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## **Request for derogation pursuant to Article 70(3) of Regulation (EU) 2024/1789 regarding the application of network codes and guidelines at interconnection points with the Russian Federation.**

In accordance with Article 70(3) of Regulation (EU) 2024/1789 of the European Parliament and of the Council of 13 June 2024 on the internal markets for renewable gas, natural gas and hydrogen (hereinafter the ‘Regulation’), the Republic of Estonia hereby submits a request for a derogation from the application of the network codes and guidelines referred to in Article 70(1) at entry points from and exit points to the Russian Federation pursuant to Article 70(2)(d).

This derogation request applies to the Luhamaa interconnection point on the border of Republic of Estonia and the Russian Federation.

### **Background**

The length of Estonian gas transmission network is 976 km and has five physical connection points with other countries, three of which are with Russian Federation. These are the Narva, Värska and Luhamaa connection points. Narva and Värska connection points have been removed from regional common regulations and are currently not in use (Estonian Competition Authority’s (ECA) decision 01 October 2024 no 7-29/2024-002). The only remaining, Luhamaa connection point, is used only for transit purposes from Russian Federation to Kaliningrad and import to Estonia is not allowed from it.

On 31 December 2022, a regulation of Republic of Estonia Government<sup>1</sup> entered into force, which ceased the import of natural gas from Russia and prohibited the injection of LNG imported from Russia into the distribution and transmission networks.

### **Legal principles**

According to Article 70 of Regulation (EU) 2024/1789:

### **Paragraph 2**

<sup>1</sup> [Vabariigi Valitsuse sanktsiooni kehtestamine maagaasi ja veeldatud maagaasi ostu keeliks seoses Venemaa Föderatsiooni agressiooniga Ukrainas, mida toetab Valgevene Vabariik–Riigi Teataja](#)

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The network codes and guidelines shall:

- a) provide the minimum degree of harmonisation required to achieve the objectives of this Regulation;
- b) take into account regional specificities, where appropriate;
- c) not go beyond what is necessary for the purposes of point (a); and
- d) apply to all interconnection points within the Union and entry points from and exit points to third countries from 5 August 2026.

### **Paragraph 3**

Until 5 February 2026, regulatory authorities may submit a request to the Commission for a derogation from the application of the network codes and guidelines referred to in paragraph 1 at entry points from and exit points to third countries pursuant to paragraph 2, point (d). The request for a derogation shall be submitted simultaneously to the Commission and to ACER. Within three months of the date of receipt of the request for a derogation ACER shall provide a reasoned opinion to the Commission.

The Commission shall adopt a decision on the request for a derogation, taking into account ACER's reasoned opinion and after assessing whether the regulatory authority has:

- a) demonstrated that a network code or guideline, or specific element of those acts, cannot be effectively implemented at entry points from and exit points to third countries; in the case of interconnection points with third countries which have the obligation to adapt to the Union energy acquis, including this Regulation, pursuant to an agreement concluded between the Union and those third countries, but where application or implementation has not been completed, the request for a derogation shall specify which provisions of this Regulation have not been effectively applied or implemented in the third country concerned or which technical rules or lack of technical rules in the third country impede the application of the specific provisions of the relevant network code or guideline;
- b) explained which measures were taken to alleviate the obstacles to the application of the specific provisions of the relevant network code or guideline;
- c) demonstrated that the derogation is not detrimental to the proper functioning of the internal market for natural gas, or to the security of supply of the Union or of a Member State.

The derogation shall be limited to the specific provisions that cannot be effectively implemented and shall be granted for a limited period of time.

### **Issues of concern**

Article 2 point (d) of the Regulation requires the network codes and guidelines to apply to entry points from and exit points to third countries from 5 August 2026. Estonia currently has one operational interconnection point (Luhamaa) with a third country (Russian Federation), is used only for transit purposes from Russian Federation to Kaliningrad and import to Estonia is not allowed from it.

The application of the network codes and guidelines established under the Regulation presupposes and legally requires active, transparent, and reliable cooperation between adjacent Transmission System Operators (TSOs).

