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

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

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Subject: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT
AND THE COUNCIL on the exercise of the power to adopt delegated acts
conferred on the Commission pursuant to Regulation (EU) No 347/2013 of
the European Parliament and of the Council of 17 April 2013 on guidelines
for trans-European energy infrastructure and repealing Decision No
1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No
714/2009 and (EC) No 715/2009

Delegations will find attached document COM(2016) 509 final.

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

on the exercise of the power to adopt delegated acts conferred on the Commission pursuant to Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009

1. INTRODUCTION

Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009¹ ('TEN-E Regulation') lays down guidelines for the timely development and interoperability of priority corridors and areas of trans-European energy infrastructure.

The TEN-E Regulation introduces the notion of a 'project of common interest' ('PCI') which is an infrastructure project necessary to implement the abovementioned energy infrastructure priority corridors and thematic areas. PCIs are energy infrastructure projects which are key for building well-interconnected energy networks in Europe and are cornerstones of various European strategies, including the Energy Union Strategy, the 2020 Energy and Climate Strategy and the 2030 Framework for Climate and Energy.

The TEN-E Regulation also provides (i) a regulatory framework for selecting PCIs that are necessary to implement priority corridors and areas, and (ii) lays down a set of measures which facilitate the timely implementation of PCIs, including rules for streamlining the permit granting, rules and guidance for the cross-border allocation of costs and risk-related incentives as well as rules determining the conditions for eligibility of PCIs for financial assistance.

PCIs are set out in a Union list of PCIs which constitutes an annex to the TEN-E Regulation ('Union list'). The Union list is established by a delegated act adopted by the Commission pursuant to Article 3(4) of the TEN-E Regulation, subject to the conditions for the exercise of the delegation laid down in its Article 16.

Article 3(4) of the TEN-E Regulation requires the Union list to be established every two years, on the basis of the regional lists adopted by the decision-making bodies of the so-called 'Regional Groups', as established according to Article 3(1)² of the TEN-E Regulation, following the procedure set out in Article 3(3) and (4) as well as Annex III.2 to the TEN-E Regulation.

Since the adoption of the TEN-E Regulation, the Commission has exercised its competence twice by adopting delegated regulations establishing two consecutive Union lists of PCIs in 2013 and in 2015, respectively.

2. LEGAL BASIS

The present report of the Commission is required under Article 16(2) of the TEN-E Regulation. This provision grants to the Commission the power to adopt delegated acts establishing the Union list of PCIs, as set out in Article 3(4) of the TEN-E Regulation.

In accordance with Article 16(2) of the TEN-E Regulation the power to adopt delegated acts is conferred on the Commission for a period of four years, starting from 15 May 2013. The Commission is required to prepare a report in respect to the exercise of the delegated powers nine months before the end of the four-year period at the latest.

¹ OJ L 115, 25.4.2013, p. 39-75.

² The Regional Groups as defined by the TEN-E Regulation consist of the Commission and the Member States that are located in particular geographic areas ('priority corridors') as set out in Annex I.1 to the TEN-E Regulation.

Article 16(2) of the TEN-E Regulation envisages that the delegation of the power will be tacitly extended for consecutive four-year periods, unless the European Parliament or the Council opposes such an extension not later than three months before the end of each four-year period.

3. EXERCISE OF THE DELEGATION

3.1. Delegated act in force

One delegated regulation is currently in force. It has been adopted by the Commission, based on the delegation conferred on it by Article 3(4) of the TEN-E Regulation, and passed successfully the period for objection of the co-legislators:

- Commission Delegated Regulation (EU) 2016/89 of 18 November 2015 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest³.

Delegated Regulation (EU) No 2016/89, which entered into force on 16 February 2016, amended Annex VII of the TEN-E Regulation by setting out the (second) Union list of PCIs.

3.2. Expired delegated act

One delegated regulation adopted by the Commission, pursuant to Article 3(4) of the TEN-E Regulation and which had passed successfully the period for objection of the co-legislators, is no longer valid:

- Commission Delegated Regulation (EU) No 1391/2013 of 14 October 2013 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure as regards the Union list of projects of common interest⁴.

Delegated Regulation (EU) 1391/2013, which entered into force on 10 January 2014, amended the TEN-E Regulation by setting out the (first) Union list of PCIs. The Union list set out by Delegated Regulation (EU) 2016/89 replaced the Union list set out by Delegated Regulation (EU) No 1391/2013.⁵

³ OJ L 19, 27.1.2016, p. 1.

⁴ OJ L 349, 21.12.2013, p. 28.

⁵ See recital (10) and Article 1 of Delegated Regulation (EU) No 2016/89.

3.3 Public consultations prior to the adoption of delegated acts

- Delegated Regulation (EU) No 2016/89 of 18 November 2015

The Commission carried out a public consultation from 22 December 2014 to 31 March 2015. The consultation process was open and it was not subject to any limitations with regard to the categories of stakeholders. The consultation complied with the Commission's consultation standards.

- Delegated Regulation (EU) No 1391/2013 of 14 October 2013

The Commission had started the consultation process sixteen months prior to the adoption of the delegated act. The (second) open public consultation was held between 20 June and 4 October 2012. The consultation process was open and it was not subject to any limitations with regard to the categories of stakeholders. The consultation complied with the Commission's consultation standards.

3.4. Delegated acts to be adopted in the future

The Commission, according to Article 3(4) of the TEN-E Regulation, is obliged to ensure that the Union list of PCIs is established every two years. Consequently, the Union list established by Delegated Regulation (EU) No 2016/89 of 18 November 2015 will be replaced by a new (third) Union list of PCIs to be laid down by a Commission delegated regulation that will be adopted in 2017 in accordance with the procedure in the TEN-E Regulation.

4. CONCLUSION

With this report the Commission complies with the reporting obligation laid down in Article 16(2) of the TEN-E Regulation. The Commission considers that it has exercised its delegated powers within the scope conferred to it by the TEN-E Regulation, with due respect to all the Regulation's provisions regarding transparency and public participation.

In accordance with Article 16(2) of the TEN-E Regulation, the delegation of power conferred by Article 3(4) of the TEN-E Regulation should be extended in order to enable the Commission to adopt consecutive Union lists of PCIs, including the (third) one in 2017 needed to achieve the EU's energy and climate objectives.

The Commission invites the European Parliament and the Council to take note of this report.

The Commission considers that the extension of delegation of power defined in Article 16(2) of the TEN-E Regulation should not be opposed.