

## **Leaked drafts of the recast of Gas Directive and Regulation - Overview of regulatory exemptions for hydrogen networks and infrastructure**

The leaked drafts of the recast of the Gas Directive and the Gas Regulation are referred to as "Gas Directive" and "Gas Regulation" for easier reading.

- (i) **Existing H2 networks:** Member States are conferred the competence to grant exemptions from unbundling, third party access ("TPA") as well as transparency requirements for existing H2 networks, which belong to vertically integrated undertakings. The derogation must be temporally limited and expires under specific circumstances (e.g. 10% expansion of capacity, request to end derogation) or latest on 31 December 2030 (Art 49 Gas Directive).
- (ii) **Closed H2 systems:** This exemption mirrors the already existent exemption for closed distribution systems. Accordingly, closed H2 systems are defined as a hydrogen network which transports hydrogen within a geographically confined industrial, commercial or shared services site and does not supply household customers, except a small number with associations with the owner of the closed H2 system. These closed H2 networks are exempt from the unbundling requirements for H2 network operators as well as of TPA. It is left to the discretion of the Member States whether this exemption is implemented into national law (Art 51 Gas Directive).
- (iii) **Geographically confined H2 networks:** Geographically confined H2 networks are defined as hydrogen networks, which transport hydrogen from one entry point to a limited number of exit points within a geographically confined, industrial or commercial area on the territory of a single Member State. For these types of H2 networks NRAs may grant derogations from specific regulatory requirements. The cross references specifying the scope of the exemption appear to be faulty. Hence, the exact scope of the exemption is unclear. It is left to the discretion of the Member States whether this exemption is implemented into national law (Art 50 Gas Directive). The scope of geographically confined H2 networks appears to be wider than the one of closed H2 networks. Other than that, the delimitation of closed H2-networks from geographically confined H2 networks appears rather unclear.
- (iv) **New H2 infrastructure:** The exemption for new infrastructure – which has been introduced as part of the Second Energy Package in 2003 – has been extended to "major new hydrogen infrastructure", ie interconnectors, liquid hydrogen terminals and underground hydrogen storage. As such they may be exempted for a defined period of time from the provisions of unbundling, TPA and tariff regulation if a set of strict criteria is met. The assessment of whether infrastructure fulfills these conditions is made by the NRA. Following, the decision must be notified to the European Commission, which either accepts the decision or instructs the NRA to withdraw or amend the decision (Art 56 Gas Regulation). As a point of reference on the

assessment of the conditions for exemption see the European Commission's decision practice.<sup>1</sup>

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<sup>1</sup> See an overview of the European Commission's decision practice here: <[https://ec.europa.eu/energy/sites/default/files/documents/exemption\\_decisions2018.pdf](https://ec.europa.eu/energy/sites/default/files/documents/exemption_decisions2018.pdf)> (accessed on 30 November 2021).