancing portfolios in order to minimise the need for transmission system operators to undertake balancing actions;
- (f) balancing actions shall be performed on the basis of standardized products and conducted on a trading platform;
- (g) market rules shall encourage free price formation and shall avoid actions which prevent price formation on the basis of demand and supply for gases;
- (h) market rules shall facilitate the development of more flexible generation, sustainable low carbon generation, and more flexible demand;

- (i) market rules shall enable the decarbonisation of the natural gas and hydrogen systems, including by enabling the integration of gas from renewable energy sources and by providing incentives for energy efficiency;
- (j) market rules shall deliver appropriate investment incentives for generation, in particular for long-term investments in a decarbonised and sustainable gas system, energy storage, energy efficiency and demand response to meet market needs, and shall facilitate fair competition thus ensuring security of supply;
- (k) barriers to cross-border gas flows, if existing, between entry-exit systems shall be progressively removed;
- (l) market rules shall provide for regional cooperation and integration where effective;

#### *Article 4*

#### **Separation of regulated asset bases**

1. Where a transmission or network operator provides regulated services for gas, hydrogen and/or electricity, it will have a regulated asset base separately for gas, electricity or hydrogen assets. This means at least that:
  - (a) Services revenues obtained from the provision of regulated services can only be used to recover the costs of the regulated asset base on which the regulated services were provided;
  - (b) When assets are transferred to a different regulated asset base, their value will be established. The value established will be such that cross-subsidies do not occur.
  - (c) It complies with the requirement for horizontal unbundling as laid down in [ref Art [50] Gas Directive and Art [XX] Electricity Directive].
2. Notwithstanding par 1(a), a Member State can allow financial transfers from one regulated asset base to another regulated assets base, provided that:
  - (a) All revenues needed for the financial transfer are collected as a dedicated charge;
  - (b) The dedicated charge cannot be collected on electricity, hydrogen and natural gas interconnection points, on entry points from or exit points to electricity, natural gas and hydrogen storage or on entry points from hydrogen terminals and LNG facilities;
  - (c) The dedicated charge [or the methodologies underlying its calculation] is approved prior to its entry into force by the regulatory authority as meant in Article [73 Directive].
  - (d) The approved dedicated charge [and the methodologies, where methodologies are approved] is/[are] published.
3. The regulatory authority can only approve a financial transfer and dedicated charge as meant in paragraph 2, provided:
  - (a) tariffs are charged from users of the regulated asset base that benefits from a financial transfer;
  - (b) the sum of financial transfers and service revenues collected through tariffs cannot be larger than the allowed revenues;

(c) a financial transfer is approved for a limited period in time [no longer than **1/3** of the depreciation period of the infrastructure concerned].

4. By **[Date of adoption + 1 year]**, ACER shall issue recommendations to network operators and regulatory authorities on:

(a) determining the value of the assets that are transferred to another regulated asset base;

(b) the calculation of the size and duration of the dedicated charge;

(c) the criteria to allocate contributions to the dedicated charge among user of the regulated asset base.

ACER shall update the recommendations at least once every two years

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↓ 715/2009

⇒ new

### Article 5~~14~~

#### **Third-party access services concerning transmission system operators**

1. Transmission system operators shall:

(a) ensure that they offer ⇒ **capacity and** ⇐ **services** on a non-discriminatory basis to all network users;

(b) provide both firm and interruptible ⇒ **capacity** ⇐ ~~third party access services~~. The price of interruptible capacity shall reflect the probability of interruption;

(c) offer to network users both long and short-term ⇒ **capacity** ⇐ ~~services~~.

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 41 of Directive 2009/73/EC**.

2. Transport contracts signed with non-standard start dates or with a shorter duration than a standard annual transport contract shall not result in arbitrarily higher or lower tariffs that do not reflect the market value of the service, in accordance with the principles laid down in **Article 13(1)**.

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↓ new

3. Where two or more interconnection points connect the same two adjacent entry-exit systems, the adjacent transmission system operators concerned shall offer the available capacities at the interconnection points at one virtual interconnection point. Any contracted capacity at the interconnection points, regardless of the date of its conclusion, shall be transferred to the virtual interconnection point.

A virtual interconnection point shall be established only if the following conditions are met:



- (a) the total technical capacity at the virtual interconnection points shall be equal to or higher than the sum of the technical capacities at each of the interconnection points contributing to the virtual interconnection points;
  - (b) the virtual interconnection point facilitates the economic and efficient use of the system including but not limited to rules set out in **Article 16** of this Regulation.
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↓ 715/2009

- 4. 3. Where appropriate, third-party access services may be granted subject to appropriate guarantees from network users with respect to the creditworthiness of such users. Such guarantees shall not constitute undue market-entry barriers and shall be non-discriminatory, transparent and proportionate.
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↓ 2009/73/EC Article 32  
paragraph 2

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

↓ new

#### *Article 6*

##### **Third-party access services concerning hydrogen network operators**

- 1. Hydrogen network operators shall offer their services on a non-discriminatory basis to all network users. Where the same service is offered to different customers, it shall be offered under equivalent contractual terms and conditions. Hydrogen network operators shall publish contractual terms and tariffs charged for network access and, if applicable, balancing charges, on their website.
- 2. The maximum capacity of a hydrogen network shall be made available to market participants, taking into account system integrity and efficient network operation.
- 3. The maximum duration for capacity contracts shall be **[20]** years. 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.
- 4. Hydrogen network operators shall implement and publish non-discriminatory and transparent congestion-management procedures, which also facilitate cross-border exchanges in hydrogen on a non-discriminatory basis.
- 5. Hydrogen network operators shall regularly assess market demand for new investment, taking into account security of supply.
- 6. As of 31 December 2030, hydrogen networks shall be organised as entry-exit systems.
- 7. As of 31 December 2030, **Article 13 (on tariffs)** shall apply also to tariff for access to hydrogen networks. When applying Article **13**, no tariffs shall be charged for access to hydrogen networks at interconnection points between Member States.

8. As of 31 December 2030, hydrogen network operators shall comply with the requirements on transmission system operators pursuant to Articles 14, 16 and 21 when offering their services, and publish tariffs for each network point on an online platform operated by the European Network of Network Operators of Hydrogen. [Until a network code on capacity allocation for hydrogen networks has been adopted pursuant to Article ... and has entered into force, such publication can occur via links to the publication of tariffs on websites of hydrogen network operators.]
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↓ 715/2009

⇒ new

#### Article 7~~15~~

#### Third-party access services concerning ⇒ natural gas ⇐ storage ⇒ , hydrogen terminals ⇐ and LNG facilities ⇒ and hydrogen storage facilities ⇐

1. LNG ⇒ , hydrogen storage facility operators as well as natural gas ⇐ ~~and~~ storage system operators shall:
    - (a) offer services on a non-discriminatory basis to all network users that accommodate market demand; in particular, where an LNG ⇒ , hydrogen storage facility ⇐ or ⇒ natural gas ⇐ storage system operator offers the same service to different customers, it shall do so under equivalent contractual terms and conditions;
    - (b) offer services that are compatible with the use of the interconnected gas ⇒ and hydrogen ⇐ transport systems and facilitate access through cooperation with the transmission system operator ⇒ or hydrogen network operator ⇐ ; and
    - (c) make relevant information public, in particular data on the use and availability of services, in a time-frame compatible with the LNG or storage facility users' reasonable commercial needs, subject to the monitoring of such publication by the ~~national~~ regulatory authority.
  2. Each storage system operator shall:
    - (a) provide both firm and interruptible third-party access services; the price of interruptible capacity shall reflect the probability of interruption;
    - (b) offer to storage facility users both long and short-term services; and
    - (c) offer to storage facility users both bundled and unbundled services of storage space, injectability and deliverability.
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↓ new

3. Each LNG system operator shall:
  - (a) offer to LNG facility users both bundled and unbundled services, within the LNG facility providing flexibility services depending on the needs expressed by LNG facility users.

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↓ 715/2009

⇒ new

4. ~~3~~ LNG ⇒ and natural gas ⇐ storage facility contracts shall not result in arbitrarily higher tariffs in cases in which they are signed:
- (a) outside a natural gas year with non-standard start dates; or
  - (b) with a shorter duration than a standard LNG and storage facility contract on an annual basis.
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↓ new

Point (b) of this paragraph applies as well to hydrogen storage facility and hydrogen terminal contracts, which shall not result in arbitrarily higher tariffs in cases in which they are signed.

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↓ 715/2009

5. ~~4~~ Where appropriate, third-party access services may be granted subject to appropriate guarantees from network users with respect to the creditworthiness of such users. Such guarantees shall not constitute undue market-entry barriers and shall be non-discriminatory, transparent and proportionate.
6. ~~5~~ Contractual limits on the required minimum size of LNG facility capacity and storage capacity shall be justified on the basis of technical constraints and shall permit smaller storage users to gain access to storage services.
- 

↓ new

#### *Article 8*

### **Market assessment for renewable and low carbon gases by LNG and storage system operators**

LNG and storage system operators shall regularly, at least every two years, assess market demand for new investment allowing the usage of renewable and low carbon gases in the facilities. When planning new investments, LNG and storage system operators shall assess market demand and take into account security of supply. LNG and storage system operators shall make publicly available any plans regarding new investments allowing the usage of renewable and low carbon gases in the facilities.

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↓ 715/2009

#### *Article ~~9~~<sup>16</sup>*

### **Principles of capacity-allocation mechanisms and congestion-management procedures concerning transmission system operators**

1. The maximum capacity at all relevant points referred to in **Article 18(3)** shall be made available to market participants, taking into account system integrity and efficient network operation.
2. The transmission system operator shall implement and publish non-discriminatory and transparent capacity-allocation mechanisms, which shall:
  - (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;
  - (b) be compatible with the market mechanisms including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances; and
  - (c) be compatible with the network access systems of the Member States.
3. The transmission system operator shall implement and publish non-discriminatory and transparent congestion-management procedures which facilitate cross-border exchanges in natural gas on a non-discriminatory basis and which shall be based on the following principles:
  - (a) in the event of contractual congestion, the transmission system operator shall offer unused capacity on the primary market at least on a day-ahead and interruptible basis; and
  - (b) network users who wish to re-sell or sublet their unused contracted capacity on the secondary market shall be entitled to do so.

In regard to point (b) of the first subparagraph, a Member State may require notification or information of the transmission system operator by network users.

↓ new

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 XX of Directive (EU) 20xx/xxx (reference to NDP Article in the Directive)** and take into account security of supply.

↓ 715/2009

⇒ new

~~4. In the event that physical congestion exists, non-discriminatory, transparent capacity-allocation mechanisms shall be applied by the transmission system operator or, as appropriate, by the regulatory authorities.~~

~~5. Transmission system operators shall regularly assess market demand for new investment. When planning new investments, transmission system operators shall assess market demand and take into account security of supply.~~

#### Article 10~~17~~

**Principles of capacity-allocation mechanisms and congestion-management procedures concerning ⇒ natural gas ⇐ storage ⇒ , hydrogen terminals, hydrogen storage facilities⇐ and LNG facilities**

1. The maximum ⇒ natural gas ⇐ storage and LNG or ⇒ hydrogen storage ⇐ facility ⇒ as well as hydrogen terminals ⇐ capacity shall be made available to market participants, taking into account system integrity and operation.
2. LNG and ⇒ hydrogen storage facilities as well as hydrogen terminal and natural gas ⇐ storage system operators shall implement and publish non-discriminatory and transparent capacity-allocation mechanisms which shall:
  - (a) provide appropriate economic signals for the efficient and maximum use of capacity and facilitate investment in new infrastructure;
  - (b) be compatible with the market mechanism including spot markets and trading hubs, while being flexible and capable of adapting to evolving market circumstances; and
  - (c) be compatible with the connected network access systems.
3. LNG ⇒ , hydrogen as well as natural gas ⇐ ~~and~~ storage facility contracts shall include measures to prevent capacity-hoarding, by taking into account the following principles, which shall apply in cases of contractual congestion:
  - (a) the system operator must offer unused LNG facility and storage capacity on the primary market without delay; for storage facilities this must be at least on a day-ahead and interruptible basis;

LNG and storage facility users who wish to re-sell their contracted capacity on the secondary market must be entitled to do so. ⇒ LNG and storage system operators, individually or regionally, shall ensure transparent and non-discriminatory booking platform for LNG facility user to re-sell their contracted capacity on the secondary market [no later than 18 months after entry into force of this Regulation].

↓ 715/2009  
⇒ new

### Article 11~~22~~

#### Trading of capacity rights

Each transmission, storage and LNG ⇒ and hydrogen ⇐ system operator shall take reasonable steps to allow capacity rights to be freely tradable and to facilitate such trade in a transparent and non-discriminatory manner. Every such operator shall develop harmonised ⇒ contracts and procedures for ⇐ transport, LNG facility, ⇒ hydrogen terminals ⇐ and ⇒ natural gas and hydrogen ⇐ storage ⇒ facilities ⇐ ~~contracts and procedures~~ on the primary market to facilitate secondary trade of capacity and shall recognise the transfer of primary capacity rights where notified by system users.

The harmonised ~~transport, LNG facility and storage~~ contracts and procedures shall be notified to the regulatory authorities.

*Article 12~~21~~*

**Balancing rules and imbalance charges**

1. Balancing rules shall be designed in a fair, non-discriminatory and transparent manner and shall be based on objective criteria. Balancing rules shall reflect genuine system needs taking into account the resources available to the transmission system operator. Balancing rules shall be market-based.

2. In order to enable network users to take timely corrective action, the transmission system operator shall provide sufficient, well-timed and reliable on-line based information on the balancing status of network users.

The information provided shall reflect the level of information available to the transmission system operator and the settlement period for which imbalance charges are calculated.

No charge shall be made for the provision of information under this paragraph.

3. Imbalance charges shall be cost-reflective to the extent possible, whilst providing appropriate incentives on network users to balance their input and off-take of gas. They shall avoid cross-subsidisation between network users and shall not hamper the entry of new market entrants.

Any calculation methodology for imbalance charges as well as the final ⇒ values ⇐ ~~tariffs~~ shall be made public by the competent authorities or the transmission system operator, as appropriate.

4. Member States shall ensure that transmission system operators endeavour to harmonise balancing regimes and streamline structures and levels of balancing charges in order to facilitate gas trade ⇒ carried out at the virtual trading point ⇐ .

