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**ADDENDUM TO "I" ITEM NOTE**

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from: General Secretariat of the Council

to: Coreper

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No. Cion prop.: 15813/11 ENER 330 CADREFIN 103 CODEC 1749

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Subject: Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 714/2009 and 715/2009

- *Approval of the final compromise text*

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Delegations will find in Annex the consolidated text of the draft Regulation.

**Regulation (EU) No.../.....of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, 714/2009 and 715/2009**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

- (1) On 26 March 2010, the European Council agreed to the Commission's proposal to launch a new strategy 'Europe 2020'. One of the priorities of the Europe 2020 strategy is sustainable growth to be achieved by promoting a more resource efficient, *more sustainable* and more competitive economy. That strategy put energy infrastructures at the forefront as part of the flagship initiative 'Resource efficient Europe', by underlining the need to urgently upgrade Europe's networks, interconnecting them at the continental level, in particular to integrate renewable energy sources.

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<sup>1</sup> OJ C 143, 22.5.2012, p. 125.

<sup>2</sup> OJ C ....

<sup>3</sup> Position of the European Parliament of ... (not yet published in the Official Journal) and Council decision....

- (3a) ***The target agreed in the conclusions of the March 2002 Barcelona European Council for Member States to have a level of interconnection equivalent to at least to 10% of their installed production capacity has not yet been achieved.***
- (2) ***The*** communication from the Commission entitled "Energy infrastructure priorities for 2020 and beyond – A Blueprint for an integrated European energy network" , followed by the Transport, Telecommunications and Energy Council conclusions of 28 February 2011 and the European Parliament resolution of **5 July** 2011, called for a new energy infrastructure policy to optimise network development at European level for the period up to 2020 and beyond, in order to allow the Union to meet its core energy policy objectives of competitiveness, sustainability and security of supply.
- (3) The European Council of 4 February 2011 underlined the need to modernise and expand Europe's energy infrastructure and to interconnect networks across borders, in order to make solidarity between Member States operational, to provide for alternative supply or transit routes and sources of energy and develop renewable energy sources in competition with traditional sources. It insisted that no Member State should remain isolated from the European gas and electricity networks after 2015 or see its energy security jeopardised by lack of the appropriate connections.
- (4) Decision No 1364/2006/EC of the European Parliament and of the Council of 6 September 2006<sup>1</sup> lays down guidelines for trans-European energy networks. ***Those*** Guidelines (TEN-E) have as objectives to support the completion of the Union internal energy market while encouraging the rational production, transportation, distribution and use of energy resources, to reduce the isolation of less-favoured and island regions, to secure and diversify the Union's energy supplies, ***sources and routes, including*** through co-operation with third countries, and to contribute to sustainable development and protection of the environment.
- (5) Evaluation of the current TEN-E framework has clearly shown that this policy, while making a positive contribution to selected projects by giving them political visibility, lacks vision, focus, and flexibility to fill identified infrastructure gaps. ***The Union should therefore step up its efforts to meet future challenges in this field, and due attention should be paid to identifying potential future gaps in energy demand and supply.***

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<sup>1</sup> OJ L 262, 22.9.2006, p. 1.

- (6) Accelerating the refurbishment of existing **energy infrastructure** and **the** deployment of new energy infrastructure is vital to achieve the Union's energy and climate policy objectives, consisting **of** completing the internal market in energy, guaranteeing security of supply, **in particular** for gas and oil, reducing greenhouse gas emissions by 20 % <sup>1</sup> increasing the share of renewable energy in **■** final energy consumption to 20 % and achieving a 20 % increase in energy efficiency by 2020 **whereby energy efficiency gains may contribute to reducing the need for construction of new infrastructures.**

At the same time, the Union has to prepare its infrastructure for further decarbonisation of its energy system in the longer term towards 2050. **This Regulation should therefore also be able to accommodate possible future Union energy and climate policy objectives.**

- (7) Despite **the fact that Directive** 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity<sup>2</sup> and **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<sup>3</sup> **provide for an** internal market in energy, **the market** remains fragmented due to insufficient interconnections between national energy networks **and to the suboptimal utilisation of existing energy infrastructure. However,** union-wide integrated networks **and deployment of smart grids** are vital for ensuring a competitive and **properly** functioning integrated market, **for achieving an optimal utilisation of energy infrastructure assets, for increased energy efficiency and integration of distributed renewable energy sources and** for promoting growth, employment and sustainable development.
- (8) The Union's energy infrastructure should be upgraded in order to prevent **technical failure** and **to** increase its resilience **against such failure, against** natural or man-made disasters, adverse effects of climate change and threats to its security, **in particular as regards** European critical infrastructures as set out in Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection<sup>4</sup>.

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<sup>1</sup> 30% if the conditions are right.

<sup>2</sup> OJ L 211, 14.8.2009, p. 55.

<sup>3</sup> OJ L 211, 14.8.2009, p. 94.

<sup>4</sup> OJ L 345, 23.12.2008, p. 75.

- (8a) *Transporting oil through land pipelines rather than over water can make an important contribution to lowering the environmental risk associated with the transportation of oil.***
- (9) The importance of smart grids in achieving the Union's energy policy objectives has been acknowledged in ***the*** communication ***of 12 April 2011*** from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions entitled "Smart grids: from innovation to deployment"
- (9a) *Energy storage facilities and reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) and compressed natural gas (CNG) have an increasingly important role to play in the European energy infrastructure. The expansion of such energy infrastructure facilities forms an important component of a well-functioning network infrastructure.***
- (10) ***The*** communication from the Commission ***of 7 September 2011*** entitled "The EU Energy Policy: Engaging with Partners beyond Our Borders" underlined the need for the Union to include the promotion of energy infrastructure development in its external relations with a view to supporting ■ socio-economic development beyond the Union borders. The Union should facilitate infrastructure projects linking the Union's energy networks with third country networks, in particular in neighbouring countries and in countries ■ with which the Union has established specific energy cooperation.
- (10a) *To ensure voltage and frequency stability, particular attention should be focused on the stability of the European electricity network under the changing conditions caused by the growing inflow of variable renewable energy.***
- (11) The investment needs up to 2020 in electricity and gas transmission infrastructures of European relevance have been estimated at about EUR 200 billion. The significant increase in investment volumes compared to past trends and the urgency of implementing the energy infrastructure priorities requires a new approach in the way energy infrastructures, and ***in particular*** those of a cross-border nature, are regulated and financed.

- (12) The Commission Staff Working Paper *for* the Transport, Telecommunications and Energy Council of 10 June 2011 entitled "Energy infrastructure investment needs and financing requirements" stressed that approximately half of the total investments needed for the decade up to 2020 are at risk of not being delivered at all or not in time due to obstacles related to *the* granting *of permits*, regulation and financing.
- (13) This Regulation lays down rules for the timely development and interoperability of trans-European energy networks in order to achieve the Treaty's energy policy objectives to ensure the functioning of the internal energy market and security of supply in the Union, to promote energy efficiency and energy saving and the development of new and renewable forms of energy, and to promote the interconnection of energy networks. By pursuing these objectives, this proposal contributes to smart, sustainable and inclusive growth and brings benefits to the entire Union in terms of competitiveness and economic, social and territorial cohesion.
- (13a) It is essential for the development of trans-European networks and their effective interoperability to ensure operational coordination between electricity transmission system operators. In order to ensure uniform conditions for the implementation of the relevant provisions of Regulation (EC) No 714/2009 in this respect, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>1</sup>. The examination procedure should be used for the adoption of the guidelines on the implementation of operational coordination between electricity transmission system operators at Union level, given that those guidelines will apply generally to all transmission system operators. Regulations (EC) No 714/2009 should be amended accordingly.*
- (13c) The Agency for the Cooperation of Energy Regulators ( the "Agency") established by Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009<sup>2</sup> is attributed important additional tasks under this Regulation and should be given the right to levy fees for some of these additional tasks.*

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<sup>1</sup> OJ L 55, 28.2.2011, p. 13.

<sup>2</sup> OJ L 211, 14.8.2009, p. 1.

- (14) ***Following close consultations with all Member States and stakeholders, the*** Commission has identified 12 strategic trans-European energy infrastructure priorities, ***the*** implementation ***of which*** by 2020 is essential for the achievement of the Union's energy and climate policy objectives. These priorities cover different geographic regions or thematic areas in the field of electricity transmission and storage, gas transmission, storage and liquefied or compressed natural gas infrastructure, carbon dioxide transport and oil infrastructure.
- (15) Projects of common interest should ***comply with*** common, transparent and objective criteria in view of their contribution to the energy policy objectives. For electricity and gas, ***in order to be eligible for inclusion in the second and following Union lists***, projects should be part of the latest available ten-year network development plan. This plan should notably take account of the conclusions of the European Council ***of 4 February 2011*** with regard to the need to integrate peripheral energy markets.
- (16) Regional groups should be established for the purpose of proposing ***and reviewing*** projects of common interest, ***leading to the establishment of regional lists of projects of common interest***. In order to ensure broad consensus, these regional groups should ensure close cooperation between Member States, national regulatory authorities, project promoters and relevant stakeholders. The cooperation should rely as much as possible on existing regional cooperation structures of national regulatory authorities and transmission system operators and other structures established by the Member States and the Commission. ***In the context of this cooperation, national regulatory authorities should, when necessary, advise the regional groups, inter alia on the feasibility of the regulatory aspects of proposed projects and on the feasibility of the proposed timetable for regulatory approval.***

(17) ***In order to ensure that the*** Union list of projects of common interest ("***Union list***") is limited to projects which contribute the most to the implementation of the strategic energy infrastructure priority corridors and areas, ***the power to adopt and review the Union list should be delegated to*** the Commission ***in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU)***, while respecting the right of the Member States to approve projects of common interest related to their territory. According to analysis carried out in the **■** impact assessment ***accompanying the proposal***, the number of such projects is estimated at some 100 in the field of electricity and 50 in the field of gas. ***Taking into account this estimate, and the need to ensure the focus of this instrument, the total number of projects of common interest should remain manageable, and therefore should not significantly exceed 220. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.***

(17b) ***A new Union list should be established every two years. Projects of common interest that are completed or that no longer fulfil the relevant criteria and requirements as set out in this Regulation should not appear on the next Union list. For that reason, existing projects of common interest that are to be taken up on the next Union list should take part in the same selection process for the establishment of regional lists and for the establishment of the Union list as proposed projects; however, care should be taken to minimise the resulting administrative burden as much as possible, for example by using to the extent possible information submitted previously, and by taking account of the annual reports of the project promoters.***

(18) Projects of common interest should be implemented as quickly as possible and should be closely monitored and evaluated, while keeping the administrative burden for ***project*** promoters to a minimum. The Commission should nominate European coordinators for projects facing particular difficulties.



(19) Authorisation procedures should *neither* lead to administrative burdens which are disproportionate to the size or complexity of a project, nor create barriers to the development of the trans-European networks and market access. The *conclusions of the* European Council of 19 February 2009 highlighted the need to identify and remove barriers to investment, including by means of streamlining of planning and consultation procedures. These conclusions were reinforced by the *conclusions of the* European Council of 4 February 2011 which again underlined the importance *of streamlining* and *improving* authorisation procedures while respecting national competences.

*(19a) The planning and implementation of Union projects in the areas of energy, transport and telecommunication infrastructure should be coordinated to generate synergies whenever to do so makes sense from an overall economic, technical, environmental or spatial planning point of view and with due regard to the relevant safety aspects.*

*In this manner, when the various European networks are being planned, preference could be given to integrating transport, communication and energy networks in order to ensure that as little land as possible is taken up, whilst ensuring, where possible, that existing and/or disused routes are reused, in order to reduce to a minimum any negative social, economic, environmental and financial impact.*

(20) Projects of common interest should be given "priority status" at national level to ensure rapid administrative treatment. Projects of common interest *should* be considered by competent authorities as being in *the* public interest. Authorisation should be given to projects which have an adverse impact on the environment, for reasons of overriding public interest, when all the conditions ■ under *Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora*<sup>1</sup> and *Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy*<sup>2</sup> are met.

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<sup>1</sup> OJ L 206, 22.7.1992, p. 7.

<sup>2</sup> OJ L 327, 22.12.2000, p. 1.

