

For the CoR Opinion on

"Improving the effectiveness of the EIA and SEA Directives"

European Commission Report on the Application and Effectiveness of the Environmental Impact Assessment (EIA) Directive, COM(2009) 378 final,

European Commission Report on the Application and Effectiveness of the Strategic Environmental Assessment (SEA) Directive, COM(2009) 469 final

Rapporteur: Mr José Macário CORREIA (PT/EPP)

1. Key messages

- A revision of the EIA Directive should help to guarantee identical standards for siting projects in all the EU's regions. Disparate rules and administrative procedures jeopardize cooperation between the regions and compromise equality of development opportunity.
- Unless Member States will not have transposed the SEA directive completely and correctly into national law, uncertainties remain for local and regional authorities that have to properly implement the Directive. For the purpose of allowing further experience being generated, the SEA Directive should only be amended in the long-term.
- Both Directives can only be successful on the ground if local and regional administrations establish well-functioning institutional settings and are provided with the necessary financial and human resources that enable in particular their environment departments to be actively involved.
- An essential feature of both directives is public consultation and participation. To improve this, a revision of the EIA Directive should include provisions for minimum time-frames for consultation and oblige public and stakeholder consultation already at the scoping stage. The SEA Directive should provide with access to justice too.
- A revision of the EIA Directive should in particular drop the screening or at least qualify it, introduce requirements for improving the quality of EIAs and coordinate with the revision of the IPPC Directive. Elements of the SEA Directive which would need further examination on the need for harmonisation concern above all national applications, the scoping process, definition of alternatives and monitoring. SEAs should be carried out for TEN projects a whole corridor level.
- Biodiversity considerations should be expressly reflected within the text of both Directives. The European Commission should develop specific guidelines in 2010 on climate impacts and adaptation to climate change not only for EIAs, but also for SEAs.

2. Relevance for the Committee of the Regions

The integration of environmental concerns into other sectoral policies is a key concern for the CoR. The EIA and SEA Directives are key pieces of EU legislation for putting this into practice. With regard to the EIA Directive, local and regional authorities are mainly responsible for the administrative aspects of EIAs, however they often also act as developers initiating public infrastructure which then require an EIA. The SEA Directive applies for a variety of plans and programmes prepared by public authorities.

3. Suggestions to the rapporteur

The secretariat recommends a number of points that the rapporteur might want to consider when drafting the opinion:

3.1 General remarks on both Directives

Benefits

The rapporteur could welcome both the EIA and SEA Directives as a major enhancement of the mechanisms for the protection of the environment within the Union. Both Directives are **key instruments of environmental integration**, covering a wide range of projects as well as plans and programmes (P&P) and improving their environmental sustainability.

The rapporteur might want to point out however, that **both Directives do not establish obligatory environmental standards**. In fact, if a project or P&P is in the end environmentally sustainable depends on the existence of EU, national and sub- national environmental standards or obligations to offset unavoidable adverse effects on the environment put in place.

The CoR could acknowledge the following **major benefits** which have been conferred by the implementation of both Directives:¹

- a **structuring effect**, with more systematic identification of relevant environmental issues and their incorporation as early as possible in the design, planning and decision-making processes;
- facilitating **improved compliance** with the requirements of sectoral environmental policies, including achieving higher standards of mitigation **and planning security** of the project and P&P;
- the formal requirements of participation and consultation of **relevant public authorities** qualify decision making and strengthen cooperation between different (planning and environmental) national, regional and local authorities;
- the formal requirements of consultation of the public have led to **greater participation in and increased transparency** of planning procedures.

Public participation

The CoR has welcomed as an essential feature of both directives that the public, widely defined, is giving access to information, opportunities to participate, and to justice.²

The CoR has advocated in the past that both Directives leave the Member States the task of deciding on the methods and procedures for participation³. The rapporteur could however note the latest findings⁴ which demonstrate that early and effective public participation in all EU regions can be substantially **hampered by constricted national arrangements**. This includes not allowing for adequate time-frames for consultation and providing with limited access to EIA/SEA documentation and access of the public concerned (and implied costs) to justice on EIAs.

To improve the situation, the CoR could reiterate its call⁵ upon for the European Commission to set up a forum for the **collection and dissemination of best local and regional practices** – in particular by means of ICT - **in public involvement**.

