

Answers to the Questionnaire on behalf of the Council of State of the Netherlands

Rapporteur: State Councillor Niels S.J.Koeman

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

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.*

The EIA Directive is transposed in Chapter 7 of the Environmental Management Act (EMA) and in the Environmental Impact Assessment Decree (EIA Decree).

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

The IPPC Directive used to be transposed in Chapter 8 of the EMA. However, as of 1 October 2010 the Environmental Permitting (General Provisions) Act has entered into force. This act unifies a number of permit procedures for activities affecting the physical environment, such as the former EMA permit procedure, into a single environmental permit procedure with a single competent authority. Therefore, the EIA Directive and the IPPC Directive are no longer transposed 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?*

Article 7.2, section 1, subsection b, EMA holds that a governmental decree designates *activities* for which the competent authority has to determine whether they may have considerable harmful consequences for the environment. According to article 7.2, section 4, EMA the governmental decree designates for this activities categories of *decisions* for which the competent authority has to determine whether the consequences of the activity are that harmful that an EIA has to be made. Article 7.2, section 8, states that the decree may provide that the designation of an activity or a decision applies only in designated categories of *cases*. The field of application of the procedure is therefore defined in the EIA Decree. Annex D holds a list of activities and decisions for which the competent authority has to determine whether the consequences of the activity are that harmful that an EIA has to be made. The annex first mentions the activity, then (for most activities) the criteria/thresholds above which the authority is obliged to make the determination and then the decisions to which this obligation applies.

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.

Hence, for some activities there solely exists a case by case examination, but for most activities a combination of criteria/thresholds and case by case examination applies. Both procedures are called the “formal screening procedure” .

In addition, it follows from the recently added Article 2, section 5, EIA Decree that insofar as Annex D for certain types of activities designates categories of cases, the obligation to determine whether a project shall be made subject to an EIA applies not only in such cases, but also in other cases in which on the basis of criteria set out in Annex III of Directive 2011/92/EU it cannot be excluded that the activity may have significant adverse environmental impact. So nowadays the criteria/thresholds to make the determination are not fully decisive. In every case the competent authority has to estimate whether there will be other circumstances because of which an activity that does not meet the criteria/thresholds, still has to be subject of a determination. One of these circumstances may be that the activity will take place in an extraordinary sensitive area. This amendment to the EIA Decree has been made in April 2011, following the judgment of the European Court from 15 October 2009, Commission/Netherlands, C-255/08, with respect to the application of thresholds. The assessment whether it cannot be excluded that the activity may have significant adverse environmental impact is called the “informal screening procedure” .

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).*

The EIA procedure will be carried out as a preliminary phase of the development consent procedure. In the case of “simple” projects, the limited EIA preparatory procedure applies. In the case of more complex projects, the extended EIA preparatory procedure applies. In both procedures, the proponent notifies the competent authority through a starting document. In the extended procedure there will be a public announcement of the proposal, consultation of designated authorities about the scope of the EIA and consultation of the public about the proposal. In both procedures, a scoping advice of the Netherlands Commission for Environmental Assessment (NCEA) is optional. The next step in both procedures is the writing of the EIA report by the proponent, who submits this report to the competent authority as part of the application for the development consent. There will be a notification of the application. The competent authority publishes the EIA report together with a concept decision concerning the development consent. After this, a public consultation about the EIA report and the concept decision will be held. In the extended procedure there will also be a consultation of designated authorities about the EIA report. In the limited procedure a review advice of the NCEA is optional, whereas this review advice of the NCEA is mandatory in the extended procedure. Subsequently, the competent authority publishes its final decision. Amongst the acts that are considered as development consent are the environmental permit according to the Environmental Permitting (General Provisions) Act, spatial planning decisions according to the Spatial Planning Act, track decisions according to the Track Act, decisions based on the Aviation Act, the Mining Act, the Excavations Act, the Water Act, etcetera.

