

## **REGULATION (EU) 347/2013 on guidelines for trans-European energy infrastructure and repealing Decision 1364/2006/EC and amending Regulations (EC) 713/2009, (EC) 714/2009 and (EC) 715/2009**

Incorporated and adapted by Ministerial Council Decision 2015/09/MC-EnC of 16 October 2015 on the implementation of Regulation (EU) 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure.

*The adaptations made by Ministerial Council Decision 2015/09/MC-EnC are highlighted in **bold and blue**.*

Whereas:

(1) On 26 March 2010, the European Council agreed to the Commission's proposal to launch a new strategy 'Europe 2020'. One of the priorities of the Europe 2020 strategy is sustainable growth to be achieved by promoting a more resource-efficient, more sustainable and more competitive economy. That strategy put energy infrastructures at the forefront as part of the flagship initiative 'Resource efficient Europe', by underlining the need to urgently upgrade Europe's networks, interconnecting them at the continental level, in particular to integrate renewable energy sources.

(2) The target agreed in the conclusions of the March 2002 Barcelona European Council for Member States to have a level of electricity interconnections equivalent to at least to 10% of their installed production capacity has not yet been achieved.

(3) The communication from the Commission entitled 'Energy infrastructure priorities for 2020 and beyond - A Blueprint for an integrated European energy network', followed by the Council conclusions of 28 February 2011 and the European Parliament resolution, called for a new energy infrastructure policy to optimise network development at European level for the period up to 2020 and beyond, in order to allow the Union to meet its core energy policy objectives of competitiveness, sustainability and security of supply.

(4) The European Council of 4 February 2011 underlined the need to modernise and expand Europe's energy infrastructure and to interconnect networks across borders, in order to make solidarity between Member States operational, to provide for alternative supply or transit routes and sources of energy and to develop renewable energy sources in competition with traditional sources. It insisted that no Member State should remain isolated from the European gas and electricity networks after 2015 or see its energy security jeopardised by lack of the appropriate connections.

(5) Decision No 1364/2006/EC of the European Parliament and of the Council lays down guidelines for trans-European energy networks (TEN-E). Those guidelines have as objectives to support the completion of the Union internal energy market while encouraging the rational production, transportation, distribution and use of energy resources, to reduce the isolation of less-favoured and island regions, to secure and diversify the Union's energy supplies, sources and routes, including through cooperation with third countries, and to contribute to sustainable development and protection of the environment.

(6) Evaluation of the current TEN-E framework has clearly shown that this framework, while making a positive contribution to selected projects by giving them political visibility, lacks vision, focus, and flexibility to fill identified infrastructure gaps. The Union should therefore increase its efforts to meet

future challenges in this field, and due attention should be paid to identifying potential future gaps in energy demand and supply.

(7) Accelerating the refurbishment of existing energy infrastructure and the deployment of new energy infrastructure is vital to achieve the Union's energy and climate policy objectives, consisting of completing the internal market in energy, guaranteeing security of supply, in particular for gas and oil, reducing greenhouse gas emissions by 20% (30% if the conditions are right), increasing the share of renewable energy in final energy consumption to 20% and achieving a 20% increase in energy efficiency by 2020 whereby energy efficiency gains may contribute to reducing the need for construction of new infrastructures. At the same time, the Union has to prepare its infrastructure for further decarbonisation of its energy system in the longer term towards 2050. This Regulation should therefore also be able to accommodate possible future Union energy and climate policy objectives.

(8) Despite the fact that Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas provide for an internal market in energy, the market remains fragmented due to insufficient interconnections between national energy networks and to the sub-optimal utilisation of existing energy infrastructure. However, Union-wide integrated networks and deployment of smart grids are vital for ensuring a competitive and properly functioning integrated market, for achieving an optimal utilisation of energy infrastructure, for increased energy efficiency and integration of distributed renewable energy sources and for promoting growth, employment and sustainable development.

(9) The Union's energy infrastructure should be upgraded in order to prevent technical failure and to increase its resilience against such failure, natural or man-made disasters, adverse effects of climate change and threats to its security, in particular as regards European critical infrastructures as set out in Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection.

(10) Transporting oil through land pipelines rather than over water can make an important contribution to lowering the environmental risk associated with the transportation of oil.

(11) The importance of smart grids in achieving the Union's energy policy objectives has been acknowledged in the communication from the Commission of 12 April 2011 entitled 'Smart grids: from innovation to deployment'.

(12) Energy storage facilities and reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) and compressed natural gas (CNG) have an increasingly important role to play in the European energy infrastructure. The expansion of such energy infrastructure facilities forms an important component of a well-functioning network infrastructure.

(13) The communication from the Commission of 7 September 2011 entitled 'The EU Energy Policy: Engaging with Partners beyond Our Borders' underlined the need for the Union to include the promotion of energy infrastructure development in its external relations with a view to supporting socio-economic development beyond the Union borders. The Union should facilitate infrastructure projects linking the Union's energy networks with third-country networks, in particular with neighbouring countries and with countries with which the Union has established specific energy cooperation.

(14) To ensure voltage and frequency stability, particular attention should be focused on the stability

of the European electricity network under the changing conditions caused by the growing inflow of energy from renewable resources that are variable in nature.

(15) The investment needs up to 2020 in electricity and gas transmission infrastructures of European relevance have been estimated at about EUR 200 billion. The significant increase in investment volumes compared to past trends and the urgency of implementing the energy infrastructure priorities requires a new approach in the way energy infrastructures, and in particular those of a cross-border nature, are regulated and financed.

(16) The Commission Staff Working Paper for the Council of 10 June 2011 entitled 'Energy infrastructure investment needs and financing requirements' stressed that approximately half of the total investments needed for the decade up to 2020 are at risk of not being delivered at all or not in time due to obstacles related to the granting of permits, regulatory issues and financing.

(17) This Regulation lays down rules for the timely development and interoperability of trans-European energy networks in order to achieve the energy policy objectives of the Treaty on the Functioning of the European Union (TFEU) to ensure the functioning of the internal energy market and security of supply in the Union, to promote energy efficiency and energy saving and the development of new and renewable forms of energy, and to promote the interconnection of energy networks. By pursuing these objectives, this Regulation contributes to smart, sustainable and inclusive growth and brings benefits to the entire Union in terms of competitiveness and economic, social and territorial cohesion.

(18) It is essential for the development of trans-European networks and their effective interoperability to ensure operational coordination between electricity transmission system operators (TSOs). In order to ensure uniform conditions for the implementation of the relevant provisions 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 electricity in this respect, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers. The examination procedure should be used for the adoption of the guidelines on the implementation of operational coordination between electricity TSOs at Union level, given that those guidelines will apply generally to all TSOs.

(19) The Agency for the Cooperation of Energy Regulators (the 'Agency') established by Regulation (EC) No 713/2009 of the European Parliament and of the Council is allocated important additional tasks under this Regulation and should be given the right to levy fees for some of these additional tasks.

(20) Following close consultations with all Member States and stakeholders, the Commission has identified 12 strategic trans-European energy infrastructure priorities, the implementation of which by 2020 is essential for the achievement of the Union's energy and climate policy objectives. These priorities cover different geographic regions or thematic areas in the field of electricity transmission and storage, gas transmission, storage and liquefied or compressed natural gas infrastructure, smart grids, electricity highways, carbon dioxide transport and oil infrastructure.

(21) Projects of common interest should comply with common, transparent and objective criteria in view of their contribution to the energy policy objectives. For electricity and gas, in order to be eligible for inclusion in the second and subsequent Union lists, projects should be part of the latest

available 10-year network development plan. This plan should notably take account of the conclusions of the European Council of 4 February 2011 with regard to the need to integrate peripheral energy markets.

(22) Regional groups should be established for the purpose of proposing and reviewing projects of common interest, leading to the establishment of regional lists of projects of common interest. In order to ensure broad consensus, these regional groups should ensure close cooperation between Member States, national regulatory authorities, project promoters and relevant stakeholders. The cooperation should rely as much as possible on existing regional cooperation structures of national regulatory authorities and TSOs and other structures established by the Member States and the Commission. In the context of this cooperation, national regulatory authorities should, when necessary, advise the regional groups, *inter alia* on the feasibility of the regulatory aspects of proposed projects and on the feasibility of the proposed timetable for regulatory approval.

(23) In order to ensure that the Union list of projects of common interest ('Union list') is limited to projects which contribute the most to the implementation of the strategic energy infrastructure priority corridors and areas, the power to adopt and review the Union list should be delegated to the Commission in accordance with Article 290 of the TFEU, while respecting the right of the Member States to approve projects of common interest related to their territory. According to analysis carried out in the impact assessment accompanying the proposal that has led to this Regulation, the number of such projects is estimated at some 100 in the field of electricity and 50 in the field of gas. Taking into account this estimate, and the need to ensure the achievement of the objectives of this Regulation, the total number of projects of common interest should remain manageable, and therefore should not significantly exceed 220. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(24) A new Union list should be established every two years. Projects of common interest that are completed or that no longer fulfil the relevant criteria and requirements as set out in this Regulation should not appear on the next Union list. For that reason, existing projects of common interest that are to be included in the next Union list should be subject to the same selection process for the establishment of regional lists and for the establishment of the Union list as proposed projects; however, care should be taken to minimise the resulting administrative burden as much as possible, for example by using to the extent possible information submitted previously, and by taking account of the annual reports of the project promoters.

(25) Projects of common interest should be implemented as quickly as possible and should be closely monitored and evaluated, while keeping the administrative burden for project promoters to a minimum. The Commission should nominate European coordinators for projects facing particular difficulties.

(26) Permit granting processes should neither lead to administrative burdens which are disproportionate to the size or complexity of a project, nor create barriers to the development of the trans-European networks and market access. The conclusions of the Council of 19 February 2009 highlighted the need to identify and remove barriers to investment, including by means of streamlining of planning and consultation procedures. Those conclusions were reinforced by the conclusions of the European Council of 4 February 2011 which again underlined the importance of streamlining and improving permit granting processes while respecting national competences.

(27) The planning and implementation of Union projects of common interest in the areas of energy, transport and telecommunication infrastructure should be coordinated to generate synergies whenever to do so makes sense from an overall economic, technical, environmental or spatial planning point of view and with due regard to the relevant safety aspects. Thus, when the various European networks are being planned, preference could be given to integrating transport, communication and energy networks in order to ensure that as little land as possible is taken up, whilst ensuring, where possible, that existing or disused routes are reused, in order to reduce to a minimum any negative social, economic, environmental and financial impact.

(28) Projects of common interest should be given 'priority status' at national level to ensure rapid administrative treatment. Projects of common interest should be considered by competent authorities as being in the public interest. Authorisation should be given to projects which have an adverse impact on the environment, for reasons of overriding public interest, when all the conditions under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy are met.

(29) The establishment of a competent authority or authorities integrating or coordinating all permit granting processes ('one-stop shop') should reduce complexity, increase efficiency and transparency and help enhance cooperation among Member States. Upon their designation, the competent authorities should be operational as soon as possible.

(30) Despite the existence of established standards for the participation of the public in environmental decision-making procedures, additional measures are needed to ensure the highest possible standards of transparency and public participation for all relevant issues in the permit granting process for projects of common interest.

