



European Union Agency for the Cooperation
of Energy Regulators



Council of European
Energy Regulators

Position on

Improving the Regulation

on Guidelines for Trans-European

Energy Networks (TEN-E

Regulation)

5 March 2021

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ACER-CEER Position on Improving the Regulation on Guidelines for Trans-European Energy Networks (TEN-E Regulation)

Introduction

In December 2020, the European Commission published a proposal for the revision of the Regulation (EU) 347/2013 on Guidelines for Trans-European Energy Networks (“TEN-E Regulation”). The EU Agency for the Cooperation of Energy Regulators (ACER¹) and energy national regulatory authorities (NRAs) in the Council of European Energy Regulators (CEER²) welcome the adaptation of the TEN-E Regulation to the policy goals of the EU Green Deal but see room for improvement in a number of areas from a regulatory viewpoint, as detailed below.

ACER and NRAs have a long experience in terms of network development for electricity and gas as well as with the implementation of the TEN-E Regulation. They actively participate in the elaboration of ten-year network developments plans (TYNDPs), including scenario building and cost benefit analysis. They are involved in the selection of projects of common interest and decide on cross-border cost allocation (CBCA). Furthermore, at national level, the majority of NRAs approve national network development plans and, in other instances, NRAs contribute to their scrutiny.

Based on this experience ACER and CEER issued a position paper³ in June 2020 presenting lessons from the implementation of the TEN-E Regulation and proposals for improvements.

In this paper, ACER and CEER present their views on the legislative proposal on the revision of TEN-E Regulation and propose improvements in terms of implementation, such as ensuring a sound evaluation of projects and NRAs’ capacity to effectively decide on cost allocation.

This paper complements the June 2020 ACER-CEER position paper and aims at proposing improvements on the main new elements of the legislative proposal⁴ to revise the TEN-E Regulation. Given its limited focus, the present paper should be considered jointly with the previous recommendations in the June 2020 ACER-CEER position paper.

In ACER and CEER’s view, the legislative proposal should be further improved to promote a neutral and independent technical assessment of infrastructure projects, to ensure those projects bringing most benefits for the European Green Deal are supported and to avoid any risks of unjustified costs to European consumers.

ACER and NRAs address particularly two dimensions: the quality of the tools to assess infrastructure needs and projects’ value according to European energy policy objectives; and the role of regulators and ACER (an EU agency) in the governance of the Projects of Common Interest (PCI) process, ensuring they can effectively oversee TSOs’ tasks and decide on project implementation.

ACER and NRAs can play a neutral role in the European network development process and, given their technical expertise and experience, they are naturally well-placed to improve it. However, the legislative proposal seems to pay limited attention to the benefits of a strengthened role of regulators (ACER and NRAs). With the exception of the introduction of ACER framework guidelines for scenarios development ACER’s role is:

¹ Agency for the Cooperation of Energy Regulators (ACER). Visit www.acer.europa.eu

² Council of European Energy Regulators (CEER). Visit www.ceer.eu

³ ACER-CEER, “Position on Revision of the Trans-European Energy Networks Regulation (TEN-E) and Infrastructure Governance” <https://www.ceer.eu/documents/104400/-/-/c4f763dd-27e7-7113-9809-1ec50f530576>

⁴ https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2394

- unchanged regarding the PCI monitoring report and the opinions on cost-benefit analysis methodologies on scenarios for Ten-Year Network Development Plans and on infrastructure gaps identification; and
- weakened due to the lack of regulatory scrutiny of offshore network development plans and due to the proposal to limit ACER's and NRAs' abilities to assess investment requests.

1. Assessment of projects through CBA – facilitating infrastructure planning (Articles 11 and 13)

The main problems:

- Although NRAs are experienced in developing and applying the cost benefit analysis (CBA) methodology as the main tool to assess if projects are in the interest of European citizens, ACER remains only marginally involved in its development process.
- Previous CBAs developed by the European Networks of Transmission System Operators (ENTSOs) raised issues regarding the robustness of benefits and the overall consistency of the assessment framework.
- The approval processes of the CBA methodologies under the current TEN-E Regulation are lengthy and cumbersome (see Table 1)⁵, and experience has shown that delays in the process are systematic rather than a one-off exception. The legislative proposal introduces additional complexity (e.g. with the ENTSOs’ CBA update after an ACER opinion, Article 11(3)) and is likely to create more inefficiencies in the process.
- The assessment of non-transmission projects (e.g. storage or innovative projects) is performed by the ENTSOs even if such projects might compete with transmission projects and there is doubt of the ENTSOs’ competence to assess such projects.

