

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2022/342

of 21 December 2021

supplementing Regulation (EU) 2021/1153 of the European Parliament and of the Council with regard to the specific selection criteria and the details of the process for selecting cross-border projects in the field of renewable energy

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the Connecting Europe Facility and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014 ⁽¹⁾, and in particular Article 7(2) thereof,

Whereas:

- (1) Directive (EU) 2018/2001 of the European Parliament and of the Council ⁽²⁾ introduced a new, binding, renewable energy target for the Union for 2030. It also promotes the use of cooperation mechanisms as effective tools that contribute to the achievement of that target.
- (2) Regulation (EU) 2021/1153 widens the scope of the instrument beyond trans-European networks to renewable energy production and establishes a new category of projects for funding under the Connecting Europe Facility (CEF) – ‘cross-border projects in the field of renewable energy’.
- (3) Cross-border projects in the field of renewable energy (‘renewable energy cross-border projects’) should aim to enable the cost-effective deployment of renewables in the Union, support the achievement of the Union’s binding target for renewable energy in 2030 as referred to in Directive (EU) 2018/2001 and contribute to the strategic uptake of innovative renewable technologies. The projects should also contribute to decarbonisation, completing the internal energy market and enhancing the security of supply by promoting cross-border cooperation between Member States in the field of planning, development and the cost-effective exploitation of renewable energy sources.
- (4) To be eligible for financing, cross-border projects in the field of renewable energy should first be included on a list of renewable energy cross-border projects. Having the official status of ‘cross-border project in the field of renewable energy’ may provide benefits such as higher visibility, increased investor certainty, and stronger support from Member States.
- (5) A project promoter whose project has been selected for inclusion on the list of cross-border projects in the field of renewable energy may also apply for funding under Regulation (EU) 2021/1153 for studies or works relating to that project.

⁽¹⁾ OJ L 249, 14.7.2021, p. 38.

⁽²⁾ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

- (6) The objectives, general criteria to be met, and procedure to be followed for the cross-border projects in the field of renewable energy are provided for in Annex Part IV to Regulation (EU) 2021/1153. Article 7 of that Regulation empowers the Commission to adopt a delegated act to lay down the specific selection criteria and the details of the process for selecting the cross-border projects to be included in the list of cross-border projects in the field of renewable energy.
- (7) Renewable energy cross-border projects should be set up by a cooperation mechanism. That mechanism can take any of the forms of cooperation agreement provided for in Articles 8, 9, 11 and 13 of Directive (EU) 2018/2001 and can be set up between two or more Member States, or between one or more Member States and one or more non-EU countries. For this criterion to be met, it is important that there is evidence of a certain degree of support from the Member States and, where relevant, the non-EU countries, involved. For this reason, a written declaration expressing willingness to support the project through a cooperation agreement, validated by a responsible institution in all participating Member States and, where relevant, non-EU countries, should be presented. There are no specific restrictions on the format of the declaration.
- (8) According to Article 11 of Regulation (EU) 2021/1153, legal entities – including joint ventures – established in a Member State, are eligible for the programme. As such, they can submit an application set up by a cooperation agreement for a joint project, including one that involves a non-EU country, under Articles 9 and 11 of Directive (EU) 2018/2001. However, in the specific case of a joint support scheme, according to Article 13 of Directive (EU) 2018/2001 only a Member State can submit an application. If the cooperation mechanism takes the form of a stand-alone statistical transfer according to Article 8 of Directive (EU) 2018/2001, there is no additional investment attached to it and, therefore, support under the CEF may only be necessary for studies in accordance with Article 7(3) of Regulation (EU) 2021/1153.
- (9) According to points 2(b) and (c) of Annex Part IV to Regulation (EU) 2021/1153, cross-border projects should provide a more effective solution to the deployment of renewables as compared to projects implemented by one of the participating Member States alone. Therefore, in addition to being set up by a cooperation mechanism, to be included on the list of cross-border projects in the field of renewable energy, the socioeconomic net benefits of a project must also be demonstrated.
- (10) The socioeconomic net benefits of a cross-border project in the field of renewable energy should be demonstrated by means of a cost-benefit analysis that covers all elements of point 3 of Annex Part IV to Regulation (EU) 2021/1153, prepared by the project promoter. Together with this delegated act the Commission will publish a methodology that sets out how the cost-benefit analysis should be performed and how the Commission should assess the project's compliance with the general criteria ^(?).
- (11) Annex Part IV to Regulation (EU) 2021/1153 establishes the main steps of the procedure for selecting a project to be included in the list of cross-border projects in the field of renewable energy. The selection procedure will entail: (a) a first evaluation by the Commission of the applications for a cross-border project in the field of renewable energy against the general criteria; (b) the establishment by the Commission of a group for cross-border projects in the field of renewable energy with the competence to adopt a draft list and monitor the implementation of the projects in the list in view of maintaining their status; (c) agreement by the group on the draft list; and (d) adoption of the final list by the Commission and review of the list every 2 years.
- (12) The Commission, when adopting the final list of cross-border projects in the field of renewable energy, should aim to ensure an appropriate geographical balance. It may also use regional groupings for the selection of projects keeping in mind that not all Member States are currently part of such a grouping and that cross-border cooperation on renewables deployment can also be between countries not sharing a physical border.
- (13) Renewable energy cross-border projects may involve various technologies that are deemed eligible. For example, renewables generation from on- and offshore wind, solar energy, sustainable biomass, ocean energy, geothermal energy or combinations thereof, their grid connection and additional elements such as storage or conversion facilities.

