

## **MEMORANDUM OF UNDERSTANDING**

**between**

**the European Union Agency for the Cooperation of Energy Regulators,  
the National Competent Authorities pursuant to Article 8(1) of Regulation (EU)  
2022/869**

**and**

**the European Commission**

**on the exchange of information under Regulation (EU) 2022/869**

The European Union Agency for the Cooperation of Energy Regulators (the 'Agency'),

and

the National Competent Authorities responsible for facilitating and coordinating the permit granting process for projects on the Union list, pursuant to Article 8(1) of Regulation (EU) 2022/869 (the 'National Competent Authorities'),

and

the European Commission's Directorate General for Energy ('DG ENER'),

hereinafter also referred to as 'Participant' or 'Participants', considering that:

- 1) Pursuant to Article 5(3) of Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure ('TEN-E Regulation'), the Agency monitors the progress of projects on the Union list, including, where necessary, make recommendations to facilitate their implementation.
- 2) Pursuant to Article 5(4) of the TEN-E Regulation, project promoters shall submit an annual report, for each project falling under the energy infrastructure categories set out in Annex II of the TEN-E Regulation, to the National Competent Authorities. The annual report provides information within the meaning of Article 2 of this Memorandum of Understanding on the progress achieved and, where relevant, the delays in the implementation with regard to permit granting processes, including the reasons for the delays.
- 3) Pursuant to Article 5(5) of the TEN-E Regulation, the National Competent Authorities shall monitor the progress of projects on the Union list on their respective territories and shall submit the project promoters' reports 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 (also referred to as the 'contributions of the National Competent Authorities'), to the Agency and to the relevant Regional Groups. The contributions of the National Competent Authorities to the report shall be clearly marked as such and drafted without modifying the text introduced by the project promoters.

- 4) With respect to the National Competent Authorities' obligation to submit project promoters' annual reports to the relevant Regional Group mentioned at Recital (3) above, DG ENER can act as a service provider for the purpose of facilitating an efficient and timely exchange of such reports and any other information between the National Competent Authorities and the relevant Regional Groups.
- 5) Pursuant to Article 5(6) of the TEN-E Regulation, the Agency shall submit to the Regional 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 shall make, where appropriate, recommendations on how to overcome the delays and difficulties encountered. In duly justified cases, the Agency may also request additional information necessary for carrying out its tasks.
- 6) Accordingly, the Agency and the National Competent Authorities shall provide monitoring reports on projects on the Union list which are based on a similar pool of information provided by project promoters.
- 7) To enhance the cost-efficiency of the monitoring process for the Participants, promoters of projects on the Union list will be able to provide information through a single IT tool managed by the Agency, through which information is exchanged with the National Competent Authorities.
- 8) The rules for the exchange of information provided in this Memorandum of Understanding should enable the Participants to carry out their tasks in an efficient, coordinated and consistent way, having regard to the most up-to-date information and to the confidentiality, integrity and protection of that information, including personal data.
- 9) The information exchange mechanism should be flexible so that it can evolve over time by remaining compliant with applicable Regulations, taking into account changing circumstances in the environment of projects on the Union list's implementation, legislative changes or the experience gained in implementation monitoring,

Have jointly decided on certain modalities as regards the exchange of information under Regulation (EU) 2022/869, as follows:

## *Article 1*

### **Purpose**

1. The purpose of this Memorandum of Understanding is to establish a framework within which: i) project promoters are enabled to provide the annual reports to the National Competent Authorities, pursuant to Article 5(4) of the TEN-E Regulation, through a single platform; ii) the single platform aims to provide the National Competent Authorities with the possibility to exchange information with the Agency and DG ENER enhancing the efficiency of the fulfilment of their obligations pursuant to Article 5(3) and Article 5(5) of the TEN-E Regulation.

## *Article 2*

### **Definitions**

For the purpose of this Memorandum of Understanding, the following terms have the following meaning:

1. 'National Competent Authorities' means the National Competent Authorities identified by each Member State as responsible for facilitating and coordinating the permit granting process of projects on the Union list within the meaning of Article 8(1) of Regulation (EU) 2022/869;
2. 'information' means the information contained in the annual report and any subsequent amendments or clarifications thereof, which promoters of projects on the Union list submitted pursuant to Article 5(4) of the TEN-E Regulation to the National Competent Authorities, as well as the information contained in the contributions of the National Competent Authorities submitted pursuant to Article 5(5) of the TEN-E Regulation. This information may contain in particular:
  - a) general project attributes, such as name and contact details of the project promoter, project websites, the description of the project, including all technical, operational and administrative details, and updates in the project design;
  - b) information on the project's financing and regulatory treatment of the projects, including requests for public funds, exemptions, cross-border cost allocation and/or project specific regulatory incentives, and the outcome of those requests;
  - c) details related to the expected costs of the project, including, *inter alia*, project investment costs (CAPEX), operating expenditure and their estimated variations, as well as changes to previous estimates;

