The revised TEN-E Regulation

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Implementation of projects of common interest (PCIs) under the revised TEN-E Regulation

11 May 10:00 to 17:00
Webinars on the revised TEN-E Regulation

Ahead of its formal entry into force, expected in June, the Commission is organising a series of dedicated webinars to present its key provisions:

Series of webinars on the revised TEN-E Regulation | European Commission (europa.eu)

10 May at 10.00 – 12.30 (CET) The revised TEN-E Regulation
Restricted to the members of the Regional Groups and thematic areas under the TEN-E

10 May at 14.00 – 17.00 (CET) Infrastructure categories and selection process under the revised TEN-E Regulation
Open to stakeholders

11 May at 10.00 – 17.00 (CET) Accelerating PCI implementation under the revised TEN-E Regulation
Open to stakeholders

19 May at AM (CET) Regulatory aspects under the revised TEN-E
Restricted to representatives of national regulatory authorities
Agenda

10:00 - 10:10 Welcome remarks and policy context of the revision of the TEN-E Regulation

10:10 - 11:30 Permitting of PCIs under the TEN-E Regulation

11:30 – 13:00 Monitoring PCI implementation

13:00 -14:00 Lunch break
Agenda

14:00- 14:45 Consultation of stakeholders and transparency under the revised TEN-E Regulation

14:45 – 15:30 Regulatory provisions under the revised TEN-E Regulation

15:30 End of webinar
The trans-European energy networks policy
The TEN-E Regulation

... Increased interconnections and effectively improved the integration of Member States’ networks, which in turn made the EU energy market more integrated and competitive than it was before the application of the TEN-E Regulation;

... is essential for EU’s energy security by
  • boosting further electrification
  • transitioning to renewable gases

and thus accelerating the European Green Deal.
Permitting of PCIs under the Revised TEN-E Regulation
Why is Permitting a Relevant concern?

2021 PCI DELAYS

Delays, 20% = 38
Why is Permitting a Relevant concern?

2021 PCIs (188 projects) Delays overview

- Projects on Time: 80% = 150
- Permiting Delays: 19% = 36
- Other Delays: 31% = 11
- Non-unique Delays: 69% = 25
- Delays overview: 2; 1%
Relevant TEN-E Provisions

- Chapter III – Articles 7 to 10
‘Priority Status’ of Union list projects – Article 7

Who benefits from this expedite procedure?

(1) The adoption of the PCI list establishes, for the purposes of any decisions issued in the permit granting process, the necessity of PCI projects from an energy policy and climate perspective, without prejudice to the exact location, routing or technology of the project*.

*This paragraph does not apply to competing projects or to projects that have not reached a sufficient degree of maturity to provide a project specific cost-benefit analysis (Section 2, point (1)(d), of Annex III).
‘Priority Status’ of Union list projects – Article 7

How should the priority status be implemented?

PCIs, project promoters, and authorities, ensure that the files are treated in the fastest way possible, being granted the status of the highest national significance, and urgent status in all dispute resolution procedures*.

* If such status exist under national law, and as far as it complies with the national and Union legal framework.
‘Priority Status’ of Union list projects – Article 7

How does it relate with environmental assessments?

MS assess which legislative and non-legislative measures are necessary to streamline the environmental assessment procedures and ensure their coherent application, taking into account the Guidance of the Commission on How to streamline these.

• The non-legislative measures identified shall be taken by the MS 9 months after the entry into force of the new TEN-E regulation.

• The Legislative measures identified shall be taken by the MS 12 months after the entry into force of the new TEN-E regulation.
‘Priority Status’ of Union list projects – Article 7 (cont.)

In Short:

TEN-E ensures a streamlining of processes and existence of and connection to an Overriding Public Interest classification.
Organisation of the permit granting process – Article 8

Who is responsible for the permit granting process?

(1) MS will update the designation of the NCA which is responsible for facilitating and coordinating the permit granting process.

NCA’s responsibilities and tasks may be delegated to another authority, per project or per particular category of projects, provided that:

(a) NCA notifies the Commission, and the information is published by the NCA or the project promoter on the project website.

(b) Delegation rests with a single authority, which is the sole point of contact for comprehensive decision’s process, and coordinates the relevant submissions.

The NCA may retain the responsibility to establish deadlines, within the time limits set in Art. 10.
Organisation of the permit granting process – Article 8

The Comprehensive Decision:

Article 2(2):

‘Decision or set of decisions taken by a Member State authority or authorities not including courts or tribunals, that determines whether or not a project promoter is authorised to build the energy infrastructure to realise a project of common interest or a project of mutual interest by having the possibility to start, or procure and start, the necessary construction works (ready-to-build phase) without prejudice to any decision taken in the context of an administrative appeal procedure;’
Organisation of the permit granting process – Article 8

How can NCA fulfil their role and MS implement this requirements?