(31) The correct and coordinated implementation of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, where applicable, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 (the 'Aarhus Convention'), and of the Espoo Convention on environmental impact assessment in a transboundary context (the 'Espoo Convention') should ensure the harmonisation of the main principles for the assessment of environmental effects, including in a cross-border context. Member States should coordinate their assessments for projects of common interest, and provide for joint assessments, where possible. Member States should be encouraged to exchange best practice and administrative capacity-building for permit granting processes.

(32) It is important to streamline and improve permit granting processes, while respecting — to the extent possible with due regard to the principle of subsidiarity — national competences and procedures for the construction of new infrastructure. Given the urgency of developing energy infrastructures, the simplification of permit granting processes should be accompanied by a clear time-limit for the decision to be taken by the respective authorities regarding the construction of the project. That time limit should stimulate a more efficient definition and handling of procedures, and should under no circumstances compromise the high standards for the protection of the environment and public participation. With regard to the maximum time limits established by this Regulation, Member States could nevertheless strive to further shorten them if feasible. The competent authorities should

ensure compliance with the time limits, and Member States should endeavour to ensure that appeals challenging the substantive or procedural legality of a comprehensive decision are handled in the most efficient way possible.

(33) Where Member States consider it appropriate, they may include in the comprehensive decision decisions taken in the context of: negotiations with individual landowners to granting access to, ownership of, or a right to occupy property; spatial planning which determines the general land use of a defined region, includes other developments such as highways, railways, buildings and nature protection areas, and is not undertaken for the specific purpose of the planned project; granting of operational permits. In the context of the permit granting processes, a project of common interest could include related infrastructure to the extent that it is essential for the construction or functioning of the project.

(34) This Regulation, in particular the provisions on permit granting, public participation and the implementation of projects of common interest, should apply without prejudice to international and Union law, including provisions to protect the environment and human health, and provisions adopted under the Common Fisheries and Maritime Policy.

(35) The costs for the development, construction, operation and maintenance of projects of common interest should in general be fully borne by the users of the infrastructure. Projects of common interest should be eligible for cross-border cost allocation when an assessment of market demand or of the expected effects on the tariffs have indicated that costs cannot be expected to be recovered by the tariffs paid by the infrastructure users.

(36) The basis for the discussion on the appropriate allocation of costs should be the analysis of the costs and benefits of an infrastructure project on the basis of a harmonised methodology for energy-system-wide analysis, in the framework of the 10-year network development plans prepared by the European Networks of Transmission System Operators under Regulation (EC) No 714/2009 and 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 networks, and reviewed by the Agency. That analysis could take into consideration indicators and corresponding reference values for the comparison of unit investment costs.

(37) In an increasingly integrated internal energy market, clear and transparent rules for cost allocation across borders are necessary in order to accelerate investment in cross-border infrastructure. The European Council of 4 February 2011 recalled the importance of promoting a regulatory framework attractive to investment in networks, with tariffs set at levels consistent with financing needs and the appropriate cost allocation for cross-border investments, while enhancing competition and competitiveness and taking account of the impact on consumers. When deciding on cross-border cost allocation, national regulatory authorities should ensure that its impact on national tariffs does not represent a disproportionate burden for consumers. The national regulatory authorities should also avoid the risks of double support for projects by taking into account actual or estimated charges and revenues. Those charges and revenues should be taken into account only insofar as they are designed to cover the costs concerned and as much as possible related to the projects. When an investment request takes into account benefits beyond the borders of the Member States concerned, the national regulatory authorities should consult the TSOs concerned on the project-specific cost-benefit analysis.

(38) The existing internal energy market law requires that tariffs for access to gas and electricity net-

works provide appropriate incentives for investment. When applying the internal energy market law, national regulatory authorities should ensure a stable and predictable regulatory framework with incentives for projects of common interest, including long-term incentives, that are commensurate with the level of specific risk of the project. This applies in particular to innovative transmission technologies for electricity allowing for large scale integration of renewable energy, of distributed energy resources or of demand response in interconnected networks, and to gas transmission infrastructure offering advanced capacity or additional flexibility to the market to allow for short-term trading or back-up supply in case of supply disruptions.

(39) This Regulation applies only to the granting of permits for, public participation in, and the regulatory treatment of projects of common interest within the meaning set out herein. Member States may nevertheless apply, by virtue of their national law, the same or similar rules to other projects which do not have the status of projects of common interest within the scope of this Regulation. As regards the regulatory incentives, Member States may apply, by virtue of their national law, the same or similar rules to projects of common interest falling under the category of electricity storage.

(40) Member States that currently do not provide for a legal status of the highest national significance possible that is attributable to energy infrastructure projects in the context of permit granting processes should consider introducing such a status, in particular by evaluating if this would lead to a quicker permit granting process.

(41) The European Energy Programme for Recovery (EEPR), established by Regulation (EC) No 663/2009 of the European Parliament and of the Council has demonstrated the added value of leveraging private funding through significant Union financial assistance to allow the implementation of projects of European significance. The European Council of 4 February 2011 recognised that some energy infrastructure projects may require limited public finance to leverage private funding. In the light of the economic and financial crisis and budgetary constraints, targeted support, through grants and financial instruments, should be developed under the next multiannual financial framework, which will attract new investors into the energy infrastructure priority corridors and areas, while keeping the budgetary contribution of the Union to a minimum. The relevant measures should draw on the experience gained during the pilot phase following the introduction of project bonds to finance infrastructure projects.

(42) Projects of common interest in the fields of electricity, gas and carbon dioxide should be eligible to receive Union financial assistance for studies and, under certain conditions, for works as soon as such funding becomes available under the relevant Regulation on a Connecting Europe Facility in the form of grants or in the form of innovative financial instruments. This will ensure that tailor-made support can be provided to those projects of common interest which are not viable under the existing regulatory framework and market conditions. It is important to avoid any distortion of competition, in particular between projects contributing to the achievement of the same Union priority corridor. Such financial assistance should ensure the necessary synergies with the Structural Funds, which will finance smart energy distribution networks of local or regional importance. A three-step logic applies to investments in projects of common interest. First, the market should have the priority to invest. Second, if investments are not made by the market, regulatory solutions should be explored, if necessary the relevant regulatory framework should be adjusted, and the correct application of the relevant regulatory framework should be ensured. Third, where the first two steps are not sufficient to deliver the necessary investments in projects of common interest, Union financial assistance could be granted if the project of common interest fulfils the applicable eligibility criteria.

(43) Since the objective of this Regulation, namely the development and interoperability of trans-European energy networks and connection to such networks, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(44) Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 should therefore be amended accordingly.

(45) Decision No 1364/2006/EC should therefore be repealed,

## CHAPTER I GENERAL PROVISIONS

### *Article 1*

#### Subject matter and scope

1. **This Regulation lays down guidelines for the timely development and interoperability of projects of Energy Community Interest.**

2. In particular, this Regulation:

(a) **addresses the identification of projects of Energy Community interest falling under energy infrastructure categories in electricity, gas and oil as well as the thematic area ‘smart grid deployment’ set out in Annex I (energy infrastructure categories and area’);**

(b) facilitates the timely implementation of projects of **Energy Community** interest by streamlining, coordinating more closely, and accelerating permit granting processes and by enhancing public participation;

(c) provides rules and guidance for the cross-border allocation of costs and risk-related incentives for projects of **Energy Community** interest;

(d) **determines the conditions for eligibility of projects of Energy Community interest for Union technical and financial assistance from the Instrument for Pre-Accession Assistance (IPA) and the Neighbourhood Investment Facility.**

### *Article 2*

#### Definitions

For the purpose of this Regulation, in addition to the definitions provided for in Directives 2009/28/EC, 2009/72/EC and 2009/73/EC, Regulations (EC) No 713/2009, (EC) No 714/2009, and (EC) No 715/2009, the following definitions shall apply:

1. **‘energy infrastructure’ means any physical equipment or facility under the energy infrastructure categories which is located within the Contracting Parties or linking Contracting Parties, or linking Contracting Parties and Member States;**



2. 'comprehensive decision' means the decision or set of decisions taken by a **Contracting Party** authority or authorities not including courts or tribunals, that determines whether or not a project promoter is to be granted authorisation to build the energy infrastructure to realise a project without prejudice to any decision taken in the context of an administrative appeal procedure;
3. 'project' means one or several lines, pipelines, facilities, equipments or installations falling under the energy infrastructure categories;
4. **'project of Energy Community interest' means a project necessary to implement the energy infrastructure and which is part of the list of projects of Energy Community interest referred to in Article 3;**
5. 'energy infrastructure bottleneck' means limitation of physical flows in an energy system due to insufficient transmission capacity, which includes *inter alia* the absence of infrastructure;
6. 'project promoter' means one of the following:
  - (a) a TSO, distribution system operator or other operator or investor developing a project of **Energy Community** interest;
  - (b) where there are several TSOs, distribution system operators, other operators, investors, or any group thereof, the entity with legal personality under the applicable national law, which has been designated by contractual arrangement between them and which has the capacity to undertake legal obligations and assume financial liability on behalf of the parties to the contractual arrangement;
7. 'smart grid' means an electricity network that can integrate in a cost efficient manner the behaviour and actions of all users connected to it, including generators, consumers and those that both generate and consume, in order to ensure an economically efficient and sustainable power system with low losses and high levels of quality, security of supply and safety;
8. 'works' means the purchase, supply and deployment of components, systems and services including software, the carrying out of development and construction and installation activities relating to a project, the acceptance of installations and the launching of a project;
9. 'studies' means activities needed to prepare project implementation, such as preparatory, feasibility, evaluation, testing and validation studies, including software, and any other technical support measure including prior action to define and develop a project and decide on its financing, such as reconnaissance of the sites concerned and preparation of the financial package;
10. 'national regulatory authority' means a national regulatory authority designated in accordance with Article 35(1) of Directive 2009/72/EC or Article 39(1) of Directive 2009/73/EC, **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC;**
11. 'commissioning' means the process of bringing a project into operation once it has been constructed.

## CHAPTER II

### PROJECTS OF ENERGY COMMUNITY INTEREST

#### *Article 3*

#### List of projects of Energy Community interest

1. **This Regulation establishes two Groups as set out in Annex II.1. The membership of each Group shall be based on the categories as set out in Annex I. Decision-making powers in the Groups shall be restricted to the Parties to the Treaty who shall, for those purposes, be referred to as the decision-making body of the Groups.**
2. Each Group shall adopt its own rules of procedure, having regard to the provisions set out in **Annex II**.
3. **The decision-making body of each Group shall adopt a preliminary list of proposed projects of Energy Community interest drawn up according to the process set out in Annex II.2, according to their fulfilment of the criteria set out in Article 4.**

When a Group draws up its **preliminary** list:

- (a) each individual proposal for a project of **Energy Community** interest **shall require the approval of the Contracting Parties or Member States**, to whose territory the project relates; **if a Contracting Party or a Member State decides not to give its approval**, it shall present its substantiated reasons for doing so to the Group concerned;
- (b) it shall take into account advice from the **Energy Community Secretariat** that is aimed at having a manageable total number of projects of **Energy Community** interest.
4. **The Ministerial Council shall establish the list of projects of Energy Community interest ('Energy Community list') by way of a Decision under Title III of the Treaty.**

In exercising its power, the **Ministerial Council** shall ensure that the **Energy Community** list is established every two years, on the basis of the **preliminary** lists adopted by the decision-making bodies of the Groups as established in **Annex II.1(2)**, following the procedure set out in paragraph 3 of this Article.

