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THE LANGUAGE OF EU LEGAL DOCUMENTS

JAZYK PRÁVNÍCH DOKUMENTŮ EU

BACHELOR'S THESIS
BAKALÁŘSKÁ PRÁCE

AUTHOR **Alexandra Rybakova**
AUTOR PRÁCE

SUPERVISOR **PhDr. Milan Smutný, Ph.D.**
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Student: Alexandra Rybakova ***ID:*** 217588

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Describe essential features typical for legal English. On examples of EU Regulations and Directives related to science and technology analyze specific features of the language used in the documents.

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Bázlik, M. and Ambrus, P. (2009) Legal English and its grammatical structure. Praha: Wolters Kluwer Česká republika. ISBN 978-80-7357-455-0.

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Urbanová, L. (2008) Stylistika anglického jazyka. Brno: Společnost pro odbornou literaturu - Barrister & Principal.

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Abstract

In this thesis, I have described and analysed characteristic features of legal language of EU documents by using specific examples of EU regulations on science and technology. The use of specific, concrete examples in EU regulations on science and technology can be beneficial for understanding other regulations and similar legal documents. In this thesis, I have explained what special features there are in European Union legal documents and shown examples of such features.

Keywords

Document, law¸ persuasive language, formal, informal style, legal texts, regulation.

Abstrakt

V této práci jsem na konkrétních příkladech nařízení a směrnic EU týkajících se vědy a techniky uvedla a analyzovala specifické rysy jazyka používaného v dokumentech EU. Znalost konkrétních, specifických příkladů v nařízeních EU týkajících se vědy a techniky může být přínosná pro pochopení některých nařízení. V této práci jsem vysvětlila, jaké zvláštní rysy mají právní dokumenty Evropské unie, a ukázala jsem příklady těchto rysů.

Klíčová slova

Dokument, právo, zákon, přesvědčovací jazyk, formální, neformální styly, právní texty, regulace.

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Author's Declaration

Author:	*Alexandra Rybakova*
Author's ID:	*217588*|
Paper type:	*Bachelor's Thesis*
Academic year:	*2022/23*
Topic:	*The language of EU legal documents*

I declare that I have written this paper independently, under the guidance of the advisor and using exclusively the technical references and other sources of information cited in the project and listed in the comprehensive bibliography at the end of the project.

As the author, I furthermore declare that, with respect to the creation of this paper, I have not infringed any copyright or violated anyone's personal and/or ownership rights. In this context, I am fully aware of the consequences of breaking Regulation S 11 of the Copyright Act No. 121/2000 Coll. of the Czech Republic, as amended, and of any breach of rights related to intellectual property or introduced within amendments to relevant Acts such as the Intellectual Property Act or the Criminal Code, Act No. 40/2009 Coll., Section 2, Head VI, Part 4.

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Brno, May 30, 2023 ----------

author's signature

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Contents

INTRODUCTION

This thesis will explore the legal English language of EU legal documents. This will be done by the means of an analysis of some EU Science and Technology Regulations, which may be useful for understanding their language and meaning. In this thesis, some features of legal documents of the European Union will be presented and analysed, along with examples that will show the most common features of the legal language. Nowadays, a considerable number of people often have to work with legal documents and for some people legal English can present a certain difficulty in understanding. For this reason, it is necessary to work on improving the understanding of the difference between legal documents and regular documents in order to be able to operate efficiently and effectively with written legal texts without any prejudice to the intended conveyance of meanings.

In order to better comprehend the language of EU legal documents, it is necessary to be well-versed not only in the legal concepts and principles underlying these documents but also in the linguistic features characteristic of this genre. The aim of this bachelor's work is to provide insight into the language of EU legal documents by examining both linguistic and legal features characteristic of this genre.

In addition, the purpose of the study is to explore how these linguistic and legal features interact with each other to create documents that are clear, precise, and legally binding. Through this work, readers will gain insight into the role of terminology, sources of legal English and other linguistic features in the creation of EU legal documents. This thesis will explore the challenges and opportunities associated with the use of English per se in EU legal documents. Finally, the thesis can be used as a source of recommendations for translators and drafters of legal documents with an engineering background working in the EU context in order to improve the clarity and efficiency of the documents which they may prepare and their overall proficiency in legal English. The study will take an analytical approach, drawing on existing literature and corpus analysis of EU legal instruments including some actual examples. Finally, the conclusion will summarize the main points and offer recommendations for future research in this area.

This bachelor's thesis emphasizes the importance of understanding the linguistic and legal features of EU legal instruments in order to improve their clarity, accuracy, and effectiveness.

1 HISTORY OF LEGAL LANGUAGE

One of the most important aspects of any legal system is the language in which it is written. This is why the European Union has a law language, which is also known as EU legal English. However, each country uses its own national/official languages of their state in official documents. It means, that the legal documents of each state must be in the official language of that state. This can make it difficult to interpret these legal texts correctly and to use them for practical purposes. Legal translators can play an important role in helping to resolve this problem. In this thesis, we will take a closer look at the EU's official language and its role in the legal system of member countries [1]. When a country joins the EU, it agrees to use the language of EU law in all legal documents it produces. There are currently 27 countries in the EU. All but two of these Denmark and Ireland have declared English as their official language. This means that most official documents in these countries are written in English [2].

For example, the Official Journal of the European Union is written in English, French, German, Italian, and Spanish. It is published once a week and contains information about laws and regulations that have been passed by the European Parliament. This document is the main source of legal information in the EU and is used by officials throughout the continent to help them interpret the law [3]. Some documents cannot be translated simply because they are written in certain non-official languages. This includes documents produced by courts and tribunals in countries where the official language is a language other than English or one of the official languages of the EU. In these cases, it may be necessary for the courts to have these documents to be translated into English before they can be used in legal proceedings [2][4].

The legal systems within the EU are structured in much the same way as those in other countries. This means that the general principles of the law are the same in all of the countries in the EU. However, there are some significant differences among various legal systems in the region. The legal systems in the EU differ significantly in terms of both substance and procedure [4]. In terms of substance, the legal systems in each of the individual EU countries are based on the laws and traditions that have been developed there over the years. In practice, this means that each country has its own laws and its own system of courts that have been shaped by the specific characteristics of the society

and culture in that country. These differences can also be seen in the way in which court proceedings are conducted in different EU member countries. In some countries, trials are conducted according to strict rules of procedure that provide defendants with certain rights during court proceedings. In other countries, the rules that govern trials are less formal and more negotiable than those found in some countries in the West [5].

2 LEGAL ENGLISH

Legal English is a special kind of the English language (including vocabulary, collocations and syntax) that is used in the legal sphere and predominantly in writing. In this part of the thesis 3 main areas are covered: vocabulary of legal English, its sources and types of the legal language.

2.1 Vocabulary of legal English

The globalisation of business activity obliges some lawyers to communicate internationally [5]. One of the main aspects of lawyers' work is legal documents, which means that lawyers must draft and understand contracts or other important documents that are not only syntactically complex but also contain highly specific vocabulary, which may be difficult for both native and non-native speakers. Even if lawyers are not native English speakers, they are obliged to understand the legal language, so in some cases, particular assistance in the form of specialised legal English training is required [1][2].

International business activity has grown at an unprecedented rate over the last 20 years. One result of this is that lawyers, who previously tended to work within established national frameworks, face increasingly more international clients, handle agreements and disputes involving businesses located in very different regions of the world with very different legal systems and traditions [6]. For practical reasons, much of the international legal activity is conducted in English and much of the legal documentation (contracts, merger agreements, memoranda, articles of association) is either entirely or mostly written in English. This means that all lawyers must master the basics of legal English. In addition, lawyers must learn to deal with the confusing language of the judicial system, which is not passable even for most native speakers due to its complex grammar, specialised vocabulary, and reliance on outdated conventional formulas [1].

2.2 Sources of legal English

The European Union (EU) is based on a large body of legal texts which are collectively known as *the EU treaties*. The treaties are composed of a series of *articles* which, taken together, form the legal basis for EU institutions [4]. The EU has a number of sources of

legal language in its treaties, including:

- the legal provisions incorporated into its treaties through the negotiation process;
- the jurisprudence of the Court of Justice of the European Union (CJEU);
- the provisions of the EU Charter of Fundamental Rights. [7]

The EU treaties are a complex document and it is therefore important to have access to both primary legal documents and secondary analysis of their content in order to fully understand the EU's legal framework. Articles are the basic building block of the EU's law. They provide the basis for creating more complex rules and structures within the Union. Although they are referred to primarily as articles, many of the articles have sub-parts called clauses or recitals and these are often referred to as *chapters* too [3][5].

Multiple languages are blended together in legal English, which is how the English language as a whole emerged. However, French and Latin are the most common languages represented in contemporary legal English. In the past, the majority of people in England spoke English even though French was the official language after the Norman conquest in 1066. For 300 years, legal proceedings were conducted in French. As a result, a significant part of the English terminologies employed in today's legal terminology originates from that era. For instance, such terms as *rent* and *moveable* and *immovable property*. Even though only scientists could speak it at the time, Latin did not become the language of the legal community even though it was still the official language of charters and reports [1][8].

As a result, three languages were spoken in England for many years following the Norman conquest. Despite the fact that the majority of people continued to speak English, all writing was done in French and Latin. English was not utilised in court cases.

Except Latin words, Legal English has Scandinavian and French loanwords. Due to their shared Germanic ancestry, Scandinavian words are the closest genetic source of early loanwords in English. Old Norse, which is the ancestor of the current Scandinavian languages, is where the loanwords come from. When sections of northern and eastern England were invaded by the Scandinavians, they coexisted with Old English and eventually merged into English. Old English and Old Norse were both Germanic languages, making them very mutually understandable. As a result, Old Norse vocabulary was extremely easily incorporated into English during conversation [1][5].

Even though the majority of the borrowings in legal English derive from Latin and French, the word *law* itself is actually an old Scandinavian *loan*. It also appears in *bylaw*, a compound that was developed. *Bylaw* has a few meanings, the first one is *a rule made by a local authority for regulation of its affairs or management of the area it governs*. The second meaning is *a regulation of a company, society* and so on. And the last one is *subsidiary law* [1].

Words, that are borrowed from Scandinavian include words *sale, loan* and some numerous verbs such as *get, take*. Some of these terms still can be seen used in legal context as parts or words to describe legal expression [1].

As was mentioned above, the legal language as well has loanword from the French language. French loanwords are a linguistic result of the Norman invasion of Britain in 1066. The Normans were a Germanic group who spoke and brought to England a dialect of French that had been influenced by some Germanic elements [1].

The Statute of Admission of Guilt was then adopted in 1356 (in French). It mandated that all judicial proceedings must be recorded in Latin and conducted in English. However, the use of French in court proceedings persisted in some legal fields. Later, new industries that existed only in English started to emerge. It is interesting to note that wills first appeared in English around 1400 [5][9].

2.3 Types of legal language

It is important to understand the legal meaning of each word or phrase that lawyers use in their legal documents. When writing a legal document, one should verify that the language is clear and concise in order to avoid misunderstandings and ensure that the message is properly conveyed [1]. Lawyers also need to make sure that the wording complies with legal requirements and any standard formatting guidelines that they may have been provided with by the Ministry of Justice and other authorities [5][10].

There are different statements of legal language such as *imperative, indicative, declaratory,* and *descriptive statements*.

An imperative statement is a command that must be obeyed, an example of this statement is *make a demand* [11][12].

An indicative statement describes a situation but does not require action [13].

"To date, energy market monitoring practices have been Member State and sector-specific" [14].

A declaratory statement describes a fact or law and may be used in a legal action or as evidence to support a legal action, could be used as evidence in a theft case.

"I certify that the information I have written on the application form and the documents I have submitted to be true and accurate" [15].

*Descriptive statement*s are used to make a point or describe a situation but do not command action or to paint a picture in the minds of readers by creating mental images using words rather than numbers [16]. And includes the words: *ordinary, wide, active, accomplished, common.*

"Major milestones to be ***accomplished*** *and their deadlines in view of the comprehensive decision to be taken;* [17]*"*

Imperative language is used to make a point or give an instruction and must clearly indicate whether or not it wants the reader to take an action. *Indicative language* is used to make factual statements, ask questions, or express opinions as if they were facts [11][18].

Declaratory language is used to make a point or describe a situation and give instructions [19].

In this type of context, the descriptions of the circumstances serve to convince the reader. It is important to keep in mind that this type of language should be used sparingly because overusing it can make a document confusing for the reader. When used correctly, however, it can really enhance the visual impact of a document and draw the reader's attention to a particular point or aspect of a topic [19].

Descriptive language is frequently used in business contexts in order to highlight the benefits of a particular product or service and to give potential customers an insight into what a product will be like before they purchase it. This type of language is particularly effective when used on product packaging or sales brochures where the customers are unable to try out the product for themselves. It can also be used in legal documents to describe the circumstances under which something will take place (for example, the sale of a property) [16].

Moreover, legal language has one more specific feature, which is *persuasive language. Persuasive language* is used to persuade readers of a particular point of view

by using facts and statistics to support what is being said. It is also commonly used to make the emotional appeal of an argument stronger so that readers be motivated to agree with a certain position [20]. Unlike *descriptive language*, which is used to create mental images of the subject matter, *persuasive language* is intended to persuade readers to take a course of action based on the facts of a situation rather than their own emotions [16]. For example, if someone is trying to convince someone to buy any product instead of using a competitor's product, someone would use *persuasive language* to describe the benefits of the product, including the price, quality, reliability, and ease of use. If the argument was successful, potential customers would be more likely to buy the product or sign a contract [20].

Besides, *persuasive language* is a form of legal advocacy. The aim of a lawyer in *persuasive writing* is to support the client's legal position and move the reader to agree with the legal conclusion that benefits the client [20][21].

3 LEGAL TEXTS

In general, a legal text is a text that has a legal character and a reason why it should be used with legal effects. The main purpose of legal texts is to convey a norm or a rule so that the reader (or the addressee) can receive a full understanding of their rights and/or obligations in a certain legal situation.

3.1 Definition of legal texts

One of the most common types of legal texts is *authoritative legal texts* - which establish, alter, or abolish the rights and obligations of people or institutions. Such texts could be referred to as written performatives, according to Austen. They are frequently described as operational or dispositive by lawyers [22].

Each genre of legal writing often has a predetermined structure, is written in legalese, and typically involves one or more speech actions that are designed to fulfill the tasks for which it is created. As a result, a contract nearly always includes one or more promises, a will includes verbs that transfer property upon death, and a deed transfers property while its author is still alive [23].

Examples of legal texts include *statutes*, *treaties*, *codes*, *court opinions*, *constitutions*, *contracts*, and legal agreements such as *non-disclosure agreements (NDAs)*, *employment contracts*, and *lease agreements*.

Legal briefs, *memorandums of understanding (MOUs)*, *pleadings*, and other legal documents used in litigation are also examples of legal texts. In addition, legal texts can also refer to *international conventions* and *agreements* such as the Universal Declaration of Human Rights or the Geneva Conventions. Overall, legal texts are any written documents that contain information related to laws, agreements, or regulations [24].

3.2 The importance of the subject for linguists

Pursuant to Bázlik and Böhmerová, legal English is a series of variations on a scale rather than a single version of the English language. In the course of our daily lives, we get involved in specific circumnutates of legal English, for example, a few of the most common issues are carrying out banking operations, getting married, selling or buying

something [1].

There are many inaccuracies in legal documents. And the reason for this is that lawmakers try to generalize as much as possible about most enforcement cases, rather than, for example, describing a particular punishment that applies to a certain offense. Because of the widespread use of generalization in legal documents, this leads to the use of a lexicon of broad interpretation which has several possible meanings. This way, inaccuracies in the wording of the law can be used by anybody including the victim's lawyer to clarify ambiguities in the wording of the law in favor of their client. The words used, which have an inaccurate meaning, help the lawyer to obtain a review of the decisions made by the court in favor of the defendant [25].

These words are often referred to as *weasel words* because they are intentionally vague or misleading. Some examples of such words are *allegedly*, *apparently*, *supposedly*, *presumably*, *ostensibly*, and *purportedly*. Lawyers can use these words to introduce doubt or uncertainty about the facts presented in a case and thus argue for a review of the decisions made by the court in favor of their client [1]. Here is an example of a sentence that uses *weasel words* in legal English: *"**Apparently**, the prosecution's key witness was not present at the scene of the crime."* This statement introduces doubt about the credibility of the prosecution's case and may be used by a defense attorney to argue for a review of the court's decision in favor of the prosecution [26].

Similarly, a defense attorney might say *"The defendant was **allegedly** seen leaving the scene of the crime"* to introduce uncertainty about the reliability of eyewitness testimony and argue for a review of the court's decision in favor of the prosecution [26].

3.3 The difference between ordinary and legal texts

Writing, printing, communicating, and copying have made it possible for a *document society* also known as an *information society* to arise. This civilization is characterised by the division of labour. *Document* (as a verb) is to make something obvious. And *a document* (as a noun) refers to anything people learn from, particularly a text. Our culture and way of life are shaped by documents [27]. Also, a document is distinguished from an ordinary text by the presence of requisites which include:

1. Title (statement, order, report)
2. Date of creation

3. Author, addressee
4. Signature, resolution

Ordinary speech and a legal text are significantly different from one another. Every genre of legal text has the said requisities, a similar structure, is typically written in legal language, and usually comprises one or more legal speech actions that are designed to fulfill the functions for which it is created. Thus, as mentioned above, deed transfers property while its maker is still alive, a will contains verbs that transfer property at death, and a contract almost always contains one or more promises [23].

3.4 Types of legal English texts

In today's world, documents have an important role for people. Both electronic and paper documents, in terms of content, can be of different natures: *graphic*, *textual*, *photographic*, and *audio*.

But the most important documents in the world are legal documents because they have an important role in today's document world. *Lawsuits, petitions, complaints, agreements, deeds, and contracts,* mediate all stages of legal regulation. Properly and correctly drafted documents are the most important prerequisite for the further protection of human rights [28].

There are many types of legal documents, each with its own purpose and use. Below is a brief description of some common types of legal documents [29].

A first type is *a contract* – this is an agreement between two or more parties. It defines the terms of the agreement and outlines the responsibilities of each party. Contracts can be oral or written, depending on the circumstances. The relationship between the parties involved is governed by the contract, so it is important that the terms are clearly defined and that both parties fully understand their obligations.

The next one is *a lease* – a legal contract according to which one party, who owns the property (landlord), allows another person (tenant) to use the said property for some time for monetary consideration. The person who leases the property carries the burden of paying the lanlord and is obliged to maintane the property for the duration of the contract. The landlord's duty is to do an overhaul of the property when needed. When the agreement expires it can be extended or terminated by effectively stopping the lease.

An employment contract is an agreement between an employer and an employee on the terms and conditions of employment. Employment contracts are commonly used in businesses involving employees such as manufacturing, retail, and service industries. An employee handbook may also contain important information regarding the terms of employment, including employee benefits, vacation time, pay rates, overtime hours.

A deed – is a document that transfers ownership of a property from one person to another. It is usually accompanied by a mortgage or other lien on the property. Deeds are typically used to transfer ownership of real property, which includes land and buildings. They are most commonly used in real estate transactions.

A mortgage – a type of loan that is secured against a piece of property. The borrower pays back the loan over time through regular monthly payments called installments. When the borrower defaults on the loan, the lender has the right to take possession of the property and sell it in order to recoup the money that was loaned to the borrower [30].

Each type of document includes a list of sections and/or subsections that are used to organize and organize the information presented in the document.

These sections are typically numbered and organized in the same order as they are presented in the document. This organization helps the reader of the document to follow the flow of information easily and helps to ensure that the information contained in the document is arranged in a logical and consistent manner.

An introduction to a document typically contains a summary or description of the major points that are discussed in the document and is usually presented at the beginning of the document. The introduction may also include a summary of the legal issues that are being addressed in the document and a brief discussion of any important background information on the topic. It is important to keep this type of information brief and to the point since the length of an introduction is not usually long enough to provide a detailed overview of the information in the document [31].

The main body of a document is typically the longest section of the document and includes all of the information that is presented in the document in a logical and sequential manner. As indicated above, each section of a document should include a heading that describes the content of that section. This helps the reader to quickly identify what each section is about and also serves as a convenient reference tool for the writer to quickly identify which sections of the document are completed. Finally, the document will usually

include a conclusion in which the author restates the main points made in the document and provides a final summary of the information contained in the document. Sometimes the conclusion will also include some recommendations or suggestions about how the topic discussed in the document can best be addressed in the future [31].

4 STYLE OF LEGAL ENGLISH

Legal documents are written in *informal, formal,* and *academic*. *Informal style* is easier to read and often contains less legal jargon than *formal style*. *Formal style* may use terms that are unfamiliar to the average person. *Academic style* is used in academia to teach students about the law. Each type of document has its own strengths and disadvantages. Below is a chart listing some of the most common styles used today and their advantages/disadvantages [33][34].

Each style of the document has characteristic features that are useful for different types of legal situations. Choosing which type of document to use depends on the purpose of writing and the aim the one is trying to reach. Writing a document in the appropriate style helps ensure that the document is clear, concise, and easy to understand. Understanding the differences between these different document styles will help to write effective documents that will meet the expectations of the readers and adhere to the rules of grammar in the jurisdiction. Each kind of document contains different elements of language intended to convey specific types of information to readers. This language reflects the purpose of the document, the format of the document, and the requirements of the legal systems under which it was created. When writing any type of legal document, it is important to be aware of the differences in language used in the various document types.

Informal style is easier to read than *formal style*, has less legal jargon than *formal style*, and is often used by businesses to communicate with clients and the general public.

Informal documents are similar to formal documents in that they are written for a specific audience of professional and lay users who are not experts in the subject matter being discussed. However, *informal documents* are typically less formal in their structure and style and tend to be simpler and more straightforward than formal documents. Informal documents are often written by nonlawyers who are writing about a legal issue that is of interest to them and may be trying to share their knowledge with others in the community [35].

A formal document is one that is intended for a general audience and contains a certain amount of formality in its structure, vocabulary, and overall style. These documents are meant to convey complex information in a clear and concise manner and are intended to

be used as a standard guide for basic legal matters. *Formal documents* are an important resource for lawyers and nonlawyers who must understand the law in a particular area [35].

Example of a formal style document: *"REGULATION (EU) 2022/869 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013* is:

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 thereof,…

Directives 2009/73/EC (9) and (EU) 2019/944 (10) of the European Parliament and of the Council provide for an internal market for energy. While there has been very significant progress in the completion of that market, there is still room for improvement by better utilising existing energy infrastructure, integrating the increasing amounts of renewable energy, and system integration" [17].

Formal style can provide more information than documents of other styles, often required for legal matters that require detailed information about a particular topic, and provide a more formal and legal tone than other types of documents [36].

Academic style is not suitable for a reader who is not familiar with the particular field that the academic text deals with, as it is too complex for them. However, for a reader who is an expert in the field, an academic text is a great simplification and facilitation. *Academic style*, which are used to teach law students at universities, may contain less legal information than other legal documents or may be aimed at a specialized audience and may not be easily understood by the general public [30][37].

An academic document is a document that is intended for the use by a specific audience of scholars and other academic professionals. *Academic documents* are often used as research tools for further analysis of legal topics or to corroborate previous research on a particular topic [37].

Certain words and phrases are used in both *formal* and *informal documents* to communicate their meaning effectively to target readers*; in accordance with Article 194 TFEU, behind the adoption of Regulation (EU) No 347/2013, moreover, furthermore, therefore, lays down guidelines for timely development* [17]. Learning about the specific

words and phrases that are used by each type of document will help to write any document more effectively and avoid using inappropriate or confusing language.

There are certain formatting conventions that are used in formal documents and informal documents that are unique to each type.

For example, it is customary for *formal documents* to be formatted using a standard font such as Times New Roman or Arial. On the other hand, *informal documents* are usually written in a simple, easy-to-read font like Helvetica or Arial and used a simple two-column format [35]. Understanding the various formatting conventions used in each type of document will help better organize any ideas and write more polished and professional-looking documents.

5 SPECIFIC FEATURES OF LEGAL ENGLISH

Legal documents are characterized by the presence of particular expressions and terminology, domestic words from accustomed English, which are mostly borrowed from other languages as are French, Greek, in most cases Latin and German. Besides, legal English has a lot of non-terminological words, such as *bad, good, time, name, say, make, before, next, soon, then, well.*

Some examples of these words are:

1. The parties shall follow the ***best*** professional standards.
2. The delivery shall be made at the agreed ***time***.
3. The ***name*** of the company is…

5.1 Pro-forms such as *there-, where-, here-*

Further, there exist pro-forms used predominantly in legal English: the *there-*, *where-*, *here-* forms, which are archaic expressions in the language of jurisprudence that have long been out of use in modern language but are often used in the drafting of some legal documents [1]. They can be replaced by more modern and clearer expressions, but the presence of archaic words is one of the characteristic features of the language of justice. For this reason, most lawyers continue to use them extensively, even though they pose some problems in understanding a legal document. The property of these words is to denote a period of time in the past or in the future or to make a reference to a certian document or its part [38]. Not all prepositions can be used after these pro-forms, but the most common are:

by: ***Whereby*** the parties have agreed to…;

of: All the appendices ***hereof***;

in: Conditions stipulated ***therein***;

after: ***Hereinafter*** called the Council;

to: … bodies or persons communicating information consent ***thereto***;

with: Memorandum of Law filed concurrently ***herewith*** [31].

5.2 Modal verb *SHALL*

Shall is a verb commonly placed before pronouns like *we* and *I*. We use it to make suggestions, but it would help us to go a little more in-depth than that. This thesis will look into using *shall we* and how we can make it work.

Shall is used for expressing the intentions of the speaker or someone else's obligations. However, it appears that the majority of English speakers have never rigorously obeyed these grammatical requirements, and the modal verb will is more prevalent in practically all applications in present daily English. In most cases, the verb shall often express commitment in a positive way and interdiction (prohibition) in a negative way. It is similar to the modal verb must. *Must* is used for commitment and *must not* for interdiction. Nowadays, the main reason why legal entities are using the verb *shall* rather than *must* is the fact that *must* has the connotation of logical necessity, in comparison with shall, which does not represent this [1][38].

The nationalistic assertions of British grammarians in the 18th and 19th centuries, who frequently mentioned the errors of the Irish, the Scots, and occasionally the Americans, imply that southern English use may have been the closest to the old standards. English usage, according to some contemporary analysts, continues to be the most similar to the established rules. Many contemporary analysts acknowledge that will is more prevalent in almost all uses. This dictionary's entries for *shall* and *will* illustrate how they are used today [39].

The word *shall* is frequently used in legal papers because lawyers, who are among the most grammatically exacting people who use the English language, have decided that *shall* grammatical norm must be properly followed [1][38].

5.3 Adjectives

Adjectives are words that characterize a noun or provide more context for it [1][31]. Certain *adjectives* can be used to describe things that are exclusively absolute. Such adjectives do not refer to terms with the following definitions: *most*, *more*, *less*, *very*, *entirely*, or *substantially*. For instance, if a clause in a contract is unenforceable, it cannot be *significantly unenforceable* or *more unenforceable*, it is just unenforceable [1][38].

According to Bázlik , adjectives have two main functions. The first one is attributive (as pre-modifiers) and the second one is a predicative function (as complements) [1]. Some adjectives with attributes come after the noun modified (postpositive position) as an examples are the words: *Court-martial, force majeure, director general, notary public.*

In certain situations, such usage can be attributed to the French language, which has had a significant impact on the English language due to the borrowing of numerous legal terms from the French language [39].

5.4 Adverbs

As mentioned above exist archaic adverbs in the language of jurisprudence which have long ceased to be used in modern language, but are often used in legal writing. They can be easily replaced by more modern and clearer equivalents. But the presence of clerical, archaic words is a characteristic of the language of justice and all lawyers continue to use them, even though the archaisms *hereinabove, hereafter, hereinafter,* and *heretofore* create problems in understanding the text. They tend to denote a certain period of time both in the past/as well as in the future [1][40].

5.5 Prepositions and pronouns

In legal English, prepositions are used following the general grammar rules of the English language. Prepositions are words that indicate place, position, time, or manner when they are used with a noun or pronoun [1].

It is crucial to remember that in legal documents there may be slight but significant changes in meaning between prepositions and that in some situations it may be permissible to employ more than one preposition [38].

One of the features of legal English is that instead of a subject pronoun like *I, she*, or *we*, one cannot use an object pronoun like *me*, *him,* or *us*. Because of this, it is appropriate to state *this matter is between you and I* rather than *this matter is between you and me*.

6 THE EXAMPLES OF LEGAL ENGLISH FROM LAW DOCUMENTS

6.1 Context

For the purposes of this thesis, it was decided to do a selective and comparative analysis of legal English used in two documents. **The first** of them is ***Regulation*** *(EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013* [17]. **The second** one is ***Regulation*** *(EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency Text with EEA relevance* [14]. For the convenience of this work, it was decided to call them ***Regulation 1*** and ***Regulation 2*** respectively.

Regulation 1 sets out the main rules for the timely creation and mutual manageability of the priority levels and fields of inter-European electrical gridlines that play a crucial role in mitigating the negative effects of climate change, reaching European goals and objectives of climate neutrality being one of its targets as well as providing energy safety and security, building internal connections and ensuring the integration of markets and systems which will be beneficial for all the participants of the European Union along with low cost energy.

The said ***Regulation 1*** focuses on the following particular points:

- identifies energy related projects of common and mutual interest;
- ensures the facilitation of the EU's projects by grouping them into different categories, providing closer control and issuing all necessary permissions in a swift manner, while also making sure there is enough public involvement and transparency;
- sets out guidelines for inter-state budgeting and splitting of spending together with risk mitigation procedures according to European standards;
- defines the criteria for allocating the European Union's funding to eligible projects.

Regulation 2 is dedicated to establishing guidelines on the prohibition of harmful practices that affect wholesale energy markets and which are consistent with the guidelines that are used in financial markets and with the right functioning of the said wholesale energy markets and which at the same time take into account their unique features. The legal document ensures the monitoring of wholesale energy markets and appoints the Agency for the Cooperation of Energy Regulators for that role in cooperation with local regulatory bodies of union nations.