(3) The comprehensive decision shall be issued within the set time limits in accordance with one of the following schemes:

- **Integrated Scheme**

Comprehensive decision is issued by the national competent authority and shall be the sole legally binding decision arising from the statutory permit granting procedure. Where other authorities are concerned by the project, they may, in accordance with national law, give their opinion as input to the procedure.
Organisation of the permit granting process – Article 8

How can NCA fulfil their role and MS implement this requirements?

(3) The comprehensive decision shall be issued within the set time limits in accordance with one of the following schemes:

- Integrated Scheme
- Coordinated Scheme

Comprehensive decision comprises multiple individual legally binding decisions issued by several authorities concerned, which shall be coordinated by the national competent authority. NCA may take individual decisions on behalf of other national concerned; NCA may consider that an authority concerned has either given its approval or refusal for the project by not deciding in the time limit; NCA may disregard an individual decision of an authority concerned if it considers that it is not sufficiently substantiated.
Organisation of the permit granting process – Article 8

How can NCA fulfil their role and MS implement this requirements?

(3) The comprehensive decision shall be issued within the set time limits in accordance with one of the following schemes:

- Integrated Scheme
- Coordinated Scheme
- Collaborative Scheme

Comprehensive decision shall be coordinated by the NCA. It shall, after consulting the other authorities concerned, if in accordance with national law, and without prejudice of the time limits set by TEN-E, establish a reasonable time limit for individual decisions. It shall also monitor compliance with the time limits by the authorities concerned.
Organisation of the permit granting process – Article 8

How can NCA fulfil their role and MS implement this requirements?

(3) The **comprehensive decision** shall be issued within the set time limits in accordance with one of the following schemes:

- Integrated Scheme
- Coordinated Scheme
- Collaborative Scheme

*Member States shall implement the schemes in a manner which, according to national law, contributes to the most efficient and timely issuing of the comprehensive decision.*
Organisation of the permit granting process – Article 8

How can NCA fulfil their role and MS implement the requirements?

Overview of Permitting schemes used in 2021

- 62% Collaborative
- 25% Coordinated
- 11% Integrated
- 2% N/A
Organisation of the permit granting process – Article 8 (cont.)

Implementation of the different schemes with regards to offshore projects:

(4) MS may apply the permitting schemes to onshore and offshore PCI projects.

(6) Regarding projects of priority offshore grid corridors set out in Section 2 of Annex I, NCAs shall designate a Single Point of Contact for project promoters.
Transparency and public participation – Article 9

The TEN-E Regulation fosters public participation from:

• **MS** by requesting the manual of procedure that follow a dedicated set of principles;

• **NCAs** that impose a minimum standard of public participation and ensure the transparency of the process;

• **Project Promoters** that comply with the requirements of public participation to submit their project (and respect them after submission).
On cross-border projects:

Permitting organization - Art 8(5):

Where a project requires decisions to be taken in two or more MS, the relevant NCAs shall take all necessary steps for efficient and effective cooperation and communication among themselves. MS endeavor to provide joint procedures, particularly with regard to the assessment of environmental impacts.

Public participation – Art 9(5):

For cross border projects, public consultations in each state shall happen within 2 months from the first one.
Duration and implementation of the permit granting process – Article 10

Starting the permit granting process:

Project promoter **written notification** to the NCA with **detailed outline** of the project

Following the receipt of the notification, the NCA has **3 months to decide whether the project is mature enough**

NCA acknowledges the project

NCA rejects the project in **written form** justifying the decision

*I.E Justifying why consider the project to not be mature enough to enter the permit granting process a*
Duration and implementation of the permit granting process – Article 10

Pre-application procedure:

- **Scope of Application file**: Within maximum 6 months of notification, NCA determines the scope of the report and level of detail of information to be submitted as part of the application to comprehensive decision.

- **Detailed Schedule**: NCA, in cooperation with the project promoter and concerned authorities develops a detailed schedule for the permit granting.

- **Missing information**: After receiving the draft application, the competent authority may request missing information. Within 3 months from submission of the missing the competent authority shall accept the application for examination.

Statutory Permit Granting
Duration and implementation of the permit granting process – Article 10

Overview of the process:

<table>
<thead>
<tr>
<th>Pre-Application Procedure</th>
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</thead>
<tbody>
<tr>
<td>Between start of the permitting process and the acceptance of the application by the NCA (up to 24 months, indicative).</td>
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<table>
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<tr>
<th>Statutory Permit Granting Procedure</th>
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<tbody>
<tr>
<td>From acceptance until the comprehensive decision (no more than 18 months).</td>
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</table>
Duration and implementation of the (...)) process – Article 10(cont.)

