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**Position of the Agency on
Potential Improvements to the
Energy Infrastructure Package**

31 May 2017

Position of the Agency on potential improvements to the Energy Infrastructure Package¹

Key messages

In its Position Paper released on 22 June 2016², the Agency noted that most of its proposals outlined there could be implemented under the current legislative framework through better enforcement, but other proposals could be considered in the context of the envisaged review of the Energy Infrastructure Package (EIP). The present Position Paper develops proposals in instances where the Agency clearly sees that legislative changes could be adopted³ in order to improve the planning and implementation of electricity and gas transmission infrastructure, more specifically in the three areas outlined below.

1. Improving Scenarios and the Cost-Benefit Analysis Methodologies

- The Agency should be conferred the power to approve the ENTSOs' proposal on Scenario Development Report and cost-benefit analysis (CBA) Methodology, request amendments by the ENTSOs, or directly amend it after consulting the ENTSOs and publish it on its website. Such power shall be exercised within four months after receiving the ENTSOs' proposals;
- The Agency should be conferred the power to issue binding guidelines on the major CBA-related deliverables (the Scenario Development Report, the CBA Methodology and the TYNDP), which may also address aspects related to the fair treatment of all project promoters and the transparency of the process;
- Annexes IV(2) and IV(3) of Regulation (EU) No 347/2013 regarding the evaluation of the selection criteria for PCIs as applicable to CBAs, should be deleted, or at least made more flexible. Instead, the evaluation methodology should be established by the Regional Groups on the basis of the features of the CBA methodologies as well as other relevant (non-CBA) criteria.

2. Streamlining monitoring activities of infrastructure projects and information requirements for the PCI selection

- The Agency proposes to ensure that all project promoters are obliged to provide to the Agency the information that it requires to fulfil its legal duties regarding infrastructure, upon the Agency's request, via a consistent reporting procedure. National Regulatory Authorities (NRAs) shall confirm the accuracy of the information provided by project promoters;
- The frequency of the PCI monitoring report should be changed from annual to once per PCI list and the timing of the promoters' reporting should be changed to at least 12 months after the adoption of the list;

¹ In this paper, 'EIP' refers mainly to Regulation (EU) No 347/2013.

² "Delivering Efficient European Networks: Position of the Agency for the Cooperation of Energy Regulators on improving the efficiency of the European framework for energy infrastructure development", 22 June 2016.

³ In case the EIP would be open for amendments after a due review process at a future moment in time.

- The relevant information requirements for PCI selection (including country-wise data) should be shaped by the Regional Groups, consistently across all the Groups of a sector, on the basis of a proposal by the Agency.

3. Regularly updating the Unit Investment Costs report

- To enable NRAs cooperating in the framework of the Agency to repeat the unit investment costs (UIC) exercise, the legislative framework should be amended in order to place an obligation on infrastructure owners, operators and promoters, including all TSOs, storage system operators (SSO), and liquefied natural gas (LNG) terminal operators, to provide the data that NRAs and the Agency require;
- To ensure flexibility with respect to any updates, Regulation (EU) No 347/2013 should foresee that UIC updates would be done ‘regularly’ (instead of stating a defined interval).

1 Introduction

The Third Energy Package⁴ and the Energy Infrastructure Package (EIP) aim at facilitating the development of the European energy networks. The Agency believes that the EIP could and should play a stronger role in further improving the efficiency of energy network development. Delivering on the objectives of the Energy Union strategy and the transition towards a more secure and sustainable energy system will require major investments in networks. The Agency and National Regulatory Authorities (NRAs) have been closely involved in the implementation of the EIP.

In June 2016, [the Agency published a Position Paper](#)⁵ (Position Paper I) which outlined the thinking of the Agency towards defining a more coherent and efficient architecture for infrastructure development in four themes:

1. Providing a **more comprehensive understanding of infrastructure needs**;
2. Addressing these needs by enabling **efficient network development**;
3. Providing **reliable information** and ensuring efficient monitoring;
4. Enhancing coordination between decision makers on the project **financing framework**.

In that Position Paper, the Agency noted that most of its proposals could be implemented under the current legislative framework through its better enforcement, but other proposals could be considered in the context of the envisaged EIP review⁶.

This Position Paper II develops proposals in instances where the Agency clearly sees that legislative changes could be adopted to improve the planning and implementation of electricity and gas transmission infrastructure. The areas, already identified in Position Paper I, which fall within this scope include:

- The process for updating the cost-benefit analysis (CBA) methodology and scenarios used for the development of the ten-year network development plans (TYNDPs);
- The monitoring activities for infrastructure projects and information requirements for the selection of projects of common interest (PCI);
- The provision of accurate and up-to-date project cost information, including for developing updated unit investment cost (UIC) indicators.

