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## **CONTRIBUTION**

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From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	EL comments on the TEN-E Regulation

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

## EL COMMENTS

### CHAPTER V OFFSHORE GRIDS FOR RENEWABLE INTEGRATION

#### Article 14 Offshore grid planning

1. By [31 July 2022], Member States, with the support of the Commission, within their specific priority offshore grid corridors, set out in point (2) of Annex I, taking into account the specificities and development in each region, shall ~~jointly define and agree to cooperate on the amount of~~ offshore renewable generation to be deployed within each sea basin by 2050, with intermediate steps in 2030 and 2040, in view of their national energy and climate plans, the offshore renewable potential of each sea basin, environmental protection, climate adaptation and other uses of the sea, as well as the Union's decarbonisation targets. That agreement shall be made in writing as regards each sea basin linked to the territory of the Union. That agreement shall be without prejudice of the Member States right to develop national projects on their territorial sea and exclusive economic zone.

2. By [31 July 2023] the ENTSO for Electricity, with the involvement of the relevant TSOs, the national regulatory authorities and of the Commission shall include integrated offshore network and reinforcements in the Union-wide ten-year network development plan taking into account environmental protection and other uses of the sea ~~and in line with the agreement referred to in paragraph 1, shall develop and publish integrated offshore network development plans starting from the 2050 objectives, with intermediate steps for 2030 and 2040, for each sea basin, in line with the priority offshore grid corridors referred to in Annex I, taking into account environmental protection and other uses of the sea. Those integrated offshore network development plans shall thereafter be updated every three years.~~

~~3. The integrated offshore network development plans shall be compatible with the latest Union-wide ten Year Network Development Plans in order to ensure coherent development of onshore and offshore grid planning.~~

~~4. The ENTSO for Electricity shall submit the draft integrated network development offshore plans to the Commission for its opinion.~~

~~5. The ENTSO for Electricity shall adapt the integrated offshore network development plans taking due account of the Commission opinion before the publication of the final reports and submit them to the relevant priority offshore grid corridors, set out in Annex I.~~

~~6. For the purpose of ensuring the timely development of the offshore grids for renewable energy, should the ENTSO for Electricity not develop, in time, the integrated offshore network development plans, referred to in paragraph 2, the Commission shall, on the basis of expert advice, draw up an integrated offshore network development plan per sea basin for each priority offshore grid corridor set out in Annex I.~~

#### Article 15

#### Offshore grids for renewable energy cross-border cost sharing

~~1. The Commission shall develop, by means of implementing acts, principles for a specific cost benefit and cost sharing methodology for the deployment of the integrated offshore network development plan referred to in Article 14(2) in accordance with the agreement referred to in Article 14(1) as part of the guidelines referred to in Article 16(10). Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 21(2).~~

~~2. Within 12 months from the publication of the principles referred to in paragraph 1, the ENTSO for Electricity, with the involvement of the relevant TSOs, the national regulatory authorities and of the Commission, shall present the results of the application of the cost benefit and cost sharing methodology to the priority offshore grid corridors.~~

**Commented [REDACTED]:** In article 14, we believe that the deadlines are very tight and pressing. Also, it is premature to establish objectives, especially if these are binding. In particular, in the Mediterranean region, we are still at a stage of identifying the potential of offshore RES, so it is difficult to set concrete targets for 2030, 2040 and 2050. Moreover, article 30 of Regulation (EU) 2019/943 already provides for the adoption of a non-binding Union-wide ten-year network development plan, ('Union-wide network development plan'), biennially. This TYNDP already covers maritime areas and projects on a two year basis. There is no need for an extra specific plan, which would not be consistent with the TYNDP.

