

Report on ALBANIA

Impact Assessments – Preventive Measures against Significant Environmental Impacts in the 21st Century

Introduction

Legal Framework

1. How is the EIA Directive (Directive 2011/92/EU) transposed in your country? Please provide a list of your national pieces of legislation transposing the EIA Directive.

Answer: a) Law nr. 10 431, date 9.6.2011, “On Environmental Protection”; b) Law nr. 10 440 date 7.7.2011, “On Environmental Impact Assessment”; c) Law nr. 91/2013, date 28.2.2013, “On Strategic Environmental Assessment”; d) Law nr. 10 448, date 14.7.2011, “On Environmental Permits”; e) Decision of the Council of Ministers Nr. 13, date 4.1.2013, “On defining the rules, responsibilities, and deadlines for the Environmental Impact Assessment procedure”; f) Decision of the Council of Ministers Nr. 247, date 30.4.2014, “On defining the rules, requirements and procedures for informing and including the public in the environmental decision making”.

2. Are the EIA Directive and the IPPC Directive¹ transposed in your country through the same legislation?

Answer: Yes, this is the case in Albania.

3. What procedure is set up to determine whether a project (listed in Annex II) shall be made subject to an assessment, case by case examination, thresholds or criteria or a combination of these procedures?

Answer: The procedure is set up by the Decision of the Council of Ministers Nr. 13, date 4.1.2013, “On defining the rules, responsibilities, and deadlines for the Environmental Impact Assessment procedure”, based on the case by case examination.

The procedure includes:

A. Phases of the preliminary procedure of the EIA:

- a) Submission of the request and accompanying documentation by the developer to the National Licensing Centre (NLC), which then forwards it to the National Environmental Agency (NEA);

- b) Consultation of the NEA with the other institutions and the publication of the request;

1 The former Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control repealed by Art 81 of the DIRECTIVE 2010/75/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Text with EEA relevance) with effect from 7 January 2014, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in 2010/75/EU Annex IX, Part B.

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- c) Decision making by the NEA, which is forwarded to the NLC, to the Ministry of Environment (MOE), and to the other consulted institutions, followed by the publication of the decision in the National Register of Licenses and Permits.

EIA Procedural Provisions

4. Is the environmental impact assessment procedure considered in a separate administrative procedure (e.g. - different from the development consent procedure) by the competent authority? If yes, please provide a short description of the applicable arrangements for the implementation of the Directive (including what administrative act is considered a development consent).

Answer: Yes, the EIA procedure is considered as part of the development consent procedure. The latter is stipulated in the Law nr. 10 119, date 23.4.2009, "On spatial planning" and the Decision of the Council of Ministers Nr. 502, date 13.07.2011, "On the uniform regulation for the control of the territorial development", which apart from the EIA, requires the submission of the approval from the NEA, the Forest Service (if Applicable), the water authorities, and the relevant authorities for the engineering, Architectural, seismic, geologic, and fire protection authorities. The competent body for the development consent procedure is the Local Government Council for the small scale projects, and the National Council for the Territorial Adjustment of the Republic of Albania, for large scale projects. Before making their final decisions on the development consent, both these authorities must have acquired first the EIA Report. As such, the EIA, so the procedure is a *sine qua non* condition for the development consent.

5. Is the EIA process part of a permitting procedure in your legal system? How are the results of the consultations with environmental authorities and the public and environmental information taken into consideration in the development consent procedure? To what extent does an EIA influence the final decision, i.e. its approval or refusal and attached conditions?

