EUROPEAN COMMISSION

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C7-0371/11 EN

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC

(Text with EEA relevance)

{SEC(2011) 1233 final}
{SEC(2011) 1234 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Major efforts are needed to modernise and expand Europe's energy infrastructure and to interconnect networks across borders to meet the Union's core energy policy objectives of competitiveness, sustainability and security of supply.

The Commission's Communication on energy infrastructure priorities for 2020 and beyond [1], adopted on 17 November 2010, therefore called for a new EU energy infrastructure policy to coordinate and optimise network development on a continental scale. It confirmed in particular the necessity to overhaul the existing Trans-European Networks for Energy (TEN-E) policy and financing framework.

Such a new policy is crucial to ensure that solidarity between Member States will become operational, that the internal energy market is completed and isolated regions are linked, that alternative supply or transmission routes and sources of energy will materialise and that renewables will develop and compete with traditional sources, as highlighted by the 4th of February 2011 European Council.

On 29 June 2011, the Commission adopted the Communication "A Budget for Europe 2020" on the next multi-annual financial framework (2014-2020)[2], which proposes the creation of a Connecting Europe Facility to promote the completion of priority energy, transport and digital infrastructures with a single fund of EUR 40 billion, out of which EUR 9.1 billion are dedicated to energy[3].

The present proposal lays down rules for the timely development and interoperability of trans-European energy networks in order to achieve the energy policy objectives of the Treaty on the Functioning of the European Union to ensure the functioning of the internal energy market, to ensure security of supply in the Union, to promote energy efficiency and the development of new and renewable forms of energy, and to promote the interconnection of energy networks.

More specifically, this Regulation aims at the full integration of the internal energy market, including by ensuring that no Member State is isolated from the European network, contributes to sustainable development and protection of the environment by enabling the Union to achieve its targets of a 20% reduction of greenhouse gas emissions[4], 20% increase in energy efficiency and 20% of renewable energy in final energy consumption by 2020, while ensuring security of supply and solidarity among Member States.

By pursuing these objectives, this proposal contributes to smart, sustainable and inclusive growth and brings forward benefits for the entire European Union in terms of competitiveness and economic, social and territorial cohesion.

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[1] COM(2010)677

[2] COM(2011) 500/I final and COM(2011) 500/II final (Policy Fiches)

[3] All amounts in 2011 prices

[4] 30% if the conditions are right

To this effect, this initiative identifies, for the period up to 2020 and beyond, a limited number of trans-European priority corridors and areas covering electricity and gas networks as well as oil and carbon dioxide transport infrastructure, for which European Union action is most warranted. It then aims at implementing these priorities by:

– streamlining permit granting procedures to significantly reduce their duration for projects of common interest and increase public participation and acceptance for the implementation of such projects;

– facilitating the regulatory treatment of projects of common interest in electricity and gas by allocating costs depending on the benefits provided and ensuring allowed returns are in line with risks incurred;

– ensuring implementation of projects of common interest by providing necessary market-based and direct EU financial support. In this latter regard, the proposal provides the basis for eligibility of projects of common interest for EU financial assistance under the "Connecting Europe Facility", which is subject to a separate legislative proposal.

The proposal is a strategic priority in the Commission Work Programme for 2011.

General context

The challenge of interconnecting and adapting our energy infrastructure to the new needs is significant, urgent, and concerns all energy sectors.

Electricity networks must be upgraded and modernised to meet increasing electricity demand due to a major shift in the overall energy value chain and mix. The grids must also be urgently extended and upgraded, including through electricity highways, to foster market integration and maintain the existing levels of system's security, but especially to transport and balance electricity generated from renewable sources, which is expected to more than double in the period 2007-2020. At the same time, reaching the EU's 2020 energy efficiency and renewable energy targets will not be possible without more innovation and intelligence in the networks at both transmission and distribution level, in particular through information and communication technologies.

Natural gas will continue, provided its supply is secure, to play a key role in the EU's energy mix in the coming decades and will gain importance as the back-up fuel for variable electricity generation. In the medium term depleting indigenous conventional natural gas resources call for additional, diversified imports. Gas networks face additional flexibility requirements in the system, the need for bi-directional pipelines, enhanced storage capacities and flexible supply, including liquefied (LNG) and compressed natural gas (CNG).

Given the role of oil in the energy mix of the coming decades, maintaining uninterrupted crude-oil supplies to land-locked EU countries in Central-Eastern Europe, currently dependent on limited supply routes, is of strategic importance.

Finally, carbon capture and storage (CCS) technologies would reduce carbon dioxide emissions on a large scale while allowing the use of fossil fuels, which will remain an important source for electricity generation over the next decades. The future development of a cross-border network for carbon dioxide transport requires steps to be taken now for European level infrastructure planning and development.

In its report to the June 2011 Energy Council[5], the Commission has estimated total investment needs in energy infrastructures of European importance up to 2020 at about EUR 200 billion:

– About EUR 140 billion for high voltage electricity transmission systems, both onshore and offshore, storage, and smart grid applications at transmission and distribution level;

– About EUR 70 billion for high pressure gas transmission pipelines (coming into the EU and between EU Member states), storage, liquefied/compressed natural gas (LNG/CNG) terminals and reverse flow infrastructure;

– About EUR 2.5 billion for carbon dioxide transport infrastructure.

Investment volumes for the period from 2011 up to 2020 will increase by 30% for gas and up to 100% for electricity compared to current levels. This investment challenge and urgency clearly distinguishes energy infrastructures from infrastructures in other sectors, as energy networks are a precondition for reaching the 2020 energy and climate targets and the longer term climate objectives.

The main identified obstacles, which will under business-as-usual assumptions prevent these investments from taking place or delay them far beyond the 2020 deadline, are problems related to permit granting (lengthy and ineffective permit granting procedures, along with public opposition), regulation (framework not geared towards delivering European infrastructure priorities) and financing (limited financing capacities of operators, lack of adapted funding instruments and sufficient support).

Existing provisions

The TEN-E framework has been developed and shaped in the 1990's through the successive TEN-E Guidelines and the corresponding financing Regulation. The 2006 Guidelines for Trans-European Energy Networks[6] listed about 550 projects eligible for Community support, classifying them in the following three categories: projects of European interest (42 in total); priority projects and projects of common interest. These projects cover only electricity and gas infrastructure. The report on the implementation of the TEN-E framework in the period 2007-2009[7], published in April 2010, concluded that while making a positive contribution to selected projects by giving them political visibility, the policy lacks focus, flexibility and a top-down approach to fill identified infrastructure gaps.

The TEN financing Regulation[8], adopted on 20 June 2007, sets out the conditions for co-funding of TEN-E projects, with a budget for the period 2007-2013 of EUR 155 million. The TEN-E Programme's financial resources and set-up have however proven to be inadequate in light of the paradigm shift to a low carbon energy system and hence the major evolution and investments needed in energy infrastructures in the coming years (limited budget, no risk mitigation instruments, no funding outside the EU, insufficient synergies with other EU funds).

[5] SEC(2011)755
[6] Decision No 1364/2006/EC
[7] COM(2010)203 and SEC(2010)505
[8] Regulation (EC) No 680/2007

Set up in the context of the economic and financial crisis, the European Energy Programme for Recovery[9] has, for the first time, allocated significant one-off amounts (about EUR 3.85 billion) to a limited number of eligible projects in the domain of electricity and gas infrastructures, off-shore wind and CCS demonstration projects.

Consistency with other EU policies and objectives

This initiative is anchored in the Europe 2020 Strategy for smart, sustainable and inclusive growth[10], which put energy infrastructures at the forefront as part of the flagship initiative "Resource efficient Europe". It underlined the need to urgently upgrade Europe's networks towards a European "smart supergrid", interconnecting them at the continental level, in particular to integrate renewable energy sources. The priorities identified and the measures proposed in this initiative with regard to permit granting, regulation and financing are fully in line with these objectives.

The proposal aims at replacing the existing TEN-E Guidelines and forms a logical package with the "Connecting Europe Facility" (CEF) developed in view of replacing the current TEN financing Regulation.

This initiative is also a vital contribution to the cost-effective achievement of the two binding targets of 20% of renewables and 20%[11] of greenhouse gas emissions reductions by 2020 and aims to be in line with the pathway set out in the Commission's Communication on a Roadmap for moving to a competitive low-carbon economy in 2050 and the EU's long term objective of an 80-95% reduction in greenhouse gas emissions by 2050 compared to 1990 levels[12].

In accordance with Article 11 TFEU, the proposal integrates the existing environmental protection requirements in the context of energy infrastructure.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation, data collection and use of expertise

This proposal was developed on the basis of a broad range of contributions from Member States and interested parties provided on various occasions (high-level conferences, workshops, surveys), including two public consultations on permit granting and on the use of project bonds for infrastructure projects[13]. The impacts of the various policy options proposed were analysed in two impact assessments carried out in 2010 and 2011 using the results of various models and numerous studies, of which three were specifically commissioned to address investment needs, permit granting and financing issues. Both impact assessments addressed the economic, social and environmental impacts of the options, taking into account the subsidiarity and proportionality principles.

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[9] Regulation (EC) No 663/2009

[10] COM(2010) 2020

[11] 30% if the conditions are right

[12] COM(2011) 112 in combination with SEC(2011)288

[13] See section 1.2.1 of the accompanying impact assessment.

Impact assessment

The first impact assessment (IA) in 2010 focused on the scope of the new initiative in terms of energy sectors covered, its design in terms of identifying priorities and selecting projects of common interest, the form of regional coordination and cooperation and general principles with regard to permit granting.

Based on this first analysis, the 2011 IA analyses in much more detail policy options in the fields of permit granting and public consultation, regulation and financing that should apply to projects of common interest selected for implementation of the previously identified infrastructure priorities. For each of the various obstacles identified, it assesses available, effective and cost-efficient solutions.

Permit granting and public consultation

The analysis compares three options: establishment of a regime of common interest; rules on the organisation and duration of the permit granting process, notably a "full one-stop shop" and a time limit; a combination of the two previous options.

As regards the measures related to the Habitats Directive, the impact on the local flora and fauna of the regime of common European interest is expected to be relevant for only a very small subset of projects of common interest identified as possibly in conflict with Natura2000 areas, which are, however, crucial for the achievement of energy and climate policy objectives.

The overall impact of the last policy option is considered to be the most positive of all, as it would lead to the on-time completion of almost all the needed projects of common interest by 2020, provided appropriate measures on regulation and financing are in place. Environmental impacts, social impacts on employment and economic impacts on GDP are expected to be stronger under this policy option as all projects of common interest would be completed, while administrative cost savings would be significant.

Regulatory issues

The analysis compares three options: cross-border cost allocation; investment incentives; a combination of the two previous options.

