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THE EUROPEAN PARLIAMENT

THE COUNCIL

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Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning the notification to the Commission of investment projects in energy infrastructure within the European Union, replacing Council Regulation (EU, Euratom) No 617/2010 and repealing Council Regulation (EC) No 736/96

REGULATION (EU) No .../2014
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

concerning the notification to the Commission
of investment projects in energy infrastructure within the European Union,
replacing Council Regulation (EU, Euratom) No 617/2010
and repealing Council Regulation (EC) No 736/96

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 194 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 Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 271, 19.9.2013, p. 153.

² Position of the European Parliament of 4 February 2014 (not yet published in the Official Journal) and decision of the Council of

Whereas:

- (1) Obtaining an overall picture of the development of investment in energy infrastructure in the Union is essential for the development of the Union's energy policy and for the Commission to perform its tasks in the field of energy. The availability of regular and up-to-date data and information should enable the Commission to make the necessary comparisons and evaluations and to propose relevant measures based on appropriate figures and analysis, in particular concerning the future balance between energy supply and demand.
- (2) The energy landscape within and outside the Union has changed significantly in recent years and makes investment in energy infrastructure a crucial issue for securing the Union's energy supply, for the functioning of the internal market and for the transition towards a low-carbon energy system which the Union has begun.
- (3) The new energy context requires significant investment in all kinds of infrastructure in all energy sectors as well as the development of new types of infrastructure and new technologies to be taken up by the market. The liberalisation of the energy sector and the further integration of the internal market give a more prominent role to economic operators for investment. At the same time, new policy requirements such as targets affecting the fuel mix will alter Member States' policies towards new and/or modernised energy infrastructure.

- (4) In this context, greater attention should be paid to investment in energy infrastructure in the Union, in particular with a view to anticipating problems, promoting best practices and establishing greater transparency on the future development of the Union's energy system.
- (5) The Commission and in particular its Market Observatory for Energy should therefore have at its disposal accurate data and information on investment projects, including decommissioning, in the most significant components of the Union's energy system.
- (6) Data and information regarding foreseeable developments in production, transmission and storage capacities and projects in the various energy sectors are of interest to the Union and are important to future investment. It is therefore necessary to ensure that the Commission is notified of investment projects on which construction or decommissioning work has started or on which a final investment decision has been taken.
- (7) Pursuant to Articles 41 and 42 of the Treaty establishing the European Atomic Energy Community (Euratom Treaty), undertakings are under an obligation to notify their investment projects. It is necessary to supplement such information with, in particular, a regular reporting on the implementation of investment projects. Such additional reporting is without prejudice to Articles 41 to 44 of the Euratom Treaty. However, imposing a double burden on undertakings should be avoided wherever possible.

- (8) In order for the Commission to have a consistent view of the future developments of the Union's energy system as a whole, a harmonised reporting framework for investment projects based on updated categories of official data and information to be transmitted by the Member States is necessary.
- (9) Member States should, to this end, notify to the Commission data and information on investment projects in energy infrastructure planned or under construction in their territory concerning the production, storage and transport of oil, natural gas, electricity, including electricity from renewable sources, electricity from coal and lignite, and the co-generation of electricity and useful heat; the production of bio-fuels; and the capture, transport and storage of carbon dioxide. Member States should also notify to the Commission data and information on investment projects in electricity interconnections and gas interconnections with third countries. Undertakings concerned should be under an obligation to notify such data and information to the Member State concerned.

- (10) Given the time horizon of investment projects in the energy sector, reporting every two years should be sufficient.
- (11) With a view to avoiding disproportionate administrative burdens and to minimise costs to Member States and undertakings, in particular for small and medium-sized enterprises, this Regulation should allow Member States and undertakings to be exempted from reporting obligations provided that equivalent information has already been supplied to the Commission pursuant to energy sector-specific Union legal acts, aiming at achieving the objectives of competitive energy markets in the Union, of sustainability of the Union's energy system and of the security of energy supply to the Union. Any duplication of reporting requirements specified in the third internal market package for electricity and natural gas should therefore be avoided. In order to ease the reporting burden, the Commission should provide support to Member States with a view to clarify in which cases it considers that data or information already notified to it under other legal acts meet the requirements of this Regulation.
- (12) The Commission, and in particular its Market Observatory for Energy, should be able to take all appropriate measures to process data and to simplify and secure data notification, and in particular to operate integrated IT tools and procedures, which should guarantee the confidentiality of the data or information notified to the Commission.

