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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	HU comments on Art. 14-31 of the TEN-E Regulation (ST 7731/21)

Delegations will find in the annex the HU comments on Art. 14-31 of the TEN-E Regulation (ST 7731/21).

Article 16

Enabling investments with cross-border impacts

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 **considering ~~at least~~ the joint scenarios established for network development planning under article 12 [ ]**;

(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.

Commented [ ]: No other scenarios should be allowed other than the common scenarios developed by the ENTSOs. Any CBCA decision should be backed by very strong analyses, and the usage of scenarios from outside the TYNDP framework could easily undermine this.

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 **efficiently incurred** investment costs to be borne by each system operator for the project, as well as their inclusion in tariffs **or on the rejection of the investment request or of part of the project if the common analysis of national regulatory authorities concludes that the project or a part of it fails to provide a significant net benefit at EU level**. The national regulatory authorities shall include **[ ]** the **relevant** efficiently incurred investment costs in tariffs in line with the allocation of investment costs to be borne by each system operator for the project. **[ ]** 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 **consider all relevant scenarios established under article 12 ~~and other scenarios~~ for network development planning, allowing a robust analysis of the contribution of the project of common interest to the Union energy policy targets of decarbonisation, market integration, competition, sustainability and security of supply [ ]**.

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.

Commented [ ]: This should not be possible if the project is already a PCI.

Commented [ ]: See above. If the new TEN-E aims to introduce an even more rigorous process for scenario development, 'other scenarios' in any subsequent task are contradictory to this aim.

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 **joint** request from **[ ]** the relevant national regulatory authorities, the decision on the investment request including cross-border cost allocation referred to in paragraph 3 **[ ]** 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 **consider all relevant scenarios established under article 12** ~~and other scenarios~~ **for network development planning, allowing a robust analysis of the contribution of the project of common interest to the Union energy policy targets of decarbonisation, market integration, competition, sustainability and security of supply [ ].**

Commented [ ]: See above.

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.~~

Commented [ ]: The project-specific risk-related incentives of the current Regulation have not been substantially used by project promoters and, according to the ACER PCI monitoring reports, project promoters show a limited interest to use them in the future. Further reports show that current regulatory regimes provide incentives to ensure efficient investment spending. This conclusion is confirmed by the low number of promoter request for incentives and even lower number of incentives granted by NRA decisions. Also the study supporting the evaluation of the TEN-E Regulation recommends "not including the regulatory incentives in their current form in a revised version of the Regulation. Additional premia imply a considerable risk of inefficient overinvestment together with unjustified returns as well as distortions in investment choices. **Therefore we suggest to delete Article 17 provisions on risk-related incentives.**

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(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.

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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, **where available**, updated in view of latest legislative, policy, technological and market developments. Such methodology and criteria shall also expressly address the specific risks incurred by off-shore 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.

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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, **[ ]** 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 *according to the cost benefit analysis methodology in Article 11* ~~pursuant to Article 16(3)(a)~~ provides evidence concerning the existence of significant positive externalities, such as **effective contribution to sustainability,** security of supply, system flexibility **[ ]** or innovation;

(b) *the evidence listed in point (a) have been identified jointly by the concerned national regulatory authorities where the project falls under their competence, including via* ~~the project has received~~ a cross-border cost allocation decision pursuant to Article 16 if adopted 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~~. *the implementation of the project may raise affordability issues according assessments carried out in particular by the national regulatory authority*

Commented [redacted]: We suggest to delete the systematic prerequisite of a CBCA for CEF grants for works. The CEF application should be based on a reasoned statement by the NRAs that the positive externalities at EU level have been scrutinized and validated by the NRAs, thus maintaining a high level of regulatory scrutiny, while without necessarily processing a CBCA. This approach would also enable to have consistent frameworks for CEF application for all project categories, removing the CBCA requirement which applies only to some project categories

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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, **in an evaluation carried out by the relevant national authority or, where applicable, the national regulatory authority**,can clearly demonstrate significant positive externalities, such as **effective contribution to sustainability**, security of supply, system flexibility, **[ ]** or innovation, generated by the projects ~~and provide clear evidence of their lack of commercial viability~~, in accordance with the cost-benefit analysis, ***or where the project may raise affordability issues, according to*** ~~the business plan and~~ assessments carried out, ~~in particular~~ by ~~potential investors or creditors or, where applicable,~~ a national regulatory authority.