The analysis shows that both an ex ante cross-border cost allocation mechanism and incentives commensurate with the risks incurred by the operator are necessary to ensure implementation of projects of common interest facing challenges with regard to their viability. Their overall economic, social and environmental impact is large and positive.

Financing

For the purpose of assessing the full range of possible measures with regard to infrastructure development, the analysis also addresses four financing options, even if their translation in policy measures will take place in the CEF: use of risk sharing instruments (including project bonds and guarantees); use of risk capital instruments (including equity participations); use of grant support for project studies and construction; a combination of grants, risk sharing and risk capital instruments.

The overall impact of the last policy option is the most positive, as it cumulate the positive impacts of the individual options and provide a flexible toolbox of market-based instruments and direct financial support, leading to synergies and efficiency gains by offering the most cost-effective solution for specific project risks. This policy option also reflects the measures proposed under the Connecting Europe Facility.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of proposed action

The proposed Regulation grants priority to 12 strategic trans-European energy infrastructure corridors and areas. It sets rules to identify, within a set of defined energy infrastructure categories, projects of common interest (PCIs), which are necessary to implement these priorities. To this end, it establishes a selection process based on regional expert groups and an advisory role for the Agency for the Cooperation of Energy Regulators (ACER) in electricity and gas, the final decision, to be updated every two years, on a Union-wide list of projects of common interest being taken by the Commission. The regional expert groups and the Agency for the Cooperation of Energy are entrusted with the monitoring and evaluation of the implementation of PCIs. The Commission may nominate European coordinators for PCIs facing difficulties.

The proposal establishes a regime of common interest for PCIs, giving particular responsibilities to one national competent authority within each Member State to coordinate and oversee the permit granting process for PCIs, setting minimum standards for transparency and public participation and fixing the maximum allowed duration of the permit granting process. The proposal also clarifies that PCIs can be implemented under certain conditions for reasons of "overriding public interest" as defined in Directives 92/43/EC and 2000/60/EC. These measures are proportionate as they aim at a minimum alignment of national administrative procedures necessary to facilitate the implementation of – mostly cross-border – PCIs. Member States are free to design their specific internal procedures in line with their national legal systems in order to comply with the requirements of this Regulation.

The proposed Regulation provides a methodology and a process for the elaboration of a harmonised energy system-wide cost-benefit analysis for PCIs in electricity and gas. On the basis of this methodology, it gives responsibility to national regulatory authorities and ACER to allocate costs across -border for PCIs in these sectors according to the benefits in the Member States directly or indirectly concerned by these PCIs. National regulatory authorities are also requested to grant appropriate incentives through tariffs for the implementation of PCIs facing higher risks for justified reasons.

Finally, the Regulation determines the conditions for eligibility of PCIs to Union financial assistance under the Connecting Europe Facility, for both studies (accessible to all PCIs except those in the oil sector) and works (accessible to all PCIs in the smart grids and carbon dioxide sector, and to PCIs in electricity and gas fulfilling certain conditions, notably having obtained a cross-border cost allocation decision).

Legal basis

The proposal is based on Article 172 of the Treaty on the Functioning of the European Union. According to Article 171(1), "the Union shall establish a series of guidelines covering the

objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest ". Article 172 specifies that the guidelines and other measures referred to in Article 171(1) shall be adopted under co-decision procedure.

Subsidiarity principle

The subsidiarity principle applies to this proposal insofar as energy policy does not fall under the exclusive competence of the Union. Energy transmission infrastructure has Trans-European or at least cross-border nature or impacts. Member State level regulation is not suited and individual national administrations have no competence to deal with these infrastructures as a whole. From an economic perspective, energy network developments can best be achieved when planned with a European perspective, encompassing both EU and Member State action while respecting their respective competences. The proposed Regulation therefore respects the subsidiarity principle.

Proportionality principle and choice of legal instrument

The proposal does not go beyond what is necessary to achieve the objectives pursued, given the energy and climate policy objectives agreed at Union level and the obstacles to develop adequate energy infrastructures. The instrument chosen is a Regulation, which has direct application and is binding in its entirety. Such a measure is necessary to ensure timely implementation of the energy infrastructure priorities by 2020.

In particular, the establishment of a permit granting framework with competent authorities at national level and clear time limits, within which the permit granting process can be carried out according to national specificities, is proportional to the objective of accelerating the permit granting process.

4. BUDGETARY IMPLICATION

All budgetary implications of this proposal are dealt with under the legislative financial statement of the Proposal for a Regulation establishing the Connecting Europe Facility.

5. OPTIONAL ELEMENTS

Repeal of existing legislation

Adoption of the proposal will lead to repeal of Decision 1364/2006/EC as of 1 January 2014. However, this will not affect the granting, continuation or modification of financial aid awarded by the Commission on the basis of calls for proposals launched under the existing TEN financing Regulation for projects targeted by this Decision, or for TEN-E projects benefiting from support through structural funds.

European Economic Area (EEA)

The Proposal concerns an EEA matter and should therefore be applicable to it.

2011/0300 (COD)

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(Text with EEA relevance)

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 172 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[14],

Having regard to the opinion of the Committee of the Regions[15],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) On 26 March 2010, the European Council agreed to the Commission's proposal to launch a new strategy "Europe 2020". One of the priorities of the Europe 2020 strategy[16] is sustainable growth to be achieved by promoting a more resource efficient, greener and more competitive economy. The strategy put energy infrastructures at the forefront as part of the flagship initiative "Resource efficient Europe", by underlining the need to urgently upgrade Europe's networks, interconnecting them at the continental level, in particular to integrate renewable energy sources.

(2) Communication from the Commission entitled "Energy infrastructure priorities for 2020 and beyond – A Blueprint for an integrated European energy network"[17], followed by the Transport, Telecommunications and Energy Council conclusions of 28 February 2011 and the European Parliament resolution of 6 July 2011, called for a new energy infrastructure policy to optimise network development at European level

[14] OJ C , , p. .
[15] OJ C , , p. .
[16] COM(2010) 2020
[17] COM(2010) 677

for the period up to 2020 and beyond, in order to allow the Union to meet its core energy policy objectives of competitiveness, sustainability and security of supply.

(3) The European Council of 4 February 2011 underlined the need to modernise and expand Europe's energy infrastructure and to interconnect networks across borders, in order to make solidarity between Member States operational, to provide for alternative supply or transit routes and sources of energy and develop renewable energy sources in competition with traditional sources. It insisted that no EU Member State should remain isolated from the European gas and electricity networks after 2015 or see its energy security jeopardized by lack of the appropriate connections.

(4) Decision No 1364/2006/EC of the European Parliament and of the Council of 6 September 2006 lays down guidelines for trans-European energy networks[18]. These Guidelines (TEN-E) have as objectives to support the completion of the Union internal energy market while encouraging the rational production, transportation, distribution and use of energy resources, to reduce the isolation of less-favoured and island regions, to secure and diversify the Union's energy supplies also through co-operation with third countries, and to contribute to sustainable development and protection of the environment.

(5) Evaluation of the current TEN-E framework has clearly shown that this policy, while making a positive contribution to selected projects by giving them political visibility, lacks vision, focus, and flexibility to fill identified infrastructure gaps.

(6) Accelerating the refurbishment of existing and deployment of new energy infrastructure is vital to achieve the Union's energy and climate policy objectives, consisting in completing the internal market in energy, guaranteeing security of supply, notably for gas and oil, reducing greenhouse gas emissions by 20%[19], increasing the share of renewable energy in the final energy consumption to 20%[20] and achieving a 20% increase in energy efficiency by 2020. At the same time, the Union has to prepare its infrastructure for further decarbonisation of its energy system in the longer term towards 2050.

(7) Despite its legal existence as defined in Directives 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity[21] and 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[22], the internal market in energy remains fragmented due to insufficient interconnections between national energy networks. Union-wide integrated networks however are vital for ensuring a competitive and well functioning integrated market for promoting growth, employment and sustainable development.

(8) The Union's energy infrastructure should be upgraded in order to prevent and increase its resilience to natural or man-made disasters, adverse effects of climate change and

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18 OJ L 262, 22.9.2006, p. 1.

19 30% if the conditions are right

20 Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources, OJ L 140, 5.6.2009, p. 16.

21 OJ L 211, 14.8.2009, p.55.

22 OJ L 211, 14.8.2009p.94.

threats to its security, notably concerning European critical infrastructures as set out in Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection[23].

(9) The importance of smart grids in achieving the Union's energy policy objectives has been acknowledged in Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Smart grids: from innovation to deployment"[24].

(10) Communication from the Commission "The EU Energy Policy: Engaging with Partners beyond Our Borders" [25] underlined the need for the Union to include the promotion of energy infrastructure development in its external relations with a view to supporting the socio-economic development beyond the Union borders. The Union should facilitate infrastructure projects linking the Union's energy networks with third country networks, in particular in neighbouring countries and in countries, with which the Union has established specific energy cooperation.

(11) The investment needs up to 2020 in electricity and gas transmission infrastructures of European relevance have been estimated at about EUR 200 billion. The significant increase in investment volumes compared to past trends and the urgency to implement the energy infrastructure priorities requires a new approach in the way energy infrastructures, and notably those of cross-border nature, are regulated and financed.

(12) The Commission Staff Working Paper to the Transport, Telecommunications and Energy Council of 10 June 2011 "Energy infrastructure investment needs and financing requirements"[26] stressed that approximately half of the total investments needed for the decade up to 2020 are at risk of not being delivered at all or not in time due to obstacles related to permit granting, regulation and financing.

(13) This Regulation lays down rules for the timely development and interoperability of trans-European energy networks in order to achieve the Treaty's energy policy objectives to ensure the functioning of the internal energy market and security of supply in the Union, to promote energy efficiency and energy saving and the development of new and renewable forms of energy, and to promote the interconnection of energy networks. By pursuing these objectives, this proposal contributes to smart, sustainable and inclusive growth and brings benefits to the entire Union in terms of competitiveness and economic, social and territorial cohesion.

(14) The Commission has identified, following close consultations with all Member States and stakeholders, 12 strategic trans-European energy infrastructure priorities, whose implementation by 2020 is essential for the achievement of the Union's energy and climate policy objectives. These priorities cover different geographic regions or thematic areas in the field of electricity transmission and storage, gas transmission, storage and liquefied or compressed natural gas infrastructure, carbon dioxide transport and oil infrastructure.

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[23] OJ L 345, 23.12.2008, p. 75
[24] COM(2011) 202 final
[25] COM (2011) 539
[26] SEC(2011)755

(15) The identification of projects of common interest should be based on common, transparent and objective criteria in view of their contribution to the energy policy objectives. For electricity and gas, proposed projects should be part of the latest available ten-year network development plan. This plan should notably take account of the conclusions of the 4 February European Council with regard to the need to integrate peripheral energy markets.

