# EXPLANATORY NOTES

## On the Implementation of EU Regulation 347/2013 - MC decision 2015/09

### Part I: The permitting process

*Energy Community Secretariat*

# Table of Contents

# I. INTRODUCTION

## 1. The EU's energy infrastructure package overview

The Secretariat will prepare the full package of (three consecutive) "Explanatory Notes on the implementation of Regulation 347/EU (TEN-E Regulation) adapted and adopted by the MC Decision 2015/09 using the analysis and findings from various Studies and Reports provided by European Commission and other relevant institutions of EU (all given in the section 6. References), in order to assist the Contracting Parties (CPs) in the process of implementation.

These are structured in three parts:

Part I: Presented in this annex, focuses on the permit granting process and related actions (Article 3, 7, 8, 9 and 10), and the improvements introduced by the TEN-E Regulation.

Part II: Will focus on Improved Regulatory Treatment of the priority projects introduced by the TEN-E Regulation.

Part III: Will focus on the financing mechanisms of the priority projects.

### Introduction to the Regulation No. 347/2013

While it is generally acknowledged that there are a number of infrastructure projects that are crucial for EU and Contracting Parties to reach their goals, to establish the Internal Energy Market and the Energy Community Market, and in particular, to improve security of energy supply [6], investments still being delayed or abandoned altogether because there are difficult permitting procedures, regulatory barriers or financing issues, and these represent real risk which all CPs are facing nowadays.

This is why, in order to facilitate the implementation of priority investments, the Regulation 347/2013 (the Infrastructure Regulation) was adopted in the EU, and respectively by virtue of Decision D/2015/09/MC-EnC, the Energy Community Ministerial Council also adopted the Regulation (EU) 347/2013 with certain adaptations [8].

The purpose of the Regulation is to streamline the permitting procedure and facilitate investments in the energy infrastructure in order to achieve the Energy Community's energy and environment policy objectives.

The Regulation as adapted for the Energy Community establishes rules for identifying projects of Energy Community significance, called Projects of Energy Community Interest (PECIs), once they have proven to be mature enough. Pursuant to the Regulation, the identification of PECIs is to follow within the categories of electricity, and respectively gas and oil infrastructure, as well as in the thematic area 'smart grid deployment'.

These projects will benefit from streamlined permitting procedures within Contracting Parties, and where applicable from cross-border cost allocation. While the models for streamlined permitting procedures are described within the Regulation, the actual national

implementation will decide the final applicable process, thus the national legislators and authorities have responsibility in the success of this streamlining.

PECIs may also be eligible for European Union technical and financial assistance from the Instrument for Pre-Accession Assistance (IPA) and the Neighbourhood Investment Facility (NIF).

The key benefits for a project having PECI status are:

- accelerated planning and permit granting procedures (capped at 3.5 years),
- a single national competent authority which will act as a one-stop-shop for permit granting procedures,
- fewer administrative costs for the project promoters and authorities due to a more streamlined environmental assessment procedure, whilst respecting the requirements of EnC law,
- increased transparency and improved public participation,
- increased visibility and attractiveness for investors thanks to an enhanced regulatory framework where costs are allocated to the countries that benefit most from a completed project, and
- potential financial support under the IPA and NIF.

PCI/PECI status aims at identifying and recognizing the cross-border importance of a project and thus grants special benefits for these projects. It also opens the possibility for grant financing for studies and work, however obtaining grants is not the default treatment eve for such projects. The standard assumption of the Regulation is that even these projects can finance themselves. In special cases, when it is proven not to be the case the Regulation provides additional procedures – with numerous additional conditions – to aim for Cross-Border Cost Allocation Decision or additionally to obtain financing for studies or works

In a nutshell, the main benefits of the R347 (MC Decision 2015/09) for the Projects of Energy Community interest are presented in the chart bellow [6] :

# 2. Priority investments: identification and verification

## System development and Investment planning - Identification of infrastructure investment needs

The identification of infrastructure investment needs is currently done through a number of processes at the European and national level, in both gas and electricity, as indicated below.

Directive 2009/72/EC for electricity and 2009/73/EC for gas were the first to introduce mandatory Ten-year network development plans for European TSOs (TYNDPs). These national network development plans aim particularly to [6, 11, 12]:

a) indicate to market players the main infrastructure that needs to be built, refurbished or extended over the next ten years,

b) list all the investments already decided and identify new investments which have to be realised in the next ten years, and

c) develop time frame for all investment projects.

