

Reforming Decision-Making in Trans-European Networks for Energy

Better governance to support the
decarbonisation of energy infrastructure

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Key recommendations

Improving governance under the TEN-E Regulation is key for ensuring the delivery of the infrastructure needed for an integrated, cost-efficient and Paris-aligned energy system.

The **revised TEN-E Regulation must improve transparency and public participation** opportunities to allow public scrutiny, increase accountability and enhance public acceptance. It **must also redesign decision-making to ensure objectivity and prevent any biases** from interested parties. In this respect, it should benefit from the input from the European Scientific Advisory Board on Climate Change that is to be established under the European Climate Law.

In particular, we recommend the following amendments to the proposal for a TEN-E Regulation tabled by the European Commission in December 2020:

- **Improve the decision-making process** for the preparation and adoption of PCI lists, by:
 - Introducing the adoption of PCI lists in separate delegated acts, one for each of the infrastructure categories [p. 11]
 - Establishing additional conditions on the exercise of delegated powers by the Commission to ensure Paris-alignment of PCI lists [p. 12]
 - Setting a common PCI assessment method across regional Groups [p. 13]

- **Increase transparency and public participation** in the adoption of PCI lists, by:
 - Preparing and publishing lists of participants, agendas and minutes of the meetings of the regional Groups [p. 13]
 - Conducting public consultations on draft regional lists [p. 13]
 - Reinforcing information obligations regarding proposed projects and PCIs [p. 14]

- **Reform the decision-making in the TYNDP process** to ensure it is based on objective and scientific criteria, including by involving the European Scientific Advisory Board on Climate Change. In particular, revise the decision-making on:
 - TYNDP scenarios [p. 15]
 - Cost-benefit analysis methodology [p. 17]
 - Infrastructure gaps identification reports [p. 18]
 - Guidelines for the inclusion of projects in the TYNDP [p. 19]

Glossary

Acronyms

ACER	Agency for the Cooperation of Energy Regulators
CBA	Cost-Benefit Analysis
CEF	Connecting Europe Facility
ENTSO-E	European Network of Transmission System Operators for Electricity
ENTSO-G	European Network of Transmission System Operators for Gas
ESABCC	European Scientific Advisory Board on Climate Change
NRA	National Regulatory Authority
PCI	Project of Common Interest
TFEU	Treaty on the Functioning of the European Union
TYNDP	Union-wide Ten-Year Network Development Plan

Definitions

Group	Regional Group (as defined in Art. 3(1) of the proposal for a revised TEN-E)
TEN-E Proposal	Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Regulation (EU) no 347/2013, COM(2020) 824 final
TEN-E Regulation	Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009
Union list or PCI list	Union list of projects of common interest (as defined in Art. 3(4) of the proposal for a revised TEN-E)
Union-wide TYNDPs	Union-wide Ten Year Network Development Plans: non-binding plans that must be adopted by ENTSO-E and ENTSOG pursuant to Regulation (EU) 2019/943 and Regulation (EC) 715/2009.

Introduction

Trans-European Networks for Energy (TEN-E)

Article 171 of the Treaty on the Functioning of the European Union (“TFEU”) tasks the Union with setting guidelines for the establishment and development of **Trans-European Networks in the area of Energy infrastructure (TEN-E)**. The guidelines shall identify projects considered crucial for the integration of the Union’s energy system (known as Projects of Common Interest (“PCIs”)), that may receive support both from Member States and the Union. The purpose of the guidelines and the PCIs shall be to contribute to the establishment and ensuring the functioning of the Union’s internal energy market, but also to enable EU citizens and regional and local communities derive benefit from it, while promoting economic, social and territorial cohesion¹.

Responding to the mandate in the TFEU, the EU legislator adopted Regulation 347/2013 on guidelines for trans-European energy infrastructure² (“TEN-E Regulation”), which lays down rules for the timely development and interoperability of trans-European energy networks and for the identifications of PCIs. Under the TEN-E Regulation, PCIs are eligible for financial support for studies and execution through the Connecting Europe Facility (“CEF”)³ and enjoy expedited permitting and judicial treatment. The TEN-E Regulation also regulates some aspects of the development of Union-wide Ten Year Development Plans (“TYNDPs”).

