

**NOTE**  
**on the Regulation 347/2013 as adapted for the Energy Community**

**Issues of concern for Contracting Parties and the Energy Community Secretariat.**

**1. Article 4: Criteria for Projects of Energy Community Interest**

In the version of the Regulation 347/2013 adapted for the Energy Community, the European Commission has introduced two additional paragraphs:

*'5. When the project directly crosses the border of one or more Contracting Parties and one or more Member States, in order to be considered to be a project of Energy Community interest, it shall be first granted a status of project of the common interest within the European Union.*

*6. Project that directly crosses the border of one or more Contracting Parties and one or more Member States which do not fulfil the condition laid down in paragraph 5 may be developed on voluntary basis as a project of Mutual Interest.'*

Paragraph 5 is considered by the Contracting Parties and the Secretariat to be discriminatory by limiting the chances of projects connecting Energy Community Contracting Parties and EU Member States to receive the label "Projects of Energy Community Interest", and by this denying them the chance to have access to technical assistance (for the infrastructure parts located on their territories) from IPA funds (national or multi country) for the Western Balkan 6, or from the Neighbourhood Investment Facility (NIF) for the Eastern Partnership countries.

The EC's justification for this requirement was that is supposed to ensure that Energy Community projects are not imposed on an EU Member State not willing to implement it, and to prevent that Energy Community Contracting Parties may end up with half an electricity line or gas pipeline, built only on their territory.

In the Secretariat's view, this argumentation is not valid, as in the process of assessing the PEI candidates all authorities concerned (governments, regulatory authorities, TSOs, etc) from both the Contracting Parties and the EU MS are consulted and have to support the PEI application.

Some of the PEI candidates, although valuable projects for the Energy Community, will not be able to receive a PCI status, as it would be difficult to demonstrate the impact of a second EU MS, which is a key criteria for receiving the PCI status. As a consequence, proposed Paragraph 5 would eliminate them also from the PEI list.

The most obvious potential PEIs candidates for 2016 that are not included in the PCI 2015 candidate lists are:

**Electricity connections:**

Moldova – Romania  
Ukraine – Hungary  
Ukraine – Poland  
Croatia – BiH  
....

**Gas connections:**

Interconnector Serbia – Romania  
Interconnector Ukraine – Poland  
Interconnector Macedonia – Greece  
....

Even in the case of existing PECIs that are present on the 2015 PCI candidates list, it is yet not clear how many of these will be retained on the final PCI list; In ECS view, not all of them would get the PCI status, as it will be difficult for the project promoters to demonstrate that their PECIs will have a direct impact on as second MS, beside the one connected.

Having this in mind, the requirement to have a PCI status confirmed before projects with EU Member States may apply for PEI status will become a major hurdle in the selection process in the Energy Community, which will have a negative implication on EU funding.

**ECS Proposal for amending the MC Decision**

Option 1: Remove completely Paragraph 5 and 6 of Article 4

Option 2: Remove Paragraph 6 and reword paragraph 5 as follows:

*'5. When the project directly crosses the border of one or more Contracting Parties and one or more Member States, when considered to be a project of Energy Community interest, **this should preferably** be first granted a status of project of the common interest within the European Union.*

**2. Art. 11. Energy system wide cost-benefit analysis**

Article 11(1) was adapted by the EC for the Energy Community as follows:

*'The methodologies published by the European Network Transmission System Operators (ENTSO) for Electricity and the ENTSO for Gas respectively under Article 11 (1) of the Regulation (EU) No 347/2013 shall be applied for projects falling under the categories set out in Annex I.(1) and (2).'*

The above mentioned methodologies are used by ENTSO E and ENTSO G to prepare the Ten-Year Network Development Plans, which were the basis for the PCI candidate list.

Nevertheless, these methodologies are not applicable in full and as such, because some of the Contracting Parties are not members of ENTSO E (Albania, Kosovo, Moldova, Ukraine) and none of them are full members of ENTSO G; Macedonia and Ukraine are only observers.

Hence some potential PECO candidates may not be on the ENTSO E / ENTSO G Ten-Year Network Development Plans, and therefore, the ENTSO methodology used for cost benefit analysis would not be entirely applicable, for those projects located in non ENTSO E and G members, as listed above.

The best approach is that a customised methodology, taking into account those proposed by ENTSO E and ENTSO G would be developed for the Energy Community, with the assistance of a consultant.

Even in the case of PCIs 2015, where ENTSO E and ENTSO G played a major role making the cost benefit analysis, due to the very complex process, the Commission had to use the services of the Joint Research Centre for the assessment and ranking of the PCIs.

### **ECS Proposal for amending the MC Decision**

Article 11(1) should be re-worded as follows:

‘The methodologies published by the European Network Transmission System Operators (ENTSO) for Electricity and the ENTSO for Gas respectively under Article 11 (1) of the Regulation (EU) No 347/2013 shall be **used as guidelines [or: shall be duly taken into account]** for projects falling under the categories set out in Annex I.(1) and (2).’