



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 19 February 2010**

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**ENER 38**

**NOTE**

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from: General Secretariat of the Council

to: Coreper

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No. Cion prop.: 12235/09 ENER 257

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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  
- *Political agreement*

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1. The Commission submitted its proposal for the above Regulation <sup>1</sup> on 17 July 2009 with articles 284 TEC (now Art. 337 TFEU) and 187 EAEC as legal bases. The opinions of the European Parliament and the European Economic and Social Committee were requested, such consultation being optional. The European Economic and Social Committee adopted its opinion on 16 December 2009 <sup>2</sup>; the European Parliament is due to adopt its opinion on 25 February 2010. The TTE (Energy) Council on 7 December 2009 took note of a progress report <sup>3</sup>.

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

<sup>2</sup> doc. CESE 1952/2009

<sup>3</sup> doc. 15692/09

2. The Energy Working Party has examined the Commission proposal since October 2009; furthermore it has included draft amendments from the European Parliament <sup>1</sup>. The result is reflected in the Annex.
3. Some delegations would have liked to see further changes, in particular as regards the following issues:
  - the template which will be used for the notifications will be adopted at a later stage (see Art. 7, p. 13). It is underlined that for the current Council Regulation (EC) No 736/96 a similar procedure was followed: after its adoption on 22 April 1996, the Commission adopted Commission Regulation (EC) No 2386/96 containing the notification template on 16 December 1996. The Commission has furthermore underlined that the new template will be based on the existing template, and that national experts will be consulted on a draft version (see also recital 17 (p. 7)). Moreover, the Commission has indicated its willingness to present a declaration in order to reassure delegations as regards the presentation of the new draft template, including notably on the issues of timing and consultation;
  - even though several thresholds (below which no notification of investment projects is required) in the Annex were already raised compared to the Commission proposal, a few delegations would have preferred a higher threshold for this or the other project category, in order to further reduce the administrative impact. However, increasing these thresholds further would greatly diminish the value and coverage of the data gathered by the reporting exercise and of the subsequent analysis of that data.

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<sup>1</sup> Note: without prejudice to the EP opinion to be adopted on 25 February, the text in Annex incorporates, to the extent possible, the draft amendments approved by the EP's ITRE Committee on 4 February 2010.

- Furthermore, the Commission holds a reservation on the reduced scope of the draft Regulation (Art. 1(2), p. 8). The original Commission proposal required the notification of all planned infrastructure investments on which work would only start in 3 or 5 years; the Presidency compromise states that planned infrastructure investment projects have to be notified after their "final investment decision" has been taken.

The Commission has presented a compromise for Article 1(2) that maintains the obligation to report on planned projects, but makes it clear that these reports are *estimates*. Although several delegations could support in principle this Commission approach, more delegations are in fact opposed to it and prefer the Presidency compromise, on the grounds that it lowers the administrative burden significantly and leads to more reliable data and analyses.

However, in view of the support of several delegations, the Presidency proposes to retain the Commission compromise in the form of an optional "may" clause (*cf.* Art. 1(2) second subparagraph, p. 8).

3. In view of the above, the Presidency holds the view that the current compromise, as reflected in Annex, already represents an optimal balance. Therefore, it calls upon delegations and the Commission to rally to this compromise.
4. Coreper is invited to agree that the text of the draft Regulation, as reflected in the Annex, is submitted to the TTE (Energy) Council on 12 March 2010 with a view to reaching a political agreement thereon.

Draft

**COUNCIL REGULATION**

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty **[] on the Functioning of the European Union**, and in particular Article **337** thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 187 thereof,

Having regard to the proposal from the Commission<sup>5</sup>,

Having regard to the opinion of the European Parliament<sup>6</sup>,

Whereas:

**[]**

- (2) Obtaining an overall picture of the development of investment in energy infrastructure in the **Union [] is essential for the European Commission to perform its tasks in the field of energy []**. **The availability of regular and up-to-date data and information []** should enable the **Commission []** to make the necessary comparisons, evaluations or to **propose []** relevant measures based on appropriate figures and analysis, in particular concerning the future energy supply – demand balance.
- (3) The energy landscape within and outside the **Union []** has changed significantly in recent years and makes investment in energy infrastructure a crucial issue for securing the **Union's** energy supply, for the functioning of the internal market and for the transition towards a low carbon energy system the **Union** has embarked on.

