

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

Introduction

Environmental Impact Assessment (EIA) is one of the major instruments of the EU for the protection of the environment and health. The update of the current legislation reflects the experience gained with environmental impact assessment procedures at the EU and at the national level, the past changes in EU legislation and policy, and the case law of the Court of Justice of the European Union. The Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment entered into force on the 15 May 2014. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 16 May 2017.

The EIA entails the systematic collection and analysis of information about the environmental effects of a project by the developer in order to enable the competent authority to decide if and how the project should be carried out. The directive is aimed at ensuring a high level of protection of the environment and human health through the establishment of common minimum requirements for the assessment of the effects of certain public and private projects on the environment. The amendments adapt the current directive to the policy, legal and technical contexts, which have evolved considerably.

In particular, the quality of the environmental impact assessment procedure is strengthened and aligned with the principles of smart regulation. In addition, the new directive enhances consistency and synergies with other EU legislation and policies. New elements incorporated into the EIA procedure include, in particular, a mandatory assessment of reasonable alternatives studied by the developer, broader scope, as the EIA will cover new issues, and more detailed provisions on screening.

The adopted text includes many improvements which should help to overcome some of the shortcomings and loopholes in the current directive.

Main improvements include: new environmental factors such as biodiversity and climate change to be taken into account in the environmental impact assessment report, independence of experts and avoidance of conflict of interest required, additional requirements to tackle slicing up of projects. Developers must show that they have considered all reasonable alternatives and justify their final decision. The conclusion that no EIA is required must be justified on the basis of an improved list of criteria (Annex III). The text also seeks to ensure better information and participation of the public, which are crucial to improve the respect of EU environmental law in general.

Questions:

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

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

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.

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 ensure a coordinated or joint (e.g. single) procedure (“one stop shop”)? If yes, please provide a list of the Directives covered.
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?
11. What arrangements are established with neighboring Member States for exchange of information and consultation?

EIA Content

12. Is the developer obliged by national legislation to consider specified alternatives to the proposed project?
13. Is scoping (e.g. scope of information to be provided by the developer) a mandatory step in the EIA procedure?
14. Are there any provisions to ensure the quality of the EIA report prepared by the developer?
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!
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!
17. Can the screening decision be appealed? If yes, who can lodge an appeal?
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?

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?

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.)?

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!

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?
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?
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?
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?
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?
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?
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?

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

Please highlight the specific aspects of your legal system without going too much into detail. Please provide, if available, summaries of interesting cases that illustrate the answers to the questions above.