¹ CdR 172/97 fin, European Commission Study 2006, COWI 2009, EEB – see annex.

² CdR 99/2001 fin

³ CdR 99/2001 fin

⁴ COWI 2009 - see annex.

⁵ CdR 99/2001 fin

Furthermore, the rapporteur could support a revision of the EIA Directive to include: a) a specification of the current general phrasing in Article 6(6) by **provisions for minimum time-frames for consultation** and b) to oblige for **public and stakeholder consultation already at the scoping stage**, with the benefit of improvement of the quality of the documentation to be produced by the developer.

The CoR could continue⁶ to criticise the fact that the EU is still limiting access to justice to projects falling under the EIA and IPPC Directives only. It could call again upon the European Commission to fully comply with the option provided for in Article 9 of the Aarhus Convention and to ensure **access to justice for public participation also to P&P falling under the SEA Directive**.

Capacity building

The CoR could highlight that both Directives can only be successful on the ground if **national, local and regional administrations establish well-functioning institutional settings** and are provided with the necessary financial and human resources that enable all responsible departments, in particular the environment departments to be actively involved. It could encourage the establishing of temporary working groups for the purpose of facilitating the procedures as done in several Member States.⁷

The rapporteur could underline the **continuous need for further capacity building** in local and regional authorities, which should include a stronger cooperation with and support for the existing national EIA/SEA Centres⁸. This applies in particular to the newer Member States and for the SEA Directive, for which local and regional authorities are still facing limited experience.

Dissemination of best practices

The CoR could regret that not enough emphasis is given in both reports given on the need for the EU and the Member States **to promote regularly meeting fora as well as internet platforms at EU and national level**. These would facilitate a continuous updating and sharing of best practices between representatives from the European Commission, national EIA/SEA Centres and from Member States', regions' and municipalities' competent authorities, developers and consultants.

The rapporteur could call upon the European Commission to compile for the SEA Directive in particular cases of **best practices and lessons learned from assessing P&P that are common to all Member States**, such as Operational Programmes under the Cohesion Funds or waste management plans under the EU's Waste Framework Directive.⁹

Coordination between the two Directives

The CoR could agree with the European Commission that, given the specificities of the two processes and the limited experience in applying the SEA Directive, **there is currently no case for merging these Directives**. However, the rapporteur could urge for their **better coordination** which would benefit local and regional authorities and developers. This could be achieved by¹⁰:

- clarifying within a **review of the EIA Directive** the legal boundaries, in particular of project categories for which overlaps occur and for which local and regional are in charge such as changes in land use;

⁶ CdR 99/2001 fin

⁷ COWI April 2009, EEB – see annex.

⁸ <http://ec.europa.eu/environment/eia/contacts2.htm>

⁹ The "Handbook on SEA for Cohesion Policy 2007-2013" of GRDPN is only a first step in this direction.

¹⁰ See Imperial College London, COWI, European Commission Study 2006 in the annex.

- **guidelines from the European Commission** on the proper identification and management of overlaps, which build up on the existing range of illustrative approaches in the EU's regions, to encourage a degree of consistency across Member States, as well as **guidance documents by the Member States** for local and regional authorities, on issues such as "tiering" with consistent hierarchical and spatial relationship between the 2 processes, parallel or joint procedures where EIA and SEA both apply or maximum time spans allowed for between an SEA and an EIA.

Coordination with EU biodiversity policy

Being concerned that the EU will not meet its 2010 target of halting biodiversity loss, the CoR should call for **biodiversity considerations** to be expressly reflected within the text of both Directives.

Reiterating its recent opinion on the subject, the CoR could urge the Member States, regional and local authorities to strictly enforce the provisions of the EIA and SEA Directives in combination with the Natura 2000 sites, but also species protection provisions of the EU Habitats and Birds Directives so as to **minimise the pressures on biological diversity**.¹¹

The rapporteur could call for a revised EIA and also SEA Directive to systematically include **strict "biodiversity and ecosystem-proofing"** of projects and P&P. Especially in times of climate change, projects must contribute to ecosystem resilience. EIAs and SEAs should obligatory include suggestions on how projects can be aligned with the development of green infrastructures, and on how climate change mitigation (e.g. windfarms) and adaptation actions (e.g. dams) can avoid impact on biodiversity, as well as on how to tackle invasive species.

