European Network of
Transmission System Operators
for Electricity

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ENTSO-E position paper on the proposal of the European Commission for a revised Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (COM/2012/628)

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Transmission System Operators (TSOs) are developing many projects requiring an environmental impact assessment. For this reason, ENTSO-E welcomes the intention of the European Commission to clarify, simplify and streamline the existing environmental impact assessment process.

However, ENTSO-E considers that some provisions of the proposal would create uncertainty, complexity and rigidity and therefore contradict the objectives pursued by this proposal as well as the objectives of some other EU policies, in particular in the field of energy.

Draft COM/2012/628	ENTSO-E recommendation	ENTSO-E justification
Art. 1, Paragraph 2 - Definition of "Project"	The inclusion of demolition works in the project definition, which may be subject to an EIA, introduces the risk that in some cases, demolition works without any significant impact on the environment can be subject to an environmental impact assessment. In this sense ENTSO-E considers that the conduct of an EIA for demolition works should only be required when relevant, i.e. when demolition works are likely to have significant impacts on the environment. ENTSO-E therefore suggests the deletion of all references to demolition work in the definition of "project" - Article 1 paragraph 2 (a) - in order to avoid that mentioning of demolition works has the effect to conduct a separate EIA. On the contrary it could be clarified that if the execution of construction works requires demolition works, such works are considered part of the main project of construction.	- Usually the final effect of the demolition work of a power line is that the environment itself benefits from it. In the case of overhead power lines, the demolition works, when considered necessary, will result in a lower environmental impact and in soil recovery. For such a reason, Directive 2011/92/EU, pointing out the list of projects to be made subject to EIA, in the specific case of the overhead power lines, states: "construction" of such installation (clarification which is not present in other typologies of projects). - The inclusion of demolition work within the definition of projects which may be subject to an EIA, will lead to longer permitting procedures for projects or works which are intended to reduce the environmental impact of electrical lines. It will then discourage the demolition of electric lines and the grid rationalisation. This fact being just the opposite of the directive rationale, leading to a land consumption increase and not its reduction. In addition, it will duplicate the EIA procedures (one for construction works and one for demolition works). - The extension of the definition of "project" – as it is justified by the European Commission in the summary proposal of the directive – is proposed on the basis of the implementation experience of the existing EIA Directive and of a Court decision (Court ruling in case C-50/09). However, such reasons should not lead to considering that whenever an EIA was relevant at the stage of construction, an EIA is also relevant at the stage of demolition.

		Generally demolition is part of the project construction and as such, it is not necessary to submit an additional EIA for this part.
Art. 4 – Paragraph 3,4,5,6) Screening procedure	As a result of the screening process, as proposed in the amendment, some changes may be requested by the competent authority to be introduced in the project so that it is pursuant to the provisions and prescriptions set in their decision for EIA. Such changes (in themselves) should not be subject to an environmental impact assessment, since they are imposed to take into account some environmental considerations. In the screening procedure review, as set by the proposal for a directive, it would be useful to strengthen the obligation of the competent authority to always conclude each authorization process with an explicit decision on the outcome in order to have certainty in the result of the screening process.	Should this provision not be included in the revised directive, there is an increase risk that a new EIA process would have to be undertaken. This additional step would represent no real improvement for the environmental protection but only generator of additional costs, as well as additional procedural burden for developers.
Scoping Procedure (art 5.2)	The systematic and compulsory recourse to the scoping procedure may extend and increase the administration burden and the number of the procedures to which developers are subject to. ENTSO-E considers that TSOs should be left the option of requesting or not a scoping from the administration, in view of: • The complexity and the environmental sensitivity of the project • The expertise available at the TSO level or which external consultants can provide.	This procedure can be useful for developers who are not used to preparing environmental impact assessments. However, it would be of no help for the TSOs, which already prepare significant number of environmental impact assessments each year. It would be useful to develop guidelines on the environmental impacts of projects.