- (21) The establishment of a **■** competent authority *or authorities* integrating or coordinating all permit granting procedures ("one-stop shop") should reduce complexity, increase efficiency and transparency and help enhance cooperation among Member States. ***Upon its designation, the competent authority should be operational as soon as possible.***
- (22) Despite the existence of established standards for the participation of the public in environmental decision-making procedures, additional measures are needed to ensure ***the*** highest possible standards of transparency and public participation for all relevant issues in the permit granting process for projects of common interest.
- (23) The correct and coordinated implementation of: ***Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment<sup>1</sup>***; of ***Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment<sup>2</sup>***, where applicable; and of the Aarhus and Espoo Conventions should ensure the harmonisation of the main principles for the assessment of environmental effects, including in a cross-border context. Member States should coordinate their assessments for projects of common interest, and provide for joint assessments, where possible. ***Member States should be encouraged to exchange best practice and administrative capacity-building for permit granting procedures.***
- (24) ***It is important to streamline and improve authorisation procedures; this should be done while respecting - to the extent possible and in order to give due regard to the principle of subsidiarity - national competences and procedures for the construction of new infrastructure.*** Given the urgency ***of developing*** energy infrastructures, the simplification of permit granting procedures should be accompanied by a clear time-limit for the decision to be taken by the respective **■** authorities regarding the construction of the project. That time limit should stimulate a more efficient definition and handling of procedures, and should under no circumstances compromise **■** the high standards for the protection of the environment and public participation. ***With regard to the maximum time limits established by this Regulation, Member States could nevertheless strive for further shortening of these time limits if feasible.***

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<sup>1</sup> ***OJ L 26, 28.1.2012, p. 1***

<sup>2</sup> ***OJ L 197, 21.7.2001, p. 30***

*In the context of the permit granting procedures, a project of common interest could include related infrastructure to the extent that it is essential for the construction or functioning of the project.*

*Where Member States consider it appropriate, they may include in the comprehensive decision decisions taken in the context of: negotiations with individual landowners to granting access to, ownership of, or a right to occupy property; spatial planning which determines the general land use of a defined region, includes other developments such as highways, railways, buildings, nature protection areas etc., and is not undertaken for the specific purpose of the planned project; granting of operational permits.*

*The competent authorities should ensure the respect of the time limits, and Member States should endeavour to ensure that appeals challenging the substantive or procedural legality of a comprehensive decision are handled in the most efficient way possible.*

- (25) This Regulation, in particular the provisions on permit granting, public participation and **the** implementation of projects of common interest, should apply without prejudice to international **law** and Union legislation, including provisions to protect the environment and human health, and provisions adopted under the Common Fisheries and Maritime Policy.

*(25a) The costs for the development, construction, operation and maintenance of projects of common interest should in general be fully borne by the users of the infrastructure. Projects of common interest should be eligible for cross-border cost allocation when an assessment of market demand or of the expected effects on the tariffs have indicated that costs cannot be expected to be recovered by the tariffs paid by the infrastructure users.*

- (26) The ***basis for the discussion on the appropriate allocation of costs should be the*** assessment of the costs and benefits of an infrastructure project on the basis of a harmonised methodology for energy-system-wide analysis, in the framework of the ten-year network development plans prepared by the European Networks of Transmission System Operators ***under*** Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity<sup>1</sup> and Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks<sup>2</sup>, and reviewed by the Agency ■ .

***That assessment could take into consideration indicators and corresponding reference values for the comparison of unit investment costs.***

- (27) In an increasingly integrated internal energy market, clear and transparent rules for cost allocation across borders are necessary in order to accelerate investment in cross-border infrastructure. The European Council of 4 February 2011 recalled the importance ***of promoting*** a regulatory framework attractive to investment in networks, with tariffs set at levels consistent with financing needs and the appropriate cost allocation for cross-border investments, while enhancing competition and competitiveness ■ and taking account of the impact on consumers. ***When deciding on cross-border cost allocation, national regulatory authorities should ensure that its impact on national tariffs does not represent a disproportionate burden for consumers. In addition, the national regulatory authorities should avoid the risks of double support for project(s) by taking into account actual or estimated charges and revenues. These charges and revenues should be taken into account only as far as they are designed to cover the costs concerned and as much as possible be related to the project(s).***

***When an investment request takes into account benefits beyond the borders of the Member States concerned, the national regulatory authorities should consult the Transport System Operators (TSOs) concerned on the project-specific cost benefit analysis.***

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<sup>1</sup> OJ L 211, 14.8.2009, p. 15.

<sup>2</sup> OJ L 211, 14.8.2009, p. 36.

(28) The existing internal energy market legislation requires that tariffs for access to gas and electricity networks **█** provide appropriate incentives for investment. When applying the internal energy market legislation, national regulatory authorities should ensure ***a stable and predictable regulatory framework with*** incentives for projects of common interest, including long-term incentives, ***that*** are commensurate with the level of specific risk of the project. This applies ***in particular*** to innovative transmission technologies ***for electricity allowing*** for large scale integration of renewable energy, of distributed energy resources or of demand response in interconnected networks, and to gas transmission infrastructure offering advanced capacity or additional flexibility to the market to allow for short-term trading or back-up supply in case of supply disruptions.

***(28a) This Regulation applies only to the granting of permits for, public participation in, and the regulatory treatment of projects of common interest within the meaning set out herein. Member States can nevertheless apply, by virtue of their national law, the same or similar rules to other projects which do not have the status of projects of common interest within the scope of this Regulation.***

***Furthermore, as regards the regulatory incentives, Member States can apply, by virtue of their national law, the same or similar rules to projects of common interest falling in the category of electricity storage.***

***(28b) Member States that currently do not provide for a legal status of the highest national significance possible that is attributable to energy infrastructure projects in the context of permit granting procedures, should consider introducing such a status, in particular by evaluating if this would lead to a quicker permit granting procedure.***

- (29) The European Energy Programme for Recovery (EPR)<sup>1</sup> has demonstrated the added value of leveraging private funding through significant Union financial aid to allow **the** implementation of projects of European significance. The European Council of 4 February 2011 recognised that some energy infrastructure projects may require limited public finance to leverage private funding. In the light of the economic and financial crisis and budgetary constraints, targeted support, through grants and financial instruments, should be developed under the next multi-annual financial framework, which will attract new investors into the energy infrastructure priority corridors and areas, while keeping the budgetary contribution of the Union to a minimum. ***The relevant measures should draw on the experience gained during the pilot phase following the introduction of project bonds to finance infrastructure projects.***
- (30) Projects of common interest in the fields of electricity, gas and carbon dioxide should be eligible to receive Union financial assistance for studies and, under certain conditions, for works ***as soon as such funding becomes available*** under the proposed Regulation for a Connecting Europe Facility (CEF Regulation) ■ in the form of grants or in the form of innovative financial instruments. This will ensure ***that*** tailor-made support can be provided to those projects of common interest which are not viable under the existing regulatory framework and market conditions. ***It is important to avoid any distortion of competition, in particular between projects contributing to the achievement of the same Union priority corridor.*** Such financial assistance should ensure the necessary synergies with ***the*** Structural Funds, ***which*** will finance smart energy distribution networks of local or regional importance. ***A three-step-logic applies to investments for projects of common interest: first, the market should have the priority to invest. Second, if investments are not carried out by the market, regulatory solutions should be explored, if necessary the relevant regulatory framework should be adjusted, and the correct application of the relevant regulatory framework should be ensured. Third, where the previous two steps are not sufficient to deliver the necessary investments in projects of common interest, Union financial support could be granted if the project of common interest fulfils the applicable eligibility criteria.***

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<sup>1</sup> OJ L 200, 31.7.2009, p. 31.

- (32) Since the objective of this Regulation, namely the development and interoperability of trans-European energy networks and connection to such networks, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on **█** European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (31) Decision No 1364/2006/EC should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

##### Subject matter and scope

1. This Regulation lays down guidelines for the timely development and interoperability of priority corridors and areas of trans-European energy infrastructure set out in Annex I (*"energy infrastructure priority corridors and areas"*).
2. In particular, this Regulation:
  - (a) *foresees the identification of* projects of common interest necessary to implement **█** priority corridors and areas and falling under the energy infrastructure categories in electricity, gas, oil, and carbon dioxide set out in Annex II (*"energy infrastructure categories"*);

- (b) facilitates the timely implementation of projects of common interest by *streamlining, coordinating more closely, and* accelerating permit granting and *by* enhancing public participation;
- (c) provides rules *and guidance* for *the* cross-border allocation of costs and risk-related incentives for projects of common interest;
- (d) determines *the* conditions for eligibility of projects of common interest for Union financial assistance ■ .

## Article 2

### Definitions

For the purpose of this Regulation, in addition to the definitions provided for in Directives 2009/28/EC, 2009/72/EC and 2009/73/EC, Regulations (EC) No 713/2009, (EC) No 714/2009, and (EC) No 715/2009, the following definitions shall apply:

1. 'energy infrastructure' means any physical equipment *or facility falling under the energy infrastructure categories as set out in Annex II* which is located within the Union or linking the Union and one or more third countries;
2. 'comprehensive decision' means the decision *or the collection of decisions* taken by a *Member State* authority *or authorities, not including courts or tribunals, that determines whether or not a project promoter is to be granted* authorisation to build the energy infrastructure *to realise*, a project, without prejudice to any *decision* taken in the context of *an* administrative ■ appeal *procedure*.
3. 'project' means one or several lines, pipelines, facilities, equipments *or* installations *falling under the energy* infrastructure categories as set out in Annex II ■ ;
4. 'project of common interest' means a project, ■ necessary to implement the energy infrastructure priority corridors and areas set out in Annex I *and which is part of the Union-wide list of projects of common interest referred to in Article 3*;



- 4a. *'energy infrastructure bottleneck' means limitation of physical flows in an energy system due to insufficient transmission capacity, which includes inter alia the absence of infrastructure;*
5. 'project promoter' means:
- (a) transmission system operator or distribution system operator or other operator or investor developing a project of common interest; or
  - (b) if there are several transmission system operators, distribution system operators, other operators, investors, or any group thereof, the entity with legal personality under the applicable national law, which has been designated by contractual arrangement between them and which has the capacity to undertake legal obligations and assume financial liability on behalf of the parties to the contractual arrangement;
- (5b) *'Agency' means the Agency for the Cooperation of Energy Regulators established in Regulation (EC) No 713/2009;*
- (5c) *'Smart grid' means an electricity network that can cost efficiently integrate the behaviour and actions of all users connected to it – generators, consumers and those that do both – in order to ensure economically efficient, sustainable power system with low losses and high levels of quality, security of supply and safety;*
6. *'works' means the purchase, supply and deployment of components, systems and services including software, the carrying out of development and construction and installation activities relating to a project, the acceptance of installations and the launching of a project;*
- 6a. *'studies' means activities needed to prepare project implementation, such as preparatory, feasibility, evaluation, testing and validation studies, including those in the form of software, and any other technical support measure, including prior action to define and develop a project and decide on its financing, such as reconnaissance of the sites concerned and preparation of the financial package;*

7. *'national regulatory authority' means a national regulatory authority designated in accordance with Article 35(1) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity<sup>1</sup> or Article 39(1) of 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<sup>2</sup>;*
8. *'commissioning' means the process of bringing a project into operation, once it has been constructed.*

## CHAPTER II

### PROJECTS OF COMMON INTEREST

#### Article 3

##### *Union list of projects of common interest*

## I

2. *This Regulation establishes twelve Regional Groups ("Groups") as set out in section 1 of Annex III. The membership of each Group shall be based on each priority corridor and area and their respective geographical coverage as set out in Annex I. Decision-making powers in the Groups shall be restricted to Member States and the Commission only, referred to as the decision-making body of the Groups.*
- 2bis. *Each Group shall adopt its rules of procedure, having regard to the provisions set out in Annex III.*
3. *The decision-making body of each Group shall adopt a regional list of proposed projects of common interest, drawn up according to the process set out in section 2 of Annex III, according to the contribution of each project to implementing the energy infrastructure priority corridors and areas and according to their fulfilment of the criteria set out in Article 4.*

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<sup>1</sup> OJ L 211, 14.8.2009, p. 55.

<sup>2</sup> OJ L 211, 14.8.2009, p. 94.

*When a Group draws up its regional list:*

- *each individual proposal for a project of common interest shall require the approval of the Member State(s), to whose territory the project relates; if a Member State decides not to give this approval, it shall present its substantiated reasons for doing so to the Regional Group concerned.*
- *it shall take into account advice from the Commission that is aimed at having a manageable total number of projects of common interest;*

*6a. The Commission shall be empowered to adopt delegated acts in accordance with Article 15b that establish the Union list of projects of common interest ("Union list"), subject to the second paragraph of Article 172 of the Treaty on the Functioning of the European Union. The Union list shall take the form of an annex to this Regulation. In exercising its power, the Commission shall ensure that the Union list is established every two years, on the basis of the regional lists adopted by the decision-making bodies of the Groups as established in point 1(1a) of Annex III, following the procedure set out in paragraph 3 of this Article. The first list shall be adopted by 31 July 2013 at the latest.*

*6b. The Commission shall, when adopting the Union list on the basis of the regional lists:*

- *ensure that only those projects that fulfil the criteria in Article 4 are included;*
- *ensure cross-regional consistency, taking into account the opinion of the Agency for the Cooperation of Energy Regulators ("the Agency") as referred to in Annex III.2(5e);*
- *take into account any opinions of Member States as referred to in Annex III.2(5c);*  
*and*
- *aim for a manageable total number of projects of common interest on the Union list.*

7. Following *their inclusion into the Union list pursuant to paragraph 6a of this Article*, projects of common interest shall become an integral part of the relevant regional investment plans pursuant *to* Article 12 of Regulations (EC) No 714/2009 and (EC) No 715/2009 and of the relevant national ten-year network development plans pursuant *to* Article 22 of Directives *2009/72/EC* and *2009/73/EC* and other national infrastructure plans concerned, as appropriate. *Those* projects shall be conferred the highest possible priority within each of these plans.