Coordination with EU climate change policy

The CoR should welcome that the European Commission will develop specific guidelines in 2010 which aim to ensure that **climate impacts of projects and their adaptation to climate change** are taken fully into account in EIAs. It could however call for extending these guidelines to SEAs, too.

Member States should in parallel provide local and regional authorities with **practical assessment tools** to predict greenhouse gas emissions or their reductions of particular projects and P&P.

The CoR could welcome targets set in some Member States of "**carbon neutrality**" of P&P and call for stronger promotion of such approaches throughout the EU's regions.

3.2 EIA Directive

3.2.1 General remarks

Further harmonisation of the EIA Directive

The rapporteur could welcome that, as the report shows, all Member States have established comprehensive regulatory frameworks, even if unfortunately sometimes only following the ruling by the EJC. He could stress, however, that despite several guidance documents issued by the European Commission, the EIA Directive is still **lacking effective and consistent implementation**.

The CoR could believe that the uneven application (several Member States have introduced obligations which go beyond the Directive), but also the wave of infrastructure development due to EU enlargement and climate change make it necessary to **expand and clarify the EIA Directive**.

¹¹ CdR 22/2009 fin; COWI (see annex).

Furthermore, the administrative aspects of EIA - for which the regions are mainly responsible - must proceed smoothly.

The CoR could reiterate that a revision of the EIA Directive should help to guarantee identical standards for siting projects in all the EU's regions. Disparate rules and administrative procedures jeopardize cooperation between the regions and **compromise equality of development opportunity**.¹²

The CoR should call upon the European Commission to **associate the CoR to the future legislative impact assessment** by requesting the CoR for an assessment of the territorial impact.

The CoR in its opinions on the revision of the Waste Framework and IPPC Directives has taken a critical stand on an increased **use of comitology** by the European Commission.¹³ It therefore could look closely on any intentions of the European Commission to introduce comitology for updating the Annexes of the EIA Directive.

Further guidance needed

The CoR could recommend that Member States, after having consulted their local and regional authorities, in cooperation with the Commission should discuss on which issues further guidance is needed and on what level these should be developed - whether at EU or at national level - in order to allow for the existing different needs in Member States to be fulfilled.¹⁴

3.2.2 Key elements of the EIA procedure for improvement

Screening (Article 4, Annex II and III)

The CoR could regret that its concerns that the introduction of a screening procedure will only cause administrative problems and will further **accentuate national and regional disparities in application**¹⁵ are now being confirmed by findings of the report on the wide variation in the types and levels of thresholds or criteria set by Member States. The levels at which thresholds have been set have clear implications for the amount of EIA activity. Most of the ECJ rulings focus on "screening".

The CoR could further take note that there are still several cases in which cumulative effects are not taken into account, and where "salami-slicing" practices are applied for big investment plans in order to avoid that a project is above the threshold limits and believe that these **jeopardise the legitimacy of the Directive** and undermine efforts to establish common screening standards.

To improve this situation, the CoR could call for a **revision of the EIA Directive** to drop the screening in favour of a clear and binding list of projects subject to EIA, or at least to¹⁶

- **transfer to Annex I** all those types of projects listed in Annex II or other project categories for which some Member States already foresee a mandatory EIA;
- **detail the screening criteria** in Annex III as proposed by the report;
- **establish Community minimum/cut-off thresholds** below which the EIA Directive is not relevant in individual cases, as suggested by the report. The CoR has urged this in particular for irrigation and land drainage projects, afforestation and intensive stock farming, projects listed in point 12 of Annex 2, waste-water treatment plants and sludge-deposition sites;

¹² CdR 245/94 fin

¹³ CdR 159/2008 fin, CdR 47/2006 fin

¹⁴ COWI, see annex.

¹⁵ CdR 245/94 fin

¹⁶ CdR 245/94 fin, COWI June 2009, see annex.

- apply **thresholds to Annex II activities under some kind of qualification** such as that Annex II activity in question does not extend beyond the impacts assessed and accepted in the SEA prior undertaken for a P&P which includes the project.