Table 1 - Excessively lengthy and complex processes for approving the CBA methodologies

First CBA methodologies (electricity & gas)	Second CBA methodology (electricity)	Third CBA methodology (electricity)
ENTSOs’ submissions 15 November 2013	ENTSO-E submission 6 December 2016	ENTSO-E submission 11 February 2020
ACER Opinion 01/2014, Jan 2014 ACER Opinion 04/2014, Feb 2014	ACER Opinion 05/2017, March 2017	ACER Opinion 03/2020, May 2020
EC Opinion C(2014)5418, July 2014	EC Opinion C(2018)4, January 2018	EC Opinion C(2020) 8975, Dec 2020
EC adoption C(2015)533, Feb 2015	EC adoption C(2018)6129, Sep 2018	EC adoption: ongoing
Approval time: 15 months	Approval time: 21 months	Approval time: > 12 months
Partly applied in TYNDP 2014 (electricity) and applied in TYNDP 2015 (gas)	Partly applied in TYNDP 2018	Application in TYNDP 2020 is still unclear

Limiting ACER’s role to “incremental changes” (as proposed in Article 11(6)) will not safeguard the neutrality, accuracy and integrity of the CBA methodologies and their subsequent application by the ENTSOs and project promoters. In order to ensure that CBA methodologies provide a truly objective, neutral and reliable assessment of the system wide costs and benefits, ACER must be able to review and improve the definition of benefits, costs and other relevant cost-benefit parameters, which are the core elements of the CBA and determine their effectiveness. **Therefore, we propose the deletion of Articles 11(6) and 11(7).**

⁵ A similar duration (19 months) was experienced by the second CBA methodology for gas, which was published by ENTSOG on 24 July 2017, received ACER Opinion 15/2017 in October 2017, received EC Opinion C(2018)6649 in October 2018 and was adopted by EC Decision C(2019)946 in February 2019.

In terms of governance, a recent paper by the Florence School of Regulation and Copenhagen School of Energy Infrastructure noted that “*it is worth considering transferring the responsibility to approve (and possibly amend) a single or a set of harmonised CBA methodologies to ACER. ACER is a more technical body than the European Commission*”.⁶

An approval role for ACER would also benefit from the experience of NRAs in developing or approving CBA methodologies, accounting for national specificities.

Risk identified: Weak cost benefit analysis methodologies, prepared with lengthy and cumbersome processes, would cause delays in the TYNDP and PCI processes and eventually inefficient infrastructure developments.

ACER-CEER proposal: ACER should be empowered to approve and, when needed, amend or request amendments to the ENTSOs’ CBA methodologies due to its neutral role, agility to deliver timely and adequate technical skills for assessing the technical aspects of the methodologies. The European Commission and Member States may contribute to the ACER approval process, via optional opinions on the draft methodologies to be provided within three months of ENTSOs’ submission.

Risk identified: Non-transmission projects face a risk of unequal treatment if the applicable CBA methodologies are not properly developed (by suitable entities) and aligned for all project categories.

ACER-CEER proposal: The European Commission should assign responsibilities for developing the CBA methodologies for non-transmission projects (electricity storage, smart electricity grids, smart gas grids, electrolysers), taking care to avoid risks of conflicts of interest, (as confirmed in the conclusions of the EC-commissioned study supporting the TEN-E evaluation⁷). The Commission should include in such assignments a role for ACER and the NRAs to promote the consistency of non-transmission projects’ CBA methodologies with the infrastructure CBA methodologies. All CBA methodologies shall be developed in a transparent manner, including an extensive consultation of Member States and all relevant stakeholders.

In addition, Article 13 of the legislative proposal explicitly introduces the infrastructure gaps identification reports. These activities are already developed by the ENTSOs in the context of their TYNDPs and are already subject to the ACER opinions on the TYNDPs. The processes of Articles 13(2), 13(3), 13(4) and 13(5) are lengthy, unnecessary and not fitting with the TYNDP biennial timing. **Therefore, these new processes should be withdrawn.**

⁶ T. Schittekatte, A. Pototschnig, L. Meeus, T. Jamasb and M. Llorca, Making the TEN-E Regulation Compatible with the Green Deal: Eligibility, Selection, and Cost Allocation for PCIs, FSR Policy Brief 2020/27, July 2020. https://cadmus.eui.eu/bitstream/handle/1814/67673/PB_2020_27_RSCAS.pdf

