

THE ENVIRONMENTAL PROTECTION IN THE URBANISTIC PLANNING AND LAND DEVELOPMENT IN EUROPEAN UNION LAW

The answers must be sent, imperatively in English or in French, before the 15th August 2011 to Ms. Anna Mendel a.mendel@kssip.gov.pl.

Part A

- I. How is the SEA-directive (Directive 2001/42/EC) implemented in your country? What is the scope of its implementation?

The SEA Directive (Directive 2001/42/EC) is implemented through the Decreto-Lei n.º 232/2007, 15th June.

In accordance with article 3, §a) of the Decreto-Lei n.º 232/2007, 15th June, the plans in the agricultural fields, forests, transport, waste, water uses, telecommunications, tourism, rural and urban management are subjected to a strategic environmental assessment.

In accordance with article 3, §b) of the Decreto-Lei n.º 232/2007, 15th June, the plans and programs related with ecological classified areas or with special protection zones or with places included in a the Rede Natura 2000 are subjected to a strategic environmental assessment.

In accordance with article 3, §c) of the Decreto-Lei n.º 232/2007, 15th June, the plans and programs not included in the above mentioned paragraphs whose projects have environmental significant consequences are subjected to a strategic environmental assessment.

- II. What types of public plans and programmes are subject to a strategic environmental assessment in accordance with the SEA-directive?

In accordance with the article 3, §2, a), of the Directive 2001/42/CE, from the 27th June of 2001 – SEA-directive, are subjected to a strategic

environmental assessment the plans in the plans in the agricultural fields, forests, transport, waste, water uses, telecommunications, tourism, rural and urban management.

In accordance with the article 3, §2, b), of the Directive 2001/42/CE, from the 27th June of 2001 – SEA-directive, are subjected to a strategic environmental assessment the plans and programs related with ecological classified areas or with special protection zones or with places included in a the Rede Natura 2000.

In accordance with the article 5, of the Directive 2001/42/CE, from the 27th June of 2001 – SEA-directive, are subjected to a strategic environmental assessment the plans and programs whose environmental effects are significant according to the criteria of the annex II of the SEA-directive.

The Decreto-Lei n.º 232/2007, 15th June, follows the SEA-Directive.

III. What kind of authority (local, regional, central) is responsible for performing the duties arising from the SEA-directive?

In accordance with the article 5, §1, the Decreto-Lei n.º 232/2007, 15th June, the authority in charge with preparing the plan or the project should accomplish the duties arising from the SEA-directive. These authorities are either municipalities or state's departments, depending on the kind of plan or program which is to be prepared and approved.

IV. Does the competent authority normally ask other authorities on different administrative levels in the process of a strategic environmental assessment for their opinion or consultation?

In accordance with article 5, §3, of the Decreto-Lei n.º 232/2007, 15th June, the authority competent to approve the plan or program should ask others authorities with environmental responsibilities to give her opinion about the plan or project.

V. What types of decision are resulting from a strategic environmental assessment proceedings?

The final decision from a strategic environmental assessment proceeding is regulated in article 9 of the Decreto-Lei n.º 232/2007, 15th June. That could be an approval decision or a non approval decision or an approval decision with some conditions or obligations in charge of the authority responsible for the implementation of the plan in order to protect or to mitigate the eventual environmental damages. It must be stressed that the plans or programs should be submitted at the approval proceedings with a environmental report (article 6 of the Decreto-Lei n.º 232/2007, 15th June), which includes the reasons of placing the damaging installation at the zone or the area chosen, the reasons of rejecting alternative solutions more environmental friendly and the mitigating environmental impact measures deemed necessary to prevent environmental damages.

VI. How does the authority ensure the public access to environmental information in the proceedings based on the SEA-directive?

In accordance with article 7, §§ 6 and 7, of the Decreto-Lei n.º 232/2007, 15th June, the draft of the plan or of the program submitted to strategic environmental assessment proceeding should be made known to the public through newspapers of national and regional level.

In accordance with the article 7, §8 of the Decreto-Lei n.º 232/2007, 15th June, the draft of the plan or of the program submitted to strategic environmental assessment proceeding should be accessible to the public at the administration buildings or at the internet institutional sites.

