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SENSITIVE*

COMMISSION DELEGATED REGULATION (EU) .../...

of 28.11.2023

**amending Regulation (EU) No 2022/869 of the European Parliament and of the Council
as regards the Union list of projects of common interest and projects of mutual interest**

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Objective and legal basis of the proposed action

This Delegated Regulation establishes the first Union list of projects of common interest (PCIs) and projects of mutual interest (PMIs) in line with Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure¹ (TEN-E Regulation).

PCIs are key energy infrastructure projects that are critical for completing the European internal energy market, which 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.

PMIs are key energy infrastructure projects promoted by the Union in cooperation with third countries.

Article 3(4) of the TEN-E Regulation requires the Commission to adopt, every two years, a delegated act that establishes a Union list of PCIs and PMIs. The Union list is based on the regional lists of candidate PCIs/PMIs prepared and adopted by the regional groups established by the TEN-E Regulation.

This Delegated Regulation takes the form of an annex to the TEN-E Regulation.

Once this Delegated Regulation is in force, the Delegated Regulation (EU) 2022/564², 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as Articles 2 to 10, Articles 12, 13 and 14, and Annexes I to IV and Annex VI to Regulation (EU) No 347/2013³ will be repealed and cease to produce effects.

General context of the Delegated Regulation

The TEN-E Regulation provides for a legislative framework which aims at energy infrastructure planning for the selection of PCIs and PMIs and at facilitating and accelerating the implementation process of PCIs and PMIs.

The TEN-E Regulation establishes 11 strategic geographical infrastructure priority corridors in the areas of electricity, offshore grids, hydrogen and electrolyzers, and three Union-wide infrastructure priority thematic areas for smart electricity grids, smart gas grids and cross-border carbon dioxide network. It provides for an open, transparent and inclusive process of

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, OJ L 152, 3.6.2022, p. 45–102

² 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).

³ These provisions had remained in force and produced 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.

identifying specific PCIs that are needed to implement these priority corridors and areas and specific PMIs that the Union develops with third countries which contribute to the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective.

The TEN-E Regulation also lays down a set of measures to ensure that PCIs and PMIs are implemented timely, including:

- strengthened transparency and improved public consultation;
- accelerated and streamlined permit granting procedure, including a binding three-and-a-half-years' time limit for this procedure;
- a single national competent authority acting as a one-stop-shop for permit granting procedures;
- a single point of contact for offshore renewable grids;
- improved regulatory treatment by allocating costs across borders according to the net benefits, and regulatory incentives; and
- eligibility of applying for financial assistance under Connecting Europe Facility (CEF) in the form of grants.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Process prior to the adoption of the Union list

The process of establishing the Union list started in October 2022 and ends with the entry into force of this Delegated Regulation.

The identification process of PCIs and PMIs is based on regional cooperation and it was managed by the regional groups. Regional groups for electricity, offshore grids, hydrogen and electrolysers comprise representatives of the Member States, national regulatory authorities (NRAs), transmission system operators (TSOs), European Networks of Transmission System Operators for gas and electricity (ENTSOG and ENTSO-E), the Agency for the Cooperation of Energy Regulators (ACER), the EU DSO entity and the Commission. Regional groups for smart gas grids, smart electricity grids and carbon dioxide networks comprise representatives of the Member States, project promoters and the Commission.

In addition to the legal provisions of the TEN-E Regulation on the specific role of Regional Groups in establishing the regional lists of PCIs and PMIs, the Commission acted on political commitments stemming from the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making and the Framework Agreement on relations between the European Parliament and the European Commission. The meetings of regional groups have been open to officials working for the Council's and Parliament's administration and information related to the preparation of this delegated act have been shared before adoption.

The PCI/PMI process also involved exchanges with relevant stakeholders acting in the field of energy, such as consumer and environmental protection organisations. Furthermore, five open public consultations were carried out by the Commission to obtain views of stakeholders and the larger public on the necessity and merits of the proposed projects from a Union energy policy perspective.

The process of establishing the Union list consisted of the following main stages:

- (a) Identification of the infrastructure needs, and the improved assessment methodology

The PCI/PMI selection process in the electricity, offshore grids and hydrogen sectors started in October 2022 with the identification at regional level of specific infrastructure needs that cannot be effectively resolved by other non-infrastructure means, including regulatory or market-based measures, and can be addressed by building new infrastructure.

The electricity infrastructure needs identified by the regional groups constituted the basis of the improved assessment methodologies of electricity PCI candidates. The needs methodologies were first developed within a cooperation platform comprising representatives of the Commission, ACER, ENTSOG and ENTSO-E as well as representatives of NRAs on an ad-hoc basis. The cooperation platform was established to ensure better coordination of the PCI/PMI process between key participants, and to provide for greater transparency. They were then discussed and approved within the relevant regional groups.