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- (4) The new energy context requires significant investment in all infrastructure in all energy sectors as well as the development of new types of infrastructure and new technologies being taken up by the market. The liberalisation of the energy sector and the further integration of the internal market give a more prominent role to economic operators for investment and at the same time, new policy requirements such as targets affecting the fuel mix will alter Member States' policies towards new and/or modernised energy infrastructure.
- (5) **In this context []**, greater attention should be paid to investment in energy infrastructure in the **Union []**, in particular with a view to anticipating problems, promoting best practices and establishing greater transparency on the future development of the energy system in the **Union**.
- (6) The Commission and in particular **its** Market Observatory for Energy should therefore dispose of accurate data and information on investment projects, including decommissioning, in the most significant components of the energy system of the **Union []**.
- (7) Data and information regarding foreseeable developments in production, **transmission []** and storage capacities and projects in the various energy sectors are of interest to the **Union and important to future investment**. It is therefore necessary to ensure that the Commission is notified of investment projects on which **construction or decommissioning** work has started or **on which a final investment decision has been taken**.
- (8) Pursuant to Articles 41 and 42 of the Euratom Treaty, undertakings are under an obligation to notify their investment projects; it is necessary to supplement such information with, in particular, a regular reporting on the implementation of investment projects; this further reporting shall be without prejudice to Articles 41 to 44 of the Euratom Treaty.
- (9) In order for the Commission to dispose of a consistent view of the future developments of the whole **Union** energy system, a harmonised reporting framework for investment projects based on updated categories for official data and information to be transmitted by the Member States is necessary.

- (10) Member States should for this purpose notify to the Commission, data and information on investment projects **in energy infrastructure** concerning production, storage and transport of oil, natural gas, **energy from renewable sources**, electric power, bio-fuels and **the capture and storage of carbon dioxide** planned or under construction in their territory, **including interconnections with third countries**. Undertakings concerned should be under an obligation to notify to the Member State the data and information in question.
- (11) Given the time horizon of investment projects in the energy sector, reporting every two years should be sufficient.
- (12) With a view to avoiding an un-proportionate administrative burden and minimise costs for Member States and undertakings in particular for small and medium enterprises, this Regulation should give the possibility to exempt Member States and undertakings from reporting obligations provided that equivalent information is supplied to the Commission pursuant to EU energy sector specific legislation, adopted by institutions of the European Union and aiming at achieving the objectives of competitive European energy markets, of sustainability of the European energy system and of the security of energy supply to the European Union []. **Any duplication of reporting requirements specified in the third internal market package should therefore be avoided.**
- (13) To process data as well as to simplify and secure data notification, the Commission and in particular its Market Observatory for Energy should be able to take all appropriate measures to that effect, in particular the operation of integrated IT tools and procedures.
- (14) The protection of individuals with regard to the processing of personal data by the Member States is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>7</sup>, while the protection of individuals with regard to the processing of personal data by the Commission is governed by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>8</sup>. This Regulation leaves these provisions intact.

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<sup>7</sup> OJ L 281, 23.11.1995, p. 31.

<sup>8</sup> OJ L 8, 12.1.2001, p. 1.

- (14b) **Member States, or their delegated entities, and the Commission should preserve the confidentiality of commercially sensitive data and information. Therefore, Member States or their delegated entities should, with the exception of crossborder transmission projects, aggregate such data and information at national level before submitting it to the Commission. If required the Commission should further aggregate this data in such a way that no details concerning individual undertakings and installations are disclosed or can be inferred.**
- (15) The Commission and in particular **its** Market Observatory for Energy should provide a regular and cross-sector analysis of the structural evolution and perspectives of the **Union** [] energy system and, where appropriate, more focused analysis on certain aspects of this energy system; this analysis should in particular contribute to identifying possible infrastructure and investment gaps in view of **an** [] energy supply and demand balance. **The analysis should also form a contribution to a discussion at European level about energy infrastructures and should therefore be forwarded to the European Parliament, the Council and the European Economic and Social Committee and made available to interested parties.**
- (16) The Commission may be assisted by experts from Member States or any other competent experts, with a view to developing a common understanding **of potential infrastructure gaps and associated risks** and to fostering transparency regarding future developments [].
- (17) **Building as far as possible on the notification format used under the previous Regulation<sup>9</sup>, and after consultation of national experts**, the technical measures [] necessary for the implementation of this Regulation should be adopted by the Commission.
- (18) Given the amendments necessary to adapt it to today's energy challenges and for the sake of clarity, Regulation (EC) No 736/96 should therefore be repealed and replaced by a new Regulation,

HAS ADOPTED THIS REGULATION:

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<sup>9</sup> **Commission Regulation (EC) No 2386/96, OJ L 326, 17.12.1996, p. 13.**

## *Article 1*

### ***Subject matter and scope***

1. This Regulation establishes a common framework for the notification to the Commission of data and information on investment projects in energy infrastructure in the oil, natural gas, [] electricity, **including from renewable sources**, and bio-fuel sectors, and on investment projects related to **the capture and storage of** carbon dioxide produced by these sectors.
2. This Regulation shall apply to the types of investment projects **or infrastructure** listed in the Annex on which **construction or decommissioning** work has started or [] **on which a final investment decision has been taken** [].

