

**DECISION OF THE AGENCY FOR THE COOPERATION OF
ENERGY REGULATORS No 05/2018**

of 19 June 2018

**ON THE EXEMPTION REQUEST FOR THE AQUIND
INTERCONNECTOR**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹, and, in particular, Article 9(1) thereof,

Having regard to 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 and repealing Regulation (EC) No 1228/2003², and, in particular, Article 17(5) thereof,

Having regard to the outcome of the consultation with the applicant, the concerned regulatory authorities and the concerned transmission system operators (TSOs),

Having regard to the favourable opinion of the Board of Regulators of 19 June 2018, delivered pursuant to Article 15(1) of Regulation (EC) No 713/2009,

Whereas:

1. INTRODUCTION

- (1) Regulation (EC) No 714/2009 lays down conditions for access to the network for cross-border exchanges in electricity. It is based on the principle that the general access regime to electricity infrastructure is regulated third party access. However, Regulation (EC) No 714/2009 also allows for exemptions for new direct interconnectors from specific regulatory requirements provided for in that Regulation, as well as in 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 and repealing Directive 2003/54/EC³.

¹ OJ L 211, 14.8.2009, p. 1.

² OJ L 211, 14.8.2009, p. 15.

³ OJ L 211, 14.8.2009, p. 55.

- (2) According to Article 17 of Regulation (EC) No 714/2009, regulatory authorities may grant, upon request, exemptions from the regulatory provisions on the use of congestion revenues, on unbundling, on third party access and on terms and conditions for connection and access, including tariffs, provided that specific conditions are met. According to Article 17(4) and (5) of Regulation (EC) No 714/2009, the regulatory authorities receiving a request for exemption should reach an agreement and take a decision on that request within six months after the receipt of the request by the last regulatory authority. Where the regulatory authorities are not able to reach an agreement within that period or upon their joint request, the Agency becomes responsible for adopting the decision concerning the request for exemption.
- (3) The present Decision follows from a request for exemptions submitted by AQUIND Limited for a new interconnector between France and Great Britain and from the subsequent notifications by the French and British regulatory authorities that they could not reach an agreement on the exemption request of AQUIND Limited and therefore referred this request to the Agency for decision.

2. PROCEDURE

2.1 Proceedings before regulatory authorities

- (4) On 17 May 2017, AQUIND Limited submitted a request for exemptions, pursuant to Article 17 of Regulation (EC) No 714/2009, for a new 2000 MW electricity interconnector between France and Great Britain ('AQUIND interconnector') to the regulatory authority of France, Commission de régulation de l'énergie ('CRE'). It submitted the same request to the regulatory authority of Great Britain, the Gas and Electricity Markets Authority ('Ofgem'). The promoter transmitted complementary information to Ofgem on 16 August 2017. CRE received the complementary information on 23 August 2017.
- (5) On 5 September 2017, the Agency received a copy of the exemption request transmitted by Ofgem. On 7 and 21 September 2017, CRE also transmitted a copy of the exemption request to the Agency.
- (6) On 16 November 2017, CRE issued its Deliberation No 2017-253⁴ establishing guidelines for new interconnector projects with the United Kingdom and deciding to transfer the exemption request submitted by AQUIND Limited to the Agency. According to that Deliberation, *'CRE considers that it is not in a position to decide whether any new interconnector project between France and the United Kingdom is beneficial to the European community before the withdrawal conditions of the United Kingdom from the European Union are clarified. [...] In the specific case of the exemption request notified by AQUIND, CRE will not be in a position to make a*

⁴ <http://www.cre.fr/en/documents/deliberations/orientation/interconnector-projects-with-the-united-kingdom/read-the-deliberation>

decision within six-month of the date of receipt of the exemption request by the last of the concerned NRAs [National Regulatory Authorities]. As a consequence, and pursuant to point 5 of Article 17 of the aforementioned regulation, it will be up to ACER to take a decision on this project’.

2.2 Proceedings before the Agency

- (7) On 29 November 2017 and 19 December 2017, the Agency received communications by CRE and by Ofgem, respectively, referring the exemption request of AQUIND Limited to the Agency for decision, pursuant to Article 17(5) of Regulation (EC) No 714/2009.
- (8) On 7 February 2018, the Agency published a notice to third parties inviting them to send observations, by 21 February 2018, concerning the exemption request of AQUIND Limited. The Agency received 16 observations: one from AQUIND Limited; two from promoters of other projects on the France – Great Britain border; five from consulting firms, service providers or cable manufacturers; four from members of the European or UK Parliament; one from an electricity supplier; one from a consumer association; one from a national regulatory authority; and one from academic experts. The observations or, where applicable, their non-confidential versions are available on the Agency’s website. They are summarised and considered in Sections 5 and 6 below.
- (9) On 20 February 2018 and 21 February 2018, the Agency held hearings with Ofgem and CRE, respectively.
- (10) On 12 March 2018, 22 March 2018 and 16 May 2018, the Agency held hearings with AQUIND Limited.
- (11) On 26 April 2018, 8 May 2018, 11 May 2018, 25 May 2018, 30 May 2018, 4 June 2018 and 12 June 2018, the Agency received written observations by AQUIND Limited.
- (12) Between 13 March 2018 and 15 March 2018, the Agency held hearings with the project promoters of the planned interconnector FAB, i.e. FAB Link Limited and Réseau de transport d’électricité (‘RTE’), and with the promoter of the GridLink interconnector, i.e. GridLink Interconnector Limited.
- (13) On 14 March 2018, the Agency held a hearing with the system operator of Great Britain, National Grid Electricity Transmission plc (‘NGET’), and on 16 March 2018 a hearing with the system operator of France, RTE.
- (14) On 26 April 2018, 22 May 2018 and 6 June 2018, the Agency held hearings with regulatory authorities participating in the Agency’s Electricity Infrastructure Task Force, in the Agency’s Electricity Working Group and in the Agency’s Board of

Regulators, to discuss the main considerations for its decision on the exemption request of AQUIND Limited.

3. THE AGENCY'S COMPETENCE TO DECIDE ON THE REQUEST FOR EXEMPTIONS

- (15) Pursuant to Article 17(5) of Regulation (EC) No 714/2009, the decision on an exemption request shall be taken by the Agency where all the regulatory authorities concerned have not been able to reach an agreement within six months from the date the exemption was requested to the last of those regulatory authorities, or where the concerned regulatory authorities have jointly requested the decision to be taken by the Agency.
- (16) According to their communications submitted to the Agency on 29 November 2017 and on 19 December 2017, CRE and Ofgem referred the exemption request of AQUIND Limited to the Agency for decision pursuant to Article 17(5) of Regulation (EC) No 714/2009.
- (17) Therefore, under the provisions of Article 17(5) of Regulation (EC) No 714/2009, the Agency has become responsible to adopt a decision concerning the exemption request of AQUIND Limited on 19 December 2017.

4. SUMMARY OF THE REQUEST FOR EXEMPTIONS

- (18) AQUIND Limited requests exemptions, under Article 17(1) of Regulation (EC) No 714/2009, from Article 16(6) of Regulation (EC) No 714/2009 and from Articles 9, 32, 37(6) and 37(10) of Directive 2009/72/EC.
- (19) In its request, AQUIND Limited explains why it considers that the conditions required for an exemption according to Article 17(1) of Regulation (EC) No 714/2009 are fulfilled. While the respective considerations of AQUIND Limited are summarised, as appropriate, and evaluated in the following Sections, its main observations are:
- *'without an exemption the AQUIND interconnector cannot progress through construction and to commercial operation', because 'a regulated regime with financial underpinning is not available to AQUIND in France';*
 - *'structural differences in the wholesale electricity price between the electricity markets in GB and France clearly demonstrates the need for more capacity. To date, the national TSOs have not invested in additional capacity';*
 - *'the full project benefits will be delivered without any funding from GB or French consumers';*
 - *'with no access to financial underpinning, AQUIND has to fully manage its own project risk. The key risks to AQUIND include: revenue risk, demand risk, GB network curtailment risks, construction and operation risks and policy and macroeconomic risks'.*

5. OBSERVATIONS AND OTHER INFORMATION RECEIVED BY THE AGENCY

- (20) In addition to the submissions of AQUIND Limited, the Agency received, in response to its notice to third parties⁵ and in the context of its hearings, the following main information.
- (21) FAB Link Limited stated that its partner, RTE, has been '*notified that, until there is clarity, further expenditures on the FAB project will not be approved by CRE*'. FAB Link Limited stated that the decision on the requested exemption is not specific to the AQUIND interconnector, but that it has significant implications on all projects being developed on the France - Great Britain border, most notably on FAB, being the project closest to completing its development phase.
- (22) GridLink Interconnector Limited stated that CRE's Deliberation No 2017-253 also has implications for other interconnector projects between France and the United Kingdom. According to CRE, the conditions of the withdrawal of the United Kingdom from the European Union have to be clarified. GridLink Interconnector Limited indicated that, depending on the clarification sought by CRE ('*draft withdrawal terms, expected, in October 2018 or executed agreements at the end of the proposed Brexit transition period, December 2020*'), a delay of one to three years will occur before CRE would contemplate making a decision on investment requests from other interconnector projects. According to GridLink Interconnector Limited, this delay represents a serious regulatory impediment to the implementation of GridLink as a project of common interest (PCI) within the meaning of 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 715/2009⁶.
- (23) In the view of GridLink Interconnector Limited, CRE's Deliberation No 2017-253 gives a competitive advantage to a merchant interconnector over a regulated interconnector and such advantage is particularly important where, as CRE has indicated in the past, room in the market is limited and consent is awarded on a first-come-first-served basis. GridLink Interconnector Limited considered that the assessment of the AQUIND Limited's exemption request should take into account the other projects with a similar timescale, such as GridLink.
- (24) During their hearings in March 2018, FAB Link Limited and GridLink Interconnector Limited provided additional information on the progress of the FAB and GridLink

⁵ [https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Documents/Notice%20on%20a%20NRAs%20request%20for%20an%20ACER%20decision%20\(Aquind%20electricity%20interconnector\).pdf](https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Documents/Notice%20on%20a%20NRAs%20request%20for%20an%20ACER%20decision%20(Aquind%20electricity%20interconnector).pdf)

⁶ OJ L 115, 25.4.2013, p. 39.

projects, respectively. Such input has been considered in the Agency's review of projects detailed in Section 6.3 below.

