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Public

# Publication on third-party access to hydrogen terminals

*The Netherlands Authority for Consumers and Markets, November 18, 2024*

**Why this publication?**

The European hydrogen and gas decarbonization package (the Decarbonization Package) was published on July 15, 2024. The package consists of the reorganization of the existing Gas Directive and Gas Regulation.[1] The Decarbonization Package is intended to contribute to reducing $CO_2$ emissions and the transition to climate neutrality by 2050 at the latest, by reducing the role of natural gas and promoting the role of green gas and low-carbon hydrogen in the energy system.[2] The primary objective of the Decarbonization Package is to make this transition possible and to facilitate it by scaling up the hydrogen market and creating an efficient natural gas market.[3]

The access conditions for natural gas and hydrogen systems form one of the core elements of the regulatory framework. As is the case for natural gas infrastructure, a third-party access system (for transport, storage and terminals) will apply to hydrogen infrastructure. For hydrogen terminals, this will be a negotiated third-party access system.[4] In contrast to hydrogen networks and hydrogen storage, the Decarbonization Package does not include a mandatory regulated third-party access system for hydrogen terminals.

Hydrogen imports play an important role in the hydrogen strategy of the Netherlands.[5] These imports require hydrogen terminals to be constructed. While there are no hydrogen terminals in the Netherlands at present, several private parties have announced initiatives. However, making final investment decisions has proven to be difficult.[6]

**Objective of this publication**

The Netherlands Authority for Consumers and Markets (hereinafter: ACM) believes, as the envisaged hydrogen infrastructure regulator,[7] that it is important to clarify the rules for market parties. ACM therefore wishes to share its interpretation of these new rules at an early stage.[8] This can contribute to investment certainty and thus facilitate the emergence of a hydrogen import supply chain in the Netherlands. This contributes to an acceleration of the energy transition. Where possible, as well as giving clarity, ACM gives a few recommendations to hydrogen terminals that may contribute to linking supply and demand.

Market parties, principally private parties that are considering investing in hydrogen terminals, require clarity about the meaning of the new rules for third-party access at an early stage. This is why ACM is publishing this question-and-answer document now, in anticipation of the full implementation and application of all new European rules in the Netherlands. The Gas Directive has not yet been implemented and ACM has not yet

[1] Directive 2024/1788 (hereinafter: Gas Directive) and Regulation 2024/1789 (hereinafter: Gas Regulation). These replace Directive 2009/73 (hereinafter: old Gas Directive) and Regulation 715/2009 (hereinafter: old Gas Regulation).
[2] See recital 9 of the Gas Directive and recital 4 of the Gas Regulation.
[3] Recital 6 of the Gas Directive and recital 4 of the Gas Regulation.
[4] Article 36 of the Gas Directive. See also the Letter to Parliament on Hydrogen policy development, May 30, 2024, page 4.
[5] See the Letter to Parliament on Energy diplomacy and hydrogen imports, June 2, 2023, and other documents.
[6] There is still much uncertainty about the development of (green) hydrogen production, the demand for (green) hydrogen, how the costs of production of the various hydrogen colors will change over time, and the roll-out of the hydrogen transport networks needed to supply hydrogen to users.
[7] Letter to Parliament on Progress toward regulation and development of the hydrogen market, June 29, 2022, page 10.
[8] The European Court of Justice ultimately has exclusive competence to make legally binding decisions on the interpretation of EU law.

been appointed as the regulatory body (the regulator). As such, ACM cannot yet give (detailed) answers to all potential questions.

ACM also points out that this is a new regulatory framework for a hydrogen market that has yet to develop. This means it is difficult to predict, among other things, how the business case for the construction and operation of hydrogen terminals (as a link in the hydrogen supply chain) will develop and what the impact of the regulatory framework on those developments will be.

In the context of our strategic objective of accelerating the energy transition and eliminating obstacles, and the need to maintain due diligence, ACM will monitor developments in the hydrogen supply chain and market, including those affecting hydrogen terminals, and the effects of the regulatory framework on those developments. New insights will then be used by ACM in the further interpretation of the rules and its future monitoring of compliance.

**For whom is this publication intended?**

This publication is primarily intended for (potential) investors in hydrogen terminals and (potential) users of their services.

Hydrogen terminal operators and their (potential) customers can use the information in this publication to assess whether their actions comply with the rules. ACM explains the rules to the extent that they are currently known, and interprets them, but does not provide legal advice, nor opinions about individual cases.

If you have any questions or remarks about the contents of this publication, you may share them with ACM by sending an e-mail to acm-post@acm.nl.

## Contents

### 1. What does third-party access to hydrogen terminals mean and which type of third-party access will apply in the Netherlands?

The Decarbonization Package establishes the general principle of third-party access to hydrogen networks, hydrogen storage facilities, and hydrogen terminals subject to objective, non-discriminatory, and transparent conditions.[9]

Third-party access means hydrogen terminal operators must offer access to their terminals to (potential) users, including hydrogen producers, traders, and consumers. Potential users can obtain access because hydrogen terminal operators are obliged, from February 5, 2025 (see question 5), to offer all (potential) users third-party access services to hydrogen terminals that meet the demand from the market on a transparent and non-discriminatory basis.[10]

The Netherlands is obliged to introduce a system of negotiated third-party access to hydrogen terminals based on objective, transparent, non-discriminatory *access agreed through negotiations*.[11] 'Negotiated third-party access' means hydrogen terminal operators are responsible for making agreements with (potential) users of their terminals about the conditions for third-party access. Both parties are obliged to negotiate in good faith.[12] General principles such as transparency and non-discrimination principles, also apply (see question 7).