Better governance needed for Paris-alignment

The **need to achieve the goal of the Paris Agreement and reach climate neutrality** by 2050 at the latest **entails rethinking the way the Union’s energy infrastructure is planned and developed**. Energy infrastructure is made of long-lived assets that largely influence energy production and consumption for decades. The European Green Deal itself recognises the strategic importance of energy infrastructure and calls for a revision of the TEN-E Regulation to ensure consistency with the climate neutrality objective⁴.

¹ Arts. 26 & 174 TFEU, via Art. 170 TFEU.

² Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ EU L 115, 25.4.2013).

³ Pursuant to the Regulation establishing the Connecting Europe Facility: Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ EU L 348 20.12.2013).

⁴ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal, COM (2019) 640, section 2.1.2.

In December 2020, the European Commission tabled a proposal for revising the current TEN-E Regulation⁵ (the “TEN-E Proposal”). The TEN-E Proposal includes **positive advances**, such as the elimination of oil and pure fossil gas pipelines from eligible infrastructure categories⁶, the explicit inclusion of the energy efficiency first principle⁷, or the recognition of the need for the TEN-E framework to contribute to the Union’s 2030 climate and energy targets as well as the objective of climate neutrality by 2050⁸.

However, the **TEN-E Proposal fails to address certain issues** that are crucial for the decarbonisation of the Union’s energy system. The **deficient governance system** is possibly the most concerning. In particular: the considerable influence of the European Networks of Transmission System Operators for Electricity and Gas (“ENTSO-E” and “ENTSOG”) and the lack of transparency in the decision-making process.

The ENTSOs are entities created by EU law that bring together the Transmission System Operators (TSOs) of Member States to facilitate their cooperation⁹. Under the TEN-E Proposal, the ENTSOs would continue to play a central role, greatly influencing the selection of PCIs. Quite often, the promoters of projects proposed for PCI status are among the members of the ENTSOs, which may lead to potential situations of **conflicts of interest**.

The risk of conflict of interest has been repeatedly denounced both by civil society¹⁰ and by EU entities, such as the Agency for the Cooperation of Energy Regulators (“ACER”)¹¹. It has also been noted in the report supporting the evaluation of the TEN-E Regulation undertaken by a group of consultancies for the European Commission¹².

The recently agreed text of the European Climate Law¹³ provides for the establishment of a European Scientific Advisory Board on Climate Change (“ESABCC”). The ESABCC will be tasked with providing scientific advice and issuing reports on existing and proposed Union measures and

⁵ Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure and repealing Regulation (EU) no 347/2013, COM(2020) 824 final, Brussels, 15.12.2020.

https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2394

⁶ Ibid, Recital (11).

⁷ Ibid, Arts. 12 & 13.

⁸ Ibid, Art. 1(2).

⁹ Art. 29, Regulation 943/2019, & Art. 5, Regulation 715/2009.

¹⁰ Global Witness, *Pipe Down – How gas companies influence EU policy and have pocketed €4 billion of taxpayer’s money*, June 2020. <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/pipe-down/>

¹¹ ACER & CEER, *Position on Improving the Regulation on Guidelines for Trans-European Energy Networks (TEN-E Regulation)*, March 2021.

https://acer.europa.eu/Official_documents/Position_Papers/Position%20papers/ACER_CEER_TEN_E_2021.pdf

¹² F. Akkermans et al., *Support to the evaluation of Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure*, January 2021

https://op.europa.eu/en/publication-detail/-/publication/19bec11f-5f86-11eb-b487-01aa75ed71a1/language-en?WT.mc_id=Searchresult&WT.ria_c=37085&WT.ria_f=3608&WT.ria_ev=search%C2%A0

¹³ Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law).

<https://data.consilium.europa.eu/doc/document/ST-8440-2021-INIT/en/pdf>

their coherence with the Union's international commitments under the Paris Agreement. While the ENTSOs possess valuable, relevant expertise that must continue to be counted on in the development of energy infrastructure, the **decision-making under TEN-E would greatly benefit from the addition of objective, science-based input from an independent scientific body** such as the ESABCC. The intervention of the ESABCC would help mitigate the risk of conflict of interest and add independent scientific input in TEN-E decision-making.

