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NOTE

from: General Secretariat of the Council

to: Delegations

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

Subject: Draft 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.**

Delegations will in Annex the text of the draft Regulation, amended in light of the discussions in the TTE (Energy) Council and in the Council Energy Working Party, as well as delegations' written positions.

Changes compared to the previous text are indicated in **bold underlined**; deletions are marked with **[]**; changes compared to the Commission proposal are indicated in **bold** and deletions by **[]**.

N.B. Delegations' attention is drawn to the **new footnote for Article 18a, and the options to be decided upon in Art. 15a(2).**

**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.
(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 ,
Having regard to the opinion of the Committee of the Regions ,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (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, greener and more competitive economy. The 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.
- (2) 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 6 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 EU Member State should remain isolated from the European gas and electricity networks after 2015 or see its energy security jeopardized by lack of the appropriate connections.
- (4) Decision No 1364/2006/EC of the European Parliament and of the Council of 6 September 2006 lays down guidelines for trans-European energy networks . These 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 also 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.
- (6) Accelerating the refurbishment of existing and deployment of new energy infrastructure is vital to achieve the Union's energy and climate policy objectives, consisting in completing the internal market in energy, guaranteeing security of supply, notably for gas and oil, reducing greenhouse gas emissions by 20%, increasing the share of renewable energy in the final energy consumption to 20% and achieving a 20% increase in energy efficiency by 2020. At the same time, the Union has to prepare its infrastructure for further decarbonisation of its energy system in the longer term towards 2050.
- (7) Despite its legal existence as defined in Directives 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and 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, the internal market in energy remains fragmented due to insufficient interconnections between national energy networks. Union-wide integrated networks however are vital for ensuring a competitive and well functioning integrated market for promoting growth, employment and sustainable development.

- (8) The Union's energy infrastructure should be upgraded in order to prevent and increase its resilience to natural or man-made disasters, adverse effects of climate change and threats to its security, notably concerning 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 .
- (9) The importance of smart grids in achieving the Union's energy policy objectives has been acknowledged in Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Smart grids: from innovation to deployment".
- (10) Communication from the Commission "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 the 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.
- (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 to implement the energy infrastructure priorities requires a new approach in the way energy infrastructures, and notably those of cross-border nature, are regulated and financed.
- (12) The Commission Staff Working Paper to the Transport, Telecommunications and Energy Council of 10 June 2011 "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 permit granting, 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.
- (14) The Commission has identified, following close consultations with all Member States and stakeholders, 12 strategic trans-European energy infrastructure priorities, whose implementation 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** **comply with** common, transparent and objective criteria in view of their contribution to the energy policy objectives. For electricity and gas, **projects** should be part of the latest available ten-year network development plan. This plan should notably take account of the conclusions of the 4 February European Council 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 **in**. 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.
- (17) **In order to ensure that the** Union-wide list of projects of common interest **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-wide** list **should be delegated to** the Commission **in accordance with Article 290 of the Treaty on the functioning of the European Union**, 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 accompanying impact assessment, the number of such projects is estimated at some 100 in the field of electricity and 50 in the field of gas. **The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.**

- (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 projects promoters to a minimum. The Commission should nominate European coordinators for projects facing particular difficulties.
- (19) Authorisation procedures should not 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 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 European Council of 4 February 2011 which again underlined the importance to streamline and improve authorisation procedures while respecting national competences.
- (20) Projects of common interest should be given "priority status" at national level to ensure rapid administrative treatment. Projects of common interest shall be considered by competent authorities as being in 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 provided for under Directives 92/43/EC and 2000/60/EC are met.
- (21) The establishment of a single competent authority at national level integrating or coordinating all permit granting procedures ("one-stop shop") should reduce complexity, increase efficiency and transparency and help enhance cooperation among Member States.
- (22) Despite the existence of established standards for the participation of the public in environmental decision-making procedures, additional measures are needed to ensure 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 Council Directive 85/337/EC as amended 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.
- (24) Given the urgency to develop energy infrastructures, the simplification of permit granting procedures must be accompanied by a clear deadline for the decision to be taken by the respective competent authorities regarding the construction of the project. This time limit should stimulate a more efficient definition and handling of procedures, and should under no circumstances compromise on the high standards for the protection of the environment and public participation.

- (25) This Regulation, in particular the provisions on permit granting, public participation and implementation of projects of common interest, should apply without prejudice to international and Union legislation, including provisions to protect the environment and human health, and provisions adopted under the Common Fisheries and Maritime Policy.
- (26) 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 according to 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 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 , and reviewed by the Agency on the Cooperation of Energy Regulators according to 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 , should be the basis for the discussion on the appropriate allocation of 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 to promote 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, notably of European industry, and taking account of the impact on consumers.
- (28) The existing internal energy market legislation requires that tariffs for access to gas and electricity networks shall provide appropriate incentives for investment. When applying the internal energy market legislation, national regulatory authorities should ensure that incentives for projects of common interest, including long-term incentives, are commensurate with the level of specific risk of the project. This applies notably in electricity to innovative transmission technologies to allow 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.

