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**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the Council common position with a view to the adoption of a European Parliament and Council decision laying down a series of guidelines for trans-European energy networks and repealing Decision No 1254/96/EC (15767/2/2002 – C5-0033/2003 – 2001/0311(COD))

Committee on Industry, External Trade, Research and Energy

Rapporteur: Nicholas Clegg

***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

At the sitting of 24 October 2002 Parliament adopted its position at first reading on the proposal for decision of the European Parliament and of the Council amending Decision No 1254/96/EC laying down a series of guidelines for trans-European energy networks (COM(2001) 775 – 2001/0311 (COD)).

At the sitting of 13 February 2003 the President of Parliament announced that the common position had been received and referred to the Committee on Industry, External Trade, Research and Energy (15767/2/2002 – C5-0033/2003).

The committee had appointed Nicholas Clegg rapporteur at its meeting of 27 March 2002.

It considered the common position and draft recommendation for second reading at its meetings of 25 March 2003 and 23 April 2003.

At the last meeting it adopted the draft legislative resolution by 43 votes to 4.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Peter Michael Mombaur, and Jaime Valdivielso de Cué, vice-chairmen/; Nicholas Clegg, rapporteur; Gordon J. Adam (for Massimo Carraro), Per-Arne Arvidsson (for Werner Langen), Danielle Auroi (for Nuala Ahern), Luis Berenguer Fuster, Guido Bodrato, Hiltrud Breyer (for Yves Piétrasanta), Gérard Caudron, Giles Bryan Chichester, Willy C.E.H. De Clercq, Harlem Désir, Concepció Ferrer, Francesco Fiori (for Sir Robert Atkins), Colette Flesch, Cristina García-Orcóyen Tormo (for Dominique Vlasto), Norbert Glante, Alfred Gomolka (for Umberto Scapagnini), Michel Hansenne, Hans Karlsson, Bashir Khanbhai, Wilfried Kuckelkorn (for Mechtild Rothe, pursuant to Rule 153(2)), Peter Liese (for Konrad K. Schwaiger), Rolf Linkohr, Caroline Lucas, Eryl Margaret McNally, Erika Mann, Elizabeth Montfort, Angelika Niebler, Giuseppe Nisticò (for Paolo Pastorelli), Seán Ó Neachtain, Josu Ortuondo Larrea (for Claude Turmes), Reino Paasilinna, John Purvis, Godelieve Quisthoudt-Rowohl, Bernhard Rapkay (for Myrsini Zorba), Imelda Mary Read, Christian Foldberg Røvsing, Paul Rübig, Jacques Santer (for Marjo Matikainen-Kallström), Esko Olavi Seppänen, Gary Tittley, Roseline Vachetta, Alejo Vidal-Quadras Roca, Olga Zrihen Zaari.

The recommendation for second reading was tabled on 30 April 2003.

## **DRAFT LEGISLATIVE RESOLUTION**

**European Parliament legislative resolution on the Council common position with a view to the adoption of a European Parliament and Council decision laying down a series of guidelines for trans-European energy networks and repealing Decision No 1254/96/EC(15767/2/2002 – C5-0033/2003 – 2001/0311(COD))**

**(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the Council common position (15767/2/2002 – C5-0033/2003),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(2001) 775<sup>2</sup>),
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 80 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Industry, External Trade, Research and Energy (A5-0132/2003),
1. Amends the common position as follows;
  2. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> P5\_TA-PROV(2002)0515 of 24.10.2002.

<sup>2</sup> OJ C 151 of 25.6.2002, p. 207.

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Amendment 1

## Recital 6

(6) It is necessary to adapt the procedure for identifying projects relating to trans-European energy networks in order to ensure the harmonious application of Council Regulation (EC) No 2236/95 of 18 September 1995 laying down general rules for the granting of Community financial aid in the field of trans-European networks <sup>1</sup>.

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<sup>1</sup> OJ L 228, 23.9.1995, p. 1. Regulation as amended by Regulation (EC) No 1655/1999 of the European Parliament and of the Council (OJ L 197, 29.7.1999, p. 1).

(6) It is necessary to adapt the procedure for identifying projects relating to trans-European energy networks in order to ensure the harmonious application of Council Regulation (EC) No 2236/95 of 18 September 1995 laying down general rules for the granting of Community financial aid in the field of trans-European networks <sup>1</sup>.

***Community financial aid for the construction phase should remain very exceptional and should require a special justification.***

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<sup>1</sup> OJ L 228, 23.9.1995, p. 1. Regulation as amended by Regulation (EC) No 1655/1999 of the European Parliament and of the Council (OJ L 197, 29.7.1999, p. 1).

*Justification*

*Based on amendment 7 of the first reading. This is in line with Recital 3 according to which the construction and maintenance of energy infrastructure should be subject to market principles.*

## Amendment 2

## Recital 6 a (new)

***(6 a) Projects shall only benefit from an increase of TEN support, from 10% to 20% of total project cost, where it is clearly in the interests of the European economy and general public interest, where funding from commercial sources has been proven to be unfeasible, and where this does not result in a significant distortion of competition between undertakings.***

### *Justification*

*This amendment makes the necessary link between the present common position and the Commission proposal amending Council Regulation (EC) N° 2236/95 laying down general rules for the granting of Community financial aid in the field of trans-european networks (COM(2002)134) which provides for an increase in Community subsidy for priority projects from 10% to 20%.*

### Amendment 3

#### Recital 8

(8) Since the project specifications ***are liable to change, they are given indicatively. The Commission should therefore continue to be empowered to update them.***

(8) Since the project specifications ***determine the use of significant public funds, it is important to find the appropriate balance between legislative oversight governing all substantial changes to these specifications and the flexibility required in implementing projects that merit potential community support.***

### *Justification*

*Self-explanatory.*

### Amendment 4

#### Article 6, paragraph 5

5. The indicative project specifications, ***comprising the detailed description of the projects and***, where appropriate, their geographical description, are set out in Annex III. These specifications shall be updated in accordance with the procedure referred to in Article 10(2).

5. The indicative project specifications, ***including***, where appropriate their geographical description, are set out in Annex III. These specifications shall be updated in accordance with the procedure referred to in Article 10(2).

***Updates must be limited only to technical changes of projects contained in annex III, modifying for example a particular part of the specified route, but shall not include substantial changes such as entirely new projects nor new country destinations not***

*listed in Annex III.*

*Justification*

*See amendment 11 of the first reading. Unlike the existing Decision 1254/96 on Transeuropean energy networks the Commission proposal and the common position introduce the possibility of "updating" Annex III in accordance with the procedure referred to in Article 10 (2) (comitology procedure). According to the Commission this flexibility is needed in order to react to new developments.*

*This has to be considered carefully by the EP. There must be a balance between the need to react quickly to new developments concerning the projects and the need for an efficient control by the co-legislator (the EP) especially as the priority axes and projects set out in Annex I and Annex II are very largely defined.*

*It is therefore proposed to limit the revision of Annex III by comitology procedure to those modifications which are of a purely technical nature such as issues concerning the detailed geographical planning, issues related to the detailed funding or the material used. However, substantial changes of the marked-out route or the addition of new projects must remain subject to the codecision procedure (referred to in Art. 251 of the Treaty).*

Amendment 5

Article 7, paragraph 2 a (new)

***2 a. Priority projects shall be compatible with sustainable development and meet the following criteria:***

***a) they must have a significant impact on the competitive operation of the internal market and/or***

***b) they must strengthen security of supply in the Community.***

*Justification*

*The criteria laid down in this amendment were mentioned in the initial Commission proposal (art. 6a) These criteria for priority projects have not been included in the wording of article 7 of the common position.*



Compromise amendment Amendment 6

Article 11, paragraph - 1 (new)

***- 1. Member States shall report to the Commission before 1 July every two years on the implementation and progress made in carrying-out of priority projects of European interest which concern transborder connections as mentioned in Annex III, points 1, 2 and 7.***

*Justification*

*Based on amendment 16 of first reading. There is a need to evaluate the implementation of the projects on a regular basis.*

*Member States are playing an important role in this sector. As mentioned in Article 6, paragraph 6 of the current Decision No 1254/96/EC "Member States shall take any measures they consider necessary to facilitate and speed up the completion of projects of common interest and to minimise delays while complying with Community law and international conventions on the environment. In particular, the necessary authorisation procedures shall be completed rapidly".*

*It is therefore suggested to ask Member States to report on an regular basis on the European transborder energy infrastructure projects (especially those mentioned in Annex III, projects a), b) and f). These projects are of special interest for the completion of the internal market in energy. According to the conclusions of the European Council in Barcelona Member States have agreed to meet a "target of a level of electricity interconnections equivalent to at least 10% of their installed production capacity".*

Amendment 7

Article 11, paragraph 1

1. **Every four** years the Commission shall draw up a report on the implementation of this Decision, which it shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. In this report, attention shall also be given to the implementation and progress made in the carrying out of priority projects which concern cross-border connections as mentioned in Annex II, points 1, 2 and 7.