The Netherlands does not intend to introduce a system of regulated third-party access to hydrogen terminals, as it is expected that sufficient competition will arise between market parties, including with other hydrogen transport types.[13] With regulated third-party access, the conditions for third-party access that the infrastructure operator must comply with are directly mandated by legislation. The regulator is responsible for determining and developing the details of the obligations. This includes determining the rates for third-party access and the methods for setting those rates.[14] In contrast, with negotiated third-party access, the rates are agreed through negotiation.

### 2. Why will mandatory third-party access to hydrogen terminals apply?

Third-party access to hydrogen infrastructure is intended to promote the scaling up of a well-functioning market for sustainable hydrogen, which will play an important role in reaching the European goals for climate neutrality.[15]

The government of the Netherlands believes that the principle of third-party access to hydrogen terminals is important to: i) diversify the countries of origin of hydrogen, ii) protect our strategic autonomy, and iii) create a level playing field between market parties that wish to become suppliers in the European market for gaseous hydrogen and are dependent on that access.[16]

### 3. What is a hydrogen terminal and to which terminals will the negotiated third-party access system apply?

Hydrogen terminals are a means of importing hydrogen.[17] The currently announced initiatives to establish such terminals differ significantly. For example, some initiatives will initially focus solely on developing

[9] Recitals 86 and 87 of the Gas Regulation, articles 7 and 8 of the Gas Regulation, and article 36 of the Gas Directive.
[10] Article 8, first paragraph of the Gas Regulation.
[11] Article 36 of the Gas Directive.
[12] Article 36, first paragraph of the Gas Directive.
[13] Letter to Parliament on Progress toward regulation and development of the hydrogen market, June 29, 2022, page 6.
[14] Regulated third-party access to hydrogen networks and hydrogen storage facilities (article 7, eighth paragraph of the Gas Regulation and article 37, second paragraph of the Gas Directive, respectively) will be enforced no later than January 1, 2033.
[15] Recitals 4 and 5 of the Gas Regulation.
[16] Letter to Parliament on Hydrogen policy development, May 30, 2024, page 4.
[17] Recital 87 of the Gas Directive.

storage and transfer facilities for ammonia. Others include the construction of ammonia cracking plants, in some cases at a later date. There are also initiatives in development for the import of liquid hydrogen and hydrogen contained in other carriers, including Liquid Organic Hydrogen Carriers (LOHCs).

The obligation to offer third-party access services applies to hydrogen terminal operators. Hydrogen terminal operators are natural persons or legal entities that are responsible for operating hydrogen terminals.[18]

The Decarbonization Package describes a hydrogen terminal as "*an installation used for the offloading and transformation of liquid hydrogen or liquid ammonia into gaseous hydrogen for injection into the hydrogen network or the natural gas system or the liquefaction of gaseous hydrogen and its onloading*[19]*, including ancillary services and temporary storage necessary for the transformation process and subsequent injection into the hydrogen network, but not any part of the hydrogen terminal used for storage.*"[20]

The Decarbonization Package establishes a regulatory framework for infrastructure and markets for gaseous hydrogen.[21] An installation may consist of various facilities that collectively form a hydrogen terminal. The definition describes these as facilities where ammonia or liquid hydrogen are converted into gaseous hydrogen, including temporary storage of the hydrogen carrier and essential ancillary services. The offloading and temporary storage of liquid hydrogen or ammonia are necessary to operate a practical conversion process.

This means that, for example: i) installations that are only used to import hydrogen contained in other hydrogen carriers, such as LOHCs, or ii) installations that are not used for conversion, but only for offloading and (temporary) storage of the hydrogen carrier (e.g. ammonia) for direct supply to end users, cannot be regarded as hydrogen terminals.

The objective of the new rules for third-party access to hydrogen terminals is to prevent anti-competitive practices by hydrogen terminal operators that adversely affect producers and users of hydrogen. This objective applies regardless of the legal structure governing the operation and ownership of the facilities that collectively form the hydrogen terminal. As regards the question of whether an installation may be regarded as a hydrogen terminal, it is therefore irrelevant whether a single party owns or operates all elements of the hydrogen terminal installation or whether there are multiple parties that own or operate parts of the required assets. This means that initiatives such as a consortium of several parties with shared responsibility for the operation of the various facilities that make up an installation will collectively be regarded as a hydrogen terminal operator.

The definition of a hydrogen terminal is not location-bound. This means that the question of whether an installation may be regarded as a hydrogen terminal does not depend on whether the offloading, temporary storage, conversion, and injection into the hydrogen network or natural gas system take place at the same physical location/site, or at various locations/sites that are connected by transport infrastructure (pipelines, ship, train, truck, etc.). The guiding principle is that the service that hydrogen terminal operators offer to third parties encompasses the entire process, from offloading to conversion of the hydrogen carrier to gaseous hydrogen, and that the facilities required to implement that entire process are inseparably linked.