In order to increase the transparency of network development planning at European level, Regulations 714/2009 for electricity and 715/2009 for gas foresee that the European Network of Transmission System Operators for Gas ENTSO-G and Electricity ENTSO-E shall establish a non-binding EU-wide ten-year network development plan (pan-EU TYNDP). Adequate networks and necessary cross border interconnections, relevant from a commercial, environmental or security of supply point of view, should be included in these network development plans [6, 11, 12].

Also, appropriate Regional Investment Plans (RgIPs) for electricity and GRIPs for gas are established and published in between the EU-wide TYNDPs. These plans can also inform the investment decisions of System Operators.

## Article 3: Projects of Energy Community Interest selection (PECIs)

The Regulation 347/2013 builds upon the mechanisms of indentifying priorities defined above and brings additional emphasis on the real priorities and their maturity level, through the identification of Projects of Energy Community Interest.

Following the Decision D/2015/09/MC-EnC the implementation of TEN-E Regulation is due by 31 December 2016. Due to the fact that not all Contracting Parties are members of the ENTSO E and ENTSO G and therefore their projects may not be in the TYNDPs, the Secretariat announced the first call for the selection of priority infrastructure projects on 21 Jan 2016.

It invited project promoters to submit project proposals using the on-line questionnaires available on the Energy Community website. Following the collection of proposals from promoters, the evaluation of the projects commenced late Feb 2016 [8]. In this process, the Secretariat is assisted by a Consultant who developed electricity and gas market models, as

well as a multi criteria assessment methodology, using also to the extend applicable, the ENTSO-E and ENTSO-G methodology for cost benefit analysis [8].

### PECI GROUPS [8]

Also pursuant to the TEN-E Regulation provisions, two decision Groups (one for electricity and one for gas) were established and are tasked to discuss the proposals for priority projects, decide on the assessment methodology, the criteria and their weights, and finally propose a preliminary list of priority project in line with the EU Regulation 347/2013.

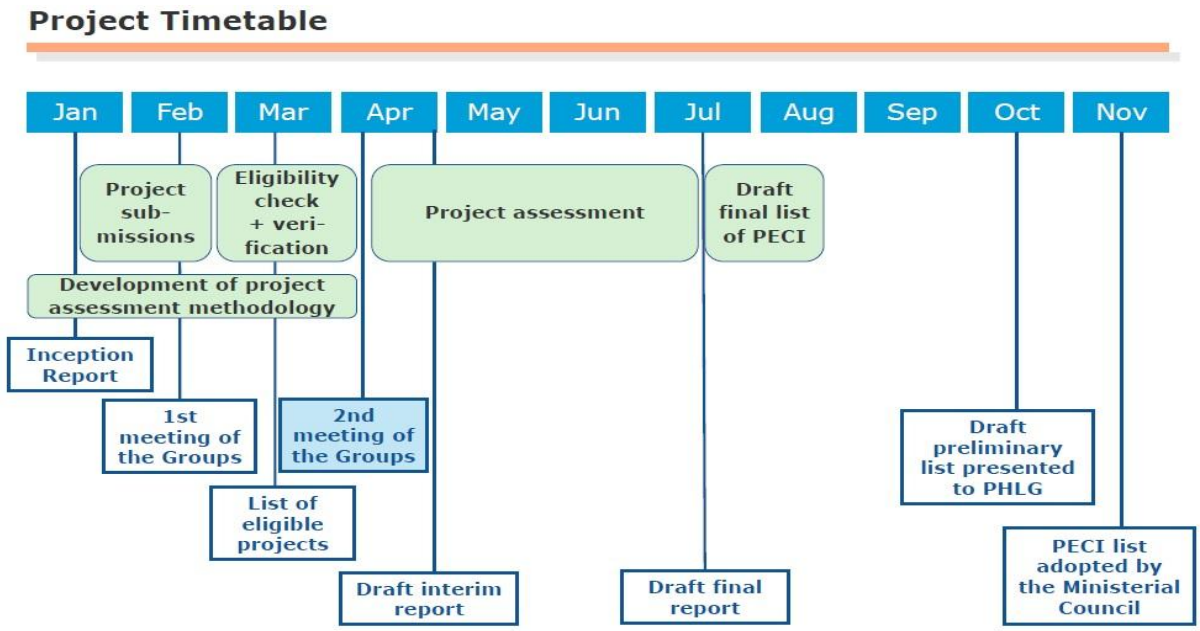
The Groups are composed of an energy ministry representative, of the respective TSOs, the regulator, the European Commission, the ENTSO-E / ENTSO-G, and the Secretariat. The two Groups are coordinated by the European Commission and the Secretariat.

### LIST OF 2016 PECIs [8]

The list of priority infrastructure projects will be established by the Ministerial Council of the Energy Community before 31 Dec 2016, based on the preliminary lists proposed by the two Groups.

