

The background of the slide is a close-up photograph of numerous blue-tinted water bubbles. The bubbles are of various sizes, some in sharp focus in the foreground and others blurred in the background, creating a sense of depth. The overall color palette is a range of blues, from light sky blue to deep navy blue.

**C L I F F O R D**  
**C H A N C E**

## **REGULATION OF HYDROGEN TRANSPORTATION IN BELGIUM**

PHILIPPE BAERT AND CHLOÉ PETIT – 25 MAY 2023

## OVERVIEW

---

1

INTRODUCTION

---

2

OVERVIEW  
OF THE BELGIAN  
PROPOSAL  
FOR A H<sub>2</sub>  
TRANSPORTATION  
LAW

---

3

FURTHER  
OUTLOOK:  
BELGIUM AND EU

---

4

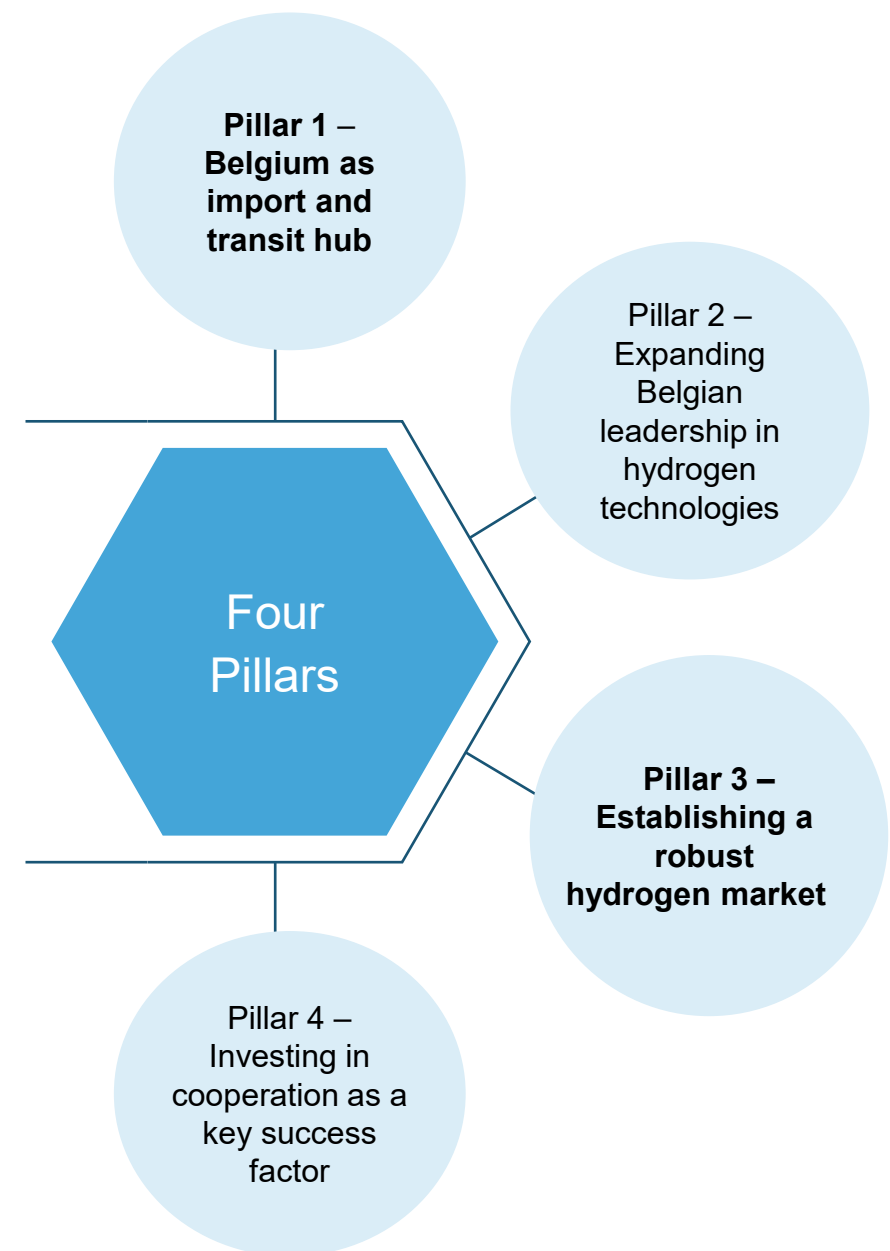
Q&A

# 1. INTRODUCTION

## FEDERAL HYDROGEN STRATEGY



- Belgian Federal Government **launched** strategy on **29 October 2021**
- Strategy based on **four pillars** focusing on clean hydrogen import and cooperation
- **Updated** in **October 2022** to further position Belgium as a key import and transit hub for renewable molecules in Western Europe
- Target to import **20 TWh** in **2030** and **between 200 and 350 TWh** in **2050** of renewable H<sub>2</sub> molecules and H<sub>2</sub> derivatives to cover domestic demand and transit activities to neighbouring countries
- **3 major import routes** identified as part of diversification efforts: (i) North Sea route, (ii) Southern (pipeline) route and (iii) the shipping route