- (25) In its hearing in March 2018, RTE (acting in its capacity as project promoter) provided the same information given by FAB Link Limited.
- (26) Members of Parliaments pointed to the benefits of new interconnection capacity on the France - Great Britain border (including security of supply, trade benefits harmonising electricity prices across Europe, market competition, combat climate change and benefits to the broader economy) and welcomed private investments.
- (27) Similar comments on the benefits of interconnections were offered by various service providers and manufacturers. In that regard, it was submitted that the merchant model can provide a fresh business investment approach needed due to interconnector business uncertainty; that the exemption is essential in providing sufficient certainty for investors; that the AQUIND interconnector project has undergone '*extensive public consultation in the United Kingdom and the concertation in France is ongoing*'; that the potential benefits of the AQUIND interconnector have been recognised by international media and leading specialists.
- (28) Furthermore, one cable manufacturer indicated that it is familiar with the concept behind the AQUIND interconnector, and that '*it involves the use of proven cable technology in a configuration of two independent symmetrical monopoles delivering 2 x 1000 MW*'.
- (29) EDF considered that the Agency should carefully assess the cost-benefit analyses, especially when the costs of an interconnector are significant as it is the case of the AQUIND interconnector, and should consider its impact on the whole interconnected European market independently of the EU membership of the United Kingdom. EDF claimed that uncertainty about the regulatory framework applicable to any new interconnection between the United Kingdom and the European continent after the withdrawal of the United Kingdom from the Union might weaken the legal basis of an exemption granted today for a 25-year period.
- (30) Union des industries utilisatrices d'énergie (UNIDEN) stated that UNIDEN shares the position of CRE and recommends waiting for the final rules of participation of Great Britain in the Internal Energy Market before taking any decisions on any new interconnector projects, especially an exempted one, between France and Great Britain.
- (31) Similarly, the Dutch regulatory authority, Autoriteit Consument & Markt ('ACM'), stated that the legal status of the new interconnector after the withdrawal of the United Kingdom from the Union should be clarified before taking a decision. ACM also claimed that the Agency is not in a position to take a decision on whether to grant an exemption to the AQUIND interconnector before the conditions of the withdrawal of

the United Kingdom from the European Union have been clarified. ACM considered that, based on electricity market prices, the level of risk attached to the investment is not such that the investment would not take place without an exemption.

- (32) Two scholars argued that the requirement that the level of risk attached to the investment is such that the investment would not take place without an exemption could hardly be substantiated. They stated that direct current interconnections are today an established technology, technological risks are well-known and many regulated solutions have been realised. Furthermore, they argued that merchant investment may positively contribute to overall welfare, but, at the same time, the drawback of merchant interconnectors is distributional issues that direct welfare gains towards the merchant operators. In their views, a level of revenues for the operator that is far higher than what could be justified is – to some extent – reflected in London Economics study on the ElecLink interconnector, where it was found that rents could be supposed to be relatively high. They underlined that distributional aspects, beyond mere welfare arguments, should be taken into account when analysing the impact of the merchant transmission investment. They questioned whether the non-transparent approach of a profit transfer rule (such as the one that was imposed in the context of the exemption of the ElecLink interconnector) is superior to regulated solutions which would also benefit from lower risk premia. They suggested not to exempt the AQUIND Limited’s project from regulation, but to advise regulators to induce development of such a project under a regulated tariff.
- (33) During their hearings of March 2018, RTE (acting in its capacity of French system operator) and NGET were requested to provide information about their studies on system impacts of the projects on the France - Great Britain border and about their studies on the costs and benefits of the projects. The Agency also submitted a similar request on the latter subject, in written form, to the European Network of Transmission System Operators for Electricity (ENTSO-E). Relevant information provided by the operators is described and considered in the assessment of the need for capacity and of the cost and benefits of new capacity on the France - Great Britain border (see Section 6.4 below).

6. ASSESSMENT OF THE REQUEST FOR EXEMPTIONS

- (34) This section illustrates the main aspects of the Agency’s assessment:
- (a) the key elements of the legal framework (Section 6.1);
 - (b) the Agency’s general considerations on exemptions pursuant to Article 17 of Regulation (EC) No 714/2009 (Section 6.2);
 - (c) the Agency’s review of the projects on the France – Great Britain border (Section 6.3), which is afterwards taken into account when assessing conditions (b) and (f) set by Article 17(1) of Regulation (EC) No 714/2009;
 - (d) the Agency’s assessment of the need for capacity on the France – Great Britain border (Section 6.4), which is another key element for assessing conditions (b) and (f) set by Article 17(1) of Regulation (EC) No 714/2009;

- (e) the assessment of each condition set by Article 17(1) of Regulation (EC) No 714/2009 (sections 6.5 to 6.10);

6.1. Legal framework

- (35) Article 17(1) of Regulation (EC) No 714/2009 provides that:

'New direct current interconnectors may, upon request, be exempted, for a limited period of time, from the provisions of Article 16(6) of this Regulation and Articles 9, 32 and Article 37(6) and (10) of Directive 2009/72/EC under the following conditions:

- (a) the investment must enhance competition in electricity supply;*
- (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted;*
- (c) the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built;*
- (d) charges are levied on users of that interconnector;*
- (e) since the partial market opening referred to in Article 19 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (10), no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector; and*
- (f) the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked.'*

- (36) In that context, recital (23) of Regulation (EC) No 714/2009 states that *'investments in major new infrastructure should be promoted strongly while ensuring the proper functioning of the internal market in electricity'*, and it underlines that *'exceptional risk profile'* characterises the construction of *'exempt major infrastructure projects'*.

6.2 General considerations

- (37) Article 17(1) of Regulation (EC) No 714/2009 provides for the possibility of exemptions for new interconnectors from certain requirements of the regulatory framework. The European Commission Staff Working document on new infrastructure exemptions⁷ indicates that *'exemptions are an exception to the general rule of regulated third party access. Such exceptions have to be limited to what is*

⁷ Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity, 6 May 2009, SEC(2009)642 final: https://ec.europa.eu/energy/sites/ener/files/documents/sec_2009-642.pdf

strictly necessary to realise the investment and the scope of the exemptions has to be proportionate’.

- (38) One prerequisite for any such exemption is, *inter alia*, that the level of risk attached to the investment at issue is such that the investment would not take place unless an exemption is granted (Article 17(1)(b) of Regulation (EC) No 714/2009).
- (39) The risk-related feature of exempted projects was identified during the preparation of Regulation (EC) No 1228/2003⁸ of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity, which introduced the concept of exemption from third party access, later confirmed and adjusted in Regulation (EC) No 714/2009. According to a communication from the European Commission⁹, *‘the possibility of an exemption from third party access has been introduced by the Council to safeguard investments in very high-risk projects, which would not take place if such an exemption were not given. For some major investments the regulated rate of return on investment impedes investors to commit their money to a project for which the risks of it becoming profitable are very high. The Commission feels that the strict limitative conditions, which the Council further elaborated, and the Commission scrutiny of any regulatory decision on an exemption should be sufficient guarantees to ensure that this possibility of exemption will only be used in cases in which it is absolutely necessary to safeguard an investment in the interest of the internal market and security of supply’.*
- (40) With respect to the risk prerequisite, it is the Agency’s view that:
- (a) Article 17(1) of Regulation (EC) No 714/2009 refers to a situation where the risk involved in making an investment (in the interest of the Internal Market and security of supply) is such that the project would not be realised under the regulated system, and that
 - (b) an exemption from the regulatory requirements of Article 16(6) of Regulation (EC) No 714/2009 and of Articles 9, 32 and Article 37(6) and (10) of Directive 2009/72/EC has the purpose of mitigating a risk which would arise for the new interconnector if those requirements were applicable to the interconnector.
- (41) As regards a potential financial risk attached to the AQUIND interconnector, it is particularly relevant to assess whether a regulated regime (and therefore the related financial underpinning) could be available to AQUIND Limited, and whether there is a need for more capacity on the France – Great Britain border.

⁸ OJ L 176, 15.7.2003, p. 1.

⁹ Communication from the Commission to the European Parliament pursuant to the second subparagraph of Article 251 (2) of the EC Treaty concerning the common position of the Council on the adoption of a European Parliament and Council Regulation on conditions for access to the network for cross-border exchanges in electricity /* SEC/2003/0160 final - COD 2001/0078.

- (42) Finally, it is to note that, according to Article 17(1) of Regulation (EC) No 714/2009, the Agency ‘may’ grant an exemption and accordingly enjoys discretion when assessing a request for exemption, and that, in any case, an exemption cannot be granted where the applicant failed to prove that the requirements set out in paragraphs (a) to (f) of Article 17(1) of Regulation (EC) No 714/2009 are fulfilled.

6.3 Review of interconnector projects between France and Great Britain

- (43) ‘Interconnexion France-Angleterre’ (‘IFA’) is the only existing electricity interconnection on the France - Great Britain border. IFA is a high voltage direct current (‘HVDC’) interconnection with 2000 MW capacity. The project is owned by National Grid Interconnector Holdings (‘NGIH’) and by RTE.
- (44) Two projects, ElecLink and IFA 2 are currently under construction on the France - Great Britain border.
- (45) ElecLink is an HVDC interconnection with 1000 MW capacity. The project is developed by ElecLink Limited. ElecLink received an exemption under Article 17 of Regulation (EC) No 714/2009 by the decisions adopted on 28 August 2014 by CRE and on 16 September 2014 by Ofgem¹⁰.
- (46) IFA 2 is an HVDC interconnection with 1000 MW capacity. The project is developed by NGIH and RTE.
- (47) ElecLink and IFA 2 were granted the PCI status through their inclusion in the first Union list of PCIs¹¹ and are still PCIs.
- (48) For the purpose of assessing the need for capacity on the France - Great Britain border, based on the inputs received by CRE¹² and Ofgem during hearings, and applying by analogy the principle defined by Annex V(1) of Regulation (EU) No 347/2013¹³, the Agency considers these two projects as certain to be constructed.

¹⁰ Ofgem’s Final decision on ElecLink Limited’s request for an exemption under Article 17 of Regulation (EC) 714/2009 for a Great Britain-France electricity interconnector, 16 September 2014. https://www.ofgem.gov.uk/sites/default/files/docs/2014/09/elecLink_final_decision_cover_letter_0.pdf and Délibération de la CRE du 28 août 2014 portant décision finale sur la demande de dérogation de la société ElecLink Ltd en application de l’article 17 du règlement (CE) n° 714/2009 du 13 juillet 2009 concernant une interconnexion entre la France et la Grande-Bretagne, 28 Aout 2014; <http://www.cre.fr/documents/deliberations/decision/interconnexion-france-grande-bretagne2>

¹¹ Commission Delegated Regulation (EU) No 1391/2013 of 14 October 2013 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure as regards the Union list of projects of common interest. OJ L 349, 21.12.2013, p. 31.