Eligible projects categories as per Adopted Regulation 347/2013 – Annex I:

- Electricity transmission and storage facilities and related investments
- Gas transmission, storage, LNG and CNG terminals and related investments
- Transport pipeline and related investments
- Oil infrastructure
- Smart grid deployment




Process to identify Projects of Energy Community Interest – PECI 2016

### Consultation on the list of proposed Projects of Common Interest – Additional projects in oil, gas and electricity

A public consultation on the submitted projects as well as a 2nd call for project proposals has been opened from 2nd May till 2nd June 2016.

The objective of this consultation was to seek stakeholder's views on the need for each gas, electricity, smart grids, or oil project proposed.

# II. PROVISIONS OF THE REGULATION 347/2013

The TEN-E Regulation stipulates that the permit granting processes for infrastructure projects should not cause disproportionate administrative burdens nor create barriers to the development of trans-European networks and market access. Obstacles related to the investments realisation are to be identified and removed, by means of streamlining planning and consultation procedures.

### Measures proposed by the Regulation [2]

The following measures are introduced by the Regulation:

#### 1. Article 7: Priority status

**Where the status of the highest national significance possible** exists in the national law , the counties shall give this status to PECIs; The type of 'status of the highest national significance possible' differs from country to country, with the type of projects to which the status can be given, benefits which stem from the status, and method of allocating the status showing considerable variation.

This is an obligation imposed only on the Contracting Parties that have already the "status of national significance" in their current laws, but not on the others.

This is the case with 16 Member States, while Luxembourg is considering the introduction of a status of (overriding) public interest

#### 2. Article 8.1 Designation of One-stop-shop as a facilitator

One of a major elements of the permit granting regime established by the TEN-E Regulation is the requirement to designate a so called "one-stop-shop", called National Competent Authority (NCA), by no later than 30 June 2017.

This concept is expected to enhance transparency and reduce the complexity of administrative procedures in which different authorities are involved.

This can be set as a completely new competent authority (e.g. Belgium and Estonia), or it can grant the existing authority for permitting, specific powers to facilitate and coordinate, the permit granting process for the PECIs (e.g. Romania).

One EU MS nominated more than one National Competent Authority: e.g Slovenia has two effective "one stop shop".

The National Competent Authority may delegate its tasks to another authority, especially related to certain project categories: e.g. for off – shore energy applications (the case of UK). Nevertheless, the designated National Competent Authority shall notify the Energy Community Secretariat on the delegation of tasks and publish this information on its website, or the project promoter shall publish it on the website referred to its PECI.

### 3. Article 8.3 Permit granting Schemes

The Contracting Parties shall organise their permit granting process in accordance with one of the following schemes (they differ with regards to the degree of the decision-making power of the competent authority [2]):

- The integrated scheme (e.g. only in one EU MS) – allows the competent authority to issue one sole legally binding permitting decision, while the other concerned authorities give their opinion as an input to the procedure;
- The Coordinated scheme – (applied in nine EU MS): the comprehensive decision comprises multiple individually binding decisions issued by several authorities concerned, coordinated by the competent authority; this has also the right to disregard the decisions of other authorities or to take decision on their behalf in certain justified cases.
- The Collaborative scheme: the comprehensive decision is coordinated by the one stop shop based o the individual, legally binding decisions by concerned authorities. This is applied in fifteen EU MS. [1]

### Obligations and Requirements

The Regulation places obligations and requirements on Competent Authority, on permitting authorities in the process and on project promoters. Some of the main obligations and requirements arising from the Regulation are listed below:

#### *Competent Authority*

The Competent authority shall:

- Take actions to facilitate the issuing of the comprehensive decision, monitor compliance with time limits and resent individual time limits, when the original limits are not met [Article 8.3(c)].
- Update Manual of Procedures as necessary. [Article 9.1]. OK,
- Modify or approve the public participation concept submitted by the project promoter [Article 9.3].
- Establish on a case-by-case basis, a detailed scheme for the permit granting process. This is to be done in consultation with the project promoter and with the other authorities. [Article 10.4(b)].
- Liaise closely with Competent Authorities in other Member States, and prepare joint schedules endeavouring to align timetables. [Article 10.4(b)].
- Submit an annual report to the respective Group on progress or delays in the implementation of PECI with regard to the permit granting processes. [Article 5.6].

The analysis of EU MS compliance commissioned by the European Commission [1] identified the main problems as such:

- The original appointment may have change due to restructuring process in the central administration;
- The name change was not always communicated to the Commission;
- The lack of powers given to the Competent Authority, especially with regards to enforcement of time limits or to the taking decisions on behalf of other authorities.