For the short term, the rapporteur could call upon Member States' and regional and local competent authorities to **establish easily applicable mechanisms for screening out very small developments**. More automatic screening procedures for such projects based on the use of Geographical Information Systems (GIS) could be developed.¹⁷

The quality of EIAs

The rapporteur could point to the fact that, even if national and regional legislation is well in place, the lack of quality of data collection (scoping), of their proper evaluation and documentation in EIA reports, as well as of the EIA processes as a whole continues to be a problem for the effectiveness of the Directive, for the **ability of local and regional authorities to make valid decisions** as well as for developers to achieve planning security.

To improve this situation, the CoR could urge to follow best practice already established in some Member States and therefore call for a **revision of the EIA Directive** which introduces requirements for: a) as suggested by the report, mandatory scoping and public consultation during scoping, b) a continuous quality control, as done in Article 12(2) of the SEA Directive¹⁸, c) an obligatory assessment of reasonable alternatives, including the "do-nothing" alternative, similar to the SEA Directive¹⁹; d) to limit the duration of the validity of EIAs.

Moreover, the CoR should encourage **national, regional and local authorities** to further improve accessibility to up to date environmental data in GIS, to request for or carry out themselves proper, timely and independent assessments as well as to promote accreditation of consultants and reasonable timeframes for collecting data in the field. In cooperation with developers, they should establish further guidelines on specific issues to be taken into account for certain types of projects.

The CoR could urge the European Commission to clarify its suggestion of introducing provisions in the Directive on **monitoring of the significant environmental effects**, as required in Article 10 of the SEA Directive. The CoR could warn in this regard that misuse of monitoring could undermine the prevention principle and precautionary principle in the way that in case of uncertain impacts of a planned project, rather than looking for alternatives or mitigation, a project is authorised with a monitoring obligation, with the difficulty to later readapt the project.

Transboundary procedures (Article 7)

The CoR could take note of the **increasing number of transboundary projects**, due to the accession of new Member States as well as the increased need for transnational infrastructure projects. This calls for better instruments that limit inconsistencies in impact assessments for such projects, which are too a large extent resulting from different jurisdiction of more than one MS.

The CoR could reiterate in this regard its call for an obligation to be included in the EIA Directive to provide information in the **relevant language** of the public concerned²⁰. Furthermore, it could support the European Commission in strengthening the Directive's provisions by setting **minimum**

¹⁷ COWI June 2009, see annex.

¹⁸ COWI June 2009, see annex.

¹⁹ CdR 245/94 fin

²⁰ CdR 99/2001 fin, CdR 245/94 fin

requirements for when and how consultations must take place and by obliging for **more coordinated or possibly joint EIA procedures** for multi-country projects.

Coordination with the IPPC Directive

The CoR could support a further harmonisation of the thresholds and criteria used to define projects and of the information requirements under the IPPC and EIA Directive, taking into account the ongoing revision of the IPPC Directive.²¹

3.3 SEA Directive

The CoR could acknowledge **additional benefits for local and regional authorities** in carrying out SEAs compared to EIAs, such as the possibility to investigate a wider range of alternatives, to assess impacts which may arise from the combined or cumulative effects of multiple projects, as well as simplifying the process of environmental investigations at the EIA level.²²

Even if the SEA Directive has only be recently transposed into national laws by Member States, the CoR could be **concerned about the great variations** in the actual implementation of the Directive in terms of institutional and legal arrangements and thus its effectiveness across all EU regions.²³

In addition, the CoR could be concerned about that in some Member States a **complete and correct transposition of the SEA directive into national or regional laws is still delayed**.²⁴ This will leave uncertainties for local and regional authorities that have to properly implement the Directive.

The CoR should agree that in the short term perspective, **reluctance towards amending the SEA Directive** should be exercised for the purpose of allowing further experience being generated and for national SEA systems and processes to settle down.

The CoR could believe that the **IMPEL network**²⁵ should closely be involved by the European Commission when aiming at improving the transposition and a strict implementation of the Directive.

Elements needing clarification or further harmonisation

The CoR could subscribe to the aim of a consistent application and implementation of the SEA Directive across all regions in the EU. It could therefore call upon the European Commission to closer examine which **elements currently left for discretion to Member States would need to be limited** in a future revision of the Directive - or at least to be clarified for local and regional authorities in the European Commission guidance document and national guidelines. Some examples consider²⁶:

- the transposition of Art. 3(2)(a), so the **national application of the Directive**: The CoR could regret that its recommendation for the directive to apply to all relevant P&Ps, irrespective of the procedure by which this is done²⁷ was not taken into account. This is now causing problems for some Member States related to the term 'required by administrative provisions'. Furthermore, local and regional authorities which have to work under national SEA systems that are founded on a simple translation of the Directive text, need to consider on a case-by case basis if the Directive is applicable and thus are more vulnerable to failure;

²¹ CdR 159/2008 fin, CdR 245/94 fin

²² EEB, .European Commission Study 2006 – see annex.