#### Article 4

##### Criteria for projects of common interest

1. Projects of common interest shall meet the following general criteria:
- (a) the project is necessary for *at least one of* the energy infrastructure ■ priority corridors and areas ; ■
  - (b) the *potential overall benefits of the* project, *assessed according to the respective specific criteria in paragraph 2, outweigh its costs, including in the longer term*; and
  - (c) the project
    - involves at least two Member States ■ by directly crossing the border of *two* or more Member States; or
    - *is* located on the territory of one Member State and *has* a significant cross-border impact as set out in point 1 of Annex IV; *or*
    - *crosses the border of at least one Member State and an EEA country.*
2. *The* following specific criteria shall apply to projects of common interest falling under specific energy infrastructure categories:
- (a) concerning electricity transmission and storage projects falling under the *energy infrastructure* categories set out in points 1(a) to (d) of Annex II, the project shall contribute significantly to at least one of the following specific criteria:

- i) market integration, *inter alia through lifting the isolation of at least one Member State and reducing energy infrastructure bottlenecks*; competition and system flexibility;
  - ii) sustainability, *inter alia through the integration of renewable energy into the grid and the transmission of renewable generation to major consumption centres and storage sites*;
  - iii) *security of supply, inter alia through interoperability, appropriate connections and secure and reliable system operation*;
- (b) concerning gas projects falling under the *energy infrastructure* categories set out in point 2 of Annex II, the project shall contribute significantly to at least one of the following specific criteria:
- i) market integration, *inter alia through lifting the isolation of at least one Member State and reducing energy infrastructure bottlenecks*; interoperability and system flexibility;
  - ii) security of supply, *inter alia through appropriate connections and diversification of supply sources, supplying counterparts and routes*;
  - iii) competition, *inter alia through diversification of supply sources, supplying counterparts and routes*;
  - iv) sustainability, *inter alia through reducing emissions, supporting intermittent renewable generation and enhancing deployment of renewable gas*;
- (c) concerning electricity smart grid projects falling under the *energy infrastructure* category set out in point 1(e) of Annex II, the project shall contribute significantly to *all* following specific *criteria*:
- i) integration and involvement of network users with new technical requirements with regard to their electricity supply and demand;

- ii)* efficiency and interoperability of electricity transmission and distribution in day-to-day network operation;
  - iii)* network security, system control and quality of supply;
  - iv)* optimised planning of future cost-efficient network investments;
  - v)* market functioning and customer services;
  - vi)* involvement of users in the management of their energy usage;
- (d) concerning oil transport projects falling under the ***energy infrastructure*** categories set out in point 3 of Annex II, the project shall contribute significantly to ***all*** following specific criteria:
- i)* security of supply reducing single supply source or route dependency;
  - ii)* efficient and sustainable use of resources through mitigation of environmental risks;
  - iii)* interoperability;
- (e) concerning carbon dioxide transport projects falling under the ***energy infrastructure*** categories set out in point 4 of Annex II, the project shall contribute significantly to ***all*** following specific criteria:
- i)* ***the*** avoidance of carbon dioxide emissions while maintaining security of energy supply;
  - ii)* ***increasing*** the resilience and security of carbon dioxide transport;
  - iii)* ***the*** efficient use of resources, by enabling the connection of multiple ***carbon dioxide*** sources and storage sites via common infrastructure and minimising environmental burden and risks.

3. Concerning projects falling under the *energy infrastructure* categories set out in points 1 to 3 of Annex II, the criteria listed in this Article shall be assessed in accordance with the indicators set out in points 2 to 5 of Annex IV.
4. ***In order to facilitate the screening of all projects that could be eligible as projects of common interest and that could be included in a regional list, each Group shall assess each projects' contribution to the implementation of the same priority corridor or area in a transparent and objective manner. Each Group shall determine its assessment method on the basis of the aggregated contribution to the criteria in paragraph 2 ; this assessment shall lead to a ranking of projects for internal use of the Group. Neither the regional list nor the Union list shall contain any ranking, nor shall the ranking be used for any subsequent purpose except as described in Annex III.2(5g).***

***When assessing projects, each Group shall furthermore give due consideration*** ■ to:

- (a) the urgency of each proposed project in order to meet the *Union* energy policy targets of market integration, *inter alia through lifting the isolation of at least one Member State* and competition, sustainability and security of supply;
- (b) the number of Member States affected by each project, *whilst ensuring equal opportunities for projects involving peripheral Member States*;
- (ba) *the contribution of each project to territorial cohesion* and
- (c) complementarity with regard to other proposed projects.

For "*smart grids*" projects falling under the *energy infrastructure* category set out in point 1(e) of Annex II, ***ranking shall be carried out for those projects that affect the same two Member States, and*** due consideration shall also be given to the number of users affected by the project, the annual energy consumption and the share of generation from non-dispatchable resources in the area covered by these users.

## Article 5

### Implementation and monitoring

1. Project promoters shall ***draw up an implementation plan for*** projects of common interest including a timetable for:
  - feasibility and design studies;
  - approval ***by the national regulatory authority or by any other authority concerned;***
  - construction and commissioning, and
  - the permit granting schedule referred to in Article 11(3).
- 1b.*** Transmission system operators, distribution system operators or other operators shall ***co-operate with each other in order to facilitate the development of*** projects of common interest in their area.
2. The Agency and the Groups ***concerned*** shall monitor the progress achieved in implementing the projects of common interest ***and, if necessary, make recommendations to facilitate the implementation of projects of common interest.*** The Groups may request ***that*** additional information ***be*** provided in accordance with paragraphs 3, 4 and 5, ***convene*** meetings with the relevant parties ***and invite the Commission to verify the provided information on site.***
3. By ***31*** March of each year following the year of selection as project of common interest pursuant to ***Article 3***, project promoters shall submit an annual report, for each project falling under the categories set out in points 1 and 2 of Annex II, ***to the competent authority referred to in Article 9***, to the Agency or, for projects falling under the categories set out in points 3 and 4 of Annex II, to the respective Group. This report shall detail:
  - (a) the progress achieved ***in*** the development, construction and commissioning of the project, ***in particular*** with regard to permit granting and consultation procedures;



(b) where relevant, delays compared to the implementation plan, *the reasons for such delays* and *details of* other difficulties encountered;

*(ba) where relevant, a revised plan aiming at overcoming the delays.*

4. Within three months of the receipt of the annual reports *referred to in paragraph 3 of this Article*, the Agency shall submit to the Groups a consolidated report for the projects of common interest falling under the categories set out in points 1 and 2 of Annex II, evaluating the progress achieved and *make*, where appropriate, *recommendations on how* to overcome the delays and difficulties encountered. *That consolidated report* shall also *evaluate*, in accordance with the provisions of Article 6(8) and (9) of Regulation (EC) No 713/2009, the consistent implementation of the Union-wide network development plans with regard to the energy infrastructure priority corridors and areas.
5. Each year, the concerned competent authorities referred to in Article 9 shall **█** report to the respective Group on the *progress* and, where relevant, *on* delays in the implementation of projects of common interest located on their respective territory *with regard to the permit granting process, and the reasons for such delays*.
6. If the commissioning of a project of common interest is delayed **█** compared to the implementation plan, *other than for overriding reasons beyond the control of the project promoter*:
  - (a) *in so far as measures referred to in Article 22(7) (a), (b) or (c) of Directives 2009/72/EC and 2009/73/EC are applicable according to respective national laws, national regulatory authorities shall ensure that the investment is carried out;*
  - (b) *if the measures of national regulatory authorities according to paragraph (6)(a) are not applicable*, the project promoter of that project shall *choose a third party to finance or construct all or part of* the project. *The project promoter shall do so before the delay compared to the date of commissioning in the implementation plan exceeds two years;*

- (ba) if a third party is not chosen according to point (b), the Member State or, when the Member State has so provided, the national regulatory authority may, within two months, designate a third party to finance or construct the project which the project promoter shall accept;*
- (c) if the delay compared to the date of commissioning in the implementation plan exceeds two years and two months, the Commission, subject to the agreement and with the full cooperation of the Member State(s) concerned, may launch a call for proposals open to any third party capable of becoming a project promoter to build the project according to an agreed timeline;*
- (ca) when points (ba) or (c) are applied, the system operator, in whose area the investment is located, shall provide the implementing operator(s) or investor(s) or third party with all information needed to realise the investment, shall connect new assets to the transmission network and shall generally make its best efforts to facilitate the implementation of the investment and the secure, reliable and efficient operation and maintenance of the project of common interest.*

7. A project of common interest may be removed from the Union list according to the procedure set in Article 3(6a) if its inclusion in that list was based on incorrect information which was a determining factor for that inclusion , or the project does not comply with Union legislation.
8. Projects which are no longer on the Union list shall lose all rights and obligations linked to the status of project of common interest arising from this Regulation .

*However, a project which is no longer on the Union list but for which an application file has been accepted for examination by the competent authority, shall maintain the rights and obligations arising from Chapter III, except in the case that the project is no longer on the list for the reasons set out in paragraph 7.*

9. This Article shall be without prejudice to any Union financial aid granted to the project prior to the withdrawal decision.

Article 6  
European coordinators

1. When a project of common interest encounters significant implementation difficulties, the Commission may designate, ***in agreement with the Member States concerned***, a European coordinator for a period of up to one year renewable twice.
2. The European coordinator shall ■ :
  - (a) promote the project(s), for which he ■ has been designated European coordinator and the cross-border dialogue between the project promoters and all concerned stakeholders;
  - (b) assist all parties as necessary in consulting concerned stakeholders and obtaining necessary permits for the project(s);
  - (ba) if appropriate, advise project promoters on the financing of the project;***
  - (c) ensure that appropriate support and strategic direction by the Member States concerned are provided for the preparation and implementation of the project(s);
  - (d) submit every year, ***and if appropriate, upon completion of their mandate***, a report to the Commission on the progress of the project(s) and on any difficulties and obstacles which are likely to significantly delay the commissioning date of the project(s). The Commission shall transmit the report to the ■ Groups ***concerned*** and the European Parliament.
3. The European coordinator shall be chosen on the basis of his ■ experience with regard to the specific tasks assigned to him ■ for the ■ project(s) ***concerned***.
4. The decision designating the European coordinator shall specify the terms of reference, detailing the duration of the mandate, the specific tasks and corresponding deadlines, and the methodology to be followed. The coordination effort shall be proportionate to the complexity and estimated costs of the project(s).
5. The Member States concerned shall ***fully*** cooperate with the European coordinator in his ■ execution of the tasks referred to in ***paragraphs 2 and 4***.

## CHAPTER III

### PERMIT GRANTING AND PUBLIC PARTICIPATION

#### Article 8

‘Priority status’ of projects of common interest

2. The adoption of the Union **■** list shall establish, *for the purposes of any decisions issued in the permit granting process*, the **■** necessity of these projects *from an energy policy perspective, without prejudice to the exact location, routing or technology of the project*.
3. For the purpose of ensuring efficient administrative processing of the *application* files related to projects of common interest, project promoters and all authorities concerned shall ensure that the most *rapid* treatment *legally* possible is given to these files **■**.
1. *When such status exists in national legislation*, projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting procedures - *and if national legislation so provides, in spatial planning - including those relating to environmental assessments*, in the manner such treatment is provided for in national legislation applicable to the corresponding type of energy infrastructure.
- 4a. *By.....\**, the Commission shall issue non-binding guidance to support Member States in defining adequate legislative and non-legislative measures to streamline the environmental assessment procedures and to ensure the coherent application of environmental assessment procedures required under Union legislation for projects of common interest.
- 4b. Member States shall assess, taking due account of the guidance from the Commission referred to in paragraph 4a, which measures to streamline the environmental assessment procedures and to ensure their coherent application are possible, and shall inform the Commission of the result.

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\* *OJ: Please insert date- three months after the entry into force of this Regulation.*

- 4c. *By nine months from the date of issuance of the guidance referred to in paragraph 4a Member States shall take the practical, non-legislative measures that they have identified under paragraph 4b*
- 4d. *By 24 months from the date of issuance of the guidance referred to in paragraph 4a), Member States shall make the legislative changes that they have identified under paragraph 4b.* These measures shall be without prejudice to obligations resulting from Union legislation.

■

5. With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest *from an energy policy perspective*, and may be considered as being of "overriding public interest", provided that all the conditions foreseen in these Directives are fulfilled.

Should the opinion of the Commission be required in accordance with Directive 92/43/EC, the Commission and the competent authority pursuant to Article 9, shall ensure that the decision with regard to the "overriding public interest" of a project is taken within the time limit pursuant to paragraph 1 of Article 11.