**Commented [REDACTED]:** Article 16 of the draft regulation already provides for offshore hybrid projects cost sharing, as it applies to projects falling under the category (e) of annex II (interconnection and transmission of offshore renewable electricity from the offshore generation sites to two or more countries »

~~3. Within six months from the presentation of the results as referred to in paragraph 2, the relevant Member States, shall update their written agreement referred to in Article 14(1) with the updated joint definition of the amount of the offshore renewable generation to be deployed within each sea basin in 2050, with intermediate steps in 2030 and 2040, and the relevant agreement to cooperate for the achievement of such amounts.~~

~~4. Within six months from the updated written agreements referred to in paragraph 3, for each sea basin, the ENTSO for Electricity shall update the integrated offshore network development plans by following the procedure set out in Article 14(2) to (5). The procedure described in Article 14(6) shall apply.~~

## CHAPTER VI

### REGULATORY FRAMEWORK

#### Article 16

#### Enabling investments with cross-border impacts

1. The efficiently incurred investment costs, which excludes maintenance costs, related to a project of common interest falling under the categories set out in points (1)(a), (b), (c) and (e) of Annex II and projects of common interest falling under the category set out in point (3) of Annex II, where they fall under the competency of national regulatory authorities, shall be borne by the relevant TSO or the project promoters of the transmission infrastructure of the Member States which the project provides a net positive impact, and, to the extent not covered by congestion rents or other charges, be paid for by network users through tariffs for network access in that or those Member States.

2. The provisions of this Article shall apply to a project of common interest falling under the categories set out in points (1)(a), (b), (c) and (e) of Annex II where at least one project promoter requests the relevant national authorities their application for the costs of the project. They shall apply to a project of common interest falling under the category set out in point (3) of Annex II, as relevant, only where an assessment of market demand has already been carried out and indicated that the efficiently incurred investment costs cannot be expected to be covered by the tariffs.

Projects falling under the category set out in points (1) (e) and (2) of Annex II may benefit from the provisions of this Article where at least one project promoter requests its application to the relevant national authorities.

Where a project has several project promoters, the relevant national regulatory authorities shall without delay request all project promoters to submit the investment request jointly in accordance with paragraph 3.

3. For a project of common interest to which paragraph 1 applies, the project promoters shall keep all relevant national regulatory authorities regularly informed, at least once per year, and until the project is commissioned, of the progress of that project and the identification of costs and impacts associated with it.

As soon as such a project of common interest has reached sufficient maturity, and is estimated to be ready to start the construction phase within the next 36 months, the project promoters, after having consulted the TSOs from the Member States which receive a significant net positive impact from it, shall submit an investment request. That investment request shall include a request for a cross-border cost allocation and shall be submitted to all the relevant national regulatory authorities concerned, accompanied by the following:

- (a) up-to-date project-specific cost-benefit analysis consistent with the methodology drawn up pursuant to Article 11 and taking into account benefits beyond the borders of the Member States

on the territory of which the project is located by using the same scenario as used in the selection process for the elaboration of the Union list where the project of common interest is listed;  
(b) a business plan evaluating the financial viability of the project, including the chosen financing solution, and, for a project of common interest falling under the category referred to in point (3) of Annex II, the results of market testing;  
(c) where the project promoters agree, a substantiated proposal for a cross-border cost allocation.

Where a project is promoted by several project promoters, they shall submit their investment request jointly.

The national regulatory authorities shall, upon receipt, transmit to the Agency, without delay, a copy of each investment request, for information purposes.

The national regulatory authorities and the Agency shall preserve the confidentiality of commercially sensitive information.

4. Within six months of the date on which the last investment request is received by the relevant national regulatory authorities, those national regulatory authorities shall, after consulting the project promoters concerned, take joint coordinated decisions on the allocation of investment costs to be borne by each system operator for the project, as well as their inclusion in tariffs. The national regulatory authorities shall include all the efficiently incurred investment costs in tariffs in line with the allocation of investment costs to be borne by each system operator for the project. The national regulatory authorities shall thereafter assess, where appropriate, whether any affordability issues might arise due to the inclusion of the investment costs in tariffs.

In allocating the costs, the national regulatory authorities shall take into account actual or estimated:

- (a) congestion rents or other charges,
- (b) revenues stemming from the inter-transmission system operator compensation mechanism established under Article 49 of Regulation (EU) 2019/943.