²³ see COWI, April 2009 (annex)

²⁴ See e.g. "[Ireland: Commission sends final written warning](#)"

²⁵ Implementation and Enforcement of Environmental Law Network.

²⁶ COWI, April 2009, EEB – see annex.

²⁷ CdR 172/97 fin

- the organisation of the **scoping process**: the SEA Directive and Guidance document set limited requirements, which results in a large variety of national and regional approaches in organising the scoping, including the consultation of concerned authorities and of the public, consultation deadlines (stretching from 10 days to 2 months) and the scoping document;
- the **definition of "reasonable alternatives"**(Article 5(1)): Local and regional authorities are in some Member States supported by extensive national guidelines for the selection of the alternatives in individual procedures; the vast majority of Member States, however, have refrained from defining how this should take place;
- the practical application of Art. 10 on **monitoring of significant environmental effects**: monitoring is a non-issue in a number of Member States and the lack of substantial national guidance may pose a problem.

The rapporteur could however take note of findings on substantial **differences in planning cultures between Member States, which may be of such profound nature** that they can be an obstacle for achieving a further harmonisation between Member States' application of the SEA²⁸

Entry into force of the SEA Protocol/

The CoR should take note that the future entry of force of the SEA Protocol of the Espoo Convention²⁹ may result in **changes to the SEA Directive**. The SEA Protocol goes further than the SEA Directive by encouraging potential application to certain policies and legislative proposals. In this regard, the CoR has stressed that it wishes the SEA Directive not to fetter the political process with restrictions on adopting general policies³⁰

TEN-T and TEN-E Programmes

The CoR could believe that the report lacks ambition by omitting the EU's TEN-T and TEN-E programmes. The CoR has stressed that TEN-T policy should pay greater attention to the objectives of sustainable development and environmental protection.³¹ It could therefore urge for robust SEAs to be carried out by the European Commission at a 'whole corridor level' at European level to consider alternatives, also in modes of transport, and be subject to quality control scrutiny by the European Commission.³²

Programmes co-financed by the EC in 2007-2013³³

The CoR could acknowledge the **overall positive effect** of the first application of the SEA Directive to Community co-funded programmes, which has led to a better integration of environmental considerations in the content of the programmes.

The CoR could call upon the EU institutions, when issuing midterm reviews and new programmes to **allow for enough time for the national and regional planning authorities**, to adopt their own programmes and carry out profound SEAs for them.

²⁸ COWI, April 2009 (annex)

²⁹ The SEA Protocol was adopted in Kiev on 21 May 2003 and subsequently signed by 36 States and the European Community. In order for it to enter into force, 16 Signatories need to ratify it (so far, it has been ratified by 10 Signatories).

³⁰ CdR 172/97 fin

³¹ CdR 103/2009 fin, CdR 405/2006 fin

³² BIRDLIFE International, RSPB (see annex)

³³ European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund, European Agricultural Fund for Rural Development (EAFRD), European Fisheries Fund

Furthermore, the CoR could encourage national and regional authorities, when revising their programmes or setting up future ones, to further improve participation by the public and environmental authorities, the consideration of the comments received, as well as the quality of the environmental reports.

4. Subsidiarity, proportionality and better regulation³⁴

Both reports do not only give an overview of the application and effectiveness of both Directives, but also prepare for a debate on the possible need for future revision of the EIA and SEA Directives. Whereas the need for and possible options of simplification of the EIA Directive are already clearly presented in the EIA report, the SEA report, due to the only limited experience in the implementation of the Directive, outlines only general opportunities for improvement of the Directive.

Any further action on the EIA and SEA Directives will be founded on Article 192 TFEU, which establishes the EU competence on environment. The legal basis so far has been Art. 175 of the EC Treaty.

