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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**concerning the notification to the Commission of investment projects in energy
infrastructure within the European Union and replacing Council Regulation (EU,
Euratom) No 617/2010**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Commission is proposing this new Regulation to the European Parliament and Council following the judgment of the European Court of Justice to annul Council Regulation (EU, Euratom) N° 617/2010 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and to maintain its effects until a new regulation has been adopted on the appropriate legal basis, namely Article 194(2) TFEU.

The scope of this proposed Regulation is identical as that of the annulled Regulation. Member States are required to notify every two years to the Commission data and information on investment projects concerning production, storage and transport of oil, natural gas, electricity (including electricity from renewable sources), biofuels and the capture and storage of carbon dioxide.

Investments to be notified to the Commission encompass planned and under construction projects, transformation of existing infrastructure as well as decommissioning projects of a certain size, on a five-year horizon, in the territory of Member States, including interconnections with third countries. Undertakings concerned should be under an obligation to notify to the Member State the data and information in question.

The Court's ruling of 6 September 2012 was decided after the European Parliament took legal action against the Council in October 2010 contesting the legal basis used for the adoption of Regulation 617/2010 and requesting the Court to annul it (Case C-490/10). The Council used Articles 337 TFEU and 187 TEAEC as a legal base, on the grounds that the Regulation relates to the activity of collecting general information.

Following the Parliament's request, the Court annulled Regulation 617/2010, but maintained its effects until a new regulation has been adopted on the correct legal basis within a reasonable period of time. In order to comply with the Court's judgement and to ensure continuity in the observation of investment projects in energy infrastructure, the Commission proposes a Regulation with the same content as the annulled Regulation and suggests a few adaptations, which are strictly necessary due to the new legislative process. These modifications concern the new legislative procedure (ordinary legislative procedure), the date for a review of the act (31 December 2016 instead of 23 July 2015) and the date for reporting.

Following the ruling of the Court, the effects of the annulled Regulation are maintained until a new Regulation has been adopted. Even though we expect a swift adoption of the new Regulation in the course of 2013, it is unlikely that the new Regulation will be adopted before July 2013, which is the next deadline for Member States to notify their investments according to the annulled Regulation. The next reporting exercise in 2013 should therefore still be based on the annulled Regulation. In the new Regulation proposed, notification of data should be done from 1 January 2015 and from then onwards every two years.

The form and technical details of the notification to the Commission of data and information on investment projects in energy infrastructure are set out in the Annex to Commission Regulation (EU, Euratom) No 833/2010 of 21 September 2010 implementing the annulled Council Regulation (EU, Euratom) No 617/2010. Commission Regulation 833/2010 will remain applicable until its revision, which will follow the adoption of this proposed Regulation.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Given that (i) a proper impact assessment and a consultation with the interested parties were carried out when Regulation 617/2010 was proposed, (ii) the content of the proposed Regulation is the same as that of Regulation 617/2010, the Commission did not carry out a new impact assessment, nor did the Commission launch a new consultation with the interested parties.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The proposed Regulation establishes a common framework for the notification to the Commission of data and information on investment projects in energy infrastructure in the petroleum, gas, electricity and bio-fuel sectors and related to carbon dioxide produced by these sectors.

Every two years, Member States or the entity they delegate this task to would be required to collect and notify data and information on investment projects concerning production, transport and storage. To minimise the administrative burden, two elements of flexibility and simplification are introduced:

- Unless otherwise decided by Member States, undertakings would be under an obligation to provide Member States - or the competent entity - information on their investment projects, including decommissioning projects;
- Member States would be exempted from reporting if they already provide equivalent information to the Commission under EU energy sector – specific legislation. This would also be the case if the bodies in charge of network development plans for gas and electricity collect the relevant data. In this case, they would be requested to notify the relevant data to the Commission, with the appropriate comments of Member States if necessary.