*Permitting Authorities (Coordinated and Collaborative scheme)*

Other authorities shall:

- Collaborate with Competent Authority in coming to an assessment of the reasonably detailed outline of the project submitted by the project promoter for the purpose of acknowledging the notification and establishing the start of the permit granting process. [Article 10.1(a)].
- Collaborate with Competent Authority in the setting of time limits for their decisions. [Article 10.4(b)].
- Inform Competent Authority where a decision is not expected to be met and provide a justification for the delay. [Article 8.3(c)].
- Inform and copy its decision to Competent Authority at the same time as notifying the project promoter of the decision. [Article 8.3(c)].

*Project promoters*

- Draw up an implementation plan for the Project including a timetable for each of the following: (a) feasibility and design studies; (b) approval by the national regulatory authority or by any other authority concerned; (c) construction and commissioning (d) the permit granting schedule referred to in Article 10(4)(b). [Article 5.1].
- Submit an annual report by 31 March of each year following the year of inclusion of a PECIs on the ECS List to Competent Authority. [Article 5.4].
- Draw up and submit a concept for public participation to Competent Authority. [Article 9.3 in line with guidelines set out in Annex VI].
- Prepare a report summarising the results of activities related to the participation of the public prior to the submission of the application file, including those activities that took place before the start of the permit granting process [Article 9 (4)]
- Establish, maintain and update a project website. [Article 9.7]
- Provide a reasonably detailed outline of the project when the PECI process is being initiated. [Article 10.1(a)].
- Prepare any environmental reports to be prepared by the project promoters during the pre-application stage. [Article 10.1 (a)].
- Ensure the completeness and adequate quality of the application file. [Article 10.5].
- Ensure that all required information is made available promptly to the relevant authorities to ensure that the time limits set can be met. [Article 10.5].
- Co-operate fully with Competent Authority to meet deadlines and comply with the detailed schedule for the permit granting process. [Article 10.5].

## 4. Article 9: Transparency and Public Participation

Article 9 of Regulation 347/2013 provides that each CP or the Competent Authority shall, where applicable in collaboration with other authorities concerned, shall publish a manual of procedures for the permit granting process applicable to PECIs, by **no later than 31December 2017.** The manual is to be updated as necessary and made available to the public. The manual is not legally binding but may refer to or quote relevant legal provisions.

The manual should include at least the information specified in Annex VI.I of the Regulation as follows:

a) the relevant law upon which decisions and opinions are based for the different types of relevant Projects of Common Interest, including environmental law;
b) the relevant decisions and opinions to be obtained;
c) the names and contact details of the Competent Authority, other authorities and major stakeholders concerned;
d) the work flow, outlining each stage in the process, including an indicative timeframe and a concise overview of the decision-making process;
e) information about the scope, structure and level of detail of documents to be submitted with the application for decisions, including a checklist;
f) the stages and means for the general public to participate in the process.

*EU practice:* The Member States applied various approaches when preparing their manuals of procedures – with varying degrees of cooperation and consultation with other authorities and stakeholders in the drafting process. In most Member States, the manual was prepared by the one-stop-shop, often in consultation with other authorities (15 Member States) and/or stakeholders (14 Member States). Finally, six Member States opted to have a working group draft the manual. In all instances, the working group was composed of representatives of different ministries and authorities, with regional authorities also included in the cases of Finland and Belgium. In Slovakia and Slovenia, the working group also included the project promoter, while in Bulgaria, Finland and Slovakia, the working group consulted with stakeholders in the process of the drafting of the manual [1].

It should be published in all the country's official languages and preferably in English and publicised.

## 5. Article 10: Binding time limits

The second major element of the permit granting provisions is the introduction of binding time limits for the final permit granting decision, which allows for the construction of the project. According to Article 10 of the Adopted Regulation, the full permit granting process for a PECI cannot exceed the time frame of three years and six months after the acceptance of the submitted application by the competent authority. This deadline may be extended on a case-by-case basis to an additional maximum of nine months.

The regulation splits the process up into two main procedures:

### Procedure 1: Pre-application [3, 4]

- Covers the period between the start of the permit granting process and the acceptance of the submitted application file by Competent Authority; this shall take place within an indicative period of 2 years. Article 10.2 of the Regulation does provide for an extension of the time period by a maximum of 9 months (for both procedures combined);
- There are various steps in the pre-application procedure:
  - Pre-application notification by the project promoter to the NCA
  - Agreement of the schedule for the permit granting process;
  - Determination by the NCA of the scope and detailed information requested from the project promoter
  - Submission of a "concept for public participation" by the project promoter;
  - Approval by the NCA
  - Preparation of application, including environmental reports and minimum one of public consultation
  - Submission of a "draft formal application file" by the project promotes to the NCA
  - Possible request for additional information by NCA
  - Revised application by project promoter and acceptance by NCA.

