Statkraft's response to consultation on the Hydrogen and Decarbonised Gas Market Package

1. Introductory remarks

Statkraft supports the overall objective to create a competitive, sustainable market for renewable and low-carbon gases, including hydrogen. In the following are our comments to the European Commission's proposed revision of the Directive of the European Parliament and Council no. 803/2021 on common rules for the internal markets in renewable and natural gases and hydrogen[1] and the Regulation of the European Parliament and Council no. 804/2021 on the internal markets for renewable and natural gases and for hydrogen.[2]

2. The use of definitions must be consistent

Developing clear and distinct definitions that can be applied consistently across EU legislation provides important and much needed legal clarity. This enables harmonisation of the definitions and their applications across sectors, enhances regulatory predictability and sets important directions for the development of more coherent policy frameworks for hydrogen. Due to the current process of developing different legal initiatives and policies under the EU Green Deal, it is especially important to be mindful of cross-references in both the Directive and Regulation to avoid discrepancies in the legal framework.[3]

Definitions decide the application of provisions in both the Directive and the Regulation. We welcome the proposed definitions of *low-carbon hydrogen*, *low-carbon gas* and *low-carbon fuels*. Crucial is the new definition of *low-carbon hydrogen* that is distinct from the definition of *renewable hydrogen* outlined in the proposed amendments to the Renewable Energy Directive (RED III).[4] Introducing a definition of what is *not* renewable hydrogen is a positive step towards obtaining more legislative coherence and is also an important measure to combat greenwashing.

However, definitions must not be a source to misunderstandings. An example of unclarity is the revised Gas Market and Hydrogen Directive Chapter IV Section 1 on access to *natural gas* infrastructure. Article 26 in the same Chapter obliges Member States to enable market access for *renewable and low carbon gases* to the market. The definitions of r*enewable gas* and *low carbon-gas* include hydrogen, while hydrogen is not defined as a *natural gas*. Thus, the placement of Article 26 creates unnecessary uncertainty on the application of the provision. How the definitions are interpreted is fundamental for

[1] Hereafter abbreviated revised Gas Market and Hydrogen Directive.
[2] Hereafter abbreviated revised Gas Market and Hydrogen Regulation.
[3] See for example the definitions of *renewable gas*, *low-carbon gas* and *low-carbon fuels* in the proposal for a revised Gas Market and Hydrogen Directive Article 2.
[4] Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 of the European Parliament and of the Council, Regulation (EU) 2018/1999 of the European Parliament and of the Council and Directive 98/70/EC of the European Parliament and of the Council as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652.

the application of the provisions and to give predictability for market participants. This illustrates that it is necessary to go through the legislation to ensure that such discrepancies are cleared up.

Furthermore, fuel is a wider terminology than gas, in that fuel also includes liquid materials. An example of a renewable fuel which is not a gas, is ammonia. The title of the Directive and Article 1 suggest that what has been intended regulated is the use of gas. This is also supported by the definition of renewable gas in Article 2 (2) where it is specified that only renewable gaseous fuels part of fuels of non-biological origins (RFNBOs), are included.

However, throughout the explanatory memorandum and different provisions in the Directive, both renewable and low carbon fuels are referred to. An example is Article 8 which is called "[c]*ertification of renewable and low carbon fuels*." This suggests that the provision applies to both renewable and low carbon fuels. Additionally, low carbon fuels are suggested defined in Article 2 (12). We worry that this creates misunderstandings concerning the scope of the Directive. It is important that the Commission has a conscious understanding of the consequences of regulating liquid fuels in addition to gases.

3. The revised Gas Market and Hydrogen Directive Article 8 on certification needs to be more fit for purpose

Statkraft is in general positive to the concept of EU-standards for documentation and tracking of renewable energy. Certification enables both Member States to track the fulfillment of their emission reduction obligations and economic operators to submit reliable information to the authorities on their emissions. It also helps economic operators to document the renewable properties of a specific good or service towards their customers.

However, this does not mean that the same documentation criteria will be suitable for all three purposes. Article 8 in the Directive introduces a certification scheme for renewable gases that builds on criteria defined in existing legislation, which are not necessarily fit for purpose. These views are further detailed below.