Furthermore, the Agency's concerns set out in Position Paper I still stand, and further work may be undertaken in some instances, most notably in relation to the cross-border cost allocation and Connecting Europe Facility processes.

⁴ In this paper, "Third Energy Package" refers to Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009, Regulation (EC) No 715/2009, and Regulation (EC) No 713/2009.

⁵ "Delivering Efficient European Networks: Position of the Agency for the Cooperation of Energy Regulators on improving the efficiency of the European framework for energy infrastructure development", 22 June 2016.

⁶ Article 17 of Regulation (EU) No 347/2013.

2 Improving Scenarios and Cost-Benefit Analysis processes used for developing TYNDPs

2.1 Current State of Play

According to Regulations (EC) No 714/2009 and No 715/2009, the ENTSOs have to submit draft TYNDPs to the Agency for its opinion. According to Article 8(10) of the mentioned Regulations, each TYNDP includes “scenario development”. The projects included in the TYNDP shall be evaluated via CBA according to the CBA methodologies developed pursuant to Article 11 of Regulation (EU) No 347/2013. The scenarios and the results of the application of the CBA methodology provide an important framework and analytical data and therefore have a significant impact on the PCI selection, as well as on the preparation of investment requests, on cost sharing agreements and on other infrastructure implementation processes.

The current legal framework establishes:

- Generic (not detailed) provisions for the scenario development phase⁷;
- A rather complex procedure (consultation, two or more opinions, approval) for the development and the adoption of the CBA methodology;
- A requirement for consultation on the draft TYNDP and an Agency’s Opinion regarding the draft TYNDP.

The **scenarios** to be considered for the TYNDP and other purposes, as indicated above, have a significant impact on the outcomes of the benefit calculations carried out in CBAs. For this reason, the robustness, the credibility and the acceptance of the scenarios affect also the credibility and acceptance of the projects’ benefit evaluation. Currently, the scenario development process is run by the ENTSOs, taking into account stakeholder input to the extent they see fit. There is no regulatory approval or possibility for the Agency to request amendment of the scenarios. The Agency produces a non-binding opinion to help guide the scenario development process, which however has typically a limited impact on the adopted scenarios.

Regarding the **CBA methodology**, the process for developing and approving the current CBA methodologies lasted more than 20 months⁸ and eventually could not ensure that the approved CBA methodologies are fit for the purpose of the PCI selection. The procedure foreseen for the improvement and the updates of the CBA methodologies is lengthy.

Furthermore, a detailed list of indicators to be used in the application of the CBA methodologies are provided in annexes IV(2) and IV(3) of Regulation (EU) No 347/2013. These prescriptive Annexes have introduced unnecessary legal constraints on how the ENTSOs can shape CBAs and the TYNDP, and Regional Groups can present and use cost and benefit data and indicators for selecting PCIs, thus restricting the flexibility and potentially the efficiency of the selection process. As the CBA methodologies are subject to regular refinement, these CBA criteria should be made more flexible for the needs of the TYNDP and the Regional Groups.

2.2 Proposal for Improvement

The Agency proposes that the current provisions be amended to the effect that:

- the Agency is conferred the power to either approve the ENTSO’s proposal on Scenario Development Report and CBA Methodology, request amendments by the ENTSOs, or

⁷ Basic guidance is given by the definition of some scenario elements in Annex V(1)(a) and (b) of Regulation (EU) No 347/2013. Annex V(2) requires that *“the data set shall be elaborated after formally consulting Member States and the organisations representing all relevant stakeholders”*.

⁸ From spring 2013 to final European Commission approval in February 2015.

directly amend it after consulting the ENTSOs and publish it on its website. Such power shall be exercised within four months after receiving the ENTSOs' proposals;

- the Agency is conferred the power to issue binding guidelines on the major CBA-related deliverables (the Scenario Development Report, the CBA Methodology and the TYNDP), which may also address aspects related to the fair treatment of all project promoters and the transparency of the process;
- Annexes IV(2) and IV(3) of Regulation (EU) No 347/2013 regarding the evaluation of the selection criteria for PCIs as applicable to CBAs, are deleted, or at least made more flexible. Instead, the evaluation methodology could be established by the Regional Groups on the basis of the features of the CBA methodologies as well as other relevant (non-CBA) criteria.