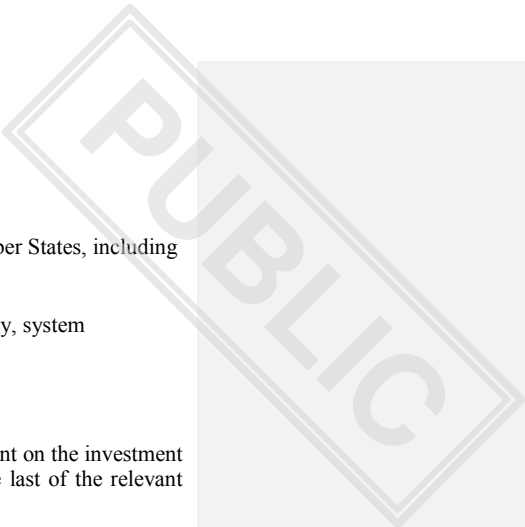
The allocation of costs across borders shall take into account, the economic, social and environmental costs and benefits of the projects in the Member States concerned and the need to ensure a stable financing framework for the development of projects of common interest while minimising the need for financial support.

In allocating costs across borders, the relevant national regulatory authorities, in consultation with the TSOs concerned, shall seek a mutual agreement based on, but not limited to, the information specified in paragraphs 3(a) and (b). Their assessment shall be based on the same scenario as used in the selection process for the elaboration of the Union list where the project of common interests is listed.

Where a project of common interest mitigates negative externalities, such as loop flows, and that project of common interest is implemented in the Member State at the origin of the negative externality, such mitigation shall not be regarded as a cross-border benefit and shall therefore not constitute a basis for allocating costs to the TSO of the Member States affected by those negative externalities.

5. National regulatory authorities shall, on the basis of the cross-border cost allocation referred to in paragraph 4 of this Article, take into account actual costs incurred by a TSO or other project promoter as a result of the investments when fixing or approving tariffs in accordance with Article 59(1)(a) of Directive (EU) 2019/944 and Article 41(1)(a) of Directive 2009/73/EC, insofar as those costs correspond to those of an efficient and structurally comparable operator.

The cost allocation decision shall be notified, without delay, by the national regulatory authorities to the Agency, together with all the relevant information with respect to the decision. In particular, the cost allocation decision shall set out detailed reasons for the allocation of costs among Member States, including the following:

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- (a) an evaluation of the identified impacts on each of the concerned Member States, including those concerning network tariffs;
  - (b) an evaluation of the business plan referred to in paragraph 3(b);
  - (c) regional or Union-wide positive externalities, such as security of supply, system flexibility, solidarity or innovation, which the project would generate;
  - (d) the result of the consultation of the project promoters concerned.

The cost allocation decision shall be published.

6. Where the relevant national regulatory authorities have not reached an agreement on the investment request within six months of the date on which the request was received by the last of the relevant national regulatory authorities, they shall inform the Agency without delay.

In that case or upon a request from at least one of the relevant national regulatory authorities, the decision on the investment request including cross-border cost allocation referred to in paragraph 3 as well as the necessity for the inclusion of the cost of the investments, in its totality, as allocated across borders in the tariffs shall be taken by the Agency within three months of the date of referral to the Agency.

Before taking such a decision, the Agency shall consult the relevant national regulatory authorities and the project promoters. The three-month period referred to in the second subparagraph may be extended by an additional period of two months where further information is sought by the Agency. That additional period shall begin on the day following receipt of the complete information.

The assessment of the Agency shall be based on the same scenario as used in the selection process for the elaboration of the Union list where the project of common interest is listed.

The Agency shall leave the way investment costs are included in the tariffs in line with the cross-border cost allocation prescribed for the determination of the relevant national authorities at the moment of the implementation of the decision in accordance with national law.

The decision on the investment request including cross-border cost allocation shall be published. Articles 25(3), 28 and 29 of Regulation (EU) 2019/942 shall apply.

7. A copy of all cost allocation decisions, together with all the relevant information with respect to each decision, shall be notified, without delay, by the Agency to the Commission. That information may be submitted in aggregate form. The Commission shall preserve the confidentiality of commercially sensitive information.

