

Amended EIA Directive and Screening

Ljubljana, 21 June 2017

Some of the challenges faced in the past

- ☐ Understanding the limits between Annex I and Annex II projects, in the light of the EIA Directive.
- ☐ Significant delays in delivering a determination because of lack of information and documentation.
- ☐ Salami slicing projects and project modifications.
- ☐ Understanding and considering cumulative impacts.

Some of the challenges faced in the past

- ☐ Insufficient coordination between assessments and procedures.
- ☐ Lack of justification, poor quality of the screening determination.
- ☐ Access to a review procedure / access to justice.
- ☐ New environmental challenges

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)

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

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.

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.

26) In order to enable the competent authority to determine whether projects listed in Annex II to Directive 2011/92/EU, their changes or extensions, are to be subject to an environmental impact assessment (screening procedure), the information which the developer is required to supply should be specified, focusing on the key aspects that allow the competent authority to make its determination. That determination should be made available to the public.

Overview of final text (unofficial)

Article 4

1. Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(4), for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10. Member States shall make that determination through:

(a) a case-by-case examination;

or

(b) thresholds or criteria set by the Member State.

Member States may decide to apply both procedures referred to in points (a) and (b).

3. Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account. Member States may set thresholds or criteria to determine when projects need not undergo either the determination under paragraphs 4 and 5 or an environmental impact assessment, and/or thresholds or criteria to determine when projects shall in any case be made subject to an environmental impact assessment without undergoing a determination set out under paragraphs 4 and 5.

~~4. Member States shall ensure that the determination made by the competent authorities under paragraph 2 is made available to the public.~~

Overview of final text (unofficial)

4. Where Member States decide to require a determination for projects listed in Annex II, the developer shall provide information on the characteristics of the project and its likely significant effects on the environment. The detailed list of information to be provided is specified in Annex IIA. The developer shall take into account, where relevant, the available results of other relevant assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The developer may also provide a description of any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Information to be provided by the developer

- 1. A description of the project, including in particular:**
 - (a) a description of the physical characteristics of the whole project and, where relevant, of demolition works;**
 - (b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.**

- 2. A description of the aspects of the environment likely to be significantly affected by the project.**

- 3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:**
 - (a) the expected residues and emissions and the production of waste, where relevant;**
 - (b) the use of natural resources, in particular soil, land, water and biodiversity.**

The criteria of Annex III shall be taken into account, where relevant, when compiling the information in accordance with points 1 to 3.

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

29) When determining whether significant effects on the environment are likely to be caused by a project, the competent authorities should identify the most relevant criteria to be considered and should take into account information that could be available following other assessments required by Union legislation in order to apply the screening procedure effectively and transparently. In this regard, it is appropriate to specify the content of the screening determination, in particular where no environmental impact assessment is required.

Moreover, taking into account unsolicited comments that might have been received from other sources, such as members of the public or public authorities, even though no formal consultation is required at the screening stage, constitutes good administrative practice.

Overview of final text (unofficial)

5. The competent authority shall make its determination, on the basis of the information provided by the developer in accordance with paragraph 4 taking into account, where relevant, the results of preliminary verifications or assessments of the effects on the environment carried out pursuant to Union legislation other than this Directive. The determination shall be made available to the public and:

(a) where it is decided that an environmental impact assessment is required, state the main reasons for requiring such assessment with reference to the relevant criteria listed in Annex III; or

(b) where it is decided that an environmental impact assessment is not required, state the main reasons for not requiring such assessment with reference to the relevant criteria listed in Annex III, and, where proposed by the developer, state any features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

Selection Criteria

1. Characteristics of projects

The characteristics of projects must be considered, with particular regard to:

- (a) the size **and design** of the **whole** project;
- (b) ~~the~~ cumulation with other **existing and/or approved** projects;
- (c) the use of natural resources, **in particular land, soil, water and biodiversity;**
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) the risk of **major** accidents ~~having regard in particular to substances or technologies used~~ **and/ or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;**
- (g) **the risks to human health (for example due to water contamination or air pollution).**

Selection Criteria

2. Location of projects

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, ~~having regard to~~, with particular regard to:

- (a) the existing and approved land use;
- (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under ~~Member States'~~ national legislation; ~~special protection~~ Natura 2000 areas designated by Member States pursuant to Directive 92/43/EEC and Directive 2009/147/EC;

Selection Criteria

2. Location of projects

(vi) areas in which **there has already been a failure to meet** the environmental quality standards, laid down in Union legislation ~~have already been exceeded~~ **and relevant to the project, or in which it is considered that there is such a failure;**

(vii) densely populated areas;

(viii) landscapes **and sites** of historical, cultural or archaeological significance.

Selection Criteria

3. Type and characteristics of the potential impact

The ~~potential~~ likely significant effects of projects on the environment must be considered in relation to criteria set out in points 1 and 2 of this Annex, and having with regard in particular to the impact of the project on the factors specified in Article 3(1), taking into account:

- (a) the magnitude and spatial extent of the impact (for example geographical area and size of the affected population likely to be affected);
- (b) the nature of the impact;
- ~~(b)~~(c) the ~~transfrontier~~ transboundary nature of the impact;
- ~~(c)~~(d) the ~~magnitude~~ intensity and complexity of the impact;
- ~~(d)~~(e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved projects;
- (h) the possibility of effectively reducing the impact.

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)**

(36) In order to stimulate more efficient decision-making and increase legal certainty, Member States should ensure that the various steps of the environmental impact assessment of projects are carried out within a reasonable period of time, depending on the nature, complexity, location and size of the project. Such time-frames should, under no circumstances, compromise the achievement of high standards for the protection of the environment, particularly those resulting from Union legislation on the environment other than this Directive, and effective public participation and access to justice.

Overview of final text (unofficial)

6. Member States shall ensure that the competent authority makes its determination as soon as possible and within a period of time not exceeding 90 days from the date on which the developer has submitted all the information required pursuant to paragraph 4. In exceptional cases, for instance relating to the nature, complexity, location or size of the project, the competent authority may extend that deadline to make its determination; in that event, the competent authority shall inform the developer in writing of the reasons justifying the extension and of the date when its determination is expected.

Section F.3.4: Major Projects and screening information

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

Yes ☐

No ☐

— If the reply is 'Yes', please include the necessary documents listed under point F.3.3

— If the reply is 'No', please include the following information:

- (a) The determination required in Article 4(4) of the EIA Directive (known as 'screening decision').
- (b) The thresholds, criteria or case by case examination carried out to reach the conclusion that an EIA was not required (this information is not needed, if it is already included in the decision mentioned under point (a) above).
- (c) An explanation of the reasons why the project has no significant environmental effects, taking into account the relevant selection criteria listed in Annex III to the EIA Directive (this information is not needed, if it is already included in the decision mentioned under point (a) above).

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Sources of information

http://ec.europa.eu/environment/eia/pdf/EIA_Directive_informal.pdf

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0052>

<http://ec.europa.eu/environment/eia/pdf/Revised%20EIA.pdf>

http://ec.europa.eu/environment/eia/pdf/transposition_checklist.pdf

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0207&from=EN>