



Joint response to ACER's consultation on the draft statutory documents of the ENNOH

Climate Action Network (CAN) Europe is Europe's leading NGO coalition fighting dangerous climate change. With over 200 member organisations active in 40 European countries, representing over 1,700 NGOs and more than 40 million citizens, CAN Europe promotes sustainable climate, energy and development policies throughout Europe.

Question 1: In your view, are ENNOH's draft Articles of Association (AoA) in line with the applicable Union law?

It is regrettable that the composition of members (Art. 6) or the board (Art. 30) and of advisory committees does not mention the involvement of non-HTNOs in the association other than through formal consultation processes (see question 5).

Another point that raises concern is the lack of clarity around some network codes to be developed by ENNOH, especially for the proposal for network codes in the area of “determining the value of transferred assets” - as this network code in particular is required to be developed with ENTSOG according to article 4§3(f) of the AoA. In the absence of clear understanding of “transferred assets”, including ENTSOG in this network code opens the door to gas TSOs valuing their assets for HTNOs, hereby undermining the real value of a transferred asset for the future hydrogen network, as it should be for ENNOH only to determine independently from gas interest and gas revenues how much an asset will be needed in the system.

Question 2: In your view, are ENNOH's draft Rules of Procedure (RoP) in line with the applicable Union law?

Article 13 from ENNOH's RoP could potentially misalign with applicable EU law. Indeed, the Grid Significance Factor in Article 13 does not explicitly distinguish between hydrogen used in hard-to-electrify sectors and hydrogen for more easily electrifiable uses, even if the revision of the gas package anchored the priority use of hydrogen as general horizontal principle (see article 1 and 3 for example). While it focuses on the transmission infrastructure (pipeline

kilometres) and volume of hydrogen transported, it does not ensure that the hydrogen is being directed toward those priority sectors, especially in the absence of a scientifically based and neutral needs assessment for hydrogen use in priority sectors. There is a risk that this focus on pipeline kilometres and hydrogen volume could promote hydrogen use in sectors where it is not needed, from a climate and energy transition perspective (e.g., heating or light-duty transport) rather than directing hydrogen toward decarbonising industries like steel, chemicals, and storage. Consequently, this risks leading to an inefficient, oversized hydrogen network, and increases the risk of significant stranded assets, for which tax payers and gas consumers will have to foot the bill.

We would like to suggest reviewing the RoP with a specific focus on ensuring following principles are implemented accordingly:

- **Use of renewable hydrogen:** The proposal does not currently make a distinction between green hydrogen and other forms of hydrogen. By focusing on hydrogen volume transported in the pipeline system, it could incentivise the transmission of grey or blue hydrogen, which would not align with the EU's climate-neutrality goal. We call for using renewable hydrogen exclusively and adapting all infrastructure assessments accordingly.
- **Hydrogen used in priority sectors:** The system should be refined to ensure that hydrogen usage is prioritised for the sectors that need it the most for decarbonisation, which will have a significant impact on the required infrastructure. One way to achieve this would be to introduce criteria or incentives that encourage hydrogen infrastructure development and usage in these specific sectors and discourage inefficient infrastructure build out.
- **Hydrogen needs assessment:** We call for an independent hydrogen needs assessment in priority sectors by 2030 and 2050 to correctly calibrate future hydrogen infrastructure needs. This needs assessment could be developed by ACER, ESABCC or accompanied by the JRC.

Question 3: In your view, are ENNOH's draft Rules of Procedure for the Consultation of Stakeholders (RoP SC) in line with the applicable Union law?

We noticed several key points that could potentially misalign with applicable EU law or best practices for stakeholder consultation:

- **Article 2 (4)(a):** The statement about providing a "flexible and effective approach to consultation" could be interpreted as allowing for discretion in how consultations are designed, which might lead to inconsistencies or a lack of standardisation in stakeholder engagement processes. This approach should not allow transparency criteria to be

watered down nor should it limit the possibility for informed stakeholders to provide feedback to consultations; their responses must be appropriately considered.

- **Article 3 (1)(f):** ENNOH should consult with stakeholders on the annual supply outlook, however, the supply outlook alone is not enough. ENNOH should also take into consideration stakeholder's input on a demand outlook, as part of or in addition to the 3 (1) (f) supply outlook, and to be aligned with the independent hydrogen needs assessment needed to develop an adequate hydrogen network compatible with decarbonisation and energy transition goals. Failure to do so would greatly increase the risk of overbuilding the hydrogen network without alignment with the EU's decarbonisation objectives, or efficiency and cost saving requirements which would ultimately have an impact on the price of hydrogen at EU level.
- **Article 3 (1)(g):** The scope of "hydrogen quality monitoring" is unclear and should be specified, as deliverables on hydrogen quality and best practice should explicitly include hydrogen leaks, annual measurement or calculation of network CO2 emissions (including emissions intensity of source hydrogen, measurement/estimation of leaks, estimation of downstream), etc. As the development of the hydrogen network has to focus on decarbonisation objectives, ENNOH should be responsible to report the carbon footprint and GWP of the European network.
- **Article 6:** The criteria for involving stakeholders in other participative processes such as the Stakeholders Joint Working Sessions is not clear enough. **ENNOH should actively invite CSOs** and diverse stakeholders to participate in the Drafting Committee and Stakeholder Joint Working Sessions (SJWS), especially in the context of drafting its Ten-Year Network Development Plan (TYNDP). ENNOH should therefore clearly communicate participation criteria as well as timely communicate all practical information needed and, if relevant, offer capacity-building workshops to enable stakeholders to meaningfully participate. Additionally, integrating scientific expertise from bodies such as the European Scientific Advisory Board on Climate Change (ESABCC) will help align the processes with science-based climate and energy objectives.
- **Article 9 (14).** The provision allowing for a minimum two-month consultation period could be seen as insufficient for complex topics, especially if the period can be reduced to three weeks in "duly justified cases." This could limit the ability of stakeholders to provide comprehensive feedback and the mention should be removed. EU public consultation guidelines typically recommend longer periods to allow thorough stakeholder input.