- (29) The European Energy Programme for Recovery (EPR) has demonstrated the added value of leveraging private funding through significant Union financial aid to allow 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.
- (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 under the proposed Regulation for a Connecting Europe Facility (CEF Regulation), either in the form of grants or in the form of innovative financial instruments. This will ensure tailor-made support can be provided to those projects of common interest which are not viable under the existing regulatory framework and market conditions. Such financial assistance should ensure the necessary synergies with funding from instruments under other Union policies. In particular, the Connecting Europe Facility will finance energy infrastructure of European relevance, while Structural Funds will finance smart energy distribution networks of local or regional importance. The two sources of funding will thereby complement each other. **A three-step-approach should be followed for 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, the relevant regulatory framework should be adjusted. Third, only if the adjustment of the regulatory framework is not sufficient to deliver the necessary investments in projects of common interest, Union financial aid should be granted.**
- (31) Decision No 1364/2006/EC should therefore be repealed.
- (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 the European Union. 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.

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.
2. In particular, this Regulation:
 - (a) **[] foresees the identification of** projects of common interest necessary to implement these priority corridors and areas and falling under the energy infrastructure categories in electricity, gas, oil, and carbon dioxide set out in Annex II;
 - (b) facilitates the timely implementation of projects of common interest by accelerating permit granting and enhancing public participation;
 - (c) provides rules **and guidance** for cross-border allocation of costs and risk-related incentives for projects of common interest;
 - (d) determines conditions for eligibility of projects of common interest for Union financial assistance under [Regulation of the European Parliament and the Council establishing the Connecting Europe Facility].

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 [] as listed 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 that determines whether a project promoter is to be granted [] authorisation [] to build** the energy infrastructure relating to a project [], without prejudice to any [] decisions taken **by legal courts or any decisions taken** in the context of granting access to property, **granting of operational permits** or administrative or judicial appeal procedures [];

3. 'project' means one or several lines, pipelines, facilities, equipments, installations and related infrastructure categories as set out in Annex II []¹;
4. 'project of common interest' means a project, which is necessary to implement the energy infrastructure priority corridors and areas set out in Annex I **and which is part of the Union-wide list []**;
5. 'project promoter' means:
 - (a) transmission system operator or distribution system operator or other operator or investor []² 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;
6. **'works' and 'studies' mean activities as defined in Regulation (EU) No XXX of the European Parliament and of the Council establishing the Connecting Europe Facility.**
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 (1) 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 (2).**

¹ **Note: this definition (cf. Annex II) excludes infrastructure not directly related to the energy infrastructure project such as access roads or office buildings; by extension, the permits related to these are not included in the definition of Art. 2(2).**

² **Explanatory Note: since "other operator or investor" is not defined, its ownership is not prescribed either: it could be owned by a Member State or by a public or private entity.**

CHAPTER II – PROJECTS OF COMMON INTEREST

Article 3³

Union-wide list of projects of common interest

[(Note: §1 moved to §6a, so that chronological order of events is reflected)]

2. **[[The Commission shall establish [(twelve Regional Groups ("Groups") as defined 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.**

2bis. Each Group shall adopt its own rules of procedure, having regard to the provisions set out in Annex III.

3. Each Group shall **adopt a [(regional list of 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 set out in Annex I and according to their fulfilment of the criteria set out in Article 4. When a Group draws up its [(regional list, each individual proposal for a project shall require the approval of the Member State(s), to the territory of which the project relates.** ⁴

[[

³ **Note: concerns were raised as regards the identification procedure, which would have to be in line with Article 171 and 172 TFEU.**

⁴ **Explanatory note: the objective of the identification process is to define which projects provide benefits that go beyond national boundaries. A formal approval at that stage by “affected” or “benefiting” MS (to whose territory the project does not directly relate) appears:**

- **in principle not to be necessary: why would a MS object to a project that brings benefits?**
- **premature: as it is not possible to establish at this point of time, if cross-border cost allocation is necessary at all and if yes, how these costs would be allocated across borders. As a concrete example: the fact that a gas project provides net benefit to country A does not and cannot entail any cross-border cost allocation if there are sufficient capacity bookings. N.B.: according to the Impact Assessment, only a minority of projects is expected to require cross-border cost allocation.**

