

EIA and SEA: Lessons learnt in the past programming period

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Who we are



JASPERS = Joint Assistance to Support Projects in European Regions

- a technical assistance partnership between three partners (DG Regional and Urban Policy, EIB and EBRD)
- independent advice to beneficiary countries to help prepare high quality major projects to be co-financed by EU Structural Funds
- focus on assignments related to major projects with total eligible cost exceeding EUR 75 million (transport sector) and EUR 50 million (other sectors)
- Headquarters: BEI Luxembourg and offices in Bucharest, Brussels, Sofia, Vienna and Warsaw

What we do

Assistance may cover:

- Project preparation support, from identification to submission of the request for EU funding
- Independent quality review of projects
- Horizontal assignments and Strategic support
- Capacity building
- Implementation support

JASPERS is a joint initiative, located within EIB but is an independent unit reporting to its steering committee. Since 1st January 2015, JASPERS has been located in Advisory Services Department of the EIB

Organised into seven divisions:

- Roads; Rail, Air and Maritime; Water and Wastewater; Energy and Solid Waste; Smart Development; Networking and Competence Centre; Independent Quality Review (IQR)

Previous programming period....

- As of 15/09/2015, four hundred and forty one (441) JASPERS-supported applications have been approved by the EC and another 39 are still in the pipeline (total 480 submissions)
- The **support** included recommendations and guidance for project **EIA procedures** as well as **SEA procedures** for relevant plans
- As a result a wealth of knowledge has been acquired and useful lessons have been learned

Lesson 1: Interpretation of definitions of project categories



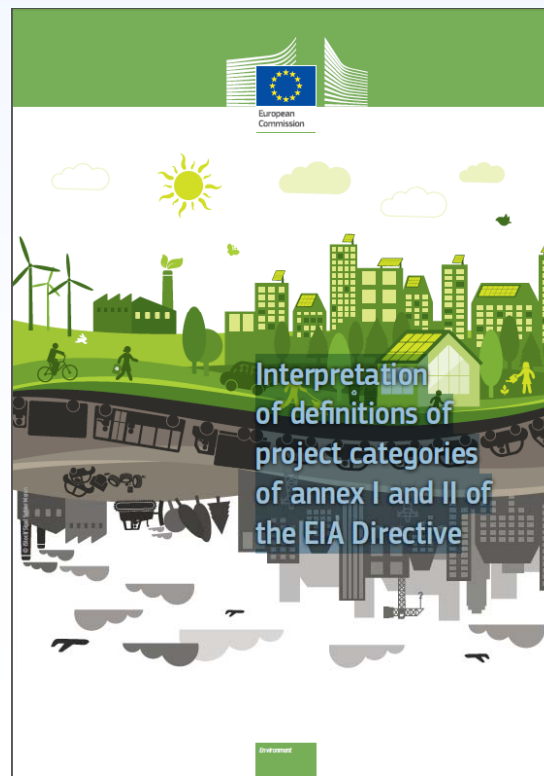
Key points to be always considered:

- if thresholds are assigned for Annex I project categories for which such thresholds are not envisaged, this would limit the scope of application of the EIA Directive....
- salami slicing / exclusion of project splitting: a project cannot be split up into successive shorter sections in order to exclude both the project as a whole and the sections resulting from that division from the requirements of the Directive
- what constitutes a project modification: ... rehabilitation works and when such rehabilitation schemes would fall under this category of projects

Lesson 1: Interpretation of definitions of project categories

Interpretation of definitions of project categories of annex I and II of the EIA Directive

http://ec.europa.eu/environment/eia/pdf/cover_2015_en.pdf



Lesson 2: Development Consent and application of articles 8 and 9 of the EIA Directive



- what constitutes development consent?

Examples of “misunderstandings” in multistage development consent systems:

- the EIA decision wrongly considered as development consent

or

- intermediate decisions/permits considered as development consent

when additional decisions of the competent authority or authorities are necessary in order to entitle the developer to proceed with the project.

Lesson 2: Development Consent and application of articles 8 and 9

- Identification of the development consent (which may vary per project category) is crucial for the implementation of articles 8 and 9 of the EIA Directive

Article 8

The results of consultations and the information gathered pursuant to Articles 5, 6 and 7 shall be taken into consideration in the development consent procedure.

