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## **Recommendations for the Improvement the PCI Designation Process and the Adjacent Public Consultation**

Similar to the German Acceleration Act (*NABEG – Netzausbaubeschleunigungsgesetz*), the Regulation (EU) No. 347/2013 (*TEN-E Regulation*) aims at the timely development of trans-European energy infrastructure, at the same time enhancing public participation (Art. 1). Participation is not only required at the permitting stage of individual projects but also when it comes to the determination of the need for and the planning of trans-European energy infrastructures. The decision upon a project, as being in “common interest” has quite far reaching factual and financial implications. Thus an inclusive and transparent selection process on both national, subnational (regional), and EU level shall be carried out in an effective manner in order to increase the acceptance of the list and help achieve a common European consensus on the necessity of those projects.

We believe that accepted and sound decisions can only be taken when the public is enabled to participate in accordance with the principles of the Aarhus Convention “*within a transparent and fair framework, having provided the necessary information*” and when due account is taken of the outcome of the public participation (Art. 7 in conjunction with Art. 6 Aarhus Convention). We appreciate the important role the European Union confers upon the principles of transparency and inclusiveness – two crucial factors in the achievement of good governance and in contribution to democratic life so that the Union may become the area of “peace, security and justice”.

We thankfully accept the Commission’s request to provide recommendations to improve the public participation component in the PCI designation process as outlined by the TEN-E Regulation. Justice & Environment and Bankwatch CEE hereby provide input and recommendations for the next PCI designation process in 2014/2015. Although the TEN-E Regulation sets certain rules for the process and the participation therein, we believe that in addition to the formal participation (defined by law as a minimum), the application of additional informal participation at an early stage is a necessary extra effort in order to give the most interested relevant stakeholders a chance for connecting to the process.

## **EP Involvement in the PCI designation process**

At this point we would like to raise a critical remark from a democratic perspective stated in Art. 16 TEN-E Regulation. The involvement of the European Parliament in the whole PCI designation procedure is highly questionable as the institution is limited to the rejection of the whole list or the acceptance of the whole list (cp. Art. 16/5). The EP is not allowed to position itself on individual projects stated in the PCI list and consequently reject or accept them. We would strongly recommend a more differentiated approach with respect to the EP's involvement and this should be a legislative amendment to the TEN-E Regulation in the near future. The current designation procedure puts MEP's in a conflict of interest between voting in favour of the whole list as it contains projects that are important and necessary for the country where they are coming from and for the development of the common European electricity and gas market and the rejection of the whole list due to the fact that some of the projects pre-selected as PCIs are of questionable benefit to the EU and have an environmental, climate and social cost too high to bear. It is also of utmost importance that the European Commission provides for a publicly available assessment on the environmental, social and climate impact of the projects selected as priority projects of common interest and an information how they lead to the fulfilment of important pieces of EU legislation such as the 2050 low-carbon economy transformation or Nature 2000 and EU biodiversity strategy.

## **Transboundary PCIs**

Some PCIs (especially gas projects) are planned beyond the geographical extension of the EU-28. It might be crucial to identify the competent bodies (e.g. the Commission, EEAS) responsible to ensure that public participation in accordance with the Aarhus Convention is carried out on a transboundary level so communities, civil society and subnational entities (i.e. regional and local authorities) are given the chance to express their views on the planned PCIs such as i.e. TAP/TANAP, Trans-Caspian Gas Pipeline (TCP), Southern Gas Corridor (SGC) or Galsi pipeline. If such public consultations cannot be guaranteed in countries that do not allow for civil society participation (as is the case in Azerbaijan or Algeria) it is essential for EU institutions like the EP, European Commission or the EEAS to take the initiative and inform the relevant stakeholders in these non-EU countries and take their comments into account. This will ensure the coherence of the projects on the PCI list with other goals pursued by the Commission.