Article 8 refers to provisions in the Renewable Energy Directive 2018/2001 (RED II). Revisions to this Directive were proposed in the Fit for 55-package of July 2021. It is challenging to comment on Article 8 when it is unclear whether proposed amendments to RED II will be approved or not, as Article 8 refers to provisions which the Commission has proposed amendments to. Such cross-referencing will potentially be a source to confusion and unintentional mistakes when new legislative packages part of the EU Green Deal are proposed or adopted at a later stage.

3.1. Obligations on economic operators will likely have spillover effects

According to the revised Gas Market and Hydrogen Directive Article 8 (1), renewable gases shall be certified in accordance with RED II Article 29 and 30. It should be specified in Article 8 who is the intended subject of certification. Our understanding is that Article 8 seems to focus on imposing certification obligations on economic operators in order for Member States to count and reach their emission obligations.

RED II Article 29 sets rules on which emissions criteria apply to fulfil each Member State's contribution to the Union target. Now the same criteria will apply for individual economic operators to prove that the

renewable gas they produce is renewable. In general, we find it problematic when obligations meant for Member States, suddenly are applied to economic operators.[5]

Furthermore, such obligations on economic operators will likely have spillover effects on their commercial business. For documentation to customers on renewable gases produced from electricity, it is important that the economic operators can document that the electricity used as input in the production is renewable. This should be done using already existing standards for electricity, such as Guarantees of Origin.

3.2. Criteria for renewable gaseous fuels part of RFNBOs must be suitable

Renewable gas is defined as gaseous fuels produced from biomass, including biomethane, and renewable gaseous fuels part of RFNBOs. As RED II Article 29 only applies to biofuels, bioliquids and biomass fuels, it is clear that the reference in Article 8 extends the scope of Article 29, as it was originally not intended for gaseous fuels part of RFNBOs.

However, it does not make sense that renewable gaseous fuels part of RFNBOs must fulfil requirements adapted to the specific nature of biofuels and biomass fuels, such as what type of land it is derived from, in order to be considered renewable. Such criteria do not fit with the characteristics of renewable gases of non-biological origin, such as hydrogen. We are skeptical to a proposal where the certification criteria for renewable gaseous fuels part of RFNBOs are not adapted to the characteristics of the said type of gases.

3.3. Certification criteria for renewable gases of non-biological origin should not include additionality requirements

Statkraft is of the opinion that certification criteria for renewable gaseous fuels part of RFNBOs should not include provisions on additionality. The concept of additionality was introduced in RED II Article 27 (3), where it is stated that the Commission must develop a methodology ensuring that the electricity used for the production of renewable liquid and gaseous transport fuels of non-biological origin is of renewable origin. This methodology has not been published yet, and changes to Article 27 were proposed in the Fit for 55-package of July 2021. As mentioned above, it is therefore difficult to fully grasp the consequences of these provisions and how they relate to the provisions in the gas and hydrogen package.

In Norway, nearly all electricity production is renewable. Not allowing parts of the existing renewable production capacity to be used to produce renewable hydrogen would make no economic or environmental sense.

While the provisions in RED II Article 27 (3) and the upcoming delegated act might impose obligations on Member States and not economic operators, and while there may be exceptions for countries with an already high share of renewable electricity, Statkraft worries that such criteria might be transposed to criteria that economic actors must comply with in order to classify their products as renewable. This can happen through legislation, like we already see for criteria for gases of biological origin, or through spillover effects where the customers start making similar demands for the classification of the products

[5] There is a difference between Member States' obligations to report on their fulfillment of their national emission reduction in line with RED II, and an economic operator's obligation to document the renewable properties of a specific good or service. Methods developed for national calculation and documentation purposes will not necessary be fit for purpose for individual economic operators.

they buy. It is therefore important to follow these developments closely to ensure that products produced using existing renewable production capacity in Norway are classified in the same category as products produced using new renewables.

Furthermore, we believe that additionality requirements will have an inhibiting effect on the hydrogen market ramp up. Including power from existing renewable assets will be necessary to avoid considerable delays due to slow permitting processes and long project timelines of new renewable assets. We also believe that differential treatment of existing and new renewable energy can have major negative effects not only for all existing renewable energy and countries with high shares of renewables, but also for the well-functioning of energy markets. Both new and existing renewable energy should be able to contribute to the green shift on equal terms and one should avoid earmarking certain types of production for specific purposes.