- 6a. **The Commission shall be empowered to adopt delegated acts in accordance with Article 15a concerning the establishment and reviewing of a Union-wide list of projects of common interest, subject to the second paragraph of Article 172 TFEU. That Union-wide list shall take the form of an annex to this Regulation. In exercising its power, the Commission shall ensure that the Union-wide list of projects of common interest is established, and reviewed every two years thereafter, on the basis of the regional lists adopted and reviewed⁵ [] by the Groups [] following the procedure [] set out in point 3 [] of this Article. [] The first list shall be adopted by [31 July 2013] at the latest.**
7. Following **their inclusion into the Union-wide list pursuant** to [] paragraph 6a, projects of common interest shall become an integral part of the relevant regional investment plans pursuant Article 12 of Regulations (EC) No 714/2009 and (EC) No 715/2009 and of the relevant national ten-year network development plans pursuant Article 22 of Directives 72/2009/EC and 73/2009/EC and other national infrastructure plans concerned, as appropriate. The 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 the implementation of the energy infrastructure priority corridors and areas set out in Annex I; and
 - (b) **[] the potential benefits of the project assessed according to the respective specific criteria in paragraph (2) outweigh its costs⁶; and**
 - (c) the project involves at least two Member States, either by directly crossing the border of one or more Member States or by being located on the territory of one Member State and having a significant cross-border impact as set out in point 1 of Annex IV;

⁵ **Note: every 2 years, a full assessment of all projects takes place. Thus:**
- completed projects;
- projects with a negative CBA, not fulfilling the criteria in Article 4;
- projects not included in the latest TYNDP (after 2014);
- projects referred to in Article 5(7) (in conflict with Union legislation or based on incorrect information);
would not figure on the next list.

⁶ **Note: this is in line with the last sentence of Article 171(1) TFEU.**

2. In addition, 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 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:
 - market integration, **inter alia through lifting the isolation of at least one Member State**; competition and system flexibility;
 - sustainability, inter alia through transmission of renewable generation to major consumption centres and storage sites;
 - **security of supply, inter alia through interoperability, [] and secure and reliable** system operation;
 - (b) concerning gas projects falling under the categories set out in point 2 of Annex II, the project shall contribute significantly to at least one of the following specific criteria:
 - market integration, **inter alia through lifting the isolation of at least one Member State**; interoperability and system flexibility;
 - security of supply, inter alia through diversification of supply sources, supplying counterparts and routes;
 - competition, inter alia through diversification of supply sources, supplying counterparts and routes;
 - 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 category set out in point 1(e) of Annex II, the project shall contribute significantly to the following **six** specific functions:
 - integration and involvement of network users with new technical requirements with regard to their electricity supply and demand;
 - efficiency and interoperability of electricity transmission and distribution in day-to-day network operation;
 - network security, system control and quality of supply;
 - optimised planning of future cost-efficient network investments;
 - market functioning and customer services;
 - involvement of users in the management of their energy usage;

- (d) concerning oil transport projects falling under the categories set out in point 3 of Annex II, the project shall contribute significantly to the following three specific criteria:
- security of supply reducing single supply source or route dependency;
 - efficient and sustainable use of resources through mitigation of environmental risks II;
 - interoperability;
- (e) concerning carbon dioxide transport projects falling under the categories set out in point 4 of Annex II, the project shall contribute significantly to the following three specific criteria:
- avoidance of carbon dioxide emissions II while maintaining security of energy supply;
 - increase the resilience and security of carbon dioxide transport;
 - efficient use of resources, by enabling the connection of multiple CO₂ sources and storage sites via common infrastructure and minimising environmental burden and risks.

3. Concerning projects falling under the 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 to become PCIs and that could appear on the Regional list, each Group shall rank projects contributing to the implementation of the same priority corridors or areas in a transparent and objective manner. Each Group shall determine its method of ranking and the relative weight of the criteria set out in paragraphs 2 and 4 of this Article; ranking may therefore lead to a general grouping of projects. The Regional list itself shall not contain any ranking⁷.**

In this context, II due consideration shall II be given to:

- (a) the urgency of each proposed project in order to meet the EU energy policy targets of market integration and competition, sustainability and security of supply;

⁷ **Explanatory Note: thus, the ranking exercise takes place before the establishment of the regional list; the ranking is not reflected on the regional list and has no implications on financing.**

- (b) the number of Member States affected by each project, **whilst ensuring equal opportunities for projects involving peripheral Member States** and
- (c) its complementarity with regard to other proposed projects.

For "**smart grids**" projects falling under the category set out in point 1(e) of Annex II, **ranking shall be done [] 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**, construction and commissioning, and the permit granting schedule referred to in Article 11(3). 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 additional information 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 4, 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 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 for the development, construction and commissioning of the project, notably with regard to permit granting and consultation procedures;
 - (b) where relevant, delays compared to the implementation plan and other difficulties encountered.

4. Within three months of the receipt of the annual reports, 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 proposing, where appropriate, measures to overcome the delays and difficulties encountered. The evaluation shall also include, 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 set out in Annex I.
5. Each year, the concerned competent authorities referred to in Article 9 shall [] report to the respective Group on the status and, where relevant, delays in the implementation of projects of common interest located on their respective territory **with regard to the permit granting process**.
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) **insofar 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 sufficient to ensure that the investment is carried out, or are not applicable, the project promoter of that project shall choose a third party to finance or construct [] 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 (b), the national regulatory authority or the Member State 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 of [] the Member States concerned, may launch a call for proposals open to any project promoter to build the project according to an agreed timeline.⁸**

⁸ **Note: in (ba) and (c), it is *Member States* that decide whether or not this option is used.**

(ca) When (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 may² be removed from the Union-wide list of projects of common interest according to the procedure set in the second sentence of Article 3(6a) if the inclusion in the list referred to in paragraph 6a of Article 3 was based on incorrect information which was a determining factor for the decision, **or** the project does not comply with existing Union legislation.

