

**ANNEX to ACER Opinion No 10/2024 on ENNOH's statutory documents**

# **Evaluation Report**

**Public consultation on  
ENNOH's statutory documents**

**PC\_2024\_G\_10**

19 December 2024

## 1. Introduction

This document summarises stakeholder feedback from ACER’s public consultation on the draft statutory documents of the European Network of Network Operators for Hydrogen (‘ENNOH’).

ACER received a total of 13 responses from the parties listed below, including 4 associations. All responses are non-confidential and are published on [ACER’s consultation page](#).

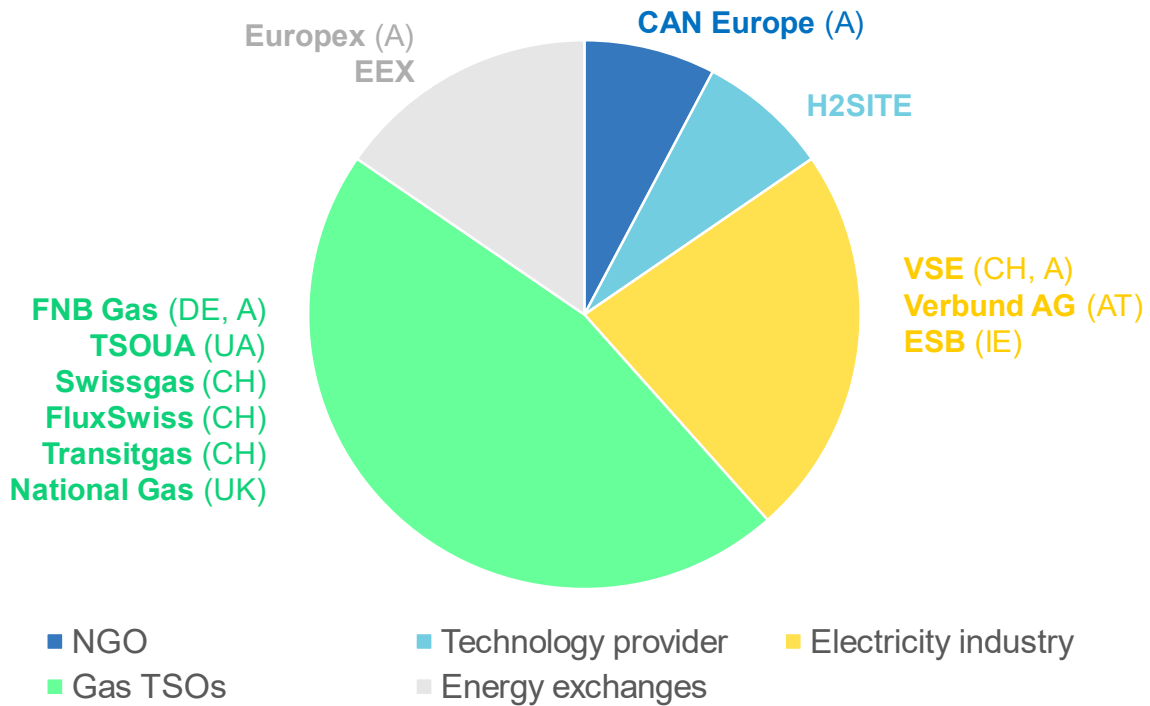
No.	Respondent	Category	Country
1.	CAN Europe	<b>Association:</b> NGOs <sup>1</sup>	multinational
2.	EEX	Energy exchange	multinational
3.	ESB	Electricity producer	Ireland
4.	Europex	<b>Association:</b> energy exchanges	multinational
5.	FluxSwiss	Gas TSO	Switzerland
6.	FNB Gas	<b>Association:</b> gas TSOs	Germany
7.	H2SITE	Technology provider	multinational
8.	National Gas	Gas TSO	UK
9.	Swissgas	Gas TSO	Switzerland
10.	TSOUA	Gas TSO	Ukraine
11.	Transitgas	Gas TSO	Switzerland
12.	Verbund AG	Electricity producer	Austria
13.	VSE	<b>Association:</b> electricity producers	Switzerland

---

<sup>1</sup> Joint response with E3G, Food and Water Action Europe, Global Witness, IEEFA, Deutsche Umwelthilfe and Bond Beter Leefmilieu.

