

Amended EIA Directive and Major Project environmental requirements

Ljubljana, 15 May 2017

Important Dates

□ Important dates:

- 25 April 2014 – publication in OJ
- 16 May 2014 – entry into force of Directive 2014/52/EU
- until **16 May 2017** – transposition/application in MS

□ Transitional provisions for projects:

the screening
was initiated

the scoping
was initiated

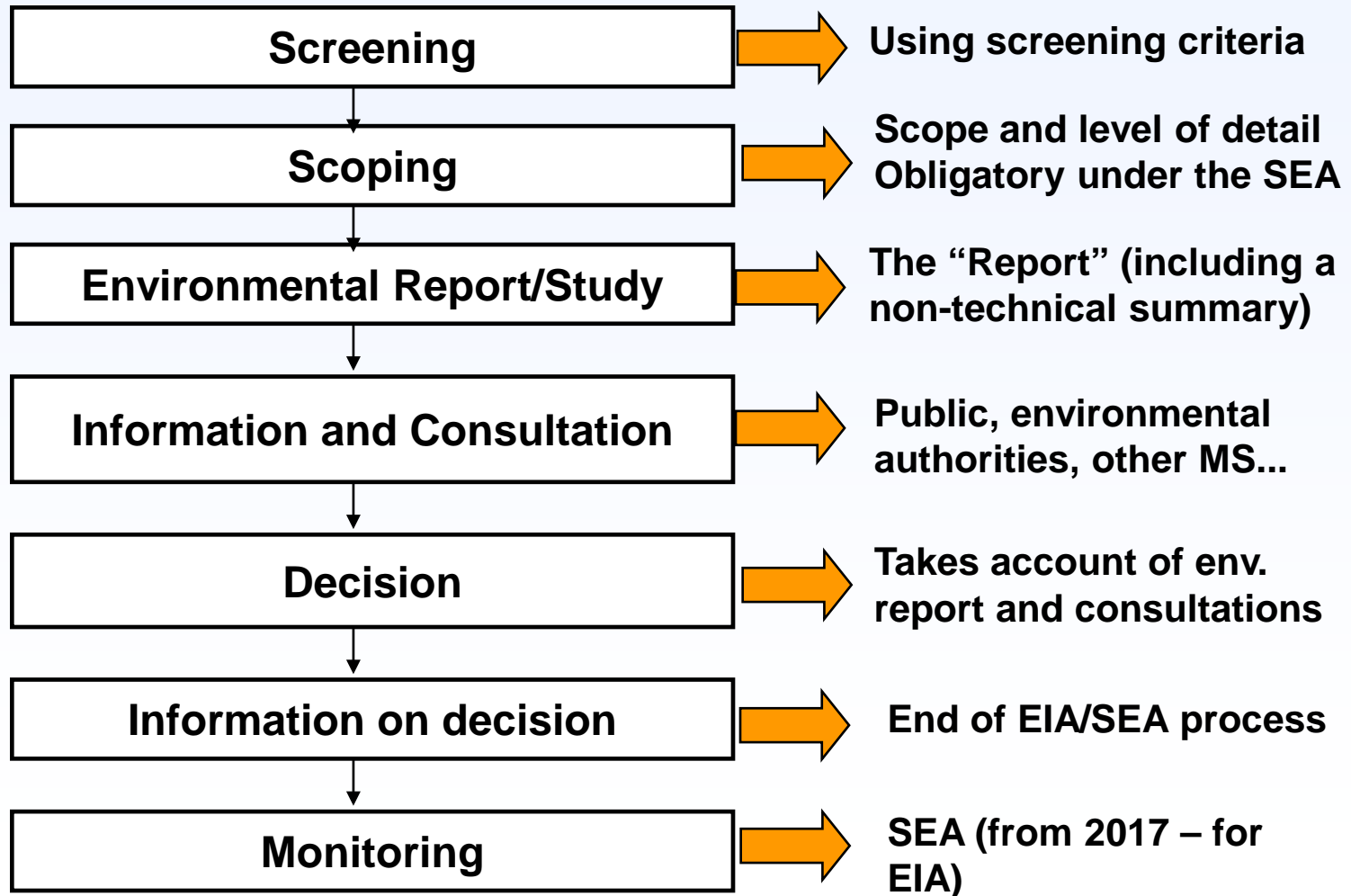
EIA report was
submitted by the
developer

before 16 May 2017

subject to the provisions of Directive 2011/92/EU (i.e. current regime)

The environmental assessment procedures

For plans, programmes and
projects screened out
(shorter procedure)



Objectives of the revision

Introduce and/or strengthen the quality related elements of the EIA Directive

- Specify the content and justification of the screening decision
- Specify the content and justification of the EIA report and the final decision
- Consider the new environmental challenges

Enhance policy coherence and synergies with the other EU/international law and simplify procedures

- Streamline environmental assessments
- Specify time-frames for the various stages of the EIA process

Overview of final text

- **Modification of Annex III criteria**
- **Alternative procedure for Annex II projects**
- **Justification of negative screening decisions**