4.1 Compliance with the principle of subsidiarity

Environmental policy is deemed to be a policy area where the exercise of competences is shared between the Community and the Member States. Therefore, the subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

With regard to the EIA and SEA Directives in places, either the trans-national aspects of the problem or the better placement of the EU in order to set common targets and commitments have justified their entering into force in terms of subsidiarity. The same arguments could be applied when assessing the respect of the subsidiarity principle in the context of any future revision of both Directives.

Notwithstanding the above, it should be pointed out that if further amendments to both Directives were to be adopted, the competences of local and regional authorities should be duly taken into account in order to ensure a level of intervention fully respectful with the subsidiarity principle.

There is no major concern to rise regarding the subsidiarity principle. It is well demonstrated in the reports that due to the transnational nature of the issues at stake, the maintaining problems can only be tackled coherently through community action.

4.2 Compliance with the principle of proportionality

Since the EIA report, and to a more limited extent the SEA report, only draw up possible options for the future, it is not yet possible to make a full evaluation in order to assess their compliance in terms of proportionality.

However, regarding possible economic impacts and financial and administrative costs of the envisaged options, the justification of an EU action thus should be based on the results of a thorough impact assessment that can better take into consideration local and regional specific features.

Any creation of **additional costs and administrative burdens** for enterprises and public administrations should be considered in balance with environmental benefits, not only in terms of proportionality, but also regarding the respect of the environmental precautionary principle.

³⁴ According to the criteria Mentioned in the Protocol on the application of the subsidiarity & proportionality principles. This chapter focuses on the European Commission Communication on Invasive Species. The other Communication does not present any specific new European Commission action.

The CoR in its previous opinions on the EIA and SEA Directives has continuously raised concerns that both Directives will impose additional costs in widely varying degrees upon local and regional authorities, according to the differing requirements already put in place by several Member States, and called upon the respective Member States to ensure that these costs are fully funded.³⁵ Evidence from EIAs in the Netherlands and United Kingdom suggests that this increase in cost and time is very limited.³⁶

The rapporteur could acknowledge in this regard findings that the costs of an EIA as a share of project costs typically range from 1% for smaller projects and 0.1% for larger projects. These costs are borne largely borne by the project developer. Furthermore, securing project consent can add up to 6-8 weeks on a procedure of around 6-8 months, or approximately 20% - 25%, to the time otherwise taken. Evidence suggests that introduction of SEA to regional and local land use planning may increase the cost by 5-10% although examples SEAs exist where costs were less than 5%. Internal inputs by administrations to SEAs need on average several months.³⁷

The CoR could take note of the **main implementation problems which can give rise to costs and delays** for local and regional authorities when implementing the two Directives, both in their role as developer or as the competent authority for authorisation³⁸:

- lack of strict timetables for each stage of the process and for formalised inputs from the various participants;
- lack of adequate screening of projects to determine the risk of significant impacts;
- lack of joint scoping by the developer and competent authority of the content of the EIA/SEA;
- lack of a systematic study, resulting in the need for supplementary information;
- limited public involvement at or after the scoping stage, and before the impact studies are published;
- lack of skills / resources in the competent authority (leading to e.g. delays, poor screening / scoping decisions);
- lack of close timing of SEA and EIAs for one major plan and its projects, leading to need for duplicated data collection.

4.3 Better Regulation

With regard to the aspect of better law-making, it can be noted that the EIA Directive has been identified as a potential instrument for a future simplification exercise,³⁹ the aim being to identify overlaps, gaps and potential for reducing regulatory and administrative burdens, in particular regarding transboundary projects.

Considering the competences local and regional authorities have in the implementation of the EIA Directive, the forthcoming impact assessment carried out by the European Commission for the simplification of the Directive should take account of any possible territorial impacts of Community action.

³⁵ CdR 99/2001 fin, CdR 349/1999 fin, CdR 172/97 fin

³⁶ European Commission Study 2006, see annex.

³⁷ GHK/TECHNOPOLIS, European Commission Study 2006 – see annex.

³⁸ GHK/TECHNOPOLIS, GRDPN, European Commission Study 2006 – see annex

³⁹ COM2009) 15 final

5. Content of the European Commission Communications

5.1 Report on the Application and Effectiveness of the Environmental Impact Assessment (EIA) Directive⁴⁰

The EIA Directive

The Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (Environmental Impact Assessment or EIA directive) was introduced in 1985 and was first amended in 1997. Directive 97/11/EC widened the scope, strengthened the procedural stages and integrated the changes provided by the UN/ECE Espoo Convention on EIA in a transboundary context.

