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Opinion

Title Impact assessment on revision of Council regulation (EC) n° 736/96 on notifying the Commission of investments projects of interest to the Community in the petroleum, natural gas and electricity sector
(draft version of 8 May 2009)

Lead DG DG TREN

1) Impact Assessment Board Opinion

(A) Context

Council regulation 736/96 obliges Member States to notify to the Commission investment projects of interest to the Community in the petroleum, natural gas and electricity sector. In the article 6¹ it calls Commission to prepare a report assessing implementation. In its second strategic energy review of November 2008, the Commission announced that it would consider revising the Regulation to adjust it to today's energy challenges.

(B) Positive aspects

The report provides a useful overview of the existing data requirements in annex III.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

General recommendation: The IA needs significant further work to make the case for this initiative, limited though it may seem. In particular, it should present a much clearer explanation of the operational objectives that are pursued and give an overview of what new data is necessary to achieve this (taking into account what is available under current and planned legislation and what is available commercially), set out the value added of collecting the data at EU level, and provide more concrete information on the precise nature, frequency and scope of the data collection. The intervention logic should be reinforced: the problem definition should focus on the shortcomings deriving from

¹ Article 6: At the end of a period of five years, the Commission shall submit to the Council a report on the implementation of this Regulation and how it has contributed to the objectives pursued. The report shall be accompanied by the requisite proposals.

insufficient data availability rather than on structural problems on energy markets, the objectives should correspond more closely to the shortcomings that have been identified, and the options should be assessed against their contribution to these objectives. Similarly, the analysis of impacts should be more focused. An option for repealing the existing regulation should be introduced and assessed.

DG TREN agreed to improve the IA report along these lines during the meeting with the IAB. Given the scope of the changes necessary, the Board asks DG TREN to resubmit a revised version of the IA report on which it will produce a new opinion.

(1) The analysis of the problem concerning data availability needs to be strengthened. The problem analysis should focus on the shortcomings deriving from insufficient data availability rather than on structural issues in energy markets such as capacity and security of supply (these elements should rather be included in the section on the policy context). The IA should clarify the reasons for weak implementation of the existing regulation. It should indicate clearly the data – broken down by source, fuel and component of the energy infrastructure – which should in principle be available on the basis of the current directive (and indicate the degree of actual enforcement/availability), data covered by other legislation (such as the renewables directive and the internal gas/electricity market package etc.), readily available on the market (e.g. from European transmission network operators) and data that is currently lacking and not envisaged by the current Regulation (like i.e. efficiency aspects of new installations). The IA should outline the shortcomings in policy making that have arisen or may arise in future because of these data gaps, in order to provide evidence for the value added of this initiative. Finally, the problem analysis should explain what the scope of application of the current requirements is, i.e. what is understood by projects in the 'community interest', and whether it needs changing.

(2) Policy objectives, and in particular what use will be made of the data, should correspond more closely to the identified problems. The objectives need to correspond more closely to the problems identified. In particular, the report should demonstrate how the collected data will be used in order to address the shortcomings in policy making identified in the problem definition section. The problem definition should provide either a clearer rationale for the following objectives or else delete/modify them: i) development of a common understanding of needs and risks (specific objective) and taking into account 'standard categories' used by operators (operational objective); ii) monitoring of the uptake of the new technologies (specific objective); iii) ensuring consistency with sector specific legislation (specific objective); iv) protecting data (specific objective) and limiting confidentiality (operational objective).

A clearer justification should be provided for two operational objectives (data purchasing by the Commission and data publishing) or else they might be dropped. The objectives should also be expressed in more measurable terms (SMART) that would allow for easier monitoring of whether the revision of the regulation has brought the desired effect.

(3) Policy options need to be restructured and assessed against proportionality. The IA should contain a 'do nothing' option/baseline scenario (elements of which now appear in options 0, 1, 2, and 2a), and the difference between options 2 and 3 should be made more explicit. An option of repealing the regulation should be added and analysed in the IA. For each option the IA report should clarify the scope of the proposed measures, as well as the method of collecting the data, who would be responsible for the collecting and reporting, and the frequency. The issue of whether and how data should be validated by Member States should be analysed further. The IA should also clarify whether the current thresholds for notification would be changed (e.g. in terms of thermal capacity), and what new projects would need to be added (e.g. carbon capture and storage), A discussion of the potential of harmonising reporting obligations with those of ENTSO or the TEN-E regulation should be added. Finally, the comparison of options should be complemented with an assessment of their contribution to reaching the policy objectives.

(4) Analysis of impacts should reflect more closely the revised problem definition and content of the proposed measures. The analysis of benefits should reflect the fact that this initiative focuses on problems deriving from lack of availability of data rather than on structural issues in energy markets, and therefore should not include benefits such as avoided energy system interruptions. It should also specify the impact on the main actors (public authorities, private companies, grid operators, Eurostat, etc), and what would be the operational costs, including administrative burden, of providing the data. Depending on the choice made in designing policy options, the analysis of impact may need to distinguish between different categories of collected data (e.g. historical and forward looking).

(D) Procedure and presentation

In general, the procedural and presentation requirements have been met. The stakeholders' positions, particularly on issues such as the sensitive nature of some data, its reliability and relevance, scope of the reporting and roles of particular stakeholders in the new system, should be reflected more fully in the IA..

2) IAB scrutiny process

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