⁷ Ecorys, Ramboll, REKK, Shepherd Wedderburn, Support to the evaluation of Regulation (EU) No 347/2013 on guidelines for trans-European energy infrastructure, Final report. January 2021, <https://op.europa.eu/en/publication-detail/-/publication/19bec11f-5f86-11eb-b487-01aa75ed71a1/language-en>

2. Assessing projects in different futures - Scenario development (Article 12)

The main problem(s):

- Currently, the transmission system operators (TSOs), through the ENTSOs, develop the scenarios. TSOs can be perceived as biased towards favouring more infrastructure, as this is in the interest of their business⁸. The neutrality of scenarios can thus be compromised, and instruments need to be implemented to safeguard it.
- In addition, as shown in Table 2, the first two editions of joint electricity and gas scenario development witnessed significant delays, endangering a timely preparation of the electricity and gas Ten-Year Network Development Plans in 2018 and 2020.

Table 2 - Delays in ENTSOs' TYNDP scenario reports⁹

	TYNDP 2018 scenarios	TYNDP 2020 scenarios
ENTSOs' planned publication of post-consultation scenario report	September 2017	September 2019
ENTSOs' actual publication of post-consultation scenario report	29 March 2018	29 June 2020
Delay in scenario preparation	≈ 6 months	≈ 9 months

ACER and CEER welcome the introduction of ACER framework guidelines for the TYNDP scenarios to promote neutrality of scenarios and to provide technical guidance, including on data transparency, which the ENTSOs shall follow (Articles 12(1) and 12(2)).

The legislative proposal features further efforts towards neutrality of scenarios by providing separate opinions by ACER and by the European Commission followed by a final approval by the Commission.

However, ACER and CEER consider that these tools fail to streamline the scenario development process. The risk of even longer delays is substantial, since compared to the current arrangement, a European Commission opinion, an ENTSOs scenario mandatory re-submission and European Commission approval are added to the process.

Risk identified: The process proposed to tackle concerns of lack of neutrality of the ENTSOs in scenario preparation risks to be lengthy and inefficient.

ACER-CEER proposal: To allow a timely preparation of scenarios, the opinion of the European Commission on the draft scenario report and the ENTSOs update of scenarios (Articles 12(6) and 12(7)) do not seem necessary and should be omitted. Given that the Commission approves the draft scenarios, it should also have the power to amend or request amendments on the draft scenarios, after duly considering ACER's opinion (and possible amendment proposals therein), which is necessary to ensure a neutral approach and further discourage ENTSOs from potential biases.

⁸ A potential conflict of the roles of the ENTSOs, as project promoters and scenario developers was identified by the EC-commissioned Ecorys study and several stakeholders, calling for mitigation measures.

⁹ ACER Opinions 10/2018 and 06/2020.

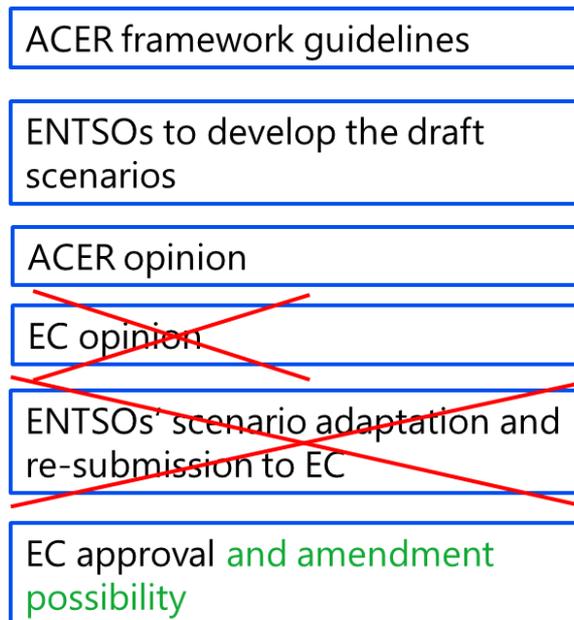


Figure 1 – The ACER-CEER proposal to streamline the scenario development process

3. Offshore grid planning should be fully integrated into the European grid planning (articles 14 and 15)

Article 14(2) of the legislative proposal suggests that ENTSO-E will develop and publish integrated offshore network development plans for each sea basin every three years, which would be subject to a European Commission opinion (Article 14(4)). Article 15(1) proposes that the Commission develops principles for a specific cost-benefit and cost-sharing methodology.