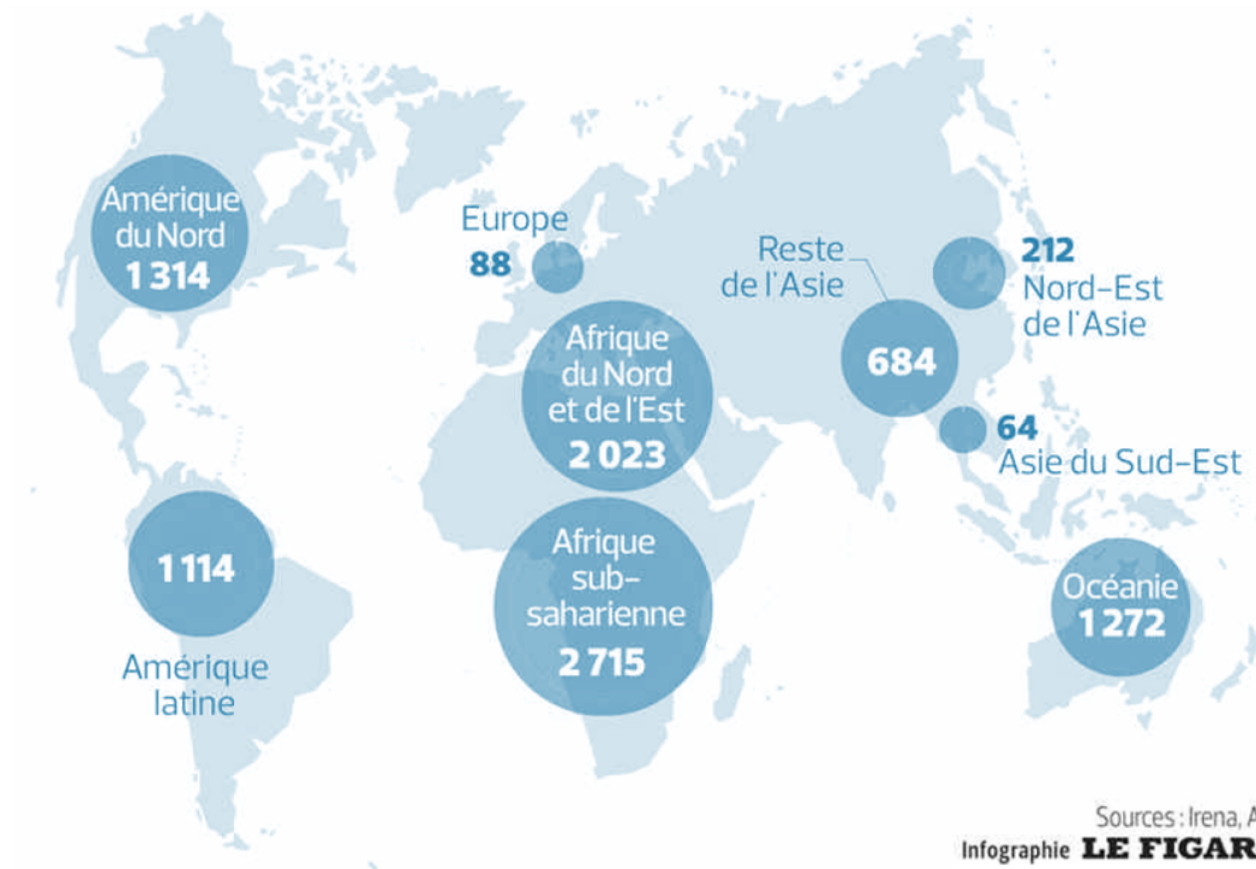
## 1. INTRODUCTION

### PRODUCTION POTENTIAL OF CLEAN HYDROGEN



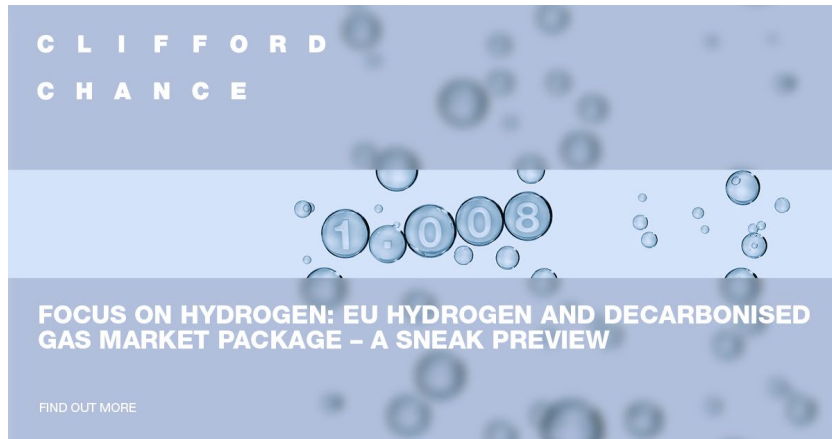
Potential in the sunniest areas

### TECHNICAL HYDROGEN PRODUCTION POTENTIAL UNDER 1.5 DOLLAR PER KG BY 2050



# 1. INTRODUCTION

## EU AND BELGIAN STATE OF PLAY



- 1 Proposal for a recast Directive on gas markets and hydrogen (COM(2021)803 final)
- 2 Proposal for a recast Regulation on gas markets and hydrogen (COM(2021)804 final)

### Follow the steps of procedure 2021/0425/COD

Reverse Order

Expand all / Collapse all

#### FIRST READING

European Parliament



+ Council of the European Union



### Belgian federal Hydrogen Strategy



PUBLIC CONSULTATION



HYDROGEN AND THE  
PENTALATERAL ENERGY FORUM



- Pillar 1 – Positioning Belgium as an import and transit hub for renewable molecules in Europe
- Pillar 2 – Expanding Belgian leadership in hydrogen technologies
- Pillar 3 – Establishing a robust hydrogen market
- Pillar 4 – Investing in cooperation as a key success factor



LA CHAMBRE.BE



Les Membres



La Chambre



Documents



Vous et la Chambre



Publication

Document parlementaire 55K3077



Projet de loi relatif au transport d'hydrogène par canalisations.

007 [419 Kb]

27/02/2023 TEXTE ADOPTE

Date de distribution 27/02/2023

DEUXIÈME LECTURE / TWEDE LEZING



# 1. INTRODUCTION

## BELGIAN STATE OF PLAY



### Franse waterstofreus Air Liquide verzet zich tegen nieuwe Belgische wet



©REUTERS

FLUX  
0,00%



DAVID ADRIAEN | 26 januari 2023 19:59



