Report on
„EU Energy Infrastructure and Environmental Assessment Procedures: Options and Challenges” Workshop

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Introduction and essential background information by Emanuela Orlando, University of Cambridge

The aim of the present European strategy is to create a more interconnected Europe. For realizing it, there are three sectors, where intensive legislative changes and financial investments (through the Connecting Europe Facility (CEF)) are being proposed: telecommunication (eTEN), transport (TEN-T) and energy (TEN-E) – the focus of this workshop was the latter. A contribution to the creation of a core energy network is essential to fulfil the Commission's desire towards better competitiveness, sustainability and guaranteeing more secure energy supply system. The current energy infrastructure is not sufficient for completing European climate and energy goals, thus there should be a reinforced focus both on developing energy transmission and distribution systems. Furthermore, investments must be catalysed by designating Projects of Common Interest (PCIs). The proposed Regulation on TEN-E Guidelines aims at giving a stronger priority status for these projects - identified within the 12 priority corridors - through specific streamlined permit-granting process and increased transparency. The Commission's Guidance on streamlining environmental assessment procedures for energy infrastructures, which shall be finalised 3 months after the entry into force of the Regulation (by summer 2013), is designed to support the implementation of the legislative measures in the Member States and to create a coordinated and common tool for the acceleration process while maintaining the high quality of the environmental assessment. The improvement of the capacity of the administration to carry out environmental assessments is desirable, possibly through the use of European Social Fund. The present workshop was dedicated to collect constructive ideas for the preparation of this non-binding Guidance detailed above.

The European Commission's Energy Infrastructure Package presented by Jonathan Parker, DG-ENV

The idea of the workshop was to encourage an open brainstorming session in order to better specify the possible content of the Commission's Guidance so as to make it as useful and practical as possible. After a short insight into the possible (negative) impacts of energy infrastructures (fragmentation, noise, visual impact, electromagnetic radiation, operational risk and collision) and unwanted conflicts with protected areas under Habitats or Birds Directives, the presentation introduced the most important elements of the proposed TEN-E Guidelines and the revised Environmental Impact Assessment Directive (EIA Directive). Special attention was paid to the *components of the accelerated permit granting process* such as: the competent authority, reduced time limit, increased transparency, enhanced public participation and preferential treatment of PCIs. With regard to the EIA Directive proposal, the three problems identified and the possible solutions underlined are: screening, improving quality, risk of inconsistency.

Timeline and state of play	
01/2012	Open call for tender on 'streamlining' guidance study
06/2012	Signature of the contract with Milieu Ltd
11/2012	Interim report (5 months after the signature of the contract)
12/2012	**Accepted Commission proposal**
01/2013	Academic conference in Cambridge Peer group meeting
spring/2013	**European Parliament's vote on the proposal** **Application of the TEN-E Guidelines** (the first day of the month after the date of entry into force of the Regulation) Final report (9 months after the signature of the contract)
summer/2013	***Commission's Guidance on streamlining energy infrastructure measures*** *(3 months after the entry into force of the Regulation)*
spring/2014	**Member States to take practical, non-legislative measures** (9 months from the issuance of the guidance)
summer/2015	**Member States to make the necessary legislative changes** (24 months from the issuance of the guidance)

Figure 1: Source: **Presentation of the *Commission* as of 18.01.2013**

Good practices in streamlining environmental assessments and the applicability across the EU Member States by Jennifer McGuinn, Milieu Ltd.

The intention of the presentation was to fill in the possible knowledge gaps and to get prepared for the Guidance preparation process, namely the peer group meeting with established subject-related experts taking place on the 22.01.2013. Through the assessment of the possible streamlined, joint and coordinated measures, a creation of such a *win-win situation is desirable, where a maximum time reduction whilst compliance with and the integrity of the environmental procedures is maintained.* . This combination is in the process of being identified by the consultancy through a dedicated study report, which investigates the existing permit-granting processes in the 27 Member States (+ Croatia) on the basis of 6 concerned European pieces of legislation[1]. The project process includes reports on the present permitting processes in the 28 countries (done by national experts, through personal interviews and analysis of written studies), identification of national best practises and definition of collectively usable common measures to be put into the Guidance document. After the study report has inventoried legislation, practices and trends in Member States, it is now focusing on the integration of the good practises (e.g. 'tiering' of EIA and SEA, coordination between different assessments, introduction of time limits, early stage of public engagement, innovative ways of public participation and data sharing, etc.) and thus on formulating possible recommendations for the Guidance by carrying out more detailed review and critical assessments.

