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## PROPOSAL

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	19 December 2017
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2017) 769 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Repealing Regulation (EU) No 256/2014 of the European Parliament and of the Council concerning the notification to the Commission of investment projects in energy infrastructure within the European Union

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Delegations will find attached document COM(2017) 769 final.

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Encl.: COM(2017) 769 final



Brussels, 19.12.2017  
COM(2017) 769 final

2017/0347 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**Repealing Regulation (EU) No 256/2014 of the European Parliament and of the Council  
concerning the notification to the Commission of investment projects in energy  
infrastructure within the European Union**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

The following proposal for repealing Regulation (EU) No 256/2014 ('the Regulation') is put forward in the context of the Commission's REFIT programme and commitment on better regulation. The objective is to ensure a legislative framework that is fit for purpose and high-quality, as stated in the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making<sup>1</sup>. The Commission has identified this Regulation as no longer fit for purpose and proposes that it be repealed.

On 26 February 2014, Regulation (EU) No 256/2014 on the notification of investment projects in energy infrastructure within the European Union to the Commission was adopted to ensure that the EU's energy policy develops in an effective way and responds to the EU's real needs. This Regulation was supported by Commission implementing Regulation (EU) No 1113/2014 of 16 October 2014, which set out the form and technical details of the notification referred to in Articles 3 and 5 of Regulation (EU) No 256/2014<sup>2</sup>.

Based on Article 194 of the Treaty on the Functioning of the European Union, Regulation (EU) No 256/2014 and Commission implementing Regulation (EU) No 1113/2014 required Member States to notify the Commission of investment projects on which construction or decommissioning work had started or on which a final investment decision had been taken. In this way, the Commission was meant to gain access to data and information on planned developments in production, transmission and storage capacities, as well as on projects in the various energy sectors of interest to the EU and important for future energy and investment policies.

Therefore, the Regulation aimed to give the Commission an overall picture of the development of investment in energy infrastructure in the EU so that it could better fulfil its responsibilities in the field of energy.

The obligations under this Regulation were already in force under 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<sup>3</sup>. The Court of Justice annulled Council Regulation No 617/2010<sup>4</sup> due to its wrong legal basis, but its effects remained until Regulation (EU) No 256/2014 was adopted.

Member States have gone through three reporting exercises (2011, 2013 and 2015) since the obligations under this Regulation and its predecessor, Council Regulation No 617/2010, have been in place. Therefore, enough time has elapsed for the Commission to be able to carry out an evidence-based critical analysis of whether the Regulation has had the expected results.

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<sup>1</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12.5.2016, p. 1–14.

<sup>2</sup> OJ L 302, 22.10.2014, p. 26,

<sup>3</sup> OJ L 180, 15.7.2010, p. 7

<sup>4</sup> Judgment of the Court of Justice of 6 September 2012 in Case C-490/10, Parliament v Council (ECR 2012, p. I-0000)).

## 2. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

### • Ex-post evaluations, regulatory fitness and simplification

The Commission ordered three external studies after the three Member State reporting exercises took place under this Regulation and its predecessor. In the light of their findings, in 2016 the Commission reviewed Regulation (EU) No 256/2014 as per Article 11 of the Regulation itself. This was part of a wider fitness check that covered the planning and reporting obligations under the body of energy legislation. The Commission published it in November 2016<sup>5</sup>, along with its proposal for a Regulation on the Governance of the Energy Union<sup>6</sup>.

This exercise revealed that:

1. There were significant overlaps between reporting obligations under this Regulation and reporting obligations to ENTSO-E<sup>7</sup> and ENTSO-G<sup>8</sup>, with little to no value added by obligations under this Regulation.
2. Most of the information provided by the Member States under this Regulation can be easily obtained from other sources: ENTSOs (European Network of Transmission System Operators), TYNDPs (ten-year network development plans), the annual reports of Transmission System Operators and utility companies, national sectoral development plans (e.g. renewables action plans), etc. Furthermore, the Commission regularly collects market information through its Energy Market Observation System (EMOS).
3. Across all three exercises completed, data collected only covered about half of the EU's energy sector.
4. Inherent difficulties in implementing some of the Regulation's requirements, especially in relation to information to be provided regarding future capacity, undermined the usefulness of the three reporting exercises carried out.

Consequently, the Commission concluded that Regulation (EU) No 256/2014 did not have the expected results. It should, therefore, be proposed that it be repealed.

### • Stakeholder consultations

As part of the preparatory work for its proposal for a legislative initiative on the Governance of the Energy Union<sup>9</sup>, the Commission carried out an extensive

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<sup>5</sup> Staff Working Document(2016) 396 final.  
[http://ec.europa.eu/energy/sites/ener/files/documents/1\\_en\\_autre\\_document\\_travail\\_service\\_part1\\_v4.pdf](http://ec.europa.eu/energy/sites/ener/files/documents/1_en_autre_document_travail_service_part1_v4.pdf)

<sup>6</sup> COM/2016/0759 final/2 - 2016/0375 (COD). Commission proposal for a Regulation of the European Parliament and of the Council on the Governance of the Energy Union, amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EU, Directive 2012/27/EU, Directive 2013/30/EU and Council Directive (EU) 2015/652 and repealing Regulation (EU) No 525/2013.