*Article 13~~3~~*

**Certification of transmission system operators ⇒ and hydrogen network operators ⇐**

1. The Commission shall examine any notification of a decision on the certification of a transmission system operator as laid down in Article 10(6) of Directive 2009/73/EC as soon as it is received. Within two months of the day of receipt of such notification, the Commission shall deliver its opinion to the relevant ~~national~~ regulatory authority in regard to its compatibility with Article 10(2) or Article 11, and Article 9 of Directive 2009/73/EC.

When preparing the opinion referred to in the first subparagraph, the Commission may request ⊗ ACER ⊗ ~~the Agency~~ to provide its opinion on the ~~national~~ regulatory authority's decision. In such a case, the two-month period referred to in the first subparagraph shall be extended by two further months.

In the absence of an opinion by the Commission within the periods referred to in the first and second subparagraphs, the Commission shall be deemed not to raise objections against the regulatory authority's decision.

2. Within two months of receiving an opinion of the Commission, the ~~national~~ regulatory authority shall adopt its final decision regarding the certification of the transmission system operator ⇒ or hydrogen network operator ⇐, taking the utmost account of that opinion. The regulatory authority's decision and the Commission's opinion shall be published together.
  3. At any time during the procedure regulatory authorities and/or the Commission may request from a transmission system operator, ⇒ hydrogen network operator ⇐ and/or an undertaking performing any of the functions of production or supply any information relevant to the fulfilment of their tasks under this Article.
  4. Regulatory authorities and the Commission shall preserve the confidentiality of commercially sensitive information.
  5. The Commission may adopt Guidelines setting out the details of the procedure to be followed for the application of paragraphs 1 and 2 of this Article. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).
  6. Where the Commission has received notification of the certification of a transmission system operator under Article 9(10) of Directive 2009/73/EC, the Commission shall take a decision relating to certification. The regulatory authority shall comply with the Commission decision.
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↓ new

#### *Article 14*

##### **Cooperation of transmission system operators**

1. Transmission system operators shall cooperate with other transmission system operators in coordinating the maintenance of their respective networks in order to minimise any disruption of transmission services to network users and transmission system operators in other areas.
2. Transmission system operators shall cooperate with each other as well as with other infrastructure operators with the objective to maximize technical capacity within the entry-exit system and minimize the use of fuel gas to the extent possible.

## Chapter III

### Network access

#### Article 15~~13~~

#### Tariffs for access to the network

1. Tariffs, or the methodologies used to calculate them, applied by the transmission system operators and approved by the regulatory authorities pursuant to Article 41(6) of Directive 2009/73/EC, as well as tariffs published pursuant to Article 32(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 and, where appropriate, taking account of the benchmarking of tariffs by the regulatory authorities. Tariffs, or the methodologies used to calculate them, shall be applied in a non discriminatory manner.

~~Member States may decide that~~ 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.

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.

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 national regulatory authorities. ~~By 3 September 2011, the~~ Member States shall ensure that, after a transitional period, network charges shall not be calculated on the basis of contract paths.

2. Tariffs for network access shall neither restrict market liquidity nor distort trade across borders of different transmission systems. Where differences in tariff structures ~~or balancing mechanisms~~ would hamper trade across transmission systems, and notwithstanding Article 41(6) of Directive 2009/73/EC, transmission system operators shall, in close cooperation with the relevant national authorities, actively pursue convergence of tariff structures and charging principles, ~~including in relation to balancing~~.



*Article 16*

**Tariff discounts**

1. When setting tariffs, a discount may be applied to:
  - (a) capacity-based transmission tariffs at entry points from and exit points to storage facilities, unless and to the extent a storage facility which is connected to more than one transmission or distribution network is used to compete with an interconnection point.
  - (b) the respective capacity-based transmission tariffs at entry points from LNG facilities for the purposes of increasing security of supply, and at entry points from and exit points to infrastructure developed with the purpose of ending the isolation of Member States in respect of their gas transmission systems.
2. Details on the discounts granted in line with paragraph 1 (a) to (b) of this Article can be set in the network code on tariff structures as referred to in Article xx (reference to NC TAR in network code article).
3. When setting tariffs at entry points from and exit points to storage facilities, a [50%] discount shall be applied to the respective capacity-based transmission tariffs for renewable and low-carbon gases. Such discount shall be granted in addition to the discount referred to in paragraph 1a and without prejudice to state aid rules.
4. When setting tariffs at entry points from renewable and low carbon production facilities, a discount of at least [50%] shall be applied to the respective capacity-based transmission tariffs for the purposes of scaling-up the injection of renewable and low-carbon gases. Such discount shall be granted without prejudice to state aid rules.
5. As of 01.01.202[X], network users shall receive a 100% discount 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 'liquefied natural gas' (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 in line with Articles 29 and 30 of Directive (EU) 2018/2001 and registered in the Union database.

With regard to this discount:

- a) Transmission system operators are 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 is 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 national 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. If within that time period no agreement is reached, the involved regulatory authorities shall decide jointly within [2] years.
- 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 [6] or [7] of this Regulation.

### *Article 17*

#### **Revenues of gas transmission system operators**

1. As of 01.01.202X, 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 relevant regulatory authority shall publish all information referred to in Annex XX, or shall require the publication by the relevant transmission system operator. This information shall be made available in a user-friendly format, to the extent possible, in English.
2. The costs of the transmission system operator shall be subject to an efficiency comparison between EU transmission system operators, which should be appropriately defined by ACER. ACER shall publish on 01.01.202X and every four years thereafter a study comparing the efficiency of EU transmission system operators' costs. The relevant national 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 national regulatory authorities, together with national circumstances, when periodically setting the allowed or target revenues of transmission system operators.
3. The relevant national 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 respective 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 based on Article XX (NDP Article in the Directive ) of the Directive.

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## Chapter IV

### Transmission, storage, LNG and hydrogen terminal system operation

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#### Article 18

##### Firm capacity for renewable and low carbon gases

1. Transmission system operators shall ensure firm capacity for the access of production facilities of renewable and low carbon gases connected to their grid. To this extent transmission system operators shall develop in cooperation with the distribution system operators procedures and arrangements, including investments, to ensure reverse flow from distribution to transmission network.
2. The first subparagraph 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 efficiency regarding new production facilities for renewable and low carbon gases. The regulatory authority shall ensure that any limitations in guaranteed access 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 19

##### Cross-border coordination on gas quality

1. Transmission system operators shall cooperate to avoid restrictions to cross-border flows due to gas quality differences.
2. Where a restriction to cross-border flow due to gas quality differences cannot be avoided by the concerned transmission system operators in their standard operations, they shall inform the concerned national regulatory authorities without delay.
3. The concerned national regulatory authorities shall jointly agree within six months whether to recognise the restriction.
4. Where the concerned national regulatory authorities recognise the restriction, they shall request the concerned transmission system operators to perform, within 12 months, the actions referred to in points (a) to (e) in sequence:
  - (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;

- (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;
  - (c) produce an estimate of the implementation time for each potential option;
  - (d) conduct a public consultation on identified feasible solutions and take into consideration the results of the consultation;
  - (e) submit a joint proposal for a solution removing the recognised restriction, including the timeframe for implementation, based on the cost benefit analysis and results of the public consultation to their respective national regulatory authorities for approval and to the other competent national authorities of each involved Member State for information.
5. Where the concerned transmission system operators do not reach an agreement on a solution, each transmission system operator shall inform its regulatory authority without delay.
  6. The concerned national regulatory authorities shall take a joint coordinated decision for removing the recognised restriction, taking into account the cost benefit analysis prepared by the concerned transmission system operators and the results of the public consultation.
  7. The joint coordinated decision of the concerned national regulatory authorities shall include a decision on the allocation of the investment costs to be borne by each 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.
  8. ACER may make recommendations to the national regulatory authorities on the details of such cost allocation decisions as referred to in paragraph 7 of this Article.
  9. Where the concerned national regulatory authorities cannot reach an agreement as referred to in paragraph 3 of this Article, the Agency shall decide on the restriction, following the process set out in Article 6(10) of Regulation (EU) 2019/942. Where the Agency recognises the restriction it shall request the concerned transmission system operators to perform, within 12 months, the actions referred to in paragraph 4 points (a) to (e) in sequence.
  10. Where the relevant national regulatory authorities cannot take a joint coordinated decisions as referred to in paragraphs 6 and 7 of this Article, the Agency shall decide on the solution to remove 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.
  11. Further details required to implement elements of this Article, including details on the cost benefit analysis, shall be set in a network code established on the basis of Article 7 of this Regulation.

#### *Article 20*

##### **Hydrogen blends at cross-border points in the [natural] gas system**

1. Transmission system operators shall accept cross-border flows of gases with a hydrogen content of up to 5% by volume from [1 October 2025].

2. Cross-border differences in the level of hydrogen volume blended in the [natural] gas system shall be considered as cross-border flow restriction as set out in Article XX [Cross-border coordination on gas quality] only within the 5% hydrogen content by volume.
  3. When the hydrogen content blended in the [natural] gas system exceeds 5% by volume, the process described in Article XX [Cross-border coordination on gas quality] shall not apply.
  4. Member States shall not use hydrogen blending in order to restrict cross-border gas flows.
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↓ 715/2009 (adapted)  
⇒ new

#### Article 21~~4~~

##### European network of transmission system operators for gas

All transmission system operators shall cooperate at  Union  ~~Community~~ level through the ENTSO for Gas, in order to promote the completion and functioning of the internal market in natural gas and cross-border trade and to ensure the optimal management, coordinated operation and sound technical evolution of the natural gas transmission network.

#### Article 22~~5~~

##### ~~Establishment of the~~ ⇒ Organisation of the ~~the~~ ENTSO for Gas

1. ~~By 3 March 2011,~~ The transmission system operators for gas shall submit to the Commission and to  ACER  ~~the Agency~~ the draft statutes, a list of members and draft rules of procedure, including the rules of procedures on the consultation of other stakeholders, of the ENTSO for Gas to be established.
  2. Within two months of the day of the receipt,  ACER  ~~the Agency~~, after formally consulting the organisations representing all stakeholders, in particular the system users including customers, shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure.
  3. The Commission shall deliver an opinion on the draft statutes, list of members and draft rules of procedures taking into account the opinion of  ACER  ~~the Agency~~ provided for in paragraph 2 and within three months of the day of the receipt of the opinion of  ACER  ~~the Agency~~.
  4. Within three months of the day of receipt of the Commission's opinion, the transmission system operators shall establish the ENTSO for Gas, adopt and publish its statutes and rules of procedure.
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↓ new

5. The documents referred to in paragraph 1 shall be submitted to the Commission and to ACER in case of changes thereof or upon reasoned request of the Commission or of ACER. ACER and the Commission shall deliver an opinion in accordance with paragraphs 2 to 4.

*Article 23~~8~~*

**Tasks of the ENTSO for Gas**

1. The ENTSO for Gas shall elaborate network codes in the areas referred to in paragraph 6 of this Article upon a request addressed to it by the Commission in accordance with **Article 6(6)**.
2. The ENTSO for Gas may elaborate network codes in the areas set out in paragraph 6 with a view to achieving the objectives set out in **Article 4** 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  ~~the Agency~~ for an opinion. That opinion shall be duly taken into account by the ENTSO for Gas.
3. The ENTSO for Gas shall adopt:
  - (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 ~~Community~~  Union -wide ten-year network development plan (~~Community~~  Union -wide network development plan), including a European supply adequacy outlook, every two years;
  - (c) recommendations relating to the coordination of technical cooperation between ~~Community~~  Union  and third-country transmission system operators;
  - (d) an annual work programme;
  - (e) an annual report;
  - (f) annual summer and winter supply outlooks.

- (g) gas quality monitoring report by **[15 May 2024]** at the latest and every two years afterwards, including developments of gas quality parameters, developments of the level and volume 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 cases related to differences in gas quality specifications and/or in specifications of blending levels and how such disputes were settled.
- (h) The monitoring report shall also cover the development for the areas listed in paragraph 1 of this Article 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”).

order to ensure optimal management of the Union hydrogen network and to allow trading and supplying hydrogen across borders in the Union, the European Network of Network Operators The European supply adequacy outlook referred to in point (b) of paragraph 3 shall cover the overall adequacy of the gas system to supply current and projected demands for gas 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 transmission system operator.

4. The annual work programme referred to in point (d) of paragraph 3 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.
5. 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; ~~and~~
  - (l) energy efficiency regarding gas networks; and

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↓ new

- (m) cyber security regarding gas networks.

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↓ 715/2009 (adapted)

6. The network codes shall be developed for cross-border network issues and market integration issues and shall be without prejudice to the Member States' right to establish national network codes which do not affect cross-border trade.
7. The ENTSO for Gas shall monitor and analyse the implementation of the network codes and the Guidelines adopted by the Commission in accordance with Article 6(11), and their effect on the harmonisation of applicable rules aimed at facilitating market integration. The ENTSO for Gas shall report its findings to the Agency and shall include the results of the analysis in the annual report referred to in point (e) of paragraph 3 of this Article.



8. The ENTSO for Gas shall make available all information required by ~~ACER~~ ~~the Agency~~ to fulfil its tasks under **Article 249**(1).
9. ~~11~~ ~~ACER~~ ~~the Agency~~ shall review national ten-year network development plans to assess their consistency with the ~~Community~~ ~~Union~~-wide network development plan. If ~~ACER~~ ~~the Agency~~ identifies inconsistencies between a national ten-year network development plan and the ~~Community~~ ~~Union~~-wide network development plan, it shall recommend amending the national ten-year network development plan or the ~~Community~~ ~~Union~~-wide network development plan as appropriate. If such national ten-year network development plan is elaborated in accordance with **Article 22 of Directive 2009/73/EC**, ~~ACER~~ ~~the Agency~~ shall recommend that the competent ~~national~~ regulatory authority amend the national ten-year network development plan in accordance with **Article 22(7)** of that Directive and inform the Commission thereof.
10. ~~12~~ Upon request of the Commission, the ENTSO for Gas shall give its views to the Commission on the adoption of the Guidelines as laid down in **Article 23**.

#### *Article 249*

#### **Monitoring by ~~ACER~~ ~~the Agency~~**

1. ~~ACER~~ ~~the Agency~~ shall monitor the execution of the tasks referred to in **Article 8(1), (2) and (3)** of the ENTSO for Gas and report to the Commission.  
~~ACER~~ ~~the Agency~~ shall monitor the implementation by the ENTSO for Gas of network codes elaborated under **Article 8(2)** and network codes which have been developed in accordance with **Article 6(1) to (10)** but which have not been adopted by the Commission under **Article 6(11)**. Where the ENTSO for Gas has failed to implement such network codes, ~~ACER~~ ~~the Agency~~ shall request the ENTSO for Gas to provide a duly reasoned explanation as to why it has failed to do so. ~~ACER~~ ~~the Agency~~ shall inform the Commission of that explanation and provide its opinion thereon.  
~~ACER~~ ~~the Agency~~ shall monitor and analyse the implementation of the network codes and the Guidelines adopted by the Commission as laid down in **Article 6(11)**, and their effect on the harmonisation of applicable rules aimed at facilitating market integration as well as on non-discrimination, effective competition and the efficient functioning of the market, and report to the Commission.
2. The ENTSO for Gas shall submit the draft ~~Community~~ ~~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 8(3)**, to ~~ACER~~ ~~the Agency~~ for its opinion.  
 Within two months from the day of receipt, ~~ACER~~ ~~the Agency~~ shall provide a duly reasoned opinion as well as recommendations to the ENTSO for Gas and to the Commission where it considers that the draft annual work programme or the draft ~~Community~~ ~~Union~~-wide network development plan submitted by the ENTSO for Gas 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.



*Article 25~~24~~*

**Regulatory authorities**

When carrying out their responsibilities under this Regulation, the regulatory authorities shall ensure compliance with this Regulation and the Guidelines adopted pursuant to Article 23.

Where appropriate, they shall cooperate with each other, with the Commission and ~~ACER~~ ~~the Agency~~ in compliance with Chapter VIII of Directive 2009/73/EC.

*Article 26~~10~~*

**Consultations**

1. While preparing the network codes, the draft ~~Community~~ ~~Union~~ ~~wide~~ network development plan and the annual work programme referred to in Article 8(1), (2) and (3), the ENTSO for Gas 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 5(1). That consultation shall also involve national regulatory authorities and other national authorities, supply and production undertakings, network users including customers, distribution system operators, including relevant industry associations, technical bodies and stakeholder platforms. It shall aim at identifying the views and proposals of all relevant parties during the decision-making process.
2. All documents and minutes of meetings related to the consultations referred to in paragraph 1 shall be made public.
3. Before adopting the annual work programme and the network codes referred to in Article 8(1), (2) and (3), the ENTSO for Gas 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.

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↓ 347/2013 Art. 22.2

*Article 27~~11~~*

**Costs**

The costs related to the activities of the ENTSO for Gas referred to in Articles 4 to 12 of this Regulation, and in Article 11 of Regulation (EU) No 347/2013 shall be borne by the transmission system 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.

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↓ 715/2009  
⇒ new

*Article 28~~12~~*

**Regional cooperation of transmission system operators**

1. Transmission system operators shall establish regional cooperation within the ENTSO for Gas to contribute to the tasks referred to in Article 8(1), (2) and (3). ~~In particular, they shall publish a regional investment plan every two years, and may take investment decisions based on that regional investment plan.~~
2. Transmission system 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.
3. For the purposes of achieving the goals set in paragraphs 1 and 2, the geographical area covered by each regional cooperation structure may be defined by the Commission, taking into account existing regional cooperation structures. Each Member State shall be allowed to promote cooperation in more than one geographical area. The measure referred to in the first sentence, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted  $\Rightarrow$  as delegated act  $\Leftarrow$  in accordance ~~with the regulatory procedure with scrutiny referred to in Article 6028(2).~~

For that purpose, the Commission shall consult  $\boxtimes$  ACER  $\boxtimes$  ~~the Agency~~ and the ENTSO for Gas.

$\Downarrow$  new

#### Article 29

### Ten-years network development plan

$\Downarrow$  715/2009 Art. 8.10 (adapted)

The ENTSO for Gas shall adopt and publish a ~~Community~~  $\boxtimes$  Union  $\boxtimes$ -wide network development plan referred to in point (b) of paragraph 3 every two years. The ~~Community~~  $\boxtimes$  Union  $\boxtimes$ -wide network development plan shall include the modelling of the integrated network, scenario development, a European supply adequacy outlook and an assessment of the resilience of the system.

The ~~Community~~  $\boxtimes$  Union  $\boxtimes$ -wide network development plan shall, in particular:

$\Downarrow$  347/2013 Art. 22.1

$\Rightarrow$  new

- (a) build on national investment plans  $\Rightarrow$  and Chapter IV of Regulation EU xxx(TEN-E regulation)  $\Leftarrow$ , ~~taking into account regional investment plans as referred to in Article 12(1), and, if appropriate, Union aspects of network planning as set out in Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure<sup>13</sup>; it shall be the subject to a cost benefit analysis using the methodology established as set out in Article 11 of that Regulation;~~

<sup>13</sup> ~~OJL 115, 25.4.2013, p. 39~~

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↓ 715/2009 Art. 8.10 (adapted)

- (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 14 and 22 of Directive 2009/73/EC**; and
- (c) identify investment gaps, notably with respect to cross-border capacities.

In regard to point (c) of the second subparagraph, 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 ~~Community~~  Union -wide network development plan.

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↓ 715/2009  
⇒ new

### Article ~~318~~

#### **Transparency requirements concerning transmission system operators**

1. The transmission system operator shall make public detailed information regarding the  capacity and  services it offers and the relevant conditions applied, together with the technical information necessary for network users to gain effective network access.
  2. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the gas network, transmission system operators or relevant national authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure.
  3. For the services provided, each transmission system operator shall make public information on technical, contracted and available capacities on a numerical basis for all relevant points including entry and exit points on a regular and rolling basis and in a user-friendly and standardised manner  as detailed in Annex 1 of this Regulation .
  4. The relevant points of a transmission system on which the information is to be made public shall be approved by the competent authorities after consultation with network users.
  5. The transmission system operator shall always disclose the information required by this Regulation in a ~~meaningful~~ quantifiably clear and easily accessible manner and on a non-discriminatory basis.
  6. The transmission system operator shall make public *ex-ante* and *ex-post* supply and demand information, based on nominations  and allocations , forecasts and realised flows in and out of the system. The ~~national~~ regulatory authority shall ensure that all such information is made public. The level of detail of the information that is made public shall reflect the information available to the transmission system operator.
- The transmission system operator shall make public measures taken as well as costs incurred and revenue generated to balance the system.
- The market participants concerned shall provide the transmission system operator with the data referred to in this Article.

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↓ new

7. The transmission system operator 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 Regulation (EU) 2015/703.
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↓ 715/2009  
⇒ new

Article 31~~19~~

**Transparency requirements concerning ⇒ natural gas and hydrogen ⇐ storage facilities, ~~and~~ LNG facilities ⇒ and hydrogen terminals ⇐**

1. LNG and ⇒ hydrogen storage facilities as well as (natural gas) ⇐ storage system operators ⇒ and hydrogen terminal operators ⇐ shall make public detailed information regarding ~~the~~ ⇒ all ⇐ services ~~it~~they offers and the relevant conditions applied, together with the technical information necessary for LNG and ⇒ hydrogen ⇐ storage facility ⇒ and hydrogen terminal ⇐ users to gain effective access to the LNG and ⇒ hydrogen ⇐ storage facilities ⇒ and hydrogen terminals ⇐ . ⇒ Regulatory authorities may request those operators to make public any additional relevant information for system users. ⇐
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↓ new

2. LNG system operators shall provide user-friendly instruments for calculating tariffs for the services available.
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↓ 715/2009  
⇒ new

3. 2. For the services provided, LNG and ⇒ hydrogen storage facilities, as well as natural gas ⇐ storage system operators shall make public information on contracted and available storage and LNG ⇒ and hydrogen storage ⇐ facility ⇒ as well as hydrogen terminal ⇐ capacities on a numerical basis on a regular and rolling basis and in a user-friendly standardised manner.
4. 3. LNG and ⇒ hydrogen storage facilities, as well as natural gas ⇐ storage system operators shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible way and on a non-discriminatory basis.
5. 4. LNG and storage system operators ⇒ and operators of hydrogen storage facilities and hydrogen terminals ⇐ shall make public the amount of gas in each storage or LNG facility ⇒ and hydrogen terminal ⇐ , or group of storage facilities if that corresponds to the way in which the access is offered to system users, inflows and outflows, and the available ⇒ natural gas and hydrogen ⇐ storage and LNG facility ⇒ and hydrogen terminal ⇐ capacities, including for those facilities exempted from third-party access. That information shall also be communicated to the transmission system operator ⇒ or to the hydrogen network operator for hydrogen storage and terminals, ⇐ which shall

make it public on an aggregated level per system or subsystem defined by the relevant points. The information shall be updated at least daily.

In cases in which a ⇨ (hydrogen) ⇩ storage system user is the only user of a ⇨ (hydrogen) ⇩ storage facility, the ⇨ (hydrogen) ⇩ storage system user may submit to the ~~national~~ regulatory authority a reasoned request for confidential treatment of the data referred to in the first subparagraph. Where the ~~national~~ regulatory authority comes to the conclusion that such a request is justified, taking into account, in particular, the need to balance the interest of legitimate protection of business secrets, the disclosure of which would negatively affect the overall commercial strategy of the storage user, with the objective of creating a competitive internal gas market, it may allow the storage system operator not to make public the data referred to in the first subparagraph, for a duration of up to one year.

The second subparagraph shall apply without prejudice to the obligations of communication to and publication by the transmission system operator referred to in the first subparagraph, unless the aggregated data are identical to the individual ⇨ (hydrogen) ⇩ storage system data for which the ~~national~~ regulatory authority has approved non-publication.

6. 5. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the infrastructures, the LNG and ⇨ (hydrogen) ⇩ storage facility operators or relevant regulatory authorities shall make public sufficiently detailed information on tariff derivation, the methodologies and the structure of tariffs for infrastructure under regulated third-party access; ⇨ LNG facilities that have been granted exemption under Article 36 of this Regulation and natural gas storage operators under the negotiated third party access regime shall make public tariffs for infrastructure in order to ensure sufficient degree of transparency. ⇩

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⇩ new

LNG system operators shall establish one single European platform [within 18 months from entry into force of the Regulation] to publish in a transparent and user-friendly manner the information required in this article.

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⇩ 715/2009

#### *Article 32~~20~~*

### **Record keeping by system operators**

Transmission system operators, storage system operators and LNG system operators shall keep at the disposal of the national authorities, including the national regulatory authority, the national competition authority and the Commission, all information referred to in Articles 18 and 19, and in Part 3 of Annex I for a period of five years.

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## Chapter V

### Distribution system operation

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#### Article 33

##### Firm capacity for renewable and low carbon gases

Distribution system operators shall ensure firm capacity 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 with the transmission system operators procedures and arrangements, including investments, to ensure reverse flow from distribution to transmission network.

The first subparagraph 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 efficiency regarding new production facilities for renewable and low carbon gases. The regulatory authority shall ensure that any limitations in guaranteed access 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 34

##### Cooperation between distribution system operators and transmission system operators

Distribution system operators shall cooperate with other distribution system operators and transmission system operators to coordinate maintenance, system development, new connections 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

##### Transparency requirements concerning distribution system operators

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 Regulation (EU) 2015/703.

## Article 36

### European entity for distribution system operators

Distribution system operators operating a natural gas system or, if applicable, a hydrogen gas system shall cooperate at Union level through the EU DSO entity set up in accordance with Articles 52 to 57 of Regulation (EU) 2019/943, in order to promote the completion and functioning of the internal markets for gases in the natural gas system and for hydrogen, and to promote optimal management and a coordinated operation of distribution and transmission systems.

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

## Article 37

### Change to the principal rules and procedures for the EU DSO entity

1. The principal 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.
2. The Strategic Advisory Group pursuant to Article 54(2) point (f) shall also consist of representatives of associations representing European distribution system operators solely operating a natural gas system.
3. By [one year after entry into force] 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 ENTSO for Gas and other stakeholders, and draft updated financing rules.

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.

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.
5. Within three months of receipt of ACER's opinion, the Commission shall deliver an opinion on documents provided pursuant to paragraph 3, taking into account ACER's opinion as provided for in paragraph 3.
6. Within three months of receipt of the Commission's positive opinion, the distribution system operators shall adopt and publish its updated statutes, rules of procedure and financing rules.
7. The documents referred to in paragraph 3 shall be submitted to the Commission and to ACER where there are changes thereto or upon the reasoned request of either of them. The Commission and ACER may deliver an opinion in line with the process set out in paragraphs 3, 4 and 5.

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.



**Additional tasks of the EU DSO entity**

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) also as regards those distribution networks which are part of the natural gas system.
2. In addition to the tasks listed in Article 55(1) of Regulation (EU) 2019/943 the EU DSO entity shall have the task of participating 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 Article xx and of contributing to mitigating fugitive methane emissions from the natural gas system.  
contributing to mitigating fugitive methane emissions from the natural gas system.  
While participating in the development of new network codes pursuant to Article xx, the EU DSO entity shall comply with the same consultation requirements as stipulated by Article 56 of Regulation (EU) 2019/943.
3. In addition to the activities listed in Article 55(2) of Regulation (EU) 2019/943 the EU DSO entity shall:
  - (a) cooperate with the ENTSO for Gas on the monitoring of 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;
  - (b) cooperate with the ENTSO for Gas 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;
  - (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, of natural gas distribution networks and of district heating and cooling systems including for the purpose of the assessment pursuant to 24(8) [proposal for REDIII].
4. The EU DSO entity shall provide input to the ENTSO for Gas for its reporting on gas quality, with regard to the distribution networks where distribution system operators are responsible for gas quality management, as referred to in Article 8 of this Regulation.



**PART II****RULES APPLICABLE TO THE DEDICATED HYDROGEN NETWORKS****Chapter VI****Access to dedicated hydrogen networks***Article 39***Cross-border coordination on hydrogen quality**

1. Hydrogen network operators shall cooperate to avoid restrictions to cross-border flows of hydrogen due to hydrogen quality differences.
2. Where a restriction to cross-border flows due to differences in hydrogen quality cannot be avoided by the concerned hydrogen network operators in their standard operations, they shall inform the concerned national regulatory authorities without delay. The information shall include a description and justified reasoning for any steps already taken by the hydrogen network operators.
3. The concerned national regulatory authorities shall jointly agree within six months whether to recognise the restriction.
4. Where the concerned national regulatory authorities recognise the restriction, they shall request the concerned hydrogen network operators to perform, within 12 months, the actions referred to in points (a) to (e) in sequence:
  - (a) cooperate and develop technically feasible options in order to remove the recognised restriction;
  - (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;
  - (c) produce an estimate of the implementation time for each potential option;
  - (d) conduct a public consultation on identified feasible solutions and take into consideration the results of the consultation;
  - (e) submit a joint proposal for a solution removing the recognised restriction, including the timeframe for implementation, based on the cost benefit analysis and results of the public consultation to their respective national regulatory authorities for approval and to the other competent national authorities of each involved Member State for information.
5. Where the concerned hydrogen network operators do not reach an agreement on a solution within 12 months, each hydrogen system operator shall inform its regulatory authority without delay.

6. The concerned national regulatory authorities shall take a joint coordinated decision for removing 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 6 months as set out in Article 6(10) of Regulation (EU) 2019/942.
7. The joint coordinated decision of the concerned national regulatory authorities shall include a decision on the allocation of the investment costs to be borne by each hydrogen network operator for implementing the agreed solution, as well as their inclusion in tariffs after [1 January 2030], taking into account the economic, social and environmental costs and benefits of the solution in the concerned Member States.
8. ACER may make recommendations to the national regulatory authorities on the details of such cost allocation decisions as referred to in paragraph 7 of this Article.
9. Where the concerned national regulatory authorities cannot reach an agreement as referred to in paragraph 3 of this Article, ACER shall decide on the restriction, following the process set out in Article 6(10) of Regulation (EU) 2019/942. Where ACER recognises the restriction it shall request the concerned hydrogen network operators to perform, within 12 months, the actions referred to in paragraph 4 points (a) to (e) in sequence.
10. Where the relevant national regulatory authorities cannot take a joint coordinated decisions as referred to in paragraphs 6 and 7 of this Article, the Agency shall decide on the solution to remove 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.
11. Further details required to implement elements of this Article, e.g. a common binding hydrogen quality specification for cross-border hydrogen interconnectors, cost benefit analyses for removing cross-border flow restrictions due to hydrogen quality differences, interoperability rules for cross-border hydrogen infrastructure, including addressing interconnection agreements, units, data exchange, communication and information provision among relevant market participants, shall be set in a network code established in accordance with Article 6 of this Regulation.

#### *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 European Network of Network Operators for Hydrogen 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 European Network of Network Operators for Hydrogen 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 European Network of Network Operators for Hydrogen 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 European Network of Network Operators for Hydrogen.
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*

##### **Tasks of the European Network of Network Operators for Hydrogen**

1. The European Network of Network Operators for Hydrogen shall:
  - (a) develop network codes in the areas set out in Article XX with a view to achieving the objectives set out in Article XX [ENNOH tasks];
  - (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 European Network of Transmission System Operators for Electricity and with the European Network of Transmission System Operators for Gas;
  - (d) develop recommendations relating to the coordination of technical cooperation between gas transmission and distribution system operators and hydrogen network operators 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 cases related to differences in hydrogen quality specifications and how such disputes were settled;
  - (j) promote cyber security and data protection in cooperation with relevant authorities and regulated entities.
2. The European Network of Network Operators for Hydrogen shall monitor and analyse the implementation of the network codes and the guidelines adopted by the Commission in accordance with Article XX [Establishment of Network Codes] and Article XX [Guidelines] of this Regulation, and their effect on the harmonisation of applicable rules aimed at facilitating market development and integration. The European Network of Network Operators for Hydrogen shall report its findings to ACER and shall include the results of the analysis in the annual report referred to in paragraph XX of this Article.
3. The European Network of Network Operators for Hydrogen 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 point f) of paragraph 1 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.
5. The European Network of Network Operators for Hydrogen shall provide ACER with the information ACER requires to fulfil its tasks pursuant to Article XX [Monitoring by ACER]. In order to enable the European Network of Network Operators for Hydrogen to meet that requirement, hydrogen network operators shall provide the European Network of Network Operators for Hydrogen with the requested information.
6. Upon request of the Commission, the European Network of Network Operators for Hydrogen shall give its views to the Commission on the adoption of the guidelines as laid down in Article XX.

#### *Article 42*

#### **Ten-Year Network Development Plan for Hydrogen**

1. The Union-wide ten-year network development plan as referred to in Article XX [Tasks of ENNOH] 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 plans as set out in Article XX of this Regulation [Hydrogen network development report] where available.
- (b) Build on the national investment plans and if appropriate Union aspects of network planning as set out in Regulation (EU) No 347/2013; it shall be subject to a cost-benefit analysis using the methodology established as set out in Article 11 of that Regulation;

(c) 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 XX (ISO) and XX (national development plans for ITOs) of Directive 2009/73/EC; and

(d) Identify investment gaps, notably with respect to cross-border capacities.

With regard to point (c) of the second subparagraph, 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 ten-year network development plan where relevant 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.

3. When developing the Union-wide ten-year network development plan as referred to in Article XX [tasks of ENNOH] the European Network of Network Operators for Hydrogen 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 electrolyzers as referred to in Article 11 [TEN-E revision], the scenarios for the Ten-Year Network Development Plans as referred to in Article 12 [TEN-E revision] and the infrastructure gaps identification as referred to in Article 13 [TEN-E revision].

#### *Article 43*

##### **Costs**

The costs related to the activities of the European Network of Network Operators for Hydrogen referred to in Articles XX 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 44*

##### **Consultation**

1. While preparing the proposals pursuant to the tasks referred to in Article XX, the European Network of Network Operators for Hydrogen shall conduct an extensive consultation process. The consultation process shall be structured in such a way as to enable the accommodation of stakeholder comments before the final adoption of the proposal and in an open and transparent manner, involving all relevant stakeholders, and, in particular, the organisations representing such stakeholders, in accordance with the rules of procedure referred to in Article XX [Tasks of the European Network of Network Operators for Hydrogen]. That 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 referred to in paragraph 1 shall be made public.
3. Before adopting the proposals referred to in Article XX [Tasks of the European Network of Network Operators for Hydrogen] the European Network of Network Operators for Hydrogen 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 45*

##### **Monitoring by ACER**

1. ACER shall monitor the execution of the tasks of the European Network of Network Operators for Hydrogen referred to in Article XX [Tasks of the European Network of Network Operators for Hydrogen] and report its findings to the Commission.
2. ACER shall monitor the implementation by the European Network of Network Operators for Hydrogen of network codes developed under Article XX. Where the European Network of Network Operators for Hydrogen has failed to implement such network codes, ACER shall request the European Network of Network Operators for Hydrogen 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 European Network of Network Operators for Hydrogen 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 XX 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 European Network of Network Operators for Hydrogen does 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, ACER shall provide a duly reasoned opinion as well as recommendations to the European Network of Network Operators for Hydrogen and to the Commission within two months of the submission

#### *Article 46*

##### **Regional cooperation of hydrogen network operators**

1. Hydrogen network operators shall establish regional cooperation within the European Network of Network Operators for Hydrogen to contribute to the tasks referred to in Art. X of this Regulation [tasks of ENNOH].
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 EU hydrogen system for facilitating commercial and operational cooperation between adjacent hydrogen network operators.

#### *Article 47*

##### **Transparency requirements concerning hydrogen network operators**

1. The hydrogen network operator shall make public detailed information regarding the services it offers and the relevant conditions applied, together with the technical information necessary for hydrogen network users to gain effective network access.
  2. In order to ensure transparent, objective and non-discriminatory tariffs and facilitate efficient utilisation of the hydrogen network, as from [31 December 2030] hydrogen network operators or relevant national authorities shall publish reasonably and sufficiently detailed information on tariff derivation, methodology and structure.
  3. The hydrogen network operator shall make public detailed information regarding the quality of hydrogen transported in their networks, which might affect network users.
  4. The relevant points of a hydrogen network on which the information is to be made public shall be approved by the competent authorities after consultation with hydrogen network users.
  5. The hydrogen network operator shall always disclose the information required by this Regulation in a meaningful, quantifiably clear and easily accessible manner and on a non-discriminatory basis.
  6. The hydrogen network operator shall make public ex-ante and ex-post supply and demand information. The regulatory authority shall ensure that all such information is made public. The level of detail of the information that is made public shall reflect the information available to the hydrogen network operator.
  7. The market participants concerned shall provide the hydrogen network operator with the data referred to in this Article.
  8. Further details required to implement the transparency requirements for hydrogen network operators, such as further details on the content, frequency and form of information provision by hydrogen network operators, shall be set in a network code established in accordance with Article XX of this Regulation.
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↓ new

## **PART III**

# **NETWORK CODES AND GUIDELINES AND FINAL PROVISIONS**

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↓ new

## **Chapter VII**

### **Network codes and guidelines**

#### *Article 48*

#### **Adoption of network codes and guidelines**

1. The Commission may, subject to the empowerments in **Articles 59, 60 and 61**, adopt implementing or delegated acts. Such acts may either be adopted as network codes on the basis of text proposals developed by the ENTSO for Gas and the European

Network of Hydrogen Network Operators, or, where so provided for in the priority list pursuant to Article 59(3), by the EU DSO entity, where relevant in cooperation with the ENTSO for Electricity, the European Network of Hydrogen Network Operators and ACER, pursuant to the procedure in Article 59, or as guidelines pursuant to the procedure in Article 61.

2. The network codes and guidelines shall:
  - (e) ensure that they provide the minimum degree of harmonisation required to achieve the aims of this Regulation;
  - (f) take into account regional specificities, where appropriate;
  - (g) not go beyond what is necessary for the purposes of point (a); and
  - (h) be without prejudice to the Member States' right to establish national network codes which do not affect cross-zonal trade.

↓ 715/2009

#### Article 49~~6~~

### Establishment of network codes

↓ new

1. The Commission is empowered to adopt implementing acts in order to ensure uniform conditions for the implementation of this Regulation by establishing network codes in the following areas:
  - (a) data exchange and settlement rules implementing Article X of Directive (EU) regarding interoperability and data exchange as well as harmonised rules for the operation of gas transmission systems, capacity booking platforms, and IT processes relevant for the functioning of the internal market
  - (b) interoperability rules implementing Article X of Directive (EU) including addressing interconnection agreements, rules on flow control and measurement, allocation and matching rules, units, gas quality, odourisation, Wobbe Index classification and mitigating measures, cost benefit analyses for removing cross-border flow restrictions due to gas quality differences or due to differences in the volume of hydrogen blended in the [natural] gas system (as referred to in Article XX of this Regulation) and reporting on gas quality; transparency, communication, information provision and cooperation among relevant market participants;
  - (c) capacity-allocation and congestion-management rules implementing Article x of Directive (EU) xxxx/xxx and Article 7 to 10 of this Regulation, including rules on cooperation of maintenance procedures and capacity calculation affecting capacity allocation, the standardization of capacity products and units including bundling, the allocation methodology including auction algorithms, sequence and procedure for existing, incremental, firm and interruptible capacity, capacity booking platforms, oversubscription and buy back schemes, short and long-term use-it-or-lose it schemes or and any other congestion-management scheme that prevents the hoarding of capacity



- (d) balancing rules including network-related rules on nominations procedure, rules for imbalance charges and rules for operational balancing between transmission system operators' systems implementing Article x of Directive (EU) xxxx/xxx and Article 7 to 10 of this Regulation including network-related rules on nomination procedures, imbalance charges, settlement processes associated with the daily imbalance charge and operational balancing between transmission system operators' networks.
  - (e) rules regarding harmonised transmission tariff structures rules implementing Article x of Directive (EU) xxxx/xxx and Article 13 to 14 of this Regulation rules on harmonised transmission tariff structures for gas, including rules on the application of a reference price methodology, the associated consultation and publication requirements as well as the calculation of reserve prices for standard capacity products, discounts for LNG and storages, allowed revenue, procedures for the implementation of providing a discount for renewable and low carbon gases, including common principles for Inter-TSO Compensation mechanisms;
  - (f) interoperability rules for the [natural] gas system, including addressing interconnection agreements, units, gas quality, odourisation, data exchange, Wobbe Index classification and mitigating measures, cost benefit analyses for removing cross-border flow restrictions due to gas quality differences or due to differences in the volume of hydrogen blended in the [natural] gas system (as referred to in Article XX of this Regulation) and reporting on gas quality; transparency, communication, information provision and cooperation among relevant market participants;
2. The Commission is empowered to adopt delegated acts in accordance with Article xx supplementing this Regulation with regard to the establishment of network codes in the following areas:
- (a) network security and reliability rules including rules for operational network security as well as reliability rules ensuring the quality of service of the network
  - (b) network connection rules including rules on the connection of renewable and low carbon gas production facilities, procedures for connection requests;
  - (c) operational procedures in an emergency including system defence plans, restoration plans, market interactions, information exchange and communication and tools and facilities;
  - (d) rules for trading related to technical and operational provision of network access services and system balancing;
  - (e) energy efficiency regarding gas networks and components as well as energy efficiency with regard to network planning and investments enabling the most energy efficient solution from a system perspective;
  - (f) cyber security aspects of cross-border gas flows, including rules on common minimum requirements, planning, monitoring, reporting and crisis management.
3. The Commission shall, after consulting ACER, the ENTSO for Gas, the European Network of Hydrogen Network Operators, 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. 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 ENTSO for Gas, to convene a drafting committee and submit a proposal for a network code to ACER.

4. The Commission shall request ACER to submit to it within a reasonable period not exceeding six months of receipt of the Commission's request non-binding framework guidelines setting out clear and objective principles for the development of network codes relating to the areas identified in the priority list (framework guideline). The request of the Commission may include conditions which the framework guideline shall address. Each framework guideline shall contribute to market integration, non-discrimination, effective competition, and the efficient functioning of the market. Upon a reasoned request from ACER, the Commission may extend the period for submitting the guidelines.
5. ACER shall consult the ENTSO for Gas, the European Network of Hydrogen Network Operators, the EU DSO entity, and the other relevant stakeholders in regard to the framework guideline, during a period of no less than two months, in an open and transparent manner.
6. ACER shall submit a non-binding framework guideline to the Commission where requested to do so under paragraph 4.
7. If the Commission considers that the framework guideline does not contribute to market integration, non-discrimination, effective competition and the efficient functioning of the market, it may request ACER to review the framework guideline within a reasonable period and resubmit it to the Commission.
8. If ACER fails to submit or resubmit a framework guideline within the period set by the Commission under paragraph 4 or 7, the Commission shall develop the framework guideline in question.
9. The Commission shall request the ENTSO for Gas or, where provided for in the priority list referred to in paragraph 3, the EU DSO entity in cooperation with the ENTSO for Gas, to submit a proposal for a network code in accordance with the relevant framework guideline, to ACER within a reasonable period, not exceeding 12 months, of receipt of the Commission's request.
10. The ENTSO for Gas, or where provided for in the priority list referred to in paragraph 3 the EU DSO entity, in cooperation with the 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 ENTSO for Gas, the European Network of Hydrogen Network Operators, where appropriate the EU DSO entity, and a limited number of the main affected stakeholders. The ENTSO for Gas or where provided for in the priority list pursuant to paragraph 3 the EU DSO entity, in cooperation with the 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.
11. ACER shall revise the proposed network code to ensure that the network code to be adopted complies with the relevant framework guidelines and contributes to market integration, non-discrimination, effective competition, and the efficient functioning of the market and, 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 ENTSO for Gas or the EU DSO entity and shall consult the relevant stakeholders on the version to be submitted to the Commission.

