

Scope of judicial review in EIA and SEA procedures

EUFJE Conference 2014

Impact assessments – Preventive measures against
significant environmental impacts in the 21st
century

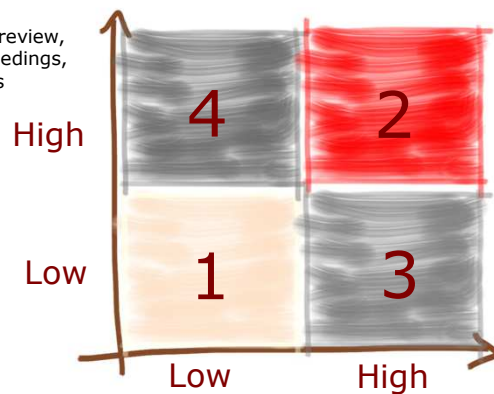
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and member of the French Environmental Authority

Scope of judicial review : efficiency vs. openness

Efficiency :

Scope of judicial review,
Duration of proceedings,
Interim measures



Openness :

Access to justice,
Role of civil society,
Collective actions

EIA and SEA are procedural steps

- ***The output of the EIA and the SEA is to ensure complete information of the authorities ... not directly to frame the decisions***
 - ***A general stringent approach of procedural rights by judges***
 - ***However, the outcome of a judgement cancelling a decision for procedural reasons is far from automatically stopping a project***
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Four levels in judicial control of EIA and SEA

- ***The number of EIA/SEA varies of lot between Member States which most likely has an influence on judicial control***
 - ***Four levels of judicial control are proposed based on French experience (4000 EIA/year, almost all challenged authorization decisions include EIA/SEA).***
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First step in judicial review

- ***Was an EIA/SEA needed ?***
 - ***Not necessary an easy task for Annex II projects***
 - ***The EIA directive allows Member States to use thresholds ... however, thresholds can never guarantee that a project does not require an EIA (Annex III Criteria)***
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Second step in judicial review

- ***Have procedural rules been correctly implemented ?***
 - ***Mainly related to public participation.***
 - ***Case-law is well developed due to particular attention on this point from NGOs***
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Third step in judicial review

- ***Was the scope of the EIA/SEA correct ?***
 - ***This could range from a very obvious lack of analysis to more complex assessments***
 - ***For instance :***
 - ***species have not been taken into consideration***
 - ***boundaries of the study are too limited***
 - ***cumulative effects with other projects are not studied***
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Fourth step in judicial review

- ***Is the scientific analysis of the impacts correct ?***
 - ***This depends mainly on the arguments presented to the judge by the parties***
 - ***This also could lead to an evaluation of the different impacts***
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Burden of proof ...

- ***This is not a big obstacle in steps one to three : the objective nature of the controls allows***
 - ***It is a crucial aspect of the fourth level of control : the scientific evidence is most of the time difficult to interpret, how to choose one expertise vs the other***
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