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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 17 July 2009

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Commission Staff Working Document
- Accompanying document to the Proposal for a Council Regulation
concerning the notification to the Commission of investment projects into
energy infrastructure within the European Community
and repealing Regulation (EC) No 736/96
= Impact assessment

Delegations will find attached Commission document SEC(2009) 971 final.

Encl.: SEC(2009) 971 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.7.2009
SEC(2009) 971 final

COMMISSION STAFF WORKING DOCUMENT

Accompanying document to the

Proposal for a

COUNCIL REGULATION

**concerning the notification to the Commission of investment projects into energy
infrastructure within the European Community
and repealing Regulation (EC) No 736/96**

IMPACT ASSESSMENT

{COM(2009) 361}
{SEC(2009) 972}

1. SECTION 1 - PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

• Identification

Lead DG: DG TREN

Associated DGs: DG ECFIN, DG ENV, DG ENTR, DG RTD, DG JRC

Agenda planning/WP reference: 2009/TREN/019

• Organisation and timing

Work on this impact assessment started in January 2009 with the analysis of the problem and of policy options as well as with a discussion on the approach for consultation of interested parties. Members of the Steering Group were also invited to contribute to the analysis of the impact of a revised Council Regulation (EC) No736/96 on their area of competence. The Steering Group met 3 times over the period from January to April 2009.

On 7 May 2009, the Impact assessment Board received a preliminary draft of this Impact Assessment Report. The Board met on 27 May 2009 to review the draft and adopted a first opinion on 29 May 2009 and a second one on 16 June 2009. The IAB requested a strengthened analysis of the problems caused by a lack of availability of data and a further clarification of policy options and of their impacts.

The revised Impact assessment report takes full account of the Impact Assessment Board's opinion throughout, namely on the following points:

- Problem definition: while no policy failure resulting from a lack of data can be produced for the past, it has been further clarified that the fundamentals of the energy landscape have changed and that investment into EU energy infrastructure has become a sensitive issue for the future EU energy position. Data will help establish a clearer view on potential problems in the future.
- Policy options: policy options have been further clarified and assessed in terms of proportionality.
- Analysis of impacts: the analysis of impacts has been improved to assess how each option will contribute to the policy objectives to be met.

• Consultation and expertise

The preparation of this impact assessment has been preceded by consultations, presentations of the objectives of the Commission in order to gather as many reactions and information as possible.

- **Consultation** of interested parties (i.e. those concerned by reporting obligations) took place at two different moments in time:

- In May 2008, in the context of the preparation of the 2nd Strategic Energy Review of the European Union¹, a questionnaire based on Council Regulation (EC) No736/96 was sent to Member States to get data on current and future power generation capacity needs and on expected evolutions of these capacities. The questionnaire was pre-filled with data from commercial information providers and Member States were asked to verify this information. The possible revision of the respective Regulation was mentioned. This first consultation may be considered as a test case for the impact assessment study.
- From February to March 2009, interested parties – Member States, representatives of industry, transmission network operators and regulators – were directly consulted on the basis of a targeted consultation. To this effect, a questionnaire was prepared and sent to these parties with a view to learning more about what is expected from EU institutions in the area of investment monitoring and the scope, design and impact of a reporting mechanism. A final consultation took place during a technical workshop with Member States and stakeholders on 14 May 2009.

The consultation targeted stakeholders interested in a possible revision: Member States, energy regulators, industry, transmission networks operators². These entities represent the whole energy chain/system (Industry, transmission/storage systems operators and regulators) and cover the EU energy mix (Conventional energy and Renewable energy sources) and are involved in technological development. Umbrella associations have been targeted by preference as they can provide a European view and speak for a whole sector/branch. As most of the companies or operators are members of national or European sector – specific associations, this targeted consultation has covered the bulk of the sector.

For most of the respondents, whether Member States or industry representatives, an appropriate monitoring of investment projects into infrastructure in the energy sector is seen as relevant. It is regularly considered as essential for increasing transparency, for policy-making and for lending support to specific projects. A monitoring instrument at EU level is supported on the condition that it remains a transparency tool, provides an added-value and does not represent a high administrative burden. For a summary of the contributions received, see Annex 2.

– **Presentations**

Two presentations on the possible revision of Council Regulation (EC) No736/96 were given to experts of the energy sector during regular meetings held in Brussels: Joint session of the Oil Supply Group and the Security of Supply Working group of the Fossil Fuels Forum (2 March 2009); Energy economists' meeting (31 March 2009).

– **Meetings with experts**

¹ Adopted on 13 November 2008 – COM (2008) 781 final

² For the list of consulted entities, see Annex 1.

DG TREN has met with representatives of the European Network of Transmission System Operators (ENTSO) for Electricity and the ENTSO for Gas in charge of the preparation of the ten-year investment plan for electricity and for gas foreseen by the third internal market package to examine whether/how their exercise and a monitoring at EU level could dovetail. Views have also been exchanged with commercial data providers. DG TREN also attended a workshop on the ten-year investment plan for gas organised by the ENTSO for gas. It has participated as an observer to several meetings organised by one Member State's authorities on an indicative planning for future investments for electricity and gas (France).

2. SECTION 2 - PROBLEM DEFINITION

• What is the general / policy context?

Currently, there is concern that EU energy infrastructure could no longer be up to the task of providing secure energy supply in the foreseeable future. As mentioned in the Second Strategic Energy Review adopted by the Commission in 2008, significant investment³ in energy infrastructure is required to replace old infrastructure and to respond to future energy demand (i.e. supply/demand balance). Investments are also required to foster the transition to a low carbon energy future (implementation of the new Energy Policy for Europe with the 20/20/20 targets to mitigate the effects of climate change), to ensure greater energy security in case of a crisis as well as the effective functioning of the internal market. All types of infrastructures in all energy sectors are concerned. This view is shared by the International Energy Agency⁴. The EU has to face a new series of risks and in particular economic risks mainly covering imbalances between demand and supply which could stem from delays in investment in energy projects. Today's energy challenges and new EU policy objectives require an acceleration of investment into energy infrastructure.

So far the required investments have been made in general: recent events have demonstrated that investments in additional gas storage for example had nevertheless been insufficient in many Member States and that some crucial inter-connectors were still missing within the EU. However, there is a **high degree of uncertainty** related to the realisation of investment projects. Experience has shown that only a limited share of investment projects announced by firms are eventually carried out⁵ and that consequently, a monitoring of investment projects at regular intervals is considered important (and is indeed undertaken by a number of countries within and outside the EU). In addition, the current credit crunch and economic crisis coupled with volatility of energy prices is seen as a major difficulty for investment projects. This has been

3 Under the New Energy Policy scenario developed in the context of the Second Strategic Energy Review adopted in November 2008, the capacity expansion (i.e. replacement of old and addition of new capacities) needed for power generation alone to meet the future demand and climate change targets will amount to 360-390 GW over 2005-2020 which corresponds to a need for € 400 to 440 billions of investment. € 17 billions of investment in electricity networks in the coming 5 years are needed according to a report issued by UCTE

4 World Energy Outlook 2008

5 According to studies carried out in US, only 12% of announced projects for coal fired power plants in 2002 had been eventually carried out on time in 2007. Projects are often delayed and even cancelled as a result of uncertainties affecting the investment environment. Investors may be confronted with regulatory uncertainties or local resistance to new projects. They may also face bottlenecks in the industry, lack of a skilled workforce.

confirmed by G8 energy ministers⁶, by the International Energy Agency⁷ and even by Industry⁸.

The EU can contribute to shaping a favourable investment climate that fosters investment projects needed to secure Europe's low carbon energy future. In addition, public authorities play a role in shaping medium to long term developments on the demand and supply side and on the evolution of the EU energy system. In this context, data reporting (i.e. notification of information) and monitoring (i.e. analysis) of investment projects and the evolution of the EU energy system are necessary.

EU institutions have called for action. The **European Council** Action Plan 2007-09 on Energy Policy for Europe has invited the Commission and the Member States to identify additional investment required to satisfy EU strategic needs in relation to gas and electricity supply and demand. In the wake of the second Strategic Energy Review adopted by the Commission, both the **Council of the European Union**⁹ and the **European Parliament**¹⁰ recalled the importance of promoting investments and improving transparency as well as of intensifying the works on supply and generation adequacy outlooks and network development plans.

- **What is the issue or problem that may require action?**

The problem that requires action is the lack of consistent data and information on investment projects (in their different phases), the future development of the EU energy system and the related shortcomings. As a result, this situation could cause a regulatory failure.

Without appropriate data, the Commission is not in a position to:

- analyze the likely evolution of EU energy infrastructure, detect any potential gaps and anticipate future energy supply;
- evaluate EU energy policy and support policy-making by official data;
- promote transparency on the likely evolution of the EU energy system.

A lack of data could lead to inappropriate or even complete absence of political initiative at times when investment into the energy infrastructure is crucial considering its long lead times, the complexity of some energy infrastructure investments and the long life time of such installations.

It has to be pointed out that due to a situation of overcapacities in the past, no evidence of policy failure due to lack of data can be produced. However, fundamentals of the energy

6 Joint statement by the G8 Energy Ministers, the European Commissioner and the Energy Ministers of Algeria, Australia, Brazil, China, Egypt, India, Indonesia, Korea, Libya, Mexico, Nigeria, Rwanda, Saudi Arabia, South Africa, and Turkey, available at the following address <http://g8.italia2009.it>

7 IEA, The impact of the financial and economic crisis on global energy investment – IEA background paper for the G8 energy ministers' meeting – 24-25 May 2009, available at the following address <http://g8.italia2009.it>

8 See the joint conference organised by Eurelectric and Eurogas, "Can Europe finance clean and secure energy in the future?", 26 May 2009, summaries of the debates are available at the following address <http://www2.eurelectric.org>.

9 Energy Council Conclusions (6692/09)

10 EP resolution on the 2nd Strategic Energy Review, 2/00/2009, (2008/2239(INI)).

landscape have radically changed and made of investment into EU energy infrastructure a sensitive issue: capacity is stretched, often ageing and sometimes inadequate; private economic operators have been given a much more prominent role for investment and new EU policy objectives for energy have been set. This new situation and the risks to be coped with call for well-calibrated policies. Appropriate data on investment projects will therefore help to establish a clearer view on potential problems in the future.

