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

Answers given by Anna-Lena Rosengardten, technical judge of the Land and Environment Court of Appeal in Stockholm, Sweden

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.

The EIA Directive is transposed into Swedish legislation mainly by the Environmental Code (SFS 1998:808) and the Ordinance on Environmental Impact Assessments (SFS 1998:905).

The Environmental Code covers environmentally hazardous activities and projects (mostly IED-projects) and water operations. It also contains a chapter, chapter 6, with general regulation on environmental impact statements (EIS) and environmental impact assessments (EIA). Both the content of the EIS and the proceedings to produce them - including consultations - are regulated in this chapter.

A number of acts that regulates other kinds of projects than what is covered by the Environmental Code, are connected to the general regulation in chapter 6 of the Environmental Code. This is the case for example for the Road Act, the Act on Certain Pipelines, the Railway Act and the Act on Electricity. These acts all contain references to the Environmental Code, so that chapter 6 of the Code is to be applied together with the special regulation.

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

Yes, they are both transposed by the Environmental Code.

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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?

There is a combination of these procedures. Larger projects, for which an EIA is always mandatory, are specified by the Ordinance on Environmental Impact Statements and by the Ordinance on Environmental Assessments. Projects that are not specified should be considered according to criteria

stated in the ordinance. In these cases it is the County Administration that decides whether an EIA is needed or not.

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?

Common answer to question 4, 5 and 6.

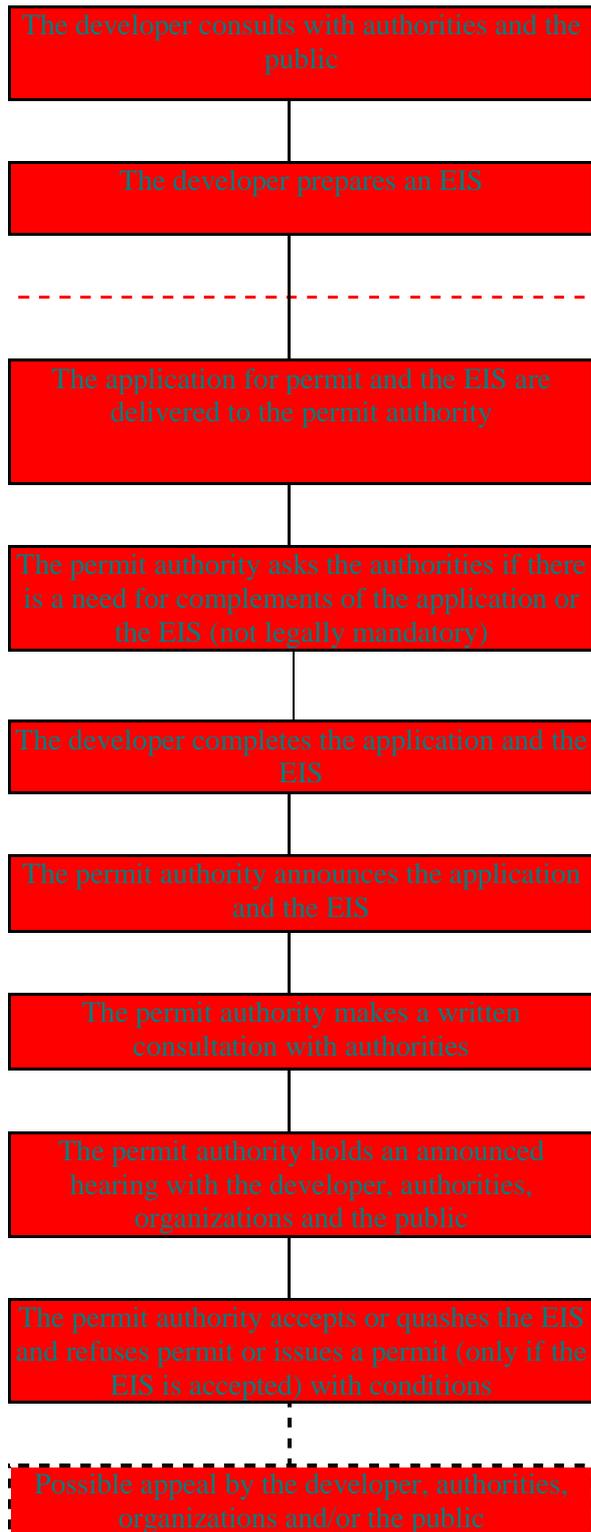
There is just one permitting process in Sweden, and this procedure includes the EIA-process as well as the demands of the Directive 2010/75/EU on industrial emissions, IED, on IED-projects.

A permit according to this process cannot be issued contrary to a detailed development plan or area regulations according to the Planning and Building Act.