Regulation 2 focuses on wholesale markets only except for a certain part of financial instruments and does not conflict with European competition law. The Agency for the Cooperation of Energy Regulators, national regulatory authorities, ESMA (European Securities and Markets Authority), competent financial bodies of the European countries and, if necessary, local competition authorities are assigned the implementation of the said regulation. The main role in this is played by the said agency which is given all the necessary powers. It is specified that the Director of the Agency shall act together with the Board of Regulators of the Agency which shall have consulting authorities.

6.2 Structure of the documents

As we can see from the text of ***Regulation 1*** it has a structure which is very typical of legal documents. The text is not divided in two columns and occupies the whole page. ***Regulation 2*** likewise is similar in structure to ***Regulation 1*** but is organized in two columns.

Both ***regulations*** open with the title giving all the formal details of the document such as its number, date and relation to the previous regulations. Then, the said documents continue with a preamble that makes a reference to the legal formalities of enacting the said directives, and then it goes on to list all the preceding events and circumstances that lead to the creation of the regulations. The preamble in ***Regulation 1*** consists of sixty-five paragraphs and makes for about one fourth of the document itself whilst in ***Regulation 2*** this part contains twenty-two paragraphs only.

The main body of the ***Regulation 1*** consisting of chapters begins with Chapter 1 on General provisions which is reminiscent of commercial contracts. This Chapter includes Articles 1 and 2 on subject matter, scope, and definitions.

Regulation 2 does not have chapters in its structure but the role and title of Article 1 and Article 2 are absolutely identical to those of ***Regulation 1***.

Chapter 2 of ***Regulation 1*** which includes Articles 3 to 6 is more material and is dedicated to projects of common and mutual interest including a respective list of such projects, criteria for the assessment of the said projects, their implementation and monitoring procedure and an article on European coordinators.

The respective articles 3 to 5 of ***Regulation 2*** also deal with material issues which include prohibition of insider training, obligation to make public certain internal information, and ban on market manipulation. Article 6 is more procedural because it provides for technical updating of main definitions from ***Regulation 2*** including inside information and market manipulation.

Chapter 3 of ***Regulation 1*** consists of Articles 7 to 10 and continues in the same spirit and lays out the rules for the permit granting process and public involvement. It deals with project priority issues, the permit granting process itself, collaborating with the public and ensuring transparency and the timeframe for the permit formalities.

The articles under the same numbers in ***Regulation 2*** are about monitoring of markets, collection of data, registering market participants and sharing of information amongst the Agency and other governmental bodies involved. It can be also seen here that these provisions are more of procedural nature.

Chapter 4 of ***Regulation 1*** is made up of Articles 11 to 13 and is about cross-sectoral infrastructure planning and has three parts: on energy cost-benefit analysis, 10-year development scenarios and plans, and a procedure for identification of infrastructure gaps.

In Regulation 2 the same articles deal with protection of data, operational reliability and implementing prohibitions preventing abuse of market.

Chapter 5 of ***Regulation 1*** (Articles 14 and 15) deals with offshore grids for renewable integration and covers their planning and cost-sharing.

Respectively, Articles 14 and 15 of ***Regulation 2*** describe right of appeal and obligations of participants professionally involved in transactions.

Chapter 6 of ***Regulation 1*** entitled '*Regulatory framework'* includes Articles 16 and 17 and focuses on the regulatory framework on cross-border investments along with their impact and regulatory incentives.

In parallel, the identical articles in ***Regulation 2*** set out rules for cooperation at Union and national levels and for secrecy regimes.

Chapter 7 of ***Regulation 1*** also has two articles (18 and 19) and is about finances and the criteria for eligibility of projects for European financial support and guidelines for the award criteria of monetary assistance.

Concurrently, in ***Regulation 2*** Article 18 covers sanctions while Article 19 is about international affairs.

Chapter 8 of ***Regulation 1*** is dedicated to final provisions and represents the last main body part and has 14 articles dealing with: delegations rules, reporting and evaluation process, time of the next review of the regulation, disclosure and publicity issues, exception for Cyprus and Malta cases which have different gridlines, amending *Regulations (EC) No 715/2009, (EU) 2019/942, (EU) 2019/943, amending Directive 2009/73/EC, (EU) 2019/944*, transitional provision and period, repeal procedure, and entry into force.

Regulation 2 has a lesser number of articles and ends in Articles 20 to 21. However, it has Article 20 entitled "*Exercise of delegation*" which bears a lot of resemblance to Article 20 of Regulation under exactly the same name. The two final articles deal with committee procedures and entry into force formalities.

Regulation 1 ends in signatures and execution date and place, while ***Regulation 2*** besides the date and place credentials also has commission statement and council statement. That is the end of ***Regulation 2***.

After that only in ***Regulation 1*** go various schedules and exhibits, first of them being Annex 1 on priority corridors and areas for energy infrastructure. Annex 2 deals with corridors for energy infrastructure. Annex 3 contains regional lists of projects. Annex 4 sets out rules and indicators for defining project criteria. Annex 5 focuses on cost-benefit analysis of energy systems. Annex 6 lists the guidelines for transparency and public involvement.

6.3 Analysis of the language of the regulations

For the scope of this thesis it has been decided to divide the analysis of the language of ***Regulations*** into five parts: **Typical legal vocabulary** (dealing with words that can be typically used in a legal context), **Legal terminology** (complex legal concepts either with

an optional or exclusive legal meaning), and **Typical Legal phrases** (collocations of two and more words), **Legal Syntax** (sentence building and punctuation) and **Cross-references** (Internal and external navigation of legal documents).

6.3.1 Typical legal vocabulary

As mentioned above legal vocabulary can be defined as a set of words used specifically in Legal English in general. However, its unique lexicon can include words from general, standard English with different meanings additionally to those words which are solely used in the legal domain.

One of the most prominent examples is legal pro-forms. ***Regulation 1*** contains some instances of such words which are also called *archaic forms* of legal English: *whereas, thereof, therein, therefore, thereafter.*

"This Regulation should apply only to the granting of permits for projects of common interest, public participation ***therein*** *and their regulatory treatment... "*

"...and the information ***therein*** *is published by either the national competent authority or…".*

In these two extracts the word *therein* is used in a similar way to the word *thereof* and serves to show that different objects mentioned in the sentence are parts of each other depending on the context. In these examples therein means *in the document mentioned before*.

Regulation 2 also contains examples of the same archaic words as *whereas, thereof, therein, therefore*, and it has two additional cases of *thereby* and *thereto*.

Below we can see an example of the use of the word *thereby* in ***Regulation 2***: *"Where an exemption from the obligation to publish certain data has been granted to a transmission system operator, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, that operator is* ***thereby*** *also exempted from the obligation set out in paragraph 1 of this Article in respect of that data".*

In this case, the word *thereby* means a reference to *Regulation EC) No 714/2009 or (EC) No 715/2009* which gives both an obligation and an exemption from the said obligation in certain circumstances.

Another major example of legal vocabulary is the modal verb *shall***.** It is very often used in legal English to illustrate the binding effect of a relation that is described in a

certain legal text. It has a meaning of a positive obligation, however different for *must* or *have to*. At the same time, it should not be confused with its future meaning which is almost never the case for the verb *shall* in legal English. However, it is not difficult to distinguish between the two meanings as the context is always self-explanatory.

This verb expresses an obligation in its positive form: *"...each individual proposal for a project shall require the approval of the Member States to whose territory the project relates; where a Member State does not give its approval, it* ***shall*** *present its substantiated reasons for doing so to the Group concerned…"* In this case we can see that the word *shall* has a binding meaning than a future connotation.

When in the negative form the verb *shall* denotes a prohibition, for instance: *"Member States* ***shall*** *not require a market participant already registered in another Member State to register again."* In this example Member States must not force market participants to go through the same registration formalities once again if they have already been completed.

Another typical class of English legal vocabulary is loanwords from the Latin language. In the current analysis we will focus on vocabulary that has been preserved unchanged and which clearly comes from the Latin language.

In ***Regulation 1*** there are two such words: *per* and *prior*. The word *per* is used six times in the text overall: *"...the duration and frequency of interruptions* ***per*** *customer;"* It is a preposition and it means the count and length of interruptions *for each* customer.

Regulation 2 uses exactly the same Latin words: *per* and *prior*. Here is an example of the word prior from the text: *"Market participants referred to in paragraph 1 of this Article shall submit the registration form to the national regulatory authority* ***prior*** *to entering into a transaction which is required to be reported to the Agency in accordance with Article 8(1)"*. In this context it is used as an adverb and means coming before in time, order, or importance.

In both analysed ***Regulations*** the term *take* is present in different interpretations.

"Network security, flexibility and quality of supply, including through higher ***uptake*** *of innovation in balancing, flexibility markets, cybersecurity, monitoring, system control and error correction;"* in this case the term *take* is modified in the word *uptake* with a different meaning from the original term, which means *implementation* or *integration* of new innovations.

*"It shall **take** into account the advice from the Commission with the aim of having a manageable total number of projects on the Union list."*

The meaning of word *take* in this example is *take into consideration* or *bear in mind* some advice.

The regulations analysed in this thesis have such French loanwords as *cause*, *commence*.

*"Member States shall provide that the national regulatory authority may disclose to the public measures or penalties imposed for infringement of this Regulation unless such disclosure would **cause** disproportionate damage to the parties involved."* In this case the word *cause* means produce (an effect).

Additionally, both ***Regulations*** contain a Latin legal phrase *inter alia* which is analysed below in the section of **Typical Legal Phrases**.

6.3.2 Legal terminology

The chapter deals with differences between just legal vocabulary and more specific legal terminology. Technically, legal terminology is part of legal vocabulary but due to the fact that it denotes whole legal concepts we are dealing with it in a separate section.

In other words, legal terminology can be described as proper legal terms relevant to legal work: to describe different legal parties correctly (subcontractors, providers, assignees, assignors). This terminology helps to differentiate such opposite concepts as prosecution and action, civil as opposed to criminal, and titles and names of different courts.

6.3.2.1 Specific meaning of words

There are some words of native English origin that are used both as general words and legal terms, for example there is a word *hearing* which does not mean a physical ability to hear sound but an occasion when a certain body or organization reviews and discusses a document or an issue.

In the reviewed ***Regulation 1*** and ***2*** such examples include the words *delegation, provide*, and *appeal*. Article 20 in ***Regulation 1*** and the same number article in Regulation 2 are called exactly that: *"Exercise of the **delegation**"*. Here the word *delegation* does not mean a group of delegates but the process or act of delegating an authority or a set of rights to somebody.

Another typical example would be the word provide commonly used in both ***Regulations***: "*This Regulation establishes rules prohibiting abusive practices affecting wholesale energy markets which are coherent with the rules applicable in financial markets and with the proper functioning of those wholesale energy markets whilst taking into account their specific characteristics. It* ***provides*** *for the monitoring of wholesale energy markets…"* In this context the word provide does not mean the act of giving something necessary to somebody, but signifies that the regulation mentioned in the first sentence *prescribes certain obligatory rules* for the said monitoring.

6.3.2.2 Words with typical legal uses

As opposed to words with a different meaning, words with typical legal uses are harder to understand and translate because they are used mainly in the legal domain. They constitute a pure example of legal terminology and have no other meanings or interpretations.

Both ***Regulations 1*** and ***2*** are rich in such examples and among them we could name the following: *deem*, *default* (verb), *enforce*, *exemption*.

For example, in Article 16 of ***Regulation 1*** we can read: *"10. This Article shall not apply to projects of common interest which have received an* ***exemption*** *from:…"* In this context the word *exemption* means a permission not to comply with the provisions of the said Article.

Another instance of a word with a typical legal use can be found in Point 26 of the Preamble to ***Regulation 2***: *"National regulatory authorities should be responsible for ensuring that this Regulation is* ***enforced*** *in the Member States."* Here the word *enforced* expresses the act of making certain persons in the Member States obey and follow the provisions of ***Regulation 2***.

6.3.3 Typical legal phrases

Having reviewed legal vocabulary, we will focus on typical legal phrases. Briefly, they can be defined as sequences of words denoting a legal phenomenon or a process as can been seen in the following example:

"This Article shall not apply to: *(a)* ***transactions conducted in the discharge of an obligation*** *that has become due to acquire or dispose of wholesale energy products."* The part of the text in bold consists actually of two parts: *transactions conducted* and *the*

discharge of an obligation. The first collocation means the act of performing a legal act or a deal and the second one means the act of fulfilling one's legal duties.

Another instance is the phrase legally binding which can be literally found in almost any legal document and in this case, it is in Article 9 of ***Regulation 1***: *"The manual shall not be* ***legally binding****, but it shall refer to or quote relevant legal provisions."* The phrase signifies that the document in consideration is one that the law says you must follow to the letter.

Additionally, ***Regulation 2*** has original Latin expressions, such as *ex-ante* and inter alia, which mean respectively *from before* and *among other things*: "*They include,* ***inter alia****, regulated markets, multilateral trading facilities and over-the-counter (OTC) transactions and bilateral contracts, direct or through brokers."*

6.3.4 Syntax

The syntax of legal English is distinctive because it is very formulaic and logical. It is abundant in subordinated, coordinated and over-extended sentences, passive forms, many negative constructions and is heavy in prepositional structures. It should equally be noted that the legal English syntax has a lot of archaic elements which can be seen both in sentence structure and punctuation [41].

Point 7 of Article 5 of ***Regulation 1*** shows an instance of a sentence with an inverted structure where all of the details come before the subject and predicate and which also contains a case of a subordinated clause: *"Where the commissioning of a project on the Union list is delayed when compared to the implementation plan, other than for overriding reasons beyond the control of the project promoter****, the following measures shall apply****:..."* It can be seen that the phrase *the following measures shall apply* is placed at the end of this part of the sentence.

In the point 5 of Article 1 of ***Regulation 2*** we can see many cases of the above-mentioned features: *"For the purposes of this definition,* ***consumption*** *at indi-vidual plants under the control of a single economic entity* ***that have a consumption capacity*** *of less than 600 GWh per year* ***shall not be taken into account*** *in so far as those* ***plants*** *do not exert a joint influence on wholesale energy market prices due to their being located in different relevant geographical markets."* In this sentence there is one defining clause *"plants… that have a consumption capacity…"*, one case of the verb *shall* used together

with a passive construction *"consumption… shall not be taken into account"*. Finally, the sentence is complex and hard to comprehend which is also typical of legal English.

6.3.5 Cross-reference markers

Cross-references are citations that are made from one section of a legal text to another section of the same text or to another text. The legal text that contains *a cross-reference* is the referencing text, and the legal document that is mentioned is the referred text [42].

They can be defined as *discource markers*, or *expressions* which directly serve to provide the reader's orientation within a legal document. Individual components are frequently designated with a number, an alphabetic letter, or a combination of the two [1].

Legal acts do not always use the same terminology to describe their divisions, as *sub-sections* and *sections*; *subparagraphs* and *paragrahps*, there are other, more nuanced distinctions that might be made. In some sources, the individual divison can be named as *chapters, articles, parts, sections, clauses, paragraphs subsections, sub-paragraphs, sub-clauses*. Sometimes, the term *provisions* can be used as a generic term in individual units [1].

An example of *cross-reference markers* we can find in ***Regulation 1*** and ***Regulation 2***. The detailed analysis of chapters, articles was mentioned in the section **6.2 Structure of a document** in this bachelor's thesis.

Briefly, ***Regulation 1*** consists of eight chapters, thirty-three articles, sixty-five points and additionally this regulation has six annexes. ***Regulation 2*** has twenty-two articles and in contrast to ***the first*** analysed ***Regulation***, ***the second Regulation*** has not chapters.

Both of these ***Regulations*** have equally divided points in numeric and alphabetic parts. The main structure of both ***Regulations*** is ordering by *cardinal numbers* such as 1, 2, 3. The next feature of structure is subsections by *bracketed cardinal numerals* as (1), (2), (3) and so on. And one more is paragraphs by *bracketed lower case letter* (a), (b) and further on.

The divisions' names are typically capitalized and frequently truncated when they are being referenced, mostly using abbreviations such as *Art.* or *Sect.*. There is typically no article used when a name is followed by a letter or a cardinal number, besides this practice is not unique to legal English.

Expressions that link the sentences or paragraphs in which they appear to the text that comes before or after are terms *accordingly*, *as a result*, *as provided by*, *notwithstanding* and so forth. Both analysed ***Regulations*** have examples, that will confirm this statement.

Regulation 1: "3. ***Notwithstanding*** *paragraph 2 of this Article, projects that were included in the fifth Union list of projects of common interest established pursuant to Regulation (EU) No 347/2013 and for which an application file has been accepted for examination by the competent authority shall benefit from the rights and obligations arising from Chapter III of this Regulation for a period of four years from the entry into force of this Regulation."* In this case the term *notwithstanding*, referring to other regulation means that one should make an exception to the previously referred part.

In ***Regulation 2***, we also can see an example of the above-mentioned statement.

"In any such case, the national regulatory authority shall notify the Agency ***accordingly****, providing as detailed information as possible on those proceedings or the judgment."*

Another important thing about *cross-reference markers* is that in legal documents they can be used in form of phrases: *pursuant to*, *in accordance with*, *subject to the provisions of*, *as defined by*, *pursuant to*, *in purview of*.

Moreover, *cross-references* are made simpler if we are consistent in referring to the specific types of divisions. Legal instruments, such as contracts, can be articulated in a similar manner.

7 CONCLUSION

This bachelor's thesis has analysed and reviewed certain features and some examples of legal English language in general and as used in EU legal documents, particularly in the sphere of electricity and energy markets.

Conditionally, this work can be divided into three parts. In its first section this thesis looked into the history of the formation of legalese, since the influence of Latin, French, Scandinavian and old Germanic languages is inseparable from the study of the subject. Following that, the thesis reviewed the general concepts of legal English including its vocabulary, sources, and types. It focused as well on legal texts as the actual incorporation of legal English and gave an overview of their types (laws, regulations, contracts), significance for professionals who use it and differences from regular sources (complexity, clear structure, formal character). Styles of legal English and their different types were also given a due examination.

In its second section the work considered some specific features of legal English going through archaic pro-forms (*therein, whereas, hereby*), the characteristic use of the modal verb *shall* in various legal documents, adjectives, adverbs and prepositions typical of legal texts.

In the practical part of the thesis a linguistic analysis of two regulations of the European Parliament in the field of electricity and energy markets was provided. This section basically followed the structure laid out in the theoretical parts. The context of issuing these regulations was analysed and their structures were reviewed and compared. It was found that such regulations have a lot in common both in general structure and at the level of particular articles. After that, the work examined concrete examples of typical legal vocabulary found in the regulations along with legal terminology, and legal phrases. Indicative syntax and cross-reference markers were also studied.

The main conclusion of the thesis is that one obviously needs to have a certain expertise both in general and legal English to be able to work with EU regulations, directives, and other legal documents. However, even given the fact that the reviewed regulations contain a considerable number of legal English elements (some of them being archaic and problematic to understand), one's mastery of the English language in the field of engineering is more important. The most complicated segment of legal English remains

connected with court proceedings, especially in criminal cases which is hardly applicable to the linguistic dimension of EU laws.

The role of legal English in the work of the European Union and its Parliament and on international level in general is beyond any overestimation because it fulfils an important purpose and is indispensable for seamless and smooth functioning of many private and public organisations governed by legal dispositions.

Rozšířený abstrakt

Tématem této bakalářské práce je právní angličtina v legislativě Evropské unie. Za tímto účelem je zde zkoumána historie vzniku právní angličtiny, její formy, styly, zdroje a jejich typy, lexikální a syntaktické rysy. Současně je prováděna společná a srovnávací lingvistická analýza právní angličtiny na základě textů dvou nařízení Evropského parlamentu o trhu s elektřinou a energií. V práci je postupně rozebrána obecná a speciální slovní zásoba právnické angličtiny, jakož i samostatně zjištěná právní terminologie, syntaxe a organizace křížových odkazů v nařízeních. Původním cílem této práce bylo poskytnout teoretický a praktický přehled právní angličtiny jak v obecném smyslu, tak v kontextu předpisů Evropské unie, a usnadnit tak práci technickým pracovníkům s nařízeními a směrnicemi EU, stejně jako i všem další zájemcům o překlady a přípravu dokumentů v právní angličtině.

V této práci byly vyhledány a použity různé legislativní a vědecké mezinárodní zdroje. Hlavní důraz při výběru pramenů byl v teoretické části práce kladen na lingvistický výzkum provedený v České republice i v zahraničí a v praktické části na texty již zmíněných usnesení Evropského parlamentu, nahlížené přes analýzy materiálu nastíněného již v teoretické části. To bylo provedeno především s cílem posoudit, do jaké míry je právní angličtina používaná v oficiálních předpisech Evropské unie v oblasti trhu s elektřinou a energií obtížně srozumitelná pro neodborníky v právní oblasti. Vybrané prameny a textové materiály poskytují dostatečný soubor údajů, aby bylo možné dosáhnout cílů studie provedením potřebného posouzení.

Samotná právnická angličtina jako fenomén vznikla v Anglii po dlouhé a namáhavé cestě zrání, během níž byla silně ovlivněna francouzštinou, latinou a dalšími jazyky, což vedlo k nevyhnutelným obtížím při porozumění dokumentům psaným s jejím použitím. S růstem moci Spojeného království se právnická angličtina rozšířila do britských kolonií a mnoha dalších zemí. Po skončení druhé světové války a nástupu hegemonie Spojených států se angličtina stala uznávaným jazykem mezinárodní komunikace a s ní se právní angličtina stala jazykem nejen mezinárodního práva, ale také obchodního, intelektuálního a vnitrostátního práva mnoha zemí. Významným faktorem pro tuto práci je, že právní angličtina se dále rozvíjela právě se vznikem Evropské unie, kde je fakticky používána jako hlavní právní jazyk. Důležitou roli hrají i národní jazyky členských států a překlady

oficiálních dokumentů Evropské unie do těchto jazyků jsou vždy k dispozici, ale hlavní roli zaujímá angličtina, což je důvod, proč je důležitá a proč odborníci musí umět pracovat s právnickou angličtinou jak při čtení, tlumočení a překladu, tak při samotném vypracovávání příslušných dokumentů.

Nicméně, v tomto příspěvku bylo ukázáno, že navzdory možným očekáváním není většina právnické angličtiny ve skutečnosti příliš obtížně srozumitelná, ačkoli v soudním a zejména trestním řízení existuje řada důvodů k potížím, neboť slovní zásoba tohoto segmentu právnické angličtiny oplývá archaismy a výpůjčkami (latina, francouzština, stará skandinávština a stará němčina), jakož i složitými gramatickými konstrukcemi, pro něž je nutný překlad.

Tento dokument navíc dospěl k závěru, že tento aspekt není pro právní nástroje Evropského parlamentu tak důležitý. Například pro porozumění technickým dokumentům (např. trhům s elektřinou a energií) je důležitější znát vysoce specifickou slovní zásobu oboru, jemuž je daný právní dokument věnován. Pokud je tato podmínka splněna, lze samotnou právní část přeložit pomocí veřejně dostupných zdrojů (slovníků, automatických překladačů). Jedním z faktorů, které přispívají ke snadnějšímu porozumění právní angličtině poslanců Evropského parlamentu, je také podobnost jejich struktur a používané slovní zásoby a syntaxe. Jsou obecné a z velké části se opakují od dokumentu k dokumentu, na některých místech téměř doslovně. Záměrem tohoto textu není hledat a zkoumat příčiny tohoto zjednodušení, někteří autoři nicméně identifikovali jeho původ v hnutí za jednoduchou angličtinu, které nabralo na síle ve druhé polovině dvacátého století a v současné době tlačí úředníky a právníky pracující s právnickou angličtinou k používání srozumitelných termínů a výrazů.

Závěrem lze říci, že tato práce může být užitečná nejen pro inženýrské a technické odborníky pracující s právnickou angličtinou, ale také pro všechny, kteří se tak či onak podílejí na práci s normativními dokumenty v angličtině.

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9 LIST OF APPENDICES

1. Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013. PE/2/2022/REV/1; OJ L 152, 3.6.2022, p. 45–102. Retrieved from: https://eur-lex.europa.eu/eli/reg/2022/869/oj
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REGULATION (EU) 2022/869 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 May 2022

on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ([1]),

Having regard to the opinion of the Committee of the Regions ([2]),

Acting in accordance with the ordinary legislative procedure ([3]),

Whereas:

(1) The Commission, in its communication of 11 December 2019 entitled 'The European Green Deal' (the 'European Green Deal'), set out a new growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy, where the climate neutrality objective is met by 2050 at the latest and where economic growth is decoupled from resource use. In its communication of 17 September 2020 entitled 'Stepping up Europe's 2030 climate ambition – Investing in a climate-neutral future for the benefit of our people', the Commission proposed to increase the greenhouse gas emissions reduction target to at least 55 % by 2030. That ambition was endorsed by the European Council on 11 December 2020 and the impact assessment accompanying that communication confirms that the energy mix of the future will be very different from the one of today and underpins the necessity to review and if necessary to revise the energy legislation. The current energy infrastructure investments are clearly insufficient to transform and build the energy infrastructure of the future. That also means infrastructure needs to be in place to support the European energy transition, including rapid electrification, scaling up of renewable and fossil fuel free electricity generation, the increased use of renewable and low-carbon gases, energy system integration and a higher uptake of innovative solutions.

(2) The current binding Union level target for renewable energy for 2030 of at least 32 % of final energy consumption and a headline Union level target for energy efficiency of at least 32,5 % will be revised as part of the Union's enhanced ambition enshrined in the Regulation (EU) 2021/1119 of the European Parliament and the Council ([4]) and the European Green Deal.

(3) The Paris Agreement adopted under the United Nations Framework Convention on Climate Change ([5]) (the 'Paris Agreement') sets out a long-term goal to hold the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1,5 °C above pre-industrial levels, and stresses the importance of adapting to the adverse impacts of climate change and making finance flows

([1]) OJ C 220, 9.6.2021, p. 51.
([2]) OJ C 440, 29.10.2021, p. 105.
([3]) Position of the European Parliament 5 April 2022 (not yet published in the Official Journal) and Council Decision of 16 May 2022.
([4]) Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).
([5]) OJ L 282, 19.10.2016, p. 4.

consistent with a pathway towards low greenhouse gas emissions and climate-resilient development. On 12 December 2019, the European Council endorsed the objective of achieving a climate-neutral European Union by 2050, in line with the objectives of the Paris Agreement.

(4) Regulation (EU) No 347/2013 of the European Parliament and of the Council ([6]) lays down guidelines for the timely development and interoperability of priority corridors and areas of trans-European energy infrastructure 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, security of supply and competitive energy markets 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. Regulation (EU) No 347/2013 puts in place a framework for Member States and relevant stakeholders to work together in a regional setting to develop better-connected energy networks with the aim to connect regions currently isolated from European energy markets, strengthen existing and promote new cross-border interconnections, and help integrate renewable energy. By pursuing those objectives, Regulation (EU) No 347/2013 contributes to smart, sustainable and inclusive growth and brings benefits to the entire Union in terms of competitiveness and economic, social and territorial cohesion.

(5) The evaluation of Regulation (EU) No 347/2013 has clearly shown that the framework has effectively improved the integration of Member States' networks, stimulated energy trade and hence contributed to the competitiveness of the Union. Projects of common interest in electricity and gas have strongly contributed to security of supply. For gas, the infrastructure is now better connected and supply resilience has improved substantially since 2013. Regional cooperation in regional groups and through cross-border cost allocation is an important enabler for project implementation. However, in many cases the cross-border cost allocation did not result in reducing the financing gap of the projects, as intended. While the majority of permitting procedures have been shortened, in some cases the process is still long. The financial assistance from the Connecting Europe Facility, established by Regulation (EU) No 1316/2013 of the European Parliament and of the Council ([7]), has been an important factor as grants for studies have helped projects to reduce risks in the early stages of development, while grants for works have supported projects addressing key bottlenecks that market finance could not sufficiently address.

(6) In its resolution of 10 July 2020 on the revision of the guidelines for trans-European energy infrastructure ([8]), the European Parliament called for a revision of Regulation (EU) No 347/2013, taking into account, in particular, the Union's 2030 targets for energy and climate and its 2050 climate neutrality objectives and the energy efficiency first principle.

(7) The trans-European energy networks policy is a central instrument in the development of an internal energy market and necessary to achieve the objectives of the European Green Deal. To achieve higher levels of greenhouse gas emission reductions by 2030 and climate neutrality by 2050 at the latest, Europe will need a more integrated energy system, relying on higher levels of electrification based on additional renewable and low-carbon sources and the decarbonisation of the gas sector. The trans-European energy networks policy can ensure that the Union energy infrastructure development supports the required energy transition to climate neutrality in line with the energy efficiency first principle and technological neutrality while considering the potential for emission reduction in the end use. It can also ensure interconnections, energy security, market and system integration, and competition that benefits all Member States, as well as energy at an affordable price for households and undertakings.

([6]) Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

([7]) Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).

([8]) OJ C 371, 15.9.2021, p. 68.

(8) While the objectives of Regulation (EU) No 347/2013 remain largely valid, the current trans-European energy networks framework does not yet fully reflect the expected changes to the energy system that will result from the new political context and in particular the upgraded Union 2030 targets for energy and climate and the 2050 climate neutrality objective under the European Green Deal. Therefore, among other aspects, both climate mitigation and climate adaptation objectives need to be adequately reflected in the revised trans-European energy networks framework. Besides the new political context and objectives, technological development has been rapid in the past decade. That development should be taken into account in the energy infrastructure categories covered by this Regulation, the selection criteria for projects of common interest as well as the priority corridors and areas. At the same time, the provisions of this Regulation should not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, in accordance with Article 194 TFEU.