Projects, which **are no longer on the** Union-wide list, lose all rights and obligations arising from this Regulation for projects of common interest. This article shall be without prejudice to any Union financing paid 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 fulfil the following tasks:
 - (a) promote the project(s), for which he or she 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);

² **Note: the "may" provides a necessary margin of appreciation as regards for example the degree of gravity of the submission of incorrect information and the degree of conflict with Union legislation (both could be non-intentional and temporary; corrective action could be relatively easy). Based on such evaluation, the Commission should decide whether an immediate removal from the list is required (using a delegated act) or this change could be done while preparing the next Union-wide list.**

- (ba) **advise project promoters on the financial package for 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 concerned Groups and the European Parliament.
3. The European coordinator shall be chosen on the basis of his or her experience with regard to the specific tasks assigned to him or her for the concerned project(s).
 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 cooperate with the European coordinator in his/her execution of the tasks referred to in paragraph 2 and 4.

CHAPTER III – Permit granting and public participation

Article 7 Regime of common interest

[] For the purpose of accelerating permit granting procedures and enhancing public participation, the provisions of this Chapter shall be applicable to all projects of common interest.

Article 8 'Priority status' of projects of common interest

1. Projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting procedures, where and in the manner such treatment is provided for in national legislation applicable to the corresponding type of energy infrastructure.
2. The adoption of the Union-wide list of projects of common interest shall establish the [] necessity of these projects **from an energy policy perspective** within the Member States concerned and shall be acknowledged as such by all parties concerned.

3. For the purpose of ensuring efficient administrative processing of the files related to projects of common interest, project promoters and all authorities concerned shall ensure that the most **rapid** [] treatment possible is given to these files [].

4. [] Member States shall, within [nine] months from the entry into force of this Regulation, take measures to streamline the environmental assessment procedures **provided for in national legislation or administrative rules**. These measures shall be without prejudice to obligations resulting from Union legislation.

The Commission shall, within three months of the entry into force of this Regulation, issue guidance¹⁰ to support Member States in defining adequate measures and to ensure the coherent application of environmental assessment procedures required under EU legislation for projects of common interest.

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. Within [six] months of the entry into force of this Regulation, each Member State shall designate one national competent authority¹¹ which shall be responsible for facilitating and coordinating the permit granting process for projects of common interest and for the implementation of the relevant tasks of the permit granting process as defined in this Chapter.

¹⁰ **Note: the Commission is likely to issue this guidance (focusing on streamlining of all relevant environmental procedures) in 2012. Furthermore, it should be noted that the Environmental Impact Assessment Directive (85/337/EEC) is under revision in 2012.**

¹¹ **Note: due note was taken of requests and proposals made to allow either an "intermediary solution" or to add here "or authorities" - perhaps limited to specific cases. All affected delegations are invited to express themselves on possible solutions at the next meeting.**

2. The competent authority shall issue, without prejudice to relevant requirements under Union and international legislation, the comprehensive decision within the time limit referred to in Article 11(1) according to one of the following schemes:
 - (a) integrated scheme: the comprehensive decision issued by the competent authority is 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 **means** [] multiple individual legally binding decisions issued by **several authorities, which must be coordinated by the Competent Authority and [] issued at the same time.** [] 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. The competent authority may overrule an individual decision of another national authority, if it considers that the decision is not sufficiently substantiated with regard to the underlying evidence presented by the authority concerned. The competent authority shall ensure that the relevant requirements under international and Union legislation are respected and must duly justify its decision.
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 compliance with the Espoo Convention and the provisions referred to in 11(3). Member States shall endeavour to provide for joint procedures, particularly with regard to the assessment of environmental impacts.
4. Member States shall endeavour to ensure that appeals challenging the substantive or procedural legality of a comprehensive decision are handled in the most efficient way possible.

Article 10 Transparency and public participation

1. [] The competent authority shall, within [nine] months of the entry into force of this Regulation, 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.

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.
3. The project promoter shall, within [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. The competent authority shall request modifications or approve the concept for public participation within [one] month. The concept shall at least include the information specified in point 3 of Annex VI.
4. At least one public consultation shall be carried out by the project promoter, or, where this is laid down by national legislation, by the competent authority, before submission of the 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 Council Directive 85/337/EEC of 27 June 1985 (as amended) on the assessment of the effects of certain public and private projects on the environment.** The public consultation shall inform stakeholders referred to in point 2(a) of Annex VI about the project at an early stage and 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 shall be prepared by the project promoter and submitted together with the application file to the competent authority, which shall take due account of these results when taking 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 85/337/EEC 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 whether it 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 duration of the permit granting process shall consist of two phases and shall not exceed a period of [three years]:

- (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 not exceed two years.

