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*Mr Miloš Vystrčil
President of the Senát
Valdštejnské náměstí 17/4
118 01 PRAGUE 1*

Dear President,

The Commission would like to thank the Senát for its reasoned Opinion on the proposal for a Regulation of the European Parliament and of the Council on the internal markets for renewable and natural gases and for hydrogen (recast) {COM(2021) 804 final} and its 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}.

The Commission agrees with the need to diversify the Union's energy supply as identified by the Senát and considers that the proposals will serve to promote the increased use of renewable gases in the natural gas system and the development of a European hydrogen economy.

As acknowledged by the Senát, the proposals on a new regulatory framework for hydrogen networks and markets are based on well-established principles of EU energy regulation and the decades-long experience in regulating of the European gas and electricity markets.

The Commission takes seriously the concerns expressed by the Senát as regards conformity of the proposals with the principle of subsidiarity.

As regards the Impact Assessment, the Commission considers that the level of detail in accompanying Impact Assessment is adequate with regard to the overall impact of the proposed legislation. In view of the emergent nature of the hydrogen economy and the uncertainties with regard to market development, a quantification of impacts at a more granular level would not be feasible or meaningful. However, the Commission notes that the accompanying study on hydrogen regulation¹ contains an assessment of regional market characteristics for hydrogen.

¹ European Commission, Directorate-General for Energy, Nuffel, L., Gorenstein, J., Gérard, F., et al., *Sector integration, regulatory framework for hydrogen : final report*, Publications Office, 2021, <https://data.europa.eu/doi/10.2833/411951>

Based on the findings of the Impact Assessment², the Commission considers that the adoption of common rules for the operation of hydrogen networks is essential to enable the development of a well-functioning and liquid internal market for hydrogen in the Union. Notably, a fragmented regulatory landscape with differences in network access between Member States could impede cross-border trade in hydrogen and risks slowing down the emergence of a European hydrogen supply chain.

As regards the proposed rules on the unbundling of hydrogen networks, the Commission considers that the experience in the gas and electricity sectors has demonstrated the necessity and appropriateness of separating the activity of energy network transport from activities of energy production and sale. The so-called ownership unbundling model, based on a structural separation of these activities, is the most effective means of preventing a conflict of interest and thereby safeguarding competition and a level playing field on energy commodity markets.

The unbundling rules envisaged for hydrogen are based on this well-established principle of ownership unbundling. Alternatives and exceptions to this default rule are adapted to the current state of hydrogen markets and their expected development. Notably, there exists currently only a very limited number of vertically integrated hydrogen networks in the Union.

The proposal contains transitional provisions aimed at a gradual regulation of these networks. Whereas the Integrated Hydrogen Network Operator model will be available only until 2030, the Commission notes that vertically integrated undertakings active in hydrogen network transport will be able to retain ownership of hydrogen networks also after 2030 by delegating the operation to an Independent Hydrogen Network Operator. This option is open also to vertically integrated gas Transmission System Operators (TSOs) and Distribution System Operators (DSOs) who intend to pursue hydrogen transport activities.

As regards the combined operation of gas and hydrogen networks, the proposals fully support such combined operatorship. Whilst in order to safeguard financial transparency, the proposed rules require separate accounts and a separate legal subsidiary for hydrogen network activities, it does not require a separation of management or governance, i.e. no functional unbundling.

In line with the views expressed by the Sénat, the Commission's proposals also promote the repurposing of natural gas infrastructure as a cost-effective way of transporting hydrogen. Notably, the proposed rules envisage a grandfathering of national permits and land-use rights when repurposing gas pipelines for hydrogen transport and set a maximum duration for national permitting procedures.

As regards the concerns raised by the Sénat about the envisaged rules on cross-border network tariffs for hydrogen, the Commission considers that the avoidance of such cross-border tariffs will benefit cross-border trade and foster market integration. A similar approach has been applied with success to cross-border electricity transmission since 2004. In the hydrogen market ramp-up phase until 2030, Member States can however opt for

² Cf. in particular Annex 6, Tables 33-45 (p.149-176).

negotiated third-party access based on bilaterally negotiated (rather than regulated) network tariffs, including for cross-border infrastructure.

The Commission hopes that the clarifications in this reply address the issues raised by the Senát and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Kadri Simson
Member of the Commission*