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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 31 October 2019

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 31.10.2019
amending Regulation (EU) No 347/2013 of the European Parliament and of
the Council as regards the Union list of projects of common interest

Delegations will find in the annex document C(2019) 7772 final.



Brussels, 31.10.2019
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COMMISSION DELEGATED REGULATION (EU) .../...

of 31.10.2019

**amending Regulation (EU) No 347/2013 of the European Parliament and of the Council
as regards the Union list of projects of common interest**

{SWD(2019) 395 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Objective and legal basis of the proposed action

This Delegated Regulation establishes a Union list of projects of common interest (PCIs) to replace the list, as established by the Commission Delegated Regulation (EU) 2018/540 of 23 November 2017¹

PCIs are specific energy infrastructure projects that are critical for completing the European internal energy market, achieving the Union's energy policy objective of providing affordable, secure and sustainable energy to all Europeans, and for attaining the Union's climate objectives.

Article 3(4) of Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure (the TEN-E Regulation) requires the Commission to adopt, every two years, a delegated act that establishes a Union list of PCIs.² The Union list is based on the regional lists of candidate PCIs prepared and adopted by the regional groups established by the TEN-E Regulation.

This Delegated Regulation takes the form of an annex to the TEN-E Regulation.

General context of the Delegated Regulation

The TEN-E Regulation provides for a legislative framework which aims at facilitating and accelerating the implementation process of PCIs.

The TEN-E Regulation establishes nine strategic geographical infrastructure priority corridors in the areas of electricity, gas and oil, and three Union-wide infrastructure priority thematic areas for smart grids, electricity highways and cross-border carbon dioxide network. It provides for an open, transparent and inclusive process of identifying specific PCIs that are needed to implement these priority corridors and areas.

The TEN-E Regulation also lays down a set of measures to ensure that PCIs are implemented in good time, including:

- strengthened transparency and improved public consultation;
- accelerated and streamlined permit granting procedure, including a binding three-and-a-half-years' time limit for this procedure;
- a single national competent authority acting as a one-stop-shop for permit granting procedures;

¹ Commission Delegated Regulation (EU) 2018/540 of 23 November 2017 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest, (OJ L 90, 6.4.2018, p. 38).

² OJ L 115, 25.4.2013, p.39.

- improved regulatory treatment by allocating costs according to the net benefits, and regulatory incentives; and
- possibility of receiving financial assistance under Connecting Europe Facility (CEF) in the form of grants and innovative financial instruments.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

PROCESS PRIOR TO THE ADOPTION OF THE UNION LIST OF PCIS

The process of establishing the Union list of PCIs started in October 2018 and ends with the entry into force of this Delegated Regulation.

The identification process of PCIs is based on regional cooperation and it was managed by the regional groups. Regional groups for electricity, smart grids, and gas comprise representatives of the Member States, national regulatory authorities (NRAs), transmission system operators (TSOs), European Networks of Transmission System Operators for gas and electricity (ENTSOG and ENTSO-E), the Agency for the Cooperation of Energy Regulators (ACER), and the Commission. Regional groups for oil and carbon dioxide transport projects comprise representatives of the Member States, project promoters and the Commission.

In addition to the legal provisions of the TEN-E Regulation on the specific role of Regional Groups in establishing the regional lists of PCIs, the Commission acted on political commitments stemming from the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making and the Framework Agreement on relations between the European Parliament and the European Commission. The meetings of regional groups have been open to the Parliament and information related to the preparation of this delegated act has been shared before adoption.

The PCI process also involved exchanges with relevant stakeholders acting in the field of energy, such as consumer and environmental protection organisations. Furthermore, five public consultations were carried out by the Commission to obtain views of stakeholders and the larger public on the necessity and merits of the proposed projects from a Union energy policy perspective.

The process of establishing the Union list consisted of the following main stages:

- (a) Identification of the infrastructure needs, and the improved assessment methodology

The PCI selection process in the electricity and gas sectors started in October 2018 with the identification at regional level of specific infrastructure needs that should be addressed by new infrastructure projects and that cannot be effectively resolved by other non-infrastructure means, including regulatory or market-based measures.

The infrastructure needs identified by the regional groups constituted the basis of the improved 2019 assessment methodologies of electricity and gas PCI candidates. These methodologies were developed within the Cooperation Platform comprising representatives of the Commission, ACER, ENTSOG and ENTSO-E as well as representatives of NRAs on an

ad-hoc basis. The Cooperation Platform was established to ensure better coordination of the PCI process between the key participants, and to provide for greater transparency.

The assessment framework for the assessment of candidate PCIs in the priority area of smart grid deployment followed the same process as for the third Union list of PCIs.

(b) Submission of candidate PCIs by project promoters

In accordance with point 2(3) and 2(4) of Annex III to the TEN-E Regulation, electricity and gas infrastructure projects submitted by promoters during the dedicated calls as candidate PCIs were part of the 10-year network development plans (TYNDPs) for gas and electricity developed by ENTSOG and ENTSO-E respectively.