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?*

As follows from the above, the EIA procedure will be carried out as a preliminary phase of the permitting procedure. According to Article 7.28, section 1, EMA, the competent authority may not

deal with an application for a development consent, if the proponent does not submit an EIA report with his application for the development consent. Furthermore, according to Article 7.36a EMA the competent authority may not take a decision about the development consent, unless the EIA procedure has been completed fully and correctly, and unless the information in the EIA can reasonably serve as the basis for the decision. According to Article 7.37 EMA the decision should indicate how the EIA report (including the alternatives described), the advice of the NCEA and the comments are taken into account. Beyond this, there is no legal regulation about what should be done with the EIA report and the comments. According to Article 3:2 of the General Administrative Law Act an administrative authority shall gather the necessary information concerning the relevant facts and the interests to be weighed. Furthermore, according to Article 3:46 of the General Administrative Law Act an administrative decision shall be based on proper reasons. It may be that the competent authority acts contrary to these obligations when it does not take into account the EIA report properly in its decision and does not respond on serious comments on a draft decision. This may be brought forward in an appeal against the final decision about the development consent.

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?*

The system is such that an EIA has to be made only once, i.e. at the first decision which provides for (part of) the activity. For any plan preceding this decision a SEA has to be made. However, if the activity is made possible in a spatial planning decision that does not need to be worked out, this decision will be regarded as the decision which provides for the activity. In that situation, an EIA (and not a SEA) has to be made for this spatial planning decision.

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

This depends on the kind of decision. Either local, regional or central authorities may be responsible. Most decisions subject to EIA are taken on municipal level.

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?*

EIA does not result in a separate decision. As stated above, if the proponent does not submit an EIA report with his application for the development consent, the competent authority may not deal with this application. In case of a multi-stage development consent procedure, the results are primarily taken into consideration in the first decision which provides for (part of) the activity (where the EIA takes place). However, they can also be taken into account in later decisions.

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.*

EIA and SEA procedures are not integrated in the Netherlands.

Although this is not about EIA, we mention that Article 7.2a EMA holds that a SEA has to be made in the preparation of a plan for which, according to the Nature Protection Act 1998, an appropriate assessment has to be made because of the activity that is made possible in the plan. In the Nature Protection Act 1998 the obligation of Directive 92/43/EEC and Directive 2009/147/EC is implemented to make an appropriate assessment of activities that may cause a serious harm to Habitat or Bird areas. Article 19j, section 4, of the Nature Protection Act 1998 holds that the appropriate assessment must be part of the SEA that is prescribed for these plans. In this respect, the appropriate assessment as

mentioned in Directive 92/43/EEC and Directive 2009/147/EC is integrated in the SEA procedure. There is no such mandatory integration in the EIA procedure.

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?

See also above. Article 19f, section 2, of the Nature Protection Act 1998 states that in the preparation of a permit the appropriate assessment as mentioned in Directive 92/43/EEC and Directive 2009/147/EC may be part of an EIA, in the case an EIA is prescribed. Consequently, there is no legal obligation for joint assessments in this respect, but the legal possibility to carry out joint assessments does exist, provided all requirements of the different Directives are met. Taken into account the different nature of these assessments, the advantages may be limited.

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

For this, a scheme is set out in paragraph 7.11 EMA on Activities with potential transboundary environmental impacts. When there is a possibility of serious consequences for the environment in another country as a result of the proposed activity, the government of that country or an authority designated by that government will be informed as soon as possible. The government of that country or an authority designated by that government will be provided with the application, the concept decision, the EIA, the results of the consultations, and the final decision, simultaneously with the publication thereof in the Netherlands. The Minister of Infrastructure and the Environment is in charge of liaising with the government of the other country in general and is involved in government consultations if consultations on the proposed activity between the competent authority and the governing bodies of the other country have not led to the desired result. The agencies that have been designated on the basis of their specific environmental responsibility by the competent authorities of the other country have the same rights as their national counterparts. If another country feels it may be affected by a proposed activity in the Netherlands, the country can also request application of the above scheme. The Minister may determine that the competent authority does not adopt its decision before he is enabled to submit the outcome of the consultations with the government of the other country to this authority. If a proposed activity in another country could have significant adverse effects on the environment in the Netherlands the Minister is responsible for maintaining contacts with that country if there is no contact about a proposed activity between the bodies directly involved in Netherlands and the governing bodies of the other country or if the contact has not led to the desired result.

