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CONTRIBUTION

From:	General Secretariat of the Council
To:	Delegations
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Subject:	HU comments on the TEN-E Regulation

Delegations will find in the annex the HU comments on the TEN-E Regulation.

HU COMMENTS 04/02/2021

Article 2

Definitions

In addition to the definitions in Directives 2009/73/EC, (EU) 2018/2001¹ and (EU) 2019/944 of the European Parliament and of the Council and in Regulations (EC) No 715/2009, (EU) 2019/942, and (EU) 2019/943, the following definitions shall apply for the purposes of this Regulation:

- (1) 'energy infrastructure' means any physical equipment or facility falling under the energy infrastructure categories which is located within the Union, or linking the Union and one or more third countries;
- (2) 'comprehensive decision' means the final decision or set of decisions taken by a Member State authority or authorities, not including courts or tribunals, that determines whether or not a project promoter is authorised to build the energy infrastructure to realise a project of common interest by having the possibility to start, or procure and start, the necessary construction works ('ready-to-build status') without prejudice to any decision taken in the context of an administrative appeal procedure;
- (3) 'project' means one or several lines, pipelines, facilities, equipment or installations falling under the energy infrastructure categories;
- (4) 'project of common interest' means a project necessary to implement the energy infrastructure priority corridors and areas set out in Annex I and which is part of the Union list of projects of common interest referred to in Article 3;
- (5) 'project of mutual interest' means a project promoted by the Union in cooperation with third countries;
- (6) 'energy infrastructure bottleneck' means limitation of physical flows in an energy system due to insufficient transmission capacity, which includes inter alia the absence of infrastructure;
- (7) 'project promoter' means one of the following:
 - (a) a transmission system operator (TSO), distribution system operator or other operator or investor developing a project of common interest;
 - (b) where there are several TSOs, 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;
- (8) 'smart electricity grid' means an electricity network that can integrate in a cost efficient manner the behaviour and actions of all users connected to it, including generators, consumers and those that both generate and consume, in order to ensure an economically efficient and sustainable power system with low losses and high

Commented [1]: We support CZ proposal for the new definition.

"Repurposing / retrofit" means physical upgrade of existing natural gas infrastructure for use of pure hydrogen or of admixture of methane with hydrogen at a pre-defined level.

We also support DE proposal to include energy efficiency first principle in the definitions.

Hungary supports the approach towards transitional application of TEN-E Regulation for advanced gas PCI projects – as proposed by PL, we are still considering the appropriate legal solution for that (new definition/or transitional measures).

¹ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources, OJ L 328, 21.12.2018, p. 82

~~levels of quality, security of supply and safety where the grid operator can digitally monitor the actions of the users connected to it, and information and communication technologies (ICT) for communicating with related grid operators, generators, consumers and/or prosumers, with a view to transmitting electricity in a sustainable, cost efficient and secure way;~~

Commented [10]: We suggest to keep the current definition for smart grids as this one gives more flexibility on how to define these kinds of electricity grids and so gives more possibilities for innovation.

We also support BE proposal to include distribution system.

- (9) 'smart gas grid' means a gas ~~network~~ system that makes use of innovative digital solutions to integrate in a cost efficient manner a plurality of low-carbon and renewable gas sources in accordance with consumers' needs and gas quality requirements in order to reduce the carbon footprint of the related gas consumption, enable an increased share of renewable and low-carbon gases, and create links with other energy carriers and sectors;

Commented [11]: Technical correction in line with EU Directive 2009/73.

- (10) 'authorities concerned' means authorities that, under national law, are competent to issue different permits and authorisations related to the planning, design and construction of immovable assets, including energy infrastructure;

Commented [12]: We also DE, NL, SK to include digital solutions, MT proposal to extend to distribution system, and IT, PL to include physical/mechanic development of the grid.

- (11) 'works' means the purchase, supply and deployment of components, systems and services including software, the carrying out of development and construction and installation activities relating to a project, the acceptance of installations and the launching of a project;

- (12) 'studies' means activities needed to prepare project implementation, such as preparatory, feasibility, evaluation, testing and validation studies, including software, and any other technical support measure including prior action to define and develop a project and decide on its financing, such as reconnaissance of the sites concerned and preparation of the financial package;

- (13) 'national regulatory authority' means a national regulatory authority designated in accordance with Article 39(1) of Directive 2009/73/EC or Article 57(1) of Directive (EU) 2019/944 ~~or~~;

- (14) 'commissioning' means the process of bringing a project into operation once it has been constructed;

- (15) 'relevant national regulatory authorities' means the national regulatory authorities in the Member States to which the project provides a significant positive impact;

- (16) 'climate adaptation' is a process that ensures that the resilience to the potential adverse impacts of climate change of energy infrastructure is ensured through a climate vulnerability and risk assessment, including through relevant adaptation measures.