(9) Directives 2009/73/EC ([9]) and (EU) 2019/944 ([10]) of the European Parliament and of the Council provide for an internal market for energy. While there has been very significant progress in the completion of that market, there is still room for improvement by better utilising existing energy infrastructure, integrating the increasing amounts of renewable energy, and system integration.

(10) 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 pursuant to Council Directive 2008/114/EC ([11]).

(11) The Union's energy infrastructure should be resilient to the unavoidable impacts that climate change is expected to create in Europe in spite of the mitigation efforts. Hence, strengthening the efforts on climate adaptation and mitigation, resilience building, disaster prevention and preparedness is crucial.

(12) The development of trans-European energy infrastructure should take into account, where technically possible and most efficient, the possibility of repurposing existing infrastructure and equipment.

(13) Security of supply, as a main driver behind the adoption of Regulation (EU) No 347/2013, has been significantly improved through projects of common interest. Moreover, the Commission's impact assessment accompanying the Commission communication of 17 September 2020 entitled 'Stepping up Europe's 2030 climate ambition – Investing in a climate-neutral future for the benefit of our people' expects the consumption of natural gas to be reduced significantly because its non-abated use is not compatible with carbon neutrality. On the other hand, the consumption of biogas, renewable and low-carbon hydrogen and synthetic gaseous fuels is expected to increase significantly towards 2050. For gas, the infrastructure is now better connected and supply resilience has improved substantially since 2013. The planning of energy infrastructure should reflect this changing gas landscape. However, not all Member States are yet connected sufficiently to the European gas network and island Member States in particular continue to face significant challenges in terms of security of supply and energy isolation. Although 78 % of gas projects that are projects of common interest are expected to be commissioned by the end of 2025, a number of them are experiencing significant delays, including due to permitting problems. This Regulation should therefore not negatively affect projects of common interest that have not yet been completed on the date of its entry into force. Therefore, projects of common interest included in the fifth Union list of projects of common interest established pursuant to Regulation (EU) No 347/2013, for which an application file has been accepted for examination by the competent authority should be able to maintain their rights and obligations as regards permitting for a period of four years after the date of entry into force of this Regulation.

([9]) 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 and repealing Directive 2003/55/EC (OJ L 211, 14.8.2009, p. 94).

([10]) Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

([11]) 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 (OJ L 345, 23.12.2008, p. 75).

(14) The importance of smart electricity grids, which do not always include the crossing of a physical border, in achieving the Union's energy and climate policy objectives was acknowledged in the Commission communication of 8 July 2020 entitled 'Powering a climate-neutral economy: An EU Strategy for Energy System Integration' (the 'EU Strategy for Energy System Integration'). The criteria for that category should be simplified, should include technological developments regarding innovation and digital aspects and should enable energy system integration. Furthermore, the role of projects promoters should be clarified. Given the expected significant increase in power demand from the transport sector, in particular for electric vehicles along highways and in urban areas, smart grid technologies should also help to improve energy network related support for cross-border, high-capacity recharging to support the decarbonisation of the transport sector.

(15) The EU Strategy for Energy System Integration also underlined the need for integrated energy infrastructure planning across energy carriers, infrastructures, and consumption sectors. Such system integration starts from the point of departure of applying the energy efficiency first principle and taking a holistic approach in policy and beyond individual sectors. It also addresses the decarbonisation needs of the hard to abate sectors, such as parts of industry or certain modes of transport, where direct electrification is, currently, technically or economically challenging. Such investments include hydrogen and electrolysers, which are progressing towards commercial large-scale deployment. The Commission communication of 8 July 2020 entitled 'A hydrogen strategy for a climate-neutral Europe' (the 'Hydrogen Strategy') gives priority to hydrogen production from renewable electricity, which is the cleanest solution and is most compatible with the Union's climate neutrality objective. In a transitional phase however, other forms of low-carbon hydrogen are needed to more rapidly decarbonise existing hydrogen production, focusing on a diverse range of clean technologies, and to kick-start an economy of scale.

(16) Moreover, in its Hydrogen Strategy the Commission concluded that, for the required deployment of hydrogen, a large-scale infrastructure network is an important element that only the Union and the internal market can offer. There is currently very limited dedicated infrastructure in place to transport and trade hydrogen across borders or to create hydrogen valleys. Such infrastructure should consist of a significant extent of assets converted from natural gas assets, complemented by new assets dedicated to hydrogen. Furthermore, the Hydrogen Strategy set a strategic goal to increase installed electrolyser capacity to 40 Gigawatts (GW) by 2030 in order to scale up the production of renewable hydrogen and facilitate the decarbonisation of fossil-fuel dependent sectors, such as industry or transport. Therefore, the trans-European energy networks policy should include new and repurposed hydrogen transmission infrastructure and storage as well as electrolyser facilities. Hydrogen transmission and storage infrastructure should also be included in the Union-wide ten-year network development plan so as to allow a comprehensive and consistent assessment of their costs and benefits for the energy system, including their contribution to sector integration and decarbonisation, with the aim of creating a hydrogen backbone for the Union.

(17) Moreover, a new infrastructure category should be created for smart gas grids to support investments which integrate a plurality of low-carbon and particularly renewable gases such as biogas, biomethane, and hydrogen, in the gas network and help manage a resulting more complex system, building on innovative digital technologies.

(18) Achieving climate neutrality by 2050 at the latest assumes that there will still be industrial processes that emit carbon dioxide. Such carbon dioxide is considered to be unavoidable when its production cannot be avoided despite optimisation, for example through energy efficiency or electrification integrating renewables. The development of carbon dioxide infrastructure should lead to a significant net reduction of otherwise unavoidable emissions in the absence of reasonable alternatives. Carbon dioxide capture is covered by Directive 2010/75/EU of the European Parliament and of the Council ([12]) for the purpose of carbon dioxide streams originating from the installations covered by that Directive, and for the purpose of geological storage pursuant to Directive 2009/31/EC of the European Parliament and of the Council ([13]).

(19) Regulation (EU) No 347/2013 required a candidate project of common interest to prove a significant contribution to at least one criterion from a set of criteria in the process for the elaboration of the Union list of projects of common interest, which could have, but did not need to, include sustainability. That requirement, in line with the specific needs of the internal energy market at the time, enabled development of projects of common interest which addressed only security of supply risks even if they did not demonstrate benefits in terms of sustainability. However,

([12]) Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

([13]) Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ L 140, 5.6.2009, p. 114).

given the evolution of the Union's infrastructure needs, the decarbonisation goals and the European Council conclusions adopted on 21 July 2020, according to which Union expenditure should be consistent with Paris Agreement objectives and the 'do no harm' principle of the European Green Deal, sustainability in terms of the integration of renewable energy sources into the grid or the reduction of greenhouse gas emissions, as relevant, should be assessed in order to ensure that trans-European energy networks policy is coherent with the Union's targets for energy and climate and 2050 climate neutrality objectives, taking into account the specificities of each Member State in reaching the climate neutrality objective. The sustainability of carbon dioxide transport networks is addressed by total expected project life-cycle greenhouse gas reductions and the absence of alternative technological solutions to achieve the same level of carbon dioxide reduction.

(20) The Union should facilitate infrastructure projects linking the Union's networks with third-country networks that are mutually beneficial and necessary for the energy transition and the achievement of the climate targets, and which also meet the specific criteria of the relevant infrastructure categories pursuant to this Regulation, in particular with neighbouring countries and with countries with which the Union has established specific energy cooperation. Therefore, this Regulation should include in its scope projects of mutual interest where they are sustainable and able to demonstrate significant net socioeconomic benefits at Union level and at least one third country. Such projects should be eligible for inclusion in the Union list of projects of common interest and projects of mutual interest (the 'Union list') provided that the policy framework has a high level of convergence and is supported by enforcement mechanisms, and should demonstrate a contribution to the Union's and the third countries' overall energy and climate policy objectives in terms of security of supply and decarbonisation.

A high level of convergence of the policy framework should be presumed for the European Economic Area or Energy Community Contracting Parties or can be demonstrated in the case of other third countries through bilateral agreements that include relevant provisions on climate and energy policy objectives on decarbonisation and further assessed by the appropriate regional group with the support of the Commission. In addition, the third country with which the Union cooperates in the development of projects of mutual interest should facilitate a similar timeline for accelerated implementation and other policy support measures, as provided for in this Regulation. Therefore, projects of mutual interest should be treated in the same manner as projects of common interest, with all provisions relative to projects of common interest applying also to projects of mutual interest, unless otherwise specified. Significant net socioeconomic benefits at Union level should be understood as improving interoperability and the functioning of the internal market, going beyond one Member State. As regards projects for storage of carbon dioxide, only projects necessary to allow the cross-border transport and storage of carbon dioxide should be eligible, provided that standards and safeguards preventing any leaks and concerning climate, human health and ecosystems as regards the safety and effectiveness of the permanent storage of carbon dioxide are at least at the same level as in the Union. It should be presumed that the European Economic Area meets those standards and safeguards.

(21) Projects of mutual interest should be considered to be an additional tool to expand the scope of this Regulation to third countries beyond those projects of common interest that contribute to implementing an energy infrastructure priority corridor or area as set out in Annex I. Therefore, where a project with a third country contributes to implementing an energy infrastructure priority corridor or area, it should be eligible to apply for the status of a project of common interest under this Regulation. By the same principle, electricity interconnection projects with third countries that had attained the status of project of common interest under Regulation (EU) No 347/2013 may be selected as projects of common interest, provided that they undergo the selection process and that they fulfil the criteria for projects of common interest.

(22) Furthermore, to achieve the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, the Union needs to significantly scale up renewable electricity generation. The existing energy infrastructure categories for electricity transmission and storage are crucial for the integration of the significant increase in renewable electricity generation in the power grid. In addition, that requires stepping up investment in offshore renewable energy with the aim of reaching at least 300 GW of offshore wind generation installed in line with the Commission's offshore renewable energy strategy set out in the Commission communication of 19 November 2020 entitled 'An EU Strategy to harness the potential of offshore renewable energy for a climate neutral future'. That strategy includes radial links connecting new offshore wind capacities, as well as hybrid integrated projects. Coordinating long-term planning and development of offshore and onshore electricity grids should also be

addressed. In particular, offshore infrastructure planning should move away from the project-by-project approach towards a coordinated comprehensive approach ensuring the sustainable development of integrated offshore grids in line with the offshore renewable potential of each sea basin, environmental protection and other uses of the sea. There should be an approach based on voluntary cooperation between Member States. Member States should remain responsible for approving the projects of common interest which are related to their territory and the related costs.

(23) Relevant Member States should be able to assess the benefits and costs of the priority offshore grid corridors for renewable energy and carry out a preliminary cost-sharing analysis at priority offshore grid corridor level to underpin joint political commitments for offshore renewable energy development. The Commission, together with the Member States and the relevant transmission system operators (TSOs) and national regulatory authorities, should develop guidance for a specific cost-benefit and cost-sharing for the deployment of the integrated offshore network development plans which should enable Member States to carry out an adequate assessment.

(24) The Union-wide ten-year network development plan process as basis for the identification of projects of common interest in the categories of electricity and gas has proven to be effective. However, while the European Network of Transmission System Operators for Electricity (the 'ENTSO for Electricity'), the European Network of Transmission System Operators for Gas (the 'ENTSO for Gas') and TSOs have an important role to play in the process, more scrutiny is required, in particular as regards defining the scenarios for the future, identifying long-term infrastructure gaps and bottlenecks and assessing individual projects, to enhance trust in the process. Therefore, due to the need for independent validation, the Agency for the Cooperation of Energy Regulators (the 'Agency') and the Commission should have an increased role in the process, including in the process for drawing up the Union-wide ten-year network development plans pursuant to Regulations (EC) No 715/2009 ([14]) and (EU) 2019/943 ([15]) of the European Parliament and of the Council. The Union-wide ten-year network development plan process should benefit from the objective, science-based input from an independent scientific body such as the European Scientific Advisory Board on Climate Change and should be organised in the most effective manner.

(25) In carrying out their tasks preceding the adoption of the Union-wide ten-year network development plans, the ENTSO for Electricity and ENTSO for Gas should conduct an extensive consultation process involving all relevant stakeholders. The consultation should be open and transparent and should be organised in a timely manner to allow for stakeholders' feedback in the preparation of key phases of the Union-wide ten-year network development plans, such as the scenario development, infrastructure gaps identification and the cost-benefit analysis methodology for project assessment. The ENTSO for Electricity and the ENTSO for Gas should give due consideration to the input received from stakeholders during consultations and should explain how they took that input into account.

(26) In line with the conclusions of the 2020 Energy Infrastructure Forum, it is necessary to ensure that all relevant sectors, such as gas, electricity, and transport, are considered in an integrated perspective in the planning processes of all onshore and offshore, transmission and distribution infrastructure. In order to comply with the Paris Agreement and to achieve the Union's 2030 climate objectives, the 2040 offshore energy development objectives, and in line with the Union's objective to achieve climate neutrality by 2050 at the latest, trans-European energy networks framework should rely on a smarter, more integrated, long-term and optimised 'one energy system' view through deployment of a framework that enables greater coordination of infrastructure planning across various sectors and creates an opportunity to optimally integrate various coupling solutions involving various network elements between various infrastructures. This should be secured by developing a progressively integrated model that enables consistency between single-sector methodologies based on common assumptions and reflects interdependencies.

([14]) 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 repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).

([15]) Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54).

(27) It is important to ensure that only infrastructure projects for which no reasonable alternative solutions exist may receive the status of project of common interest. To that end, the energy efficiency first principle should be taken into account in the infrastructure gaps identification report developed in line with this Regulation and the work of the regional groups in establishing the regional lists of proposed projects. In line with the energy efficiency first principle, all relevant alternatives to new infrastructure for ensuring future infrastructure needs, that could contribute to addressing the infrastructure gap identification, should be considered.

The regional groups, assisted by the national regulatory authorities, should consider the assumptions and outcomes of the infrastructure gaps assessment developed in line with this Regulation and ensure that the energy efficiency first principle is fully reflected in the selection process for projects of common interest. In addition, during project implementation, project promoters should report on the compliance with environmental legislation and demonstrate that projects do 'no significant harm' to the environment within the meaning of Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council ([16]). For existing projects of common interest having reached sufficient maturity, this will be taken into account during project selection for subsequent Union list by the regional groups.

(28) To ensure voltage and frequency stability, particular attention should be given to the stability of the European electricity network under the changing conditions, especially in view of the growing share of flexibility options, such as sustainable energy storage, and renewable electricity. Efforts to maintain and ensure a satisfactory level of planned low-carbon energy production, in order to ensure security of supply for citizens and businesses, should be given particular priority.

(29) Following close consultations with all Member States and stakeholders, the Commission has identified 14 trans-European energy infrastructure priorities, the implementation of which is essential for the achievement of the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective. Those priorities cover various geographic regions or thematic areas in the field of electricity transmission and storage, offshore grids for renewable energy, hydrogen transmission and storage, electrolysers, smart gas grids, smart electricity grids, and the transport and storage of carbon dioxide.

(30) Projects of common interest should comply with common, transparent and objective criteria in view of their contribution to the energy policy objectives. In order to be eligible for inclusion in the Union lists, electricity, and hydrogen projects should be part of the latest available Union-wide ten-year network development plan. As hydrogen infrastructure is not currently included in the Union-wide ten-year network development plan, that requirement for hydrogen projects should apply only from 1 January 2024 for the purposes of the second Union list that will be established pursuant to this Regulation.

(31) 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, those regional groups should ensure close cooperation between Member States, national regulatory authorities, project promoters and relevant stakeholders. In the context of that cooperation, national regulatory authorities should, where 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.

(32) In order to increase the efficiency of the process, cooperation between the regional groups should be strengthened and further encouraged. It is necessary that the Commission play an important role in facilitating that cooperation with a view to addressing the possible impact of projects on other regional groups.

([16]) Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

(33) A new Union list should be established every two years. Projects of common interest that have been completed or that no longer fulfil the relevant criteria and requirements as set out in this Regulation should not appear on the following Union list. For that reason, existing projects of common interest that are to be included in the following Union list should be subject to the same selection process for the establishment of regional lists and for the establishment of the Union list applied to proposed projects. However, the administrative burden should be reduced to the extent possible, for example by using information submitted previously and by taking account of the annual reports of the project promoters. To that end, existing projects of common interest that have made significant progress should benefit from a streamlined inclusion process in the Union-wide ten-year network development plan.

(34) Projects of common interest should be implemented as quickly as possible and should be closely monitored and evaluated, while duly observing the requirements for stakeholder participation and environmental legislation and keeping the administrative burden for project promoters to a minimum. The Commission should nominate European coordinators for projects facing particular difficulties or delays. The progress in the implementation of the specific projects as well as the fulfilment of the obligations pertaining to this Regulation should be taken into account in the selection process for subsequent Union lists for those projects.

(35) The permit granting process 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.

(36) 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 where it is feasible from an overall economic, technical, environmental, climate or spatial planning point of view and with due regard to the relevant safety aspects. Thus, during the planning of the various European networks, it should be possible to give preference to integrating transport, communication and energy networks in order to ensure that as little land as possible is taken up. A common vision of the networks is necessary for energy system integration in the various sectors, whilst ensuring, where possible, that existing or disused routes are reused, in order to reduce to a minimum any negative social, economic, environmental, climate and financial impact.

(37) Projects of common interest should be given priority status at national level to ensure rapid administrative treatment and urgent treatment in all judicial and dispute resolution procedures relating to them. They should be considered by competent authorities as being in the public interest. For reasons of overriding public interest, projects which have an adverse impact on the environment should be authorised where all the conditions set out in Directive 2000/60/EC of the European Parliament and of the Council ([17]) and Council Directive 92/43/EEC ([18]) are met.

(38) It is essential that stakeholders, including civil society, be provided with information and be consulted, in order to ensure the success of projects and to limit objections to them.

(39) In order to reduce complexity, increase efficiency and transparency, and help enhance cooperation among Member States, there should be a competent authority or authorities integrating or coordinating all permit granting processes.

(40) In order to simplify and expedite the permit granting process for offshore grids for renewable energy, unique points of contact should be designated for cross-border offshore projects on the Union list reducing administrative burden for project developers. The unique points of contact should reduce complexity, increase efficiency and speed up the permit granting process for offshore transmission assets often crossing many jurisdictions.

([17]) 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 (OJ L 327, 22.12.2000, p. 1).

([18]) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

(41) Despite the existence of established standards ensuring the participation of the public in environmental decision-making procedures, which apply fully to projects of common interest, additional measures are still required under this Regulation to ensure the highest possible standards of transparency and public participation in all relevant issues in the permit granting process for projects of common interest. Where already covered by national rules under the same or higher standards as in this Regulation, the pre-consultation ahead of the permitting procedure should become optional and avoid duplication of legal requirements.

(42) The correct and coordinated implementation of Directives 2001/42/EC ([19]) and 2011/92/EU ([20]) of the European Parliament and of the Council and where applicable, of the United Nations Economic Commission for Europe Convention on access to information, public participation in decision-making and access to justice in environmental matters ([21]), signed in Aarhus on 25 June 1998 (the 'Aarhus Convention'), and of the Convention on environmental impact assessment in a transboundary context ([22]), signed in Espoo on 25 February 1991 (the 'Espoo Convention'), should ensure the harmonisation of the main principles for the assessment of environmental and climate effects, including in a cross-border context. The Commission has issued guidance to support Member States in defining adequate legislative and non-legislative measures to streamline the environmental assessment procedures for energy infrastructure and to ensure the coherent application of environmental assessment procedures required under Union law for projects of common interest. Member States should coordinate their assessments of projects of common interest, and provide for joint assessments, where possible. Member States should be encouraged to exchange best practice and administrative capacity-building in the permit granting processes.

(43) It is important to streamline and improve the permit granting process, while respecting, to the extent possible and with due regard to the principle of subsidiarity, national competences and procedures for the construction of new energy infrastructure. Given the urgency of developing energy infrastructures, the simplification of the permit granting process should set a clear time limit for the decision of the relevant 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 in line with environmental legislation and public participation. This Regulation should establish maximum time limits. However, Member States can strive to achieve shorter time limits where feasible and, in particular, as regards projects such as smart grids, which may not require as complex a permitting process as that for transmission infrastructure. The competent authorities should be responsible for ensuring compliance with the time limits.

(44) Member States should be able to include in comprehensive decisions, where appropriate, decisions taken in the context of negotiations with individual landowners to grant access to, ownership of, or a right to occupy, property in the context of spatial planning, which determines the general land use of a defined region, including other developments such as highways, railways, buildings and nature protection areas and which is not undertaken for the specific purpose of the planned project and granting of operational permits. In the context of the permit granting process, a project of common interest should be able to include related infrastructure to the extent that it is essential for the construction or functioning of the project. This Regulation, in particular the provisions on permit granting, public participation and the implementation of projects of common interest, should apply without prejudice to Union and international law, including provisions to protect the environment and human health, and provisions adopted under the Common Fisheries Policy and Integrated Maritime Policy, in particular Directive 2014/89/EU of the European Parliament and of the Council ([23]).

(45) The costs of the development, construction, operation and maintenance of projects of common interest should in general be borne fully by the users of the infrastructure. The cost allocation should ensure that end-users are not disproportionately burdened, especially if that could lead to energy poverty. Projects of common interest should be eligible for cross-border cost allocation where an assessment of market demand, or of the expected effects on tariffs, indicates that costs cannot be expected to be recovered by the tariffs paid by the infrastructure users.

([19]) 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 (OJ L 197, 21.7.2001, p. 30).

([20]) 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 (OJ L 26, 28.1.2012, p. 1).

([21]) OJ L 124, 17.5.2005, p. 4.

([22]) OJ C 104, 24.4.1992, p. 7.

([23]) Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning (OJ L 257, 28.8.2014, p. 135).

(46) The discussion of the appropriate allocation of costs should be based on the analysis of the costs and benefits of an infrastructure project carried out on the basis of a harmonised methodology for energy-system-wide analysis, using all relevant scenarios established in the framework of the Union-wide ten-year network development plans prepared pursuant to Regulations (EC) No 715/2009 and (EU) 2019/943, and reviewed by the Agency and additional scenarios for network development planning, allowing a robust analysis of the contribution of the project of common interest to the Union energy policy of decarbonisation, market integration, competition, sustainability and security of supply. That analysis can take into consideration indicators and corresponding reference values for the comparison of unit investment costs. Where additional scenarios are used, those should be consistent with the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective and should be subject to a comprehensive consultation and scrutiny process.

(47) 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 and in projects with a cross-border impact. It is essential to ensure a stable financing framework for the development of projects of common interest while minimising the need for financial support, and at the same time to encourage interested investors, with appropriate incentives and financial mechanisms. In deciding on cross-border cost allocation, national regulatory authorities should allocate efficiently incurred investment costs, as relevant in view of their national approaches and methodologies for similar infrastructure, across borders in their entirety and include them in the national tariffs, and, afterwards, if relevant, determine whether their impact on national tariffs could represent a disproportionate burden for consumers in their respective Member States. The national regulatory authorities should 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 in so far as they relate to the projects, and are designed to cover the costs concerned.

(48) There is a need for cross-border projects that have a positive effect on the Union's power grid, such as smart electricity grids or electrolysers, without involving a physical common border.

(49) The internal energy market legislation requires that tariffs for access to networks provide appropriate incentives for investment. However, several types of projects of common interest are likely to have externalities that might not be fully captured in, and recovered through, the regular tariff system. In applying the internal energy market legislation, national regulatory authorities should ensure a stable and predictable regulatory and financial framework with incentives for projects of common interest, including long-term incentives, that are commensurate with the level of specific risk of the project. That framework should apply in particular to cross-border projects, innovative transmission technologies for electricity allowing for the large scale integration of renewable energy, of distributed energy resources or of demand response in interconnected networks, and energy technology and digitalisation projects, which are either likely to incur higher risks than similar projects located within one Member State or which promise higher benefits for the Union. Moreover, projects with high operational expenditure should also have access to appropriate incentives for investment. In particular, offshore grids for renewable energy, which serve the dual functionality of electricity interconnectors and connecting renewable offshore generation projects, are likely to incur higher risks than comparable onshore infrastructure projects, due to their intrinsic connection to generation assets which brings regulatory risks, financing risks such as the need for anticipatory investments, market risks and risks pertaining to the use of new innovative technologies.

(50) This Regulation should apply only to the granting of permits for projects of common interest, public participation therein and their regulatory treatment. Member States should nevertheless be able to adopt national provisions to apply the same or similar rules to other projects that do not have the status of projects of common interest within the scope of this Regulation. As regards the regulatory incentives, Member States should be able to adopt national provisions to apply the same or similar rules to projects of common interest falling under the category of electricity storage.

(51) Member States that currently do not attribute the highest possible national significance to energy infrastructure projects as regards the process of permit granting, should be encouraged to consider introducing such a high national significance, in particular by evaluating whether that would lead to a quicker permit granting process.

(52) Member States that do not currently have in place accelerated or urgent judicial procedures applicable to energy infrastructure projects should be encouraged to consider introducing such procedures, in particular by evaluating whether that would lead to the quicker implementation of such projects.

(53) Regulation (EU) No 347/2013 has demonstrated the added value of leveraging private funding through significant Union financial assistance to allow the implementation of projects of European significance. In the light of the economic and financial situation and budgetary constraints, targeted support, through grants and financial instruments, should continue under the multiannual financial framework, in order to maximise the benefits to Union citizens and to attract new investors into the energy infrastructure priority corridors and areas set out in an annex to this Regulation, while keeping the budgetary contribution of the Union to a minimum.

(54) Projects of common interest should be eligible for Union financial assistance for studies and, under certain conditions, for works pursuant to Regulation (EU) 2021/1153 of the European Parliament and of the Council ([24]) in the form of grants or in the form of innovative financial instruments to 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, in order to finance smart energy distribution networks, and with the Union renewable energy financing mechanism established by Commission Implementing Regulation (EU) 2020/1294 ([25]), pursuant to Article 33(1) of Regulation (EU) 2018/1999 of the European Parliament and of the Council ([26]).

A three-step logic should apply 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, the relevant regulatory framework should be adjusted if necessary, 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, it should be possible to grant Union financial assistance where the project of common interest fulfils the applicable eligibility criteria. Projects of common interest may also be eligible under the InvestEU programme, which is complementary to grant financing.

(55) The Union should facilitate energy projects in disadvantaged, less connected, peripheral, outermost or isolated regions so as to enable access to the trans-European energy networks in order to accelerate the decarbonisation process and reduce dependency on fossil fuels.

(56) Where there is no TSO in a Member State, the references to TSOs throughout this Regulation should apply mutatis mutandis to distribution system operators (DSO).

(57) Grants for works related to projects of mutual interest should be available under the same conditions as for other categories where they contribute to the Union's overall energy and climate policy objectives and where the decarbonisation objectives of the third country are consistent with the Paris Agreement.

([24]) Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014 (OJ L 249, 14.7.2021, p. 38).

([25]) Commission Implementing Regulation (EU) 2020/1294 of 15 September 2020 on the Union renewable energy financing mechanism (OJ L 303, 17.9.2020, p. 1).

([26]) Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

(58) Regulations (EC) No 715/2009, (EU) 2019/942 ([27]), and (EU) 2019/943 of the European Parliament and of the Council and Directives 2009/73/EC and (EU) 2019/944 should therefore be amended accordingly.

(59) Whereas the repurposing of the natural gas infrastructure aims to decarbonise the gas networks, allowing the dedicated use of pure hydrogen, a transitional period could allow for the transport or storage of a predefined blend of hydrogen with natural gas or biomethane. The blending of hydrogen with natural gas or biomethane could be used in the scaling up of the hydrogen production capacity and facilitating the transport of hydrogen. To ensure the transition to hydrogen, the project promoter should demonstrate, including through commercial contracts, how, by the end of the transitional period, the natural gas assets will become dedicated hydrogen assets and how the use of hydrogen will be enhanced during the transitional period. In the context of the monitoring exercise, the Agency should verify the timely transition of the project to a dedicated hydrogen asset. Any financing of those projects pursuant to Regulation (EU) 2021/1153 during the transitional period should be subject to a condition in the grant agreement to repay the financing in the case of a delay of the timely transition of the project to a dedicated hydrogen asset, and to adequate provisions allowing for the enforcement of that condition.

(60) In line with the European Council conclusions of 4 February 2011 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, this Regulation aims to ensure access to the trans-European energy networks by ending the energy isolation of Cyprus and Malta, that are still not interconnected to the trans-European gas network. That objective should be attained by allowing projects under development or planning that have been granted the status of project of common interest under Regulation (EU) No 347/2013 to maintain their status until Cyprus and Malta are interconnected to the trans-European gas network. Apart from contributing to the development of the renewable energy market, the flexibility and resilience of the energy system, and the security of supply, those projects will ensure access to future energy markets, including hydrogen, and contribute to achieving the Union's overall energy and climate policy objectives.

(61) Projects of common interest should not be eligible for Union financial assistance where the project promoters, operators or investors are in one of the situations of exclusion referred to in Article 136 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([28]), such as in cases of a conviction for fraud, corruption or conduct related to a criminal organisation. It should be possible to remove a project of common interest from the Union list if its inclusion in that list was based on incorrect information which was a determining factor for that inclusion, or if the project does not comply with Union law. For a project of common interest located in the Member States benefiting from a derogation under this Regulation, those Member States should ensure, when supporting any applications for financing pursuant to Regulation (EU) 2021/1153 for such projects, that the projects do not benefit directly or indirectly persons or entities that are in one of the situation of exclusion as referred to in Article 136 of Regulation (EU, Euratom) 2018/1046.

(62) In order to ensure the timely development of essential energy infrastructure projects for the Union, the fifth Union list of projects of common interest should remain in force until the first Union list of projects of common interest and projects of mutual interest established pursuant to this Regulation enters into force. Moreover, to enable the development, monitoring and financing of the projects of common interest on the fifth Union list, certain provisions of Regulation (EU) No 347/2013 should also remain in force and produce effects until the entry into force of the first Union list of projects of common interest and projects of mutual interest established pursuant to this Regulation.

([27]) Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (OJ L 158, 14.6.2019, p. 22).