Under Council Regulation (EC) No736/96 on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sector, the Commission shall be notified once a year of major investment projects, decommissioning decisions, or major decisions affecting investment projects (such as cancellation of projects) in the petroleum, natural gas and electricity sectors. These projects concern pipelines for gas, refineries, LNG terminals, power plants and electricity transmission lines. Information is in principle communicated by Member States on the basis of notifications from industry.

However, Council Regulation (EC) No736/96 is no longer enforced consistently; imperfectly covers the current and new energy infrastructure and does not collect all appropriate information.

a) Council Regulation (EC) No 736/96 is no longer enforced consistently. In 2009, the Commission has received 4 notifications from Member States (some notifications only concern some sector covered by the Regulation). The “quality” of data transmitted may also be arguable in some cases.

b) Council Regulation (EC) No 736/96 imperfectly covers the current and new energy infrastructure needed for security of energy supply and the transition to a low carbon energy system. The evolution of the energy sector since 1996 has rendered the system devised by the Regulation increasingly ill-adapted and no longer fit for use:

- The recent enlargements of the EU have brought new challenges to be dealt with: Oil pipelines have become an issue since two oil pipeline systems (Eastern and Western) coexist within the European Union. However they are not covered by the current Regulation.
- The notion of "Community interest" in the existing regulation relates to the cross-border nature and/or size of an installation. In today's internal market context, this rationale is no longer appropriate. Rather, it is of interest to collect information on installations (investment projects) which will have an impact on the functioning of the overall system:

Concerning gas networks only trans-frontier ones are covered by the current Regulation whilst it is of interest to get a view of the transmission system as a whole, irrespective of the length of lines (as suggested under the current Regulation). Moreover, ‘internal’ lines may also affect cross-border interconnections.

Thresholds are often too high to get a precise view of the development of the whole system. Due to the shift towards a more decentralised power generation, centralised generation units tend to have a more limited capacity than they used

to have. For storage of gas, the connection of storage installations be they above or under ground connected to the transport is more important than capacity as such (which is the type of information required under the current Regulation).

- As a result of the New EU Energy Policy (in particular with its renewable targets), a major shift on EU energy systems and infrastructure based on conventional fossil fuel supply is required and the scope of the current Regulation does not cover relevant issues such as electricity generation powered by renewable energy sources, carbon transport and storage or bio-fuel plants.

Table 1 gives an overview of the current scope of Council Regulation (EC) n°736/96 with regard to investment projects currently covered and necessary amendment and/or additional information requirements.

c) Council Regulation (EC) No 736/96 does not collect **information on investment projects** of interest for energy security and climate change mitigation. With regard to new investment projects, the current notification requires to indicate the type of raw materials used. This information is considered no longer necessary (contrary to the type of energy source used). However, the notification does not request any information on new equipment to capture carbon on power plants or refineries.

The exercise carried out in May 2008 with national ministries for energy revealed that some categories need to be updated to be of interest. For instance, the current emphasis on installed nominal power generation capacities should be complemented by the load factor for power generation to get a better idea on the power to be generated.

Table 2 gives an overview of the current information requirement of Council Regulation (EC) No736/96 and additional ones deemed necessary or requirements to be amended.

**Table 1 - Scope of investment projects
covered by Council Regulation (EC) No736/96 and required amendments/additions**

Investment projects under Council Regulation (EC) No736/96	Amendments	Additions
1. OIL		
<p>1.1. Petroleum refineries</p> <p>Distillation plants with a capacity of not less than 1 Mio tonnes a year;</p> <p>Extension of distilling capacity beyond 1 Mio tonnes a year;</p> <p>Reforming/cracking plants with a minimum capacity of 500 tonnes a day;</p> <p>Desulphurization plants for residual fuel oil/gas oil/feedstock/other petroleum products.</p>	None	<p>- Oil pipelines</p> <p>Crude oil pipelines /Petroleum product pipelines</p> <p>Pipelines which constitute essential links in national or international interconnecting networks and pipelines and projects of common interest identified in the guidelines established under Article 155 of the EC Treaty.</p> <p>- Oil storage</p> <p>Storage installations for crude oil and petroleum products</p>
2. GAS		
<p>2.1. Transport</p> <p>- Trans-frontier Pipelines and projects of common interest identified in the guidelines established under Article 129c of the EC Treaty.</p> <p>- Terminals for the importation of liquefied natural gas</p>	<p>Trans-frontier Pipelines and projects of common interest identified in the guidelines established under Article 155 of the EC Treaty.</p>	<p>- Gas, including natural gas and biogas, pipelines other than upstream pipeline and other than the part of pipelines primarily used in the context of local distribution;</p>
<p>2.2. Distribution</p> <p>- Underground storage</p>	<p>Storage</p> <p>- Storage installations</p>	

installation with a capacity not less than 150 Mio m ³ .	connected to the transport pipelines (underground and above ground).	
3. ELECTRICITY		
<p>3.1 Generation</p> <ul style="list-style-type: none"> - Thermal (conventional + Nuclear >200 MW) - Hydro (> 50 MW) 	<ul style="list-style-type: none"> - Thermal power stations (generators with a unit capacity of 200 100 MW or more), - Hydro-electric power stations (power stations having a capacity of 50 30 MW or more), 	<ul style="list-style-type: none"> - Wind power farms (with a capacity of 20 MW or more for offshore farms or with a capacity of 10 MW or more for onshore farms); - Concentrated solar thermal, geothermal and photovoltaic installations (generators with a unit capacity of 10 MW or more); - Biomass/waste power generation installations (generators with a unit capacity of 10 MW or more); - Power stations with cogeneration of electricity and useful heat (units with an electrical capacity of 10 or more).
<p>3.2. Transport</p> <ul style="list-style-type: none"> - Overhead transmission lines, if they have been designed for a voltage of 345 kV or more, - Underground and submarine transmission cables, if they have been designed for a voltage of 100 kV or more; - Projects of common interest identified in the guidelines established under Article 129c of the EC Treaty, 	<ul style="list-style-type: none"> - Overhead transmission lines, if they have been designed for a voltage of 345 150 kV or more, 	-

4. BIOFUELS		
		Refineries
5. CO2		
		Transport and storage

Table 2 – Information requirements on investment projects currently covered by Council Regulation (EC) n°736/96 and suggested amendments/additions

Information requested under Council Regulation (EC) n°736/96	Amendments	Additions
<p>Investment projects (new)</p> <ul style="list-style-type: none"> - Precise purpose and nature of such investments - Planned capacity or power - Probable date of commissioning - Type of raw materials used - Volume of capacities in commission or under construction - Member States may add any comments they may have 	<p>Precise purpose and nature of such investments</p> <ul style="list-style-type: none"> - Planned capacity or power - Probable date of commissioning Type of raw materials used Volume of capacities in commission planned or under construction 	<p>Where applicable</p> <ul style="list-style-type: none"> - Location, type, name and main characteristics of installations - Type of energy sources used - Technologies of interest for energy security (e.g. reverse flows for gas pipelines) - Carbon capture equipment or retrofitting mechanisms. Volume of installed capacities at the beginning of the reporting year Obstacles and delays to investment projects
<p>Decommissioning projects</p> <ul style="list-style-type: none"> - Character and capacity or power of the installations concerned; - Probable date when the installations will be withdrawn from service 	<p>None</p>	<p>None</p>

Volume of capacities which are scheduled to be taken out of commission within 3 years	None	None
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- To get the relevant data and information on investment projects into the energy infrastructure, the Commission could rely **on other data sources**:

- a) **EU legislation**: in some specific acts, Member States are required to report on and/or monitor aspects connected with investments projects, including decommissioning (see Annex 3).
- b) **Commercial sources**: some data providers can supply data and information on investments projects planned or under construction.
- c) **Industry sources**: in some cases, industry associations collect on a voluntary basis data and information on investment projects or on the evolution of capacities. This data is sometimes publicly available.

Table 3 gives an overview of the possible data source for **investment projects** (and not only on existing infrastructure).

It is to be noted, however, that the EU regulatory framework imposing notification obligations for investment projects or infrastructure development is heterogeneous. It does not provide sufficiently consistent information for a cross - sectoral monitoring and reporting conditions differ significantly (e.g. type of data / information, frequency, conditions for use of the data)¹¹. On top of that, projects for oil or CO2 pipelines or bio-fuel refineries are not covered by EU legislation.

For example, Council Regulation (Euratom) No2587/1999 imposes notification for all investments above certain monetary thresholds in the civil nuclear sector. Industry (and not Member States concerned by the investment projects) notifies directly to the Commission. In this case, investment is notified once for all (one off notification) and is not subject to regular monitoring. In other words, the evolution of the infrastructure is not regularly checked upon. Also, investment is notified at a very advanced stage (not later than three months before the first contracts are concluded with the suppliers or, if the work is to be carried out by the undertaking with its own resources, three months before the work begins).

Experience also shows that other sources of information such as industry associations at EU level or data provided by commercial suppliers do not provide complete/fully reliable data as illustrated by the following examples:

- Commercial data purchased by DG TREN did not provide complete data for installed power capacities and power capacities per fuel.

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See Table in Annex 3

- An industry association was not able to provide data on withdrawal capacities of gas storage infrastructure.
- An industry association was not able to reconcile its figures on the installed capacities for refineries with data from commercial information providers.

Table 3
Overview of the possible data sources on investment projects

Investment projects (new + decommissioning)	Council Regulation 736/96	EU legislation other than Council Regulation 736/96	Industry sources	Data providers (commercial sources)
Oil				
Refineries	X (partial)		X (partial)	X (partial)
Pipelines			X (partial)	X (partial)
Storage				X (partial)
Gas				
Transport pipelines	X (partial)	X (specific)	X (partial)	X (partial)
LNG	X	X (specific)	X (partial)	X (partial)
Storage	X (partial)	X (specific)	X (partial)	X (partial)
Electricity				
Conventional + nuclear power plants	X (partial)	X (partial)	X (partial)	X (partial)
Electricity generation from Renewable energy source	X (partial)	X (specific)	X (partial)	X (partial)
Transport	X (partial)	X (specific)	X	X (partial)
Biofuels production plants			X (partial)	X (partial)
CO2				
Pipelines				
Storage		X (specific)		

- **What are the underlying drivers of the problem?**

- As for the non-application of Council Regulation (EC) No736/96 and the resulting lack of information, there are two main drivers of the problem: the design of the system (structural reasons) and the situation which prevailed after the adoption of the Regulation (historical/cyclical reasons) in 1996.

