

# **The EU package to decarbonise the gas market, promote hydrogen, and reduce methane emissions**

---

## The aim of the EU's package

For EU Member States to achieve climate neutrality by 2050<sup>1</sup> and increase independence from fossil fuels, it requires not only efforts to increase the share of renewable energy sources, but also a wider use of renewable and low-carbon gases, including hydrogen. For this purpose, the European Commission ("EC") has prepared regulations focused on reducing EU gas market emissions.

Under the European Green Deal, natural gas plays the role of a so-called 'bridge fuel' due to the lower carbon intensity of gas-fired plants compared to coal-fired plants. Meanwhile, it is assumed that natural gas should be replaced by other energy sources, mainly hydrogen. The current EC strategy assumes achieving 40 GW of installed capacity of renewable hydrogen electrolyzers and hydrogen production of 10 million tonnes in the EU by 2030<sup>2</sup>.

<sup>1</sup> Communication from the Commission to the European Parliament, The European Council, The Council, The European Economic and Social Committee and the Committee of the Regions, The European Green Deal (COM(2019) 640 final).

<sup>2</sup> Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions, A hydrogen strategy for a climate-neutral Europe (COM (2020) 301 final).

## Components of the package

The EC has published the drafts of the following legal acts which are proceeding under the ordinary legislative procedure:

- Proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (COM/2021/804 final) (recast of 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), and
- Proposal for a Directive of the European Parliament and of the Council on common rules for the internal markets in renewable and natural gases and in hydrogen (COM/2021/803 final) (recast of 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 and repealing Directive 2003/55/EC)<sup>3</sup>.

The proposed regulations are intended to **reduce EU gas market emissions** (including the expansion of renewable and low-carbon gases, including hydrogen). The decarbonisation package also continues efforts to reduce methane emissions in the energy sector<sup>4</sup>.

<sup>3</sup> Recasting means adopting a new legal act that combines, within a single text, both the substantive changes made by the new act to the earlier act and the unchanged provisions of the earlier act. The new legal act replaces and repeals the earlier act. The rules on the recasting of EU legal acts are regulated by the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts (2002/C 77/01).

<sup>4</sup> The adoption of the present regulations was announced in the Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions on an EU strategy to reduce methane emissions (COM/2020/663 final).

## Scope of the package's regulation

1) The Regulation and the Directive, as they are worded, define the basic terms for the natural gas market and regulate:

- the procedure to certify transmission network operators (TSOs),
- the procedure to adopt and amend network codes,
- the introduction of transmission tariffs,
- third-party and storage access to the network,
- balancing rules,
- the basic principles of cooperation between Member States in the gas market, and
- rules on the unbundling, designation, certification, and operation of TSOs, storage system operators (SSOs), and distribution network operators (DSOs).

**2) The aim of the projected amendments is to cover the internal markets for natural gas, renewable gas, and hydrogen with a common regulation, i.a. by:**

- amending the catalogues of definitions and market participants in connection by extending gas market regulations to new gaseous fuels,
- introducing basic regulations for the internal hydrogen market,
- specifying the conditions of access to the network and the obligations of network operators in this regard,
- Member States' obligations to improve procedures to issue licences for the construction or operation of gas and hydrogen plants,
- introducing an obligation to use smart metering systems,
- introducing an obligation to certify network operators (gas and hydrogen) and to certify renewable gases,
- clarifying the balancing rules and tariff setting (including tariff discounts, especially for biomethane), and
- widening final customers' rights (e.g. facilitating the change of a gas supplier).

## Key changes proposed in the package

1) In its current wording, the package does not distinguish between definitions of particular gaseous fuels because it regulates the functioning of the natural gas internal market (in practice, sometimes also mixed with biomethane). The proposed acts introduce definitions of, i.a.:

- **natural gas** – covering all gases that primarily consist of methane, including biogas, gas from biomass and biomethane, or other types of gas, that can technically and safely be injected into, and transported through, the natural gas system,
- **gases** – covering natural gas and hydrogen, and
- **renewable gas** – covering biogas, biomethane, and renewable gaseous fuels of non-biological origin.

2) The package makes changes related to:

- **actors on the gas market** – introducing new definitions to define entities operating in the regulated hydrogen and gas market:
  - **a hydrogen network operator (HNO)** – the entity responsible for hydrogen transport and the operation and technical maintenance of the hydrogen network<sup>5</sup>. The HNO will be required to set non-discriminatory procedures and tariffs for the connecting hydrogen storage facilities, hydrogen terminals, and industrial customers to the hydrogen network, and how hydrogen storage facilities, hydrogen terminals are used,

- **a hydrogen undertaking** – the entity carrying out at least one of the activities in the hydrogen supply chain, including production, transport, sale, and storage, but not including final customers,
- **an active customer** – a final customer or group of final customers for natural gas, consuming or storing renewable gas<sup>6</sup>, selling self-produced renewable gas, or participating in energy efficiency systems<sup>7</sup>. The purpose of regulating the active consumer is to ensure broad citizen participation in the gas market, and
- the subject scope, introducing **new definitions to define the elements of the hydrogen infrastructure**:
  - **hydrogen storage facilities**, including those that are part of hydrogen terminals and stand-alone underground installations,
  - **hydrogen terminals**, which are facilities that convert liquid hydrogen or ammonia into a gaseous hydrogen for injection into the hydrogen network, or for the liquefaction of gaseous hydrogen, and
  - **hydrogen networks** (onshore and offshore) as separate networks from the gas network, to **transport hydrogen**, i.e. to deliver hydrogen to customers.