EIA Content

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

According to Article 7.23, section 1, EMA an EIA contains a description of the proposed activity and the manner in which this will be carried out and of the alternatives which should reasonably be taken into consideration, and the reasons for the choice of the alternatives considered. However, it follows from Article 1.11, section 1, Crisis- and Recovery Act that this obligation is not applicable on decisions within the scope of this Act. This Act relates, generally spoken, to construction projects that have a major impact on employment or the economy, for example track decisions.

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

In the limited EIA preparatory procedure the proponent may voluntarily request the competent authority an opinion on the scope and level of detail of the information of the EIA. In the extended EIA preparation procedure there will be an obligatory consultation of designated authorities about the scope of the EIA. In both procedures, a scoping advice of the Netherlands Commission for Environmental Assessment (NCEA) is optional.

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

Article 7.23 EMA summarizes the information that an EIA report must include (the aim of the proposed activity, a description of the proposed activity and the manner in which this will be carried out, a description of the alternatives that should reasonably be taken into consideration, an indication of the decision for which the EIA is made, a description of the existing state of the environment, the effects on the environment of the proposed activity and the alternatives, a description of possible measures to be taken, a summary for the general public, etcetera). The competent authority publishes the EIA report together with a concept decision concerning the development consent. After this, a public consultation about the EIA report and the concept decision will be held. In the extended procedure there will also be a consultation of designated authorities about the EIA report. In the limited procedure a review advice of the NCEA is optional, whereas this review advice of the NCEA is mandatory in the extended procedure. According to Article 7.36a EMA, the competent authority may not take a decision about the development consent, unless the EIA procedure has been completed fully and correctly, and unless the information in the EIA can reasonably serve as the basis for the decision.

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!

As mentioned before, it follows from Article 2, section 5, EIA Decree that insofar as Annex D for certain types of activities designates categories of cases, the obligation to determine whether a project shall be made subject to an EIA applies not only in such cases, but also in other cases in which on the basis of criteria set out in Annex III of Directive 2011/92/EU it cannot be excluded that the activity may have significant adverse environmental impact. In its decision from 3 July 2013, case no. 201209539/1/R4, the Council of State pointed out that in Annex III of Directive 2011/92/EU cumulation with other projects is mentioned as criterion. In view of the excavations in the vicinity of the currently licensed excavation the Dutch Council of State ruled there was a cumulation of projects, as set out in Annex III of Directive 2011/92/EU. Therefore, the competent authority was obliged to determine whether the project shall be made subject to an EIA.

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!

According to the case law of the Council of State, not the requested or licensed activity but the technical capacity of the installation is decisive for the determination whether a project shall be made subject to an EIA. Therefore, when the technical capacity of the installation exceeds the thresholds, the fact that the requested activity is below the thresholds is irrelevant. When a company wishes to expand its activities, not the growth of the licensed activity is decisive, but the question whether an installation is replaced or expanded. For example, when a farmer decides to pull down his old stable and to build a new one for a number of pigs or poultry that is over the threshold, EIA regulation applies no matter if he has already a permit for the existing part of the animals. When he decides to build an additional

stable for a number of pigs or poultry that is below the thresholds, EIA regulation does not apply, no matter if the total number of animals in his two stables will be over the thresholds. Situations may be complex for farms that have a number of stables of which some will be pulled down, others not, but the last ones will be enlarged or renewed.

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

When the competent authority determines the project is to be subject to an EIA, this screening decision can be appealed separately. When the competent authority determines the project is not to be subject to an EIA, this screening decision can be appealed as part of the decision about the development consent. In both cases, the appeal can be lodged by an interested party.

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?

There is no strict time limit for the validity of the EIA. However, the competent authority may not take a decision about the development consent, unless the information in the EIA can reasonably serve as the basis for the decision (Article 7.36a EMA). Therefore, when the EIA becomes outdated, it cannot be used anymore.

According to Article 2.23, section 1, of the Environmental Permitting (General Provisions) Act an environmental permit may specify that it applies in whole or in part for a specified period of time. Article 2.23, section 2, holds that by governmental decree categories of cases can be designated, in which an environmental permit must specify that it is only valid for a specified period. Article 5.19 of the Environmental Law Decree states that an environmental permit for activities as referred to in Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances may apply for a maximum period of five years only.

