

Response to MITECO Public Consultation on the Transposition of Gas Package – Directive (EU) 2024/1788 and Regulation (EU) 2024/1789

Energy Traders Europe welcome the opportunity to comment on public consultation on the transposition of recast Gas Directive EU/2024/1788 and recast Gas Regulation EU/2024/1789, known as Gas Package. Key points we wish to make regarding the transposition of said legislation are listed below. We remain available to continue the discussion and provide all required information or clarifications.

Questionnaire – Transposition of recast Gas Directive

Article 4: Market-based supply prices

Regulated retail prices should not undermine wider objectives of EU energy policy such as competitive markets, consumer empowerment or greater energy efficiency. To this end, if public interventions are introduced, it is essential to establish measures that guarantee fair competition and equal treatment for all suppliers. Additionally, we emphasize the need for any public interventions in natural gas price setting to be transparent, non-discriminatory, time-limited, and proportionate to the beneficiaries, in line with Article 4(4)

In this regard, we would like to note the following:

- The current formula setting the cost of gas for the regulated gas tariff should be necessarily updated to reflect actual costs of the natural gas market, including both supply costs and commercial management cost capable to enable competition in the liberalised market. To this extent, new costs derived from new regulatory obligations should be included as well (e.g. contribution to the National Energy Efficiency Fund, ETS2, etc)
- Public interventions on natural gas prices will be exceptional and limited to vulnerable consumers and/or those affected by energy poverty. In this regard, in view of the characteristics of the retail natural gas market in Spain described in the Market Monitoring

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Reports published by ACER and CEER, we interpret that the conditions necessary to apply the provisions described in Art. 4.6 wouldn't concur in Spain.

Article 5: Access to affordable energy during a natural gas price crisis

The Directive allows for extraordinary pricing of natural gas in the event of a price crisis at regional or Union level. In order to avoid distorting competition and aggravating the situation of suppliers in the liberalised market during a regional crisis situation, it is essential that a) all suppliers (instead of regulated suppliers only) can participate in the mechanism by offering their customers natural gas offers under the compensation conditions and b) that the compensation covers the full difference between the full cost (supply costs, management costs and reasonable commercial margin) incurred by the supplier and the cost allocated by the public intervention.

Article 8: Authorisation procedure

The Directive sets time limits for authorization procedures for the construction or operation activities of natural, renewable or low-carbon natural gas installations and infrastructures. The time limits may be even shorter for applications for authorisation of renewable gas installations and infrastructures, as provided for in Directive 2018/2001 (e.g. for projects in renewable acceleration zones, which might be set for biogas and/or renewable hydrogen/RFNBOs). It also establishes that applicants can carry out the entire process through a single point of contact. It is therefore necessary to review and adapt the authorisation process to comply with the provisions of both regulations.

Article 9: Certification of renewable gas and low-carbon fuels

This article mandates the Member States to require economic operators to put in place an adequate standard of independent auditing of the information submitted regarding compliance with the 70 % greenhouse gas emissions savings threshold. The auditing shall verify that the systems used by economic operators are accurate, reliable and protected against fraud. To ensure the effective operation of the framework established by the Directive to promote the uptake of RES&LC gases, we highlight the essential role of national authorities in preventing fraud. This responsibility extends beyond gas systems to encompass compliance with other obligations arising from relevant legislation, including the Energy Efficiency Directive (particularly concerning the National Fund for Energy Efficiency) and the ETS II Directive.

Finally, once the Union Database for gases is launched, we encourage Spanish authorities to connect its national GdO system into the UDB, in order to transfer/move the GdOs inextricably associated to the renewable gas consignments of accredited sustainability. Until the effective integration of GdOs into the UDB, demonstrating sales/consumption of renewable gas through the accreditation of sustainability and emission reduction criteria only should be enabled. The consignments of accredited gas could be accompanied, if applicable, by responsible statements by the suppliers indicating either that the GdOs associated with the delivered production have been transferred to the customer or that they have not cancelled at any other point of supply. Once the national systems of GdOs are integrated with the UDB, it will ensure that there are no separate transfers of PoS and GdO.

Article 30: Access of renewable gas and low-carbon gas to the market

Spain must facilitate the access of renewable and low-carbon gases to infrastructure by establishing the regulatory conditions to guarantee access, including the guarantee of firm capacity by network operators. Notwithstanding the need to always enable virtual reverse flow as a primary option, network operators should carry out works to allow reverse flow when there is an actual need to invest in physical infrastructure and subject to a cost benefit analysis to facilitate the integration of renewable gases into the market.