([28]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

(63) Regulation (EU) No 347/2013 should therefore be repealed.

(64) In order to ensure that the Union list is limited to projects which contribute the most to the implementation of the strategic energy infrastructure priority corridors and areas set out in an annex to this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to amend the annexes to this Regulation so as to establish and review the Union list, while respecting the right of the Member States to approve projects on the Union list related to their territories. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ([29]). 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. Where they consider this necessary, the European Parliament and the Council may each send experts to meetings of the Commission expert groups dealing with the preparation of delegated acts to which Member States' experts are invited.

The discussions in the regional groups are instrumental for the Commission to adopt the delegated acts establishing the Union lists. Therefore, it is appropriate, to the extent possible and compatible with the framework of this Regulation, that the European Parliament and the Council be informed about, and may send experts to, the meetings of regional groups in accordance with the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. Taking into account the need to ensure the achievement of the objectives of this Regulation and, in view of the number of projects on Union lists so far, the total number of projects on the Union list should remain manageable, and therefore should not significantly exceed 220.

(65) Since the objectives of this Regulation, namely the development and interoperability of trans-European energy networks and connection to such networks that contribute to ensuring climate change mitigation, in particular achieving the Union's 2030 targets for energy and climate and its climate neutrality objective by2050 at the latest, and to ensuring interconnections, energy security, market and system integration, competition that benefits all Member States, and affordable energy prices, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the proposed action, 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 those objectives,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

General provisions

Article 1

Subject matter, objectives and scope

1. This Regulation lays down guidelines for the timely development and interoperability of the priority corridors and areas of trans-European energy infrastructure (energy infrastructure priority corridors and areas) set out in Annex I that contribute to ensuring climate change mitigation, in particular achieving the Union's 2030 targets for energy and climate and its climate neutrality objective by 2050 at the latest, and to ensuring interconnections, energy security, market and system integration and competition that benefits all Member States, as well as affordability of energy prices.

([29]) OJ L 123, 12.5.2016, p. 1.

2. In particular, this Regulation:

(a) provides for the identification of projects on the Union list of projects of common interest and of projects of mutual interest established pursuant to Article 3 (Union list);

(b) facilitates the timely implementation of projects on the Union list by streamlining, coordinating more closely and accelerating permit granting processes, and by enhancing transparency and public participation;

(c) provides rules for the cross-border allocation of costs and risk-related incentives for projects on the Union list;

(d) determines the conditions for eligibility of projects on the Union list for Union financial assistance.

Article 2

Definitions

For the purposes of this Regulation, in addition to the definitions in Regulations (EC) No 715/2009, (EU) 2018/1999, (EU) 2019/942 and (EU) 2019/943 and in Directives 2009/73/EC, (EU) 2018/2001 ([30]) and (EU) 2019/944, the following definitions apply:

(1) 'energy infrastructure' means any physical equipment or facility falling under the energy infrastructure categories which is located within the Union, or linking the Union and one or more third countries;

(2) '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;

(3) 'comprehensive decision' means the decision or set of decisions taken by a Member State authority or authorities not including courts or tribunals, that determines whether or not a project promoter is authorised to build the energy infrastructure to realise a project of common interest or a project of mutual interest by having the possibility to start, or procure and start, the necessary construction works (ready-to-build phase) without prejudice to any decision taken in the context of an administrative appeal procedure;

(4) 'project' means one or several lines, pipelines, facilities, equipment or installations falling under the energy infrastructure categories set out in Annex II;

(5) 'project of common interest' means a project necessary to implement the energy infrastructure priority corridors and areas set out in Annex I and which is on the Union list;

(6) 'project of mutual interest' means a project promoted by the Union in cooperation with third countries pursuant to letters of support from the governments of the directly affected countries or other non-binding agreements, which falls under one of the energy infrastructure categories set out in point 1(a) or (f), point 3(a), or point 5(a) or (c) of Annex II, which contributes to the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective and which is on the Union list;

(7) 'competing projects' means projects that fully or partially address the same identified infrastructure gap or regional infrastructure need;

(8) 'project promoter' means one of the following:

  (a) a transmission system operator (TSO), a distribution system operator (DSO) or another operator or investor developing a project on the Union list;

  (b) in the case of more than one such TSO, DSO, other operator or investor, 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;

(9) 'smart electricity grid' means an electricity network, including on islands that are not interconnected or not sufficiently connected to the trans-European energy networks, that enables cost-efficient integration and active control of the behaviour and actions of all users connected to it, including generators, consumers and prosumers, in

([30]) Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

order to ensure an economically efficient and sustainable power system with low losses and a high level of integration of renewable sources, of security of supply and of safety, and in which the grid operator can digitally monitor the actions of the users connected to it, and information and communication technologies for communicating with related grid operators, generators, energy storage facilities, and consumers or prosumers, with a view to transmitting and distributing electricity in a sustainable, cost-efficient and secure way;

(10) 'smart gas grid' means a gas network that makes use of innovative and digital solutions to integrate in a cost-efficient manner a plurality of low-carbon and particularly renewable gas sources in accordance with consumers' needs and gas quality requirements in order to reduce the carbon footprint of the related gas consumption, enable an increased share of renewable and low-carbon gases, and create links with other energy carriers and sectors, including the related physical upgrades if they are indispensable to the functioning of the equipment and installations for integration of low-carbon and particularly renewable gases;

(11) 'authority concerned' means an authority that, under national law, is competent to issue various permits and authorisations related to the planning, design and construction of immovable assets, including energy infrastructure;

(12) 'national regulatory authority' means a national regulatory authority designated in accordance with Article 39(1) of Directive 2009/73/EC or a regulatory authority at national level designated in accordance with Article 57 of Directive (EU) 2019/944;

(13) 'relevant national regulatory authority' means the national regulatory authority in the Member States hosting the projects and in Member States to which the project provides a significant positive impact;

(14) 'works' means the purchase, supply and deployment of components, systems and services including software, the carrying out of development, repurposing and construction and installation activities relating to a project, the acceptance of installations and the launching of a project;

(15) '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;

(16) 'commissioning' means the process of bringing a project into operation once it has been constructed;

(17) 'dedicated hydrogen assets' means infrastructure ready to accommodate pure hydrogen without further adaptation works, including pipeline networks or storage facilities that are newly constructed, repurposed from natural gas assets, or both;

(18) 'repurposing' means the technical upgrading or modification of existing natural gas infrastructure in order to ensure that it is dedicated for the use of pure hydrogen;

(19) 'climate adaptation' means a process that ensures that resilience to the potential adverse impacts of climate change of energy infrastructure is achieved through a climate vulnerability and risk assessment, including through relevant adaptation measures.

CHAPTER II

Projects of common interest and projects of mutual interest

Article 3

Union list of projects of common interest and projects of mutual interest

1. Regional groups (Groups) shall be established in accordance with the process set out in Section 1 of Annex III. The membership of each Group shall be based on each priority corridor and area and their respective geographical coverage as set out in Annex I. Decision-making power in the Groups shall be restricted to Member States and the Commission (decision-making body), and based on consensus.

2. Each Group shall adopt its own rules of procedure, having regard to the provisions set out in Annex III.

3. The decision-making body of each Group shall adopt a regional list of projects drawn up in accordance with the process set out in Section 2 of Annex III, the contribution of each project to implementing the energy infrastructure priority corridors and areas set out in Annex I and their fulfilment of the criteria set out in Article 4.

Where a Group draws up its regional list:

(a) each individual proposal for a project shall require the approval of the Member States to whose territory the project relates; where a Member State does not give its approval, it shall present its substantiated reasons for doing so to the Group concerned;

(b) it shall take into account the advice from the Commission with the aim of having a manageable total number of projects on the Union list.

4. The Commission is empowered to adopt delegated acts in accordance with Article 20 of this Regulation in order to establish the Union list, subject to the second paragraph of Article 172 TFEU.

In exercising its power, the Commission shall ensure that the Union list is established every two years, on the basis of the regional lists adopted by the decision-making bodies of the Groups established pursuant to Section 1, point (1), of Annex III, following the procedure set out in paragraph 3 of this Article.

The Commission shall adopt the delegated act establishing the first Union list pursuant to this Regulation by 30 November 2023.

If a delegated act adopted by the Commission pursuant to this paragraph cannot enter into force due to an objection expressed either by the European Parliament or the Council pursuant to Article 20(6), the Commission shall immediately convene the Groups in order to draw up new regional lists taking into account the reasons for the objection. The Commission shall adopt a new delegated act establishing the Union list as soon as possible.

5. When establishing the Union list by combining the regional lists referred to in paragraph 3, the Commission shall, taking due account of the deliberations of the Groups:

(a) ensure that only projects that fulfil the criteria referred to in Article 4 are included;

(b) ensure cross-regional consistency, taking into account the opinion of the Agency as referred to in Section 2, point (14), of Annex III;

(c) take into account the opinions of Member States referred to in Section 2, point (10), of Annex III;

(d) aim to ensure a manageable total number of projects on the Union list.

6. Projects of common interest that fall under the energy infrastructure categories set out in point (1)(a), (b), (c), (d) and (f) of Annex II to this Regulation shall become an integral part of the relevant regional investment plans under Article 34 of Regulation (EU) 2019/943 and of the relevant national ten-year network development plans under Article 51 of Directive (EU) 2019/944 and other national infrastructure plans, as appropriate. Those projects of common interest shall be conferred the highest possible priority within each of those plans. This paragraph shall not apply to competing projects, projects that have not reached a sufficient degree of maturity to provide a project-specific cost-benefit analysis as referred to in Section 2, point (1)(d), of Annex III or projects of mutual interest.

7. Projects of common interest that fall under the energy infrastructure categories set out in point (1)(a), (b), (c), (d) and (f) of Annex II and that are competing projects or projects that have not reached a sufficient degree of maturity to provide a project-specific cost-benefit analysis as referred to in Section 2, point (1)(d), of Annex III may be included in the relevant regional investment plans, the national ten-year network development plans and other national infrastructure plans, as appropriate, as projects under consideration.

Article 4

Criteria for the assessment of projects by the Groups

1. A project of common interest shall meet the following general criteria:

(a) the project is necessary for at least one of the energy infrastructure priority corridors and areas set out in Annex I;

(b) the potential overall benefits of the project, assessed in accordance with the relevant specific criteria in paragraph 3, outweigh its costs, including in the longer term;

(c) the project meets any of the following criteria:

(i) it involves at least two Member States by directly or indirectly, via interconnection with a third country, crossing the border of two or more Member States;

(ii) it is located on the territory of one Member State, either inland or offshore, including islands, and has a significant cross-border impact as set out in point (1) of Annex IV.

2. A project of mutual interest shall meet the following general criteria:

(a) the project contributes significantly to the objectives referred to in Article 1(1), and those of the third country, in particular by not hindering the capacity of the third country to phase out fossil fuel generation assets for its domestic consumption, and to sustainability, including through the integration of renewable energy into the grid and the transmission and distribution of renewable generation to major consumption centres and storage sites;

(b) the potential overall benefits of the project at Union level, assessed in accordance with the relevant specific criteria in paragraph 3, outweigh its costs within the Union, including in the longer term;

(c) the project is located on the territory of at least one Member State and on the territory of at least one third country and has a significant cross-border impact as set out in point (2) of Annex IV;

(d) for the part located on Member State territory, the project is in line with Directives 2009/73/EC and (EU) 2019/944 where it falls within the infrastructure categories set out in points (1) and (3) of Annex II to this Regulation;

(e) there is a high level of convergence of the policy framework of the third country or countries involved and legal enforcement mechanisms to support the policy objectives of the Union are demonstrated, in particular to ensure:

(i) a well-functioning internal energy market;

(ii) security of supply based, inter alia, on diverse sources, cooperation and solidarity;

(iii) an energy system, including production, transmission and distribution, moving towards the objective of climate neutrality, in line with the Paris Agreement and the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, in particular, avoiding carbon leakage;

(f) the third country or countries involved support the priority status of the project, as set out in Article 7, and commit to complying with a similar timeline for accelerated implementation and other policy and regulatory support measures as applies to projects of common interest in the Union.

As regards projects for the storage of carbon dioxide falling under the energy infrastructure category set out in point (5)(c) of Annex II, the project shall be necessary to allow the cross-border transport and storage of carbon dioxide and the third country where the project is located shall have an adequate legal framework based on demonstrated effective enforcement mechanisms to ensure that standards and safeguards apply to the project, preventing any carbon dioxide leaks, and concerning climate, human health and ecosystems as regards the safety and effectiveness of the permanent storage of carbon-dioxide, which are at least at the same level as those provided by Union law.

3. The following specific criteria shall apply to projects of common interest falling within specific energy infrastructure categories:

(a) for electricity transmission, distribution and storage projects falling under the energy infrastructure categories set out in point (1)(a), (b), (c), (d) and (f) of Annex II, the project contributes significantly to sustainability through the integration of renewable energy into the grid, the transmission or distribution of renewable generation to major consumption centres and storage sites, and to reducing energy curtailment, where applicable, and contributes to at least one of the following specific criteria:

(i) market integration, including through lifting the energy isolation of at least one Member State and reducing energy infrastructure bottlenecks, competition, interoperability and system flexibility;

(ii) security of supply, including through interoperability, system flexibility, cybersecurity, appropriate connections and secure and reliable system operation;

(b) for smart electricity grid projects falling under the energy infrastructure category set out in point (1)(e) of Annex II, the project contributes significantly to sustainability through the integration of renewable energy into the grid, and contributes to at least two of the following specific criteria:

(i) security of supply, including through efficiency and interoperability of electricity transmission and distribution in day-to-day network operation, avoidance of congestion, and integration and involvement of network users;

(ii) market integration, including through efficient system operation and use of interconnectors;

(iii) network security, flexibility and quality of supply, including through higher uptake of innovation in balancing, flexibility markets, cybersecurity, monitoring, system control and error correction;

(iv) smart sector integration, either in the energy system through linking various energy carriers and sectors, or in a wider way, favouring synergies and coordination between the energy, transport and telecommunication sectors;

(c) for carbon dioxide transport and storage projects falling under the energy infrastructure categories set out in point (5) of Annex II, the project contributes significantly to sustainability through the reduction of carbon dioxide emissions in the connected industrial installations and contributes to all of the following specific criteria:

(i) avoiding carbon dioxide emissions while maintaining security of supply;

(ii) increasing the resilience and security of transport and storage of carbon dioxide;

(iii) the efficient use of resources, by enabling the connection of multiple carbon dioxide sources and storage sites via common infrastructure and minimising environmental burden and risks;

(d) for hydrogen projects falling under the energy infrastructure categories set out in point (3) of Annex II, the project contributes significantly to sustainability, including by reducing greenhouse gas emissions, by enhancing the deployment of renewable or low carbon hydrogen, with an emphasis on hydrogen from renewable sources in particular in end-use applications, such as hard-to-abate sectors, in which more energy efficient solutions are not feasible, and supporting variable renewable power generation by offering flexibility, storage solutions, or both, and the project contributes significantly to at least one of the following specific criteria:

(i) market integration, including by connecting existing or emerging hydrogen networks of Member States, or otherwise contributing to the emergence of an Union-wide network for the transport and storage of hydrogen, and ensuring interoperability of connected systems;

(ii) security of supply and flexibility, including through appropriate connections and facilitating secure and reliable system operation;

(iii) competition, including by allowing access to multiple supply sources and network users on a transparent and non-discriminatory basis;

(e) for electrolysers falling under the energy infrastructure category set out in point (4) of Annex II, the project contributes significantly to all of the following specific criteria:

(i) sustainability, including by reducing greenhouse gas emissions and enhancing the deployment of renewable or low-carbon hydrogen in particular from renewable sources, as well as synthetic fuels of those origins;

(ii) security of supply, including by contributing to secure, efficient and reliable system operation, or by offering storage, flexibility solutions, or both, such as demand side response and balancing services;

(iii) enabling flexibility services such as demand response and storage by facilitating smart energy sector integration through the creation of links to other energy carriers and sectors;

(f) for smart gas grid projects falling under the energy infrastructure category set out in point (2) of Annex II, the project contributes significantly to sustainability by ensuring the integration of a plurality of low-carbon and particularly renewable gases, including where they are locally sourced, such as biomethane or renewable hydrogen, into the gas transmission, distribution or storage systems in order to reduce greenhouse gas emissions, and that project contributes significantly to at least one of the following specific criteria:

(i) network security and quality of supply by improving the efficiency and interoperability of gas transmission, distribution or storage systems in day-to-day network operation by, inter alia, addressing challenges arising from the injection of gases of various qualities;

(ii) market functioning and customer services;

(iii) facilitating smart energy sector integration through the creation of links to other energy carriers and sectors and enabling demand response.

4. For projects falling under the energy infrastructure categories set out in Annex II, the criteria set out in paragraph 3 of this Article shall be assessed in accordance with the indicators set out in points (3) to (8) of Annex IV.

5. In order to facilitate the assessment of all projects that could be eligible as projects of common interest and that could be included in a regional list, each Group shall assess each project's contribution to the implementation of the same energy infrastructure priority corridor or area 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 3. That assessment shall lead to a ranking of projects for internal use of the Group. Neither the regional list nor the Union list shall contain any ranking, nor shall the ranking be used for any subsequent purpose except as described in Section 2, point (16), of Annex III.

In assessing projects, in order to ensure a consistent assessment approach among the Groups, each Group shall give due consideration to:

(a) the urgency and the contribution of each proposed project in order to meet the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, market integration, competition, sustainability, and security of supply;

(b) the complementarity of each proposed project with other proposed projects, including competing or potentially competing projects;

(c) possible synergies with priority corridors and thematic areas identified under trans-European networks for transport and telecommunications;

(d) for proposed projects that are, at the time of the assessment, projects on the Union list, the progress of their implementation and their compliance with the reporting and transparency obligations.

As regards smart electricity grids and smart gas grids projects falling under the energy infrastructure categories set out in point (1)(e) and point (2) of Annex II, ranking shall be carried out for those projects that affect the same two Member States, 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 by those users.

Article 5

Implementation and monitoring of projects on the Union list

1. Project promoters shall draw up an implementation plan for projects on the Union list, including a timetable for each of the following:

(a) feasibility and design studies including, as regards, climate adaptation and compliance with environmental legislation and with the doing 'no significant harm' principle;

(b) approval by the national regulatory authority or by any other authority concerned;

(c) construction and commissioning;

(d) the permit granting process referred to in Article 10(6), point (b).

2. TSOs, DSOs and other operators shall cooperate with each other in order to facilitate the development of projects on the Union list in their area.

3. The Agency and the Groups concerned shall monitor the progress achieved in implementing the projects on the Union list and, where necessary, make recommendations to facilitate their implementation. The Groups may request additional information in accordance with paragraphs 4, 5 and 6, convene meetings with the relevant parties and invite the Commission to verify the information provided on site.

4. By 31 December of each year following the year of the inclusion of a project on the Union list, project promoters shall submit an annual report, for each project falling under the energy infrastructure categories set out in Annex II, to the national competent authority referred to in Article 8(1).

That report shall include details of:

(a) the progress achieved in the development, construction and commissioning of the project, in particular with regard to the permit granting process and the consultation procedure, as well as compliance with environmental legislation, with the principle that the project does 'no significant harm' to the environment, and climate adaptation measures taken;

(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 to overcome the delays.

5. By 28 of February of each year following the year in which the project promoter has to submit the report referred to in paragraph 4 of this Article, the competent authorities referred to in Article 8(1) shall submit to the Agency and to the relevant Group the report referred to in paragraph 4 of this Article supplemented with information on the progress and, where relevant, on delays in the implementation of projects on the Union list located on their respective territory with regard to the permit granting processes, and on the reasons for such delays. The contribution of the competent authorities to the report shall be clearly marked as such and drafted without modifying the text introduced by the project promoters.

6. By 30 April of each year in which a new Union list should be adopted, the Agency shall submit to the Groups a consolidated report for the projects on the Union list that are subject to the competence of national regulatory authorities, evaluating the progress achieved and expected changes in project costs, and, where appropriate, make recommendations on how to overcome the delays and difficulties encountered. That consolidated report shall also evaluate, in accordance with Article 11, point (b), of Regulation (EU) 2019/942, the consistent implementation of the Union-wide network development plans with regard to the energy infrastructure priority corridors and areas set out in Annex I.

In duly justified cases, the Agency may request additional information necessary for carrying out its tasks set out in this paragraph.

7. Where the commissioning of a project on the Union list is delayed when compared to the implementation plan, other than for overriding reasons beyond the control of the project promoter, the following measures shall apply:

(a) in so far as measures referred to in Article 22(7), point (a), (b) or (c) of Directive 2009/73/EC and Article 51(7), point (a), (b) or (c) of Directive (EU) 2019/944 are applicable in accordance with respective national law, national regulatory authorities shall ensure that the investment is carried out;

(b) if the measures of national regulatory authorities pursuant to point (a) are not applicable, the project promoter shall, within 24 months of the date of commissioning set out in the implementation plan, choose a third party to finance or construct all or part of the project;

(c) if a third party is not chosen in accordance with point (b), the Member State or, when the Member State 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) where the delay compared to the date of commissioning in the implementation plan exceeds 26 months, the Commission, subject to the agreement and with the full cooperation of the Member States concerned, may launch a call for proposals open to any third party capable of becoming a project promoter to build the project in accordance with an agreed timetable;

(e) where measures referred to in point (c) or (d) are 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 or, where applicable, the distribution 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 on the Union list.

8. A project on the Union list may be removed from the Union list in accordance with 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 Union law.

9. Projects which are no longer on the Union list shall lose all rights and obligations linked to the status of project of common interest or project of mutual interest provided for in this Regulation.

However, a project which is no longer on the Union list but for which an application file has been accepted for examination by the competent authority shall maintain the rights and obligations laid down in Chapter III, except where the project has been removed from the Union list for the reasons set out in paragraph 8 of this Article.

10. This Article shall be without prejudice to any Union financial assistance granted to any project on the Union list prior to its removal from the Union list.

Article 6

European coordinators

1. Where a project of common interest encounters significant implementation difficulties, the Commission may designate, in agreement with the Member States concerned, a European coordinator for a period of up to one year, renewable twice.

2. The European coordinator shall:

(a) promote the projects, for which he or she has been designated as a European coordinator and the cross-border dialogue between the project promoters and all stakeholders concerned;

(b) assist all parties as necessary in consulting the stakeholders concerned, discussing alternative routing, where appropriate, and obtaining necessary permits for the projects;

(c) where appropriate, advise project promoters on the financing of the project;

(d) ensure that appropriate support and strategic direction by the Member States concerned are provided for the preparation and implementation of the projects;

(e) submit every year, and, where appropriate, upon completion of their mandate, a report to the Commission 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 Commission shall transmit the report of the European coordinator referred to in point (e) to the European Parliament and the Groups concerned.

3. The European coordinator shall be chosen following an open, non-discriminatory and transparent process and on the basis of a candidate's experience with regard to the specific tasks assigned to him or her for the projects concerned.

4. The decision designating the European 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 Member States concerned shall fully cooperate with the European coordinator in the execution of the tasks referred to in paragraphs 2 and 4.

CHAPTER III

Permit granting and public participation

Article 7

Priority status of projects on the Union list

1. The adoption of the Union list shall establish, for the purposes of any decisions issued in the permit granting process, the necessity of projects on the Union list from an energy policy and climate perspective, without prejudice to the exact location, routing or technology of the project.

This paragraph shall not apply to competing projects or to projects that have not reached a sufficient degree of maturity to provide a project specific cost-benefit analysis as referred to in Section 2, point (1)(d), of Annex III.

2. For the purpose of ensuring efficient administrative processing of the application files related to projects on the Union list, project promoters and all authorities concerned shall ensure that those files are treated in the most rapid way possible in accordance with Union and national law.

3. Without prejudice to obligations provided for in Union law, projects on the Union list shall be granted the status of the highest national significance possible, where such a status exists in national law, and be appropriately treated in the permit granting processes and, if national law so provides, in spatial planning, including those processes relating to environmental assessments, in the manner such treatment is provided for in national law applicable to the corresponding type of energy infrastructure.

4. All dispute resolution procedures, litigation, appeals and judicial remedies related to projects on the Union list in front of any national courts, tribunals, panels, including mediation or arbitration, where they exist in national law, shall be treated as urgent, if and to the extent to which national law provides for such urgency procedures.

5. Member States shall assess, taking due account of the existing guidance issued by the Commission on streamlining the environmental assessment procedures for projects on the Union list, which legislative and non-legislative measures are necessary to streamline the environmental assessment procedures and to ensure their coherent application and shall inform the Commission of the result of that assessment.

6. By 24 March 2023, Member States shall take the non-legislative measures that they have identified under paragraph 5.

7. By 24 June 2023, Member States shall take the legislative measures that they have identified under paragraph 5. Those legislative measures shall be without prejudice to obligations provided for in Union law.

8. 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, provided that all the conditions set out in those Directives are fulfilled, projects on the Union list shall be considered as being of public interest from an energy policy perspective, and may be considered as having an overriding public interest.

Where the opinion of the Commission is required in accordance with Directive 92/43/EEC, the Commission and the national competent authority referred to in Article 9 of this Regulation shall ensure that the decision with regard to the overriding public interest of a project is taken within the time limits set in Article 10(1) and (2) of this Regulation.

This paragraph shall not apply to competing projects or to projects that have not reached a sufficient degree of maturity to provide a project specific cost-benefit analysis as referred to in Section 2, point (1)(d), of Annex III.

Article 8

Organisation of the permit granting process

1. By 23 June 2022, each Member State shall update, where necessary, the designation of one national competent authority which shall be responsible for facilitating and coordinating the permit granting process for projects on the Union list.

2. The responsibilities of the national competent authority referred to in paragraph 1 or the tasks related to it may be delegated to, or carried out by, another authority, per project on the Union list or per particular category of projects on the Union list, provided that:

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

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

The national competent authority may retain the responsibility to establish time limits, without prejudice to the time limits set in Article 10(1) and (2).

3. Without prejudice to relevant requirements under Union and international law and, to the extent it does not contradict them, national law, the national competent authority shall facilitate the issuing of the comprehensive decision. The comprehensive decision shall be issued within the time limits set in Article 10(1) and (2) and in accordance with one of the following schemes:

(a) integrated scheme:

the comprehensive decision shall be issued by the national competent authority and shall be the sole legally binding decision arising 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 national 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 national competent authority. The national competent authority may establish a working group where all concerned authorities are represented in order to draw up a detailed schedule for the permit granting process in accordance with Article 10(6), point (b), and to monitor and coordinate its implementation. The national competent authority shall, after consulting the other authorities concerned, where applicable in accordance with national law, and without prejudice to time limits set in Article 10(1) and (2), establish on a case-by-case basis a reasonable time limit within which the individual decisions shall be issued. The national competent authority may take an individual decision on behalf of another national authority concerned, where the

decision by that authority is not delivered within the time limit and where the delay cannot be adequately justified; or, where provided under national law, and to the extent that this is compatible with Union law, the national competent authority may consider that another national authority concerned has either given its approval or refusal for the project where the decision by that authority is not delivered within the time limit. Where provided under national law, the national 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; in doing so, the national competent authority shall ensure that the relevant requirements under Union and international law are respected and shall provide reasons for its decision;

(c) collaborative scheme:

the comprehensive decision shall be coordinated by the national competent authority. The national competent authority shall, after consulting the other authorities concerned, where applicable in accordance with national law, and without prejudice to time limits set in Article 10(1) and (2), 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.

Member States shall implement the schemes in a manner which, according to national law, contributes to the most efficient and timely issuing of the comprehensive decision.

The competence of the authorities concerned can either be incorporated into the competence of the national competent authority designated in accordance with paragraph 1 or the authorities concerned can maintain, to a certain extent, their independent competence in line with the respective permitting scheme chosen by the Member State in accordance with this paragraph to facilitate the issuing of the comprehensive decision and cooperate with the national competent authority accordingly.

Where an authority concerned does not expect to deliver an individual decision within the set time limit, that authority shall immediately inform the national competent authority, providing reasons for the delay. Subsequently, the national competent authority shall set another time limit within which that individual decision shall be issued, in compliance with the overall time limits set in Article 10(1) and (2).

Member States shall 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 implement the scheme which is most effective for them in light of national specificities in their planning and permit granting processes. Where a Member State chooses the collaborative scheme, it shall inform the Commission of its reasons.

4. Member States may apply the schemes set out in paragraph 3 to onshore and offshore projects on the Union list.

5. Where a project on the Union list requires decisions to be taken in two or more Member States, the relevant national competent authorities shall take all necessary steps for efficient and effective cooperation and communication among themselves, including the steps referred to in Article 10(6). Member States shall endeavour to provide joint procedures, particularly with regard to the assessment of environmental impacts.

6. The relevant national competent authorities of the Member States involved in a project on the Union list belonging to one of the priority offshore grid corridors set out in Section 2 of Annex I shall jointly designate among themselves a unique point of contact for project promoters per project, which shall be responsible for facilitating the exchange of information between the national competent authorities on the permit granting process of the project, with the aim of facilitating that process as well as the issuance of decisions by the relevant national competent authorities. The unique points of contact may act as a repository aggregating the existing documents pertaining to the projects.

Article 9

Transparency and public participation

1. By 24 October 2023, the Member State or national competent authority shall, where applicable, in collaboration with other authorities concerned, publish an updated manual of procedures for the permit granting process applicable to projects on the Union list to include at least the information specified in point (1) of Annex VI. The manual shall not be legally binding, but it shall refer to or quote relevant legal provisions. The national competent authorities shall, where relevant, cooperate and find synergies with the authorities of neighbouring countries with a view to exchanging good practices and facilitating the permit granting process, in particular for the development of the manual of procedures.

2. Without prejudice to environmental law and any requirements under the Aarhus Convention, the Espoo Convention and relevant Union law, all parties involved in the permit granting process shall follow the principles for public participation set out in point (3) of Annex VI.