**4. Which (temporary) storage capacity is considered part of the hydrogen terminal?**

[18] See article 2, paragraph 47 of the Gas Regulation and article 2, ninth paragraph of the Gas Directive: "Natural or legal person that carries out the function of offloading and transformation of liquid hydrogen or liquid ammonia into gaseous hydrogen for injection into the hydrogen network or the natural gas system or the liquefaction and onloading of gaseous hydrogen and is responsible for operating a hydrogen terminal."
[19] This concerns the export of hydrogen, which is expected to be of limited importance for the Netherlands. As such, we will not consider it in detail in this document.
[20] Article 2, paragraph 46 of the Gas Regulation and article 2, eighth paragraph of the Gas Directive.
[21] Recital 86 of the Gas Directive.

Hydrogen terminal operators can arrange the required temporary hydrogen carrier storage in various ways. These include a small (ammonia) feed-in tank connected to the conversion facility, or via a main receiving storage tank (for ammonia) for the terminal. The temporary storage tank need not be exclusively connected to the conversion facility. The guiding principle is that the temporary storage capacity required for the entire process, from offloading to conversion of the hydrogen carrier to gaseous hydrogen, must be made available to third parties to allow them to use the hydrogen terminal. This means that the storage capacity that is made available, and to which third-party access is granted, must be proportional to the conversion capacity of the hydrogen terminal.[22]

The components of the terminal used to store gaseous hydrogen that do not support the overall conversion process[23] are not regarded as part of the hydrogen terminal. These include storage capacity that users can use for their own flexibility needs, or for situations in which they do not immediately wish to inject the gaseous hydrogen into the hydrogen network for commercial reasons.[24] However, this storage capacity may be included in the definition of a hydrogen storage facility to which a third-party access system will also apply.[25]

It may be necessary to provide access to the underlying transport capacity of the hydrogen carrier between the various facilities that make up the installation, for example charging facilities for trucks, provided that these operations involve a supporting service that is related to, and is reasonably necessary for, the subsequent conversion and injection of hydrogen into the network[26] (see also question 3).

As indicated in the answer to question 3, the Decarbonization Package establishes a regulatory framework for infrastructure and markets for gaseous hydrogen. This means that if transport services such as truck transport are not an essential part of the overall conversion process that the hydrogen terminal provides (from offloading to injection into the hydrogen network), the obligation to permit third-party access does not apply to those services. This may be the case, for example, if ammonia is transported directly to its users.

**5. From which date will negotiated third-party access to hydrogen terminals apply?**

The Gas Regulation and Gas Directive came into force on August 4, 2024.[27] The articles in the Gas Directive will apply once the Netherlands has implemented them in domestic legislation. Member states have two years to do so.[28]

The Gas Directive obliges member states to introduce a system that permits third-party access to hydrogen terminals based on objective, transparent, non-discriminatory access agreed through negotiations.[29] ACM must also be appointed as the regulator, in order to be able to monitor the conditions for third-party access and the consequences of these for the hydrogen market, and take measures to improve access to hydrogen terminals if this is necessary in order to safeguard competition.[30]

The Gas Regulation is effective from February 5, 2025.[31] The Gas Regulation sets out the details of the third-party access system for hydrogen terminals. In specific terms, this means hydrogen terminal operators must offer third-party access services that meet the demand from the market to all (potential) users on a

[22] Recital 87 of the Gas Directive.
[23] For example because the technical capacity of the conversion facility does not exactly match the capacity of the hydrogen network injection point.
[24] Recital 87 of the Gas Directive.
[25] See article 2, paragraph 44 of the Gas Regulation and article 2, fifth paragraph of the Gas Directive for the definition of a hydrogen storage installation. See article 8 of the Gas Regulation and article 37 of the Gas Directive for third-party access to hydrogen storage installations.
[26] Recital 87 of the Gas Directive.
[27] The twentieth day following publication of the Gas Regulation and the Gas Directive in the Official Journal of the European Union. This took place on July 15, 2024.
[28] Article 96 of the Gas Directive.
[29] Article 36, first paragraph of the Gas Directive.
[30] Article 36, second paragraph of the Gas Directive.
[31] Article 89, first paragraph of the Gas Regulation. Articles including article 11, third paragraph under b, and article 34, sixth paragraph, will already apply from January 1, 2025. Given that contractual congestion at hydrogen terminals is unlikely at that moment, and no regulated third-party access system will apply, this will have no effect.

non-discriminatory basis from February 5, 2025.[32] From that date, hydrogen terminal operators also have new obligations concerning transparency (see also question 7) and information provision (see also question 9). These obligations are intended to promote effective third-party access.[33]

Some obligations imposed by the Gas Regulation will become effective later, including the requirement for hydrogen terminal operators to set up a platform to allow trading of capacity rights. This obligation will become effective no later than February 5, 2026.[34]

**6. What do the new rules for third-party access mean for existing contracts?**

Existing contracts must also comply with the Gas Regulation from the moment the Gas Regulation becomes effective on February 5, 2025. This does not mean that previously allocated capacity must be reallocated in accordance with the new rules. Contracts concluded before the new rules come into effect remain effective. However, market parties themselves are responsible for ensuring that existing contracts comply with the new rules, for example with a compliance clause. For example, contracts must comply with the rules for congestion management to prevent hoarding of capacity (see question 22).