Producers should be provided with adequate visibility of the distribution networks, planned works/evolution of the grid, injection capacity and points. A limited view of the local grid planning complicates the identification of areas with the highest potential for renewable and low carbon production (e.g. areas with high feedstock potential and low distance to the gas grid).

Article 31: Third-party access to natural gas distribution and transmission and LNG terminals

Authorities should clarify the conditions referred to in Article 31.3 for fossil gas supply contracts without abated emissions whose expiration date is due after December 31, 2049. Article 31 seems to refer to access to networks, LNG terminals and capacity contracts only. Clarification on the type of contracts referred to in the case, and the date of application for new contracts should be provided.

Article 32: Access to upstream natural gas pipeline networks

Access regime should avoid any abuse of dominant position or conflicts of interest. Strict unbundling rules should be applicable to gas and hydrogen network operators regarding the development of renewable and low-carbon gas production activities, in particular with regard to the management of requests for connection to the grid, costs of works, grid planning activities, etc. Potential conflicts of interest regarding the alternative connection of hydrogen producers into gas or (future) hydrogen networks may exist. Monitoring and supervision of the management of access and connection requests, including average connection costs per company, should be established. It is thus required that

- Network operators should be required to provide detailed information on the management of connection requests to competent authorities.
- The remuneration of network operators includes an economic incentive related to the management of connection requests from renewable gas producers: time to manage connection requests, number of incidents or disputes, compliance with planned upstream actions/works to increase injection capacity, average connection costs per type of project or network adaptation, etc.
- In order to compare the differences in the access regime between regions and network operators, authorities should monitor and report publicly on a regular basis about the status of the connection framework in the different regions. Aggregated and non-commercially sensitive information on the activities should be published. The report may cover, among others, evolution of the number of projects, typology and production volumes, average permitting times, the number of applications processed in the last 6/12 months, the ratio and status of applications, incidents, and even information on the typology and associated average costs per project typology.

Article 35: Third party access to hydrogen networks

For cost efficiency's sake, we would recommend Spain could make use of the Art. 35.4 power to waive Art. 35.1 and to ensure that hydrogen network operators can apply negotiated access instead of regulated access until 31/12/2032. This will also give flexibility in the first projects, where the developer assumes the greatest risk.

Article 38: Refusal of access and connection

To avoid hindering the uptake of renewable gases, we emphasize the need for national authorities to establish clear and stringent criteria for enabling DSOs to refuse access or connection to the national gas or hydrogen system only in cases of insufficient capacity and/or connection. Under no circumstances should the DSO deny access without proper justification and a clear plan to enhance the system in a way that addresses capacity issues.

Grandfathering should also apply to production projects already connected into the grid, ensuring that the connection of new producers doesn't lead to a reduction of the injection capacity and access rights of the existing economic operators.

Article 46: Unbundling of distribution system operators and hydrogen distribution network operators

Dominant positions or conflicts of interest should be avoided. Strict unbundling rules should be applicable to gas and hydrogen network operators regarding the development of renewable and low-carbon gas production activities, in particular regarding the management of requests for connection to the grid, costs of works, grid planning activities, etc. Potential conflicts of interest regarding the alternative connection of hydrogen producers into gas or (future) hydrogen networks may exist. Monitoring and supervision of the management of access and connection requests, including average connection costs per company, should be established. It is thus required that

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Article 47: Existing hydrogen networks

Private hydrogen pipelines have been built and operated exclusively for the supply of hydrogen to industry, based on individual contracts governing not only the production and transport, but also the supply of hydrogen. As such, these private pipelines should be eligible to apply for exemptions from regulatory requirements, with each case evaluated individually, particularly in instances where they do not provide public supply.

Article 55: Network development for natural gas and hydrogen and powers to make investment decisions

Producers should be provided with adequate visibility of the distribution networks, planned works/evolution of the grid, injection capacity and points. A limited view of the local grid planning complicates the identification of areas with the highest potential for renewable and low carbon production (e.g. areas with high feedstock potential and low distance to the gas grid).

Article 68: Unbundling of hydrogen transmission network operators

We call for a strict unbundling for hydrogen transmission network operators, in line with what have been established for network operators for electricity and gas. We consider that hydrogen transmission network operators should not be allowed to participate in the activities of production or supply of hydrogen.

Article 78: Duties and powers of the regulatory authority

Paragraph t) reiterates the need to control the time to complete connections, works and repairs, including grid connection requests made by biomethane production facilities. It is therefore a critical issue, as already mentioned, to include economic incentives for grid managers and to provide information to developers, aggregated by geographical area.