8. Cost allocation decisions shall not affect the right of TSOs to apply and of national regulatory authorities to approve charges for access to networks in accordance with Article 6 of Directive (EU) 2019/944, Article 32 of Directive 2009/73/EC, Article 18(1) and 18(3) to (6) of Regulation (EU) 2019/943, and Article 13 of Regulation (EC) No 715/2009.

9. This Article shall not apply to projects of common interest which have received an exemption:
- (a) from Articles 32, 33 and 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC pursuant to Article 36 of that Directive;
  - (b) from Article 19(2) and (3) of Regulation (EU) 2019/943 or Articles 6, 59(7) and 60(1) of Directive (EU) 2019/944 pursuant to Article 63 of Regulation (EU) 2019/943;
  - (c) from unbundling or third party access rules pursuant to Article 64 of Regulation (EU) 2019/943 and Article 66 of Directive (EU) 2019/944 or
  - (d) pursuant to Article 17 of Regulation (EC) No 714/2009.

~~10. By [31 December 2022], the Commission shall adopt implementing acts containing binding guidelines to ensure uniform conditions for the implementation of this Article and the offshore~~

~~grids for renewable energy cross border cost sharing as referred to in Article 15(1). The guidelines shall also address the special situation of offshore grids for renewable energy projects of common interest by including principles on how their cross border cost allocation shall be coordinated with the financing, market and political arrangements of offshore generation sites connected to them. In adopting or amending the guidelines, the Commission shall consult ACER, the ENTSO for Electricity, the ENTSO for Gas, and, where relevant, other stakeholders. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 21(2);~~

**Commented [REDACTED]:** Regulation and cost-sharing are essential issues that cannot be addressed via guidelines, especially adopted with the advisory procedure. All relevant provisions should be included in the regulation itself.

## *Article 17*

### **Incentives**

1. Where a project promoter incurs higher risks for the development, construction, operation or maintenance of a project of common interest falling under the competency of national regulatory authorities, when compared to the risks normally incurred by a comparable infrastructure project, Member States and national regulatory authorities shall ensure that appropriate incentives are granted to that project in accordance with Article 58(f) of Directive (EU) 2019/944, Article 41(8) of Directive 2009/73/EC, Article 18(1) and (3) to (6) of Regulation (EU) 2019/943, and Article 13 of Regulation (EC) No 715/2009.

The first subparagraph shall not apply where the project of common interest has received an exemption:

- (a) from Articles 32, 33, and 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC pursuant to Article 36 of that Directive;
- (b) from Article 19(2) and (3) of Regulation (EU) 2019/943 or an exemption from Articles 6, 59(7) and 60(1) of Directive (EU) 2019/944 pursuant to Article 63 of Regulation (EU) 2019/943 ;
- (c) pursuant to Article 36 of Directive 2009/73/EC ;
- (d) pursuant to Article 17 of Regulation (EC) No 714/2009.

2. In their decision granting the incentives referred to in paragraph 1, national regulatory authorities shall consider the results of the cost-benefit analysis on the basis of the methodology drawn up pursuant to Article 11 and in particular the regional or Union-wide positive externalities generated by the project. The national regulatory authorities shall further analyse the specific risks incurred by the project promoters, the risk mitigation measures taken and the justification of the risk profile in view of the net positive impact provided by the project, when compared to a lower-risk alternative. Eligible risks shall in particular include risks related to new transmission technologies, both onshore and offshore, risks related to under-recovery of costs and development risks.

3. The decision shall take into account the specific nature of the risk incurred and may grant incentives covering, inter alia, the following measures:

- (a) the rules for anticipatory investment;
- (b) the rules for recognition of efficiently incurred costs before commissioning of the project;
- (c) the rules for providing additional return on the capital invested for the project;
- (d) any other measure deemed necessary and appropriate.

4. By [31 July 2022], each national regulatory authority shall submit to the Agency its methodology and the criteria used to evaluate investments in energy infrastructure projects and the higher risks incurred by them, updated in view of latest legislative, policy, technological and market developments. Such methodology and criteria shall also expressly address the specific risks incurred by offshore grids for renewable energy referred to in point (1)(e) of Annex II and by projects, which, while having low capital expenditure, incur significant operating expenditure.



