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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 172 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) On 26 March 2010, the European Council agreed to the Commission's proposal to launch a new strategy 'Europe 2020'. One of the priorities of the Europe 2020 strategy is sustainable growth to be achieved by promoting a more resource-efficient, more sustainable and more competitive economy. That strategy put energy infrastructures at the forefront as part of the flagship initiative 'Resource efficient Europe', by underlining the need to urgently upgrade Europe's networks, interconnecting them at the continental level, in particular to integrate renewable energy sources.

(2) The target agreed in the conclusions of the March 2002 Barcelona European Council for Member States to have a level of electricity interconnections equivalent to at least to 10 % of their installed production capacity has not yet been achieved.

(3) The communication from the Commission entitled 'Energy infrastructure priorities for 2020 and beyond — A Blueprint for an integrated European energy network', followed by the Council conclusions of 28 February 2011 and the European Parliament resolution[(4)], called for a new energy infrastructure policy to optimise network development at European level for the period up to 2020 and beyond, in order to allow

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the Union to meet its core energy policy objectives of competitiveness, sustainability and security of supply.

(4) The European Council of 4 February 2011 underlined the need to modernise and expand Europe's energy infrastructure and to interconnect networks across borders, in order to make solidarity between Member States operational, to provide for alternative supply or transit routes and sources of energy and to develop renewable energy sources in competition with traditional sources. It insisted that no Member State should remain isolated from the European gas and electricity networks after 2015 or see its energy security jeopardised by lack of the appropriate connections.

(5) Decision No 1364/2006/EC of the European Parliament and of the Council[(5)] lays down guidelines for trans-European energy networks (TEN-E). Those guidelines have as objectives to support the completion of the Union internal energy market while encouraging the rational production, transportation, distribution and use of energy resources, to reduce the isolation of less-favoured and island regions, to secure and diversify the Union's energy supplies, sources and routes, including through cooperation with third countries, and to contribute to sustainable development and protection of the environment.

(6) Evaluation of the current TEN-E framework has clearly shown that this framework, while making a positive contribution to selected projects by giving them political visibility, lacks vision, focus, and flexibility to fill identified infrastructure gaps. The Union should therefore increase its efforts to meet future challenges in this field, and due attention should be paid to identifying potential future gaps in energy demand and supply.

(7) Accelerating the refurbishment of existing energy infrastructure and the deployment of new energy infrastructure is vital to achieve the Union's energy and climate policy objectives, consisting of completing the internal market in energy, guaranteeing security of supply, in particular for gas and oil, reducing greenhouse gas emissions by 20 % (30 % if the conditions are right), increasing the share of renewable energy in final energy consumption to 20 %[(6)] and achieving a 20 % increase in energy efficiency by 2020 whereby energy efficiency gains may contribute to reducing the need for construction of new infrastructures. At the same time, the Union has to prepare its infrastructure for further decarbonisation of its energy system in the longer term towards 2050. This Regulation should therefore also be able to accommodate possible future Union energy and climate policy objectives.

(8) Despite the fact that Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity[(7)] and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas[(8)] provide for an internal market in energy, the market remains fragmented due to insufficient interconnections between national energy networks and to the suboptimal utilisation of existing energy infrastructure. However, Union-wide integrated networks and deployment of smart grids are vital for ensuring a competitive and properly functioning integrated market, for achieving an optimal utilisation of energy infrastructure, for

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increased energy efficiency and integration of distributed renewable energy sources and for promoting growth, employment and sustainable development.

(9) The Union's energy infrastructure should be upgraded in order to prevent technical failure and to increase its resilience against such failure, natural or man-made disasters, adverse effects of climate change and threats to its security, in particular as regards European critical infrastructures as set out in Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection[(9)].

(10) Transporting oil through land pipelines rather than over water can make an important contribution to lowering the environmental risk associated with the transportation of oil.

(11) The importance of smart grids in achieving the Union's energy policy objectives has been acknowledged in the communication from the Commission of 12 April 2011 entitled 'Smart grids: from innovation to deployment'.

(12) Energy storage facilities and reception, storage and regasification or decompression facilities for liquefied natural gas (LNG) and compressed natural gas (CNG) have an increasingly important role to play in the European energy infrastructure. The expansion of such energy infrastructure facilities forms an important component of a well-functioning network infrastructure.

(13) The communication from the Commission of 7 September 2011 entitled 'The EU Energy Policy: Engaging with Partners beyond Our Borders' underlined the need for the Union to include the promotion of energy infrastructure development in its external relations with a view to supporting socio-economic development beyond the Union borders. The Union should facilitate infrastructure projects linking the Union's energy networks with third-country networks, in particular with neighbouring countries and with countries with which the Union has established specific energy cooperation.

(14) To ensure voltage and frequency stability, particular attention should be focused on the stability of the European electricity network under the changing conditions caused by the growing inflow of energy from renewable resources that are variable in nature.