### Procedure 2: The Statutory Permit Granting Procedure

- Covers the period from the date of acceptance of the submitted application file until the comprehensive decision is taken.
- The period shall not exceed one year and six months. While the combined duration of the two procedures should not exceed a period of 3 years and 6 months, the Regulation does provide that where Competent Authority considers that one or both of the two procedures (pre-application procedure and statutory permit granting procedure) will not be completed before the set time limits, it may decide before their expiry and on a case by case basis, to extend one or both of these time limits by a maximum of 9 months for both procedures combined.
- Includes issuing of the Comprehensive Decision

The comprehensive decision can be issued after the authorities concerned including Competent Authority have issued grants/approvals. In such circumstances, the comprehensive decision will take the form of a document issued by Competent Authority which will detail all the necessary permits granted/approved which were obtained in order to realise the project.

# III. CASE STUDY

## Republic of Serbia – Law on determining the public interest and special procedures for obtaining and acquisition of documentation for realization and construction of the system for electricity transmission 400 kV "Transbalkan corridor – phase I"

The realization of investment construction projects of high-voltage transmission lines is nowadays extremely complex. The major problems are not connected to the technical solutions, but rather related to the integration of the objects in the surrounding environment and ensuring their social acceptance. However, at the same time, significant delays are related to obtaining a large number of licenses.

High-voltage lines represent infrastructure of high public interest. And because of that, countries should recognize the need for improving the process.

In order to develop network of high voltage level of 400kV, Republic of Serbia identified projects that need to be built, and the government adopted a special law on Transbalkan corridor. The law regulates the two most sensitive phases of the project implementation:

1. Legal affairs connected to the process of land acquisition, and
2. Permit granting process (relevant institutions involved).

The "Law on determining the public interest and special procedures for obtaining and acquisition of documentation for realization and construction of the system for electricity transmission 400 kV "Transbalkan corridor – phase I" identifies the following investment items:

- New 400 kV interconnection between Serbia and Romania;
- New 400 kV interconnection between Serbia and Montenegro;
- New 400 kV interconnection between Serbia and Bosnia and Herzegovina;
- A new 400 kV transmission line SS Kragujevac 2 - SS Kraljevo 3, with system upgrade in the SS Kraljevo 3 to 400 kV;
- System upgrade of the transmission network in western Serbia on 400 kV voltage level between SS Obrenovac and SS Bajina Basta, which includes new double 400 kV transmission line SS Obrenovac - SS Bajina Basta, reconstruction of the existing SS Obrenovac and SS Bajina Basta, as well as potentially system upgrade to 400 kV in SS Valjevo.

### Legal affairs and land acquisition process improvements

The administrative procedure related to the legal affairs and land acquisition have been improved in two areas:

- first, the law has declared public interest for all the investment items that constitute the Trans-Balkan corridor. In usual practice, before adoption of this law, the procedure for the declaration of public interest lasted minimum 3 to 6 months, and included decisions in a number of ministries (Ministry of Finance, Ministry of Construction, etc.). This law provision eliminated these intermediary steps and improvement accelerated the process.
- second, each of the stages in the process of expropriation is shortened for the investment items related to the project Transbalkan corridor. The Law has imposed on local governments to speed up work on legal affairs and give extra priority to energy facilities of public interest.

As an outstanding example of the implementation of this law is OHL 2x400kV Pancevo 2 - Romania's borders. Complete land acquisition for the transmission line was solved in a little bit more than 6 months, which is a very good result comparing to the other projects of the similar magnitude, for which land acquisition lasted for up to many years in some cases.

### Permit granting process improvements

The law makes reference to other stages of investment preparation:

- In this context, the Law accelerated the phase of issuing Information on the location, Location permits (site conditions), the issuing of construction permits, use permits, cadastre, etc.
- Also the Law introduced option of issuing partial permits, permits for the part of the investment object, if it is necessary. This enabled effective and parallel work on different stages of permitting for different parts of the investment object, at the same time making permit granting process much shorter. For example, if any part of some of the route encounters a situation that cannot be foreseen (archaeological sites, landslides, etc.), there is a possibility to continue working on obtaining permits for uncontested parts. Before the adoption of this Law, in extreme cases even problems with only “one tower” could totally stop and postpone the construction of the rest 100 km of overhead line.

# IV. REFERENCES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