Following the signature by the Community (June 1998) of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the EIA Directive was amended by Directive 2003/35/EC, which sought to align the provisions on public participation with the Aarhus Convention.⁴¹

The Directive aims to protect the environment and the quality of life, while ensuring approximation of national laws with regard to the assessment of the environmental effects of public and private projects.

The EIA procedure ensures that environmental consequences of projects likely to have significant environmental effects are identified and assessed before development consent is given by a public authority. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards.

The Directive harmonises the principles of the EIA by introducing minimum requirements, in particular with regard to the procedure that shall be followed, including types of projects that should be subject to assessment, the main obligations of the developers, the content of the assessment and the participation of the competent authorities and the public.

The 2009 report

The aim of this report is to review the application and effectiveness of the EIA Directive, based on Article 11 of the Directive.

At present, all Member States have established comprehensive regulatory frameworks. However, the challenge of ensuring that the Directive is implemented effectively and consistently across all MS is a continuous one. This report assesses the 20 years of implementation in an effort to address this challenge.

This report indicates areas where improvements are needed: screening, lack of harmonised practices for public participation, insufficient quality of the EIAs, difficulties regarding EIA transboundary procedures, better coordination between the EIA and other environmental directives and policies, such as EIA, IPPC, climate change and biodiversity. The report presents for each of these areas possible recommendations for action, including possible changes to the EIA Directive as well as improving EU and Member State guidance documents.

⁴⁰ Based on COM(2009) 378 final

⁴¹ See link to the consolidated version in the annex.

The report confirms that in many cases, MS have built on the minimum requirements of the Directive and have gone beyond them. The European Commission sees momentum to step up the Directive's minimum requirements and improve the Directive.

These findings are relevant in the framework of a future simplification exercise of the Directive. The Commission will consider all simplification methods (codification, codification combined with the introduction of comitology, recasting, merging, use of regulation). Any simplification initiative will aim to improve environmental protection, increase the degree of harmonisation and simplify existing procedures.

An Annex 3 includes main findings of recent ECJ rulings on screening mechanism on the Interpretation of certain Annex I and II categories of projects, on development consent, on retention permissions and "after-the-event regularisations" of unlawful operations as well as on Administrative fees.

5.2 Report on the on the Application and Effectiveness of the Strategic Environmental Assessment (SEA) Directive⁴²

The SEA Directive

The purpose of the directive on the assessment of the effects of certain plans and programmes on the environment (Strategic Environmental Assessment or SEA directive)⁴³ is to ensure that the environmental consequences of certain public plans and programmes (P&P) are identified and assessed during their preparation and before their adoption.

The public and environmental authorities can give their opinion and all results are integrated and taken into account in the course of the planning procedure. After the adoption of the plan or programme the public is informed about the decision and the way in which it was made. In the case of likely transboundary significant effects the affected Member State and its public are informed and have the possibility to make comments which are also integrated into the national decision making process.

The 2009 report

Article 12(3) of the Directive requires the Commission, to send a first report on its application and effectiveness to the European Parliament and the Council before 21 July 2006. Due to delays in transposing the Directive in many Member States (MS) and to the limited experience of its application, this report was just issued in 2009.

MS had to transpose the SEA Directive into their legislations by 21.7.2004. As of that date, only nine of the 25 MS had actually transposed the Directive. By 2009, all MS have transposed the Directive. Where appropriate, infringement procedures have been or are being launched by the Commission to address problems of incomplete or incorrect transposition.

The overall picture of the application and effectiveness of the SEA Directive across all MS is a varied one in terms of the institutional and legal arrangements of the SEA procedure, and in terms of how Member States perceive its role.

Overall, it is concluded that the SEA Directive contributes to the systematic and structured consideration of environmental concerns in planning processes and better integration of environmental considerations upstream. In addition, by means of its requirements (environmental

⁴² Based on COM(2009) 469 final

⁴³ Directive 2001/42/EC, see annex.

report, consultation and information of the authorities and public concerned etc.) it ensures better and harmonized planning procedures, and contributes to transparent and participatory decision making processes.