Risk identified: the 3rd Energy Package and the TEN-E Regulation introduced EU-wide planning procedures (in particular, the Ten-Year Network Development Plan and the Regional Investment Plans), which aim at an – as comprehensive as possible – EU planning subject to regulatory scrutiny by ACER with the support of the NRAs.

However, the legislative proposal appears to decouple the offshore grid development planning from the EU-wide planning exercise and introduces unnecessary multiple methodologies and different responsibilities. This proposal raises severe risks of inefficiencies and uncoordinated grid developments, potentially leading to bad investment decisions to the detriment of European society.

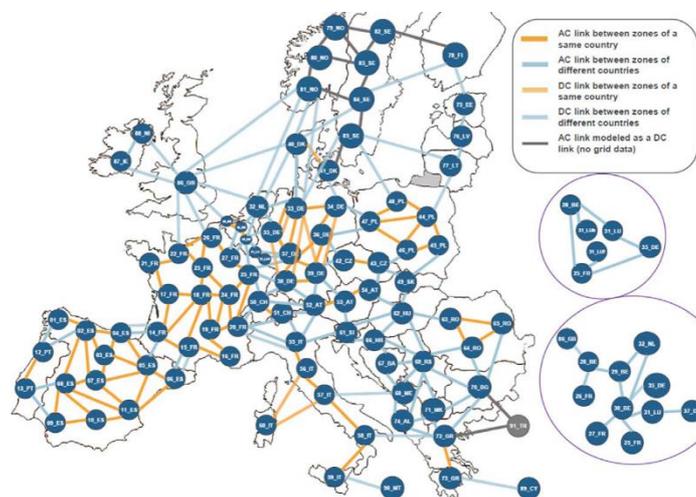


Figure 2 – A simplified model of the (single onshore and offshore) EU electricity network
– source: ENTSO-E draft power system needs report 2020

The different frequencies (2 years vs. 3 years) and the different CBA methodologies of the TYNDP and the offshore plans will create significant practical problems and inefficiencies:

- the introduction of a new process, on top of the existing activities, is not efficient as it will require more resources and will distract ENTSO-E from their current duties;
- the scenarios risk being different, leading to a mismatch on important assumptions of the development of the onshore and offshore grids;
- the different CBA methodology for offshore grids risks causing different assessments of similar assets, favouring one over others, undermining in the end the credibility of planning;
- the absence of regulators' analysis risks causing inefficient infrastructure development, resulting in higher costs for consumers and possibly even stranded assets.

The fall-back option that offshore network development planning is drawn up by the European Commission (Article 14(6)) is inappropriate as, under appropriate scrutiny, ENTSO-E and TSOs are naturally well-placed to plan the electricity network. **Therefore, Article 14(6) should be withdrawn.**

ACER-CEER proposal: the TEN-E Regulation should deal with offshore planning, favouring appropriate synergies with the existing processes. The development of offshore grids should be subject to appropriate regulatory scrutiny, in similar terms with onshore grids, and in particular:

- Articles 14(2) to 14(6) and Article 15 should be adapted to ensure the necessary links with the existing processes for TYNDP, CBA and Regional Investment Plans.
- The offshore network development planning (per sea basin, with appropriate interlinkages with the planning of onshore grids) would be much more efficiently addressed in the existing Regional Investment Plans which are developed every two years pursuant to Article 34 of Regulation (EU) 2019/943 and which are monitored by ACER pursuant to Article 5(8) of Regulation (EU) 2019/942;
- The offshore network development planning should be fully incorporated in the preparation of the EU-wide TYNDP without any separate process;
- ACER should develop a binding decision on the content and process of the TYNDPs¹⁰ before ENTSOs' preparation of the TYNDPs and should be empowered to issue binding amendment requests on the draft TYNDPs;
- The cost-benefit analysis of offshore projects should be developed by using the current ENTSO-E cost-benefit analysis methodology, updated as appropriate to assess offshore networks; no specific CBA methodology is needed;
- The cost-sharing methodology should be developed by expanding the ACER Recommendation 05/2015 on Good Practices for the Treatment of the Investment Requests for Electricity PCIs or via dedicated ACER recommendations, as appropriate.

¹⁰ This recommendation was already outlined in the ACER-CEER June 2020 position paper on TEN-E, referring to both electricity and gas sectors.