(1) *Structural reasons*

a) *Design of the system*

Council Regulation (EC) No736/96 puts in place a reporting mechanism which consists in a series of notifications and ends by a report to the Council drafted by the Commission. The system was mainly designed in the early 1970's when the Council adopted Regulation (EEC) No 1056/72. It has been amended in the light of experience, firstly, in 1976 and, secondly, in 1996. However, the major features of the system set up in 1972 were maintained.

The following problems have been identified:

- This reporting has led to synthesis reports¹² and results have not been analysed in the context of demand forecasts. It was therefore difficult to identify possible infrastructure/capacity gaps. No conclusions were drawn.
- Stakeholders who provide information were not informed of any outcome as the compiled information remains restricted. The whole system has been limited to a reporting mechanism without operational consequences.

(2) *Historical/cyclical reasons: Overcapacities and low prices*

The system put in place by Council Regulation (EC) No736/96 was initially designed and adopted at a time of high oil prices (first oil price shock). It was thus considered pertinent. Over time, with lower prices, overcapacities and national markets dominated by a limited number of national operators prevailed and the issue of investments into energy infrastructures was considered less sensitive.

- As for the availability of alternative data sources, the following reasons may be given:

EU specific legislation is designed for a specific purpose. For example, details on investment projects for gas infrastructure may be communicated to the Commission if an exemption is requested under the Third Party exemption regime. However, data is not collected systematically nor can it be used for other purposes than the Third Party exemption. On the other hand, some pieces of legislation lay down very general obligations such as “investment intentions, for the next five years or more calendar years, of transmission system operators” or as “the envisaged additional capacity being planned or under construction” which leads to heterogeneous information that can hardly be aggregated for analytical purposes.

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The 1997 report – last report - shows the limited interest of this approach.

- As for data from commercial information providers and for data collected by industry associations, data remains most of the time incomplete.

- **Who is affected, in what ways, and to what extent?**

Two categories of entities can be identified as affected by the absence of an EU reporting and monitoring tool for energy infrastructure investment projects:

- EU institutions and Member States are co-responsible for energy security and for the implementation and evaluation of EU Energy Policy. In this context, an appropriate reporting and monitoring at EU level constitutes an important tool for relevant policy-making. Without such a reliable picture on future investment projects (for example those that have received planning consent from the authorities), the Commission (and the EU) is not fully equipped to anticipate problems like capacity gaps and to contribute to solving them within the limits of its own competences and powers: the Commission cannot promote measures to reduce risks of underinvestment or inadequacy of investments.
- Investors/economic operators, who decide on and implement investment projects, need transparency and visibility on the investment situation for their business operations. The absence of an EU wide, regular overview of the likely evolution of energy infrastructure may negatively affect the investment environment, in particular for smaller companies and new markets entrants.

- **How should the problem evolve, all things being equal? Should the EU act?**

Given the need for data for monitoring the evolution of energy infrastructure in the EU it is necessary to act and improve the data situation enabling a consistent cross – sector monitoring (i.e. analysis) which can be made public and which thus will increase transparency.

3. SECTION 3 - OBJECTIVES

The general objectives of the revision of Council Regulation (EC) No736/96 are to build an effective and efficient reporting and monitoring tool, i.e. to collect appropriate data on investment into EU energy infrastructure, to set up a mechanism for sharing the resulting analysis with Member States and stakeholders and to improve policy-making and evaluation of EU policies on a medium to long term basis. This translates into specific and operational objectives as shown in the table below:

General objectives	Specific objectives	Operational objectives
	1. Update the scope of the reporting ;	1. Collect information taking into account the standard categories used by operators to avoid overlap: * cover additional infrastructure (existing or new) such as oil pipelines, storage capacities, Carbon transport and storage;

<p>1. Collect as from 2010 appropriate data on future investment into EU energy infrastructure while minimizing costs related to data collection;</p> <p>2. Develop and share analysis with stakeholders on short term basis;</p> <p>3. Improve policy-making and evaluation of EC policies on a medium to long term basis.</p>	<p>2. Ensure consistent and proportionate reporting obligations;</p> <p>3. Allow for a cross - sector monitoring/analyses of investment in EU energy infrastructures with a view to:</p> <ul style="list-style-type: none"> - enhancing EU institutions' capacity to anticipate problems and propose solutions and - promoting transparency on future investment and on the evolution of the EU energy system <p>4. Develop of a common understanding of potential infrastructure gaps and associated risks.</p>	<p>* cover new categories of data related to existing capacities (gas storage withdrawal capacities) or equipment (reverse flows);</p> <p>2. Limit confidentiality requirements hampering the publication of aggregated data except for commercially sensitive data;</p> <p>3. Limit reporting obligations for Member States and Industry if equivalent data is already provided (in case of relevant sector specific monitoring at EU level / With appropriate thresholds and a reporting obligation every two years).</p> <p>4. Define an appropriate way of collecting, processing and protecting data.</p>
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An appropriate reporting and monitoring of investment in the energy sector at EU level can (only indirectly though) contribute to the objectives of the Lisbon strategy to strengthen growth and competitiveness. An efficient and up-to-date reporting framework, keeping reporting obligations proportionate and consistent with other EU obligations contributes to the drive towards “better regulation”.

4. SECTION 4 - POLICY OPTIONS

Four policy options have been considered.

Option 0 – Status quo - Monitoring of the evolution of energy infrastructure without specific reporting

Under option 0, data and information on investment projects into EU energy infrastructure would be either provided through existing reporting mechanisms (at EU and/or national levels) and/or purchased by the Commission from commercial data providers.

Member States have developed monitoring systems of the energy sector and in some cases they are already submitting to the Commission information on infrastructure development as a result of EU obligations. For gas and electricity, Member States or competent national authorities are required to monitor and report to the Commission¹³. These mechanisms will be complemented with the entry into application of the third internal market package which requires a ten-year investment plan for gas and electricity to be elaborated by Transmission System Operators at European level. Council Regulation (EC) No 736/96 is still one instrument for data collection useful for the oil sector. The Commission has also been working with several energy data providers for some time now. Their data are contained in EMOS – the Energy Markets Observatory System - which is a database of dedicated databases.

The Commission could use these data and information for its analyses. The results of such analysis would be used to have discussions with stakeholders and to determine for example whether risks of underinvestment or of inadequate investment or infrastructure gaps are likely to occur.

Option 1 – Repeal of Council Regulation No736/96

Compared to the status quo, this option consists in repealing Council Regulation (EC) No 736/96 given the poor implementation of this Regulation and its growing inability to capture the new EU energy system. Assuming that in the longer run markets would balance supply and demand, regulatory monitoring could be replaced by studies that could be conducted on a case by case basis if specific policy decisions would require an analysis of energy related investment projects. Both data supplied by commercial providers and data forwarded on the basis of other EU piece of legislation would in principle be available.

Option 2 – Monitoring of the evolution of energy infrastructure with a complementary reporting

Under option 2, the envisaged monitoring is supported by a specific reporting. Council Regulation (EC) No736/96 is revised (for the sake of clarity this Regulation is repealed and a new regulation is drafted) and a reporting obligation for all data and information on investment projects deemed necessary for monitoring purpose is maintained.

The scope of the Regulation is enlarged to encompass sectors of importance for the new EU energy system (e.g. oil pipelines and storage, renewable energy source for electricity, bio-fuel refineries, CO2 transport and storage infrastructure). In order to minimize costs for Member States and companies, the revised system would maintain the possibility for Member States to exempt companies from notifying information and take into account existing reporting or monitoring obligations provided that equivalent information is made available. For the remaining data needs, Member States are still under an obligation to

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For the whole picture of reporting obligations relating to investment/infrastructure imposed by EU legislation, see Annex 3.

notify. The content of notification is clarified and updated to take into account new needs.

Given the time horizon of investment projects in the energy sector, reporting would apply every two years (instead of every year under the current text). Time horizon for investment would be set at 5 years further easing the administrative burden and aligning this obligation with other relevant frameworks, as generally suggested by respondents to the consultation. Thresholds are generally lowered for existing items and are set for new ones to take into account the latest developments of the energy system¹⁴ while for the sake of proportionality minimum thresholds below which information will not be required are set. Such thresholds will give the possibility to get a picture of the situation without imposing un-proportionate administrative burden on companies. In order to align this text with other texts dealing with data collection, appropriate collection and storage IT instruments are to be set up and data protection for individuals is provided. To improve quality of data and the acceptability and quality of the works relying on such data, a general obligation of the type of the obligation imposed on Member States in the context of statistics is spelled out. Appropriate ‘validation’ by Member States (e.g. opportunity to give feedback) is required for information and data concerning projects on their own territory collected by ENTSOs.

On the basis of data collected, the Commission and in particular its Market Observatory for Energy prepares regular analyses of the future development of the EU energy system in a cross sector perspective with a view to identifying potential gaps and potential problems as well as bringing transparency to market participants. The results of this analysis would be discussed with stakeholders and made public. Confidentiality of data would be limited to commercially sensitive data which is the generally accepted rule.

As a result of these modifications, a global and integrated framework combining reporting and monitoring and streamlined information flows, with validation of data by Member States in principle, is set up. The system is balanced with two coordinated pillars (reporting and monitoring). Compared to the status quo option, this approach would imply the following main changes in the current Regulation:

Proposed change of content	Proposed change with regard to Council Regulation (EC) No 736/96
Adjustment of the scope of reporting (<i>incorporation of new infrastructure – e.g. oil pipelines and storage, Renewable energy source for electricity, bio-fuel refineries, CO2 transport and storage</i>) revision of certain thresholds (<i>e.g. capacity for hydro-electric power station</i>)	Modification of Articles 1(1) and of the Annex
Possibility for Member States to be exempted from notification provided that equivalent information is provided	Modification of Article 1(1)

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See also section 2 – What is the problem that requires action ?