Data and information collected (type of investment, planned capacities and major obstacles...) would provide the major trends for investment in EU energy infrastructure. Provision is made to guarantee that data and information notified to the Commission meet generally accepted standards; that data and information are received, stored and processed with the appropriate IT tools and in full compliance with the legal framework on data protection for individuals; that data and information will be made public except where they are commercially sensitive.

On the basis of the data and information received, the Commission will provide a regular and cross – sector analysis of the structural evolution and perspectives of the EU energy system and any other specific analysis needed. This would allow for an identification of potential future demand and supply gaps and obstacles to investment. With these analyses, the Commission will be in a better position to promote best practice and to establish greater transparency for market participants. To develop common views on these issues, the results of these analyses would be discussed with stakeholders and published.

Legal basis

The legal basis for the proposal is Article 194 of the Treaty on the Functioning of the European Union.

Subsidiarity principle

This draft proposal aims at strengthening the framework for collection of data and information for the Commission's tasks. With appropriate data, the Commission and in particular its Market Observatory for Energy will be in a better position to monitor the evolution of the EU energy system, in a cross – sector perspective and at EU level, and the potential problems which could delay or hinder investment projects. Given the interrelations of energy sub sectors (e.g. electricity and gas) and the existence of an internal market, the EU-wide dimension is becoming more and more relevant, thus justifying the role of EU institutions and of the Commission in particular.

Proportionality principle

The proposal complies with the proportionality principle. This proposal does not go beyond what is necessary in order to achieve the objectives. Member States will continue to have considerable flexibility in choosing the arrangements to collect data.

Choice of instruments

The instrument proposed is a Regulation as it replaces an existing Regulation.

4. BUDGETARY IMPLICATION

The proposal will have a limited impact on the Community budget, in particular to cover expenditure on information technology and, should the Commission so decide, expenditure on data purchasing of data and reimbursement of experts. No major direct impact is foreseen for the budgets of Member States.

5. OPTIONAL ELEMENTS

Simplification

By taking account of existing reporting obligations and monitoring mechanisms, this proposal does not add an unnecessary administrative burden but should apply for its reporting part only if equivalent data and information is not provided by sector- specific legislation.

Review clause

By 31 December 2016, the Commission will review the reporting and monitoring mechanism laid down by the new Regulation.

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concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and replacing Council Regulation (EU, Euratom) No 617/2010

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Obtaining an overall picture of the development of investment in energy infrastructure in the Union is essential for the Commission to perform its tasks in the field of energy. The availability of regular and up-to-date data and information should enable the Commission to make the necessary comparisons, evaluations or to propose relevant measures based on appropriate figures and analysis, in particular concerning the future energy supply-demand balance.
- (2) The energy landscape within and outside the Union has changed significantly in recent years and makes investment in energy infrastructure a crucial issue for securing the Union's energy supply, for the functioning of the internal market and for the transition towards a low-carbon energy system the Union has begun.
- (3) The new energy context requires significant investment in all kinds of infrastructure in all energy sectors as well as the development of new types of infrastructure and new technologies to be taken up by the market. The liberalisation of the energy sector and the further integration of the internal market give a more prominent role to economic operators for investment. At the same time, new policy requirements such as targets affecting the fuel mix will alter Member States' policies towards new and/or modernised energy infrastructure.
- (4) In this context, greater attention should be paid to investment in energy infrastructure in the Union, in particular with a view to anticipating problems, promoting best practices and establishing greater transparency on the future development of the Union's energy system.
- (5) The Commission and in particular its Market Observatory for Energy should therefore have at its disposal accurate data and information on investment projects, including decommissioning, in the most significant components of the energy system of the Union.