**The next Energy Community list following the one adopted by the Ministerial Council on 24 October 2013 shall be adopted by 31 December 2016.**

5. The **Ministerial Council** shall, when adopting the **Energy Community** list on the basis of the **preliminary** lists:
  - (a) ensure that only those projects that fulfil the criteria referred to in Article 4 are included;
  - (b) ensure cross-regional consistency, taking into account the opinion of the **Regulatory Board** as referred to in **Annex II.2(10)**;
  - (c) **take into account any opinions of Contracting Parties and Member States concerned, as referred to in Annex II.2(7); and**
  - (d) aim for a manageable total number of projects of **Energy Community** interest on the **Energy Community** list.
6. Projects of **Energy Community** interest included on the **Energy Community** list pursuant to

paragraph 4 of this Article **shall be submitted with the view to become** an integral part of the relevant regional investment plans under Article 12 of Regulations (EC) No 714/2009 and (EC) No 715/2009 and of the relevant national 10-year network development plans under Article 22 of Directives 2009/72/EC and 2009/73/EC and other national infrastructure plans concerned, as appropriate. Those projects shall be conferred the highest possible priority within each of those plans.

#### **Article 4**

#### **Criteria for projects of Energy Community interest**

1. Projects of **Energy Community** interest shall meet the following general criteria:
  - (a) **the project falls in at least one of the energy infrastructure categories and area as described in Annex I;**
  - (b) the potential overall benefits of the project, assessed according to the respective specific criteria in paragraph 2, outweigh its costs, including in the longer term; and
  - (c) the project meets any of the following criteria:
    - (i) **involves at least two Contracting Parties or a Contracting Party and a Member State by directly crossing the border of two or more Contracting Parties, or of one Contracting Party and one or more Member States;**
    - (ii) is located on the territory of one **Contracting Party** and has a significant cross-border impact as set out in **Annex III.1**;
    - (iii) <...><sup>1</sup>
2. The following specific criteria shall apply to projects of **Energy Community** interest falling within specific energy infrastructure categories:
  - (a) for electricity transmission and storage projects falling under the energy infrastructure categories set out in **Annex I.1(a)**, **(b)** and **(c)**, the project is to contribute significantly to at least one of the following specific criteria:
    - (i) market integration <...> and reducing energy infrastructure bottlenecks; competition and system flexibility;
    - (ii) sustainability, *inter alia* through the integration of renewable energy into the grid and the transmission of renewable generation to major consumption centres and storage sites;
    - (iii) security of supply, *inter alia* through interoperability, appropriate connections and secure and reliable system operation;
  - (b) for gas projects falling under the energy infrastructure categories set out in **Annex I.2**, the project is to contribute significantly to at least one of the following specific criteria:
    - (i) market integration <...> and reducing energy infrastructure bottlenecks; interoperability and system flexibility;
    - (ii) security of supply, *inter alia* through appropriate connections and diversification of supply sources, supplying counterparts and routes;
    - (iii) competition, *inter alia* through diversification of supply sources, supplying counterparts and

<sup>1</sup> Not applicable according to Article 8(1)(a)(c) of Ministerial Council Decision 2015/09/MC-EnC.

routes;

(iv) sustainability, *inter alia* through reducing emissions, supporting intermittent renewable generation and enhancing deployment of renewable gas;

(c) for electricity smart grid projects falling under the energy infrastructure category set out in **Annex I.1(d)**, the project is to contribute significantly to all of the following specific criteria:

(i) integration and involvement of network users with new technical requirements with regard to their electricity supply and demand;

(ii) efficiency and interoperability of electricity transmission and distribution in day-to-day network operation;

(iii) network security, system control and quality of supply;

(iv) optimised planning of future cost-efficient network investments;

(v) market functioning and customer services;

(vi) involvement of users in the management of their energy usage;

(d) for oil transport projects falling under the energy infrastructure categories set out in **Annex I.3**, the project is to contribute significantly to all of the following specific criteria:

(i) security of supply reducing single supply source or route dependency;

(ii) efficient and sustainable use of resources through mitigation of environmental risks;

(iii) interoperability;

(e) <...><sup>2</sup>

3. For projects falling under the energy infrastructure categories set out in **Annex I.1** to 3, the criteria listed in this Article shall be assessed in accordance with the indicators set out in **Annex III.2** to 5.

4. In order to facilitate the assessing of all projects that could be eligible as projects of **Energy Community** interest and that could be included in a **preliminary** list, each Group shall assess each **project's benefits** in a transparent and objective manner. Each Group shall determine its assessment method on the basis of the aggregated contribution to the criteria referred to in paragraph 2; this assessment shall lead to a ranking of projects for internal use of the Group. Neither the **preliminary** list nor the **Energy Community** list shall contain any ranking, nor shall the ranking be used for any subsequent purpose except as described in **Annex II.2(12)**.

When assessing projects, each Group shall furthermore give due consideration to:

(a) the urgency of each proposed project in order to meet the Union energy policy targets of market integration and competition, sustainability and security of supply;

(b) the number of **Contracting Parties and Member States** affected by each project, whilst ensuring equal opportunities for projects involving peripheral **Contracting Parties and Member States**;

(c) the contribution of each project to territorial cohesion; and

(d) complementarity with regard to other proposed projects.

For smart grids projects falling under the energy infrastructure category set out in **Annex I.1(d)**, ranking shall be carried out for those projects that affect the same two **Contracting Parties**, and due consideration shall also be given to the number of users affected by the project, the annual energy consumption and the share of generation from non-dispatchable resources in the area covered

<sup>2</sup> Not applicable according to Article 8(2) of Ministerial Council Decision 2015/09/MC-EnC.

by these users.

5.<sup>3</sup> **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.<sup>4</sup> **Project that directly crosses the border of one or more Contracting Parties and one or more Member States which is not granted a status of project of the common interest within the European Union may be developed on voluntary basis as a project of Mutual Interest.**

## *Article 5*

### **Implementation and monitoring**

1. Project promoters shall draw up an implementation plan for projects of **Energy Community** interest, including a timetable for each of the following:

- (a) feasibility and design studies;
- (b) approval by the national regulatory authority or by any other authority concerned;
- (c) construction and commissioning;
- (d) the permit granting schedule referred to in Article 10(4)(b).

2. TSOs, distribution system operators and other operators shall co-operate with each other in order to facilitate the development of projects of **Energy Community** interest in their area.

3. The **Energy Community Secretariat** and the Groups concerned shall monitor the progress achieved in implementing the projects of **Energy Community** interest and, if necessary, make recommendations to facilitate the implementation of projects of **Energy Community** interest. The Groups may request that additional information be provided in accordance with paragraphs 4, 5 and 6, convene meetings with the relevant parties and invite the **Energy Community Secretariat** to verify the information provided on site.

4. By 31 March of each year following the year of inclusion of a project of **Energy Community** interest on the **Energy Community** list pursuant to Article 3, project promoters shall submit an annual report, for each project falling under the categories set out in **Annex I.1** and 2, to the competent authority referred to in Article 8 and either to the **Regulatory Board** or, for projects falling under the categories set out in **Annex I.3**, to the respective Group. That report shall give details of:

- (a) the progress achieved in the development, construction and commissioning of the project, in particular with regard to permit granting and consultation procedures;
- (b) where relevant, delays compared to the implementation plan, the reasons for such delays and other difficulties encountered;
- (c) where relevant, a revised plan aiming at overcoming the delays.

5. Within three months of the receipt of the annual reports referred to in paragraph 4 of this Article, the **Energy Community Secretariat** shall submit to the Groups a consolidated report for the proj-

<sup>3</sup> The text displayed here corresponds to Article 8(4) of Ministerial Council Decision 2015/09/MC-EnC.

<sup>4</sup> The text displayed here corresponds to Article 8(4) of Ministerial Council Decision 2015/09/MC-EnC.

ects of **Energy Community** interest falling under the categories set out in **Annex I.1** and 2, evaluating the progress achieved and make, where appropriate, recommendations on how to overcome the delays and difficulties encountered. <...>

6. Each year, the competent authorities referred to in Article 8 shall report to the respective Group on the progress and, where relevant, on delays in the implementation of projects of **Energy Community** interest located on their respective territory with regard to the permit granting processes, and on the reasons for such delays.

7. If the commissioning of a project of **Energy Community** interest is delayed compared to the implementation plan, other than for overriding reasons beyond the control of the project promoter:

(a) **in so far as measures referred to in Article 22(7)(a), (b) or (c) of Directives 2009/72/EC and 2009/73/EC, as incorporated and adapted by the Ministerial Council Decision 2011/02/MC-EnC, are applicable according to respective national laws, national regulatory authorities shall ensure that the investment is carried out;**

(b) if the measures of national regulatory authorities according to point (a) are not applicable, the project promoter shall choose a third party to finance or construct all or part of the project. The project promoter shall do so before the delay compared to the date of commissioning in the implementation plan exceeds two years;

(c) if a third party is not chosen according to point (b), the **Contracting Party** or, when the **Contracting Party** has so provided, the national regulatory authority may, within two months of the expiry of the period referred to in point (b), designate a third party to finance or construct the project which the project promoter shall accept;

(d) <...><sup>5</sup>

(d) when **point (c)** is applied, the system operator in whose area the investment is located shall provide the implementing operators or investors or third party with all the information needed to realise the investment, shall connect new assets to the transmission network and shall generally make its best efforts to facilitate the implementation of the investment and the secure, reliable and efficient operation and maintenance of the project of **Energy Community** interest.

8. A project of **Energy Community** interest may be removed from the **Energy Community** list according to the procedure set out in Article 3(4) if its inclusion in that list was based on incorrect information which was a determining factor for that inclusion, or the project does not comply with **Energy Community** law.

9. Projects which are no longer on the **Energy Community** list shall lose all rights and obligations linked to the status of project of **Energy Community** interest arising from this Regulation.

However, a project which is no longer on the **Energy Community** list but for which an application file has been accepted for examination by the competent authority shall maintain the rights and obligations arising from Chapter III, except where the project is no longer on the list for the reasons set out in paragraph 8.

10. <...><sup>6</sup>

<sup>5</sup> Not applicable according to Article 9(3)(b) of Ministerial Council Decision 2015/09/MC-EnC.

<sup>6</sup> Not applicable according to Article 9(4) of Ministerial Council Decision 2015/09/MC-EnC.