#### Article 9

##### Organisation of the permit granting process

1. *By .....*<sup>\*</sup>, each Member State shall designate one national competent authority which shall be responsible for facilitating and coordinating the permit granting process for projects of common interest ■ .
- 1a. *The responsibility of the competent authority referred to in paragraph 1 and/or the tasks related to it may be delegated to, or carried out by, another authority, per project of common interest or per particular category of projects of common interest, provided:*

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<sup>\*</sup> *OJ : Please insert date- six months after the entry into force of this Regulation.*

- (a) *the competent authority notifies the Commission and the information is published by either the competent authority or the project promoter on the website referred to in Article 10(7);*
- (b) *only one authority is responsible per project of common interest, is the sole point of contact for the project promoter in the process leading to the comprehensive decision for a given project of common interest, and coordinates the submission of all relevant documents and information.*

*The competent authority may retain the responsibility to establish time limits, without prejudice to time limits set in accordance with Article 11.*

2. The competent authority shall *take actions*, without prejudice to relevant requirements under Union and international legislation, *to facilitate that the comprehensive decision is issued. The comprehensive decision shall be issued* within the time limit referred to in Article 11(1) *and (1a) and* according to one of the **L** schemes *under points (a) to (c) below.*

*Acknowledging the national specificities in planning and permit granting procedures, Member States may choose among these three schemes to facilitate and coordinate their procedures and shall opt to implement the most effective scheme. When a Member State chooses the collaborative scheme, it shall inform the Commission of its reasons for doing so. The Commission shall undertake an evaluation of the effectiveness of the schemes in the report foreseen in Article 16.*

- (a) integrated scheme: the comprehensive decision *shall be* issued by the competent authority *and shall be* the sole legally binding decision resulting from the statutory permit granting procedure. Where other authorities are concerned by the project, these may, in accordance with national legislation, give their opinion as input to the procedure, which shall be taken into account by the competent authority.

- (b) coordinated scheme: the comprehensive decision *comprises* multiple individual legally binding decisions issued by *several authorities concerned, which shall be coordinated by the competent authority*. The competent authority *may* establish *a working group where all concerned authorities are represented in order to elaborate a permit granting schedule in accordance with Article 11(2)(b), and to monitor and coordinate its implementation. The competent authority shall, in consultation with the other authorities concerned, where applicable in accordance with national legislation, and without prejudice to time limits set in accordance with article 11, establish on a case-by-case basis a reasonable time limit within which the individual decisions shall be issued.* The competent authority may take an individual decision on behalf of another national authority concerned, if the decision by that authority is not delivered within the time limit and if the delay cannot be adequately justified; *or, when a Member State so provides in its national legislation, and to the extent that this is compatible with Union law, the competent authority may consider that another national authority concerned has either given its approval or refusal for the project if the decision by that authority is not delivered within the time limit. When a Member State so provides in its national legislation,* the competent authority may *disregard* an individual decision of another national authority *concerned*, if it considers that the decision is not sufficiently substantiated with regard to the underlying evidence presented by the *national* authority concerned; *when doing so, the* competent authority shall ensure that the relevant requirements under international and Union legislation are respected and *shall* duly justify its decision.
- (c) *collaborative scheme: the comprehensive decision shall be coordinated by the competent authority. The competent authority shall, in consultation with the other authorities concerned, where applicable in accordance with national legislation, and without prejudice to time limits set in accordance with article 11, establish on a case-by-case basis a reasonable time limit within which the individual decisions shall be issued. It shall monitor compliance with the time limits by the authorities concerned.*

*If the decision by an authority concerned is expected not to be delivered within the time limit, that authority shall inform the competent authority without delay and include a justification for the delay. Subsequently, the competent authority shall reset the time limit within which that individual decision shall be issued, whilst still respecting the overall time limits set in accordance with Article 11.*

2a. *However, Member States may apply different schemes as set out in paragraph 2 to onshore and offshore projects of common interest.*

3. If a project of common interest requires decisions to be taken in two or more Member States, the respective competent authorities shall take all necessary steps for efficient and effective cooperation and coordination among themselves, including *as regards* the provisions referred to in Article 11(3). Member States shall endeavour to provide for joint procedures, particularly with regard to the assessment of environmental impacts.

## Article 10

### Transparency and public participation

1. *By...\*, the Member State or competent authority shall, where applicable in collaboration with other authorities concerned, publish a manual of procedures for the permit granting process applicable to projects of common interest. The manual shall be updated as necessary and made available to the public. The manual shall at least include the information specified in point 1 of Annex VI. The manual shall not be a legally binding document, but it may refer to or quote relevant legal provisions.*
2. Without prejudice to any requirements under the Aarhus and Espoo Conventions and relevant Union legislation, all parties involved in the permit granting process shall follow the principles for public participation set out in point 2 of Annex VI.

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\* OJ: Please insert date - *twelve* months after the entry into force of this Regulation.



3. The project promoter shall, within ***an indicative period of*** three months of the start of the permit granting process pursuant to paragraph 1(a) of Article 11, elaborate and submit a concept for public participation to the competent authority, ***following the process outlined in the manual and in line with the guidelines set out in Annex VI***. The competent authority shall request modifications or approve the concept for public participation within ***three months; in doing so, the competent authority shall take into consideration any form of public participation and consultation that took place before the start of the permit granting process, to the extent that such public participation and consultation has fulfilled the requirements of this Article***.

***Where the project promoter intends to make significant changes to an approved concept, it shall inform the competent authority thereof. In that case the competent authority may request modifications.***

4. At least one public consultation shall be carried out by the project promoter, or, where this is required by national legislation, by the competent authority, before submission of the ***final and complete*** application file to the competent authority pursuant to paragraph 1(a) of Article 11. ***This is without prejudice to any public consultation to be carried out after submission of the request for development consent according to Article 6(2) of Directive 2011/92/EU*** The public consultation shall inform stakeholders referred to in point 2(a) of Annex VI about the project at an early stage and ***shall help to*** identify the most suitable location or trajectory and the relevant issues to be addressed in the application file. The minimum modalities of this public consultation are specified in point 4 of Annex VI.

A report summarising the results of activities related to the participation of the public prior to the submission of the application file, ***including those activities that took place before the start of the permit granting process***, shall be prepared by the project promoter and submitted together with the application file to the competent authority. ***Due account shall be taken*** of these results ***in*** the comprehensive decision.

5. For projects crossing the border of two or more Member States, the public consultations pursuant to paragraph 4 in each of the Member States concerned shall take place within a delay of no more than two months from the start date of the first public consultation in one of these Member States.

6. For projects likely to have significant adverse cross-border impacts in one or more neighbouring Member States, where Article 7 of Directive **2011/92/EU** and the Espoo Convention are applicable, the relevant information shall be made available to the competent authority of the neighbouring Member State(s). The competent authority of the neighbouring Member State(s) shall indicate, ***in the notification process where appropriate***, whether it, ***or any other authority concerned***, wishes to participate in the relevant public consultation procedures.
7. The project promoter, or, where national legislation so provides, the competent authority, shall establish and regularly update a project website to publish relevant information about the project, which shall be linked to the Commission website and which shall satisfy the requirements specified in point 5 of Annex VI. Commercially sensitive information shall be kept confidential.

Project promoters shall, in addition, publish relevant information by other appropriate information means to which the public has open access.

## Article 11

### Duration and implementation of the permit granting process

1. The ■ permit granting process shall consist of two phases ■ :
  - (a) The pre-application procedure, covering the period between the start of the permit granting process and the acceptance of the submitted application file by the competent authority, shall ***take place within an indicative period of*** two years.

***This procedure shall include the preparation of any environmental reports to be prepared by the project promoter(s).***
  - (b) The statutory permit granting procedure, covering the period from the ***date of*** acceptance of the submitted application file until the ■ comprehensive decision ***is taken***, shall not exceed one year ***and six months***. Member States may set an earlier date for the time-limit if considered appropriate.

- 1a. The combined duration of the two phases shall not exceed a period of three years and six months. However, where the competent authority considers that one or both of the two phases of the permit granting process would not be completed before the time limits as set out in paragraph 1, it may decide, before their expiry and on a case by case basis, to extend one or both of the time limits by a maximum of nine months for both phases combined.**

***In this case, the competent authority shall inform the Group concerned and present to the Group concerned the measures taken or to be taken to conclude the permit granting process with the least possible delay. The Group may request the competent authority to report regularly on progress achieved in this regard.***

- 1b. In Member States where the determination of a route or location, undertaken solely for the specific purpose of a planned project, including the planning of specific grid corridors, can not be included in the process leading to the comprehensive decision, the corresponding decision shall be taken within a separate period of six months, starting on the date of submission of the final and complete application documents by the promoter.**

***In this case, the extension period referred to in paragraph 1a shall be reduced to six months, including for the procedure referred to in this paragraph.***

- 2. The pre-application phase shall comprise the following steps:**

**(a) Upon the acknowledgement of the notification, pursuant to paragraph 1(a), the competent authority shall identify, in close cooperation with the other authorities concerned, *and where appropriate based on a proposal by the project promoter*, the scope of material and level of detail of information to be submitted by the project promoter, as part of the application file, to apply for the comprehensive decision. The checklist referred to in point 1(e) of Annex VI shall serve as a basis for this identification. ■**

**(b) The competent authority shall elaborate, in close cooperation with the project promoter and other authorities concerned and taking into account the results of the activities carried out under paragraph 2, a detailed schedule for the permit granting process in line with the provisions set out in Annex VI.(1b).**

For projects crossing the border between two or more Member States, the competent authorities of the Member States concerned shall **prepare a joint schedule, in which they endeavour to** align their timetables **█**.

(c) **Upon receipt of the draft application file, the competent authority shall, if necessary, and including on behalf of other authorities concerned, make further requests regarding missing information to be submitted by the project promoter, which may only address subjects identified under point (a). Within three months of the submission of the missing information, the competent authority shall accept for examination the application in written form. Requests for additional information may only be made if these are justified by new circumstances.**

4. The project promoter shall ensure the completeness and adequate quality of the application file and seek the competent authority's opinion on this as early as possible during the pre-application procedure. The project promoter shall **fully** cooperate with the competent authority to meet deadlines and comply with the detailed schedule as defined in paragraph 3.

**█**

7. The time limits in the above provisions shall be without prejudice to obligations arising from international and Union legislation, **and without prejudice to administrative appeal procedures and judicial remedies before a court or tribunal.**

## CHAPTER IV

### REGULATORY TREATMENT

#### Article 12

##### Energy system wide cost-benefit analysis

1. By...\*, the European Network of Transmission System Operators (ENTSO) for Electricity and the ENTSO for Gas shall **publish and** submit to the Agency, **█** the Commission **and Member States** their respective **methodologies**, including on network and market modelling, for a harmonised energy system-wide cost-benefit analysis at Union-wide level for projects of common interest falling under the categories set out in points 1(a) to (d) and 2 of Annex II.

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\* **OJ: Please insert date- six months after the entry into force of this Regulation.**

*These methodologies shall be applied for the preparation of each subsequent ten year network development plan developed by the ENTSOs for Electricity or Gas pursuant Article 8 of Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009. The methodologies shall be elaborated in line with the principles laid down in Annex V and be consistent with the rules and indicators set out in Annex IV.*

*Prior to submitting their respective methodologies, the ENTSOs shall conduct an extensive consultation process involving at least the organisations representing all relevant stakeholders - and, if deemed appropriate, stakeholders -, national regulatory authorities and other national authorities.*

2. Within three months of the day of receipt of the *methodologies*, the Agency **■** shall provide an opinion to the Commission *and Member States* on the *methodologies* and *publish it*.
3. Within three months of the receipt of the opinion of the Agency, the Commission shall, *and Member States may*, deliver an opinion on the *methodologies*. *The opinions shall be submitted to the ENTSO for Electricity or the ENTSO for Gas.*
4. Within three months of the day of receipt of the *last* opinion *received under paragraph 3*, the ENTSO for Electricity and the ENTSO for Gas shall adapt their *methodologies taking duly into account the Commission's opinion, the Agency's opinion and the opinions of Member States received*, and submit it to the Commission for approval.
5. Within two weeks of the approval by the Commission, the ENTSO for Electricity and the ENTSO for Gas shall publish *their respective methodologies* on their websites. They shall transmit the corresponding input data sets as defined in point 1 of Annex V and other relevant network, load flow and market data in a sufficiently accurate form according to national legislations and relevant confidentiality agreements to the Commission and the Agency, upon request. The data shall be valid at the date of the request. The Commission and the Agency shall ensure the confidential treatment of the data received, by themselves and by any party carrying out analytical work for them on the basis of those data.

6. The methodology shall be updated and improved regularly by following the procedure laid down in paragraphs 1 to 5. The Agency, ***on its own initiative or upon a duly reasoned request by national regulatory authorities or stakeholders, and*** after formally consulting the organisations representing all relevant stakeholders and the Commission, may request such updates and improvements with due justification and timescales. ***The Agency shall publish the request(s) by national regulatory authorities or stakeholders and all relevant non commercially sensitive documents leading to a request from the Agency for an update or improvement.***
- 7a. ***By.....\* , national regulatory authorities cooperating in the framework of the Agency shall establish and make publicly available a set of indicators and corresponding reference values for the comparison of unit investment costs for comparable projects of the infrastructure categories included in Annex II(1) and (2). These reference values may be used by the ENTSOs for the cost-benefit analyses carried out for subsequent Ten-year network development plans.***
8. By 31 December 2016, the ENTSO for Electricity and the ENTSO for Gas shall jointly submit to the Commission and the Agency ***a consistent and interlinked*** electricity and gas market and network model including both electricity and gas transmission ***infrastructure as well as storage and LNG facilities***, covering the energy infrastructure priority corridors and areas and elaborated in line with the principles laid down in Annex V. After approval of this model by the Commission according to the procedure set out in paragraphs 2 to 4, it shall be included in the methodology.