### Vivaldi maakt bocht: Air Liquide mag eigen waterstofnet toch houden



De Franse industriële gasreus Air Liquide heeft in België 600 kilometer aan leidingen om waterstof te vervoeren. ©REUTERS

TOBE STEEL | 17 april 2023 12:59

De federale regering gaat de Franse gasreus Air Liquide toch niet verplichten zijn Belgische waterstofleidingen open te stellen voor concurrenten.

## 2. OVERVIEW OF THE BELGIAN PROPOSAL FOR A H<sub>2</sub> TRANSPORTATION LAW

### SCOPE OF APPLICATION

- The Federal Law would apply to **“Hydrogen Transportation Installations”** (*“waterstofvervoersinstallaties”* / *“installations de transport d’hydrogène”*) (article 3)
- **Underpinning definitions** (article 2):

#### **“Waterstofvervoersinstallaties”**

*“alle waterstofvervoersleidingen, met inbegrip van de bestaande waterstofnetten, gebouwen, machines en accessoire inrichtingen;”*

#### **“Waterstofvervoersleiding”**

*“elke pijpleiding die bestemd is voor het vervoer van waterstof;”*

#### **“Waterstof”**

*“elk product dat hoofdzakelijk bestaat uit waterstofmoleculen;”*

#### **“Waterstofvervoer”**

*“het vervoer van waterstof door een net dat vooral bestaat uit pijpleidingen waarvan de hoogst toelaatbare werkdruk meer dan 16 bar bedraagt, maar de levering zelf niet inbegrepen is, en waarbij het steeds het vervoer betreft: a) van of naar andere landen en de aansluiting van importinfrastructuur; b) van en naar de waterstofdistributienetten, inclusief de aansluiting ervan; c) naar de grote eindafnemers, inclusief de aansluiting ervan; d) van de grote waterstofproductie-eenheden, inclusief de aansluiting ervan; e) van en naar de grote waterstofopslagfaciliteiten, inclusief de aansluiting ervan;”*

