ACER
European Union Agency for the Cooperation of Energy Regulators

CEER
Council of European Energy Regulators

ACER-CEER Reaction to the European Commission's Hydrogen and Decarbonised Gas Market Package

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The EU Agency for Cooperation of Energy Regulators (ACER) and the Council of European Energy Regulators (CEER) welcome the European Commission's legislative proposals on Hydrogen and Decarbonised Gas Markets. In the present note, European energy regulators present their views and recommendations on key regulatory aspects.

Regulators appreciate the Package's ambition to establish a comprehensive system design with a clear target model for the hydrogen and decarbonised gas market(s), to reinforce measures on integrated network development and focus on consumer protection issues.

In particular, ACER and CEER welcome:

- ✓ The willingness to establish core principles for the regulation of a dedicated hydrogen sector, entrusted to national energy regulatory authorities.
- ✓ The extensive mirroring of the consumer protection provisions already in place for electricity consumers to the benefit of gas consumers.
- ✓ The proposed role for regulatory authorities in approving and amending national development plans for gas as a way to promote a user-oriented and efficient development of the energy system.

Turning to the detailed elements of the proposals, regulators present below recommendations to enhance the effectiveness of the provisions in the Package, with a focus on

Comprehensive system design

Integrated network development

Inclusive consumer protection

1. Comprehensive system design

As regards the current natural gas system, the proposal provides a timely update of the existing rules to include renewable and low-carbon gases. Meanwhile, for hydrogen, which is a nascent sector, the proposal lays down an all-encompassing framework with 2030 as the target date to achieve a hydrogen market that resembles what we know for electricity and natural gas markets today. The proposed measures seek to promote and facilitate the deployment of renewable and low-carbon gases, including hydrogen, in order to support extensive decarbonisation and the Union's energy self-sufficiency. Regulators underline the following recommendations for a comprehensive and future-adaptive system design:

- **Ensure flexibility to phase in regulation of hydrogen networks by allowing derogations and exemptions, while keeping the 2030 target date.** Due to the infancy of (large-scale) hydrogen technologies, regulators consider the pace at which the hydrogen market will develop in different Member States to be uncertain, making the 2030 target rather ambitious. In this context, European energy regulators repeat their call to legislators to ensure a sufficient degree of flexibility at the national level by having an approach with a clear political target date and establishing an effective system for derogations and exemptions to optimise the national trajectories for developing a hydrogen market. In particular, regulators suggest specific provisions on derogations for existing and 'geographically confined' hydrogen networks and on the unbundling rules applicable to hydrogen activities.
- **Ensure that national regulatory authorities (NRAs) have a primary role in the governance of the Inter-TSO compensation (ITC) mechanism for tariff discounts and in the financial compensation for cross-border hydrogen networks.** While discounts for low-carbon and renewable gas may be understandable from a policy perspective, the proposed mechanism leads to cross-subsidies among users of the gas network, and its implementation might be burdensome. For such reasons, simpler and more effective tools should be preferred to incentivise the uptake of renewable and low-carbon gases. ACER and CEER highlight the importance of ensuring that NRAs are made responsible for handling these compensation instruments, given their extensive experience with the principles of cost reflectivity, beneficiary-pays, and revenue regulation.
- **Clarify the scope of "entry-exit systems" to avoid misinterpretations and over-regulation of the distribution level.** To ensure participation of local producers in the market, alternative solutions to full integration of transmission and distribution levels (for example, regarding balancing) should be considered. Also, the proposal should clarify that it does not have consequences on the perimeter of capacity allocations, and that, for tariff purposes, only the transmission level falls within the scope of the network code on harmonised transmission tariff structures for gas (TAR NC). In addition, the definitions for 'entry-exit system' and 'balancing zone' should be made consistent.
- **Reinforce the use of cost-benefit assessments in the processes for gas quality coordination.** The legislation should allow, based on the outcome of the cost-benefit analysis, the possibility of maintaining a restriction on cross-border flows. Also, it should include the possibility to lower the 5% threshold where costs are expected to be excessive compared to the benefits. A European gas quality standard could give ACER the necessary means to achieve effective decisions on cross-border disputes on gas quality.