Overall, the RoP SC still lacks clarity regarding the involvement of stakeholders and guarantees to ensure a fair representation of civil society and avoid conflict of interest with the fossil gas transport industry. The rules of procedure should not only align with better regulation and best practices, but also with the principles set out in the Strategic Environmental Assessment (SEA) Directive (2001/42/EC) and the Environmental Impact Assessment (EIA) Directive (2011/92/EU amended by 2014/52/EU). In particular, ENNOH should ensure transparency and inclusiveness in decision making by inviting stakeholders to give broader, general inputs in a more open

format (via regular meetings or via a very open preliminary consultation), taking into account the limited capacity of most NGO stakeholders to contribute with crucial input before being limited to very narrow, technical questions only - thus leading to a more holistic approach. ENNOH should clearly show how the broader general input has been taken into account to inform the further more technical next steps. We would like to suggest reviewing the ROP with a specific focus on ensuring following principles are implemented accordingly:

- **Alignment with EU Law:** ENNOH's consultation processes should adhere to SEA and EIA Directives, ensuring broad stakeholder involvement, with mechanisms to provide necessary data early for informed participation.
- **Consultation Timing:** ENNOH must consult stakeholders before major decisions, replacing vague terms with clear criteria to ensure transparency in all crucial issues.
- **Balanced Representation:** ENNOH should include a range of stakeholders, from technical experts to those with limited expertise, focusing on early, broader input beyond narrow technical discussions.
- **Feedback and Transparency:** Clear, accessible consultation processes with regular updates, publication of notes from all consultations, and transparent timely reporting on how input was used.

Question 4: Do you have any comments on ENNOH's draft List of Members?

The list of members raises concern regarding the clear separation needed between hydrogen transmission operators and gas transmission operators and the timeline of implementation of this separation and of the ownership and access to the hydrogen network. According to the article 57 of the gas regulation, ENNOH shall consist of hydrogen transmission network operators (HTNO) certified pursuant to Article 71 of the gas Directives. So far, only three gas TSOs from the proposed list of members seem to have created at this stage unbundled units specific for hydrogen TSO. We call for clarification on the timeline of these TSOs to have unbundled hydrogen units and the degree of unbundling to be achieved. A lack of a clear and early separation of hydrogen interests risks leading to a situation in which hydrogen infrastructure plans are not in the best interest of Europeans but rather serve the fossil gas transport industry to prolong its business model, ie. through extensive repurposing plans without firm needs assessment, overvaluation of gas infrastructure assets, overly optimistic hydrogen import and import infrastructure plans, and the planning for a hydrogen grid very similar to the existing gas grid, while ignoring the fundamental differences between use cases. In this respect it also needs to be noted that in the case of a failure of materialisation of the hydrogen projects, the fallback option will be fossil gas.

Question 5: Any other comment?

While ENNOH has addressed some of our comments submitted during its own consultation of Rules of Procedures for consulting stakeholders, many of our key concerns remain unaddressed. Notably, the lack of precise criteria for involvement of stakeholders beyond traditional consultation approaches, such as through **Stakeholder Joint Working Sessions**, is particularly problematic.

Furthermore, there is insufficient focus on hard-to-decarbonise sectors which are critical for achieving climate goals. Without **prioritising renewable hydrogen** and engaging independent, science-based institutions like the European Scientific Advisory Board on Climate Change (ESABCC) in needs assessments, ENNOH risks perpetuating a system that prioritises hydrogen infrastructure buildup without alignment with the EU's decarbonisation objectives, or efficiency and cost saving requirements. ENNOH must also better prevent influence from the fossil gas transport industry to avoid misaligned infrastructure investments, as it will be at the core of the TYNDP planning. It is therefore of the utmost importance to avoid conflict of interests and their expected negative impacts on sustainability, efficiency and costs. For this aim the work of ENNOH must be based on a needs assessments for renewable hydrogen and infrastructure needs, made in cooperation with independent and science-based stakeholders. A **science-based advisory board or a civil society advisory panel** should be established within the association, tasked with advising the Board or General Assembly on key decisions.

The response to ACER's consultation on ENNOH was submitted jointly by:

