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PROPOSAL

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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

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Delegations will find attached document COM(2020) 824 final Annex 7.

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ANNEX 7

ANNEX

to the

**Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on guidelines for trans-European energy infrastructure and repealing Regulation (EU)
No 347/2013**

{SEC(2020) 431 final} - {SWD(2020) 346 final} - {SWD(2020) 347 final}

Subsidiarity Grid

<p>1. Can the Union act? What is the legal basis and competence of the Unions' intended action?</p>
<p>1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?</p>
<p>Article 170 of the Treaty on the Functioning of the European Union foresees that the Union shall contribute to the establishment and development of trans-European networks, including in the area of energy infrastructure. The Union shall promote interconnection of national networks. The TEN-E Regulation is based on Article 172 of the Treaty on the Functioning of the European Union which provides for the legal base to adopt guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks as set out in Article 171.</p>
<p>1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?</p>
<p>In the case of trans-European networks, the Union's competence is shared. Art. 172 states that guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.</p>
<p><i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU¹. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU² sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU³ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i></p>
<p>2. Subsidiarity Principle: Why should the EU act?</p>
<p>2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁴:</p> <ul style="list-style-type: none"> - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
<ul style="list-style-type: none"> - In line with the Better Regulation Guidelines, the Commission carried out a comprehensive consultation based on a consultation strategy that included a range of consultation methods and tools. The strategy was designed in line with the intervention logic, placing the focus on relevance, effectiveness, efficiency, coherence, and EU value-added of the TEN-E Regulation. The consultation strategy aimed to ensure that all relevant evidence were taken into account, including data about costs, about societal impact, and about the potential benefits of the initiative. - An online public consultation (OPC) between 18 May and 13 July 2020 provided the opportunity to anyone interested in the evaluation and revision of the TEN-E Regulation to contribute. EU Survey was used to manage the OPC. The questionnaire was available in 23 of the official languages of the EU. It was addressed to mainly to citizens and organisations (e.g. NGOs, local government, local communities, companies and industry associations) that have no specialist knowledge of the TEN-E Regulation. This was reflected in the number, structure and wording of the questionnaire. The questions in the open public consultation aimed to

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

identify the relevance of the TEN-E regulation in terms of its objectives, infrastructure categories, and the PCI features the general public deemed most important. Contributors with specialist knowledge of the TEN-E Regulation (e.g. as a professional for a national competent / regulatory authority, TSO, DSO, company project promoter, energy producer, NGO with specific knowledge on the subject) were invited to fill in a targeted survey. The online public consultation was accessible on the Commission's Have your say website , including links to background documents and to relevant webpages, such as the ones dedicated to the TEN-E policy and the European Green Deal.

- Four stakeholder webinars took place to ensure further outreach to stakeholders and create opportunities for structured feedback
- The explanatory memorandum and the impact assessment contain a section on the principle of subsidiarity. More information is available at the question 2.2 below.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

Both the explanatory memorandum and the impact assessment accompanying the Commission’s proposal contain an adequate justification regarding the conformity with the principle of subsidiarity.

Energy transmission infrastructure (including an interconnected offshore grid and smart grid infrastructure) has a European added value due to its cross-border impacts and is essential to achieve a climate neutral energy system. The TEN-E Regulation has provided value and has contributed to achieving results regarding the Union energy market integration, competition and security of supply. A framework for regional cooperation across Member States is necessary to develop cross-border energy infrastructure. Individual Member State regulations and actions are insufficient to deliver these infrastructure projects as a whole.

The internal energy market require cross-border infrastructure, the development of which requires cooperation of two or more Member States, all with their own regulatory framework.

The TEN-E Regulation has provided additional value compared to what could have been achieved at national or regional level alone. The implementation of over 40 key energy infrastructure projects since its entry into force helped most Member States reach the 10% interconnection target for 2020 and achieve a well-interconnected and shock-resilient gas grid. The Union energy market is more integrated and competitive than it was in 2013 and the Union’s energy security has improved. Access to targeted financing under CEF enabled the implementation of 95 PCIs which have had otherwise difficulties in accessing financing under market rules.

The above progress could not have been achieved with Member State action alone. Various stakeholders confirmed the added value of the TEN-E Regulation, pointing to the importance of regional cooperation in implementing cross-border projects, transparency regulatory certainty and access to financing.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

Individual Member State regulations and actions are insufficient to deliver the priority energy infrastructure projects needed to achieve the objectives of the proposed initiative. In the absence of EU level action the objectives as enshrined in the Treaty in terms of promoting interconnections and

interoperability of national networks cannot be achieved.
(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?
The legal base on trans-European networks (see point 1.1 above) stipulates that the subject is of cross-border nature. This is also reflected in the objective of the initiative which is to facilitate the development of adequate energy infrastructures across the EU and in its neighbourhood to enable delivering on the EU's energy and climate objectives, in particular on the 2030/50 targets, as well as market integration competitiveness, and security of supply. More specifically, the proposed action is to enable the identification of the cross-border projects and investments across the EU and with its neighbouring countries that are necessary for the energy transition and climate targets. In addition, it aims to improve cross-border infrastructure planning for energy system integration and offshore grids.
(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty⁵ or significantly damage the interests of other Member States?
In the absence of EU level action, the objectives as set out in Article 170, i.e. the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructure could not be achieved. This is to promote interconnections and interoperability of national networks as well as access to such networks. In this context the need to link island, landlocked and peripheral regions with central regions of the Union has to be taken into account.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
National action can enact appropriate measures to complement EU level action and to enable achieving the objectives in this policy field. Measures may inter alia relate to national networks linked to the cross-border networks and the national implementation of measures including permitting of infrastructure projects. However, in the absence of EU level action for a coordinated approach to trans-European energy networks, the interconnections required for the decarbonisation of the energy system, better market integration, competition, and security of supply would not be identified and implemented.
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
The two key problems addressed by the proposed action concern the national, regional, and local levels: first, the type and scale of cross-border infrastructure developments are not fully aligned with EU energy policy objectives in particular as regards European Green Deal and the climate neutrality objective; second, delays in the implementation of key infrastructure projects affect all levels of the EU by lower levels of market integration, competition, and security of supply.
(e) Is the problem widespread across the EU or limited to a few Member States?
The problems set out in the previous sub-sections concern all Member States and is widespread across the EU. All Member States need to further decarbonise their energy systems and contribute to the achievement of climate neutrality by 2050 and will benefit from higher levels of market integration, competition, and security of supply.

⁵ https://europa.eu/european-union/about-eu/eu-in-brief_en

<p>(f) Are Member States overstretched in achieving the objectives of the planned measure?</p>
<p>Measures at Member State level alone would not be able to achieve the objectives of the proposed initiative. A coordinated approach at EU level to cross-border infrastructure planning and the identification of priority infrastructure projects, based on regional cooperation, will help to increase efficiencies.</p>
<p>(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?</p>
<p>There has been support for EU level action during the stakeholder consultation from national, regional, and local authorities.</p>
<p>2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?</p>
<p>Acting at EU level provides a clear added value compared to national policies as has been demonstrated by the existing TEN-E Regulation and the benefits delivered so far. Effectively connecting Member States' networks and removing bottlenecks has improved market integration between Member States and competitiveness, as reflected in the progress towards the interconnection targets and the convergence of energy prices across the EU.</p>
<p>(a) Are there clear benefits from EU level action?</p>
<p>The TEN-E Regulation has established a new approach to cross-border energy infrastructure planning. It brings together stakeholders in regional groups to identify and help implement projects of common interest (PCIs) that contribute to the development of energy infrastructure priority corridors and thematic areas.</p> <p>In addition to an effective and cost-efficient approach to infrastructure planning, the regulation has improved the permitting procedures. It requires Member States to ensure a streamlined permit granting process for PCIs within a timeframe of 3½ year for a permitting decision. They are to receive the highest national priority status and be included in national network development plans. The regulation also provides for regulatory assistance, rules and guidance for the cross-border allocation of costs and risk-related incentives, and provides access to financing opportunities from the Connecting Europe Facility (CEF).</p> <p>Since its adoption in 2013, TEN-E enabled the implementation of over 40 key energy infrastructure projects and further 75 projects are expected to be implemented by 2022. The financing support provided by CEF of EUR 4.7 billion in total enabled the implementation of 95 PCIs. Since 2014, CEF has provided financing to 149 actions of which 114 (EUR 519 million) for studies and 35 (EUR 4.2 billion) for works. Of the total budget of EUR 4.7 billion, EUR 1.5 billion were allocated to gas projects and EUR 2.8 billion to electricity projects. So far, around one fifth of all PCIs have received CEF financial assistance for studies and/or works.</p> <p>There is widespread agreement among stakeholders on the EU added value of the Regulation, achieved through regional cooperation, access to financing, improved information and transparency, and improved planning and permitting processes.</p>
<p>(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?</p>
<p>The evaluation of the current TEN-E Regulation shows that it has effectively contributed to</p>

connecting Member States networks and removing bottlenecks. Market integration between Member States and competitiveness have improved, as reflected in the progress towards the interconnection targets and the convergence of energy prices across the EU. The implementation of electricity PCIs will help most Member States reach the 10% interconnection target for 2020. As a result, the EU energy market is more integrated and competitive than it was in 2013. The projects also enable the integration of renewable electricity and power exchange across borders reducing the need to curtailment.

Security of supply, as one main driver behind the current TEN-E Regulation, has been significantly improved through PCIs. By the early 2020s, when the gas PCIs currently under implementation will be in operation, Europe should achieve a well-interconnected and shock-resilient gas grid and all Member States will have access to at least three gas sources or the global liquefied natural gas (LNG) market, a key element to improve the Union's energy security through the diversification of gas sources.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

Building on the current TEN-E Regulation the proposed measures aim for a more coordinated approach to cross-border infrastructure planning, accelerated project implementation and a more coherent regulatory treatment of projects of common interest. This will allow for a more efficient approach to the development of cross-border infrastructure projects and more timely implementation of these projects.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

Accelerating the implementation of energy infrastructure projects that enable the achievement of the European Green Deal's climate neutrality objectives as well as market integration, competitiveness, and security of supply at least cost to consumers and businesses is a high priority for all Member States. Therefore, acting at the EU level will enable to support all the Member States in contributing to the achievement of key energy and climate policy objectives.

(e) Will there be improved legal clarity for those having to implement the legislation?

The proposed revision of the existing TEN-E framework will provide improved legal clarity for project promoters and national authorities. For instance, provisions on the regulatory treatment of projects of common interest will be clarified.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

Both the explanatory memorandum and the impact assessment accompanying the Commission's proposal contain such a justification.

The initiative complies with the proportionality principle. It falls within the scope for action in the field of the trans-European energy networks, as defined in Article 170 of the Treaty on the Functioning of the European Union. The policy intervention is proportional to the dimension and

nature of the problems defined and the achievement of the set objectives.

The proposal does not go beyond what is necessary to achieve the general objective pursued to facilitate the timely development of sufficient energy infrastructures across the Union and in its neighbourhood to enable delivering on the Union's energy and climate objectives in line with the European Green Deal, in particular on the 2030/50 targets including the climate-neutrality objective, as well as market integration competitiveness, and security of supply.

Building on the results of the evaluation, the Commission assessed several policy options belonging to four impact areas of the current TEN-E framework, such as scope, governance/infrastructure planning, permitting and public participation, and regulatory treatment.

The assessment and the comparison of the options (see in particular sections 7 and 8 of the accompanying Impact Assessment) shows that no single option is sufficient to meet the identified objectives. The identification of package of policy options best suited to achieve the specific objectives is based on an assessment that includes the proportionality principle.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The proposed action includes measures that are appropriate to achieve the intended objectives of the initiative. The measures are proportionate and do not go beyond what is necessary. Without EU action, Member States would not be able to meet the objectives in a satisfactory manner. Additional costs are very limited and it includes measure to reduce direct costs.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

In the absence of EU level action, Member States would not be able to identify adequate cross-border infrastructure projects necessary for the achievement of the climate and energy policy objectives based on integrated cross-border infrastructure planning. The proposed measures are limited to those aspects that Member States cannot achieve satisfactorily on their own.

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

The initiative propose the revision of the existing TEN-E Regulation, hence to maintain the choice of instrument which has proven to work well to achieve the objectives pursued in line with the regulatory method (co-legislation) as prescribed in Article 172 TFEU.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)

Article 171 TFEU stipulates that the Union shall establish guidelines covering the objectives, priorities and broad lines of measure envisaged in the sphere of trans-European network and that these guidelines shall identify projects of common interest. The proposed measures build on these provisions to set a framework at EU level that is required to achieve the objectives as enshrined in the TFEU.

(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?

The proposed measures are mainly improvements to the current TEN-E framework. The evaluation has shown that the current Regulation has worked well. During the stakeholder consultation most stakeholders concerned agreed that the Regulation is cost-effective and provides higher benefits than costs. The initiative creates limited additional financial and administrative burden for project promoters and the Commission as well as ACER. Proposed simplification measures will generate direct benefits through reduced existing recurrent direct costs related to administrative burden as a result of reduced monitoring and reporting obligations.

(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

No special circumstance applying in individual Member States have been identified.