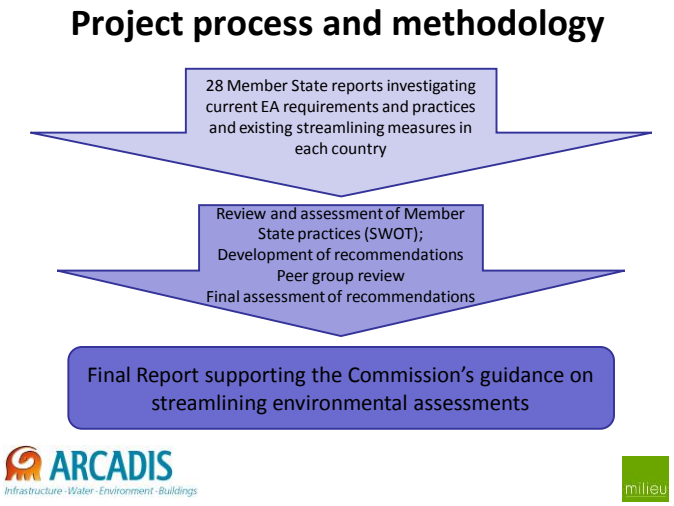

Figure 2: Source: **Presentation of *Milieu Ltd.* as of 18.01.2013**

[1] SEA Directive, EIA Directive, Habitats/Birds Directive, Seveso II, IPPC/IED and WFD

Q & A session

The Q & A session focused on *four essential questions*: (1) the necessity of the existence of the Guidance itself, (2) the importance of public participation and public resistance mitigation, (3) the role of the EIA process and (4) the nature of the relationship between the TEN-E and the EIA Directive.

(1) There was a heated debate on the *necessity of such a guidance on joint or coordinated streamlining measures*. It was claimed that the Guidance in preparation only aims at resolving problems and obstacles caused by implementing EU (environmental) legislation correctly. Participants considered the national level as more appropriate to handle problems of compensation due to loss of propriety and problems of national resistance against possible projects. The Commission underlined that common engagement is necessary to handle the case of public resistance more efficiently and to help increasing acceptance for PCIs. In the meantime, it was acknowledged that EU legislation is not perfect, and while, EU policy is mostly complementary, there are still conflicts between some policies (e.g. environment vs. agriculture, environment vs. transport or environment vs. energy), which must be tackled on EU level. However, the Commission underlines that problems of implementation of Energy PCIs must be solved on the level of Member States with the help of a national guidance in order to increase effectiveness.

(2) The other controversial issue was the question of *public participation and early engagement*. It was considered that early engagement should be started at the moment of the creation of the PCIs list. It was claimed that local people should have the right to reject projects to become part of the priority list. This must be offset by *balancing* the local interest against the EU-wide public interest to realize the EU2020 goals and to reduce energy dependency on risky countries. Everyone has accepted that it is difficult to clearly prioritize between the two. A final conclusion was drawn, that common European interest must get the green light first while local interest should be taken into account as much as possible while respecting EU rules.

(3) Afterwards, it was highlighted that *EIA process* in relation with (energy) projects *is certainly not designed to stop any infrastructure initiative but to assess the environmental impacts*, on which basis the national authorities have the right to decide on permissions to be issued or on further measures to be taken.

(4) Finally, there were several questions raised - but remained open - concerning the nature of the relationship between the TEN-E and the EIA Directive. What is the *relationship of this guidance for energy projects and the broader revision of the EIA Directive*? Streamlining is particularly urgent for energy PCIs in order to achieve the 2020 goals in time. However, once the EIA Directive revision will also be completed, what will be the *scope for coordination* between the "two EIA streamlining procedures", or will TEN-E infrastructures always be singled out?