For the purpose of establishing the start of the permit granting process, the project promoter(s) shall notify the project to the competent authority of the Member State(s) concerned in written form, and shall include a reasonably detailed outline of the project. No later than [two] weeks following the receipt of the notification, the competent authority shall accept or, if it considers the project as not mature enough to enter the permit granting process, refuse the notification in written form. In case of a refusal, the competent authority shall justify its decision. The date of signature of the acceptance of the notification by the competent authority shall serve as the start of the permit granting process. Where two or more Member States are concerned, the acceptance of the notification by the last competent authority concerned shall serve as the date of the start of the permit granting process.

- (b) The statutory permit granting procedure, covering the period from the acceptance of the submitted application file until the competent authority takes a comprehensive decision, shall not exceed [one year]. Member States may set an earlier date for the time-limit if considered appropriate.

2. Within one month of the start of the permit granting process, pursuant to paragraph 1(a), the competent authority shall identify, in close cooperation with the other authorities concerned, 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. At least one meeting between the competent authority and the project promoter, and, if considered appropriate by the competent authority, other authorities and stakeholders concerned shall take place to this aim. A detailed application outline, which shall include the results of this meeting, shall be transmitted to the project promoter and be made available to the public no later than one month after the meeting.
3. Within three months of the start of the permit granting process pursuant to paragraph 1(a), 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, identifying at 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.For projects crossing the border between two or more Member States, the competent authorities of the Member States concerned shall align their timetables and elaborate a joint schedule.
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.

5. Within one month of the receipt of the application file, the competent authority shall, if necessary, make further requests regarding missing information to be submitted by the project promoter, which may only address subjects identified in the detailed application outline. Within one month of the receipt of the complete application file, the competent authority shall accept the application in written form. Subsequently, requests for additional information may only be made if these are justified by new circumstances and duly explained by the competent authority.
6. In the event of an expiry of the time-limit for the comprehensive decision, the competent authority shall 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.
7. The time limits in the above provisions shall be without prejudice to obligations arising from international and Union legislation.

CHAPTER IV – Regulatory treatment

Article 12

Energy system wide cost-benefit analysis¹²

1. Within **[six]** month of the entry into force of this Regulation, the ENTSO for Electricity and the ENTSO for Gas shall submit to the Agency and the Commission their respective methodology, including on network and market modelling, for a harmonised energy system-wide cost-benefit analysis at Union-wide level for **the preparation of each ten year network development plan developed by the ENTSOs for Electricity or Gas pursuant Article 8 of Regulation (EC) 714/2009 and Regulation (EC) 715/2009, including** projects of common interest falling under the categories set out in points 1(a) to (d) and 2 of Annex II. The methodology 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. The ENTSOs shall conduct an extensive consultation process involving at least the organisations representing all relevant stakeholders - and, if deemed appropriate, stakeholders directly -, national regulatory authorities and other national authorities¹³.**

¹² **Explanatory note: the cost-benefit analysis is a tool to assess the wider benefits of a project or a cluster of projects to society that may go beyond national borders. As such, if applied in detail at project level, it can also demonstrate which countries would be the net beneficiaries. NB: only a minority of projects of common interest (according to the Impact Assessment about 25% of the investment need) is estimated to require cross border cost-allocation. The result of the CBA is one input *to be taken into account when Regulators discuss how costs shall be allocated across borders* but not an automatic, straightforward “allocation division key”.**

¹³ **Note: this sentence is based on Art. 10 of Regulations 714/2009 and 715/2009.**

2. Within [three] months of the day of receipt of the methodology, the Agency [] shall provide an opinion to the Commission on the methodology.
3. Within three months of the receipt of the opinion of the Agency, the Commission shall deliver an opinion on the methodology.
4. Within three months of the day of receipt of the Commission's opinion, the ENTSO for Electricity and the ENTSO for Gas shall adapt their methodology **taking duly into account the Commission's opinion []**.
5. [] The ENTSO for Electricity and the ENTSO for Gas shall publish the methodology 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 NRAs 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.

[]¹⁴

8. By 31 December 2016, the ENTSO for Electricity and the ENTSO for Gas shall jointly submit to the Commission and the Agency common electricity and gas market and network model including both electricity and gas transmission **infrastructure** and storage **facilities and LNG facilities**, covering the priority corridors and areas designated in Annex I 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.

¹⁴ **Note: see new Article 18a.**

Explanatory note: the cost-benefit methodology shall be applied to all ten year network development plans, as these plans (after 2013) are the basis for the project identification. If the methodology was to be applied only to already identified PCIs, it would exclude from the analysis potential PCIs that could be identified in the coming cycle. ENTSO-E already includes a cost-benefit analysis in their TYNDP in 2012 at the level of project clusters.