^(?) SWD/2021/429 final.

- (14) To directly enable the achievement of the EU 2030 renewable energy target, the cross-border projects should always include a renewables generation facility as an integral part of the project. Additional components of the project that indirectly enable the achievement of the EU 2030 renewable energy target and the cost-effective deployment of renewable energy by contributing to the effective integration of the renewables generation can be eligible, however not as stand-alone projects, but as integral part of the cross-border project which is deployed in addition to the renewables generation. Such additional components can be cross-border transmission grid, thermal storage, battery storage, compressed air and liquid air storage, pumped hydro and electrolysis of water coupled with hydrogen storage. Eligible action is not limited to the electricity sector and can cover other energy carriers and potential sector coupling, for example with heating and cooling, power to gas, storage and transport.
- (15) Renewable energy cross-border projects do not necessarily entail a physical link between the cooperating Member States. These projects can be located on the territory of only one involved Member State provided that the general criteria of Annex part IV are met.
- (16) Cross-border projects in the field of renewable energy should comply with the applicable legal requirements on sustainability, greenhouse gas-emission savings, as well as the principle of 'do no significant harm' in accordance with Article 17 of Regulation (EU) 2020/852 of the European Parliament and of the Council ⁽⁴⁾.
- (17) Regulation (EU) 2021/1153 allows the CEF programme to support studies to help develop and identify renewable energy cross-border projects, in accordance with Article 7(3) of that Regulation. These studies aim to prepare cooperation mechanisms for renewables planning and deployment and to overcome initial barriers to setting up such cooperation. Support for such studies can precede a project's inclusion in the list of cross-border projects in the field of renewable energy and can also be used to prepare for its application to the list and/or the cost-benefit analysis.
- (18) A project that has been awarded support for a study under Article 7(3) should not have an advantage in the procedure to be included in the list of cross-border projects in the field of renewable energy and/or receive CEF funding for studies and works. Benefiting from a study under Article 7(3) does also not result in an obligation to apply either to be included in the list of cross-border projects in the field of renewable energy or to apply for CEF funding for studies and works.
- (19) As the risks and profitability of eligible projects may differ and may also evolve over time, it may be appropriate to allow for a part of the available allocation for renewable energy cross-border projects to be provided through contributions to blending operations or a blending facility under Invest EU.
- (20) All relevant provisions under Union legislation, notably on sustainability of bioenergy, capacity allocation at the borders, unbundling, competition and state aid, biodiversity and environmental protection should be fully respected by the renewable energy cross-border projects.
- (21) All projects included in the list of renewable energy cross-border projects should be implemented swiftly and be monitored and evaluated closely and regularly, while keeping reporting requirements for project promoters to a minimum,