2.3 Required Amendments to the current legislation

The above proposals would require amendments to:

- Regulations (EC) No 714/2009, (EC) No 715/2009, to add the Scenario Development Reports in Article 8(3)(b) of Regulations 714/2009 and 715/2009, developed by ENTSOs subject to Agency's approval;
- Regulation (EU) No 347/2013, to revise Article 11(1) to 11(5) to simplify the process of adoption of the CBA methodology as proposed above. Furthermore, Annexes IV(2) and IV(3) should be deleted or simplified;
- Regulations (EC) No 714/2009 and No 715/2009, to confer to the Agency the powers to issue binding guidelines on the reports prepared pursuant to Article 8(3)(b) and on their preparatory works.

3 Streamlining monitoring activities of infrastructure projects and information requirements for the PCI selection

3.1 Current State of Play

During the PCI lifecycle, the project promoter has to provide a series of data for the inclusion of the project in the EU-wide TYNDP, for consideration in the PCI selection process, and during the regular monitoring of the TYNDP and PCIs conducted by the Agency. Various entities are involved in data collection, and they set various data requirements and deadlines for data submission. As a result of the non-coordinated data collection processes foreseen in the current framework, a series of negative consequences have been noted in the Agency's past opinions: multiple reporting requirements for project promoters, leading to higher administrative burden for all stakeholders involved, reduced data accuracy and sometimes lack of clarity of the project's characteristics and progress.

The Agency is also legally required to provide a number of monitoring reports and opinions related to the adoption and the implementation of TYNDPs, their consistency with national development plans (NDPs), and to projects on the PCI lists, including an annual consolidated report on PCIs. This report on PCIs evaluates the progress achieved and makes, where appropriate, recommendations on how to overcome the delays and difficulties encountered.

Given that the PCI list is usually adopted at the end of a certain year (year "n"), the PCI monitoring carried out in the year "n+1" (conducted during the first half of that year) does not allow sufficient time for substantial advancement of the projects in comparison to their status at the time when the projects were included in the PCI list. The timing of such monitoring should be changed accordingly, so that a longer period elapses between the adoption of the PCI lists and the carrying out of a monitoring round, as it is already the case in the Agency's monitoring activities on TYNDPs⁹.

The information required for the Agency's opinions, monitoring and reporting reaches the Agency in various ways in terms of source, timing and ability to verify the information's completeness and accuracy (quality). The Agency receives information directly from project promoters in just one instance, when the PCI promoters submit their annual reports to the Agency. For other infrastructure monitoring activities, the Agency relies on NRAs cooperating within the Agency for checking project information. There exist, consequently, numerous instances where project information has to be verified, which the Agency typically strives to resolve by asking NRAs to check the information and provide their views about its quality. Despite the efforts of the Agency and the NRAs, a full coverage of the infrastructure information needs is not achieved due to the rather fragmented and asynchronous pathways via which the information is obtained.

3.2 Proposal for Improvement

The monitoring of infrastructure projects should be improved in terms of timing and frequency, allowing for a more flexible delivery, while also ensuring that the findings and the recommendations in the respective opinions and monitoring reports are taken into account for the preparation of forthcoming TYNDPs and PCI lists, and generally for the efficient development of electricity and gas infrastructure. Therefore, it is proposed that the provisions

⁹ The Agency's Opinions on the implementation of the ENTSO-E TYNDP 2012 and on the ENTSO-E TYNDP 2014 were issued in July 2014 and July 2016 respectively. The Opinion monitoring the ENTSSOG TYNDP 2013 and 2015 were issued in December 2014 and December 2016, respectively. This timing was optimally set as there is no prescriptive requirement on the deadlines for these Opinions in the Third Energy Package.

regarding the TYNDPs and the development of the PCI lists require that due consideration be given to the opinions adopted and the monitoring reports produced by the Agency.

It is critically important to ensure that the data used for the purpose of each activity is up-to-date and of sufficient quality, and that data collection and review are transparent and consistent. The information required by the Agency for the scrutiny and monitoring of the TYNDPs, the PCIs and the other infrastructure projects is not matched by the Agency's powers to oblige the relevant TSOs and other entities to submit the required data. Therefore, it is proposed that the Agency be given the power to request any information that it needs in order properly to scrutinise and monitor the implementation of the TYNDPs, the PCIs and of the other infrastructure projects of European relevance, whereby the NRAs shall confirm the accuracy of information provided to the Agency.