#### **“Waterstofdistributie”**

*“de werkzaamheid die erin bestaat, via plaatselijke pijpleidingnetten, eindafnemers gevestigd op het grondgebied van één of meer bepaalde gemeenten aan te sluiten en met waterstof te bevoorraden, inclusief de aansluiting en de bevoorrading van kleine productie- en opslageenheden, de levering zelf niet inbegrepen;”*

## 2. OVERVIEW OF THE BELGIAN PROPOSAL FOR A H<sub>2</sub> TRANSPORTATION LAW

### KEY ELEMENTS OF THE PROPOSED LAW (latest public version: 27 February 2023)

#### Designation of a single Hydrogen Network Operator (HNO)

- Responsible for *inter alia* the operation, exploitation and development of the Belgian hydrogen transportation network and the commercial relations with network users
- **Tasks akin to a natural gas or electricity TSO**
- Designated by the federal minister for energy.
- **Legal monopoly**
- **Non-discriminatory and open access** to the hydrogen transportation network
- Strict **unbundling requirements**
- Preparation of a **Network Development Plan**, covering a period of at least 10 years and revised every 2 years under the CREG's supervision

#### Transitional measures for existing hydrogen networks

- Hydrogen pipelines already in use when the regulation would enter into force are subject to transitional measures to enable existing operators to (i) respect their commitments under existing supply and offtake agreements; (ii) ensure that they could be interconnected and integrated with the HNO's network; (iii) facilitate the development of the HNO's activities.
- These transitional measures will be applicable until **31 December 2030** (\*)
- By 31 December 2030, all existing hydrogen transportation networks would have to be managed by the HNO (\*)

#### Dedicated permit regime for hydrogen networks

- Will enter into force as soon as the Ministerial Decree designating the HNO is published
- Operators of existing hydrogen networks can apply for an **extension** of their **existing** transportation **permits** under the existing Federal Gas Law up to 31 December 2030 (\*)
- Operators of existing hydrogen networks can also apply for the **expansion** of an **existing** hydrogen **network** until 31 December 2030 (\*)

(\*) but see [pending amendment](#) (slide 13)