¹² In addition, in its Deliberation 2017-272 CRE indicates that IFA2 planned expenditures for year 2018 are 70 million Euros.

¹³ According to Annex V(1) of Regulation (EU) No 347/2013: the cost benefit analysis methodology shall be based on a data set comprising at least (...) the composition of the transmission network, and its evolution, taking

- (49) Three other HVDC projects - AQUIND interconnector, FAB (France-Alderney-Britain, 1400 MW) and GridLink (1400 MW) - are under development on the France - Great Britain border.
- (50) The AQUIND interconnector is developed by AQUIND Limited. The AQUIND interconnector is included in the third (currently the latest) Union list of PCIs¹⁴. The project is 'in permitting' status, within the meaning of ENTSO-E's and Agency's project status definitions. In its hearing of March 2018, AQUIND Limited informed the Agency that its marine geophysical survey is due to be completed shortly. AQUIND Limited plans to commence a marine geotechnical survey¹⁵ in 2018. AQUIND Limited considers that [REDACTED]
- (51) FAB is promoted jointly by FAB Link Limited and by RTE. FAB received a positive decision under Cap and Floor Window 1 Initial Project Assessment by Ofgem in July 2015. FAB was granted the PCI status in the first Union list and is still a PCI. The project is 'in permitting' status and it has already completed all marine surveys.
- (52) According to the information provided by the FAB promoters, in the last months of 2017 they were ready to request the final approval of the project from the regulators (final project assessment in Great Britain and incentive regulation in France). FAB could have then reached a final investment decision in the first half of 2018 and commissioning of the project by 2021. However, due to CRE's Deliberation No 2017-253, FAB Link Limited and RTE expect the project to be delayed and to reach a final investment decision and commissioning only in 2019 and 2023, respectively. On 19 December 2017, by its Deliberation No 2017-272 regarding the approval of RTE's investment programme in 2018¹⁶, CRE decided an allowed expenditure of 1.5 million Euro for the FAB project during the year 2018. This expenditure corresponds to the expenses needed to manage the suspension of RTE's activities for FAB.

into account transmission projects for which a final investment decision has been taken and that are due to be commissioned by the end of year n+5.

¹⁴ Commission Delegated Regulation (EU) 2018/540 of 23 November 2017 amending Regulation (EU) No 347/2013 of the European Parliament and of the Council as regards the Union list of projects of common interest, OJ L 90, 6.4.2018, p. 38.

¹⁵ The Agency considers that the progress of the marine surveys is an important factor when assessing the advancement of a project in the pre-construction phase due to its significant costs.

¹⁶ Délibération No 2017-272 de la Commission de Régulation de l'Énergie du 7 décembre 2017 portant approbation du programme d'investissements de RTE pour 2018. <http://www.cre.fr/documents/deliberations/approbation/programme-d-investissements-rte-2018/consulter-la-deliberation>

- (53) FAB Link Limited indicated that they requested the application of Article 12 of Regulation (EU) No 347/2013, regarding investment requests including cross border cost allocation requests.
- (54) GridLink is promoted by GridLink Interconnector Limited. GridLink received a positive decision under Cap and Floor Window 2 Initial Project Assessment by Ofgem in January 2018. GridLink Interconnector Limited and RTE have entered into discussion on a potential partnership, but no formal agreement has been concluded yet. GridLink is included in the third (currently the latest) Union list of PCIs. The project is ‘in permitting’ status and the promoter plans to start the marine surveys in 2018. GridLink Interconnector Limited expects to reach a final investment decision on the project in 2020 and commissioning in 2023.
- (55) An overview of the expected commissioning dates of the different projects (according to promoters’ indications) is provided in Table 1.

Table 1: Expected commissioning dates of France - Great Britain interconnection projects

	TYNDP 2014 ¹⁷	TYNDP 2016 ¹⁸	C&F Window 2 (NGET)	PCI monitoring 2016 ¹⁹	PCI monitoring 2017 ²⁰	PCI monitoring 2018
IFA 2	2020	2020	-	2020	2020	2020
ElecLink	2016	2018	-	2019	2019	2019
AQUIND	-	2020	2022	-	-	2022
FAB	2022	2022	-	2021	2021	2023
GridLink	-	2021	2022	-	-	2023

¹⁷ <https://docstore.entsoe.eu/major-projects/ten-year-network-development-plan/tyndp-2014/Pages/default.aspx>

¹⁸ <https://www.entsoe.eu/publications/tyndp/tyndp-2016/>

¹⁹ Consolidated Report on the progress of electricity and gas projects of Common Interest for the year 2015 (05.07.2016).

https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/CONSOLIDATED%20REPORT%20ON%20THE%20PROGRESS%20OF%20ELECTRICITY%20AND%20GAS%20PROJECTS%20OF%20COMMON%20INTEREST%20for%20the%20year%202015.pdf

²⁰ Consolidated Report on the progress of electricity and gas projects of Common Interest for the year 2016 (07.07.2017).

http://www.acer.europa.eu/official_documents/acts_of_the_agency/publication/consolidated%20report%20on%20the%20progress%20of%20electricity%20and%20gas%20projects%20of%20common%20interest%20for%20the%20year%202016.pdf

- (56) Based on the FAB's developments described in ENTSO-E TYNDPs, the Agency's monitoring of TYNDP and PCI projects and the inputs provided by the FAB promoters during the hearings, the Agency observes that FAB was advancing two to three years ahead of AQUIND interconnector and GridLink.
- (57) Based on the two-year postponement of FAB's commissioning date, as communicated by the promoters of this project in the context of the 2018 PCI monitoring exercise, as compared to the information provided for the 2017 PCI monitoring exercise, and on the observation by GridLink (one- to two-year delay, see Section 5 above), the Agency considers that the FAB project is facing a delay of about 2 years subsequently to CRE's Deliberation No 2017-272.
- (58) When assessing the need for capacity on the France - Great Britain border, the Agency considers that, after the aforementioned delay of FAB, the three projects - AQUIND interconnector, FAB and GridLink - are in a rather similar stage of advancement.
- (59) In addition, based on the draft ENTSO-E TYNDP 2016, two other projects (ANAI and Britib) are under consideration on the France - Great Britain border, including a tri-terminal link with Spain. Based on ENTSO-E's datasheets of November 2015, ANAI and Britib were considered as non-compliant with the draft guidelines for inclusion in the TYNDP²¹. ANAI and Britib applied for PCI status in 2017²². Neither of the two projects received PCI status. In its Opinion No 08/2017, the Agency noted that ANAI's necessity has not been confirmed in at least two of the three hosting countries. Britib was still 'not confirmed / under discussion' in France and it was rejected by the relevant ministry in Spain. Based on the regulatory authorities' inputs to the Opinion, both projects should have not been considered in the ENTSO-E TYNDP 2016²³.
- (60) Due to the early stage of development and the uncertainties of the project progress, as well as indications by Ofgem during the hearings that they do not consider the two Great Britain – France - Spain projects to be under active development, ANAI and Britib are not further considered by the Agency in its assessment of the need for capacity on the France - Great Britain border and in the present Decision.

²¹ Agency's Opinion No 01/2017 of 3 February 2017 on the ENTSO-E draft Ten-Year Network Development 2016, p. 5.

https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2001-2017.pdf

²² Electricity candidate projects submitted to be included in the Union list of Projects of Common Interest 2017. https://ec.europa.eu/energy/sites/ener/files/documents/electricity_candidate_projects_for_projects_common_interest_fin.pdf

²³ Agency's Opinion No 08/2017 of 3 April 2017 on electricity projects in the National Ten-year Network Development Plans and in the Union-wide Ten-year Network Development Plan 2016, p. 26. https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2008-2017.pdf

6.4 The need for interconnection capacity between France and Great Britain

- (61) This Section assesses the need for interconnection capacity between France and Great Britain, based on data from various available sources²⁴.
- (62) Two main options are applicable to evaluate the need for interconnection capacity:
- (a) an explicit market test;
 - (b) the evaluation of the demand/need for interconnection capacity via network planning studies and network development plans.
- (63) According to the AQUIND Limited's exemption request, *'initial market testing indicated that [REDACTED]*
[REDACTED] However, the analysis of the responses provided to AQUIND Limited (which are part of the exemption request) does not provide particularly quantified information on the demand for capacity and willingness to pay for it.
- (64) Consequently, the Agency assessed the need for interconnection capacity, looking at two key elements: i) the expected costs of building new capacity and ii) the expected benefits (for society) delivered by the new capacity.
- (65) The assessment of the need for capacity does not relate to a specific project. It relates to average conditions of expected costs and benefits for projects on the France – Great Britain border, taking primarily into account the available information and simulation results regarding the AQUIND interconnector, FAB and GridLink.
- (66) The assessment of the need for capacity builds on the concept described in the Agency's Opinion No 01/2015²⁵ (p. 25): *'for every boundary, the target capacity corresponds in essence to the capacity above which additional capacity development would not be [socially] profitable, i.e. the economic value derived from an additional capacity quantum cannot outweigh the corresponding costs'*. According to this concept, capacity is needed until reaching the target capacity, while there is no need for further capacity beyond that point²⁶.

²⁴ For the sake of clarity, the preliminary calculations of ENTSO-E TYNDP 2018, which have been made available to some project promoters for feedback, were not deemed as a valid source, because the draft TYNDP 2018 is still to be subject to its public consultation, consequent amendments by ENTSO-E and the Agency's Opinion on it.

²⁵ Agency's Opinion No 01/2015 of 29 January 2015 on the ENTSO-E Draft Ten-Year Network Development Plan 2014.

https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2001-2015.pdf

²⁶ For the sake of clarity, the concept is solely related to techno-economic analysis and not to other aspects, such as the so-called '15% interconnection targets' which were recently investigated by the European Commission.