Maximum time limits:

(2) The procedure shall not last for more than 3.5 years, however only if the NCA considers that the deadline will not be met it may extend one or both parts of the procedure for 9 months (longer extensions are only possible when justified by exceptional circumstances - In that case NCA must inform the concerned group which may request regular updates on the progress achieved and reason for the delay).

(7) It is the responsibility of Project Promoters to cooperate, by seeking the NCA opinion early in the permitting process and submit all the relevant documents and complete application file in due time, allowing for the compliance with the time limits set in the Regulation.
Duration and implementation of the (...) process – Article 10(cont.)

Legal predictability / protection from regulatory changes:

New Article 10(8) Introduces the requirement that Member States endeavor not to cause any changes to national law that may lead to the prolonging of any permitting procedure started before the entry into force of the amendment.

NCAs shall adapt accordingly the schedule established in cooperation with the project promoter so that the maximum permitting duration is observed.
Issues; Interpretation concerns; capacity issues

Where can they be addressed?

Any issue, matter of interpretation or capacity issues of project promoters, NCAs or others, should be raised within the NCA Platform or the Regional Groups which are the right forum to address such matters.
Platform of National Competent Authorities under the TEN-E Regulation

• Cooperation between Member States is key to swift and harmonised application of the TEN-E provisions;
• NCA platform: *an outlet for exchanging ideas, best practices, obtaining answers to common issues encountered, developing joint interpretations etc.*
• Scope & objectives, organisation.
Monitoring PCI implementation
5th PCI list

- Monitoring according to the current TEN-E Regulation:
  Art 32 (2) (new TEN-E): Notwithstanding paragraph 1 of this Article, Annex VII to Regulation (EU) No 347/2013, as amended by Commission Delegated Regulation (EU) .../... of ..., containing the fifth Union list of projects of common interest as well as Articles 2 to 10, Articles 12, 13 and 14, and Annexes I to IV and Annex VI of that Regulation, shall remain in force and produce effects as regards the projects of common interest included on the fifth Union list until the entry into force of the first Union list of projects of common interest and projects of mutual interest established pursuant to this Regulation.
1. **Project promoters** shall draw up an implementation plan for projects on the Union list, including a timetable for each of the following:

   (a) feasibility and design studies including, as regards, climate adaptation and compliance with environmental legislation and with the doing ‘no significant harm’ principle;

   (b) approval by the national regulatory authority or by any other authority concerned;

   (c) construction and commissioning;

   (d) the permit granting process referred to in Article 10(6), point (b).

3. The **Agency and the Groups concerned shall monitor the progress achieved in implementing the projects on the Union list** and, where necessary, make recommendations to facilitate their implementation. The Groups may request additional information in accordance with paragraphs 4, 5 and 6, convene meetings with the relevant parties and invite the Commission to verify the information provided on site.

4. By **31 December** of each year following the year of the inclusion of a project on the Union list, **project promoters shall submit an annual report**, for each project falling under the energy infrastructure categories set out in Annex II, **to the competent authority referred to in Article 8(1)**.

   That report shall include details of:

   (a) **the progress achieved in the development, construction and commissioning of the project**, in particular with regard to the permit granting process and the consultation procedure as well as compliance with environmental legislation, with the principle that the project does ‘no significant harm’ to the environment, and climate adaptation measures taken;

   (b) **where relevant, delays compared to the implementation plan**, the reasons for such delays and other difficulties encountered;

   (c) **where relevant, a revised plan aiming to overcome the delays**.
5. By **28 of February** of each year following the year in which the project promoter has to submit the report referred to in paragraph 4 of this Article, **the competent authorities referred to in Article 8(1) shall submit to the Agency and to the relevant Group the report referred to in paragraph 4 of this Article supplemented with information on the progress and, where relevant, on delays in the implementation of projects on the Union list** located on their respective territory with regard to the permit granting processes, and on the reasons for such delays. The contribution of the competent authorities to the report shall be clearly marked as such and drafted without modifying the text introduced by the project promoters.