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ANNEX I (5): Disclosure of energy sources

The first requirement is to provide information on the % of renewable and low-carbon gas contracted by the end customer. In this sense, as detailed in paragraph 4, the disclosure in the invoice of the percentage of renewable gas consumed in the referred billing period must make use of guarantees of origin (GoOs). Art. 19 of Directive 2018/2001 specifies that guarantees of origin are the instrument to certify to final customers the origin of energy produced from renewable sources "under contracts traded with reference to the consumption of energy from renewable sources".

Bills are also required to include information on the renewable and low-carbon gas mix supplied by the supplier during the previous year. For these purposes, we understand that the previous year's supply includes both the renewable gas volumes offered/sold by making reference to its origin from renewable sources with GoOs, as well as other volumes of renewable gas for which a guarantee of origin has not been issued but which the supplier can demonstrate were delivered in Spain through the corresponding consignments of withdrawal in the Union Database (which trace sustainable accredited renewable gas moves).

The information on the environmental impact of the supply in the previous year shall be calculated as follows. For the calculation of the GHG footprint of natural gas supply, the natural gas emissions factor from the latest published "Annual GHG Inventory Report of Spain" will be considered. The calculation of the footprint of the renewable gas and low carbon gas supplied will be made based on the output records in the Union Database consigned by the supplier and containing information on the emissions footprint (regardless of the issuance or not of guarantees of origin).

Questionnaire - Transposition of recast Gas Regulation

Article 5: Separation of regulated asset base

We believe that direct subsidy measures (such as grants, contracts for differences, etc.) should be preferred over transfer of revenues between RABs of different services. In any case, if they are to be included, then we recommend that financial transfers, dedicated charges, value of transferred assets (or at least the methodologies used to underpin them) should all be subject to consultation prior to regulatory approval. Financial transfers as cross-subsidies should be limited in size not least for protection of consumers in networks where such additional charges are applied.

Article 6: Third-party access services concerning transmission system operators

Following the principle of cost efficiency, we recommend Spain to make use of the Art. 35.4 power to waive Art. 35.1 and to ensure that hydrogen network operators can apply negotiated access instead of regulated access until 31/12/2032. This will also give flexibility in the first projects, where the developer assumes the greatest risk.

Regarding the consideration of hydrogen networks as a regulated activity, we believe it is necessary to impose a strict separation of activities, avoiding any kind of cross-subsidies between energy consumers and activities in favour of hydrogen consumers. The exception foreseen in Article 5.4 of the Regulation should be disregarded considering the important distortions that it would entail among energy consumers. An efficient development of the hydrogen network should be expected. The optional application of lower initial access tariffs to the first users connected to the hydrogen network or lower initial amortisation rates would be less distortive measures, as foreseen in the regulation.

Article 7: Third-party access services concerning hydrogen network operators

This article provides for zero-priced interconnection capacity to be locked in a long-term contract for up to 20 years without commitment by the capacity holder. We urge the national authorities to be mindful of the risks of contractual congestion that will inevitably arise from the offer of free capacity, and to establish provisions that can prevent and manage these risks effectively.

Article 18: Tariff discounts for renewable gas and low-carbon gas

We believe that the proposed scheme to offer tariff discounts for RES&LC gases does not reflect the use of the physical system and may discriminate in favour of imported rather than EU-produced gases. It may also contribute to a proliferation of uncoordinated national schemes that would hinder cross-border trading and fragment the single internal market.

Therefore, as the Directive provides the opportunity, under Article 18(5), to derogate from applying tariff discounts, we advise against the use of selective discounts to promote specific technological solutions for producing RES&LC gases. Instead, network operators should be incentivised to operate safe and efficient systems, and tariff methodologies should be cost-reflective.

Where nascent technologies face a cost disadvantage over established technologies, which is expected to reduce over time, this should be addressed through EU assistance – for example through carbon pricing – rather than through tariff design for use of the gas network. To do otherwise is likely to result in unpredictable tariff swings for those classes of users who are not eligible for discounts, and perverse incentives for use of the network.

Finally, if a tariff discount scheme is ultimately implemented, limiting discounts to the first input and last exit point (and excluding intermediate interconnection points) would be more practical and aligned with the goal of focusing on commercial rather than physical flows. The degree of renewable and low-carbon gas development that could lead to modification of the discount in the tariffs should be defined.

Article 19: Revenues of gas transmission system operators

We strongly support the introduction of transparency around the revenues of the TSOs along with the benchmarking of their relative cost-efficiency.

Article 20: Firm capacity for renewable gas and low-carbon gas to the transmission system

Network operators should carry out works to allow reverse flow when strictly needed and subject to a cost benefit analysis to facilitate the integration of renewable gases into the market. The associated costs shouldn't be borne by the project developers and should be considered system costs. Grid plans should be publicly known and regularly updated.

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Article 36: Firm capacity for renewable gas and low-carbon gas to the distribution system

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