Quality of information and streamlining the EIA process (art 5. 1, art.5.2 and Annex 4.2)	ENTSO-E recommends removing "reasonable alternatives relevant to the proposed project and its specific characteristics » in the list mentioned in Art. 5 paragraph 2 to be determined by the competent authority. ENTSO-E proposes to modify paragraph 2 of Annex IV as follows: "A brief description, of the technical, locational or other aspects (e.g. in terms of project design, technical capacity, size and scale) of the alternatives considered by the developer, ~~*including the identification of the least environmentally impacting one,*~~ and an indication of the main reasons for the choice made, taking into account in particular the environmental effects"	It is not the role of the competent authority to tell TSOs which alternatives are reasonable (cf. Article 5.2). This choice relies on considerations of feasibility and appropriateness, which are the responsibility of TSOs only. When choosing between several alternatives, the TSOs cannot take into account only environmental criteria but it also the technical and economic implications each solution. The notion of « alternative » [cf. Art. 5(1) and annex IV (2)] is going far beyond what is provided for in the current EIA Directive (« *an outline of the main alternatives studied by the developer* » in Annex IV (2). This change if it was maintained would substantially increase the burden of TSOs when describing substitute solutions, without really contributing to a better integration of environmental aspects in the project design stage. It will be difficult in many cases to conclude that any alternative is unambiguously the 'best' when they will have differing impacts across a variety of environmental topics. For this reason, the requirement to describe "the least environmentally impacting" alternative should be removed from the draft Directive.
Review of the environmental authorization by the developer. Art 8.a	ENTSO-E proposes a new item to art. 8: "The competent authority or authorities will send for comments to the developer the draft of the measures it/they envisaged to request before issuing their final decision. "	In some cases, the measures specified by the consenting authority in their environmental authorization/decision might make the project unviable economically or technically. The competent authority may consider its authorization as positive, but with conditions that may, in themselves, prove unworkable to the developer and result in a cancelation or redundancy of the project.
Annexes II & III	ENTSO-E recommends that: • In article 4 paragraph 3, the detailed list of information specified in Annex II.A is to be provided only when the authority requests it (on a case-by-case examination). • Annex II A should be completed to mention that the description by the	The preliminary screening procedure, as described in the draft directive, may be considerably more burdensome, especially due to the creation of Annex II A (information to be provided by the developer during the preliminary screening procedure) and to the changes proposed for Annex III (criteria to be taken into account by competent authorities during the preliminary screening procedure).

	developer of the environmental factors which are likely to be affected, of the significant effects of the project on the environment and of any measures considered in order to prevent or reduce the negative impact of the project on the environment, should be a summary description; • It should be expressly mentioned that, during the screening procedure using the criteria specified in Annex III, the competent authority cannot demand that the developer should produce information beyond what is required in Annex II A.	There is a concern that the amount of information required for EIA screening, as proposed by the amendment, would be considerable. Predictions on certain impacts could not be quantified without detailed studies in many instances, and this information cannot be expected to be delivered at the screening stage. There is concern that the procedure would be more burdensome than before, for both the developer and the competent authority screening the projects. There is a risk that this may compromise the administrative processing of developments at this stage in the process. This potentially will increase the time frame of the authorisation procedures as opposed to reduce it.
Transitional provisions Art 2 and 3 Entering into force	The provisions of the directive should not have a retroactive effect on an EIA process that has begun under the application of the existing directive.	The proposal for a directive foresees that the projects - for which the request for development consent was introduced before the date of adoption of this directive by Member States and for which the environmental impact assessment has not been concluded before the above mentioned date - shall be subject to the obligations referred in Directive 2011/92/EU as amended by this Directive. Since the proposal for a Directive modifies the EIA procedure substantially, the obligation for projects to be pursuant to the new provisions risks to cancel the preliminary works carried out before the date of the adoption of the Directive and to restart the procedures at national level from the beginning. The duplication of preliminary activities to conclude the EIA might significantly delay the EIA development consent for the project. Additionally this would be time-consuming and costly for the project developer as well as for the public administration, in a context where projects already have to go through long authorization procedures.