<sup>5</sup> Possibly also the development of the hydrogen network and interconnections with other hydrogen networks.

<sup>6</sup> Produced on their territory with defined boundaries or, if allowed by the Member State, on another territory.

<sup>7</sup> This activity must not be the primary economic or professional activity of the active customer.



3) The package redefines Member States' obligations to ensure third-party access to infrastructure to confirm access to renewable, low-carbon gases and hydrogen:

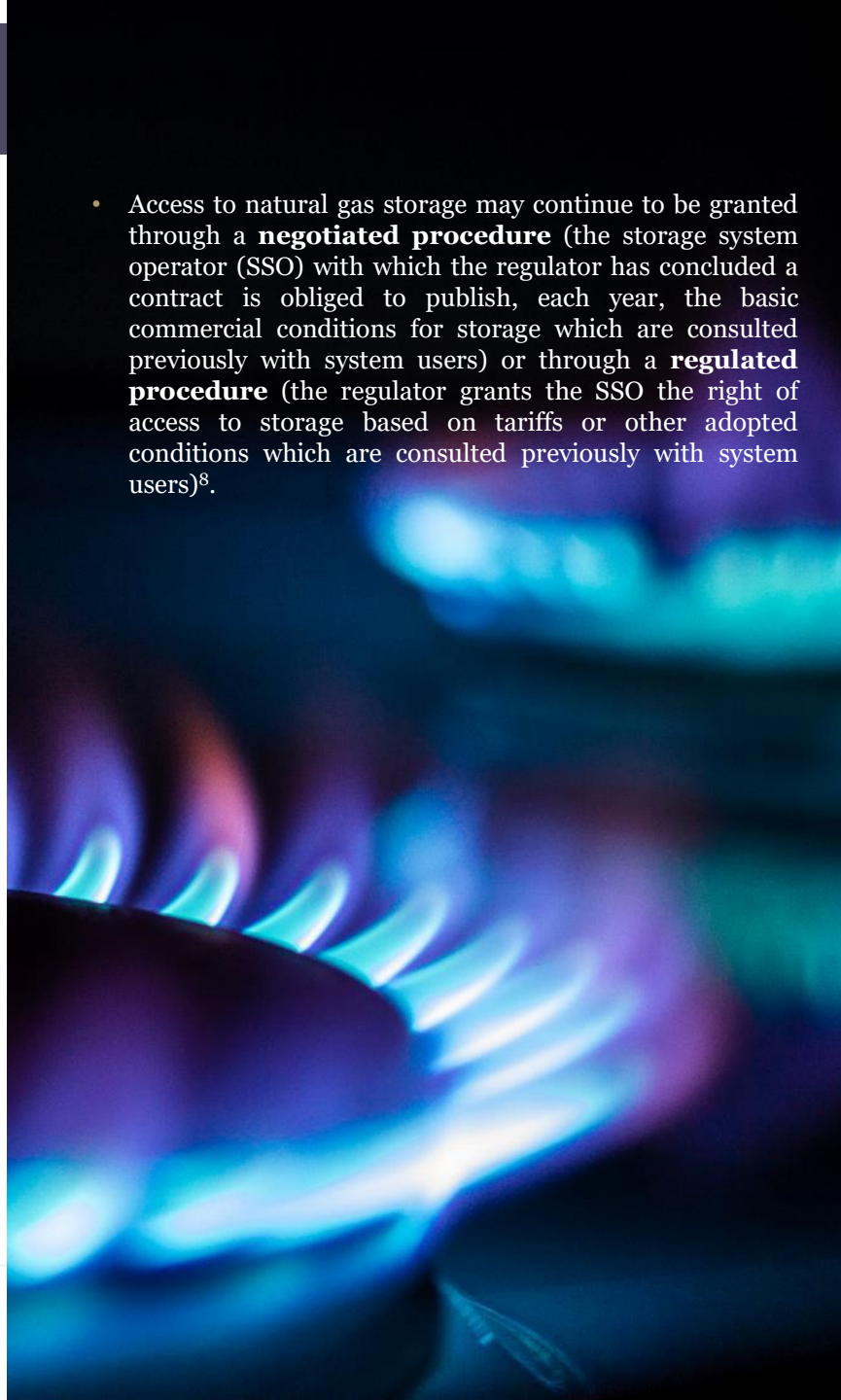
▪ **natural gas**

- Access to the market for renewable and low-carbon gases must be ensured regardless of whether renewable and low-carbon gas generation facilities are connected to the distribution or transmission network.
- Access to natural gas distribution and transmission and LNG terminals is to be ensured in a non-discriminatory way.