Using advanced scientific information to improve the timing and coverage of risk-based decisions on energy systems by Douglas Crawford-Brown, Cambridge Centre for Climate Change Mitigation Research

The presentation pointed out that the degree of protectiveness of the existing system of risk-based decisions is known and that legal arguments can point to direct observation of adverse effects. It also claimed that this is too slow and too costly a process, so either we live with a slow rate of approval for new energy sites, or we speed up the assessment process, which is possible with scientific advances near to deployment. However, it was highlighted that the reliability and the error rates of these methods are not yet known, and hence the confidence that resulting decisions would provide a reasonable degree of confidence is missing. To make it short, the desirable way for policy-making is to "*Find a policy such that (…) produces an acceptable level of risk from energy production, in an acceptable fraction of the population, and do so with the desired level of confidence*." Based on the theory, the negative effects of electromagnetic radiation were highlighted, and special human health risk analysis was suggested to be included in the Guidance once the concerned energy infrastructure projects are realised.

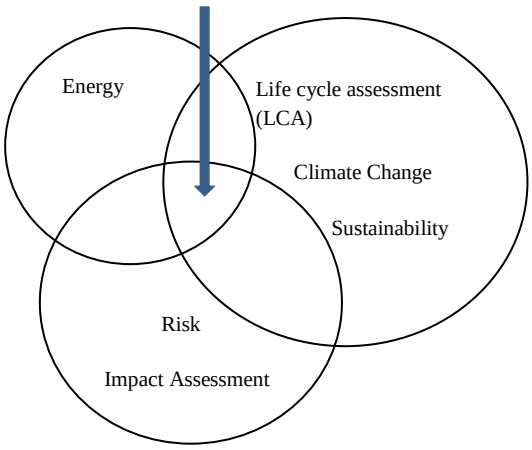

Figure 3: Source: **Presentation of *Douglas Crawford-Brown* of 18.01.2013**

Streamlining tools in the Netherlands and quality control of Environmental Assessment (EA) in brief by Sjoerd Harkema, Netherlands Commission for Environmental Assessment

Since 2008, the Netherlands Commission for Environmental Assessment (NCEA) has prepared mandatory and voluntary advisory reports for government (national, provincial and local) on the scope and quality of environmental impact reports. With the foundation of this body, the Netherlands was able to speed up the assessment process of its combined SEA and EIA procedure. The legal obligation tackles not only the problems of time limits but also the controversial public participation issues including priority access to Supreme Court and 'standing' by appeals cases. Furthermore, it deals with tailor-made streamlined procedures and gives special power to the Minister to take over the process and make the final decision, if necessary. Last but not least, the related acts lay down the rules for single integrated permit granting process, in case it would be needed, so as to speed up the infrastructure development. At the heart of Dutch streamlined procedures lays a funnel approach (see figure 4). The key is to put more effort in the early stages of the project, by looking into regional

agendas, alternative strategies and designs. If you do this right, you have a better option finding the best solutions and preventing later discussion going out of the funnel, thus saving time and resources, you also have the basis to face the next steps in the procedure with confidence. In the rest of the funnel, the degree of freedom is much smaller and also the effort and resources needed for decision-making and permitting. The procedure helps to prevent unnecessary research while, at the same time, creates support for the project and justifies decisions. Independent quality control puts the funnel on the agenda if it is not there yet. It also contributes with an appropriate level of detail of the required environmental assessments. The debate followed the presentation showed that the funnel approach could help to streamline environmental assessment procedures and concentrate public participation. Even if, the system works smoothly in the Netherlands, the applicability of the transfer of the scheme might be questionable in other Member States due to the costs of the maintenance of such an *'independent', government-financed body* and due to special structural compliance issues. The creation of a similar *supranational body* also came into discussion at EU level to control quality of EA for Energy PCIs, but since quality insurance is meant to be a national obligation lied down by the European legislation, it is not a valid option that could be put into practice.