(16) In view of complying with article 172 of the Treaty on the Functioning of the European Union, regional groups should be established for the purpose of proposing projects of common interest that will be approved by Member States. In order to ensure broad consensus, these regional groups should ensure close cooperation between Member States, national regulatory authorities, project promoters and relevant stakeholders. The cooperation should rely as much as possible on existing regional cooperation structures of national regulatory authorities and transmission system operators and other structures established by the Member States and the Commission.

(17) The Union-wide list of projects of common interest should be limited to projects which contribute the most to the implementation of the strategic energy infrastructure priority corridors and areas. This requires the decision on the list to be taken by the Commission, while respecting the right of the Member States to approve projects of common interest related to their territory. According to analysis carried out in the accompanying impact assessment, the number of such projects is estimated at some 100 in the field of electricity and 50 in the field of gas.

(18) Projects of common interest should be implemented as quickly as possible and should be closely monitored and evaluated, while keeping the administrative burden for projects promoters to a minimum. The Commission should nominate European coordinators for projects facing particular difficulties.

(19) Authorisation procedures should not lead to administrative burdens which are disproportionate to the size or complexity of a project, nor create barriers to the development of the trans-European networks and market access. The European Council of 19 February 2009 highlighted the need to identify and remove barriers to investment, including by means of streamlining of planning and consultation procedures. These conclusions were reinforced by the European Council of 4 February 2011 which again underlined the importance to streamline and improve authorisation procedures while respecting national competences.

(20) Projects of common interest should be given "priority status" at national level to ensure rapid administrative treatment. Projects of common interest shall be considered by competent authorities as being in public interest. Authorisation should be given to projects which have an adverse impact on the environment, for reasons of overriding public interest, when all the conditions provided for under Directives 92/43/EC and 2000/60/EC are met.

(21) The establishment of a single competent authority at national level integrating or coordinating all permit granting procedures ("one-stop shop") should reduce complexity, increase efficiency and transparency and help enhance cooperation among Member States.

(22) Despite the existence of established standards for the participation of the public in environmental decision-making procedures, additional measures are needed to ensure highest possible standards of transparency and public participation for all relevant issues in the permit granting process for projects of common interest.

(23) The correct and coordinated implementation of Council Directive 85/337/EC as amended and of the Aarhus and Espoo Conventions should ensure the harmonisation of the main principles for the assessment of environmental effects, including in a cross-border context. Member States should coordinate their assessments for projects of common interest, and provide for joint assessments, where possible.

(24) Given the urgency to develop energy infrastructures, the simplification of permit granting procedures must be accompanied by a clear deadline for the decision to be taken by the respective competent authorities regarding the construction of the project. This time limit should stimulate a more efficient definition and handling of procedures, and should under no circumstances compromise on the high standards for the protection of the environment and public participation.

(25) This Regulation, in particular the provisions on permit granting, public participation and implementation of projects of common interest, should apply without prejudice to international and Union legislation, including provisions to protect the environment and human health, and provisions adopted under the Common Fisheries and Maritime Policy.

(26) The assessment of the costs and benefits of an infrastructure project on the basis of a harmonised methodology for energy system-wide analysis, in the framework of the ten-year network development plans prepared by the European Networks of Transmission System Operators according to 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 [27] and 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[28], and reviewed by the Agency on the Cooperation of Energy Regulators according to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators [29], should be the basis for the discussion on the appropriate allocation of costs.

(27) In an increasingly integrated internal energy market, clear and transparent rules for cost allocation across borders are necessary in order to accelerate investment in cross-border infrastructure. The European Council of 4 February 2011 recalled the importance to promote a regulatory framework attractive to investment in networks, with tariffs set at levels consistent with financing needs and the appropriate cost allocation for cross-border investments, while enhancing competition and competitiveness, notably of European industry, and taking account of the impact on consumers.

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27 OJ L 211, 14.8.2009, p.15
28 OJ L 211, 14.8.2009, p.36
29 OJ L 211, 14.8.2009, p.1

(28) The existing internal energy market legislation requires that tariffs for access to gas and electricity networks shall provide appropriate incentives for investment. When applying the internal energy market legislation, national regulatory authorities should ensure that incentives for projects of common interest, including long-term incentives, are commensurate with the level of specific risk of the project. This applies notably in electricity to innovative transmission technologies to allow for large scale integration of renewable energy, of distributed energy resources or of demand response in interconnected networks, and to gas transmission infrastructure offering advanced capacity or additional flexibility to the market to allow for short-term trading or back-up supply in case of supply disruptions.

(29) The European Energy Programme for Recovery (EEPR)[30] has demonstrated the added value of leveraging private funding through significant Union financial aid to allow implementation of projects of European significance. The European Council of 4 February 2011 recognised that some energy infrastructure projects may require limited public finance to leverage private funding. In the light of the economic and financial crisis and budgetary constraints, targeted support, through grants and financial instruments, should be developed under the next multi-annual financial framework, which will attract new investors into the energy infrastructure priority corridors and areas, while keeping the budgetary contribution of the Union to a minimum.

(30) Projects of common interest in the fields of electricity, gas and carbon dioxide should be eligible to receive Union financial assistance for studies and, under certain conditions, for works under the proposed Regulation for a Connecting Europe Facility (CEF Regulation), either in the form of grants or in the form of innovative financial instruments. This will ensure tailor-made support can be provided to those projects of common interest which are not viable under the existing regulatory framework and market conditions. Such financial assistance should ensure the necessary synergies with funding from instruments under other Union policies. In particular, the Connecting Europe Facility will finance energy infrastructure of European relevance, while Structural Funds will finance smart energy distribution networks of local or regional importance. The two sources of funding will thereby complement each other.

(31) Decision No 1364/2006/EC should therefore be repealed.

(32) Since the objective of this Regulation, namely the development and interoperability of trans-European energy networks and connection to such networks, cannot be sufficiently achieved by the Member States and can therefore 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 the 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 that objective.

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30 OJ L 200, 31.7.2009, p.31

HAVE ADOPTED THIS REGULATION:

CHAPTER I – GENERAL PROVISIONS

Article 1
Subject matter and scope

1. This Regulation lays down guidelines for the timely development and interoperability of priority corridors and areas of trans-European energy infrastructure set out in Annex I.

2. In particular, this Regulation:

   (a) lays down rules to identify projects of common interest necessary to implement these priority corridors and areas and falling under the energy infrastructure categories in electricity, gas, oil, and carbon dioxide set out in Annex II;

   (b) facilitates the timely implementation of projects of common interest by accelerating permit granting and enhancing public participation;

   (c) provides rules for cross-border allocation of costs and risk-related incentives for projects of common interest;

   (d) determines conditions for eligibility of projects of common interest for Union financial assistance under [Regulation of the European Parliament and the Council establishing the Connecting Europe Facility].

Article 2
Definitions

For the purpose of this Regulation, in addition to the definitions provided for in Directives 2009/28/EC, 2009/72/EC and 2009/73/EC, Regulations (EC) No 713/2009, (EC) No 714/2009, and (EC) No 715/2009, the following definitions shall apply:

1. 'energy infrastructure' means any physical equipment designed to allow transmission and distribution of electricity or gas, transportation of oil or carbon dioxide, or storage of electricity or gas, which is located within the Union or linking the Union and one or more third countries;

2. 'comprehensive decision' means the decision taken by a competent authority to grant or refuse authorisation to build the energy infrastructure relating to a project, without prejudice to any subsequent decisions taken in the context of granting access to property, or administrative or judicial appeal procedures thereafter;

3. 'project' means one or several lines, pipelines, facilities, equipments, installations and related infrastructure categories as set out in Annex II, aiming at building new energy infrastructure or reinforcing or refurbishing existing energy infrastructure;

4. 'project of common interest' means a project, which is necessary to implement the energy infrastructure priority corridors and areas set out in Annex I;

5. ' project promoter' means:

(a) transmission system operator or distribution system operator or other operator or investor developing a project of common interest; or

(b) if there are several transmission system operators, distribution system operators, other operators, investors, or any group thereof, the entity with legal personality under the applicable national law, which has been designated by contractual arrangement between them and which has the capacity to undertake legal obligations and assume financial liability on behalf of the parties to the contractual arrangement.

CHAPTER II – PROJECTS OF COMMON INTEREST

Article 3
Identification of projects of common interest

1. The Commission shall establish a Union-wide list of projects of common interest. The list shall be reviewed and updated as necessary every two years. The first list shall be adopted by 31 July 2013 at the latest.

2. For the purpose of identifying projects of common interest, the Commission shall establish a Regional Group ("Group ") as defined in section 1 of Annex III based on each priority corridor and area and their respective geographical coverage as set out in Annex I.

3. Each Group shall draw up its proposed list of projects of common interest according to the process set out in section 2 of Annex III, according to the contribution of each project to implementing the energy infrastructure priority corridors and areas set out in Annex I and according to their fulfilment of the criteria set out in Article 4. Each individual proposal for a project shall require the approval of the Member State(s), to the territory of which the project relates.

4. For electricity and gas projects falling under the categories set out in points 1 and 2 of Annex II, each Group shall, at the latest six months before the adoption date of the Union-wide list referred to in paragraph 1, submit its proposed list of projects of common interest to the Agency for the Cooperation of Energy Regulators ("Agency").

For oil and carbon dioxide transport projects falling under the categories set out in points 3 and 4 of Annex II, each Group shall, at the latest six months before the adoption date of the Union-wide list referred to in paragraph 1, submit its proposed list of projects of common interest to the Commission.

5. For electricity and gas projects falling under the categories set out in points 1 and 2 of Annex II, the Agency shall submit, within two months from the date of receipt of the proposed lists of projects of common interest set out in the first subparagraph of paragraph 4, an opinion to the Commission on the proposed lists of projects of common interest, in particular taking into account the consistent application of the criteria set out in Article 4 across the Groups, and the results of the analysis carried out by the ENTSOs for Electricity and Gas in accordance with point 2.6 of Annex III.

6. For oil and carbon dioxide transport projects falling under the categories set out in points 3 and 4 of Annex II, the Commission shall evaluate the application of the criteria set out in Article 4. For carbon dioxide projects falling under the category set out in point 4 of Annex II, the Commission shall also take into account the potential for future extension to include additional Member States.

7. Following the Commission decision for adoption referred to in paragraph 1, projects of common interest shall become an integral part of the relevant regional investment plans pursuant Article 12 of Regulations (EC) No 714/2009 and (EC) No 715/2009 and of the relevant national ten-year network development plans pursuant Article 22 of Directives 72/2009/EC and 73/2009/EC and other national infrastructure plans concerned, as appropriate. The projects shall be conferred the highest possible priority within each of these plans.