<i>(reference to existing EU reporting mechanisms and to monitoring under the Third internal market package provisions – ENTSO for Gas and for Electricity)</i>	
Revision of the frequency of the reporting <i>(every two years)</i> and of the date for notification <i>(31 July of the reporting year)</i>	Modification of Article 1 (1) and (2)
Clarification of the definitions used in the context of this draft Regulation	Add new Article
Clarification of the content of the notification <i>(deletion of outdated aspects – e.g. raw material used – and extension of its scope to cover new equipments on infrastructure – e.g. carbon capture equipment)</i>	Modification of Article 2
Incorporation of new requirements to ensure quality of data and information transmitted to the Commission and of new requirements concerning data processing <i>(IT tools and protection of individuals)</i>	Add new article
Clarification of the scope for implementing measures <i>(technical aspects/definition)</i>	Modification of Articles 2(2) and 5
Incorporation of the analysis dimension <i>(e.g. mention of regular analysis in a cross sector perspective – experts; mention of the context of the objectives of the analysis)</i>	Add new Article
Enhance transparency of data / information and of the results of analysis <i>(possibility to publish data collected except for commercially sensitive data and information / discussion of the results of analyses with stakeholders / publication of the analysis and transmission to EU institutions)</i>	Modification of Articles 3 and 4

Option 3 – Monitoring of the evolution of energy infrastructure with new and fully-fledged reporting requirements

Under option 3, the envisaged monitoring is also supported by a specific reporting. As under option 2, a global and integrated framework combining reporting and monitoring and streamlined information flows, with validation of data by Member States in

principle, would be set up. The system would be balanced with two coordinated pillars (reporting and monitoring). Council Regulation (EC) No736/96 is revised (for the sake of clarity this regulation is repealed and a new regulation is drafted). As for option 2, the revision of Council Regulation (EC) No736/96 consists in particular in adjusting the scope of the Regulation, clarifying and complementing the existing provisions, revising the frequency or reporting and setting up a monitoring system.

However, the difference with option 2 is that option 3 sets a fully-fledged integrated reporting and monitoring system. In practice, Member States are obliged to notify and validate all requested information to the Commission, irrespective of other existing notification mechanisms or monitoring mechanisms developed at EU level (ENTSO for gas and ENTSO for electricity). No exemptions from reporting obligations would be granted to Member States. Industry would be required to supply Member States with the relevant information unless where the Member State decides to use other means of supplying the Commission.

Compared to the status quo option, this approach would imply the following main changes in the current Regulation:

Proposed change of content	Proposed change with regard to Council Regulation (EC) No736/96
Adjustment of the scope of reporting (<i>incorporation of new infrastructure – e.g. oil pipelines and storage, Renewable energy source for electricity, bio-fuel refineries, CO2 transport and storage</i>) revision of certain thresholds (<i>e.g. capacity for hydro-electric power station</i>)	Modification of Articles 1(1) and of the Annex
Revision of the frequency of the reporting (<i>every two years</i>) and of the date for notification (<i>31 July of the reporting year</i>)	Modification of Article 1 (1) and (2)
Clarification of the definitions used in the context of this draft Regulation	Add new Article
Clarification of the content of the notification (<i>deletion of outdated aspects – e.g. raw material used – and extension of its scope to cover new equipments on infrastructure – e.g. carbon capture equipment</i>)	Modification of Article 2
Incorporation of new requirements to ensure quality of data and information transmitted to the Commission and of new requirements concerning data processing (<i>IT tools and protection of individuals</i>)	Add new article

Clarification of the scope for implementing measures (<i>technical aspects/definition</i>)	Modification of Articles 2(2) and 5
Incorporation of the analysis dimension (<i>e.g. mention of regular analysis in a cross sector perspective – experts; mention of the context of the objectives of the analysis</i>)	Add new Article
Enhance transparency of data / information and of the results of analysis (<i>possibility to publish data collected except for commercially sensitive data and information / discussion of the results of analyses with stakeholders / publication of the analysis and transmission to EU institutions</i>)	Modification of Articles 3 and 4

5. SECTION 5 - ANALYSIS OF IMPACTS

The revision of Council Regulation No 736/96, whatever policy option is considered, will *per se* not have any significant economic impacts (nor will it help create jobs, develop innovation or have an impact on environment). The analysis of impacts of such mechanism aims at clarifying the impact on availability of relevant data and on an appropriate development of monitoring (analysis), and on the impact on SMEs as well. It is considered that collecting “historical” data, like in the case of statistics, does not differ from collecting forward looking data such as for investment projects.

5.1. Benefits

- On data availability and quality of data

An improved and strengthened reporting system will increase data availability and the quality of data and information notified to the Commission. Regular studies commissioned by the Commission could also increase data availability.

- On problems deriving from lack of data availability

- (a) On analysis of and transparency on the evolution of the EU energy system

An improved and clear framework for analysis will improve the monitoring of investment projects at EU level. A reporting and/or analysis every two years would be sufficient given the type of investment at stake.

In a short term perspective, an improved monitoring will not provide transparency and information with a level of detail required to take a decision for individual investment projects which are generally capital intensive. In a

medium to long term perspective, the elaboration of an EU consistent approach and overview, based on accurate and appropriate information is generally valued by investors, in particular if it reveals obstacles to investment projects such as undue authorisation procedures or lack of credit. However, it is to be noted that decisions will ultimately be taken by economic operators on the basis of market analyses and signals, of their own strategies and of the economic viability of a project. This EU overview contributes nevertheless to level playing field information which is more difficult to obtain for smaller companies and new markets entrants than for established players.

- (b) On evaluation of EU energy policies, identification of problems and on policy-making

With data provided on a regular basis and analysis, the Commission will be better informed and will have a greater possibility to address, within its field of competence, identified problems. The Commission could in particular promote best practices, e.g. regarding the authorisation procedures of energy infrastructure projects.

In addition, policy-making at EU level could benefit from better data availability and from a better knowledge of the problems and of their causes. It could be based on more reliable facts, figures and analysis whenever a decision or initiative will be needed. Policy-making at Member States level may also benefit from an improved EU monitoring, complementing national approaches and developing regional dimensions.

The impact of such monitoring will therefore increase in the medium to long term. All these aspects are however difficult to quantify.

The likelihood for these potential impacts to happen depends on the option selected.

- **Policy option 0**, as a baseline case, will in the longer-term have a negative impact on EU energy policy and commercial entities, since important information on investments will not be made available in a systematic and coherent way. Since it relies on reporting / monitoring exercises developed for sector specific purposes, a coherent and comprehensive approach would be unlikely and it is likely that the added value for policy makers and private investors remains small. This could also lead to un-informed EU policy decision, both in terms of undertakings misinformed actions or not being able to act due to lack of information. No meaningful monitoring can be developed on this basis, given that the data requirements are not adapted to the current needs of the policy makers and investors and that quality of the data is not ensured. The EU added value would therefore be limited.
- **Policy option 1** (repeal of the current Regulation) will not overcome the limitations related to the availability of consistent data. Some data and information will only be made available in the context of studies or of existing specific legislation. The risks of methodological inconsistencies are considerable and the appropriateness/accuracy of data used in the

context of these studies is not guaranteed. Contractors would have to get the data, most likely from Member States, industry or commercial sources. Verification of data used by contractors would be necessary to make sure that the envisaged analysis relies on robust data and brings added value. Member States and / or industry would have to be consulted to comment on figures used for the analysis. Administrative burden on Member States, on Industry or on the Commission would not be necessarily reduced.

- **Policy options 2 and 3 may prove more relevant.** These options consist in a monitoring based on information and data which are meant to be adapted to the needs. On a medium to long-term basis, these policy options are likely to provide real added-value and a useful framework for discussion between public authorities and stakeholders in the analysis of future trends and investment projects and encountered investment barriers.

The strength of **policy options 2 and 3** consists in a global and integrated reporting and monitoring system with a wide variety of information sources and with a greater implication of industry and Member States at all stage of the process (from collection to analysis). This greater involvement could improve compliance with reporting obligations and quality of data. A global and consistent view at EU level can be built up.

However, both options would create some new administrative burden for companies and administrations to fulfil new reporting requirements, which are kept to a minimum and proportionate to the potential benefits.

The following table summarizes the situation as follows:

Policy option	Short – term potential impact	Medium to long term potential impact	
		Likelihood	Magnitude
PO 0,1	negative	negative	negative
PO 2	positive	positive	high
PO 3	positive	positive	high

5.2. Administrative burden / costs

The Commission was able to determine an approximate number of concerned operators on the basis of data provided by commercial data providers¹⁵, and the frequency of reporting. However, consulted parties have not provided the Commission with data or information on time required and categories of staff involved in the reporting process under the Council Regulation No736/96 and its possible revision. For the Commission, 2 Staff members working 6 months per monitoring exercise (preparation, aggregation of data, conclusions...) would be needed.

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See Annex 4

The following parameters have therefore been selected to make a calculation of the administrative costs:

Gross earning per hour	Companies = € 44.66 (average of gross earning per hour from the 10 Member States with the highest amount for category 2 staff following EU standard costs model)
	Member States = use of the individual amount for category 2 staff following EU standard costs model
Gross earning per year	Commission = € 122 000 (standard average annual costs for one official, as recommended by DG BUDG)
Time required per notification action	Companies to MS = 8 hours (Commission's estimate)
	MS to EU = 40 hours – current regulation (Commission's estimate) 48 hours – revised regulation (Commission's estimate)
	Commission = 6 months – 1 staff = current regulation 6 months - two staff = revised regulation
Experts	€ 5000 max per expert No expert – current regulation 10 experts – revised regulation

The results of the calculation per notification exercise under the current scope of Council Regulation (EC) No 736/96 and under a revised Regulation in case of full reporting without any exemptions (option 3) are the following:

Maximum costs ¹⁶	Under the Current Regulation	Under a Revised Regulation (<i>lower thresholds¹⁷ and expanded scope¹⁸ + analysis and discussion</i>)	Impact of the revision
<i>For companies</i>	<i>€ 160 000</i>	<i>€ 350 000</i>	<i>+ € 190 000</i>
<i>For Member States</i>	<i>€ 30 000</i>	<i>€ 40 000</i>	<i>+ € 10 000</i>
<i>For the Commission</i>	<i>€ 61 000</i>	<i>€ 172 000</i>	<i>+ € 111 000</i>
<i>Total</i>	<i>€ 251 000</i>	<i>€ 562 000</i>	<i>€ 311 000</i>

These costs are however unlikely to be actually borne by companies and Member States to meet the requirements of a revised Council Regulation (EC) No 736/96 as they are the maximum costs.