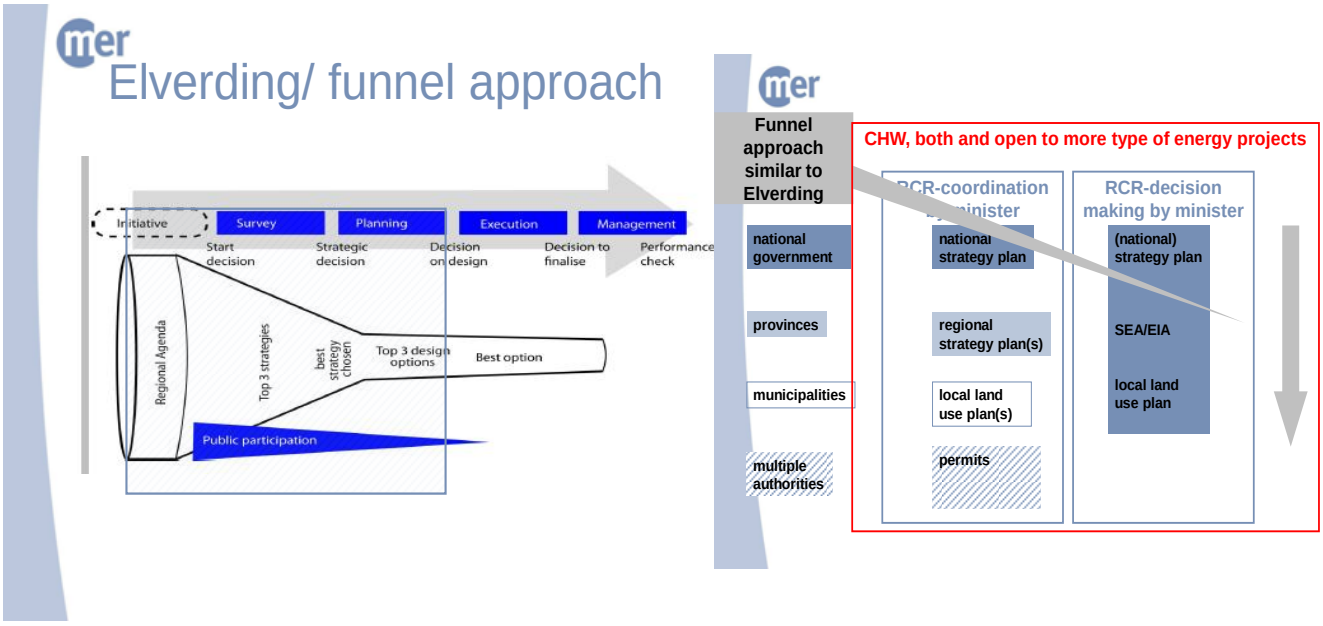

Figure 4: Source: **Presentation of *Sjoerd Harkema* as of 18.01.2013**

NCEA experience with streamlining and EA of energy projects – case study of the North South gas pipeline

The case study represents the advantages of the streamlined assessment system working in the Netherlands. For realizing the North South gas pipeline project, thousands of permits were considered to be necessary. These were issued in 9 provinces through 9 simultaneous combined impact assessments. The quality review was done by NCEA, which even gave specific advice on unique soil-protection issues. During the planning phase for section 1 (of the 9) the route with the least environmental impacts and smallest environmental cost were considered, whereas by the sub-route identification, the minimum environmental impacts cross the NATURA2000 wetland near the Ijsselmeer and the most environmental friendly (technical) design was selected for implementation. After the Commission has gathered all the additional information that was still required during the

process, the overall positive conclusion of NCEA allowed the 1st tunnel to be build under the NATURA2000 area in the Netherlands. The discussion showed that was a particularly successful example of a coordinated system between different authorities, and the NCEA role could be perhaps repeated at EU level.

Energy projects – environmental assessment and its implementations by Hector Pearson, National Grid

As a result of the changing energy landscape, today's challenge is to ensure security of supply, sustainability, safeguard the environment whilst delivering value for money. To overcome it, significant investments are needed in the concerned sector and the increase of interconnectivity is becoming essential. The UK has a high electricity demand and cannot be excluded from the trends. The recently adopted Planning Act 2008 creates a new regime for streamlining permit granting procedures while providing stronger community engagement through the various consultation stages of stakeholders and communities. The process is unique by cumulating the assessment of environmental and social impacts with system and cost issues. The policy's success can be found not only in its detailed routing and siting process (where the EIA goes till the 3rd stage (see chart below) and full EIA is compulsory on the preferred alignment) but also in National Grid's reputation itself. SEA on the Ten Year Energy Infrastructure Plan is difficult as the specific locations of projects are not known.

