

H2 – New EU Regulatory Framework

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15 June 2022

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Introduction

- Decarbonisation of gases = necessity for reaching targets of EU-Climate Law (2030: -55%; 2055: climate neutrality).
- Low carbon & renewable H2 take central role in the decarbonization of gases
- Gas Directive/Regulation Recasts published on 15 December 2021 → create a regulatory framework for nascent H2-market (blending/high-purity H2)
- Regulatory framework of Recasts covers entire value chain. Mirrors already present regulatory framework for natural gas
- Transition period, exemptions and H2-specific supporting instruments aim at supporting uptake of H2-market

Regulation of H2-networks – general remarks (1/2)

Art 2 (20) Gas Directive: “network of pipelines used for the transport of hydrogen of a high grade of purity with a view to its delivery to customers [...].”

Questions



No differentiation between transmission/distribution → nascent market



What constitutes a “network of pipelines”? → ECJ *citiworks* on E-Distribution networks: size and consumption of the system are irrelevant.



What is to be understood under “hydrogen of a high grade of purity”?
Delimitation in case of blending?

Regulation of H2-networks – general remarks (2/2)

2 phases of regulation: (i) until **31 December 2030**; (ii) **2031 onwards**

Until
31 December
2030

Discretion of MS to implement regulatory reliefs (e.g. negotiated TPA; integrated H2-network operator [equivalent to ITO]; exemptions for existing H2-networks)

2031 onwards

In general, regulation mirrors the one of natural gas networks (e.g. regulated TPA, unbundling of networks from production/supply)

Regulation of H2-networks – Unbundling (1/2)

- Idea of unbundling: Vertical integration of functions of production/supply with distribution/transmission = **risk of discrimination** → Unbundling aims at separating interests of network operation from supply/production
- 2009 Gas Directive introduced 3 unbundling models for TSOs: (i) ownership unbundling (OU); (ii) independent system operator (ISO); (iii) independent transmissions operator (ITO)
 - **OU**: no control or rights over TSO and *vice versa* (e.g. majority shareholding, no exercise of voting rights, power to appoint members of statutory bodies)
 - **ISO**: production/supply company may keep ownership of network; system operator must be ownership unbundled
 - **ITO**: no ownership unbundling, however, strict organizational measures to ensure independence

(!) ITO & ISO only possible if network has been owned by production/supply company at entry into force of the Gas Directive

Regulation of H2-networks – Unbundling (2/2)

Unbundling models for H2-networks in general mirror the ones for applicable to natural gas with some particularities – e.g.:

- Horizontal unbundling → natural gas/electricity TSOs/DSOs must be legally unbundled from hydrogen network operator
- ITO only applicable until 31 December 2031 → Is temporal limitation of ITO compliant with EU-Law?
 - Principle of subsidiarity (Art 5 TEU)
 - Free movement of capital (Art 63 TFEU)
 - Freedom to conduct a business; Right to property; Equality before the law (Art 16, 17, 20 CFR)

→ Common requirement: Regulatory measures must be proportionate.

(!) H2-market structure is incomparable to natural gas market;

(!) unbundling stricter than in case of natural gas (temporal limitation of ITO)

Regulation of H2-networks – Regulatory exemptions (1/2)

- **Existing H2-networks** (Vertically integrated H2-networks present at the time of entry into force of the Gas Directive) → Member States may grant derogations from **TPA, unbundling** and **regional cooperation with ENNOH**.

Exemption must be **limited in time** (at latest 31 December 2030) and **in scope to the network's capacity**. Exemption ends if (i) it is connected with another H2-network or (ii) upon expansion of the network or its capacity.

- **Geographically confined H2-networks** (single entry-point transporting H2 to limited number of exit points within confined, industrial or commercial area) → Member States may confer NRAs competence to grant derogations from **unbundling**.

Exemption at least until 31 December 2030; after that it may end if (i) **competing H2-producer wants access** or (ii) if the exempted H2-network is **connected with another H2-network**.

Regulation of H2-networks – Regulatory exemptions (2/2)



Major New H2-infrastructure (e.g. Interconnectors):

- H2-interconnectors may be exempted by European Commission for limited time from **vertical unbundling, TPA** and **tariff regulation**;
- H2-terminals and underground storages from **TPA**.