1. The **efficiently incurred** investment costs related to a project of common interest falling under the categories set out in points 1(a), **(b) and []** (d) and 2 ¹⁶ of Annex II shall be borne by the **relevant** transmission system operator(s) **or the project promoter 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 States**. **For projects of common interest falling under the categories set out in point 2 of Annex II, the provisions of the previous sentence shall [] only apply if:**
- (a) **at least one project promoter requests the relevant national authorities to apply this Article for all or parts of the costs of the project and**
 - (b) **an assessment of market demand has shown that costs cannot be expected to be covered by the tariffs paid by the infrastructure users¹⁷.**

Where the 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.

[] ¹⁸

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 of the progress of that project and the identification of costs and impacts associated with it.**

¹⁵ **Explanatory note: this article does not establish how cost allocation shall be done in practical terms, but leaves it to the agreement of Regulators (and potentially TSOs). It leaves free discretion to decide for example if cost-bearer TSOs/PPs should provide an upfront contribution and/or rather an ex post revenue flow to the TSOs/PPs that carry out the investments. In this context it would hence be possible for Regulators to take into account future developments and revenue flows stemming from congestion charges, the ITC mechanism etc.**

¹⁶ **Note: see also point 3 of this Article, and the footnote to Art. 14.**

¹⁷ **Note: to allow the adaptation of the wording to the specificities of the gas and electricity sectors, thus allowing for more clarity, the two sectors have been split. The aim of this sentence is to clarify under which conditions the continuation of existing practice(s) in the gas sector is allowed, whilst offering an alternative as set out in this Article.**

¹⁸ **Note: moved to §8a.**

As soon as [] **such projects have** reached sufficient maturity, the project promoter shall submit an investment request including a **request for a cross-border cost allocation decision**, to the relevant national regulatory authorities, 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 projects of common interest falling under the category referred to in point 2 of Annex I, the results of market testing.

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

For projects contained in the first Union-wide list of projects of common interest, 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 request was received by the last of the national regulatory authorities concerned, the national regulatory authorities shall, after consultation of the project promoter(s) concerned, take a joint decision 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 **to the extent that these are not covered by actual or estimated**:

- **congestion rents;**
- **charges of the secondary market;**
- **revenues stemming from the inter-transmission system operator compensation mechanism established under Article 13 of Regulation No 714/2009;**

or to allocate costs among a package of several projects of common interest.

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 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).**

3. National regulatory authorities shall, **based on the cross-border cost allocation as referred to in point (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 operator¹⁹.

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.

¹⁹ **Explanatory note: the concept of an efficient and structurally comparable network operator as reference for tariff setting, and the obligation to use this concept, is included in the 3rd Package: see Article 14 of Regulation 714/2009 and Article 13 of Regulation 715/2009.**

The **cost** allocation decision shall be published. **Article 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 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 pursuant Article 36 of Directive 2009/73/EC or Article 17 of Regulation (EC) 714/2009.**

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, [] 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 for its entire capacity:

- [] 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.

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 cover *inter alia*:
 - (a) rules for anticipatory investment; or
 - (b) rules for recognition of efficiently incurred costs before commissioning of the project; or
 - (c) rules for providing additional return on the capital invested for the project; or
 - (d) any other measure deemed necessary and appropriate.
4. By 31 July 2013, **where available**, each national regulatory authority **shall submit** its methodology and the criteria used to evaluate investments in electricity and gas transmission projects and the higher risks incurred by them.
5. By 31 December 2013, **taking due account of the information received pursuant to point (4)**, the Agency shall **facilitate the sharing of good practices and make recommendations** in accordance with Article 7(2) of Regulation (EC) No 713/2009:
 - (a) regarding the incentives referred to in paragraph 1 on the basis of a benchmarking of best practice by national regulatory authorities;
 - (b) regarding a common methodology to evaluate the incurred higher risks of investments in electricity and gas transmission 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 transmission projects and the higher risks incurred by them.**
6. **In case the measures referred to in points (5) and (5a) are not sufficient to ensure timely implementation of PCIs**, the Commission may issue guidelines regarding the incentives laid down in this Article in accordance with Article 18(1) to (3) of Regulation (EC) No 714/2009 and Article 23 (1) of Regulation (EC) No 715/2009.

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 support in the form of grants for studies and financial instruments²⁰ in accordance with the provisions of [Regulation of the European Parliament and the Council establishing the Connecting Europe Facility].
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 projects²¹, shall be also eligible for Union financial support in the form of grants for works in accordance with the provisions of [Regulation of the European Parliament and the Council establishing the Connecting Europe Facility] **II** 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

²⁰ **Note: the criteria to grant financial instruments are defined by the financial institutions (such as the EIB) to whom the management of such instruments will be delegated, once a project is identified as being of common interest. The same eligibility criteria as for grants for works cannot be applicable, as the objective of financial instruments is to mitigate risk, enhance credit-worthiness and thus bring down the cost of financing. Therefore projects eligible for financial instruments must be close to commercial viability (see slide from workshop on financial instruments on the 9th March 2012). Also, financial institutions must have a margin of discretion to manage their investment/credit portfolios adequately.**