Article 4
Criteria for projects of common interest

1. Projects of common interest shall meet the following general criteria:

   (a) the project is necessary for the implementation of the energy infrastructure priority corridors and areas set out in Annex I; and

   (b) the project displays economic, social and environmental viability; and

   (c) the project involves at least two Member States, either by directly crossing the border of one or more Member States or by being located on the territory of one Member State and having a significant cross-border impact as set out in point 1 of Annex IV;

2. In addition, the following specific criteria shall apply to projects of common interest falling under specific energy infrastructure categories:

   (a) concerning electricity transmission and storage projects falling under the categories set out in points 1(a) to (d) of Annex II, the project shall contribute significantly to at least one of the following specific criteria:

      – market integration, competition and system flexibility;

      – sustainability, *inter alia* through transmission of renewable generation to major consumption centres and storage sites;

      – interoperability and secure system operation;

(b) concerning gas projects falling under the categories set out in point 2 of Annex II, the project shall contribute significantly to at least one of the following specific criteria:

– market integration, interoperability and system flexibility;

– security of supply, *inter alia* through diversification of supply sources, supplying counterparts and routes;

– competition, *inter alia* through diversification of supply sources, supplying counterparts and routes;

– sustainability;

(c) concerning electricity smart grid projects falling under the category set out in point 1(e) of Annex I, the project shall contribute significantly to the following specific functions:

– integration and involvement of network users with new technical requirements with regard to their electricity supply and demand;

– efficiency and interoperability of electricity transmission and distribution in day-to-day network operation;

– network security, system control and quality of supply;

– optimised planning of future cost-efficient network investments;

– market functioning and customer services;

– involvement of users in the management of their energy usage;

(d) concerning oil transport projects falling under the categories set out in point 3 of Annex II, the project shall contribute significantly to the following three specific criteria:

– security of supply reducing single supply source or route dependency;

– efficient and sustainable use of resources through mitigation of environmental risks;

– interoperability;

(e) concerning carbon dioxide transport projects falling under the categories set out in point 4 of Annex II, the project shall contribute significantly to the following three specific criteria:

– avoidance of carbon dioxide emissions at low cost while maintaining security of energy supply;

– increase the resilience and security of carbon dioxide transport;

– efficient use of resources, by enabling the connection of multiple CO_2 sources and storage sites via common infrastructure and minimising environmental burden and risks.

3. Concerning projects falling under the categories set out in points 1 to 3 of Annex II, the criteria listed in this Article shall be assessed in accordance with the indicators set out in points 2 to 5 of Annex IV.

4. When ranking projects contributing to the implementation of the same priority, due consideration shall also be given to the urgency of each proposed project in order to meet the energy policy targets of market integration and competition, sustainability and security of supply, the number of Member States affected by each project, and its complementarity with regard to other proposed projects. For projects falling under the category set out in point 1(e) of Annex II, due consideration shall also be given to the number of users affected by the project, the annual energy consumption and the share of generation from non dispatchable resources in the area covered by these users.

Article 5
Implementation and monitoring

1. Project promoters shall implement projects of common interest according to an implementation plan including a timetable for feasibility and design studies, regulatory approval, construction and commissioning, and the permit granting schedule referred to in Article 11(3). Transmission system operators, distribution system operators or other operators shall operate projects of common interest in their area.

2. The Agency and the Groups shall monitor the progress achieved in implementing the projects of common interest. The Groups may request additional information provided in accordance with paragraphs 3, 4 and 5, verify the provided information on site and convene meetings with the relevant parties. The Groups may also request the Agency to take measures to facilitate the implementation of projects of common interest.

3. By the 31 March of each year following the year of selection as project of common interest pursuant to Article 4, project promoters shall submit an annual report, for each project falling under the categories set out in points 1 and 2 of Annex II, to the Agency or, for projects falling under the categories set out in points 3 and 4 of Annex II, to the respective Group. This report shall detail:

(a) the progress achieved for the development, construction and commissioning of the project, notably with regard to permit granting and consultation procedures;

(b) where relevant, delays compared to the implementation plan and other difficulties encountered.

4. Within three months of the receipt of the annual reports, the Agency shall submit to the Groups a consolidated report for the projects of common interest falling under the categories set out in points 1 and 2 of Annex II, evaluating the progress achieved and proposing, where appropriate, measures to overcome the delays and difficulties

encountered. The evaluation shall also include, in accordance with the provisions of Article 6(8) and (9) of Regulation (EC) No 713/2009, the consistent implementation of the Union-wide network development plans with regard to the energy infrastructure priority corridors and areas set out in Annex I.

5. Each year, the concerned competent authorities referred to in Article 9 shall, at the meeting following receipt of the annual reports referred to in paragraph 3, report to the respective Group on the status and, where relevant, delays in the implementation of projects of common interest located on their respective territory.

6. If the commissioning of a project of common interest is delayed by more than two years compared to the implementation plan without sufficient justification:

   (a) The project promoter of that project shall accept investments by one or several other operators or investors to implement the project. The system operator, in whose area the investment is located, shall provide the implementing operator(s) or investor(s) with all information needed to realise the investment, shall connect new assets to the transmission network and shall generally make its best efforts to facilitate the implementation of the investment and the secure, reliable and efficient operation and maintenance of the project of common interest.

   (b) the Commission may launch a call for proposals open to any project promoter to build the project according to an agreed timeline.

7. A project of common interest may be removed from the Union-wide list of projects of common interest according to the procedure set in the second sentence of Article 3(1) if:

   (a) The energy system-wide cost-benefit analysis carried out by the ENTSOs in accordance with point 6 of Annex III does not yield a positive result for the project;

   (b) The project is no longer included in the ten-year network development plan;

   (c) The inclusion in the list referred to in paragraph 1 of Article 3 was based on incorrect information which was a determining factor for the decision;

   (d) The project does not comply with existing Union legislation.

   Projects, which are withdrawn from the Union-wide list, lose all rights and obligations arising from this Regulation for projects of common interest. This article shall be without prejudice to any Union financing paid to the project prior to the withdrawal decision.

Article 6
European coordinators

1. When a project of common interest encounters significant implementation difficulties, the Commission may designate a European coordinator for a period of up to one year renewable twice.

2. The European coordinator shall fulfil the following tasks:

(a) promote the project(s), for which he or she has been designated European coordinator and the cross-border dialogue between the project promoters and all concerned stakeholders;

(b) assist all parties as necessary in consulting concerned stakeholders and obtaining necessary permits for the project(s);

(c) ensure that appropriate support and strategic direction by the Member States concerned are provided for the preparation and implementation of the project(s);

(d) submit every year a report to the Commission on the progress of the project(s) and on any difficulties and obstacles which are likely to significantly delay the commissioning date of the project(s). The Commission shall transmit the report to the concerned Groups and the European Parliament.

3. The European coordinator shall be chosen on the basis of his or her experience with regard to the specific tasks assigned to him or her for the concerned project(s).

4. The decision designating the European coordinator shall specify the terms of reference detailing the duration of the mandate, the specific tasks and corresponding deadlines and the methodology to be followed. The coordination effort shall be proportionate to the complexity and estimated costs of the project(s).

5. The Member States concerned shall cooperate with the European coordinator in his/her execution of the tasks referred to in paragraph 2 and 4.

CHAPTER III – Permit granting and public participation

Article 7
Regime of common interest

1. For the purpose of accelerating permit granting procedures and enhancing public participation, the provisions of this Chapter shall be applicable to all projects of common interest.

Article 8
'Priority status' of projects of common interest

1. Projects of common interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting procedures, where and in the manner such treatment is provided for in national legislation applicable to the corresponding type of energy infrastructure.

2. The adoption of the Union-wide list of projects of common interest shall establish the public interest and necessity of these projects within the Member States concerned and shall be acknowledged as such by all parties concerned.

3. For the purpose of ensuring efficient administrative processing of the files related to projects of common interest, project promoters and all authorities concerned shall ensure that the most preferential treatment possible is given to these files as regards the resources allocated.

4. With the objective of meeting the time limits set out in Article 11 and reducing the administrative burden for the completion of projects of common interest, Member States shall, within nine months from the entry into force of this Regulation, take measures to streamline the environmental assessment procedures. These measures shall be without prejudice to obligations resulting from Union legislation.

The Commission shall, within three months of the entry into force of this Regulation, issue guidance to support Member States in defining adequate measures and to ensure the coherent application of environmental assessment procedures required under EU legislation for projects of common interest.

5. With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EC and Article 4(7) of Directive 2000/60/EC, projects of common interest shall be considered as being of public interest, and may be considered as being of "overriding public interest", provided that all the conditions foreseen in these Directives are fulfilled.

Should the opinion of the Commission be required in accordance with Directive 92/43/EC, the Commission and the competent authority pursuant to Article 9, shall ensure that the decision with regard to the "overriding public interest" of a project is taken within the time limit pursuant to paragraph 1 of Article 11.

Article 9

Organisation of the permit granting process

1. Within six months of the entry into force of this Regulation, each Member State shall designate one national competent authority which shall be responsible for facilitating and coordinating the permit granting process for projects of common interest and for the implementation of the relevant tasks of the permit granting process as defined in this Chapter.

2. The competent authority shall issue, without prejudice to relevant requirements under Union and international legislation, the comprehensive decision within the time limit referred to in Article 11(1) according to one of the following schemes:

(a) integrated scheme: the comprehensive decision issued by the competent authority is the sole legally binding decision resulting from the statutory permit granting procedure. Where other authorities are concerned by the project, these may, in accordance with national legislation, give their opinion as input to the procedure, which shall be taken into account by the competent authority.

(b) coordinated scheme: The comprehensive decision may encompass multiple individual legally binding decisions issued by the Competent Authority and other authorities concerned. The competent authority shall establish, on a case-by-case basis, a reasonable time limit within which the individual decisions must be issued. The competent authority may take an individual decision on behalf of another national authority concerned, if the decision by that authority is not delivered within the time limit and if the delay cannot be adequately justified. The competent authority may overrule an individual decision of another national authority, if it considers that the decision is not sufficiently substantiated with regard to the underlying evidence presented by the authority concerned. The competent authority shall ensure that the relevant requirements under international and Union legislation are respected and must duly justify its decision.

3. If a project of common interest requires decisions to be taken in two or more Member States, the respective competent authorities shall take all necessary steps for efficient and effective cooperation and coordination among themselves, including compliance with the Espoo Convention and the provisions referred to in 11(3). Member States shall endeavour to provide for joint procedures, particularly with regard to the assessment of environmental impacts.

4. Member States shall endeavour to ensure that appeals challenging the substantive or procedural legality of a comprehensive decision are handled in the most efficient way possible.

Article 10
Transparency and public participation

1. To increase transparency for all stakeholders concerned, the competent authority shall, within nine months of the entry into force of this Regulation, publish a manual of procedures for the permit granting process applicable to projects of common interest. The manual shall be updated as necessary and made available to the public. The manual shall at least include the information specified in point 1 of Annex VI.