**7. What do transparency and non-discrimination mean?**

Third-party access to hydrogen terminals must be objective, transparent, and non-discriminatory and must be agreed through negotiations.[35]

The transparency obligation means hydrogen terminal operators must provide (potential) terminal users with all information they require to obtain efficient access to the hydrogen terminals. This means hydrogen terminal operators must publish detailed information about the services they offer and the relevant conditions that apply to those services. They must also publish relevant technical information that potential users need to make effective use of their hydrogen terminals.[36] Relevant information must also be published promptly, particularly data about the use of hydrogen terminals and the availability of the services offered by hydrogen terminal operators.[37] For example, hydrogen terminal operators must publish the volume of hydrogen in their hydrogen terminals, the inflow and outflow, and the available hydrogen terminal capacity.[38,39]

Hydrogen terminal operators are free to determine how they publish the required information, provided that it is made available in a meaningful, quantifiable, easily accessible, and non-discriminatory manner.[40] This is the case if all (potential) terminal users can easily obtain the required (numerical) information and can actually use it to obtain access to the terminal.

The non-discrimination obligation means hydrogen terminal operators must treat equivalent cases equally. If hydrogen terminal operators offer the same service to multiple (potential) users, they must be offered equivalent contractual terms. [41] Non-discrimination does not mean ‘the same for all parties’. With negotiated third-party access, parties can freely negotiate the conditions under which, and rates at which, the service is offered and used. This means different conditions and rates may apply, provided that there are objective circumstances that justify those differences; differences must not be arbitrary.[42] These circumstances may

[32] Article 8 of the Gas Regulation in combination with article 89, first paragraph of the Gas Regulation.
[33] Articles 8, 11, and 34 of the Gas Regulation in combination with article 89 of the Gas Regulation.
[34] Article 11, third paragraph under c of the Gas Regulation.
[35] Article 36, first paragraph of the Gas Directive.
[36] Article 34, first paragraph of the Gas Regulation.
[37] Article 8, first paragraph under c of the Gas Regulation.
[38] This means the capacity of the conversion facility of the hydrogen terminal (the cracking plant) and its inflow and outflow (see also question 17).
[39] Article 34, fifth paragraph of the Gas Regulation.
[40] Article 34, fourth paragraph of the Gas Regulation.
[41] Article 8, first paragraph under a of the Gas Regulation.
[42] See also article 8, fourth paragraph of the Gas Regulation.

relate to, for example, the contract period or differences in the division of risks between users and hydrogen terminal operators (see also questions 11 and 12).

Non-discrimination also applies to hydrogen terminal operators' own companies or allied companies. A vertically integrated undertaking, i.e., an undertaking that is active in the upstream and/or downstream markets for gaseous hydrogen in addition to offering hydrogen terminal services, must not discriminate between the undertaking itself and third parties, and must therefore treat those third parties equally.[43]

**8. Why must third-party access be transparent and non-discriminatory?**

Transparency and non-discrimination are necessary to reduce information asymmetry between parties (hydrogen terminal operators and users) and to ensure that all potential users can obtain access to the hydrogen terminal in comparable circumstances and subject to comparable conditions. This contributes to: i) a certain degree of equality in bargaining power, so hydrogen terminal operators cannot dictate conditions to (contracted) users, and ii) a level playing field for access to the hydrogen terminal for users that (potentially) compete with one another in the downstream and upstream markets for hydrogen production and supply.

**9. Which information must hydrogen terminal operators publish, and when?**

Hydrogen terminal operators must publish detailed information about the services they offer and the relevant conditions that apply to those services, as well as the technical information required to obtain effective access to their hydrogen terminals. Hydrogen terminal operators must publish this relevant information promptly[44].
Hydrogen terminal operators must also regularly publish (numerical) information about contracted and available hydrogen terminal capacity, about the hydrogen present in the terminal and the inflow and outflow of hydrogen.[45] Hydrogen terminal operators must also supply this information to the hydrogen network operator, which will in turn publish it in aggregated form and update it at least daily.[46]

Hydrogen terminal operators must continue to provide access to the aforementioned information for a period of five years to the proposed regulatory bodies: ACM as the proposed regulator of the hydrogen market and competition authority, and the European Commission.[47]

**10. Which information contained in contracts/contractual information may remain confidential?**

The obligation to publish information in the interests of transparency does not mean that hydrogen terminal operators must publish commercially sensitive information contained in negotiated contracts. Hydrogen terminal operators are in fact obliged to respect any commercially sensitive information that comes into their possession in the course of their operations.[48]

The aforementioned information – contracted and available hydrogen terminal capacity, the volumes of hydrogen stored in the terminal, and the inflow and outflow of hydrogen – may be published in aggregated form. Hydrogen terminal operators are obliged to protect commercially sensitive information from terminal users, i.e., information that would adversely affect the users' overall commercial strategy if made public.