3. The project promoter shall, within an indicative period of three months following the start of the permit granting process pursuant to Article 10(3), draw up and submit a concept for public participation to the national competent authority, following the process outlined in the manual referred to in paragraph 1 of this Article and in line with the guidelines set out in Annex VI. The national competent authority shall request modifications or approve the concept for public participation within three months of receipt of the concept, taking 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 for public participation, it shall inform the national competent authority thereof. In that case the national competent authority may request modifications.

4. Where it is not already required under national law at the same or higher standards, the project promoter or, where required by national law, the national competent authority shall carry out at least one public consultation, before the project promoter submits the final and complete application file to the national competent authority pursuant to Article 10(7). That public consultation shall be without prejudice to any public consultation to be carried out after submission of the request for development consent pursuant to Article 6(2) of Directive 2011/92/EU. The public consultation shall inform the stakeholders referred to in point (3)(a) of Annex VI about the project at an early stage and shall help to identify the most suitable location, trajectory or technology, including, where relevant, in view of adequate climate adaptation considerations for the project, all impacts relevant under Union and national law, and the relevant issues to be addressed in the application file. The public consultation shall comply with the minimum requirements set out in point (5) of Annex VI. Without prejudice to the procedural and transparency rules in Member States, the project promoter shall publish on the website referred to in paragraph 7 of this Article a report explaining how the opinions expressed in the public consultations were taken into account by showing the amendments made in the location, trajectory and design of the project, or by providing reasons why such opinions have not been taken into account.

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 the reports referred to in the first and second subparagraphs together with the application file to the national competent authority. The comprehensive decision shall take due account of the results of these reports.

5. For cross-border projects involving two or more Member States, the public consultations carried out pursuant to paragraph 4 in each of the Member States concerned shall take place within a period of no more than two months from the date on which the first public consultation started.

6. For projects likely to have a significant transboundary impact in one or more neighbouring Member States, to which Article 7 of Directive 2011/92/EU and the Espoo Convention are applicable, the relevant information shall be made available to the national competent authorities of the neighbouring Member States concerned. The national competent authorities of the neighbouring Member States concerned shall indicate, in the notification process where appropriate, whether they, or any other authority concerned, wishes to participate in the relevant public consultation procedures.

7. The project promoter shall establish and regularly update a dedicated project website with relevant information about the project of common interest, which shall be linked to the Commission website and the transparency platform referred to in Article 23 and which shall meet the requirements specified in point (6) of Annex VI. Commercially sensitive information shall be kept confidential.

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

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 national competent authority, which shall take place within an indicative period of 24 months; and

(b) the statutory permit granting procedure, covering the period from the date of acceptance of the submitted application file until the taking of the comprehensive decision, which shall not exceed 18 months.

With regard to point (b) of the first subparagraph, where appropriate, Member States may provide for a statutory permit granting procedure that is shorter than 18 months.

2. The national competent authority shall ensure that the combined duration of the two procedures referred to in paragraph 1 does not exceed a period of 42 months.

However, where the national competent authority considers that one or both of the procedures will not be completed within the time limits set in paragraph 1, it may extend one or both of those time limits before their expiry and on a case-by-case basis. The national competent authority shall not extend the combined duration of the two procedures for more than nine months other than in exceptional circumstances.

Where the national competent authority extends the time limits, it shall inform the Group concerned and present it with the measures taken, or to be taken, for the conclusion of the permit granting process, with the least possible delay. The Group may request that the national competent authority reports regularly on progress achieved in that regard and reasons for any delays.

3. For the purpose of establishing the start of the permit granting process, the project promoters shall notify the project to the national competent authority of each Member State concerned in written form and shall include a reasonably detailed outline of the project.

Within three months of receipt of the notification, the national competent authority shall acknowledge or, if it considers the project not to be mature enough to enter the permit granting process, reject the notification, in writing, including on behalf of other authorities concerned. In the event of a rejection, the national competent authority shall provide reasons for its decision, including on behalf of other authorities concerned. The date of signature of the acknowledgement of the notification by the national competent authority shall mark the start of the permit granting process. Where two or more Member States are concerned, the date of the acceptance of the last notification by the national competent authority concerned shall mark the start of the permit granting process.

The national competent authorities shall ensure that the permit granting process is accelerated in line with this Chapter for each category of projects of common interest. To that end, the national competent authorities shall adapt their requirements for the start of the permit granting process and for the acceptance of the submitted application file, to make them fit for projects that due to their nature, dimension or lack of requirement for environmental assessment under national law, may require less authorisations and approvals for reaching the ready-to-build phase. Member States may decide that the pre-application procedure referred to in paragraphs 1 and 6 of this Article is not required for the projects referred to in this subparagraph.

4. The national competent authorities shall take into consideration in the permit granting process any valid studies conducted and permits or authorisations issued for a given project on the Union list before the project entered the permit granting process in accordance with this Article, and shall not require duplicate studies and permits or authorisations.

5. In Member States where the determination of a route or location undertaken solely for the specific purpose of a planned project, including the planning of specific corridors for grid infrastructures, 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 the circumstances described in the first subparagraph of this paragraph, the extension referred to in paragraph 2, second subparagraph, shall be reduced to six months, other than in exceptional circumstances, including for the procedure referred to in this paragraph.

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

(a) as soon as possible and no later than 6 months of the notification pursuant to first subparagraph of paragraph 3, the national competent authority shall determine, on the basis of the checklist referred to in point (1)(e) of Annex VI, and in close cooperation with the other authorities concerned, and where appropriate on the basis of a proposal by the project promoter, the scope of the reports and documents and the level of detail of information to be submitted by the project promoter, as part of the application file, to apply for the comprehensive decision;

(b) the national 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) of this paragraph, a detailed schedule for the permit granting process in line with the guidelines set out in point (2) of Annex VI;

(c) upon receipt of the draft application file, the national competent authority shall, where necessary, on its own behalf or on behalf of other authorities concerned, request the project promoter to submit missing information relating to the requested elements referred to in point (a).

The pre-application procedure shall include the preparation of any environmental reports by the project promoters, as necessary, including the climate adaptation documentation.

Within three months of submission of the missing information referred to in point (c) of the first subparagraph, the competent authority shall accept for examination the application in written form or on digital platforms, starting the statutory permit granting procedure referred to in paragraph 1, point (b). Requests for additional information may be made, but only where they are justified by new circumstances.

7. The project promoter shall ensure that the application file is complete and adequate and seek the national competent authority's opinion on that matter as early as possible during the permit granting process. The project promoter shall cooperate fully with the national competent authority in order to comply with the time limits set in this Regulation.

8. Member States shall endeavour to ensure that any amendments to the national law do not lead to prolonging any permit granting process started before the entry into force of those amendments. With a view of maintaining an accelerated permit granting process for projects on the Union list, national competent authorities shall adequately adapt the schedule established in line with paragraph 6, point (b), of this Article to ensure, to the extent possible, that the time limits for the permit granting process set in this Article are not exceeded.

9. The time limits set in this Article shall be without prejudice to obligations arising from Union and international law, and without prejudice to administrative appeal procedures and judicial remedies before a court or tribunal.

The time limits set in this Article for any of the permit granting procedures shall be without prejudice to any shorter time limits set by Member States.

CHAPTER IV

Cross-sectoral infrastructure planning

Article 11

Energy system wide cost-benefit analysis

1. The ENTSO for Electricity and the ENTSO for Gas shall draft consistent single sector draft methodologies, including the energy network and market model referred to in paragraph 10 of this Article, for a harmonised energy system-wide cost-benefit analysis at Union level for projects on the Union list falling under the energy infrastructure categories set out in point (1)(a), (b), (d) and (f) and point (3) of Annex II.

The methodologies referred to in the first subparagraph of this paragraph shall be drawn up in line with the principles laid down in Annex V, be based on common assumptions allowing for project comparison, and be consistent with the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, as well as with the rules and indicators set out in Annex IV.

The methodologies referred to in the first subparagraph of this paragraph shall be applied for the preparation of each subsequent Union-wide ten-year network development plans developed by the ENTSO for Electricity pursuant to Article 30 of Regulation (EU) 2019/943 or the ENTSO for Gas pursuant to Article 8 of Regulation (EC) No 715/2009.

By 24 April 2023, the ENTSO for Electricity and the ENTSO for Gas shall publish and submit to Member States, the Commission and the Agency their respective consistent single sector draft methodologies after having gathered input from the relevant stakeholders during the consultation process referred to in paragraph 2.

2. Prior to submitting their respective draft methodologies to the Member States, the Commission and the Agency in accordance with paragraph 1, the ENTSO for Electricity and the ENTSO for Gas shall publish preliminary draft methodologies and conduct an extensive consultation process and seek recommendations from Member States and, at least, the organisations representing all relevant stakeholders, including the entity of distribution system operators in the Union established pursuant to Article 52 of Regulation (EU) 2019/943 (EU DSO entity), associations involved in electricity, gas and hydrogen markets, heating and cooling, carbon capture and storage and carbon capture and utilisation stakeholders, independent aggregators, demand-response operators, organisations involved in energy efficiency solutions, energy consumer associations, civil society representatives and, where it is deemed appropriate the national regulatory authorities and other national authorities.

Within three months of publication of the preliminary draft methodologies under the first subparagraph, any stakeholder referred to in that subparagraph may submit a recommendation.

The European Scientific Advisory Board on Climate Change established under Article 10a of Regulation (EC) No 401/2009 of the European Parliament and of the Council ([31]) may, on its own initiative, submit an opinion to the draft methodologies.

Where applicable, Member States, and stakeholders referred to in the first subparagraph shall submit and make publicly available their recommendations and the European Scientific Advisory Board on Climate Change shall submit and make publicly available its opinion to the Agency and, as applicable, to the ENTSO for Electricity or the ENTSO for Gas.

The consultation process shall be open, timely and transparent. The ENTSO for Electricity and the ENTSO for Gas shall prepare and make public a report on the consultation process.

([31]) Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (OJ L 126, 21.5.2009, p. 13).

The ENTSO for Electricity and the ENTSO for Gas shall provide reasons where they have not, or have only partly, taken into account the recommendations from Member States or the stakeholders, as well as from national authorities, or the opinion of the European Scientific Advisory Board on Climate Change.

3. Within three months of receipt of the draft methodologies together with the input received in the consultation process and the report on the consultation, the Agency shall provide an opinion to the ENTSO for Electricity and the ENTSO for Gas. The Agency shall notify its opinion to the ENTSO for Electricity, the ENTSO for Gas, the Member States, and the Commission and publish it on its website.

4. Within three months of receipt of the draft methodologies, Member States may deliver their opinions to the ENTSO for Electricity and the ENTSO for Gas and the Commission. To facilitate the consultation, the Commission may organise specific meetings of the Groups to discuss the draft methodologies.

5. Within three months of receipt of the opinions of the Agency and Member States, as referred to in paragraphs 3 and 4, the ENTSO for Electricity and the ENTSO for Gas shall amend their respective methodologies to fully take into account the opinions of the Agency and the Member States and submit them together with the opinion of the Agency to the Commission for its approval. The Commission shall issue its decision within three months of submission of the methodologies by the ENTSO for Electricity and the ENTSO for Gas, respectively.

6. Within two weeks of the approval by the Commission in accordance with paragraph 5, the ENTSO for Electricity and the ENTSO for Gas shall publish their respective methodologies on their websites. They shall publish the corresponding input data and other relevant network, load flow and market data in a sufficiently accurate form subject to restrictions under national law and relevant confidentiality agreements. The Commission and the Agency shall ensure the confidential treatment of the data received by them and by any party that carries out analytical work on the basis of those data on their behalf.

7. The methodologies shall be updated and improved regularly following the procedure described in paragraphs 1 to 6. In particular, they shall be amended after submission of the energy network and market model referred to in paragraph 10. The Agency, on its own initiative, or upon a duly reasoned request by national regulatory authorities or stakeholders, and after formally consulting the organisations representing all relevant stakeholders referred to in paragraph 2, first subparagraph, and the Commission, may request such updates and improvements, providing reasons and a timetable. The Agency shall publish the requests by national regulatory authorities or stakeholders and all relevant non-commercially sensitive documents leading to a request from the Agency for an update or improvement.

8. For projects falling under the energy infrastructure categories set out in point (1)(c) and (e) and in points (2), (4) and (5) of Annex II, the Commission shall ensure the development of methodologies for a harmonised energy system-wide cost-benefit analysis at Union level. Those methodologies shall be compatible in terms of benefits and costs with the methodologies developed by the ENTSO for Electricity and the ENTSO for Gas. The Agency, with the support of national regulatory authorities, shall promote the consistency of those methodologies with the methodologies elaborated by ENTSO for Electricity and the ENTSO for Gas. The methodologies shall be developed in a transparent manner, including extensive consultation of Member States and of all relevant stakeholders.

9. Every three years, the Agency shall establish and publish a set of indicators and corresponding reference values for the comparison of unit investment costs for comparable projects of the energy infrastructure categories included in Annex II. Project promoters shall provide the requested data to the national regulatory authorities and to the Agency.

The Agency shall publish the first indicators for the infrastructure categories set out in points (1), (2) and (3) of Annex II by 24 April 2023, to the extent that data is available to calculate robust indicators and reference values. Those reference values may be used by the ENTSO for Electricity and the ENTSO for Gas for the cost-benefit analyses carried out for subsequent Union-wide ten-year network development plans.

The Agency shall publish the first indicators for the energy infrastructure categories set out in points (4) and (5) of Annex II, by 24 April 2025.

10. By 24 June 2025, following an extensive consultation process of stakeholders referred to in paragraph 2, first subparagraph, the ENTSO for Electricity and the ENTSO for Gas shall jointly submit to the Commission and the Agency a consistent and progressively integrated model that will provide consistency between single sector methodologies based on common assumptions including electricity, gas and hydrogen transmission infrastructure as well as storage facilities, liquefied natural gas and electrolysers, covering the energy infrastructure priority corridors and areas set out in Annex I drawn up in line with the principles laid down in Annex V.

11. The model referred to in paragraph 10, shall cover at least the relevant sectors' interlinkages at all stages of infrastructure planning, specifically scenarios, technologies and spatial resolution, infrastructure gaps identification in particular with respect to cross-border capacities, and projects assessment.

12. After approval of the model referred to in paragraph 10 by the Commission in accordance with the procedure set out in paragraphs 1 to 5, it shall be included in the methodologies referred to in paragraph 1, that shall be amended accordingly.

13. At least every five years, starting from its approval in accordance with paragraph 10, and more frequently where necessary, the model and the consistent single sector cost-benefit methodologies shall be updated in accordance with the procedure referred to in paragraph 7.

Article 12

Scenarios for the ten-year network development plans

1. By 24 January 2023, the Agency, after having conducted an extensive consultation process involving the Commission, the Member States, the ENTSO for Electricity, the ENTSO for Gas, the EU DSO entity and at least the organisations representing associations involved in electricity, gas and hydrogen markets, heating and cooling, carbon capture and storage and carbon capture and utilisation stakeholders, independent aggregators, demand-response operators, organisations involved in energy efficiency solutions, energy consumer associations and civil society representatives, shall publish the framework guidelines for the joint scenarios to be developed by ENTSO for Electricity and ENTSO for Gas. Those guidelines shall be regularly updated as found necessary.

The guidelines shall establish criteria for a transparent, non-discriminatory and robust development of scenarios taking into account best practices in the field of infrastructures assessment and network development planning. The guidelines shall also aim to ensure that the underlying ENTSO for Electricity and ENTSO for Gas scenarios are fully in line with the energy efficiency first principle and with the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective and shall take into account the latest available Commission scenarios, as well as, when relevant, the national energy and climate plans.

The European Scientific Advisory Board on Climate Change may, on its own initiative, provide input on how to ensure compliance of scenarios with the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective. The Agency shall take duly into account that input in the framework guidelines referred in the first subparagraph.

The Agency shall provide reasons where it has not, or has only partly, taken into account the recommendations from Member States, stakeholders and the European Scientific Advisory Board on Climate Change.

2. The ENTSO for Electricity and ENTSO for Gas shall follow the Agency's framework guidelines when developing the joint scenarios to be used for the Union-wide ten-year network development plans.

The joint scenarios shall also include a long-term perspective until 2050 and include intermediary steps as appropriate.

3. The ENTSO for Electricity and ENTSO for Gas shall invite the organisations representing all relevant stakeholders, including the EU DSO entity, associations involved in electricity, gas and hydrogen markets, heating and cooling, carbon capture and storage and carbon capture and utilisation stakeholders, independent aggregators, demand-response operators, organisations involved in energy efficiency solutions, energy consumer associations, civil society representatives, to participate in the scenarios development process, in particular on key elements such as assumptions and how they are reflected in the scenarios data.

4. The ENTSO for Electricity and the ENTSO for Gas shall publish and submit the draft joint scenarios report to the Agency, the Member States and the Commission for their opinion.

The European Scientific Advisory Board on Climate Change may, on its own initiative, provide an opinion on the joint scenarios report.

5. Within three months of receipt of the draft joint scenarios report together with the input received in the consultation process and a report on how it was taken into account, the Agency shall submit its opinion on compliance of the scenarios with the framework guidelines referred to in paragraph 1, first subparagraph, including possible recommendations for amendments, to the ENTSO for Electricity, ENTSO for gas, Member States and the Commission.

Within the same time limit, the European Scientific Advisory Board on Climate Change may, on its own initiative, provide an opinion on the compatibility of scenarios with the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective.

6. Within three months of receipt of the opinion referred to in paragraph 5, the Commission taking into account the opinions of the Agency and Member States shall approve the draft joint scenarios report or request the ENTSO for Electricity and the ENTSO for Gas to amend it.

The ENTSO for Electricity and the ENTSO for Gas shall provide reasons explaining how any request for amendments from the Commission has been addressed.

In the event the Commission does not approve the joint scenarios report, it shall provide a reasoned opinion to the ENTSO for Electricity and the ENTSO for Gas.

7. Within two weeks of the approval of the joint scenarios report in accordance with paragraph 6, the ENTSO for Electricity and the ENTSO for Gas shall publish it on their websites. They shall also publish the corresponding input and output data in a sufficiently clear and accurate form for a third party to reproduce the results, taking due account of the national law and relevant confidentiality agreements and sensitive information.

Article 13

Infrastructure Gaps Identification

1. Within six months of approval of the joint scenarios report pursuant to Article 12(6) and every two years thereafter, the ENTSO for Electricity and the ENTSO for Gas shall publish the infrastructure gaps reports developed within the framework of the Union-wide ten-year network development plans.

When assessing the infrastructure gaps the ENTSO for Electricity and the ENTSO for Gas shall base their analysis on the scenarios established under Article 12, implement the energy efficiency first principle and consider with priority all relevant alternatives to new infrastructure. When considering new infrastructures solutions, the infrastructures gaps assessment shall take into account all relevant costs, including network reinforcements.

The infrastructures gaps assessment shall, in particular, focus on those infrastructure gaps potentially affecting the fulfilment of the Union's 2030 climate and energy targets and its 2050 climate neutrality objective.

Prior to publishing their respective reports, the ENTSO for Electricity and the ENTSO for Gas shall conduct an extensive consultation process involving all relevant stakeholders, including the EU DSO entity, associations involved in electricity, gas and hydrogen markets, heating and cooling, carbon capture and storage and carbon capture and utilisation stakeholders, independent aggregators, demand-response operators, organisations involved in energy efficiency solutions and, energy consumer associations, civil society representatives, the Agency and all the Member States' representatives that are part of the relevant energy infrastructure priority corridors that are set out in Annex I.

2. The ENTSO for Electricity and the ENTSO for Gas shall submit their respective draft infrastructure gaps report to the Agency and the Commission and Member States for their opinion.

3. Within three months of receipt of the infrastructure gaps report together with the input received in the consultation process and a report on how it was taken into account, the Agency shall submit its opinion to the ENTSO for Electricity or ENTSO for Gas, the Commission and Member States and make it publicly available.

4. Within three months of receipt of the Agency's opinion referred to in paragraph 3, the Commission shall, taking the Agency's opinion into account and with input from the Member States, draft its opinion and submit it to the ENTSO for Electricity or the ENTSO for Gas.

5. The ENTSO for Electricity and the ENTSO for Gas shall adapt their infrastructure gaps reports taking due account of the Agency's opinion and in line with the Commission's and the Member States' opinions and make them publicly available.

CHAPTER V

Offshore grids for renewable integration

Article 14

Offshore grid planning

1. By 24 January 2023, Member States, with the support of the Commission, within their specific priority offshore grid corridors, set out in Section 2 of Annex I, taking into account the specificities and development in each region, shall conclude a non-binding agreement to cooperate on goals for offshore renewable generation to be deployed within each sea basin by 2050, with intermediate steps in 2030 and 2040, in line with their national energy and climate plans, and the offshore renewable potential of each sea basin.

That non-binding agreement shall be made in writing as regards each sea basin linked to the territory of the Member States, and shall be without prejudice to the right of Member States to develop projects on their territorial sea and exclusive economic zone. The Commission shall provide guidance for the work in the Groups.

2. By 24 January 2024, and as part of each ten-year network development plan thereafter, the ENTSO for Electricity, with the involvement of the relevant TSOs, the national regulatory authorities, the Member States and the Commission, and in line with the non-binding agreement referred to in paragraph 1 of this Article, shall develop and publish, as a separate report which is part of the Union-wide ten-year network development plan, high-level strategic integrated offshore network development plans for each sea-basin, in line with the priority offshore grid corridors referred to in Annex I, taking into account environmental protection and other uses of the sea.

In the development of the high-level strategic integrated offshore network development plans within the timeline provided for in paragraph 1, the ENTSO for Electricity shall consider the non-binding agreements referred to in paragraph 1 for the development of the Union-wide ten-year network development plan scenarios.

The high-level strategic integrated offshore network development plans shall provide a high-level outlook on offshore generation capacities potential and resulting offshore grid needs, including the potential needs for interconnectors, hybrid projects, radial connections, reinforcements, and hydrogen infrastructure.

3. The high-level strategic integrated offshore network development plans shall be consistent with regional investment plans published pursuant to Article 34(1) of Regulation (EU) 2019/943 and integrated within the Union-wide ten-year network development plans in order to ensure coherent development of onshore and offshore grid planning and the necessary reinforcements.

4. By 24 December 2024 and every two years thereafter, the Member States, shall update their non-binding agreements referred to in paragraph 1 of this Article, including in view of the results of the application of the cost-benefit and cost-sharing to the priority offshore grid corridors, when those results become available.

5. After each update of the non-binding agreements in accordance with paragraph 4, for each sea basin, the ENTSO for Electricity shall update the high level strategic integrated offshore network development plans within the next Union-wide ten-year network development plan as referred to in paragraph 2.

Article 15

Offshore grids for renewable energy cross-border cost sharing

1. By 24 June 2024, the Commission shall, with the involvement of the Member States, relevant TSOs, the Agency and the national regulatory authorities, develop guidance for a specific cost-benefit and cost-sharing for the deployment of the sea-basin integrated offshore network development plans referred to in Article 14(2) in accordance with the non-binding agreements referred to in Article 14(1). This guidance shall be compatible with Article 16(1). The Commission shall update its guidance when appropriate, taking into account the results of its implementation.

2. By 24 June 2025, the ENTSO for Electricity, with the involvement of the relevant TSOs, the Agency, the national regulatory authorities and the Commission, shall present the results of the application of the cost-benefit and cost-sharing to the priority offshore grid corridors.

CHAPTER VI

Regulatory framework

Article 16

Enabling investments with a cross-border impact

1. The efficiently incurred investment costs, which exclude maintenance costs, related to a project of common interest falling under the energy infrastructure categories set out in point (1)(a), (b), (c), (d) and (f) of Annex II, and projects of common interest falling under the energy infrastructure category set out in point (3) of Annex II, where they fall under the competence of national regulatory authorities in each Member State concerned, shall be borne by the relevant TSO or the project promoters of the transmission infrastructure of the 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 Member States.

2. The provisions of this Article shall apply to a project of common interest falling under the energy infrastructure categories set out in point (1)(a), (b), (c), (d), (f) and point (3) of Annex II, where at least one project promoter requests the relevant national authorities their application for the costs of the project.

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

Where a project has several project promoters, the relevant national regulatory authorities shall without delay request all project promoters to submit the investment request jointly in accordance with paragraph 4.

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

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

(a) up-to-date project-specific cost-benefit analysis consistent with the methodology drawn up pursuant to Article 11 and taking into account benefits beyond the borders of the Member States on the territory of which the project is located by considering at least the joint scenarios established for network development planning referred to in Article 12. Where additional scenarios are used, those shall be consistent with the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective and be subject to the same level of consultation and scrutiny as the process provided for in Article 12. The Agency shall be responsible for assessing any additional scenarios and ensuring their compliance with this paragraph;

(b) a business plan evaluating the financial viability of the project, including the chosen financing solution, and, for a project of common interest falling under the energy infrastructure category referred to in point (3) of Annex II, the results of market testing;

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

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

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

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

5. Within six months of the date on which the investment request is received by the last of the relevant national regulatory authorities, those authorities shall, after consulting the project promoters concerned, take joint coordinated decisions on the allocation of efficiently incurred investment costs to be borne by each system operator for the project, as well as their inclusion in tariffs, or on the rejection of the investment request, in whole or in part, if the common analysis of the relevant national regulatory authorities concludes that the project or a part of it fails to provide a significant net benefit in any of the Member States of the relevant national regulatory authorities. The relevant national regulatory authorities shall include the relevant efficiently incurred investment costs in tariffs, as defined in the recommendation referred to in paragraph 11, in line with the allocation of investment costs to be borne by each system operator for the project. For projects in the territories of their respective Member State, the relevant national regulatory authorities, shall thereafter assess, where appropriate, whether any affordability issues might arise due to the inclusion of the investment costs in tariffs.

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

(a) congestion rents or other charges;

(b) revenues stemming from the inter-transmission system operator compensation mechanism established under Article 49 of Regulation (EU) 2019/943.

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

In allocating costs across borders, the relevant national regulatory authorities, after consulting the TSOs concerned, shall seek a mutual agreement based on, but not limited to, the information specified in paragraphs 4, first subparagraph, points (a) and (b), of this Article. Their assessment shall consider all the relevant scenarios referred to in Article 12 and other scenarios for network development planning, allowing a robust analysis of the contribution of the project of common interest to the Union energy policy of decarbonisation, market integration, competition, sustainability and security of supply. Where additional scenarios are used, they shall be consistent with the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective and be subject to the same level of consultation and scrutiny as the process provided for in Article 12.

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

6. The relevant national regulatory authorities shall, on the basis of the cross-border cost allocation referred to in paragraph 5 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 41(1), point (a), of Directive 2009/73/EC and Article 59(1), point (a), of Directive (EU) 2019/944, insofar as those costs correspond to those of an efficient and structurally comparable operator.

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

(a) an evaluation of the identified impact on each of the concerned Member States, including those concerning network tariffs;

(b) an evaluation of the business plan referred to in paragraph 4, first subparagraph, point (b);

(c) regional or Union-wide positive externalities, such as security of supply, system flexibility, solidarity or innovation, which the project would generate;

(d) the result of the consultation of the project promoters concerned.

The cost allocation decision shall be published.

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

In that case, or upon a joint request from the relevant national regulatory authorities, the decision on the investment request including cross-border cost allocation referred to in paragraph 5 shall be taken by the Agency within three months of the date of referral to the Agency.

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

The assessment of the Agency shall consider all relevant scenarios established under Article 12 and other scenarios for network development planning, allowing a robust analysis of the contribution of the project of common interest to the Union energy policy targets of decarbonisation, market integration, competition, sustainability and security of supply. Where additional scenarios are used, they shall be consistent with the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective and be subject to the same level of consultation and scrutiny as the process provided for in Article 12.

The Agency, in its decision on the investment request including cross-border cost allocation, shall leave the determination of the way the investment costs are included in the tariffs in line with the cross-border cost allocation prescribed, to the relevant national authorities at the time of the implementation of that decision in accordance with national law.

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

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

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

10. This Article shall not apply to projects of common interest which have received an exemption from:

(a) Articles 32, 33 and 34 and Article 41(6), (8) and (10) of Directive 2009/73/EC, pursuant to Article 36 of that Directive;

(b) Article 19(2) and (3) of Regulation (EU) 2019/943 or Article 6, Article 59(7) and Article 60(1) of Directive (EU) 2019/944, pursuant to Article 63 of Regulation (EU) 2019/943;

(c) unbundling or third party access rules, pursuant to Article 17 of Regulation (EC) No 714/2009 of the European Parliament and of the Council ([32]) or to Article 64 of Regulation (EU) 2019/943 and Article 66 of Directive (EU) 2019/944.

11. By 24 June 2023, the Agency shall adopt a recommendation for identifying good practices for the treatment of investment requests for projects of common interest. That recommendation shall be regularly updated as necessary, in particular to ensure consistency with the principles on the offshore grids for renewable energy cross-border cost sharing as referred to in Article 15(1). In adopting or amending the recommendation, the Agency shall carry out an extensive consultation process, involving all relevant stakeholders.

12. This Article shall apply mutatis mutandis to projects of mutual interest.

Article 17

Regulatory incentives

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

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

(a) from Articles 32, 33, and 34 and from Article 41(6), (8) and (10) of Directive 2009/73/EC, pursuant to Article 36 of that Directive;

(b) from Article 19(2) and (3) of Regulation (EU) 2019/943 or from Article 6, Article 59(7) and Article 60(1) of Directive (EU) 2019/944 pursuant to Article 63 of Regulation (EU) 2019/943;

(c) pursuant to Article 36 of Directive 2009/73/EC;

(d) pursuant to Article 17 of Regulation (EC) No 714/2009.

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

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

(a) the rules for anticipatory investment;

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

([32]) 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 and repealing Regulation (EC) No 1228/2003 (OJ L 211, 14.8.2009, p. 15).

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

(d) any other measure deemed necessary and appropriate.

4. By 24 January 2023, each national regulatory authority shall submit to the Agency its methodology and the criteria used to evaluate investments in energy infrastructure projects and the higher risks incurred by those projects, updated in view of latest legislative, policy, technological and market developments. Such methodology and criteria shall also expressly address the specific risks incurred by offshore grids for renewable energy referred to in point (1)(f) of Annex II and by projects, which, while having low capital expenditure, incur significant operating expenditure.