6.4.1 Cost and benefit categories and general approach

- (67) Two cost categories are considered, in line with the Agency's Opinion No 05/2017²⁷ (p. 6): 'indicator C1 of capital expenditure and indicator C2 of operating expenditure' ('CAPEX' and 'OPEX', respectively). The cost considered in the Agency's assessment of the need for interconnection capacity is a standard cost, which comprises a standard investment cost and a standard operating cost.
- (68) Six benefit categories are considered, in line with the Agency's Opinions No 01/2014²⁸ and No 05/2017, as well as with the Agency's Position on the ENTSO-E 'Guideline to Cost Benefit Analysis of Grid Development Projects'²⁹:
- (a) (increase in) socio-economic welfare;
 - (b) (positive or negative) variation in losses³⁰;
 - (c) (positive or negative variation in costs for) relieving national constraints³¹;
 - (d) (positive or negative variation in) future costs for generation investments³²;
 - (e) (positive or negative variation in) future costs for transmission investments³³;
 - (f) (positive or negative variation in costs for) ancillary services: frequency response, black start and reactive response.
- (69) As far as applicable, costs and benefits are discounted as recommended in the Agency's Opinions No 01/2014 and No 05/2017, i.e. at 4% social discount rate, referring to 25 years of operation and with no residual value.
- (70) Given the uncertainty on the possible commissioning dates, it is deemed more appropriate to express the results of costs and benefits calculations as annual costs and benefits, rather than presenting present values.

²⁷ Agency's Opinion No 05/2017 of 6 March 2017 on the draft ENTSO-E Guideline for Cost Benefit Analysis of Grid Development Projects.

https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2005-2017.pdf

²⁸ Agency's Opinion No 01/2014 of 30 January 2014 on the ENTSO-E Guideline for Cost Benefit Analysis of Grid Development Projects.

https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2001-2014.pdf

²⁹ https://acer.europa.eu/Official_documents/Position_Papers/Position%20papers/ACER%20Position%20ENTSO-E%20CBA.pdf

³⁰ The term 'positive variation' refers to a positive benefit.

³¹ This benefit category may be also referred to as 'attributable constraint costs', 'internal dispatch costs' or 'redispatching'.

³² This benefit category may be also referred to as 'adequacy'.

³³ This benefit category may be also referred to as 'network reinforcement costs'.

6.4.2 Estimation of costs

- (71) The investment cost estimates of the promoters of the three interconnectors on the Great Britain – France border and the relevant sources are presented in Table 2.

Table 2: Available project data and investment cost data

	FAB	GridLink	AQUIND
DC voltage (kV)	+/- 320	+/- 525	+/- 320
Length sea route (km)	167	140	190-230
Length onshore route (km)	47.4	17	55-85
Capacity (GW)	1.4	1.4	2.0
Capex – source TYNDP 2016 (million Euro)	850 ±230	600	1400
Capex – source RTE (million Euro)	870	860	1400
Unit cost (as per TYNDP 2016) per GW (million Euro per GW)	607	429	700

Note: different transfer capacities have been considered in the evaluation of the GridLink and AQUIND projects during the preparation of the ENTSO-E TYNDP 2016 (1.5 GW and 1.8 GW respectively).

- (72) The Agency considers that the GridLink project cost in the ENTSO-E TYNDP 2016 is an outlier cost estimate, and is not relevant for the purpose of defining a reference investment cost.
- (73) This consideration is also supported by the cost estimates used by Ofgem when assessing GridLink in the context of Cap and Floor Window 2.
- (74) The investment cost estimate provided by AQUIND Limited in its exemption request was quoted in GB pounds (1172m), and at varying exchange rates (1.15 Euro to GBP, as assumed during the PCI benefit analysis, or 1.22 Euro to GBP, at the time of the investment request). It is in line with the figure provided in the ENTSO-E TYNDP 2016 in Euros.
- (75) In order to disconnect the approximation of the target interconnection capacity from specific projects, the Agency considered two reference investment costs for this exercise: 600 million Euro per GW, based on the reference cost used in the ENTSO-E Regional Investment Plan 2015 and in CRE/Artelys study³⁴, and 700 million Euro per GW, which is the highest unit investment cost estimate derived from the ENTSO-E TYNDP 2016.

³⁴ Artelys, 'Study on the value of interconnections between France and Great Britain', October 2017. <http://www.cre.fr/en/documents/deliberations/orientation/interconnector-projects-with-the-united-kingdom/read-the-study>

- (76) Given the low values of inflation registered in France and Great Britain between 2015 and 2017 (ranging from 0% to 0.7% per year for 2015 and 2016, and from 1.6% to 2.7% for 2017), for the sake of simplicity, the Agency assumes all values expressed in money of the year 2015 or 2016 or 2017 as equivalent.
- (77) Based on the aforementioned discounting rules and assuming (for the sake of simplicity) that all investments are incurred in the year before operation³⁵, the CAPEX is estimated in the range of 38-45 million Euro per year per GW.
- (78) Regarding the operational expenses, a yearly figure of 2% of investment cost was used. This figure was calculated based on the data on yearly lifecycle costs provided by promoters to the Agency in the 2018 PCI monitoring framework. This assumption is slightly higher than the reference operational expenditures used in the CRE/Artelys study (1.5% per year) and is deemed preferable, also in order to have a more prudent estimate³⁶.
- (79) The operational expenditures are therefore estimated in the range of 12-14 million Euro per year per GW.

6.4.3 Estimation of benefits

- (80) For the assessment of benefits, the first elements to be considered are the expected commissioning date of the new capacity and the appropriate study years.
- (81) As shown in Section 6.3 above, the year of start of operation (which is conventionally considered as the year after commissioning), as currently declared by project promoters, is 2023 or 2024. The Agency does not see a significant need further to assess the accuracy of these estimates, given that a possible postponement of too optimistic commissioning dates (and therefore of both costs and benefits of the projects) would not impact significantly the benefit-cost balance, in particular, when considering that the valuation of losses and the social economic welfare benefits relate to the study year 2030.
- (82) As regards study years, the Agency considers that the use of results referred to the year 2020 (as available e.g. in the ENTSO-E TYNDP 2016) would not be appropriate, being it too early with respect to the currently expected commissioning dates.

³⁵ The impact of more refined assumptions regarding the breakdown of capital expenditures in more construction years would likely be limited to 4%, corresponding to an additional year between (average) construction costs and the start of operation.

³⁶ The impact of using the alternative assumption would be a lower cost around 3-3.5 million Euro per GW per year.

- (83) For the sake of simplicity and comparability across various studies, in the few cases (Ofgem's and AQUIND Limited's cost benefit analyses) where results are available for multiple study years, only the year 2030 was considered³⁷.
- (84) For the assessment of benefits, a second important element is the identification of scenarios to be assessed.
- (85) The approach to scenarios used for the assessment of the socio-economic welfare benefits differs across various studies: in some cases (in France), the four-vision approach of the ENTSO-E TYNDP 2016 is adopted. In other cases (in Great Britain), an approach referring to a 'base case' estimation, complemented by a 'low' and a 'high' estimation and by sensitivity analyses, is used. The Agency deems that both approaches are acceptable.
- (86) However, as regards the TYNDP four-vision approach, in its Opinion No 12/2016³⁸, Section 4.5, the Agency indicated that:

ENTSO-E indicates that 'the four 2030 Visions are on track with the recent set targets for 2030' and that 'the percentage of the demand covered by RES spreads from 44% in Vision 1 to close to 60% for Visions 3 and 4'.

The estimates for RES production to cope with the European policy targets defined by the Council in 2014 range from 43% to 47%. If this estimate is confirmed, one of the ENTSO-E 2030 scenario (Vision 1) would be in line with the EU targets, one (Vision 2) would be above the EU targets and two scenarios (Vision 3 and Vision 4) would be significantly above the EU targets.

The Agency considers that the current approach may determine unrealistically overestimated results for Visions 3 and 4, including in terms of infrastructure needs and projects, and recommends that ENTSO-E always uses a balanced range of assumptions for each parameter in the different scenarios (when possible, with 'low', 'average' and 'high' assumptions).

In line with the above-mentioned Agency's remarks, only the results of Visions 1 and 2 (for TYNDP and TYNDP-originated scenarios) are used in the assessment of the need for capacity.

³⁷ For the case of AQUIND Limited, [REDACTED]

[REDACTED] a multi-year average around year 2030 was used.

³⁸ Agency's Opinion No 12/2016 of 4 October 2016 on the ENTSO-E draft TYNDP 2016 Scenario Development Report.

https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2012-2016.pdf

- (87) The evaluation of benefits is based on the results of various studies, where it was mostly carried out by means of the ‘with-and-without’ approach: the results are obtained as the difference of a calculation with the project and a calculation without it. The calculations are referred to a specific network condition (also called ‘baseline network’), which features a specific value of the interconnection capacity on the France – Great Britain border.
- (88) The evaluation of each benefit category is presented by starting with those benefits which are fully or mostly independent from the value of the interconnection capacity on the France – Great Britain border and ends with the socio-economic welfare benefit, which has a clear decreasing trend when the interconnection capacity increases.
- (89) For the sake of clarity, the Agency acknowledges that the (frequently negative) benefit related to losses variation may vary with the level of interconnection capacity. However, the primary drivers of losses variation across projects on the France - Great Britain border are the location of the connection points and local grid specificities, while the level of interconnection capacity is a less impacting driver. Therefore, for the sake of feasibility³⁹ and simplicity, the losses variation benefit is assumed, in the Agency’s assessment, as being invariant with respect to the level of capacity on the France – Great Britain border. Regarding the adequacy benefit, the Agency decided to follow the constant-benefit approach which was adopted in the 2017 PCI selection process, as further discussed in recital (99) below. For the ancillary service benefits (especially black start and avoided reactive compensation equipment), the valuation is again primarily dependent on local grid and locally available resources, rather than on the level of interconnection capacity.

6.4.4 Estimation of variation in losses benefit

- (90) For the benefit category ‘variation in losses’, the Agency observes that, in the ENTSO-E TYNDP 2016, only the FAB project, among the three projects under development, was evaluated. Given that losses may vary significantly depending on the connection point, it was deemed appropriate, for a better estimation, also to take into account the results for the projects IFA2 and ElecLink, as presented in Table 3.

³⁹ Insufficient information was available from existing studies to consider a different approach.

Table 3: Available results regarding variation of losses

	ElecLink	FAB	IFA2
Transfer capacity (GW)	1.0	1.4	1.0
Losses TYNDP 2030-V1 (million Euro/year)	-25	11	0
Losses TYNDP 2030-V2 (million Euro/year)	-33	-17	-16
Average benefit (million Euro/year)	-29	-3	-8
Average unit benefit (million Euro/GW/year)	-29	-2	-8

- (91) Based on the results above, the average of the unit benefit of losses variation for the three projects is -13 million Euro per GW per year (negative).
- (92) The study carried out by Artelys for CRE (p. 12 and p. 38) takes into account the results of a former CRE's estimation of losses for the IFA2 project⁴⁰, which estimated the additional interconnector losses coming from this project. This study did not assess potential changes in losses in the remaining parts of the network⁴¹. The additional losses amount to €11 million per GW per year in 2030.
- (93) In addition, RTE provided the Agency with the results of losses calculation for the three projects AQUIND interconnector, FAB and GridLink. RTE's results confirm that there is a significant variation across projects. The RTE's average figure of -10 million Euro per GW per year confirms the figure presented above based on ENTSO-E TYNDP 2016 results.