The EIA is crucial for the approval or refusal and for the conditions of the project.

The permitting process differs a little between different kinds of projects, but this scheme describes the most important steps of the process for projects that are covered by the Environmental Code.

The process is more or less the same for all projects that are tried for a permit according to the Environmental Code. That is, projects for which an EIA is not mandatory according to the EU-legislation, still have to pass this process according to the Swedish legislation.



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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 project. The decisions concerning larger projects are made by central authorities (the government or national authorities) or by the land and environment courts (of which there are 5 in Sweden). Decisions concerning not so large projects are made by the county administrations. There are 21 county administrations in Sweden, but only 12 of them have the authority to make this kind of decisions.

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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?

No. No further development consent is needed when the permit - the result of the EIA-process - is issued.

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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.

Yes. Only one procedure is required even though the demand for EIA might arise from different pieces of EU legislation. I have not the survey of environmental directives to pinpoint which of them that has a specific demand for EIA, but issues that arise from for example the directives on waste, the frame directive for water, the directives on air quality standard and the directives on birds and on habitats are examples that are all included in the same procedure. As mentioned earlier, the demands of the IED-directive are also met by this procedure.

The Swedish legislation might however demand separate EIA:s for separate parts of a project, due to different competent authorities. This is the case for example when it concerns certain kinds of infrastructural projects, such as the building of new roads or railways that also comprises tunnels or bridges. The roads and railways are decided by the government or by national authorities, while the tunnels or bridges are considered as water operations for which the land and environment courts are the competent authorities.

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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?

Provided the question concerns the habitat directive (92/43/EEG) and the directive on birds (2009/147/EC), the answer is yes. If a project concerning an environmentally hazardous activity (for instance an IED-project) or a water operation (the two groups of projects that are obliged to have a permit according to the Environmental Code) is planned in a Natura 2000 area, only one permit process is needed. The developer can apply for a permit to conduct the project at the same time he or she applies for a permit to pursue an activity that in a significant way may affect the Nature 2000 area. There is only one process.

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

It is the national Environment Protection Agency that is the competent authority to inform the competent authority in another country of projects that are likely to have a significant environmental impact in that country. The government can in a specific case decide that this responsibility should be the duty of some other authority. National authorities - for instance the county administrations - that gets knowledge of a project that is likely to have a significant environmental impact in another country is obliged to inform the national Environment Protection Agency.

The Torne älv is a river that forms the border between Finland and Sweden. Before, there was a special legislation concerning this river, and a special body consisting of judges from Finland and Sweden that decided on EIA:s of water operations carried out in this river. This arrangement has ended since a couple of years, and now it is the national legislations in Finland and Sweden that are applied for projects in the Torne älv.

EIA Content

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

Yes. The developer is obliged to present alternative sites and designs for the project.

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

No, it is not a mandatory step, although it is stated that the county administration, during the initial step of the process (see the scheme in the answer to questions 4, 5 and 6) when the developer consults

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the authorities, should “work for the EIS to have the direction and scope needed for the permit application”.

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

According to the Environmental Code, the authority that decides upon the EIA should also decide upon the EIS (the EIA report) and decide if this is to be accepted or not. It is common that this is decided in the same document as the permit. A permit cannot be issued unless there is an EIS that is accepted.

Besides of this legalized control of the EIS, there is a common custom among the permitting authorities to send the application for permit and the EIS to the environmental authorities for comments on the need for complements directly when the application is submitted. This is marked as the fourth step in the scheme of the process in the answer to questions 4, 5 and 6.

This is often an effective way to get a complete EIS of a good quality as early as possible in the process. If this step is omitted (which it can be since it is not stated in the legislation), there will often be demands for complements later in the process, in the consultation and still worse, during the hearing. This can delay the process more than what the extra step does.

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!

Common answer to question 15 and 16

The Land and Environment Court of Appeal has in a number of cases pointed out that however the developer chooses to delimit the application for permit, the result of the assessment, made by the permit authority, must always cover all the crucial issues, so that there are pre-requisites to decide on conditions in all parts that are relevant from an environmental point of view. Although it is the developer who states the scope of the application, in the end it is the permit authority that decides if the application can form the basis of an assessment.

This means that if an application has not the scope that is needed from an environmental point of view, it can be rejected by the permit authority.

This has happened in a number of cases in the Land and Environment Court of appeal. Since in Sweden environmentally hazardous activities (typically IPPC-projects) and water operations historically have been tried according to different legislations (the Environment Protection Act and the Water Act respectively), it is not until the Environmental Code came into force 1999 that these kinds of projects were regulated by the same legislation. Therefore there are a number of cases in Sweden where applications have been rejected because the application has only taken into account the environmental(for instance pollution of water) or the water affecting (for instance effect on the groundwater level) aspects of a project, while both aspects have to be covered at the same time according to the Environmental Code.