Lack of transparency also remains an issue in the TEN-E Proposal. PCIs would still be selected behind closed doors, based on rankings of projects not publicly available. Failure by promoters to provide complete and updated information on projects will still have no consequences on project eligibility. This will continue to hinder scrutiny of decision-making by the public, prevent meaningful public participation of civil society and, in consequence, exacerbate public opposition to certain PCIs. Deficient transparency may also have consequences on the quality of the projects selection process and bring a risk of unequal treatment among projects.

Apart from governance issues, **other concerns** about the TEN-E Proposal include the lack of definition of the sustainability criteria for PCIs, which threatens their effectiveness, and the loose definitions of the new infrastructure categories of hydrogen and smart gas grids, which may become a backdoor for support to fossil gas and endanger the delivery of the Union's climate targets¹⁴.

This briefing: (i) explores the idea of involving the ESABCC in the TEN-E decision-making to ensure that it is based on objective, science-based criteria and contributes to the achievement of the Union's climate and energy targets; (ii) exposes some of the decision-making mechanisms under the TEN-E Proposal concerning the adopting of Union lists of PCIs and the Union-wide TYNDPs; and (iii) proposes alternatives in order to improve governance and transparency and ensure Paris-alignment under the future TEN-E Regulation.

¹⁴ A fossil-free TEN-E regulation. NGO briefing on the revision of the Trans-European energy infrastructure regulation, March 2021. https://caneurope.org/content/uploads/2021/03/NGO-paper-EC-TEN-E-proposal_EP.pdf

The ESABCC's input to energy infrastructure planning

Following informal meetings of the three main EU institutions, on 5 May 2021, the Permanent Representatives Committee meeting endorsed a final compromise text with a view to agreement for a European Climate Law¹⁵. The agreed text of the **European Climate Law** sets into law the objective of a climate-neutral EU by 2050, and a collective, net greenhouse gas emissions reduction target of at least 55% by 2030 compared to 1990.

The agreed text of the European Climate Law also recognises that scientific expertise and the best available, up-to-date evidence needs to underpin the Union's efforts to reach climate neutrality by 2050¹⁶. In this regard, the **European Scientific Advisory Board on Climate Change** ("ESABCC") is established to serve as a point of reference for the Union on scientific knowledge relating to climate change¹⁷.

The **tasks** of the ESABCC include **providing scientific advice on existing and proposed Union measures**, and on their coherence with the Union's international commitments under the Paris Agreement. The ESABCC shall as well contribute to the exchange of scientific knowledge in the field of modelling, monitoring, promising research and innovation contributing to reducing emissions or increasing removals¹⁸.

The TEN-E Proposal has recognised the role of energy infrastructure in the achievement of the decarbonisation targets¹⁹ and provides that the energy infrastructure priority corridors and areas shall contribute to the Union's 2030 climate and energy targets and the objective of climate neutrality by 2050²⁰. However, to ensure that energy infrastructure decisions under TEN-E are coherent with the Union's climate target, state-of-the-art, science-based input and expertise will be needed. Stakeholders influencing the TEN-E decision-making possess a deep understanding of some aspects of energy infrastructure, but may lack familiarity with the latest scientific findings, or access to scientific interdisciplinary expertise, all of which will be necessary for a more integrated infrastructure planning that considers alternatives to infrastructure-based solutions. **The innovation-focused, interdisciplinary and science-based contribution of the ESABCC would be of great help in unlocking the climate contribution of energy infrastructure and in advancing towards a more integrated energy infrastructure planning.**

The **design of the ESABCC would also help mitigate the risk of bias** and conflict of interest under the TEN-E Regulation. While some of the entities involved in the decision-making under

¹⁵ Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law). <https://data.consilium.europa.eu/doc/document/ST-8440-2021-INIT/en/pdf>

¹⁶ Ibid, Recital (18b).

¹⁷ Ibid, Art. 2b.

¹⁸ Ibid, Art. 2b(2).

¹⁹ TEN-E Proposal, Recital (6).

²⁰ Ibid, Art. 1(1).

TEN-E, such as the Commission or ACER, already have a clear climate mandate, they all have to balance it with a broader mission (promoting the general interest of the Union, in the case of the Commission²¹, contributing to the establishment of high-quality common regulatory and supervisory practices, in the case of ACER²², the cooperation between TSOs, in the case of the ENTSOs²³). The ESABCC would be the only involved entity solely focused on ensuring the achievement of the Union's climate targets.