5. By 24 June 2023, taking due account of the information received pursuant to paragraph 4 of this Article, the Agency shall facilitate the sharing of good practices and make recommendations in accordance with Article 6(2) of Regulation (EU) 2019/942 regarding both of the following:

(a) the incentives referred to in paragraph 1 on the basis of a benchmarking of best practice by national regulatory authorities;

(b) a common methodology to evaluate the incurred higher risks of investments in energy infrastructure projects.

6. By 24 September 2023, each national regulatory authority shall publish its methodology and the criteria used to evaluate investments in energy infrastructure projects and the higher risks incurred by them.

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

CHAPTER VII

Financing

Article 18

Eligibility of projects for Union financial assistance under Regulation (EU) 2021/1153

1. Projects of common interest falling under the energy infrastructure categories set out in Article 24 and Annex II shall be eligible for Union financial assistance in the form of grants for studies and financial instruments.

2. Projects of common interest falling under the energy infrastructure categories set out in Article 24 and in point (1)(a), (b), (c), (d) and (f) of Annex II and point (3) of Annex II shall also be eligible for Union financial assistance in the form of grants for works where they fulfil all of the following criteria:

(a) the project specific cost-benefit analysis drawn up pursuant to Article 16(4), point (a), provides evidence concerning the existence of significant positive externalities, such as security of supply, system flexibility, solidarity or innovation;

(b) the project has received a cross-border cost allocation decision pursuant to Article 16 or, as regards projects of common interest falling under the energy infrastructure category set out in point (3) of Annex II, where they do not fall under the competence of national regulatory authorities and therefore they do not receive a cross-border cost allocation decision, the project aims to provide services across borders, brings technological innovation and ensures the safety of cross-border grid operation;

(c) the project cannot be financed by the market or through the regulatory framework in accordance with the business plan and other assessments, in particular those carried out by potential investors, creditors or the national regulatory authority, taking into account any decision on incentives and reasons referred to in Article 17(2) when assessing the project's need for Union financial assistance.

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

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

5. This Article shall apply mutatis mutandis to projects of mutual interest.

Projects of mutual interest shall be eligible for Union financial assistance under conditions set out in Article 5(2) of Regulation (EU) 2021/1153. With regard to grants for works, projects of mutual interest shall be eligible for Union financial assistance provided that they fulfil the criteria set out in paragraph 2 of this Article and where the project contributes to the Union's overall energy and climate policy objectives.

Article 19

Guidance for the award criteria of Union financial assistance

The specific criteria set out in Article 4(3) of this Regulation and the parameters set out in Article 4(5) of this Regulation shall apply for the purpose of establishing award criteria for Union financial assistance in Regulation (EU) 2021/1153. For projects of common interest falling under Article 24 of this Regulation, the criteria of market integration, security of supply, competition and sustainability shall apply.

CHAPTER VIII

Final provisions

Article 20

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 3(4) shall be conferred on the Commission for a period of seven years from 23 June 2022. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the seven-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 3(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 3(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 21

Reporting and evaluation

By 30 June 2027, the Commission shall publish a report on the implementation of projects on the Union list, and submit it to the European Parliament and the Council. That report shall provide an evaluation of:

(a) the progress achieved in the planning, development, construction and commissioning of projects on the Union list, and, where relevant, delays in implementation and other difficulties encountered;

(b) the funds engaged and disbursed by the Union for projects on the Union list, compared to the total value of funded projects on the Union list;

(c) the progress achieved in terms of integration of renewable energy sources, including offshore renewable energy sources, and reduced greenhouse gas emissions through the planning, development, construction and commissioning of projects on the Union list;

(d) for the electricity and renewable or low-carbon gases including hydrogen sectors, the evolution of the interconnection level between Member States, the corresponding evolution of energy prices, as well as the number of network system failure events, their causes and related economic cost;

(e) the permit granting process and public participation, in particular:

  (i) the average and maximum total duration of the permit granting process for projects on the Union list, 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(6);

  (ii) the level of opposition faced by projects on the Union list, in particular the number of written objections during the public consultation process and the number of legal recourse actions;

  (iii) best and innovative practices with regard to stakeholder involvement;

  (iv) best and innovative practices with regard to mitigation of environmental impacts, including climate adaptation, during permit granting processes and project implementation;

  (v) the effectiveness of the schemes provided for in Article 8(3) regarding compliance with the time limits set in Article 10(1) and (2);

(f) regulatory treatment, in particular:

  (i) the number of projects of common interest having been granted a cross-border cost allocation decision pursuant to Article 16;

  (ii) the number and type of projects of common interest which received specific incentives pursuant to Article 17;

(g) the effectiveness of this Regulation in contributing to the Union's 2030 targets for energy and climate and the achievement of climate neutrality by 2050 at the latest.

Article 22

Review

By 30 June 2027, the Commission shall carry out a review of this Regulation, on the basis of the results of the reporting and evaluation provided for in Article 21 of this Regulation, as well as the monitoring, reporting and evaluation carried out pursuant to Articles 22 and 23 of Regulation (EU) 2021/1153.

Article 23

Information and publicity

The Commission shall establish and maintain a transparency platform easily accessible to the general public through the internet. The platform shall be regularly updated with information from the reports referred to in Article 5(4) and the website referred to in Article 9(7). The platform shall contain the following information:

(a) general, updated information, including geographic information, for each project on the Union list;

(b) the implementation plan as set out in Article 5(1) for each project on the Union list, presented in a manner that allows the assessment of the progress in implementation at any time;

(c) the main expected benefits and contribution to the objectives referred to in Article 1(1) and the costs of the projects except for any commercially sensitive information;

(d) the Union list;

(e) the funds allocated and disbursed by the Union for each project on the Union list;

(f) the links to the national manual of procedures referred to in Article 9;

(g) existing sea basin studies and plans for each priority offshore grid corridor, without infringing any intellectual property rights.

Article 24

Derogation for interconnections for Cyprus and Malta

1. In the case of Cyprus and Malta, which are not interconnected to the trans-European gas network, a derogation from Article 3, Article 4(1), points (a) and (b), Article 4(5), Article 16(4), point (a), and Annexes I, II and III shall apply, without prejudice to Article 32(2). One interconnection for each of those Member States shall maintain its status of project of common interest under this Regulation with all relevant rights and obligations, where that interconnection:

(a) is under development or planning on 23 June 2022;

(b) has been granted the status of project of common interest under Regulation (EU) No 347/2013; and

(c) is necessary to secure permanent interconnection of those Member States to the trans-European gas network.

Those projects shall ensure the future ability to access new energy markets, including hydrogen.

2. The project promoters shall provide sufficient evidence of how the interconnections referred to in paragraph 1 will allow access to new energy markets, including hydrogen, in line with the Union's overall energy and climate policy objectives. Such evidence shall include an assessment of the supply and demand for renewable or low-carbon hydrogen as well as a calculation of the greenhouse gas emissions reduction enabled by the project.

The Commission shall regularly verify that assessment and that calculation, as well as the timely implementation of the project.

3. In addition to the specific criteria set out in Article 19 for Union financial assistance, the interconnections referred to in paragraph 1 of this Article shall be designed in view of ensuring access to future energy markets, including hydrogen, shall not lead to a prolongation of the lifetime of natural gas assets and shall ensure the interoperability of neighbouring networks across borders. Any eligibility for Union financial assistance under Article 18 shall end on 31 December 2027.

4. Any request for Union financial assistance for works shall clearly demonstrate the aim to convert the asset into a dedicated hydrogen asset by 2036 if market conditions allow, by means of a roadmap with a precise timeline.

5. The derogation set out in paragraph 1 shall apply until Cyprus or Malta, respectively, is directly interconnected to the trans-European gas network or until 31 December 2029, whichever is the earlier.

Article 25

Amendment to Regulation (EC) No 715/2009

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

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

Article 26

Amendment to Regulation (EU) 2019/942

In Article 11 of Regulation (EU) 2019/942, points (c) and (d) are replaced by the following:

'(c) carry out the obligations laid out in Article 5, Article 11(3), Article 11(6) to (9), Articles 12, 13 and 17 and in Section 2, point (12), of Annex III to Regulation (EU) 2022/869 of the European Parliament and the Council (*);

(d) take decisions on investment requests including cross-border cost allocation pursuant to Article 16(7) of Regulation (EU) 2022/869.

(*) Regulation (EU) 2022/869 of the European Parliament and the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013 (OJ L 152, 3.6.2022, p. 45).'.

Article 27

Amendment to Regulation (EU) 2019/943

In Article 48(1) of Regulation (EU) 2019/943, the first subparagraph is replaced by the following:

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

Article 28

Amendment to Directive 2009/73/EC

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

'(v) carrying out the obligations laid out in Article 3, Article 5(7) and Articles 14 to 17 of Regulation (EU) 2022/869 of the European Parliament and the Council (*).

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(*) Regulation (EU) 2022/869 of the European Parliament and the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013 (OJ L 152, 3.6.2022, p. 45).'.

Article 29

Amendment to Directive (EU) 2019/944

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

'(aa) carrying out the obligations laid out in Article 3, Article 5(7) and Articles 14 to 17 of Regulation (EU) 2022/869 of the European Parliament and the Council (*).

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(*) Regulation (EU) 2022/869 of the European Parliament and the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943 and Directives 2009/73/EC and (EU) 2019/944, and repealing Regulation (EU) No 347/2013 (OJ L 152, 3.6.2022, p. 45).'.

Article 30

Transitional provisions

This Regulation shall not affect the granting, continuation or modification of financial assistance awarded by the Commission pursuant to Regulation (EU) No 1316/2013 of the European Parliament and of the Council ([33]).

Chapter III shall not apply to projects of common interest that have entered in the permit granting process and for which a project promoter has submitted an application file before 16 November 2013.

Article 31

Transitional period

1. During a transitional period ending on 31 December 2029, dedicated hydrogen assets converted from natural gas assets falling under the energy infrastructure category set out in point (3) of Annex II may be used for transport or storage of a predefined blend of hydrogen with natural gas or biomethane.

2. During the transitional period referred to in paragraph 1, the project promoters shall closely cooperate on project design and implementation in order to ensure interoperability of neighbouring networks.

3. The project promoter shall provide sufficient evidence, including through commercial contracts, how, by the end of the transitional period, the assets referred to in paragraph 1 of this Article will cease to be natural gas assets and become dedicated hydrogen assets, as set out in point (3) of Annex II, and how the increased use of hydrogen will be enabled during the transitional period. Such evidence shall include an assessment of the supply and demand for renewable or low-carbon hydrogen as well as a calculation of the greenhouse gas emissions reduction enabled by the project. In the context of the monitoring of progress achieved in implementing the projects of common interest, the Agency shall verify the timely transition of the project to a dedicated hydrogen asset as set out in point (3) of Annex II.

([33]) Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).

4. Eligibility of projects referred to in paragraph 1 of this Article for Union financial assistance under Article 18 shall end on 31 December 2027.

Article 32

Repeal

1. Regulation (EU) No 347/2013 is repealed from 23 June 2022. No rights shall arise under this Regulation for projects listed in the Annexes to Regulation (EU) No 347/2013.

2. Notwithstanding paragraph 1 of this Article, Annex VII to Regulation (EU) No 347/2013, as amended by Commission Delegated Regulation (EU) 2022/564 ([34]), containing the fifth Union list of projects of common interest as well as Articles 2 to 10, Articles 12, 13 and 14, and Annexes I to IV and Annex VI to Regulation (EU) No 347/2013, shall remain in force and produce effects as regards the projects of common interest included on the fifth Union list until the entry into force of the first Union list of projects of common interest and projects of mutual interest established pursuant to this Regulation.

3. Notwithstanding paragraph 2 of this Article, projects that were included in the fifth Union list of projects of common interest established pursuant to Regulation (EU) No 347/2013 and for which an application file has been accepted for examination by the competent authority shall benefit from the rights and obligations arising from Chapter III of this Regulation for a period of four years from the entry into force of this Regulation.

Article 33

Entry into force

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

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

Done at Brussels, 30 May 2022.

For the European Parliament	*For the Council*
The President	*The President*
R. METSOLA	B. LE MAIRE

([34]) Commission Delegated Regulation (EU) 2022/564 of 19 November 2021 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest (OJ L 109, 8.4.2022, p. 14).

ANNEX I

ENERGY INFRASTRUCTURE PRIORITY CORRIDORS AND AREAS

(as referred to in Article 1(1))

This Regulation shall apply to the following trans-European energy infrastructure priority corridors and areas:

1. PRIORITY ELECTRICITY CORRIDORS

(1) North-South electricity interconnections in Western Europe (NSI West Electricity): interconnections between Member States of the region and with the Mediterranean area including the Iberian peninsula, in particular to integrate electricity from renewable energy sources, reinforce internal grid infrastructures to foster market integration in the region and to end isolation of Ireland, and to ensure the necessary onshore prolongations of offshore grids for renewable energy and the domestic grid reinforcements necessary to ensure an adequate and reliable transmission grid and to supply electricity generated offshore to landlocked Member States.

Member States concerned: Belgium, Denmark, Germany, Ireland, Spain, France, Italy, Luxembourg, Malta, Netherlands, Austria and Portugal.

(2) North-South electricity interconnections in Central Eastern and South Eastern Europe (NSI East Electricity): interconnections and internal lines in North-South and East-West directions to complete the internal market, integrate generation from renewable energy sources to end the isolation of Cyprus, and to ensure the necessary onshore prolongations of offshore grids for renewable energy and the domestic grid reinforcements necessary to ensure an adequate and reliable transmission grid and to supply electricity generated offshore to landlocked Member States.

Member States concerned: Bulgaria, Czechia, Germany, Croatia, Greece, Cyprus, Italy, Hungary, Austria, Poland, Romania, Slovenia and Slovakia.

(3) Baltic Energy Market Interconnection Plan in electricity (BEMIP Electricity): interconnections between Member States and internal lines in the Baltic region, to foster market integration while integrating growing shares of renewable energy in the region.

Member States concerned: Denmark, Germany, Estonia, Latvia, Lithuania, Poland, Finland and Sweden.

2. PRIORITY OFFSHORE GRID CORRIDORS

(4) Northern Seas offshore grids (NSOG): offshore electricity grid development, integrated offshore electricity, as well as, where appropriate, hydrogen grid development and the related interconnectors in the North Sea, the Irish Sea, the Celtic Sea, the English Channel and neighbouring waters to transport electricity or, where appropriate, hydrogen from renewable offshore energy sources to centres of consumption and storage or to increase cross-border renewable energy exchange.

Member States concerned: Belgium, Denmark, Germany, Ireland, France, Luxembourg, Netherlands and Sweden.

(5) Baltic Energy Market Interconnection Plan offshore grids (BEMIP offshore): offshore electricity grid development, integrated offshore electricity, as well as, where appropriate, hydrogen grid development and the related interconnectors in the Baltic Sea and neighbouring waters to transport electricity or, where appropriate, hydrogen from renewable offshore energy sources to centres of consumption and storage or to increase cross-border renewable energy exchange.

Member States concerned: Denmark, Germany, Estonia, Latvia, Lithuania, Poland, Finland and Sweden.

(6) South and West offshore grids (SW offshore): offshore electricity grid development, integrated offshore electricity, as well as, where appropriate, hydrogen grid development and the related interconnectors in the Mediterranean Sea, including the Cadiz Gulf, and neighbouring waters to transport electricity or, where appropriate, hydrogen from renewable offshore energy sources to centres of consumption and storage or to increase cross-border renewable energy exchange.

Member States concerned: Greece, Spain, France, Italy, Malta and Portugal.

(7) South and East offshore grids (SE offshore): offshore electricity grid development, integrated offshore electricity, as well as, where appropriate, hydrogen grid development and the related interconnectors in the Mediterranean Sea, Black Sea and neighbouring waters to transport electricity or, where appropriate, hydrogen from renewable offshore energy sources to centres of consumption and storage or to increase cross-border renewable energy exchange.

Member States concerned: Bulgaria, Croatia, Greece, Italy, Cyprus, Romania and Slovenia.

(8) Atlantic offshore grids: offshore electricity grid development, integrated offshore electricity grid development and the related interconnectors in the North Atlantic Ocean waters to transport electricity from renewable offshore energy sources to centres of consumption and storage and to increase cross-border electricity exchange.

Member States concerned: Ireland, Spain, France and Portugal.

3. PRIORITY CORRIDORS FOR HYDROGEN AND ELECTROLYSERS

(9) Hydrogen interconnections in Western Europe (HI West): hydrogen infrastructure and the repurposing of gas infrastructure, enabling the emergence of an integrated hydrogen backbone, directly or indirectly (via interconnection with a third country), connecting the countries of the region and addressing their specific infrastructure needs for hydrogen supporting the emergence of an Union-wide network for hydrogen transport, and, in addition, as regards islands and island systems, decreasing energy isolation, supporting innovative and other solutions involving at least two Member States with a significant positive impact on the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, and contributing significantly to the sustainability of the island energy system and that of the Union.

Electrolysers: supporting the deployment of power-to-gas applications aiming to enable greenhouse gas reductions and contributing to secure, efficient and reliable system operation and smart energy system integration and, in addition, as regards islands and island systems, supporting innovative and other solutions involving at least two Member States with a significant positive impact on the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, and contributing significantly to the sustainability of the island energy system and that of the Union.

Member States concerned: Belgium, Czechia, Denmark, Germany, Ireland. Spain, France, Italy, Luxembourg, Malta, Netherlands, Austria and Portugal.

(10) Hydrogen interconnections in Central Eastern and South Eastern Europe (HI East): hydrogen infrastructure and the repurposing of gas infrastructure, enabling the emergence of an integrated hydrogen backbone, directly or indirectly (via interconnection with a third country), connecting the countries of the region and addressing their specific infrastructure needs for hydrogen supporting the emergence of an Union-wide network for hydrogen transport and, in addition, as regards islands and island systems, decreasing energy isolation, supporting innovative and other solutions involving at least two Member States with a significant positive impact on the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, and contributing significantly to the sustainability of the island energy system and that of the Union.

Electrolysers: supporting the deployment of power-to-gas applications aiming to enable greenhouse gas reductions and contributing to secure, efficient and reliable system operation and smart energy system integration and, in addition, as regards islands and island systems, supporting innovative and other solutions involving at least two Member States with a significant positive impact on the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, and contributing significantly to the sustainability of the island energy system and that of the Union.

Member States concerned: Bulgaria, Czechia, Germany, Greece, Croatia, Italy, Cyprus, Hungary, Austria, Poland, Romania, Slovenia and Slovakia.

(11) Baltic Energy Market Interconnection Plan in hydrogen (BEMIP Hydrogen): hydrogen infrastructure and the repurposing of gas infrastructure, enabling the emergence of an integrated hydrogen backbone, directly or indirectly (via interconnection with a third country), connecting the countries of the region and addressing their specific infrastructure needs for hydrogen supporting the emergence of an Union-wide network for hydrogen transport and, in addition, as regards islands and island systems, decreasing energy isolation, supporting innovative and other solutions involving at least two Member States with a significant positive impact on the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, and contributing significantly to the sustainability of the island energy system and that of the Union.

Electrolysers: supporting the deployment of power-to-gas applications aiming to enable greenhouse gas reductions and contributing to secure, efficient and reliable system operation and smart energy system integration and, in addition, as regards islands and island systems, supporting innovative and other solutions involving at least two Member States with a significant positive impact on the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, and contributing significantly to the sustainability of the island energy system and that of the Union.

Member States concerned: Denmark, Germany, Estonia, Latvia, Lithuania, Poland, Finland and Sweden.

4. PRIORITY THEMATIC AREAS

(12) Smart electricity grids deployment: adopting smart grid technologies across the Union 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, energy storage, electric vehicles and other flexibility sources and, in addition, as regards islands and island systems, decreasing energy isolation, supporting innovative and other solutions involving at least two Member States with a significant positive impact on the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, and contributing significantly to the sustainability of the island energy system and that of the Union.

Member States concerned: all.

(13) Cross-border carbon dioxide network: development of infrastructure for transport and storage of carbon dioxide between Member States and with neighbouring third countries of carbon dioxide capture and storage captured from industrial installations for the purpose of permanent geological storage as well as carbon dioxide utilisation for synthetic fuel gases leading to the permanent neutralization of carbon dioxide.

Member States concerned: all.

(14) Smart gas grids: adoption of smart gas grid technologies across the Union to efficiently integrate a plurality of low-carbon and particularly renewable gas sources into the gas network, support the uptake of innovative and digital solutions for network management and facilitating smart energy sector integration and demand response, including the related physical upgrades if indispensable to the functioning of the equipment and installations for integration of low-carbon and particularly renewable gases.

Member States concerned: all.

ANNEX II

ENERGY INFRASTRUCTURE CATEGORIES

The energy infrastructure categories to be developed in order to implement the energy infrastructure priorities set out in Annex I shall be the following:

(1) concerning electricity:

(a) high and extra-high voltage overhead transmission lines, crossing a border or within a Member State territory including the exclusive economic zone, 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. For Member States and small isolated systems with a lower voltage overall transmission system, those voltage thresholds are equal to the highest voltage level in their respective electricity systems;

(b) any equipment or installation falling under energy infrastructure category referred to in point (a) enabling transmission of offshore renewable electricity from the offshore generation sites (energy infrastructure for offshore renewable electricity);

(c) energy storage facilities, in individual or aggregated form, used for storing energy 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 and distribution lines designed for a voltage of 110 kV or more. For Member States and small isolated systems with a lower voltage overall transmission system, those voltage thresholds are equal to the highest voltage level in their respective electricity systems;

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

(e) smart electricity grids: any equipment or installation, digital systems and components integrating information and communication technologies (ICT), through operational digital platforms, control systems and sensor technologies both at transmission and medium and high voltage distribution level, aiming to ensure a more efficient and intelligent electricity transmission and distribution network, increased capacity to integrate new forms of generation, energy storage and consumption and facilitating new business models and market structures, including investments in islands and island systems to decrease energy isolation, to support innovative and other solutions involving at least two Member States with a significant positive impact on the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, and to contribute significantly to the sustainability of the island energy system and that of the Union;

(f) any equipment or installation falling under energy infrastructure category referred to in point (a) having dual functionality: interconnection and offshore grid connection system from the offshore renewable generation sites to two or more Member States and third countries participating in projects on the Union list, including the onshore prolongation of this equipment up to the first substation in the onshore transmission system, as well as any offshore adjacent equipment or installation essential to operate safely, securely and efficiently, including protection, monitoring and control systems, and necessary substations if they also ensure technology interoperability, inter alia, interface compatibility between various technologies (offshore grids for renewable energy);

(2) concerning smart gas grids: any of the following equipment or installation aiming to enable and facilitate the integration of a plurality of low-carbon and particularly renewable gases, including biomethane or hydrogen, into the gas network: digital systems and components integrating ICT, control systems and sensor technologies to enable the interactive and intelligent monitoring, metering, quality control and management of gas production, transmission, distribution, storage and consumption within a gas network. Furthermore, such projects may also include equipment to enable reverse flows from the distribution to the transmission level, including the related physical upgrades if indispensable to the functioning of the equipment and installations for integration of low-carbon and particularly renewable gases;

(3) concerning hydrogen:

(a) pipelines for the transport, mainly at high pressure, of hydrogen, including repurposed natural gas infrastructure, giving access to multiple network users on a transparent and non-discriminatory basis;

(b) storage facilities connected to the high-pressure hydrogen pipelines referred to in point (a);

(c) reception, storage and regasification or decompression facilities for liquefied hydrogen or hydrogen embedded in other chemical substances with the objective of injecting the hydrogen, where applicable, into the grid;

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

(e) any equipment or installation allowing for hydrogen or hydrogen-derived fuels use in the transport sector within the TEN-T core network identified in accordance with Chapter III of Regulation (EU) No 1315/2013 of the European Parliament and of the Council [1].

Any of the assets listed in points (a) to (d) may be newly constructed or repurposed from natural gas to hydrogen, or a combination of the two;

(4) concerning electrolyser facilities:

(a) electrolysers that:

(i) have at least 50 MW capacity, provided by a single electrolyser or by a set of electrolysers that form a single, coordinated project;

(ii) the production complies with the life cycle greenhouse gas emissions savings requirement of 70 % relative to a fossil fuel comparator of 94 g CO_2eq/MJ as set out in Article 25(2) and Annex V to Directive (EU) 2018/2001. Life cycle greenhouse gas emissions savings are calculated using the methodology referred to in Article 28(5) of Directive (EU) 2018/2001 or, alternatively, using ISO 14067 or ISO 14064-1. The life-cycle greenhouse gas emissions must include indirect emissions. Quantified life-cycle greenhouse gas emission savings are verified in line with Article 30 of Directive (EU) 2018/2001 where applicable, or by an independent third party; and

(iii) have a network-related function, particularly with a view to overall system flexibility and overall system efficiency of electricity and hydrogen networks;

(b) related equipment, including pipeline connection to the network;

(5) concerning carbon dioxide:

(a) dedicated pipelines, other than upstream pipeline network, used to transport carbon dioxide from more than one source, for the purpose of permanent geological storage of carbon dioxide pursuant to Directive 2009/31/EC;

(b) fixed facilities for liquefaction, buffer storage and converters of carbon dioxide in view of its further transportation through pipelines and in dedicated modes of transport such as ship, barge, truck, and train;

(c) without prejudice to any prohibition of geological storage of carbon dioxide in a Member State, surface and injection facilities associated with infrastructure within a geological formation that is used, in accordance with Directive 2009/31/EC, for the permanent geological storage of carbon dioxide, where they do not involve the use of carbon dioxide for the enhanced recovery of hydrocarbons and are necessary to allow the cross-border transport and storage of carbon dioxide;

(d) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems.

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[1] Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ L 348, 20.12.2013, p. 1).

ANNEX III

REGIONAL LISTS OF PROJECTS

1. RULES FOR GROUPS

(1) With regard to energy infrastructure falling under the competence of national regulatory authorities, each Group shall be composed of representatives of the Member States, national regulatory authorities, TSOs, as well as the Commission, the Agency, the EU DSO entity and either the ENTSO for Electricity or the ENTSO for Gas.

For the other energy infrastructure categories, each Group shall be composed of the Commission and the representatives of the Member States, project promoters concerned by each of the relevant priorities set out in Annex I.

(2) Depending on the number of candidate projects for the Union list, regional infrastructure gaps and market developments, the Groups and the decision-making bodies of the Groups may split, merge or meet in different configurations, as necessary, to discuss matters common to all Groups or pertaining solely to particular regions. Such matters may include issues relevant to cross-regional consistency or the number of proposed projects included on the draft regional lists at risk of becoming unmanageable.

(3) Each Group shall organise its work in line with regional cooperation efforts pursuant to Article 12 of Regulation (EC) No 715/2009, Article 34 of Regulation (EU) 2019/943, Article 7 of Directive 2009/73/EC and Article 61 of Directive (EU) 2019/944, and other existing regional cooperation structures.

(4) Each Group shall invite, as appropriate for the purpose of implementing the relevant energy infrastructure priority corridors and areas designated in Annex I, promoters of a project potentially eligible for selection as a project of common interest as well as representatives of national administrations, of regulatory authorities, of civil society and TSOs from third countries. The decision to invite third-country representatives shall be made by consensus.

(5) For the energy infrastructure priority corridors set out in Section 2 of Annex I, each Group shall invite, as appropriate, representatives of the landlocked Member States, competent authorities, national regulatory authorities and TSOs.

(6) Each Group shall invite, as appropriate, the organisations representing relevant stakeholders, including representatives from third countries, and, where deemed to be appropriate, directly the stakeholders, including producers, DSOs, suppliers, consumers, local populations and Union-based organisations for environmental protection, to express their specific expertise. Each Group shall organise hearings or consultations where relevant for the accomplishments of its tasks.

(7) As regards the meetings of the Groups, the Commission shall publish, on a platform accessible to stakeholders, the internal rules, an updated list of member organisations, regularly updated information on the progress of work, meeting agendas, as well as meeting minutes, where available. The deliberations of the decision-making bodies of the Groups and the project ranking in accordance with Article 4(5) shall be confidential. All decisions concerning to the functioning and work of the regional groups shall be made by consensus between the Member States and the Commission.

(8) The Commission, the Agency and the Groups shall strive for consistency between the Groups. For that purpose, the Commission and the Agency shall ensure, when relevant, the exchange of information on all work representing an interregional interest between the Groups concerned.

(9) The participation of national regulatory authorities and the Agency in the Groups shall not jeopardise the fulfilment of their objectives and duties under this Regulation or under Regulation (EU) 2019/942, Articles 40 and 41 of Directive 2009/73/EC and Articles 58, 59 and 60 of Directive (EU) 2019/944.

2. PROCESS FOR ESTABLISHING REGIONAL LISTS

(1) Promoters of a project potentially eligible for selection as a project on the Union list wanting to obtain that status shall submit an application for selection as a project on the Union list to the Group that includes:

(a) an assessment of their projects with regard to their contribution to implementing the priorities set out in Annex I;

(b) an indication of the relevant project category set out in Annex II;

(c) an analysis of the fulfilment of the relevant criteria laid down in Article 4;

(d) for projects having reached a sufficient degree of maturity, a project-specific cost-benefit analysis consistent with the methodologies drawn up pursuant to Article 11;

(e) for projects of mutual interest, the letters of support from the governments of the directly affected countries expressing their support for the project or other non-binding agreements;

(f) any other relevant information for the evaluation of the project.

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

(3) The proposed electricity transmission and storage projects of common interest falling under the energy infrastructure categories set out in point (1)(a), (b), (c), (d) and (f) of Annex II to this Regulation shall be part of the latest available Union-wide ten-year network development plan for electricity, developed by the ENTSO for Electricity pursuant Article 30 of Regulation (EU) 2019/943. The proposed electricity transmission projects of common interest falling under the energy infrastructure categories set out in point (1)(b) and (f) of Annex II to this Regulation shall derive from and be consistent with the integrated offshore network development and grid reinforcements referred to in Article 14(2) of this Regulation.

