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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	19 November 2015
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 18.11.2015 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest

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Delegations will find attached document C(2015) 8052 final.

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Brussels, 18.11.2015  
C(2015) 8052 final

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

**of 18.11.2015**

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

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

#### **Objective and legal basis of the proposed action**

This Delegated Regulation establishes a Union list of projects of common interest (PCIs) to replace the list, as established by the Commission Delegated Regulation (EU) No 1391/2013<sup>1</sup> of 14 October 2013.

Article 3(4) of Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure<sup>2</sup> (the TEN-E Regulation) requires the Commission to adopt, every two years, a delegated act that establishes a Union list of PCIs. The Union list should be based on the regional lists of PCIs adopted by the decision-making bodies of the regional groups established by the TEN-E Regulation. This Delegated Regulation takes the form of an annex to that TEN-E Regulation.

PCIs are specific energy infrastructure projects that are necessary to implement the twelve priority corridors and thematic areas laid down in the TEN-E Regulation. They are critical for completing the European internal energy market and for achieving the Union's energy policy objective of affordable, secure and sustainable energy.

#### **General context of the Delegated Regulation**

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

The TEN-E Regulation establishes the nine strategic geographical infrastructure priority corridors in the domains of electricity, gas and oil, and the three Union-wide infrastructure priority areas for smart grids, electricity highways and carbon dioxide transportation networks. It provides for a transparent and inclusive process of identifying specific PCIs that are needed to implement these priority corridors and areas. It also lays down a set of measures to ensure that the PCIs are implemented in good time, including:

- strengthened transparency and improved public consultation;
- accelerated permit granting procedures (binding three-and-a-half-years' time limit);
- improved, faster and better streamlined environmental assessment;
- a single national competent authority will act as a one-stop-shop for permit granting procedures;
- improved regulatory treatment by allocating costs according to the net benefits, and regulatory incentives; and
- possibility of receiving financial assistance under Connecting Europe Facility (CEF) in the form of grants and innovative financial instruments.

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<sup>1</sup> 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 interest; (OJ L 349, 21.12.2013, p.28).

<sup>2</sup> OJ L 115, 25.4.2013, p.39.

This Union list provides for 195 PCIs, including 108 in electricity, 77 in gas, 7 in oil and 3 smart grids. PCIs in the field of carbon dioxide networks have not been yet identified as projects are not mature enough at this stage. A number of electricity PCIs have been labelled as 'electricity highways' where they fulfil at the same time the criteria in sub-point 11 of Annex I and point 1(b) of Annex II to the TEN-E Regulation.

The list contains 52 PCIs fewer than the first Union list adopted in 2013. It should be highlighted that 13 PCIs have already been successfully commissioned or are to be commissioned by the end of 2015. These completed projects constitute an integral part of the trans-European energy networks in the EU. The lower number of PCIs results mainly from the enhanced selection process and stronger focus on the most important bottlenecks.

## **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

### **PROCESS PRIOR TO THE ADOPTION OF THE UNION LIST OF PCIS**

The process of establishing the Union list of PCIs started in November 2014 and ends with the adoption of this Delegated Regulation.

The identification process of PCIs is based on regional cooperation. The PCIs were identified on the basis of the regional lists of proposed PCIs as adopted by the regional groups. The regional groups comprise representatives of the Member States, national regulatory authorities (NRAs), transmission system operators (TSOs), European Networks of Transmission System Operators for gas and electricity (ENTSOG and ENTSO-E), the Agency for the Cooperation of Energy Regulators (ACER), and the Commission.

The process also involved relevant stakeholders acting in the field of energy, such as consumer and environmental protection organisations.

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

#### **(a) Submission of candidate PCIs by project promoters**

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

#### **(b) Check of the criteria and the cross-border relevance by the NRAs**

The NRAs (coordinated by ACER) cross-checked the candidate electricity, gas and smart grids PCIs' compliance with the criteria and their cross-border relevance. Their findings were submitted to the regional groups.