5. **Projects of common interest in island territories where, due to their geographical situation, it is not feasible to demonstrate a physical cross-border impact, shall also be eligible for Union financial assistance in the form of grants for works, where the concerned project promoters can clearly demonstrate in an evaluation carried out by the national regulatory authority: significant positive externalities, such as effective contribution to sustainabilitysecurity of supply, system flexibility 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.**

6. *(ex point 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]

Article 25

Amendment to Regulation (EC) No 715/2009

In Article 8(10) of Regulation (EC) No 715/2009, the first subparagraph is replaced by the following:

> 'The ENTSO for Gas shall adopt and publish a Union-wide network development plan referred to in point (b) of paragraph 3 every two years. The Union-wide network development plan shall include the modelling of the integrated network, including hydrogen networks, scenario development, a European supply adequacy outlook and an assessment of the resilience of the system'.

1 a. The following Article 8(13) is added to Regulation (EC) 715/2009:

'13. By 31 March 2023, the Agency shall publish guidelines, which shall be followed by European Network of Transmission System Operators for Gas, for the development of the draft Union-wide network development plan referred to in point (b) of paragraph 3. The guidelines shall be regularly updated, as found necessary. The Agency shall be entitled to issue binding amendment requests on the draft Union-wide network development plan referred to in point (b) of paragraph 3.'

Commented [■]: *In order to avoid potential or perceived biases in the TYNDP preparation, ACER should develop a binding decision on the content and process of the TYNDPs before ENTSOs' preparation of the TYNDPs and should be empowered to issue binding amendment requests on the draft TYNDPs. It should focus on how the TYNDP is to be developed in terms of admission criteria for projects, process, stakeholder consultation and required outputs. Aspects related to the fair treatment of all project promoters and the transparency of the process are also of paramount importance. The ACER decision could also cover the objectives of cross-sectoral integration and energy transition.*

Binding amendment requests by ACER should be introduced to cover any flaws of the draft TYNDPs that ACER and NRAs might identify, including those which require re-running simulations on certain aspects of projects' assessment that can only be done by the ENTSOs. The current experience shows that the amendment requests raised by ACER in its regular opinions on draft TYNDPs, including on TYNDP projects and their features, have not always been implemented, which may have detrimental effects of the interest of European citizens.

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Article 26

Amendment to Directive 2009/73/EC

In Article 41(1) of Directive 2009/73/EC, point (v) is added:

'(v) carry out the obligations laid out in Articles 3, 5(7), Articles 14, 15, 16 and Article 17 of [the TEN-E Regulation as proposed by COM(2020)824];'

Article 22(1) of Directive 2009/73/EC is replaced by the following:

'(1) Every two years, all transmission system operators of a Member State, regardless of their unbundling regime, in a joint way, shall submit to the regulatory authority a ten-year network development plan based on existing and forecast supply and demand after having consulted all the relevant stakeholders. That network development plan shall contain efficient measures in order to guarantee the adequacy of the system and the security of supply. The transmission system operator shall publish the ten-year network development plan on its website. The regulatory authority shall review the draft ten-year network development plan and approve it. Before its approval, it may require the transmission system operator to amend its ten-year network development plan, including the inclusion or removal of investment items.'

Article 22(2) of Directive 2009/73/EC is replaced by the following:

'(2) The ten-year network development plan shall, in particular:

(a) indicate to market participants the main transmission infrastructure that needs to be built or upgraded over the next ten years;

(b) contain all the investments already decided and identify new investments which have to be executed in the next three years;

(c) contain all investments which are planned in the next 10 years; and

(d) provide for a time frame for all investment projects.'

Commented [ ]: *National development plans (NDPs) are not legally required to be prepared for all types of Transmission System Operator (TSO) unbundling regimes. Further, NDPs significantly differ from each other in terms of their scope, time-horizon, frequency and timing, which reduces the usability of the NDPs as a solidly comparable basis for the construction of the TYNDP. Next, not all NDPs are subject to regulatory approval which would increase economic scrutiny of the projects, thus increase the credibility and feasibility of the plans. As a minimum requirement, national network development plans - defining the transmission development on at least a 10-year time-horizon - should be published by each TSO regardless of its certification and approved by the relevant national regulatory authority. The change of frequency from yearly to every two years would align the requirements for electricity and gas NDPs and facilitate synergies in the planning activities.*

In Member States with several TSOs in a sector, NDPs should be developed by all TSOs in a joint and fully coordinated way.

The Electricity Directive already contains the obligation of TSOs to publish the NDP on their website. This should be mirrored for gas.

Article 27

Amendment to Directive (EU) 2019/944

In Article 59(1) of Directive (EU) 2019/944, point (zz) is added:

'(zz) carry out the obligations laid out in Articles 3, 5 (7), Articles 14, 15, 16 and Article 17 of [the TEN-E Regulation as proposed by COM(2020)824];'

Article 51(1) of Directive (EU) 2019/944 is replaced by the following:

'1. Every two years, all transmission system operators of a Member State, regardless of their unbundling regime as set out in Sections 1, 2 and 3 above, shall submit to the regulatory authority, in a joint way, a ten-year network development plan based on existing and forecast supply and demand after having consulted all the relevant stakeholders. That network development plan shall contain efficient measures in order to guarantee the adequacy of the system and the security of supply. The transmission system operator shall publish the ten-year network development plan on its website. The regulatory authority shall review the draft ten-year network development plan and approve it. Before its approval, it may require the transmission system operator to amend its ten-year network development plan.'

