

## **GEODE Position Paper on Hydrogen and Gas Markets Decarbonization Package calling for a removal of Article 63 on horizontal unbundling of hydrogen network operators**

**GEODE**, the European association of local energy distributors across Europe appreciates the work undertaken by the Council, European Parliament, and European Commission in relation to the Hydrogen and Gas markets decarbonisation package. Nevertheless, ahead of the next set of triologue negotiations, we would like to call upon legislators to reconsider the inclusion of art. 63 of the Gas Directive in the current form and its mention to be removed from art. 42 paragraph 3a.

The current formulation of art. 63 on *“Horizontal unbundling of hydrogen network operators”* states:

*“Where a hydrogen network operator is part of an undertaking active in transmission or distribution of natural gas or electricity, it shall be independent at least in terms of its legal form.”*

As currently formulated the provision does not bring additional clarification to the text for the following reasons:

1. If the current formulation refers to a more extensive form of separation, it would imply an unbundling at ownership level. The economic implications of such definition would be vast, especially in terms of assets transfer from the parent company to the hydrogen network operator. DSOs would have to undergo an evaluation of current assets. The appraisal of the grid is not as linear as other assets. This is so, given that the actual life of the grid would exceed market value under commercial or tax legislation. Implying a positive evaluation, even beyond the accounting depreciation purposes. This is particularly true if we were to look at conversion of the grid to support Hydrogen, which is directly targeted by the article 63 provision.

Consequently, market value of the transferrable assets would exceed bookkeeping value. This positive appraisal of the assets would ultimately result in important proceedings for the GAS DSOs transferring the assets towards the Hydrogen operator, who will need to have important capital to ensure acquisition. This would be an important investment for DSOs operators under 100 000 customers, who would potentially have to reach out to outside investors, having direct implication on final customers and network fees. As a matter of fact, the latter would be utilized to repay the investments. Consequently, making the Hydrogen grid charges significantly higher than what they would have been if the unbundling of the assets would have not taken place. Ultimately, this strong unbundling would be a strong deterrent for reconversion of the current grids towards hydrogen transport.

2. The formulation seems an unnecessary repetition of the extensive unbundling requirements already included within the Directive for Distribution System Operators.

If the current formulation directly refers to a complete unbundling requirement for Hydrogen DSOs, this obligation is already included within Article 69 of the Directive, where accounting obligations for DSOs are listed. In addition to this requirement, article 4 of the Gas Package Regulation, already ensures that no cross-financing by network-user is possible, as well adding a separation of assets for the system operators.

Based on the above presented arguments **GEODE calls on legislator to:**

- a) Remove article 63 from the Gas Directive
- b) In case the removal of the article 63 from the Directive is not possible, to either **limit DSOs unbundling to only legal aspects**, by clarifying the provision via the inclusion of a reference to Recital 70 within the provision, as per proposal below:

*“Where a hydrogen network operator is part of an undertaking active in transmission or distribution of natural gas or electricity, it shall be independent ~~at least~~ in terms of its legal form **only. That shall not create an obligation to separate the ownership of assets or the need for a functional unbundling of governance or separation of management or staff of the hydrogen network from the undertaking active in transmission or distribution of natural gas or electricity.**”*

- c) Alternatively, to **remove references to article 63 from article 42, para 3a** and **add a reference to the hydrogen network in art 42, para 4** the text would read as follows:

**Art 42, para 3a**

*“The distribution system operator and the hydrogen distribution network operator shall comply with Articles ~~63~~, 64 and 69.”*

**Art 42, para 4.**

*„Member States may decide not to apply paragraphs 1, 2 and 3 to distribution system operators **or the hydrogen distribution network operators** which are part of an integrated natural gas undertaking serving less than 100 000 connected customers“.*