(4) From 1 January 2024, the proposed hydrogen projects of common interest falling under the energy infrastructure categories set out in point (3) of Annex II to this Regulation are projects that are part of the latest available Community-wide ten-year network development plan for gas, developed by the ENTSO for Gas pursuant Article 8 of Regulation (EC) No 715/2009.

(5) By 30 June 2022 and subsequently for every Union-wide ten-year network development plan, the ENTSO for Electricity and ENTSO for Gas shall issue updated guidelines for inclusion of projects in their respective Union-wide ten-year network development plan, as referred to in points (3) and (4), in order to ensure equal treatment and the transparency of the process. For all the projects on the Union list in force at the time, the guidelines shall establish a simplified process of inclusion in the Union-wide ten-year network development plans taking into account the documentation and data already submitted during the previous Union-wide ten-year network development plan processes, provided that the documentation and data already submitted remains valid.

The ENTSO for Electricity and ENTSO for Gas shall consult the Commission and the Agency about their respective draft guidelines for inclusion of projects in the Union-wide ten-year network development plans and take due account of the Commission's and the Agency's recommendations before the publication of the final guidelines.

(6) Proposed carbon dioxide transport and storage projects falling under the energy infrastructure category set out in point (5) of Annex II shall be presented as part of a plan, developed by at least two Member States, for the development of cross-border carbon dioxide transport and storage infrastructure, to be presented by the Member States concerned or entities designated by those Member States to the Commission.

(7) The ENTSO for Electricity and the ENTSO for Gas shall provide information to the Groups as to how they applied the guidelines to evaluate inclusion in the Union-wide ten-year network development plans.

(8) For projects falling under their competence, the national regulatory authorities and, where necessary, the Agency shall, where possible in the context of regional cooperation pursuant to Article 7 of Directive 2009/73/EC and Article 61 of Directive (EU) 2019/944, check the consistent application of the criteria and of the cost-benefit analysis methodology and evaluate their cross-border relevance. They shall present their assessment to the Group. The Commission shall ensure that criteria and methodologies referred to in Article 4 of this Regulation and Annex IV are applied in a harmonised way to ensure consistency across the regional groups.

(9) For all projects not covered in point (8) of this Annex, the Commission shall evaluate the application of the criteria set out in Article 4 of this Regulation. The Commission shall also take into account the potential for future extension to include additional Member States. The Commission shall present its assessment to the Group. For projects applying for the status of project of mutual interest, third-country representatives and regulatory authorities shall be invited to the presentation of the assessment.

(10) Each 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 territory, may present an opinion to the Group specifying its concerns.

(11) The Group shall examine, at the request of a Member State of the Group, the substantiated reasons presented by a Member State pursuant to Article 3(3) for not approving a project related to its territory.

(12) The Group shall consider whether the energy efficiency first principle is applied as regards the establishment of the regional infrastructure needs and as regards each of the candidate projects. The Group shall, in particular, consider solutions such as demand-side management, market arrangement solutions, implementation of digital solutions, and renovation of buildings as priority solutions where they are judged more cost-efficient on a system wide perspective than the construction of new supply side infrastructure.

(13) The Group shall meet to examine and rank the proposed projects based on a transparent assessment of the projects and using the criteria set out in Article 4 taking into account the assessment of the regulators, or the assessment of the Commission for projects not falling within the competence of national regulatory authorities.

(14) The draft regional lists of proposed projects falling under the competence of national regulatory authorities drawn up by the Groups, together with any opinions as specified in point (10) of this Section, shall be submitted to the Agency six months before the adoption date of the Union list. The draft regional lists and the accompanying opinions shall be assessed by the Agency within three months of the date of receipt. The Agency shall provide an opinion on the draft regional lists, in particular on the consistent application of the criteria and the cost-benefit analysis across regions. The opinion of the Agency shall be adopted in accordance with the procedure referred to in Article 22(5) of Regulation (EU) 2019/942.

(15) Within one month of the date of receipt of the Agency's opinion, the decision-making body of each Group shall adopt its final regional list of proposed projects, respecting the provisions set out in Article 3(3), on the basis of the Groups' proposal and taking into account the opinion of the Agency and the assessment of the national regulatory authorities submitted in accordance with point (8), or the assessment of the Commission for projects not falling within the competence of national regulatory authorities proposed in accordance with point (9), and the advice from the Commission that aims to ensure a manageable total number of projects on the Union list, especially at borders related to competing or potentially competing projects. The decision-making bodies of the Groups shall submit the final regional lists to the Commission, together with any opinions as specified in point (10).

(16) Where, on the basis of the draft regional lists, and after having taken into account the Agency opinion, the total number of proposed projects on the Union list would exceed a manageable number, the Commission shall advise each Group concerned, not to include in the regional list projects that were ranked lowest by the Group concerned in accordance with the ranking established pursuant to Article 4(5).

ANNEX IV

RULES AND INDICATORS CONCERNING CRITERIA FOR PROJECTS

(1) A project of common interest with a significant cross-border impact shall be a project on the territory of a Member State and shall fulfil 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 Member State with one or several other Member States, having the effect of increasing the cross-border grid transfer capacity at the border of that Member State with one or several other Member States, by at least 500 Megawatts (MW) compared to the situation without commissioning of the project, or the project decreases energy isolation of non-interconnected systems in one or more Member States and increases the cross-border grid transfer capacity at the border between two Member States by at least 200 MW;

(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 GW-hours/year;

(c) for smart electricity grids, the project is designed for equipment and installations at high-voltage and medium-voltage level, and involves TSOs, TSOs and DSOs, or DSOs from at least two Member States. The project may involve only DSOs provided that they are from at least two Member States and provided that interoperability is ensured. The project shall satisfy at least two of the following criteria: it involves 50 000 users, generators, consumers or prosumers of electricity, it captures a consumption area of at least 300 GW hours/year, at least 20 % of the electricity consumption linked to the project originates from variable renewable resources, or it decreases energy isolation of non-interconnected systems in one or more Member States. The project does not need to involve a physical common border. For projects related to small isolated systems as defined in Article 2, point (42), of Directive (EU) 2019/944, including islands, those voltage levels shall be equal to the highest voltage level in the relevant electricity system;

(d) for hydrogen transmission, the project enables the transmission of hydrogen across the borders of the Member States concerned, or increases existing cross-border hydrogen transport capacity at a border between two Member States by at least 10 % compared to the situation prior to the commissioning of the project, and the project sufficiently demonstrates that it is an essential part of a planned cross-border hydrogen network and provides sufficient proof of existing plans and cooperation with neighbouring countries and network operators or, for projects decreasing energy isolation of non-interconnected systems in one or more Member States, the project aims to supply, directly or indirectly, at least two Member States;

(e) for hydrogen storage or hydrogen reception facilities referred to in point (3) of Annex II, the project aims to supply, directly or indirectly, at least two Member States;

(f) for electrolysers, the project provides at least 50 MW installed capacity provided by a single electrolyser or by a set of electrolysers that form a single, coordinated project and brings benefits directly or indirectly to at least two Member States, and, specifically, as regards projects on islands and island systems, supports innovative and other solutions involving at least two Member States with a significant positive impact on the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective, and contributes significantly to the sustainability of the island energy system and that of the Union;

(g) for smart gas grids, a project involves TSOs, TSOs and DOS or DSOs from at least two Member States. DSOs may be involved, but only with the support of the TSOs of at least two Member States that are closely associated to the project and ensure interoperability;

(h) for offshore renewable electricity transmission, the project is designed to transfer electricity from offshore generation sites with capacity of at least 500 MW and allows for electricity transmission to onshore grid of a specific Member State, increasing the volume of renewable electricity available on the internal market. The project shall be developed in the areas with low penetration of offshore renewable electricity and shall demonstrate a significant positive impact on the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective and shall contribute significantly to the sustainability of the energy system and market integration while not hindering the cross-border capacities and flows;

(i) for carbon dioxide projects, the project is used to transport and, where applicable, store anthropogenic carbon dioxide originating from at least two Member States.

(2) A project of mutual interest with significant cross-border impact shall be a project and shall fulfil the following conditions:

(a) for projects of mutual interest in the category set out in point (1)(a) and (f) of Annex II, the project increases the grid transfer capacity, or the capacity available for commercial flows, at the border of that Member State with one or more third countries and brings significant benefits, either directly or indirectly (via interconnection with a third country), under the specific criteria listed in in Article 4(3), at Union level. The calculation of the benefits for the Member States shall be performed and published by the ENTSO for Electricity in the frame of Union-wide ten-year network development plan;

(b) for projects of mutual interest in the category set out in point (3) of Annex II, the hydrogen project enables the transmission of hydrogen across at the border of a Member State with one or more third countries and proves bringing significant benefits, either directly or indirectly (via interconnection with a third country) under the specific criteria listed in Article 4(3), at Union level. The calculation of the benefits for the Member States shall be performed and published by the ENTSO for Gas in the frame of Union-wide ten-year network development plan;

(c) for projects of mutual interest in the category set out in point (5) of Annex II, the project can be used to transport and store anthropogenic carbon dioxide by at least two Member States and a third country.

(3) Concerning projects falling under the energy infrastructure categories set out in point (1)(a), (b), (c), (d) and (f) of Annex II, the criteria listed in Article 4 shall be evaluated as follows:

(a) transmission of renewable energy generation to major consumption centres and storage sites, measured in line with the analysis made in the latest available Union-wide ten-year network development plan in electricity, in particular by:

(i) for electricity transmission, estimating the amount of generation capacity from renewable energy sources (by technology, in MW), which is connected and transmitted due to the project, compared to the amount of planned total generation capacity from those types of renewable energy sources in the Member State concerned in 2030 according to the National Energy and Climate Plans submitted by Member States in accordance with Regulation (EU) 2018/1999;

(ii) or energy storage, comparing new capacity provided by the project with total existing capacity for the same storage technology in the area of analysis as set out in Annex V;

(b) market integration, competition and system flexibility, measured in line with the analysis made in the latest available Union-wide ten-year network development plan in electricity, in particular by:

(i) calculating, for cross-border projects, including reinvestment projects, the impact on the grid transfer capability in both power flow directions, measured in terms of amount of power (in MW), and their contribution to reaching the minimum 15 % interconnection target, and for projects with significant cross-border impact, the impact on grid transfer capability at borders between relevant Member States, between relevant Member States and third countries or within relevant Member States and on demand-supply balancing and network operations in relevant Member States;

(ii) assessing the impact, for the area of analysis as set out in Annex V, in terms of energy system-wide generation and transmission costs and evolution and convergence of market prices provided by a project under various planning scenarios, in particular taking into account the variations induced on the merit order;

(c) security of supply, interoperability and secure system operation, measured in line with the analysis made in the latest available Union-wide ten-year network development plan in electricity, in particular by assessing the impact of the project on the loss of load expectation for the area of analysis as set out in Annex V 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.

(4) Concerning projects falling under the energy infrastructure category set out in point (1)(e) of Annex II, the criteria listed in Article 4 shall be evaluated as follows:

(a) the level of sustainability, measured by assessing the extent of the ability of the grids to connect and transport variable renewable energy;

(b) security of supply, measured by assessing the level of losses in distribution, transmission networks, or both, 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 on the duration and frequency of interruptions, including climate related disruptions;

(c) market integration, measured by assessing the innovative uptake in system operation, the decrease of energy isolation and interconnection, as well as the level of integrating other sectors and facilitating new business models and market structures;

(d) network security, flexibility and quality of supply, measured by assessing the innovative approach to system flexibility, cybersecurity, efficient operability between TSO and DSO level, the capacity to include demand response, storage, energy efficiency measures, the cost-efficient use of digital tools and ICT for monitoring and control purposes, the stability of the electricity system and the voltage quality performance.

(5) Concerning hydrogen falling under the energy infrastructure category set out in point (3) of Annex II, the criteria listed in Article 4 shall be evaluated as follows:

(a) sustainability, measured as the contribution of a project to greenhouse gas emission reductions in various end-use applications in hard-to-abate sectors, such as industry or transport; flexibility and seasonal storage options for renewable electricity generation; or the integration of renewable and low-carbon hydrogen with a view to consider market needs and promote renewable hydrogen;

(b) market integration and interoperability, 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;

(c) security of supply and flexibility, measured by calculating the additional value of the project to the resilience, diversity and flexibility of hydrogen supply;

(d) competition, measured by assessing the project's contribution to supply diversification, including the facilitation of access to indigenous sources of hydrogen supply.

(6) Concerning smart gas grid projects falling under the energy infrastructure category set out in point (2) of Annex II, the criteria listed in Article 4 shall be evaluated as follows:

(a) level of sustainability, measured by assessing the share of renewable and low-carbon gases integrated into the gas network, the related greenhouse gas emission savings towards total system decarbonisation and the adequate detection of leakage;

(b) quality and security of supply, measured by assessing the ratio of reliably available gas supply and peak demand, the share of imports replaced by local renewable and low-carbon gases, the stability of system operation, the duration and frequency of interruptions per customer;

(c) enabling flexibility services such as demand response and storage by facilitation of smart energy sector integration through the creation of links to other energy carriers and sectors, measured by assessing the cost savings enabled in connected energy sectors and systems, such as the heat and power system, transport and industry.

(7) Concerning electrolyser projects falling under the energy infrastructure category set out in point (4) of Annex II the criteria listed in Article 4 shall be evaluated as follows:

(a) sustainability, measured by assessing the share of renewable hydrogen or low-carbon hydrogen, in particular from renewable sources meeting the criteria defined in point (4)(a)(ii) of Annex II integrated into the network or estimating the amount of deployment of synthetic fuels of those origins and the related greenhouse gas emission savings;

(b) security of supply, measured by assessing its contribution to the safety, stability and efficiency of network operation, including through the assessment of avoided curtailment of renewable electricity generation;

(c) enabling flexibility services such as demand response and storage by the facilitation of smart energy sector integration through the creation of links to other energy carriers and sectors, measured by assessing the cost savings enabled in connected energy sectors and systems, such as the gas, hydrogen, power and heat networks, the transport and industry sectors.

(8) Concerning carbon dioxide infrastructure falling under the energy infrastructure categories set out in point (5) of Annex II the criteria listed in Article 4 shall be evaluated as follows:

(a) sustainability, measured by assessing the total expected project life-cycle greenhouse gas reductions and the absence of alternative technological solutions such as, but not limited to, energy efficiency, electrification integrating renewable sources, to achieve the same level of greenhouse gas reductions as the amount of carbon dioxide to be captured at connected industrial installations at a comparable cost within a comparable timeline taking into account the greenhouse gas emissions from the energy necessary to capture, transport and store the carbon dioxide, as applicable, considering the infrastructure including, where applicable, other potential future uses;

(b) resilience and security, measured by assessing the security of the infrastructure;

(c) the mitigation of environmental burden and risk via the permanent neutralisation of carbon dioxide.

ANNEX V

ENERGY SYSTEM-WIDE COST-BENEFIT ANALYSIS

The methodologies for cost-benefit analyses developed by the ENTSO for Electricity and the ENTSO for Gas shall be consistent with each other, taking into account sectorial specificities. The methodologies for a harmonised and transparent energy system-wide cost-benefit analysis for projects on the Union list shall be uniform for all infrastructure categories, unless specific divergences are justified. They shall address costs in the broader sense, including externalities, in view of the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective and shall comply with the following principles:

(1) the area for the analysis of an individual project shall cover all Member States and third countries, on whose territory the project is located, all directly neighbouring Member States and all other Member States in which the project has a significant impact. For this purpose, ENTSO for Electricity and ENTSO for Gas shall cooperate with all the relevant system operators in the relevant third countries. In the case of projects falling under the energy infrastructure category set out at point (3) of Annex II, the ENTSO for Electricity and the ENTSO for Gas shall cooperate with the project promoter, including where it is not a system operator;

(2) each cost-benefit analysis shall include sensitivity analyses concerning the input data set, including the cost of generation and greenhouse gases as well as the expected development of demand and supply, including with regard to renewable energy sources, and including the flexibility of both, and the availability of storage, the commissioning date of various projects in the same area of analysis, climate impacts and other relevant parameters;

(3) they shall establish the analysis to be carried out, based on the relevant multi-sectorial input data set by determining the impact with and without each project and shall include the relevant interdependencies with other projects;

(4) they shall give guidance for the development and use of energy network and market modelling necessary for the cost-benefit analysis. The modelling shall allow for a full assessment of economic benefits, including market integration, security of supply and competition, as well as lifting energy isolation, social and environmental and climate impacts, including the cross-sectorial impacts. The methodology shall be fully transparent including details on why, what and how each of the benefits and costs are calculated;

(5) they shall include an explanation on how the energy efficiency first principle is implemented in all the steps of the Union-wide ten-year network development plans;

(6) they shall explain that the development and deployment of renewable energy will not be hampered by the project;

(7) they shall ensure that the Member States on which the project has a net positive impact, the beneficiaries, the Member States on which the project has a net negative impact, and the cost bearers, which may be Members States other than those on which territory the infrastructure is constructed, are identified;

(8) they shall take into account, at least, the capital expenditure, operational and maintenance expenditure costs, as well as the costs induced for the related system over the technical lifecycle of the project as a whole, such as decommissioning and waste management costs, including external costs. The methodologies shall give guidance on discount rates, technical lifetime and residual value to be used for the cost- benefit calculations. They shall furthermore include a mandatory methodology to calculate benefit-to-cost ratio and the net present value, as well as a differentiation of benefits in accordance with the level of reliability of their estimation methods. Methods to calculate the climate and environmental impacts of the projects and the contribution to Union energy targets, such as renewable penetrations, energy efficiency and interconnection targets shall also be taken into account;

(9) they shall ensure that the climate adaptation measures taken for each project are assessed and reflect the cost of greenhouse gas emissions and that the assessment is robust and consistent with other Union policies in order to enable comparison with other solutions which do not require new infrastructures.

ANNEX VI

GUIDELINES FOR TRANSPARENCY AND PUBLIC PARTICIPATION

(1) The manual of procedures referred to in Article 9(1) shall contain at least:

(a) specifications of the relevant pieces of legislation upon which decisions and opinions are based for the various types of relevant projects of common interest, including environmental law;

(b) the list of relevant decisions and opinions to be obtained;

(c) the names and contact details of the competent authority, other authorities concerned and major stakeholders concerned;

(d) the work flow, outlining each stage in the process, including an indicative timeline and a concise overview of the decision-making process for the various types of relevant projects of common interest;

(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;

(g) the manner in which the competent authority, other authorities concerned and the project promoter shall demonstrate that the opinions expressed in the public consultation were taken into account, for example by showing what amendments were done in the location and design of the project or by providing reasons why such opinions have not been taken into account;

(h) to the extent possible, translations of its content in all languages of the neighbouring Member States to be realised in coordination with the relevant neighbouring Member States.

(2) The detailed schedule referred to in Article 10(6), point (b), shall at least specify 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) Without prejudice to the requirements for public consultations under environmental law, 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 common 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, in an inclusive manner, 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 common interest are grouped together where possible including public consultations already required under national law. 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 only from the beginning of the public consultation until the expiry of the deadline;

(d) the project promoters shall ensure that consultations take place during a period that allows for open and inclusive public participation.

(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 various 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 in electronic and, where relevant, printed form, an information leaflet of no more than 15 pages, giving, in a clear and concise manner, an overview of the description, purpose and preliminary timetable of the development steps of the project, the national grid development plan, alternative routes considered, types and characteristics of the potential impact, including of cross-border or transboundary nature, and possible mitigation measures, such information leaflet is to be published prior to the start of the consultation and to list the web addresses of the website of the project of common interest referred to in Article 9(7), the transparency platform referred to in Article 23 and the manual of procedures referred to in point (1) of this Annex;

(b) publish the information on the consultation on the website of the project of common interest referred to in Article 9(7), on the bulletin boards of the offices of local administrations, and, at least, in one or, if applicable, two local media outlets;

(c) invite, in written or electronic form, the relevant affected stakeholders, associations, organisations and groups to dedicated meetings, during which concerns shall be discussed.

(6) The project website referred to in Article 9(7) shall at least publish the following information:

(a) the date when the project website was last updated;

(b) translations of its content in all languages of the Member States concerned by the project or on which the project has a significant cross-border impact in accordance with point (1) of Annex IV;

(c) the information leaflet referred to in point (5) updated with the latest data on the project;

(d) a non-technical and regularly updated summary reflecting the current status of the project, including geographic information, and clearly indicating, in case of updates, changes to previous versions;

(e) the implementation plan as set out in Article 5(1) updated with the latest data on the project;

(f) the funds allocated and disbursed by the Union for the project;

(g) 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;

(h) contact details in view of obtaining additional information or documents;

(i) contact details in view of conveying comments and objections during public consultations.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2011

on wholesale energy market integrity and transparency

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on Functioning of European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee [1],

After consulting the Committee of the Regions of the European Union,

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) It is important to ensure that consumers and other market participants can have confidence in the integrity of electricity and gas markets, that prices set on wholesale energy markets reflect a fair and competitive interplay between supply and demand, and that no profits can be drawn from market abuse.

(2) The goal of increased integrity and transparency of wholesale energy markets should be to foster open and fair competition in wholesale energy markets for the benefit of final consumers of energy.

(3) The advice of the Committee of European Securities Regulators and the European Regulators Group for Electricity and Gas confirmed that the scope of existing legislation might not properly address market integrity issues on the electricity and gas markets and recommended the consideration of an appropriate legislative framework tailored to the energy sector which prevents market abuse and takes sector-specific conditions into account which are not covered by other directives and regulations.

(4) Wholesale energy markets are increasingly interlinked across the Union. Market abuse in one Member State often affects not only wholesale prices for electricity and natural gas across national borders, but also retail prices to consumers and micro-enterprises. Therefore the concern to ensure the integrity of markets cannot be a matter only for individual Member States. Strong cross-border market monitoring is essential for the completion of a fully functioning, interconnected and integrated internal energy market.

(5) Wholesale energy markets encompass both commodity markets and derivative markets, which are of vital importance to the energy and financial markets, and price formation in both sectors is interlinked. They include, inter alia, regulated markets, multilateral trading facilities and over-the-counter (OTC) transactions and bilateral contracts, direct or through brokers.

(6) To date, energy market monitoring practices have been Member State and sector-specific. Depending on the overall market framework and regulatory situation, this can result in trading activities being subject to multiple jurisdictions with monitoring carried out by several different authorities, possibly located in different Member States. This can result in a lack of clarity as to where responsibility rests and even to a situation where no such monitoring exists.

[1] OJ C 132, 3.5.2011, p. 108.

[2] Position of the European Parliament of 14 September 2011 (not yet published in the Official Journal) and Decision of the Council of 10 October 2011.

(7) Behaviour which undermines the integrity of the energy market is currently not clearly prohibited on some of the most important energy markets. In order to protect final consumers and guarantee affordable energy prices for European citizens, it is essential to prohibit such behaviour.

(8) Derivative trading, which may be either physically or financially settled, and commodity trading are used together on wholesale energy markets. It is therefore important that the definitions of insider trading and market manipulation, which constitute market abuse, be compatible between derivatives and commodity markets. This Regulation should in principle apply to all transactions concluded but at the same time should take into account the specific characteristics of the wholesale energy markets.

(9) Retail contracts which cover the supply of electricity or natural gas to final customers are not susceptible to market manipulation in the same way as wholesale contracts which are easily bought and sold. None the less, the consumption decisions of the largest energy users can also affect prices on wholesale energy markets, with effects across national borders. Therefore it is appropriate to consider the supply contracts of such large users in the context of ensuring the integrity of wholesale energy markets.

(10) Taking account of the results of the examination set out in the Commission Communication of 21 December 2010 entitled 'Towards an enhanced market oversight framework for the EU Emissions Trading Scheme', the Commission should consider bringing forward a legislative proposal to tackle the identified shortcomings in the transparency, integrity and supervision of the European carbon market in an appropriate time-frame.

(11) 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 [1] 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 [2] recognise that equal access to information on the physical status and efficiency of the system is necessary to enable all market participants to assess the overall demand and supply situation and identify the reasons for fluctuations in the wholesale price.

(12) The use or attempted use of inside information to trade either on one's own account or on the account of a third party should be clearly prohibited. Use of inside information can also consist in trading in wholesale energy products by persons who know, or ought to know, that the information they possess is inside information. Information regarding the market participant's own plans and strategies for trading should not be considered as inside information. Information which is required to be made public in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Regulations, may serve, if it is price-sensitive information, as the basis of market participants' decisions to enter into transactions in wholesale energy products and therefore could constitute inside information until it has been made public.

(13) Manipulation on wholesale energy markets involves actions undertaken by persons that artificially cause prices to be at a level not justified by market forces of supply and demand, including actual availability of production, storage or transportation capacity, and demand. Forms of market manipulation include placing and withdrawal of false orders; spreading of false or misleading information or rumours through the media, including the internet, or by any other means; deliberately providing false information to undertakings which provide price assessments or market reports with the effect of misleading market participants acting on the basis of those price assessments or market reports; and deliberately making it appear that the availability of electricity generation capacity or natural gas availability, or the availability of transmission capacity is other than the capacity which is actually technically available where such information affects or is likely to affect the price of wholesale energy products. Manipulation and its effects may occur across borders, between electricity and gas markets and across financial and commodity markets, including the emission allowances markets.

(14) Examples of market manipulation and attempts to manipulate the market include conduct by a person, or persons acting in collaboration, to secure a decisive position over the supply of, or demand for, a wholesale energy product which has, or could have, the effect of fixing, directly or indirectly, prices or creating other unfair trading conditions; and the offering, buying or selling of wholesale energy products with the purpose, intention or effect of misleading market participants acting on the basis of reference prices. However, accepted market practices such as those applying in the financial services area, which are currently defined by Article 1(5) of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) [3] and which may be adapted if that Directive is amended, could be a legitimate way for market participants to secure a favourable price for a wholesale energy product.

[1] OJ L 211, 14.8.2009, p. 15.
[2] OJ L 211, 14.8.2009, p. 36.
[3] OJ L 96, 12.4.2003, p. 16.

(15) The disclosure of inside information in relation to a wholesale energy product by journalists acting in their professional capacity should be assessed taking into account the rules governing their profession and the rules governing the freedom of the press, unless those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question or when disclosure is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products.

(16) As financial markets develop, the concepts of market abuse applying to those markets will be adapted. In order to ensure the necessary flexibility to respond quickly to these developments therefore, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of technical updating of the definitions of inside information and market manipulation for the purpose of ensuring coherence with other relevant Union legislation in the fields of financial services and energy. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission should, when preparing and drawing up delegated acts, ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

(17) Efficient market monitoring at Union level is vital for detecting and deterring market abuse on wholesale energy markets. The Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council [1] ('the Agency') is best placed to carry out such monitoring as it has both a Union-wide view of electricity and gas markets, and the necessary expertise in the operation of electricity and gas markets and systems in the Union. National regulatory authorities, which have a comprehensive understanding of developments on energy markets in their Member State, should have an important role in ensuring efficient market monitoring at national level. Close cooperation and coordination between the Agency and national authorities is therefore necessary to ensure proper monitoring and transparency of energy markets. The collection of data by the Agency is without prejudice to the right of national authorities to collect additional data for national purposes.

(18) Efficient market monitoring requires regular and timely access to records of transactions as well as access to structural data on capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas. For this reason market participants, including transmission system operators, suppliers, traders, producers, brokers and large users, who trade wholesale energy products should be required to provide that information to the Agency. The Agency may for its part establish strong links with major organised market places.

(19) In order to ensure uniform conditions for the implementation of the provisions on data collection, 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 the Member States of the Commission's exercise of implementing powers [2]. Reporting obligations should be kept to a minimum and not create unnecessary costs or administrative burdens for market participants. The uniform rules on the reporting of information should therefore undergo an *ex-ante* cost-benefit analysis, should avoid double reporting, and should take account of reporting frameworks developed under other relevant legislation. Furthermore, the required information or parts thereof should be collected from other persons and existing sources where possible. Where a market participant or a third party acting on its behalf, a trade reporting system, an organised market, a trade-matching system, or other person professionally arranging transactions has fulfilled its reporting obligations to a competent authority in accordance with Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments [3] or applicable Union legislation on derivative transactions, central counterparties and trade repositories, its reporting obligation should be considered fulfilled also under this Regulation, but only to the extent that all the information required under this Regulation has been reported.

(20) It is important that the Commission and the Agency work closely together in implementing this Regulation and consult appropriately with the European Networks of Transmission System Operators for Electricity and for Gas and the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council [4] (ESMA), with national regulatory authorities, competent financial authorities and other Member State authorities such as national competition authorities, and with stakeholders such as organised market places (e.g. energy exchanges) and market participants.

[1] OJ L 211, 14.8.2009, p. 1.

[2] OJ L 55, 28.2.2011, p. 13.

[3] OJ L 145, 30.4.2004, p. 1.

[4] OJ L 331, 15.12.2010, p. 84.

(21) A European register of market participants, based on national registers, should be established to enhance the overall transparency and integrity of wholesale energy markets. One year after the establishment of that register, the Commission should assess in cooperation with the Agency, in line with the reports submitted by the Agency to the Commission, and with the national regulatory authorities, the functioning and the usefulness of the European register of market participants. If deemed appropriate based on that assessment, the Commission should consider presenting further instruments to enhance the overall transparency and integrity of wholesale energy markets and to ensure a Union-wide level playing field for market participants.

(22) In order to facilitate efficient monitoring of all aspects of trading in wholesale energy products, the Agency should establish mechanisms to give access to the information which it receives on transactions on wholesale energy markets to other relevant authorities, in particular to ESMA, national regulatory authorities, competent financial authorities of the Member States, national competition authorities, and other relevant authorities.