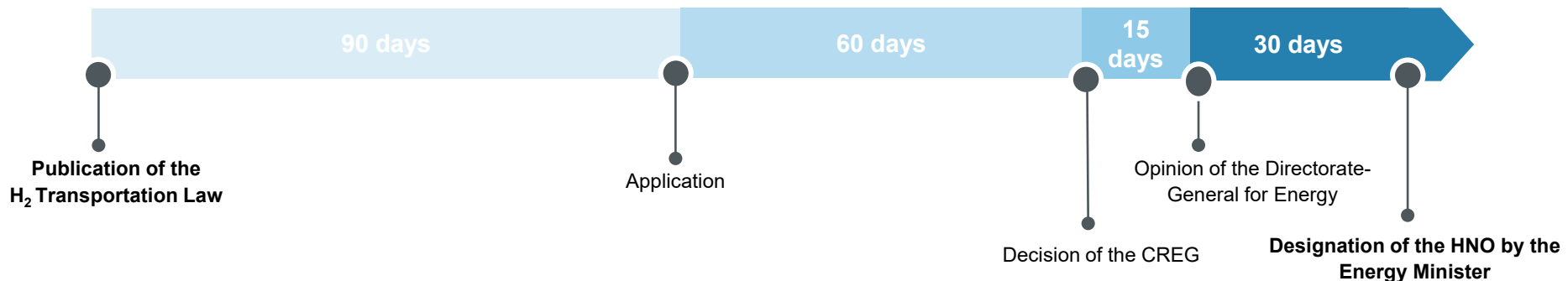


## 2. OVERVIEW OF THE BELGIAN PROPOSAL FOR A H<sub>2</sub> TRANSPORTATION LAW

### Designation of a single Hydrogen Network Operator (HNO)

#### Procedure (article 9):

- Any company can apply for certification and designation as a HNO within **90 working days** of the date of publication of the H<sub>2</sub> Transportation Law in the Belgian State Gazette
- Within **60 working days** of the end of the application period, the **CREG** takes a decision on the certification application and provides the Directorate-General for Energy with an **opinion** on the applicants against the evaluation criteria (*see next slide*)
- Within **15 working days** of receiving the CREG's opinion, the Directorate-General for Energy submits an **opinion to the Minister** on the designation of one of the candidates as HNO
- Within **30 working days** of receiving the opinion of the Directorate-General for Energy and after deliberation in the Council of Ministers, **the Minister designates the hydrogen transportation network operator**. The Ministerial Decree designating the HNO is published in the Belgian Official Gazette and notified by registered letter to the designated HNO and to the other applicants. The Minister communicates the identity of the designated HNO to the European Commission.



## 2. OVERVIEW OF THE BELGIAN PROPOSAL FOR A H<sub>2</sub> TRANSPORTATION LAW

### Designation of a single Hydrogen Network Operator (HNO)

#### Summary of evaluation criteria (article 11):

1. **Quality of the business plan** detailing the financial, technical, material and human resources that the applicant intends to deploy for the development of a hydrogen transportation network open to third parties
2. **Experience in the construction or operation of gas transport infrastructure**
3. **Experience in managing a network open to third parties** or, in the absence of such experience, the skills the applicant can demonstrate in managing a network open to third parties
4. **Territorial coverage, location, intricacy and characteristics of the transport pipelines** owned by the applicant or subject to a long-term right of use, or of which he can establish with reasonable probability to acquire such right in the short term, and which can be used to transport hydrogen, either in their current state or by converting them into hydrogen transport pipelines
5. How the applicant intends to **contribute to the balancing and flexibility of the energy system** as a whole
- ~~6. Understanding of the hydrogen market in Belgium and in neighbouring countries (\*)~~
- ~~7. Understanding of the legal context and the Belgian federal system applicable to the construction and management of hydrogen transport infrastructures (\*)~~
6. **Contribution to the Belgian and European energy and climate policy**, including efforts to avoid greenhouse gas emissions

(\*) amendments made in version adopted in second reading on 27 February 2023 compared with original proposal

## 2. OVERVIEW OF THE BELGIAN PROPOSAL FOR A H<sub>2</sub> TRANSPORTATION LAW

### Main certification criteria (article 10):

#### Compliance with vertical and horizontal unbundling requirements

- The (candidate) HNO must be **unbundled from** any legal entity engaged in the **production or supply of hydrogen, natural gas, biogas, bio-methane an any other forms of synthetic methane or electricity** and must in particular guarantee that the same person(s) do(es) not have the right to:
    - (i) exercise direct or indirect control over an undertaking engaged in the production or supply of hydrogen, natural gas, biogas, bio-methane an any other forms of synthetic methane or electricity and directly or indirectly control or exercise any powers or rights over the HNO and
    - (ii) exercise direct or indirect control over the HNO and directly or indirectly controls exercises any powers or rights over an undertaking involved in the production or supply of the abovementioned energy carriers
  - appoint members of the administrative bodies of the HNO and exercise direct or indirect control or any power or rights over an undertaking involved in the production or supply of the abovementioned energy carriers
  - be a member of the administrative bodies of the HNO and of an undertaking involved in the production or supply of the abovementioned energy carriers
- A single group is allowed to operate both the hydrogen transportation network and **hydrogen storage or import infrastructure**, provided that these activities are structured though **separate legal entities** and the group is not involved in activities which qualify as the “sale of energy other than for its own operational needs”
- A single group is allowed to operate both the hydrogen transportation network and **natural gas, biogas, bio-methane an any other forms of synthetic methane or electricity transportation, storage or import infrastructure**, provided that these activities are structured though **separate legal entities** and the group is not involved in activities which qualify as the “sale of energy other than for its own operational needs”
- Certain **operational synergies** are allowed between the entities (e.g. staff can be shared, certain services could be provided and joint purchasing systems or joint ventures may be established for the conducting of specific tasks)

## 2. OVERVIEW OF THE BELGIAN PROPOSAL FOR A H<sub>2</sub> TRANSPORTATION LAW

### Third party access (article 15):

- **Non-discriminatory and open access** to the hydrogen transportation network operated by the HNO based on regulated tariffs
- Access to the network can only be refused on the basis of certain technical elements, under the supervision of the CREG
- *Exemption*: negotiated third-party access for existing hydrogen pipelines not operated by HNO during a transition period (see next slide)