- d) details related to the transfer capacity increase (where relevant) and the expected benefits, including the data about the studies carried out for their calculation, the project's contribution to the objectives laid down in the TEN-E Regulation, the monetised value of the benefits demonstrated by the project, information related to the benefits in the hosting country and benefits projected on other individual Member States;
  - e) the progress in the implementation of the project, including a description of the works performed, information about related intergovernmental agreements, the project's inclusion in the relevant national development plan or other planning instruments and the reason for any lack of inclusion, the current status and the reasons for any delay, rescheduling, difficulties or cancellation and a detailed implementation schedule showing the project milestones, as well as the previously and currently planned deadlines;
  - f) the actions which the project promoter took or proposed to take to overcome the delays and difficulties encountered;
3. 'exchange' means the transmission of information between the Participants via the IT tool managed by the Agency or other means related only to those projects on the Union list which are situated, at least in part, in the Member State of the National Competent Authorities;
4. 'IT tool' means the platform established and managed by the Agency for the purpose of facilitating the fulfilment of promoters of project on the Union list's reporting obligation pursuant to Article 5(4) of the TEN-E Regulation towards the National Competent Authorities, as well as the fulfilment of National Competent Authorities' obligations towards the Agency and Regional Groups pursuant to Article 5(5) of the same Regulation.

### *Article 3*

#### **Exchange of information**

1. The Participants jointly decided that the obligation to transmit information pursuant to Articles 5(4) and 5(5) of the TEN-E Regulation can be fulfilled by providing direct access to the information via the IT tool.
2. The National Competent Authorities collect and transmit to the Agency, via the IT tool, the information included in project promoters' annual reports within the deadline set out in Article 5(5) of the TEN-E Regulation.
3. The National Competent Authorities provide their contributions to the reports of the promoters of projects on the Union list through the same means mentioned at point 2 and in line with the terms and deadline provided by Article 5(5) of the TEN-E Regulation.

4. Where project promoters' submission of their annual report takes place via the IT tool, the National Competent Authorities agree to grant the Agency direct access to the annual report via the IT tool at the same time they receive it. The contributions of the National Competent Authorities will be submitted afterwards via the IT tool and pursuant to the deadline and procedures established in Article 5(5) of the TEN-E Regulation.
5. The National Competent Authorities provide DG ENER with direct access to the information via the IT tool; DG ENER proposes to act as a service provider for the purpose of receiving the information, including the contributions of National Competent Authorities, and transmitting those to the relevant Regional Group, enabling the National Competent Authorities to fulfil their reporting obligation pursuant to Article 5(5) of the TEN-E Regulation in a timely and efficient manner.
6. DG ENER uses the information received pursuant to the TEN-E Regulation and this Memorandum of Understanding to enable an efficient and timely exchange of the annual reports and the National Competent Authorities' contributions between the National Competent Authorities and the relevant Regional Groups, ensuring the implementation of the provisions of Article 5 of the TEN-E Regulation.

#### *Article 4*

#### **Exclusion of Liability**

1. The Agency ensures the proper functioning of the IT tool, but in no event can it be held liable to any person or entity for any direct or indirect loss or damage arising from the use of the IT tool, its content, or its unavailability. In case of malfunctioning, the Agency would cooperate to ensure the IT tools are restored to their normal functioning as quickly as possible and retrieve any lost data to the extent it is technically possible. The exclusion of liability pursuant to Article 4(3) of this Memorandum of Understanding does not concern liability stemming from obligations established by legislative provisions.
2. Neither the European Commission, nor DG ENER hold any responsibility over the proper functioning of the IT tool and cannot be held liable for any direct or indirect loss or damage arising from the use of the IT tool, its content, or its unavailability.
3. None of the National Competent Authorities hold any responsibility over the proper functioning of the IT tool and cannot be held liable for any direct or indirect loss or damage arising from the use of the IT tool by other users, including its content, or for its unavailability.