⁽⁴⁾ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down specific selection criteria and details of the process for selecting renewable energy cross-border projects pursuant to Article 7(2) of Regulation (EU) 2021/1153.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) 'renewable energy cross-border project' or 'project' means a cross-border project in the field of renewable energy within the meaning of Regulation (EU) 2021/1153;
- (2) 'renewable energy' means a renewable energy as defined in Article 2(1) of Directive (EU) 2018/2001;
- (3) 'project promoter' means a legal entity that develops a cross-border project in the field of renewable energy, including a Member State;
- (4) 'application' means an application to have a project selected as a cross-border project in the field of renewable energy by the Commission under Regulation (EU) 2021/1153;
- (5) 'cooperation mechanism' means cooperation between at least two Member States, or between at least one Member State and a non-EU country, that takes place in accordance with Articles 8, 9, 11 and 13 of Directive (EU) 2018/2001;
- (6) 'cooperation agreement' means a formal agreement setting up a cooperation mechanism;
- (7) 'the draft list' means the list of renewable energy cross-border projects as agreed by the Group referred to in point 4(b) of Annex Part IV of Regulation (EU) 2021/1153;
- (8) 'the final list' means the list of renewable energy cross-border projects as established by the Commission under point 4(g) of Annex Part IV of Regulation (EU) 2021/1153;
- (9) 'host Member State' means a Member State where the renewables generation facility is physically located;
- (10) 'off-taking Member State' means a Member State that makes a financial contribution to the renewables generation investment located in another Member State;
- (11) 'participating Member States' includes both off-taking and host Member States;
- (12) 'storage' means energy storage as defined in Article 2(59) of Directive (EU) 2019/944 of the European Parliament and of the Council ^(⁵).

⁽⁵⁾ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

CHAPTER II

SPECIFIC SELECTION CRITERIA FOR RENEWABLE ENERGY CROSS-BORDER PROJECTS*Article 3***Eligible technologies, components and investments**

The following technologies, components and investments shall be eligible as part of the renewable energy cross-border projects:

- (a) Generation technologies based on any of the renewable energy sources listed in Directive (EU) 2018/2001;
- (b) Storage facilities both on and offsite, provided that they form an integral part of the project, effectively enable the integration of and are ancillary to a renewables generation facility;
- (c) Any system and component integrating information and communication technologies, including to improve predictability of renewables production and any equipment or installation essential for the investment to operate properly, including monitoring and control systems, provided they form an integral part of the project, effectively enable the integration of and are ancillary to a renewables generation facility;
- (d) Connection of the renewables generation either to the distribution or the transmission grid and, if applicable, of storage to either the transmission or distribution grid, provided they form an integral part of the project, effectively enable the integration of and are ancillary to a renewables generation facility;
- (e) Conversion of renewable electricity to renewable liquid and gaseous fuels of non-biological origin, including transformer or compression facilities, provided they form an integral part of the project, effectively enable the integration of and are ancillary to a renewables generation facility;
- (f) Any other technologies, components or investments specified in the relevant CEF work programmes and calls, that form an integral part of the project, effectively enable the integration of and are ancillary to a renewables generation facility.

*Article 4***Cooperation mechanisms setting up the renewable energy cross-border projects and application**

1. For a project to be included in the draft list of renewable energy cross-border projects, it shall be set up by a cooperation mechanism.
2. A project promoter applying for a project to be included in the draft list of renewable energy cross-border projects shall provide a written declaration of the participating Member States and, where relevant, third countries, expressing their willingness to conclude a cooperation agreement in order to set up the renewable energy cross-border project. The declaration does not require a specific format, but it shall be signed by the Ministries of the participating Member States in charge of implementing the cooperation agreement, including transit countries, where relevant and where the agreement requires the use of their infrastructure.
3. The application to be included in the draft list shall include the information on the criteria for selection referred to in this Chapter.

*Article 5***Socioeconomic net benefits of the renewable energy cross-border projects**

1. A project promoter applying for a project to be included in the draft list of renewable energy cross-border projects shall demonstrate that the potential overall cost savings in the deployment of renewables and/or the benefits for system integration, security of supply or innovation that are associated with the project outweigh its costs ('socioeconomic net benefits').

2. The socioeconomic net benefits referred to in the previous paragraph shall be demonstrated for the period, which shall cover at least 15 years, starting with the first year of operation of the project and reflecting its technological lifetime.
3. The estimation of the project's socioeconomic net benefits referred to in the first paragraph shall be based on a cost-benefit analysis, prepared by the project promoter. The cost-benefit analysis shall include all elements referred to in point 3 of Annex Part IV of Regulation (EU) 2021/1153 and shall demonstrate the existence of socioeconomic net benefits in comparison to a similar project or renewable energy project implemented by one of the Member States participating in the cooperation agreement.