6.4.5 Estimation of adequacy-related benefits

- (94) As regards the variation of future costs for generation investments (adequacy benefit), the Agency notes that the ENTSO-E TYNDP 2016 results did not indicate any security of supply benefit based on the calculation of Expected Energy Not Supplied. Therefore, as indicated in the Agency's Opinion No 14/2017⁴², the benefit 'B5 SoS - Adequacy to meet demand' was taken into account in the PCI 2017 process via two valuation methods.

⁴⁰ Consultation by CRE (French Energy Regulatory Commission) regarding the interconnector 'IFA2' between France and Great Britain, December 2016, English language version, page 6. http://www.cre.fr/content/download/15265/179997/version/3/file/161201_CP-interconnexion-IFA2-en.pdf

⁴¹ According to CRE's preliminary assessment, 'Because ENTSO-E's method to assess network losses at the European scale remains to be fully understood, and since no other estimate is available, CRE is considering to approximate the cost of network losses by the costs of power losses on the sole IFA2 power line, as proposed by RTE'.

⁴² Agency's Opinion No 14/2017 of 10 October 2017 on the draft regional lists of proposed electricity Projects of Common Interest. https://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Opinions/Opinions/ACER%20Opinion%2014-2017.pdf

- (a) Consideration of the ‘MW of spare capacity that does not need to be installed as a result of expanding transmission capacity’, and then monetisation based on avoided investment costs of peak units.
 - (b) By using a capacity remuneration approach.
- (95) In the PCI 2017 selection process, adequacy benefits were considered for the AQUIND interconnector, FAB and GridLink. The valuation in the PCI 2017 process (for Great Britain only) was based on Ofgem Cap and Floor Window 1 assessment (for FAB in 2014): 34 500 Euro per MW per year, derating factor 0.7, thus 24.15 million Euro per GW per year.
- (96) The Agency observes that the derating factor for Cap and Floor Window 2 was modified to 0.59 (c.f. Pöyry’s report, Annex D, Table 10)⁴³. With a clearing price of 35 Euro/kW (as used in Window 2), the adequacy benefit for Great Britain only is therefore reduced by the Agency to 20.7 million Euro per GW per year.
- (97) An additional adequacy benefit was monetised in the PCI 2017 selection process for the FAB project, accounting for an avoided capacity of peaking units valued at 600 000 Euro per MW (c.f. Agency’s Opinion No 14/2017, p. 26). Therefore, a 20.2 million Euro per year additional adequacy benefit was obtained for FAB. No additional benefits were counted for the AQUIND interconnector and GridLink.
- (98) A very similar monetisation coefficient for avoided capacity was made publicly available by RTE in a recent study⁴⁴: 550 000 Euro per MW. The avoided operational expenses are also indicated as 15 000 Euro per MW per year. However, this would determine an inconsistency with the approach used in the 2017 PCI selection process. Therefore, the Agency considers that the 2017 PCI process figure is substantially confirmed.
- (99) Taking into account RTE’s indication that, in its view, adequacy benefit decreases as the level of interconnection capacity increases and considering that presently there is no common metric for monetisation of the adequacy benefit (see ENTSO-E consultation of May-June 2018 on TYNDP 2018 additional benefits, Section II Alternative monetisation of CBA [cost benefit analysis] indicators⁴⁵), the Agency divided the 20.2 million Euro per year referred to in recital (97) above by the total capacity of projects in TYNDP 2016 (4.9 GW) and obtained an additional adequacy benefit of 4.1 million Euro per GW per year.

⁴³ Near-term interconnector cost benefit analysis: independent report (cap & floor window 2) - A Pöyry report for Ofgem, January 2017.

https://www.ofgem.gov.uk/system/files/docs/2018/01/near-term_interconnector_cost_and_benefit_analysis_-_independent_report_.pdf

⁴⁴ RTE, Analyse d’impact du mécanisme de capacité - Une contribution au débat européen pour un approvisionnement sûr en électricité, January 2018, in French language, p. 58.

https://clients.rte-france.com/htm/fr/mediatheque/telecharge/MecaCapa_Analyse_impact_v5.pdf

⁴⁵ <https://consultations.entsoe.eu/tyndp/tyndp-2018-additional-benefits/>

- (100) Based on the assessment above, the total benefit related to adequacy (avoided future costs in generation investments) is around +25 million Euro per GW per year.

6.4.6 Estimation of other benefits

- (101) As regards the benefits related to ancillary services, relieving national constraints and variation of future costs for transmission investments, Ofgem Cap and Floor Window 1 assessment (including a report prepared by National Grid in 2014) investigated Frequency Response, Black Start, Reactive Response and boundary capability (i.e. displaced investment on the transmission network) and constraint costs for FAB.
- (102) The National Grid 2014 study indicates that (p.35) '*FAB Link can contribute [annual] savings of between £ 32m and £ 63m*' and that (p.36) '*NGET's analysis demonstrates that at the mid-point, operational costs for FAB Link [3 million £/y] are marginal*'.
- (103) Ofgem Cap and Floor Window 2 assessment (including a report prepared by National Grid in 2017) investigated Frequency Response, Black Start and Reactive Response, minus constraint costs for GridLink.
- (104) The National Grid 2017 report (publicly available in a redacted version) assessed potential benefits for consumers. It indicates (p.7) that:
- (a) All the interconnectors (AQUIND and GridLink) will provide some benefits with regard to frequency response;
 - (b) Along the south coast where interconnectors plan to connect, there are existing or planned interconnectors which have black start capability, therefore there is no benefit from additional interconnection;
 - (c) GridLink interconnector is not able to provide any additional benefits with regards to reactive power compensation. However, AQUIND interconnector is able to support the reactive issues around Lovedean and could save capital expenditure;
 - (d) There is a large variation in the annual constraint costs, which is driven mainly by the direction of flow on the interconnector.
- (105) The Ofgem 2017 report indicates that (p.34) '*A single figure for the total system impact of each project can be derived from tables in this consultation, but we do not include any further breakdown*' and, for GridLink, (p.16) '*Net Great Britain consumer welfare (incl. system impact): 2984 million Pounds*' and (p.24) '*Net Great Britain consumer welfare: 2931 million Pounds*'.
- (106) It is therefore possible to calculate a net benefit of 53 million Pounds (corresponding to a GridLink transfer capacity of 1500 MW in the National Grid 2017 report). This leads to a benefit of 44 million Euro per GW, which corresponds to about +3 million Euro per GW per year.

- (107) In the Agency’s view, given the early date of the National Grid 2014 study, it is more prudent to limit the use of ancillary services results to more recent data available for GridLink.
- (108) In addition, regarding the costs of future network reinforcement for FAB, the Ofgem 2014 consultation document indicates that ‘£ 42m of local works are required’. This amount corresponds to a benefit of about -3 million Euro per GW per year (negative).
- (109) Redispatching costs for two projects were mentioned also in RTE study, but they were only described in generic terms without detailed quantitative values. Besides, the study assumptions leading to these values were not described in detail. As a result, these costs were not considered in the analysis.
- (110) As the (negative) benefit figure indicated in recital (108) above is of the same magnitude as the (positive) results for the ancillary services benefit and the constraint costs of GridLink in Great Britain, the Agency considers that the total benefits of i) national constraints, ii) variation of cost for transmission investments and iii) ancillary services can be neglected.

6.4.7 Estimation of social-economic welfare benefit

- (111) Before assessing the last benefit category (socio-economic welfare), the findings for the other costs and benefits are summarised in Table 4.

Table 4: Summary of costs and benefits (excluding socio-economic welfare)

All figures in million Euro per GW per year	Costs	Benefits	Benefit-costs
Capital expenditures	-38 / -45		
Operational expenditures	-12 / -14		
Losses		-13	
Adequacy		25	
Ancillary services, national constraints and transmission costs		0	
Net cost before socio-economic welfare	-50 / -59	12	-38 / -47

- (112) Consequently, a socio-economic welfare (SEW) benefit below 38 million Euro per GW per year would indicate that benefits are below costs, while a SEW benefit above 47 million Euro per GW per year would indicate that benefits are above costs.
- (113) Given the wealth of studies on the subject, the Agency did not run its own assessment, but took into account SEW results based on five sources: ENTSO-E TYNDP 2016, study by Baringa for AQUIND Limited, study by Artelys for CRE, study by Pöyry for Ofgem and results provided by RTE to the Agency.

- (114) The studies' results were carefully reviewed, provided that the available data sets were detailed enough to allow so. The Agency had some concern related to the SEW calculation in the study provided by AQUIND Limited, and the ENTSO-E TYNDP 2016. The concerns and the actions taken were:
- (a) In the AQUIND Limited study, [REDACTED]
[REDACTED] In order to ensure consistency with the other studies (for which the SEW for the study year 2030 was used), the Agency considered the unweighted SEW average over 2028 – 2032 as the representative SEW value for 2030.
 - (b) In the ENTSO-E TYNDP 2016 results, the results for AQUIND interconnector were calculated for an increase of 2.0 GW and had been scaled down to account for a cross-border capacity of 1.8 GW in the pre-consultation draft, whereas the project was eventually described as adding 2.0 GW of capacity and the same amount of benefits in the final release. Besides, some specific results of one of the four tools used⁴⁶ were discarded for some visions, leading to inconsistencies among treatment of individual results across projects and across scenarios. The Agency corrected the SEW values for the AQUIND interconnector to account for a 2.0 GW capacity increase, assessed with all four tools, to ensure consistency.
- (115) Table 5 lists all individual SEW results, which the Agency took into account as primary input for its assessment of expected SEW benefits of new capacity on the France - Great Britain border. As SEW results are decreasing with the increase of the interconnection capacity, the table also indicates the capacity range, i.e. the France - Great Britain interconnection capacities with and without the new project or capacity.

⁴⁶ Antares, BID, Plexos and Powrsym.