4. Neither the Agency, DG ENER nor the European Commission are liable for the accuracy and/or validity of the information. Where project promoters' submission of their annual report takes place via the IT tool, as described in Article 3(4) of this Memorandum of Understanding, the relevant National Competent Authorities are not liable for the accuracy and/or validity of the information contained therein.
5. If any Participant becomes aware that any information exchanged under this Memorandum of Understanding is inaccurate, it is expected to inform the other Participants in writing without delay.

## *Article 5*

### **Protection and confidentiality of information**

1. The Participants are expected to preserve the confidentiality of commercially sensitive information.
2. The Participants are expected to have mechanisms in place to ensure the integrity and protection of the information received. Should any of the information received represent confidential information or business secrets, if so indicated by the owners of the respective information, the Participants endeavour to have mechanisms in place to ensure such confidentiality.
3. The Participants will ensure the protection of personal data in accordance with the applicable legislation in their jurisdiction, Regulation (EU) 2016/679<sup>1</sup> and Regulation (EU) 2018/1725<sup>2</sup>.
4. The Participants remain fully responsible for their use and/or disclosure of the received or submitted information.

## *Article 6*

### **Publication**

The Participants agree to make this Memorandum of Understanding publicly available.

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.

<sup>2</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295, 21.11.2018, p. 39.

## *Article 7*

### **Communications**

1. Unless otherwise agreed between the Participants, communications under this Memorandum of Understanding should be made in the English language.
2. Each Participant proposes to designate a contact point to facilitate communications on any matter relating to the implementation of this Memorandum of Understanding.
3. The Agency will designate a contact for all matters concerning the use and functionalities of the IT tool.

## *Article 8*

### **Signature, entry into force and termination**

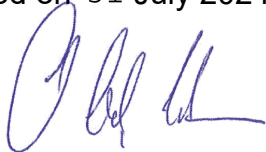
1. National Competent Authorities that wish to become a Participants to this Memorandum of Understanding may do so by signing the here-enclosed Annex A.
2. The collaboration set out in this Memorandum of Understanding is to start after 90 days from its signature by the Agency and DG ENER and from reception by the Agency of the list of Annex A signed by at least 12 National Competent Authorities.
3. This Memorandum of Understanding is concluded for an unlimited period of time and may be discontinued by the Participants at any time. Participants, who intend to discontinue the cooperation are expected to inform the other Participants in writing. By default, discontinuation comes into effect 90 days after the written agreement is signed by the Participants.

The Agency may unilaterally discontinue the collaboration under this Memorandum of Understanding in case of impossibility of any nature on its side to ensure the functioning of the IT Tool overtime. In such case, the Agency will inform the other Participants of the case of impossibility as soon as possible after its occurrence.

4. Any amendment to this Memorandum of Understanding will be subject to the prior agreement between the Participants and will be done in writing.

5. The Memorandum of Understanding between the Agency for the Cooperation of Energy Regulators and the Competent Authorities pursuant to Article 8(1) of Regulation (EU) No 347/2013, laying down administrative arrangements on the exchange of information under Regulation (EU) No 347/2013, dated 22 December 2015, is terminated upon the expiry of the 90 days prior written notice, in line with the terms of Article 9(2) of the same Memorandum of Understanding.

Signed on 31 July 2024



Christian Pilgaard Zinglensen  
Director  
European Union Agency for the  
Cooperation of Energy Regulators  
(ACER)

Qualified electronic signature by:

DITTE MARIA JUUL JØRGENSEN

Date: 2024-07-24 11:03:42 +02:00

Ditte Juul Jørgensen  
Director-General  
DG Energy, European  
Commission



## Annex A

### Declaration on the MEMORANDUM OF UNDERSTANDING

**between the European Union Agency for the Cooperation of Energy Regulators, the National Competent Authorities pursuant to Article 8(1) of Regulation (EU) 2022/869 and the European Commission on the exchange of information under Regulation (EU) 2022/869**

In my capacity as *(Position within the National Competent Authority)* ..... Chairperson I hereby declare that *(Name of the National Competent Authority:)* ..... An Bord Pleanála ..... enters into the Memorandum of Understanding between the European Union Agency for the Cooperation of Energy Regulators, the National Competent Authorities pursuant to Article 8(1) of Regulation (EU) 2022/869 and the European Commission on the exchange of information under Regulation (EU) 2022/869 as of *(Date of signature:)* ..... 1st August 2024

64 Marlborough Street,  
Done at Dublin 1 on 01/08/2024

Signature 