### Regulated network tariffs (article 16):

- Very similar to the tariffs applicable to gas and electricity TSOs
- Network tariffs determined on the basis of the **tariff methodology set out by the CREG** following prior market consultation
- The HNO must prepare a **tariff proposal** in accordance with the methodology for the CREG's **approval**

### Regulatory account (article 24):

- A regulatory account will be created in the name of the HNO
- If the HNO books lower operating costs or additional revenue compared to its maximum authorised regulated revenue, this regulatory account will be adjusted accordingly
- The income from the regulatory account can be used to reduce the network tariffs

## 2. OVERVIEW OF THE BELGIAN PROPOSAL FOR A H<sub>2</sub> TRANSPORTATION LAW

### Exemption of existing hydrogen networks

- **Transitional measures** for hydrogen networks **already in use when the regulation enters into force** (articles 19 to 23)
- Operators of existing hydrogen networks are allowed to continue operating such networks until **31 December 2030**, provided that they offer their available transport capacity under non-discriminatory conditions, in priority to (i) the HNO or to (ii) other market participants if the HNO has not expressed interest (**negotiated third-party access regime**) (\*)
- By **31 December 2030**, all existing hydrogen networks must be operated by the HNO (\*)
- **Valuation methodology** to be developed by the CREG within one year following the entry into force of the H<sub>2</sub> Transportation Law, after consultation of the HNO
- **HNO not obliged to purchase** any existing hydrogen network infrastructure

(\*) but see [pending amendment](#) (next slide)

### 3. FURTHER OUTLOOK

#### BELGIUM



#### Amendment to the Belgian H2 Transportation Law

- **Existing networks:**
  - **deletion of negotiated TPA** (third party access) during the transition period
  - **deletion of the date of 31 December 2030** as the final date for this transition period
- **Designation of the HNO:** validity limited to a **renewable period of 20 years**
- Introduction of a legal basis for the **potential granting of subsidies** to the HNO
- *Not officially published yet*
- *Draft amendment sent to the Council of State for opinion*

news.belgium

🔍 Zoek een nieuwsbericht

Ministerraad

14 APR 2023 15:44



Hoort bij [Ministerraad van 14 april 2023](#)

#### Ontwerp-amendement over het Belgische waterstofnet

De ministerraad keurt op voorstel van minister van Energie Tinne van der Straeten een ontwerp-amendement goed betreffende het vervoer van waterstof door leidingen.



### 3. FURTHER OUTLOOK

#### EU AND BELGIUM



EU



- Ownership unbundling  
– *ITO and ISO models not entirely ruled out*
- Complemented by horizontal unbundling rules
- Exemptions for “Existing Hydrogen Networks” and “Geographically Confined Hydrogen Networks”



BELGIUM



- Ownership unbundling  
– legal monopoly granted to a single HNO
- Complemented by horizontal unbundling rules
- Exemption for “Existing Hydrogen Networks”

### 3. FURTHER OUTLOOK

EU



#### Exemption for Existing hydrogen networks – revised EU Gas Directive:

Initial position European Parliament	Interim position European Council	Agreed position European Council as adopted on 28 March 2023	Final position after further Trialogue
31 December 2030	31 December 203 <u>5</u>	Market test :  « where the regulatory authority concludes by decision that the continued application of the derogation would carry the risk of <b>impeding competition or adversely affecting the efficient deployment of hydrogen infrastructure or the development of the hydrogen market in the Member State or the Union</b> »	?

## 4. Q&A



## CONTACT US



**PHILIPPE BAERT**  
ASSOCIATE

**T** +32 2 533 5936  
**E** philippe.baert  
@cliffordchance.com



**CHLOÉ PETIT**  
ASSOCIATE

**T** +32 2 533 5087  
**E** chloe.petit  
@cliffordchance.com



**PATRICE VIAENE**  
PARTNER

**T** +32 2 533 5925  
**E** patrice.viaene  
@cliffordchance.com



**YONATHAN TISON**  
ASSOCIATE

**T** +32 2 533 5984  
**E** yonathan.tison  
@cliffordchance.com



**LOUIS DE  
MEULEMEESTER**  
ASSOCIATE

**T** +32 2 533 5029  
**E** louis.demeulemeester  
@cliffordchance.com



# CLIFFORD CHANCE

Clifford Chance, Avenue Louise 65, Box 2, 1050 Brussels, Belgium

© Clifford Chance 2023

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

**[WWW.CLIFFORDCHANCE.COM](http://WWW.CLIFFORDCHANCE.COM)**