- (6) Data and information regarding foreseeable developments in production, transmission and storage capacities and projects in the various energy sectors are of interest to the Union and important to future investment. It is therefore necessary to ensure that the Commission is notified of investment projects on which construction or decommissioning work has started or on which a final investment decision has been taken.
- (7) Pursuant to Articles 41 and 42 of the Euratom Treaty, undertakings are under an obligation to notify their investment projects. It is necessary to supplement such information with, in particular, a regular reporting on the implementation of investment projects. Such additional reporting is without prejudice to Articles 41 to 44 of the Euratom Treaty.
- (8) In order for the Commission to have a consistent view of the future developments of the Union's energy system as a whole, a harmonised reporting framework for investment projects based on updated categories for official data and information to be transmitted by the Member States is necessary.
- (9) Member States should, to this end, notify to the Commission, data and information on investment projects in energy infrastructure concerning production, storage and transport of oil, natural gas, electricity, including electricity from renewable sources, bio-fuels and the capture and storage of carbon dioxide planned or under construction in their territory, including interconnections with third countries. Undertakings concerned should be under an obligation to notify to the Member State the data and information in question.
- (10) Given the time horizon of investment projects in the energy sector, reporting every two years should be sufficient.
- (11) With a view to avoiding disproportionate administrative burdens and to minimise costs to Member States and undertakings in particular for small and medium enterprises, this Regulation should give the possibility to exempt Member States and undertakings from reporting obligations provided that equivalent information is supplied to the Commission pursuant to energy sector-specific legal acts, adopted by the institutions of the Union, aiming at achieving the objectives of competitive energy markets in the Union, of sustainability of the energy system of the Union and of the security of energy supply to the Union. Any duplication of reporting requirements specified in the third internal market package for electricity and natural gas should therefore be avoided.
- (12) To process data as well as to simplify and secure data notification, the Commission and in particular its Market Observatory for Energy should be able to take all appropriate measures to that effect, in particular the operation of integrated IT tools and procedures.
- (13) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council¹, while the protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council². This Regulation leaves those provisions intact.

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 8, 12.1.2001, p. 1.

- (14) Member States, or their delegated entities, and the Commission should preserve the confidentiality of commercially sensitive data and information. Therefore, Member States or their delegated entities should, with the exception of data and information related to cross-border transmission projects, aggregate such data and information at national level before submitting it to the Commission. If required the Commission should further aggregate this data in such a way that no details concerning individual undertakings and installations are disclosed or can be inferred.
- (15) The Commission and in particular its Market Observatory for Energy should provide a regular and cross-sector analysis of the structural evolution and perspectives of the Union energy system and, where appropriate, more focused analysis on certain aspects of this energy system. This analysis should in particular contribute to identifying possible infrastructure and investment gaps in view of an energy supply and demand balance. The analysis should also form a contribution to a discussion at Union level about energy infrastructures and should therefore be forwarded to the European Parliament, the Council and the European Economic and Social Committee and made available to interested parties.
- (16) The Commission may be assisted by experts from Member States or any other competent experts, with a view to developing a common understanding of potential infrastructure gaps and associated risks and to fostering transparency regarding future developments.
- (17) This Regulation replaces Council Regulation (EU, Euratom) No 617/2010 of 24 June 2010, which was annulled by the European Court of Justice on 6 September 2012 and whose effects were maintained until a new regulation is adopted³.
- (18) The form and technical details of the notification to the Commission of data and information on investment projects in energy infrastructure are set out in the Commission Regulation (EU, Euratom) No 833/2010 of 21 September 2010, implementing Council Regulation (EU, Euratom) No 617/2010. Commission Regulation (EU, Euratom) No 833/2010 remains applicable until its revision, which will follow the adoption of this Regulation.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation establishes a common framework for the notification to the Commission of data and information on investment projects in energy infrastructure in the oil, natural gas, electricity, including electricity from renewable sources, and bio-fuel sectors, and on investment projects related to the capture and storage of carbon dioxide produced by these sectors.

2. This Regulation shall apply to investment projects of the types listed in the Annex on which construction or decommissioning work has started or on which a final investment decision has been taken.