## **Article 6**

### **PECI coordinators**

1. Where a project of **Energy Community** interest encounters significant implementation difficulties, the **Energy Community Secretariat may propose and Permanent High Level Group may designate in agreement with Contracting Parties and Member States** concerned, a **PECI** coordinator for a period of up to one year renewable twice.
2. The **PECI** coordinator shall:
  - (a) promote the projects, for which he has been designated **PECI** coordinator and the cross-border dialogue between the project promoters and all concerned stakeholders;
  - (b) assist all parties as necessary in consulting concerned stakeholders and obtaining necessary permits for the projects;
  - (c) if appropriate, advise project promoters on the financing of the project;
  - (d) ensure that appropriate support and strategic direction by the **Contracting Parties** concerned are provided for the preparation and implementation of the projects;
  - (e) submit every year, and if appropriate, upon completion of their mandate, a report to the **Energy Community Secretariat** on the progress of the projects and on any difficulties and obstacles which are likely to significantly delay the commissioning date of the projects. **The Secretariat shall transmit the report to the Permanent High Level Group and the Groups concerned. The Permanent High Level Group may bring the report also to the attention of the Ministerial Council.**
3. The **PECI** coordinator shall be chosen on the basis of his experience with regard to the specific tasks assigned to him for the projects concerned.
4. The decision designating the **PECI** coordinator shall specify the terms of reference, detailing the duration of the mandate, the specific tasks and corresponding deadlines, and the methodology to be followed. The coordination effort shall be proportionate to the complexity and estimated costs of the projects.
5. The **Contracting Parties** concerned shall fully cooperate with the **PECI** coordinator in his execution of the tasks referred to in paragraphs 2 and 4.

## **CHAPTER III**

### **PERMIT GRANTING AND PUBLIC PARTICIPATION**

## **Article 7**

### **'Priority status' of projects of Energy Community interest**

1. The adoption of the **Energy Community** list shall establish, for the purposes of any decisions issued in the permit granting process, the necessity of these projects from an energy policy perspective, without prejudice to the exact location, routing or technology of the project.
2. For the purpose of ensuring efficient administrative processing of the application files related to projects of **Energy Community** interest, project promoters and all authorities concerned shall en-

sure that the most rapid treatment legally possible is given to these files.

3. Where such status exists in national law, projects of **Energy Community** interest shall be allocated the status of the highest national significance possible and be treated as such in permit granting processes — and if national law so provides, in spatial planning — including those relating to environmental assessments, in the manner such treatment is provided for in national law applicable to the corresponding type of energy infrastructure.

4. <...><sup>7</sup>

**4. Contracting Parties** shall assess, taking due account of the guidance **issued by the Commission under Article 7(4) of the Regulation (EU) No 347/2013**, which measures to streamline the environmental assessment procedures and to ensure their coherent application are possible, and shall inform the **Energy Community Secretariat** of the result.

**5.** By **4 years** from the date of issue of the guidance referred to in paragraph 4, **Contracting Parties** shall take the non-legislative measures that they have identified under **paragraph 4**.

**6.** By **5 years** from the date of issue of the guidance referred to in paragraph 4, **Contracting Parties** shall take the legislative measures that they have identified under **paragraph 4**. These measures shall be without prejudice to obligations resulting from **Energy Community** law.

**7. With regard to the environmental impacts addressed in Article 6(4) of Directive 92/43/EEC and Article 4(7) of Directive 2000/60/EC, to the extent applicable to a Contracting Party under bilateral arrangements with the European Union**, projects of **Energy Community** interest shall be considered as being of public interest from an energy policy perspective, and may be considered as being of overriding public interest, provided that all the conditions set out in these Directives are fulfilled.

<...>

## **Article 8**

### **Organisation of the permit granting process**

1. By **30 June 2017**, each **Contracting Party** shall designate one national competent authority which shall be responsible for facilitating and coordinating the permit granting process for projects of **Energy Community** interest.

2. The responsibility of the competent authority referred to in paragraph 1 and/or the tasks related to it may be delegated to, or carried out by, another authority, per project of **Energy Community** interest or per particular category of projects of **Energy Community** interest, provided that:

(a) the competent authority notifies the **Energy Community Secretariat** of that delegation and the information therein is published by either the competent authority or the project promoter on the website referred to in Article 9(7);

(b) only one authority is responsible per project of **Energy Community** interest, is the sole point of contact for the project promoter in the process leading to the comprehensive decision for a given project of **Energy Community** interest, and coordinates the submission of all relevant documents and information.

<sup>7</sup> Not applicable according to Article 11(1) of Ministerial Council Decision 2015/09/MC-EnC.



The competent authority may retain the responsibility to establish time limits, without prejudice to the time limits set in accordance with Article 10.

3. Without prejudice to relevant requirements under international and **Energy Community** law, the competent authority shall take actions to facilitate the issuing of the comprehensive decision. The comprehensive decision shall be issued within the time limit referred to in Article 10(1) and (2) and according to one of the following schemes:

(a) integrated scheme: the comprehensive decision shall be issued by the competent authority and shall be the sole legally binding decision resulting from the statutory permit granting procedure. Where other authorities are concerned by the project, they may, in accordance with national law, give their opinion as input to the procedure, which shall be taken into account by the competent authority;

(b) coordinated scheme: the comprehensive decision comprises multiple individual legally binding decisions issued by several authorities concerned, which shall be coordinated by the competent authority. The competent authority may establish a working group where all concerned authorities are represented in order to draw up a permit granting schedule in accordance with Article 10(4)(b), and to monitor and coordinate its implementation. The competent authority shall, in consultation with the other authorities concerned, where applicable in accordance with national law, and without prejudice to time limits set in accordance with Article 10, establish on a case-by-case basis a reasonable time limit within which the individual decisions shall be issued. The competent authority may take an individual decision on behalf of another national authority concerned, if the decision by that authority is not delivered within the time limit and if the delay cannot be adequately justified; or, where provided under national law, and to the extent that this is compatible with **Energy Community** law, the competent authority may consider that another national authority concerned has either given its approval or refusal for the project if the decision by that authority is not delivered within the time limit. Where provided under national law, the competent authority may disregard an individual decision of another national authority concerned if it considers that the decision is not sufficiently substantiated with regard to the underlying evidence presented by the national authority concerned; when doing so, the competent authority shall ensure that the relevant requirements under international and **Energy Community** law are respected and shall duly justify its decision;

(c) collaborative scheme: the comprehensive decision shall be coordinated by the competent authority. The competent authority shall, in consultation with the other authorities concerned, where applicable in accordance with national law, and without prejudice to time limits set in accordance with Article 10, establish on a case-by-case basis a reasonable time limit within which the individual decisions shall be issued. It shall monitor compliance with the time limits by the authorities concerned. If an individual decision by an authority concerned is not expected to be delivered within the time limit, that authority shall inform the competent authority without delay and include a justification for the delay. Subsequently, the competent authority shall reset the time limit within which that individual decision shall be issued, whilst still complying with the overall time limits set in accordance with Article 10.

Acknowledging the national specificities in planning and permit granting processes, **Contracting Parties** may choose among the three schemes referred to in points (a), (b) and (c) of the first subparagraph to facilitate and coordinate their procedures and shall opt to implement the most effective scheme. Where a **Contracting Party** chooses the collaborative scheme, it shall inform the **Energy**

**Community Secretariat** of its reasons therefor. The **Energy Community Secretariat** shall undertake an evaluation of the effectiveness of the schemes in the report referred to in Article 17.

4. **Contracting Party** may apply different schemes as set out in paragraph 3 to onshore and off-shore projects of **Energy Community** interest.

5. If a project of **Energy Community** interest requires decisions to be taken in two or more **Contracting Parties**, the respective competent authorities shall take all necessary steps for efficient and effective cooperation and coordination among themselves, including as regards the provisions referred to in Article 10(4). **Contracting Parties** shall endeavour to provide for joint procedures, particularly with regard to the assessment of environmental impacts.

**6.<sup>8</sup> If a project of Energy Community interest requires decisions to be taken in one or more Contracting Parties and one or more Member States, the respective competent authorities are encouraged to take all necessary steps for efficient and effective cooperation and coordination among themselves, including as regards the provisions referred to in Article 10(4). Contracting Parties and Member States concerned are encouraged to provide for joint procedures, particularly with regard to the assessment of environmental impacts.**

## *Article 9*

### **Transparency and public participation**

1. By **31 December 2017**, the **Contracting Party** or competent authority shall, where applicable in collaboration with other authorities concerned, publish a manual of procedures for the permit granting process applicable to projects of **Energy Community** interest. The manual shall be updated as necessary and made available to the public. The manual shall at least include the information specified in **Annex V.1**. The manual shall not be legally binding, but it may refer to or quote relevant legal provisions.

2. Without prejudice to any requirements under the Aarhus and Espoo Conventions and relevant **Energy Community** law, all parties involved in the permit granting process shall follow the principles for public participation set out in of **Annex V.3**.

3. The project promoter shall, within an indicative period of three months of the start of the permit granting process pursuant to Article 10(1)(a), draw up and submit a concept for public participation to the competent authority, following the process outlined in the manual referred to in paragraph 1 and in line with the guidelines set out in **Annex V**. The competent authority shall request modifications or approve the concept for public participation within three months; in so doing, the competent authority shall take into consideration any form of public participation and consultation that took place before the start of the permit granting process, to the extent that such public participation and consultation has fulfilled the requirements of this Article.

Where the project promoter intends to make significant changes to an approved concept, it shall inform the competent authority thereof. In that case the competent authority may request modifications.

4. At least one public consultation shall be carried out by the project promoter, or, where required by national law, by the competent authority, before submission of the final and complete applica-

<sup>8</sup> The text displayed here corresponds to Article 12(2) of Ministerial Council Decision 2015/09/MC-EnC.

tion file to the competent authority pursuant to Article 10(1)(a). This shall be without prejudice to any public consultation to be carried out after submission of the request for development consent according to Article 6(2) of Directive 2011/92/EU. The public consultation shall inform stakeholders referred to in **Annex V.3(a)** about the project at an early stage and shall help to identify the most suitable location or trajectory and the relevant issues to be addressed in the application file. The minimum requirements applicable to this public consultation are specified in **Annex V.5**.

The project promoter shall prepare a report summarising the results of activities related to the participation of the public prior to the submission of the application file, including those activities that took place before the start of the permit granting process. The project promoter shall submit that report together with the application file to the competent authority. Due account shall be taken of these results in the comprehensive decision.

5. For projects crossing the border of two or more **Contracting Parties**, the public consultations pursuant to paragraph 4 in each of the **Contracting Parties** concerned shall take place within a period of no more than two months from the date on which the first public consultation started.

**For projects crossing the border of two or more Contracting Parties, or one or more Contracting Parties and one or more Member States, the public consultations pursuant to paragraph 4 in each of the Contracting Parties and the Member States concerned may take place within a period of no more than two months from the date on which the first public consultation started.**<sup>9</sup>

6. For projects likely to have significant adverse cross-border impacts in one or more neighbouring **Contracting Parties or Member States**, where Article 7 of Directive 2011/92/EU and the Espoo Convention are applicable, the relevant information shall be made available to the competent authority of the neighbouring **Contracting Parties or Member States**. The competent authority of the neighbouring **Contracting Parties or Member States** shall indicate, in the notification process where appropriate, whether it, or any other authority concerned, wishes to participate in the relevant public consultation procedures.

7. The project promoter, or, where national law so provides, the competent authority, shall establish and regularly update a website with relevant information about the project of **Energy Community** interest, which shall be linked to the **Energy Community** website and which shall meet the requirements specified in **Annex V.6**. Commercially sensitive information shall be kept confidential.

Project promoters shall also publish relevant information by other appropriate information means to which the public has open access.

<sup>9</sup> The text displayed here corresponds to Article 13(2) of Ministerial Council Decision 2015/09/MC-EnC.

## **Article 10**

### **Duration and implementation of the permit granting process**

1. The permit granting process shall consist of two procedures:

(a) The pre-application procedure, covering the period between the start of the permit granting process and the acceptance of the submitted application file by the competent authority, shall take place within an indicative period of two years.