#### **(c) Assessment of candidate PCIs by the regional groups**

Each regional group carried out an assessment of the candidate PCIs proposed for its priority corridor. Projects were assessed with regard to their contribution to implementing the priority corridor. For the first time, electricity and gas candidate PCIs were subject to cost/benefit analysis according to the newly developed ENTSO-E<sup>3</sup> and ENTSOG<sup>4</sup> methodologies.

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<sup>3</sup> <https://www.entsoe.eu/Documents/SDC%20documents/TYNDP/ENTSO-E%20cost%20benefit%20analysis%20approved%20by%20the%20European%20Commission%20on%204%20February%202015.pdf>.

Following the quantitative assessment, a qualitative evaluation was carried out according to the criteria in Article 4(4) of the TEN-E Regulation, including the urgency of projects, the Member States affected, the contribution to territorial cohesion and complementarity with other proposed projects.

#### **(d) Consultation of stakeholders on candidate PCIs**

Point 1(5) of Annex III to the TEN-E Regulation requires each regional group to consult organisations representing relevant stakeholders (and, if deemed appropriate, stakeholders directly) including producers, distribution system operators, suppliers, consumers, and environmental protection organisations. Public consultations on gas and electricity candidate PCIs were carried out from 22 December 2014 to 31 March 2015. These consultations complied with the Commission's consultation standards.

In summary, a number of environmental stakeholders emphasised the need for respecting in the PCIs identification process the existing environmental legislation. However, the main goal of the process was to assess the necessity of the proposed projects – taking account of their socioeconomic benefits and costs - from the point of view of the Union's energy policy. In any event, all PCIs must comply with Union legislation and undergo a complete permit granting procedure, including an environmental impact assessment and public consultation. Should a PCI be found not to be in compliance with Union legislation, it may be removed from the Union list.

Several stakeholders commented on the consultation process itself, pointing out the need for greater transparency and to improve the format of the information subject to the consultation. It should be stressed that, in addition to the consultation process, the representatives of consumer and environmental organisations were regularly invited to, and some participated in, meetings of the regional groups in which the regional lists of PCIs were prepared.

Public consultations were also held on three proposed smart grid candidate PCIs between 5 March 2015 and 15 April 2015, and on seven proposed oil candidate PCIs and additional gas and electricity projects between 29 July 2015 and 22 October 2015. The shorter consultation period resulted from a significantly smaller number of candidate PCIs proposed in these two domains.

#### **(e) Agreement of the decision-making bodies on the draft regional lists of PCIs**

Following the assessment of candidate PCIs by the regional groups, their decision-making bodies at technical level (composed of Commission and Member States representatives) agreed on the draft regional lists and the preliminary ranking of candidate PCIs. Meetings of the technical decision-making bodies of the regional groups were held on 3 July (electricity) 29 September (gas and oil) and 17 April 2015 (smart grids).

#### **(f) ACER's opinion on the draft regional lists**

In line with point 2(12) of Annex III to the TEN-E Regulation, ACER provided its opinions on the draft regional lists of electricity and gas PCIs on 30 October 2015. It assessed the consistent application of the assessment criteria and cost/benefit analysis across the regions.

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<sup>4</sup> [http://www.entsog.eu/public/uploads/files/publications/CBA/2015/INV0175-150213\\_Adapted\\_ESW-CBA\\_Methodology.pdf](http://www.entsog.eu/public/uploads/files/publications/CBA/2015/INV0175-150213_Adapted_ESW-CBA_Methodology.pdf).

Its opinions were positive and it recommended the draft regional lists for adoption as the Union list of PCIs.

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

The final regional lists of electricity, gas and oil PCIs were adopted by the decision-making bodies at high level of the regional groups on 3 November 2015. The final regional list of smart grid PCIs was adopted on 6 May 2015.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

#### **Summary of the proposed action**

This Delegated Regulation identifies 195 PCIs which are deemed necessary to implement the priority corridors in the electricity, gas and oil sectors and the priority thematic area smart grids and electricity highways, as identified in the TEN-E Regulation.

The Regulation is adopted pursuant to Article 3(4) of the TEN-E Regulation, which empowers the Commission to adopt, every two years, a delegated act establishing the Union lists of PCIs. This list is to replace the first Union list of PCIs established by Commission Delegated Regulation (EU) No 1391/2013. This Regulation takes the form of a new Annex VII to the TEN-E Regulation.