Article 9

1. When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures and shall make available to the public the following information:

- (a) the content of the decision and any conditions attached thereto;
- (b) having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process;
- (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects.

Lesson 3: Public Consultation and Information

- Too short or too long public consultation

Revised EIA Directive: *public consultations should last at least 30 days...*

Aarhus Guidance: *45 days*

- weak information about public participation and information on consultations with (type of public announcement, availability of announcement, deadline for comments, public hearings dates and participation, comments made, the way they were addressed...)
- Definition of public concerned

Lesson 3: Public consultation and Information / Consultation with other MS



Implementation of article 7 of the EIA Directive and of the ESPOO convention

- Assessing whether a project has cross – border impacts (the fact that the project is not “touching” the border is not grounds enough for excluding impacts)
- Assessing impacts for a cross border project can be a challenge

Lesson 4: Annex II - Thresholds/Criteria and Case by Case examination



- Justification of negative screening determinations for Annex II projects
 - Consideration of Annex III criteria not always evident
 - Consideration of Annex III criteria not always in place

- Information on how the screening determination has been made available to the public

- Thresholds might exclude a whole project category from examination or be only relevant to project nature and scale/capacity

Lesson 5: Quality of the EIA report

- EIA report does not address all issues required by Annex IV of the EIA Directive, weakness in addressing issues such as:
 - cumulative effects
 - impacts not always quantified
 - risk analysis – including risk caused by poor operation of the site during construction period and risk generated by natural disasters
 - environmental management plan – institutional roles/responsibilities, indication on the timeframe for their implementation

Lesson 6: Quality of the NTS

- Preparing a Non Technical Summary is a requirement of the EIA Directive
- In some cases the Non Technical Summary prepared would not include the basic necessary information (such as a description of the project, its environment, the effects of the project on the environment and the proposed mitigation)
- It was not written in a non-technical “language” (avoiding technical terms, detailed data and scientific discussion)

Lesson 7: Poor quality of Appropriate Assessment

- Lack of justification for screening out projects
- AA too superficial – not focused on N2000 and species/ habitats
- Assessment of impacts not sufficiently science based – too subjective and not enough field studies /baseline surveys done to support
- Lack of clear conclusions
- No evaluation of cumulative effects
- Performed at a less than optimum timing context

Lesson 8: application of article 4.7 of the WFD

- Misunderstanding when article 4.7 is applicable (eg axiomatically exempting non water related projects from it's application)
- Simple mentioning that the project is of overriding public interest (without demonstrating that the benefits of the project vs. benefits of achieving WFD objective) is not enough
- Weak assessments of the impact of the project on the status of the water body (eg cumulative impacts are not considered, the quality element is not considered)
- Skipping the examination of a better environmental option

- SEA does not substitute EIA and vice versa
 - they are complementary procedures addressing different stages and processes
 - Member States must ensure they meet the requirements of both directives when they both apply

- Repeating the assessment (on the same level of details) should be avoided

- The results of SEA should be considered in subsequent EIA procedures

Lesson 10: difficulties in SEA procedures

- Screening - which plans and programmes should be subject to SEA?
- Consideration of alternatives
- Poor Integration of SEA with plan-making processes
- Scoping –inappropriate scoping-out of key SEA topics.
- Inconsistencies in the assessment of significant effects, including cumulative effects and proposed mitigation and monitoring
- Presentation and communication, limiting engagement
(eg NTS that is neither Non Technical nor a summary)

Recommendation: road mapping & early scoping

The overall project development needs to be sufficiently planned and coordinated

- Identify and avoid parallel procedures that are not linked
- Identify and avoid overlaps

Scoping has many benefits for environmental assessments, both in terms of the duration of the procedure and the quality of the assessment.

- stimulates early dialogue
- identifies critical assessment and control points
- identifies reasonable alternatives for consideration
- identifies information gathering methods/ scope