5. By [31 December 2022], taking due account of the information received pursuant to paragraph 4 of this Article, the Agency shall facilitate the sharing of good practices and make recommendations in accordance with Article 6 of Regulation (EU) 2019/942 regarding:

- (a) the incentives referred to in paragraph 1 on the basis of a benchmarking of best practice by national regulatory authorities;
- (b) a common methodology to evaluate the incurred higher risks of investments in energy infrastructure projects.

6. By [31 March 2023], each national regulatory authority shall publish its methodology and the criteria used to evaluate investments in energy infrastructure projects and the higher risks incurred by them.

7. Where the measures referred to in paragraphs 5 and 6 are not sufficient to ensure the timely implementation of projects of common interest, the Commission may issue guidelines regarding the incentives laid down in this Article.

## CHAPTER VII

### FINANCING

#### Article 18

**Eligibility of projects for Union financial assistance under Regulation (EU)... [on a Connecting Europe Facility as proposed by COM(2018)438]**

1. Projects of common interest falling under the categories set out in Annex II are eligible for Union financial assistance in the form of grants for studies and financial instruments.

2. Projects of common interest falling under the categories set out in points (1)(a), (b), (c) and (e) of Annex II and point (3) of Annex II, ~~except for hydro-pumped electricity storage projects~~, are also eligible for Union financial assistance in the form of grants for works where they fulfil all of the following criteria:

- (a) the project specific cost-benefit analysis pursuant to Article 16(3)(a) provides evidence concerning the existence of significant positive externalities, such as security of supply, system flexibility, solidarity or innovation;
- (b) the project has received a cross-border cost allocation decision pursuant to Article 16 or, as regards projects of common interest falling under the category set out in point (3) of Annex II, where they do not fall under the competency of national regulatory authorities, and therefore they do not receive a cross-border cost allocation decision, the project aims at providing services across borders, bring technological innovation and ensure the safety of cross-border grid operation;
- (c) the project is not commercially viable according to the business plan and other assessments carried out, in particular by potential investors or creditors or the national regulatory authority. The decision on incentives and its justification referred to in Article 17(2) shall be taken into account when assessing the project's commercial viability.

3. Projects of common interest carried out in accordance with the procedure referred to in Article 5(7)(d) shall also be eligible for Union financial assistance in the form of grants for works where they fulfil the criteria set out in paragraph 2 of this Article.

4. Projects of common interest falling under the categories set out in points (1)(d), (2) and (5) of Annex II shall also be eligible for Union financial assistance in the form of grants for works, where the concerned project promoters can clearly demonstrate significant positive externalities, such as security of supply, system flexibility, solidarity or innovation, generated by the projects and provide clear evidence of their lack of commercial viability, in accordance with the cost-benefit analysis, the business plan and assessments carried out, in particular by potential investors or creditors or, where applicable, a national regulatory authority.

**Commented [REDACTED]:** We strongly believe that the hydro-pumped storage facilities should be eligible for financing of works and not only of studies. Energy transition, with the integration of a vast amount of RES in the system turns those facilities indispensable for the stability of the system. In addition, many EU countries are withdrawing existing lignite-fired generation capacity, which will leave a critical gap, in terms of capacity adequacy and security of supply, which needs to be covered. Hydro-pump storage facilities can contribute in this direction.

5. Projects of mutual interest shall be assimilated with projects of common interest and be eligible for Union financial assistance. Only the investments located on the territory of the Union which are part of the project of mutual interest, shall be eligible for Union financial assistance in the form of grants for works where they fulfil the criteria set out in paragraph 2, and where the cross-border cost allocation decision referred to in paragraph 2(b) allocates costs across borders for at least two Member States in a significant proportion in each Member State.

*Article 19*

**Guidance for the award criteria of Union financial assistance**

The specific criteria set out in Article 4(3) and the parameters set out in Article 4(5) shall apply for the purpose of establishing award criteria for Union financial assistance in in Regulation (EU)... [on a Connecting Europe Facility as proposed by COM(2018)438].