It is highly likely that a lot of data will be collected in the context of sector – specific monitoring at national level, irrespective of an EU obligation. Following the adoption of the third internal market package, a lot of data will also be collected by industry itself in the context of investment programming for gas and electricity grid. Administrative costs and burden are expected to result mainly from other information obligations laid down by other legal instruments. Therefore, the estimated cost is considered to represent the maximum administrative burden.

As a conclusion, the actual administrative costs induced by a revised Council Regulation (EC) No 736/96 are likely to remain modest and even negligible. It also appears that the cost of such a reporting for companies and Member States is more or less equivalent to purchasing data from commercial data providers and commissioning studies. Purchasing data and commissioning studies therefore cannot be considered as a cheaper option, also considering that data from commercial providers is sometimes flawed or incomplete. As for the Commission, the cost incurred for this involved analysis of data is comparable to the expenses which could be incurred for external consultants.

5.3. SMEs Test

In the energy landscape, dominated by big energy companies, small and medium enterprises (SMEs) are mainly active in the sector of renewable energy sources (RES) which is relatively recent¹⁹. In Spain for example, enterprises fully involved in this sector

¹⁶ Rounded figures

¹⁷ Except for power generation from RES, the impact of lower thresholds on the number of operators is limited.

¹⁸ New aspects: oil pipelines, storage capacities, RES...

¹⁹ Within the RES sector, SMEs are rather upstream innovator players than generators/ or downstream producers.

are either medium-sized or small and one out of three enterprises has been created after 2000. However, no comprehensive figures on SMEs in the RES sector at EU level which could be concerned by the revised Regulation are available²⁰.

To measure the impact on SMEs, this test can be carried out in the form of a cost/benefit analysis.

- (1) The **burden** of Council Regulation (EC) No 736/96 for SMEs is expected to be limited for the following reasons:
 - (a) Firstly, given that Member States have to comply with specific targets related to RES, a thorough monitoring of investment in these capacities is highly likely to take place at national level, irrespective of the obligations stemming from Council Regulation (EC) No 736/96. The EU targets on climate change translate into national targets. As mentioned above, no additional burden for companies is expected to result from a revised Council Regulation (EC) n°736/96.
 - (b) Secondly, in line with the objective of this proposal to get the information at minimum costs, it is not considered that under Council Regulation (EC) No 736/96 Member States will have to contact directly companies to get the relevant information. Member States will still enjoy flexibility to select the way data should be collected. The one stop shop principle, according to which companies will be required to communicate the same information only once, will be promoted by the Commission. Alternative ways of obtaining data from the RES sector are surveys based on representative samples.
 - (c) Thirdly, the impact will be further reduced with a less frequent reporting obligation and the definition of thresholds below which notification of investment projects is not required. A reporting every two years – instead of an annual one as under the current text – is envisaged. Thresholds for RES are defined to ensure that the most relevant capacity developments, which are the focus of the Regulation, are covered. As evidenced in Annex 4, the number of operators concerned by a notification obligation could be reduced by about 20% with a threshold set at 10 MW for RES.
- (2) SMEs may also benefit from such a monitoring tool for investment projects in the energy sector and its conclusions. Analyses on the overall situation at EU level and data collected will be made publicly available, which will provide an additional source of information for SMEs and their investment projects. Given their limited resources/capacities, SMEs are generally less equipped than big companies to collect information.

As a conclusion, Council Regulation (EC) No 736/96 is not expected to put SMEs at a disadvantage compared to big companies. The administrative burden resulting from this Regulation, if any, will be limited and will, at least partly, be outweighed by the potential

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Data often concerns the whole sector, from construction to generation, for example. This exceeds by far the scope of the current and possible future Regulation which targets investments in new generation capacities

benefits. In a medium to long term perspective, it is likely that the number of SMEs in the RES sector will decrease as a result of the possible consolidation/consolidation trends of this sector. This could take place with the possible evolution of support schemes which have been put in place to stimulate the development of RES.

6. SECTION 6 – COMPARING THE OPTIONS

The comparison of the policy options is based on qualitative terms and on the assessment of administrative burden. The following table gives a summary of the advantages and disadvantages of each option for a reporting and monitoring tool.

Policy option	Advantages	Disadvantages
<p>PO 0</p> <p><i>(Do nothing situation)</i></p>	<ul style="list-style-type: none"> - Use of existing data sources - Confidentiality generally limited to commercially sensitive information (Except for Council Regulation 736/96) 	<ul style="list-style-type: none"> - No consistent reporting (difference of deadline, frequency, format, type of information...) and reporting without updated categories of data. Lack of consistent nomenclature. - Still lack of important data to discuss all challenges (e.g. bio-diesels plants; oil pipelines and storage, RES in particular). Useful / necessary data not necessarily collected; - Quality of data might be insufficient due to collection method and compliance problems. - For Council Regulation 736/96, confidentiality of forwarded data (<i>subject to publication of general information or of summaries not containing details concerning individual undertakings</i>) - Problems with comparability and relevance of data collected ; - Compliance problems under specific instruments; - Additional administrative burden for MS and the Commission to process data

		<p>from various sources.</p> <ul style="list-style-type: none"> - No analysis possible against demand and supply scenarios.
<p><i>PO 1</i></p> <p><i>(Repeal of Council Regulation (EC) No736/96)</i></p>	<ul style="list-style-type: none"> - Simplification of the regulatory framework for reporting obligations. - Limitation of the compliance problem by Member States and industry. 	<ul style="list-style-type: none"> - Repeal of the only instrument providing for a certain cross-sector view at EU level; - Repeal of the only source of information for certain EU energy infrastructure (e.g. oil refineries); - Still lack of important data to discuss all challenges (e.g. bio-diesels plants; oil pipelines and storage in particular); - No consistent reporting (difference of deadline, frequency, format, type of information...) and reporting without updated categories of data. Lack of consistent nomenclature. - Quality of data might be insufficient due to collection method and compliance problems. - Problems with comparability and relevance of data collected; - Compliance problems under specific instruments; - Additional administrative burden for MS and the Commission to process data from various sources; - No analysis possible against demand and supply scenarios.
<p>PO 2</p> <p><i>(monitoring with specific complementary)</i></p>	<ul style="list-style-type: none"> - Availability of required data and proportionality of data; - Acceptability of data used (commercial, MS and industry) 	<ul style="list-style-type: none"> - Possible incompleteness of data due to uncertain compliance with reporting obligations

<i>reporting)</i>	data) and broad overview; - Integrated framework combining reporting and monitoring; - Confidentiality limited to commercially sensitive information; - Reduction of duplication with other EU reporting and monitoring exercises; - Improved framework for data processing	- Possible limitations of the quality of data depending on collection methods - Additional administrative burden to collect data - Additional co-ordination effort by the Commission for collecting and processing the data
PO 3 <i>(monitoring with a new and fully-fledged reporting)</i>	- Collection of data specifically required and diversified sources of information (commercial, MS, industry) - Possible greater acceptability of data used (commercial, MS and industry data) - Integrated framework combining reporting and monitoring - Confidentiality limited to commercially sensitive information	- Possible incompleteness of data due to uncertain compliance with reporting obligations - Possible limitations of the quality of data depending on collection methods - High administrative burden to collect data (Duplication with existing data/reporting mechanisms) - Additional co-ordination effort by the Commission for collecting and processing the data

On the basis of this list of advantages and disadvantages, it is possible to evaluate the various options to determine the best option. In this case the best option should allow for a good reporting and monitoring process giving a global and cross-sector view of investment trends to the Commission and ultimately to Member States and economic operators (effectiveness), with minimum negative impacts (efficiency). With this mechanism which should be as simple as possible, they should be in a better position to perform their respective tasks and to contribute to achieving EU policy objectives (energy security, mitigation of climate change, better regulation, transparency, level playing - field...) which should make the burden / costs it implies acceptable (coherence).

In the following, the evaluation of the different policy options is based on a qualitative grading, on a scale from (-) to (++).

A (++) grade is granted when the policy option provides a significant contribution to meeting the objectives.

A (+) grade is granted when the policy option provides a satisfactory contribution to meeting the objectives.

A (-) grade is granted when the policy objectives are not achieved or negative impacts can be expected.

	Effectiveness (reaching the target)	Efficiency (reaching the target at minimum costs)	Coherence
PO 0 (<i>Status quo</i>)	-	-	-
PO 1 (<i>Repealing Council Regulation No736/96</i>)	-	-	-
PO 2 (<i>monitoring with specific complementary reporting</i>)	++	+	+
PO 3 (<i>monitoring with a new and fully-fledged reporting</i>)	++	-	+

From the above analysis, it can be concluded that option 2 presents the most favourable outcome of the options considered and best reaches the objectives set for the revision of Council Regulation (EC) No 736/96:

- It provides an integrated and updated framework combining reporting and monitoring at EU level which should allow for a global and cross – sector view of investment trends.
- It will improve quality and acceptability of data and allow for comparison of data.
- It allows EU to establish a dialogue with Member States and industry in a monitoring context (which would not be the case with option 1). This can improve sense of ownership of the process and improve quality of data notification.
- It will give the possibility to publish data and to limit confidentiality to commercially sensitive information.
- It takes into account the existing reporting and monitoring sector specific mechanisms at EU level which are of possible interest. It would avoid duplicating existing work and simplify the administrative environment and therefore limits the administrative burden imposed on Industry and Member States (which would not be the case with option 3).

- Policy options 1 and 3 are unlikely to allow for a global and consistent overview of investment trends at EU level at a minimum cost. In this context, there is no improvement to expect compared to the baseline case (do nothing situation).