## 2. STAKEHOLDERS

The pie chart categorises respondents based on their industry sector. 'A' stands for 'association'.



## 3. STAKEHOLDER ANSWERS

ACER has reviewed and considered all stakeholder comments in formulating its Opinion. In certain areas, these comments are explicitly reflected in the reasoning provided within the Opinion. The table below summarises all the key points raised by the stakeholders, along with references to the specific sections of the Opinion that cover these points. Comments have been grouped when they pertain to the same aspects or areas of the statutory documents. Summaries of comments appear on the left side of the table, with ACER's responses on the right side.

Respondents' comments	ACER's views
<b>1. ENNOH's objectives</b>	
<p>Two respondents provided comments on ENNOH's objectives.</p> <p><b>CAN Europe</b> emphasised key areas needing improvement to ensure that ENNOH's establishment aligns with the EU decarbonisation and sustainability goals.</p> <p><b>H2SITE</b> asked that Article 4 of the Articles of Association ('AoA') explicitly reference EU hydrogen strategy documents to reinforce ENNOH's alignment with EU energy policy goals.</p>	<p>ACER agrees with the respondents and has recommended to explicitly refer to climate-related objectives in Article 4 of the AoA (see section 3.2.1 of the Opinion).</p>
<b>2. ENNOH's governance / potential conflict of interest</b>	
<p><b>CAN Europe</b> expressed concerns about ENNOH's framework, highlighting the potential for conflicts of interest due to the involvement of fossil gas interests. Their main points included:</p> <ul style="list-style-type: none"> <li>- The absence of a clear separation between hydrogen and gas transmission operators, as well as the lack of a defined timeline and scope for unbundling hydrogen units from gas TSOs. CAN Europe was concerned that without an early and well-defined separation, hydrogen infrastructure plans could be leveraged to support the fossil gas transport industry, thus extending its business model.</li> <li>- ENNOH's collaboration with gas-related entities, especially in asset valuation, which might not align with the interests of the hydrogen network. They specifically raised concerns about the development of the network code for determining the value of transferred assets (to be created in collaboration with ENTSO-G) and the potential influence of gas TSOs on this process. CAN Europe emphasised that ENNOH should independently determine the necessary assets for the system without being influenced by gas interests or revenues.</li> </ul> <p>To address these concerns, CAN Europe advocated for the creation of a dedicated,</p>	<p>ACER does not share these concerns. Although the current regulatory framework permits the joint operation of hydrogen networks alongside natural gas or electricity networks to leverage potential synergies, it incorporates safeguards to mitigate conflicts of interest between gas and hydrogen transmission operations. These safeguards include:</p> <ul style="list-style-type: none"> <li>- <u>Legal horizontal unbundling</u>: the operation of hydrogen transmission networks must be legally separated from the operation of gas and electricity networks. While Member States may grant temporary derogations from this requirement, such exceptions are contingent on a positive cost-benefit analysis and an impact assessment by regulatory authorities.</li> <li>- <u>Separation of regulatory asset bases</u>: where a TSO, a DSO or a hydrogen network operator provides regulated services for natural gas, hydrogen or electricity, the Regulation require them to use separate regulatory asset bases ('RAB') and unbundled accounts.</li> <li>- <u>Vertical unbundling of HTNOs</u>: Like gas TSOs, HTNOs must undergo certification by the regulatory authority, with the Commission providing an opinion to ensure compliance with unbundling rules. Regulatory authorities are also tasked with ongoing monitoring to ensure certified entities remain in compliance.</li> </ul>

science-based, and independent advisory board within ENNOH to guide key decisions. They argued that such a board would help align ENNOH's activities with scientific climate and energy objectives, reduce the influence of fossil gas interests in decision-making, and maintain a focus on renewable hydrogen and sectors critical for decarbonisation.