12. Where the ENTSO for Gas or the EU DSO entity have 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.
13. The Commission may adopt, on its own initiative, where the ENTSO for Gas or the EU DSO entity have failed to develop a network code, or ACER has failed to develop a draft network code as referred to in paragraph 12, or upon the proposal of ACER under paragraph 11, one or more network codes in the areas listed in paragraphs 1 and 2.
14. Where the Commission proposes to adopt a network code on its own initiative, the Commission shall consult ACER, the ENTSO for Gas and all relevant stakeholders in regard to the draft network code during a period of no less than two months.
15. This Article shall be without prejudice to the Commission's right to adopt and amend the guidelines as laid down in [Article 61](#). It shall be without prejudice to the possibility for the ENTSO for Gas 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 ENTSO for Gas by the Commission. The ENTSO for Gas shall submit any such guidance to ACER for an opinion and shall duly take that opinion into account.

↓ 715/2009

- ~~1. The Commission shall, after consulting the Agency, the ENTSO for Gas and the other relevant stakeholders establish an annual priority list identifying the areas set out in Article 8(6) to be included in the development of network codes.~~
- ~~2. The Commission shall request the Agency to submit to it within a reasonable period of time not exceeding six months a non binding framework guideline (framework guideline) setting out clear and objective principles, in accordance with Article 8(7), for the development of network codes relating to the areas identified in the priority list. Each framework guideline shall contribute to non discrimination, effective competition and the efficient functioning of the market. Upon a reasoned request from the Agency, the Commission may extend that period.~~
- ~~3. The Agency shall formally consult the ENTSO for Gas and the other relevant stakeholders in regard to the framework guideline, during a period of no less than two months, in an open and transparent manner.~~
- ~~4. If the Commission considers that the framework guideline does not contribute to non discrimination, effective competition and the efficient functioning of the market, it may request the Agency to review the framework guideline within a reasonable period of time and re submit it to the Commission.~~
- ~~5. If the Agency fails to submit or re submit a framework guideline within the period set by the Commission under paragraphs 2 or 4, the Commission shall elaborate the framework guideline in question.~~
- ~~6. The Commission shall request the ENTSO for Gas to submit a network code which is in line with the relevant framework guideline, to the Agency within a reasonable period of time not exceeding 12 months.~~

- ~~7. Within a period of three months after the day of receipt of a network code, during which the Agency may formally consult the relevant stakeholders, the Agency shall provide a reasoned opinion to the ENTSO for Gas on the network code.~~
- ~~8. The ENTSO for Gas may amend the network code in the light of the opinion of the Agency and re-submit it to the Agency.~~
- ~~9. Once the Agency is satisfied that the network code is in line with the relevant framework guideline, the Agency shall submit the network code to the Commission and may recommend that it be adopted within a reasonable time period. The Commission shall provide reasons in the event that it does not adopt that network code.~~
- ~~10. Where the ENTSO for Gas has failed to develop a network code within the period of time set by the Commission under paragraph 6, the Commission may request the Agency to prepare a draft network code on the basis of the relevant framework guideline. The Agency may launch a further consultation in the course of preparing a draft network code under this paragraph. The Agency shall submit a draft network code prepared under this paragraph to the Commission and may recommend that it be adopted.~~
- ~~11. The Commission may adopt, on its own initiative where the ENTSO for Gas has failed to develop a network code, or the Agency has failed to develop a draft network code as referred to in paragraph 10 of this Article, or upon recommendation of the Agency under paragraph 9 of this Article, one or more network codes in the areas listed in Article 8(6).~~
- ~~Where the Commission proposes to adopt a network code on its own initiative, the Commission shall consult the Agency, the ENTSO for Gas and all relevant stakeholders in regard to the draft network code during a period of no less than two months. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).~~
- ~~12. This Article shall be without prejudice to the Commission's right to adopt and amend the Guidelines as laid down in Article 23.~~

↓ new

## Article 50

### Establishment of network codes for hydrogen

1. The Commission is empowered to adopt implementing acts in order to ensure uniform conditions for the implementation of this Regulation by establishing network codes in the following areas:
2. The Commission is empowered to adopt delegated acts in accordance with Article 68 supplementing this Regulation with regard to the establishment of network codes in the following areas:
  - (a) energy efficiency regarding hydrogen networks and components;
  - (b) interoperability rules for the hydrogen network, including addressing interconnection agreements, units, hydrogen quality, odourisation, data exchange, cost benefit analyses for removing cross-border flow restrictions due to hydrogen quality differences (as referred to in Article XX of this Regulation)

and reporting on hydrogen quality; transparency, communication, information provision and cooperation among relevant market participants;

- (c) rules for the system of financial compensation for cross-border hydrogen infrastructure implementing Article XX [Financing new cross-border hydrogen infrastructure] of this Regulation, including ...;
- (d) transparency rules implementing Article XX [Transparency requirements concerning hydrogen network operators] of this Regulation, including further details on the content, frequency and form of information provision by hydrogen network operators and implementing Articles XX [Format of the publication of technical information on network access, content of the publication of technical information on network access, information to be published at all relevant points and time schedule], including details on the format and content of the information necessary for network users for effective access to the network, information to be published at relevant points, details on time schedules;
- (e) capacity-allocation and congestion-management rules implementing Article x [TPA H2 networks] of Directive (EU) and Article xx [14a] of this Regulation, including rules on cooperation of maintenance procedures and capacity calculation affecting capacity allocation, the standardisation of capacity products and units including bundling, the allocation methodology including auction algorithms, sequence and procedure for existing, incremental, firm and interruptible capacity, capacity booking platforms, oversubscription and buy back schemes, short and long-term use-it-or-lose it schemes or and any other congestion-management scheme that prevents the hoarding of capacity;
- (f) rules regarding harmonised tariff structures for hydrogen network access implementing Article x of Directive (EU) and Article xx of this Regulation, including rules on the application of a reference price methodology, the associated consultation and publication requirements as well as the calculation of reserve prices for standard capacity products, allowed revenue, ...
- (g) balancing rules including network-related rules on nominations procedure, rules for imbalance charges and rules for operational balancing between hydrogen network operators' networks implementing Article x of Directive (EU) and Article xx of this Regulation including network-related rules on nomination procedures, imbalance charges, settlement processes associated with the daily imbalance charge and operational balancing between transmission system operators' networks.

3. The Commission shall, after consulting ACER, the European Network of Hydrogen Network Operators, 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.

4. The Commission shall request ACER to submit to it within a reasonable period not exceeding six months of receipt of the Commission's request non-binding framework guidelines setting out clear and objective principles for the development of network codes relating to the areas identified in the priority list (framework guideline). The request of the Commission may include conditions which the framework guideline shall address. Each framework guideline shall contribute to market integration, non-discrimination, effective competition, and the efficient functioning of the market.

Upon a reasoned request from ACER, the Commission may extend the period for submitting the guidelines.

5. ACER shall consult the European Network of Hydrogen Network Operators, the ENTSO for Gas and the other relevant stakeholders in regard to the framework guideline, during a period of no less than two months, in an open and transparent manner.
6. ACER shall submit a non-binding framework guideline to the Commission where requested to do so under paragraph 4.
7. If the Commission considers that the framework guideline does not contribute to market integration, non-discrimination, effective competition and the efficient functioning of the market, it may request ACER to review the framework guideline within a reasonable period and resubmit it to the Commission.
8. If ACER fails to submit or resubmit a framework guideline within the period set by the Commission under paragraph 4 or 7, the Commission shall develop the framework guideline in question.
9. The Commission shall request the European Network of Hydrogen Network Operators to submit a proposal for a network code in accordance with the relevant framework guideline to ACER within a reasonable period, not exceeding 12 months, of receipt of the Commission's request.
10. The European Network of Hydrogen Network Operators 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 European Network of Hydrogen Network Operators 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.
11. ACER shall revise the proposed network code to ensure that the network code to be adopted complies with the relevant framework guidelines and contributes to market integration, non-discrimination, effective competition, and the efficient functioning of the market and, 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 European Network of Hydrogen Network Operators and shall consult the relevant stakeholders on the version to be submitted to the Commission.
12. Where the European Network of Hydrogen Network Operators 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.
13. The Commission may adopt, on its own initiative, where the 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, or upon the proposal of ACER under paragraph 11, one or more network codes in the areas listed in paragraphs 1 and 2.

14. Where the Commission proposes to adopt a network code on its own initiative, the Commission shall consult ACER, the European Network of Hydrogen Network Operators, the ENTSOG for Gas and all relevant stakeholders in regard to the draft network code during a period of no less than two months.
15. This Article shall be without prejudice to the Commission's right to adopt and amend the guidelines as laid down in Article XX. It shall be without prejudice to the possibility for the European Network of Hydrogen Network Operators 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 European Network of Hydrogen Network Operators by the Commission. The European Network of Hydrogen Network Operators shall submit any such guidance to ACER for an opinion and shall duly take that opinion into account.

↓ 715/2009 (new)

### Article 51~~z~~

#### Amendments of network codes

- ~~1. Draft amendments to any network code adopted under Article 6 may be proposed to the Agency by persons who are likely to have an interest in that network code, including the ENTSO for Gas, transmission system operators, network users and consumers. The Agency may also propose amendments of its own initiative.~~
- ~~2. The Agency shall consult all stakeholders in accordance with Article 10 of Regulation (EC) No 713/2009. Following this process, the Agency may make reasoned proposals for amendments to the Commission, explaining how such proposals are consistent with the objectives of the network codes set out in Article 6(2) of this Regulation.~~
- ~~3. The Commission may adopt, taking account of the Agency's proposals, amendments to any network code adopted under Article 6. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).~~
- ~~4. Consideration of proposed amendments under the procedure set out in Article 28(2) shall be limited to consideration of the aspects related to the proposed amendment. Those proposed amendments are without prejudice to other amendments which the Commission may propose.~~

↓ new

1. The Commission is empowered to amend the network codes within the areas listed in Article 59(1) and (2) in accordance with the relevant procedure set out in that Article. ACER may also propose amendments to the networks codes in accordance with paragraphs 2 and 3 of this Article.
2. Persons who are likely to have an interest in any network code adopted under Article 59, including the ENTSO for Gas, the European Network of Hydrogen Network Operators, the EU DSO entity, regulatory authorities, transmission system operators, distribution system operators, system users and consumers, may propose draft



amendments to that network code to ACER. ACER may also propose amendments on its own initiative.

3. ACER may make reasoned proposals to the Commission for amendments, explaining how such proposals are consistent with the objectives of the network codes set out in Article 59(3) of this Regulation. Where it considers an amendment proposal to be admissible and where it proposes amendments on its own initiative, ACER shall consult all stakeholders in accordance with Article 14 of Regulation (EU) 2019/942.

↓ 715/2009

## Article 52~~23~~

### Guidelines

- ~~1. Where appropriate, Guidelines providing the minimum degree of harmonisation required to achieve the aims of this Regulation shall specify:~~

↓ new

1. The Commission is empowered to adopt binding guidelines in the areas listed in this Article.
2. The Commission is empowered to adopt guidelines in the areas where such acts could also be developed under the network code procedure pursuant to Article 59(1) and (2). Those guidelines shall be adopted in the form of delegated or implementing acts, depending on the relevant empowerment provided for in this Regulation.
3. The Commission is empowered to adopt delegated acts in accordance with Article 68 supplementing this Regulation by setting out guidelines relating to:

↓ 715/2009

⇒ new

- (a) details of third-party access services, including the character, duration and other requirements of those services, in accordance with Articles 14 and 15;
- (b) details of the principles underlying capacity-allocation mechanisms and on the application of congestion-management procedures in the event of contractual congestion, in accordance with Articles 16 and 17;
- (c) details of the provision of information, definition of the technical information necessary for network users to gain effective access to the system and the definition of all relevant points for transparency requirements, including the information to be published at all relevant points and the time schedule for the publication of that information, in accordance with Articles 18 and 19;
- (d) details of tariff methodology related to cross-border trade of natural gas, in accordance with Article 13 ⇒ to 14 of this Regulation ⇄;
- (e) details relating to the areas listed in Article 8(6) (reference to new article on network code).



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↓ new

Those guidelines shall specify, in accordance with the principles set out in Articles 18 and 49:

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 68 laid down in Annex I to this Regulation.
5. When adopting or amending guidelines, the Commission shall consult ACER, the ENTSO for Gas, the European Network of Hydrogen Network Operators, the EU DSO entity and, where relevant, other stakeholders.

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↓ 715/2009

~~For that purpose, the Commission shall consult the Agency and the ENTSO for Gas.~~

- ~~6. Guidelines on the issues listed in points (a), (b) and (c) of paragraph 1 are laid down in Annex I with respect to transmission system operators.~~

~~The Commission may adopt Guidelines on the issues listed in paragraph 1 of this Article and amend the Guidelines referred to in points (a), (b) and (c) thereof. Those measures, designed to amend non-essential elements of this Regulation, inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 28(2).~~

- ~~7. The application and amendment of Guidelines adopted pursuant to this Regulation shall reflect differences between national gas systems, and shall, therefore, not require uniform detailed terms and conditions of third party access at Community level. They may, however, set minimum requirements to be met to achieve non-discriminatory and transparent network access conditions necessary for an internal market in natural gas, which may then be applied in the light of differences between national gas systems.~~

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↓ 715/2009

⇒ new

#### **Article 25**

##### **Provision of information**

~~Member States and the regulatory authorities shall, on request, provide to the Commission all information necessary for the purposes of Article 23.~~

~~The Commission shall set a reasonable time limit within which the information is to be provided, taking into account the complexity of the information required and the urgency with which the information is needed.~~

#### **Article 53~~26~~**

##### **Right of Member States to provide for more detailed measures**

This Regulation shall be without prejudice to the rights of Member States to maintain or introduce measures that contain more detailed provisions than those set out ⇒ in

this Regulation, in the guidelines referred to in Article 61 or in the network codes referred to in Article 59, provided that those measures are compatible with Union law ~~↔ herein or in the Guidelines referred to in Article 23.~~

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↓ new

#### Article 54

##### **Provision of information and confidentiality**

1. Member States and the regulatory authorities shall, on request, provide the Commission with all the information necessary for the purposes of enforcing this Regulation including the guidelines, and the network codes adopted under this Regulation.