(23) The Agency should ensure the operational security and protection of the data which it receives, prevent unauthorised access to the information kept by the Agency, and establish procedures to ensure that the data it collects are not misused by persons with an authorised access to them. The Agency should also ascertain whether those authorities which have access to the data held by the Agency are able to maintain an equally high level of security and are bound by appropriate confidentiality arrangements. The operational security of the IT systems used for processing and transmitting the data therefore also needs to be ensured. For setting up an IT system that ensures the highest possible level of data confidentiality, the Agency should be encouraged to work closely with the European Network and Information Security Agency (ENISA). These rules should also apply to other authorities that are entitled to access to the data for the purpose of this Regulation.

(24) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as referred to in Article 6 of the Treaty on European Union and the constitutional traditions in the Member States and should be applied in accordance with the right to freedom of expression and information recognised in Article 11 of the Charter.

(25) Where information is not, or no longer, sensitive from a commercial or security viewpoint, the Agency should be able to make that information available to market participants and the wider public with a view to contributing to enhanced market knowledge. Such transparency will help build confidence in the market and foster the development of knowledge about the functioning of wholesale energy markets. The Agency should establish and make publicly available rules on how it will make that information available in a fair and transparent manner.

(26) National regulatory authorities should be responsible for ensuring that this Regulation is enforced in the Member States. To this end they should have the necessary investigatory powers to allow them to carry out that task efficiently. These powers should be exercised in conformity with national law and may be subject to appropriate oversight.

(27) The Agency should ensure that this Regulation is applied in a coordinated way across the Union, coherent with the application of Directive 2003/6/EC. To that effect, the Agency should publish non-binding guidance on the application of the definitions set out in this Regulation, as appropriate. That guidance should address, inter alia, the issue of accepted market practices. Furthermore, since market abuse on wholesale energy markets often affects more than one Member State, the Agency should have an important role in ensuring that investigations are carried out in an efficient and coherent way. To achieve this, the Agency should be able to request cooperation and to coordinate the operation of investigatory groups comprised of representatives of the concerned national regulatory authorities and, where appropriate, other authorities including national competition authorities.

(28) The Agency should be provided with the appropriate financial and human resources, in order to adequately fulfil the additional tasks assigned to it under this Regulation. For this purpose, the procedure for the establishment, implementation and control of its budget as set out in Articles 23 and 24 of Regulation (EC) No 713/2009 should take due account of these tasks. The budgetary authority should ensure that the best standards of efficiency are met.

(29) National regulatory authorities, competent financial authorities of the Member States and, where appropriate, national competition authorities should cooperate to ensure a coordinated approach to tackling market abuse on wholesale energy markets which encompasses both commodity markets and derivatives markets. That cooperation should include the mutual exchange of information regarding suspicions that acts which are likely to constitute a breach of this Regulation, Directive 2003/6/EC, or competition law are being or have been carried out on wholesale energy markets. Furthermore, that cooperation should contribute to a coherent and consistent approach to investigations and judicial proceedings.

(30) It is important that the obligation of professional secrecy applies to those who receive confidential information in accordance with this Regulation. The Agency, national regulatory authorities, competent financial authorities of the Member States and national competition authorities should ensure the confidentiality, integrity and protection of the information which they receive.

(31) It is important that the penalties for breaches of this Regulation are proportionate, effective and dissuasive, and reflect the gravity of the infringements, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation. The application of these penalties should be carried out in accordance with national law. Recognising the interactions between trading in electricity and natural gas derivative products and trading in actual electricity and natural gas, the penalties for breaches of this Regulation should be in line with the penalties adopted by the Member States in implementing Directive 2003/6/EC. Taking account of the consultation on the Commission Communication of 12 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector', the Commission should consider presenting proposals to harmonise minimum standards for the penalties systems of Member States in an appropriate time-frame. This Regulation affects neither national rules on the standard of proof nor obligations of national regulatory authorities and courts of the Member States to ascertain the relevant facts of a case, provided that such rules and obligations are compatible with general principles of Union law.

(32) Since the objective of this Regulation, namely the provision of a harmonised framework to ensure wholesale energy market transparency and integrity, 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,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter, scope and relationship with other Union legislation

1. This Regulation establishes rules prohibiting abusive practices affecting wholesale energy markets which are coherent with the rules applicable in financial markets and with the proper functioning of those wholesale energy markets whilst taking into account their specific characteristics. It provides for the monitoring of wholesale energy markets by the Agency for the Cooperation of Energy Regulators ('the Agency') in close collaboration with national regulatory authorities and taking into account the interactions between the Emissions Trading Scheme and wholesale energy markets.

2. This Regulation applies to trading in wholesale energy products. Articles 3 and 5 of this Regulation shall not apply to wholesale energy products which are financial instruments and to which Article 9 of Directive 2003/6/EC applies. This Regulation is without prejudice to Directives 2003/6/EC and 2004/39/EC as well as to the application of European competition law to the practices covered by this Regulation.

3. The Agency, national regulatory authorities, ESMA, competent financial authorities of the Member States and, where appropriate, national competition authorities shall cooperate to ensure that a coordinated approach is taken to the enforcement of the relevant rules where actions relate to one or more financial instruments to which Article 9 of Directive 2003/6/EC applies and also to one or more wholesale energy products to which Articles 3, 4 and 5 of this Regulation apply.

4. The Agency's Administrative Board shall ensure that the Agency carries out the tasks assigned to it under this Regulation in accordance with this Regulation and Regulation (EC) No 713/2009.

5. The Director of the Agency shall consult the Agency's Board of Regulators on all aspects of implementation of this Regulation and give due consideration to its advice and opinions.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

(1) 'inside information' means information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products.

For the purposes of this definition, 'information' means:

(a) information which is required to be made public in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Regulations;

(b) information relating to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities;

(c) information which is required to be disclosed in accordance with legal or regulatory provisions at Union or national level, market rules, and contracts or customs on the relevant wholesale energy market, in so far as this information is likely to have a significant effect on the prices of wholesale energy products; and

(d) other information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product.

Information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of wholesale energy products;

(2) 'market manipulation' means:

(a) entering into any transaction or issuing any order to trade in wholesale energy products which:

(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products;

(ii) secures or attempts to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or

(iii) employs or attempts to employ a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;

or

(b) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products, including the dissemination of rumours and false or misleading news, where the disseminating person knew, or ought to have known, that the information was false or misleading.

When information is disseminated for the purposes of journalism or artistic expression, such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless:

(i) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or

(ii) the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products;

(3) 'attempt to manipulate the market' means:

(a) entering into any transaction, issuing any order to trade or taking any other action relating to a wholesale energy product with the intention of:

(i) giving false or misleading signals as to the supply of, demand for, or price of wholesale energy products;

(ii) securing the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or

(iii) employing a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;

or

(b) disseminating information through the media, including the internet, or by any other means with the intention of giving false or misleading signals as to the supply of, demand for, or price of wholesale energy products;

(4) 'wholesale energy products' means the following contracts and derivatives, irrespective of where and how they are traded:

(a) contracts for the supply of electricity or natural gas where delivery is in the Union;

(b) derivatives relating to electricity or natural gas produced, traded or delivered in the Union;

(c) contracts relating to the transportation of electricity or natural gas in the Union;

(d) derivatives relating to the transportation of electricity or natural gas in the Union.

Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products. However, contracts for the supply and distribution of electricity or natural gas to final customers with a consumption capacity greater than the threshold set out in the second paragraph of point (5) shall be treated as wholesale energy products;

(5) 'consumption capacity' means the consumption of a final customer of either electricity or natural gas at full use of that customer's production capacity. It comprises all consumption by that customer as a single economic entity, in so far as consumption takes place on markets with interrelated wholesale prices.

For the purposes of this definition, consumption at individual plants under the control of a single economic entity that have a consumption capacity of less than 600 GWh per year shall not be taken into account in so far as those plants do not exert a joint influence on wholesale energy market prices due to their being located in different relevant geographical markets;

(6) 'wholesale energy market' means any market within the Union on which wholesale energy products are traded;

(7) 'market participant' means any person, including transmission system operators, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets;

(8) 'person' means any natural or legal person;

(9) 'competent financial authority' means a competent authority designated in accordance with the procedure laid down in Article 11 of Directive 2003/6/EC;

(10) 'national regulatory authority' means a national regulatory authority designated in accordance with Article 35(1) of 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 [1] or Article 39(1) of 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 [2];

(11) 'transmission system operator' has the meaning set out in point 4 of Article 2 of Directive 2009/72/EC and in point 4 of Article 2 of Directive 2009/73/EC;

(12) 'parent undertaking' means a parent undertaking within the meaning of Articles 1 and 2 of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts [3];

(13) 'related undertaking' means either a subsidiary or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

(14) 'distribution of natural gas' has the meaning set out in point (5) of Article 2 of Directive 2009/73/EC;

(15) 'distribution of electricity' has the meaning set out in point (5) of Article 2 of Directive 2009/72/EC.

Article 3

Prohibition of insider trading

1. Persons who possess inside information in relation to a wholesale energy product shall be prohibited from:

(a) using that information by acquiring or disposing of, or by trying to acquire or dispose of, for their own account or for the account of a third party, either directly or indirectly, wholesale energy products to which that information relates;

(b) disclosing that information to any other person unless such disclosure is made in the normal course of the exercise of their employment, profession or duties;

(c) recommending or inducing another person, on the basis of inside information, to acquire or dispose of wholesale energy products to which that information relates.

2. The prohibition set out in paragraph 1 applies to the following persons who possess inside information in relation to a wholesale energy product:

(a) members of the administrative, management or supervisory bodies of an undertaking;

(b) persons with holdings in the capital of an undertaking;

(c) persons with access to the information through the exercise of their employment, profession or duties;

(d) persons who have acquired such information through criminal activity;

(e) persons who know, or ought to know, that it is inside information.

[1] OJ L 211, 14.8.2009, p. 55.
[2] OJ L 211, 14.8.2009, p. 94.
[3] OJ L 193, 18.7.1983, p. 1.

3. Points (a) and (c) of paragraph 1 of this Article shall not apply to transmission system operators when purchasing electricity or natural gas in order to ensure the safe and secure operation of the system in accordance with their obligations under points (d) and (e) of Article 12 of Directive 2009/72/EC or points (a) and (c) of Article 13(1) of Directive 2009/73/EC.

4. This Article shall not apply to:

(a) transactions conducted in the discharge of an obligation that has become due to acquire or dispose of wholesale energy products where that obligation results from an agreement concluded, or an order to trade placed, before the person concerned came into possession of inside information;

(b) transactions entered into by electricity and natural gas producers, operators of natural gas storage facilities or operators of LNG import facilities the sole purpose of which is to cover the immediate physical loss resulting from unplanned outages, where not to do so would result in the market participant not being able to meet existing contractual obligations or where such action is undertaken in agreement with the transmission system operator(s) concerned in order to ensure safe and secure operation of the system. In such a situation, the relevant information relating to the transactions shall be reported to the Agency and the national regulatory authority. This reporting obligation is without prejudice to the obligation set out in Article 4(1);

(c) market participants acting under national emergency rules, where national authorities have intervened in order to secure the supply of electricity or natural gas and market mechanisms have been suspended in a Member State or parts thereof. In this case the authority competent for emergency planning shall ensure publication in accordance with Article 4.

5. Where the person who possesses inside information in relation to a wholesale energy product is a legal person, the prohibitions laid down in paragraph 1 shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

6. When information is disseminated for the purposes of journalism or artistic expression such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless:

(a) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or

(b) the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products.

Article 4

Obligation to publish inside information

1. Market participants shall publicly disclose in an effective and timely manner inside information which they possess in respect of business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part. Such disclosure shall include information relevant to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities.

2. A market participant may under its own responsibility exceptionally delay the public disclosure of inside information so as not to prejudice its legitimate interests provided that such omission is not likely to mislead the public and provided that the market participant is able to ensure the confidentiality of that information and does not make decisions relating to trading in wholesale energy products based upon that information. In such a situation the market participant shall without delay provide that information, together with a justification for the delay of the public disclosure, to the Agency and the relevant national regulatory authority having regard to Article 8(5).

3. Whenever a market participant or a person employed by, or acting on behalf of, a market participant discloses inside information in relation to a wholesale energy product in the normal exercise of his employment, profession or duties as referred to in point (b) of Article 3(1), that market participant or person shall ensure simultaneous, complete and effective public disclosure of that information. In the event of a non-intentional disclosure the market participant shall ensure complete and effective public disclosure of the information as soon as possible following the non-intentional disclosure. This paragraph shall not apply if the person receiving the information has a duty of confidentiality, regardless of whether such duty derives from law, regulation, articles of association or a contract.

4. The publication of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes simultaneous, complete and effective public disclosure.

5. Where an exemption from the obligation to publish certain data has been granted to a transmission system operator, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, that operator is thereby also exempted from the obligation set out in paragraph 1 of this Article in respect of that data.

6. Paragraphs 1 and 2 are without prejudice to the obligations of market participants under Directives 2009/72/EC and 2009/73/EC, and Regulations (EC) No 714/2009 and (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Directives and Regulations, in particular regarding the timing and method of publication of information.

7. Paragraphs 1 and 2 are without prejudice to the right of market participants to delay the disclosure of sensitive information relating to the protection of critical infrastructure as provided for in point (d) of Article 2 of 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 [1], if it is classified in their country.

Article 5

Prohibition of market manipulation

Any engagement in, or attempt to engage in, market manipulation on wholesale energy markets shall be prohibited.

Article 6

Technical updating of definitions of inside information and market manipulation

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 20 in order to:

(a) align the definitions set out in points (1), (2), (3) and (5) of Article 2 for the purpose of ensuring coherence with other relevant Union legislation in the fields of financial services and energy; and

(b) update those definitions for the sole purpose of taking into account future developments on wholesale energy markets.

2. The delegated acts referred to in paragraph 1 shall take into account at least:

(a) the specific functioning of wholesale energy markets, including the specificities of electricity and gas markets, and the interaction between commodity markets and derivative markets;

(b) the potential for manipulation across borders, between electricity and gas markets and across commodity markets and derivative markets;

(c) the potential impact on wholesale energy market prices of actual or planned production, consumption, use of transmission, or use of storage capacity; and

(d) network codes and framework guidelines adopted in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009.

Article 7

Market monitoring

1. The Agency shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation. It shall collect the data for assessing and monitoring wholesale energy markets as provided for in Article 8.

2. National regulatory authorities shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets referred to in paragraph 1. For this purpose national regulatory authorities shall have access to relevant information held by the Agency which it has collected in accordance with paragraph 1 of this Article, subject to Article 10(2). National regulatory authorities may also monitor trading activity in wholesale energy products at national level.

Member States may provide for their national competition authority or a market monitoring body established within that authority to carry out market monitoring with the national regulatory authority. In carrying out such market monitoring, the national competition authority or the market monitoring body shall have the same rights and obligations as the national regulatory authority pursuant to the first subparagraph of this paragraph, the second sentence of the second subparagraph of paragraph 3 of this Article, the second sentence of Article 4(2), the first sentence of Article 8(5), and Article 16.

3. The Agency shall at least on an annual basis submit a report to the Commission on its activities under this Regulation and make this report publicly available. In such reports the Agency shall assess the operation and transparency of different categories of market places and ways of trading and may make recommendations to the Commission as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market. It may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency. Reports may be combined with the report referred to in Article 11(2) of Regulation (EC) No 713/2009.

The Agency may make recommendations to the Commission as to the records of transactions, including orders to trade, which it considers are necessary to effectively and efficiently monitor wholesale energy markets. Before making such recommendations, the Agency shall consult with interested parties, in particular with national regulatory authorities, competent financial authorities in the Member States, national competition authorities and ESMA.

All recommendations should be made available to the European Parliament, the Council and the Commission and to the public.

[1] OJ L 345, 23.12.2008, p. 75.

Article 8

Data collection

1. Market participants, or a person or authority listed in points (b) to (f) of paragraph 4 on their behalf, shall provide the Agency with a record of wholesale energy market transactions, including orders to trade. The information reported shall include the precise identification of the wholesale energy products bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction and the beneficiaries of the transaction and any other relevant information. While overall responsibility lies with market participants, once the required information is received from a person or authority listed in points (b) to (f) of paragraph 4, the reporting obligation on the market participant in question shall be considered to be fulfilled.

2. The Commission shall, by means of implementing acts:

(a) draw up a list of the contracts and derivatives, including orders to trade, which are to be reported in accordance with paragraph 1 and appropriate *de minimis* thresholds for the reporting of transactions where appropriate;

(b) adopt uniform rules on the reporting of information which is to be provided in accordance with paragraph 1;

(c) lay down the timing and form in which that information is to be reported.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of existing reporting systems.

3. Persons referred to in points (a) to (d) of paragraph 4 who have reported transactions in accordance with Directive 2004/39/EC or applicable Union legislation on derivative transactions, central counterparties and trade repositories shall not be subject to double reporting obligations relating to those transactions.

Without prejudice to the first subparagraph of this paragraph, the implementing acts referred to in paragraph 2 may allow organised markets and trade matching or trade reporting systems to provide the Agency with records of wholesale energy transactions.

4. For the purposes of paragraph 1, information shall be provided by:

(a) the market participant;

(b) a third party acting on behalf of the market participant;

(c) a trade reporting system;

(d) an organised market, a trade-matching system or other person professionally arranging transactions;

(e) a trade repository registered or recognised under applicable Union legislation on derivative transactions, central counterparties and trade repositories; or

(f) a competent authority which has received that information in accordance with Article 25(3) of Directive 2004/39/EC or ESMA when it has received that information in accordance with applicable Union legislation on derivative transactions, central counterparties and trade repositories.

5. Market participants shall provide the Agency and national regulatory authorities with information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities, for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.

6. The Commission shall, by means of implementing acts:

(a) adopt uniform rules on the reporting of information to be provided in accordance with paragraph 5 and on appropriate thresholds for such reporting where appropriate;

(b) lay down the timing and form in which that information is to be reported.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of existing reporting obligations under Regulations (EC) No 714/2009 and (EC) No 715/2009.

Article 9

Registration of market participants

1. Market participants entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) shall register with the national regulatory authority in the Member State in which they are established or resident or, if they are not established or resident in the Union, in a Member State in which they are active.

A market participant shall register only with one national regulatory authority. Member States shall not require a market participant already registered in another Member State to register again.

The registration of market participants is without prejudice to obligations to comply with applicable trading and balancing rules.

2. Not later than 3 months after the date on which the Commission adopts the implementing acts set out in Article 8(2), national regulatory authorities shall establish national registers of market participants which they shall keep up to date. The register shall give each market participant a unique identifier and shall contain sufficient information to identify the market participant, including relevant details relating to its value added tax number, its place of establishment, the persons responsible for its operational and trading decisions, and the ultimate controller or beneficiary of the market participant's trading activities.

3. National regulatory authorities shall transmit the information in their national registers to the Agency in a format determined by the Agency. The Agency shall, in cooperation with those authorities, determine that format and shall publish it by 29 June 2012. Based on the information provided by national regulatory authorities, the Agency shall establish a European register of market participants. National regulatory authorities and other relevant authorities shall have access to the European register. Subject to Article 17, the Agency may decide to make the European register, or extracts thereof, publicly available provided that commercially sensitive information on individual market participants is not disclosed.

4. Market participants referred to in paragraph 1 of this Article shall submit the registration form to the national regulatory authority prior to entering into a transaction which is required to be reported to the Agency in accordance with Article 8(1).

5. Market participants referred to in paragraph 1 shall communicate promptly to the national regulatory authority any change which has taken place as regards the information provided in the registration form.

Article 10

Sharing of information between the Agency and other authorities

1. The Agency shall establish mechanisms to share information it receives in accordance with Article 7(1) and Article 8 with national regulatory authorities, competent financial authorities of the Member States, national competition authorities, ESMA and other relevant authorities. Before establishing such mechanisms, the Agency shall consult with those authorities.

2. The Agency shall give access to the mechanisms referred to in paragraph 1 only to authorities which have set up systems enabling the Agency to meet the requirements of Article 12(1).

3. Trade repositories registered or recognised under applicable Union legislation on derivative transactions, central counterparties and trade repositories shall make relevant information regarding wholesale energy products and derivatives of emissions allowances collected by them available to the Agency.

ESMA shall transmit to the Agency reports of transactions in wholesale energy products received pursuant to Article 25(3) of Directive 2004/39/EC and under applicable Union legislation on derivative transactions, central counterparties and trade repositories. Competent authorities receiving reports of transactions in wholesale energy products received pursuant to Article 25(3) of Directive 2004/39/EC shall transmit those reports to the Agency.

The Agency and authorities responsible for overseeing trading in emissions allowances or derivatives relating to emissions allowances shall cooperate with each other and establish appropriate mechanisms to provide the Agency with access to records of transactions in such allowances and derivatives where those authorities collect information on such transactions.

Article 11

Data protection

This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1] or the obligations of the Agency, when fulfilling its responsibilities, relating to its processing of personal data under Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [2].

Article 12

Operational reliability

1. The Agency shall ensure the confidentiality, integrity and protection of the information received pursuant to Article 4(2) and Articles 8 and 10. The Agency shall take all necessary measures to prevent any misuse of, and unauthorised access to, the information maintained in its systems.

National regulatory authorities, competent financial authorities of the Member States, national competition authorities, ESMA and other relevant authorities shall ensure the confidentiality, integrity and protection of the information which they receive pursuant to Articles 4(2), 7(2) or 8(5) or Article 10 and shall take steps to prevent any misuse of such information.

The Agency shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures.

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.

2. Subject to Article 17, the Agency may decide to make publicly available parts of the information which it possesses, provided that commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred.

The Agency shall make its commercially non-sensitive trade database available for scientific purposes, subject to confidentiality requirements.

Information shall be published or made available in the interest of improving transparency of wholesale energy markets and provided it is not likely to create any distortion in competition on those energy markets.

The Agency shall disseminate information in a fair manner according to transparent rules which it shall draw up and make publicly available.

Article 13

Implementation of prohibitions against market abuse

1. National regulatory authorities shall ensure that the prohibitions set out in Articles 3 and 5 and the obligation set out in Article 4 are applied.

Each Member State shall ensure that its national regulatory authorities have the investigatory and enforcement powers necessary for the exercise of that function by 29 June 2013. Those powers shall be exercised in a proportionate manner.

Those powers may be exercised:

(a) directly;

(b) in collaboration with other authorities; or

(c) by application to the competent judicial authorities.

Where appropriate, the national regulatory authorities may exercise their investigatory powers in collaboration with organised markets, trade-matching systems or other persons professionally arranging transactions as referred to in point (d) of Article 8(4).

2. The investigatory and enforcement powers referred to in paragraph 1 shall be limited to the aim of the investigation. They shall be exercised in conformity with national law and include the right to:

(a) have access to any relevant document in any form, and to receive a copy of it;

(b) demand information from any relevant person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and, if necessary, the right to summon and hear any such person or principal;

(c) carry out on-site inspections;

(d) require existing telephone and existing data traffic records;

(e) require the cessation of any practice that is contrary to this Regulation or delegated acts or implementing acts adopted on the basis thereof;

(f) request a court to freeze or sequester assets;

(g) request a court or any competent authority to impose a temporary prohibition of professional activity.

Article 14

Right of appeal

Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

Article 15

Obligations of persons professionally arranging transactions

Any person professionally arranging transactions in wholesale energy products who reasonably suspects that a transaction might breach Article 3 or 5 shall notify the national regulatory authority without further delay.

Persons professionally arranging transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to identify breaches of Article 3 or 5.

Article 16

Cooperation at Union and national level

1. The Agency shall aim to ensure that national regulatory authorities carry out their tasks under this Regulation in a coordinated and consistent way.

The Agency shall publish non-binding guidance on the application of the definitions set out in Article 2, as appropriate.

National regulatory authorities shall cooperate with the Agency and with each other, including at regional level, for the purpose of carrying out their duties in accordance with this Regulation.

National regulatory authorities, competent financial authorities and the national competition authority in a Member State may establish appropriate forms of cooperation in order to ensure effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, judicial proceedings and to the enforcement of this Regulation and relevant financial and competition law.

2. National regulatory authorities shall without delay inform the Agency in as specific a manner as possible where they have reasonable grounds to suspect that acts in breach of this Regulation are being, or have been, carried out either in that Member State or in another Member State.

Where a national regulatory authority suspects that acts which affect wholesale energy markets or the price of wholesale energy products in that Member State are being carried out in another Member State, it may request the Agency to take action in accordance with paragraph 4 of this Article and, if the acts affect financial instruments subject to Article 9 of Directive 2003/6/EC, in accordance with paragraph 3 of this Article.

3. In order to ensure a coordinated and consistent approach to market abuse on wholesale energy markets:

(a) national regulatory authorities shall inform the competent financial authority of their Member State and the Agency where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to Article 9 of that Directive; for these purposes, national regulatory authorities may establish appropriate forms of cooperation with the competent financial authority in their Member State;

(b) the Agency shall inform ESMA and the competent financial authority where it has reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to Article 9 of that Directive;

(c) the competent financial authority of a Member State shall inform ESMA and the Agency where it has reasonable grounds to suspect that acts in breach of Articles 3 and 5 are being, or have been, carried out on wholesale energy markets in another Member State;

(d) national regulatory authorities shall inform the national competition authority of their Member State, the Commission and the Agency where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy market which are likely to constitute a breach of competition law.

4. In order to carry out its functions under paragraph 1, where, inter alia, on the basis of initial assessments or analysis, the Agency suspects that there has been a breach of this Regulation, it shall have the power:

(a) to request one or more national regulatory authorities to supply any information related to the suspected breach;

(b) to request one or more national regulatory authorities to commence an investigation of the suspected breach, and to take appropriate action to remedy any breach found. Any decision as regards the appropriate action to be taken to remedy any breach found shall be the responsibility of the national regulatory authority concerned;

(c) where it considers that the possible breach has, or has had, a cross-border impact, to establish and coordinate an investigatory group consisting of representatives of concerned national regulatory authorities to investigate whether this Regulation has been breached and in which Member State the breach took place. Where appropriate, the Agency may also request the participation of representatives of the competent financial authority or other relevant authority of one or more Member States in the investigatory group.

5. A national regulatory authority receiving a request for information under point (a) of paragraph 4, or receiving a request to commence an investigation of a suspected breach under point (b) of paragraph 4, shall immediately take the necessary measures in order to comply with that request. If that national regulatory authority is not able to supply the required information immediately, it shall without further delay notify the Agency of the reasons.

By way of derogation from the first subparagraph, a national regulatory authority may refuse to act on a request where:

(a) compliance might adversely affect the sovereignty or security of the Member State addressed;

(b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or

(c) a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

In any such case, the national regulatory authority shall notify the Agency accordingly, providing as detailed information as possible on those proceedings or the judgment.

National regulatory authorities shall participate in an investigatory group convened in accordance with point (c) of paragraph 4, rendering all necessary assistance. The investigatory group shall be subject to coordination by the Agency.

6. The last sentence of Article 15(1) of Regulation (EC) No 713/2009 shall not apply to the Agency when carrying out its tasks under this Regulation.

Article 17

Professional secrecy

1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 2, 3 and 4.

2. The obligation of professional secrecy shall apply to:

(a) persons who work or who have worked for the Agency;

(b) auditors and experts instructed by the Agency;

(c) persons who work or who have worked for the national regulatory authorities or for other relevant authorities;

(d) auditors and experts instructed by national regulatory authorities or by other relevant authorities who receive confidential information in accordance with this Regulation.

3. Confidential information received by the persons referred to in paragraph 2 in the course of their duties may not be divulged to any other person or authority, except in summary or aggregate form such that an individual market participant or market place cannot be identified, without prejudice to cases covered by criminal law, the other provisions of this Regulation or other relevant Union legislation.

4. Without prejudice to cases covered by criminal law, the Agency, national regulatory authorities, competent financial authorities of the Member States, ESMA, bodies or persons which receive confidential information pursuant to this Regulation may use it only in the performance of their duties and for the exercise of their functions. Other authorities, bodies or persons may use that information for the purpose for which it was provided to them or in the context of administrative or judicial proceedings specifically related to the exercise of those functions. The authority receiving the information may use it for other purposes, provided that the Agency, national regulatory authorities, competent financial authorities of the Member States, ESMA, bodies or persons communicating information consent thereto.

5. This Article shall not prevent an authority in a Member State from exchanging or transmitting, in accordance with national law, confidential information provided that it has not been received from an authority of another Member State or from the Agency under this Regulation.

Article 18

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, dissuasive and proportionate, reflecting the nature, duration and seriousness of the infringement, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.

The Member States shall notify those provisions to the Commission by 29 June 2013 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Member States shall provide that the national regulatory authority may disclose to the public measures or penalties imposed for infringement of this Regulation unless such disclosure would cause disproportionate damage to the parties involved.

Article 19

International relations

In so far as is necessary to achieve the objectives set out in this Regulation and without prejudice to the respective competences of the Member States and the Union institutions, including the European External Action Service, the Agency may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries in particular with those impacting the Union energy wholesale market in order to promote the harmonisation of the regulatory framework. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with those supervisory authorities, international organisations and the administrations of third countries.

Article 20

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 6 shall be conferred on the Commission for a period of 5 years from 28 December 2011. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.

3. The delegation of power referred to in Article 6 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 6 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 21

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 22

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Paragraph 1, the first subparagraph of paragraph 3, and paragraphs 4 and 5 of Article 8 shall apply with effect from 6 months after the date on which the Commission adopts the relevant implementing acts referred to in paragraphs 2 and 6 of that Article.

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

Done at Strasbourg, 25 October 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
M. DOWGIELEWICZ

COMMISSION STATEMENT

The Commission considers that the thresholds for reporting transactions within the meaning of Article 8(2)(a) and information within the meaning of Article 8(6)(a) cannot be set through implementing acts.

Where appropriate the Commission will come forward with a legislative proposal to set such thresholds.

COUNCIL STATEMENT

The EU legislator has conferred on the Commission implementing powers in accordance with Article 291 TFEU in relation to measures foreseen in Article 8. That is legally binding for the Commission despite the declaration it made in respect to Article 8(2)(a) and Article 8(6)(a).