Table 5: Yearly socio-economic welfare benefits from the various studies

Study	Capacity range (GW)	Capacity range (GW)	Benefits (million Euro per year)	Benefits (million Euro per GW per year)
ENTSO-E TYNDP 2016	Vision 1 – 2030	4.0 - 5.4	80	57
		5.4 - 7.4	76 (*)	38 (*)
ENTSO-E TYNDP 2016	Vision 2 – 2030	4.0 - 5.4	140	100
		5.4 - 7.4	159 (*)	80 (*)
CRE/Artelys	Vision 1 adapted – 2030	4.0 - 5.4		53
CRE/Artelys	Vision 2 adapted – 2030	4.0 - 5.4		85
CRE/Artelys	Vision 1 soft Brexit - 2030	4.0 - 5.4		50
CRE/Artelys	Vision 2 soft Brexit – 2030	4.0 - 5.4		84
CRE/Artelys	Vision 1 hard Brexit - 2030	4.0 - 5.4		41
CRE/Artelys	Vision 2 hard Brexit – 2030	4.0 - 5.4		69
Ofgem/Pöyry	Base case (relies on Vision 2) - 2030	5.4 – 6.8	190	136
		7.4 – 8.8	114	81
AQUIND	Base case	5.4 – 7.4	130 (**)	65(**)
RTE	Vision 1 – 2030	4.0 – 5.0	44	44
		5.0 – 6.0	40	40
		6.0 – 7.0	35	35
		7.0 – 8.0	29	29
RTE	Vision 2 – 2030	8.0 – 9.0	27	27
		4.0 – 5.0	93	93
		5.0 – 6.0	81	81
		6.0 – 7.0	72	72
NGET / NOA IC	-	7.0 – 8.0	62	62
		8.0 – 9.0	54	54
		6.8 – 7.8	Detailed results not available	Detailed results not available

(*) ENTSO-E TYNDP results corrected in order to ensure results' consistency among visions.

(**) [REDACTED] average over 2028-2032.

The Artelys/CRE study directly provided benefits per GW.

(116) The Agency decided to value all sources equally, while assigning a double weight⁴⁷ to the ENTSO-E TYNDP 2016 results, i.e.:

- (a) 40% weight to ENTSO-E TYNDP 2016;
- (b) 20% weight to AQUIND Limited study;
- (c) 20% weight jointly to the French studies (by CRE and by RTE);
- (d) 20% weight to the British study by Ofgem.

⁴⁷ The ENTSO-E TYNDP is deemed to play a central role in the development of electricity transmission infrastructure in Europe, in line with the provisions in Regulation (EC) No 714/2009 and in Regulation (EU) No 347/2013. The document was developed by ENTSO-E, which features among its members the French and GB system operators.

- (117) As mentioned above, the SEW results are significantly decreasing with the increase in the transfer capacity. Therefore, individual capacity blocks are assessed. For instance, in the capacity range 5 to 6 GW⁴⁸, the results presented in Table 6 are obtained.

Table 6: Weighted assessment of SEW results (capacity range from 5 to 6 GW)

	SEW benefit (million Euro per GW per year)	Weight	Benefit contribution (million Euro per GW per year)
ENTSO-E TYNDP 2016 Vision 1	45.7	20%	9.1
ENTSO-E TYNDP 2016 Vision 2	87.7	20%	17.5
AQUIND Limited	65	20%	13
CRE	63.7	10%	6.4
RTE	60.5	10%	6.1
Ofgem	115.0	20%	23.0
Total SEW benefit	n.a.	n.a.	75.1

- (118) As for all capacity ranges from 4 GW to 8 GW the overall benefit-cost balance is positive, the more relevant analysis is the one for the capacity range from 8 to 9 GW. For this capacity range, fewer SEW results are available, as indicated in Table 7.

Table 7: Weighted assessment of SEW results (capacity range from 8 to 9 GW)

	SEW benefit (million Euro per GW per year)	Weight	Benefit contribution (million Euro per GW per year)
RTE	40.5	50%	20.2
Ofgem	81.4	50%	40.7
Total SEW benefit	n.a.	n.a.	60.9

6.4.8 Conclusions on costs and benefits assessment

- (119) Given that the SEW benefit of 60.9 million Euro per GW per year is above the range of net cost figures before accounting for socio-economic welfare (-38 to -47 million

⁴⁸ Appropriate weightings were used where multiple results were available (e.g. ENTSO-E TYNDP for the range 5-6 GW). Extrapolation was used where only part of the range was covered by available results (e.g. CRE for the range 5-6 GW, Ofgem for the range 8-9 GW).

Euro per GW per year, see Table 4)⁴⁹, the Agency concludes that it is socially beneficial to build interconnection capacity from 8 to 9 GW⁵⁰.

- (120) Therefore, the results of the analyses of costs and benefits show that three new projects on the France - Great Britain border (for a capacity of 4.8 GW) appear to be needed beyond the capacity provided by the ‘firm projects’ (the existing IFA interconnector and two projects under construction, ElecLink and IFA2, for a capacity equal to 4 GW).
- (121) The results of the aforementioned SEW analyses stem from a European energy system-wide welfare perspective. The scope of the analysis may be slightly different across the studies (e.g. covering the ENTSO-E TYNDP 2016 modelled perimeter or 22 more relevant countries in AQUIND Limited’s study). Given that the Agency observed small variations of the SEW benefits of more distant countries, the scopes of available SEW results are deemed very similar to the European Union welfare perspective and thus directly usable. The Agency also observes that the approach to and scopes of the SEW analyses are aligned with the principles regarding the area of analysis in Annex V(10) of Regulation (EU) No 347/2013⁵¹ and in Annex V(2) of Regulation (EU) No 347/2013, according to which ‘*the data set shall reflect Union and national law in force at the date of analysis*’.
- (122) These considerations are without prejudice to the outcome of the negotiations following the notification of the United Kingdom on 29 March 2017 of its intention to withdraw from the European Union according to Article 50 of the Treaty on European Union.

6.5 Article 17(1)(a): the investment must enhance competition in electricity supply

- (123) In its exemption request, AQUIND Limited claims that, if an exemption is granted, the AQUIND interconnector will enhance competition in electricity supply because the investment would result in:
- (a) An increase in market size, providing access to a larger market for European market participants;
 - (b) An increase in traded volumes (liquidity) in the Great Britain and French markets;
 - (c) An increase in competition in provision of capacity through the Great Britain (and French) capacity markets; and

⁴⁹ In this decision, benefits have a positive sign and costs have a negative sign. For the sake of consistency, a net cost (i.e. more costs than benefits) is presented as a negative amount.

⁵⁰ For the purpose of this decision, assessing benefits and costs beyond 9 GW capacity is deemed by the Agency neither feasible nor necessary.

⁵¹ Annex V(10) of Regulation (EU) No 347/2013: ‘*The area for the analysis of an individual project shall cover all Member States and third countries, on whose territory the project shall be built, all directly neighbouring Member States and all other Member States significantly impacted by the project*’.

- (d) An increase in competition for Great Britain - France cross-border capacity across short-term and multi-year capacity products.
- (124) In the executive summary of its exemption request (p. 6), AQUIND Limited '*proposes to voluntarily introduce a number of conditions through the exemption to ensure it is proportionate and maximises the project benefits. These conditions will place limits on AQUIND and its users. [...] These limits will include [...] a limit on the allocation of multi-year capacity to market participants who hold a dominant position in the importing market*'.
- (125) In line with the Commission staff working document on new infrastructure exemptions⁵², and, in particular, paragraph 32 in section 2.3, the Agency considers that, in general, an investment in new infrastructure is likely to entail positive effects on competition through increased capacity.
- (126) On the other hand, based on the same paragraph of the said Commission staff working document, the Agency also considers that granting an exemption may counteract this positive effect to some extent in cases where access to the exempted infrastructure is restricted, which is in turn likely to restrict competition, in particular if the capacity is held by players with a significant degree of market power.
- (127) In that regard, the Commission staff working document on new infrastructure exemptions also states, in paragraph 34 in section 2.3, that '*if a dominant undertaking is the direct beneficiary of an exemption or could become an indirect beneficiary by booking important amounts of capacity with the direct beneficiary, a positive competition assessment is unlikely in the absence of conditions that effectively address the competition concerns*'.
- (128) To ensure that the exempted infrastructure will not enhance dominant market positions and will provide increased opportunities for non-dominant competitors to enter the market(s) concerned or to expand their market position, certain limitations on the allocation and/or the use of the exempted capacity could be imposed on the dominant market players of each connected market.
- (129) In that regard, Ofgem suggests that an exemption decision could place appropriate conditions on AQUIND Limited, which ensure that competition in electricity supply is enhanced despite any exemptions for the AQUIND interconnector.
- (130) The Agency agrees in principle that the pro-competitive effects of the AQUIND interconnector could be safeguarded by imposing, *inter alia*, limitations on the

⁵² Commission staff working document on Article 22 of Directive 2003/55/EC concerning common rules for the internal market in natural gas and Article 7 of Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity, 6 May 2009, SEC(2009)642 final: https://ec.europa.eu/energy/sites/ener/files/documents/sec_2009-642.pdf

allocation of capacity to dominant market player(s) so that the condition set by Article 17(1)(a) of Regulation (EC) No 714/2009 would be met.

6.6 Article 17(1)(b): the level of risk attached to the investment is such that the investment would not take place unless an exemption is granted

(131) In its exemption request, AQUIND Limited refers to various types of risks which would justify an exemption. The following types of risks are indicated in the executive summary of AQUIND Limited's exemption request:

- (a) 'A regulated regime with financial underpinning is not available to AQUIND in France' / 'no access to financial underpinning';
- (b) Revenue risk;
- (c) Risk of a reduced or uncertain demand for capacity;
- (d) Great Britain network curtailment risks;
- (e) Construction and operation risks; and
- (f) Policy and macroeconomic risks.

(132) AQUIND Limited elaborates on these risks (in particular in sections 6.4 and 7.3 of the exemption request) with regard to the following aspects:

- (a) Exceptional market (competition with other projects, the majority of which will receive regulatory support from Great Britain and France) and policy (Brexit negotiations, energy policies in the United Kingdom and France and their impacts) risks;
- (b) Unique construction and operating risks (marine cable of 190-230 km and onshore routes of cables longer than other comparable projects);
- (c) Risks of unplanned interruptions (any increases in the unplanned outage rate would reduce AQUIND Limited's projected revenue);
- (d) Financial underpinning not available (according to AQUIND Limited, RTE has a monopoly to build and operate regulated interconnectors so that the only investment route in France is to apply for an exemption under Article 17 of Regulation (EC) No 714/2009);
- (e) Congestion revenue uncertainty (without financial underpinning, AQUIND Limited's revenue will be wholly reliant on the market);
- (f) Macroeconomic and policy risk (including the impact of Brexit);
- (g) Competition with other interconnectors;
- (h) Capacity and construction risk (larger project than other interconnectors, risk of cost overruns);
- (i) Operation, connection and curtailment risk.

