

## EU Policy Update: (EU2013.06): Reform of the EIA Directive

### Introduction

On 26 October 2012 the European Commission published its proposals **for revisions to the Environmental Impact Assessment (EIA) Directive<sup>1</sup>**.

The existing EIA Directive (2011/92/EU) requires an impact assessment of projects likely to have significant environmental effects prior to them being granted consent by local and/or national authorities.

The European Commission states that whilst the Directive has brought environmental and socio-economic benefits it has not significantly changed since its introduction 25 years ago. The general objective of the proposal is to address shortcomings in relation to the scoping procedure contained within the existing Directive, the quality and analysis of the impact assessments and inconsistencies both within the Directive and between the Directive and other EU legislation. The proposals also seek to ensure the Directive reflects the environmental and socio-economic changes that have occurred since its first iteration and reflect the smart regulation agenda.

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<sup>1</sup> COM(2012)628 available from [DG Environment web-site](#).

### Summary of main points in proposals

- **Issues covered by EIAs:** the issues that an impact assessment is required to consider will be amended **to include population, human health, biodiversity, climate change and land**. The assessment will also need to consider the exposure, vulnerability and resilience of developments to natural and man-made disaster risks.
- **Annex II projects:** Annex I of the existing Directive sets out a list of projects which have to be subject to an EIA. Projects either listed or similar to those listed in Annex II are assessed by competent authorities to decide whether a full EIA is required. The Commission proposals would **require developers** to provide competent authorities **at this initial stage with the information contained in a new Annex IIA** to enable authorities to make a decision as to whether a full EIA is required. A timeframe within which competent authorities would be required to make a screening decision is also proposed.
- **Environmental Reports:** The proposals would require competent authorities in consultation with environmental authorities **to set out in detail to all developers the detail and scope of information that should be included within an EIA. This is not currently mandatory**. They would also require the developer to either **appoint a technically competent person to complete the assessment or require the competent authority to appoint such a person to review its contents**. The report will also be required to make reference to reasonable alternatives to the proposed project and its specific characteristics.

- **Consultation:** The proposals would include **timeframes within the Directive for consultation with the public and with the environmental authorities.** The time-frame would be no less than 30 days and no more than 60 apart from exceptional cases where the nature, size, location or complexity of a development warrants a further 30 day consultation.
- **Decision-Making:** If the consultation or the information gathered to inform the EIA finds the project may have significant adverse environmental effects the competent authority in cooperation with **the environmental authorities and developer must consider whether the project should be modified or revised to mitigate or compensate for those effects.** If the competent authority decides to grant development consent it shall ensure that the consent includes measures to monitor any adverse impacts and the effectiveness of any mitigation or compensation measures. Once a decision had been reached the competent authority would be required to provide the developer, public and environmental authorities with information on the content of the decision and any conditions attached, the reasons for the decision and any mitigation and monitoring measures.
- **Timeframe:** Where all the necessary information has been provided by the developer and proper consultation has been completed **the competent authority would be required to make a decision within three months.** Depending on the nature, complexity, location and size of the project the competent authority may extend this by a further three months but must inform the developer of the justification for doing this.

- **Reporting Measures:** The proposals would **amend the reporting requirements for Member States.** Member States would be required to report to the Commission **every six years** setting out the number of projects made subject to an assessment, a breakdown of assessments by project categories and type of developer, the average duration of the EIA and the average cost.

## Background context to proposal

The European Commission published a report on the application and effectiveness of the existing EIA Directive in July 2009. The report highlighted where the Directive had been effective and areas where its implementation needed improvement. The report identified a number of barriers that existed to the effective implementation of the Directive including:

- Ensuring the Directive complied with European Court of Justice Rulings on its implementation.
- The variance in the quality of EIA documentation across Member States.
- Variance in the timeframe for the completion of EIAs.
- Variance in the interpretation of Annex II of the Directive and the screening process applied to Annex II projects.
- A lack of synergy between the EIA Directive and other Union legislation.

Following the publication of this report a public consultation was carried out by the Commission between June and September 2010. The consultation asked for views on the effectiveness of the Directive and possible future options for amendments. A stakeholder conference was also held between the 18 and 19 November 2010. The Commission received 1365 responses to its consultation and states the results of the consultation and the conference 'provided useful input' to the development of the Commission's proposals.

## Relevance to Wales

**Implementation of the EIA Directive in Wales is the responsibility of the Welsh Government** and local authorities except in relation to major infrastructure projects outside of devolved competence. The EIA Directive is transposed through a number of regulations in Wales which would need to be amended to reflect any changes made. Any proposals will also **impact upon the work of the statutory consultation bodies** and developers in Wales.