<sup>7</sup> European Network of Transmission System Operator for Electricity

<sup>8</sup> European Network or Transmission System Operator for Gas

<sup>9</sup> COM/2016/0759 final/2 - 2016/0375 (COD). Commission proposal for a Regulation of the European Parliament and of the Council on the Governance of the Energy Union, amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EU, Directive

consultation to collect views and input from stakeholders, citizens and Member States. The consultation asked how existing planning and reporting arrangements in the energy field could be improved to meet the objectives of the Energy Union and to reduce administrative burden.

The public consultation was launched on 11 January 2016, lasted over 12 weeks and closed on 22 April 2016. The responses fed into the Commission's evaluation and fitness check of existing planning and reporting obligations as well as into the impact assessment of its legislative proposal on the Governance of the Energy Union.

Respondents to the consultation identified the obligations under Regulation (EU) No 256/2014 as ones which could be repealed<sup>10</sup>.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

The proposal repeals Regulation (EU) No 256/2014 of the European Parliament and of the Council of 26 February 2014 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) N° 736/96.

The legal basis of Regulation (EU) No 256/2014, namely, Article 194 of the Treaty on the functioning of the European Union, is subject to the ordinary legislative procedure. The Commission is therefore proposing the repeal of this Regulation to the European Parliament and to the Council.

### **4. BUDGETARY IMPLICATIONS**

The Regulation had very limited budgetary implications, which related to expenditure on information technology, data purchasing and reimbursement of experts. No major direct impact was expected for Member State budgets either.

The repeal of this Regulation will put an end to the limited expenditure linked to it. It will help rationalise the use of Commission and Member State resources by removing double reporting obligations and processing of data which have become available via other, higher-quality sources.

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2012/27/EU, Directive 2013/30/EU and Council Directive (EU) 2015/652 and repealing Regulation (EU) No 525/2013.

<sup>10</sup> See *ibid* SWD(2016) 396 final, p. 118.

Proposal for a

## REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

### Repealing Regulation (EU) No 256/2014 of the European Parliament and of the Council concerning the notification to the Commission of investment projects in energy infrastructure within the European Union

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 Committee<sup>11</sup>,

Having regard to the opinion of the Committee of the Regions<sup>12</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The European Parliament, the Council of the European Union and the European Commission confirmed their joint commitment to updating and simplifying legislation in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>13</sup>.
- (2) In order to clean -up and reduce the volume of legislation, it is necessary to identify legislation that is obsolete or no longer fit-for-purpose. Repealing such legislation keeps the legislative framework transparent, clear and easy to use.
- (3) Regulation (EU) No 256/2014 of the European Parliament and of the Council<sup>14</sup> required Member States to notify the Commission of investment projects on which construction or decommissioning work had started or on which a final investment decision had been taken.
- (4) The obligations under Regulation (EU) No 256/2014 concerning the notification of investment projects and certain information and data relating to it already existed

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<sup>11</sup> OJ C [...], [...], p. [...].

<sup>12</sup> OJ C [...], [...], p. [...].

<sup>13</sup> OJ L 123, 12.5.2016, p. 1.

<sup>14</sup> Regulation (EU) No 256/2014 of the European Parliament and of the Council of 26 February 2014 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 (OJ L 84, 20.3.2014, p.61).

under Council Regulation (EU, Euratom) No 617/2010<sup>15</sup>. The Court of Justice annulled Regulation (EU, Euratom) No 617/2010<sup>16</sup> due to it not having the correct legal basis, but its effects were maintained until Regulation No 256/2014 was adopted.

- (5) The previous legislative framework was intended to provide the Commission with data and information on planned developments in production, transmission and storage capacities as well as on projects in the energy sectors. It was intended to give the Commission an overall picture of the development of investment in energy infrastructure in the Union.
- (6) There have been three reporting exercises since the creation of the obligations under Regulation (EU) No 256/2014 and Council Regulation (EU, Euratom) No 617/2010 (in 2011, 2013 and 2015). Furthermore, the Commission ordered three external studies after the three Member States' reporting exercises which took place under Regulation (EU) No 256/2014. Consequently, enough time has elapsed and sufficient experience has been gained for the Commission to be able to carry out an evidence-based critical analysis of whether the Regulation has delivered the expected results.
- (7) In 2016 the Commission carried out the review provided for in Article 11 of Regulation (EU) No 256/2014, including a stakeholder consultation covering all planning and reporting obligations in the energy sector. The Commission came to the conclusion that there were significant overlaps between reporting obligations under Regulation (EU) No 256/2014 and the reporting obligations to the Energy Transmission System Operators ENTSO-E and ENTSO-G. It also became apparent that the quality and appropriateness of the information and data received were often poor, and that this information and data had become available to the Commission via other sources, such as ENTSOs (European Network of Transmission System Operators), TYNDPs (ten-year network development plans), the annual reports of Transmission System Operators and utility companies, national development plans, etc. Furthermore, it was noted that the Commission had direct access to market data via its Energy Market Observation System (EMOS).
- (8) Regulation (EU) No 256/2014 has therefore not delivered the expected results in terms of quantity, quality and appropriateness of data and information received by the Commission.
- (9) Consequently, Regulation (EU) No 256/2014 should be repealed,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EU) No 256/2014 is repealed.

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<sup>15</sup> 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).

<sup>16</sup> Judgment of the Court of Justice of 6 September 2012 in Case C-490/10, Parliament v Council, ECLI:EU:C:2012:525

*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,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*