Recommendation: Data collection, data sharing and quality control



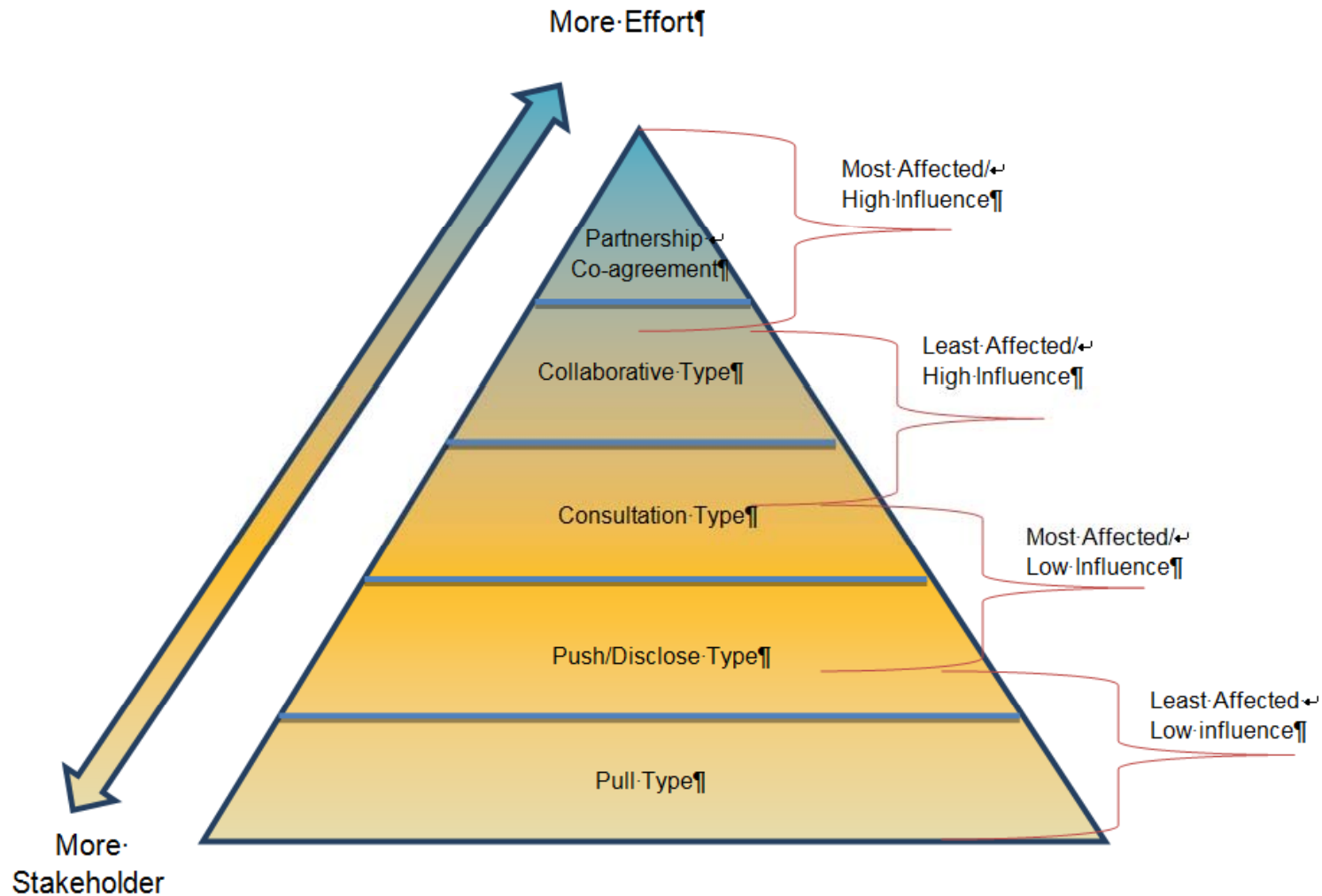
- the needs for data collection and data gaps should be identified and specified early in the process
- the existence of thematic databases at national or regional levels facilitates the process and guarantees a statutory level of quality
- establishing a data sharing mechanism between assessment teams to ensure full consideration of all relevant information and avoid duplication of efforts
- use of external experts and independent quality control can ensure that assessment reports are robust and the data used are valid and relevant

Recommendation: being transparent and involving the public



- setting the ideal scope and timing of public involvement is of paramount importance
- plan for different levels of public consultation and participation (beyond minimum requirements)
- the public can be already informed of and involved in the early scoping and road mapping of the project at the conceptual stage
- public scoping events can be very helpful to inform the public and to receive early feedback by the public

Recommendation: being transparent and involving the public



Conclusions

- Significant steps to the right direction have been taken
- Various and different actors still need to take ownership of their part in the procedures
- Streamlining could simplify procedures and make them more effective

REM::There is no one size fits all solution!!