VII. Who is authorized to take part in a strategic environmental assessment proceedings? What about for example people living in the neighbourhood, NGO's and authorities on different administrative levels (local, regional, national)? What legal rights do participants of the proceedings have?

In accordance with article 7, §6, of the Decreto-Lei n.º 232/2007, 15th June, the draft of the plan or of the program submitted to strategic environmental assessment proceeding should be submitted to public consultation, within a period of 30 days. In that period, NGOS, the

environment associations and the people affected by the plan are allowed to present observations, proposals to be considered at the final draft of the plan or project. That is named the public inquire proceeding.

VIII. To what extent are the SEA and EIA procedures were integrated in your country? If a new industrial project also needs a change of the building plan, can the same documentation be used for the assessment of both the project and the plan? Are there problems related to the integration or the lack of integration for different actors (such as the public, the operator of the project, the municipality or authorities)? Can you give examples?

The SEA and the EIA procedures are different and separated procedures. The former is regulated through the Decreto-Lei n.º 232/2007, 15th June. The later is regulated through the Decreto-Lei n.º 197/2005, 8th November.

They aren't integrated, although they can be integrated in some individual case.

For instance, the project called "Troiresort" which includes both an environmental friendly touristic project and an urbanisation plan for the area involved, was submitted to SEA and the EIA procedures (consulted at <http://www.apai.org.pt/index.php?idmenu=1>).

Part B

I. How is the EIA-directive implemented in your country? What is the scope of its implementation?

The EIA-directive is implemented through the Decreto-Lei n.º 197/2005, 8th November; this statute has the same content of the last version of EIA-Directive. The Habitats and Birds Directives are implement through the Decreto-Lei n.º 49/2005, 29th February; this statute has the same content of the of the last version of the implemented Directives.

At the moment, all the public and private projects implemented in sensitive environmental zones are submitted to EIA.

In Portuguese's courts, the discussion focus is not the submission of a project with significant environmental effects to EIA, but the type of mitigating measures, their efficacy to prevent the environmental damage and the kind of analyse of the environmental elements affected by the project realised in the report previous to the final resolution of the EIA proceeding.

II. What types of public and private projects are subject to an environmental impact assessment in accordance with EIA-directive?

In order to answer this question, we can visit the site of "Portuguese Authority of environment" - <http://www.apambiente.pt/Paginas/default.aspx> ;

As far as concern projects included in annex I of EIA-directive, we should refer the following projects:

- construction of railway traffic;
- construction of airports;
- construction of motorways and express roads;
- construction of a new road of four or more lanes;
- waste disposal installations for the incineration;
- dams;
- construction of overhead electrical power lines;
- pipelines for the transportation of gas, oil and chemicals;
- installations for storage of petroleum, petrochemical or chemical products.
- (...)

As far as concern projects included in annex II of EIA-Directive, we should mention the following projects:

- 1. Agriculture, siculture and aquaculture - intensive livestock installations; intensive fish farming;

- 2. Extractive industry – quarries, open-cast mining; underground mining;
- 3. Energy industry – industrial installations for the production of electricity, steam and hot water; transmission of electrical energy by overhead cables; installations for hydroelectric energy production; installations for the harnessing of wind power for energy production;
- 6. Chemical Industry – Treatment of intermediate products and products of chemicals,
- 10. Infrastructure projects – Industrial estate projects – Plataforma logística; construction of railways and intermodal transshipment facilities, and of intermodal terminals; construction of airfields; tramways, elevated and underground railways;
- 11. Other projects – installations for the disposal of waste.
- 12. Tourism and leisure – marinas; holiday villages and hotel complexes outside urban areas and associated developments; Theme Parks;

III. What are selection criteria that should be applied by the developer or the competent authority to identify projects requiring an EIA because of their potentially significant environmental effects?

In accordance with article 1, §3, of the Decreto-Lei n.º 197/2005, 8th November, all the projects include in annexes I and II of the above mentioned decree/statute should be evaluated through EIA. The content of Annex I and of Annex II follows the content of the respective annexes of EIA-Directive; the projects included in either one or the other annex are mandatory evaluated through EIA; there are quantitative threshold for each project in order to assume that it will be included in annex I or in annex II. For instance, the construction of motorways and express roads is submitted to EIA, when it implies a length superior of 10 Km, in accordance with §7, of annex I of the above mentioned decree. In accordance with §10, of annex II, the national and regional roads, with a length superior of 10 Km should be submitted to EIA.

