

EU Policy Update: (EU2013.01):

Reform of the EIA Directive

Introduction

On 26 October 2012 the European Commission published its proposals for revisions to the Environmental Impact Assessment (EIA) Directive¹. 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.

¹ 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 this screening decision is also proposed.
- **Environmental Reports:** The proposals would require competent authorities in consultation with environmental authorities to set out for 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 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**. There is a provisional first reading date set for 16 June 2013 and in plenary 10 September 2013, however, these dates may well change depending on the progress of discussions within the European Parliament committees.

The Lead Rapporteur will be **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 Chair of the Committee is **German MEP Matthias Groot** from the Progressive Alliance of Socialists and Democrats. **Welsh MEP Jill Evans** (from the Greens/European Free Alliance) is also a member of this Committee

These pages will be updated as the proposals progress through the European Parliament.

Council of Ministers

The **Environment Council** will take a lead on this dossier in the Council of Ministers. The Council held a first discussion on the EIA proposals at their meeting on 17 December 2012, taking note of the proposals and the progress of discussions within the Council working groups.

Committee of the Regions

As one of the two 'consultative bodies' of the EU, the Committee of the Regions is preparing an opinion on the proposed revisions to the EIA Directive.

The Rapporteur is Mr Marek SOWA, the Marshal of Małopolska Voivodship in Poland, and member of the European People's Party (EPP).

He has organised a stakeholder conference in Brussels on 18 February to inform the preparation of his draft report.

Further information

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