
**POSSIBILE COMPROMESSO PER LA REVISIONE DEGLI ARTICOLI 16 E 17 DELLA
“Proposta di regolamento UE sugli orientamenti per le infrastrutture
energetiche transeuropee” [COM(2020) 824 def.]**

Revision of the TEN-E Regulation, most important articles DSO Smart Grids

Article 16

Enabling investments with cross-border impacts

1. The efficiently incurred investment costs, which excludes maintenance costs, related to a project of common interest falling under the categories set out in points (1)(a), (b), (c), (d) and (e) of Annex II and projects of common interest falling under the category set out in point (3) of Annex II and point 1 (c) of Annex IV, where they fall under the competency of national regulatory authorities, shall be borne by the relevant grid operator or the project promoters of the transmission or distribution infrastructure of the Member States which the project provides a net positive impact, and, to the extent not covered by congestion rents or other charges, be paid for by network users through tariffs for network access in that or those Member States.

2. The provisions of this Article shall apply to a project of common interest falling under the categories set out in points (1)(a), (b), (c), (d) and (e) of Annex II and point 1 (c) of Annex IV where at least one project promoter requests the relevant national authorities their application for the costs of the project. They shall apply to a project of common interest falling under the category set out in point in point (3) of Annex II, as relevant, only where an assessment of market demand has already been carried out and indicated that the efficiently incurred investment costs cannot be expected to be covered by the tariffs.

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In allocating costs across borders, the relevant national regulatory authorities, in consultation with the grid operator concerned, shall seek a mutual agreement based on, but not limited to, the information specified in paragraphs 3(a) and (b). Their assessment shall be based on the same scenario as used in the selection process for the elaboration of the Union list where the project of common interests is listed. Where a project of common interest mitigates negative externalities, such as loop flows, and that project of common interest is implemented in the Member State at the origin of the negative externality, such mitigation shall not be regarded as a cross-border benefit and shall therefore not constitute a basis for allocating costs to the grid operator of the Member States affected by those negative externalities.

Justification to amendments Article 16

For some reason, categories concerning smart grids have been removed for incentives. Even though this likely is a mistake, we must make sure that this is amended in the new regulation.

Incentive models vary greatly across the single energy market. In some member states, there are incentives with additional WACC for EU projects. In other member states, projects can receive regulatory depreciation on assets financed by grants.

These are two good examples of how DSOs can be incentivised to take on PCI projects and receive funding from the CEF.

However, this is not the case in all member states. In MSs such as Germany and Sweden there is no incentive at all, as the operators are not allowed to earn returns on the RAB that is financed by EU or other external grants. This, combined with the fact that such additional physical assets will automatically drive up OPEX, which is often object to efficiency requirements while there is no recognition in the asset base of the assets financed by the grant, means successful projects could in fact be EBIT-neutral or EBIT-negative for the company.

Currently there are only 5 candidate PCI smart grid projects for the 5th PCI list. Given the consensus the important role Smart Grids plays in our ongoing energy transition, this must be addressed. While there are myriad of other reasons that might have contributed to this problem, E.ON continues to believe that the main reason behind the current lack of smart grid projects in the PCI list and CEF is due to the financial disincentive mentioned above.

It would also be worthwhile to point out that the PCI process is a rather complicated one, involving many FTEs. Sadly, under the current regimes in place in many MS, the financial incentives are simply not in place for DSOs to make a sound business case for utilising the PCI mechanism and the CEF funding.

Article 17

2. In their decision granting the incentives referred to in paragraph 1, national regulatory authorities shall consider the results of the cost-benefit analysis on the basis of the methodology drawn up pursuant to Article 11 and in particular the regional or Union-wide positive externalities generated by the project. The national regulatory authorities shall further analyse the specific risks incurred by the project promoters, the risk mitigation measures taken and the justification of 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 and distribution technologies, both onshore and offshore, risks related to under-recovery of costs and development risks.

3. The decision granting the incentives shall take into account the specific nature and risk incurred by the respective project and shall grant incentives covering, inter alia, one or more of the following measures:

(a)

the rules for anticipatory investment; or

(b)

the rules for recognition of efficiently incurred costs before commissioning of the project;

and

(c)

the rules for providing additional return on the capital invested f by the project promoter for the project in a certain percentage on top of the regulated rate of profitability approved according to national legislation; or

(d)

the rules for recognition of costs (CAPEX and OPEX), which shall include:

(1) future regulatory depreciation allowance for any CAPEX costs of major maintenance, repair, or replacement of any project-related assets; and

(2) the non-delayed recognition, in full, of any operational costs of project-related assets and exemption of projects from efficiency targets and related deductions under national legislation; .

(e)

smartness bonus for innovative digital solutions, including solutions developed within the Horizon Europe programme.

7. Where the measures referred to in paragraphs 5 and 6 are not sufficient to ensure the timely implementation of projects of common interest, the Commission shall issue guidelines regarding the incentives laid down in this Article, point 3. (c) or (d).

Justification to amendments Article 17

At some point, assets financed by funding will have to be replaced by new ones. Since there hasn't been any recognition of the depreciation, there aren't any capital for re-investments.

Since in many MS, DSOs cannot be incentivized via CEF and the PCI mechanism to look across the border, the stated objectives of the TEN-E to finance projects that will contribute to the greater European energy system integration and to support the ongoing energy transition might not be sufficiently achieved via Smart Grids, as DSOs are only incentivised to optimize locally.

Projects related to the Smart Grid category should also be able to benefit from incentives in Article 16 and 17. Furthermore, the incentives need to be adapted in order to properly incentivize the DSOs.

Currently DSOs and smart grid projects are not referred to in neither article 16 nor 17, we would therefore recommend the institutions to not treat smart grid projects any differently compared to other projects.

It must be assured that:

- DSOs aren't disincentivised by raising OPEX linked to the projects funded by grants and punished with efficiency requirements for their PCI projects.
- DSOs can benefit from future regulatory depreciation allowance for any CAPEX related to maintenance, repair or replacement of project-related assets. Furthermore, financial incentives don't necessarily have to be connected to grants. Projects making it to the PCI list could benefit from a "smartness bonus". Since there already is a well-functioning PCI selection process on the EU level, the PCI status can thus be used to unlock other kinds of mechanisms or grants rather than just the CEF-budget, which is admittedly quite limited in relation to the huge investment need in grid infrastructure.

To this end, a connection could also be made to e.g. the Horizon Europe program, where innovative solutions to support the energy transition are created. This would not only benefit the PCI-project itself, but also innovative solutions such as flexibility platforms to become more than just another flexibility platform that dies when the project is over.

The logic with receiving regulatory depreciation on assets financed by grants is the same as how DSOs are working with their costs and revenues today. When a customer connects to the electricity grid, the customer pays a connection fee to the DSO. The connection fee mirrors the cost of connecting the customer. As soon as the customer is connected to the DSO, the customer will start paying a tariff. In the tariff, the depreciation cost is included as it will finance the replacement of the installed equipment after its lifetime. This is necessary, because the customer will only pay the connection fee once!