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\* ***OJ: Please insert date -2 years after the entry into force of this Regulation.***

## Article 13

### Enabling investments with cross-border impacts

1. The *efficiently incurred* investment costs, *which excludes maintenance costs*, related to a project of common interest falling under the categories set out in points 1(a), **(b) and (d)** and 2 of Annex II shall be borne by the *relevant* transmission system operator(s) *or the project promoter(s) of the transmission infrastructure* of the Member State(s) to which the project provides a net positive impact, and, *to the extent not covered by congestion rents or other charges*, be paid for by network users through tariffs for network access *in this or these Member State(s)*.

**1b.** *For a project of common interest falling under the categories set out in points 1 (a), (b) and (d) and 2 of Annex II, the provisions of paragraph 1 shall apply only if at least one project promoter requests the relevant national authorities to apply this Article for all or parts of the costs of the project. In addition, for a project of common interest falling under the categories set out in point 2 of Annex II, the provisions of paragraph 1 shall apply only where an assessment of market demand has already been carried out and indicated that the efficiently incurred investment costs cannot be expected to be covered by the tariffs.*

*Where a project has several promoters, the relevant national regulatory authorities shall without delay request all promoters to submit the investment request jointly according to paragraph 4.*

4. *For a project of common interest to which the provisions of paragraph (1) are applied, the project promoter(s) shall keep all concerned national regulatory authorities regularly informed, at least once per year, and until the project is commissioned, of the progress of that project and the identification of costs and impacts associated with it.*

As soon as *such* a project has reached sufficient maturity, the project *promoter(s)*, *after having consulted the Transport System Operators ("TSO's") from those Member States to which the project provides a significant net positive impact*, shall submit an investment request. *This investment request shall include a request for a cross-border cost allocation and shall be submitted to all national regulatory authorities concerned*, accompanied by the following:

- (a) a **project-specific** cost-benefit analysis **consistent with** the methodology elaborated pursuant to Article 12 **and taking into account benefits beyond the borders of the Member State concerned**; and
  - (b) a business plan evaluating the financial viability of the project, including the chosen financing solution, and, for **a project** of common interest falling under the category referred to in point 2 of **Annex II**, the results of market testing;
- (ba) when the project promoters can agree, a substantiated proposal for a cross-border cost allocation.**

If a project is promoted by several operators or investors, they shall submit their investment request jointly.

For projects contained in the first Union list, project promoters shall submit their request by 30 September 2013.

A copy of each investment request shall be transmitted for information without delay by the national regulatory authorities to the Agency on receipt.

The national regulatory authorities and the Agency shall preserve the confidentiality of commercially sensitive information.

5. Within six months of the date on which the last investment request was received by the national regulatory authorities concerned, the national regulatory authorities shall, after consulting of the project promoter(s) concerned, take **coordinated decisions** on the allocation of investment costs to be borne by each system operator for that project, as well as their inclusion in ■ tariffs. The national regulatory authorities may decide to allocate only part of the costs, or **may decide** to allocate costs among a package of several projects of common interest.

**When allocating the costs, the national regulatory authorities shall take into account actual or estimated:**

- **congestion rents or other charges;**



- *revenues stemming from the inter-transmission system operator compensation mechanism established under Article 13 of Regulation (EC) No 714/2009.*

In deciding to allocate costs across borders, the economic, social and environmental costs and benefits of the project(s) in the Member States concerned and the possible need for financial support shall be taken into account.

*In deciding to allocate costs across borders, the relevant national regulatory authorities, in consultation with the concerned TSOs, shall seek a mutual agreement based on, but not limited to, the information specified in paragraph 4(a) and (b).*

*If a project of common interest mitigates negative externalities, such as loop flows, and this project of common interest is implemented in the Member State at the origin of the negative externality, this mitigation shall not be regarded as a cross-border benefit and shall therefore not be a basis for allocating costs to the transmission operator of the Member State(s) affected by these negative externalities.*

2. National regulatory authorities shall, *based on the cross-border cost allocation as referred to in paragraph 5*, take into account actual costs incurred by a transmission system operator or other project promoter as a result of the investments ■ when fixing or approving tariffs in accordance with Article 37(1)(a) of Directive 2009/72/EC and Article 41(1)(a) of Directive 2009/73/EC, insofar as these costs correspond to those of an efficient and structurally comparable operator.

The *cost allocation* decision shall be notified, without delay, by the national regulatory authorities to the Agency, together with all the relevant information with respect to the decision. In particular, the information shall contain detailed reasons on the basis of which costs were allocated among Member States, such as the following:

- (a) an evaluation of the identified impacts, including concerning network tariffs, on each of the concerned Member States;
- (b) an evaluation of the business plan referred to in paragraph 4(b);

- (c) regional or Union-wide positive externalities, which the project would generate;
- (d) the result of the consultation of the project promoter(s) concerned.

The *cost* allocation decision shall be published.

6. Where the national regulatory authorities concerned have not reached an agreement on the investment request within six months of the date on which the request was received by the last of the national regulatory authorities concerned, they shall inform the Agency without delay.

In this case or upon a joint request from the national regulatory authorities concerned, the decision on the investment request including cross-border cost allocation referred to in paragraph 4 as well as the way the cost of the investments are reflected in the tariffs shall be taken by the Agency within three months of the date of referral to the Agency.

Before taking such a decision, the Agency shall consult the national regulatory authorities concerned and the project promoter(s). The three-month period referred to in the second subparagraph may be extended by an additional period of two months where further information is sought by the Agency. That additional period shall begin on the day following receipt of the complete information.

The *cost* allocation decision shall be published. *Articles 19 and 20 of Regulation (EC) No 713/2009 are applicable.*

7. A copy of all *cost allocation* decisions, together with all the relevant information with respect to each decision, shall be notified, without delay, by the Agency to the Commission. That information may be submitted in aggregate form. The Commission shall preserve the confidentiality of commercially sensitive information.
8. This cost allocation decision shall not affect the right of transmission system operators to apply and national regulatory authorities to approve charges for access to networks in accordance with Article 32 of Directive 2009/72/EC and of Directive 2009/73/EC, Article 14 of Regulation (EC) No 714/2009, and Article 13 of Regulation (EC) No 715/2009.

**8a. The provisions of this Article shall not apply to projects of common interest having received:**

- **an exemption from Articles 32, 33, 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC pursuant to Article 36 of Directive 2009/73/EC, or**
- **an exemption from Article 16(6) of Regulation (EC) No 714/2009 or an exemption from Articles 32 and 37(6) and (10) of Directive 2009/72/EC pursuant to Article 17 of Regulation (EC) No 714/2009, or**
- **an exemption under Article 22 of Directive 2003/55/EC<sup>1</sup>;**
- **an exemption under Article 7 of Regulation (EC) No 1228/2003<sup>2</sup>.**

Article 14

Incentives

1. Where a project promoter incurs higher risks for the development, construction, operation or maintenance of a project of common interest falling under the categories set out in points **1(a), (b) and (d)** and 2 of Annex II, **■** compared to the risks normally incurred by a comparable infrastructure project, **Member States and** national regulatory authorities shall ensure that appropriate incentives are granted to that project **in line with** Article 37(8) of Directive 2009/72/EC, Article 41(8) of Directive 2009/73/EC, Article 14 of Regulation (EC) No 714/2009, and Article 13 of Regulation (EC) No 715/2009.

***This provision does not apply when the project has received:***

- **an exemption from Articles 32, 33, 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC pursuant to Article 36 of Directive 2009/73/EC, or**
- **an exemption from Article 16(6) of Regulation (EC) No 714/2009 or an exemption from Articles 32 and 37(6) and (10) of Directive 2009/72/EC pursuant to Article 17 of Regulation (EC) No 714/2009, or**

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<sup>1</sup> **OJ L 176, 15.7.2003, p. 57**

<sup>2</sup> **OJ L 176, 15.7.2003, p. 1**

- *an exemption under Article 22 of Directive 2003/55/EC,*
  - *an exemption under Article 7 of Regulation (EC) No 1228/2003.*
2. The decision of the national regulatory authorities for granting such incentives shall consider the results of the cost-benefit analysis on the basis of the methodology elaborated pursuant to Article 12 and in particular the regional or Union-wide positive externalities generated by the project. The national regulatory authorities shall further analyse the specific risks incurred by the project promoter(s), the risk mitigation measures taken and the justification of this risk profile in view of the net positive impact provided by the project, when compared to a lower-risk alternative. Eligible risks shall notably include risks related to new transmission technologies, both onshore and offshore, risks related to under-recovery of costs and development risks.
  3. The incentive granted by the decision shall take account of the specific nature of the risk incurred and *may* cover *inter alia*:
    - (a) the rules for anticipatory investment; or
    - (b) the rules for recognition of efficiently incurred costs before commissioning of the project; or
    - (c) the rules for providing additional return on the capital invested for the project; or
    - (d) the any other measure deemed necessary and appropriate.
  5. By 31 July 2013, *where available*, each national regulatory authority *shall submit to the Agency* its methodology and the criteria used to evaluate investments in electricity and gas *infrastructure* projects and the higher risks incurred by them.
  4. By 31 December 2013, *taking due account of the information received pursuant to paragraph 5 of this Article*, the Agency shall *facilitate the sharing of good practices and make recommendations* in accordance with Article 7(2) of Regulation (EC) No 713/2009 regarding:

- (a) the incentives referred to in paragraph 1 on the basis of a benchmarking of best practice by national regulatory authorities;
- (b) a common methodology to evaluate the incurred higher risks of investments in electricity and gas *infrastructure* projects.

**5a. By 31 March 2014 each national regulatory authority shall publish its methodology and the criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them.**

**6. In case the measures referred to in paragraphs 4 and 5a are not sufficient to ensure timely implementation of projects of common interest, the Commission may issue guidelines regarding the incentives laid down in this Article.**

## CHAPTER V

### FINANCING

#### Article 15

##### Eligibility of projects for Union financial assistance

1. Projects of common interest falling under the categories set out in points 1, 2 and 4 of Annex II are eligible for Union financial *assistance* in the form of grants for studies and financial instruments.
2. Projects of common interest falling under the categories set out in points 1(a) to (d) and 2 of Annex II, except for hydro-pumped electricity storage projects, *are* also eligible for Union financial *assistance* in the form of grants for works if they fulfil the following criteria:
  - (a) the project specific cost-benefit analysis pursuant to paragraph 4(a) of Article 13 provides evidence concerning the existence of significant positive externalities, such as security of supply, solidarity or innovation; and

- (b) *the project has received a cross-border cost allocation decision pursuant to Article 13; however, for projects of common interest falling under the category 1(c) of Annex II and that therefore do not receive a cross-border cost allocation decision, the project shall aim to provide services across borders, bring technological innovation and ensure the safety of cross-border grid operation;*
- (c) the project is commercially not viable according to the business plan and other assessments carried out, notably by possible investors or creditors *or the national regulatory authority*. The decision on incentives and its justification referred to in *paragraph 2* of Article 14 shall be taken into account when assessing the project's commercial viability.
- 2a. *Projects of common interest carried out according to the procedure referred to in paragraph 6(c) of Article 5 shall also be eligible for Union financial assistance in the form of grants for works if they fulfil the criteria set out in paragraph 2 of this Article.*
3. Projects of common interest falling under the categories set out in points 1(e) and 4 of Annex II shall be also eligible for Union financial *assistance* in the form of grants for works, if the concerned project promoters can clearly demonstrate the significant positive externalities generated by the projects and their lack of commercial viability, *according to the business plan and other assessments carried out, notably by possible investors or creditors or, where applicable, a national regulatory authority.*

#### *Article 15a*

##### *Guidance for the award criteria of Union financial assistance*

*The specific criteria set out in Article 4(2) and the parameters set out in Article 4(4) also fulfil the role of objectives for the purpose of establishing award criteria for Union financial assistance in the proposed Regulation for a Connecting Europe Facility .*

*Article 15b*

*Exercise of the delegation*

1. *The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
2. *The power to adopt delegated acts referred to in Article 3 shall be conferred on the Commission for a period of 4 years from ....\* . The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of this period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.*
3. *The delegation of power referred to in Article 3 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*
4. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council*
5. *A delegated act adopted pursuant to Article[s] ... shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.*

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\* *OJ: Please insert date of entry into force of this Regulation.*

## CHAPTER VI

### FINAL PROVISIONS

#### Article 16

##### Reporting and evaluation

Not later than 2017, the Commission shall publish a report on the implementation of projects of common interest ***and submit it to the European Parliament and the Council***. This report shall provide an evaluation of:

- (a) the progress achieved for the ***planning***, development, construction and commissioning of projects of common interest selected pursuant ***to*** Article 3, and, where relevant, delays in implementation and other difficulties encountered;
- (b) the funds engaged and disbursed by the Union for projects of common interest **■**, compared to the total value of funded projects of common interest;
- (c) concerning the electricity and gas sectors, the evolution of the interconnection level between Member States, the corresponding evolution of energy prices, as well as the number of network system failure events, their causes and related economic cost;
- (d) concerning permit granting and public participation:
  - the average and maximum total duration of authorisation procedures for projects of common interest, including the duration of each step of the authorisation procedure, compared to the timing foreseen by the initial major milestones referred to in Article 11(3);
  - the level of opposition faced by projects of common interest (notably number of written objections during the public consultation process, number of legal recourse actions);



- *an overview of best and innovative practices with regard to stakeholder involvement and mitigation of environmental impact during permit granting processes and project implementation;*
- *the effectiveness of the schemes foreseen in Article 9(2) regarding compliance with the time limits set under Article 11.*

(e) concerning regulatory treatment:

- the number of projects of common interest having been granted a cross-border cost allocation decision pursuant to Article 13;
- the number and type of projects of common interest having received specific incentives pursuant to Article 14.