This procedure shall include the preparation of any environmental reports to be prepared by the project promoters.

For the purpose of establishing the start of the permit granting process, the project promoters shall notify the project to the competent authority of the **Contracting Parties** concerned in written form, and shall include a reasonably detailed outline of the project. No later than three months following the receipt of the notification, the competent authority shall, including on behalf of other authorities concerned, acknowledge or, if it considers the project as not mature enough to enter the permit granting process, reject the notification in written form. In the event of a rejection, the competent authority shall justify its decision, including on behalf of other authorities concerned. The date of signature of the acknowledgement of the notification by the competent authority shall serve as the start of the permit granting process. Where **two or more Contracting Parties, and/or Member States are concerned**, the date of the acceptance of the last notification by the competent authority concerned shall serve as the date of the start of the permit granting process.

(b) The statutory permit granting procedure, covering the period from the date of acceptance of the submitted application file until the comprehensive decision is taken, shall not exceed one year and six months. **Contracting Parties** may set an earlier date for the time-limit, if considered appropriate.

2. The combined duration of the two procedures referred to in paragraph 1 shall not exceed a period of three years and six months. However, where the competent authority considers that one or both of the two procedures of the permit granting process will not be completed before the time limits as set out in paragraph 1, it may decide, before their expiry and on a case by case basis, to extend one or both of those time limits by a maximum of nine months for both procedures combined.

In that case, the competent authority shall inform the Group concerned and present to the Group concerned the measures taken or to be taken to conclude the permit granting process with the least possible delay. The Group may request the competent authority to report regularly on progress achieved in this regard.

3. In **Contracting Parties** where the determination of a route or location undertaken solely for the specific purpose of a planned project, <...> cannot be included in the process leading to the comprehensive decision, the corresponding decision shall be taken within a separate period of six months, starting on the date of submission of the final and complete application documents by the promoter.

In that case, the extension period referred to in paragraph 2 shall be reduced to six months, including for the procedure referred to in this paragraph.

4. The pre-application procedure shall comprise the following steps:

(a) upon the acknowledgement of the notification pursuant to paragraph 1(a), the competent authority shall identify, in close cooperation with the other authorities concerned, and where appropriate on the basis of a proposal by the project promoter, the scope of material and level of detail of informa-

tion to be submitted by the project promoter, as part of the application file, to apply for the comprehensive decision. The checklist referred to in **Annex V.1(e)** shall serve as a basis for this identification;

(b) the competent authority shall draw up, in close cooperation with the project promoter and other authorities concerned and taking into account the results of the activities carried out under point (a), a detailed schedule for the permit granting process in line with the guidelines set out in **Annex V.(2)**;

For projects crossing the border between two or more **Contracting Parties**, the competent authorities of the **Contracting Parties** concerned shall prepare a joint schedule, in which they endeavour to align their timetables;

**For projects crossing the border between one or more Contracting Parties and one or more Member States, the competent authorities of the Contracting Parties and Member States concerned are encouraged to prepare a joint schedule, in which they endeavour to align their timetables;**<sup>10</sup>

(c) upon receipt of the draft application file, the competent authority shall, if necessary, and including on behalf of other authorities concerned, make further requests regarding missing information to be submitted by the project promoter, which may only address subjects identified under point (a). Within three months of the submission of the missing information, the competent authority shall accept for examination the application in written form. Requests for additional information may only be made if they are justified by new circumstances.

5. The project promoter shall ensure the completeness and adequate quality of the application file and seek the competent authority's opinion on this as early as possible during the pre-application procedure. The project promoter shall cooperate fully with the competent authority to meet deadlines and comply with the detailed schedule as defined in paragraph 4(b).

6. The time limits laid down in this Article shall be without prejudice to obligations arising from international and **Energy Community** law, and without prejudice to administrative appeal procedures and judicial remedies before a court or tribunal.

## CHAPTER IV REGULATORY TREATMENT

### *Article 11*

#### Energy system wide cost-benefit analysis

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

2. <...>

3. <...>

4. <...>

<sup>10</sup> The text displayed here corresponds to Article 14(3) of Ministerial Council Decision 2015/09/MC-EnC.

5. <...>

6. <...><sup>11</sup>

2. By **30 June 2018**, national regulatory authorities cooperating in the framework of the **Regulatory Board** shall establish and make publicly available a set of indicators and corresponding reference values for the comparison of unit investment costs for comparable projects of the infrastructure categories included in **Annex I.1** and 2. **Those reference values may be used by the project promoters for the cost-benefit analyses carried out for their projects.**

**A set of indicators and corresponding reference values for the comparison of unit investment costs, referred to in first subparagraph shall be consistent with those established under Article 11 (7) of Regulation (EU) No 347/2013. The Agency is invited to include in a set of indicators and corresponding reference values, established under that Article, unit investment costs submitted by national regulatory authorities from Contracting Parties.**<sup>12</sup>

3. **The Secretariat shall prepare and submit for endorsement to the Permanent High Level Group an electricity and gas market and network model including both electricity transmission infrastructure, and gas transmission infrastructure as well as storage and LNG facilities, covering the energy infrastructure in the Energy Community, and drawn up in line with the principles laid down in Annex IV. These models shall be in line with those proposed by ENTSO E and ENTSO G under Article 11(8) of Regulation (EU) No 347/2013.**

## *Article 12*

### **Enabling investments with cross-border impacts**

1. **The efficiently incurred investment costs, which excludes maintenance costs, related to a project of Energy Community interest falling under the categories set out in Annex I.(1) and Annex I.(2), and concerning only Contracting Parties, shall be borne by the relevant TSO or the project promoters of the transmission infrastructure of the Contracting Parties to 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 Contracting Parties.**

**The efficiently incurred investment costs, which excludes maintenance costs, related to a project of Energy Community interest falling under the categories set out in Annex I.(1) and Annex I.(2), and concerning Member States and Contracting Parties, may be borne by the relevant TSO or the project promoters of the transmission infrastructure of the Contracting Parties and Member States, to 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 Contracting Parties and Member States concerned.**<sup>13</sup>

2. For a project of **Energy Community** interest falling under the categories set out in **Annex I.1(a), and (c)** and **Annex I.2**, paragraph 1 shall apply only if at least one project promoter requests the rel-

<sup>11</sup> Paragraphs 2, 3, 4, 5 and 6 are not applicable according to Article 15(2) of Ministerial Council Decision 2015/09/MC-EnC.

<sup>12</sup> The text displayed here corresponds to Article 15(3)(c) of Ministerial Council Decision 2015/09/MC-EnC.

<sup>13</sup> The text displayed here corresponds to Article 16(1)(b) of Ministerial Council Decision 2015/09/MC-EnC.

evant national authorities to apply this Article for all or parts of the costs of the project. For a project of **Energy Community** interest falling under the categories set out in **Annex I.2**, paragraph 1 shall apply 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.

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 **Energy Community** interest to which paragraph 1 applies, the project promoters shall keep all concerned 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 has reached sufficient maturity, the project promoters, after having consulted the TSOs **from the Contracting Parties and Member States concerned** to which the project provides a significant net positive impact, 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 national regulatory authorities concerned, accompanied by the following:

(a) a 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 **Contracting Party and Member State concerned**;

(b) a business plan evaluating the financial viability of the project, including the chosen financing solution, and, for a project of **Energy Community** interest falling under the category referred to in **Annex I.2**, the results of market testing; and

(c) if the project promoters agree, a substantiated proposal for a cross-border cost allocation.

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

**For projects included in the Energy Community list approved by the Ministerial Council in 2013, project promoters shall submit their investment request by 30 September 2016. A copy of each investment request shall be transmitted for information without delay by the national regulatory authorities to the Regulatory Board on receipt.**

The national regulatory authorities and the **Regulatory Board** shall preserve the confidentiality of commercially sensitive information.

4. Within six months of the date on which the last investment request was received by the national regulatory authorities concerned, the national regulatory authorities shall, after consulting the project promoters concerned, take 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 may decide to allocate only part of the costs, or may decide to allocate costs among a package of several projects of **Energy Community** interest.

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

— congestion rents or other charges,

— **revenues stemming from the inter-transmission system operator compensation mechanism established under Article 13 of Regulation (EC) No 714/2009, as incorporated and**

**adapted by the Ministerial Council Decision 2011/02/MC-EnC and by Decision 2013/01/PHLG.**

In deciding to allocate costs across borders, the economic, social and environmental costs and benefits of the projects **in the Contracting Parties and Member States concerned** and the possible need for financial support shall be taken into account.

In deciding to allocate 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 paragraph 3(a) and (b).

If a project of **Energy Community** interest mitigates negative externalities, such as loop flows, and that project of **Energy Community** interest is implemented in the **Contracting Party or 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 Contracting Parties and Member States affected** by those negative externalities.

**5. National regulatory authorities shall, based on the cross-border cost allocation as 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 37(1)(a) of Directive 2009/72/EC and Article 41(1)(a) of Directive 2009/73/EC as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC, insofar as these 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 Regulatory Board and the Agency**, together with all the relevant information with respect to the decision. In particular, the information shall contain detailed reasons on the basis of which costs were allocated **among Contracting Parties, and Member States concerned**, such as the following:

- (a) an evaluation of the identified impacts, including concerning network tariffs, on each of **the concerned Contracting Parties and Member States;**
- (b) an evaluation of the business plan referred to in paragraph 3(b);
- (c) regional or Union-wide positive externalities, 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 national regulatory authorities concerned 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 national regulatory authorities concerned, they shall inform the Regulatory Board, the Energy Community Secretariat and the Commission without delay.**

In this case or upon a joint request from the national regulatory authorities concerned, the decision on the investment request including cross-border cost allocation referred to in paragraph 3 as well as the way the cost of the investments are reflected in the tariffs shall be taken by the **Regulatory Board** within three months of the date of referral to the **Regulatory Board**.

Before taking such a decision, the **Regulatory Board shall consult the Energy Community Secretariat, the national regulatory authorities concerned** 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 **Regulatory Board**. That additional period shall begin on the day following receipt of the complete information.

The cost allocation decision shall be published. **Procedure referred to in this paragraph shall be applicable to projects having cross-border impacts only between Contracting Parties. Issues concerning allocation of costs across borders between Member States and Contracting Parties shall be deemed to be solved only by means of mutual agreement.**

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 **Regulatory Board** to the **Energy Community Secretariat**. That information may be submitted in aggregate form. The **Energy Community Secretariat** shall preserve the confidentiality of commercially sensitive information.

8. **This cost allocation decision shall not affect the right of TSOs to apply and national regulatory authorities to approve charges for access to networks in accordance with Article 32 of Directive 2009/72/EC and of Directive 2009/73/EC, Article 14 of Regulation (EC) No 714/2009, and Article 13 of Regulation (EC) No 715/2009, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC.**

9. This Article shall not apply to projects of **Energy Community** interest having received:

(a) **an exemption from Articles 32, 33, 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC pursuant to Article 36 of Directive 2009/73/EC, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC;**

(b) **an exemption from Article 16(6) of Regulation (EC) No 714/2009 or an exemption from Article 32 and Article 37(6) and (10) of Directive 2009/72/EC pursuant to Article 17 of Regulation (EC) No 714/2009, as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC;**

(c) an exemption under Article 22 of Directive 2003/55/EC; or

(d) an exemption under Article 7 of Regulation (EC) No 1228/2003.