Estonia seeks this derogation based on the following grounds:

The request for derogation is predicated upon the fundamental deterioration of the geopolitical situation resulting from the ongoing military aggression by the Russian Federation against Ukraine. This situation constitutes an objective impediment to the maintenance of normal

commercial and operational relations between the Estonian TSO and the TSO of the Russian Federation.

The effective implementation of the Union network codes and guidelines referred to in Article 70(1) inherently presupposes active cooperation, the conclusion of Interconnection Agreements, and continuous operational data exchange between adjacent TSOs. Taking into account the prevailing geopolitical situation, it is currently impossible for the Estonian TSO to enter into new agreements or maintain normal operational cooperation with an entity controlled by the Russian Federation. Furthermore, strict adherence to these network codes implies a degree of commercial and technical integration that is incompatible with the national security interests of Estonia and the restrictive measures (sanctions) imposed by the European Union.

Given that the Russian Federation does not apply EU energy regulation, unilateral enforcement of network codes at the border is technically and legally unfeasible due to the absence of reciprocity. Consequently, the application of network codes and guidelines referred to in Article 70(1) of the Regulation is not possible for interconnection points on the Russian border, specifically including the Luhamaa interconnection point.

Regarding the impact on the internal market, this derogation shall have no negative effect on the proper functioning of the internal market for natural gas, nor on the security of supply of the Union or of any Member State. This assessment is supported by the fact that the importation of natural gas from the Russian Federation has been banned in Estonia for the past four years, and the relevant infrastructure is currently utilized exclusively for transit purposes.

Therefore, the granting of this derogation is not detrimental to the proper functioning and will not hamper the completion of the internal market for natural gas, nor will it affect the security of supply within the European Union. On the contrary, it provides legal certainty for the Estonian TSO by suspending obligations that are impossible to fulfill under the current circumstances.

The requested derogation is necessary for an indeterminate period, remaining in effect until the regulation of Republic of Estonia Government<sup>2</sup> or until any other such regulations are standing.

## **Request for derogation**

Pursuant to Article 70(3) of Regulation (EU) 2024/1789, the ECA hereby formally requests a derogation from the application of the network codes and guidelines referred to in Article 70(1) at the Luhamaa interconnection point.

This derogation is requested pursuant to Article 70(2)(d) regarding entry points from and exit points to a third country. The ECA requests that this derogation remain in effect until the regulation of Republic of Estonia Government<sup>2</sup> or until any other such regulations are standing.

In addition to the specific request for Luhamaa interconnection point, the ECA seeks legal guidance from the Commission regarding the temporal scope of Article 70(3) in relation to interconnection points that are currently dormant or inactive due to the suspension of gas flows.

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<sup>2</sup> [Vabariigi Valitsuse sanktsiooni kehtestamine maagaasi ja veeldatud maagaasi ostu keeliks seoses Venemaa Föderatsiooni agressiooniga Ukrainas, mida toetab Valgevene Vabariik–Riigi Teataja](#)

**Questions for the European Commission regarding According to Article 70 of Regulation (EU) 2024/1789:**

In addition to the derogation request, the ECA has questions for the European Commission that are of crucial importance for the decision making of the regulatory authority of Estonia.

Should gas flows from the Russian Federation be reinstated at the Värska and Narva interconnection points after the deadline of 5 February 2026 established in Article 70(3), the ECA seeks confirmation that it would remain eligible to submit a request for derogation at that future time, considering that the need for such derogation would only materialize upon the reactivation of those points.

Should the products offered at the Luhamaa interconnection point be modified while the derogation is in effect, the ECA seeks confirmation that such operational changes would either be covered by the existing derogation or that a supplementary derogation request would be admissible notwithstanding the expiry of the initial application deadline.

We await the European Commission's decision and guidance on these matters to ensure full legal certainty and compliance with Regulation (EU) 2024/1789.

We stand ready to provide any further information required by the European Commission to process this request.

Sincerely,

(digitally signed by)

Evelin Pärn-Lee  
Director General