2. Without prejudice to any requirements under the Aarhus and Espoo Conventions and relevant Union legislation, all parties involved in the permit granting process shall follow the principles for public participation set out in point 2 of Annex VI.

3. The project promoter shall, within three months of the start of the permit granting process pursuant to paragraph 1(a) of Article 11, elaborate and submit a concept for public participation to the competent authority. The competent authority shall request modifications or approve the concept for public participation within one month. The concept shall at least include the information specified in point 3 of Annex VI.

4. At least one public consultation shall be carried out by the project promoter, or, where this is laid down by national legislation, by the competent authority, before submission of the application file to the competent authority pursuant to paragraph 1(a) of Article 11. The public consultation shall inform stakeholders referred to in point 2(a) of Annex VI about the project at an early stage and identify the most suitable location or trajectory and the relevant issues to be addressed in the

application file. The minimum modalities of this public consultation are specified in point 4 of Annex VI. A report summarising the results of activities related to the participation of the public prior to the submission of the application file shall be prepared by the project promoter and submitted together with the application file to the competent authority, which shall take due account of these results when taking the comprehensive decision.

5. For projects crossing the border of two or more Member States, the public consultations pursuant to paragraph 4 in each of the Member States concerned shall take place within a delay of no more than two months from the start date of the first public consultation in one of these Member States.

6. For projects likely to have significant adverse cross-border impacts in one or more neighbouring Member States, where Article 7 of Directive 85/337/EC and the Espoo Convention are applicable, the relevant information shall be made available to the competent authority of the neighbouring Member State(s). The competent authority of the neighbouring Member State(s) shall indicate whether it wishes to participate in the relevant public consultation procedures.

7. The project promoter, or, where national legislation so provides, the competent authority, shall establish and regularly update a project website to publish relevant information about the project, which shall be linked to the Commission website and which shall satisfy the requirements specified in point 5 of Annex VI. Commercially sensitive information shall be kept confidential.

Project promoters shall, in addition, publish relevant information by other appropriate information means, to which the public has open access.

Article 11

Duration and implementation of the permit granting process

1. The duration of the permit granting process shall consist of two phases and shall not exceed a period of three years:

(a) the pre-application procedure, covering the period between the start of the permit granting process and the acceptance of the submitted application file by the competent authority, shall not exceed two years.

For the purpose of establishing the start of the permit granting process, the project promoter(s) shall notify the project to the competent authority of the Member State(s) concerned in written form, and shall include a reasonably detailed outline of the project. No later than two weeks following the receipt of the notification, the competent authority shall accept or, if it considers the project as not mature enough to enter the permit granting process, refuse the notification in written form. In case of a refusal, the competent authority shall justify its decision. The date of signature of the acceptance of the notification by the competent authority shall serve as the start of the permit granting process. Where two or more Member States are concerned, the acceptance of the notification by the last competent authority concerned shall serve as the date of the start of the permit granting process.

(b) The statutory permit granting procedure, covering the period from the acceptance of the submitted application file until the competent authority takes a comprehensive decision, shall not exceed one year. Member States may set an earlier date for the time-limit if considered appropriate.

2. Within one month of the start of the permit granting process, pursuant to paragraph 1(a), the competent authority shall identify, in close cooperation with the other authorities concerned, the scope of material and level of detail of information to be submitted by the project promoter, as part of the application file, to apply for the comprehensive decision. The checklist referred to in point 1(e) of Annex VI shall serve as a basis for this identification. At least one meeting between the competent authority and the project promoter, and, if considered appropriate by the competent authority, other authorities and stakeholders concerned shall take place to this aim. A detailed application outline, which shall include the results of this meeting, shall be transmitted to the project promoter and be made available to the public no later than one month after the meeting.

3. Within three months of the start of the permit granting process pursuant to paragraph 1(a), the competent authority shall elaborate, in close cooperation with the project promoter and other authorities concerned and taking into account the results of the activities carried out under paragraph 2, a detailed schedule for the permit granting process, identifying at minimum the following:

(a) the decisions and opinions to be obtained;

(b) the authorities, stakeholders, and the public likely to be concerned;

(c) the individual stages of the procedure and their duration;

(d) major milestones to be accomplished and their deadlines in view of the comprehensive decision to be taken,;

(e) the resources planned by the authorities and possible additional resource needs.

For projects crossing the border between two or more Member States, the competent authorities of the Member States concerned shall align their timetables and elaborate a joint schedule.

4. The project promoter shall ensure the completeness and adequate quality of the application file and seek the competent authority's opinion on this as early as possible during the pre-application procedure. The project promoter shall cooperate with the competent authority to meet deadlines and comply with the detailed schedule as defined in paragraph 3.

5. Within one month of the receipt of the application file, the competent authority shall, if necessary, make further requests regarding missing information to be submitted by the project promoter, which may only address subjects identified in the detailed application outline. Within one month of the receipt of the complete application file, the competent authority shall accept the application in written form. Subsequently, requests for additional information may only be made if these are justified by new circumstances and duly explained by the competent authority.

6. In the event of an expiry of the time-limit for the comprehensive decision, the competent authority shall present to the competent Group the measures taken or to be taken to conclude the permit granting process with the least possible delay. The Group may request the competent authority to report regularly on progress achieved in this regard.

7. The time limits in the above provisions shall be without prejudice to obligations arising from international and Union legislation.

CHAPTER IV – Regulatory treatment

Article 12
Energy system wide cost-benefit analysis

1. Within one month of the entry into force of this Regulation, the ENTSO for Electricity and the ENTSO for Gas shall submit to the Agency and the Commission their respective methodology, including on network and market modelling, for a harmonised energy system-wide cost-benefit analysis at Union-wide level for projects of common interest falling under the categories set out in points 1(a) to (d) and 2 of Annex II. The methodology shall be elaborated in line with the principles laid down in Annex V.

2. Within three months of the day of receipt of the methodology, the Agency, after formally consulting the organisations representing all relevant stakeholders, shall provide an opinion to the Commission on the methodology.

3. Within three months of the receipt of the opinion of the Agency, the Commission shall deliver an opinion on the methodology.

4. Within three months of the day of receipt of the Commission's opinion, the ENTSO for Electricity and the ENTSO for Gas shall adapt their methodology accordingly and submit it to the Commission for approval.

5. Within two weeks of the approval by the Commission, the ENTSO for Electricity and the ENTSO for Gas shall publish the methodology on their websites. They shall transmit the corresponding input data sets as defined in point 1 of Annex V and other relevant network, load flow and market data in a sufficiently accurate form according to national legislations and relevant confidentiality agreements to the Commission and the Agency, upon request. The data shall be valid at the date of the request. The Commission and the Agency shall ensure the confidential treatment of the data received, by themselves and by any party carrying out analytical work for them on the basis of those data.

6. The methodology shall be updated and improved regularly by following the procedure laid down in paragraphs 1 to 5. The Agency, after formally consulting the organisations representing all relevant stakeholders and the Commission, may request such updates and improvements with due justification and timescales.

7. The methodology shall be applied to the cost-benefit analysis under all subsequent ten-year network development plans for electricity or gas developed by the ENTSOs for Electricity or Gas pursuant Article 8 of Regulation (EC) 714/2009 and Regulation (EC) 715/2009.

8. By 31 December 2016, the ENTSO for Electricity and the ENTSO for Gas shall jointly submit to the Commission and the Agency common electricity and gas market and network model including both electricity and gas transmission and storage, covering the priority corridors and areas designated in Annex I and elaborated in line with the principles laid down in Annex V. After approval of this model by the Commission according to the procedure set out in paragraphs 2 to 4, it shall be included in the methodology.

Article 13
Enabling investments with cross-border impacts

1. The investment costs related to a project of common interest falling under the categories set out in points 1(a) to (d) and 2 of Annex II shall be borne by the transmission system operator(s) of the Member State(s) to which the project provides a net positive impact, and be paid for by network users through tariffs for network access.

   The provisions of this Article shall not apply to projects of common interest having received an exemption pursuant Article 36 of Directive 2009/73/EC or Article 17 of Regulation (EC) 714/2009.

2. National regulatory authorities shall take into account actual costs incurred by a transmission system operator or other project promoter as a result of the investments and cross-border allocation of corresponding costs referred to in paragraph 3 when fixing or approving tariffs in accordance with Article 37(1) (a) of Directive 2009/72/EC and Article 41(1)(a) of Directive 2009/73/EC, insofar as these costs correspond to those of an efficient and structurally comparable operator.

3. Without prejudice to investments in projects of common interest by mutual agreement between the transmission system operators concerned, national regulatory authorities shall jointly approve investments and decide on the cross-border allocation of corresponding costs for projects of common interest or packages thereof as well as the inclusion of investment costs in the transmission tariffs.

4. The promoter(s) of a project of common interest falling under the categories set out in points 1(a) to (d) and 2 of Annex II shall keep all concerned national regulatory authorities regularly informed of the progress of that project and the identification of costs and impacts associated with it. As soon as a project of common interest selected pursuant to Article 3 and falling under the categories set out in points 1(a) to (d) and 2 of Annex II has reached sufficient maturity, the project promoter shall submit an investment request including a cross-border cost allocation, to the relevant national regulatory authorities, accompanied by the following:

   (a) a cost-benefit analysis on the basis of the methodology elaborated pursuant to Article 12; and

(b) a business plan evaluating the financial viability of the project, including the chosen financing solution, and, for projects of common interest falling under the category referred to in point 2 of Annex I, the results of market testing.

If a project is promoted by several operators or investors, they shall submit their request jointly.

For projects contained in the first Union-wide list of projects of common interest, project promoters shall submit their request by 30 September 2013.

A copy of each investment request shall be transmitted for information without delay by the national regulatory authorities to the Agency on receipt.

The national regulatory authorities and the Agency shall preserve the confidentiality of commercially sensitive information.

5. Within six months of the date on which the last request was received by the last of the national regulatory authorities concerned, the national regulatory authorities shall, after consultation of the project promoter(s) concerned, take a joint decision on the allocation of investment costs to be borne by each system operator for that project, as well as their inclusion in network tariffs. The national regulatory authorities may decide to allocate only part of the costs or to allocate costs among a package of several projects of common interest.

In deciding to allocate costs across borders, the economic, social and environmental costs and benefits of the project(s) in the Member States concerned and the possible need for financial support shall be taken into account.

The decision shall be notified, without delay, by the national regulatory authorities to the Agency, together with all the relevant information with respect to the decision. In particular, the information shall contain detailed reasons on the basis of which costs were allocated among Member States, such as the following:

(a) an evaluation of the identified impacts, including concerning network tariffs, on each of the concerned Member States;

(b) an evaluation of the business plan referred to in paragraph 4(b);

(c) regional or Union-wide positive externalities, which the project would generate;

(d) the result of the consultation of the project promoter(s) concerned.