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An example that has been shown before on EUFJE-conferences is the case of the Citybanan. The example is repeated here. In this example it is a question of both “salami-slicing” (how big part of the tunnel system that the application should cover) and which issues that should be considered (only effect on groundwater level, or other effects as well such as noise, vibrations or pollution of water).

Example showing the required scope of an EIA – the case of the Citybanan (MÖD 2007:50)

The Swedish Transport Administration was planning a new system of tunnels under the city of Stockholm to expand the railway system for commuter trains. The system consists of a main tunnel for the railway from the south to the north of Stockholm, and of a number of service tunnels, connected to the main tunnel, for building purposes.

The building of such a railway system needs a railway plan, according to the Railway Act. Since the building of tunnels affects the groundwater levels, a permit is also needed according to the Environmental Code.

The Transport Administration applied for permit according to the Environmental Code for one of the service tunnels and presented documentation on the impact of the tunnel on the groundwater levels. The Land and Environment Court issued a permit. This was appealed by owners of houses that could be affected by the tunnel.

The Land and Environment Court of Appeal found that the scope of the application and of the EIS was insufficient in two ways. First the geographical scope was insufficient, since the impact on the groundwater levels due to this service tunnel, would collaborate with the impact on the same groundwater levels by other parts of the tunnel system – for instance the main tunnel. Thus it was not possible to try just the service tunnel, separate from other parts of the tunnel system. Second, although the Swedish legislation ties the need for a permit for a tunnel to the impact on the groundwater level, the EIS cannot be limited to describe this impact. An EIS has to cover all relevant effects on the environment, such as – beside the impact on the groundwater level – also for instance the pollution of water and the noise and vibrations from the building of the tunnel. Since the EIS was insufficient, the Court of Appeal cancelled the permit.

The Transport Administration later applied for a permit concerning the whole northern part of tunnel system. The EIS connected to this application concerned all kinds of effects for the environment. This application was also tried by the Land and Environment Court of Appeal. This time the question was if all the different kinds of possible effects on the environment, presented in the EIS, could be subject for conditions for the permit, or if the conditions could only concern the impact on the groundwater levels. The court found in this case that the conditions could concern all relevant types of effects on the environment.

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

There are no cases from the Land and Environment Court of Appeal that gives the answer to this question. In a similar case however, concerning a screening decision according to the SEA-directive, it has been stated that this decision cannot be appealed separately, but only together with the final decision. In that case the decision can be appealed by the same parties, organizations and persons that can appeal the permit itself.

Since the process is more or less the same in Sweden, regardless if the project is decided to be an EIA-project or not, this is not a big issue.

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?

In each decision is stated when it at latest should be utilized. If it is not utilized during that time – that is if the project has not started within the time limit – the permit ceases.

Once the developer has made use of the permit, it is normally valid for ever and the developer does not have to apply for any new permit. It is legally possible to decide on a time limit for a permit, but in practice this is only done for certain kinds of projects, such as quarries and wind-farms. The conditions for a permit however, can be changed after ten years.

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 scheme of the process in the answer to question number 4, 5 and 6, the steps where the public is involved are marked with a darker shade.

The first step in the scheme is a consultation that according to the law shall be held in good time before submitting the application. The information about the project is provided by the developer. At this stage the developer shall submit information about the localization, extent and nature of the planned activity or measure and its anticipated environmental impact. The consultation has often the form of a meeting organized by the developer and advertised in the local papers. There are other possibilities to, and the supervisory authority gives advises on how the consultation could be carried out. The consultation shall comprise the county administration, the supervisory authority, other government agencies, the municipalities, the public and the organizations that are likely to be affected.

As shown in the scheme, the permit authority announces an application for permit and an EIS and invites the public to comment on them in writing. The permit authority also announces the hearing on the application, where the public is free to participate.

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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.)?

All of the documentation concerning the EIA – the application for permit, the EIA, the written comments from authorities, organizations and the public and the comments from the developer – are public and available for anyone, either at the deciding authority or at a special keeper of the documentation. In the announcement of the application (local papers) is stated who is the special keeper of the documentation in the individual case. The keeper of the documentation is often a person

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working for the municipality where the project is planned. It is free of charge to read the documents at deciding authority and at the keeper of the documentation. Copies of them can be charged at cost price.

Many documents can be found on the internet, but there is no legal demand for this.

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 scheme that illustrates the answer to the questions 4, 5 and 6, the steps that involve the public (such as neighbors) and NGO:s are marked with a darker shade. Generally, there is no limitations as concerns who (the public and organizations) can participate in the process in the first instance. Whoever is interested can participate in the initial consultation with the developer, by written comments to the permit authority after the announcement of the application and in the official hearing hold by the permit authority with the developer, the authorities involved and the public (organizations and persons). The permit authority – the first instance - listens to all comments that are presented, no matter who presents them.