Commented [13]: Despite the oral answer of the COM during Feb 2 EWP on union level background, it is still unclear how will project promoters deal with this new instrument.

- (17) "Repurposing / retrofit" means physical upgrade of existing natural gas infrastructure for use of pure hydrogen or of admixture of methane with hydrogen at a pre-defined level.

CHAPTER II

PROJECTS OF COMMON INTEREST AND PROJECTS OF MUTUAL INTEREST

Article 3

Union list of projects of common interest and projects of mutual interest

1. Regional groups shall be established ('Groups') as set out in Section 1 of Annex III. The membership of each Group shall be based on each priority corridor and area and their respective geographical coverage as set out in Annex I. Decision-making powers in the Groups shall be restricted to Member States and the Commission, who shall, for those purposes, be referred to as the decision-making body of the Groups.

The Commission shall be empowered to adopt delegated acts in accordance with Article 20 supplementing this Regulation concerning the ~~scope and~~ composition of the priority corridors and areas.

Commented [REDACTED] In our view the scope of the priority corridors and areas is an essential element of the regulation, therefore it should not be subject to secondary legislation, but remain with ordinary legislative procedure. We propose deletion of the word scope.

2. Each Group shall adopt its own rules of procedure, having regard to the provisions set out in Annex III.

3. The decision-making body of each Group shall adopt a regional list of proposed projects of common interest drawn up in accordance with the process set out in Section 2 of Annex III, the contribution of each project to implementing the energy infrastructure priority corridors and areas and their fulfilment of the criteria set out in Article 4.

Where a Group draws up its regional list:

(a) each individual proposal for a project of common interest shall require the approval of the states, to whose territory the project relates; where a state does not give its approval, it shall present its substantiated reasons for doing so to the Group concerned;

(b) it shall take into account the advice from the Commission that is aimed at having a manageable total number of projects of common interest.

Commented [REDACTED] Opinion of the CLS is necessary with regard to the establishment of obligations for 3rd countries to approve the proposal for PMI.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 20 of this Regulation ~~amending annexes to this Regulation~~ in order to establish the Union list of projects of common interest ('Union list'), subject to the second paragraph of Article 172 of the Treaty on the Functioning of the European Union.

Commented [REDACTED] Technical or legal clarification is necessary with regard to the Annex on the Union list of PCI-s. In our view as this Regulation is a new piece of legislation and not an amendment, the Union list should be established first.

In exercising its power, the Commission shall ensure that the Union list is established every two years, on the basis of the regional lists adopted by the decision-making bodies of the Groups as established in point (2) of Section 1 of Annex III, following the procedure set out in paragraph 3 of this Article.

The first Union list pursuant to this Regulation shall be adopted by 30 November 2023 at the latest.

5. The Commission shall, when adopting the Union list on the basis of the regional lists:

(a) ensure that only those projects that fulfil the criteria referred to in Article 4 are included;

(b) ensure cross-regional consistency, taking into account the opinion of the Agency for the Cooperation of Energy Regulator ('the Agency') as referred to in point (12) of Section 2 of Annex III;

(c) take into account the opinions of Member States as referred to in point (9) of Section 2 of Annex III;

(d) aim for a manageable total number of projects of common interest on the Union list.

6. Projects of common interest included on the Union list pursuant to paragraph 4 of this Article under the energy infrastructure categories set out in points (1)(a), (b), (c) and (e) of Annex II, shall become an integral part of the relevant regional investment plans under Article

34 of Regulation (EU) 2019/943 and Article 12 of Regulation (EC) No 715/2009 and of the relevant national 10-year network development plans under Article 51 of Directive (EU) 2019/944 and Article 22 of Directive 2009/73/EC and other national infrastructure plans concerned, as appropriate. Those projects shall be conferred the highest possible priority within each of those plans. This paragraph shall not apply to projects of mutual interest.

Commented [1][1] We do not support ES proposal to delete reference to internal gas legislation.