Screening

**Article 4
Annex III
Annex II.A**

Mandatory assessment of alternatives
Additional environmental issues
Mandatory scoping
Quality control of the EIA information
Justification of final decisions
Mandatory post-EIA monitoring

EIA quality and analysis

**Article 3
Article 5
Article 8
Article 9
Annex III
Annex IV**

Mandatory coordinated/integrated procedure
Specific time frames for public consultation
Maximum time frames for decision - making

Risk of inconsistencies

**Article 2.3
Article 6/7
Article 4.6
Article 8.3**

Definitions

New definition of EIA inserted in Art. 1(2)g

Special cases

Art 1(3) – exemptions:

Projects or parts of projects, having defense as their sole purpose

Projects having the response to civil emergencies as their sole purpose

Article 1(4) (projects approved in detail by law) deleted and moved to article 2(5) with stricter conditions

Amended Article 1 (cont)

- ❑ 1 (3) This is a new definition making clear the steps of the EIA procedure.
- ❑ It needs either to be transposed into national legislation or that legislation has to provide for a legal framework clearly outlining these steps. See also recital 23 explaining the interlink between the different steps of the procedure.

Main obligation: coordinated/integrated procedure, where appropriate, for assessments under EIA and/or Habitats/Birds Directives

- For assessments under EIA and other Union legislation
- (e.g. SEA, Water Framework, IED, Waste Framework, Seveso)
- Possibility to apply one stop shop

- Short explanations of coordinated / integrated procedures

- COM has issued guidance on coordinated/integrated procedures

This is a new provision introducing one-stop shop for assessments arising from the EIA and the nature Directives. It needs to be transposed into national legislation.

Clarification change – “development”[consent] added in Art 2 (1) and 2 (2)

This paragraph is identical to Art. 2(1) of 2011/92/EU and therefore it should already appear in national legislation. In order to streamline the definitions used throughout the text of the Directive "development" is added to "consent" in line with the definition under Art. 1(2)(c). Possible amendments to national legislation may be needed depending on the wording in transposing legislation.

Exemptions:

Art 2 (4) further clarified – “where the application of those provisions would result in adversely affecting the purpose of the project, provided the objective of This Directive are met”; Art 2(5) projects approved in detail by law

Amended Article 3

Adaptation to new environmental issues:

- Use of natural resources (biodiversity, land, soil, water, air)
- Biodiversity with focus on species/habitats protected under the two Nature directives
- Risks of major accidents and or/disasters
- Recitals 7 to 16

The paragraph is based on Art. 3 of 2011/92/EU, however, the scope of the EIA is broadened to cover new factors (e.g. biodiversity, land). Therefore transposing national legislation needs to be amended to cover the amendments.

Consistency with other provisions

- Population and human health (instead of human beings)**
- Reference to “significant” effects i.e objective of Article 2(1)**
- Annex IV 4**

The paragraph is based on Art. 3 of 2011/92/EU, however, the scope of the EIA is broadened to cover new factors. "Population and human health" replace "human beings". Therefore transposing national legislation needs to be amended to cover the amendments. It is to be noted that under references in p. 4 of Annex IV, as well as under recitals 7, 9–13 and 16, "climate" includes "climate change".

Article 4(3) –thresholds/criteria to decide when projects have/have not to undergo screening or EIA

Article 4(4) and Annex II.A – list of information to be provided by the developer

This is a new paragraph introducing new Annex II.A (information to be provided by the developer for projects listed in Annex II). It needs to be transposed into national legislation. See also recital 26.

Please note that this para refers to "avoid/prevent" [significant adverse effects] and does not include the verbs "offset"/"compensate" which are linked to compensation measures.

Article 4(5) screening decision-making / content of the screening decision

- **on the basis of the information provided by the developer**
- **take into account, where relevant, the results of preliminary verifications/assessments**
- **use of annex III criteria reasons (C87/02 and C75/08) for any screening decision**
- **Measures to avoid or prevent significant adverse effects (if no EIA)**

This new paragraph clarifies and streamlines the screening procedure. It needs to be transposed into national legislation. See also recital 29. Please note that this para refers to "avoid/prevent" [significant adverse effects] and does not include the verbs "offset"/"compensate" which are linked to compensation measures.

Article 4(6): time frame of the screening decision:

- **90 days (from the date on which the developer has submitted all the requested information)**

This is a new paragraph setting maximum time frame for concluding a screening. It needs to be transposed into national legislation. See also recital 36.

- **Possibility for extension in exceptional cases (in writing informing the developer of the reasons for the extension and the expected new date)**

Amended Article 5 and Annex IV

Article 5(1) par1 – Based on Art. 5(3) of 2011/92/EU, this new sub-paragraph further clarifies the content of the EIA report. It needs to be transposed into national legislation. See also recital 31. Please note that only one non-technical summary (referred to under Art. 5(1) and Annex IV, p. 9) has to be included in the EIA report.

Article 5(1) par2 - This new sub-paragraph further clarifies the content of the EIA report. It needs to be transposed into national legislation.

Article 5(1) par 3 - This new sub-paragraph needs to be transposed into national legislation. See also recital 32 - other relevant assessments under Union legislation may include SEA, assessments under 92/43/EEC and 2000/60/EC.