Answer: Yes, the EIA process is part of the permitting procedure in the Albanian legal system. According to the Law Nr.10 081, date 23.2.2009, "On licenses, authorizations and Permits in the Republic of Albania", Environmental Impact Permits are part of the Field III, of Section 3 of the law, which deals with permits that allow the activities that can have an impact on water reserves, the use of ozone depleting substances, waste management, fisheries and aquaculture, forests, meadows, medicinal plants, wild fauna, hunting, and the licensing of the experts. The results of the consultations with environmental authorities and the public and environmental information are analyzed by NEA, based on the EIA Preliminary Report, which must include: a) a short description of the floral cover of the area where it is proposed the implementation of the project (hereinafter 'the project area'), accompanied by images of the area; b) information on the existence of water reserves in the project area and its' vicinity; c) the identification of possible detrimental impact on the environment, including the impact on biodiversity, water, soil and air; d) a short description on possible discharges on the environment, such as dirty waters, gases, dust, noise, vibrations, and waste production; e) information on possible duration of the of the identified negative impact; f) data on the possible spatial extend of the negative impact on the environment; g) the possibility of the rehabilitation of the environment and the possibility of restoring the area to its previous conditions and the approximate financial costs for such a restoration; h) possible measures for the avoidance and mitigation of the negative impact on environment; i) possible impact on the transboundary environment; j) the relevant certificate and license of the expert that has drafted the EIA Preliminary Report; k) the receipt of the administrative fee payment.

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NEA has the legal obligation to send the full application dossier within 5 days of receipt from the NLC for consultation and their opinion to all the relevant ministries that are responsible for the spatial planning, the protection of public health, agricultural land, economy, and the development of public infrastructure, other institutions that are responsible for the permission/licensing and for the natural and civil emergencies, and the Regional Environmental Agencies (REA), which are branches of the NEA, that should seek the opinion of the local government institutions of the region of the project area. These consulted institutions must reply in writing within 15 days of the receipt of the application dossier. In cases of no reply, this is considered as silent consent. For the purpose of informing the public about the EIA, within 5 days of the receipt of the dossier, the NEA must publish on its website the information submitted by the developer for 20 consecutive days, with the explanation of the procedure and the deadline for publishing its decision in the National Register of Licenses and Permits.

The extent to which the EIA influences the final decision, is a matter of judgment of NEA, which has the legal obligation to provide the detailed reasoning in cases of the refusal of an environmental permit.

6. In case of a multi-stage development consent procedure (e.g. combination of several distinct decisions), at what stage does the environmental impact assessment procedure take place during the development consent procedure in your country?

Answer: As explained above (see Answer 4), before the Territorial Adjustment (for the small scale projects), or the National Council for the Territorial Adjustment of the Republic of Albania (for the large scale projects) make their decisions on development consent, they must have acquired first the EIA Report. So, the EIA procedure precedes the development consent decision.

7. What kind of authority (local, regional, central) is responsible for making decisions on EIA and/or to grant/refuse development consent?

Answer: NEA is a central government authority, under the authority of the Minister of Environment, exercising its functions through the Head Office in Tirana and its Regional Branches, the so called Regional Environmental Directorates (RED), for the EIA consent, whereas the Local Government Territorial Adjustment Council (for the small scale projects), and the National Council for the Territorial Adjustment of the Republic of Albania (for the large scale projects) are the competent authorities for granting the development consent.

8. Is the decision resulting from the environmental impact assessment a pre-condition to grant development consent? In case of a multi-stage development consent procedure, at what stage are the results of the consultations with environmental authorities and the public and environmental information taken into consideration?

Answer: As explained above (see Answer 6), before the Territorial Adjustment (for the small scale projects), or the National Council for the Territorial Adjustment of the Republic of Albania (for the large scale projects) make their decisions on development consent, they must have acquired first the EIA Report. As such, the EIA procedure precedes the development consent decision and it is a pre-condition to grant development consent. The EIA stage precedes the development consent stage.

9. In case of projects for which the obligation to carry out environmental impact assessment arises simultaneously from the EIA Directive and other Union legislation, does your country

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ensure a coordinated or joint (e.g. single) procedure (“one stop shop”)? If yes, please provide a list of the Directives covered.

Answer: N/A. Albania has only recently been granted the status of the EU Candidate Country.