2. Integrated network development

The reinforced measures seek to facilitate efficient network development, building on an increasingly integrated view on planning energy networks based on joint scenarios, the alignment of planning scenarios with the National Energy and Climate Plans, and the possibility of decommissioning gas infrastructure and repurposing it as hydrogen infrastructure. Regulators underline the following recommendations to promote an effective integrated network planning:

- **Ensure regulatory oversight on hydrogen network development once regulation is fully in place.** In the nascent stages of the hydrogen market, while the development of network infrastructure may benefit from a lighter regulatory framework, it is nonetheless crucial to ensure the appropriate regulatory oversight, in particular with regard to the national hydrogen network development reports. Once regulation is fully in place, regulated hydrogen infrastructure should be part of a national development planning process subject to stakeholder consultation and NRA approval.
- **Restrict the possibility of cross-border cost allocation to regulated hydrogen networks included in national development plans approved by NRAs.** Regulators acknowledge that the instrument of cross-border cost allocation (CBCA) can be a tool to facilitate investment in hydrogen networks. However, the Commission's proposal does not limit access to this instrument to regulated networks. Furthermore, ACER and CEER believe that hydrogen network projects requesting the application of this instrument must be included in national development plans that are approved by NRAs to ensure appropriate regulatory oversight in a similar way as exists for Projects of Common Interest applying for a CBCA.
- **Put in place alternative models to a CBCA based on proven user needs.** Network development must be based on actual or concretely planned production and consumption needs. As an effective alternative to development supported by a CBCA, market-based approaches should be put in place, for instance, in the form of open seasons or long-term contracts that offer visibility to investors and bring together producers, network operators and consumers.

3. Inclusive consumer protection and engagement

With respect to consumer protection and engagement, regulators observe different approaches for consumers of renewable and low-carbon gas vis-à-vis consumers of hydrogen, reflecting the expectation that industrial users will be the primary hydrogen consumers. In this context, ACER and CEER highlight the importance of protecting natural gas consumers, in particular, vulnerable consumers and those facing or risking energy poverty as the energy transition and decarbonisation efforts intensify. Similarly, the ongoing security and price crises underline the importance of ensuring security of supply, whilst mitigating the impact of high costs on consumers.

- **Mitigate the impact on consumers of mandatory fuel switches and decommissioning.** The Fit for 55 Package recognises the vast decarbonisation potential of reducing gas consumption in homes and buildings through electrification of heat and the deployment of district heating. Where they are deployed, such structural fuel switches at local or regional level will directly affect household consumers. Not only customers who will have to make a fuel switch, but also those who remain connected to the gas network may face a burden when the remaining network costs are recovered from them. Therefore, sufficient mitigating measures need to be put in place.

- **Safeguard against potential policy "maladaptations" by ensuring investments deliver cost efficiency and value-for-money for present and future consumers.** Regulators recognise that renewable and low-carbon gases and hydrogen will have their place in a zero-emissions integrated energy system by 2050. In that regard, it is important that any actions and investments are cost-efficient and deliver value for money for present and future consumers. As noted in the IPCC WG2 report on "Climate Change 2022: Impacts, adaptation and vulnerability"[1], it is essential to safeguard against potential "maladaptations" (including, for example, as a result of opting for or locking in inappropriate technologies to meet climate goals).
- **Introduce a link between actual gas consumption and Member State storage capacity and other specificities such as LNG availability or demand seasonality when setting filling requirements to ensure security of gas supply.** For that purpose, regulators recommend conducting an analysis of the role of storage in order to identify the most appropriate measures for the different situations that may be encountered across the EU. Once the measures are in place, EU-wide monitoring of storage filling levels and of the prices paid for those fillings will need to be put in place. This will allow policymakers to learn from the current experience, identify best practices, and achieve good results at a much lower cost for consumers for next year's filling seasons. Furthermore, existing national rules and practices that have enabled efficient use and development of storage capacities should be preserved and may be promoted within the regional risk groups.

In closing, **ACER and CEER** find it essential to amend the proposals to ensure these and other regulatory concerns are addressed, to ensure an efficient and future-adaptive framework that enables the decarbonisation of the energy system.

[1] https://www.ipcc.ch/report/ar6/wg2/