Member States may furthermore submit any estimated data or preliminary information on investment projects of the types listed in the Annex on which construction work is scheduled

³ Case C- 490/10, European Parliament v Council of the European Union [OJ C 331/2 of 27.10.2012]

to start within five years and to those which are scheduled to be decommissioned within three years, but for which a final investment decision has not been taken.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

1. 'infrastructure' means any type of installations or part of installations related to production, transmission and storage;
2. 'investment projects' means projects aiming at:
 - (i) building new infrastructure;
 - (ii) transforming, modernising, increasing or reducing capacities of existing infrastructure;
 - (iii) partial or total decommissioning of existing infrastructure;
3. 'final investment decision' means the decision taken at the level of an undertaking to definitively earmark funds towards the investment phase of a project, the investment phase meaning the phase during which construction or decommissioning takes place and capital costs are incurred. The investment phase excludes the planning phase, during which project implementation is prepared and which includes, where appropriate, a feasibility assessment, preparatory and technical studies, obtaining licences and authorisations and incurring capital costs;
4. 'investment projects under construction' means investment projects for which construction has started and capital costs are incurred;
5. 'decommissioning' means the phase where an infrastructure is permanently taken out of operation;
6. 'production' means the generation of electricity and the processing of fuels, including bio-fuels;
7. 'transmission' means the transport of energy sources or products or carbon dioxide, through a network, in particular:
 - (i) through pipelines, other than upstream pipeline network and other than the part of pipelines primarily used in the context of local distribution; or
 - (ii) through extra high voltage and high-voltage interconnected systems and other than the systems primarily used in the context of local distribution;
8. 'storage' means the stocking on a permanent or temporary basis of energy or energy sources in above-ground or underground infrastructure or geological sites or containment of carbon dioxide in underground geological formations;
9. 'undertaking' means any natural or legal private or public person, deciding or implementing investment projects;
10. 'energy sources' means:
 - (i) primary energy sources, such as oil, natural gas or coal;
 - (ii) transformed energy sources, such as electricity;
 - (iii) renewable energy sources including hydroelectricity, biomass, biogas, wind, solar, tidal, wave and geothermal energy; and

(iv) energy products, such as refined oil products and bio-fuels;

11. 'specific body' means a body entrusted by any energy sector-specific legal act of the Union with the preparation and adoption of Union-wide multi-annual network development and investment plans in energy infrastructure, such as the European network of transmission system operators for electricity ('ENTSO-E') referred to in Article 4 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity⁴ and the European network for transmission system operators for gas ('ENTSO-G') referred to in Article 4 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks⁵.

Article 3

Notification of data

1. While keeping the collection and reporting burden proportionate, Member States or the entities to which they delegate this task to shall compile all data and information specified in this Regulation from 1 January 2015 and from then onwards every two years.

They shall notify the data and relevant project information specified in this Regulation to the Commission in 2015, that year being the first reporting year, and from then onwards every two years. This notification shall be made in aggregated form, except for data and relevant information relating to cross-border transmission projects.

Member States or their delegated entities shall notify aggregated data and relevant project information by 31 July of the reporting year concerned.

2. Member States or their delegated entities are exempted from the obligations set out in paragraph 1, provided that, and to the extent that, pursuant to energy sector-specific Union law or the Euratom Treaty:

(a) the concerned Member State or its delegated entity has already notified to the Commission data or information equivalent to the requirements of this Regulation and has indicated the date of the notification and the specific legal act concerned; or

(b) a specific body is entrusted with the preparation of a multi-annual investment plan in energy infrastructure at Union level and compiles to this end data and information equivalent to the requirements of this Regulation. In this case and for the purposes of this Regulation, the specific body shall notify all the relevant data and information to the Commission.

Article 4

Data sources

The undertakings concerned shall notify the data or information referred to in Article 3 to the Member States, or their delegated entities, in whose territory they are planning to carry out investment projects before 1 June of each reporting year. The data or information notified shall reflect the situation of investment projects as of 31 March of the relevant reporting year.

⁴ OJ L 211, 14.8.2009, p. 15.

⁵ OJ L 211, 14.8.2009, p. 36.

