



Position Paper on the proposed revision to the Environmental Impact Assessment Directive

(DIRECTIVE 85/337/CEE OF THE COUNCIL OF 27 JUNE 1987 ON THE ASSESSMENT OF THE
EFFECTS OF CERTAIN PUBLIC AND PRIVATE PROJECTS ON THE ENVIRONMENT - AS MODIFIED
BY DIRECTIVE 97/11/EC)

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Introduction

The Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment establishes the categories of projects (including electrical infrastructure) that require environmental impact assessment and describes the main procedure. The directive is transposed into national legislation by all member states with several local differences e.g. regarding the categories of projects subject to EIA, public participation, etc.

In 2009 EC issued a report on the application and effectiveness of the EIA Directive¹. In summer 2010, EC launched a public consultation on the Review of the Environmental Impact Assessment (EIA) Directive with the objective to collect opinions on:

- the overall view on the functioning and effectiveness of the EIA Directive,
- the need to amend the EIA Directive,
- the possible policy options for review,
- the areas to be improved / amended.

The EC has started the Impact Assessment process with the intention to revise the current EIA directive. One of the objectives of this revision is a “simplification exercise, the aim being to identify overlaps, gaps and potential for reducing regulatory and administrative burdens, in particular regarding transboundary projects (e.g. pipelines or power cables on the sea bed)”².

The development of electricity infrastructure is of crucial national and European importance. Many electricity infrastructure projects face severe obstacles during the authorization phase. The complexity, duration and ineffectiveness of authorization procedures and the lack of acceptance by civil society are among the main reasons for delays in completing high-priority electricity infrastructure projects across Europe.

From the answers to the consultation of the EC beginning 2011 regarding the permitting procedures, it became clear that the realization of an EIA is often one of the main reasons for delay in the realisation of large transmission grid projects.

Comments made by ENTSO-E members concern the lack of similar standards for performing the EIA in the different member states, lack of guidelines concerning the acceptance of corridors in protected areas, unclear legislation, the multitude of alternatives that need to be examined, the lack of balance between environmental impact and social benefits of a project, etc..

Within the framework of the revision of the EIA directive and the Infrastructure Package announced by the EC by the end of 2011, including measures regarding permitting procedures for large energy infrastructure projects³, ENTSO-E aims to give its view on modifications to the directive through this position paper.

¹ COM (2009) 378 final

² See COM (2009) 378 final

³ COM(2010) 639 final

Scope of the Directive – Projects categories

According to the directive, the authorization of public or private projects that are likely to have material impact on the environment can only be granted after prior assessment of the effects that these projects are likely to have on the environment.

Accordingly, article 4 of the Directive distinguishes two categories:

- (a) Subject to article 2 paragraph 3, the projects listed under annex I are subject to a prior assessment, conforming to articles 5 to 10.
- (b) Subject to article 2 paragraph 3, Member States decide, for the projects listed under annex II, either on a case-by-case basis or on the basis of pre-determined criteria, whether the project must be subject to a prior assessment.

The projects listed under Annex I directly related to the construction of electric transmission infrastructure are:

Section 20: *The construction of above ground lines for the transport of electrical energy of 220 Kv tension and longer than 15 km*

Section 22: *Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex“*

The projects listed under Annex II are the following.

Category 3 (b): *Industrial installations for carrying gas, steam and hot water; transmission of electrical energy by overhead cables (projects not included in Annex I);*

Category 13: *Any change or extension of projects listed in Annex I or Annex II, already authorized, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I)*

ENTSO-E believes that the current distinction of projects between Annex I and II, as detailed above, should not be changed. The distinctions between mandatory assessments (Annex I) and case by case decisions (Annex II) should be maintained.

However, when transposing the Directive, any extension of the category I projects by individual member states should be restricted in order to avoid differences between member states on which transboundary projects might stumble.

Furthermore the formulation of Section 22 in Annex I gives often rise to discussions and different interpretations, in particular for projects upgrading or reinforcing existing lines. For example:

- Adding a second circuit on a line ($\geq 220\text{kV}$ and over 15 km) already built and with an existing first circuit ($\geq 220\text{kV}$ and over 15 km).
- Replacing the conductors (increasing capacity) of an existing line ($\geq 220\text{kV}$ and over 15 km).
- Changing the voltage level of an existing line (from 220kV to 380kV) even if no substantial modification to the towers.

It is often understood that in those cases an EIA is mandatory, although the environmental impact of an upgrade or reinforcement of an existing line is not significant. Therefore ENTSO-E proposes to exempt these kinds of projects from an EIA obligation or to submit them to a case by case decision.

Screening - determines whether an EIA is required for projects listed in Annex II

It is the opinion of ENTSO-E that the mechanism of screening should be adapted in order to avoid arbitrariness and moreover to harmonize between member states, so that similar projects under similar conditions are subject to the same obligations.

Whereas screening is important to appraise projects on a case by case basis, it is as well of utmost importance to shield against the arbitrariness that any assessment – should it be based on criteria – could lead to. Therefore any screening decisions should be duly justified.

The different criteria are large to such an extent that any project could be considered as liable to an EIA. The existing guidelines of the Commission on screening provide useful guidance on the subject. It would however be valuable that the application of criteria be illustrated on examples or counterexamples.

Furthermore, ENTSO-E proposes that the completing of a simple checklist would be sufficient to obtain a screening decision. If this is not the case there is a risk that an EIA be required to assess whether an EIA is necessary... Such a checklist should not consist of new set of thresholds. An EIA should be considered necessary only if a combination of criteria is met.

Scoping - determines the content and extent of the matters to be covered

There is a variety of experiences both positive and negative among TSO's with respect to a formal scoping process and its effect on the permitting process and/or public acceptance.

