Council Regulation (EU, Euratom) No 617/2010 of 24 June 2010 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and repealing Regulation (EC) No 736/96

COUNCIL REGULATION (EU, EURATOM) No 617/2010

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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 European Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Obtaining an overall picture of the development of investment in energy infrastructure in the Union is essential for the 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.

(2) 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 begun.

(3) The new energy context requires significant investment in all kinds of infrastructure in all energy sectors as well as the development of new types of infrastructure and new technologies to be 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. 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.

(4) 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 Union's energy system.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU, Euratom) No 617/2010. (See end of Document for details)*

(5) The Commission and in particular its Market Observatory for Energy should therefore have at its disposal accurate data and information on investment projects, including decommissioning, in the most significant components of the energy system of the Union.

(6) 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.

(7) 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. Such additional reporting is without prejudice to Articles 41 to 44 of the Euratom Treaty.

(8) In order for the Commission to have a consistent view of the future developments of the Union's energy system as a whole, 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.

(9) Member States should, to this end, notify to the Commission, data and information on investment projects in energy infrastructure concerning production, storage and transport of oil, natural gas, electricity, including electricity from renewable sources, 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.

(10) Given the time horizon of investment projects in the energy sector, reporting every two years should be sufficient.

(11) With a view to avoiding disproportionate administrative burdens and to minimise costs to 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 energy sector-specific legal acts, adopted by the institutions of the Union, aiming at achieving the objectives of competitive energy markets in the Union, of sustainability of the energy system of the Union and of the security of energy supply to the Union. Any duplication of reporting requirements specified in the third internal market package for electricity and natural gas should therefore be avoided.

(12) 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.

(13) 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[(1)], 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[(2)]. This Regulation leaves those provisions intact.

(14) 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 data and information related to 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 Union 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 Commission Regulation (EC) No 2386/96[(3)] which is applying Council Regulation (EC) No 736/96 of 22 April 1996 on notifying the Commission of investment projects of interest to the Community in the petroleum, natural gas and electricity sectors[(4)], 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 extent of amendments necessary to adapt it to today's energy challenges and for the sake of clarity, Regulation (EC) No 736/96 should be repealed and replaced by a new Regulation,

HAS ADOPTED THIS REGULATION:

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,

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU, Euratom) No 617/2010. (See end of Document for details)*

natural gas, electricity, including electricity 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 investment projects of the types 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 of the types listed in the Annex 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’ means projects aiming at:

   (i) building new infrastructure;

   (ii) transforming, modernising, increasing or reducing capacities of existing infrastructure;

   (iii) partial or total decommissioning of existing infrastructure;

3. ‘final investment decision’ means the decision taken at the level of an undertaking 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, a feasibility assessment, preparatory and technical studies, obtaining licences and authorisations and incurring capital costs;

4. ‘investment projects under construction’ means 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:

   (i) through pipelines, other than upstream pipeline network and other than the part of pipelines primarily used in the context of local distribution; or

   (ii) 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 or underground infrastructure or geological sites or containment of carbon dioxide in underground geological formations;

9. ‘undertaking’ means any natural or legal private or public person, deciding or implementing investment projects;

10. ‘energy sources’ means:

    (i) primary energy sources, such as oil, natural gas or coal;

    (ii) transformed energy sources, such as electricity;

    (iii) renewable energy sources including hydroelectricity, biomass, biogas, wind, solar, tidal, wave and geothermal energy; and

    (iv) energy products, such as refined oil products and bio-fuels;

11. ‘specific body’ means a body entrusted by any energy sector-specific legal act of the Union 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 (‘ENTSO-E’) referred to in 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[(5)] and the European network for transmission system operators for gas (‘ENTSO-G’) referred to in 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[(6)].

Article 3

Notification of data

1 While keeping the collection and reporting burden proportionate, Member States or the entities to which they delegate this task to shall compile all data and information specified in this Regulation from 1 January 2011 and from then onwards every two years.

They shall notify the data and relevant project information specified in this Regulation to the Commission in 2011, 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.

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

2 Member States or their delegated entities are exempted from the obligations set out in paragraph 1, provided that, and to the extent that, pursuant to energy sector-specific Union law or 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 legal act concerned; or

b a specific body is entrusted with the preparation of a multi-annual investment plan in energy infrastructure at Union level and compiles to this end data and information equivalent to the requirements of this Regulation. In this case and for the purposes of