[43] See also article 50, first paragraph under e of the Gas Directive.
[44] In this case, promptly means: 'within a timeframe that takes account of the commercial needs of potential users'. See article 8, first paragraph under c of the Gas Regulation.
[45] Article 34, first, third, and fifth paragraphs of the Gas Regulation.
[46] Article 34, fifth paragraph of the Gas Regulation.
[47] Article 67 of the Gas Regulation.
[48] Article 54, first paragraph of the Gas Directive.

As a system of negotiated – rather than regulated – third-party access to hydrogen terminals will apply in the Netherlands, hydrogen terminal operators (or ACM) need not publish information about (agreed) rates and/or rate-setting methods.[49]

**11. Is it possible for users to be co-investors in hydrogen terminals?**

The rules in the Gas Regulation and Gas Directive do not prevent third parties, such as parties that are or will be users of hydrogen terminals, from co-investing or acquiring an interest in hydrogen terminals (see also question 12).

**12. Can launching customers or parties that (co-)invest in a hydrogen terminal be offered different terms?**

There may be objective justifications for agreeing different terms with a launching customer (i.e., a first customer that is crucial for the successful start of the development of the infrastructure), or a (co-)investor, than the terms offered to users that decide to purchase terminal capacity at a later date. This may be the case if, for example, this launching customer is willing to cover part of the financial risk of the initial investment with, for example, a longer take-or-pay contract.

ACM may see the guarantee that this terminal user will purchase the requested capacity for a period of several years as an objective justification for offering more favorable contractual terms, including rates. This does not mean that unequal terms can be offered for other aspects, such as information sharing and congestion management.

**13. Can hydrogen terminal operators impose creditworthiness requirements on users?**

If necessary, third-party access services may be made dependent on obtaining appropriate creditworthiness guarantees from users. However, such guarantees shall not constitute undue market-entry barriers and shall be non-discriminatory, transparent, and proportional.[50]

**14. To what extent is the use of standard contracts mandatory?**

In the context of transparency and non-discrimination, the most obvious arrangement is that hydrogen terminal operators will offer a standard or model contract to all (potential) interested users. This may also describe the rights and obligations of all users. This does not preclude the potential agreement of (additional) specific terms for individual users, provided that the same service is offered to multiple users subject to equivalent contractual terms.

**15. Which requirements apply to contracts, including contract periods?**

With negotiated third-party access, hydrogen terminal operators have a great deal of contractual freedom. Products with longer contract periods of, for example, ten to twenty years, may be necessary to ensure the profitability of investments in the construction of new hydrogen terminals, or expanding the capacity of existing terminals. However, ACM will monitor contracts (with longer periods) to ensure that they do not have the objective or effect of reducing competition. One example is an exclusivity clause in a contract that prevents or discourages users from signing a contract with another hydrogen terminal operator during the contract period.[51]

Hydrogen terminal operators are not obliged to (also) offer capacity on the basis of products with shorter contract periods in advance, as the product or service types that hydrogen terminal operators offer must take account of market demand and applicable market conditions.[52] In time, once a more mature hydrogen

[49] Article 34, sixth paragraph of the Gas Regulation.
[50] Article 8, fifth paragraph of the Gas Regulation.
[51] Article 78, first paragraph, part r of the Gas Directive.
[52] Article 11, second paragraph of the Gas Regulation.

market has developed, offering products with shorter contract periods may be necessary to facilitate (short-term) trade in hydrogen products that meet the needs of users.

**16. How must hydrogen terminal operators offer the capacity of their terminals, including newly realized capacity?**

Hydrogen terminal operators themselves may determine how to offer the capacity of their terminals. It is important that terminal operators employ a process that offers all (potential) interested parties equal opportunities to access the new or expanded capacity. All potential users must know that the capacity will become available, how the capacity can be purchased and under which conditions, and how that capacity will subsequently be allocated. This process need not be the same in situations where capacity is offered in a hydrogen terminal that is yet to be constructed as when offering capacity by expanding an existing hydrogen terminal.

The process of assessing the need for terminal capacity among potential users may, for example, take the form of an open season or public auction. An open season means a non-binding phase in which potential users may express their interest, followed by a binding phase in which the actual capacity is allocated/sold. The result of the procedure may be that only a single party is interested in purchasing capacity. As such, there is no obligation to sell the capacity to multiple parties.

In practice, this single party may also be a co-investor that acts as the launching customer. It cannot be ruled out that this investor may be a vertically integrated party in the hydrogen market. The essence is that future hydrogen terminal operators that offer the newly available capacity to all potential users (users of the hydrogen terminal) must do so in an objective, transparent, and non-discriminatory manner (see also question 7), and must offer unsold, and sold but unused, capacity on the market again (see also questions 21 and 22). Provided that this is the case, there is no objection to the use of the hydrogen terminal by the investor alone, whether or not as a vertically integrated party.