(c) Assessment of candidate PCIs by the regional groups

Each regional group carried out an assessment of the candidate PCIs proposed for its priority corridor.

In the first place, projects were assessed with regard to their compliance with the general criteria laid down in Articles 4(1) of the TEN-E Regulation, including their contribution to the objectives of the corridor and their cross-border dimension.

Subsequently, the regional groups assessed projects' contributions to the specific criteria laid down in Article 4(2) of the TEN-E Regulation according to the agreed dedicated methodologies developed within the Cooperation Platform (for electricity and gas PCI candidates) or by the respective working group (for oil and cross-border carbon dioxide network PCI candidates). Furthermore, electricity and gas candidate PCIs were subject to cost-benefit analysis carried out according to the methodologies developed by ENTSO-E and ENTSOG. In the priority thematic area of smart grid deployment, the cost-benefit analysis was prepared by the promoters themselves and the application for PCI was assessed in accordance with the Assessment Framework and the legal provisions.

(d) Consultation of stakeholders on candidate PCIs

Provisions of Annex III to the TEN-E Regulation provide for enhanced transparency and public participation in the PCI process. Each regional group should consult the organisations representing relevant stakeholders — and, if deemed appropriate, stakeholders directly — including producers, distribution system operators, suppliers, consumers, and organisations for environmental protection. The regional group may also organise hearings or consultations, where relevant for the accomplishment of its tasks.

Five public consultations on electricity, gas, smart grids, cross-border CO₂ networks and oil candidate PCIs were carried out during the period from 22 November 2018 to 26 September 2019 complying with the Commission's better-regulation principles. Overall, 720 contributions from 22 Member States were submitted via the EU Survey consultation platform representing a wide range of citizens and stakeholders, including environmental organisations, trade associations, small and medium enterprises (SMEs) etc. Furthermore, several position papers were submitted via a functional mailbox communicated to the public. In summary, the respondents largely supported the inclusion of smart grids and CO₂ network candidate projects in the Union list. With regards to electricity and gas consultations, a number of environmental stakeholders emphasised the need to take into account the environmental merits of individual candidate projects in the course of the PCI identification

and selection process. The main goal of the consultation process was to assess the necessity of the proposed projects – taking account of their socioeconomic benefits and costs - from the Union energy policy perspective. All PCIs must comply with Union legislation and undergo a complete permit granting procedure, including an environmental impact assessment and public consultation. Should a PCI be found not to be in compliance with Union legislation, it may be removed from the Union list.

In addition to the online consultation process, bilateral meetings with representatives of consumer and environmental organisations were held to allow for more in-depth discussions on the methodology underpinning the assessment of PCIs.

Moreover, stakeholders were regularly invited to, and participated in meetings of the regional groups which discussed the needs in each corridor, assessed the PCI candidates and drew up the regional lists of PCIs.

(e) Check of the criteria and the cross-border relevance by the NRAs

The NRAs (coordinated by ACER) cross-checked, for the electricity, gas and smart grids PCI candidates, the consistent application of the criteria/cost-benefit analysis methodology and their cross-border relevance. Overall, the NRAs assessment has been positive and only some NRAs have expressed their reservations with regard to a handful of projects. Detailed findings were submitted to the regional groups.

(f) Agreement of the decision-making bodies on the draft regional lists of candidate PCIs

Following the assessment of candidate PCIs by the regional groups, their decision-making bodies at technical level (composed of the Commission and Member States representatives) agreed on the draft regional lists and the preliminary ranking of candidate PCIs. Meetings of the technical decision-making bodies of the regional groups were held on 5 July for electricity, smart grids and gas projects, and on 17 July for oil projects. In the case of cross-border carbon dioxide network projects, the draft regional list was agreed in written form in July 2019.

(g) ACER's opinions on the draft regional lists

In line with point 2(12) of Annex III to the TEN-E Regulation, ACER provided its opinions on the *draft* regional lists of electricity (including smart grids) and gas PCIs on 25 September 2019. ACER assessed the consistent application of the assessment criteria and of the cost/benefit analysis across the regions.

(h) Adoption of the final regional lists of PCIs by the decision-making bodies

The *final* regional lists in all nine priority corridors and all three priority thematic areas were adopted by the decision-making bodies of the regional groups on 4 October 2019. The decision-making bodies adopted the final regional lists on the basis of the draft regional lists and by considering ACER's opinion, the NRAs' assessments and in the case of oil and carbon-dioxide transport projects the Working Group's assessment. The Gothenburg LNG terminal in Sweden was removed from the BEMIP gas regional list agreed by the relevant decision-making body following the Swedish authorities' decision denying authorization for a

connection of the LNG terminal to the gas transmission grid, without which the project does not have a cross border impact as required by the TEN-E Regulation.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Summary of the proposed action

This Delegated Regulation identifies 151 PCIs which are deemed necessary to implement the priority corridors in the electricity, gas and oil sectors and the priority thematic areas: smart grids, electricity highways and the cross-border carbon-dioxide networks, as identified in the TEN-E Regulation.