- Accounting unbundling: the Directive mandates the Member State to ensure unbundling of accounts for hydrogen network operators, ensuring financial transparency.

The requirement for Member States to transpose the Directive into national law by 5 August 2026 establishes a clear timeline for implementing these safeguards.

*(See Articles 68, 69, 71 and 94 of Directive (EU) 2024/1788, Articles 5 and 14 of Regulation (EU) 2024/1789.)*

ACER also notes the concern that the network code for determining the value of transferred assets might be influenced by the interests of gas TSOs. However, the Regulation requires that the transfers of assets between RABs of natural gas TSOs and HTNOs are subject to an audit and approval by the regulatory authority and that cross-subsidies do not occur. ACER may also issue recommendations to the TSOs, DSOs, hydrogen network operators and the regulatory authorities on the methodologies for the determination of the value of the assets that are transferred to another RAB in addition to the destination of any profits and losses that may occur as a result.

*(See Articles 5(1)(b) and 5(6) of Regulation (EU) 2024/1789.)*

Furthermore, to ensure cross-sectoral consistency and address potential cross-border impacts of repurposing, decisions to remove assets from natural gas networks must be made within the framework of network planning processes conducted at both national and EU levels.

At national level, according to the Directive, gas national development plans ('NDPs') must be based on joint scenarios across natural gas, hydrogen, and electricity, developed in close coordination with NDPs for hydrogen and electricity, include scenarios on regional distribution of natural gas demand and supply, and report on future utilisation of individual assets by also highlighting possible shift of residual utilisation.

*(See Articles 55, 56 and 57 of Directive (EU) 2024/1788.)*

At EU level, Regulation (EU) 2024/1789 establishes the EU rules for developing the ten-year network development plan ('TYNDP'), including specific provisions on decommissioning:

- TYNDP for natural gas must include the modelling of the integrated network, scenario development, a European supply adequacy outlook and an assessment of the resilience of the system, including infrastructure to be decommissioned (Article 32).
- DSOs must cooperate with other DSOs and TSOs to coordinate decommissioning of infrastructure (Article 37).

Regulation (EU) 2022/869 ('TEN-E') establishes a framework for identifying and facilitating investments in hydrogen and electricity networks with a view to achieve a climate-neutral energy mix by 2050.

Finally, ACER notes that the process for developing network codes (such as the one for determining the value of transferred assets) is designed to provide robust oversight which prevents undue influence of gas TSOs.

Regulation (EU) 2024/1789 foresees that a draft network code is prepared by system operators in accordance with ACER's framework guideline and is then reviewed by ACER before it is recommended to the Commission for adoption. The Commission can amend the network code at any time, and stakeholders, including system users and consumers, and ACER, may propose amendments to the network code.

*(See Articles 72 and 73 of Regulation (EU) 2024/1789.)*

ACER has recommended explicitly referencing climate-related objectives in Article 4 of the AoA and including independent climate expert bodies, such as European Scientific Advisory Board on Climate Change ('ESABCC'), in the drafting committees (see sections 3.2.1 and 3.2.6.4 of the Opinion).

See also ACER's response to stakeholders' comments in **section 9** below, concerning

hydrogen infrastructure planning and development.

### 3. Members in ENNOH

**Verbund** advocated for a pragmatic approach to admitting founding members into ENNOH from the outset of its establishment. They emphasised the importance of swiftly implementing hydrogen regulations at the national level to expedite the development of the European hydrogen economy.

Verbund highlighted that initiating the certification process should be presumed (as currently set out in the Rules of Procedure) as a practical approach in admitting founding members into ENNOH.

ACER's views on the presumption of the start of the certification process are set out in section 3.2.2.2 of the Opinion.