### **Article 13**

#### **Incentives**

1. Where a project promoter incurs higher risks for the development, construction, operation or maintenance of a project of **Energy Community** interest falling under the categories set out in **Annex I.1(a), and (c) and Annex I.2**, compared to the risks normally incurred by a comparable infrastructure project, **Contracting Parties** and national regulatory authorities shall ensure that appropriate incentives are granted to that project in accordance with Article 37(8) of Directive 2009/72/EC, Article 41(8) of Directive 2009/73/EC, Article 14 of Regulation (EC) No 714/2009, and Article 13 of Regulation (EC) No 715/2009, **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC.**

The first subparagraph shall not apply where the project of **Energy Community** interest has received:

(a) an exemption from Articles 32, 33, 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC pursuant to Article 36 of Directive 2009/73/EC, **as incorporated and adapted by Ministerial Council**

**Decision 2011/02/MC-EnC;**

(b) an exemption from Article 16(6) of Regulation (EC) No 714/2009 or an exemption from Article 32 and Article 37(6) and (10) of Directive 2009/72/EC pursuant to Article 17 of Regulation (EC) No 714/2009, **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC;**

(c) an exemption under Article 22 of Directive 2003/55/EC; or

(d) an exemption under Article 7 of Regulation (EC) No 1228/2003.

2. The decision of the national regulatory authorities for granting the incentives referred to in paragraph 1 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 **Energy Community**-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 this risk profile in view of the net positive impact provided by the project, when compared to a lower-risk alternative. Eligible risks shall notably include risks related to new transmission technologies, both onshore and offshore, risks related to under-recovery of costs and development risks.

3. The incentive granted by the decision shall take account of the specific nature of the risk incurred and may cover *inter alia*:

(a) the rules for anticipatory investment; or

(b) the rules for recognition of efficiently incurred costs before commissioning of the project; or

(c) the rules for providing additional return on the capital invested for the project; or

(d) the any other measure deemed necessary and appropriate.

4. By **30 June 2017**, each national regulatory authority shall submit to the **Regulatory Board** its methodology and the criteria used to evaluate investments in electricity and gas infrastructure projects and the higher risks incurred by them, where available.

5. **Good practices and recommendations referred to in Article 13 of the Regulation (EU) 347/2013 shall be applied accordingly.**

6. By **31 December 2017**, each national regulatory authority shall publish its methodology and the criteria used to evaluate investments in electricity and gas 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 Energy Community interest, the Commission guidelines referred to in Article 13 paragraph 7 of the Regulation (EU) 347/2013 shall be applied accordingly.**

## CHAPTER V FINANCING

### Article 14

#### Eligibility of projects for Union technical and financial assistance

1. **Projects of Energy Community interest falling under the categories set out in Annex I.(1), (2) are eligible for Union technical and financial assistance in the form of grants for studies and financial instruments from the Instrument for Pre-Accession Assistance (IPA) and the Neighbourhood Investment Facility.**

2. **Projects of Energy Community interest falling under the categories set out in Annex I.(1) and (2), except for hydro-pumped electricity storage projects, are also eligible for financial assistance in the form of grants for works from the Instrument for Pre-Accession Assistance (IPA) and the Neighbourhood Investment Facility if they fulfil all of the following criteria:**

(a) the project specific cost-benefit analysis pursuant to Article 12(3)(a) provides evidence concerning the existence of significant positive externalities, such as security of supply, solidarity or innovation;

(b) the project has received a cross-border cost allocation decision pursuant to Article 12; or, for projects of **Energy Community** interest falling under the category set out in **Annex I.1(b)** and that therefore do not receive a cross-border cost allocation decision, the project shall aim to provide services across borders, bring technological innovation and ensure the safety of cross-border grid operation;

(c) the project is commercially not viable according to the business plan and other assessments carried out, notably by possible investors or creditors or the national regulatory authority. The decision on incentives and its justification referred to in Article 13(2) shall be taken into account when assessing the project's commercial viability.

3. Projects of **Energy Community** 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 if they fulfil the criteria set out in paragraph 2 of this Article.

4.<...><sup>14</sup>

### Article 15

#### Guidance for the award criteria of Union technical and financial assistance

**The specific criteria set out in Article 4(2) and the parameters set out in Article 4(4) shall also fulfil the role of objectives for the purpose of establishing award criteria for Union technical and financial assistance from the Instrument for Pre-Accession Assistance (IPA) and the Neighbourhood Investment Facility.**

<sup>14</sup> Not applicable according to Article 18(3) of Ministerial Council Decision 2015/09/MC-EnC.

**Article 16****Exercise of the delegation**<...><sup>15</sup>**CHAPTER VI  
FINAL PROVISIONS****Article 17****Reporting and evaluation**

Not later than **2018**, the **Energy Community Secretariat** shall publish a report on the implementation of projects of **Energy Community** interest and submit it to the **Ministerial Council**. This report shall provide an evaluation of:

- (a) the progress achieved for the planning, development, construction and commissioning of projects of **Energy Community** interest selected pursuant to Article 3, and, where relevant, delays in implementation and other difficulties encountered;
- (b) the funds engaged and disbursed by the Union for projects of **Energy Community** interest, compared to the total value of funded projects of **Energy Community** interest;
- (c) for the electricity and gas sectors, the evolution of the interconnection level **between Contracting Parties, and with Member States concerned**, the corresponding evolution of energy prices, as well as the number of network system failure events, their causes and related economic cost;
- (d) permit granting and public participation, in particular:
  - (i) the average and maximum total duration of permit granting processes for projects of **Energy Community** interest, including the duration of each step of the pre-application procedure, compared to the timing foreseen by the initial major milestones referred to in Article 10(4);
  - (ii) the level of opposition faced by projects of **Energy Community** interest (notably number of written objections during the public consultation process, number of legal recourse actions);
  - (iii) an overview of best and innovative practices with regard to stakeholder involvement and mitigation of environmental impact during permit granting processes and project implementation;
  - (iv) the effectiveness of the schemes foreseen in Article 8(3) regarding compliance with the time limits set under Article 10;
- (e) regulatory treatment, in particular:
  - (i) the number of projects of **Energy Community** interest having been granted a cross-border cost allocation decision pursuant to Article 12;
  - (ii) the number and type of projects of **Energy Community** interest having received specific incentives pursuant to Article 13;
- (f) **the effectiveness of this Regulation in contributing to the goals for market integration by 2016 and 2017, to the Treaty objectives and Contracting Parties' targets for renewable**

<sup>15</sup> Not applicable according to Article 20 of Ministerial Council Decision 2015/09/MC-EnC.

**energy and energy efficiency, as stipulated in Energy Community law and endorsed in the Energy Strategy.**

### **Article 18**

#### **Information and publicity**

The **Energy Community Secretariat** shall establish by six months **after the date of adoption of the first Energy Community list** an infrastructure transparency platform easily accessible to the general public, including via the internet. This platform shall contain the following information:

- (a) general, updated information, including geographic information, for each project of **Energy Community** interest;
- (b) the implementation plan as set out in Article 5(1) for each project of **Energy Community** interest;
- (c) the main results of the cost-benefit analysis on the basis of the methodology drawn up pursuant Article 11 for the projects of **Energy Community** interest concerned, except for any commercially sensitive information;
- (d) the **Energy Community** list;
- (e) the funds allocated and disbursed by the Union for each project of **Energy Community** interest.

### **Article 19**

#### **Transitional provisions**

1. For projects of Energy Community interest in the permit granting process for which a project promoter has submitted an application file before 16 October 2016, the provisions of Chapter III shall not apply.
2. As regards the next Energy Community list following the one adopted by the Ministerial Council on 24 October 2013, articles of this Regulation which do not require the Contracting Parties to implement domestic transposition measures, may be applied from the day of the adoption of this Regulation by the Ministerial Council.

### **Article 20**

#### **Amendments to Regulation (EC) No 713/2009**

<...>

### **Article 21**

#### **Amendments to Regulation (EC) No 714/2009**

<...>

### **Article 22**

#### **Amendments to Regulation (EC) No 715/2009**

<...>

### **Article 23**

#### **Repeal**

<...><sup>16</sup>

### **Article 24**

#### **Entry into force**

This Regulation shall enter into force upon adoption by the Ministerial Council. This Regulation shall be implemented by the Contracting Parties within the deadlines specified in the adapted Regulation. Domestic transposition measures shall be notified to the Secretariat within these deadlines.

#### **Implementation of the energy acquis**

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Regulation (EU) No 347/2013, as adapted by this Decision, by 31 December 2016. They shall forthwith inform the Energy Community Secretariat thereof.

The Contracting Parties shall apply those measures from 1 January 2017.

2. The Contracting Parties shall communicate to the Energy Community Secretariat the text of the main provisions of national law which they adopt in the field covered by this Decision.<sup>17</sup>

#### **Reporting**

1. The Secretariat shall monitor and review the application of this Decision in the Contracting Parties.

2. The Secretariat shall present a report to the Ministerial Council for the first time by 30 November 2016, and thereafter on an annual basis, summarising the opinions issued by the Secretariat in application of the acts referred to in Article 1, as adapted by this Decision.<sup>18</sup>

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<sup>16</sup> Articles 20, 21, 22, and 23 are not applicable according to Article 24 of Ministerial Council Decision 2015/09/MC-EnC.

<sup>17</sup> The text displayed here corresponds to Article 3 of Decision 2015/09/MC-EnC.

<sup>18</sup> The text displayed here corresponds to Article 28 of Decision 2015/09/MC-EnC.

## ANNEX I

## ENERGY INFRASTRUCTURE CATEGORIES AND AREA

The energy infrastructure categories to be developed are the following:

(1) concerning electricity:

(a) high-voltage overhead transmission lines, if they have been designed for a voltage of 220 kV or more, and underground and submarine transmission cables, if they have been designed for a voltage of 150 kV or more;

(b) <...><sup>19</sup>

(b) electricity storage facilities used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines designed for a voltage of 110 kV or more;

(c) any equipment or installation essential for the systems defined in (a) **and** (b) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations;

(d) any equipment or installation, both at transmission and medium voltage distribution level, aiming at two-way digital communication, real-time or close to real-time, interactive and intelligent monitoring and management of electricity generation, transmission, distribution and consumption within an electricity network in view of developing a network efficiently integrating the behaviour and actions of all users connected to it — generators, consumers and those that do both — in order to ensure an economically efficient, sustainable electricity system with low losses and high quality and security of supply and safety;

(2) concerning gas:

(a) transmission pipelines for the transport of natural gas and bio gas that form part of a network which mainly contains high-pressure pipelines, excluding high-pressure pipelines used for upstream or local distribution of natural gas;

(b) underground storage facilities connected to the above-mentioned high-pressure gas pipelines;

(c) reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) or compressed natural gas (CNG);

(d) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;

(3) concerning oil:

(a) pipelines used to transport crude oil;

(b) pumping stations and storage facilities necessary for the operation of crude oil pipelines;

(c) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems and reverse-flow devices;

(4) <...><sup>20</sup>

<sup>19</sup> Not applicable according to Article 26(2)(a)(ii) of Ministerial Council Decision 2015/09/MC-EnC.

