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NOTE

from: General Secretariat of the Council
to: Delegations

No. Cion prop.: 15813/11 ENER 330 CADREFIN 103 CODEC 1749

Subject: **Council (Transport, Telecom, Energy) meeting on 14 February 2012**
 - 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
 = Orientation debate

1. The Commission tabled the above proposal on 24 October 2011, proposing as legal basis Article 172 TFEU. It was presented by Commissioner Oettinger at the TTE (Energy) Council meeting on 24 November 2011, after which Ministers held a first exchange of views¹.

Before the proposal was presented however, Ministers had already discussed on several occasions - in both formal and informal settings - the key elements of a revised energy infrastructure policy for the EU, most notably in response to the Commission Communications "*Energy 2020: A strategy for competitive, sustainable and secure energy*"² and "*Energy infrastructure priorities for 2020 and beyond*"³.

¹ on the basis of doc. 16148/11

² doc. 16096/10

³ doc. 16302/10

These discussions were reflected in the conclusions adopted by the European Council on 4 February 2011⁴ and by the TTE (Energy) Council on 28 February 2011⁵.

2. The EU funding related to this draft Regulation is to be negotiated in the context of the financing instrument 'Connecting Europe Facility' (CEF)⁶, in the overall framework of the negotiation of the Multiannual Financial Framework 2014-2020. In its proposal, the Commission proposes to allocate € 9.1 billion to energy. It should be noted that the Council's Energy Working Party will provide input to the Budget Working Party on some provisions of the proposal that relate to energy but not directly to financing.
3. The European Parliament has nominated as rapporteur Mr. António Correia de Campos (Portugal, S&D). Agreement between the two Institutions on the draft infrastructure Regulation should preferably be reached before the end of 2012, *i.e.* in a first reading agreement. This would enable entry into force in early 2013, which would in turn allow for the establishment of the first Union-wide list of Projects of Common Interest (PCIs) by 31 July 2013, as proposed by the Commission (Art. 3(1)).
4. At working party level, one complete round of examination of the articles and annexes was completed, and a second round is underway. It should be underlined that much of the discussion at this stage is still devoted to the clarification of the different provisions and the interplay between them; furthermore, many delegations are still studying the text and therefore maintain scrutiny reservations. Nevertheless, the aforementioned discussions so far⁷ have allowed the identification of a number of main issues and concerns, listed below.

- Projects of common interest (PCIs)

As regards the selection process for PCIs as set out in Chapter II (Art. 3 - 6) of the proposal, several issues on the role, the establishment, composition and the functioning of regional groups (Art. 3(2) - (4)) remain to be resolved - but the role of regional groups as such is supported.

⁴ doc. EUCO 2/11

⁵ doc. 6207/1/11 REV 1

⁶ *Proposal for a Regulation establishing the Connecting Europe Facility*, doc. 16176/11.

⁷ Note: detailed clarifications on many key provisions are set out in doc. 18781/11.

On the proposed selection process itself (Art. 3 and 4), some delegations would like to make it shorter, simpler and less bureaucratic, whereas others stated that some phases of the process should be lengthened. Some delegations also wonder whether this process could realistically be completed by 31 July 2013, as proposed by the Commission (Art. 3(1)). Several delegations have requested a larger role for Member States in the identification of PCIs.

Other delegations have called for additional criteria (Art. 4) in order to define 'market failure', 'isolated market', 'security of supply' or 'industrial interest'; some opposed certain criteria, such as the condition that a project appear on the Union-wide ten year network development plan (TYNDP) (Art. 3(3) in combination with Annex III, section 2, points (3) and (4); Art. 5(7)(b)). Several delegations expressed the view that the criteria for the selection of PCIs should be set out in more detail, and be made quantifiable or measurable. The provisions that would be applicable to a project if it were delayed by more than two years (Art. 5(6)) (namely: investments by other operators or investors, call for proposals open to other project promoters) were opposed by several delegations in their current form and still require further discussion.

- Permit granting

During discussions on the granting of permits (Chapter III, Art. 7 - 11), concerns were expressed about maintaining the necessary safeguards for citizens and the environment, as well as the need to respect the competences and roles of local, regional and national authorities (Art. 8).

Several delegations - in the context of the presentation of the Commission impact assessment ⁸ - considered that the provisions in this Chapter did not respect the principles of subsidiarity and proportionality. In particular, it was underlined that a one size fits all-approach might not work equally well in all Member States due to their diversity, and that the many changes required in national legislation and at the level of national, local and regional administration were not proportional to the aims, which could also be achieved by more general requirements on Member States.

On the organisation of the permit granting process (Art. 9 and 10), its duration and implementation (Art. 11), several delegations requested longer timeframes and more flexibility *within* the timeframe proposed, both as regards the timing of the phases proposed and as regards the procedure to be followed in the Member State itself - including the functioning of the "one stop shop" (Art. 9(1)).

⁸ doc. 15813/11 ADD 1

- Regulatory treatment

Some delegations requested a larger role for Member States in the development of the cost-benefit analysis for PCIs (Art. 12), and in the development of the data sets (Annex V, points 1 and 2). The role of the different actors to be involved will require further discussion. Also the mechanism for the cross-border cost allocation for projects (Art. 13) requires further work.

- Financing

The issue of "market" versus "public funding" has been the topic of much discussion, with most delegations stressing that the market should be the main driver for investments in infrastructure ("market primacy"), whereas other delegations recalled that at the same time, public funds should be used in certain cases of market failure. Some delegations contested the inclusion or exclusion of this or the other category of projects from the different categories of cofinancing (grants for studies, grants for financial instruments, grants for (construction) works) (Art. 15). Much discussion focused on the application of the different criteria (including on how to assess a project's "positive externalities, such as security of supply, solidarity or innovation", and how to assess whether a project is "commercially not viable") (Art. 15(2)(a) and (b)).

5. Against this background, and with a view to facilitating further progress particularly on Chapter II and related aspects of Chapter IV, the Presidency invites Ministers to hold an orientation debate, focusing in particular on the following questions:

1. *The Regional Groups will be one of the main drivers of the identification process. How do Member States see their role in the Regional Groups and consider that these Groups could build on work on project identification so far and engage in additional work to conclude the identification of 'projects of common interest' so as to accelerate the development of these projects?*
2. *The regulatory measures proposed in Chapter IV complement provisions of already existing legislation. What is the Member States' view on these measures and their aim to maximise market-based investment in networks across borders?*

Delegations are invited to submit their positions in writing before or at the Council meeting, in order to allow Ministers to focus on key messages.

6. Coreper is invited to confirm that the orientation debate at Council on 14 February could take place on the basis of the questions set out in point 5.