The first paragraph shall not apply to undertakings where the Member State concerned decides to use other means of supplying the Commission with the data or information referred to in Article 3.

Article 5

Content of the notification

1. With regard to investment projects of the types listed in the Annex, the notification provided for in Article 3 shall indicate, where appropriate:

- (a) the volume of the capacities planned or under construction;
- (b) the type and main characteristics of infrastructure or capacities planned or under construction, including the location of cross-border transmission projects, if applicable;
- (c) the probable year of commissioning;
- (d) the type of energy sources used;
- (e) the installations capable of responding to security of supply crises, such as equipment enabling reverse flows or fuel switching; and
- (f) the equipment of carbon capture systems or retrofitting mechanisms for carbon capture and storage.

2. With regard to any proposed decommissioning of capacities, the notification provided for in Article 3 shall indicate:

- (a) the character and the capacity of the infrastructure concerned; and
- (b) the probable year of decommissioning.

3. Any notification under Article 3 shall include where appropriate the total volume of installed production, transmission and storage capacities which are in place at the beginning of the reporting year concerned or whose operation is interrupted for a period exceeding three years.

Member States, their delegated entities or the specific body referred to in Article 3(2)(b) may add to their notifications relevant comments, such as comments on delays or obstacles to the implementation of investment projects.

Article 6

Quality and publicity of data

1. Member States, their delegated entities or, where appropriate, the specific bodies shall aim to ensure the quality, relevance, accuracy, clarity, timeliness and coherence of data and information they notify to the Commission.

In case of specific bodies, the data and information notified may be accompanied by appropriate comments from Member States.

2. The Commission may publish data and information forwarded pursuant to this Regulation, in particular in analyses referred to in Article 10(3), provided that the data and information are published in an aggregated form and that no details concerning individual undertakings and installations are disclosed or can be inferred.

3. Member States, the Commission, or their delegated entities shall each preserve the confidentiality of commercially sensitive data or information in their possession.

Article 7

Implementing provisions

Within the limits laid down by this Regulation, the Commission shall adopt, within two months after the entry into force of this Regulation, the provisions necessary for its implementation, concerning the form and other technical details of the notification of data and information referred to in Articles 3 and 5. Until then, Commission Regulation (EU, Euratom) No 833/2010 of 21 September 2010 implementing Council Regulation (EU, Euratom) No 617/2010 remains applicable.

Article 8

Data processing

The Commission shall be responsible for developing, hosting, managing and maintaining the IT resources needed to receive, store and carry out any processing of the data or information on energy infrastructure notified to the Commission pursuant to this Regulation.

Article 9

Protection of individuals with regards to the processing of data

This Regulation is without prejudice to Union law and, in particular, does not alter Member States' obligations with regard to the processing of personal data, as laid down by Directive 95/46/EC, or the obligations incumbent upon the Union's institutions and bodies under Regulation (EC) No 45/2001 with regard to the processing of personal data by them in the course of their duties.

Article 10

Monitoring and reporting

1. On the basis of data and information forwarded and, if appropriate, of any other data sources including data purchased by the Commission, and taking into account relevant analyses such as the multi-annual network development plans for gas and for electricity, the Commission shall forward to the European Parliament, to the Council and to the European Economic and Social Committee and shall publish every two years a cross-sector analysis of the structural evolution and perspectives of the energy system of the Union. This analysis shall aim in particular at:

- (a) identifying potential future gaps between energy demand and supply that are of significance from an energy policy perspective of the Union;
- (b) identifying investment obstacles and promoting best practices to address them; and
- (c) increasing transparency for market participants and potential market entrants.

On the basis of this data and information, the Commission may also provide any specific analysis deemed necessary or appropriate.

2. In preparing the analyses referred to in paragraph 1, the Commission may be assisted by experts from Member States and/or any other experts, professional associations with specific competence in the area concerned.

The Commission shall provide all Member States with an opportunity to comment on the draft analyses.