Also, regarding the data required for the PCI selection process, higher consistency needs to be achieved and multiple reporting by promoters and the ENTSOs needs to be avoided. The data collected by the Agency can be used in this respect, and therefore it is proposed that the Regional Groups decide on the information requirements for PCI selection procedure (as currently stipulated under Article 3(2) regarding the rules of procedure of the Regional Groups and Annex III.2(1) about the application for PCI selection) on the basis of a relevant proposal of the Agency. In this procedure, it is important to ensure that country-wise data is made available to the Regional Group Members, to increase transparency. Furthermore, it is proposed that in case project promoters fail to meet the information requirements set by the Regional Groups, their respective PCI candidate(s) should not be further considered in the PCI selection process.

3.3 Required amendments to the current legislation

The proposals above would require amending:

- Article 5(4) and (5) of Regulation (EU) 347/2013, to ensure that all project promoters are obliged to provide to the Agency the information that it requires to fulfil its legal duties regarding infrastructure, upon the Agency's request, via a consistent reporting procedure. NRAs shall confirm the accuracy of the information provided by project promoters;
- The frequency of the PCI monitoring report from annual to once per PCI list and the timing of the promoters' reporting to at least 12 months after the adoption of the list;
- Annex III.2(1) to provide that the relevant information requirements for PCI selection (including country-wise data) are shaped by Regional Groups, consistently across all Groups of a sector, on the basis of a proposal by the Agency.

4 Regularly updating the Unit Investment Costs report

4.1 Current State of Play

One of the most significant barriers to the assessment and monitoring of network developments by the Agency and NRAs is the incompleteness or lack of accurate, detailed and up-to-date information. For their regulatory tasks, NRAs need access to the relevant information concerning investment plans, projects and related costs (planned and actual).

The EIP lays some groundwork for addressing these challenges, *inter alia* with the obligation to publish a report on UIC indicators and reference values. However, by stating a concrete date (by 16 May 2015) for establishing and publishing the report, Regulation (EU) No 347/2013 only provides the legal basis for a **one-time** UIC report¹⁰. Without a proper legal basis stating the right of NRAs cooperating in the framework of the Agency to repeat that exercise, and the explicit obligation for electricity and gas infrastructure promoters and owners to provide the required data, experience shows that some NRAs have limited legal recourse to enforce regular data submission; thus the periodic production of an UIC report is subject to serious hurdles. This is particularly a problem for exempt infrastructure, where the reporting obligations are likely to be lower than for equivalent regulated projects, and for underground gas storage and liquefied natural gas (LNG) facilities.

Additionally, Regulation (EU) No 347/2013 foresees the potential use of the UIC indicators and the reference values by ENTSO-E and ENTSO-G for the CBAs carried out for the TYNDPs, which require that data is up-to-date and therefore updated periodically. For this purpose, the Agency and NRAs need a better understanding of planned costs as well as actual, up-to-date project costs.

4.2 Proposal for Improvement

To help improve the efficiency of network development, the continuous availability of planned and actual cost data and other project characteristics to the Agency and NRAs should be ensured, in order to enable them accurately to monitor the progress of project costs and other project features over the various project development stages. To ensure that cost data is not outdated, the establishment of UIC reference values would need to be repeated regularly. To enable NRAs cooperating in the framework of the Agency to repeat the UIC exercise, the legislative framework would need to be changed in order to place an obligation on infrastructure owners, operators and promoters, including TSOs, storage system operators (SSO), and LNG terminal operators, to provide the data that NRAs and the Agency require.

To ensure flexibility with respect to any updates, Regulation (EU) No 347/2013 should foresee that updates would be done ‘regularly’ (instead of stating a precise interval). A reasonable balance needs to be found between short time intervals (providing new data for only a few projects) and longer intervals which potentially provide for a more comprehensive project data.

4.3 Required amendments to the current legislation

The proposals above would require amendments to Article 11 (7) as follows:

¹⁰ For electricity,

http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/UIC%20Report%20%20-%20Electricity%20infrastructure.pdf

For gas, http://www.acer.europa.eu/official_documents/acts_of_the_agency/publication/uic%20report%20-%20gas%20infrastructure.pdf

A set of indicators and corresponding reference values for the comparison of unit investment costs for comparable projects of the infrastructure categories included in Annex II.1 and 2 **shall be updated and improved regularly by national regulatory authorities cooperating in the framework of the Agency. The underlying input data shall be submitted by TSOs, SSOs, LNG terminal operators and other project promoters to their respective national regulatory authorities.** Those reference values shall be used by the ENTSO for Electricity and the ENTSO for Gas for the cost-benefit analyses carried out for subsequent ten-year network development plans **for the purpose of comparisons.**



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