The Commission shall set a reasonable time limit within which the information is to be provided, taking into account the complexity and urgency of the information required.

2. If the Member State or the regulatory authority concerned does not provide the information referred to in paragraph 1 within the time limit referred to in paragraph 1 the Commission may request all the information necessary for the purpose of enforcing this Regulation directly from the undertakings concerned.

When sending a request for information to an undertaking, the Commission shall, at the same time, forward a copy of the request to the regulatory authorities of the Member State in whose territory the seat of the undertaking is situated.

3. In its request for information under paragraph 1, 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 x(2) [Penalties]** for supplying incorrect, incomplete or misleading information.

4. The owners of the undertakings or their representatives and, in the case of legal persons, the natural persons authorised to represent the undertaking by law or by their instrument of incorporation, shall supply the information requested. Where lawyers are authorised to supply the information on behalf of their client, the client shall remain fully responsible in the event that the information supplied is incomplete, incorrect or misleading.

5. Where an undertaking does not provide the information requested within the time limit set by the Commission or supplies incomplete information, the Commission may by decision require the information to be provided. That decision shall specify what information is required and set an appropriate time limit within which it is to be supplied. It shall indicate the penalties provided for in **Article x(2) [Penalties]**. It shall also indicate the right to have the decision reviewed by the Court of Justice of the European Union.

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.

6. The information referred to in paragraphs 1 and 2 shall be used only for the purposes of enforcing this Regulation.

The Commission shall not disclose information acquired pursuant to this Regulation where that information is covered by the obligation of professional secrecy.

↓ 715/2009

## Article 55~~27~~

### Penalties

↓ new

1. Without prejudice to paragraph 2 of this Article, the Member States shall lay down the rules on penalties applicable to infringements of this Regulation, the network codes adopted pursuant to **Article xx**, and the guidelines adopted pursuant to **Annexes xx to xx** of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it without delay of any subsequent amendment affecting them.
2. The Commission may, by decision, impose on undertakings fines not exceeding 1 % of the total turnover in the preceding business year where, intentionally or negligently, those undertakings supply incorrect, incomplete or misleading information in response to a request made pursuant to **Article 27(3) [Provision of information and confidentiality]** or fail to supply information within the time-limit set in a decision adopted pursuant to the first subparagraph of Article 27(5) [Provision of information and confidentiality]. In setting the amount of a fine, the Commission shall have regard to the gravity of the failure to comply with the requirements referred to in paragraph 1 of this Article.
3. The penalties provided for pursuant to paragraph 1 and any decisions taken pursuant to paragraph 2 shall not be of a criminal law nature.

↓ 715/2009

1. ~~The Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that those provisions are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify the Commission by 1 July 2006 of those rules corresponding to the provisions laid down in Regulation (EC) No 1775/2005 and shall notify the Commission without delay of any subsequent amendment affecting them.~~ →<sub>1</sub> They shall notify the Commission of those rules not corresponding to the provisions laid down in Regulation (EC) No 1775/2005 by 3 March 2011 and shall notify the Commission without delay of any subsequent amendment affecting them. ←
2. Penalties provided for pursuant to paragraph 1 shall not be of a criminal law nature.

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↓ new

## Chapter VIII

### Final provisions

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↓ 2009/73/EC Article 36  
⇒ new

#### Article 56~~36~~

##### New ⇒ natural gas and hydrogen ⇐ infrastructure

1. Major new ~~gas~~ ⇒ natural gas and hydrogen ⇐ infrastructure, i.e. 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 of ⇐ Articles 9, 32, 33 and 34 and Article 41(6), (8) and (10) ⇒ of Directive [reference to new Gas Directive] ⇐ . ⇒ . Major new hydrogen infrastructure, i.e. interconnectors, liquid hydrogen terminals and underground hydrogen storage may, upon request, be exempted, for a defined period of time, from the provisions of Articles [unbundling], [TPA networks], [access to terminals], [access to storage] and [tariff regulation]. The following conditions apply ⇐ ~~under the following conditions~~:
- (a) the investment must enhance competition ~~in gas supply~~ and enhance security of supply ⇒ in a spirit of solidarity ⇐ ;
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↓ new

- (b) the investment must contribute to decarbonisation;
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↓ 2009/73/EC

- (c) ~~(b)~~ the level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted;
- (d) ~~(e)~~ the infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built;
- (e) ~~(d)~~ charges must be levied on users of that infrastructure; and
- 

↓ 2919/692 Art. 1.5(a)  
⇒ new

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

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↓ 2009/73/EC  
⇒ new

2. Paragraph 1 shall also apply to significant increases of capacity in existing infrastructure and to modifications of such infrastructure which enable the development of new sources of ⇒ renewable and low carbon gases supply ⇐.
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↓ 2019/692 Art. 1.5(b) (adapted)

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

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

- (a) the national regulatory authorities of the Member States the markets of which are likely to be affected by the new infrastructure; and
- (b) the relevant authorities of the third countries, where the infrastructure in question is connected with the Union network under the jurisdiction of a Member State, and originates from or ends in one or more third countries.

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

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↓ 2009/73/EC (adapted)

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

↓ 2019/692 Art. 1.5(c)

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

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↓ 2009/73/EC

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

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

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

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

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↓ 2009/73/EC

⇒ new

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

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↓ 2009/73/EC

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

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

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

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↓ new

7. When analysing whether a major new infrastructure is expected to enhance the security of supply pursuant to paragraph 1(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, both at regional and national level.

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↓ 2009/73/EC

8. ~~7.~~ Notwithstanding paragraph 3, Member States may provide that their regulatory authority or  ACER  ~~the Agency~~, as the case may be, shall submit, for the purposes of the formal decision, to the relevant body in the Member State its opinion on the request for an exemption. That opinion shall be published together with the decision.
9. ~~8.~~ The regulatory authority shall transmit to the Commission, without delay, a copy of every request for exemption as of its receipt. The decision shall be notified, without delay, by the competent authority to the Commission, together with all the relevant information with respect to the decision. That information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well-founded decision. In particular, the information shall contain:
- (a) the detailed reasons on the basis of which the regulatory authority, or Member State, granted or refused the exemption together with a reference to paragraph 1 including the relevant point or points of that paragraph on which such decision is based, including the financial information justifying the need for the exemption;
  - (b) the analysis undertaken of the effect on competition and the effective functioning of the internal market ~~in natural gas~~ resulting from the grant of the exemption;
  - (c) the reasons for the time period and the share of the total capacity of the ~~gas~~ infrastructure in question for which the exemption is granted;
  - (d) in case the exemption relates to an interconnector, the result of the consultation with the regulatory authorities concerned; and
  - (e) the contribution of the infrastructure to the diversification of ~~gas~~ supply.

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↓ new

10. Within 50 working days of the day following that of receipt of the notification under paragraph 7, the Commission may take a decision requesting the notifying bodies to amend or withdraw the decision to grant an exemption. 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.

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↓ 2009/73/EC

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

~~complete information. The initial two month period may also be extended with the consent of both the Commission and the regulatory authority.~~

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

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

The Commission shall preserve the confidentiality of commercially sensitive information.

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

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

↓ 715/2009  
⇒ new

#### Article ~~57~~<sup>28</sup>

#### Committee procedure

1. The Commission shall be assisted by the committee set up by Article 51 of Directive 2009/73/EC. ⇒ That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. ⇐

↓ new

2. Where reference is made to this paragraph, Article 4 of regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

↓ 715/2009

- ~~2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof~~



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↓ 1999/2018 Art. 50

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↓ new

#### Article 58

##### Derogations

This Regulation shall not apply to natural gas transmission systems situated in Member States for the duration of derogations granted under Article 49 and Article 49a of [new Gas Directive].

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↓ 715/2009

#### Article 30

##### Derogations and exemptions

~~This Regulation shall not apply to:~~

~~(a) natural gas transmission systems situated in Member States for the duration of derogations granted under Article 49 of Directive 2009/73/EC;~~

~~(b) major new infrastructure, i.e. interconnectors, LNG and storage facilities, and significant increases of capacity in existing infrastructure and modifications of such infrastructure which enable the development of new sources of gas supply referred to in Article 36(1) and (2) of Directive 2009/73/EC which are exempt from the provisions of Articles 9, 14, 32, 33, 34 or Article 41(6), (8) and (10) of that Directive as long as they are exempt from the provisions referred to in this subparagraph, with the exception of Article 19(4) of this Regulation; or~~

~~(c) natural gas transmission systems which have been granted derogations under Article 48 of Directive 2009/73/EC.~~

~~As regards point (a) of the first subparagraph, Member States that have been granted derogations under Article 49 of Directive 2009/73/EC may apply to the Commission for a temporary derogation from the application of this Regulation, for a period of up to two years from the date on which the derogation referred to in that point expires.~~

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↓ new

#### Article 59

##### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article xx, Article xx, and Article xx shall be conferred on the Commission for an indeterminate period of time from [entry into force].
3. The delegation of power referred to in Article xx, Article xx, and Article xx may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated act already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article xx, Article xx, and Article xx shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### *Article 60*

#### **Amendments to Regulation (EU) 2019/942**

Regulation (EU) 2019/942 is amended as follows:

- (1) Article 2, point (a) is replaced by the following:

‘(a) issue opinions and recommendations addressed to transmission system operators, the ENTSO for Electricity, the ENTSO for Gas, **the European Network of Network Operators for Hydrogen**, the EU DSO Entity, regional coordination centres, nominated electricity market operators, and entities established by transmission system operators for gas, LNG system operators, gas or hydrogen storage system operators or operators of networks for hydrogen;’

- (2) Article 3(2), 1<sup>st</sup> subparagraph is replaced by the following:

‘At ACER's request, the regulatory authorities, the ENTSO for Electricity, the ENTSO for Gas, **the European Network of Network Operators for Hydrogen**, the regional coordination centres, the EU DSO entity, the transmission system 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 operators of networks for hydrogen shall provide to ACER the information necessary for the purpose of carrying out ACER's tasks under this Regulation, unless ACER has already requested and received such information’

- (3) Articles 4(1), 4(2), 4(3)(a) and (b) are replaced by the following:

‘1. ACER shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure of the ENTSO for Electricity in accordance with Article 29(2) of Regulation (EU) 2019/943 and on those of the ENTSO for Gas in

accordance with **Article 22(2) of [Gas Regulation]** and on those of the **European Network of Network Operators for Hydrogen in accordance with Article 40(5) of Regulation [Gas Regulation]** and on those of the EU DSO entity in accordance with Article 53(3) of Regulation (EU) 2019/943 and **Article 37(4) of [Gas Regulation].**'

'2. ACER shall monitor the execution of the tasks of the ENTSO for Electricity in accordance with Article 32 of Regulation (EU) 2019/943, of the ENTSO for Gas in accordance with **Article 24 of [Gas Regulation]** and of the **European Network of Network Operators for Hydrogen in accordance with Article 41 of Regulation [Gas Regulation]** and of the EU DSO entity as set out in Article 55 of Regulation (EU) 2019/943 and Article 38 of [Gas Regulation].'

'3. ACER may provide an opinion:

(a) to the ENTSO for Electricity in accordance with point (a) of Article 30(1) of Regulation (EU) 2019/943 and to the ENTSO for Gas in accordance with **Article 8(2) of Regulation (EC) No 715/2009** and to the European Network of Network Operators for Hydrogen in accordance with Article XX of Regulation [Gas Regulation] on the network codes;'

'(b) to the ENTSO for Electricity in accordance with the first subparagraph of Article 32(2) of Regulation (EU) 2019/943, and to the ENTSO for Gas in accordance with the **first subparagraph of Article 9(2) of Regulation (EC) No 715/2009** and to the **European Network of Network Operators for Hydrogen in accordance with Article XX of Regulation [Gas Regulation]** on the draft annual work programme, on the draft Union-wide network development plan and other relevant documents referred to in Article 30(1) of Regulation (EU) 2019/943 and **Article 8(3) of Regulation (EC) No 715/2009** and in **Article XX of Regulation [Gas Regulation]**, taking into account the objectives of non-discrimination, effective competition and the efficient and secure functioning of the internal markets for electricity and natural gas;'

(4) Articles 4(6), 4(7) and 4(8) are replaced by the following:

'6. The relevant regulatory authorities shall coordinate in order to jointly identify whether there is non-compliance of ~~the EU DSO entity~~, **the ENTSO for Electricity, the ENTSO for Gas, the European Network of Network Operators for Hydrogen, the EU DSO entity** or regional coordination centres with their obligations under Union law, and shall take appropriate action in accordance with Article 59(1) point (c) and Article 62(1) point (f) of Directive (EU) 2019/944 **or with [Article 41(1) point (c) new) of Gas Directive].**

At the request of one or more regulatory authorities or at its own initiative, ACER shall issue a reasoned opinion as well as a recommendation to the ENTSO for Electricity, **the ENTSO for Gas, the European Network of Network Operators for Hydrogen,** the EU DSO entity or the regional coordination centres with regard to compliance with their obligations.';

'7. Where a reasoned opinion of ACER identifies a case of potential non-compliance of the ENTSO for Electricity, **the ENTSO for Gas, the European Network of Network Operators for Hydrogen,** the EU DSO entity or a regional coordination centre with their respective obligations, the regulatory authorities concerned shall unanimously take coordinated decisions establishing whether there is non-compliance with the relevant obligations and, where applicable, determining the measures to be taken by the ENTSO for Electricity, **the ENTSO for Gas, European Network of Network Operators for Hydrogen,** the EU DSO entity or the regional coordination

centre to remedy that non-compliance. Where the regulatory authorities fail to take such coordinated decisions unanimously within four months of the date of receipt of ACER's reasoned opinion, the matter shall be referred to ACER for a decision pursuant to Article 6(10).'

'8. Where the non-compliance by the ENTSO for Electricity, **the ENTSO for Gas, the European Network of Network Operators for Hydrogen**, the EU DSO entity or a regional coordination centre that was identified pursuant to paragraph 6 or 7 of this Article has not been remedied within three months, or where the regulatory authority in the Member State in which the entity has its seat has not taken action to ensure compliance, ACER shall issue a recommendation to the regulatory authority to take action in accordance with Article 59(1) point (c) and Article 62(1) point (f) of Directive (EU) 2019/944 **or with [Article 41(1) point (c new) of Gas Directive]**, in order to ensure that the ENTSO for Electricity, **the ENTSO for Gas, the European Network of Network Operators for Hydrogen**, the EU DSO entity or the regional coordination centre comply with their obligations, and shall inform the Commission.';

(5) In Article 6 the following paragraphs (9a), (9b), (9c) and (9d) are inserted:

(9a) ACER shall issue recommendations to regulatory authorities and network operators related to regulated asset bases pursuant to **Article 3(4)** of [Gas Regulation].