Article 51(2) is replaced by the following:

'2. The ten-year network development plan shall in particular:

(a) indicate to market participants the main transmission infrastructure that needs to be built or upgraded over the next ten years;

(b) contain all the investments already decided and identify new investments which have to be executed in the next three years;

(c) contain all investments which are planned in the next 10 years; and

(d) provide for a time frame for all investment projects.'

Article 28

Amendment to Regulation (EU) 2019/943

The first sentence of Article 48 of Regulation (EC) 2019/943 is replaced by the following:

'The Union-wide network development plan referred to under point (b) of Article 30(1) shall include the modelling of the integrated network, including scenario development and an assessment of the resilience of the system. **Relevant input parameters for the modelling such as assumptions on fuel and carbon prices or installation of renewables** it shall be fully consistent with the European resource adequacy assessment developed pursuant to Article 23.'

Point (c) of Article 48(1) of Regulation (EC) 2019/943 is replaced by the following:

Commented [■]: *National development plans (NDPs) are not legally required to be prepared for all types of Transmission System Operator (TSO) unbundling regimes. Further, NDPs significantly differ from each other in terms of their scope, time-horizon, frequency and timing, which reduces the usability of the NDPs as a solidly comparable basis for the construction of the TYNDP. Next, not all NDPs are subject to regulatory approval which would increase scrutiny of the projects, in the interest of European citizens, and increase the credibility and feasibility of the plans. As a minimum requirement, national network development plans - defining the transmission development on at least a 10-year time-horizon - by each TSO regardless of its unbundling regime and be subject to amendments and approval by the relevant national regulatory authority.*

Each Member State should have a single national development plan for electricity infrastructure development (and a single plan for gas infrastructure development, see the mirror amendment proposed for the Gas Directive). In Member States with several TSOs in a sector, NDPs should be developed by all TSOs in a joint and fully coordinated way

'(c) identify investment gaps, in particular with respect to cross-border capacities, by analysing target values in MW for transfer capacity at bidding zone boundaries.'

The following Article 48(3) is added to Regulation (EC) 2019/943:

'3. By 31 March 2023, ACER shall publish guidelines, which shall be followed by European Network of Transmission System Operators for Electricity, for the development of the draft Union-wide network development plan referred to in Article 30(1) of Regulation (EU) 2019/943. The guidelines shall be regularly updated, as necessary. ACER shall be entitled to issue binding amendment requests on the draft Union-wide network development plan referred to in Article 30(1) of Regulation (EU) 2019/943.'

Commented [REDACTED]: *The Union-wide ten-year network development plan (TYNDP) should analyse target values in MW for additional transfer capacity at each bidding zone boundary, accounting for costs and benefits of capacity increase, in line with Article 13 of the legislative proposal for the TEN-E Regulation.*

In order to avoid potential or perceived biases in the TYNDP preparation, ACER should develop a binding decision on the content and process of the TYNDPs before ENTSOs' preparation of the TYNDPs and should be empowered to issue binding amendment requests on the draft TYNDPs. It should focus on how the TYNDP is to be developed in terms of admission criteria for projects, process, stakeholder consultation and required outputs. Aspects related to the fair treatment of all project promoters and the transparency of the process are also of paramount importance. The ACER decision could also cover the objectives of cross-sectoral integration and energy transition.

ACER's binding amendment requests should be introduced to cover any flaws of the draft TYNDPs that ACER and NRAs might identify, including those which require re-running simulations on certain aspects of projects' assessment that can only be done by the ENTSOs. The current experience shows that the amendment requests raised by ACER in its regular opinions on draft TYNDPs, including on TYNDP projects and their features, have not always been implemented, which may have detrimental effects of the interest of European citizens.

*A*rticle 30

Repeal

Regulation (EU) No 347/2013 is repealed from [1 January 2022]. No rights shall arise under the present Regulation for projects listed in the Annexes to Regulation (EU) 347/2013.

Rights and obligations with regard to priority status and eligibility for EU funding shall remain in force under the present Regulation for natural gas projects of common interest listed in Annex VII to Regulation (EU) 347/2013 until 31. December 2029. with the condition that those projects have sufficient maturity at the time of the entry.

Commented [redacted]: We maintain our proposal maintain the eligibility of natural gas projects with PCI status in 2021 for a limited time period in order to finish commissioning and enable them to receive CEF funding