10. Is it possible to carry out joint or coordinated environmental assessments, fulfilling the requirements of the EIA Directive, and Directive 92/32/EEC and/or Directive 2009/147/EC? Is there a legal basis for carrying out such assessments?

Answer: N/A.

11. What arrangements are established with neighboring Member States for exchange of information and consultation?

Answer: Republic of Albania has signed the bilateral Agreement with the Republic of Greece (Member State) for the Establishment of the Permanent Commission for the Transboundary Waters. Also, Albania has signed a bilateral Memorandum of Understanding with Montenegro (Candidate Member State) for the Joint Management of Transboundary Waters and a bilateral agreement with the Republic of Macedonia (Candidate Member State) for the Protection and Sustainable Development of Lake Ohrid and its Basin. Information is exchanged with these countries through the work of the common commissions established for the purpose of the management of the transboundary waters.

EIA Content

12. Is the developer obliged by national legislation to consider specified alternatives to the proposed project?

Answer: Article 1.1/gj of the Decision of the Council of Ministers Nr. 13, date 4.1.2013, “On defining the rules, responsibilities, and deadlines for the Environmental Impact Assessment procedure”, stipulates that the information for the alternatives taken into consideration regarding the selection of the location and of the technology to be used by the project, has to be submitted by the developer to the NLC at the early stage of the application, whereas article 5/1/ç requests that at least two alternatives of the project should be submitted for the deep environmental impact assessment.

13. Is scoping (e.g. scope of information to be provided by the developer) a mandatory step in the EIA procedure?

Answer: Yes. Decision of the Council of Ministers Nr. 13, date 4.1.2013, “On defining the rules, responsibilities, and deadlines for the Environmental Impact Assessment procedure”, stipulates that the information submitted by the developer should include the scope of the project, information on the location and its surroundings, information on the inhabited areas in the vicinity of the project, information on the necessary infrastructure for the connection with the electrical and water network, water supply, waste water discharge, information on existing access roads or the necessity to open up new roads, etc.

14. Are there any provisions to ensure the quality of the EIA report prepared by the developer?

Answer: The report has to be prepared by a professional environmental expert, licensed by the NLC, who prepares and signs the report and is responsible for its content.

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15. How is the cumulation with other existing and/or approved/already proposed projects considered? Please illustrate your answer by referring to examples of national case law!

Answer: Each project has to be evaluated separately, for its impact on the environment. There are no provisions in the Albanian legislation on cumulating the projects, neither any relevant case law.

16. How is it ensured that the purpose of the EIA Directive is not circumvented by splitting of projects - e.g. 'salami slicing' of projects (i.e. the assessment and permitting of large-scale, usually linear infrastructure projects by pieces)? Please illustrate your answer by referring to examples of national case law!

Answer: There are no legal safeguards against circumvention by splitting of projects, but for the linear infrastructure projects the total length is considered, so if it is detected by the authorities that the whole project exceeds the minimal length for the EIA procedure, the latter one must be carried out, before any permits are issued.

17. Can the screening decision be appealed? If yes, who can lodge an appeal?

Answer: Yes, the screening decision can be firstly appealed administratively before the NLC, or the other decision making institution, for its acts and omissions. Then, the decision of the head of the administrative authority can be can be appealed at the administrative court, according to the judicial rules of procedure. Article 30 of Law Nr.10 081, date 23.2.2009, "On licenses, authorizations and permits in the Republic of Albania" stipulates that "*Any interested party has the right to lodge an administrative appeal against acts and omissions of the NLC or the other institution...*"

18. Is there a time limit for the validity of the EIA-decision and the development consent? Is the permit holder obliged to apply for a new permit after a certain period of time?

Answer: Yes, the EIA-decision and the development consent are valid for 2 years. After that period, the permit holder is obliged to apply for a new permit, submitting anew all the necessary documentation.