Amended Article 5 and Annex IV

Article 5(2) par1 – *Where requested by the developer, the competent authority, taking into account the information provided by the developer in particular on the specific characteristics of the project, including its location and technical capacity, and its likely impact on the environment, shall issue an opinion on the scope and level of detail of the information to be included by the developer in the environmental impact assessment report in accordance with paragraph 1 of this Article. The competent authority shall consult the authorities referred to in Article 6(1) before it gives its opinion.*

Based on Art. 5(2) of 2011/92/EU, this new sub-paragraph clarifies the scoping stage. It needs to be transposed into national legislation. See also recital 30.

Article 5(3) – Quality of EIA report (new provision)

- **Guarantee the completeness and quality of the EIA report**
- **Two cumulative conditions:**
 - the Developer shall ensure that the EIA report is prepared by competent experts and**
 - the Competent Authority shall ensure that it has, or has access as necessary to, sufficient expertise to examine the EIA report**
- **Where necessary the CA shall seek from the developer supplementary information, directly relevant to reaching the reasoned conclusion on the significant effects of the project**

New items:

Art 6(1) – local and regional authorities are clearly spelled out as bodies given an opportunity to participate in the EIA consultation

Art 6(2) – the public shall be informed electronically (and by public notices..)

Art 6(5) – relevant information shall be electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level
Art 6(6)- reasonable timeframes for the different phases to be provided (for information and for participation in the decision making)

Art 6(7) – time frame for consulting the public concerned on the EIA report – at least 30 days

Amended Art 7, New items:

Art 7 (4) second subpara – consultations may be conducted through an appropriate joint body

Art 7 (5) – time frames for public consultation highlighted

It is very important for the correct implementation of the Directive with regard to transboundary consultations. It needs to be transposed into national legislation.

Amended Article 8

Results of consultations and the information gathered shall be **duly taken into account In the development consent**

Art. 8a(1) - decision to grant development consent:

- the reasoned conclusion;
- any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.

Art. 8a(2) - decision to refuse development consent – main reasons for the refusal.

Art. 8a(3) – reflecting different EIA systems in the EU (also recital 21).

Art. 8a(4) - **monitoring** (new provision – recital 35).

Requirements for projects with significant + adverse environmental effects;

- Measures/features to avoid, prevent, reduce offset effects to be implemented by the developer.
- MS to determine appropriate procedures to monitor such effects.
 - type of parameters to be monitored / duration of the monitoring: proportionate to the nature, location and size of the project and the significance of its effects on the environment;
 - use of existing monitoring from EU legislation (to avoid duplication).

Final decision: new Article 8a (cont.)

Art. 8a(5) – CA shall issue the reasoned conclusion/development consent/other decisions within a "*reasonable period of time*".

Art. 8a (6) – validity of the reasoned conclusion/development consent/other decisions.

Information on the decision: amended Article 9

New items - Art. 9(1)

- The public and authorities under Art. 6(1) shall be promptly informed; information shall be available to the public and to the authorities under Art. 6(1).
- Summary of the results of the consultations and the information gathered and how those results have been incorporated or otherwise addressed, in particular the comments received from the affected Member State, shall be made available as well.

New Article 9a – conflict of interest

MSs shall ensure that CA perform the duties in an objective manner and do not find themselves in a situation giving rise to a conflict of interest.

Where the competent authority is also the developer, MSs shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions.

New Article 10a – penalties

MSs shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to the Directive. The penalties thus provided for shall be effective, proportionate and dissuasive

Current EIA Directive (2011/92/EU)

- Climate/climatic factors and interactions with other factors to be assessed within EIA ((Article 3 and Annex IV(3))

Revised EIA Directive (2014/52/EU)

- Climate and interactions with other factors to be assessed within EIA (Article 3)
- Screening selection criteria - Annex III(1)(f) (the risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change)
- Information for the EIA report - Annex IV(4) climate (for example greenhouse gas emissions, impacts relevant to adaptation and (5)(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change)

F.3.3 *When covered by Annex I to the EIA Directive, include the following documents (as Appendix 6) and use a text box below for additional information and explanations ⁽¹⁾:*

- (a) The non-technical summary of the EIA Report ⁽²⁾.
- (b) Information on consultations with environmental authorities, the public and if applicable, consultations with other Member States, carried out in accordance with Articles 6 and 7 of the EIA Directive.
- (c) The decision of the competent authority issued in accordance with Articles 8 and 9 of the EIA Directive ⁽³⁾, including information on how it was made available to the public.

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F.3.4 *When covered by Annex II to that Directive, has an EIA been carried out? <type='C' input='M'>*

Yes

No

Section F.3.3: Application of the EIA Directive (2011/92/EU)

The additional information should focus on selected elements of the EIA procedure important for the project (e.g. data analysis, studies and assessments, additional consultations with the competent authorities and the public, determination of additional compensation/mitigation measures, additional ‘screening’ decision etc., when changes in the project are likely to be identified) that needs to be carried out, in particular as part of multi-stage development consent processes.