*(ea) the effectiveness of this Regulation in contributing to the goals for market integration by 2014 and 2015, to the climate and energy targets for 2020, and, in the longer term, to the move toward a low-carbon economy by 2050.*

## Article 17

### Information and publicity

The Commission shall establish *by 6 months after the date of adoption of the first Union list* an infrastructure transparency platform easily accessible to the general public, *including via the internet*. This platform shall contain the following information:

- (a) general, **■** updated information, including geographic information, for each project of common interest;
- (b) the implementation plan *as set out in Article 5(1)* for each project of common interest;
- (c) the main results of the cost-benefit analysis on the basis of the methodology elaborated pursuant Article 12 for the projects of common interest concerned, except for any commercially sensitive information;

***(ca) the Union list;***

***(cb) the funds allocated and disbursed by the Union for each project of common interest.***

## Article 18

### Transitional provisions

This Regulation shall not affect the granting, continuation or modification of financial aid awarded by the Commission on the basis of calls for proposals launched under Regulation (EC) No 680/2007 of the European Parliament and of the Council<sup>1</sup> to projects listed in Annexes I and III to Decision No 1364/2006/EC or in view of the targets, based on the relevant categories of expenditure for TEN-E, as defined in Council Regulation (EC) No 1083/2006<sup>2</sup>.

***For projects of common interest in the permit granting process for which a project promoter has submitted an application file before.....\*, the provisions of Chapter III shall not apply.***

## Article 18a

### *Amendments to Regulation (EC) No 713/2009*

***Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators is hereby amended as follows:***

- ***Article 22 (1) shall be replaced by the following:***

***“1. Fees shall be due to the Agency for requesting an exemption decision pursuant to Article 9(1) and for decisions on crossborder cost allocation provided by the Agency pursuant to Article 13 of Regulation (EU) No .../... of the European Parliament and of the Council of ....\* on guidelines for trans-European energy infrastructure.***

***OJ L ...\*\*.”.***

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<sup>1</sup> OJ L 162, 22.6.2007, p. 1.

<sup>2</sup> OJ L 210, 31.7.2006, p. 25.

\* ***OJ: Please insert date-six months after the entry into force of this Regulation.***

\* ***OJ: Please insert number and publication date of this Regulation.***

\*\* ***OJ: Please insert publication references of this Regulation.***

*Article 18b*

*Amendments to Regulation (EC) No 714/2009*

*Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity<sup>1</sup> is hereby amended as follows:*

*(a) Article 8(10)(a) shall be replaced by the following:*

*“(a) build on national investment plans, taking into account regional investment plans as referred to in Article 12(1), and, if appropriate, Union aspects of network planning as set out in Regulation (EU) No .../...of the European Parliament and of the Council of... \* on guidelines for trans-European energy infrastructure; it shall be subject to a cost-benefit analysis using the methodology established as set out in Article 12 of that Regulation;*

*OJ L \*\* ...”.*

*(b) Article 11 shall be replaced by the following:*

*“Article 11*

*Costs*

*The costs related to the activities of the ENTSO for Electricity referred to in Articles 4 to 12, and in Article 12 of Regulation (EU) No ..../.... \* shall be borne by the transmission system operators and shall be taken into account in the calculation of tariffs. Regulatory authorities shall approve those costs only if they are reasonable and appropriate.”*

*.(c) Article 8(3)(a) will be replaced by the following text:*

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<sup>1</sup> *OJ L 211, 14.8.2009, p. 15*

*\* OJ: Please insert number and publication date of this Regulation.*

*\*\* OJ: Please insert publication references of this Regulation.*

*\* OJ: Please insert number of this Regulation.*

*“(a) common network operation tools to ensure coordination of network operation in normal and emergency conditions, including a common incidents classification scale, and research plans. These tools shall specify inter alia:*

- (i) the information, including appropriate day ahead, intra-day and real-time information, useful for improving operational coordination, as well as the optimal frequency for the collection and sharing of such information,*
- (ii) the technological platform for the exchange of information in real time and where appropriate, the technological platforms for the collection, processing and transmission of the other information referred to in point (i), as well as for the implementation of the procedures capable of increasing the operational coordination between transmission system operators with a view to such coordination becoming Union-wide;*
- (iii) how transmission system operators make available the operational information to other transmission system operators or any entity duly mandated to support them to achieve the operational coordination, and to the Agency; and*
- (iv) that transmission operators designate a contact point in charge of answering inquiries from other transmission system operators or from any entity duly mandated as referred to in point (iii), or from the Agency concerning such information.*

*The ENTSO for Electricity shall submit the adopted specifications on points (i) to (iv) above to the Agency and to the Commission by .....\*\*[.*

*Within 12 months of the adoption of the specifications, the Agency shall issue an opinion in which it considers whether they sufficiently contribute to the promotion of cross-border trade and to ensuring the optimal management, coordinated operation, efficient use and sound technical evolution of the European electricity transmission network.”.*

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**\*\* OJ: Please insert date- 24 months after the entry into force of this Regulation.**

*(d) In Article 18, a new paragraph shall be inserted:*

*“4a The Commission may adopt guidelines on the implementation of operational coordination between transmission system operators at Union level. These guidelines shall be consistent with and build upon the network codes referred to in Article 6 of this Regulation and build upon the adopted specifications and the Agency opinion referred to in Article 8(3)(a) of this Regulation. When adopting those guidelines, the Commission shall take into account differing regional and national operational requirements.*

*Those guidelines shall be adopted in accordance with the examination procedure referred to in Article 23(3).”.*

*(e) The following paragraph shall be inserted into Article 23:*

*“3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers shall apply.*

*OJ L55, 28.2.2011, p. 13.”.*

#### *Article 18c*

#### *Amendments to Regulation (EC) No 715/2009*

*Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005<sup>1</sup> is hereby amended as follows:*

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<sup>1</sup> OJ L 211, 14.8.2009, p. 36

**(a) Article 8(10)(a) shall be replaced by the following:**

**“(a) build on national investment plans, taking into account regional investment plans as referred to in Article 12(1), and, if appropriate, Union aspects of network planning as set out in Regulation (EU) No .../... of the European Parliament and of the Council of ....\* on guidelines for trans-European energy infrastructure; it shall be the subject to a cost-benefit analysis using the methodology established as set out in Article 12 of that Regulation.**

**OJL \*\*....”.**

**(b) Article 11 shall be replaced by the following:**

**“Article 11**

**Costs**

**The costs related to the activities of the ENTSO for Gas referred to in Articles 4 to 12, and in Article 12 of Regulation (EU) No .../...\*\*\* shall be borne by the transmission system operators and shall be taken into account in the calculation of tariffs. Regulatory authorities shall approve those costs only if they are reasonable and appropriate.”.**

Article 19

Repeal

Decision No 1364/2006/EC is hereby repealed from 1 January 2014. No rights shall arise under this Regulation for projects listed in Annexes I and III to Decision No 1364/2006/EC.

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**\* OJ: Please insert number and publication date of this Regulation.**

**\*\* OJ: Please insert publication references of this Regulation.**

**\*\*\* OJ: Please insert number of this Regulation**

Article 20

Entry into force

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

It shall apply from ....\* ***with the exception of Articles 15 and 15a which shall apply as from the date of application of the proposed Regulation for a Connecting Europe Facility.***

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

Done at ...,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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\* ***OJ: Please insert date- the first day of the month after the date of entry into force of this Regulation.***

## ANNEX I

### ENERGY INFRASTRUCTURE PRIORITY CORRIDORS AND AREAS

This Regulation shall apply to the following trans-European energy infrastructure priority corridors and areas:

#### 1. PRIORITY ELECTRICITY CORRIDORS

- (1) Northern Seas offshore grid (“NSOG”): integrated offshore electricity grid ***development and the related interconnectors*** in the North Sea, the Irish Sea, the English Channel, the Baltic Sea and neighbouring waters to transport electricity from renewable offshore energy sources to centres of consumption and storage and to increase cross-border electricity exchange.

Member States concerned: Belgium, Denmark, France, Germany, Ireland, Luxemburg, the Netherlands, Sweden, the United Kingdom;

- (2) North-South electricity interconnections in Western Europe (“NSI West Electricity”): interconnections between Member States of the region and with ***the Mediterranean area including the Iberian peninsula***, notably to integrate electricity from renewable energy sources ***and reinforce internal grid infrastructures to foster market integration in the region.***

Member States concerned: ***Austria***, Belgium, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Malta, Portugal, Spain, the United Kingdom;

- (3) North-South electricity interconnections in Central Eastern and South Eastern Europe (“NSI East Electricity”): interconnections and internal lines in North-South and East-West directions to complete the internal market and integrate generation from renewable energy sources.

Member States concerned: Austria, Bulgaria, ***Croatia***<sup>1</sup>, Czech Republic, Cyprus, Germany, Greece, Hungary, Italy, Poland, Romania, Slovakia, Slovenia;

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<sup>1</sup> ***Subject to and as of the date of accession of Croatia.***



- (4) Baltic Energy Market Interconnection Plan in electricity ("BEMIP Electricity"): interconnections between Member States in the Baltic region and reinforcing internal grid infrastructures accordingly, to end isolation of the Baltic States and to foster market integration *inter alia by working towards the integration of renewable energy* in the region;
- Member States concerned: Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Sweden.

## 2. PRIORITY GAS CORRIDORS

- (5) North-South gas interconnections in Western Europe ("NSI West Gas"): *gas infrastructure* for North-South gas flows in Western Europe to further diversify routes of supply and *for increasing* short-term gas deliverability.

Member States concerned: Belgium, **Denmark**, France, Germany, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Spain, the United Kingdom;

- (6) North-South gas interconnections in Central Eastern and South Eastern Europe ("NSI East Gas"): **■ gas infrastructure for regional ■** connections between *and in* the Baltic Sea region, the Adriatic and Aegean Seas, *the Eastern Mediterranean Sea* and the Black Sea, *and for enhancing* diversification and security of gas supply;

Member States concerned: Austria, Bulgaria, **Croatia**<sup>1</sup>, Cyprus, Czech Republic, Germany, Greece, Hungary, Italy, Poland, Romania, Slovakia, Slovenia;

- (7) Southern Gas Corridor ("SGC"): *infrastructure for the* transmission of gas from the Caspian Basin, Central Asia, the Middle East and the Eastern Mediterranean Basin to the Union to enhance diversification of gas supply.

Member States concerned: Austria, Bulgaria, **Croatia**<sup>2</sup>, Czech Republic, Cyprus, France, Germany, Hungary, Greece, Italy, Poland, Romania, Slovakia, Slovenia;

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<sup>1</sup> *Subject to and as of the date of accession of Croatia.*

<sup>2</sup> *Subject to and as of the date of accession of Croatia.*

- (8) Baltic Energy Market Interconnection Plan in gas ("BEMIP Gas"): **gas** infrastructure to end the isolation of the three Baltic States and Finland and their **■** dependency ***on a single supplier, to reinforce internal grid infrastructures accordingly, and*** to increase diversification ***and security*** of supplies in the Baltic Sea region;

Member States concerned: Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Sweden.

### 3. PRIORITY OIL CORRIDOR

- (9) Oil supply connections in Central Eastern Europe ("OSC"): interoperability of the oil pipeline network in Central Eastern Europe to increase security of supply and reduce environmental risks.

Member States concerned: Austria, ***Croatia***<sup>1</sup>, Czech Republic, Germany, Hungary, Poland, Slovakia.

### 4. PRIORITY THEMATIC AREAS

- (10) Smart grids deployment: adoption of smart grid technologies across the Union to efficiently integrate the behaviour and actions of all users connected to the electricity network, in particular the generation of large amounts of electricity from renewable or distributed energy sources and demand response by consumers;

Member States concerned: all;

- (11) Electricity highways: first electricity highways by 2020, in view of building an electricity highways system across the Union ***that is capable of:***

- i) accommodating ever-increasing wind surplus generation in and around the Northern and Baltic Seas and increasing renewable generation in the East and South of Europe and also North Africa;***
- ii) connecting these new generation hubs with major storage capacities in Nordic countries, the Alps and other regions with major consumption centres, and***

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<sup>1</sup> ***Subject to and as of the date of accession of Croatia.***

*iii) coping with an increasingly variable and decentralised electricity supply and flexible electricity demand;*

Member States concerned: all;

- (12) Cross-border carbon dioxide network: development of carbon dioxide transport infrastructure between Member States and with neighbouring third countries in view of the deployment of carbon dioxide capture and storage.