Access to Information Provisions

19. How is the public informed about the project and the EIA? When is the public informed about a project requiring an EIA and about a pertaining administrative procedure? Where can the information be accessed? What does the information contain? Who gets access to this information?

Answer: The principles of the freedom of information in the environmental issues are stipulated in the Albanian legislation, starting with the Constitution, the law "On Environmental Protection", the Decision of the Council of Ministers Nr. 16, date 4.1.2012 "On Public Access to Environmental Information", Prime Minister's Order Nr.02, date 16.12.2005, "On improving transparency through an increased use of the internet and improvement of existing website". Pursuant to this legislation, the official websites of every Albanian administrative authority must publish contact details of the person or the information departments and the deadlines for providing responses. According to the decision, the public relations departments of the administration (including MOE) should provide the information as soon as possible, the latest within one month of the request.

20. How does the authority ensure public access to environmental information in the procedures based on the EIA Directive? To what extent is this provision of information user-friendly (easy to find, free of charge, searchable, online, downloadable, etc.)?

Answer: Public authorities have the legal obligation to publish on their websites the information on the project. Pursuant to the law “On Environmental Protection”, the ‘State of the Environment’ reports must be published annually. If a person’s request for Information has been ignored or refused, he must exhaust the administrative appeal, before lodging a judicial appeal before a court. The information is freely downloadable and there are no restrictions to access.

Public Participation Provisions

21. What are the criteria for taking part in an environmental impact assessment procedure, besides the project developer and the competent authority? What rights can people living in the neighborhood, NGOs, authorities invoke in the procedure? What legal rights do participants of the proceeding have? What happens if the competent authority denies someone's legal standing? Please illustrate your answer by referring to examples of national case law!

Answer: Article 25 of the Law on EIA stipulates that any interested party, subject of this law, has the right of the administrative appeal, through a request at the NLC, against the acts or omissions of the ministry. Whereas article 48 of the Law on Environment Protection accords the right to lodge a judicial appeal in case of a threat to the environment, pollution or its damage, the public (which includes NGO’s) has the right: a) to request from the public authorities to take the necessary measures; b) to file a claim in the court against the public authority, or the legal and natural person that have caused environmental damage, or that threaten to damage the environment. If a person is denied legal standing, he/she can seek the remedy before a court. Unfortunately, there is no case law on this issue.

Administrative and Judicial Review & Enforcement Provisions

22. Can the decisions of the authority (local, regional, central) responsible for making decisions on EIA be appealed? Who is the superior authority deciding over the appeal?

Answer: Yes, the decisions on EIA can be appealed. The superior administrative authority is the Minister of Environment.

23. Is there a judicial review against decisions made in EIA procedures? If yes, what matters can be challenged and what decisions can the court take?

Answer: Yes, there a judicial review against decisions made in EIA procedures (see Answer 21). The court decision can force the developer or the administrative authority to take an action, in cases of omissions, or to declare null and void an action taken by them which is deemed to have infringed the law, and order them to compensate the damage caused, as the case might be.

24. What are the criteria of legal standing against decisions based on EIA? Who (individuals, NGOs, others) is entitled to challenge the EIA decision at the court? Do individuals need to be affected? If yes, in what way do individuals need to be affected by the decisions in order to have standing?