The ESABCC has been conceived taking into account previous experiences with climate advisory bodies at national level. Research suggests that there are certain characteristics that are crucial for the effectiveness of such bodies²⁴. The following are especially relevant in the context of energy infrastructure and TEN-E governance:

- **Independence.** Climate advisory bodies should carry out their activities autonomously, without representing any particular interest and with the only aim of achieving their objectives. Independence in decision-making is especially crucial under the TEN-E Regulation, given the risk of potential conflict of interest of some stakeholders involved and the great environmental and climate impact of energy infrastructure projects. The agreed text of the Climate Law builds independence for the ESABCC through the following elements²⁵:
 - An explicit requirement for all its members to act with independence of the Member States and the European Institutions.
 - The number of members of the ESABCC (fifteen) is set avoiding matching the number of Member States, to prevent it from becoming a *de facto* representative body.
 - The selection process of the members of the ESABCC is based on an open evaluation and on objective criteria.
 - The ESABCC shall establish its annual work programme independently, while complementing the work of the European Environment Agency.

- **Interdisciplinarity.** Climate advisory bodies should bring together experts in different fields such as physics, engineering, economy and policy. In the case of energy infrastructure, the concurrence of a wide variety of technical expertise will be instrumental for advancing toward a more integrated energy infrastructure planning. In this respect, the agreed text of the European Climate Law establishes that the selection of members of the

²¹ Art. 17, Treaty of the European Union.

²² Art. 1(2), Regulation 2019/942.

²³ Art. 4, Regulation 715/2009 & Art. 27 Regulation 2019/943.

²⁴ Averchenkova A, Lazaro L, The design of an independent expert advisory mechanism under the European Climate Law: What are the options? London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science, September 2020. <https://www.lse.ac.uk/granthaminstitute/publication/the-design-of-an-independent-expert-advisory-mechanism-under-the-european-climate-law/>

²⁵ Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), Art. 2aa(1).

ESABCC shall seek to ensure a varied disciplinary and sectoral expertise. Moreover, the selection criteria for members of the ESABCC includes having professional experience in an interdisciplinary environment²⁶.

- **Permanent character.** Climate advisory bodies should be established for an indefinite period to ensure that they effectively influence policy over the long term. Energy infrastructure planning is an iterative process that calls for a permanent body to advise on it permanently. In the agreed text of the European Climate Law the ESABCC has indeed been established for an indefinite period of time.
- **Transparency.** Transparency in scientific and technical advice drives accountability and credibility, and hence is a desirable trait for climate advisory bodies. In the context of energy infrastructure planning, public financial support to certain infrastructure, environmental and social impacts, as well as the need to gain public acceptance, are some of the reasons that justify a high level of transparency throughout the decision-making process. The agreed text of the European Climate Law ensures requires the ESABCC to follow a fully transparent process and to make its reports available to the public²⁷.

²⁶ Ibid, Art. 2aa(1).

²⁷ Ibid, Art. 2b(3).

Improving TEN-E governance

The European Commission has included some improvements to the decision-making concerning Union lists of PCIs and Union-wide TYNDPs in the TEN-E Proposal. However, these changes are still insufficient, since they do not guarantee adequate transparency, nor mitigate the risk of potential conflict of interest. This section outlines the decision-making process as currently proposed and suggests additional changes for improving governance.

1. Adoption of Union lists

The Union list of PCIs (“Union list” or “PCI list”) contains the projects identified as PCIs. These are energy infrastructure projects which may access certain benefits under the TEN-E Regulation, such as financial assistance in the form of grants for studies and works, or expedited permitting. The Union list is adopted by the European Commission in the form of a delegated regulation after a long process that involves different stakeholders. Compared with the text of the TEN-E Regulation in force, the TEN-E Proposal only introduces minor changes to the process for the adoption of Union lists. As currently proposed by the European Commission, the **process for the adoption of Union lists** would be²⁸:

- 1 Project promoters submit **applications** to the Regional Groups (“Groups”) proposing projects for their selection as PCIs. As a requirement, most projects in the electricity category and hydrogen projects will need to be already part of the Union-wide TYNDPs. Union-wide TYNDPs are developed by the ENTSOs²⁹.
- 2 For projects falling under the competence of National Regulatory Authorities (“NRAs”), the NRAs –and ACER if necessary– check the consistent application of the criteria and of the CBA methodology, evaluate the cross-border relevance, and present their **assessment** to the Groups.
- 3 For the rest of projects, the Commission evaluates the application of the general and specific criteria for PCIs and presents its **assessment** to the Groups.
- 4 Member States on which a proposed project has a potential net positive impact or a potential significant effect may present an **opinion** to the Group on such proposed project.
- 5 Member States may also **veto** proposed projects related to their territory if they present substantiated reasons for doing so to the corresponding Group.