**17. Which hydrogen terminal capacity must terminal operators make available to third parties?**

Hydrogen terminal operators must make the maximum capacities of their hydrogen terminals available to users.[53] This means hydrogen terminal operators must not withhold capacity without an objective justification, and must offer the entire capacity of their hydrogen terminals to (potential) users. To ensure that smaller users do not face unreasonable barriers to entry, if a minimum capacity is offered, this may only be due to technical limitations.[54]

The maximum capacities of hydrogen terminals are dependent on the maximum capacities (from offloading to injection into the hydrogen network) that hydrogen terminal operators can offer. Because hydrogen installations may consist of various facilities that collectively form a hydrogen terminal, in practice, the maximum capacity offered will be determined by the facility with the lowest maximum capacity (the 'bottleneck').

If a certain conversion capacity is made available (the cracking plant), the temporary hydrogen carrier (liquid hydrogen or ammonia) storage capacity that is made available must be proportional to the capacity of the conversion facility.[55] This is necessary to ensure the effectiveness of third-party access to the hydrogen terminal. Access to temporary storage may be offered in various ways. The storage facility need not be exclusively used for the conversion facility. For example, access to temporary storage may also be offered by granting access to a larger ammonia storage facility that is used to directly supply ammonia to users (see also question 4) as well as to the cracking plant.

[53] "Taking into account system integrity and operations", see article 8 of the Gas Regulation.
[54] Article 8, sixth paragraph of the Gas Regulation.
[55] See also recital 87 of the Gas Directive.

**18. How should hydrogen terminal operators take system integrity and operations into account when offering the maximum terminal capacity?**

Hydrogen terminal operators must make the maximum available capacities (see question 17) of their hydrogen terminals available to users, while taking system integrity and operations into account.[56] The latter includes technical or maintenance works on the terminal and/or the hydrogen network into which the hydrogen is injected. These works may be a justifiable reason not to make the full capacity of a terminal available during the works.

**19. How must hydrogen terminal operators divide/allocate the capacity of their hydrogen terminals?**

The guiding principle is that hydrogen terminal operators must offer the maximum available capacity in a transparent, non-discriminatory manner based on objective criteria. Hydrogen terminal operators must determine and publish allocation mechanisms, so that potential users know in advance how they can make their needs known and how the capacity will be divided, and so that potential users have equal opportunities to obtain access to capacity. This mandatory allocation mechanism applies even if capacity is not (yet) scarce.[57]

The allocation mechanism that hydrogen terminal operators use must comply with several conditions.[58] For example, it is important that the allocation mechanism does not impede new parties from joining the hydrogen market and that it does not prevent market participants, including newcomers to the market, from being able to compete effectively with one another.

Capacity may be allocated in various ways, including auctions or on a first-come-first-served basis. The first-come-first-served allocation mechanism is transparent and non-discriminatory if it offers all (potential) interested parties the ability to purchase capacity subject to the same conditions until there are no more interested parties. In a new market, in which the demand for hydrogen terminal capacity has not yet fully developed and where there will initially be sufficient capacity to meet all demand, first-come-first-served can be an efficient allocation mechanism.

If hydrogen terminal operators launch open seasons to identify the demand and this demand exceeds the available capacity, the first-come-first-served mechanism will not suffice. If it is possible that this situation will arise, hydrogen terminal operators who organize an open season will need to publish the mechanism, and the underlying objective criteria, that will be used to allocate the available capacity among (potential) users in advance if the demand proves to exceed the available capacity.

An alternative transparent, efficient, and non-discriminatory allocation mechanism is an auction. This mechanism is particularly suitable for allocating capacity if the expected demand for capacity is greater than the available capacity.

**20. Must hydrogen terminal operators reserve capacity in their terminals for future users?**

No, non-discrimination does not mean that hydrogen terminal operators must reserve part of the capacity that becomes available for potential future users. As explained in the answer to question 17, hydrogen terminal operators must make the maximum capacities of their hydrogen terminals available to the current interested parties in the market.

**21. If some capacity remains unsold, are hydrogen terminal operators obliged to offer it again on the market?**

[56] Article 11, first paragraph of the Gas Regulation.
[57] See also article 11 of the Gas Regulation.
[58] Article 11, second paragraph of the Gas Regulation.

The objective of the new rules is to ensure that the maximum capacities of hydrogen terminals are used as efficiently as possible. This means hydrogen terminal operators must offer the maximum capacities of their terminals and must not withhold some of the available capacity.[59] If interest is expressed later, hydrogen terminal operators must offer any capacity that (initially) remains unsold on the market based on an allocation mechanism (see explanation for question 19). Hydrogen terminal operators, either individually or collectively, must set up a booking platform (see question 22) to bring together new demand and unsold capacity.

**22. Must unused capacity be made available again on the market?**

Hydrogen terminal operators must implement measures to prevent users from hoarding terminal capacity. If capacity is hoarded, hydrogen terminals may be used less efficiently, or their maximum capacities may not be used. In addition, if established parties hoard terminal capacity, this may impede or delay the entry of new and/or smaller parties to the newly developing hydrogen market.

Hydrogen terminal operators must therefore include mechanisms that prevent hoarding in the contracts they offer.[60] This means unused capacity must be made available to other interested parties that have no access or limited access to capacity at that time, i.e., at moments when there is contractual congestion.[61] This means hydrogen terminal operators must develop a mechanism that ensures that they can offer unused capacity on the primary market without delay. Hydrogen terminal operators are free to set up this mechanism as they choose, provided that it ensures that, in the event of contractual congestion, unused terminal capacity becomes available to other parties in a non-discriminatory and transparent way, and is thus used efficiently and maximally.