(15) The investment needs up to 2020 in electricity and gas transmission infrastructures of European relevance have been estimated at about EUR 200 billion. The significant increase in investment volumes compared to past trends and the urgency of implementing the energy infrastructure priorities requires a new approach in the way energy infrastructures, and in particular those of a cross-border nature, are regulated and financed.

(16) The Commission Staff Working Paper for the Council of 10 June 2011 entitled 'Energy infrastructure investment needs and financing requirements' stressed that approximately half of the total investments needed for the decade up to 2020 are at risk of not being delivered at all or not in time due to obstacles related to the granting of permits, regulatory issues and financing.

(17) This Regulation lays down rules for the timely development and interoperability of trans-European energy networks in order to achieve the energy policy objectives of the

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Treaty on the Functioning of the European Union (TFEU) to ensure the functioning of the internal energy market and security of supply in the Union, to promote energy efficiency and energy saving and the development of new and renewable forms of energy, and to promote the interconnection of energy networks. By pursuing these objectives, this Regulation contributes to smart, sustainable and inclusive growth and brings benefits to the entire Union in terms of competitiveness and economic, social and territorial cohesion.

(18) It is essential for the development of trans-European networks and their effective interoperability to ensure operational coordination between electricity transmission system operators (TSOs). In order to ensure uniform conditions for the implementation of the relevant provisions 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[(10)] in this respect, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers[(11)]. The examination procedure should be used for the adoption of the guidelines on the implementation of operational coordination between electricity TSOs at Union level, given that those guidelines will apply generally to all TSOs.

(19) The Agency for the Cooperation of Energy Regulators (the 'Agency') established by Regulation (EC) No 713/2009 of the European Parliament and of the Council[(12)] is allocated important additional tasks under this Regulation and should be given the right to levy fees for some of these additional tasks.

(20) Following close consultations with all Member States and stakeholders, the Commission has identified 12 strategic trans-European energy infrastructure priorities, the implementation of which by 2020 is essential for the achievement of the Union's energy and climate policy objectives. These priorities cover different geographic regions or thematic areas in the field of electricity transmission and storage, gas transmission, storage and liquefied or compressed natural gas infrastructure, smart grids, electricity highways, carbon dioxide transport and oil infrastructure.

(21) Projects of common interest should comply with common, transparent and objective criteria in view of their contribution to the energy policy objectives. For electricity and gas, in order to be eligible for inclusion in the second and subsequent Union lists, projects should be part of the latest available 10-year network development plan. This plan should notably take account of the conclusions of the European Council of 4 February 2011 with regard to the need to integrate peripheral energy markets.

(22) Regional groups should be established for the purpose of proposing and reviewing projects of common interest, leading to the establishment of regional lists of projects of common interest. In order to ensure broad consensus, these regional groups should ensure close cooperation between Member States, national regulatory authorities, project promoters and relevant stakeholders. The cooperation should rely as much as possible on existing regional cooperation structures of national regulatory authorities

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and TSOs and other structures established by the Member States and the Commission. In the context of this cooperation, national regulatory authorities should, when necessary, advise the regional groups, inter alia on the feasibility of the regulatory aspects of proposed projects and on the feasibility of the proposed timetable for regulatory approval.

(23) In order to ensure that the Union list of projects of common interest ('Union list') is limited to projects which contribute the most to the implementation of the strategic energy infrastructure priority corridors and areas, the power to adopt and review the Union list should be delegated to the Commission in accordance with Article 290 of the TFEU, while respecting the right of the Member States to approve projects of common interest related to their territory. According to analysis carried out in the impact assessment accompanying the proposal that has led to this Regulation, the number of such projects is estimated at some 100 in the field of electricity and 50 in the field of gas. Taking into account this estimate, and the need to ensure the achievement of the objectives of this Regulation, the total number of projects of common interest should remain manageable, and therefore should not significantly exceed 220. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(24) A new Union list should be established every two years. Projects of common interest that are completed or that no longer fulfil the relevant criteria and requirements as set out in this Regulation should not appear on the next Union list. For that reason, existing projects of common interest that are to be included in the next Union list should be subject to the same selection process for the establishment of regional lists and for the establishment of the Union list as proposed projects; however, care should be taken to minimise the resulting administrative burden as much as possible, for example by using to the extent possible information submitted previously, and by taking account of the annual reports of the project promoters.

(25) Projects of common interest should be implemented as quickly as possible and should be closely monitored and evaluated, while keeping the administrative burden for project promoters to a minimum. The Commission should nominate European coordinators for projects facing particular difficulties.

(26) Permit granting processes should neither lead to administrative burdens which are disproportionate to the size or complexity of a project, nor create barriers to the development of the trans-European networks and market access. The conclusions of the Council of 19 February 2009 highlighted the need to identify and remove barriers to investment, including by means of streamlining of planning and consultation procedures. Those conclusions were reinforced by the conclusions of the European Council of 4 February 2011 which again underlined the importance of streamlining and improving permit granting processes while respecting national competences.

(27) The planning and implementation of Union projects of common interest in the areas of energy, transport and telecommunication infrastructure should be coordinated to generate synergies whenever to do so makes sense from an overall economic,