***1. On the basis of the reports mentioned in paragraph -1 (new) and every two*** years the Commission shall draw up a report on the implementation of this Decision, which it shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. In this report, attention shall also be given to the implementation and progress made in the carrying out of priority projects which concern cross-border connections as mentioned in

*Justification*

*Based on amendment 16 of first reading. Together with amendment 5, this amendment could be a compromise between the position of the EP at first reading and the common position.*

*In order to ensure an efficient control by the co-legislator (the EP), it is not acceptable to extend the reporting period for the implementation reports from 2 to 4 years.*

*This period is certainly too long.*

*The annual report issued in pursuance of Regulation (EC) No 2236/95 (rules for granting Community financial aid for TEN) concerns a different legislative act, which does not define the projects of community interest and those to be considered as priority projects.*

Compromise amendment Amendment 8

Article 11, paragraph 1a (new)

***1a. In addition this report shall examine in detail the justifications for any support exceeding 10% of the total project cost, given that all such funding must only occur if it is clearly in the interests of the European economy and general public interest, where funding from commercial sources has been proven to be unfeasible, and where this does not result in a distortion of competition between undertakings.***

*Justification*

*See amendment 1*

## **EXPLANATORY STATEMENT**

### **1.) Key issues of the present proposal**

The present proposal for a revision of the Guidelines for Trans-European Energy Networks (TEN-Energy) was put forward by the Commission taking account of the recent developments following from the implementation of the Directive on liberalising the markets for electricity and natural gas, the increasing dependence on imported energy and the setting of targets for the penetration of renewable energy sources.

It is part of the measures requested by the Stockholm and Barcelona European Councils with a view to exploiting the potential of the internal market, in particular for the creation of the framework for the establishment of efficient trans-frontier markets with the support of appropriate infrastructure capacities. At Barcelona the European Council established "the target for Member States of a level of electricity interconnections equivalent to at least 10% of their installed production capacity by 2005".

As far back as its Green Paper, 'Towards a European strategy for the security of energy supply' the Commission referred to the need to expand the European energy infrastructure still further (particularly in Southern Europe, between France and Spain), but there are still political and financial obstacles to this. The main aim is to realise two priority objectives: to ensure security of energy supply and to complete the internal market in energy. The Commission notes that a functioning internal market in electricity and gas, in which there should also be cross-border trade and competition, is inconceivable without the necessary infrastructure.

The present proposal is aimed at amending the TEN-Energy Guidelines by identifying a distinct category of priority projects among the projects of common interest.

The projects of common interest are those which correspond to the criteria and objectives fixed by the TEN-Energy Guidelines. The current list was adopted by the European Parliament and the Council as an Annex to the Decision establishing the TEN-Energy Guidelines in 1996, and added to in 1997 and 1999. The updating of the list of projects is foreseen in this proposal (see Annex III). The projects of common interest are defined more broadly (10 thematic projects instead of the current 90 detailed projects). The detailed project definitions are incorporated into the project specifications mentioned in Annex III of the proposal. This new structure introduced by the proposal is an important difference with regard to the current Decision.

It is thus proposed to identify a category of priority projects of European interest among the projects of common interest. This category will include a restricted number of energy network projects which will have very important impact from the point of view of the essential criteria of energy policy, i.e. completing the internal market and reinforcing security of supply (see Annex I).

The Commission proposes to focus the means available under the TEN policy on the priority projects. In particular, priority will be given to the priority projects when funding under the TEN Financial Support Regulation is decided. The Commission also believes that when deciding on financial support under the TEN Regulation, priority should be given to the

development phase (which follows the phase of initial studies), including the removal of obstacles to carrying out projects; previously, priority was given to the design and initial feasibility study phase (see also point 2.).

2.) New Member States will have to be integrated in the internal market in energy. The present proposal takes into account a few projects concerning the connection between EU Member States and candidate countries (see for example Annexe III, project f) and h).