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Answer: As explained in Answer 21, the public has the right to lodge a judicial appeal in case of a threat to the environment, pollution or its damage. Article 5/12 of the Law on Environment Protection defines the term “*public*” as “one or more natural or legal persons, in accordance with the national legislation and practices, associations, organizations and their groupings”. On the other hand, paragraph 2.1 of the Decision of the Council of Ministers Nr. 247, date 30.4.2014, “On defining the rules, requirements and procedures for informing and including the public in the environmental decision making” stipulates that every ‘interested party’ has the right to lodge an administrative appeal during the EIA procedure. Article 4 of the Code of Administrative Procedures defines the ‘interested party’ as any natural or legal person, or state body, whose legal rights and competence have been infringed, or might be infringed during the administrative procedure, whereas article 45, includes the environment amongst the ‘wide interest’ issues, when a person can initiate the proceedings. Further, article 18/b of the Code stipulates that in order to protect the constitutional and legal rights of the private persons, the administrative activity is subject to the judicial review. Moreover, article 15 of the Law 49/2012, “On the organization and functioning of the Administrative Courts and the judicial settlement of the administrative conflicts”, accords the right to lodge a claim at the court to any subject who pretends that a legal right or interest has been infringed by an act or omission of the public body. From this, it can be inferred that individuals need to be affected, in order to challenge an EIA decision at the court. There are no legal provisions as to the manner that an individual has to be affected, this is decided by the court on a case by case basis.

25. Does an administrative appeal or an application for judicial review have suspensive effect on the decision? Under which conditions can the EIA decision be suspended by the court?

Answer: Yes, in both cases the decisions can have suspending effects. The court can order the suspension of the EIA decision when an irreparable damage can be caused to the interests of the claimant.

26. Does the court have the competence to change/amend an EIA decision? Can it decide on a new condition or change the conditions of the EIA decision?

Answer: Yes, the courts have the competence to change or amend any administrative decisions, including new conditions.

27. In general, is it required to include monitoring of environmental impacts in the EIA? How is compliance with the monitoring conditions being checked? Is the public informed about the results of monitoring and if yes, how?

Answer: Yes, monitoring of environmental impacts is obligatory, according to Chapter III of the Decision of the Council of Ministers Nr. 247, date 30.4.2014, “On defining the rules, requirements and procedures for informing and including the public in the environmental decision making”. The developer has the obligation to send all the information to the NEA and its regional branches (RED), and to the Local Government Unit (LGU). Also, the State Inspectorate of Environment, Forests, and Waters has monitoring and sanctioning competences. The public is informed by the displaying the information on the project at the LGU premises, in the written and visual media, and the website of the NEA.

28. Who controls compliance with EIA decisions in your country? Are there specialized inspectorates checking compliance? How often do inspections take place? What enforcement policy do the authorities have (warnings, injunctions, sanctions and so on) in case of detected non-compliance? Has information on the results of inspections and related enforcement actions been disseminated to the wider public, and if yes, how?

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Answer: NEA controls compliance with EIA decisions in Albania. The frequency of inspections is decided on a case by case basis. NEA can issue fines for non-compliance up to 2.000.000 Albanian lek (ALL), approximately 7,200.00 Euro. All the information is made available on the website of the NEA.

29. If EIA decisions are infringed, what types of sanctions can be imposed by whom? Are these sanctions administrative, criminal or civil in nature? What is the level of sanctions? Are those sanctions often applied and are they considered to be effective? Can those sanctions be applied on legal persons? Please illustrate your answer by referring to examples of national case law!

Answer: The sanctions are imposed by the NEA and are of an administrative character. They can also be imposed on legal persons. The fines carry a penalty up to 2.000.000 Albanian lek (ALL), approximately 7,200.00 Euro. Criminal sanctions can be imposed when the developer presents falsified documentation during the EIA proceedings.

30. If a given activity falls under the provisions of the EIA legislation, but the developer started the activity without the required authorization, what kind of measures can be taken by the competent authority?

Answer: NEA can suspend the activity and impose a fine (administrative sanction) on the developer. It can also order the sequestration of the property, depending on the nature of the infringement. Criminal sanctions can be imposed when the developer presents falsified documentation.

31. Are there any penalties applicable to infringements of the national provisions adopted pursuant to the EIA Directive?

Answer: The penalties mentioned above (see answers 28-30), fines, sequestration, criminal sanctions are imposed on persons that infringe the laws on environment protection, on environment impact assessment, and on environmental permits, but not specifically related to the EIA Directive.