## **Major transparency and public participation deficiencies for oil PCIs**

Minimal transparency was granted when designating PCIs in the oil sector. As regards the future revision process for oil PCIs a structured approach is completely missing. While a transparency platform was created within ENTSO-E and ENTSO-G to monitor PCIs implementation, such a platform does not exist for oil PCIs. While electricity and gas projects fall under a more definite and regulated scheme (ENTSO-E and ENTSO-G in the framework of the TYNDP, as well as ACER) - there is no such strategic planning, assessment and consultation carried out for oil PCIs. Thus in

this sector still major improvements should be done in terms of transparency and public participation.

As the EC and the Member States have decision-making powers – public participation shall take place both on the subnational (regional), national and the EU level and these levels shall be interconnected. Thus it seems recommendable to elaborate the public participation procedure together with the Member States and other relevant stakeholders. Basically it is important for the success of the designation process and for the quality of the outcomes to guarantee

- 1. transparency/information to, and**
- 2. inclusiveness/consultation with the public**

**Ad 1: Keep the process transparent and inform stakeholders on meetings and projects early in the process when all options are open**

Information needs to be granted not only on the proposed projects and the discussions on them but also on the public participation process: the procedural rules and aim of the participation process shall be made clear to everybody and consequently accepted by everybody.

Transparency Portal: As already started by the EC (Interactive Map and Project Descriptions), one website shall provide all relevant information and inter-linkages with national sites. In order to make it operable, Member States should make sure that there are dedicated websites on the homepages of their governments / competent ministries / competent authorities on the projects likely to be included in the PCI list and the adjacent process of their selection and adoption. The websites should contain in the official languages of the EU:

- Constant status-quo updates on PCIs (costs, benefits, alternatives, involved actors, environmental, economic impacts etc.)
- Assessment/Evaluation of projects (without ranking) shall be made accessible to the public
- Meeting minutes of the regional group meetings shall be made accessible to the public (see also Annex III/6 TEN-E Regulation)
- Announcement of events, consultations and regional group meetings in a timely manner (6 to 8 weeks before)

Proactive spreading of information: A public stakeholder mailing list could be created where information on the designation process and on potential PCIs is distributed. Use of social media is advised. A step further could be the creation of a “Forum for Exchange” to facilitate communication between governments, citizens, stakeholders, businesses and other interest groups.

Provide differentiated information to different stakeholder groups: Create different information materials for different audiences, at least 2 types: A) for the general public with non-technical summaries and major financial, technical and environmental data; B) for experts including international environmental NGOs with detailed data on financial implications, technical characteristics, environmental impacts and the like of the proposed projects on the PCI list.

## **Ad 2: Set up a participation infrastructure and procedure and consult the public in a gradual approach**

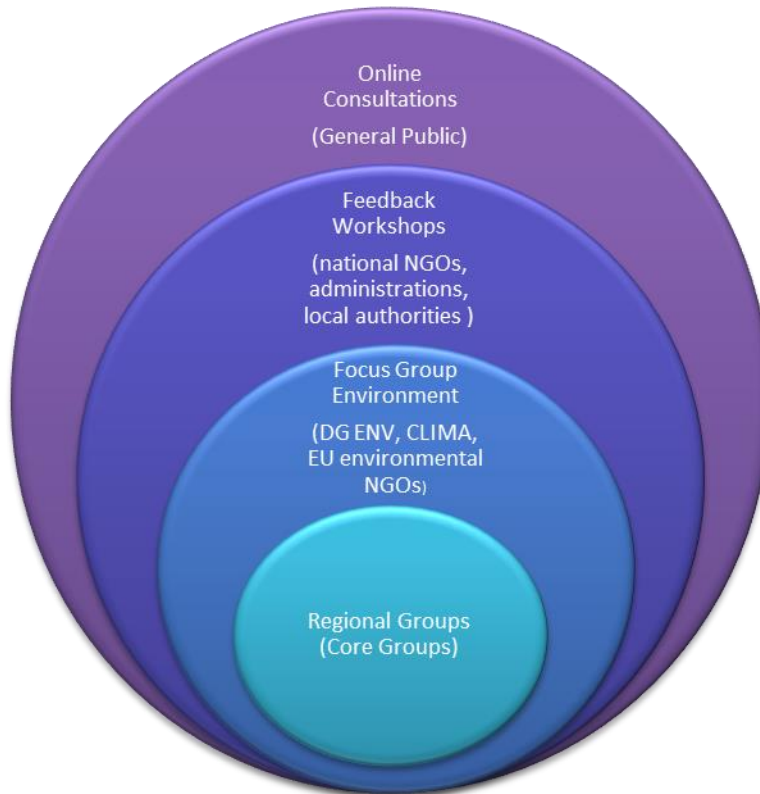
Public interest in the European energy future and thus in the development and interconnection of energy infrastructures is very high. It is therefore necessary to provide for a more cooperative form of participation. The TEN-E Regulation itself advocates for close cooperation between Member States, national regulatory authorities, project promoters and relevant stakeholders within the regional groups in order to ensure a broad consensus on the projects (cp. recital 22). In view of the complexity of the process we would like to advocate for a **gradual participation process**:

- We claim to closely involve on the EU level the organized environmental organizations in the designation process. Furthermore, the positioning of national level based environmental organizations as well as the positioning of the general public shall be ensured.
- We claim to involve DG Clima and DG Environment in the designation process. Equally we suggest advocating for the involvement of the respective competent ministries of environment by the Member States.

In order to adequately involve these groups it is important to have a clear participation infrastructure, process and timeline in place. A possible solution might be

- A **steering group** consisting of representatives from EC, Member States, TSOs, NGOs, project promoters could help accompanying the participatory processes (establishing a concept, monitoring and evaluating) and make it more effective.
- The **regional groups** should function as core groups (frequent meetings).
- The EU level environmental stakeholders gathered in **focus groups** (participating on an irregular basis in the regional group meetings – applying feedback loops) would provide comments to each project suggested by a project promoter and comments to the regional draft lists. These comments should be assessed in a transparent and comprehensible manner in the regional group meetings. Comments and statements shall be taken into due account by the decision-making body (EC and MS) when deciding on the draft lists. Reasoning for taking or not taking comments into account shall be made public as well.
- **Stakeholder or Feedback Workshops** could guarantee that a broader circle of stakeholders is included into the process (possibly national environmental NGOs, administrations, local authorities etc.). Assess comments and evaluate them in the process, taking them into due account.
- **Constant information** on group meetings processes etc. to the general public and **online consultations** on the draft list may guarantee the chances for general public to provide input. These comments should be assessed in a transparent and comprehensible manner in the regional group meetings. Comments and statements shall be taken into due account by the decision making body (EC and MS) when deciding on the draft lists. Reasoning for taking or not taking comments into account shall be made public as well.
- Member States should establish ex- post monitoring schemes to assess real impacts and whether mitigation and compensation measures are implemented and effective. Ex post monitoring should be coordinated at a high level but also with the consultation with NGOs

and EU level environmental stakeholders. EC should adopt an early timeline for these ex-post monitoring schemes and consultation workshop with regional groups, NGOs and environmental stakeholders.



\*Gradual involvement of stakeholder groups

As Member States should have a discussion process first on the national level – they shall be urged to have the adequate involvement of national environmental stakeholders in place. As one of the decision-makers in the regional groups they are responsible for this. To guarantee broad participation and effective strategic (also environmental) assessments on national level, all national energy infrastructure plans shall undergo an SEA as required by Directive 2001/42/EC. Thus the PCI process on EU level could be carried out way more effectively.

By applying the principle of transparency and carrying out effective public participation in the run of the decision-making process decisions taken under the TEN-E Regulation can be solid and better accepted. This may well have positive impacts on individual PCI permitting procedures and consequently the timely development of trans-European energy infrastructure complying with the EUs energy and environmental goals at the same time.