²¹ **The Presidency has noted the request from several delegations to also make hydro-pumped electricity storage (HPES) eligible for funding, and also the arguments against such inclusion forwarded by the Commission. In order to bring this debate forward, the Presidency proposes the option of linking the inclusion of HPES to additional conditions: for PCIs relating to hydro-pumped electricity storage falling under point 1(c) of Annex II [electricity storage], the project shall:**

- **be commercially not viable according to the business plan that has to include cross-border services and takes into account a comprehensive evaluation of all revenue streams under different business plan scenarios, reflecting different applicable regulatory regimes;**
- **aim to provide services across borders; and**
- **bring technological innovation.**

- (b) the project has received a cross-border cost allocation decision pursuant to Article 13 or, for projects having received an exemption pursuant to Article 36 of Directive 2009/73/EC or Article 17 of Regulation (EC) No 714/2009, an opinion from the competent national regulatory authorities and the Agency on the commercial viability of the project; **and**
- (c) the project is commercially not viable according to the business plan and other assessments carried out, notably by possible investors or creditors. The decision on incentives and its justification referred to in paragraph 3 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 support in the form of grants for works in accordance with the provisions of [Regulation of the European Parliament and the Council establishing the Connecting Europe Facility] if they fulfil the criteria set out in point (2).

- 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 support in the form of grants for works in accordance with the provisions of [Regulation of the European Parliament and the Council establishing the Connecting Europe Facility], if the concerned project promoters can clearly demonstrate the significant positive externalities generated by the projects and their lack of commercial viability.

Article 15a²²
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.

²² **Note: all delegations hold a scrutiny reservation on this Article and the corresponding changes (cf. recitals 15, 16, 17; Article 1(2)(a) and Article 3).**

2. [duration]

Option 1:

The power to adopt delegated acts referred to in Article[s] ... shall be conferred on the Commission for an indeterminate period of time from*.

Option 2:

The power to adopt delegated acts referred to in Article[s] ... shall be conferred on the Commission for a period of X 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 the X-year 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.

Option 3:

The power to adopt delegated acts referred to in Article[s] ... shall be conferred on the Commission for a period of X years from*.

3. The delegation of power referred to in Article[s] ... 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 [one month] at the initiative of the European Parliament or of the Council.

* Date of entry into force of the basic legislative act or any other date set by the legislator.

* Date of entry into force of the basic legislative act or any other date set by the legislator.

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. This report shall provide an evaluation of:

- (a) the progress achieved for the development, construction and commissioning of projects of common interest selected pursuant 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 in accordance with the provisions of [Regulation of the European Parliament and the Council establishing the Connecting Europe Facility], 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);
- (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.

Article 17
Information and publicity

The Commission shall establish by **[X months after the date of adoption] of the Union-wide list of PCIs** an infrastructure transparency platform easily accessible to the general public. This platform shall contain the following information:

- (a) general, regularly 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.

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 to projects listed in Annexes I and III to Decision 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.

Article 18a²³
Amendments

- (a) 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 and repealing Regulation (EC) No 1228/2003²⁴ is hereby amended as follows:
- 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, Community aspects of network planning as set out in Regulation XXX on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC; it shall be the subject to a cost-benefit analysis using the methodology established as set out in Article 12 of Regulation XXX on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC;'

²³ **The Presidency invites delegation to consider the following issue and text proposal: ACER has severe budgetary constraints already, and with the new tasks related to the infrastructure package and the overall budget cut for agencies this situation is likely to be aggravated so that ACER's ability to fulfil its tasks is likely to be compromised. In the ACER Regulation (Art.21 and 22 of 713/2009), ACER has the possibility to charge fees for determined tasks. So it is suggested to add to these determined tasks the ACER tasks under the infrastructure guidelines.**

This would entail the following text change at the end of Article 13(6):
"Articles 19, 20 and 22 of Regulation (EC) No 713/2009 are applicable."

This would entail the following addition in Article 18 a:
"(c) 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:

The following is added at the end of Article 22(1) "...pursuant to Article 9(1) of this Regulation and for requests made by the national regulatory authorities for a recommendation, opinion or decision of the Agency, provided by the Agency pursuant to Regulation XXX on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC."

²⁴ OJ L 211, 14.8.2009, p. 15

(b) 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 ²⁵ is hereby amended as follows:

- **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, Community aspects of network planning as set out in Regulation XXX on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC; it shall be the subject to a cost-benefit analysis using the methodology established as set out in Article 12 of Regulation XXX on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC;'

Article 19
Repeal

Decision 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 1364/2006/EC.

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 1 January 2013.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

²⁵ **OJL 211, 14.8.2009, p. 36**

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 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 []**, notably to integrate electricity from renewable energy sources.