Exemption requires that infrastructure fulfills strict requirements (e.g. contribution to decarbonization, enhances competition and SoS, investment would not be made without exemption) → see decision practice of the EC

Blending of H2 into natural gas networks

- Blends with up to **5% H2** must be accepted by TSOs at IP
 - Further supporting instruments for **renewable** and **low carbon H2** (GHG reduction of **at least 70%**)
 - **75% discount** on capacity-based tariffs at entry points to the **natural gas grid**
 - **100% discount** on tariffs at **IPs**
 - **Guaranteed firm capacity** to **production facilities**
- Classification as renewable/low-carbon H2 will be based on **EU-wide certification system** including **dedicated methodology for assessing GHG-emissions savings**

Conclusion

- Regulatory framework of Recasts covers entire value chain. Mirrors already present regulatory framework for natural gas
- Regulation of H2-networks to a large extent mirrors regulation of natural gas networks
- “Regulatory holidays” for H2-networks until 31 December 2030 (option to implement negotiated TPA, ITO-unbundling)
- (Excessive) regulation after 2030 → H2-network operators must be ownership unbundled
- Regulatory exemptions: (i) Existing H2-networks, (ii) geographically confined H2-networks, (iii) New H2-Infrastructure
- Blending of low-carbon & renewable hydrogen into natural gas networks is supported (e.g discounts on tariffs)

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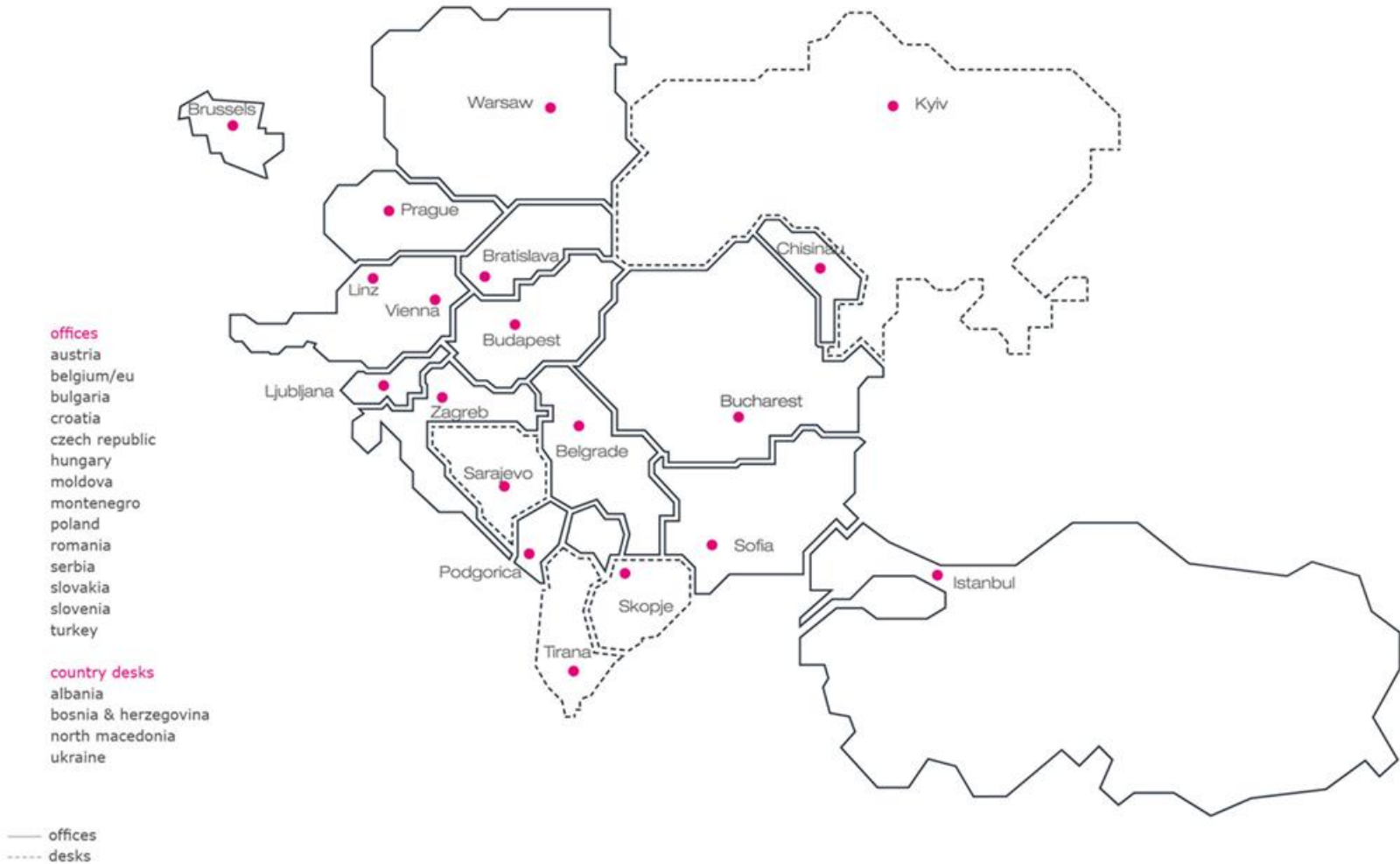
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