Member States concerned: all.

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## ANNEX II

### ENERGY INFRASTRUCTURE CATEGORIES

The energy infrastructure categories to be developed in order to implement the energy infrastructure priorities listed in Annex I are the following:

- (1) concerning electricity:
  - (a) high-voltage overhead transmission lines, if they have been designed for a voltage of 220 kV or more, and underground and submarine transmission cables, if they have been designed for a voltage of 150 kV or more;
  - (b) concerning in particular electricity highways; any physical equipment designed to allow transport of electricity on the high and extra-high voltage level, in view of connecting large amounts of electricity generation or storage located in one or several Member States or third countries with large-scale electricity consumption in one or several other Member States;
  - (c) electricity storage facilities used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines designed for a voltage of 110 kV or more;
  - (d) any equipment or installation essential for the systems defined in (a) to (c) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels *and substations*;
  - (e) any equipment or installation, both at transmission and medium voltage distribution level, aiming at two-way digital communication, real-time or close to real-time, interactive and intelligent monitoring and management of electricity generation, transmission, distribution and consumption within an electricity network in view of developing a network efficiently integrating the behaviour and actions of all users connected to it – generators, consumers and those that do both – in order to ensure an economically efficient, sustainable electricity system with low losses and high quality and security of supply and safety;

- (2) concerning gas:
- (a) transmission pipelines for the transport of natural gas and bio gas that form part of a network which mainly contains high-pressure pipelines, excluding high-pressure pipelines used for upstream or local distribution of natural gas,
  - (b) underground storage facilities connected to the above-mentioned high-pressure gas pipelines,
  - (c) reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) or compressed natural gas (CNG);
  - (d) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, ***including compressor stations***;
- (3) concerning oil:
- (a) pipelines used to transport crude oil;
  - (b) pumping stations and storage facilities necessary for the operation of crude oil pipelines;
  - (c) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems and reverse-flow devices;
- (4) concerning carbon dioxide:
- (a) dedicated pipelines, other than upstream pipeline network, used to transport anthropogenic carbon dioxide from more than one source, i.e. industrial installations (including power plants) that produce carbon dioxide gas from combustion or other chemical reactions involving fossil or non-fossil carbon-containing compounds, for the purpose of permanent geological storage of carbon dioxide pursuant to Directive 2009/31/EC;

- (b) facilities for liquefaction and buffer storage of carbon dioxide in view of its further transportation. This does not include infrastructure within a geological formation used for the permanent geological storage of carbon dioxide pursuant to Directive 2009/31/EC and associated surface and injection facilities.
  - (c) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems.
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## ANNEX III

### REGIONAL *LISTS* OF PROJECTS OF COMMON INTEREST

#### 1. RULES FOR REGIONAL GROUPS

- (1) For electricity projects falling under the categories set out in point 1 of Annex II, each Group shall be composed of representatives of the Member States, national regulatory authorities, transmission system operators **■**, as well as the Commission, the Agency and the ENTSO for Electricity.

For gas projects falling under the categories set out in point 2 of Annex II, each Group shall be composed of representatives of the Member States, national regulatory authorities, transmission system operators **■**, as well as the Commission, the Agency and the ENTSO for Gas.

For oil and carbon dioxide transport projects falling under the categories referred to in Annex II(3) and (4), each Group shall be composed of the representatives of the Member States, project promoters concerned by each of the relevant priorities designated in Annex 1 and the Commission.

- (1a) The decision-making bodies of the Groups may merge. All Groups or decision-making bodies shall meet together, when relevant, to discuss matters common to all Groups; such matters may include issues relevant to cross-regional consistency or the number of proposed projects included on the draft regional lists being at risk of becoming unmanageable.***

- (2) Each Group shall organise its **work** in line with regional cooperation efforts pursuant Article 6 of Directive 2009/72/EC, Article 7 of Directive 2009/73/EC, Article 12 of Regulation (EC) No 714/2009, and Article 12 of Regulation (EC) No 715/2009 and other existing regional cooperation structures.

- (3) Each Group shall invite, as appropriate in view of implementing the relevant priority designated in Annex I, ***promoters of a project potentially eligible for selection as a project of common interest as well as*** representatives of national administrations, of regulatory authorities, ■ and transmission system operators from EU candidate countries and potential candidates, the member countries of the European Economic Area and the European Free Trade Association, representatives from the Energy Community institutions and bodies, countries covered by the European Neighbourhood policy and countries, with which the Union has established specific energy cooperation. ***The decision to invite third country representatives shall be based on consensus.***
- (4) Each Group shall 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 Group may organise hearings or consultations, where relevant for the accomplishments of *its* tasks.
- (4b) ***The internal rules, an updated list of member organisations, regularly updated information on the progress of work, meeting agendas, as well as final conclusions and decisions of each Group shall be published by the Commission on the transparency platform referred to in Article 17.***
5. ***The Commission, the Agency and the Groups shall strive for consistency between the different Groups. For this purpose, the Commission and the Agency shall ensure, when relevant, the exchange of information of all work representing an interregional interest between the Groups concerned.***

***The participation of national regulatory authorities and the Agency in the Regional Groups shall not jeopardise the fulfilment of their objectives and duties under this Regulation or under Articles 36 and 37 of Directive 2009/72/EC and Articles 40 and 41 of directive 2009/73/EC, or under Regulation (EC) No 713/2009.***

## 2. PROCESS FOR ***ESTABLISHING*** REGIONAL ***LISTS***

***Promoters of a project potentially eligible for selection as a project of common interest wanting to obtain the status of projects of common interest shall submit an application for selection as project of common interest to the ■ Group that includes:***



- an assessment of its project(s) with regard to the contribution to implementing the priorities set out in Annex I;
  - ***an analysis on*** the fulfilment of the relevant criteria defined in ***Article 4***;
  - ***for projects having reached a sufficient degree of maturity, a project-specific cost-benefit analysis in accordance with the provisions in Article 18a and based on the methodology elaborated by the ENTSOs pursuant to Article 12; and***
  - any other relevant information for the evaluation of the project.
- (2) All recipients shall preserve the confidentiality of commercially sensitive information.
- (3) ***After adoption of the first Union list, for all subsequent Union lists adopted,*** proposed electricity transmission and storage projects falling under the categories set out in point 1(a) ***(b) and*** (d) of Annex II shall be part of the latest available ten-year network development plan for electricity, developed by the ENTSO for Electricity pursuant Article 8 of Regulation (EC) No 714/2009.
- (4) ***After adoption of the first Union list , for all subsequent Union*** ■ lists adopted, ■ proposed gas ***infrastructure*** projects falling under the categories set out in point 2 of Annex II shall be part of the latest available ten-year network development plan for gas, developed by the ENTSO for Gas pursuant Article 8 of Regulation (EC) No 715/2009.
- (4aa) The project proposals submitted for inclusion in the first Union list interest which were not previously evaluated pursuant to Article 8 of Regulation (EC) No 714/2009 shall be assessed at Union-wide system level by:***
- (4a) the ENTSO for Electricity in line with the methodology applied in the latest available ten-year network development plan for projects falling under point 1(a), (b) and (d) of Annex II.***
- (4b) by the ENTSO for Gas or by a third party in a consistent manner based on an objective methodology for projects falling under point 2 of Annex II.***

- (4c) By....\* , the Commission shall issue Guidelines on criteria to be applied by the ENTSO for electricity and the ENTSO for gas when developing the respective ten-year network development plans referred to in points (3) and (4) above, in order to ensure equal treatment and transparency of the process.*
- (5) Proposed carbon dioxide transport projects falling under the category set out in point 4 of Annex II shall be presented as part of a plan, developed by **at least** two Member States, for the development of cross-border carbon dioxide transport and storage infrastructure, to be presented by the Member States concerned or entities designated by those Member States to the Commission.
- (5a) For proposed projects falling under the categories set out in points 1 and 2 of Annex II, national regulatory authorities, and if necessary the Agency, shall, where possible in the context of regional cooperation (Article 6 of Directive 2009/72/EC, Article 7 of Directive 2009/73/EC) check the consistent application of the criteria/ cost-benefit analysis methodology and evaluate their cross-border relevance. They shall present their assessment to the Group.*
- (5b) For proposed oil and carbon dioxide transport projects falling under the categories set out in points 3 and 4 of Annex II, the Commission shall evaluate the application of the criteria set out in Article 4. For proposed carbon dioxide projects falling under the category set out in point 4 of Annex II, the Commission shall also take into account the potential for future extension to include additional Member States. The Commission shall present its assessment to the Group.*
- (5c) Each Member State to whose territory a proposed project does not relate, but on which the proposed project may have a potential net positive impact or a potential significant effect, such as on the environment or on the operation of the energy infrastructure on its territory, may present an opinion to the Group specifying its concerns.*

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\* *OJ: Please insert date- eight months after the entry into force of this Regulation.*

- (5ca) The decision-making body of the Group shall examine, upon request of a Member State of the Group, the substantiated reasons presented by a Member State pursuant to Article 3(3) for not approving a project of common interest related to its territory.*
- (5d) The Group shall meet to examine and rank the proposed projects taking into account the assessment of the regulators, or the assessment of the Commission for oil and carbon dioxide transport projects.*
- (5e) The draft regional lists of proposed projects falling under the categories set out in points 1 and 2 of Annex II elaborated by the Groups, together with any opinions as specified in point (5c), shall be submitted to the Agency six months before the adoption date of the Union list. The draft regional lists and the accompanying opinions shall be assessed by the Agency within three months from the date of receipt. The Agency shall provide an opinion on the draft regional lists, in particular on the consistent application of the criteria and the cost-benefit analysis across regions. The opinion of the Agency shall be adopted in accordance with the procedure referred to in Article 15(1) of Regulation (EC) No 713/2009.*
- (5f) Within [1 month] of the date of receipt of the Agency opinion, the decision making body of each Group shall adopt [] its final regional list, respecting the provisions set out in Article 3(3), based on the Groups' proposal and taking into account the opinion of the Agency and the assessment of the national regulatory authorities submitted in accordance with point (5a), or the assessment of the Commission for oil and carbon dioxide transport projects proposed in accordance with point (5b). The Groups shall submit the final regional lists to the Commission, together with any opinions as specified in point (5c).*
- (5g) If, based on the regional lists received, and after having taken into account the Agency opinion, the total number of proposed projects of common interest on the Union list would exceed a manageable number, the Commission shall consider, after having consulted each Group concerned, to not include on the Union list projects that were ranked lowest by the Group concerned according to the ranking established pursuant to Article 4(4).*

## ANNEX IV

### RULES AND INDICATORS CONCERNING CRITERIA FOR PROJECTS OF COMMON INTEREST

- (1) A project with significant cross-border impact is a project on the territory of a Member State, which fulfils the following conditions:
- (a) for electricity transmission, the project *increases* the grid transfer capacity, *or the capacity available for commercial flows*, at the border of that Member State with one or several other Member States, or at any other relevant cross-section of the same transmission corridor *having the effect of increasing this cross-border grid transfer capacity*, by at least 500 Megawatt compared to the situation without commissioning of the project;
  - (b) for electricity storage, the project provides *at least 225 MW installed capacity and has a storage capacity that allows* a net annual electricity generation of *250* Gigawatt-hours/year;
  - (c) for gas transmission, the project concerns investment in reverse flow capacities or changes the capability to transmit gas across the border(s) of the concerned Member *States* by at least 10 % compared to the situation prior to the commissioning of the project;
  - (d) for gas storage or liquefied/compressed natural gas, the project aims at supplying directly or indirectly at least two Member States or at fulfilling the infrastructure standard (N-1 rule) at regional level in accordance with Article 6(3) of Regulation (EU) No 994/2010;
  - (e) for smart grids, the project is designed for equipments and installations at high-voltage and medium-voltage level designed for a voltage of 10kV or more. It involves transmission and distribution system operators from at least two Member States, which cover at least *50 000* users that generate or consume electricity or do both in a consumption area of at least 300 Gigawatthours/year, of which at least 20 % originate from *variable* resources.