Member States concerned: 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, Czech Republic, Cyprus, Germany, Greece, Hungary, Italy, Poland, Romania, Slovakia, Slovenia;

- (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 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, 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** 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, 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, Czech Republic, Cyprus, France, Germany, Hungary, Greece, Italy, Poland, Romania, Slovakia, Slovenia;

- (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, 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 and the Alps and with [] major consumption centres [], and**
- 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.

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;
 - (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;
- (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.

ANNEX III

REGIONAL II 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 following their obligation to cooperate on a regional level in accordance with Article 6 of Directive 2009/72/EC and Article 12 of Regulation (EC) No 714/2009 II, 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 following their obligation to cooperate on a regional level in accordance with Article 7 of Directive 2009/73/EC and Article 12 of Regulation (EC) No 715/2009 II, 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) Decision making powers in the Groups shall be restricted to Member States and the Commission only. For this purpose, for each Group a High Level Steering Group (HLSG) may be set up. The HLSG may make the final decision on the regional project lists. The same HLSG may be competent for several corridors ²⁶.

(2) Each Group shall organise its workload 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.

²⁶ **Explanatory note: 6 HLSGs could be envisaged, for the following corridors and areas (numbering as in Annex I):**

- **corridor 1**
- **corridors 2 and 5**
- **corridors 3, 6 and 9**
- **corridors 4 and 8**
- **corridor 7**
- **areas 10, 11 and 12.**

- (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.
- (4) Each Group shall consult the organisations representing relevant stakeholders - **and, if deemed appropriate, stakeholders directly** - including producers, distribution system operators, suppliers, consumers, and, for the tasks set out in paragraph 2 of Article 5, organisations for environmental protection. The Group may organise hearings or consultations, where relevant for the accomplishments of its tasks.

5. The Commission and the Agency shall strive for consistency between the different Groups. For this purpose, they shall ensure, when relevant, the exchange of information of all work representing an interregional interest between the Groups concerned.

2. PROCESS FOR ESTABLISHING REGIONAL [] LISTS

1. **Project promoters (PP) [] wanting to obtain the status of PCI for a project that is potentially eligible for identification as a project 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 (CBA) 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) **For all II projects of common interest II included in the Union-wide list after 1 August 2013, proposed electricity transmission and storage projects falling under the categories set out in point 1(a) (b) and II (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) 714/2009.**
- (4) For all Union-wide lists of projects of common interest adopted after 1 August 2013, proposed gas transmission and storage 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) 715/2009.
- (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 more than 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 submitted 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 2009/72/EC) check the consistent application of the criteria/CBA methodology and evaluate their European added value. They shall present their assessment to the Group.**
- (5b) For 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 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) The Group shall meet to examine and rank the submitted projects taking into account the assessment of the regulators, or the assessment of the Commission for oil and carbon dioxide transport projects.
- (5d) The draft regional lists of projects falling under the categories set out in points 1 and 2 of Annex II elaborated by the Groups shall be submitted to the Agency six months before the adoption date of the Union-wide list. The regional lists shall be assessed by the Agency within three months from the date of receipt. The Agency shall provide an opinion on the consistent application of the identification and ranking criteria and the CBA across regions.

(5e) Within [1 month] of the date of receipt of the Agency opinion, the Group, or the High Level Steering Group if applicable, **shall** adopt the final regional list, based on the Groups' proposal and taking into account the opinion of the Agency, or the assessment of the Commission for oil and carbon dioxide transport projects. The adoption of the final regional list in the Group and the HLSG **may** be based on consensus²⁷. The Groups shall submit the final regional lists to the Commission.

²⁷ **Note: this provision relates to the *consensus* on the *entire* final regional list; it is to be read in conjunction with Article 3(3) last sentence: "...each *individual* proposal for a *project* shall require the approval of the Member State(s), to the territory of which the project relates."**

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 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 storage capacity allowing a net annual electricity generation of at least **250 MW capacity and 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 State 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 100,000 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 non dispatchable 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 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), 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.

The total expenditure for the project over its technical lifecycle shall be taken into account when calculating these indicators.

- (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 HHI index 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 system and to enhancing the remaining flexibility of the system to cope with supply disruptions 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 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, such as open seasons, the impacts on the indicators defined in Annex IV and the following impacts:
- []
- (b) System resilience, including disaster and climate resilience, and system security, notably for European critical infrastructures as defined in Directive 2008/114/EC;
- []
- (e) Flexibility of and 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 project²⁸. 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 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.

²⁸ **Note: moved from previous paragraph**

ANNEX VI
GUIDELINES FOR TRANSPARENCY AND PUBLIC PARTICIPATION

- (1) The manual of procedures 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;
 - (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.
- (2) To increase public participation in the permit granting process, the following principles shall be applied:
 - (a) The stakeholders affected by a project of common interest, including relevant 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 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 concentrated 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. 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;
 - (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, at least three alternative routes considered, expected impacts, including of cross-border nature, and possible mitigation measures;
 - (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:
 - (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;
 - (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;
 - (e) the manual of procedures pursuant Article 10(1).