3. The Commission shall discuss the analyses with interested parties, such as ENTSO-E, ENTSO-G, the Gas Coordination Group and the Oil Supply Group.

Article 11

Review

By 31 December 2016, the Commission shall review the implementation of this Regulation, and present a report on the results of this review to the European Parliament and to the Council. In the review, the Commission shall, *inter alia*, examine the possible extension of the scope to include the extraction of gas, oil and coal.

Article 12

Repeal

Council Regulation (EU, Euratom) N° 617/2010 shall be repealed from the date of the entry into force of this Regulation.

Article 13

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX
INVESTMENT PROJECTS

1. OIL

1.1. Refining

- distillation plants with a capacity of not less than 1 million tonnes a year,
- extension of distilling capacity beyond 1 million tonnes a year,
- reforming/cracking plants with a minimum capacity of 500 tonnes a day,
- desulphurisation plants for residual fuel oil/gas oil/feedstock/other petroleum products,
- chemical plants which do not produce fuel oil and/or motor fuels, or which produce them only as by-products, are excluded.

1.2. Transport

- crude oil pipelines with a capacity of not less than 3 million metric tonnes a year, and extension or lengthening of these pipelines, which are not less than 30 kilometres long,
- petroleum product pipelines with a capacity of not less than 1,5 million tonnes a year, and extension or lengthening of these pipelines, which are not less than 30 kilometres long,
- pipelines which constitute essential links in national or international interconnecting networks and pipelines and projects of common interest identified in the guidelines established under Article 171 of the Treaty on the Functioning of the European Union ('TFEU').

Pipelines for military purposes and those supplying plants outside the scope of point 1.1. are excluded.

1.3. Storage

- storage installations for crude oil and petroleum products (installations with a capacity of 150 000 m³ or more or, in the case of tanks, with a capacity not less than 100 000 m³),

Tanks intended for military purposes and those supplying plants outside the scope of point 1.1. are excluded.

2. GAS

2.1. Transmission

- gas, including natural gas and biogas, transport pipelines that form part of a network which mainly contains high-pressure pipelines, excluding pipelines that form part of an upstream pipeline network and excluding the part of high-pressure pipelines primarily used in the context of local distribution of natural gas,
- pipelines and projects of common interest identified in the guidelines established under Article 171 TFEU.

2.2. LNG terminals

- terminals for the importation of liquefied natural gas, with a regasification capacity of 1 billion m³ per year or more.

2.3. Storage

- storage installations connected to the transport pipelines referred to in point 2.1.

Gas pipelines, terminals and installations for military purposes and those supplying chemical plants which do not produce energy products, or which produce them only as by-products, are excluded.

3. ELECTRICITY

3.1. Production

- thermal and nuclear power stations (generators with a capacity of 100 MWe or more),
- biomass/bioliquids/waste power generation installations (with a capacity of 20 MW or more),
- power stations with cogeneration of electricity and useful heat (installations with an electrical capacity of 20 MW or more),
- hydro-electric power stations (installations having a capacity of 30 MW or more),
- wind power farms with a capacity of 20 MW or more,
- concentrated solar thermal and geothermal installations (with a capacity of 20 MW or more),
- photovoltaic installations (with a capacity of 10 MW or more).

3.2. Transmission

- overhead transmission lines, if they have been designed for the voltage commonly used at the national level for the interconnection lines, and provided they have been designed for a voltage of 220 kV or more,
- underground and submarine transmission cables, if they have been designed for a voltage of 150 kV or more,
- projects of common interest identified in the guidelines established under Article 171 TFEU

4. BIOFUEL

4.1. Production

- Installations that are able to produce or refine bio-fuels (installations with a capacity of 50 000 tonnes/year or more).

5. CARBON DIOXIDE

5.1. Transport

- CO₂ pipelines related to production installations referred to in points 1.1. and 3.1.

5.2. Storage

- storage installations (storage site or complex with a capacity of 100 kt or more),

Storage installations intended for research and technological development are excluded.