- Access to natural gas storage may continue to be granted through a **negotiated procedure** (the storage system operator (SSO) with which the regulator has concluded a contract is obliged to publish, each year, the basic commercial conditions for storage which are consulted previously with system users) or through a **regulated procedure** (the regulator grants the SSO the right of access to storage based on tariffs or other adopted conditions which are consulted previously with system users)<sup>8</sup>.

---

<sup>8</sup> The Directive leaves the Member States the freedom of choice of procedure to access storage; either or both may be introduced.



## ■ hydrogen

- Access to the hydrogen network will, in principle, be regulated<sup>9</sup> and tariff-based.
  - Access to hydrogen terminals will be provided through negotiations, based on objective, transparent, and non-discriminatory criteria.
  - Access to hydrogen storage facilities will be regulated and tariff-based.
- 4) To increase energy efficiency, the package includes:
- a **recommendation** for the use of smart metering in natural gas (which may be abandoned if a cost-benefit analysis carried out in accordance with the requirements of the proposed Directive delivers a negative result), and
  - an **obligation** to use smart metering in the hydrogen system.
- 5) An obligation for Member States to improve the procedures to issue the required permits for investment in the construction or operation of natural gas facilities, hydrogen production facilities, and hydrogen system infrastructure, by introducing appropriate national measures. Permits allowing for the above operations are to be issued in a non-discriminatory and transparent way, **with a time period not exceeding two years** (extendable by one year in exceptional circumstances).

6) The package also provides for an **obligation to certify renewable and low-emission gases** under the principles set out in Directive 2018/2001. The aim of the regulation is to harmonise the market for gaseous fuels and introduce common criteria to estimate emissions, consequently enabling end users to make a conscious choice of lower-emission fuels. Gas will be considered as renewable if the certification confirms an emission reduction of at least 70% compared to fossil fuels.

7) The package will also allow Member States to provide support to gas market participants, regarding:

- granting appropriate **investment incentives**, in particular, long-term incentives, to accelerate the development of low-carbon gas infrastructure,
- granting appropriate short- and long-term **incentives** to system operators and customers to increase the network's efficiency; notably, in terms of energy efficiency, and
- setting **tariffs and balancing conditions**, in particular, by applying discounts of 75% (subject to exceptions) in tariffs for the injection of renewable and low-carbon gases from production facilities into the network or storage facilities (until now, discounts have been applied in some Member States without a legal basis).
- Countries can opt out of this system by 31 December 2030 and will then be obliged to introduce a negotiated system.

---

<sup>9</sup> Countries can opt out of this system by 31 December 2030 and will then be obliged to introduce a negotiated system.

8) The solutions to **strengthen the position of the gas end user**, primarily the customers, include:

- extending the rights relating to the choice of a gas supplier and changing the gas supplier (including ensuring that suppliers registered in another Member State are able to act) - the change of a gas supplier should take place within no more than three weeks of the request and, from 2026, the process of changing the supplier must take no longer than 24 hours;
- ensuring, at least for household and micro-enterprise gas customers, access to tools to compare suppliers' offers;
- extending end users' rights to information (including comprehensive, transparent, and understandable information on contract terms and conditions and contract changes);
- enabling the sale of self-generated renewable gas using the natural gas system; and
- the possibility to participate in citizen energy communities (the gas equivalent of energy cooperatives).

### Entry of the changes into force

According to the current drafts, the recast **Regulation is expected to enter into force in January 2023** and the **Directive on the 20th day after publication in the Official Journal of the EU**. Member States will be required to implement the Directive by 31 December 2023.



**Tomasz Młodawski**

Senior Counsel, attorney-at-law

☎ +48 600 871 096

✉ tomasz.mlodawski@skslegal.pl



**Andrzej Sikorski**

Associate, attorney-at-law

☎ +48 602 151 179

✉ andrzej.sikorski@skslegal.pl



**Aleksandra Pinkas**

Junior Associate

☎ +48 538 633 895

✉ aleksandra.pinkas@skslegal.pl



### Warsaw

Jasna 26, 00-054 Warszawa

T +48 22 608 70 00

F +48 22 608 70 70

E office@skslegal.pl

### Katowice

Wojewódzka 10, 40-026 Katowice

T +48 32 731 59 86

F +48 32 731 59 90

E office.katowice@skslegal.pl

### Poznań

Mickiewicza 35, 60-837 Poznań

T +48 61 856 04 20

F +48 61 856 05 67

E office.poznan@skslegal.pl

### Wrocław

Plac Solny 16, 50-062 Wrocław

T +48 71 346 77 00

E office.wroclaw@skslegal.pl

**www.skslegal.pl**