## **2.) The Commission proposal on amending Council Regulation (EC) No 2236/95 laying down general rules for the granting of Community financial aid in the field of trans-European networks**

The present proposal for a revision of the Guidelines for Trans-European Energy Networks (TEN-Energy) is closely linked to the proposed amendment of the rules for the granting of Community aid in this field<sup>1</sup>(Regulation (EC) 2236/95 of 18 September 1995 laying down general rules for the granting of Community financial aid in the field of trans-European networks).

In December 2001 the Commission proposed an amendment to the current Regulation which provides for an increase in the maximum rate of Community subsidy from 10% to 20% of total costs for particular TEN projects which make an important contribution to the objectives of the Trans-European Networks but have a low level of profitability. Initially the proposal was limited to specific trans-European networks (cross-border rail bottlenecks, bottlenecks at borders with candidate countries, satellite positioning, navigation systems). On 12 March 2002 the Commission modified this proposal and extended it to ‘priority projects essential for completing the trans-European energy network’.

The Commission stresses that there is no question of increasing appropriations in the energy sector, and that the proposal – unlike in the case of the trans-European transport networks – will not lead to any increase in the Community budget set aside in the financial perspectives for energy networks. For 2002 an amount of EUR 21 m is set aside for the trans-European energy infrastructure.

Unfortunately the two proposals are neither dealt with in the same committee of the European Parliament nor at the same time which led to the situation whereby the Committee on Industry, External Trade, Research and Energy had to give an opinion on the rules for the granting of Community financial aid in the field of TEN-energy before the EP had taken a decision on the guidelines including the priority projects for which an increase in the maximum rate of Community subsidy from 10% to 20% of total costs had been suggested.

In its opinion on financial aid in the field of transeuropean energy networks the ITRE-committee adopted the following position which is of interest in the context of the present report:

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<sup>1</sup> COM(2002) 134; Report by Mr. Turchi (A5-0188/2002), which was adopted in plenary on 2 July 2002; see also the opinion by the Committee on Industry, External Trade, Research and Energy (Draftsman: Mrs. Erika Mann)

\* The total amount of Community aid may exceptionally reach 20% of the total investment cost in the case of certain priority projects on the energy networks listed in the Decision of the European Parliament and of the Council amending Decision No 1254/96/EC laying down a series of guidelines for trans-European energy networks.

\* In order to define these priority projects on the energy networks, the Commission shall submit a report to the European Parliament and the Council listing and describing the measures on the energy networks which are likely, in the event of an increase in Community subsidy from 10% to 20%, to lead to more rapid completion of the relevant priority projects.

\* As a rule, only the development stage of priority projects on the energy networks should qualify for higher financial aid without this leading to any increase in the Community funds set aside for energy networks in the 2003-2006 financial perspectives.

\* This aid is in respect of priority projects on the energy networks carried out in own (unbundled) companies, which are necessary in the interests of the European economy but unprofitable in business terms and which do not distort competition between enterprises.

### **3.) The proposed amendments**

A large number of amendments adopted by the EP in the first reading (notably amendments 2, 3, 9, 22, 13, 14, 15, 19, 20, 21) have been accepted by the Council literally.

Furthermore, the rapporteur welcomes the approach adopted by the Council to recast the decision as this will contribute to more clarity and legal certainty. It would be desirable that this approach be adopted by the Commission for future proposals which concern extensive amendments of an existing Community act.

The following main ideas which have not been adopted by the common position have been considered in the framework of the present recommendation for the 2nd reading:

1.) The Commission proposes to introduce the possibility of updating the specifications mentioned in Annex III in accordance with the comitology procedure referred to in Article 9, paragraph 2 (regulatory procedure). According to the Commission this flexibility is needed in order to react to new developments.

This was considered carefully by the EP. There must be a balance between the need to react quickly to new developments concerning the projects and the need for an efficient control by the co-legislator (the EP) especially as the priority axes and projects set out in Annex I are very largely defined.

A possible compromise is therefore proposed in amendment 4.

2.) The Commission proposes to extend the reporting period for the implementation reports from 2 to 4 years since, in pursuance of Regulation (EC) No 2236/95 (rules for granting Community financial aid for TEN), it already submits an annual report which contains information on the progress of projects.

In order to ensure an efficient control by the co-legislator (the EP), it is not acceptable to

extend the reporting period for the implementation reports from 2 to 4 years.  
This period is certainly too long.

The annual report issued in pursuance of Regulation (EC) No 2236/95 (rules for granting Community financial aid for TEN) concerns a different legislative act, which does not define the projects of community interest and those to be considered as priority projects (see amendment 6 and 7).