²⁸ Arts. 3, 4, 20 & Annex III, TEN-E Proposal.

²⁹ Vid. Section 2 *infra* for more information on TYNDPs.

- 6 Groups meet to examine and **rank** the proposed projects using their own assessment method, determined at Group level. Groups also take into account the assessment of the regulators or the Commission (items 2 & 3 above).
- 7 Groups prepare **draft regional lists** of proposed projects that fall under the competency of NRAs and submit them to ACER, which shall provide an **opinion** within three months.
- 8 The decision-making bodies of each Group adopt the **final regional list**, taking into account ACER's opinion (item 7 above) and the assessment of the Commission or the NRAs (items 2 & 3 above).
- 9 The Groups submit the final regional lists to the Commission.
- 10 The Commission adopts a **delegated act** establishing the Union list, based on regional lists. When adopting the Union list, the Commission shall ensure that only projects fulfilling the general and specific criteria are included, ensure cross-regional consistency, take into account opinions of potentially affected states (item 4 above) and aim for a manageable number of PCIs³⁰. The Union list shall be updated every two years.
- 11 The Council and the European Parliament have to be notified of the delegated act as soon as adopted, and can object to the delegated act within two months upon notification.

This proposed process suffers from two serious flaws: (i) decisions are made without mitigating the risk of potential situations of conflict of interest by the ENTSOs, and (ii) transparency is not ensured through the PCI selection process. The following **amendments** should be considered **for improving the process for establishing Union lists of PCIs**:

1.1 Decision-making design

- **Adoption of the Union list in more than one delegated act**

The current conflation of all infrastructure categories in a single delegated act leaves the Council and the European Parliament with limited options for controlling the use by the European Commission of the delegated powers³¹. The control system in force does not allow the European Parliament and the Council to bring amendments to the Union list, only a yes/no vote is possible. The Union list, however, contains projects belonging to different infrastructure categories, of very diverse nature and with different climate, environmental and social impacts, on which the European Parliament or the Council may want to adopt differentiated positions.

³⁰ The number of PCIs “should not significantly exceed 220”, recital (50) of the TEN-E Proposal.

³¹ Art. 20, TEN-E Proposal.

To remedy this situation, the **Union list should be made of different chapters**, one per infrastructure category, and each chapter should be **adopted by a separate delegated act**. This would allow a more effective exercise of control powers on the choice of PCIs by the Council and the European Parliament.

- **Establish additional conditions for the exercise of delegated powers by the European Commission to ensure Paris-aligned Union lists**

Article 20 of the TEN-E Proposal establishes conditions for the exercise by the Commission of the delegated power to adopt delegated acts³². These conditions are broadly based on Article 290(2) of the TFEU and on the standard clauses in the Interinstitutional Agreement on Better Law-Making³³. In short, the conditions entail that both the Council and the European Parliament can (i) revoke the delegation; and (ii) object to the entry into force of a delegated act.

While these are forceful conditions, practice shows that they very rarely come into play: as of January 2021, neither the Council nor the European Parliament had ever revoked a delegation of powers³⁴, and at the time of writing this briefing they had only objected to 16 delegated acts³⁵. These conditions for the exercise of the delegated powers for establishing Union lists need to be complemented with others containing clear obligations for the Commission to ensure Paris-alignment.

Article 3(5) of the TEN-E Proposal is relevant in this respect, since it contains requirements for the Commission when adopting the Union list. Although not explicitly stated, these requirements are in practice also conditions for the exercise by the Commission of the delegated power to adopt delegated acts. Regrettably, none of the requirements in Article 3(5) is focused on ensuring overall Paris-alignment of the Union list.