Congestion management mechanisms include, for example, rules obliging users to offer contracted capacity that they do not use within a certain period to third parties on a secondary market, in which hydrogen terminal users themselves offer capacity or delegate it to hydrogen terminal operators that do so on their behalf, or by employing the principle of Use It Or Lose It (UIOLI). UIOLI clauses are conditions that oblige buyers to release capacity that has remained unused for a certain period, so hydrogen terminal operators can offer it to other interested parties on a non-discriminatory basis and through negotiations.

Hydrogen terminal operators are also obliged to ensure that users can resell their contracted capacity obtained through the primary market on a secondary market.[62] To this end, by February 5, 2026, at the latest, hydrogen terminal operators must set up a non-discriminatory booking platform that allows users to resell their contracted capacity on the secondary market.[63] Hydrogen terminal operators may do so individually or together with other hydrogen terminal operators. Hydrogen terminal operators must also recognize the transfer of primary capacity rights.[64]

**23. How will ACM enforce the rules for negotiated third-party access to hydrogen terminals?**

ACM is the proposed regulator. From the moment that ACM is appointed as the regulator, we will be able to fulfil our responsibilities based on the Gas Regulation and the implemented Gas Directive.
The guiding principle behind negotiated third-party access is that hydrogen terminal operators and the (potential) users of their hydrogen terminals must negotiate access in good faith, including the conditions governing how third parties may access their terminals. Parties have a great deal of freedom to determine how this should occur, provided that access is granted based on objective criteria and in a transparent and non-discriminatory manner.[65]

[59] Article 11, first paragraph of the Gas Regulation.
[60] Article 11, third paragraph of the Gas Regulation.
[61] Contractual congestion means a situation in which the demand for firm capacity is greater than the technical capacity (Article 2, paragraph 22 of the Gas Regulation).
[62] Article 11, third paragraph of the Gas Regulation.
[63] Article 11, third paragraph under c of the Gas Regulation.
[64] Article 12 of the Gas Regulation.
[65] Article 36, first paragraph of the Gas Directive.

As the proposed regulator, ACM will ensure that this is the case and may, depending on how the Gas Directive is implemented, impose measures to improve access to the terminal infrastructure to ensure effective competition.[66] It is also anticipated that ACM will, if necessary, be able to oblige hydrogen terminal operators to amend their access conditions to ensure that they are proportional and are applied in a non-discriminatory manner. Given that a regulated third-party access system will not apply to hydrogen terminals in the Netherlands, this authority will not extend to amending rates.[67]

Market parties themselves are responsible for compliance with the rules and are not obliged to have ACM assess in advance whether their actions and conditions for offering and obtaining third-party access to hydrogen terminals comply with these principles. Market parties with questions about specific plans may contact ACM.

**24. What will happen if a dispute arises between a hydrogen terminal operator and a (potential) user about third-party access?**

Once the Gas Directive has been implemented in domestic legislation, ACM will, as the proposed regulator, function as an arbitration body for hydrogen infrastructure. This is expected to occur after July 2026 (see question 5). Parties with complains about hydrogen terminal operators may then submit them to ACM.[68]
ACM currently already functions as an arbitration body for gas and electricity infrastructure.[69]
Parties also have recourse to the courts in the event of a dispute or, alternatively, they may agree to submit their dispute to an arbitration committee.

**25. Can hydrogen terminal operators obtain an exemption from the obligation to offer third-party access?**

Major new hydrogen infrastructure or major capacity increases of existing hydrogen infrastructure may be exempted from the obligation to offer third-party access subject to conditions.[70] In this case, hydrogen infrastructure means interconnectors, hydrogen terminals, and underground hydrogen storage facilities.

Hydrogen terminals may, on request, for a fixed period and subject to conditions, obtain an exemption from the terms of the Gas Regulation – with the exception of the obligation to publish the volume of hydrogen in the installation and to update it daily[71] – and from the obligation to offer third-party access imposed by the Gas Directive.[72]

Seven conditions must be met before an exemption can be granted[73] (see question 27). If an exemption is granted, it will be subject to rules for the management and allocation of capacity to (potential) terminal users[74] (see question 28). This should increase the positive effect on competition and security of supply of major infrastructure projects for which exemptions are granted.[75]

**26. What is the procedure for applying for an exemption?**

[66] Article 36, second paragraph of the Gas Directive.
[67] Article 79, first paragraph of the Gas Directive.
[68] Article 79 of the Gas Directive.
[69] See: Energy arbitration procedure | ACM.nl (in Dutch)
[70] Article 78 of the Gas Regulation.
[71] Article 34, fifth paragraph of the Gas Regulation. In addition, no exemption is possible from article 34, sixth paragraph based on article 78 of the Gas Regulation. However, the sixth paragraph (information about rates) is only relevant in situations where a system of regulated third-party access applies. A system of negotiated third-party access will apply to hydrogen terminals in the Netherlands.
[72] Articles 35, 36, 37, and 68 of the Gas Directive.
[73] Article 78, sixth paragraph of the Gas Regulation.
[74] Article 78, sixth paragraph of the Gas Regulation.
[75] Recital 102 of the Gas Regulation.