4. Cross-border investment decisions should be exclusively a NRA competence and, where relevant, ACER (Article 16)

The possibility to correctly assess projects during the PCI selection process is limited, leading to an excessive number of PCIs and contestable results in terms of calculated costs and benefits under the current governance framework. Therefore, it is crucial that in the interest of selecting the best projects for decarbonisation, security of supply and competition for the European Union, NRAs (and ACER, where relevant) thoroughly scrutinise PCI investment requests on their territory and as well as those from which they receive significant impacts.

Main problem: the legislative proposal restricts the capacity of NRAs to assess and decide independently on projects. Several provisions are too restrictive and interfere with the competences of NRAs as defined in European legislation. In particular:

- Under Articles 16(4) and 16(6), the analysis of the investment request by the NRAs and by ACER shall be carried out solely with one scenario as used in the PCI selection process. This proposal deprives NRAs (and ACER, where it has to take decisions) of the ability to analyse a project in light of the data they consider most relevant, which is critical in a highly uncertain future where system developments tend to be more and more interconnected. An evaluation “*under different planning scenarios*” is explicitly requested by Annex IV(3) to the legislative proposal, when evaluating the benefits related to market integration. Using several scenarios does not contradict the EU’s energy policy ambitions but allows assessment of different paths to their fulfilment and helps understand the potential added value of various projects.
- The new version of Article 16(4) requires NRAs to include all the efficiently incurred investment costs in the tariffs, allowing promoters to include less beneficial investments in their investment request. In our view, the evaluation of the appropriate project elements to be included in a CBCA and of costs to be included in tariffs shall be under the sole remit of NRAs (and ACER, where relevant). NRAs and ACER should remain free to exclude some project elements (or the entire project) from cost allocation when some project elements do not provide a net benefit to Europe.
- Article 16(10) introduces binding guidelines on CBCA by the European Commission, deviating from the long-standing and efficient practice of guidance by ACER¹¹ to project promoters and NRAs on how to best implement the provisions of the TEN-E Regulation. After the latest ACER Recommendation (No. 05/2015), all 25 investment requests submitted by project promoters led to a decision by the concerned NRAs without the need of referring the case to ACER.

In addition, Article 16(6) of the legislative proposal endangers the good cooperation among NRAs on infrastructure development. It states that the referral to ACER can be made at the request of a single NRA before the expiry of the six-month period (while, under the current Regulation (EU) 347/2013, a joint request is necessary). Therefore, a project could be sent for decision to ACER even without the agreement of the NRAs territorially concerned. **NRAs strongly call for withdrawing this new proposal**, which conflicts with Article 6(10) of Regulation (EU) 2019/942, which requires a joint request from the competent regulatory authorities in order for ACER to take decisions.

¹¹ https://www.acer.europa.eu/en/electricity/infrastructure_and_network%20development/infrastructure/pages/acer-recommendation-on-cbca-decisions.aspx

Risk identified: The legislative proposal introduces deep changes in terms of treatment of investment requests by NRAs without clear justifications about their benefits. They could even exacerbate the risk of disagreements in the treatment of investment requests and could result in imposing projects for which NRAs would be able to prove there is not net benefit at EU level. In addition, the proposed European Commission guideline for CBCA would undermine the current framework for objectively assessing and deciding upon cost sharing among regulators which is a corner stone of an effective implementation of PCIs. It would also disregard ACER's proven experience and capacity to elaborate recommendations to NRAs.

ACER-CEER proposal: It is proposed to delete the aforementioned changes in Articles 16(4) and 16(6). In particular, there is no need for implementing acts by the European Commission on this matter (Article 16(10)). Instead, ACER should continue to provide recommendations. The scrutiny of the NRAs for PCI implementation shall be ensured by giving them all the means to objectively assess projects to the best of their ability and based on the data available. If concerned NRAs' common analysis concludes that a project fails to provide a significant net benefit at EU level, NRAs should be explicitly empowered to reject such a project. To ensure good cooperation between NRAs and compliance with the ACER Regulation, the principle of a joint referral to ACER should be reintroduced.

5. Specific provisions on risk-related incentives are not necessary (Article 17)

The main problem: the project-specific risk-related incentives of Regulation (EU) No 347/2013 have not been substantially used by project promoters (as shown in Figure 2) and, according to the ACER PCI monitoring reports, project promoters show a limited interest to use them in the future.