(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 [Gas Regulation].

(9c) ACER may issue recommendations to regulatory authorities on the allocation of costs of solutions for restrictions to cross-border flows due to hydrogen quality differences pursuant to **Article xx(8) [Cross-border cooperation on hydrogen quality]** of [Gas Regulation].

(9d) ACER shall publish monitoring reports on congestion at interconnection points pursuant to **Annex I, section 2.2.1, point 2** of [Gas Regulation]

(6) Article 6(30), first subparagraph is replaced by the following:

'3. By 5 July 2022, and every four years thereafter the Commission shall submit a report to the European Parliament and the Council on the independence of regulatory authorities pursuant to Article 57(7) of Directive (EU) 2019/944 and **Article XX of [Gas Directive]**.'

(7) Article 6(10), first subparagraph, points (b) and (c) are replaced by the following:

'(b) network codes and guidelines **referred to in Articles 59 to 61 of Regulation (EU) 2019/943** adopted before 4 July 2019 and subsequent revisions of those network codes and guidelines; ~~or~~<sup>2</sup>

'(c) network codes and guidelines **referred to in Articles 59 to 61 of Regulation (EU) 2019/943** adopted as implementing acts pursuant to Article 5 of Regulation (EU) No 182/2011; ~~or~~'

(8) In Article 6(10), first subparagraph, the following points are added:

(d) guidelines pursuant to Annex I to [Gas Regulation]; or

(e) network codes referred to in Article **xx** of [Gas Regulation].

(9) In Article 6(10), second subparagraph, point (a) is replaced by the following:

(a) where the competent regulatory authorities have not been able to reach an agreement within six months of referral of the case to the last of those regulatory authorities, or within four months in cases under Article 4(7) of this Regulation or under point (c) of Article (59)(1) or point (f) of Article 62(1) of Directive (EU) 2019/944, **or point (c new) of Article 41(1) of [Gas Directive]**; or

(10) Article 6(10), third subparagraph is replaced by the following:

‘The competent regulatory authorities may jointly request that the period referred to in point (a) of the second subparagraph of this paragraph be extended by a period of up to six months, except in cases under Article 4(7) of this Regulation or under point (c) of Article 59(1) or point (f) of Article 62(1) of Directive (EU) 2019/944 **or point (c new) of Article 41(1) of [Gas Directive]**.’;

(11) Article 6(10), fourth subparagraph, is replaced by the following:

‘Where the competences to decide on cross-border issues referred to in the first subparagraph have been conferred on the regulatory authorities in new network codes or guidelines **referred to in Articles 59 to 61 of Regulation (EU) 2019/943**, adopted as delegated acts after 4 July 2019, ACER shall only be competent on a voluntary basis pursuant to point (b) of the second subparagraph of this paragraph, upon a request from at least 60 % of the competent regulatory authorities. Where only two regulatory authorities are involved, either one may refer the case to ACER.’;

(12) Article 6(12), point (a) is replaced by the following:

(a) shall issue a decision within six months of the date of referral, or within four months thereof in cases pursuant to Article 4(7) of this Regulation or point (c) of Article (59)(1) or point (f) of Article 62(1) of Directive (EU) 2019/944 **or point (c new) of Article 41(1) of [Gas Directive]**; and

(13) Article 14(1) is replaced by the following:

‘In carrying out its tasks, in particular in the process of developing framework guidelines in accordance with Article 59 of Regulation (EU) 2019/943 or Article 6 of Regulation (EC) No 715/2009, and in the process of proposing amendments of network codes under Article 60 of Regulation (EU) 2019/943 or Article 7 of Regulation (EC) No 715/2009 ACER shall, extensively consult at an early stage market participants, transmission system operators, **hydrogen network operators**, consumers, end-users and, where relevant, competition authorities, without prejudice to their respective competence, in an open and transparent manner, in particular when its tasks concern transmission system operators **and hydrogen network operators**.’

(14) In Article 15 the following paragraphs (6) and (7) are added:

‘(6) ACER shall issue studies comparing the efficiency of EU transmission system operators’ costs pursuant to **Article xx(2), [Revenues of gas transmission system operators]** of **[Gas Regulation]**.’

‘(7) ACER shall submit opinions providing a harmonised format for the publication of technical information on access to hydrogen networks pursuant to **Article xx(1), point (e) [Format of the publication of technical information on network access]** of **[Gas Regulation]**.’

(15) Article 15(1) is replaced by the following:

‘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 retail prices of electricity and natural gas, compliance with the consumer rights laid down in Directive (EU) 2019/944 and ~~Directive 2009/73/EC~~ **[Gas Directive]**, 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**, regulatory barriers for new market entrants and smaller actors, including citizen 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.’

(16) In Article 15(2) the following subparagraph 2 is added:

‘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 hydrogen markets, in particular the impact of market developments on hydrogen customers, access to the hydrogen network, including access to the network of hydrogen produced from renewable energy sources, the progress made with regard to interconnectors, potential barriers to cross-border trade.’

(17) Article 15(2) is replaced by the following:

‘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 to the completion of the internal markets for electricity, ~~and natural gases~~ **injected into the [natural] gas system and hydrogen.**’

#### *Article 61*

#### **Amendment to Regulation (EU) No 1227/2011**

In Article 2, Article 3(3) and (4), Article 4(1), Article 8(5) of Regulation No 1227/2011 of 25 October 2011, the term " electricity or natural gas " is replaced by the term **“electricity, hydrogen or gases injected into the [natural] gas system”**. In Article 6(2) of this Regulation, the term “electricity and gas markets” is replaced by the term **“electricity, hydrogen and gas markets”**

#### *Article 62*

#### **Amendments to Regulation (EU) 2017/1938**

Regulation (EU) 2017/1938 is amended as follows:

(1) In Article 1, ‘renewable and low-carbon gases’ is added after ‘natural gas’.

(2) The word ‘natural’ is deleted before ‘gas’ in Article 1, Article 3 (1), Article 6(1), Article 6(3), Article 6(4), Article 7(6), Article 9(1) section ‘d’, Article 10(1) section ‘b’, ‘d’ ‘k’ and ‘o’, Article 11(3), Article 11(8), Article 12(6), Article 14(1), Article

14(4), Article 14(6), Article 14(10), Annex VI(6), Annex VII(2.2), Annex VII(2.3), Annex VII(5), Annex VII(8.1.2) and Annex VII(8.1.3).

- (3) In Article 2, a definition of natural gas is added, with reference to the 2022 Directive, while references to the old gas directive and regulation will be adapted.

**‘(0) “[natural] gas” – means [natural] gas as defined in point (1) of Article 2 of Directive 2022/xx/EU;’**

- (4) In Article 7(1) and Article 8(3) the word ‘storage’ is added.

‘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.**’

‘The regional chapters shall contain appropriate and effective cross-border measures, including in relation to **storages and LNG**, subject to agreement between the Member States implementing the measures from the same or different risk groups affected by the measure on the basis of the simulation referred to in Article 7(1) and the common risk assessment.’

- (5) In Article 7(4), sections ‘e’ is replaced by the following:

‘(e) Taking into account risks relating to the control of infrastructure relevant to the security of gas supply to the extent that they may involve, inter alia, risks of underinvestment, undermining diversification, misuse of existing infrastructure, **including hoarding of storage capacities**, or an infringement of Union law;’

- (6) A new Article 7a “preventive and emergency measures” is inserted as follows:

‘1. Member States shall take appropriate preventive and emergency 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.’

- (7) Articles 8(1) and 9(3) to 9(10) shall be moved to become Article 7a(2) to 7a(12).

- (8) Articles 7b and 7c are added:

#### ‘Article 7b

#### **Efficient use of infrastructures and gas storage**

1. Member States shall enable using the existing infrastructures at national and regional level, for the benefit of the security of supply in an efficient way. They shall in particular facilitate the cross border access to storage and LNG.

2. The periodic common risk assessment shall analyse the functioning of the storage capacities and their contribution to security of supply of the Union. This analysis shall compare the role of gas storages with alternative measures such as investments in energy efficiency and renewables.

3. Where the results of this analysis in the periodic common risk assessment indicate that there is a risk at regional level that cannot otherwise be addressed, the Member State should consider one of the following measures:

- a. strategic reserve obliging gas shippers to store a minimum volume of gas in underground storage,



- b. tendering or equivalent mechanisms which incentivise bookings of storage capacities under which the potential shortfalls in costs are covered,
- c. strategic stocks purchased and managed by the transmission system operator
- d. the integration of storages in the network of the transmission system operator in case it would otherwise stop operations

Such measures should only be implemented after consultation in the relevant risk group. This consultation should in particular aim at agreeing the targeted level of stocks in the region to ensure that the identified security of supply risk is covered and in line with the common analysis of risks.

4. The measures (of paragraph 3) shall be necessary, proportionate, non-discriminatory, transparent and open to [EU undertakings]. The measures must also be in line with applicable internal market and competition aid rules. The measures may not be associated to measures blocking the cross-border capacities outside emergency and crisis times in line with the provisions of Commission Regulation (EU) 2017/459 of 16 March 2017 establishing a network code on capacity allocation mechanisms in gas transmission systems and repealing Regulation (EU) No 984/2013.

5. Member States in the relevant risk group shall seek to agree on joint financing schemes of the chosen measure. The allocation of cost across Member States shall be fair and based on the analysis of paragraph 2. If the measure is financed through a levy, this levy shall not be allocated to cross-border interconnection points.

6. Member States in the relevant risk group shall agree on common procedures to withdraw gas stored subject to the measure only in case of declaration of emergency [link to relevant Article in SoS Regulation].

7. The measures (of paragraph 3) shall be adapted to the risk assessment applicable in the given period.

#### Article 7c

### **Joint procurement for reserve stocks**

[...]

(9) Article 8a is added:

#### Article 8a

### **Measures on cybersecurity**

1. When establishing the preventive action plans and the emergency plans, the Member States shall consider the appropriate measures related to cybersecurity.

2. The Commission may adopt a delegated act establishing gas sector-specific rules for the cyber security aspects of cross-border gas flows, including rules on common minimum requirements, planning, monitoring, reporting and crisis management. The gas sector-specific rules on cybersecurity shall be established after consulting ACER, ENISA and the main affected stakeholders in line with the Directive on measures for high common level of cybersecurity.

3. The rules of the previous paragraph shall, where appropriate, be developed and implemented by using entities with existing competences in cybersecurity, within their own mandate, such as cybersecurity national competent authorities (CS-NCA), cyber



security operation centres (SOC) and computer security incident response teams (CSIRT), and operation of the gas system and facilitate the close cooperation among them”.’

(10) Article 9, section ‘e’ is replaced by the following:

‘other preventive measures designed to address the risks identified in the risk assessment, **as referred to in Article 7a(1)**, such as those relating to the need to enhance interconnections between neighbouring Member States, to further improve energy efficiency, **to prevent capacity hoarding**, to reduce gas demand and the possibility to diversify gas routes and sources of gas supply and the regional utilisation of existing storage and LNG capacities, if appropriate, in order to maintain gas supply to all customers as far as possible;

(11) Article 9, sections ‘k’ is replaced by the following:

(k) information on all public service obligations that relate to the security of gas supply, **including storage capacity obligations and strategic stocks;**

(i) **Information on measures related to cybersecurity, as referred to in Article 8a.’**

(12) Article 9(3) until Article 9(10) will be moved to Article 7(a) on ‘measures’.

(13) Article 13(3) will be replaced by the following:

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

(a) **declared 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.’

(14) Article 13(4) is replaced by the following:

‘4. **The Member States that receives 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.’

(15) Article 13(5) is replaced by the following:

‘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. **Should the available market based offers not be 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.**'

(16) The following paragraph will be added at the end of Article 13(10):

'Where a solidarity measure has been provided in accordance to paragraphs 1 and 2, the actual method used for calculating 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 weeks of the lifting of the emergency. The authority which exercises this ex-post control shall be empowered to require a rectification of the amount of the compensation. The conclusions of this ex-post control shall be transmitted to the European Commission and to the requesting Member State, which will take them into consideration in its report on the emergency pursuant to Article 14(3).'

(17) Article 13(14) is replaced by the following paragraph:

'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, **should a solidarity measure be 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**'

(18) The first paragraph of Article 14(3) will be replaced by the following:

'After an emergency, the competent authority referred to in paragraph 1 shall, as soon as possible and at the latest six weeks after the lifting of the emergency, provide the Commission with a detailed assessment of the emergency and the effectiveness of the measures implemented, including an assessment of the economic impact of the emergency, the impact on the electricity sector and the assistance provided to or received from, the Union and its Member States. **Where relevant, the assessment shall include a detailed description of the circumstances that led to activating the mechanism in Article 13 and the conditions under which the missing gas supplies were received, including the price and financial compensation paid, and – where relevant – the reasons why the solidarity offers were not accepted and /or gas was not supplied.** Such assessment shall be made available to the GCG and shall be reflected in the updates of the preventive action plans and the emergency plans.'

(19) The first sentences of Article 19(2), Article 19(3) and of Article 19(6) will be replaced by the following:

'2. The power to adopt delegated acts referred to in Article 3(8), Article 7(5), Article 8(5) **and Article 8a(2) (cybersecurity)** shall be conferred on the Commission for a period of five years from 1 November 2017.'

'3. The delegation of power referred to in Article 3(8), Article 7(5), Article 8(5) **and Article 8a(2) (cybersecurity)** may be revoked at any time by the European Parliament or by the Council.'

'6. A delegated act adopted pursuant to Article 3(8), Article 7(5), Article 8(5) **and Article 8a(2) (cybersecurity)** 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.’

(20) In Annex VI, section 5a and section 11.3a the following will be added underneath ‘measures to diversify gas routes and sources of supply,’

‘Measures to prevent capacity hoarding,’

(21) A new Annex IX will be added after Annex VIII:

**‘ANNEX X – Default technical, legal and financial arrangements pursuant to**

**Article 13(14)**

This Annex contains the procedure – in the form of mandatory templates – for implementing a solidarity measure under Article 13, to be followed in the event that the Member State requesting solidarity (“Requesting Member State”) and the Member State obliged to provide the solidarity measure under Article 13(1) and (2) (“Providing Member State”) have failed to agree or finalise the technical, legal and financial arrangements under Article 13(10).