All PCIs included in this Regulation must comply with Union legislation, including environmental legislation and the unbundling provisions in Directives 2009/72/EC<sup>5</sup> and Directive 2009/73/EC<sup>6</sup>. A PCI is to be implemented only after successful completion of permit granting procedures in all countries concerned, including environmental impact assessments and public consultations.

PCIs on the Union list are eligible to benefit from the TEN-E Regulation provisions for an accelerated permit granting procedure, greater transparency and public consultation, improved regulatory treatment and, subject to further assessment, Union financial assistance under CEF.

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<sup>5</sup> 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 and repealing Directive 2003/54/EC; (OJ L 211, 14.8.2009, p.55).

<sup>6</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC; (OJ L 211, 14.8.2009, p.94).

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

**of 18.11.2015**

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

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009<sup>7</sup>, and in particular Article 3(4) thereof,

Whereas:

- (1) Regulation (EU) No 347/2013 establishes a framework for the identification, planning and implementation of projects of common interest ('PCIs') which are required to implement the nine strategic geographical energy infrastructure priority corridors identified in the fields of electricity, gas and oil, and the three Union-wide energy infrastructure priority areas for smart grids, electricity highways and carbon dioxide transportation networks.
- (2) Pursuant to Article 3(4) of Regulation (EU) No 347/2013, the Commission is empowered to adopt delegated acts to establish the Union list of PCIs ('Union list').
- (3) Projects proposed for the inclusion in the Union list have been assessed by the regional groups and meet the criteria laid down in Article 4 of Regulation (EU) No 347/2013.
- (4) The draft regional lists of PCIs were agreed by the regional groups at technical-level meetings. Following positive opinions of the Agency for the Cooperation of Energy Regulators ('ACER') on 30 October 2015 on the consistent application of the assessment criteria and the cost/benefit analysis across regions, the regional groups' decision-making bodies adopted the regional lists on 3 November 2015. Pursuant to Article 3(3)(a) of Regulation (EU) No 347/2013, prior to the adoption of the regional lists, all proposed projects were approved by the Member States to whose territory the projects relate.
- (5) Organisations representing relevant stakeholders, including producers, distribution system operators, suppliers, and consumer and environmental protection organisations were consulted on the projects proposed for inclusion in the Union list.

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<sup>7</sup> OJ L 115, 25.4.2013, p. 39.

- (6) PCIs should be listed per strategic trans-European energy infrastructure priorities in the order laid down in Annex I to Regulation (EU) No 347/2013. The Union list should not contain any ranking of projects.
- (7) PCIs should be listed either as stand-alone PCIs or as a part of a cluster of several PCIs. However, certain PCIs should be clustered because they are interdependent or (potentially) competing.
- (8) The Union list contains projects at different stages of their development, including pre-feasibility, feasibility, permit-granting and construction. For PCIs at an early development stage, studies may be needed to demonstrate technical and economic viability and compliance with Union legislation, including environmental legislation. In this context, potential negative impacts on the environment should be adequately identified, assessed and avoided or mitigated.
- (9) The inclusion of projects on the Union list is without prejudice to the outcome of the relevant environmental assessment and permit procedure. Under Article 5(8) of Regulation (EU) No 347/2013, a project that does not comply with Union law may be removed from the Union list. The implementation of PCIs, including their compliance with the relevant legislation, should be monitored in accordance with Article 5 of that Regulation.
- (10) Pursuant to the second paragraph of Article 3(4) of Regulation (EU) No 347/2013, the Union list is established every two years, therefore the Union list established by Delegated Regulation (EU) No 1391/2013<sup>8</sup> is no longer valid and should be replaced.
- (11) Pursuant to Article 3(4) of Regulation (EU) No 347/2013, the Union list is to take the form of an annex to that Regulation.
- (12) Regulation (EU) No 347/2013 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

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

#### *Article 2*

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

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

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<sup>8</sup> 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 interest (OJ L 349, 21.12.2013, p.28).



Done at Brussels, 18.11.2015

*For the Commission  
The President  
Jean-Claude JUNCKER*