- (13) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council¹, while the protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council². This Regulation leaves those provisions intact.
- (14) Member States, or their delegated entities, and the Commission should preserve the confidentiality of commercially sensitive data and information. Therefore, Member States or their delegated entities should, with the exception of data and information related to cross-border transmission projects, aggregate such data and information at national level before submitting it to the Commission. If required the Commission should further aggregate those data in such a way as to prevent any details concerning individual undertakings or installations from being disclosed or inferred.

¹ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

² Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (15) The Commission and in particular its Market Observatory for Energy should provide a regular and cross-sector analysis of the structural evolution and perspectives of the Union's energy system and, where appropriate, more focused analysis on certain aspects of that energy system. That analysis should in particular contribute to enhancing energy security by identifying possible infrastructure and investment gaps with a view to achieving a balance between energy supply and demand. The analysis should also form a contribution to a discussion at Union level about energy infrastructures and should therefore be forwarded to the European Parliament, to the Council and to the European Economic and Social Committee and made available to interested parties.
- (16) Small and medium-sized enterprises will be able to benefit, in the context of their investment planning, from the Commission's cross-sector analysis and the data and information published by the Commission under this Regulation.
- (17) The Commission may be assisted by experts from Member States or any other competent experts with a view to developing a common understanding of potential infrastructure gaps and associated risks and to fostering transparency regarding future developments, which is of particular interest for new market entrants.

- (18) This Regulation should replace Council Regulation (EU, Euratom) No 617/2010¹, which was annulled by the Court of Justice on 6 September 2012² and the effects of which were to be maintained until the entry into force of a new regulation. Therefore, with the entry into force of this Regulation, the annulment of Regulation (EU, Euratom) No 617/2010, as ruled by the Court, should take effect. Furthermore, Council Regulation (EC) No 736/96³, that was repealed by the annulled Regulation (EU, Euratom) No 617/2010, should be repealed by this Regulation.
- (19) The form and technical details of the notification to the Commission of data and information on investment projects in energy infrastructure are set out in the Commission Regulation (EU, Euratom) No 833/2010⁴. Regulation (EU, Euratom) No 833/2010 should remain applicable until its revision, which will follow the adoption of this Regulation.

¹ Council Regulation (EU, Euratom) No 617/2010 of 24 June 2010 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and repealing Regulation (EC) No 736/96 (OJ L 180, 15.7.2010, p. 7).

² Judgment of the Court of Justice of 6 September 2012 in Case C-490/10, Parliament v Council (ECR 2012, p. I-0000).

³ Council Regulation (EC) No 736/96 of 22 April 1996 on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors (OJ L 102, 25.4.1996, p. 1).

⁴ Commission Regulation (EU, Euratom) No 833/2010 of 21 September 2010 implementing Council Regulation (EU, Euratom) No 617/2010 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union (OJ L 248, 22.9.2010, p. 36).

- (20) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. 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 those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation establishes a common framework for the notification to the Commission of data and information on investment projects in energy infrastructure in the sectors of oil, natural gas, electricity - including electricity from renewable sources, electricity from coal and lignite, and cogeneration of electricity and useful heat - as well as on investment projects related to bio-fuel production and the capture, transport and storage of carbon dioxide produced by those sectors.
2. This Regulation shall apply to investment projects of the types listed in the Annex on which construction or decommissioning work has started or on which a final investment decision has been taken.

Member States may furthermore submit any estimated data or preliminary information on investment projects of the types listed in the Annex on which construction work is scheduled to start within five years and on those which are scheduled to be decommissioned within three years, but for which a final investment decision has not been taken.