6. By **30 April of each year in which a new Union list should be adopted**, the Agency shall submit to the Groups a consolidated report for the projects on the Union list that are subject to the competence of national regulatory authorities, evaluating the progress achieved and expected changes in project costs, and, where appropriate, make recommendations on how to overcome the delays and difficulties encountered. That consolidated report shall also evaluate, in accordance with Article 11, point (b), of Regulation (EU) 2019/942, the consistent implementation of the Union-wide network development plans with regard to the energy infrastructure priority corridors and areas set out in Annex I. In duly justified cases, the Agency may request additional information necessary for carrying out its tasks set out in this paragraph.
Monitoring – link to the PCI process

- In assessing projects, each Group shall give due consideration, for proposed projects that are, at the time of the assessment, projects on the Union list, the progress of their implementation and their compliance with the reporting and transparency obligations.
Climate adaptation requirements in the revised TEN-E Regulation
Climate adaptation

• ‘The process of adjustment to actual or expected climate and its effects’ (IPCC definition)

• Strengthening the efforts on climate adaptation and mitigation, resilience building, disaster prevention and preparedness is crucial
Climate adaptation of energy infrastructure

- The impacts of climate change are already visible, and these impacts are set to intensify in the future. Potential risks for energy infrastructure:
  - **Sea level rise; rising heat levels; disruptions with cooling for power plants; damage to infrastructure; changing tree and leaf coverage resulting in hazards for overhead transmission lines**

- Investing in resilient, climate-proof infrastructure pays off. Infrastructure often lasts for many decades but much of the existing stock is not coping well with the changing climate. To minimise the risk of disasters and be cost-effective over its lifetime, infrastructure should be **climate resilient**.
Relevant TEN-E provisions for project promoters

Article 5 – implementation and monitoring:
• Project promoters to create **implementation plan**, including a timetable for: feasibility and design studies including, as regards, climate adaptation and compliance with environmental legislation and with the principle of “do no significant harm”
• Project promoters to submit an **annual report**, including details on climate adaptation measures taken

Article 10 – permit granting process:
• **Climate adaptation documentation** necessary for pre-application procedure as part of the environmental reports

Annex V - on the Cost-Benefit Analysis (CBA):
• It shall ensure that the **climate adaptation measures** taken for each project are assessed
Documentation on adaptation required for PCIs

• Conduct a **vulnerability and risk assessment** to evaluate whether there are any potentially significant climate risks, how they can be addressed in the design of the project and what are the residual risks:

  ✓ **Necessary for pre-application to permit granting**

  ✓ Information from this assessment and its implementation will feed into the implementation plan of the project and the annual reporting, **reflecting on adaptation measures to address identified risks** and progress on the implementation of these measures, as well as in the CBA.
Commission guidance on climate proofing

• Technical guidance on climate proofing of infrastructure (2021/C 373/01 - July 2021): Climate proofing is a process that integrates climate change mitigation and adaptation measures into the development of infrastructure projects.

• Guidance sets out common principles and practices for the identification, classification and management of physical climate risks when planning, developing, executing and monitoring infrastructure projects and programs.
Vulnerability and risk assessment

The vulnerability and risk assessment aims to identify the relevant climate hazards for the project at the planned location, explain how they are addressed in the design and identify any residual risks. The vulnerability of a project is a combination of two aspects:

1. How sensitive the project’s components are to climate hazards in general (sensitivity)
2. The probability of these hazards occurring at the project location now and in the future (exposure).

Examples of key questions (see guidance):
• Can the materials used during construction withstand higher temperatures (or will they experience, for example, material fatigue or surface degradation)?
• Can the materials used during construction withstand higher/lower temperatures and fire?
• Will the proposed project be at risk because of storms and strong winds? Can the project and its operation be affected by falling objects (e.g., trees) close to its location?
TEN-E provisions outlining Commission’s obligations

Article 22 – reporting and evaluation:

- By 31-12-2027, the EC will publish a report on the implementation of PCIs and PMIs, including an overview of best and innovative practices with regard to mitigation of environmental impact, including climate adaptation, during permit granting processes and project implementation.

- EC to collect experiences and best practices over time to feed into implementation report.
Consultation of stakeholders and transparency under the revised TEN-E Regulation
Consultation of stakeholders and transparency

Public participation and transparency in PCI implementation: cornerstones of the TEN-E policy;

• Member states and NCAs must publish a manual of procedures;

• Project promoters have to:
  • **conduct at least one public consultation** to inform stakeholders and help identify the most suitable location or routing for the project;
  • **establish and regularly update a website** with information on consultations timeline, progress, and outcomes and how it was taken them into account;
  • Open access to information such as the economic and social benefits, costs or environmental impact of projects and early consultation of those affected was sought to address concerns and increase acceptance of PCIs.
How can the Commission help increase public trust, awareness and acceptance of PCIs?