The requirements set for the Commission when adopting Union lists³⁶ should be amended to **include an obligation for the Commission to ensure that the Union list is compatible with the Paris Agreement and the Union's 2030 climate targets and the 2050 climate neutrality objective**. This would be consistent with the language in Article 1 of the TEN-E Proposal, which adds the contribution to such targets to the subject matter of the TEN-E Regulation. To facilitate this, the **Commission should be allowed to request an opinion from the ESABCC on the alignment of its draft Union list with the Union's energy and climate targets**. For the sake of clarity, these requirements for the

³² Arts. 20(3) & 20(5), TEN-E Proposal.

³³ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, (OJ L 123, 12.5.2016).

³⁴ Chamon, M. The legal framework for delegated and implementing powers ten years after the entry into force of the Lisbon Treaty. ERA Forum 22, 21–38 (2021). <https://doi.org/10.1007/s12027-020-00646-2>

³⁵ Information available in the Register of delegated and implementing acts: <https://webgate.ec.europa.eu/regdel/#/home?lang=en>

³⁶ Art. 3(5), TEN-E Proposal.

Commission when adopting Union lists should also be **explicitly described as conditions for the exercise by the Commission of the delegated powers**³⁷.

- **Setting a common assessment method across Groups**

Currently the Groups determine their own assessment methods for assessing and ranking the proposed projects³⁸. Using a common assessment method across Groups would facilitate comparability, reinforce objectivity in the rankings and in the Union list, and mitigate the risk of tailor-made assessment methods being promoted by certain stakeholders involved in the assessment with the intent to promote their particular interests.

A **common objective assessment method** should be prepared and published and all Groups should be required to use it when assessing the proposed projects against the applicable criteria and producing a ranking of proposed projects.

1.2 Transparency and public participation

- **Transparent Group meetings**

Increased transparency in the meetings of the Groups and especially of their decision-making bodies is instrumental for ensuring that the rules of the process for establishing Union lists are duly followed and all proposed projects are correctly assessed.

A **list of the attendants, meeting agendas and meeting minutes** should always be produced and published for each meeting of the Groups. The **deliberations** of the decision-making bodies and the project **rankings** should not be deemed as confidential and made **public**.

- **Public consultation on regional lists**

Early and meaningful engagement with stakeholders, including civil society organisations, is crucial for identifying the concerns of those affected by projects, adapting projects, and increasing public acceptance.

Groups should be required to organise a **consultation on their regional list**, not just given the choice to organise consultations or hearings as necessary. The consultation on the regional list shall begin well before the preparation of the draft regional lists, when all the

³⁷ The recently approved general approach of the Council for the negotiations with the European Parliament has diluted this article relegating it into items of advice the Commission shall provide to the decision-making bodies of each Group.

³⁸ Art. 4(5), TEN-E Proposal.

options are still open, and be specially designed to engage local communities and local civil society organisations. All opinions expressed in the public consultation shall be duly taken into account by the Groups in the preparation of the draft regional lists. The Groups shall publish their regional lists annexing a report summarising the opinions expressed and showing how they were taken into account, or justifying why such opinions were not taken into account.

- **Transparency in proposed projects**

Sufficient, accurate and timely information needs to be facilitated to stakeholders, including civil society to enable early and meaningful public participation.

The obligation to publish information about PCIs in a dedicated website referred to in Article 9(7) of the TEN-E Proposal should also apply to proposed projects. As soon as a project is proposed for selection as PCI by its promoters, information should be made available at least in the dedicated project website in a complete and updated manner and in all the languages of the Member States affected by the project. Accordingly, the information to be published in the dedicated project website should be extended to include the information delivered as part of the application for selection as a project of common interest³⁹, as well as all relevant information about the public consultation carried out on the project. To ensure compliance with this obligation, failure to provide or update information should result in the ineligibility of the proposed project until the default is remedied.

³⁹ Annex III, Section 2, point (1), TEN-E Proposal.

2. Union-wide Ten-Year Network Development Plans (TYNDPs)

The **Union-wide TYNDPs** are non-binding documents developed and published every two years by the ENTSOs with the aim to assess, in accordance with all legal requirements, how relevant European energy infrastructure projects contribute to the improvement of the European electricity and gas systems⁴⁰.

The inclusion of gas projects and some types of electricity projects in the Union-wide TYNDP is a precondition for their submission as proposed projects to the Groups and therefore to obtain the PCI status. Hence, Union-wide TYNDPs act in some way as a **preliminary ‘filter’ for PCIs**.