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?

In the extended EIA procedure there will be a public announcement of the proposal. In both the simple and the extended EIA procedure the competent authority notifies the public about the application for the development consent and publishes the EIA report together with a concept decision concerning the development consent. Article 3.10, section 1, subsection c, of the Environmental Permitting (General Provisions) Act holds that the so called uniform public preparatory procedure of the General Administrative Law Act is applicable on environmental permits for the establishment of an installation. From this it follows that Articles 3:11 and 3:12 apply. Article 3:11 of the General Administrative Law Act holds that the draft decision is made public by the competent authority, that Article 10 of the Act on openness of public administration is applicable, that the authority will supply copies of the files that are made public and that these files are made public for a period of six weeks. After this period the files remain public, but the period restricts the possibility to state views within six weeks. Article 3:12 of the General Administrative Law Act holds that the competent authority gives notice of the possibility to see the files, in daily newspapers or local papers. In this notice the place where and the time within the files may be seen is mentioned, who will be entitled to state views, how this should be done and in some cases the time within a decision should be taken. According to Article 7.32, section 2, EMA views on an EIA report can be brought forward by everyone.

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.)?*

The Act on openness of public administration and Chapter 19 EMA contain specific provisions on openness of environmental information. According to the Act on openness of public administration information will be given by public authorities in fulfilling their tasks. This information is given both on the own initiative of the public authority and by request. Article 19.1a EMA gives a definition of environmental information. The Act on openness of public administration holds some specific provisions on environmental information. The act is amended on this points to meet the requirements of the Aarhus-convention. In addition to the Act on openness of public administration the EMA holds some specific articles on, for instance, openness of files related to environmental permits, the duty to give information on own initiative of public responsibilities, functions and public services related to the environment, and a specific regulation on confidentiality of information in an application for an environmental permit. According to Article 19.1b, section 1, EMA access to irrevocable environmental permits and the documents related to it, such as the EIA report, is without cost. A copy of the permit and as far as possible of the documents related to it must be provided at no more than its costs. Article 19.1b, section 2, EMA holds that irrevocable permits for IPPC-installations shall be made available electronically to all.

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!*

In the extended procedure there will be a consultation of the public about the proposal. According to Article 7.32, section 2, EMA views on an EIA report can be brought forward by everyone in the preparatory procedure simultaneously with views on the application or the draft decision for the development consent. According to Article 13.3 EMA everyone can express his or her view on the draft of an environmental permit for an installation. Views can be brought forward by written or oral means within a time limit of six weeks after publication of the draft decision and the EIA report. The participants in this phase can invoke any rule of law and can express any opinion on policy. In this phase, there will generally be no reason for the competent authority to deny someone's legal standing. If the authority does so nevertheless, this decision is subject to judicial review and may lead the judge to the conclusion that it cannot be held against the person that he or she did not take part in the preparatory procedure (which is normally a prerequisite to get access to court).

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?*

As stated above, the uniform public preparatory procedure of the General Administrative Law Act is applicable on these decisions. In the Dutch administrative legal system applicability of the uniform public preparatory procedure – in which views can be expressed on a draft decision – excludes the possibility of an administrative appeal against the definitive decision. Against the definitive decision direct appeal to the courts is possible.

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?

As the EIA procedure will be carried out as a preliminary phase of the permitting procedure, the (sub)decisions made in EIA procedures can be challenged in a judicial procedure against the definitive decision about the development consent. Basically, all legal requirements to the EIA can be invoked, unless the so-called 'relativity requirement' does not allow this (see the answer to Question 24). The court can annul all or part of the disputed decision. The court may, however, determine that all or part of the legal consequences of the annulled decision shall be allowed to stand. The court may direct the administrative authority to make a new decision in accordance with its judgment. Therefore, the court also may set the administrative authority a time limit. Furthermore, the court can determine that its judgment shall take the place of the annulled decision, but the court can only use this possibility when the administrative authority has no discretion or has given a reasonable opinion in court about the way the freedom should yet be exercised. Nowadays, the court can also make an intermediate judgment, ordering the administrative authority to repair its decision.

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?