The report summarizes the first experiences made by MS in key issues of the SEA procedure: It also highlights experiences of MS in the relationship of the SEA Directive with other EU legislation and policy, including the EIA Directive, the Habitats Directive and Biodiversity Action Plan, the SEA Protocol and climate change as well as experiences made in the first application of the SEA to the Operational Programmes 2007-2013 under the Structural Funds.

The general findings of this first report suggest that the application of the SEA in MS is in its infancy, and that further experience is needed before deciding on whether the Directive should be amended and, if so, how this should be done. MS seem to prefer stability in the legislative requirements, to allow SEA systems and processes to settle down. The next evaluation report should be prepared in 2013.

Opportunities for improvement of the Directive are seen in the long term with regard to the entry into force of the SEA Protocol, the need to develop capacity in the MS as well as the need for further guidance on the interpretation of certain key concepts of the Directive

6. Procedure

Responsible: Directorate-General for Environment (DG ENV), Commissioner Dimas

Contact DG ENV: Mr Stephanos AMPATZIS (on EIA), Ms Yvette IZABEL (on SEA), Mr Georges-Stavros KREMLIS, Head of Unit ENV.B.4 “Cohesion Policy and EIA”

Schedule: to be confirmed, following final decision of the CoR Plenary in February 2010 on the division of the DEVE Commission.

Rapporteur: Mr José Macário CORREIA (PT/EPP)

Inter-institutional framework: European Parliament: no report by ENVI Committee on the dossiers. Proposal for the revision of the EIA Directive announced by the European Commission for end of 2010.

ANNEX

Most relevant CoR opinions:

- Opinion on "**TEN-T: A policy review** ", COM(2009) 44 final, Rapporteur: Daclin (FR/PES), CdR 103/2009 fin
- Opinion on "**New impetus for halting biodiversity loss**", Rapporteur: Souchon (FR/PES), CdR 22/2009 fin
- Opinion on "**Industrial Emissions**", Rapporteur: Lamers (NL/EPP), CdR 159/2008 fin
- Opinion on the **Annual Report of the Six European TEN-T Coordinators** COM(2006) 490 final and **Trans-European Networks: Towards an Integrated Approach** COM(2007) 135 and **Extension of the Major Trans-European Transport Axes** COM(2007) 32 final, Rapporteur: Soulage (FR/PES), CdR 405/2006 fin
- Opinion on the **Proposal from the Commission for a Directive providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Council Directives 85/337/EC and 96/61/EC**, COM(2000) 839 final - 2000/0331 (COD), CdR 99/2001 fin
- Opinion on the **Amended proposal for Council Directive on assessment of the effects of certain plans and programmes on the environment**, COM(1999) 73 final - 96/304 (COD), CdR 349/1999 fin
- Opinion on the **Proposal for a Council Directive on the assessment of the effects of certain plans and programmes on the environment**, COM(96) 511 final, CdR 172/97 fin
- Opinion on the **Proposal for a Council Directive amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment**, COM(93) 575 final), CdR 245/94 fin

Further documents:

Consolidated version of the EIA Directive: Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC), as amended by Council Directive 97/11/EC of 3 March 1997 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1985L0337:20030625:EN:PDF>

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EU Institutions:

EUROPEAN COMMISSION website "Environmental Assessment",
<http://ec.europa.eu/environment/eia/home.htm>

EUROPEAN COMMISSION websites "Environmental Impact Assessment",
<http://ec.europa.eu/environment/eia/eia-legalcontext.htm> and "EIA related guidance and research", <http://ec.europa.eu/environment/eia/eia-support.htm>

EUROPEAN COMMISSION websites "Strategic Environmental Assessment",
<http://ec.europa.eu/environment/eia/sea-legalcontext.htm> and "SEA related guidance and research", <http://ec.europa.eu/environment/eia/sea-support.htm>

EUROPEAN COMMISSION, 2006: Study "Costs and benefits of the EIA Directive" (Summary);
<http://ec.europa.eu/environment/eia/eia-studies-and-reports/eia-costs-benefit-en.htm>

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COWI, June 2009: Study concerning the report on the application and effectiveness of the EIA Directive, study commissioned by DG ENV, European Commission,
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Others:

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http://www.rspb.org.uk/Images/SEA_and_biodiversity_tcm9-133070.pdf

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http://ec.europa.eu/regional_policy/sources/docoffic/working/doc/sea_handbook_final_foreword.pdf