- (2) Concerning projects falling under the categories set out in points 1(a) to (d) of Annex II, the criteria listed in Article 4 shall be measured as follows:
- (a) Market integration, competition and system flexibility shall be measured in line with the analysis made in the latest available Union-wide ten-year network development plan in electricity, notably by:
- calculating, for cross-border projects, the impact on the grid transfer capability in both power flow directions, measured in terms of amount of power (in megawatt), **and their contribution to reach the minimum interconnection capacity of 10 % installed production capacity** or, for projects with significant cross-border impact, the impact on grid transfer capability at borders between relevant Member States, between relevant Member States and third countries or within relevant Member States and on demand-supply balancing and network operations in relevant Member States;
  - assessing the impact, for the area of analysis as defined in point 10 of Annex V, in terms of energy system-wide generation and transmission costs and evolution **and convergence** of market prices provided by a project under different planning scenarios, notably taking into account the variations induced on the merit order.
- (b) Transmission of renewable energy generation to major consumption centres and storage sites shall be measured in line with the analysis made in the latest available ten-year network development plan in electricity, notably by:
- for electricity transmission, by estimating the amount of generation capacity from renewable energy sources (by technology, in megawatts), which is connected and transmitted due to the project, compared to the amount of planned total generation capacity from these types of renewable energy sources in the concerned Member State in 2020 according to the national renewable energy action plans as defined in Article 4 of Directive 2009/28/EC.
  - for electricity storage, by comparing new capacity provided by the project with total existing capacity for the same storage technology in the area of analysis as defined in point 10 of Annex V.

- (c) **Security of supply**, interoperability and secure system operation shall be measured in line with the analysis made in the latest available ten-year network development plan in electricity, notably by assessing the impact of the project on the loss of load expectation for the area of analysis as defined in point 10 of Annex V in terms of generation and transmission adequacy for a set of characteristic load periods, taking into account expected changes in climate-related extreme weather events and their impact on infrastructure resilience. **Where applicable, the impact of the project on independent and reliable control of system operation and services shall be measured.**

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- (3) Concerning projects falling under the categories set out in point 2 of Annex II, the criteria listed in Article 4 shall be measured as follows:
- (a) Market integration and interoperability shall be measured by calculating the additional value of the project to the integration of market areas and price convergence, to the overall flexibility of the system, including the capacity level offered for reverse flows under various scenarios.
- (b) Competition shall be measured on the basis of diversification, including the facilitation of access to indigenous sources of supply, taking ■ into account, **successively:** diversification of sources; **diversification of** counterparts; **diversification of** routes; the impact of new capacity on the Herfindahl-Hirschmann index (HHI) calculated at capacity level for the area of analysis as defined in point 10 of Annex V.
- (c) Security of gas supply shall be measured by calculating the additional value of the project to the short and long-term resilience of the **Union's gas** system and to enhancing the remaining flexibility of the system to cope with supply disruptions **to Member States** under various scenarios as well as the additional capacity provided by the project measured in relation to the infrastructure standard (N-1 rule) at regional level in accordance with Article 6(3) of Regulation (EU) No 994/2010.

- (d) Sustainability shall be measured as the contribution of a project to reduce emissions, to support the back-up of renewable electricity generation or power-to-gas and biogas transportation, taking into account expected changes in climatic conditions.
- (4) Concerning projects falling under the category set out in point 1(e) of Annex II, each function listed in Article 4 shall be evaluated against the following criteria:
- (a) Level of sustainability: This criterion shall be measured by assessing the reduction of greenhouse gas emissions, and the environmental impact of electricity grid infrastructure;
  - (b) Capacity of transmission and distribution grids to connect and bring electricity from and to users: This criterion shall be measured by estimating the installed capacity of distributed energy resources in distribution networks, the allowable maximum injection of electricity without congestion risks in transmission networks, and the energy not withdrawn from renewable sources due to congestion or security risks;
  - (c) Network connectivity and access to all categories of network users: This criterion shall be evaluated by assessing the methods adopted to calculate charges and tariffs, as well as their structure, for generators, consumers and those that do both, and the operational flexibility provided for dynamic balancing of electricity in the network;
  - (d) Security and quality of supply: This criterion shall be evaluated by assessing the ratio of reliably available generation capacity and peak demand, the share of electricity generated from renewable sources, the stability of the electricity system, the duration and frequency of interruptions per customer, including climate related disruptions, and the voltage quality performance;

- (e) Efficiency and service quality in electricity supply and grid operation: This criterion shall be estimated by assessing the level of losses in transmission and in distribution networks, the ratio between minimum and maximum electricity demand within a defined time period, the demand side participation in electricity markets and in energy efficiency measures, the percentage utilisation (i.e. average loading) of electricity network components, the availability of network components (related to planned and unplanned maintenance) and its impact on network performances, and the actual availability of network capacity with respect to its standard value;
  - (f) Contribution to cross-border electricity markets by load-flow control to alleviate loop-flows and increase interconnection capacities: This criterion shall be estimated by assessing the ratio between interconnection capacity of a Member State and its electricity demand, the exploitation of interconnection capacities, and the congestion rents across interconnections.
- (5) Concerning oil transport projects falling under the categories set out in point 3 of Annex II, the criteria listed in Article 4 shall be measured as follows:
- (a) Security of oil supply shall be measured by assessing the additional value of the new capacity offered by a project for the short and long-term resilience of the system and the remaining flexibility of the system to cope with supply disruptions under various scenarios.
  - (b) Interoperability shall be measured by assessing to what extent the project improves the operation of the oil network, in particular by providing the possibility of reverse flows.
  - (c) Efficient and sustainable use of resources shall be evaluated by assessing the extent to which the project makes use of already existing infrastructure and contributes to minimising environmental and climate change burden and risks.



## ANNEX V

### ENERGY SYSTEM-WIDE COST-BENEFIT ANALYSIS

The methodology for a harmonised energy system-wide cost-benefit analysis for projects of common interest shall satisfy the following principles laid down in this Annex.

- (1) The methodology shall be based on a common input data set representing the Union's electricity and gas systems in the years  $n+5$ ,  $n+10$ ,  $n+15$ , and  $n+20$ , where  $n$  is the year in which the analysis is performed. This data set shall comprise at least:
  - (a) In electricity: scenarios for demand, generation capacities by fuel type (biomass, geothermal, hydro, gas, nuclear, oil, solid fuels, wind, solar photovoltaic, concentrated solar, other renewable technologies) and their geographical location, fuel prices (including biomass, coal, gas and oil), carbon dioxide prices, the composition of the transmission and, if relevant, the distribution network, and its evolution, taking into account all new significant generation (including capacity equipped for capturing carbon dioxide), storage and transmission projects for which a final investment decision has been taken and that are due to be commissioned by the end of year  $n+5$ ;
  - (b) In gas: scenarios for demand, imports, fuel prices (including coal, gas and oil), carbon dioxide prices, the composition of the transmission network and its evolution, taking into account all new projects for which a final investment decision has been taken and that are due to be commissioned by the end of year  $n+5$ ;
- (2) The data set shall reflect Union and national legislations in force at the date of analysis. The data sets used for electricity and gas respectively shall be compatible, notably with regard to assumptions on prices and volumes in each market. The data set shall be elaborated after formally consulting Member States and the organisations representing all relevant stakeholders. The Commission and the Agency shall ensure access to the required commercial data from third parties when applicable.
- (3) The methodology shall give guidance for the development and use of network and market modelling necessary for the cost- benefit analysis.

- (4) The cost-benefit analysis shall be based on a harmonised evaluation of costs and benefits for the different categories of projects analysed and cover at least the period of time referred to in point 1.
- (5) The cost-benefit analysis shall at least take into account the following costs: capital expenditure, operational and maintenance expenditure over the technical lifecycle of the project and decommissioning and waste management costs, where relevant. The methodology shall give guidance on discount rates to be used for the calculations.
- (6) For electricity transmission and storage, the cost-benefit analysis shall at least take into account *the impact and compensations resulting from the application of Article 13 of Regulation (EC) No 714/2009*, the impacts on the indicators defined in *Annex IV*, and the *following* impacts **■** :

**■**

- (b) *Greenhouse* gas emissions and transmission losses over the technical lifecycle of the project;
- (c) Future costs for new generation and transmission investment over the technical lifecycle of the project;
- (d) Operational flexibility, including optimisation of regulating power and ancillary services;
- (e) System resilience, including disaster and climate resilience, and system security, notably for European critical infrastructures as defined in Directive 2008/114/EC.
- (7) For gas, the cost-benefit analysis shall at least take into account the results of market testing **□** the impacts on the indicators defined in *Annex IV* and the following impacts:

**■**

- (b) **■** disaster and climate resilience, and system security, notably for European critical infrastructures as defined in Directive 2008/114/EC;

- (e) congestion in the gas network.
- (8) For smart grids, the cost-benefit analysis shall take into account the impacts on the indicators defined in *Annex IV*.
- (9) The detailed method used to take into account the indicators referred to in points 6 to 8 shall be elaborated after formally consulting *Member States and* the organisations representing all relevant stakeholders.
- (10) The methodology shall define the analysis *to be carried out, based on the relevant input data set, by determining the impacts with and without each project*. The area for the analysis of an individual project shall cover all Member States and third countries, on whose territory the project shall be built, all directly neighbouring Member States and all other Member States significantly impacted by the project.
- (11) The analysis shall identify the Member States on which the project has net positive impacts (beneficiaries) and those Member States on which the project has a net negative impact (cost bearers). Each cost-benefit analysis shall include sensitivity analyses concerning the input data set, the commissioning date of different projects in the same area of analysis and other relevant parameters.
- (12) Transmission, *storage system and compressed and liquified natural gas terminal operators* and distribution system operators shall exchange the information necessary for the elaboration of the methodology, including the relevant network and market modelling. Any transmission or distribution system operator collecting information on behalf of other transmission or distribution system operators shall give back to the participating transmission and distribution system operators the results of the collection of data.
- (13) For the common electricity and gas market and network model set out in paragraph 8 of Article 12, the input data set referred to in point 1 shall cover the years n+10, n+20 and n+30 and the model shall allow for a full assessment of economic, social and environmental impacts, notably including external costs such as those related to greenhouse gas and conventional air pollutant emissions or security of supply.

## ANNEX VI

### GUIDELINES FOR TRANSPARENCY AND PUBLIC PARTICIPATION

- (1) The manual of procedures *referred to in Article 10(1)* shall at least specify:
  - (a) the relevant legislation upon which decisions and opinions are based for the different types of relevant projects of common interest, including environmental legislation;
  - (b) the relevant decisions and opinions to be obtained;
  - (c) the names and contact details of the Competent Authority, other authorities and major stakeholders concerned;
  - (d) the work flow, outlining each stage in the process, including an indicative time frame *and a concise overview of the decision-making process*;
  - (e) information about the scope, structure and level of detail of documents to be submitted with the application for decisions, including a checklist;
  - (f) the stages and means for the general public to participate in the process.
- (1b) *The detailed schedule referred to in Article 11(3) shall specify as a minimum the following:*
  - (a) *the decisions and opinions to be obtained;*
  - (b) *the authorities, stakeholders, and the public likely to be concerned;*
  - (c) *the individual stages of the procedure and their duration;*
  - (d) *major milestones to be accomplished and their deadlines in view of the comprehensive decision to be taken;*
  - (e) *the resources planned by the authorities and possible additional resource needs.*
- (2) To increase public participation in the permit granting process *and ensure in advance information and dialogue with the public*, the following principles shall be applied:

- (a) The stakeholders affected by a project of common interest, including relevant ***national, regional and local*** authorities, landowners and citizens living in the vicinity of the project, the general public and their associations, organisations or groups, shall be extensively informed and consulted at an early stage, ***when potential concerns by the public can still be taken into account*** and in an open and transparent manner. Where relevant, the competent authority shall actively support the activities undertaken by the project promoter.
  - (b) Competent authorities shall ensure that public consultation procedures for projects of common interest are ***grouped together*** where possible. Each public consultation shall cover all subject matters relevant to the particular stage of the procedure, and one subject matter relevant to the particular stage of the procedure shall not be addressed in more than one public consultation; ***however, one public consultation can take place in more than one geographical location***. The subject matters addressed by a public consultation shall be clearly indicated in the notification of the public consultation.
  - (c) Comments and objections shall be admissible from the beginning of the public consultation until the expiry of the deadline only.
- (3) The concept for public participation shall at least include information about:
- (a) the stakeholders concerned and addressed;
  - (b) the measures envisaged, ***including proposed general locations and dates of dedicated meetings***;
  - c) the timeline;
  - (d) the human resources allocated to the respective tasks.
- (4) In the context of the public consultation to be carried out before submission of the application file, the relevant parties shall at least:

- (a) publish an information leaflet of no more than 15 pages, giving, in a clear and concise manner, an overview of the purpose and preliminary timetable of the project, ***the national grid development plan*** alternative routes considered, expected impacts, including of cross-border nature, and possible mitigation measures, ***which shall be published prior to the start of the consultation; The information leaflet shall furthermore list the web addresses of the transparency platform referred to in Article 17 and of the manual of procedures referred to in point (1).***
  - (b) inform all stakeholders affected about the project through the website referred to in Article 10(7) and other appropriate information means;
  - (c) invite in written form relevant affected stakeholders to dedicated meetings, during which concerns shall be discussed.
- (5) The project website shall make available as a minimum the following:
- (ao) the information leaflet referred to in point (4);***
  - (a) a non-technical and regularly updated summary of no more than 50 pages reflecting the current status of the project and clearly indicating, in case of updates, changes to previous versions;
  - (b) the project and public consultation planning, clearly indicating dates and locations for public consultations and hearings ***and the foreseen subject matters relevant for those hearings;***
  - (c) contact details in view of obtaining the full set of application documents;
  - (d) contact details in view of conveying comments and objections during public consultations;

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