<sup>20</sup> Not applicable according to Article 26(2)(a)(ii) of Ministerial Council Decision 2015/09/MC-EnC.

**The priority thematic area to be developed:**

**Smart grids deployment: adoption of smart grid technologies across the Energy Community to efficiently integrate the behaviour and actions of all users connected to the electricity network, in particular the generation of large amounts of electricity from renewable or distributed energy sources and demand response by consumers.<sup>21</sup>**

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<sup>21</sup> The text displayed here corresponds to Article 26(2)(a)(iii) of Ministerial Council Decision 2015/09/MC-EnC.



## ANNEX II

### PRELIMINARY LISTS OF PROJECTS OF ENERGY COMMUNITY INTEREST

#### 1. RULES FOR GROUPS

(1) For electricity projects falling under the categories set out in Annex I.(1) (a), (b) and (c), the Group includes representatives of the Contracting Parties and Member States concerned, the Commission, national regulatory authorities, TSOs, as well as the Energy Community Secretariat, and upon invitation the ENTSO for Electricity. For gas projects falling under the categories set out in Annex I.(2) (a), (b) and (c), the Group includes representatives of the Contracting Parties and Member States concerned, the Commission, national regulatory authorities, TSOs, as well as the Energy Community Secretariat, and upon the invitation the ENTSO for Gas. For oil transport projects falling under the categories set out in Annex I.(3) (a), (b) and (c), the same Group shall be used as for gas projects, and in addition it will include, project promoters concerned.

(2) The decision-making bodies of the Groups may merge. All Groups or decision-making bodies shall meet together, when relevant, to discuss matters common to all Groups; such matters may include issues relevant to cross-regional consistency or the number of proposed projects included on the draft **preliminary** lists at risk of becoming unmanageable.

(3) Each Group shall organise its work in line with regional cooperation efforts pursuant Article 6 of Directive 2009/72/EC, Article 7 of Directive 2009/73/EC, Article 12 of Regulation (EC) No 714/2009, and Article 12 of Regulation (EC) No 715/2009, **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC**, and other existing regional cooperation structures.

(4) Each Group shall invite, promoters of a project potentially eligible for selection as a project of **Energy Community** interest as well as representatives of national administrations, of regulatory authorities, and TSOs from <...> the member countries of the European Economic Area and the European Free Trade Association, representatives from the Energy Community institutions and bodies, countries covered by the European Neighbourhood policy and countries, with which the Union has established specific energy cooperation **as well as European Union institutions**. The decision to invite third country-representatives shall be based on consensus.

(5) Each Group shall consult the organisations representing relevant stakeholders — and, if deemed appropriate, stakeholders directly — including producers, distribution system operators, suppliers, consumers, and organisations for environmental protection. The Group may organise hearings or consultations, where relevant for the accomplishments of its tasks.

(6) The internal rules, an updated list of member organisations, regularly updated information on the progress of work, meeting agendas, as well as final conclusions and decisions of each Group shall be published by the **Energy Community Secretariat** on the transparency platform referred to in Article 18.

(7) The **Energy Community Secretariat** shall strive for consistency between the different Groups.

<...>

## 2. PROCESS FOR ESTABLISHING PRELIMINARY LISTS

(1) Promoters of a project potentially eligible for selection as a project of **Energy Community** interest wanting to obtain the status of projects of **Energy Community** interest shall submit an application for selection as project of **Energy Community** interest to the Group that includes:

— an assessment of their projects with regard to the contribution to **implementing the objectives of the Energy Community, as set in the Treaty, Energy Community law and the Energy Strategy of the Energy Community,**

— an analysis of the fulfilment of the relevant criteria defined in Article 4,

— for projects having reached a sufficient degree of maturity, a project-specific cost-benefit analysis <...> based on the methodologies developed by the ENTSO for electricity or the ENTSO for gas pursuant to Article 11, and

— any other relevant information for the evaluation of the project.

(2) All recipients shall preserve the confidentiality of commercially sensitive information.

(3) After adoption of the first **Energy Community** list, for all subsequent **Energy Community** lists adopted, proposed electricity transmission and storage projects falling under the categories set out in **Annex I.1(a), and (c)** shall be part of the latest available 10-year network development plan for electricity, developed by the ENTSO for Electricity pursuant Article 8 of Regulation (EC) No 714/2009, **with the exception of those located in a Contracting Party the TSO of which is not a member of ENTSO E. For those, the relevant projects shall be part of national ten year network development plans.**

(4) After adoption of the first **Energy Community** list, for all subsequent **Energy Community** lists adopted, proposed gas infrastructure projects falling under the categories set out in **Annex I.2** shall be part of the latest available 10-year network development plan for gas, developed by the ENTSO for Gas pursuant Article 8 of Regulation (EC) No 715/2009, **with the exception of those located in a Contracting Party the TSO of which is not a member of ENTSO G. For those, the relevant projects shall be part of national ten year network development plans.**

(5) <...>

(6) <...><sup>22</sup>

(5) For proposed projects falling under the categories set out in **Annex I.1** and 2, national regulatory authorities, and if necessary the **Regulatory Board**, shall, where possible in the context of regional cooperation (Article 6 of Directive 2009/72/EC, Article 7 of Directive 2009/73/EC, **as incorporated and adapted by Ministerial Council Decision 2011/02/MC-EnC**), check the consistent application of the criteria/ cost-benefit analysis methodology and evaluate their cross-border relevance. They shall present their assessment to the Group.

(6) For proposed oil transport projects falling under the categories set out in **Annex I.3**, the **Energy Community Secretariat** shall evaluate the application of the criteria set out in Article 4.

<...>

(7) **Each Contracting Party or the Member State** to whose territory a proposed project does not relate, but on which the proposed project may have a potential net positive impact or a potential significant effect, such as on the environment or on the operation of the energy infrastructure on its

<sup>22</sup> Points (5) and (6) are not applicable according to Article 26(3)(b)(iv) of Ministerial Council Decision 2015/09/MC-EnC.

territory, may present an opinion to the Group specifying its concerns.

(8) The decision-making body of the Group shall examine, **at the request of a Contracting Party or the Member State concerned**, the substantiated reasons presented by a **Contracting Party** pursuant to Article 3(3) for not approving a project of **Energy Community** interest related to its territory.

(9) The Group shall meet to examine and rank the proposed projects taking into account the assessment of the regulators, or the assessment of the **Energy Community Secretariat** for oil transport projects.

(10) The draft **preliminary** lists of proposed projects falling under the categories set out in **Annex I.1** and **2** drawn up by the Groups, together with any opinions as specified in point (7), **shall be submitted to the Energy Community Secretariat, the Regulatory Board and the Agency** six months before the adoption date of the **Energy Community** list. The draft **preliminary** lists and the accompanying opinions shall be assessed by the **Regulatory Board** within three months of the date of receipt. **The Regulatory Board seeking cooperation with the Agency and with the support of the Energy Community Secretariat shall provide an opinion on the draft preliminary lists, in particular on the consistent application of the criteria and cost-benefit analysis.**

<...>

(11) Within one month of the date of receipt of the **Regulatory Board's** opinion, the decision-making body of each Group shall adopt its final **preliminary** list, respecting the provisions set out in Article 3(3), based on the Groups' proposal and taking into account the opinion of the **Regulatory Board** and the assessment of the national regulatory authorities submitted in accordance with point (5), or the assessment of the **Energy Community Secretariat** for oil transport projects proposed in accordance with point (6). The Groups shall submit the final **preliminary** lists to the **Energy Community Secretariat**, together with any opinions as specified in point (7).

(12) If, based on the **preliminary** lists received, and after having taken into account the **Regulatory Board** opinion, the total number of proposed projects of **Energy Community** interest on the **Energy Community** list would exceed a manageable number, **the Permanent High Level Group shall consider**, after having consulted each Group concerned, not to include in the **Energy Community** list projects that were ranked lowest by the Group concerned according to the ranking established pursuant to Article 4(4).

## ANNEX III

## RULES AND INDICATORS CONCERNING CRITERIA FOR PROJECTS OF ENERGY COMMUNITY INTEREST

(1) A project with significant cross-border impact is a project on the territory of a **Contracting Party**, which fulfils the following conditions:

(a) for electricity transmission, the project increases the grid transfer capacity, or the capacity available for commercial flows, at the border of that **Contracting Party with one or several other Contracting Parties and/or Member States**, or at any other relevant cross-section of the same transmission corridor having the effect of increasing this cross-border grid transfer capacity, by at least 500 Megawatt compared to the situation without commissioning of the project;

(b) for electricity storage, the project provides at least 225 MW installed capacity and has a storage capacity that allows a net annual electricity generation of 250 Gigawatt-hours/year;

(c) for gas transmission, the project concerns investment in reverse flow capacities or changes the capability to transmit gas across the **borders of the Contracting Parties and/or Member States** concerned by at least 10% compared to the situation prior to the commissioning of the project;

(d) for gas storage or liquefied/compressed natural gas, the project aims at supplying directly or indirectly **at least two Contracting Parties, and/or one or more Member States** or at fulfilling the infrastructure standard (N-1 rule) at regional level in accordance with Article 6(3) of Regulation (EU) No 994/2010 of the European Parliament and of the Council, **once incorporated in the Energy Community**;

(e) for smart grids, the project is designed for equipments and installations at high-voltage and medium-voltage level designed for a voltage of 10 kV or more. It involves transmission and distribution system operators from at least two **Contracting Parties**, which cover at least 50 000 users that generate or consume electricity or do both in a consumption area of at least 300 Gigawatthours/year, of which at least 20% originate from renewable resources that are variable in nature.

(2) Concerning projects falling under the categories set out in Annex I.1(a) to (c), the criteria listed in Article 4 shall be evaluated as follows:

(a) Market integration, competition and system flexibility shall be measured in line with the analysis made in the latest available Union-wide 10-year network development plan in electricity, notably by:

— calculating, for cross-border projects, the impact on the grid transfer capability in both power flow directions, measured in terms of amount of power (in megawatt), and their contribution to reaching the minimum interconnection capacity of 10% installed production capacity or, for projects with significant cross-border impact, the impact on grid transfer capability at borders **between relevant Contracting Parties and/or with Member States, or within relevant Contracting Parties** and on demand-supply balancing and network operations in relevant **Contracting Parties**,

— assessing the impact, for the area of analysis as defined in Annex IV.6, in terms of energy system-wide generation and transmission costs and evolution and convergence of market prices provided by a project under different planning scenarios, notably taking into account the variations induced on the merit order.

(b) Transmission of renewable energy generation to major consumption centres and storage sites

shall be measured in line with the analysis made in the latest available 10-year network development plan in electricity, notably by:

— for electricity transmission, by estimating the amount of generation capacity from renewable energy sources (by technology, in megawatts), which is connected and transmitted due to the project, compared to the amount of planned total generation capacity from these types of renewable energy sources in the concerned **Contracting Party** in 2020 according to the national renewable energy action plans as defined in Article 4 of Directive 2009/28/EC, **as incorporated and adapted by Ministerial Council Decision 2012/04/MC-EnC**,

— for electricity storage, by comparing new capacity provided by the project with total existing capacity for the same storage technology in the area of analysis as defined in Annex IV.6.