To appeal a permit however, the public has to be concerned and an organization has to fulfil certain criteria. If the person that appeals is not concerned (for instance lives far away from the site of the project) or if the organization does not fulfil the criteria, the appeal will be rejected. The rejection can also be appealed.

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?

Yes, the decisions – the permits – can be appealed. There are different authorities involved, depending on the kind of project.

When it concerns the projects covered by the Environmental Code – environmentally hazardous activities, and water operations and projects that affects Natura 2000 areas - decisions made by the county administrations are appealed to the land and environment courts. Their judgments can be appealed to the Land and Environment Court of Appeal that will try the case after leave to appeal. Permits issued by the land and environment courts as a first instance are appealed to the Land and Environment Court of Appeal that will try the case after leave to appeal. These cases can also be appealed further to the Supreme Court, where leave to appeal is needed.

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Decisions concerning infrastructural projects that are decided by national authorities can be appealed to the government. A judicial review of the decision of the government can be done by the Supreme Administrative Court.

This means that the superior authority can be the Land and Environment Court of Appeal, the Supreme Court or the Supreme Administrative Court, depending on the kind of case.

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?
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There is a judicial review as well as a trial on the matters of the case. A permit can be abated or changed, and stricter or less strict conditions for the permit can be decided as well as new conditions. If the first instance has refused a permit, the court of appeal can issue one, and decide on the conditions for this permit.

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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(See the answer to question 21). Yes, individuals have to be affected. This means that they have to live close enough to the site of the project to be exposed for a risk to be affected by environmental disturbances from it, or to own some property that is exposed to such a risk.

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?
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Normally, the project cannot be carried out until the permit has gained legal force – that is it has not been appealed, or the judgment of the court of appeal has been issued. In certain cases the authority or the court however can decide that a permit can be used although it is appealed. In these cases the developer stands the risks that the permit might be changed.

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?
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Yes it can change/amend a permit and decide on new conditions or change the conditions.

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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?

According to judgments from the Land and Environment Court of Appeal the conditions for a permit shall include data on the monitoring. The monitoring stated in the condition is not very detailed; a more detailed monitoring program is normally established to be accepted by the supervisory authority. It is the supervisory authority that checks the compliance with the permit and the conditions as a whole, including the parts of the conditions that concerns monitoring.

The results of the monitoring are public. The public is not actively informed, but has the right to get the information when asking the supervisory authority.

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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?

Normally it is the County Administration, but this authority can decide to leave the responsibility for the supervision to the health and environment board of the municipality. In Sweden the developer himself has a far-reaching responsibility to control and report to the supervisory authority on his own activities. The supervisory authorities do only seldom make their own technical inspections. Instead, their inspections are aimed at eying that the control made by the developer is of a high quality and have the right scope.

When it concerns environmentally hazardous activities, the developer shall – according to the Environmental Code – each year submit an environmental report to the supervisory authority. This report, as all other documents that are handed over to a Swedish authority, is open for the public on demand.

When it concerns enforcement, see the answer to question 29.

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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!

The supervisory authority can apply administrative sanctions such as injunctions or prohibitions. The injunction or prohibition can be made subject to a pending fine. The pending fine is normally decided to be somewhat larger than the cost to observe the permit or the conditions that are violated. If an injunction or a prohibition is not complied with, the Swedish Enforcement Authority shall enforce the decision at the request of the supervisory authority. Instead of requesting enforcement, the supervisory authority may decide that the fault shall be corrected at the expense of the party at fault. The administrative sanctions can be applied on legal persons.

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The supervisory authority is also obliged to report infringements to the police or public prosecution authorities where there are grounds for suspicion that an offence has been committed. According to the Environmental Code it is a criminal offence to intentionally or through negligence start or pursue an activity without a permit (that is an EIA) if that is needed, or to offend a condition or a provision for a permit (“offence of unauthorized environmental activity”). It is also a criminal offence to intentionally or through negligence submit incorrect information in an appeal for permit or in a report to the supervisory authority according to a monitoring program (“obstruction of environmental control”). In both cases the penalty is fines or prison up to two years. If an offence is minor there is no penalty. The criminal penalties cannot be applied on legal persons.

The administrative sanctions are considered to be more common and also more effective than the criminal sanctions.

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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?

(See also the answer to question 29.)

The supervisory authority can issue an injunction or a prohibition. The injunction or prohibition can be made subject to a pending fine.

The supervisory authority is also obliged to report infringements – in this case starting an activity without the permit needed - to the police or public prosecution authorities where there are grounds for suspicion that an offence has been committed.

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

(See the answer to question 29)