7. SECTION 7 – MONITORING AND EVALUATION

The Commission will continuously monitor the impact/interest of the changed legislation and of the reporting and monitoring mechanism. More specifically, the Commission will observe the following issues:

- Number of MS complying with the reporting obligation
- Quality, completeness, appropriateness of data collected
- Participation of stakeholders and of interested entities in the monitoring mechanism (interest in analytical reports, participation in meetings...)
- Number of references made to the monitoring exercise carried out by the Commission and use of its results by EU institutions and other interested parties

Experience shows that the effects of a change in a regulatory framework take three to five years to materialize. Therefore the Commission proposes to review the application of the revised Regulation five years after its entry into force.

Annex 1

Entities consulted by the Commission (on top of Member States)

Name	Representative of	Members
EUROPIA - European Petroleum Industry Association	Oil refining and marketing industry in Europe	17 international and national companies
OGP Europe - International Association of Oil & Gas producers (OGP)	Private and state-owned oil & gas companies, oil & gas associations and major upstream service companies. OGP members produce more than half the world's oil and about one third of its gas.	- 49 upstream companies - 14 national and other associations - 3 associate members
EUROGAS	Companies, national federations and associations involved in the supply, trading and distribution of natural gas and related activities such as storage and liquefied natural gas.	46 members from 26 countries out of which 33 natural gas companies, 12 federations of natural gas companies, and 1 international organisation
GIE – Gas Infrastructure Europe	Gas transmission companies, storage system operators and LNG terminal operators in Europe.	63 member companies from 27 countries (GTE transmission – 34 Members in 27 Countries GSE storage – 33 members in 17 countries GLE (LNG) – 16 members in 11 countries)

ENTSO-E / European Network of Transmission System Operators for Electricity	Transmission system operators running the high voltage interconnected grid in Europe	42 members
EURELECTRIC – Union of the Electric Industry	Sector association representing the electricity industry	34 European full members and 9 European affiliate members
EURACOAL - The European Association for Coal and Lignite	Umbrella organisation of the European coal industry - The association's activities are directed at the entire coal chain beginning with coal prospection, access to reserves, extraction, marketing and transport right through to its utilisation at power stations, in the steel industry as well as in other energy-intensive industries.	28 Members from 18 countries amongst which national producers and importers associations, companies and research institutes
EREC - European Renewable Energy Council	Umbrella organisation of the European renewable energy industry, trade and research associations active in the sectors of bioenergy, geothermal, ocean, small hydropower, solar electricity, solar thermal and wind energy.	12 members and 1 associate member (non profit organisations and federations)
EUREC Agency - European Renewable Energy Research Centres Agency	European Economic Interest Grouping in 1991 to strengthen and rationalise the European research, demonstration and development efforts in all renewable energy technologies.	43 prominent research groups from all over Europe
ERGEG - European Regulators' Group for Electricity and Gas".	ERGEG is a body of independent national energy regulatory authorities, which was set up by the European Commission as an Advisory Group to the Commission on energy	27 Members (national regulators)

	issues.	
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Annex 2

Summary of contributions to the targeted consultation of Member States and representatives of Industry and energy regulators (+ questionnaire)

1. INTRODUCTION

The Commission received 34 contributions (out of which 21 from Member States). One member of an umbrella association sent its views to the Commission. The consultation was very welcome. Some contributions in particular for more technical aspects were presented as first views due to the fact that some developments of interest for the issue under discussion have still to take place. This is the case for the monitoring to be carried out by the future ENTSO – Electricity and Gas.

2. GENERAL REMARKS (QUESTIONS 1 AND 2)

- a) In the area of investment, it is widely acknowledged that **EU should**:
- a) Bring transparency on investment, improve the market design and set up a stable and attractive regulatory framework for investment.
 - b) Provide analysis on energy trends and forecasts at EU level
 - c) Make sure that regulating frameworks allow for necessary investment to be made. For some respondents, EU should focus on support to new investments politically, financially and technically.
- b) For most of the respondents, an appropriate monitoring of investment projects into infrastructure in the energy sector is seen as relevant and is regularly considered as **essential for transparency, policy-making and support to specific projects**.
- a) **Impact on investment: transparency and data-sharing** which could result from this monitoring could help market participants identify opportunities for investment if:
- it could result in an early overview of planned investments,
 - it provides, statistical overview of data, dedicated analyses of the actual situation – sector by sector - and of the trends on medium to long term perspective at EU and regional level,
 - it provides clarity on where it is important to make investment and on cross-border dimensions.

According to various submissions, such a monitoring could potentially influence the direction of investment, contribute to optimizing investment

process/decisions and help identify necessary investment for EU energy security and the relevant time frame.

b) **Impact on policy-making.** Monitoring investment is considered crucial for **policy – making and for evaluation of policies:**

- Data on the level or timing of investment are necessary for EU informed decisions on what action can most usefully be taken.
- A monitoring could stimulate a strategic thinking on infrastructure and on priorities for investment projects.
- It could help bring more consistency between the future demands and the EU policy objectives.

For respondents, improved timeliness and quality of data on investment would contribute to better understanding the EU energy position, in particular with relation to infrastructure which could be considered of strategic importance for energy security.

c) **Impact on specific projects.** For some respondents, a better monitoring at EU level could be **of help for specific projects**, which are not progressing as planned or which need co-funding to be properly implemented or where the market has not delivered.

- It could provide a useful tool for pressuring/stimulating on-time implementation, for a better cross-border cooperation and coordination of local planning.
- It could encourage participation of joint infrastructure projects and foster support mechanisms for R&D technologies, investment and associated infrastructure (e.g. CCS...).

c) The **nature, reliability and relevance** of such an EU monitoring at EU level as well the **administrative burden** it may represent are however discussed.

a) **Nature of the instrument.** For some Member States and Industry associations, this monitoring should not:

- Be turned into a centrally-planned economy instrument: Investment into energy infrastructure has to remain market-driven/economically-feasible.
- Be used to promote investment (or even decide on investment) in a way which affects negatively the functioning of the market.

For one industry representative, the confidential nature of the plans and strategies in relation to their antitrust, stock and labour related sensitivities has to be reckoned with.

- b) **Reliability.** For some Member States and Industry representatives, public conclusions based on results of such a monitoring could be questionable since:
- Such tool only captures information from the supply side and it may be inherent in this system that it would overestimate the planned investment.
 - Investment/divestment strategies carry a high level of uncertainty.
- c) **Relevance:** While the direct impact of monitoring on investment is bound to be modest, it is felt by some respondents that this instrument will not bring any added – value at all or that a revision of this Regulation is not necessary:
- Information on investment projects may be already publicly available and investment decisions require detailed information which cannot be provided by a monitoring tool.
 - Given the existence of national monitoring resulting from EU legislation and the latest legislative development²¹, an EU monitoring under Council Regulation N°736/96 would be irrelevant.
 - The TEN-E Regulation and the future Infrastructure instrument could suit more the needs of a monitoring on investment on infrastructure.

Replies however make a distinction between the various energy sectors potentially concerned – electricity and gas on the one hand – and oil on the other hand where monitoring would be more necessary.

One European association (ENTSO-E) underlines that a well designed monitoring system could strengthen information flows and data-sharing.

- d) **Administrative burden**²². For some Member States and Industry associations, such a monitoring could be a burden both for Member States and companies and could even be an obstacle to investment. However, in some cases it is considered that the impact would be low. Reporting through only one system should be ensured.
- d) Some replies underline that the revision of Council Regulation N°736/96 should be preceded by a **prior analysis** of the faults of the current system and by charting the future needs of the sector. The need for an **ex post analysis** ensuring that reporting data will eventually support the political process is also mentioned once.

21 Under the 3rd internal market package, the new European associations of transmission system operators (ENTSO - Electricity and Gas) will be required to prepare and update a 10-year investment statement for gas and electricity at EU level and publish annual summer and winter generation adequacy outlook. The new Directive on Renewable energy sources will also provide relevant information.

22 Respondents did not submit specific evidence on the costs/burden potentially induced by reporting obligations stemming from the current legislation. Depending on the exact scope of the obligations, administrative costs could be considered as low for some respondents.

3. COMMENTS ON MONITORING (QUESTIONS 3 TO 5)

a) As a rule, both **horizontal and sector-specific** monitoring are seen as relevant:

- a) A global / horizontal approach is needed: sectors are interrelated and interdependent and each impacts on the overall energy security.
- b) Sector-specific monitoring should nevertheless be, for several Member States, the starting point of any global analysis and it is necessary to adjust the monitoring to the specificities of individual sectors.

5 respondents prefer a sector – specific monitoring which appears to them more practical for processing and analysing data.

Some Member States refer to alternative or complementary options: regional dimension or cross-border network development plans or other structural developments of importance for energy security.

One Member State reminds that the specificities of some (small) Member States should be taken into account.

One Member State suggests that the monitoring could focus on specific themes. Depending on the challenges or threats to EU energy situation, analyses or reports could be elaborated.

b) In addition to what could be expected for investment and policy-making (see under point 2), this monitoring could:

- a) Provide an overview of achievements and of the needs and functioning of the market.
- b) Lead to a list of projects of significant interest for energy security or to a data base on European energy infrastructure. Member States could follow up by assessing alternative ways of meeting demand through efficiency measures, alternative ways of supplying energy.

c) For most of the respondents, all actors should be involved in the monitoring:

- a) It would help this mechanism to be perceived as a help rather than an administrative obligation.
- b) Discussion of final reports and conclusions could be a way of increasing value added and a sense of ownership to the process.

Member States are considered by some respondents best placed to assess contributions and to deal with various aspects of the monitoring.

Industry's involvement is critical for the vast majority of respondents. For one industry representative, the role of Member States is crucial to ensure that the link with Industry is strong.

As for civil society, many consulted parties do not provide clear views on this issue. While it is generally acknowledged that civil society can contribute to a smooth dissemination of information available and should have the possibility to discuss issues to a certain extent, 3 Member States clearly reject the possible involvement of civil society. For these Member States, this monitoring should not be turned into a second Environmental Impact Assessment.

