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Executive Vice-President
Commissioner for Climate Action

Mr Frans Timmermans
European Commission

Via Email: frans-timmermans-contact@ec.europa.eu

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Power purchase criteria for green hydrogen
Draft of the Delegated Act of the EU-COM on Art. 27 RED II

Dear Mr Vice-President Timmermans,

a first dedicated draft on the delegated act (hereinafter "DA") of the European Commission on Art. 27 para. 3 of the Renewable Energies Directive (RED II) has been circulating for a few weeks. We would like to point out that the implementation of this draft would have profound negative effects on the ramp-up of a European green hydrogen economy.

The first green hydrogen projects always focus on the mobility market as the offtaker of hydrogen because due to the regulation of the RED II fuel distributors must place a certain percentage of renewable fuels on the market or purchase corresponding GHG certificates. Those who offer green hydrogen only at the filling station can therefore sell surplus GHG reduction certificates. This represents a central source of revenue that makes the production of green hydrogen possible in an economic way.

The European Commission introduces many comprehensible and sensible specifications in the DA, e.g., the quarter-hourly balancing between generation and consumption of renewable electricity (Art. 4 para. 1 (d) DA), as well as the possibility of electricity supply via the electric grid in grids with no systematic electricity grid congestion (Art. 4 para. 1 (e) DA).

However, the European Commission's solution to the problem of additionality of the renewable electricity used is extremely problematic. This is to ensure that additional renewable generation capacity is built up through consumption in the transport sector (recital 3 DA). This is implemented by the

fact that the generating unit must have been in operation for no more than 12 months before the electrolyser (Art. 3 para. 1 (b) and Art. 4 para. 1 (b) DA) and that the production unit neither receives nor has received support (Art. 4 para. 1 (c) DA). To avoid double funding, it is understandable that an existing support excludes creditability towards the GHG reduction quota.

However, the handling of units promoted with aid in the past is critical. These units should not be excluded under any circumstances, as otherwise **the supply of renewable electricity is artificially tightened** and the market price rises accordingly. This poses a considerable threat to the ramp-up of the hydrogen economy and thus the hydrogen strategy of the EU in a significant way.

The exclusion of formerly supported units also reveals an **inconsistent understanding of the market by the European Commission** because generation units are not provided for a specific market. Rather, in the optimised marketing of a generation unit, a new decision is made every quarter of an hour as to which offtaker the electricity can be delivered to. This is one of the outstanding results of the development of the European internal market for energy: generation units can react in the intraday market via intraday continuous auctions. In times of grid bottlenecks or a very low spot market price, it must be possible for all generation units without current support to deliver the electricity to an electrolyser. The exclusion of formerly supported units would prevent this efficient form of marketing. This also represents a barrier to access to the energy market for which there is no justification. The average market price would deteriorate. **As a result, the yield of post-funding generators would be significantly worse compared to new units.** This disadvantage for unit operators with formerly supported units is probably not intended.

We also see such a consequence as exceeding the competence of the Commission in developing delegated acts. The basic norm of Art. 27 para. 3 RED II, to which the dR refers, does not require such a restriction and the exclusion of producers from the development of the hydrogen market via renewable energy systems. This would also contradict the subsidiarity principle of EU law.

The dR may only be of a technical nature, but this regulation for formerly funded units is not a purely technical regulation. It must therefore at least not be stipulated in the dR without prior consultation and impact assessment (see also the wording of the dR itself under 2: "Being of technical nature, this proposal did not need to be supported by an impact assessment nor an open public consultation which are usually required only for major initiatives"). A technical-methodological dR cannot exclude market participants from the market through a circumstance of previous promotion.

We also refer to the wording in the draft dR: Only a dR is to be developed with a technical "methodology setting out detailed rules by which economic operators are to comply with the requirements laid down in the fifth and sixth subparagraphs of Article 27(3) of the Directive".

RED II will receive a new modifying draft in July as part of a legislative package from the Commission, which will certainly increase the implementation of the targets of the new, soon to be published EU climate regulation by raising the level of ambition. At the end of the year, further legislative proposals for the expansion of the hydrogen economy can be expected from the Commission. Against this background, too, this exclusion of established market participants does not fit into the picture.

We therefore urge you to achieve the politically comprehensible goal of additionality only by improving the investment conditions for renewable energies, especially in the area of authorisation, and not by excluding marketing channels for older units. In case of doubt, this thwarts the goal of additional volumes through the dismantling of older units. Therefore we have considerable reservations about this proposed regulation under EU law.

If you have any questions, please do not hesitate to contact us.

Yours sincerely,

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