(133) The Agency considers that some of the aforementioned risks are fully or partly overlapping. Therefore, some of the risks are jointly assessed in the following considerations.

- (134) As already indicated in recitals (40) and (41) above, assessing whether AQUIND Limited is exposed to a level of risk which justifies an exemption according to Article 17(1)(b) of Regulation (EC) No 714/2009 requires an assessment of whether a regulated regime (with financial underpinning) is available for the AQUIND Interconnector. If the latter is the case, in the Agency's view, the level of risk of the project is not such to meet the condition in Article 17(1)(b) of Regulation (EC) No 714/2009. If, instead, it could be demonstrated that the regulated regime is indeed not available for the AQUIND interconnector, this would imply the presence of a significant level of financial risk for the promoter.
- (135) As regards the availability of a regulated regime for the AQUIND interconnector (and the consequent financial underpinning), the Agency notes that, in April 2018, i.e. after AQUIND Limited submitted its request for exemptions, the AQUIND interconnector was granted PCI status. Therefore, AQUIND Limited can request the application of Article 12 of Regulation (EU) No 347/2013, regarding investment requests, including cross-border cost allocation requests, for the AQUIND interconnector. So far, however, AQUIND Limited has not requested the application of Article 12 of Regulation (EU) No 347/2013.
- (136) When Article 12 of Regulation (EU) No 347/2013 applies to a PCI, pursuant to Article 12(1) of the same Regulation, the efficiently incurred investment costs related to the PCI shall, to the extent not covered by congestion rents or other charges, be paid for by network users through tariffs for network access. Pursuant to Article 12(4) of Regulation (EU) No 347/2013, the national regulatory authorities shall, after consulting the project promoters concerned, take coordinated decisions on the allocation of investment costs. Pursuant to Article 12(5) of the same Regulation, national regulatory authorities shall, based on the cross-border cost allocation, take into account actual costs incurred by a TSO or other project promoter as a result of the investments when fixing or approving tariffs, insofar as these costs correspond to those of an efficient and structurally comparable operator.
- (137) In its observations of 25 May 2018, AQUIND Limited claims that Article 12(1) of Regulation (EU) No 347/2013 allows the recovery of investment costs, but not of maintenance costs. In its inputs, Ofgem stated that '*CRE has been consistent in stating that it is not willing to approve any project*' [at the France – Great Britain border, in addition to ElecLink and IFA2].
- (138) However, in the Agency's view, the main focus of Article 12(1) of Regulation (EU) No 347/2013 is on cost allocation across countries (which relates only to the investment costs), while Article 12(5) of the same Regulation refers to the inclusion of actual costs into tariffs, without limiting its scope to the investment costs. Irrespective of Article 12(1) and (5) of Regulation (EU) No 347/2013, the efficient costs of a PCI can be recovered via regulated tariffs in accordance with Article 37(1)(a) of Directive 2009/72/EC.

- (139) According to Annex VII of Regulation (EU) No 347/2013, as amended in April 2018 by Commission Delegated Regulation (EU) 2018/540, the AQUIND interconnector PCI 1.7.4 belongs to a cluster of potentially competing PCIs (cluster 1.7 France – United Kingdom interconnectors).
- (140) According to that Annex VII, *‘a cluster of potentially competing PCIs (...) reflects an uncertainty around the extent of the bottleneck across country borders. It is left to the market to determine whether one, several or all PCIs are to be implemented, subject to the necessary planning, permit and regulatory approvals’.*
- (141) Given the PCI status of the AQUIND interconnector (i.e. PCI belonging to a cluster of potentially competing PCIs), it is important to assess the need for capacity at the relevant border.
- (142) Based on its assessment of the need for capacity, costs and benefits (see Section 6.4 above), the Agency concludes that three new projects on the France - Great Britain border (for a total capacity of 4.8 GW) appear to be needed beyond the capacity provided by the existing IFA interconnector and the two projects under construction, i.e. ElecLink and IFA2 (for a total capacity of 4 GW).
- (143) Therefore, given its assessment above, the Agency notes that a decision on an investment request under Article 12 of Regulation (EU) No 347/2013 for the AQUIND interconnector, based on an assessment⁵³, jointly by the regulatory authorities or, where required, by the Agency, could result in the allocation of AQUIND interconnector’s investment costs and in the actual costs incurred by AQUIND Limited, insofar as they are efficient, to be taken into account in tariffs in accordance with Article 37(1)(a) of Directive 2009/72/EC.
- (144) Since AQUIND Limited has not yet requested the application of Article 12 of Regulation (EU) No 347/2013 (though it could not do so before April 2018) and such request has not yet been decided by the competent bodies, the Agency cannot exclude at the time of issuing this Decision that a financial underpinning under a regulated regime is available for the AQUIND interconnector. Consequently, the Agency does not identify, with the required certainty, risks related to a lack of ‘financial underpinning’ via the regulatory regime with regard to the AQUIND interconnector.
- (145) During the hearing held on 22 May 2018, AQUIND Limited observed that the regulated rate of return is sufficient for RTE, which is a large regulated company and financed by public money, but not for an independent company such as AQUIND Limited. AQUIND Limited also stated in its input of 25 May 2018 that *‘it is uncertain whether the TSO and NRAs would regard interest on debt and other finance-related transaction costs to qualify as efficiently incurred investment costs’.*

⁵³ A specific assessment may be needed in case of competing or potentially competing PCIs, as further discussed above in recitals 139 et seq..

- (146) In that regard, the Agency notes that Article 12(5) of Regulation (EU) No 347/2013 refers to ‘insofar as these costs correspond to those of an efficient and structurally comparable operator’. Structural comparability between ‘a large company’ and a company which promotes only one interconnector seems very limited. Such structural difference should be taken into account, to the appropriate extent, when identifying a structurally comparable operator.
- (147) As regards the revenue risk, the risk of a reduced or uncertain demand for capacity, the exceptional market risk, the risk linked to direct competition with other interconnectors and the congestion revenue uncertainty, the Agency notes that these risks are also fundamentally linked to the need for interconnection capacity between France and Great Britain.
- (148) In that regard, AQUIND Limited observed in particular that:
- (a) With no access to financial underpinning, AQUIND Limited has to fully manage its own project risk (p. 6 of the exemption request);
 - (b) The project developer and investors of an exempted project are fully exposed to market and regulatory risk (p. 38 of the exemption request);
 - (c) Without sufficient revenue certainty, debt cannot be raised and equity returns will not be attractive to investors, given the risk of the project (p. 30 of the exemption request).
- (149) By applying the reverse logic, based on the proven appetite of investors in new interconnections on the France – Great Britain border, the Agency observes that the access to financial underpinning through cost recovery under the regulated regime, such as under Article 12 of Regulation (EU) No 347/2013, will manage the large majority of AQUIND interconnector’s risks, will allow to raise debt and will be attractive to (at least some types of) investors.
- (150) In other terms, the revenue / market / project competition risks are largely mitigated by the availability of a regulated route to the recovery of investment and operating costs. Therefore, those risks cannot correspond to a level such that the investment would not take place unless an exemption is granted.
- (151) As regards the Great Britain network curtailment risks, the risks of unplanned interruptions and the operation risks, those risks are related to:
- (a) Non-firm connection to the Great Britain onshore network (until completion of reinforcement works which are expected in [REDACTED]
[REDACTED]);
 - (b) Potential outages of the AQUIND interconnector, especially in the early years of operation.

- (152) The Agency observes that the period of non-firm connection is relatively limited [REDACTED] and some reinforcement works are scheduled already [REDACTED].
- [REDACTED] It also concurs with the comment provided by two respondents to the notice to third parties, who indicated that no particular technological risks exist for widely used subsea interconnectors, as the DC technology has been thoroughly validated over the recent years. In addition, the presence of a regulated framework for cost recovery will significantly mitigate the unplanned outage risks.
- (153) As regards construction risks, the length of the marine route (around 200 km) is an average or even lower distance compared to many currently operational submarine cables. In addition, the project promoter is expected to be able to transfer, to some extent, such construction risks to its sub-contractors (manufacturers of converter stations and of cables). Last, the relatively high capacity of the project has been chosen by the project promoter itself (assumedly in relation to its considerations on risks and possible revenues), thus it cannot be deemed as a relevant risk within the meaning of Article 17(1)(b) of Regulation (EC) No 714/2009.
- (154) In that regard, AQUIND Limited argued that the unique construction and operation risks were a reason why ElecLink fulfilled the condition of Article 17(1)(b) of Regulation (EC) No 714/2009 and received an exemption under Article 17 of Regulation (EC) No 714/2009 in 2014. By the same token, the AQUIND interconnector should be exempted, in particular as *'ElecLink did not face any of the sub-sea risks associated with laying a cable under the English Channel'*.
- (155) The Agency does not agree with AQUIND Limited's comparison and its conclusions on the ElecLink project. As a matter of fact, ElecLink involves the laying of a power cable into a tunnel and, as acknowledged by the European Commission Decision C(2014) 5475 final:
- (a) This requires compliance with temperature and space constraints within the Tunnel;
 - (b) ElecLink Limited, in their application, argues that there are significant complexities to building an interconnector using the existing tunnels, relating to safety, access rights, etc.;
 - (c) Because this project is first of a kind, it is possible that realised construction costs will be higher.
- (156) Again, as a matter of fact, the currently estimated investment costs of ElecLink (as communicated to the Agency in the framework of the 2018 PCI monitoring) are 65% higher than the ElecLink cost estimates in the ENTSO-E TYNDP 2014 (which was prepared at the time of ElecLink's request for exemption and the related decisions).
- (157) Therefore, the Agency considers that the Great Britain network curtailment risks, the (unique) construction and operation risks, the risks of unplanned interruptions, the

‘capacity and construction risks’ and the ‘operation connection, and curtailment risk’ do not confirm a sufficient risk in relation to condition b) in Article 17(1) of Regulation (EC) No 714/2009.