**Member States may furthermore submit any estimated data or preliminary information on investment projects on which construction work is scheduled to start within five years and to those which are scheduled to be decommissioned within three years, but for which a final investment decision has not been taken.**

## *Article 2*

### ***Definitions***

For the purpose of this Regulation, the following definitions shall apply:

- (1) “infrastructure” means any type of installations or part of installations related to [] production, **transmission** and storage [];
- (2) “investment projects” mean projects aiming at
  - (a) building new infrastructure;
  - (b) transforming, modernising, increasing or reducing capacities of existing infrastructure;
  - (c) **partial or total** decommissioning [] of existing infrastructure;

- (3) “[**]** **final investment decision**” means the decision taken at company level to definitively earmark funds towards the investment phase of a project, the investment phase meaning the phase during which construction or decommissioning takes place and capital costs are incurred. The investment phase excludes the planning phase, during which project implementation is prepared and which includes, where appropriate, feasibility assessment, preparatory and technical studies, obtaining licences and authorisations and incurring capital costs;
- (4) “investment projects under construction” mean investment projects for which construction has started and capital costs are incurred;
- (5) “decommissioning” means the phase where an infrastructure is permanently taken out of operation;
- (6) “production” means the generation of electricity and the processing of fuels, including bio-fuels;
- (7) “**transmission**” means the **transport** of energy sources or products or carbon dioxide, through a network, in particular:
  - (a) through pipelines, other than upstream pipeline network and other than the part of pipelines primarily used in the context of local distribution;
  - (b) through extra high voltage and high-voltage interconnected systems and other than the systems primarily used in the context of local distribution;
- (8) “storage” means the stocking on a permanent or temporary basis of energy **or energy** sources [**]** in above ground and underground infrastructure or geological sites **or containment of carbon dioxide in underground geological formations**;
- (9) “undertakings” means any natural or legal private or public person, deciding or implementing investment projects;
- (10) “energy sources” mean
  - (a) primary energy sources, such as oil, natural gas or coal;

- (a *bis*) transformed energy sources, such as electricity;
- (b) [] energy **from renewable** sources **such as** hydroelectricity, biomass, **biogas**, wind, solar, tidal, **wave** and geothermal energy;
- (c) energy products, such as refined oil products and bio-fuels.

(11) **"specific body" means a body entrusted by EU energy sector-specific legislation with the preparation and adoption of Union-wide multi-annual network development and investment plans in energy infrastructure, such as the European network of transmission system operators for electricity in accordance with Article 4 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity<sup>10</sup> and the European network for transmission system operators for gas in accordance with Article 4 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks<sup>11</sup>.**

### *Article 3*

#### *Notification of data*

1. While keeping the collection and reporting burden proportionate, Member States or the entity they delegate this task to shall compile all data and information specified in this Regulation from *[ 1 January of the year immediately following adoption]\**) [] and from then onwards every two years.

They shall notify [] the [] data and relevant project information **specified in this Regulation** to the Commission in *[the year immediately following adoption]\**) [], that year being the first reporting year, and from then onwards every two years. **This notification shall be made in aggregated form, except for data and relevant information relating to crossborder transmission projects.**

*\*) Note: date to be inserted by the lawyer-linguists*

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<sup>10</sup> OJ L 211, 14.8.2009, p. 15

<sup>11</sup> OJ L 211, 14.8.2009, p. 36

Member States or their delegated entities shall notify aggregated data and relevant project information by 31 July of the concerned reporting year.

2. [] The Member States or their delegated entities [] **are exempted** from the obligation referred to in paragraph 1 [], **provided that, and to the extent that,** pursuant to EU energy sector - specific legislation **and the Euratom Treaty**:
- (a) the concerned Member State or its delegated entity has already notified **to the Commission [] data or information equivalent to the requirements of this Regulation** and has indicated the date of the notification and the specific legislation concerned;
- (b) a specific body [] is entrusted with the preparation of a multi-annual investment plan in energy infrastructure at EU level [] **and** compiles to this end [] data and information **equivalent to the requirements of this Regulation. In this case and for the purposes of this Regulation, the specific body shall notify [] all the relevant data and information to the Commission [].**

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*Article 4*  
***Data sources***

- [] Undertakings concerned shall notify the data or information referred to in Article 3 to the Member States, or the entity to which they have delegated, in whose territory they are planning to carry out investment projects before **1 June** of each reporting year. The data or information notified shall reflect the situation of investment projects as of 31 March of the concerned reporting year.