The allocation decision shall be published.

6. Where the national regulatory authorities concerned have not reached an agreement on the investment request within six months of the date on which the request was received by the last of the national regulatory authorities concerned, they shall inform the Agency without delay.

In this case or upon a joint request from the national regulatory authorities concerned, the decision on the investment request including cross-border cost

allocation referred to in paragraph 4 as well as the way the cost of the investments are reflected in the tariffs shall be taken by the Agency within three months of the date of referral to the Agency.

Before taking such a decision, the Agency shall consult the national regulatory authorities concerned and the project promoter(s). The three-month period referred to in the second subparagraph may be extended by an additional period of two months where further information is sought by the Agency. That additional period shall begin on the day following receipt of the complete information.

The allocation decision shall be published.

7. A copy of all decisions, together with all the relevant information with respect to each decision, shall be notified, without delay, by the Agency to the Commission. That information may be submitted in aggregate form. The Commission shall preserve the confidentiality of commercially sensitive information.

8. This cost allocation shall not affect the right of transmission system operators to apply and national regulatory authorities to approve charges for access to networks in accordance with Article 32 of Directive 2009/72/EC and of Directive 2009/73/EC, Article 14 of Regulation (EC) No 714/2009, and Article 13 of Regulation (EC) No 715/2009.

Article 14
Incentives

1. Where a project promoter incurs higher risks for the development, construction, operation or maintenance of a project of common interest falling under the categories set out in points 1 and 2 of Annex II, except for hydro-pumped electricity storage projects, compared to the risks normally incurred by a comparable infrastructure project, and where such risks are not covered under an exemption pursuant to Article 36 of Directive 2009/73/EC or Article 17 of Regulation (EC) No 714/2009, national regulatory authorities shall ensure that appropriate incentives are granted to that project when applying Article 37(8) of Directive 2009/72/EC, Article 41(8) of Directive 2009/73/EC, Article 14 of Regulation (EC) No 714/2009, and Article 13 of Regulation (EC) No 715/2009.

2. The decision of the national regulatory authorities for granting such incentives shall consider the results of the cost-benefit analysis on the basis of the methodology elaborated pursuant to Article 12 and in particular the regional or Union-wide positive externalities generated by the project. The national regulatory authorities shall further analyse the specific risks incurred by the project promoter(s), the risk mitigation measures taken and the justification of this risk profile in view of the net positive impact provided by the project, when compared to a lower-risk alternative. Eligible risks shall notably include risks related to new transmission technologies, both onshore and offshore, risks related to under-recovery of costs and development risks.

3. The incentive granted by the decision shall take account of the specific nature of the risk incurred and cover:

(a) rules for anticipatory investment; or

(b) rules for recognition of efficiently incurred costs before commissioning of the project; or

(c) rules for providing additional return on the capital invested for the project; or

(d) any other measure deemed necessary and appropriate.

4. By 31 December 2013, the Agency shall issue guidance in accordance with Article 7(2) of Regulation (EC) No 713/2009:

(a) regarding the incentives referred to in paragraph 1 on the basis of a benchmarking of best practice by national regulatory authorities;

(b) regarding a common methodology to evaluate the incurred higher risks of investments in electricity and gas transmission projects.

5. By 31 July 2013, each national regulatory authority shall publish its methodology and the criteria used to evaluate investments in electricity and gas transmission projects and the higher risks incurred by them.

6. The Commission may issue guidelines regarding the incentives laid down in this Article in accordance with Article 18(1) to (3) of Regulation (EC) No 714/2009 and Article 23 (1) of Regulation (EC) No 715/2009.

CHAPTER V – Financing

Article 15
Eligibility of projects for Union financial assistance

1. Projects of common interest falling under the categories set out in points 1, 2 and 4 of Annex II are eligible for Union financial support in the form of grants for studies and financial instruments in accordance with the provisions of [Regulation of the European Parliament and the Council establishing the Connecting Europe Facility].

2. Projects of common interest falling under the categories set out in points 1(a) to (d) and 2 of Annex II, except for hydro-pumped electricity storage projects, shall be also eligible for Union financial support in the form of grants for works in accordance with the provisions of [Regulation of the European Parliament and the Council establishing the Connecting Europe Facility], if they are carried out according to the procedure referred to in paragraph 6(b) of Article 5 or if they fulfil the following criteria:

(a) the project specific cost-benefit analysis pursuant to paragraph 4(a) of Article 13 provides evidence concerning the existence of significant positive externalities, such as security of supply, solidarity or innovation; and

(b) the project is commercially not viable according to the business plan and other assessments carried out, notably by possible investors or creditors. The decision on incentives and its justification referred to in paragraph 3 of Article 14 shall be taken into account when assessing the project's commercial viability; and

(c) the project has received a cross-border cost allocation decision pursuant to Article 13 or, for projects having received an exemption pursuant to Article 36 of Directive 2009/73/EC or Article 17 of Regulation (EC) No 714/2009, an opinion from the competent national regulatory authorities and the Agency on the commercial viability of the project.

3. Projects of common interest falling under the categories set out in points 1(e) and 4 of Annex II shall be also eligible for Union financial support in the form of grants for works in accordance with the provisions of [Regulation of the European Parliament and the Council establishing the Connecting Europe Facility], if the concerned project promoters can clearly demonstrate the significant positive externalities generated by the projects and their lack of commercial viability.

CHAPTER VI – Final provisions

Article 16
Reporting and evaluation

Not later than 2017, the Commission shall publish a report on the implementation of projects of common interest. This report shall provide an evaluation of:

(a) the progress achieved for the development, construction and commissioning of projects of common interest selected pursuant Article 3, and, where relevant, delays in implementation and other difficulties encountered;

(b) the funds engaged and disbursed by the Union for projects of common interest in accordance with the provisions of [Regulation of the European Parliament and the Council establishing the Connecting Europe Facility], compared to the total value of funded projects of common interest;

(c) concerning the electricity and gas sectors, the evolution of the interconnection level between Member States, the corresponding evolution of energy prices, as well as the number of network system failure events, their causes and related economic cost;

(d) concerning permit granting and public participation:

– the average and maximum total duration of authorisation procedures for projects of common interest, including the duration of each step of the authorisation procedure, compared to the timing foreseen by the initial major milestones referred to in Article 11(3);

– the level of opposition faced by projects of common interest (notably number of written objections during the public consultation process, number of legal recourse actions);

(e) concerning regulatory treatment:

– the number of projects of common interest having been granted a cross-border cost allocation decision pursuant to Article 13;

– the number and type of projects of common interest having received specific incentives pursuant to Article 14;

Article 17
Information and publicity

The Commission shall establish an infrastructure transparency platform easily accessible to the general public. This platform shall contain the following information:

(a) general, regularly updated information, including geographic information, for each project of common interest;

(b) the implementation plan for each project of common interest;

(c) the main results of the cost-benefit analysis on the basis of the methodology elaborated pursuant Article 12 for the projects of common interest concerned, except for any commercially sensitive information.

Article 18
Transitional provisions

This Regulation shall not affect the granting, continuation or modification of financial aid awarded by the Commission on the basis of calls for proposals launched under Regulation (EC) No 680/2007 of the European Parliament and of the Council [31] to projects listed in Annexes I and III to Decision 1364/2006/EC or in view of the targets, based on the relevant categories of expenditure for TEN-E, as defined in Council Regulation (EC) No 1083/2006[32].

Article 19
Repeal

Decision 1364/2006/EC is hereby repealed from 1 January 2014. No rights shall arise under this Regulation for projects listed in Annexes I and III to Decision 1364/2006/EC.

[31] OJ L 162, 22.6.2007, p. 1.
[32] OJ L 210, 31.7.2006, p. 25.

Article 20
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*.

It shall apply from 1 January 2013.

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

ENERGY INFRASTRUCTURE PRIORITY CORRIDORS AND AREAS

This Regulation shall apply to the following trans-European energy infrastructure priority corridors and areas:

1. PRIORITY ELECTRICITY CORRIDORS

(1) *Northern Seas offshore grid ("NSOG"):* integrated offshore electricity grid in the North Sea, the Irish Sea, the English Channel, the Baltic Sea and neighbouring waters to transport electricity from renewable offshore energy sources to centres of consumption and storage and to increase cross-border electricity exchange.

Member States concerned: Belgium, Denmark, France, Germany, Ireland, Luxemburg, the Netherlands, Sweden, the United Kingdom;

(2) *North-South electricity interconnections in Western Europe ("NSI West Electricity"):* interconnections between Member States of the region and with Mediterranean third countries, notably to integrate electricity from renewable energy sources.

Member States concerned: Belgium, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Malta, Portugal, Spain, the United Kingdom;

(3) *North-South electricity interconnections in Central Eastern and South Eastern Europe ("NSI East Electricity"):* interconnections and internal lines in North-South and East-West directions to complete the internal market and integrate generation from renewable energy sources.

Member States concerned: Austria, Bulgaria, Czech Republic, Cyprus, Germany, Greece, Hungary, Italy, Poland, Romania, Slovakia, Slovenia;

(4) *Baltic Energy Market Interconnection Plan in electricity ("BEMIP Electricity"):* interconnections between Member States in the Baltic region and reinforcing internal grid infrastructures accordingly, to end isolation of the Baltic States and to foster market integration in the region;

Member States concerned: Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Sweden.

2. PRIORITY GAS CORRIDORS

(5) *North-South gas interconnections in Western Europe ("NSI West Gas"):* interconnection capacities for North-South gas flows in Western Europe to further diversify routes of supply and increase short-term gas deliverability.

Member States concerned: Belgium, France, Germany, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Spain, the United Kingdom;

(6) *North-South gas interconnections in Central Eastern and South Eastern Europe ("NSI East Gas"):* regional gas connections between the Baltic Sea region, the Adriatic and Aegean Seas and the Black Sea, notably to enhance diversification and security of gas supply;

Member States concerned: Austria, Bulgaria, Cyprus, Czech Republic, Germany, Greece, Hungary, Italy, Poland, Romania, Slovakia, Slovenia;

(7) *Southern Gas Corridor ("SGC"):* transmission of gas from the Caspian Basin, Central Asia, the Middle East and the Eastern Mediterranean Basin to the Union to enhance diversification of gas supply.

Member States concerned: Austria, Bulgaria, Czech Republic, Cyprus, France, Germany, Hungary, Greece, Italy, Poland, Romania, Slovakia, Slovenia;

(8) *Baltic Energy Market Interconnection Plan in gas ("BEMIP Gas"):* infrastructure to end the isolation of the three Baltic States and Finland and their single supplier dependency and to increase diversification of supplies in the Baltic Sea region;

Member States concerned: Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Sweden.