Union-wide TYNDPs are **also relevant as a general tool for energy planning**, since they are used as starting point for other important modelling exercises. For example, the methodology⁴¹ of the European Resource Adequacy Assessment aligns some of its assumptions with the assumptions of the Union-wide TYNDP scenarios.

The TEN-E Proposal introduces several changes in the process of preparation of Union-wide TYNDPs. However, the **role of the ENTSOs remains central** in defining the scenarios that are the basis of the Union-wide TYNDPs, in setting the cost-benefit analysis (“CBA”) methodologies that are used for assessing the proposed projects, and in identifying infrastructure gaps. Decisions on these elements **would benefit from the input from the ESABCC** to ensure energy infrastructure is planned based on objective and scientific criteria and in alignment with the Union’s climate commitments.

Below is an outline of the decision-making on elements relevant for the Union-wide TYNDPs put forward by the European Commission in the TEN-E Proposal, as well as specific recommendations for their improvement:

2.1 Scenarios for the Union-wide TYNDPs

Under the TEN-E Proposal, the scenarios for the Union-wide TYNDPs would be developed through the following process⁴²:

- (i) ACER would conduct a consultation with all relevant stakeholders and publish framework guidelines for the joint electricity and gas scenarios. These guidelines shall ensure that the energy efficiency first principle is duly considered and that the scenarios are aligned with decarbonisation targets;

⁴⁰ Commission Recommendation of 24 July 2018 on guidelines on equal treatment and transparency criteria to be applied by ENTSO-E and ENTSG when developing their TYNDPs as set out in Annex III 2(5) of Regulation 347/2013 of the European Parliament and of the Council (OJ C 265/1, 27.7.2018).

⁴¹ Decision No 24/2020 of the European Union Agency for the Cooperation of Energy Regulators of 2 October 2020 on the Methodology for the European Resource Adequacy Assessment.

⁴² Art. 12, TEN-E Proposal.

- (ii) the ENTSOs would develop the joint scenarios based on ACER’s framework guidelines and submit a draft joint scenarios report to ACER and the Commission for their opinions;
- (iii) the ENTSOs would adapt their joint scenarios report “taking due account” of ACER’s position and “in line with” the Commission’s opinion; and
- (iv) the ENTSOs would submit the updated joint scenarios report to the Commission for approval.

This proposed decision-making includes improvements to the current process, such as the explicit recognition of the energy efficiency first principle and a reference to the need to align the scenarios with decarbonisation targets. However, it **fails to set solid mechanisms to ensure that these improvements are effectively implemented** based on the best scientific evidence and that any bias in the design of scenarios is avoided.

The process **should be amended as follows:**

- (i) the ESABCC shall be tasked with defining the qualitative scenarios to be used by the ENTSOs. The qualitative scenarios shall be based on the latest scientific evidence and climate targets and integrate assumptions not only on gas and electricity sectors demand, but also on energy efficiency and network demand for heat and other gases;
- (ii) the ENTSOs shall conduct a public consultation and develop the joint scenarios, following the ESABCC’s qualitative scenarios and considering the input received in the public consultation;
- (iii) the ENTSOs shall prepare and submit a draft joint scenarios report to the ESABCC for its assessment;
- (iv) the ESABCC shall assess the joint scenarios report;
- (v) the ENTSOs shall adapt the joint scenarios report in line with the ESABCC’s assessment or justify the reasons for deviating from the assessment; and
- (vi) the Commission shall approve the final joint scenarios.

2.2 Cost-Benefit Analysis (CBA) methodologies

As currently proposed by the Commission, the approval process of the CBA methodologies is composed of the following steps⁴³:

- (i) a public consultation on the CBA methodologies would be conducted by the ENTSOs, involving all relevant stakeholders;
- (ii) the ENTSOs would develop and publish the CBA methodologies and submit them to ACER;
- (iii) ACER would issue its opinion on the CBA methodologies;
- (iv) the ENTSOs would update the CBA methodologies taking due account of ACER's opinion and submit them to the Commission;
- (v) the Commission would issue its opinion on the updated CBA methodologies; and
- (vi) the ENTSOs would adapt the CBA methodologies taking due account of the Commission's opinion and submit them to the Commission for approval.

The proposed process **does not mitigate the risks of the ENTSOs establishing biased CBA methodologies** that would result in excessive infrastructure development. It also tasks the ENTSOs with developing different CBA methodologies, failing to institute a single, joint CBA methodology, necessary for advancing towards greater energy system integration.