For one Member State, neither industry nor civil society should be part of the monitoring.

The role of the Commission as a facilitator and for analysis is recalled. The Commission is urged by some Member States to establish strong links with actors. It is regularly put forward that ENTSO and ACER (future Agency for regulators) should have a crucial role to play in monitoring and in coordinating projects. For the representative of energy regulators, the monitoring should be assigned to ACER.

4. COMMENTS ON REPORTING (QUESTIONS 6 TO 9)

Consulted parties are strongly in favour of a simple and pragmatic approach. Reporting obligations should not be duplicated but should be harmonised with those of ENTSO or those of the TEN-E regulation.

- a) **Scope of reporting.** Respondents are generally in favour of an expansion although a few consulted parties are not supporting it.

Example of possible extensions:

- a) Infrastructure for supply of petroleum or CHP/district cooling/heating infrastructure, as they serve multiple goals, for some respondents.
- b) New technologies (smart meters, carbon capture and storage...): their incorporation is widely supported, although in some cases on the condition that it is relevant to the analysis of policy objectives or that no other reporting systems on these specific aspects exist.
- c) Non financial decisions (e.g. divestment...): they should be encompassed for the vast majority of respondents. In one case, it is considered that these decisions are purely private matters and should not be reported.
- d) Obstacles to projects: reporting is seen as a positive development or as a possibility by several Member States. For a few respondents, this information is not relevant for the monitoring or is a private matter. Incorporation is also conditioned upon the existence of EC specific powers to resolve the issues.
- e) Partners or amount of investment: incorporation is accepted by several respondents as a contribution to transparency. However, for a few respondents, such reporting could act as deterrent to stakeholders to provide information or would not be relevant or would be commercially

sensitive. A facultative notification is suggested by various consulted parties.

b) Definition of **projects of European interest**. The following main aspects are mentioned:

- a) Cross-border dimension, impact of an infrastructure on more than one Member State, as a rule.
- b) Contribution to EU policy objectives (Security of supply, diversification of supply, internal market...), for several Member States. The definition laid down in the TEN-E guidelines is referred to by a few respondents.

c) **Possible thresholds** in order to determine the scope of reporting. Submissions are limited to general ideas: these thresholds depend on the sector, they should be balanced and not too small but the thrust should not be lost.

For one respondent, these thresholds should also reflect the importance of a project compared to the scale of the sector in a Member States.

For renewable energy sources, and wind in particular, the Commission is urged by one sector association to ensure that all energy projects, big and small, are accounted for in order to reflect the reality of today.

d) **Categories on the status of investment projects**. For some, categories should be adapted according to the nature of the investment. However, “planned” or “committed”, “under construction” and “expected” date of commissioning” are generally considered as basic categories.

One respondent suggests four categories: preparatory phase (planned projects or undergoing feasibility study) / before the final investment decision / under construction / in operation.

For the moment of notification, the planning consent could be used as a starting point for several respondents, subject to a clear definition of what “planning consent” is. This would avoid confidentiality problems. Other contributions also mention the moment a project is formally presented to national authorities and not necessarily the licensing stage or the project approval, as a possible starting point.

e) On time horizon (projects for which work is scheduled to start within...) for notification: replies are equally divided into three categories: 3 years, five years and no target date. It is generally underlined that the relevant time horizon depends on the infrastructure concerned.

f) On frequency of the reporting. An obligation every two years (instead of an annual one) is slightly preferred:

- a) Projects concerned are big and such a frequency would reduce administrative burden.

- b) It would also be consistent with the monitoring carried out by ENTSO for gas and electricity.

However, rapid changes of the situation on the ground could justify a more frequent reporting, at least an annual one. For one respondent, a more frequent reporting could be accepted for projects with an accelerated implementation if participants agree. One respondent suggests that the reporting should take place every third year, which could compensate an increased level reporting.

- g) For respondents, industry should report to Member States, subject to one suggestion, according to which EU multinationals operating in several Member States could notify directly to the Commission.
- h) Confidentiality of reported data should be limited as much as possible for the vast majority of respondents, subject to commercially sensitive data or to an aggregation of data.

In one reply, confidentiality should be the rule and for a few respondents, this issue should left to Member States or subject to separate agreement with industry.

Questionnaire

A – General questions

1. What do you expect from EU institutions in the investment area?
2. How could a monitoring system help investment decisions and implementation?

B - Questions relating to monitoring

3. What type of monitoring would be relevant for industry/investors: a horizontal / global or sector-specific monitoring?
4. What should be the results and follow-up of such a monitoring, from an industry point of view?
5. Would it be necessary to involve industry, Member States, civil society in the monitoring? How should they be involved?

C - Questions relating to reporting

6. What information should be reported / collected to be of interest for industry/investors?
 - a) Should sectors other than oil, gas, electricity (CCGT, hydro, solar, wind, etc) be covered?
 - b) In your area, what infrastructures should be monitored?

- c) What would be a project of European interest from your perspective? What thresholds for infrastructures should be set?
 - d) Should new technologies or equipments (CCS, switching systems, reverse flows installations...etc) be covered?
 - e) Should information on partners in the projects / amounts of the investment projects be notified?
 - f) Should concrete obstacles to projects implementation be reported?
 - g) Should non-financial decisions with an impact on infrastructure (e.g. life-time extension, decommissioning...etc) be encompassed?
 - h) For investment monitoring, what are the most relevant categories:
 - Planned projects, under construction, date of (de)commissioning...etc? Should the planning consent be the stage when notification should start?
 - What is the relevant time horizon: Projects on which work is scheduled to start within three years / five years?
 - Should nominal capacities be complemented?
7. How frequently should information be reported, once a year, every two years?
8. Should industry be involved in the reporting? What alternative could be envisaged? What administrative costs or burden would imply a reporting of the type laid down by the current regulation?
9. Should forwarded information be treated as confidential? To what extent could information be disclosed?

Annex 3 – Overview of the notification obligations resulting from EU legislation in relation to investment/infrastructure

Which infrastructure/ investment?	Which obligation?	Who notifies?	When?	How?	Confidentiality?	Action by Commission
I - Existing legislation						
A- GAS						
A1. Directive No 2003/55 of the European Parliament and of the Council common rules for the internal market in natural gas						
Article 4 “Natural facilities” gas	<i>For information</i> - Reasons for refusal to grant authorisation for construction or operation of natural gas facilities	Member States or delegated entities		NA		Article 31 – Annual Report to the European Parliament and Council , including examination of issues relating to the system capacity levels...physical capacity for exchanges and development of storage
- Article 5 Capacity “Envisaged additional capacity being planned or under construction” -	<i>For SoS purposes</i> - Monitoring by MS and reporting to the Commission <i>For control of access</i>		Annual	National Annual report outlining the findings - to be forwarded to the Commission		

	- Notification of exemption decision to access rules					
- Article 22 a) Major new gas infrastructures – i.e. interconnectors between MS, LNG and storage facilities b) Existing infrastructure with significant increased capacity and modifications to such infrastructure which enable the development of new sources of gas supply	<i>Exemption possible in particular if the level of risks attached to the investment is such that the investment would not take place unless an exemption was granted</i>		Without delay after adoption of the decision	Decision with all relevant information including share of the total capacity of the infrastructure for which exemption is granted; contribution of the infrastructure to the diversification of gas supply	Confidentiality of commercially sensitive information	
A2. Council Directive 2004/67 concerning measures to safeguard security of natural gas supplies						
- Levels of storage	In the report pursuant to Article 5 of	MS				Monitoring on the basis of the reports referred to

	Directive 2003/55					in Article 5 Withdrawal capacity of gas storage - level of interconnection of national gas systems of MS
A3. Decision No 1364/2006 of the European Parliament and of the Council laying down guidelines for trans-European energy networks						
- Article 2 - High pressure gas pipelines - Underground storage facilities connected to High pressure gas pipelines - reception, storage and regasification facilities for LNG and also LNG carriers	- Article 8 * For each projects of European interest, regular exchange of relevant information; *MS to communicate reasons for (significant or prospective) delay for a project of European interest	MS	<i>Upon request</i>			

	<p>- Article 9</p> <p>Every two years, Commission <u>in close collaboration with the committee</u> (comitology) to present a report on the progress of projects of European interest^{23, 24},</p>					
B - ELECTRICITY						
B1. Directive No 2003/54 of the European Parliament and of the Council common rules for the internal market in electricity						
<p>- Article 4</p> <p>Capacity - “Envisaged additional capacity being planned or under construction”</p>	<p><i>For SoS purposes - Monitoring by MS and reporting to the Commission</i></p>	<p>Member States or delegated entities</p>	<p>Every two year</p>	<p>National Annual report outlining the findings - to be forwarded to the</p>		<p>Article 28 1(c) – Monitoring and reporting of the implementation of the Directive – Annual report covering at least an examination of issues relating to system capacity levels...</p>

23 *projects of European interest = on the axis of priority projects and which are of cross-border nature or have a significant impact on cross-border transmission capacity.