The first PCI/PMI selection process for hydrogen and electrolyser infrastructure projects was carried out against a backdrop of significant uncertainties of information on current and future supply (European or imports from outside the EU) and demand of hydrogen. The needs methodology agreed by the regional groups strove to ensure that hydrogen infrastructure needs lead to the selection of PCI or PMI projects responding to realistic future hydrogen demand and supply in 2030 and which are essential for the European Union energy and climate objectives.

To carry out a robust assessment of needs within this context, input data was qualified and cross-checked between different sources. Data on current or projected demand and supply of renewable hydrogen was mainly collected from Member States and further corroborated with additional sources such as Fuel Cell Hydrogen Observatory (FCHO) for current figures, European Commission own modelling, data from the European Network of Transmission and System Operators (ENTSOG), the European Clean Hydrogen Alliance, and the International Energy Agency data. The hydrogen methodology considered sustainability as an EU-wide need.

(b) Submission of candidate PCIs and PMIs by project promoters

In accordance with point 2(3) and 2(4) of Annex III to the TEN-E Regulation, electricity, offshore grids and hydrogen infrastructure projects⁴ submitted by promoters during the dedicated calls as candidate PCIs and PMIs are required to be part of the 10-year network development plans (TYNDPs) for gas and electricity developed by ENTSOG and ENTSO-E respectively.

(c) Assessment of candidate PCIs and PMIs by the regional groups

Each regional group carried out an assessment of the candidate PCIs proposed for its priority corridor and each of the candidate PMIs pertaining to the respective category and region.

In the first place, projects were assessed with regard to their compliance with the general criteria laid down in Articles 4(1) and 4(2) of the TEN-E Regulation, including, their cross-border dimension, as well as their contribution to the objectives of the corridor. Secondly, the candidate projects considered eligible were all assessed against the sustainability criterion⁵ mandatory for all project categories in line with the TEN-E Regulation. Only the projects that demonstrated significant contributions to sustainability were further assessed in the PCI/PMI process.

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⁴ As of 1 January 2024

⁵ The sustainability assessment for hydrogen and electrolysers projects evaluate the impact on CO₂ emissions due to the integration of renewable and low-carbon hydrogen into the European system, as well as the avoidance of renewable curtailed by using the surplus electricity to feed electrolysers connected to the network. Data underpinning the evaluation was retrieved from the Ten-Year Network Development Plan 2022 developed by ENTSO-G.

Furthermore, electricity and offshore grids candidate PCIs and PMIs were subject to cost-benefit analysis carried out according to the methodologies developed by ENTSO-E. The cost-benefit analysis of the hydrogen candidate PCI/PMI projects were carried out in line with the methodology developed by the Commission and consulted with relevant stakeholders ahead of the assessment phase of the regional groups.

Subsequently, the regional groups assessed projects' contributions to the specific criteria laid down in Article 4(3) of the TEN-E Regulation according to the dedicated methodologies developed within the cooperation platform and agreed by the respective regional groups (for electricity, offshore grids, hydrogen and electrolyzers PCI/PMIs candidates).

Considering the early development of the European hydrogen market and the limited data available on the supply and potential off-takers of renewable hydrogen, the assessment methodologies for candidate hydrogen and electrolyzers projects included high-level principles developed and agreed by the regional groups. These principles complemented the Article 4 criteria, further strengthening the decision-making in line with the infrastructure needs and EU's policy objectives.

In the priority thematic areas of smart electricity grid, smart gas grids and cross-border carbon dioxide networks, the cost-benefit analysis was prepared by the promoters following the respective methodologies⁶ pursuant to Article (11) of the TEN-E Regulation. Subsequently, the application for PCI/PMI status was assessed in accordance with the assessment framework agreed within the respective thematic areas.

(d) Consultation of stakeholders on candidate PCIs

Provisions of Annex III to the TEN-E Regulation provide for enhanced transparency and public participation in the PCI/PMI process. Each regional group should consult the organisations representing relevant stakeholders — and, if deemed appropriate, stakeholders directly — including third country representatives, producers, distribution system operators, suppliers, consumers, and organisations for environmental protection. The regional group may also organise hearings or consultations, where relevant for the accomplishment of its tasks.