Article 2
Definitions

For the purpose of this Regulation, the following definitions apply:

- (1) 'infrastructure' means any type of installations or part of an installation relating to production, transmission and storage, including interconnections between the Union and third countries;
- (2) 'investment projects' means projects aiming at:
 - (i) building new infrastructure;
 - (ii) transforming, modernising, increasing or reducing the capacity of existing infrastructure;
 - (iii) partial or total decommissioning of existing infrastructure;
- (3) 'final investment decision' means the decision taken at the level of an undertaking to definitively earmark funds for the investment phase of a project;
- (4) 'investment phase' means the phase during which construction or decommissioning takes place and capital costs are incurred; it excludes the planning phase;

- (5) 'planning phase' means the phase during which project implementation is prepared and which includes, where appropriate, a feasibility assessment, preparatory and technical studies, obtaining licences and authorisations and incurring capital costs;
- (6) 'investment projects under construction' means investment projects for which construction has started and capital costs have been incurred;
- (7) 'decommissioning' means the phase where an infrastructure is permanently taken out of operation;
- (8) 'production' means the generation of electricity and the processing of fuels, including bio-fuels;
- (9) 'transmission' means the transport of energy sources or products or carbon dioxide, through a network, in particular:
 - (i) through pipelines, other than an upstream pipeline network and other than the part of pipelines primarily used in the context of local distribution; or
 - (ii) through extra-high-voltage and high-voltage interconnected systems and other than the systems primarily used in the context of local distribution;

- (10) 'capture' means the process of capturing carbon dioxide from industrial installations for storage;
- (11) 'storage' means the stocking on a permanent or temporary basis of energy or energy sources in above-ground or underground infrastructure or geological sites or containment of carbon dioxide in underground geological formations;
- (12) 'undertaking' means any natural or legal private or public person, deciding or implementing investment projects;
- (13) 'energy sources' means:
 - (i) primary energy sources, such as oil, natural gas or coal;
 - (ii) transformed energy sources, such as electricity;
 - (iii) renewable energy sources including hydroelectricity, biomass, biogas, wind, solar, tidal, wave and geothermal energy; and
 - (iv) energy products, such as refined oil products and bio-fuels;

- (14) 'specific body' means a body entrusted by any energy sector-specific legal act of the Union with the preparation and adoption of Union-wide multi-annual network development and investment plans in energy infrastructure, such as the European network of transmission system operators for electricity ('ENTSO-E') referred to in Article 4 of Regulation (EC) No 714/2009 of the European Parliament and of the Council¹ and the European network for transmission system operators for gas ('ENTSO-G') referred to in Article 4 of Regulation (EC) No 715/2009 of the European Parliament and of the Council²;
- (15) 'aggregated data' means data aggregated at the level of one or more Member States.

Article 3

Notification of data

1. While keeping the collection and reporting burden proportionate, Member States or the entities to which they delegate that task shall compile all the data and information required under this Regulation as from 1 January 2015 and every two years thereafter.

They shall notify the data and relevant project information specified in this Regulation to the Commission in 2015, that year being the first reporting year, and from then onwards every two years. That notification shall be made in aggregated form, except for data and relevant information relating to cross-border transmission projects.

¹ 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 1228/2003 (OJ L 211, 14.8.2009, p. 15).

² 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 (OJ L 211, 14.8.2009, p. 36).

Member States or their delegated entities shall notify aggregated data and relevant project information by 31 July of the reporting year concerned.

2. Member States or their delegated entities are exempted from the obligations set out in paragraph 1, provided that, and to the extent that, pursuant to energy sector-specific legal acts of the Union or the Euratom Treaty:
 - (a) the Member State concerned or its delegated entity has already notified to the Commission data or information equivalent to that required under this Regulation and has indicated the date of that notification and the specific legal act concerned; or
 - (b) a specific body is entrusted with the preparation of a multi-annual investment plan in energy infrastructure at Union level and, to that end, compiles data and information equivalent to that required under this Regulation. In this case and for the purposes of this Regulation, that specific body shall notify all the relevant data and information to the Commission.

Article 4

Data sources

The undertakings concerned shall notify the data or information referred to in Article 3 to the Member States, or their delegated entities, in whose territory they are planning to carry out investment projects before 1 June of each reporting year. The data or information notified shall reflect the situation of investment projects as of 31 March of the relevant reporting year.

The first paragraph shall not apply to undertakings where the Member State concerned decides to use other means of supplying the Commission with the data or information referred to in Article 3, provided that the data or information supplied are comparable.