- By enforcing the provisions of the TEN-E Regulation on **transparency and public participation** (including the creation and update of a **Transparency Platform for PCIs**);
- By carrying out **communication** campaigns, studies and useful communication tools and strategies to support project promoters in their engagement activities and promoting project benefits (Brochures, flyers, Press Releases, DG ENER website, replies to citizens enquiries/petitions etc.);
- By facilitating **exchange of best practices**;
- By supporting **regulatory initiatives** to building locally accepted PCIs.
Transparency and participation in the PCI process

The TEN-E Regulation establishes a specific legislative framework on the process preparation of the Commission delegated act setting up the list of projects of common European interest. This binding framework includes the setting up of Regional Groups as well as rules on their memberships, potential invitees, public consultation and decision making process.

The PCI process is an inclusive two-year regional and multi-stakeholder selection process:
Each Group shall invite, as appropriate, the organisations representing relevant stakeholders, including representatives from third countries, and, where deemed to be appropriate, directly the stakeholders, including producers, DSOs, suppliers, consumers, local populations and Union-based organisations for environmental protection, to express their specific expertise. Each Group shall organise hearings or consultations where relevant for the accomplishments of its tasks.

Meetings are webstreamed and materials are available on CIRCABC:
As regards the meetings of the Groups, the Commission shall publish, on a platform accessible to stakeholders, the internal rules, an updated list of member organisations, regularly updated information on the progress of work, meeting agendas, as well as meeting minutes, where available. The deliberations of the decision-making bodies of the Groups and the project ranking in accordance with Article 4(5) shall be confidential. All decisions concerning to the functioning and work of the regional groups shall be made by consensus between the Member States and the Commission.
Regulatory provisions under the revised TEN-E Regulation
Regulatory provisions of TEN-E

- Agree on cost sharing among Member States according to received benefits
- Ensure a suitable set-up to incentivise higher-risk investments

Project Implementation
The CBCA is essential to ensure a stable financing framework for the development of PCIs while minimising the need for financial support.

Able to request a CBCA: infrastructure categories set out in points (1)(a), (b), (c), (d), (f) and point (3) of Annex II, but also the energy infrastructure categories set out in point (1)(e) and point (2) of Annex II;
Article 16 – Enabling investments with a cross-border impact

- **Investment request includes**
  - Updated PS CBA;
  - Business plan;
  - If there is agreement a proposal for a CBCA.

- **Decision:** *joint coordinated decision of the relevant NRAs;*
The allocation of costs across borders shall take into account, the economic, social and environmental costs and benefits of the projects in the Member States concerned and the need to ensure a stable financing framework for the development of PCIs while minimising the need for financial support.

By approx. June 2023, the Agency shall adopt a recommendation for identifying good practices for the treatment of investment requests for projects of common interest.

CBCA provisions apply mutatis mutandis to projects of mutual interest.
Cross-border cost-allocation (Article 16)

- Agree on cost sharing among Member States according to received benefits

Incentives (Article 17)

- Ensure a suitable set-up to incentivise higher-risk investments

Project Implementation
Article 17 – Regulatory incentives

• Several types of PCIs are likely to have externalities that might not be fully captured in, and recovered through, the regular tariff system;

• NRAs should ensure a stable and predictable regulatory and financial framework with incentives for PCIs, that are commensurate with the level of specific risk of the project, in particular for:
  - Innovative transmission technologies
  - Energy technology and digitalisation
  - Projects with high operational expenditure
  - Offshore grids
Article 17 – Regulatory incentives

Project with **higher risks** – NRAs may grant appropriate incentives:

- In their decision NRAs need to further analyse “the specific risks incurred by the project promoters, the risk mitigation measures taken and the reasons for the risk profile in view of the net positive impact provided by the project, when compared to a lower-risk alternative”;

- Eligible risks shall in particular include risks related to new transmission technologies, both onshore and offshore, risks related to under-recovery of costs and development risks.
The incentives decision shall take into account the specific nature of the risk incurred, covering inter alia one or more of the following measures:

- Anticipatory investments
- Recognition of efficiently incurred costs before commissioning of the project
- Providing additional return on the capital invested for the project
- Any other measure deemed necessary
Article 17 – Regulatory incentives

Procedural aspects:

- By approx. January 2023 NRAs shall submit to the Agency its methodology.
- By approx. June 2023 the Agency shall facilitate the sharing of good practices and make recommendations.
- By approx. September 2023 NRAs shall publish its [updated] methodology.
- Where the measures not sufficient to ensure the timely implementation of PCIs, the Commission may issue guidelines regarding incentives.
The C4 team

ener-c4-projects@ec.europa.eu
Infrastructure (europa.eu)