Five public consultations on electricity/offshore, hydrogen and electrolyzers, smart electricity grids, smart gas grids and cross-border carbon dioxide networks candidate PCIs/PMIs were carried out during the period from 21 December 2022 to 16 March 2023 complying with the Commission's better-regulation principles. Overall, more than 900 submissions were received for all project categories. Replies were submitted via the EU Survey consultation platform representing a wide range of citizens and stakeholders, including environmental organisations, trade associations, small and medium enterprises (SMEs) etc. Several position papers were submitted via a functional mailbox communicated to the public. The main goal of the consultation process was to assess the necessity of the proposed projects – taking account of their socioeconomic benefits and costs - from the Union energy policy perspective.. All replies to the consultation were uploaded on the Commission dedicated online repository for meetings (CIRCABC)⁷.

In addition to the online consultation process, bilateral meetings with representatives of consumer and environmental organisations were held to allow for more in-depth discussions on the methodology underpinning the assessment of PCIs and PMIs.

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⁶ The final CBA methodologies can be found here: [Targeted consultation on methodologies for assessing costs and benefits of candidate projects under the revised TEN-E Regulation - 2022 \(europa.eu\)](#)

⁷ [TEN-E Regional Group Meetings - Library \(europa.eu\)](#)

Moreover, stakeholders were regularly invited to, and participated in meetings of the regional groups which discussed the needs in each corridor, assessed the PCI/PMIs candidates and drew up the regional lists of PCIs/PMIs.

- (e) Check of the criteria and the cross-border relevance by the national regulatory authorities (NRAs)

The NRAs (coordinated by ACER) cross-checked the consistent application of the criteria/cost-benefit analysis methodology and their cross-border relevance for candidate PCIs and PMIs falling within their competency. Overall, the NRAs assessment has been positive and only some NRAs have expressed their reservations with regard to a limited number of projects. Detailed findings were submitted to the regional groups for their consideration.

- (f) Agreement of the decision-making bodies on the draft regional lists of candidate PCIs and PMIs

Following the assessment of candidate PCIs/PMIs by the regional groups, their decision-making bodies at technical level (composed of the Commission and Member States representatives) agreed on the draft regional lists and the ranking of candidate PCIs/PMIs. Meetings of the technical decision-making bodies of the regional groups were held on 28 June for all project categories.

- (g) ACER's opinions on the draft regional lists

In line with point 2(14) of Annex III to the TEN-E Regulation, ACER provided its opinions on the *draft* regional lists of projects falling under the competence of national regulatory authorities on 21 September 2023. ACER assessed the consistent application of the assessment criteria and of the cost/benefit analysis across the regions.

- (h) Adoption of the final regional lists of PCIs and PMIs by the decision-making bodies

The *final* regional lists in the relevant 11 priority corridors, all three priority thematic areas, and for PMIs were adopted by the decision-making bodies of the regional groups on 25 October 2023. The decision-making bodies adopted the final regional lists on the basis of the draft regional lists and after considering the ACER's opinion, the NRAs' assessments and, in the case of projects not falling under the competence of NRAs, the Commission's assessment.

The inclusion of the projects in the Union list is without prejudice to the application of State aid rules in case of State support to the projects.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Summary of the proposed action

This Delegated Regulation identifies 166 PCIs/PMIs which are deemed necessary to implement the priority corridors for electricity, offshore grids, hydrogen and electrolysers and the priority thematic areas (smart electricity grids, smart gas grids and the cross-border carbon-dioxide networks, as identified in the TEN-E Regulation), or respectively, where the Union is developing projects in cooperation with third countries contribute to the Union's 2030 targets for energy and climate and its 2050 climate neutrality objective.

This Delegated Regulation is adopted pursuant to Article 3(4) of the TEN-E Regulation, which empowers the Commission to adopt, every two years, a delegated act establishing the Union list of PCIs and PMIs. This is the first Union list under the the TEN-E Regulation following its revision and once it enters into force the Delegated Regulation (EU) 2022/564, 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 will be repealed and cease to produce effects.

This Union list provides for 166 PCIs/PMIs, including 68 in electricity, 12 in offshore grids, 65 in hydrogen and electrolysers, 5 smart electricity grids, and 14 cross-border carbon dioxide network projects. No project submitted for the smart gas grids area was found eligible, resulting in no PCI project for this category.

The Union list includes projects that are critical for completing the European internal energy market, which 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.

The establishment of the Union list is without prejudice to any additional assessments to be carried out under the Treaty on the Functioning of the European Union ("TFEU") and the obligations stemming from it and from secondary legislation. Thus, the assessment is, inter alia, without prejudice to the application of EU competition rules, and it does not amount to a clearance under EU state aid rules. Recalling that it is the primary role of Member States to notify to the Commission any plans to grant State aid in line with Article 108(3) TFEU.