The Welsh Government is yet to outline its views on the issues but was consulted by the UK Government when it prepared an Explanatory Memorandum on the proposals.

## UK Government Position

The UK Government outlined its view of the proposals in an Explanatory Memorandum (EM) published in December 2012. The UK Government states in the EM **that some of the proposals put forward by the European Commission should not be included within a revised Directive and should be left to the discretion of Member States.**

Whilst the UK Government supports the Commission's intention to streamline the EIA process it expresses particular concern that:

- The proposals would increase the number of projects that would need to be screened to assess whether a full assessment is required;
- The proposal to require accredited experts to review assessments could add significant costs to the process;
- The proposal to establish time-frames represents a 'one size fits all' approach which would cause difficulties in the UK; and
- The potential increase of costs and time-burdens on developers and competent authorities that could result from the proposals.

The UK Government expresses concern that the Commission did not share its proposals or associated impact assessment with Member States prior to their publication. It states that it has initiated further work to assess the costs of environmental impact assessments and the implications of the proposals for the UK.

## Progress of dossier in EU Institutions

***This section will be updated as the negotiations take place in Brussels and the official positions of the EU Institutions become clear.***

### Monitoring the dossier

The Commission's proposals will be adopted through the 'ordinary legislative procedure' (Co-decision), which requires an agreement between the Council of Ministers and the European Parliament before the proposals can become EU law. The progress of the dossier through the EU decision-making process can be followed on two web-sites (using the Commission reference to identify progress on each element of the package):

- **European Parliament's Legislative Observatory**
- **European Commission's Pre-Lex web-site**

### European Parliament

The lead committee for this dossier is **Environment, Public Health and Food Safety**. The Lead Rapporteur for the Committee's work has been the **Italian MEP Andrea Zanoni** from the group of the Alliance of Liberals and Democrats for Europe. Amongst the Shadow Rapporteurs is **UK Conservative MEP Struan Stevenson**. The Committee adopted its report on 22 July 2013 making a number of recommendations for amendments to the Commission's proposals. This report was debated and voted on in a plenary session in the European Parliament on 9 October 2013. The position adopted by the Parliament will form the basis of its negotiations with the European Council and Commission.

The key amendments the European Parliament wish to see made to the Commission's original proposals are:<sup>2</sup>

- **The addition of a conflict of interest clause** that would require Member States to make sure that the Competent Authority responsible for assessing the Environmental Report is not **in any way linked to, dependent on or subordinate to the developer**. If adopted this revision could have a significant impact on Natural Resources Wales as its advisory arm may not be able to assess any Environment Report completed by its operational arm.
- The **inclusion of a requirement that both** the person producing the Environmental Report for the developer and the persons assessing the report for the competent authority have relevant qualifications and expertise.
- The addition of a new clause that would **require Member States to set up a single electronic portal where the public could access relevant information** on the proposal and the consultation process. Member States would also have to appoint a single point of contact within a Competent Authority for the public.
- The Parliament would like **to see an amendment to the Directive that would require a developer to take corrective action** where monitoring of a development showed unforeseen adverse impacts on the environment.
- The inclusion of a clause that would require **Member States to lay down rules on penalties for infringements of the Directives**. The penalties would be required to be effective, proportionate and dissuasive.

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<sup>2</sup> European Parliament, *Amendments adopted by the European Parliament on 9 October 2013 on COM 2012 (0628)*, October 2013 [accessed 6 December 2013]

- An amendment that would make it **compulsory for any projects related to exploration and hydraulic fracturing ("fracking") extraction activities for non-conventional hydrocarbons to be subject to an EIA**.

## Council of Ministers

The **Environment Council** is taking a lead on this dossier in the Council of Ministers. To date the Council has held three sessions on the proposals on the 17 December 2012, 21 March 2013 and 18 June 2013. At his meeting on 21 March 2013 the Council held a public debate on the proposals.<sup>3</sup>

During the discussions **there was broad agreement on the need to simplify the EIA process** but Member States expressed some concern about the Commission's proposals. Member States argued that the reforms should **avoid being too prescriptive and provide Member States with greater flexibility** to implement the reforms at a national level. Member States expressed concern that the Commission's proposals could increase the administrative burden and costs for Member States.

Further discussion in the Council will take place before its negotiation position is adopted.

## Further information

For further information please contact:

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<sup>3</sup> European Council Press Release, *3233 Meeting of the Council of the European Union (Environment)*, 21 March 2013, [accessed 6 December 2013]