- (158) Last, the Agency deems that the claimed policy and macroeconomic risks (and uncertainties, such as commodity prices, carbon price schemes, currency exchange and possible impacts of financial market movements) are rather normal for this type of electricity infrastructure projects. Regardless of the outcome of the negotiations following the notification of the United Kingdom on 29 March 2017 of its intention to withdraw from the European Union according to Article 50 of the Treaty on European Union, it would seem reasonable that market fundamentals (and price differentials between France and Great Britain which are expected to persist) will continue to be a key aspect for the project.
- (159) Therefore, the Agency considers the ‘policy and macroeconomic risk’ not to correspond to a higher risk than for other interconnectors on the France – Great Britain border. As two other projects (and, in particular, one in the regulated regime) on this border are progressing construction, the Agency does not see a level of risk (according to Article 17(1)(b) of Regulation (EC) No 714/2009) such that the investment would not take place unless the requested exemption is granted.
- (160) Ofgem indicated that *‘there are a number of types of risk faced by AQUIND interconnector in addition to the economic (volume/revenue) risk’*. Ofgem stated that, under French law, CRE can only award a regulated revenue stream to the French TSO (RTE). Ofgem also observed that *‘the staff working paper of the European Commission does not specifically mention risk resulting from a non-compliant domestic regulatory regime; however, it is likely that the working papers are written on the assumption of compliance’*.
- (161) In its input of 25 May 2018, AQUIND Limited indicated that *‘Ofgem has indicated it does not have an intention to open a [Cap and Floor] Window 3 for new interconnectors in the near future’* in its Initial Project Assessment of Window 2 projects. As a result, AQUIND Limited would face an uncertain regulatory status and therefore most likely face a regulatory delay on the Great Britain side.
- (162) In that regard, the Agency notes that Regulation (EU) No 347/2013 is directly and immediately applicable and that under Article 12(4) of that Regulation, if an investment request is submitted, the regulatory authorities, within six months of the submission, shall take coordinated decisions on the allocation of investment costs to be borne by each system operator for the project, as well as their inclusion in tariffs. Therefore, no risks related to a delay of regulatory decisions pursuant to Article 12(4) of Regulation (EU) No 347/2013 (or, if required, by Article 12(6) thereof) are evident based on the information available at this stage.

- (163) In its input of 25 May 2018, AQUIND Limited also indicated that *‘besides market risks, the risk under Article 17(1)(b) of Regulation (EC) No 714/2009 also includes regulatory and legal risks, among others’*. AQUIND Limited also indicated the term exceptional used in Recital 23 of Regulation (EC) No 714/2009 (*‘given the exceptional risk profile of constructing those exempt major infrastructure projects’*) is not used or defined in Article 17(1) of Regulation (EC) No 714/2009. It also argued that *‘exempt interconnector projects are a relatively rare type of investments and they do present an exceptional, unique risk profile’*.
- (164) The Agency observes that the level of risk of the project, pursuant to Article 17(1)(b) of Regulation (EC) No 714/2009, has to be evaluated without the exemption. Therefore, a possible argument that exempted projects are more risky is deemed not relevant for the evaluation. As regards other risks, the Agency considers that it has evaluated all the risk types, which were indicated by the promoter and by the other parties during the decision-making process.
- (165) For all the aforementioned reasons, the Agency is not able to identify with the required certainty a level of risk for the AQUIND interconnector such that the investment in this project would not take place unless the requested exemptions are granted.
- (166) Therefore, the Agency concludes that the condition set by Article 17(1)(b) of Regulation (EC) No 714/2009 is not met.

6.7 Article 17(1)(c): the interconnector must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that interconnector will be built

- (167) According to the exemption request, the AQUIND interconnector is developed by AQUIND Limited, which is a limited liability company under the laws of the United Kingdom and fully owned by OGN Enterprises Limited, [REDACTED]
[REDACTED]
- (168) Ofgem and CRE, which are responsible for the certification of the TSOs in Great Britain and in France, respectively, communicated to the Agency that AQUIND Limited is separate in its legal form from existing TSOs within the meaning of Article 17(1)(c) of Regulation (EC) No 714/2009.
- (169) Against that background, AQUIND Limited can be considered as being owned by a natural or legal person, which is separate at least in terms of its legal form from NGET and RTE, i.e. the system operators in whose systems that interconnector will be built.
- (170) Therefore, the Agency concludes that the condition set by Article 17(1)(c) of Regulation (EC) No 714/2009 is met.

6.8 Article 17(1)(d): charges are levied on users of that interconnector

- (171) In its exemption request, AQUIND Limited claims that, in case the requested partial exemption is granted, charges will be levied on users of the AQUIND interconnector, namely on:
- (a) the interconnector users via explicitly auctioned capacity through long-term contracts in accordance with an open season procedure subject to regulatory approval; and
 - (b) the network users via implicitly allocated capacity in accordance with the general national regulatory frameworks.
- (172) Ofgem and CRE, which are responsible for approving the capacity auction rules, did not raise any doubts that the users of the AQUIND interconnector will be charged for using the interconnector within the meaning of Article 17(1)(d) of Regulation (EC) No 714/2009.
- (173) Therefore, the Agency concludes that the condition set by Article 17(1)(d) of Regulation (EC) No 714/2009 is met.

6.9 Article 17(1)(e): no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector

- (174) In its exemption request, AQUIND Limited states that no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector.
- (175) Ofgem and CRE, which would be responsible for approving any potential cost recovery from network charges, communicated to the Agency that no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the AQUIND interconnector.
- (176) Therefore, the Agency concludes that that the condition set by Article 17(1)(e) of Regulation (EC) No 714/2009 is met.

6.10 Article 17(1)(f): the exemption must not be to the detriment of competition or the effective functioning of the internal market in electricity, or the efficient functioning of the regulated system to which the interconnector is linked

6.10.1 Detriment to competition

- (177) As clarified in the Commission staff working document on new infrastructure exemptions, this sub-condition relates to the possible negative effects on competition of the exemption itself. Given that negative effects on competition in supply can be avoided by setting specific conditions when granting exemptions, the Agency's assessment is here focused on the possible detriment of granting an exemption on competition in relation to other competing projects, either regulated, exempted or submitted for exemption.
- (178) For examining the impact on other potentially competing projects, taking also into account the PCI labelling for AQUIND Limited and the considerations by various parties, including in particular the project promoters, during the Agency's decision-making process, the analysis focused on the France - Great Britain border and did not extend to other borders between Great Britain and the rest of continental Europe.
- (179) As indicated in Section 6.3 above, the Agency investigated as potentially competing projects the AQUIND interconnector, FAB and GridLink.
- (180) As concluded in Section 6.4 above, based on the data currently available to the Agency, all three projects (for a total capacity of 4.8 GW) appear to be needed beyond the capacity provided by the existing IFA interconnector and the two projects under construction, i.e. ElecLink and IFA2 (for a total capacity of 4 GW). Thus, the Agency concludes that the three projects under development - the AQUIND interconnector, FAB and GridLink - are actually not competing projects and, therefore, no detriment to the implementation of potentially competing projects is identified.
- (181) Therefore, the Agency concludes that this sub-condition set by Article 17(1)(f) of Regulation (EC) No 714/2009 is met.

6.10.2 Detriment to effective functioning of the internal market

- (182) The effective functioning of the internal market could be undermined if the exemption hindered the overall optimisation of the network and market, for example by scheduling flows on the interconnector regardless of implications for congestion in other parts of the network or on production costs. This risk is reduced by the non-firm connection condition already defined by Ofgem for the AQUIND interconnector. It can be further minimised by imposing conditions and obligations regarding the capacity allocation rules in case an exemption is granted. As a result of these (potential) conditions and obligations, the physical use of the exempted interconnector

could be integrated with the wider capacity allocation and congestion management methods developed to ensure the effective operation of the internal electricity market.

- (183) Therefore, the Agency concludes that this sub-condition set by Article 17(1)(f) of Regulation (EC) No 714/2009 is met.

6.10.3. Detriment to efficient functioning of the regulated system

- (184) The impact on the secure operation of the regulated system, e.g. redispatching costs and reinforcement of the existing network, is one aspect examined under this sub-condition. The impact on system operation has been assessed by National Grid and by RTE, as well as by AQUIND Limited in its exemption request. Although it is not possible to estimate these costs on the French side due to the lack of the relevant quantified input, on the British side National Grid data for some interconnectors between France and Great Britain are available to the full extent⁵⁴ or to sufficient extent⁵⁵. These costs are taken into account in the assessment of the need for capacity (Section 6.4 above) and they result to be outbalanced by the monetised benefits.

- (185) The impact of granting an exemption on the use of congestion revenues, which - in the counterfactual case of development of a regulated competing project - would be returned to the regulated system (based on the possible uses defined by Article 16 of Regulation (EC) No 714/2009), is not relevant in this specific case, given that the Agency, based on the available data, concludes in Section 6.10.1 above that the three projects under development - the AQUIND interconnector, FAB and GridLink - are actually not competing projects. Thus, no detriment to the efficient functioning of the regulated system is identified.

- (186) Therefore, the Agency concludes that this sub-condition set by Article 17(1)(f) of Regulation (EC) No 714/2009 is met.

- (187) Based on the above analyses, the Agency concludes that the condition set by Article 17(1)(f) of Regulation (EC) No 714/2009 is met.

7. CONCLUSION

- (188) For all these reasons, in particular in view of the risks of the AQUIND interconnector and the need for capacity on the France - Great Britain border, the Agency concludes that the condition defined by Article 17(1)(b) of Regulation (EC) No 714/2009 for granting an exemption according to Article 17(1) of Regulation (EC) No 714/2009 is currently not fulfilled for the AQUIND interconnector.

⁵⁴ National Grid SO Submission to Cap and Floor, Published Version, 16 December 2014.

⁵⁵ National Grid SO Submission to Cap and Floor June 2017 and Ofgem Cap and floor regime: Initial Project Assessment of the GridLink, NeuConnect and NorthConnect Interconnectors, June 2017.

- (189) Therefore, the requested exemptions to the AQUIND interconnector pursuant to Article 17 of Regulation (EC) No 714/2009 should not be granted under the current circumstances.
- (190) The present Decision is without prejudice to the outcome of the process initiated by the notification of the United Kingdom on 29 March 2017 of its intention to withdraw from the European Union according to Article 50 of the Treaty on European Union and to the subsequent relationship between the United Kingdom and the European Union,

HAS ADOPTED THIS DECISION:

Article 1

The exemptions from Article 16(6) of Regulation (EC) No 714/2009 and from Articles 9, 32, 37(6) and 37(10) of Directive 2009/72/EC requested by AQUIND Limited are not granted.

Article 2

This Decision is addressed to AQUIND Limited.

Done at Ljubljana on 19 June 2018.

For the Agency:


Alberto Pototschnig
Director

In accordance with Article 19 of Regulation (EC) No 713/2009, the addressee may appeal against this Decision by filing an appeal, together with the statement of grounds, in writing at the Board of Appeal of the Agency within two months of the day of notification of this Decision.