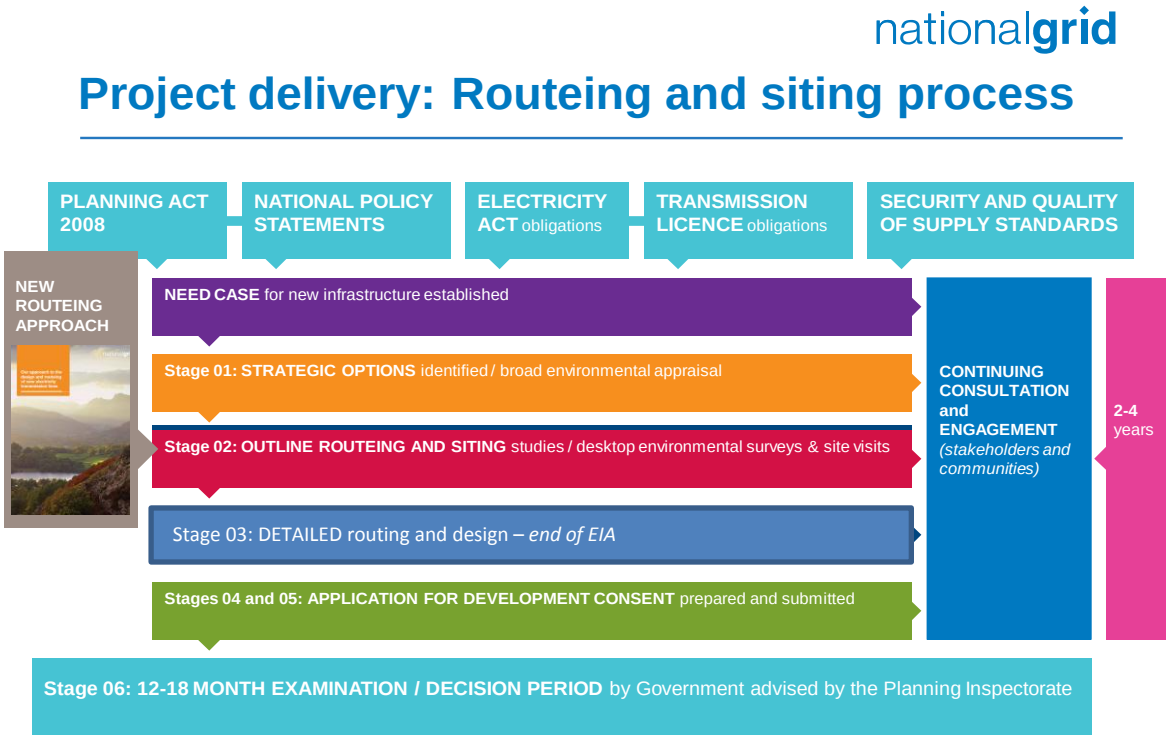

Figure 5: Source: **Presentation of *Hector Pearson* as of 18.01.2013**

Roundtable discussion

The discussion in the light of the presentations above, were *grouped around four main issues*: (1) reduction of public opposition through the synergies of the three TENs, (2) national infrastructure planning process, (3) applicability of the Guidance document and (4) EA quality control.

(1) First of all, the discussion aimed at discovering the way to *reduce public opposition and increase public trust* during the streamlined process. One of the considered possible options was *putting the TENs routes together* in order to mitigate the unwanted interventions into the untouched environment. The concept should, however, count with two necessary limitations: due to security issues, certain minimum distance should be kept between transport and other type of routes (e.g. to avoid gas explosions); and more difficult public consultation is to be foreseen in case of intervention in an untouched landscape.
(2) Afterwards, the concept of *national infrastructure planning* process was highlighted as possible solution for Member States. It was underlined that in some cases a systematically prepared national plan might be more useful and effective for a longer period than series of individual and separated plans. It is also easier to carry out an SEA on such a plan compared to an energy infrastructure plan where the projects are often not known.
(3) Furthermore, special attention was drawn to the fact that, however, the Commission's Guidance document issued to Member States would not be legally binding, there is a risk that some *countries might simply copy it as part of their national policy* due to lack of time for identifying specific measures or due to other country related issues.
(4) The final discussion point was the idea of *including a mechanism or institution for EA quality control and/or support to developers* into the Guidance. The participants considered that this could be modelled on the NCEA, and possibly be partially supported by larger project developers, although impartiality would need to be ensured. Everyone agreed that it might be a Commission set up just for energy projects, possibly (but unlikely) EU-wide or shared across certain Member States.