However, subparagraph 1 shall not apply to undertakings where the Member State concerned decides to use other means of supplying the Commission with the data or information referred to in Article 3.

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*Article 5*  
**Content of the notification**

1. With regard to investment projects referred to in **Article 1(2) and in** the Annex, the notification provided for in Article 3 shall indicate where appropriate:
  - (a) the **volume of the** capacities planned or under construction;
  - (b) the [] type and main characteristics of infrastructure or capacities planned or under construction, **including the location of crossborder transmission projects, if applicable**;
  - (c) the probable **year** of commissioning;
  - (d) the type of energy sources used;
  - (e) the **installations capable of responding to [] security of supply [] crises**, such as **equipment enabling reverse flows or fuel switching, []**;
  - (f) the equipment of carbon capture systems or retrofitting mechanisms **for carbon capture and storage**;
  
2. With regard to any proposed decommissioning of capacities, the notification provided for in Article 3 shall indicate:
  - (a) the character and the capacity of the infrastructure concerned;
  - (b) the probable **year** of decommissioning.
  
3. Any notification under Article 3 shall include **where appropriate** the **total** volume of installed **production, [] transmission and storage capacities which are in place** at the beginning of the reporting year concerned **or whose operation is interrupted for a period exceeding three years**.

Member States, their delegated entities or the specific body referred to in Article 3(2) **may []** add to their notifications **relevant** comments [], such as comments on delays or obstacles to the implementation of investment projects.

*Article 6*  
***Quality and publicity of data***

1. Member States, the entity they delegate to or, where appropriate, the **specific** bodies [] shall **aim to** ensure the quality, relevance, accuracy, clarity, timeliness and coherence of data and information they notify to the Commission.

In case of **specific** bodies [], the data and information notified **may** be accompanied by appropriate comments from Member States [].

2. The Commission may publish data and information forwarded pursuant to this Regulation, in particular in analyses referred to in Article 10(3), provided that data and information are published in an aggregated form and that no details concerning individual undertakings **and installations** are disclosed **or can be inferred**.
3. Member States, **the Commission**, or their delegated entities [] shall **each** preserve the confidentiality of commercially sensitive data or information **in their possession**.

*Article 7*  
***Implementing provisions***

**Within the limits laid down by this Regulation**, the Commission shall adopt, **by 31 October 2010 at the latest**, the **provisions** necessary for the implementation of this Regulation, concerning [] the form [] and other **technical** details of the notification of data and information referred to in Article 3 **and 5**.

*Article 8*  
**Data processing**

The Commission shall be responsible for developing, hosting, managing and maintaining the IT resources needed to receive, store and carry out any processing of the data or information **on energy infrastructure** notified to the Commission pursuant to this Regulation.

*Article 9*  
**Protection of individuals with regards to the processing of data**

This Regulation is without prejudice to the provisions of **European Union** law and, in particular, does not alter Member States' obligations with regard to the processing of personal data, as laid down by Directive 95/46/EC, or the obligations incumbent upon **the Union's** institutions and bodies under Regulation (EC) No 45/2001 with regard to the processing of personal data by them in the course of their duties.

*Article 10*  
**Monitoring and reporting**

1. On the basis of data and information forwarded and, if appropriate, of any other data sources including data purchased by the Commission, **and taking into account relevant analyses such as the multi-annual network development plans for gas and for electricity**, the Commission shall **[ ] forward to the European Parliament, to the Council and to the European Economic and Social Committee and shall publish** every two years a cross-sector analysis of the structural evolution and perspectives of the EU energy system. **This analysis shall aim** in particular at:
  - (a) identifying potential future gaps **[ ] between** energy demand and supply **that are of significance from an EU energy policy perspective**;
  - (b) identifying investment obstacles and promoting best practices to address them;
  - (c) increasing transparency for market participants **and potential market entrants**.

The Commission may also provide on the basis of this data and information any specific analysis deemed necessary or appropriate.

2. In preparing the analyses referred to in paragraph 1, the Commission may be assisted by experts from Member States and / or any other experts, **[ ] professional associations** with specific competence in the area concerned.