From February 5, 2025, hydrogen terminal operators can request exemptions for new hydrogen terminals or terminals that are to be expanded, insofar as the exemption concerns clauses in the Gas Regulation.[76] Before this date, the Ministry of Climate Policy and Green Growth will clarify the agency to which exemption requests may be submitted (the ministry or ACM) and will ensure that this agency is authorized to grant exemptions.

The European Commission must also approve the decision.[77] In some cases, it may be necessary to first consult the (regulatory body of) third member states that may be affected by the decision.[78]

**27. Which conditions must a request for exemption meet?**

Applicants must justify requests for exemption based on the following conditions:[79]

a) the investment enhances competition in natural gas supply or hydrogen supply and enhance security of supply;
b) the investment contributes to decarbonization and the achievement of the European Union's climate and energy targets, and was decided by applying the "energy efficiency first" principle;
c) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;
d) the infrastructure is owned by a natural or legal person which is separate, at least in terms of its legal form, from the system operators in whose system that infrastructure will be built;
e) charges are levied on users of that infrastructure;
f) the exemption is not detrimental to competition in the relevant markets which are likely to be affected by the investment, to the proper functioning of the internal integrated market for natural gas or hydrogen, to the proper functioning of the regulated systems concerned, to decarbonization or the security of supply of the European Union;
g) no European Union funding has been received for the infrastructural works under Regulation (EU) 2021/1153 of the European Parliament and of the Council.

When assessing points a), c), and f), the results of the capacity allocation procedure that the hydrogen terminal operator will employ (see question 28) will be taken into account.[80] For example, the assessment of the effect of the exemption on competition in the relevant markets may be affected by which party or parties the capacity is assigned to.

On the basis of article 18h of the existing Dutch Gas Act[81], the Netherlands has previously granted exemptions from clauses governing *regulated* third-party access to LNG terminals to Gate[82] and EET.[83] ACM issued a recommendation to the Minister of Economic Affairs and Climate Policy in this regard.[84] The conditions imposed by the Gas Regulation are not exactly the same as the conditions imposed by the existing Dutch Gas Act, but are very similar.[85]

However, these decisions and recommendations offer only limited guidance when assessing requests for exemption, given that the requests for exemptions for the aforementioned LNG terminals concerned exemptions from the obligation to offer *regulated* third-party access, while third-party access to hydrogen terminals will be *negotiated*. This will affect matters including the assessment of the regulatory risks associated with recouping investments (condition c).

[76] An exemption from articles in the Gas Directive will be possible once the Netherlands has implemented the Gas Directive in domestic legislation.
[77] Article 78, ninth and tenth paragraphs of the Gas Regulation.
[78] Article 78, third and fourth paragraphs of the Gas Regulation.
[79] Article 78, sixth paragraph of the Gas Regulation.
[80] Article 78, sixth paragraph of the Gas Regulation.
[81] Article 18h of the existing Dutch Gas Act implements article 22 of Directive 2003/55/EC (the second Gas Directive).
[82] Dutch Government Gazette 2023, 25651
[83] Dutch Government Gazette 2022, 25326
[84] See here for EET and here for Gate.
[85] Conditions a, c, d, e, and f in the Gas Regulation are identical, or practically identical, to conditions in the existing Dutch Gas Act. Conditions b and g in the Gas Regulation are new compared to the existing Dutch Gas Act.

With negotiated third-party access, these risks will very probably be lower than is the case with regulated third-party access. This is because with negotiated third-party access, the conditions and rates are not determined by legislation or set by the regulator, but are agreed through negotiation. For example, parties that request exemptions must be able to justify why an exemption is necessary, because investment risks would otherwise be insufficiently covered with contracts for longer periods containing conditions specifying how the terminal operator and users must respond to future price and volume risks (risk sharing).

**28. Which conditions and rules will apply to exemptions?**

The general principle governing exemptions is that they must not go further than is necessary to mitigate the risks affecting the realization of investments. As such, exemptions may be subject to conditions covering the duration of the exemption and non-discriminatory access to the infrastructure.[86] This will be assessed on a case-by-case basis.

If an exception if granted, it will be subject to rules concerning the mechanisms for managing and/or allocating capacity. These rules will cover at least the following requirements:[87]

- Allocation of capacity. Hydrogen terminal operators must invite all users of the infrastructure to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including capacity allocated for terminal operators' own use, takes place.
- Capacity management. Hydrogen terminal operators must offer unused capacity on the market and must give users of the infrastructure the right to trade their contracted capacity on the secondary market.

If an exemption is granted, the hydrogen terminal operator will also be obliged to publish the volume of hydrogen in the facility and to update this data daily[88] (see also question 25).

Parties requesting an exemption can indicate themselves how they wish to comply with these rules. The questions and answers in this publication on topics including transparency, non-discrimination, and capacity management clarify this. If an exception is granted, a decision will be taken about the exact exemption conditions and rules.

[86] Article 78, sixth paragraph of the Gas Regulation.
[87] Article 78, sixth paragraph of the Gas Regulation.
[88] Article 34, fifth paragraph of the Gas Regulation.