### 4. Associated Partners in ENNOH

**H2SITE** recommended clarifying the criteria for associated partners to ensure compliance with competition law and defining the role of technology providers as associated partners to better align with innovation policies. H2SITE expressed interest in participating in ENNOH as an associated partner, contributing their expertise in hydrogen production and purification to support network planning.

Article 57(5) of Regulation (EU) 2024/1789 reserves the category of associated partners to entities nominated by those Member States which have not designated a HTNO, but which plan to develop a hydrogen transmission network in accordance with their integrated national energy and climate plans. This nomination expires when a HTNO established in the Member State concerned becomes a member of the ENNOH. According to Recital (79) of the Regulation, Member States may delegate the representative of a national association dedicated to hydrogen matters.

See also section 3.2.2.2 of the Opinion.

Technology providers, as all other relevant stakeholders, have other channels to participate in ENNOH, particularly through public consultations, and other participation processes to be established by ENNOH in the future. In this context, ACER has recommended that the drafting committees include a diverse market stakeholder group to best align network codes with current market realities and technological developments (see section 3.2.6.4 of the Opinion).

See also ACER's response in **section 8, point d)** below.

## 5. Observers in ENNOH

Six respondents provided comments regarding the observer status in ENNOH.

**GTSOU** proposed that the statutory documents should specify that observer status be available not only to (designated) HTNOs from third countries but also to network operators nominated by these countries to develop hydrogen networks, even if they have not yet been formally designated as HTNOs due to the absence of relevant legislation transposing the EU Directive. This clarification is particularly important for entities in the Energy Community Contracting Parties developing hydrogen transmission networks, such as the Central European Hydrogen Corridor.

**Transitgas, FluxSwiss, Swissgas, and VSE** underscored the significance of granting observer status to various sectors and regions, including the EFTA States (e.g., Switzerland), to promote transparency and collaboration. The Swiss gas TSOs argued that allowing observer participation in ENNOH aligns with the existing ENTSO-G framework and enhances EU cooperation with third countries, thereby supporting the transition to a hydrogen economy beyond EU borders and aligning EU policies with global hydrogen infrastructure standards. VSE specifically highlighted Switzerland's role in the European hydrogen market and its extensive energy interconnections with the EU, arguing that observer participation from Switzerland would acknowledge and leverage the Swiss energy sector's potential contributions to the European hydrogen economy.

**National Gas** expressed concerns that the eligibility criteria for observers were too restrictive, excluding entities functioning as de facto HTNOs from interconnected third countries, such as the UK. They noted that this restriction could limit ENNOH's ability to fulfil its responsibilities, such as planning, reporting, and technical cooperation. National Gas

ACER agrees with GTSOU and has recommended to extend the observer status to network operators nominated by these countries to develop and operate hydrogen networks, even if they lack formal HTNO designation. The comment is reflected in section 3.2.2.4 of the Opinion.

ACER's views on the eligibility criteria for observers are set out in section 3.2.2.4 of the Opinion.

ACER's views on the eligibility criteria for observers are set out in section 3.2.2.4 of the Opinion.



recommended revising these criteria to permit broader participation from interconnected regions, fostering more effective and efficient collaboration with third countries.

**Swissgas** inquired about the role of ACER in obtaining observer status.

ACER does not play any role in this process. Observer status can be obtained by applying directly to ENNOH, once established.

## 6. General Assembly voting - Grid Significance Factor

**CAN Europe** has raised concerns regarding the proposed Grid Significance Factor ('GSF'), noting that it emphasises hydrogen network length and volume without prioritising hydrogen use for sectors that are challenging to decarbonise, such as steel and chemicals. They highlighted that the revised Gas Package introduces this priority use principle,<sup>2</sup> and that neglecting it could result in an oversized network and stranded assets, outcomes misaligned with the EU's climate objectives.