This Delegated Regulation is adopted pursuant to Article 3(4) of the TEN-E Regulation, which empowers the Commission to adopt, every two years, a delegated act establishing the Union list of PCIs. This list is to replace the third Union list of PCIs established by Commission Delegated Regulation (EU) 2018/540 of 23 November 2017. This Delegated Regulation takes the form of a new Annex VII to the TEN-E Regulation.

This Union list provides for 151 PCIs, including 102 in electricity, 32 in gas, 6 in oil, 6 smart grids, and 5 cross-border carbon dioxide network projects. In total 22 electricity PCIs have been labelled as 'electricity highways' where they also fulfil the criteria in sub-point 11 of Annex I and point 1(b) of Annex II to the TEN-E Regulation.

The Union list includes projects that are critical for completing the European internal energy market, for achieving the Union's energy policy objective of affordable, secure and sustainable energy, and for attaining the Union's climate objectives. PCIs include all the priority projects agreed by the High Level Groups established to facilitate at regional level the development of cross-border and trans-European projects as well as the implementation of harmonised rules. When completed, electricity PCIs will help Member States to comply with the 2030 climate and energy policy targets, and the 2020 and 2030 electricity interconnection targets. Gas PCIs will allow all Member States to have access to at least three sources of gas and to liquefied natural gas, and will ensure that no Member State remains in energy isolation.

This Union list contains in total 21 PCIs fewer than the (third) Union list adopted in 2017. 20 gas projects have been removed from the list, along with one project for smart grids and one for cross-border carbon-dioxide networks. The lower number of gas PCIs results mainly from (i) the completion of some projects, (ii) a more robust PCI selection process, and (iii) the prioritisation of projects addressing the remaining and most urgent essential bottlenecks taking into account the estimated gas demand in line with the European Union's decarbonisation objectives.

PCIs included in this Delegated Regulation are to be implemented only after successful completion of permit granting procedures in all countries concerned, including environmental impact assessments and public consultations. PCIs should comply with Union and national legislation, including environmental legislation and the unbundling provisions in Directive (EU) 2019/944 and Directive 2009/73/EC.^{3,4}

³ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU OJ L 158, 14.6.2019, p. 125).

⁴ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p.94).

COMMISSION DELEGATED REGULATION (EU) .../...

of 31.10.2019

amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009⁵, and in particular Article 3(4) thereof,

Whereas:

- (1) Regulation (EU) No 347/2013 establishes a framework for the identification, planning and implementation of projects of common interest ('PCIs') which are required to implement the nine strategic geographical energy infrastructure priority corridors identified in the fields of electricity, gas and oil, and the three Union-wide energy infrastructure priority areas for smart grids, electricity highways and carbon dioxide transportation networks.
- (2) The Commission is empowered to establish the Union list of PCIs ('Union list').
- (3) The list of PCIs is established every two years, thus, it is necessary to replace it.
- (4) Projects proposed for the inclusion in the Union list have been assessed by the regional groups referred to in Article 3 of Regulation (EU) No 347/2013 who confirmed that they meet the criteria laid down in Article 4 of that Regulation.
- (5) The draft regional lists of PCIs were agreed by the regional groups at technical-level meetings. Following the opinions of the Agency for the Cooperation of Energy Regulators ('ACER') on 25 September 2019 on the consistent application of the assessment criteria and the cost/benefit analysis across regions, the regional groups' decision-making bodies adopted the regional lists on 4 October 2019. Pursuant to Article 3(3)(a) of Regulation (EU) No 347/2013, prior to the adoption of the regional lists, all proposed projects were approved by the Member States to whose territory the projects relate.

⁵ OJ L 115, 25.4.2013, p. 39.

- (6) Organisations representing relevant stakeholders, including producers, distribution system operators, suppliers, and consumer and environmental protection organisations were consulted on the projects proposed for inclusion in the Union list.
- (7) PCIs should be listed per strategic trans-European energy infrastructure priorities in the order laid down in Annex I to Regulation (EU) No 347/2013. The Union list should not contain any ranking of projects.
- (8) PCIs should be listed either as stand-alone PCIs or as a part of a cluster of several PCIs because they are interdependent or (potentially) competing.
- (9) The Union list contains projects at different stages of their development, including pre-feasibility, feasibility, permit-granting and construction. For PCIs at an early development stage, studies may be needed to demonstrate technical and economic viability and compliance with Union legislation, including environmental legislation. In this context, potential negative impacts on the environment should be adequately identified, assessed and avoided or mitigated.
- (10) The inclusion of projects on the Union list is without prejudice to the outcome of the relevant environmental assessment and permit procedure. Under Article 5(8) of Regulation (EU) No 347/2013, a project that does not comply with Union law may be removed from the Union list. The implementation of PCIs, including their compliance with the relevant legislation, should be monitored in accordance with Article 5 of that Regulation.
- (11) Regulation (EU) No 347/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex VII to Regulation (EU) No 347/2013 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 31.10.2019

*For the Commission
The President
Jean-Claude JUNCKER*