Article 5

Content of the notification

1. With regard to investment projects of the types listed in the Annex, the notification provided for in Article 3 shall indicate, where appropriate:
 - (a) the volume of the capacity planned or under construction;
 - (b) the type and main characteristics of infrastructure or capacity planned or under construction, including the location of cross-border transmission projects, if applicable;
 - (c) the probable year of commissioning;
 - (d) the type of energy sources used;
 - (e) the installations capable of responding to security of supply crises, such as equipment enabling reverse flows or fuel switching; and
 - (f) the equipment of carbon capture systems or retrofitting mechanisms for carbon capture and storage.

2. With regard to any proposed decommissioning of capacities, the notification provided for in Article 3 shall indicate:
 - (a) the character and the capacity of the infrastructure concerned; and
 - (b) the probable year of decommissioning.
3. Any notification under Article 3 shall include where appropriate:
 - (a) the total volume of installed production, transmission and storage capacities which are in place at the beginning of the reporting year concerned or whose operation is interrupted for a period exceeding three years; and
 - (b) relevant information concerning delays and/or obstacles to the implementation of an investment project, where Member States, their delegated entities or the specific body concerned possess that information.

Article 6

Quality and publicity of data

1. Member States, their delegated entities or, where appropriate, the specific bodies shall aim to ensure the quality, relevance, accuracy, clarity, timeliness and coherence of the data and information which they notify to the Commission.

Where specific bodies make the notification, the data and information notified may be accompanied by appropriate comments from Member States.

2. The Commission may publish aggregated data and information forwarded pursuant to this Regulation, in particular in analyses referred to in Article 10(3), provided that no details concerning individual undertakings and installations are disclosed or can be inferred.
3. Member States, their delegated entities, or the Commission shall each preserve the confidentiality of commercially-sensitive data or information in their possession.

Article 7

Implementing provisions

Within the limits laid down by this Regulation, by ...*, the Commission shall adopt the provisions necessary for the implementation of this Regulation, concerning the form and other technical details of the notification of data and information referred to in Articles 3 and 5. Until then, Regulation (EU, Euratom) No 833/2010 shall remain applicable.

Article 8

Data processing

The Commission shall be responsible for developing, hosting, managing and maintaining the IT resources needed to receive, store and carry out any processing of the data or information on energy infrastructure which is notified to it pursuant to this Regulation.

The Commission shall also ensure that the IT resources referred to in the first paragraph guarantee the confidentiality of the data or information which is notified to it pursuant to this Regulation.

* OJ: Please insert a date of two months after the date of entry into force of this Regulation.

Article 9

Protection of individuals with regards to the processing of data

This Regulation is without prejudice to Union law and, in particular, does not alter Member States' obligations with regard to the processing of personal data, as laid down in Directive 95/46/EC, or the obligations incumbent upon the Union's institutions and bodies under Regulation (EC) No 45/2001 with regard to the processing of personal data by them in the course of their duties.

Article 10

Monitoring and reporting

1. On the basis of data and information forwarded and, if appropriate, of any other data sources including data purchased by the Commission, and taking into account relevant analyses such as the multi-annual network development plans for gas and for electricity, the Commission shall forward to the European Parliament, to the Council and to the European Economic and Social Committee and shall publish every two years a cross-sector analysis of the structural evolution and perspectives of the Union's energy system. That analysis shall aim in particular at:
 - (a) identifying potential future gaps between the demand and supply of energy that are of significance for the Union's energy policy, including for the functioning of the internal energy market, with an emphasis on potential future deficiencies and flaws in the production and transmission infrastructure;

- (b) identifying investment obstacles and promoting best practices to address them; and
- (c) increasing transparency for market participants and potential market entrants.

On the basis of this data and information, the Commission may also provide any specific analysis deemed necessary or appropriate.

2. In preparing the analyses referred to in paragraph 1, the Commission may be assisted by experts from Member States and/or any other experts, professional associations with specific competence in the area concerned.

The Commission shall provide all Member States with an opportunity to comment on the draft analyses.

3. The Commission shall discuss the analyses with interested parties, such as ENTSO-E, ENTSO-G, the Gas Coordination Group, the Electricity Coordination Group and the Oil Coordination Group.