Based on ACER's considerations in **section 2** (above, ENNOH's governance) and **section 9** (below, hydrogen infrastructure planning), ACER does not see the need at this stage to adjust the proposed criteria for GSF. However, if the application of the GSF results in ENNOH failing to observe the priority use principle, ACER and/or the Commission may request changes to ENNOH's statutory documents at any time to amend these criteria.

*(See Article 57(12) of Regulation (EU) 2024/1789.)*

## 7. Board elections

**FNB Gas** emphasised the importance of the five pre-assigned seats on the ENNOH Board as a way to acknowledge and reward leading countries in hydrogen infrastructure development. They highlighted Germany's significant role in the European hydrogen network, noting that 9 out of 36 founding members are German HTNOs. Additionally, Germany's hydrogen network is projected to span 10,000 km and attract private investments amounting to 20 billion EUR. FNB Gas advocated for guaranteeing representation of German network operators due to their substantial progress and contributions to hydrogen infrastructure development.

ACER's views on the pre-assigned seats in the Board are set out in section 3.2.3.2 of the Opinion.

## 8. Stakeholder engagement and stakeholder consultations

Five respondents provided comments on stakeholder engagement, including stakeholder consultations, and the draft Rules of Procedure

<sup>2</sup> See Article 1(5) of Directive (EU) 2024/1788 and Article 3(l) of Regulation (EU) 2024/1789).

for the Consultation of Stakeholders ('RoP CS'), making the following recommendations:

*a) More detailed guidelines on stakeholder engagement*

**CAN Europe and ESB** expressed concerns about the vague language in the RoP CS, noting that excessive flexibility in consultation approaches could compromise transparency, result in inconsistencies, and create confusion (e.g., clarification needed for references to TSOs and DSOs due to the presence of three types of network operators). CAN Europe emphasised the need for clear criteria for stakeholder participation and transparency, while ESB suggested more comprehensive guidelines for communication with stakeholders. These should include advance alerts for planned consultations, maintaining a register of interactions with stakeholders, documenting oral submissions, and publishing refined final responses. ESB also highlighted the importance of balancing transparency with confidentiality, suggesting that all responses could be published with commercial details redacted to protect sensitive information.

**H2SITE** requested more detailed guidance on how ENNOH would manage conflicting stakeholder interests and saw value in clearer coordination with the European Commission and ACER to prevent duplicated efforts. They also recommended including digital accessibility provisions for ENNOH's documents and processes and clarifying the *'interactive data collection process'* outlined in Article 6(1)(c) of the RoP CS to allow for the submission of technical data to inform network development and operational standards. In this respect, they suggested more detailed guidelines to protect intellectual property rights during consultations.

*b) Longer or shorter consultation periods*

**ESB and CAN Europe** advocated for extending consultation periods. ESB noted that if consultations are reduced to three weeks or less, ENNOH should provide a justification and make efforts to notify stakeholders, including

ACER notes these comments and has included related recommendations to improve the draft RoP CS in section 3.2.8.1 of the Opinion.

ACER acknowledges these comments and has included corresponding recommendations in section 3.2.8.2 of the Opinion.

ACER also notes that the two-month period is a minimum and does not prevent ENNOH from

regulatory authorities. CAN Europe suggested that two months may be insufficient for complex topics.

**H2SITE** proposed introducing a mechanism for expedited consultations on emerging technologies or methodologies that could impact hydrogen network operations, to facilitate rapid integration of innovative solutions.

*c) Forming specific structures within ENNOH for engaging stakeholders*

**Europex and EEX** suggested including market stakeholders such as shippers, producers, suppliers, and trading operators in ENNOH to enhance transparency and foster innovation. They recommended creating a [Market Advisory Group \(Market Consultative Group\)](#) within ENNOH to engage diverse stakeholders in network code development and improve dialogue during the technical rule-making process. This group would complement, not replace, existing public consultations and aim to make processes more proactive and reduce the need for revisions.

**ESB** proposed forming [Expert Stakeholder Committees](#) to address crossover areas like power generation and large energy users, and highlighted the potential value of engaging with Eurelectric for network code implementation.