**The Commission shall provide [ ] all Member States with an opportunity to comment on the draft analyses.**

3. The Commission **shall** discuss the analyses with interested parties, **such as ENTSO-E, ENTSO-G, [ ] the Gas Coordination Group and the Oil Supply Group. [ ]**

*Article 11*  
**Review**

Within five years of the entry into force of this Regulation, the Commission shall review its implementation, **and present a report on the results of this review to the European Parliament and to the Council. In the review, the Commission shall *inter alia* examine the possible extension of the scope to include the extraction of gas, oil and coal.**

*Article 12*  
**Repeal**

Regulation (EC) No 736/96 is repealed.

*Article 13*  
**Entry into force**

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

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

Done at Brussels,

*For the Council*  
*The President*

**ANNEX**  
**INVESTMENT PROJECTS**

**1. OIL****1.1. Refining**

- Distillation plants with a capacity of not less than 1 Mio tonnes a year;
- Extension of distilling capacity beyond 1 Mio tonnes a year;
- Reforming/cracking plants with a minimum capacity of 500 tonnes a day;
- Desulphurisation plants for residual fuel oil/gas oil/feedstock/other petroleum products.

Chemical plants which do not produce fuel oil and/or motor fuels, or which produce them only as by-products, are excluded.

**1.2. Transport**

- Crude oil pipelines with a capacity of not less than 3 Mio Metric tonnes a year, and extension or lengthening of these pipelines, which are not less than 30 kilometres long;
- Petroleum product pipelines with a capacity of not less than 1.5 Mio tonnes a year, and extension or lengthening of these pipelines, which are not less than 30 kilometres long;
- 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 171 TFEU <sup>1</sup>.

Pipelines for military purposes and those supplying plants outside the scope of point 1.1 are excluded.

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<sup>1</sup> **The TEN-E Decision 1364/2006 (OJ L 262, 22.9.2006, p. 1) was adopted under Art. 155 EC Treaty.**

### 1.3. Storage

- Storage installations for crude oil and petroleum products (installations with a capacity of **150.000 m<sup>3</sup>** or more or, in the case of tanks, with a capacity not less than 100 000 m<sup>3</sup>).

Tanks intended for military purposes and those supplying plants outside the scope of point 1.1 are excluded.

## 2. GAS

### 2.1. Transmission

- Gas, including natural gas and biogas, transport pipelines **that form part of a network which mainly contains high-pressure pipelines, excluding pipelines that form part of an upstream pipeline network and excluding the part of high-pressure pipelines primarily used in the context of local distribution of natural gas;**
- Pipelines and projects of common interest identified in the guidelines established under Article 171 TFEU <sup>1</sup>.

### 2.2. LNG terminals

- Terminals for the importation of liquefied natural gas, **with a regasification capacity of 1 billion m<sup>3</sup> per year or more.**

### 2.3. Storage

- Storage installations connected to the transport pipelines referred to in point 2.1.

Gas pipelines, terminals and installations for military purposes and those supplying chemical plants which do not produce energy products, or which produce them only as by-products, are excluded.

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<sup>1</sup> **The TEN-E Decision 1364/2006 (OJ L 262, 22.9.2006, p. 1) was adopted under Art. 155 EC Treaty.**

### 3. ELECTRICITY

#### 3.1. Production

- Thermal and nuclear power stations (generators with a [] capacity of 100 MW<sub>e</sub> or more);
- Biomass/**bioliquids**/waste power generation installations ( [] with a [] capacity of **20** MW or more);
- Power stations with cogeneration of electricity and useful heat (**installations** with an electrical capacity of **20** MW or more);
- Hydro-electric power stations (**installations** having a capacity of 30 MW or more);
- Wind power farms with a capacity of 20 MW or more [];
- Concentrated solar thermal **and** geothermal [] installations ( [] with a [] capacity of **20** MW or more);
- **Photovoltaic installations ( [] with a [] capacity of 10 MW or more).**

#### 3.2. Transmission

- Overhead transmission lines, if they have been designed for a voltage of **220** kV or more;
- Underground and submarine transmission cables, if they have been designed for a voltage of **150** kV or more;
- Projects of common interest identified in the guidelines established under Article **171 TFEU** <sup>1</sup>.

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<sup>1</sup> **The TEN-E Decision 1364/2006 (OJ L 262, 22.9.2006, p. 1) was adopted under Art. 155 EC Treaty.**

## **4. BIOFUEL**

### **4.1. Production**

- **Installations that are able to produce or refine bio-fuels [] (installations with a capacity of 50 000 tonnes/year or more).**

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## **5. CARBON DIOXIDE**

### **5.1. Transport**

- CO<sub>2</sub> pipelines related to production installations referred to in points 1.1 and 3.1.

### **5.2. Storage**

- Storage installations (storage site or complex with a capacity of 100 kt or more).

Storage installations intended for research and technological development are excluded.