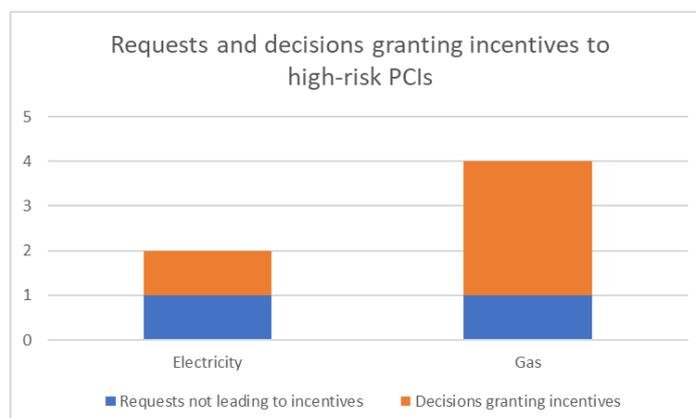


Figure 3 - Decisions on incentives for high-risk projects of common interest (source of data: ACER summary report on project-specific risk-based incentives)

With regard to risk-related incentives, Article 17 of the legislative proposal means that the entire process which took place in 2013-2014 (NRA draft methodology to evaluate investments and the higher risks incurred by them, ACER recommendation, NRA final methodology) would be implemented again.

The ACER¹² and Trinomics¹³ reports show that current regulatory regimes provide incentives to ensure efficient investment spending. This conclusion is confirmed by the low number of promoter requests for incentives and even lower number of incentives granted by NRA decisions (1 for electricity and 3 for gas, as shown in Figure 3). Also, the EC-commissioned study supporting the evaluation of the TEN-E Regulation recommends “*not including the regulatory incentives in their current form in a revised version of the Regulation*”¹⁴.

Pursuant to Article 58(f) of Directive (EU) 2019/944, Article 18(2) of Regulation (EU) 2019/943, Article 41(8) of Directive 2009/73/EC and Article 13(1) of Regulation (EC) No 715/2009, NRAs already have powers and duties to grant appropriate incentives to electricity and gas infrastructure projects. **The provisions proposed in Article 17 are therefore unnecessary.**

Risk identified: Additional premia imply a considerable risk of inefficient overinvestment together with unjustified returns as well as distortions in investment choices.

ACER-CEER proposal: It is therefore, proposed to delete the Article 17 provisions on risk-related incentives.

¹² ACER (2014). Recommendation No 03/2014 of 27 June 2014 on incentives for projects of common interest and on a common methodology for risk evaluation. https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Recommendations/ACER%20Recommendation%2003-2014.pdf

¹³ Trinomics (2018). Evaluation of the TEN-E Regulation and Assessing the Impacts of Alternative Policy Scenarios, p. 142. <https://op.europa.eu/en/publication-detail/-/publication/81f6baae-5efc-11e8-ab9c-01aa75ed71a1/language-en>

¹⁴ Ecorys, Ramboll, REKK, Shepherd Wedderburn study, page 15.

6. Simplification of Regional Groups (Article 3 and Annex I)

ACER and CEER have been calling for simplification of the regional groups. However, the legislative proposal keeps the concept of electricity and hydrogen/electrolysers groups by region, and even increases the number of groups from 12 to 13.

The regional dimension of the groups creates some problems: in some instances, potentially competing projects were not assessed in the same group, but were dealt with in different regional groups, meaning that they could not be compared to each other when selecting projects for PCI status. Also, most members of the groups are members of multiple regional groups, which means preparation, attendance, and review of a multitude of meetings. The recent assessment showed that ranking threshold and criteria have been used similarly at all Regional Groups, making the regional dimension an unnecessary bureaucratic hurdle for stakeholders.

ACER and CEER propose to bring the groups to a European dimension, by introducing EU-wide groups instead of regional groups (i.e. one EU-wide group for electricity transmission onshore and offshore, one EU-wide group for hydrogen projects and electrolysers). This would cut the number of groups down to 5.

The major advantage of EU-wide groups would be that all projects which need to be benchmarked against each other for the PCI selection would be assessed in the same group, enhancing comparability and transparency. Any risks of losing cross-regional consistency and the actions needed to safeguard it would be removed.

Furthermore, such a reduction of groups would help members of the groups keep oversight of all activities they are potentially concerned with and reduce the number of meetings, saving administrative costs.

Risk identified: The approach of regional groups does not ensure cross-regional consistency early in the selection process and may result in potentially competing projects in different groups being assessed independently from each other. Having many regional groups also increases the administrative burden for group members.