PCIs/PMIs included in this Delegated Regulation are to be implemented only after successful completion of permit granting procedures in all countries concerned, including environmental impact assessments and public consultations. PCIs/PMIs need to comply, as applicable, with Union and national legislation, including environmental legislation and the unbundling provisions in Directive (EU) 2019/944 and Directive 2009/73/EC where relevant.^{8,9}

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⁸ 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).

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).

COMMISSION DELEGATED REGULATION (EU) .../...

of 28.11.2023

amending Regulation (EU) No 2022/869 of the European Parliament and of the Council as regards the Union list of projects of common interest and projects of mutual interest

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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, and in particular Article 3(4) thereof,

Whereas:

- (1) Regulation (EU) No 2022/869 establishes a framework for the identification, planning and implementation of projects of common interest ('PCIs') which are required to implement the 11 strategic geographical energy infrastructure priority corridors identified in the fields of electricity, offshore grids, hydrogen and electrolyzers, and the three Union-wide energy infrastructure priority areas for smart electricity grids, smart gas grids and carbon dioxide transportation networks and a framework for the identification, planning and implementation of projects of mutual interest (PMIs) developed by the Union together with third countries in the fields of electricity, hydrogen and carbon dioxide transportation networks.
- (2) In line with Article 3(4) of Regulation (EU) No 2022/869, the Commission should adopt the delegated act establishing the first Union list pursuant to Regulation (EU) No 2022/869 by 30 November 2023.
- (3) The eligible projects proposed for the inclusion in the Union list were all assessed against the sustainability criterion mandatory for all project categories in line with Regulation (EU) No 2022/869. Only the projects that demonstrated significant contributions to sustainability were further assessed by the regional groups referred to in Article 3 of Regulation (EU) No 2022/869 who confirmed that they meet the criteria laid down in Article 4 of that Regulation.
- (4) The Commission has assessed the candidate projects in view of the requirements of Article 3(5).
- (5) The draft regional lists of PCIs/PMIs were agreed by the regional groups at technical-level meetings.
- (6) Following the opinions of the Agency for the Cooperation of Energy Regulators ('ACER') on 21 September 2023 on the consistent application of the assessment criteria and the cost/benefit analysis across regions, the regional groups' decision-making bodies adopted the final regional lists on 25 October 2023. Pursuant to Article 3(3)-point (a) of Regulation (EU) No 2022/869, prior to the adoption of the regional lists, all proposed projects were approved by the Member States to whose territory the projects relate.

- (7) The projects proposed for inclusion in the Union list were subject to a public consultation. Moreover, organisations representing relevant stakeholders, including representatives of third countries, producers, distribution system operators, suppliers, local populations and consumer and environmental protection organisations were invited to the technical discussions in the regional groups and consulted on the projects proposed for inclusion in the Union list.
- (8) PCIs should be listed per strategic trans-European energy infrastructure priorities in the order laid down in Annex I to Regulation (EU) No 2022/869. PMIs, which are not required to implement the energy infrastructure priority corridors and areas set out in Annex I of the TEN-E Regulation, should be listed separately as per the infrastructure category they belong to and the region where they are located.
- (9) PCIs/PMIs should be listed either as stand-alone PCIs/PMIs or as a part of a cluster of several PCIs and PMIs because they are interdependent or (potentially) competing.
- (10) In line with the derogation provided by Article 24 of Regulation (EU) No 2022/869 in the case of Cyprus and Malta regarding one interconnection for each of those Member States, the Commission has received the documentation required in line with paragraphs (1) and (2) of Article 24. The respective projects were presented during the technical regional group meetings and the relevant documentation, excluding business secrets, was published. One interconnection for Malta and one interconnection for Cyprus, necessary to interconnect those Member States to the trans-European gas network, should, therefore, maintain their status of projects of common interest.
- (11) The Union list contains projects at different stages of their development, including pre-feasibility, feasibility, permit-granting and construction. For PCIs/PMIs at an early development stage, studies may be needed to demonstrate technical and economic viability and compliance with Union legislation, including environmental legislation. In this context, potential negative impacts on the environment should be adequately identified, assessed and avoided or mitigated. Moreover, relevant climate adaptation measures as regards the development of the projects should be identified and taken into consideration.
- (12) The inclusion of projects on the Union list is without prejudice to the outcome of the relevant environmental assessment and permit procedure.
- (13) The first Union list of PCIs and PMIs should be adopted accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The first Union list of projects of common interest and projects of mutual interest in accordance with the Annex to this Regulation is adopted.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union* and shall remain in force until the entry into force of the delegated regulation enacting the second Union list of projects of common interest and projects of mutual interest.

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

Done at Brussels, 28.11.2023

For the Commission
The President
Ursula VON DER LEYEN