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COVER NOTE

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

date of receipt: 24 November 2017

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

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 23.11.2017
amending Regulation (EU) No 347/2013 of the European Parliament and of
the Council as regards the Union list of projects of common interest

Delegations will find attached document C(2017) 7834 final.

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Brussels, 23.11.2017
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COMMISSION DELEGATED REGULATION (EU) .../...

of 23.11.2017

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

{SWD(2017) 425 final}

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 2016/89 of 18 November 2015.¹

PCIs are specific energy infrastructure projects that are critical for completing the European internal energy market, achieving the Union's energy policy objective of affordable, secure and sustainable energy, and for attaining the Union's climate objectives.

Article 3(4) of Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure (the TEN-E Regulation) requires the Commission to adopt, every two years, a delegated act that establishes a Union list of PCIs.² The Union list should be based on the regional lists of candidate PCIs prepared and adopted by the regional groups established by the TEN-E Regulation.

This Delegated Regulation takes the form of an annex to the TEN-E Regulation.

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.³

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 thematic areas for smart grids, electricity highways and cross-border carbon dioxide network. It provides for a transparent and inclusive process of identifying specific PCIs that are needed to implement these priority corridors and areas.

The TEN-E Regulation also lays down a set of measures to ensure that PCIs are implemented in good time, including:

- strengthened transparency and improved public consultation;
- accelerated and streamlined permit granting procedure, including the binding three-and-a-half-years' time limit;
- improved, faster and better streamlined environmental assessment;

¹ Commission Delegated Regulation (EU) No 2016/89 of 18 November 2015 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 19, 27.01.2016, p.1).

² OJ L 115, 25.4.2013, p.39.

³ Since the United Kingdom notified on 29 March 2017 its intention to leave the Union, pursuant to Article 50 of the Treaty on European Union, all PCIs located in the United Kingdom and connecting the United Kingdom with a Member State will be subject to reassessment as to their compliance with the criteria laid down in Article 4 of the TEN-E Regulation (notably the required impact on at least two Member States) with the entry into force of the withdrawal agreement, or failing that after 29 March 2019 (unless that period is extended by the European Council in agreement with the United Kingdom). The next (fourth) Union list of PCIs will be adopted in Q3 2019.

- a single national competent authority acting 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.

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 September 2016 and ends with the adoption of this Delegated Regulation.

The identification process of PCIs was based on regional cooperation and it was managed by the regional groups. Regional groups for electricity, smart grids, and gas 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. Regional groups for oil and carbon dioxide transport projects comprise representatives of the Member States, project promoters and the Commission.

The PCI process also involved relevant stakeholders acting in the field of energy, such as consumer and environmental protection organisations. Furthermore, public consultations were organised to obtain views of the public on the necessity of the proposed projects from the point of view of the Union's energy policy.

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

(a) Identification of the infrastructure needs, and the improved assessment methodology

The PCI selection process in the electricity and gas sectors started in September 2016 with the identification at regional level of specific infrastructure needs that need to be addressed by new infrastructure projects and that cannot be effectively resolved by other non-infrastructure means, including regulatory or market-based measures.

The infrastructure needs identified by the regional groups constituted the basis of the improved 2017 assessment methodologies of electricity and gas PCI candidates. These methodologies were developed within the Cooperation Platform comprising representatives of the Commission, ACER, ENTSOG and ENTSO-E as well as representatives of NRAs on ad-hoc basis. The Cooperation Platform was established to ensure better coordination of the PCI process between the key participants, and to provide for greater transparency.

The assessment framework for the assessment of candidate PCIs in the priority area of smart grid deployment was improved in 2017 with a similar process.

(b) 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 submitted by promoters during the dedicated calls as candidate PCIs were part of the 10-year network development plans (TYNDPs) for gas and electricity developed by ENTSOG and ENTSO-E respectively.

(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.

In the first place, projects were assessed with regard to their compliance with the general criteria laid down in Articles 4(1) of the TEN-E Regulation, including their contribution to the objectives of the corridor and their cross-border dimension.

Subsequently, the regional groups assessed projects' contributions to the specific criteria laid down in Article 4(2) of the TEN-E Regulation according to the agreed dedicated methodologies developed within the Cooperation Platform (for electricity and gas PCI candidates) or by a working group (for oil and cross-border carbon dioxide network PCI candidates). Furthermore, electricity and gas candidate PCIs were subject to cost-benefit analysis carried out according to the methodologies developed by ENTSO-E and ENTSOG.^{4,5} In the priority thematic area of smart grid deployment, the cost-benefit analysis was prepared by the promoters themselves and the application for PCI was assessed in accordance with the Assessment Framework and the legal provisions.⁶

Following the quantitative assessment, a qualitative evaluation of the electricity and gas candidate PCIs identified by the regional groups 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

Provisions of Annex III to the TEN-E Regulation provide for enhanced transparency of and public participation in the PCI process. Each regional group should consult the organisations representing relevant stakeholders — and, if deemed appropriate, stakeholders directly — including producers, distribution system operators, suppliers, consumers, and organisations for environmental protection. The regional group may also organise hearings or consultations, where relevant for the accomplishments of its tasks.

Public consultations on gas and electricity candidate PCIs were carried out from 27 March to 19 June 2017 complying with the Commission's consultation standards. Overall, 342 questionnaires from 23 Member States were submitted via the EU Survey platform representing a wide range of stakeholders. Furthermore, several position papers were submitted. In summary, a number of environmental stakeholders emphasised the need for respecting the existing environmental legislation in the course of the PCIs identification process. 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.