ACER-CEER proposal: EU-wide groups should be defined in Annex I of the TEN-E Regulation.



Figure 4 - ACER-CEER proposal for EU-wide groups for electricity (offshore and onshore) and for hydrogen and electrolysers

7. Projects of Mutual Interests (Articles 3 and 4)

Projects of Mutual Interest (PMI) formally include projects with non-EU countries within the scope of the TEN-E regulation. PMIs differ from PCIs on their geographical scope (Article 2(5)) and on their eligibility criteria (Article 4). The perimeter of a potential EU support through the Connecting Europe Facility (CEF) is limited to the part of the project located in the EU territory (Article 18(5)).

In terms of PMI treatment, Article 18(5) of the legislative proposal stipulates that PMIs shall be assimilated with Projects of Common Interest while recital (17) of the legislative proposal explains that all the provisions of the Regulation apply to both PCIs and PMIs unless otherwise specified¹⁵.

Main problem: Although we consider the establishment of distinct criteria for PMIs as positive, the process remains unclear and does not ensure the ability of hosting countries to decide on the projects. The TEN-E Regulation shall provide a reliable and inclusive framework accounting for the diversity of situations which may arise under the PMI status, with projects concerning states belonging to the Energy Community where the EU acquis is legally binding, or third-countries with potentially specific agreements both with the EU and/or bilaterally with Member States.

The legislative proposal lacks precision on the treatment of PMIs at different stages of the process, as mainly addressing PMI status in the recitals is questionable. In particular, it is unclear how PMI selection shall be handled, notably regarding the project assessment, the preparation of the draft regional lists, the link with priority corridors and their ranking. **The selection procedure applicable to PMIs and the geographical scope of costs and benefits for them should thus be clarified.**

Clarity is also needed regarding the cross-border cost-allocation procedure for PMIs. Article 16, which defines CBCA procedures, refers explicitly only to PCIs. However, in Article 18(5) the eligibility for CEF funding is conditioned to a CBCA decision, with stricter rules than those applicable to PCIs (“*allocated costs for at least two Member States in a significant proportion*”).

Risk identified: without guarantee of value on the EU territory, the legislative proposal bears the risks of promoting inefficient projects. The lack of clarity of the text will likely lead to conflicts of interpretation in the implementation phase.

ACER-CEER proposal: Article 4 should refer to the benefits and costs located in the EU territory or in countries where the EU acquis applies by agreement. The process of selection of PMIs and the eventual differences with PCIs should be clearly stated in the text of the Regulation. In addition, the cost-allocation process under Article 16 should clarify that only costs in the EU territory or in countries applying the EU acquis and which have concluded an agreement with the Union can be allocated and only NRAs of countries applying the EU acquis and which have concluded an agreement with the Union can participate in the CBCA procedure.

¹⁵ E.g. in Article 3(6) regarding priority and inclusion in national development plans.

8. Implications of amended gas project categories

For the newly introduced categories related to gas (hydrogen, smart gas grids, electrolysers), many questions arise:

Hydrogen projects instead of natural gas projects

Main problem: Hydrogen projects (Article 4, Annex II, Annex IV) broadly replaced the “old” natural gas projects category in the legislative proposal. However, a European regulatory framework for hydrogen is not yet in place. It is not certain whether hydrogen will be added to the internal market legislation for gas, justifying similar treatment in the PCI selection process.

While regulators welcome the forward-looking perspective of the legislative proposal of including new future-proof categories, the revision of the TEN-E Regulation should not pre-empt the legislative process for the regulatory framework for hydrogen. ENTSOG is given a too-prominent role by including hydrogen in the ENTSOG TYNDP, and by assessing the hydrogen projects (ENTSOG CBA methodology for hydrogen (Article 11)), although ENTSOG’s members are not allowed to operate hydrogen pipelines in most Member States at present and a regulatory framework defining the different roles is missing.

NRAs, on the other hand, do not have competences concerning hydrogen for the time being. Therefore, hydrogen projects are mostly not part of national network development plans (which are the basis for the TYNDP), and NRAs will mostly not be members of the regional groups for hydrogen. This lack of NRA competence with respect to hydrogen might lead to a lack of regulatory oversight vis-à-vis ENTSOG.