3. PRIORITY OIL CORRIDOR

(9) *Oil supply connections in Central Eastern Europe ("OSC"):* interoperability of the oil pipeline network in Central Eastern Europe to increase security of supply and reduce environmental risks.

Member States concerned: Austria, Czech Republic, Germany, Hungary, Poland, Slovakia.

4. PRIORITY THEMATIC AREAS

(10) *Smart grids deployment:* adoption of smart grid technologies across the Union to efficiently integrate the behaviour and actions of all users connected to the electricity network, in particular the generation of large amounts of electricity from renewable or distributed energy sources and demand response by consumers;

Member States concerned: all;

(11) *Electricity highways:* first electricity highways by 2020, in view of building an electricity highways system across the Union;

Member States concerned: all;

(12) *Cross-border carbon dioxide network:* development of carbon dioxide transport infrastructure between Member States and with neighbouring third countries in view of the deployment of carbon dioxide capture and storage.

Member States concerned: all.

ANNEX II

ENERGY INFRASTRUCTURE CATEGORIES

The energy infrastructure categories to be developed in order to implement the energy infrastructure priorities listed in Annex I are the following:

(1) concerning electricity:

(a) high-voltage overhead transmission lines, if they have been designed for a voltage of 220 kV or more, and underground and submarine transmission cables, if they have been designed for a voltage of 150 kV or more;

(b) concerning in particular electricity highways; any physical equipment designed to allow transport of electricity on the high and extra-high voltage level, in view of connecting large amounts of electricity generation or storage located in one or several Member States or third countries with large-scale electricity consumption in one or several other Member States;

(c) electricity storage facilities used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines designed for a voltage of 110 kV or more;

(d) any equipment or installation essential for the systems defined in (a) to (c) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels;

(e) any equipment or installation, both at transmission and medium voltage distribution level, aiming at two-way digital communication, real-time or close to real-time, interactive and intelligent monitoring and management of electricity generation, transmission, distribution and consumption within an electricity network in view of developing a network efficiently integrating the behaviour and actions of all users connected to it – generators, consumers and those that do both – in order to ensure an economically efficient, sustainable electricity system with low losses and high quality and security of supply and safety;

(2) concerning gas:

(a) transmission pipelines for the transport of natural gas and bio gas that form part of a network which mainly contains high-pressure pipelines, excluding high-pressure pipelines used for upstream or local distribution of natural gas,

(b) underground storage facilities connected to the above-mentioned high-pressure gas pipelines,

(c) reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) or compressed natural gas (CNG);

(d) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity;

(3) concerning oil:

(a) pipelines used to transport crude oil;

(b) pumping stations and storage facilities necessary for the operation of crude oil pipelines;

(c) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems and reverse-flow devices;

(4) concerning carbon dioxide:

(a) dedicated pipelines, other than upstream pipeline network, used to transport anthropogenic carbon dioxide from more than one source, i.e. industrial installations (including power plants) that produce carbon dioxide gas from combustion or other chemical reactions involving fossil or non-fossil carbon-containing compounds, for the purpose of permanent geological storage of carbon dioxide pursuant to Directive 2009/31/EC;

(b) facilities for liquefaction and buffer storage of carbon dioxide in view of its further transportation. This does not include infrastructure within a geological formation used for the permanent geological storage of carbon dioxide pursuant to Directive 2009/31/EC and associated surface and injection facilities.

(c) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems

ANNEX III

REGIONAL IDENTIFICATION OF PROJECTS OF COMMON INTEREST

1. RULES FOR REGIONAL GROUPS

(1) For electricity projects falling under the categories set out in point 1 of Annex II, each Group shall be composed of representatives of the Member States, national regulatory authorities, transmission system operators following their obligation to cooperate on a regional level in accordance with Article 6 of Directive 2009/72/EC and Article 12 of Regulation (EC) No 714/2009 and project promoters concerned by each of the relevant priorities designated in Annex I, as well as the Commission, the Agency and the ENTSO for Electricity.

For gas projects falling under the categories set out in point 2 of Annex II, each Group shall be composed of representatives of the Member States, national regulatory authorities, transmission system operators following their obligation to cooperate on a regional level in accordance with Article 7 of Directive 2009/73/EC and Article 12 of Regulation (EC) No 715/2009 and project promoters concerned by each of the relevant priorities designated in Annex 1, as well as the Commission, the Agency and the ENTSO for Gas.

For oil and carbon dioxide transport projects falling under the categories referred to in Annex II(3) and (4), each Group shall be composed of the representatives of the Member States, project promoters concerned by each of the relevant priorities designated in Annex 1 and the Commission.

(2) Each Group shall organise its workload in line with regional cooperation efforts pursuant Article 6 of Directive 2009/72/EC, Article 7 of Directive 2009/73/EC, Article 12 of Regulation (EC) No 714/2009, and Article 12 of Regulation (EC) No 715/2009 and other existing regional cooperation structures.

(3) Each Group shall invite, as appropriate in view of implementing the relevant priority designated in Annex I, representatives of national administrations, of regulatory authorities, project promoters, and transmission system operators from EU candidate countries and potential candidates, the member countries of the European Economic Area and the European Free Trade Association, representatives from the Energy Community institutions and bodies, countries covered by the European Neighbourhood policy and countries, with which the Union has established specific energy cooperation.

(4) Each Group shall consult the organisations representing relevant stakeholders, including producers, distribution system operators, suppliers, consumers, and, for the tasks set out in paragraph 2 of Article 5, organisations for environmental protection. The Group may organise hearings or consultations, where relevant for the accomplishments of it tasks.

2. PROCESS FOR REGIONAL IDENTIFICATION

(1) Each project promoter shall submit an application for selection as project of common interest to the members of the respective Group, including an assessment of its project(s) with regard to the contribution to implementing the priorities set out in Annex I, the fulfilment of the relevant criteria defined in Article 6, and any other relevant information for the evaluation of the project.

(2) All recipients shall preserve the confidentiality of commercially sensitive information.

(3) Proposed electricity transmission and storage projects falling under the categories set out in point 1(a) to (d) of Annex II shall be part of the latest available ten-year network development plan for electricity, developed by the ENTSO for Electricity pursuant Article 8 of Regulation (EC) 714/2009.

(4) For all Union-wide lists of projects of common interest adopted after 1 August 2013, proposed gas transmission and storage projects falling under the categories set out in point 2 of Annex II shall be part of the latest available ten-year network development plan for gas, developed by the ENTSO for Gas pursuant Article 8 of Regulation (EC) 715/2009.

(5) Proposed carbon dioxide transport projects falling under the category set out in point 4 of Annex II shall be presented as part of a plan, developed by more than two Member States, for the development of cross-border carbon dioxide transport and storage infrastructure, to be presented by the Member States concerned or entities designated by those Member States to the Commission.

(6) When evaluating proposed electricity and gas projects falling under the categories set out in points 1(a) to (d) and 2 of Annex II, each Group shall, without prejudice to the provisions of point 4, take account of the analysis made, in accordance with the provisions in paragraph 7 of Article 12, for proposed electricity and gas projects falling under the categories set out in points 1(a) to (d) and 2 of Annex II in the latest available ten-year network development plan for gas and electricity, developed by the ENTSOs for Electricity and Gas pursuant Article 8 of Regulations (EC) 714/2009 and (EC) 715/2009.

ANNEX IV

RULES AND INDICATORS CONCERNING CRITERIA FOR PROJECTS OF COMMON INTEREST

(1) A project with significant cro ss-border im pact is a pro ject on the territory of a Member State, which fulfils the following conditions:

(a) for electricity transmission, the project changes the grid transfer capacity at the border of that Member State with one or several other Member States or at any other relevant cross-section of the sa me transm ission corridor by at least 500 Megawatt compared to the situation without commissioning of the project;

(b) for electricity storage, the project provides storage capacity allowing a net annual electricity generation of at least 500 Gigawatt-hours;

(c) for gas transmission, the project concerns investment in reverse flow capacities or changes the capability to transm it gas across the border(s) of the concerned Member State by at least 10 % com pared to the situa tion pr ior to the commissioning of the project;

(d) for gas storage or liquefied/com pressed natural gas, the project aim s at supplying directly or indirec tly at least two Member St ates or at fulfilling the infrastructure stand ard (N-1 rule) at re gional le vel in ac cordance with Artic le 6(3) of Regulation (EU) No 994/2010;

(e) for smart grids, the project is designed for equipments and installations at high-voltage and m edium-voltage level designe d for a voltage of 10kV or more. It involves transm ission and di stribution system operators from at least two Member States, which cover at least 100,000 users that generate or consume electricity or do both in a consum ption area of at least 300 Gigawatthours/year, of which at least 20% originate from non dispatchable resources.

(2) Concerning projects falling under the categories set out in points 1(a) to (d) of Annex II, the criteria listed in Article 4 shall be measured as follows:

(a) Market integration, competition and system flexibility shall be measured in line with th e an alysis m ade in the la test available ten-year network developm ent plan in electricity, notably by:

– calculating, for cross -border p rojects, the im pact on the grid transfer capability in both power flow directi ons, measured in terms of amount of power (in m egawatt), or, for project s with significan t cross-bo rder impact, the impact on grid transfer capa bility at borders between relevant Member Sta tes, between relevant Mem ber States and third countries or within relevant Mem ber States and on de mand-supply balancing and network operations in relevant Member States;

– assessing th e im pact, for the area o f analysis as defined in point 10 of Annex V, i n term s of energy system -wide generation and transm ission

costs and evolution of market prices provided by a project under different planning scenarios, notably taking into account the variations induced on the merit order.

(b) Transmission of renewable energy generation to major consumption centres and storage sites shall be measured in line with the analysis made in the latest available ten-year network development plan in electricity, notably by:

– for electricity transmission, by estimating the amount of generation capacity from renewable energy sources (by technology, in megawatts), which is connected and transmitted due to the project, compared to the amount of planned total generation capacity from these types of renewable energy sources in the concerned Member State in 2020 according to the national renewable energy action plans as defined in Article 4 of Directive 2009/28/EC.

– for electricity storage, by comparing new capacity provided by the project with total existing capacity for the same storage technology in the area of analysis as defined in point 10 of Annex V.

(c) Interoperability and secure system operation shall be measured in line with the analysis made in the latest available ten-year network development plan in electricity, notably by assessing the impact of the project on the loss of load expectation for the area of analysis as defined in point 10 of Annex V in terms of generation and transmission adequacy for a set of characteristic load periods, taking into account expected changes in climate-related extreme weather events and their impact on infrastructure resilience.

The total expenditure for the project over its technical lifecycle shall be taken into account when calculating these indicators.

(3) Concerning projects falling under the categories set out in point 2 of Annex II, the criteria listed in Article 4 shall be measured as follows:

(a) Market integration and interoperability shall be measured by calculating the additional value of the project to the integration of market areas and price convergence, to the overall flexibility of the system, including the capacity level offered for reverse flows under various scenarios.