We acknowledge the need for new renewable energy to achieve the ambitious targets for green hydrogen. However, we believe that incentives to increase the demand for hydrogen will enhance the deployment and supply of renewable electricity. Renewables are increasingly competitive and the fuel of choice for new generation in many locations.

3.4. There should be a common structural approach to certification of renewable and low-carbon hydrogen

Article 8 (2) requires the Commission to adopt a methodology for the certification of emission reduction from low-carbon hydrogen so that the requirements of 70 % greenhouse gas emissions savings are fulfilled. At the same time, RED II regulates identification of, requirements for and certification of renewable hydrogen.

As already mentioned, clear definitions are fundamental for the successful development of an EU-wide certification system for hydrogen. Designing a common structural approach to such a system, covering all renewable and low-carbon energy carriers, is pivotal. We support initiatives that seek to enhance transparency and traceability throughout value chain. Requiring producers to document the origin of renewable sources for all renewable hydrogen is essential, and we advise that a certification scheme for hydrogen is fit for purpose and compatible with already existing standards of documentation.

4. Unbundling ensures fair competition

Both the revised Gas Market and Hydrogen Directive and Regulation include rules on unbundling for the DSOs for natural gas, TSOs for natural gas and hydrogen network operators.

We note that the unbundling rules in the revised Gas Market and Hydrogen Directive Article 62 (2) and Article 69, in addition to the revised Gas Market and Hydrogen Regulation Article 4, also extend the unbundling requirements for DSOs for electricity in Directive (EU) 2019/944.

However, the current national implementation of the unbundling requirements from the third package, already requires that the DSOs for electricity legally and functionally separate from a*ll other activities*. We consider that this implementation ensures that the new unbundling requirements proposed through the revised Gas Market and Hydrogen Directive and Regulation, is therefore already fulfilled in Norwegian legislation for DSOs in the electricity sector. Statkraft also then assumes that there will not be any changes to the requirements for exemptions, and thus, that existing exemptions will not be affected.

Statkraft is of the opinion that unbundling should be carried out strictly. The objective of unbundling is to remove incentives for network operators to discriminate against competitors as regards to network access and investments. It is therefore important that network operators as a main rule do not have a right to own storage facilities for natural gas and hydrogen. Storage services should be based on competition to ensure fair competition and access for new market entrants. Additionally, only hydrogen network operators should operate the hydrogen network.

5. Non-discriminatory market access is crucial for the development of a well-functioning hydrogen market

Statkraft is in favour of a strong right to market access for market participants. Market access is fundamental for the further development of a well-functioning renewable gas market.

Storage of gas and hydrogen can be utilized as a flexibility resource in the electricity grid. Firstly, we believe it is important that such storage activities are exposed to competition. Therefore, network operators should as a main rule not participate in such activities, which unbundling rules are meant to ensure. Secondly, it is important that market participants storing natural gas and hydrogen, both as a flexibility tool and to produce electricity, have market access, and that flexibility services can be offered to all market participants on equal and competitive terms.

Statkraft is in general positive to the development of a non-discriminatory and unbiased system for regulating third party access to hydrogen networks based on published tariffs. Our understanding of the revised Gas Market and Hydrogen Directive Article 31 is that such a system will only apply from 1. January 2031. We encourage to facilitate an alternative and transitional arrangement to ensure third party access prior to the implementation of the proposed system. Uncertainties and vague guidelines regarding rules for third party access could hinder or slow down the development of the hydrogen market.

6. Blending

Hydrogen and natural gas blending is in early stages of development, but facilitating a limited percentage of blending in Europe’s natural gas network can be an enabler for the development of the hydrogen economy and contribute to meet targets for decarbonisation.

Statkraft supports the development of legislation to support the technical feasibility of blending hydrogen with natural gas in Europe. Without this, different gas quality standards and rules on hydrogen blending levels might apply, risking cross-border flow restrictions and market segmentation. Gas quality standards would continue to be mainly defined by the quality parameters of natural gas, limiting the integration of renewable gases in the network. The blending of hydrogen into the natural gas system is less efficient compared to using hydrogen in its pure form and diminishes the value of hydrogen. However, by accepting a certain percentage of blending it is important that the blended hydrogen is renewable and that we avoid lock-in of new natural gas capacity.