CBCAs and CEF funding should not take place for hydrogen projects until NRAs have regulatory oversight over hydrogen in all concerned Member States. Generally, more explanation is needed on why hydrogen projects should be treated differently than other project categories eligible for the application of Article 16. According to Article 16(3), for hydrogen projects a market demand assessment needs to be conducted that indicates that the efficiently incurred investment costs cannot be expected to be covered by the tariffs before the article can be applied. The different treatment does not seem to be justified.

In addition, the proposed one-to-one application of the assessment criteria for natural gas projects to hydrogen projects would not lead to reliable results, as the hydrogen business and infrastructure are in the early stages of development. The criteria “market integration and interoperability” should be measured differently (significant cross-border impact by at least 10% compared to the situation prior to the commissioning of the project) and the security of supply (SoS) criterion seems to significantly overlap with the competition criterion.

Inclusion of smart gas grids

Main problem: The “smart gas grids” category (Article 2, Article 4, Annex II and Annex IV) resembles the already-existing “smart electricity grids” category, focusing on the integration of decentralised renewable and low-carbon gases.

Little effort was made to define this category in a way which would increase cross-border relevance. The description of this category does not clearly state whether blending of hydrogen up to a certain threshold in the natural gas grid is covered too, although such a purpose could contribute to meeting EU decarbonisation targets efficiently in some particular situations.

Inclusion of electrolysers

Main problem: The description of this category requires some clarifications on the “network-related function” and the role in facilitation of smart energy integration. Beyond sector integration, electrolysers should enable flexibility services such as demand response and storage.

In addition, it must be ensured that a monitoring of the life cycle greenhouse gas emissions savings takes place. Such monitoring needs to be anchored in the Regulation, including the definition of the relevant time frame and consequences in case of non-compliance.

Risk identified: A European regulatory framework for the treatment of hydrogen is still missing: The TEN-E framework should prepare for but not pre-empt European and national legislative processes on this matter. In addition, leaving hydrogen planning and CBA assessment to ENTSOG bears a risk of creating once more a perception of lack of neutrality and conflict of interest. The lack of preciseness of the smart gas grid category leads to a risk of selecting irrelevant projects, i.e. projects without significant cross-border impacts.

ACER-CEER proposals:

Improving the role of NRAs in assessing hydrogen projects and smart gas grids: More neutrality is needed in the planning and CBA definition, with the introduction of more consultation and supervision and definition of responsible organisations for the CBA development, as well as ACER approval.

The definition of the smart grid category in gas shall be specified and its relevance demonstrated. The objectives of smart grids and electrolysers should be set more clearly, i.e. enable flexibility services such as demand response and storage, beyond sector integration. The indicators for all three categories (hydrogen, smart gas grids, electrolysers) could be improved.

9. Implications of the abolition of natural gas project categories

The main problem:

The state-of-play in various Member States and regions in the EU regarding their transition to low-carbon energy and the relevant transformation of energy infrastructure across Europe differs significantly. The revision of the TEN-E Regulation should consider the fact that the starting point for the transition differs and support the change of the energy systems in all Member States in a fair way.

Natural gas projects are no longer planned to be eligible for the status of Projects of Common Interest (PCI), starting from the 6th list (expected to be adopted in 2023), while transitional provisions are defined in Article 24 regarding granting, continuation or modification of financial assistance awarded by the European Commission.

ACER's PCI Monitoring Report 2020 shows that 17 gas PCIs on the current list are planned to be commissioned after 2023. These projects have already been assessed as being of common interest due to their positive contribution to improving market integration, competition and security of supply in the EU. Most of these 17 projects are located in Member States in East and South East Europe. The removal of these projects from the PCI list would diminish the ability of Member States with less mature gas markets to pursue better market integration, competition and security of supply.

Natural gas infrastructures could also be developed as hydrogen-ready or in a way that could cost-effectively be converted/repurposed for hydrogen. This is acknowledged in the legislative proposal as repurposing of natural gas infrastructure and is covered by the hydrogen category in Annex II(3). A transitional period could also support the role of the converted gas infrastructure in the transition to low-carbon energy.

Risk identified: Natural gas PCIs which are in the implementation phase could play an important role for market integration, security of supply and the transition to a low-carbon energy system in some Member States and regions of the EU. To remove their PCI status under the legislative proposal may create obstacles for their implementation, as the projects would be unable to benefit from accelerated permit granting, and possibly from regulatory and financial instruments under the TEN-E rules.

ACER-CEER proposal: Introduce a limited transitional period for natural gas PCIs that are already part of the list that is valid at the entry into force of the revised Regulation.