In the Netherlands the right to take legal action on environmental decisions has been dependent on the term 'interested party' since 1 July 2005. Therefore, the admissibility conditions in respect of environmental decisions no longer differ from those that apply in administrative law proceedings in general. Interested party means a person whose interest is directly affected by a decision. The 'interest' element should be understood as meaning that the person concerned may be exposed to the actual consequences of the decision. Legal entities may be interested parties in the same way as other persons, for example if their property or assets are adversely affected by a decision. What applies specifically to legal entities is that their interests are deemed to include the general and collective interests which they particularly represent in accordance with their objects and as evidenced by their actual activities. On this basis, NGOs, including environmental protection associations, have greater access to the courts than natural persons since they can represent general interests, including environmental interests, which do not (or do not always) affect natural persons individually. The criteria of the organisation's objects and its actual activities can be regarded as 'communicating vessels': the more wide-ranging the objects the more exacting are the requirements that the nature and scope of the actual activities must meet, and the more limited the objects in terms of function or territorial scope the fewer will be the actual activities necessary as a basis for admissibility. In practice, foundations and associations that represent environmental interests or nature conservation interests have ample opportunity to institute proceedings before the administrative courts. In this regard, it can be noted that the organisation is free to choose its own objects. The thresholds are low. This also applies to informal associations (i.e. associations not established by notarial deed). The right to challenge a decision of an administrative authority is not dependent on demonstrating that a subjective right has been infringed. However, a so-called 'relativity requirement' must be fulfilled (Article 8:69a of the General Administrative Law Act). An administrative court may not reverse a decision on the ground that it is in conflict with a legal rule or general principle of law if this rule or principle manifestly is not intended to protect the interests of the party invoking it.

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?

Applications to the administrative courts for judicial review or appeal do not have suspensive effect, either generally or in the particular case of environmental decisions. However, decisions prepared in accordance with the uniform public preparatory procedure take effect only on the day after the time

limit for review or appeal passes. In addition, where a request for interim relief is lodged within that time limit, decisions prepared in accordance with the uniform public preparatory procedure do not take effect until after the judge has ruled on the request for interim relief. To this extent, therefore, a request for interim relief has suspensive effect. Suspension can be based on a preliminary judgment about the lawfulness of the decision or on a balancing of interests.

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?

For this, we refer to the answer to Question 23.

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?

There is no obligation for the developer to monitor activities. However, agreements can be made with the developer to provide the competent authority with monitoring data.

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?

According to Article 7.39, section 1, EMA the competent authority that has taken a decision must examine the impact of the implementation of that decision for the environment, when the proposed activity is undertaken or after it has been undertaken. According to Article 7.41, section 1, EMA the competent authority draws up a report of the examination. The report must be submitted to the advisors and the designated authorities, the NCEA Committee in the extended EIA procedure and the developer. A notice of the report is published in one or more daily papers, newspapers or free local papers, or in another suitable manner. According to Article 7.42, section 1, EMA, if the examination referred to in section 7.39 shows that the activity has substantially more detrimental effects on the environment than expected, the competent authority takes, if at his judgment this is necessary, measures standing at his disposal in order to reduce the effects as much as possible or undo these effects. Besides this, the Environmental Inspectorate is responsible for monitoring projects. In the Netherlands, the general enforcement policy can be described as a ‘principle of duty’. The most common forms of enforcement are ‘enforcement action’ and ‘astreinte’. ‘Enforcement action’ means physical acts taken by or on behalf of an administrative authority against what has been or is being done, kept or omitted in breach of obligations laid down by or pursuant to any statutory regulations.

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!

For administrative sanctions, see the answer to Question 28. According to Article 1a juncto Article 2, section 1, of the Economic Crimes Law acting without or in violation of an environmental permit constitutes a crime if done intentionally and otherwise an offence, so that prosecution is possible. However, enforcement actions are applied more often. Acting without or in violation of an environmental permit can also constitute an unlawful act in civil law, but this way is not followed very often, either. Sanctions can be applied on legal persons.

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?

In this case no permit (development consent) has been granted to the developer. When the developer acts without a permit, enforcement action can be taken.

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

There are no financial penalties to the infringement of the specific national EIA provisions, but there can be financial penalties on acting without or in violation of an environmental permit. Furthermore, a permit can be withdrawn.

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.