Article 11

Review

By 31 December 2016, the Commission shall review the implementation of this Regulation, and present a report on the results of that review to the European Parliament and to the Council. In the review, the Commission shall, *inter alia*, examine:

- (a) the possible extension of the scope of this Regulation to include:
 - (i) the extraction of gas, oil and coal;
 - (ii) terminals for compressed natural gas;
 - (iii) additional types of electricity storage; and
- (b) the question as to whether or not thresholds for renewable energy installations should be lowered.

In examining those options, the Commission shall take into account the need to ensure a balance between the increased administrative burden and the benefits of acquiring the additional information.

Article 12

Repeal

Regulation (EC) No 736/96 shall be repealed from ...*.

Article 13

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*.

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

Done at ...,

For the European Parliament

The President

For the Council

The President

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

ANNEX

INVESTMENT PROJECTS

1. OIL

1.1. Refining

- distillation plants with a capacity of not less than 1 million tonnes a year,
- extension of distilling capacity beyond 1 million tonnes a year,
- reforming/cracking plants with a minimum capacity of 500 tonnes a day,
- desulphurisation plants for residual fuel oil/gas oil/feedstock/other petroleum products,

Chemical plants which do not produce fuel oil and/or motor fuels, or which produce them only as by-products, are excluded.

1.2. Transport

- crude oil pipelines with a capacity of not less than 3 million metric tonnes a year, and extension or lengthening of these pipelines, which are not less than 30 kilometres long,

- petroleum product pipelines with a capacity of not less than 1,5 million tonnes a year, and extension or lengthening of these pipelines, which are not less than 30 kilometres long,
- pipelines which constitute essential links in national or international interconnecting networks and pipelines and projects of common interest identified in the guidelines established under Article 171 of the Treaty on the Functioning of the European Union ('TFEU').

Pipelines for military purposes and those supplying plants outside the scope of point 1.1. are excluded.

1.3. Storage

- storage installations for crude oil and petroleum products (installations with a capacity of 150 000 m³ or more or, in the case of tanks, with a capacity not less than 100 000 m³),

Tanks intended for military purposes and those supplying plants outside the scope of point 1.1. are excluded.

2. GAS

2.1. Transmission

- gas, including natural gas and biogas, transport pipelines that form part of a network which mainly contains high-pressure pipelines, excluding pipelines that form part of an upstream pipeline network and excluding the part of high-pressure pipelines primarily used in the context of local distribution of natural gas,
- "pipelines and projects of common interest" identified in the guidelines established under Article 171 TFEU.

2.2. Liquefied natural gas (LNG) terminals

- terminals for the import of LNG, with a regasification capacity of 1 billion m³ per year or more.

2.3. Storage

- storage installations connected to the transport pipelines referred to in point 2.1.

Gas pipelines, terminals and installations for military purposes and those supplying chemical plants which do not produce energy products, or which produce them only as by-products, are excluded.

3. ELECTRICITY

3.1. Production

- thermal and nuclear power stations (generators with a capacity of 100 MWe or more),
- biomass/bioliquids/waste power generation installations (with a capacity of 20 MW or more),
- power stations with cogeneration of electricity and useful heat (installations with an electrical capacity of 20 MW or more),
- hydro-electric power stations (installations having a capacity of 30 MW or more),
- wind power farms with a capacity of 20 MW or more,
- concentrated solar thermal and geothermal installations (with a capacity of 20 MW or more),
- photovoltaic installations (with a capacity of 10 MW or more).

3.2. Transmission

- overhead transmission lines, if they have been designed for the voltage commonly used at national level for the interconnection lines, and provided they have been designed for a voltage of 220 kV or more,

- underground and submarine transmission cables, if they have been designed for a voltage of 150 kV or more,
- projects of common interest identified in the guidelines established under Article 171 TFEU.

4. BIOFUEL

4.1. Production

- Installations that are able to produce or refine bio-fuels (installations with a capacity of 50 000 tonnes/year or more).

5. CARBON DIOXIDE

5.1. Transport

- Carbon dioxide pipelines related to the production installations referred to in points 1.1. and 3.1.

5.2. Storage

- storage installations (storage site or complex with a capacity of 100 kt or more),

Storage installations intended for research and technological development are excluded.