Another threshold used by the decree to make mandatory a EIA of, for instance, a road with a length inferior to 10 km is the sensitive character of the area where it is supposed to be located. According to article 2, item b), sensitive areas are the following: i) classified landscapes; ii) network Nature 2000; iii) classified monuments and buildings.

- IV. What kind of authority (local, regional, central) is responsible for performing the duties arising from the EIA-directive?

In accordance with article 5 of the of the Decreto-Lei n.º 197/2005, 8th November, the authorities responsible for performing the duties arising from the EIA-Directive are the administrative agency (which can be either a state department or a independent agency or a municipality) competent to issue the mandatory authorisation of the project or the administrative agency competent to issue the environmental compatibility declaration – environment authority.

- V. When should an environmental impact assessment take place during the investment procedure?

In accordance with article 21 of the Decreto-Lei n.º 209/2008, 29th October (authorisations in the field of industrial activity), the EIA proceedings may take place simultaneously with the authorisation proceedings.

- VI. Does the decision resulting from an environmental impact assessment grant the final development consent?

In accordance with the article 20, §1 of the Decreto-Lei n.º 197/2005, 8th November, the project submitted to EIA can't be approved if hasn't a previous favourable or favourable environmental compatibility declaration. But the project may be rejected by the competent licensing authority due to other legal grounds which are in the scope of her duty to preserve.

- VII. How does the authority ensure the public access to environmental information in the proceedings based on the EIA-directive?

The project submitted to EIA, and all the reports elaborate during the proceeding are made known to the public through the internet sites at the administrative building of the agencies involved (article 22 and 23 of the Decreto-Lei n.º 197/2005, 8th November).

During the EIA proceeding there must be a public inquiry on the projects and the environmental reports annexed to it (article 15 of the Decreto-Lei n.º 197/2005, 8th November).

VIII. Who is authorized to take part in an environmental impact assessment proceedings? What about for example people living in the neighbourhood, NGO's and authorities on different administrative levels (local, regional, national)? What legal rights do participants of the proceedings have?

In accordance with the article 14 of the Decreto-Lei n.º 197/2005, 8th November, the draft of the project submitted to EIA proceeding (and the environmental report elaborated previous or during the proceeding) should be submitted to public consultation, within a period of 15 days. In that period, NGOS, the environment associations and the people affected by the plan are allowed to present observations, proposals to be considered at the final draft of the plan or project.

IX. In what way are questions concerning the application of the EIA-directive brought to court? Please give one example of the proceeding and the judgement.

In the case known as Tunel do Marquês, the Municipality of Lisbon decided to built a tunnel with 1,200 Km, in the centre of the town. Some organizations and a singular citizen sue the Municipality of Lisbon in order to sustain the undertaking until the accomplishment of the EIA proceedings. The Court of first instance follows the plaintiff's thesis and ordered the stopping of the public works. The sentence wasn't upheld by the Supreme Court.

In the case known as Costaterra, the owner of a large farm which includes flora, fauna and sites classifieds as priorities under the Natura 2000 Network, has received from de environmental agency a

declaration of environmental compatibility with some conditions, which were designed to mitigate the negative effects of the tourist project of thousands of beds. In spite of the not so positive declaration of compatibility, the government decides to issue permission to implement the project because this was thought to be in accordance with the public interest.

The NGOs pledge in Court for the suspension of the works arguing the offense of the above mentioned priority species, as was described in the final reports attached to the final resolution of the EIA.

The Court follows the plaintiff's thesis. The sentence wasn't upheld by the Court of Appeal.

- X. What are the specific characteristics of the transboundary environmental impact assessment of certain public and private projects?

In accordance with the articles 32 and 35 of the Decreto-Lei n.º 197/2005, 8th November, in case of the installation of a project with transboundary environmental effects the member state where is to be located the main structure of the project should notify the other member states whose territories would be affected in order to allow the participation in the EIA proceedings and must assure the access to all the information and reports produced during the procedure in order to have as far as most complete evidence as possible on the environmental impacts of the project.