However, formal consultation between grid operators, permitting authorities, and institutional stakeholders and experts would be helpful in the early stage of the project. The formal consultation should be organized by the permitting authority and it should be within their remit to decide whether the scoping would be widened to representatives of interest groups or the wider general public when individual interests are particularly difficult to seize.

Once a finalized scoping report is agreed, no additional information not listed in the scoping report should be required.

Quality of the EIA

The EIA documentation submitted to the permitting authority by the TSO in respect of a transmission development should be of a sufficient standard that it is adequate from the legislative perspective, satisfies the requirements of the Directive and is proportionate to the actual impact of the project. It is therefore important that the EIA documentation is produced by competent and experienced persons appropriately qualified in their respective discipline. It is therefore proposed that the individual member states should satisfy themselves of the quality of the work of the consultants carrying out the work.

ENTSO-E would be of the view that technically feasible alternatives with due consideration for costs should be presented in the EIA report. The TSO's should give consideration to the publication of completed interim reports as part of the public consultation process outlined below.

Member states should be obliged to maintain databases on protected areas and on seasonal/long term survey data which could be drawn upon by promoters of later projects. The need for seasonal surveys should be recognised and advised to the project developers early in the process so that significant delays are not incurred. The start of such seasonal survey early in the process should not be hampered by local authorities.

ENTSO-E considers that the EIA should remain valid over the duration of the project including the construction phase. However in exceptional cases it may be necessary to provide an update to the EIA to consider changed circumstances in particular if these occur during the consultation period. These 'exceptional circumstances' would have to be defined at Commission level and be applicable to all member states.

Monitoring of construction effects may be requested by the permitting authority particularly in relation to potential impacts on archaeology and ecology. A monitoring and reporting programme should be put in place in such cases which would ensure compliance with the specified project mitigation measures.

The benefits of the project, for instance the integration of renewable energy or the liberalisation of the electricity market, should also be highlighted in the EIA as they might counterbalance the potential negative impacts on the environment.

Public Participation

According to article 6 of the Regulation 85/337/EEC, the public should be informed about the project details as soon as the information can reasonably be provided.

TSOs support the idea of early public participation in an open and transparent manner on grid development investments. It is advisable that this participation be steered by the permitting authorities. The way and timing to inform the general public during the pre-application stage can then be discussed with the permitting authority and local authorities. The public participation can be organized by means of public meetings, hotlines, webpages etc. However, a lot depends upon the support of the permitting authority and local authorities. ENTSO-E is of the opinion that the way to organize public participation during the pre-application stage should not be subject to formal rules. The existing guidelines on scoping from the Commission provide sufficient guidance on the subject.

A formal public consultation should take place after the preparation of the permitting application files thus at the start of the formal application process.

In general the formal public consultation and the publication of the information are organized by the authorities. However, grid operators do often support public authorities during this formal consultation period by publishing themselves the necessary documents, by pro-actively organizing information sessions (together with the authorities), by providing hotlines, etc.

Considering there is a one-stop-permitting procedure, a consultation period of about 6 weeks at the start of the process seems reasonable. Within that time frame, the public involved and stakeholders could comment on the project. Legal actions against the permit of a project could be taken within a time frame of 8 weeks after the decision.

As the electronic media gain more and more importance, the information about the project should be available online. Many grid operators already publish general information about the need for the project, the project itself as well as information about the process on a special website.

Transboundary procedures

For transboundary projects there is a need for improved formal and informal arrangements.

One of the issues often raised is the definition of a cross border common connection point for interconnections. Without the prior definition of such a point, the EIA performed separately in each involved member state could lead to conclusions that are not compatible.

Furthermore many practical aspects are difficult to deal with: translation of information, explication to another MS, different procedures and timings. Finally, the distinction between originating country and affected country is not applicable in the case of interconnections.

It is therefore proposed to have a specific framework with regard to development consent procedures for such projects. In addition bilateral agreements between the involved countries (agreement on connection point) and support by a European coordinator can be useful to facilitate the process.

Coordination between the EIA and other EU directives and policies

ENTSO-E underlines the need for a better coordination between the EIA directive and the directives or policies regarding SEA, IPPC, biodiversity and climate change directives. The complete permitting process, including the EIA should be handled as a 'one-stop-shop'-procedure.

For electricity, it is very important that the objectives on the climate policy of the EC (20-20-20) and the needs for the further liberalisation of the European electricity market are taken into account. These objectives justify the need for grid extension projects (reduction of CO₂ emission, unification of the internal market, etc.) and should also play a role when an appropriate assessment according to the nature directives should be performed. These policy objectives can be taken into account as imperative reasons of overriding public interest that justify, in the absence of alternatives, the construction of a project with a significant negative impact on the special protected habitat under the condition of providing compensatory measures.

The assessment of alternatives under the nature directives is often a difficult point because in many cases there are alternatives but at a much higher cost and with a much higher technical risk. It is therefore important that for the required assessment only the technically feasible alternatives with due consideration for costs are taken into account. It would be useful if guidelines are published on the application of the Habitats Directive.

Codification - reviewing the EIA Directive

Article 288 Treaty on the Functioning of the European Union states that a directive is binding on the result to be achieved. The choice of form and methods of its implementation is left to the Member States.

The environmental impact assessment should therefore be organized through a directive giving the member states some interpretation margin for example regarding the organization of public participation. However, this interpretation margin should be limited, especially with regard to the categories of projects subject to an EIA, in order to avoid too many differences between member states and to give more certainty to the project developer.

ENTSO-E has already recommended in its answer of 29 April 2011 regarding the EC consultation on permit granting procedures, the drafting of guidelines regarding the pre application stage. This should include recommendations on the best way to go forward with an EIA.