In addition to the online consultation process, several bilateral meetings between the representatives of consumer and environmental organisations and the promoters of the gas

⁴ <https://www.entsoe.eu/Documents/SDC%20documents/TYNDP/ENTSO-E%20cost%20benefit%20analysis%20approved%20by%20the%20European%20Commission%20on%204%20February%202015.pdf>.

⁵ http://www.entsog.eu/public/uploads/files/publications/CBA/2015/INV0175-150213_Adapted_ESW-CBA_Methodology.pdf.

⁶ https://ses.jrc.ec.europa.eu/sites/ces.jrc.ec.europa.eu/files/publications/assessment_framework.pdf.
http://publications.jrc.ec.europa.eu/repository/bitstream/JRC107348/jrc_smart_grid_pci_science_for_policy_report_2017_gk_final.pdf.

PCI candidates were organised to allow for in-depth discussions on the chosen projects and their potential impact on the society and environment.

Moreover, stakeholders were regularly invited to, and participated in meetings of the regional groups which assessed the PCI candidates and drew up the regional lists of PCIs.

A second public consultation process dedicated to four proposed smart grids candidate PCIs and to seven proposed oil candidate PCIs was held between 3 April and 26 June 2017. In total five responses were received for each category. The respondents largely supported the inclusion of the candidate projects in the Union list.

Finally, a third consultation dedicated to cross-border carbon dioxide transport projects was conducted on four proposed PCI candidates between 22 May and 15 August 2017. There were 12 questionnaires submitted with 11 positive replies and one questioning the pertinence of projects involving the UK due to its intention to leave the European Union (Brexit).

(e) Check of the criteria and the cross-border relevance by the NRAs

The NRAs (coordinated by ACER) cross-checked, for the electricity, gas and smart grids PCI candidates, the consistent application of the criteria/cost-benefit analysis methodology and their cross-border relevance. Overall, the NRAs assessment has been positive and only some NRAs have expressed their reservations with regard to a handful of projects. Detailed findings were submitted to the regional groups.

(f) Agreement of the decision-making bodies on the draft regional lists of candidate PCIs

Following the assessment of candidate PCIs by the regional groups, their decision-making bodies at technical level (composed of the 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 13 July for electricity, smart grids and gas projects, and on 27 September for oil projects. In the case of cross-border carbon dioxide network projects, the draft regional list was agreed in written form by 21 September.

(g) ACER's opinions 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 (including smart grids) and gas PCIs on 10 October 2017. ACER assessed the consistent application of the assessment criteria and cost/benefit analysis across the regions. Its opinions were positive and provided some recommendations of further improvements of the PCI process.

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

The *final* regional lists in all nine priority corridors and all three priority thematic areas were adopted by the decision-making bodies of the regional groups on 17 October 2017. The decision-making bodies adopted the final regional lists on the basis of the draft regional lists and by considering the ACER's opinion, the NRAs' assessments and in the case of oil and carbon-dioxide transport projects the Commission's assessment.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Summary of the proposed action

This Delegated Regulation identifies 173 PCIs which are deemed necessary to implement the priority corridors in the electricity, gas and oil sectors and the priority thematic areas: smart

grids, electricity highways and the cross-border carbon-dioxide networks, as identified in the TEN-E Regulation.

This Delegated 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 list of PCIs. This list is to replace the second Union list of PCIs established by Commission Delegated Regulation (EU) No 2016/89. This Delegated Regulation takes the form of a new Annex VII to the TEN-E Regulation.

This Union list provides for 173 PCIs, including 106 in electricity, 53 in gas, six in oil, four smart grids, and four cross-border carbon dioxide network projects. In total 35 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 Union lists includes projects that are critical for completing the European internal energy market, for achieving the Union's energy policy objective of affordable, secure and sustainable energy, and for attaining the Union's climate objectives. PCIs include all the priority projects agreed by the High-Level Groups established to facilitate at regional level development of cross-border and trans-European projects as well as implementation of harmonised rules. When completed, electricity PCIs will help Member States to comply with the 2030 climate and energy policy objectives, and the 2020 and 2030 electricity interconnection target. Gas PCIs will allow all Member States to have access to at least three sources of gas, and will ensure that no Member State remains in energy isolation.

This Union list contains in total 22 PCIs fewer than the (second) Union list adopted in 2015. Two electricity and 24 gas projects have been removed from the list while four cross-border carbon-dioxide network projects have been added. The lower number of gas PCIs results mainly from (i) the consideration that the Union's decarbonisation objectives may lead to the lower gas demand, (ii) more robust PCI selection process which started with the identification of the specific infrastructure needs, and (iii) more attention being given to projects addressing most urgent and essential bottlenecks.

PCIs included in this Delegated Regulation are to be implemented only after successful completion of permit granting procedures in all countries concerned, including environmental impact assessments and public consultations. PCIs should comply with Union legislation, including environmental legislation and the unbundling provisions in Directives 2009/72/EC and Directive 2009/73/EC.^{7,8}

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 by the Commission, Union financial assistance under CEF.

⁷ 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).

⁸ 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 23.11.2017

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 715/2009⁹, 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 Regulation (EU) No 347/2013, the Commission is empowered 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 10 October 2017 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 17 October 2017. 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.
- (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 because they are interdependent or (potentially) competing.

⁹ OJ L 115, 25.4.2013, p. 39.

- (8) The Union list is established every two years, therefore the Union list established by Delegated Regulation (EU) No 2016/29¹⁰ is no longer valid and should be replaced.
- (9) 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.

Done at Brussels, 23.11.2017

For the Commission
The President
Jean-Claude JUNCKER

¹⁰ 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 interest (OJ L 19, 27.01.2016, p.1).