**H2SITE** suggested establishing an [Innovation Working Group](#) to offer technology providers a formal channel for participation, to enhance technical expertise, align with technological progress, and support EU innovation goals. They supported the inclusion of technology providers and SMEs in Article 31 of the Rules of Procedure to enhance consultations.

**CAN Europe** called for broader stakeholder involvement, including civil society organisations.

conducting longer consultations when necessary.

Article 6 of the RoP CS details three types of participative processes that ENNOH plans to implement beyond its consultations: drafting committees for network codes, stakeholder joint working sessions for the TYNDP, and interactive data collections.

ACER acknowledges the importance of involving a diverse range of market stakeholders in ENNOH's network code development process, in particular through their inclusion in the drafting committees, as envisaged in Regulation (EU) 2024/1789. ACER's recommendations on drafting committees are detailed in section 3.2.6.4 of the Opinion.

ACER also notes that Article 6 of the RoP CS allows flexibility, stating that ENNOH will implement at least these three types of structures but does not preclude additional ones. ENNOH may establish stakeholder groups in the future to support the fulfilment of its legal mandates. ACER believes it is unnecessary to specify these groups at this stage, allowing ENNOH the flexibility to create and adapt them as needed for specific deliverables or activities.

For instance, since 2015, ENTSO-E, in collaboration with ACER, established European Stakeholder Committees for network code implementation, which operate under their own terms of reference and are independent of ENTSO-E's statutory documents.

## 9. Hydrogen infrastructure planning and development

Two respondents provided comments on hydrogen infrastructure planning and development.

The comments of the respondents are not related specifically to ENNOH's draft statutory documents, but rather relate in general to the

**CAN Europe** emphasised the need for criteria that ensure hydrogen infrastructure supports decarbonisation efforts and avoids the risk of developing inefficient, oversized networks or stranded assets that could burden taxpayers and gas consumers. Specifically, they proposed:

- Conducting an independent hydrogen needs assessment for priority sectors (e.g., hard-to-decarbonise sectors such as steel, chemicals, and storage) for both 2030 and 2050 to accurately plan future hydrogen infrastructure requirements.
- Establishing criteria or incentives to encourage hydrogen infrastructure development and utilisation in priority sectors while discouraging inefficient buildouts.
- Explicitly prioritising green hydrogen over other types of hydrogen and ensuring this priority is reflected in all infrastructure assessments.

(See also CAN Europe's views under **section 2** above.)

regulatory framework of hydrogen infrastructure planning and development and are thus outside the scope of this Opinion.

In any event, ACER notes that Article 3 of Regulation (EU) 2024/1789 establishes general principles for the operation of natural gas and hydrogen markets. These principles require that:

- rules on network planning must prioritise hydrogen use in hard-to-decarbonise sectors, consider greenhouse gas ('GHG') abatement potential, encourage reduced fossil gas demand, and align with the EU's climate and energy goals (point (l));
- market rules must enable decarbonisation of the natural gas and hydrogen systems by facilitating the integration of renewable energy sources, promoting energy savings and efficiency, reducing and making demand more flexible, enhancing energy system integration, and contributing to the achievement of EU climate and energy targets (point (j)); and that
- market rules must deliver long-term investments in a sustainable, decarbonised gas and hydrogen system, energy storage, efficiency, demand reduction, and response, while emphasising the 'energy efficiency first' principle to prevent investments that could lead to stranded assets (point (k)).

The EU hydrogen network planning and development process under Regulation (EU) 2024/789 and Directive (EU) 2024/789 incorporates these general principles. The process evaluates alternatives to system expansion and assesses the needs of hard-to-decarbonise sectors, considering GHG abatement potential, energy efficiency, and cost-effectiveness compared to other options.

There is regulatory oversight to ensure these elements are reflected in network planning at both national and EU levels.