The process **should be amended as follows**:

- (i) a public consultation on the joint CBA methodology shall be conducted by the ENTSOs, involving all relevant stakeholders, including the EU DSO entity;
- (ii) the ENTSOs shall develop a draft joint CBA methodology and submit it to the ESABCC and ACER, along with the input received in the consultation and a report on how the opinions expressed therein were taken into account;
- (iii) the ESABCC shall conduct an independent assessment of the draft joint CBA methodology and publish its results in a report;
- (iv) ACER shall provide an opinion on the draft joint CBA methodology;
- (v) the ENTSOs shall adapt the draft joint CBA methodology in line with the report of the ESABCC and ACER's opinion (or justifying the reasons for deviating from their recommendations) and submit it to the Commission; and
- (vi) the Commission shall approve the final joint CBA methodology.

⁴³ Art. 11, TEN-E Proposal.

2.3 Infrastructure gaps reports

Under the TEN-E Proposal, the process for the publication of infrastructure gaps reports would be as follows⁴⁴:

- (i) the ENTSOs would conduct a public consultation on energy infrastructure gaps and prepare their respective infrastructure gaps reports;
- (ii) the ENTSOs would submit their infrastructure gap reports to ACER and the Commission for their opinions;
- (iii) ACER and the Commission would submit their opinions;
- (iv) the ENTSOs would have to adapt their infrastructure gaps reports “taking due account” of ACER’s position and “in line” with the Commission’s opinion; and
- (v) the ENTSOs would publish the final infrastructure gaps reports.

The proposed process relies on the ENTSOs for the identification of infrastructure needs, while their members, the TSOs, obtain a substantial part of their income from regulated revenues derived from infrastructure construction and operation. To mitigate the **risk of overestimating the need for infrastructure development**, the ESABCC should assess the ENTSOs report relying on objective, science-based criteria. To facilitate energy system integration, there should be a single infrastructure gaps report.

The process **should be amended as follows**:

- (i) the ENTSOs shall conduct a public consultation on energy infrastructure gaps and prepare a single, joint infrastructure gaps report;
- (ii) the ENTSOs shall submit their joint infrastructure gap report, together with the input received in the consultation process and a report on how it was taken into account, to the ESABCC and ACER for their opinions;
- (iii) the ESABCC shall conduct an independent assessment of the joint infrastructure gaps report and publish its results in a report;
- (iv) ACER, considering the ESABCC’s opinion, shall draft and submit its opinion;
- (v) the ENTSOs shall adapt the joint infrastructure gaps report in line with the ESABCC’s report and ACER’s opinion (or justifying the reasons for deviating from their recommendations) and submit the updated infrastructure gaps report to the Commission for its approval; and
- (vii) The Commission shall approve the final infrastructure gap report.

⁴⁴ Art. 13, TEN-E Proposal.

2.4 Guidelines for the inclusion of projects in Union-wide TYNDPs

Under the TEN-E Proposal, the process for producing the guidelines for inclusion of projects in Union-wide TYNDPs would be as follows⁴⁵:

- (i) the ENTSOs would prepare draft guidelines for inclusion of projects in their respective Union-wide TYNDPs;
- (ii) the ENTSOs would consult with the Commission and ACER about the draft guidelines for the inclusion of projects in Union-wide TYNDPs and take due account of their recommendations; and
- (iii) the ENTSOs would publish the final guidelines for inclusion of projects in Union-wide TYNDPs.

The proposed process is not very clearly laid out in the TEN-E Proposal and should be revised to ensure unity and objectivity of the guidelines, which in practice act as a first filter for projects that aim to qualify as PCI.

The process **should be amended as follows**:

- (i) the ENTSOs shall prepare draft joint guidelines for inclusion of projects in Union-wide TYNDPs;
- (ii) the ENTSOs shall consult with the ESABCC and ACER about the draft guidelines for the inclusion of projects in Union-wide TYNDPs and amend them in line with their recommendations;
- (iii) the ENTSOs shall submit the amended guidelines for the inclusion of projects in Union-wide TYNDPs to the Commission; and
- (iv) the final guidelines for the inclusion of projects in Union-wide TYNDPs shall be approved by the Commission.

⁴⁵ Annex III.2(5), TEN-E Proposal.

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