CHAPTER III

SELECTION PROCESS FOR THE LIST OF RENEWABLE ENERGY CROSS-BORDER PROJECTS

Article 6

Group for renewable energy cross-border projects

1. The Commission shall set up a group for renewable energy cross-border projects ('the Group') which shall be composed of one representative of each Member State and one of the Commission.
2. The representative of each Member State may be accompanied by other relevant parties, such as the national regulatory authority, transmission or distribution system operators, or permitting authorities.
3. The Group shall invite, as appropriate, promoters of cross-border projects in the field of renewable energy and representatives of non-EU countries involved in renewable energy cross-border projects.
4. The Group may invite to its meetings, as appropriate, organisations representing relevant stakeholders including producers, suppliers, consumers and organisations for environmental protection. The Group may organise hearings or consultations, where relevant for the accomplishment of its tasks.
5. The Group shall establish the draft list of projects to become renewable energy cross-border projects and shall monitor the implementation of the projects in the final list.
6. The Group shall adopt its own rules of procedure and shall be chaired by a representative of the Commission.

Article 7

Draft list of renewable energy cross-border projects

1. The Commission shall launch a call for applications to have a project selected as a renewable energy cross-border project at least once per year.
2. Following an evaluation of the projects, in accordance with point 4(c) of Annex Part IV of Regulation (EU) 2021/1153, the Commission shall prepare and submit to the Group a list of the projects that comply with the selection criteria set out in Annex Part IV of Regulation (EU) 2021/1153, together with the relevant information referred to in point 4(d) of Annex Part IV of Regulation (EU) 2021/1153. The Commission shall not submit the full applications to the Group, or any information that was indicated by the applicant as commercially sensitive.
3. On the basis of the information received from the Commission, the Group shall establish the draft list of projects to become renewable energy cross-border projects.

*Article 8***Final list of renewable energy cross-border projects**

1. The Commission shall adopt the final list of renewable energy cross-border projects in accordance with Article 25(1)(b) of Regulation (EU) 2021/1153. The final list of projects shall not attribute ranking to the projects on the list.
2. The final list shall reflect the draft list established by the Group in accordance with Article 7(3) of this Regulation. If the final list differs from the draft list, the Commission shall obtain the positive opinion of the Group before adopting the final list.

*Article 9***Review of the final list of renewable energy cross-border projects**

1. The Commission shall review the list at least every 2 years.
2. Without prejudice to the evaluation referred to in the previous paragraph, the Commission shall withdraw a project from the final list as soon as it establishes one of the following:
 - (a) the project's evaluation was based on incorrect information which was a determining factor in the evaluation; or
 - (b) the project does not comply with Union law.
3. The Commission may withdraw a project from the list if:
 - (a) the endorsement by one or all of the participating Member States has been withdrawn; and/or
 - (b) the project promoter informs the group that the project is no longer pursued; or
 - (c) the project has not progressed since it was put on the list; or
 - (d) the project has been completed.
4. Before withdrawing a project from the list, the Commission shall consult the Group and shall take due account of the relevant information received from the members of the Group.

*Article 10***Monitoring the implementation of projects included in the list of renewable energy cross-border projects**

1. The promoter of the project that is included in the final list shall submit a progress report with relevant updates of the project specification and implementation once per year to the Commission, and the Commission shall submit the report to the Group.
2. If project promoters include commercially-sensitive information in their reporting, they shall indicate which information shall neither be made public nor be submitted to the Group in a manner that it allows the project to which the information refers to be identified. In this case, the Commission shall provide the information on monitoring of progress of the projects to the Group in an aggregated manner.
3. For the purpose of the monitoring by the Group, the progress report submitted by the promoter shall include:
 - (a) an updated project description and its status;
 - (b) a timetable of the following as applicable: feasibility, design, permitting, construction, commissioning;
 - (c) any administrative, legal, financial or other information that differs from the previously provided information.
4. Based on the information on progress submitted by the Commission, the Group shall monitor the implementation of the projects.

5. The Group may make recommendations pertaining to a specific project with a view to overcoming any possible delays in implementation. This may include actions to be taken in one or more Member States.

Article 11

Information and publicity

1. The Commission shall publish information on the projects included in the final list of projects in a manner that is easily accessible to the general public.
2. The Commission shall publish only non-commercially sensitive information of the project, such as project description, status, implementation timetable or location.
3. The promoter of a project included in the final list shall publish at least the information indicated in the previous paragraph through its own webpage and update it at least every 6 months.

Article 12

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 21 December 2021.

For the Commission
The President
Ursula VON DER LEYEN
