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Alexandros Lykourazos' speech at the Official Conference Dinner

The proposed European Infrastructure Package and its legal barriers

It is well known that the European Commission has proposed a new Regulation since October 2011, which is at the stage of final consultation, aiming at improving the coordination of network development and accelerating electricity, natural gas, oil and CO₂ investments in twelve (12) "strategic trans European energy infrastructure corridors and areas". The new Regulation, replacing the existing TEN-E framework, **will set rules on how to identify "projects of common interest" (PCIs), whose timely implementation is essential to support the achievement of EU energy policy objectives**. These projects will typically involve more than one Member State via physical location and/or via a significant cross-border impact. PCIs will be selected in a two-stage process: first, the project promoter submit a proposal to the relevant "regional expert group" (being composed of representatives of Member States, National Regulator Authorities and Transmission System Operators), which will prepare an initial list. Then, the Commission will take the final decision. ACER (ie the European Regulator) will be responsible for monitoring and evaluating project implementation.

A "harmonized energy system-wide cost-benefit analysis" for PCIs, taking into account social, economic and environmental costs and benefits, is a core element of this proposal. Concrete methodologies will have to be developed by ENTSO-E and ENTSO-G, respectively, and have to be approved by the

Commission taking into account the opinion of ACER. Based on this, the costs for PCIs shall be allocated according to the direct and indirect benefits occurring in different Member States and will be paid for by grid users through national tariffs for network access. National Regulator Authorities shall take a joint decision on the allocation of investment costs to be borne by each system operator. If they do not reach an agreement, “the decision on the investment request including cross-border cost allocation [.....] as well as the cost if the investments are reflected in the tariffs shall be taken by ACER.” If a PCI suffers from higher risks for development, construction or operation, national regulators “shall ensure that appropriate incentives are granted to that project”. In case a PCI encounters “significant implementation difficulties” the Commission may nominate a European coordinator. If the commissioning of a PCI is delayed by more than two years without sufficient justification, the Commission may launch a call for proposals open to third parties to build the project according to certain conditions.

Furthermore the proposed Regulation sets minimum standards for **transparency**, which is an important principle for tarification within EU legislation, and also public participation while in parallel fixes a minimum allowed duration for the permit granting process in order to accelerate project realization.

Finally the proposed Regulation specifies the conditions under which PCIs might be eligible for financial support in the form of grants. Public funds of 9.1 bn Euros will be available for the energy sector under the Connecting Europe facility for the period 2014-2020.

We have to keep in mind though that the successful implementation of PCIs **presupposes the removal of some eventual legal barriers.**

First of all national regulations do not allow TSOs to include investments realized in third countries in the own asset base. An illustrative example could be a new cable within Germany that might benefit mainly for example Poland and Netherlands. However, Polish or Dutch TSOs might first not be allowed to invest in Germany and second their national regulations do not foresee the inclusion of any assets on foreign territory into their RAB. One possible

solution solving this issue could be the financing of respective infrastructures through a European tariff component.

Second the proposed Regulation specifies, as I mentioned before, that in case the concerned national regulators do not reach an agreement on an investment request, ACER “shall take decisions” regarding the allocation of costs as well as the way on how these costs are reflected in the national tariffs. This decision will be submitted to the Commission. However, it is not clear if ACER or the Commission have the legal power to step over national Regulators and to enforce decisions regarding cost allocation, the regulation of national TSOs and tariff setting.

Third, even though the proposed Regulation says that “national regulatory authorities shall ensure that appropriate incentives are granted”, it does not provide any stimulus to national regulators themselves to do it. In other words, if the regulators do not want to provide incentives to TSOs to expand their grids, they are not forced to do so and if they want to give incentives, existing legislation already allows them to do so. In fact, the allocation of costs is always prerogative of national regulators and it remains to be doubted whether national regulators will fully cooperate voluntarily for increasing total EU welfare, especially in those cases where increasing interconnection capacity will have a substantial impact on consumer surplus due to rising energy prices. Therefore, an important role for the EU could be to incentivize National Regulator Authorities rather than going into details about how regulators should incentivize Transmission System Operators.

Forth, congestion rents are not mentioned at all in the proposed regulation. However, congestion rents emerge due to bottlenecks at cross-border lines, which constitute a major reason for developing new infrastructure to accommodate cross-border exchange to the maximization of the total welfare for the interconnected countries. Therefore, these should be taken into account in the cost-benefit allocation mechanism, either being used directly to pay the new infrastructure, as suggested by existing legislation, or to reduce national tariffs, to compensate the least benefitting Member States for contributing in the construction of the new infrastructure.

I do not wish to tire you with more details of the legal aspects of the regulation. I would like to conclude stating that the EU should call for the removal of the legal barriers, as mentioned before, that might impede grid investments where strong geographical asymmetries in costs (i.e. investment needs) and benefits occur. It is necessary that third parties can invest where incumbent Transmission System Operators do not show interest to realize identified priority projects. Those who wish to take action should not be forbidden to do so. Actually, as a positive side-effect of such a regime, the need for ex-ante cost-benefit allocation arrangements for such projects would be reduced.

Being optimistic by nature I believe that these legal barriers as well as the difficult financial situation that we are facing will soon be overcome. We must remain calm and patient.