(c) Security of supply, interoperability and secure system operation shall be measured in line with the analysis made in the latest available 10-year network development plan in electricity, notably by assessing the impact of the project on the loss of load expectation for the area of analysis as defined in **Annex IV.6** in terms of generation and transmission adequacy for a set of characteristic load periods, taking into account expected changes in climate-related extreme weather events and their impact on infrastructure resilience. Where applicable, the impact of the project on independent and reliable control of system operation and services shall be measured.

(3) Concerning projects falling under the categories set out in **Annex I.2**, the criteria listed in Article 4 shall be evaluated as follows:

(a) Market integration and interoperability shall be measured by calculating the additional value of the project to the integration of market areas and price convergence, to the overall flexibility of the system, including the capacity level offered for reverse flows under various scenarios.

(b) Competition shall be measured on the basis of diversification, including the facilitation of access to indigenous sources of supply, taking into account, successively: diversification of sources; diversification of counterparts; diversification of routes; the impact of new capacity on the Herfindahl-Hirschmann index (HHI) calculated at capacity level for the area of analysis as defined in **Annex IV.6**.

(c) Security of gas supply shall be measured by calculating the additional value of the project to the short and long-term resilience of the Union's gas system and to enhancing the remaining flexibility of the system to cope with supply disruptions to **Contracting Parties** under various scenarios as well as the additional capacity provided by the project measured in relation to the infrastructure standard (N-1 rule) at regional level in accordance with Article 6(3) of Regulation (EU) No 994/2010, **once incorporated in the Energy Community**.

(d) Sustainability shall be measured as the contribution of a project to reduce emissions, to support the back-up of renewable electricity generation or power-to-gas and biogas transportation, taking into account expected changes in climatic conditions.

(4) Concerning projects falling under the category set out in **Annex I.1(d)**, each function listed in Article 4 shall be evaluated against the following criteria:

(a) Level of sustainability: This criterion shall be measured by assessing the reduction of greenhouse gas emissions, and the environmental impact of electricity grid infrastructure.

(b) Capacity of transmission and distribution grids to connect and bring electricity from and to users: This criterion shall be measured by estimating the installed capacity of distributed energy resources

in distribution networks, the allowable maximum injection of electricity without congestion risks in transmission networks, and the energy not withdrawn from renewable sources due to congestion or security risks.

(c) Network connectivity and access to all categories of network users: This criterion shall be measured by assessing the methods adopted to calculate charges and tariffs, as well as their structure, for generators, consumers and those that do both, and the operational flexibility provided for dynamic balancing of electricity in the network.

(d) Security and quality of supply: This criterion shall be measured by assessing the ratio of reliably available generation capacity and peak demand, the share of electricity generated from renewable sources, the stability of the electricity system, the duration and frequency of interruptions per customer, including climate related disruptions, and the voltage quality performance.

(e) Efficiency and service quality in electricity supply and grid operation: This criterion shall be measured by assessing the level of losses in transmission and in distribution networks, the ratio between minimum and maximum electricity demand within a defined time period, the demand side participation in electricity markets and in energy efficiency measures, the percentage utilisation (i.e. average loading) of electricity network components, the availability of network components (related to planned and unplanned maintenance) and its impact on network performances, and the actual availability of network capacity with respect to its standard value.

(f) Contribution to cross-border electricity markets by load-flow control to alleviate loop-flows and increase interconnection capacities: This criterion shall be estimated by assessing the ratio between interconnection capacity of a **Contracting Party** and its electricity demand, the exploitation of interconnection capacities, and the congestion rents across interconnections.

(5) Concerning oil transport projects falling under the categories set out in **Annex I.3**, the criteria listed in Article 4 shall be evaluated as follows:

(a) Security of oil supply shall be measured by assessing the additional value of the new capacity offered by a project for the short and long-term resilience of the system and the remaining flexibility of the system to cope with supply disruptions under various scenarios.

(b) Interoperability shall be measured by assessing to what extent the project improves the operation of the oil network, in particular by providing the possibility of reverse flows.

(c) Efficient and sustainable use of resources shall be measured by assessing the extent to which the project makes use of already existing infrastructure and contributes to minimising environmental and climate change burden and risks.

## ANNEX IV

## ENERGY SYSTEM-WIDE COST-BENEFIT ANALYSIS

The methodology for a harmonised energy system-wide cost-benefit analysis for projects of **Energy Community** interest shall satisfy the following principles laid down in this Annex.

(1) The methodology shall be based on a common input data set representing the Union's electricity and gas systems in the years n+5, n+10, n+15, and n+20, where n is the year in which the analysis is performed. This data set shall comprise at least:

(a) in electricity: scenarios for demand, generation capacities by fuel type (biomass, geothermal, hydro, gas, nuclear, oil, solid fuels, wind, solar photovoltaic, concentrated solar, other renewable technologies) and their geographical location, fuel prices (including biomass, coal, gas and oil), carbon dioxide prices, the composition of the transmission and, if relevant, the distribution network, and its evolution, taking into account all new significant generation (including capacity equipped for capturing carbon dioxide), storage and transmission projects for which a final investment decision has been taken and that are due to be commissioned by the end of year n+5;

(b) in gas: scenarios for demand, imports, fuel prices (including coal, gas and oil), carbon dioxide prices, the composition of the transmission network and its evolution, taking into account all new projects for which a final investment decision has been taken and that are due to be commissioned by the end of year n+5.

(2) The data set shall reflect Union and national law in force at the date of analysis. The data sets used for electricity and gas respectively shall be compatible, notably with regard to assumptions on prices and volumes in each market. The data set shall be elaborated after formally consulting **Contracting Parties** and the organisations representing all relevant stakeholders. The **Energy Community Secretariat** and the **Regulatory Board** shall ensure access to the required commercial data from third parties when applicable.

(3) The methodology shall give guidance for the development and use of network and market modelling necessary for the cost-benefit analysis.

(4) The cost-benefit analysis shall be based on a harmonised evaluation of costs and benefits for the different categories of projects analysed and cover at least the period of time referred to in point (1).

(5) The cost-benefit analysis shall at least take into account the following costs: capital expenditure, operational and maintenance expenditure over the technical lifecycle of the project and decommissioning and waste management costs, where relevant. The methodology shall give guidance on discount rates to be used for the calculations.

(6) <...>

(7) <...>

(8) <...>

(9) <...><sup>23</sup>

(6) The methodology shall define the analysis to be carried out, based on the relevant input data set, by determining the impacts with and without each project. The area for the analysis of an individual

<sup>23</sup> Points (6), (7), (8) and (9) are not applicable according to Article 26(5)(a) of Ministerial Council Decision 2015/09/MC-EnC.

project shall cover **all Contracting Parties and Member States, on whose territory the project shall be built, all directly neighbouring Contracting Parties and Member States and all other Contracting Parties and Member States significantly impacted by the project.**

(7) The analysis shall identify the **Contracting Parties and Member States** on which the project has net positive impacts (beneficiaries) and those **Contracting Parties and Member States** on which the project has a net negative impact (cost bearers). Each cost-benefit analysis shall include sensitivity analyses concerning the input data set, the commissioning date of different projects in the same area of analysis and other relevant parameters.

(8) Transmission, storage system and compressed and liquefied natural gas terminal operators and distribution system operators shall exchange the information necessary for the elaboration of the methodology, including the relevant network and market modelling. Any transmission or distribution system operator collecting information on behalf of other transmission or distribution system operators shall give back to the participating transmission and distribution system operators the results of the collection of data.

(9) For the common electricity and gas market and network model set out in **paragraph 3** of Article 11, the input data set referred to in point (1) shall cover the years  $n+10$ ,  $n+20$  and  $n+30$  and the model shall allow for a full assessment of economic, social and environmental impacts, notably including external costs such as those related to greenhouse gas and conventional air pollutant emissions or security of supply.



## ANNEX V

### GUIDELINES FOR TRANSPARENCY AND PUBLIC PARTICIPATION

- (1) The manual of procedures referred to in Article 9(1) shall at least specify:
- (a) the relevant law upon which decisions and opinions are based for the different types of relevant projects of **Energy Community** interest, including environmental law;
  - (b) the relevant decisions and opinions to be obtained;
  - (c) the names and contact details of the Competent Authority, other authorities and major stakeholders concerned;
  - (d) the work flow, outlining each stage in the process, including an indicative time frame and a concise overview of the decision-making process;
  - (e) information about the scope, structure and level of detail of documents to be submitted with the application for decisions, including a checklist;
  - (f) the stages and means for the general public to participate in the process.
- (2) The detailed schedule referred to in Article 10(4)(b) shall specify as a minimum the following:
- (a) the decisions and opinions to be obtained;
  - (b) the authorities, stakeholders, and the public likely to be concerned;
  - (c) the individual stages of the procedure and their duration;
  - (d) major milestones to be accomplished and their deadlines in view of the comprehensive decision to be taken;
  - (e) the resources planned by the authorities and possible additional resource needs.
- (3) To increase public participation in the permit granting process and ensure in advance information and dialogue with the public, the following principles shall be applied:
- (a) The stakeholders affected by a project of **Energy Community** interest, including relevant national, regional and local authorities, landowners and citizens living in the vicinity of the project, the general public and their associations, organisations or groups, shall be extensively informed and consulted at an early stage, when potential concerns by the public can still be taken into account and in an open and transparent manner. Where relevant, the competent authority shall actively support the activities undertaken by the project promoter.
  - (b) Competent authorities shall ensure that public consultation procedures for projects of **Energy Community** interest are grouped together where possible. Each public consultation shall cover all subject matters relevant to the particular stage of the procedure, and one subject matter relevant to the particular stage of the procedure shall not be addressed in more than one public consultation; however, one public consultation may take place in more than one geographical location. The subject matters addressed by a public consultation shall be clearly indicated in the notification of the public consultation.
  - (c) Comments and objections shall be admissible from the beginning of the public consultation until the expiry of the deadline only.
- (4) The concept for public participation shall at least include information about:

- (a) the stakeholders concerned and addressed;
  - (b) the measures envisaged, including proposed general locations and dates of dedicated meetings;
  - (c) the timeline;
  - (d) the human resources allocated to the respective tasks.
- (5) In the context of the public consultation to be carried out before submission of the application file, the relevant parties shall at least:
- (a) publish an information leaflet of no more than 15 pages, giving, in a clear and concise manner, an overview of the purpose and preliminary timetable of the project, the national grid development plan, alternative routes considered, expected impacts, including of cross-border nature, and possible mitigation measures, which shall be published prior to the start of the consultation; The information leaflet shall furthermore list the web addresses of the transparency platform referred to in Article 18 and of the manual of procedures referred to in point (1);
  - (b) inform all stakeholders affected about the project through the website referred to in Article 9(7) and other appropriate information means;
  - (c) invite in written form relevant affected stakeholders to dedicated meetings, during which concerns shall be discussed.
- (6) The project website shall make available as a minimum the following:
- (a) the information leaflet referred to in point (5);
  - (b) a non-technical and regularly updated summary of no more than 50 pages reflecting the current status of the project and clearly indicating, in case of updates, changes to previous versions;
  - (c) the project and public consultation planning, clearly indicating dates and locations for public consultations and hearings and the envisaged subject matters relevant for those hearings;
  - (d) contact details in view of obtaining the full set of application documents;
  - (e) contact details in view of conveying comments and objections during public consultations.