

## Decision-making process in the Dutch EIA-procedures

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### Implementation of Directives

- EIA directive is implemented in the Environmental Protection Act
- List of projects where EIA is compulsory
- List of decisions ( permits, consents, zoning plans etc) with EIA obligation

## Starting point: full integration

- EIA-procedure is fully integrated in the Dutch administrative law procedure with regard to the consent for the project from the competent authority
- See Article 2(2) of the Directive
- In other words: the EIA-report ( as a result of the EIA-procedure) is considered as one of the requirements for an admissible application for the consent ( mostly a permit)

## EIA-procedure ( light )

- Announcement of the intended project by the developer (initiator)
- Advice of the competent authority on the scope of the required information
- EIA-report is provided by the developer
- Publication EIA-report and draft decision
- Public participation process concerning the project, the EIA-report and the draft decision
- Decision and justification

## EIA- procedure ( heavy )

Additional steps for more important projects and plans:

- Advice from the EIA-commission or another independent body on the intended project
- Advice of the EIA-commission on the EIA-report

## Content of the EIA report

- Description of the project
- Description of reasonable alternatives
- Consequences of the project and of the alternatives
- Measures to avoid or reduce possible negative effects of the project

## Writing the EIA report

- The EIA report is written by the initiator of the project
- The initiator is mostly a private party, but sometimes a governmental body (State, municipality etc )
- In practice, the writing is done by specialised engineering or consulting firms

## Combined EIA/permit procedure I

- If application is made without EIA-report, the application for the permit must be declared non admissable
- Same in case of incorrect or incomplete EIA-report
- Initiator can appeal against decision of non-admissibility

## Combined EIA/permit procedure II

- Permit application, EIA report and draft decision of competent authority are published
- Members of the public ( individuals, environmental groups,neighbourhood groups etc) can give their views
- Decision by competent authority
- Interested parties, who have given their views before on the draft decision, can appeal at administrative court

## Combined EIA/permit procedure III

- In his decision the competent authority must take in consideration all the effects on the environment of the project
- Even in the case that the legislation that is the basis for the consent/permit has a more narrow scope

## Combined EIA/permit procedure IV

The decision by the competent authority may impose any condition, regulation and restriction necessary to protect the environment

- Extra possibility based on case law: the conditional obligation : an activity is only allowed when a measure is realised

## Administrative courts

- Review the decision of the competent authority ( including the EIA report or the absence of a EIA report )
- Review the EIA procedure
- Decide whether the information in the EIA report is sufficient
- Review the lawfulness of the consent/permit and the conditions, regulations and restrictions

## Possible verdicts

- Appeal is unfounded ( decision stays intact)
- Total or partial annulment of the decision > competent authority must revise the decision
- Total or partial annulment of the decision that is replaced by a decision by the court
- Interim verdict : a lack in the decision is concluded > competent authority can repair the lack ( administrative loop )

## Consequences of combined procedure

- No additional appeals
- Review of the EIA report in relation to the decision on the consent/permit
- Defect in EIA procedure or EIA report may be found after a long period of time
- Information in EIA report can be no longer relevant at the time the court must decide

## SEA procedure

- Integrated in the procedure of the plan/programme
- Made by the competent authority
- Administrative court decides on the lawfulness of the plan/programme, including the SEA ( procedure and content)

## Differences EIA and SEA

- Against some plans/programmes no appeal is possible at administrative courts > then SEA cannot be reviewed by administrative courts
- Some plans cover extended areas ( e.g. countryside) >difficult to describe the possible effects of the activities allowed in those plans