Where there are several Providing Member States and bilateral solidarity arrangements are in place with one or several of them, those arrangements should prevail between the Member States having agreed bilaterally. The default arrangements will be applicable only with the remaining Providing Member State.

Communication between the Requesting and Providing Member States shall primarily be made by e-mail; if not possible, by telephone or any other available means, to be specified in the solidarity request and in confirmed in the acknowledgment of receipt of the request.

The following templates, as filled-in, shall be sent by e-mail to the relevant counterparts in other Member States (main addressee, for action), as well as to the Commission’s contact point for gas crisis management (in copy, for information).

**1. Solidarity request (to be filled in in English)**

**Instructions:**

To be sent at the latest 20 hours before start of the delivery day (*save force majeure*).

Where there are several Providing Member States, the solidarity request shall be sent simultaneously to all of them, preferably using the same e-mail.

The solidarity measures must be requested for the following gas day, as defined in Article 3(7) of Regulation (EU) No 984/201. If needed, the request will be repeated for additional gas days.

Date: \_\_\_\_\_

Time: \_\_\_\_\_

1. On behalf of (*Requesting Member State*), I request from (*Providing Member State*) the implementation of solidarity measures under Article 13(1) and Article 13(2) (*delete the latter if not relevant*). I confirm that the requirements of Article 13(3) are complied with.

2. Short description of measures implemented by (*Requesting Member State*) (as foreseen in Article 13(2)(c)):

3. (Requesting Member State) undertakes to pay fair and prompt compensation for the solidarity measures to (Providing Member State) in accordance with Article 13(8). The compensation will be paid in EUR within 30 days of receipt of the invoice.

4. Competent authority of requesting Member State:

Contact person: \_\_\_\_\_

E-mail : \_\_\_\_\_

Phone: +\_\_\_\_\_ back-up phone: \_\_\_\_\_

Alternative instant messaging: +\_\_\_\_\_

5. Competent authority of providing Member State (please confirm it in your acknowledgement of receipt):

Contact person: \_\_\_\_\_

E-mail : \_\_\_\_\_

Phone: +\_\_\_\_\_ back-up phone: \_\_\_\_\_

Alternative instant messaging: +\_\_\_\_\_

3. Responsible TSO in requesting Member State:

Contact person: \_\_\_\_\_

Phone +\_\_\_\_\_

4. Responsible market area manager in requesting Member State (where relevant):

Contact person: \_\_\_\_\_

Phone +\_\_\_\_\_

6. In case of voluntary (market-based) solidarity measures, gas delivery contracts with market participants in the providing Member State shall be concluded

by the requesting Member State or

by an agent acting on behalf of the requesting Member State (under State guarantee).

Name: \_\_\_\_\_.

Contact person: \_\_\_\_\_.

Phone: + \_\_\_\_\_.

7. Technical details of the request

a) Volume of gas needed (total):

\_\_\_\_\_ kWh,

of which

high caloric gas: \_\_\_\_\_ kWh;

low caloric gas: \_\_\_\_\_ kWh.

b) Delivery points (interconnectors):

\_\_\_\_\_;

\_\_\_\_\_;

\_\_\_\_\_;

\_\_\_\_\_.

There are limitations with regard to the delivery points:

No

Yes

If yes, please indicate the exact delivery points and volumes of gas needed:

Delivery point:	Volume of gas:
-----------------	----------------

\_\_\_\_\_ kWh

\_\_\_\_\_ kWh

\_\_\_\_\_ kWh

\_\_\_\_\_ kWh

Signature: \_\_\_\_\_

**2. Acknowledgement of receipt / request for additional information***(to be filled in in English)*

Instructions:

To be sent within 30' of receipt of the request.

To the attention of *(Competent Authority of the Requesting Member State)*:

On behalf of *(Providing Member State)* I acknowledge receipt of your request for solidarity measures under Article 13(1) and Article 13(2) *(delete the latter if not relevant)*.

I confirm / rectify the contact details to be used for the next steps:

Contact person: \_\_\_\_\_

E-mail : \_\_\_\_\_

Phone: + \_\_\_\_\_ back-up phone: \_\_\_\_\_

Alternative instant messaging: + \_\_\_\_\_

*(If request is incomplete/contains errors or omissions)* After verification, it seems that your request is incomplete / contains the following errors / missing information:

.....  
.....

Please send us an amended request, with the missing / correct data within 30', if possible.

Done on (date) ..... at (time) .....

Signature: .....

### 3. Solidarity offer (to be filled in in English)

#### Instructions:

(1) To be sent at the latest 11 hours before start of the delivery day (*save force majeure*).

(2) The solidarity offer shall include primarily gas offers based on voluntary measures (“Primary offers”). In addition, should the primary offers not be enough to cover the volumes stated in the solidarity request, the solidarity offer shall include additional gas offers (“Secondary offers”), based on mandatory measures. Should the primary offers from other Providing Member States (if relevant) not sufficient to cover the request for solidarity, (*the competent authority of the providing Member State*) shall be ready to activate non-market based measures and supply the missing volumes.

(3) The compensation pursuant to Article 13(8) for solidarity gas based on voluntary measures shall include the gas price (as resulting from contract clauses, tenders or other market based mechanism applied) and the transmission costs to the delivery point. This compensation shall be paid directly by the Requesting Member State to the gas supplier(s) of the Providing party.

(4) The compensation (to be paid to the Providing Member State) pursuant to Article 13(8) for the provision of solidarity gas based on mandatory measures shall include:

a. the gas price, which corresponds to the last available spot market price, for the relevant gas quality, on the exchange of the providing Member State at the date of the provision of the solidarity measure; if several exchanges in the territory of the providing Member State, it corresponds to the arithmetic mean of the last available spot market prices on all the exchanges; if the absence of an exchange in the territory of the providing Member State, it corresponds to the arithmetic mean of the last available spot market prices on all exchanges in the territory of the Union.

b. any compensation to be paid by the Providing Member State to affected third parties on the basis of the relevant laws and regulations as a result of the mandatory measure, including, if appropriate, any related non-judicial and judicial procedural costs, and

c. the transport costs to the delivery point.

(4) The providing Member State shall bear the transport risk for the transport to the delivery point.

(5) The requesting Member State shall ensure that the gas volumes provided at the agreed delivery points are taken off. The compensation for the solidarity measures will be due irrespective of the actual take-off of the gas volumes provided in line with the contract.

Date .....

Time.....

To the attention of (*Competent Authority of the Requesting Member State*).

1. Following your request for solidarity measures under Article 13(1) and Article 13(2) (*delete the latter if not relevant*), received on (*date*) at (*time*), (*the competent authority of the providing Member State*) transmits you the following offer(s):

2. Information on the gas providing party

a. Gas supplier / market participant signing the contract (*for voluntary measures / if relevant*)

Contact person: \_\_\_\_\_

Phone: + \_\_\_\_\_

b. Contracting competent authority

Contact person: \_\_\_\_\_

Phone: + \_\_\_\_\_

c. Responsible TSO:

\_\_\_\_\_

Contact person: \_\_\_\_\_

Phone: + \_\_\_\_\_

d. Responsible market area manager (where relevant):

\_\_\_\_\_

Contact person: \_\_\_\_\_

Phone + \_\_\_\_\_

3. Primary offers – based on voluntary measures (“market based”)

a. Volume of gas (total):

\_\_\_\_\_ kWh, of which

high caloric gas: \_\_\_\_\_ kWh,

low caloric gas: \_\_\_\_\_ kWh.

b. Period of supply:

\_\_\_\_\_

c. Maximum transport capacity:

\_\_\_\_\_ kWh/h, of which

firm capacity: \_\_\_\_\_ kWh/h;

interruptible capacity: \_\_\_\_\_ kWh/h.

d. Delivery points (interconnectors):

Delivery point	Firm transport capacity	Interruptible transport capacity
_____	_____ kWh/h	_____ kWh/h
_____	_____ kWh/h	_____ kWh/h
_____	_____ kWh/h	_____ kWh/h
_____	_____ kWh/h	_____ kWh/h
_____	_____ kWh/h	_____ kWh/h

e. Reference to capacity booking platform:

\_\_\_\_\_

f. Estimated compensation for the voluntary measure:

gas price: \_\_\_\_\_ EUR;

other costs: \_\_\_\_\_ EUR (pls specify)

g. Payment details:



Recipient: \_\_\_\_\_

Bank details: \_\_\_\_\_

**4. Secondary offers – based on mandatory measures (“non-market based”)**

a. Volume of gas (total):

\_\_\_\_\_ kWh, of which

high caloric gas: \_\_\_\_\_ kWh,

low caloric gas: \_\_\_\_\_ kWh.

b. Period of supply:

\_\_\_\_\_

c. Maximum transport capacity:

\_\_\_\_\_ kWh/h, of which

firm capacity: \_\_\_\_\_ kWh/h;

interruptible capacity: \_\_\_\_\_ kWh/h.

d. Delivery points (interconnectors):

Delivery point	Firm transport capacity	Interruptible transport capacity
----------------	-------------------------	----------------------------------

_____	_____ kWh/h	_____ kWh/h
-------	-------------	-------------

_____	_____ kWh/h	_____ kWh/h
-------	-------------	-------------

_____	_____ kWh/h	_____ kWh/h
-------	-------------	-------------

_____	_____ kWh/h	_____ kWh/h
-------	-------------	-------------

_____	_____ kWh/h	_____ kWh/h
-------	-------------	-------------

e. Reference to capacity booking platform:

\_\_\_\_\_

f. Likely costs of mandatory measures:

estimated price of gas per kWh: \_\_\_\_\_ EUR;

likely transportation costs: \_\_\_\_\_ EUR;

estimated amount of compensation payments to sectors of the economy of the providing Member State affected by reductions in supply:

\_\_\_\_\_ EUR.

g. Payment details:

Recipient: \_\_\_\_\_

Bank details: \_\_\_\_\_

Done on (date) ..... at (time) .....

Signature: .....

**4. Acknowledgement of receipt of the solidarity offer** *(to be filled in in English)*

Instructions:

To be sent within 30' of receipt of the solidarity offer.

To the attention of *(Competent Authority of the Providing Member State)*.

On behalf of *(Requesting Member State)*, I acknowledge receipt of your solidarity offer received on (date)....., at ..... (time).

*(Competent Authority of the Requesting Party)*

Contact person: .....

Phone: + .....

Done on (date) ..... at (time) .....

Signature: .....

**5. Acceptance / refusal of solidarity offers based on voluntary measures** *(to be filled in in English)*

Instructions:

(1) To be sent within 2 hours of receipt of the offer.

(2) If offer is accepted in full, the acceptance shall reproduce the exact terms of the offer, as received from the Providing Member State. Partial acceptance of the offer may only relate to the volumes to be provided.

Date ..... Time .....

1. On behalf of *(Requesting Member State)*, I *(fully / partially)* accept / refuse the offer made by *(Providing Member State)* on *(date)* at *(time)* in implementation of solidarity measures under Article 13(1) and Article 13(2) *(delete the latter if not relevant)*.

2. Competent authority of requesting Member State:

\_\_\_\_\_

Contact person: \_\_\_\_\_

Phone: + \_\_\_\_\_

3. Responsible TSO in requesting Member State:

\_\_\_\_\_

Contact person: \_\_\_\_\_

Phone: + \_\_\_\_\_

4. Responsible market area manager in requesting Member State (where relevant):

\_\_\_\_\_

Contact person: \_\_\_\_\_

Phone + \_\_\_\_\_

5. Accepted primary offer(s), based on voluntary measures (*pls reproduce the exact terms of the "Primary offer(s)", as accepted*):

.....

Done on (date) ..... at (time) .....

Signature: .....

**6. Acceptance of solidarity offers based on mandatory measures (*to be filled in in English*)**

**Instructions:**

- (1) To be sent within 3 hours of receipt of the solidarity offer.
- (2) If offer is accepted in full, the acceptance shall reproduce the exact terms of the offer, as received from the Providing Member State. Partial acceptance of the offer may only relate to the volumes to be provided by delivery point.
- (3) The acceptance of offers based on mandatory measures shall include: (a) short description of offers based on voluntary measures received from other Providing Member States; (b) if relevant, the reasons why these offers were not accepted (nb. reasons may not relate to price); (c) short description of offers based on mandatory measures received from other Providing Member States; (d) an indication of whether these offers have been accepted as well and, if not, the reasons for refusing them.
- (4) The Commission may convene a coordination call with the Requesting Member State and all Providing Member States; it shall convene it upon request of one Member State. This phone call shall be held within 30' after receipt of the acceptance of the solidarity offers based on mandatory measures (if at Commission's initiative) or of after receipt of the request for a coordination call by a Member State.

Date ..... Time .....

1. On behalf of (*Requesting Member State*), I (*fully / partially*) accept / refuse the offer made by (*Providing Member State*) on (*date*) at (*time*) in implementation of solidarity measures under Article 13(1) and Article 13(2) (*delete the latter if not relevant*).

2. Competent authority of requesting Member State:

\_\_\_\_\_

Contact person: \_\_\_\_\_

Phone: + \_\_\_\_\_

3. Responsible TSO in requesting Member State:

\_\_\_\_\_

Contact person: \_\_\_\_\_

Phone: + \_\_\_\_\_

4. Responsible market area manager in requesting Member State (where relevant):

\_\_\_\_\_

Contact person: \_\_\_\_\_

Phone + \_\_\_\_\_

5. Accepted secondary offer, based on mandatory measures (*pls reproduce the exact wording of the "secondary offer", as received from the Providing Member State*).

.....

6. Additional information on the acceptance of secondary offers:

(a) short description of offers based on voluntary measures received from other Providing Member States:

.....

(b) have these offers been accepted? if not, state the reasons:

.....

(c) short description of offers based on mandatory measures received from other Providing Member States:

.....

(d) have these offers been accepted? if not, state the reasons:

.....

Done on (date) ..... at (time) .....

Signature: .....

↓ 715/2009 (adapted)

Article 63~~34~~<sup>31</sup>

**Repeal**

Regulation (EC) No  715/2009  ~~1775/2005 shall be~~  is  repealed ~~from 3 March 2011~~.  
References made to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in **Annex II**.

*Article 64~~32~~*

**Entry into force**

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↓ Corrigendum, OJ L 229,  
1.9.2009, p. 29 (adapted)

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from ☒ 1 January 2023 ☒ ~~3 March 2011~~.

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↓ 715/2009

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*