Specifically, ENNOH's TYNDP must be based on NDPs which in turn must be aligned with the integrated national energy and climate plans and supporting the climate-neutrality goal, and are subject to approval by the regulatory authorities who assess compliance with these requirements. The joint scenarios prepared by

H2SITE recommended that ENNOH incorporate new hydrogen production and purification technologies in its network planning to stay aligned with the latest technological advancements. They also called for the inclusion of EU climate and energy objectives, as well as considerations for emerging hydrogen

the network operators for the NDPs must include an analysis of hard-to-decarbonise sector needs. These scenarios require approval by the competent national authorities and are also reviewed by the ESABCC, which may issue opinions on their compatibility with EU climate targets for 2030 and 2050.

ACER provides an opinion on the draft TYNDP and, where relevant, on NDPs to assess their consistency with the TYNDP, recommending amendments as needed. Additionally, regulatory authorities are tasked with monitoring and evaluating the implementation of the NDPs.

*(See Article 60 of Regulation (EU) 2024/1789 and Article 55 of Directive (EU) 2024/1788.)*

Climate objectives are also considered in the EU framework on the Projects of Common Interest ('PCI') under Regulation (EU) 2022/869. All candidate PCI projects are assessed for their contribution to EU 2030 targets for energy and climate and its 2050 climate neutrality objective and to this aim, climate impact assessments are integrated into the selection process and cost-benefit assessment. In particular, to obtain a PCI status, a hydrogen project must contribute significantly to sustainability, including by reducing GHG emissions, by enhancing the deployment of renewable or low carbon hydrogen, with an emphasis on hydrogen from renewable sources in particular in end-use applications, such as hard-to-abate sectors, in which more energy efficient solutions are not feasible, and supporting variable renewable power generation by offering flexibility, storage solutions, or both.

*(See Articles 4(3)(d) and 4(5)(a) of Regulation (EU) 2022/869, as well as point (5)(a) of Annex IV assessment criteria for hydrogen projects and Annex V concerning energy system-wide CBA)*

This comment also goes beyond the scope of this Opinion as it concerns the regulatory framework of hydrogen infrastructure planning. In any case, ACER does not see the need to explicitly incorporate new hydrogen production and purification technologies, or emerging hydrogen technologies into ENNOH's network

technologies, in Article 34 of the Rules of Procedure related to the TYNDP for hydrogen.

planning or ENNOH's Rules of Procedure concerning TYNDP. This is because the joint scenarios that underpin the NDPs already undergo an extensive consultation process involving relevant stakeholders. Similarly, when preparing the TYNDP, ENNOH is required to conduct a comprehensive public consultation that includes all relevant market participants. The active engagement of developers of hydrogen production and purification technologies, as well as developers of emerging hydrogen technologies, will be essential to ensure that hydrogen network planning aligns with the latest technological advancements.

*(See Article 63 of Regulation (EU) 2024/1789 and Article 55 of Directive (EU) 2024/1788.)*

## 10. Bilateral agreements

**National Gas** criticised Article 26 of the Rules of Procedure, which governs ENNOH's bilateral agreements with third-country network operators, arguing that it imposes overly restrictive conditions on ENNOH's activities. They noted that this provision introduces an unnecessary and administratively burdensome approach to cooperation, as it requires a bilateral process that is less efficient and transparent than obtaining the observer status. National Gas highlighted a comparable situation under ENTSO-G statutes following Brexit, where a separate task force was necessary to facilitate collaboration between ENTSO-G and UK TSOs, suggesting that the current approach may replicate similar inefficiencies.

ACER's views on the bilateral agreements with third country operators are set out in section 3.2.6.3 of the Opinion.

## 11. Confidentiality provisions

**H2SITE** recommended a review of the confidentiality provisions outlined in Article 36 of the Rules of Procedure to ensure they do not conflict with EU transparency requirements, particularly those related to public access to environmental information.

ACER's views on confidentiality provisions are set out in section 3.2.7 of the Opinion.