(b) Competition shall be measured on the basis of diversification, including the facilitation of access to indigenous sources of supply, taking successively into account diversification of sources, counterparts and routes and the impact of new capacity on the HHI index calculated at capacity level for the area of analysis as defined in point 10 of Annex V.

(c) Security of gas supply shall be measured by calculating the additional value of the project to the short and long-term resilience of the system and to enhancing the remaining flexibility of the system to cope with supply disruptions under various scenarios, as well as the additional capacity provided by the project measured in relation to the infrastructure standard (N-1 rule) at regional level in accordance with Article 6(3) of Regulation (EU) No 994/2010.

(d) Sustainability shall be measured as the contribution of a project to reduce emissions, to support the back-up of renewable electricity generation or power-to-gas and biogas transportation, taking into account expected changes in climatic conditions.

(4) Concerning projects falling under the category set out in point 1(e) of Annex II, each function listed in Article 4 shall be evaluated against the following criteria:

(a) Level of sustainability: This criterion shall be measured by assessing the reduction of greenhouse gas emissions, and the environmental impact of electricity grid infrastructure;

(b) Capacity of transmission and distribution grids to connect and bring electricity from and to users: This criterion shall be measured by estimating the installed capacity of distributed energy resources in distribution networks, the allowable maximum injection of electricity without congestion risks in transmission networks, and the energy not withdrawn from renewable sources due to congestion or security risks;

(c) Network connectivity and access to all categories of network users: This criterion shall be evaluated by assessing the methods adopted to calculate charges and tariffs, as well as their structure, for generators, consumers and those that do both, and the operational flexibility provided for dynamic balancing of electricity in the network;

(d) Security and quality of supply: This criterion shall be evaluated by assessing the ratio of reliably available generation capacity and peak demand, the share of electricity generated from renewable sources, the stability of the electricity system, the duration and frequency of interruptions per customer, including climate related disruptions, and the voltage quality performance;

(e) Efficiency and service quality in electricity supply and grid operation: This criterion shall be estimated by assessing the level of losses in transmission and in distribution networks, the ratio between minimum and maximum electricity demand within a defined time period, the demand side participation in electricity markets and in energy efficiency measures, the percentage utilisation (i.e. average loading) of electricity network components, the availability of network components (related to planned and unplanned maintenance) and its impact on network performances, and the actual availability of network capacity with respect to its standard value;

(f) Contribution to cross-border electricity markets by load-flow control to alleviate loop-flows and increase interconnection capacities: This criterion shall be estimated by assessing the ratio between interconnection capacity of a Member State and its electricity demand, the exploitation of interconnection capacities, and the congestion rents across interconnections.

(5) Concerning oil transport projects falling under the categories set out in point 3 of Annex II, the criteria listed in Article 4 shall be measured as follows:

(a) Security of oil supply shall be measured by assessing the additional value of the new capacity offered by a project for the short and long-term resilience of the system and the remaining flexibility of the system to cope with supply disruptions under various scenarios.

(b) Interoperability shall be measured by assessing to what extent the project improves the operation of the oil network, in particular by providing the possibility of reverse flows.

(c) Efficient and sustainable use of resources shall be evaluated by assessing the extent to which the project makes use of already existing infrastructure and contributes to minimising environmental and climate change burden and risks.

ANNEX V

ENERGY SYSTEM-WIDE COST-BENEFIT ANALYSIS

The methodology for a harmonised energy system-wide cost-benefit analysis for projects of common interest shall satisfy the following principles laid down in this Annex.

(1) The methodology shall be based on a common input data set representing the Union's electricity and gas systems in the years n+5, n+10, n+15, and n+20, where n is the year in which the analysis is performed. This data set shall comprise at least:

(a) In electricity: scenarios for demand, generation capacities by fuel type (biomass, geothermal, hydro, gas, nuclear, oil, solid fuels, wind, solar photovoltaic, concentrated solar, other renewable technologies)and their geographical location, fuel prices (including biomass, coal, gas and oil), carbon dioxide prices, the composition of the transmission and, if relevant, the distribution network, and its evolution, taking into account all new significant generation (including capacity equipped for capturing carbon dioxide), storage and transmission projects for which a final investment decision has been taken and that are due to be commissioned by the end of year n+5;

(b) In gas: scenarios for demand, imports, fuel prices (including coal, gas and oil), carbon dioxide prices, the composition of the transmission network and its evolution, taking into account all new projects for which a final investment decision has been taken and that are due to be commissioned by the end of year n+5;

(2) The data set shall reflect Union and national legislations in force at the date of analysis. The data sets used for electricity and gas respectively shall be compatible, notably with regard to assumptions on prices and volumes in each market. The data set shall be elaborated after formally consulting Member States and the organisations representing all relevant stakeholders. The Commission and the Agency shall ensure access to the required commercial data from third parties when applicable.

(3) The methodology shall give guidance for the development and use of network and market modelling necessary for the cost- benefit analysis.

(4) The cost-benefit analysis shall be based on a harmonised evaluation of costs and benefits for the different categories of projects analysed and cover at least the period of time referred to in point 1.

(5) The cost-benefit analysis shall at least take into account the following costs: capital expenditure, operational and maintenance expenditure over the technical lifecycle of the project and decommissioning and waste management costs, where relevant. The methodology shall give guidance on discount rates to be used for the calculations.

(6) For electricity transmission and storage, the cost-benefit analysis shall at least take into account the impacts on the indicators defined in Annex III. In line with the methods applied for the elaboration of the latest available ten-year network development plan in electricity, it shall in addition notably take into account the impacts of the project on the following:

(a) Competition in terms of market power of different operators and the convergence of prices between different Member States;

(b) Costs of electricity generation, transmission and distribution, including the costs for power plant self consumption and those related to greenhouse gas emissions and transmission losses over the technical lifecycle of the project;

(c) Future costs for new generation and transmission investment over the technical lifecycle of the project;

(d) Operational flexibility, including optimisation of regulating power and ancillary services;

(e) System resilience, including disaster and climate resilience, and system security, notably for European critical infrastructures as defined in Directive 2008/114/EC.

(7) For gas, the cost-benefit analysis shall at least take into account the results of market testing, such as open seasons, the impacts on the indicators defined in Annex III and the following impacts:

(a) Competition in terms of market power of different operators and the convergence of prices between different Member States;

(b) System resilience, including disaster and climate resilience, and system security, notably for European critical infrastructures as defined in Directive 2008/114/EC;

(c) Probability and quantity of energy not being supplied and increase in security and quality of supply;

(d) Contribution to the integration of different gas market areas,

(a) Flexibility of and congestion in the gas network.

(8) For smart grids, the cost-benefit analysis shall take into account the impacts on the indicators defined in Annex III.

(9) The detailed method used to take into account the indicators referred to in points 6 to 8 shall be elaborated after formally consulting the organisations representing all relevant stakeholders.

(10) The methodology shall define an area of analysis for the cost-benefit analysis of each individual project and for the analysis at regional or Union-wide level. The area for the analysis of an individual project shall cover all Member States and third countries, on whose territory the project shall be built, all directly neighbouring Member States and all other Member States significantly impacted by the project.

(11) The methodology shall define the analysis to be carried out, based on the relevant input data set, by calculating the results of the objective function with and without each project. The analysis shall identify the Member States on which the project has net positive impacts (beneficiaries) and those Member States on which the project

has a net negativ e im pact (cos t bearers). Each cost-benefit analys is s hall include sensitivity analyses concer ning the input data set, the comm issioning date of different projects in the same area of analysis and other relevant parameters.

(12) Transmission and distribution system opera tors sha ll ex change th e inf ormation necessary for the elaboration of the methodology, including the relevant network and market m odelling. Any transm ission or distribution system operator collecting information on behalf of other transm ission or distribution system operators shall give back to the participating transm ission and distribution system operators the results of the colle ction of data. For th e common electricity and gas m arket an d network model set out in paragraph 8 of Ar ticle 12, the input data set referred to i n point 1 shall cover the years n+10, n+20 a nd n+30 and the m odel shall allow for a full asses sment of econ omic, social and environmental im pacts, notably including external costs such as those related to greenhouse gas and conventional air pollutant emissions or security of supply.

ANNEX VI

GUIDELINES FOR TRANSPARENCY AND PUBLIC PARTICIPATION

(1) The manual of procedures shall at least specify:

(a) the relevant legislation upon which decisions and opinions are based for the different types of relevant projects of common interest, including environmental legislation;

(b) the relevant decisions and opinions to be obtained;

(c) the names and contact details of the Competent Authority, other authorities and major stakeholders concerned;

(d) the work flow, outlining each stage in the process, including an indicative time frame;

(e) information about the scope, structure and level of detail of documents to be submitted with the application for decisions, including a checklist;

(f) the stages and means for the general public to participate in the process.

(2) To increase public participation in the permit granting process, the following principles shall be applied:

(a) The stakeholders affected by a project of common interest, including relevant authorities, landowners and citizens living in the vicinity of the project, the general public and their associations, organisations or groups, shall be extensively informed and consulted at an early stage and in an open and transparent manner. Where relevant, the competent authority shall actively support the activities undertaken by the project promoter.

(b) Competent authorities shall ensure that public consultation procedures for projects of common interest are concentrated where possible. Each public consultation shall cover all subject matters relevant to the particular stage of the procedure, and one subject matter relevant to the particular stage of the procedure shall not be addressed in more than one public consultation. The subject matters addressed by a public consultation shall be clearly indicated in the notification of the public consultation.

(c) Comments and objections shall be admissible from the beginning of the public consultation until the expiry of the deadline only.

(3) The concept for public participation shall at least include information about:

(a) the stakeholders concerned and addressed;

(b) the measures envisaged;

(c) the timeline;

(d) the human resources allocated to the respective tasks.

(4) In the context of the public consultation to be carried out before submission of the application file, the relevant parties shall at least:

(a) publish an information leaflet of no more than 15 pages, giving, in a clear and concise manner, an overview of the purpose and preliminary timetable of the project, at least three alternative routes considered, expected impacts, including of cross-border nature, and possible mitigation measures;

(b) inform all stakeholders affected about the project through the website referred to in Article 10(7) and other appropriate information means;

(c) invite in written form relevant affected stakeholders to dedicated meetings, during which concerns shall be discussed.

(5) The project website shall make available as a minimum the following:

(a) a non-technical and regularly updated summary of no more than 50 pages reflecting the current status of the project and clearly indicating, in case of updates, changes to previous versions;

(b) the project and public consultation planning, clearly indicating dates and locations for public consultations and hearings;

(c) contact details in view of obtaining the full set of application documents;

(d) contact details in view of conveying comments and objections during public consultations;

(e) the manual of procedures pursuant Article 10(1).