



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : General Secretariat of the Council

to : Coreper/Council

No. Cion prop. : 12235/09 ENER 257

Subject : Proposal for a Council Regulation concerning the notification to the Commission of investment projects in energy infrastructure within the European Community and repealing Regulation (EC) No 736/96
- Progress report

The attached progress report was prepared on the basis of delegations oral and written comments, with a view to facilitating further work on the above proposal. It is submitted under the Secretariat's responsibility, without prejudice to future development in delegations' positions.

Council is invited to take note of this progress report.

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

Progress report

Introduction

1. The Commission submitted its proposal for the above Regulation ¹ on 17 July 2009 with articles 284 TEC and 187 EAEC as legal bases. The opinions of the European Parliament and the European Economic and Social Committee were requested ², such consultation being optional.

2. The proposal was presented in response to the European Council Action Plan 2007-2009 and to the reactions that both Council and the European Parliament gave on the Second Strategic Energy Review which the Commission presented in 2008. The need for this Regulation lies in the increased importance of the security of energy supply and the changing nature of the energy structure in the Community, taking account of relevant factors such as increased overall energy consumption, uncertainties affecting the current investment climate, the completion of the internal market for electricity and gas, the continuously increasing inflow of energy from renewable sources from a growing number of producers, the transition to a low-carbon economy and recurring supply problems.

3. The proposed Regulation aims therefore to bring more transparency to the process of investment in energy infrastructure in the Community, by generating more and better data. This will allow, in turn, an improved (cross-sectoral) analysis of needs, shortcomings, potential risks and bottlenecks *et cetera*, and subsequently better coordination - between Member States concerned and at Community level - of joint efforts to anticipate potential problems.

¹ doc. 12235/09 + ADD 1 (impact assessment) + ADD 2 (summary of the impact assessment)

² see doc. 12459/09

Reactions to the proposal

4. Most delegations welcomed the Commission's proposal and subscribed to its aims, even though some delegations underlined one or more particular concerns that prevented them from expressing their general support at this stage. A few delegations even questioned the added value of the proposed Regulation, considering the various existing reporting requirements, in particular the ten-year ENTSO-E and ENTSO-G network development plans that were agreed in the third Internal Energy Market package for electricity and gas.

Even though the aim of avoiding double reporting and unnecessary administrative burdens is addressed in the Commission's proposal¹, almost all delegations nevertheless placed great emphasis on the overriding importance of this aim. Several delegations underlined that changes to certain provisions appear needed to limit even further the risk of double reporting and the administrative burden, including the cost and burden for companies. Thus, the scope of the Regulation could be reduced somewhat in certain areas, because more limited data should suffice. This could be achieved by focusing on crossborder investments rather than national ones, by increasing the thresholds on infrastructure size for certain reporting obligations, by limiting data requirements - such as regards pipeline network, indication of the planned capacity but not of the decommissioning capacity - and by reducing the period for which planned investments or decommissioning projects have to be reported.

At the same time, for some delegations, the scope should be expanded to include the production of oil, gas and coal since this is of key importance to the security of energy supply, or with a view to improving the quality of data, for example by covering some technical characteristics of the planned investments (such as foreseen efficiency, planned working hours).

¹ Note: Annex III of the impact assessment, doc. 12235/09 ADD 1, provides an overview of the many existing notification obligations in this area under Community law; however, some delegations asked that more detailed and regularly updated information be provided. Article 3(2)(a) of the draft Regulation specifies that Member States are exempted from reporting if they have already transmitted the requested information.

As regards the gathering of data, some delegations expressed the view that it could prove challenging to obtain this information from companies, in particular concerning commercially sensitive information from private companies. Member States should therefore dispose of adequate flexibility in the gathering of the required data. It was furthermore underlined that there could be significant differences in data quality levels since the data relies on input from companies and since this data includes rather uncertain predictions of the future.

Several delegations expressed concern on or even opposed the publication of aggregated data by the Commission. In particular, solutions should be found to safeguard against the situation of competitive disadvantage that could occur in small countries or countries with only one or very few operator(s), namely that an individual operator will be easily identifiable in spite of the data being published in aggregated form. A solution could be to perform "regional blinding of data" *i.e.* to aggregate the data at regional level instead of at national level. Furthermore, the confidentiality of commercially sensitive data submitted was stressed, including in the context of publication.

Several delegations underlined that investment projects should only be notified *after* the project has been formally launched in a clearly defined manner, and offered drafting suggestion on such a definition.

Several delegations hold the view that the proposed first data collection deadline, 31 July 2010, is too early, and some underlined that the frequency of the reporting proposed, *i.e.* every two years, should be lowered.

It was underlined that when the Commission prepares its cross-sector analysis, all key stakeholders including Member States should be involved; this should be further specified. Moreover, further information was requested about the methodology which the Commission intends to use for its analysis and on ways in which Council would be involved before or after the completion of the Commission's analysis.