24 (Info -envisaged passage of the project through the planning approval phase; timetable for the feasibility and design phase; construction of the project; entry into service of the project) - No info on capacity

				Commission		
B2. Directive 2005/89 of the European Parliament and of the Council concerning measures to safeguard security of electricity supply and infrastructure investment						
<p>- Article 7</p> <p>*cross-border interconnection capacity</p> <p>*taking into account existing and planned transmission lines (internal lines that materially affect the provision of cross-border interconnection)</p>	<p><i>For SoS purpose -</i></p> <p>In the report pursuant to Article 4 of Directive 2003/54</p> <p>- investment intentions for the next five or more calendar year, of TSOs and those of any other party of which they are aware, as regards the provision of cross-border interconnection capacities;</p> <p>- investments related to the building of internal lines that materially affect the provision of cross-border</p>	<p>MS or competent authorities in close cooperation with TSOs</p> <p>- TSO and any other party required to provide MS with information</p>	<p>Every two year</p>	<p>National Annual report outlining the findings - to be forwarded to the Commission</p>	<p>Non-disclosure of confidential information</p>	<p>Article 7(5) – On the basis of information received from competent authorities, Commission to report to MS, competent authorities, ERGEG, on the investments planned and their contribution to SoS</p>

	interconnection					
B3. Decision No 1364/2006 of the European Parliament and of the Council laying down guidelines for trans-European energy networks						
- Article 2 Electricity networks: - all high voltage lines, excluding those of distribution networks, and to submarine links provided this infrastructure is used for interregional or international transmission or connection; - any equipment or installations essential for the system to operate properly (including protection, monitoring and control systems)	- Article 8 For each projects of European interest, regular exchange of relevant information; - Article 8 MS to communicate reasons for (significant or prospective) delay for a project of European interest - Article 9 Every two years, Commission <u>in close collaboration with the committee</u> (comitology) to present a report on the progress of projects of European	On MS	Upon request			Commission to draw up a report on the progress of projects of European interest (Article 9) and on the implementation of this Decision (Article 15)

	interest					
B4. Regulation No 1228/2003 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity						
Article 7 – New interconnectors (exemption ...level of risks attached to the investment is such that the investment would not take place unless an exemption is granted)	Article 7 – For exemption purposes (congestion management...) Notification of the exemption decision and of all relevant information relevant to that decision	Article 7 – MS or competent authorities	Article 7 - Automatic notification		Article 7 - Confidentiality of commercially sensitive information	
Article 10 - Networks /infrastructure in general	Article 10 – For inter transmission compensation Information on costs (...) Costs of the networks and costs of hosting cross-border flows based on ...investment in new	Article 10 – MS or competent authorities – in exceptional case, the undertaking (as last option)	Article 10 – Upon request		Article 10 – Information collected to be used only for the specific purposes of this Regulation Commission shall not disclose information acquired pursuant	Decision on amounts to be paid for compensation purposes Guidelines on cross - border compensation

	infrastructure				to this Regulation if covered by professional secrecy.	
C – Oil/Gas (Hydrocarbons)						
C.1 Directive 94/22 of the European Parliament and of the Council on the conditions for granting and using authorizations for the prospection exploration and production of hydrocarbons						
Article 9 Information on activities of prospection, exploration and production of hydrocarbons	Article 9 – <i>For SoS reasons</i> - information on geographical areas opened for prospecting, exploration and production - authorizations granted - entities holding authorizations and the composition thereof	MS	Annually	Annual report		
D - Nuclear						
D1. Council Regulation No 2857/1999 defining the investment projects to be communicated to the Commission in accordance with Article						

41 of the Euratom Treaty

<p>- Article 1</p> <p>New installations and of replacements or conversion (transformation, modernisation) and their decommissioning as well as activities across the entire fuel cycle in a series of industrial activities when such projects are sufficiently extensive (i.e <u>above certain thresholds expressed in Millions Euros – e.g. above € 100 Mio for nuclear reactors of all types and for all purposes</u>)</p> <p>In particular nuclear reactors of all types and for all purposes</p>	<p>Communication to the Commission of new investment projects fulfilling the criteria set up in the Annex to the Regulation.</p> <p>Communication shall include and be limited to the details required (Article 43 Euratom) including: type of investment; amount; length of time to be required; prospects as regards supply and operation of the installation (Article 3).</p> <p>Voluntary notifications of investment projects for decommissioning and for new installations for nuclear reactors of</p>	<p>Persons or undertakings engaged in industrial activities falling within the scope of the Regulation (Annex II Euratom Treaty).</p>	<p>For new installations - not later than three months before the first contracts are concluded with the suppliers or, if the work is to be carried out by the undertaking with its own resources, three months before the work begins (Art. 42 Euratom Treaty).</p>	<p>Official notification to the Commission by the investor. For decommissioning – simple declaration which may be limited to essential characteristics (Article 1).</p> <p>For voluntary notification, simple declaration giving the essential characteristics (Article</p>	<p>The Commission may with the consent of the Member States, persons and undertakings concerned public any investment projects communicated to it (Art. 44 Euratom Treaty)</p>	<p>The Commission shall discuss with the persons or undertakings all aspects of investment projects which are related to the objectives of the Euratom Treaty. It shall communicate its view with the Member State concerned (Art.43 Euratom Treaty).</p>
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	any type and for any purpose and projects concerning the replacement, transformation, modernisation or power increase of such installation when costs are below the cost thresholds set up in the Annex.			1)		
E – Critical infrastructures						
E1. Council Directive 2008/11/EC on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection (transposition 1/1/2011)						
Annex I - Infrastructures and facilities for generation and transmission of electricity - Oil production, refining, treatment and transmission pipelines	- Article 4(4) Information of the Commission of the number of designated ECIs - Article 7(2) Report on the types of risks, threats and vulnerabilities encountered per ECI	On MS	- Article 4 – every year - Article 7(2)- Every two years	Report	Yes	Commission and MS to assess whether further measures are necessary

- Gas production, refining, treatment, storage and transmission by pipelines and LNG terminals	sectors					
F – Energy statistics						
F1. Regulation n° 1099/2008 of the European Parliament and of the Council on energy statistics						
Annex B – - 2.2.6 – Gas storage capacities - 3.3.1. Electrical capacities - 5.2.5 – RES electricity generation capacities - 5.2.5 – Biofuels production capacities	Transmission of data on installed capacities and energy consumption	MS	Annual notification		Possibility of confidentiality – a priori not applicable to these data	Production and dissemination of data by 31 January of year n+2 following the reported period
G. COGENERATION						
F.1 Directive 2004/8 of the European Parliament and of the Council on the promotion of co-generation based on a useful heat demand and in the internal energy market						

Article 10 – cogeneration capacities and fuels used for cogeneration	Article 10 – Reporting obligation - statistics	MS	Annual basis		No	Article 11 – Progress report on the implementation of the Directive to the Council and EP every 4 years
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G. CO2 infrastructure

G1. Directive 2009/31/EC on the geological storage of carbon dioxide and amending Directives 85/337, 96/61, 2000/60, 2001/80, 2004/35, 2006/12

Article 2 -Geological Storage sites in the territory of Member States (not those undertaken for RTD with a total intended storage < 100Kt)	Article 10 – review of draft storage permits + notification of the final Decision Article 18 – Transmission of a report (and all relevant information) + draft decision / final decision on transfer of responsibility in case of closure of a	Articles 10 and 18 – MS or competent authorities	Articles 10 and 18 –			Articles 10 and 18 - Opinion by the Commission
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	storage site					
	Article 27 – Report on the implementation of the Directive + permanent register of all closed storage sites and surrounding storages complexes	Article 27 - S	Article 27 – Every three years			Article 27 - Report
H. Renewables						
H1. Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewables sources						
(Possibly) development of infrastructure and generation in relation to RES	<i>For monitoring of the achievement of RES targets</i> Article 22- National action plans	MS	Every two years		No except if MS request it for certain information	Article 23 – Reporting by the Commission to EP + Council

II - Future legislation

A. European Recovery Action Plan

(Proposal for a...) Regulation of the European Parliament and of the Council establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy

<p>Article 1 –</p> <ul style="list-style-type: none"> - Gas and electricity interconnections²⁵ - offshore wind projects - CCS projects 	<p>Information on actions related to projects listed in Annex may be obtained in the course of the calls for proposals</p> <p>Information on the evolution of actions related to projects once selected for EC financial assistance</p>	<p>Promoters of projects</p>	<p>In the course of the call for proposals and during the implementation and evaluation of selected projects</p>	<p>No obligation</p>	
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²⁵ all high-voltage lines, excluding those of distribution networks, and submarine links, provided that this infrastructure is used for interregional or international transmission or connection; high-pressure gas pipelines; underground storage facilities connected to the high-pressure gas pipelines; reception, storage and regasification facilities for liquefied natural gas (LNG); any equipment or installations essential for the system in question to operate properly, including protection, monitoring and control systems

Annex 4 – Number of operators

Infrastructure in petroleum, gas, electricity, CO2, biofuels			
Number of operators by order of magnitude			
Sector ²⁶	Total number	Number over current thresholds	Potential number over possible revised thresholds/criteria
1. Oil			
1.1. Petroleum refineries			
<i>1.1.1 Crude input</i>	85	70 (> 1000 kt/y)	75 (> 500 kt/d) 65 (> 2000kt/d)
<i>1.1.2 Cat cracking</i>	50	45 (> 500 t/d)	45 ([> 500 and < 2000 t/d])
<i>1.1.3 Hydro cracking</i>	35	30 (> 500 t/d)	45 (> 2000 t/d) 25 (> 1000 t/d)
<i>1.1.4 Desulphurisation</i>	?		
1.2. Oil pipelines	75	-	75
<i>1.2.1 Condensate</i>	10	-	
<i>1.2.2 Crude</i>	65	-	
<i>1.2.3 Products</i>	15	-	
<i>1.4. Oil storage</i>		-	
2. Gas			
2.1. Transport (TSO)	65	50	65
2.2. LNG	15	15	15

²⁶ Bold and italicised items are not covered by the current Regulation. They have been introduced in this table to have a picture of the sector in case the current Regulation would be expanded to cover them.

2.3. Storage	65	50 (> 150 Millions m ³)	50 (> 150 Millions m ³)
2.3.1 <i>Underground</i>	55	45 (> 150 Millions m ³)	45 (> 150 Millions m ³)
2.3.2 <i>Above ground</i>	15	5 (> 150 Millions m ³)	5 (> 150 Millions m ³)
3. Electricity			
3.1 Production (All)	900	240 (>200Mw)	550 (with application of specific thresholds: 100 Mw for thermal, 30 Mw hydro and 10 for RES)
3.1.1 <i>Thermal (conventional + Nuclear)</i>	620	200 (> 200 Mw)	360 (> 50 Mw) 270 (>100 Mw)
3.1.2 <i>Hydro</i>	90	70 (> 50 Mw)	80 (> 30 Mw)
3.1.3. <i>RES (All)</i>	500	-	400 (> 10 Mw)
3.2. Transport	45	35 (International connections)	45 (all infrastructure)
4. CO2			
4.1. <i>Transport</i>	-	-	
4.2. <i>Storage</i>	-	-	
5. Biofuels			
5.1. Production		-	90

Source: Includes data supplied by Petroconsultants S.A., Copyright (2009) Petroconsultants S.A.; various.